THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
The Honorable Robert E. Hood, Circuit Court Judge

Appellate Case No. 2020-001708
Civil Action Case No. 2020-CP-40-03810

Penn America Insurance Company and Global Indemnity Group, Inc.,

Plaintiff/Counter-Defendants,

v.

Morris Beach Hutson a/k/a M.B. Hutson,

Defendant/Counter-Plaintiff,

AND

Morris Beach Hutson a/k/a M.B. Hutson,

Third-Party Plaintiff,

v.

Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C.,

Third-Party Defendants.

of whom Morris Hutson is the Appellant,

and Penn America Insurance Company; Global Indemnity Group, LLC; Timothy J. Newton, Esq.; Murphy & Grantland, P.A.; Christian Stegmaier, Esq.; and Collins & Lacy P.C. are the Respondents.

RESPONDENTS TIMOTHY J. NEWTON AND MURPHY & GRANTLAND, P.A.'S REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO STRIKE APPELLANT'S "MEMORANDUM" FILED MARCH 5, 2021, APPELLANT'S "NOTICE" FILED MARCH 8, 2021, AND

APPELLANT'S "REPLY BRIEF" FILED MARCH 10, 2021 AND REQUEST FOR SANCTIONS

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Respondents Timothy J. Newton and Murphy & Grantland, P.A. (hereinafter collectively "Newton") submit this Reply Memorandum in support of Respondents' Motion to Strike Appellant's "Memorandum" filed March 5, 2021, Appellant's "Notice" filed March 8, 2021, and Appellant's "Reply Brief" filed March 10, 2021. [1]

Respondents filed this Motion to strike court filings made by Appellant Morris Beach Hutson that are not allowed by the applicable Rules and that contain false and scurrilous slurs. Respondents also sought to strike Hutson's latest untimely innuendo—that Respondents had all of the documents of Hutson's adversary, TLC Holdings, LLC.

Hutson's response memoranda simply rehash numerous prior filings Hutson has made. Hutson again alleges fraud without evidentiary support.

No evidence was provided that Respondents have all of TLC's documents.

In paragraph 4, Hutson repeated his speculation that Respondents have all of TLC's documents. Respondents repudiated this allegation in their Motion filed March 23, 2021. [2] Hutson had no substantive response.

Hutson's Draft Pleading

Paragraph 5 reiterates Hutson's frequently debunked claim that Laura Paton investigated and reported 77 counts of fraud that Respondents failed to pursue, thus causing Hutson to lose all his prior

[1] Appellant filed two nearly identical responses on March 25 and 31. The e-mail attached to Appellant's "response" filed March 31, 2021 is directed to Respondents Newton.

[2] Newton demonstrated that TLC opposed Penn-America's attempts to investigate Hutson's claims of fraud based on lack of relevance and because the issue had been explored in prior actions. (See Exh. A: excerpts from the Rule 30(b)(6) deposition of TLC (referenced in Newton's March 23, 2021 Motion to Strike, pp. 5-6).)

cases. Respondents demonstrated in their briefs (Newton Init. Br. filed Mar. 9, 2021, pp. 8-9, 20-21, 26) that Hutson's representation to this Court is false in numerous respects:

- Hutson has never presented any evidence that Laura Paton investigated his counterclaims against TLC;
- Laura Paton did not sign Hutson's counterclaims against TLC;
- Hutson's counterclaims do not contain 77 counts of fraud;
- Pleadings do not constitute evidence;
- Hutson's counterclaims were heard and dismissed (see Exh. B: Cothran Order); and
- Hutson released TLC with respect to the fraud alleged in the counterclaim in a prior action.

Respondents do not rely solely upon their motion for sanctions.

In paragraph 6, Hutson falsely alleged that the only defense Respondents have asserted is to label his arguments frivolous. Respondents raised numerous defenses, as Hutson can verify with even a cursory perusal of their briefs. Hutson has no response to these defenses; he simply ignores them. Respondents argued Hutson's filings are frivolous in support of their motion(s) for sanctions.

Hutson's defamatory statements regarding his defense attorney

Hutson's allegations against Frank Gordon, a non-party, are slanderous. Mr. Gordon defended Hutson in the Defamation Action after Hutson demanded that Paton be replaced. [3] Respondents do not "accuse" either Gordon or Hutson of "losing" that claim. Respondents have shown that Hutson's counterclaims in the Defamation Action were dismissed due to *res judicata*. (Exh. B: Cothran Order.) Mr. Gordon did not represent Hutson with respect to either his counterclaims or the prior case upon which the dismissal ruling was based. [4]

---

[3] TLC Holdings, LLC, *et al.* v. Hutson, Civ. Action No. 2015-CP-14-00615 (Clarendon Cnty. Comm. Pl.). Penn-America settled TLC's judgment at no cost to Hutson.

[4] TLC Holdings, LLC, v. Hutson, Civ. Action No. 2011-CP-14-00602 (Clarendon County Comm. Pl.) ("the Ejectment Action").

Alleged failure to report fraud

Paragraphs 7 through 9 restate Hutson's contention that Respondents should lose their law licenses for failing to report fraud. As Respondents demonstrated in their briefs, this argument fails because Hutson cannot prove the existence of any fraud to report.

Hutson's example of extrinsic fraud

Hutson's allegory regarding self-defense, which he has repeated several times, has no relevance to this case. A more apt allegory would be something like the following:

Hutson and TLC argue over a piece of property on the bus. They litigate their dispute and the court rules in favor of TLC. Hutson loses his temper and threatens TLC, who calls the police. The responding officer, who had never met either Hutson or TLC and who knows nothing about their dispute, writes a report. Hutson then sues the police officer claiming he committed fraud on the court that ruled in favor of TLC.

If the above allegory seems to make no sense, one has grasped the point. Hutson's claim is as ethereal as the fading smile on the famed Cheshire Cat. Respondents are baffled by Hutson's continuing barrage of invectives. It appears that Hutson is projecting his disappointment with the results of his litigation with TLC onto Respondents for some reason.

Hutson's latest untimely canard

In paragraph 6, Hutson makes a new and spurious allegation to which Newton takes this opportunity to respond. Hutson alleged that Newton "slipped in prior to the jury trial and met with all parties and the judge ex-parte prior to the opening of that session." This allegation is malicious.

Approximately a week before trial, TLC filed a Motion to Amend its Complaint in the Defamation Action. (A complete copy of TLC's Motion is attached as Exhibit C.) In their supporting Memorandum, TLC alleged that Hutson posted defamatory statements about TLC and one of its

principals, Richard Clark, on a website called "Ripoff Report" on May 19, 2014. [5] Frank Gordon filed a Brief in Opposition on behalf of Hutson. (Exh. E.)

Penn-America also filed a Motion to Intervene for the Limited Purpose of Submitting a Special Verdict Form or Special Interrogatories. (Exh. F.) Penn-America argued that any damages associated with the May 19, 2014 offense were not covered because that occurred after the policy was cancelled. (Id. at ¶ 11.) Accordingly, Penn-America sought to intervene for the limited purpose of submitting an allocated verdict to the jury. [6] (Id. at ¶ 27.)

Penn-America's Motion to Intervene was submitted on January 19, 2018. (See Exh F.) The trial judge, the Honorable George M. McFaddin, responded later that day indicating that the motions would be addressed on Monday. (Exh. G: e-mail.)

The trial began on Monday, January 22, 2018. (Exh H: trial tr. excerpt.) Judge McFaddin heard motions before trial in a conference room adjacent to the courtroom. There was no *ex parte* communication—Hutson, Gordon, and TLC's counsel were present at the hearing. After the hearing, TLC withdrew its motion to amend. Penn-America then withdrew its motion to intervene because it was moot. (Exh. H: trial tr., p. 8.) The only parties at trial were TLC and Hutson. (Id., p. 1.) Newton left after the hearing—he was not at the courthouse at all during trial.

Importantly, Newton could not have raised Hutson's fraud claims against TLC at the hearing before Judge McFaddin. Newton represented Penn-America at the hearing, not Hutson. Hutson's counterclaims against TLC had already been dismissed, and Hutson's time for appealing that ruling

---

[5] Hutson posted several complaints on the Ripoff Report related to his litigation with TLC, including one against Susan Stroman, TLC's realtor. (See Exh. D: website printouts.)

[6] Penn-America's Motion to Intervene was made under unsettled law at the time. The Supreme Court of South Carolina subsequently held that liability insurers may not intervene, but they may allocate between covered and non-covered damages in a separate declaratory judgment action. See Ex Parte: Builders Mut. Ins. Co., 431 S.C. 73, 847 S.E.2d 87 (2020).

had passed. (Exh. B: Cothran Order (filed Mar. 2, 2017).) Judge McFaddin could not have entertained such a motion even if he had been so inclined because Hutson's counterclaims were dismissed by Judge R. Ferrell Cothran, Jr. [7] Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another.")

Hutson understood the purpose of the hearing. He was present at the hearing, and he made no objections. Hutson's allegations regarding Newton, made years after the fact, do not arise from innocent confusion. Rather, they are part of Hutson's continuing pattern of abusing the judicial process through intentional defamation and harassment.

Hutson's lawsuit against Judge Robert E. Hood

Hutson's allegations against Judge Hood are not relevant to this appeal—those claims are asserted in a separate action. They are significant, however, because they demonstrate that Hutson is not an unsophisticated *pro se* litigant. Hutson claims that Judge Hood violated Judicial Canon 3.D.(2). If Hutson understands the judicial canons, he also has the wherewithal to know that his allegations against Newton are false. Hutson should retract them.

Hutson's requested relief

Hutson's prayer for relief is misplaced in response to an appellate motion. Hutson is merely using the platform of court filings to malign Respondents with abusive rhetoric.

Summary

Hutson continues to make representations to this Court that are nothing more than fabrications concocted in his scheming mind. The Record on Appeal is voluminous because every time Hutson made these allegations, Respondents supplied documentary evidence proving that his claims are false.

---

[7] See Exh. B (Cothran Order).

Yet Hutson not only brazenly repeats the same false allegations after being soundly refuted; he demonstrates his mendaciousness by continuing to invent new slurs after briefing has been completed.

CONCLUSION

Respondents moved to strike filings that are without procedural basis and that improperly raise new substantive issues. Hutson did not address the merits of the motion before the court in his response. Hutson merely repeated his threadbare "big fish story" with a new twist. Respondents' Motion to Strike and request for sanctions against Hutson should be granted for the reasons set forth above. Respondents also request leave to reassert this Motion should the Court find it prudent to decide the merits of the appeal before reaching this issue.

These Respondents are *not* seeking to hold any deadline for the filing of the Record in Appeal in abeyance during the pendency of the instant Motion, as the content of the Record will not be affected by the Court's ruling. See Rule 240(b), SCACR.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/ Timothy J. Newton
John M. Grantland, Esq., SC Bar # 64158
Timothy J. Newton, Esq. SC Bar # 71640
P. O. Box 6648
Columbia, SC 29260
Phone: 803-782-4100
Fax: 803-782-4140
jgrantland@murphygrantland.com
tnewton@murphygrantland.com

April 1, 2021
Columbia, SC

CERTIFICATE OF SERVICE
(Appellate Case No. 2020-001708)

I, the undersigned, attorney for Respondents Timothy J. Newton and Murphy & Grantland, P.A. do hereby certify that I have this date served the foregoing **Reply Memorandum in support of their Motion To Strike Appellant's "Memorandum" filed March 5, 2021, Appellant's "Notice" filed March 8, 2021, and Appellant's "Reply Brief" filed March 10, 2021 and Request for Sanctions** upon all parties, by electronic mail and by placing a copy in the United States mail, postage prepaid, on April 1, 2021, addressed to the following:

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

Christian Stegmaier, Esquire
Laura R. Baer, Esquire
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor (29201)
P.O. Box 12487
Columbia, SC 29211
cstegmaier@collinsandlacy.com
lbaer@collinsandlacy.com
Attorneys for Respondents Penn America Insurance Co., Global Indem. Group., Inc., Christian Stegmaier, Esq., and Collins & Lacy P.C.

s/ Timothy J. Newton
JOHM M. GRANTLAND
TIMOTHY J. NEWTON
Attorneys for Respondents Timothy J. Newton and Murphy & Grantland, P.A.

Dated: April 1, 2021

Exhibit A

(also referred to as

"Newton Exh. 9"

and

"Newton Exh. CC")

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

PENN-AMERICA INSURANCE COMPANY, Plaintiff,	C.A. NO.: 2:16-cv-01943-DCN
v.	30(b)(6) Deposition of TLC HOLDINGS, LLC AND BIG WATER RESORT, LLC
BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL a/k/a JIMMY "STEVE" LOVELL, JAMES THIGPEN, OCOEE, LLC, Defendants.	November 14, 2017

30(b)(6) deposition of TLC Holdings, LLC and Big Water Resort, LLC, on oral examination of Richard Clark, reported by Lisa P. Huffman, Verbatim Court Reporter and Notary Public in and for the State of South Carolina; said deposition taken pursuant to notice of deposition, by agreement and in accordance with Federal Rules of Civil Procedure, at the law offices of Turner Padget, 40 Calhoun Street, Suite 200, Charleston, South Carolina, on November 14, 2017, at the hour of 9:57 a.m.

APPEARANCES

TIMOTHY J. NEWTON, ESQUIRE
Murphy & Grantland, P.A.
4406-B Forest Drive
Columbia, South Carolina 29206
tnewton@murphygrantland.com
ATTORNEY FOR PLAINTIFF

JOHN S. WILKERSON, ESQUIRE
Turner Padget Graham & Laney, P.A.
40 Calhoun Street, Suite 200
Charleston, South Carolina 29401
jwilkerson@turnerpadget.com
-and-
R. WAYNE BYRD, ESQUIRE
Turner Padget Graham & Laney, P.A.
2411 North Oak Street, Suite 301
Myrtle Beach, South Carolina 29577
wbyrd@turnerpadget.com
ATTORNEYS FOR DEFENDANTS, BIG WATER RESORT, LLC, TLC HOLDINGS, LLC, RICHARD CLARK AND JIMMY "STEVE LOVELL

Also Present: Arden Lowndes and Steve Lovell

* * * * *

INDEX

EXHIBIT INDEX: PAGE:

EXHIBIT INDEX: PAGE:

EXHIBIT INDEX: PAGE:

EXHIBIT INDEX: PAGE:

LEGEND OF THE TRANSCRIPT

dashes (-)	intentional or purposeful interruption
(ph)	denotes phonetically written
(sic)	written as said

STIPULATIONS

It is hereby stipulated and agreed by and between counsel for the respective parties that the Witness will not waive the reading and signing of the deposition transcript.

Whereupon,

RICHARD CLARK,

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

DIRECT EXAMINATION

(By Mr. Newton)

Q. Mr. Clark, my name is Tim Newton. I'm here representing Penn-America Insurance Company. This is a coverage action. I'll just put the case number on the record. Pending in Federal Court Charleston Division 2:16-cv-01943-DCN. We're here pursuant to the Federal Rules of Civil Procedure for a deposition. Have you ever given a deposition before?

A. I have.

Q. And in South Carolina, have you?

A. I have.

Q. Okay. So I won't belabor the details. If you would, just direct any questions that you have from hereon to me rather than your attorney. If you

need a break let me know. If you would, state your responses in yes or no form rather than nodding or something like so the court reporter can get everything. So we'll go ahead and begin.

MR. NEWTON: Just for the record, what we're going to do first is we're going to do the two 30(b)(6) depositions together. I've agreed to do that. So let's make Exhibit Number 1 the 30(b)(6) Notice.

MR. WILKERSON: This is actually all the notices --

MR. NEWTON: That's correct.

MR. WILKERSON: What we're doing here is the first two?

MR. NEWTON: Yes.

MR. WILKERSON: Okay. These are the depositions of TLC Holdings, LLC and the deposition of Big Water Resort, LLC. And Mr. Clark will be he spokesperson for both.

MR. NEWTON: Okay.

(PLAINTIFF'S EXHIBIT 1 MARKED FOR IDENTIFICATION PURPOSES (10 pages) - NOTICE OF DEPOSITION.)

A. Am I supposed to have this?

MR. WILKERSON: Yes, sir.

Page 9

Q. You can look at it and then the court reporter will keep those. I have copies of just about everything. So if you'd turn then on Exhibit 1 to what will be the second page. There's a caption there. It says the Notice of Deposition of 30(b)(6) of TLC Holdings, LLC. Are you the designee for TLC Holdings, LLC?
A. I am.
Q. Have you reviewed this document before?
A. I have.
Q. Do you feel qualified to speak on all the topics that are identified in this Deposition Notice?
A. I do.
Q. Okay. And since we're doing these together, then if you turn then to the fourth page, which is captioned Notice of Deposition 30(b)(6) of Big Water Resort, LLC. Are you the designee for Big Water Resort, LLC, also?
A. I am.
Q. And have you reviewed this document?
A. I have.
Q. Do you feel qualified and are you the best person for Big Water Resort, LLC to testify regarding these topics?
A. I am.

Page 10

MR. NEWTON: I'm going to mark this Exhibit 2.
(PLAINTIFF'S EXHIBIT 2 MARKED FOR IDENTIFICATION PURPOSES (9 pages) - AMENDED COMPLAINT.)
Q. This is a pleading in Civil Action Number 2015-CP-14-0615 in State Court, the County of Clarendon, Court of Common Pleas. Have you seen this document before?
A. I believe I have.
Q. It's an Amended Complaint in a case captioned as TLC Holdings, LLC, et al., versus M.B. Hutson filed November 29, 2016. Did you participate in providing information for this Complaint?
A. I did.
MR. NEWTON: I'm going to mark this next one as Exhibit 3.
(PLAINTIFF'S EXHIBIT 3 MARKED FOR IDENTIFICATION PURPOSES (14 pages) - COMPLAINT.)
Q. Exhibit 3 is a Complaint in case captioned William Reed versus Big Water Resort, LLC, et al., Civil Action Number 2:14-CV-01583-DCN. Have you seen this document before?
A. I have.

Page 11

Q. Now, going back to Exhibit 2. In Exhibit 2 is Amended Complaint by TLC Holdings, who you're testifying for; is that correct?
A. That's correct.
Q. And are y'all claiming liable and slander in this action?
A. I'd have to read the Complaint to see. That's more of a legal question.
Q. Fair enough. What is the gist of your understanding of what this Amended Complaint is about, Exhibit 2?
MR. WILKERSON: The document, of course, speaks for itself. So note my objection in that regard.
A. The gist of it is that Mr. Hudson, who was staying at the campground, sent a postcard to members, and to whom else I don't know, but I think it was a mass mailing of probably 600 or so people received a postcard. And on that postcard it basically calls Mr. Lovell and myself crooks. It said that we had scammed the members or the people that held memberships in Big Water Resort, that we had put the money in our pocket and run. So, you know, as to whether that's slander, liable, I don't know. But all I know is it was factually incorrect, and

Page 12

it didn't do a lot for our reputation, mine and Mr. Lovell's personal reputations nor the reputation of TLC Holdings.
Q. Does Exhibit 3, if you take a look, have anything to do with Exhibit 2?
MR. WILKERSON: Object to the form.
A. I don't know if I totally understand your question or not, but if the Complaint -- Exhibit 3 is the Complaint by the members that held memberships in Big Water Resort against Big Water Resort, TLC Holdings, Richard Clark, James Thigpen, Steve Lovell and Ocoee, LLC. So as to the relation between -- relationship between them filing a Complaint against these entities and these individuals and ours filing a Complaint against Hudson slandering and libeling us, I'm not sure if there's a relationship or not. I mean, there's some -- I guess the relationship would be there's some of the same parties involved, but other than that I don't know.
Q. Is it your contention that the postcard that you mentioned led to a lawsuit?
A. Yes.
Q. And is Exhibit 3, does that appear to be the lawsuit you're talking about?

A. Yes.
Q. Now, if you look at Exhibit 3, is there anything in particular that TLC Holdings and Big Water Resort, LLC object to in this Complaint?
MR. WILKERSON: What's the question?
Q. Is there anything in particular that TLC Holdings and Big Water Resort object to in the Complaint identified as Exhibit 3?
MR. WILKERSON: Object to the form. We filed an answer with our position in regard to the Complaint.
A. I guess that would be my answer also. I mean, those are our objections to each point in this have been filed, so.
Q. Okay. Well, let's go through it then. If you turn to paragraph 13. This case arises from defendants, et cetera, scheme to solicit millions of dollars from over a 1,000 people in exchange for the sale of nearly worthless memberships in Big Water Resort. Do you object to that paragraph?
MR. WILKERSON: Object to the form.
A. Well, it's stated under facts, and there's nothing in that paragraph true. So I object to that.
Q. Paragraph 14, Big Water Resort was held out by defendants, Big Water Resort, et cetera, as a

private club where members would have guaranteed exclusive access to certain property known as Big Water Resort, et cetera. Do you object to anything in that paragraph?
A. I would potentially object to the fact that it was held out as a private club. At the time at the very beginning it was held out as a private club, but nothing in the agreement says that members are -- or the public couldn't -- could utilize the campground. So to that extent, I object to it.
Q. How about paragraph 15, the memberships were in excess of 8400 per membership. Is that factually inaccurate?
A. I can't state for sure that any memberships were sold for greater than $8,400 per membership. There certainly were many that were sold for $8,400, but for in excess of $8,400, if there were, I don't recall any right now. But if there, they were very, very few.
Q. What in your understanding was the average price of the membership?
A. They were all kind of memberships, so. And some of them, you know, for as little as $1500 or maybe even less than that. So I don't know if I've ever seen an average cost. But each, it's part of the

records. Matter of fact, I think you've been given everything we got. There's a copy of every contract, every single agreement. But I don't think I've ever done that calculation on what the average cost of the memberships were.
Q. Okay. Paragraph 16 of Exhibit 3, Big Water Resort, LLC, promised the plaintiffs they would have a membership and a private club operated by Big Water Resort, et cetera, for their lifetime plus the life of one survivor. Is that factually inaccurate?
A. There are parts of it that are. There are many memberships that were sold that do not include that at all. I mean, they were term memberships like five years, ten years, whatever, did not include a lifetime. Some of them did. A lot of them didn't. And, again, at the time that the memberships were sold it was operated and represented as a private club during that time. But that was subject to change and was written that way. So, again, in the membership agreement I would not agree that it was promised in the membership agreement that it was -- that the public could not come, okay.
Q. Okay. How about paragraph 17, under the contract the members were permitted to sell their membership. Is that inaccurate?

A. No, that's correct.
Q. This is paragraph 18, one of the critical promises in the contract between Big Water Resort, LLC and the plaintiffs, this would be the campground members, was that the club would be members only.
A. I don't agree with that.
Q. Paragraph 19, one of the critical promises in the contract between Big Water Resort, LLC and the plaintiffs was that the club would have access to the land owned by TLC Holdings, LLC for the lives of each member and their survivor. Is that factually accurate?
MR. WILKERSON: Object to the form.
A. I don't know that that was written into the contract anywhere, but they did. I mean, it was represented to the people that bought those memberships that they would have access to that land, and they did.
Q. Did Big Water Resort, in paragraph 20, convert from a private club to a public facility?
A. Well, again, I don't agree with that because I'm not sure that that ever occurred. I don't know when you say, okay, when did the private club start and when did the public facility start. But if it did, then it did during Mr. Hudson's tenure, not

Page 17

ours.
Q. If you turn to paragraph 27, this paragraph reads upon information and belief defendants, Clark, Thigpen and Lovell, to the detriment of Big Water Resort, LLC for their personal gain stripped Big Water, LLC of the funds paid by the membership and left Big Water, LLC without any operating capital, et cetera. Is that allegation factually inaccurate in your opinion?
A. It is factually inaccurate and it also makes my dander rise a little bit every time I read that. And, to me, it's almost a repeat of the postcard Mr. Hudson sent out.
Q. Did TLC market its property for sale to third parties?
MR. WILKERSON: Object to the form.
A. TLC has really never marketed that property or never listed it for sale. And never actually asked anybody to go out on our behalf and sell the property. But we did have for a period of three or four years we had people that came to us and said they would like to buy the property, and I think we had as many as actually two contacts that were signed on the property prior to Mr. Hudson.
Q. Did TLC, in fact, sell the Big Water Resort

Page 18

campground property?
A. Did TLC sale? No.
Q. Did TLC enter into a lease purchase agreement with a third party for the land upon which Big Water Resort campground was situated?
A. Yes, they did.
Q. Would that be an individual by the name of M.B. Hudson, also known as M.B. Hutson, with a t or a d. Hudson or Hutson?
A. That would be him.
Q. And was that in December 2010?
A. That's correct.
MR. NEWTON: I'm going to mark Exhibit 4.
(PLAINTIFF'S EXHIBIT 4 MARKED FOR IDENTIFICATION PURPOSES (18 pages) - FIRST AMENDED COMPLAINT.)
Q. The First Amended Complaint. Take a quick look at Exhibit 4.
A. (Witness complies.) Okay.
Q. Have you seen this document before?
A. I have.
Q. Does this appear to be another pleading in the Reed versus Big Water Resort, LLC action?
A. Correct.
Q. Let's look at paragraph 13. This case arises from

Page 19

the failure of the Big Water Resort Club in attempts to avoid financial responsibility for this failed venture. Is that allegation factually inaccurate?
A. It is factually inaccurate.
Q. Explain.
A. There was no attempt to avoid any financial responsibility there.
Q. Paragraph 14, Big Water Resort was held out as a private club for exclusive access, et cetera. Have we talked about that already?
A. We have.
Q. Paragraph 20, if you would. Let's just kind of back up for a minute. Just so we have this on the record. In this deposition are we talking about a campground by the name of Big Water Resort?
A. Yes, we are.
Q. And is that campground located in Clarendon County, South Carolina?
A. It is.
Q. Somewhere off of I95?
A. That's correct.
Q. And who is the owner of the property upon which the campground sits?
A. TLC Holdings, LLC.

Page 20

Q. When did TLC Holdings, LLC purchase the property?
A. Maybe 2003 I think it was actually transferred from Big Water Resort to TLC.
Q. Big Water, LLC purchased it from a third party and then transferred it to TLC? Is that accurate?
A. That's correct.
Q. And what is the nature of the Big Water Resort campground? In general, what is it about?
A. Well, it's a piece of -- it's a campground that's located on about 35 acres in the county that you just mentioned. It's located on the banks of the Lake Marion. It has like over 100 campsites for RVers. It has, I think, seven two-bedroom cabins. It has like 13 one-bedroom cabins, one three-bedroom cabin. It has a launch area for Lake Marion, a public launch area. It has outdoor pavilion for concerts, recreation for people that want to -- weddings, et cetera. It has a miniature golf course. It has volleyball courts, it has a catch and release fish pond on it. It has a fish cleaning station, an arcade for children, et cetera.
Q. Fair enough. Now, what entity operates the campground?
MR. WILKERSON: Today?

A. Say again, please.
Q. Prior to December 2010, what entity oporates the campground?
A. Which entity?
Q. Yes.
A. Big Water Resort, LLC.
Q. What is the mechanism by which Big Water Resort, LLC has access to the campground property?
A. There was a lease between Big Water Resort, LLC and TLC. And the ownership was common.
Q. When you say the ownership was common, what does that mean?
A. That means that the individuals owning membership interests in the entity TLC Holdings, LLC were exactly the same in the same proportion that the individuals holding the membership interest in Big Water Resort, LLC.
Q. Let's talk about that for a minute. TLC Holdings, LLC, how many principals are there in it?
A. Three.
Q. And the name of those principals are?
A. Richard Clark, Steve Lovell and Jim Thigpen.
Q. Jim Thigpen, is he here today?
A. No, he isn't.
Q. What's his condition?

A. I honestly don't know. I know that he had a very severe stroke about six months ago. And I also know that he's fighting some form of cancer right now, too. So but as to what his condition is today, I don't know for sure.
Q. Now, I asked you about TLC. Who are the principals in Big Water Resort, LLC?
A. Richard Clark -- well, at which time?
Q. Prior to December 2010.
A. Richard Clark, Steve Lovell and Jim Thigpen.
Q. Who are the principals in Big Water Resort, LLC now?
A. I don't know if I can answer that question. I would assume that Mr. Hudson still owns it.
Q. Now, you mentioned a lease between Big Water Resort, LLC and TLC Holdings, LLC. Is there a written lease in existence?
A. We haven't been able to find one. There was.
Q. And that lease provided what?
A. Well, it provided all the facilities for which the campground required. It provided access to those facilities for all the memberships that were sold from Big Water. And I don't remember the exact terms of it. The only thing I do remember because it was booked was $330,000 was the original

lease payment.
Q. When was the lease entered into?
A. I don't recall for sure, but I think 2003.
Q. Did Big Water Resort, LLC ever make payments to TLC, LLC pursuant to that lease we're talking about?
A. No.
Q. Did Big Water Resort ever cease operations?
A. No.

MR. NEWTON: I will mark as Exhibit 5.
(PLAINTIFF'S EXHIBIT 5 MARKED FOR IDENTIFICATION PURPOSES (34 pages) - LEASE PURCHASE AGREEMENT.)

Q. Do you recognize this document?
A. I do.
Q. Tell me about this document. What is it, Exhibit 5?
A. This is a document that was entered into between TLC Holdings, Richard Clark, Jimmy Steve Lovell and Jim Thigpen with M.B. Hudson to lease the properties that were owned by TLC Holdings at the location we discussed earlier. It was to lease that property and with an obligation to purchase.
Q. What was the purchase price?
A. Well, actually, there was two options on the

purchase price. I believe there was one option where if it was purchased by a certain date, the purchase price was six million dollars. And if it didn't meet that date, but purchased at a later date then it was seven million dollars, so.
Q. And the lessee was who, Mr. Hudson; is that correct?
A. That's correct.
Q. So if you turn to page 3 of the lease purchase agreement. At the beginning of the first full paragraph there in the middle of the page, would you read that sentence?
A. (As read) The parties acknowledge that the purchaser intends to develop and construct condominiums or other residential dwelling structures on certain portions of the unimproved premises.
Q. What was the intent of the parties there?

MR. WILKERSON: Object to the form.

A. Well, the intent as it pertains to that specific sentence –
Q. Yes.
A. -- or as it pertains to this agreement?
Q. Well, let's start with the agreement. What was the intent of the parties for the agreement?

Page 25

A. The intent of the parties in the agreement was that Mr. Hudson would lease that campground until he actually exercised -- not exercised, he fulfilled his obligations to purchase it. But he was going to lease it until that time. And his stated intent was he was going to operate the campground as a campground, which he had, not under this agreement, but under his purchase of Big Water Resort, LLC, an obligation to operate that campground per the terms of the memberships that were purchased there. So he was -- and, matter of fact, he stated to us that his intent was that he was going to build, at that time, it was three condominiums. And he actually had what I call a footprint or a chart that was the campground. And he said I'm going to build one here, one here, one here. They were all on unimproved parts of the campground that were totally available to do that. He said I got buyers for those condominiums and I'm going to sell each one of those members a membership. If you buy a condominium you're going to get a -- you have to buy a membership in the campground. And he stated he was going to double the memberships there. So that was his stated intent to Mr. Lovell. Now when we met with him, which I think is pretty well

Page 26

captured in these agreements.

Q. Have you been present at any of M.B. Hudson's testimony in the litigation over Big Water?

A. I have.

Q. Would it surprise you if Mr. Hudson's testimony is different from what you've just stated?

A. I've been involved in this and the testimony from Mr. Hudson in restraining -- temporary restraining order that he had tried to overturn. I've listened to his testimony in a bankruptcy examination. I've listened to his testimony in this particular case. And it wouldn't surprise me what you might hear Mr. Hudson's say.

Q. Now, was Hudson supposed to make lease payments under this lease purchase agreement, Exhibit 5?

A. He was.

Q. How much were the payments?

A. I think it was for the first seven months, I believe, seven or eight months they were $10,000 a month and then after that they went to $8,000 a month, I believe.

Q. Okay. So you got, 70,000 plus 40,000, 110,000. And then what was it for the second year?

A. I'm sorry?

Q. What was it for the second year?

Page 27

A. I believe it was 8,000 a month for the second year. But you'd have to go back and look -- it's in the agreement.

Q. Would you agree that that comes out to be around 100,000 per year for lease payments?

A. Yeah, I think somewhere around 100,000.

Q. Now, if you'd flip to the back. I'm trying to understand what properties we're talking about here. I'm going to show you a series of printouts that I did from the Clarendon County website.

MR. NEWTON: This first one, Exhibit 6.

(PLAINTIFF'S EXHIBIT 6 MARKED FOR IDENTIFICATION PURPOSES (1 page) - Color Aerial Photograph.)

Q. Actually, let me back up. If you go to the Lease Purchase Agreement, Exhibit A, then you have A and then in bold and underlined, Campground known as Big Water Resort. It goes on into the second page. Then it says, For derivation, see below. Said tract being designated as Clarendon tax map number 035-05-00-001-00. I'm going to represent to you that I went to the Clarendon County website and printed this off. If you take a look you see parcel ID number. Does this appear to be the tract that we're talking about?

Page 28

MR. WILKERSON: Object to the form. What are you talking about? The picture or the entirety of the blue or part of the blue or what are you talking about?

Q. Do you see the below the photo on the left there where it says parcel ID number?

A. Correct.

Q. And then what is the number that's after that listing?

A. The number after the parcel ID number?

Q. Yes.

A. The alternate ID number?

Q. No. What is the parcel ID number that's listed on Exhibit 6?

A. 035-05-00-001-00.

Q. And compare that then to Exhibit 5, what we just read off. The next page there, I believe. No, no. I'm sorry. It's on page 30 of 34 of this Federal Court filing at the top.

A. Okay, I'm with you. They're the same.

Q. Okay. So it's the same parcel ID number?

A. Uh-huh.

Q. So if I printed this off, this is -- well, look at the blue highlighted portion of the picture. Does that appear to be to you to be an aerial photo with

Page 29

the perimeter or the outline of the property identified as campground known as Big Water Resort in Exhibit 5?

MR. WILKERSON: Object to the form. Which one?

Q. Well, let me ask you this, then. You see a blue line that sort of angles through the middle of it?

A. I do.

Q. Is there a right-of-way or some sort of power line or something that goes through the middle of the campground?

A. There is.

Q. Okay. So let's ignore the right-of-way through the middle there and look at the total area. Does that appear to be the Big Water Resort campground property?

A. No, not all of it. It's part of it, but not all of it.

Q. Okay.

MR. WILKERSON: Counsel, could I ask which question this relates to on your 30(b)(6) notice? I just lost touch of where we're going here.

MR. NEWTON: It's paragraph six of TLC's.

MR. WILKERSON: Six of TLC's?

Page 30

MR. NEWTON: Uh-huh.

MR. WILKERSON: Let's talk about it for a second. From which the above referenced actions arose. Now, the above referenced actions are the actions in which we brought claims against Mr. Hudson, correct?

MR. NEWTON: Well, your company knowledge's of the nature of the transactions between TLC Holdings and Hudson, which above reference transactions arose.

MR. WILKERSON: But the actions that you've identified were the action where we sued Mr. Hudson both in Cross-Complaint in the Reed matter and a direct action in the matter pending in Clarendon County. I don't know that we've ever -- that these facts, the nature of the property that you're trying to identify here has anything to do with claims that we asserted against him in any of those cases. And, further, these issues have been discovered ad nauseam in the underlying action. And it sounds to me like you're really trying to retry the merits of those underlying actions. I just don't know where we're going here and how this relates to

Page 31

the 30(b)(6) notice. Can you articulate that for me?

MR. NEWTON: Sure. The nature of the transactions between TLC Holdings and M.B. Hudson from which the above referenced actions which are the two underlying lawsuits, and this is we're just identifying the property that relates to this lease purchase agreement. And all of those two actions had to do with this lease purchase agreement and membership agreement.

MR. WILKERSON: Well, not to be argumentative, but I am. In the first one you're talking about the claims against M.B. Hudson by us, number one. Number two, the amount of the damages against M.B. Hudson in our claims. Number three, our company's knowledge of the basis for the lawsuit in Clarendon County and the damages in Clarendon County. And I just don't see where this has anything to do with our claims against Mr. Hudson and more importantly, I'm not smart enough to figure out how it has anything to do with coverage. So, you know, this witness has testified to these matters many times under

Page 32

oath. You've had access to that information. And if you think I'm making a speaking objection, stop me and I'll do it with him outside of the room. I don't intend to do that. But it just seems to me that we're prolonging discovery in this case on matters that, A, have nothing to do with coverage, B, have been explored ad nauseam and, C, are not part of your 30(b)(6) notice.

MR. NEWTON: They're part of the 30(b)(6) notice. And I'm, you know, -- they are -- we are talking about the nature of the transaction. And, you know, it's the subject matter of what was leased that's on -- identifying the property. Help me understand so that we can -- I mean, you've -- Penn-America for, you know, multi millions. And so the least we can do is figure out what property we're talking about in this lease purchase agreement.

MR. WILKERSON: Our objection stands. I don't understand it. I'm not instructing him not answer questions, but I'm in the situation where I'm going to have to buy a transcript of all this stuff where it has already been

explored ad nauseam. You've got plenty of testimony where you can identify these facts. We will stipulate to certain facts concerning the underlying case. I just wonder why we have to go through this process is the basis of my objection.

MR. NEWTON: I've explained it to you. And I will say that I've read hundreds of -- thousands of pages in this case and have not ever been able to quite figure this out, so I just want to make sure I understand.

MR. WILKERSON: Fair enough. Fair enough. Our objection stands, so go ahead.

MR. NEWTON: Okay. I'm going to mark another one of these as Exhibit 7.

(PLAINTIFF'S EXHIBIT 7 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)

Q. I'll give you a second to look at it. If you go back to Exhibit 5 then just under the number we just read, it's about the third line down, it says tract two in capital bold type. You got a meets and bounds description. Then you come down to another tax map number about halfway down. And I'll point it out for you. It's right there.

It's 035-06-02-007-00.

A. I see that. They're the same as the tax map.

Q. Now, if you look at the parcel ID number, the same exercise that we just did with Exhibit 6, does this appear to be a tract two? Does what's printed out in Exhibit 7, does that appear to be tract two identified in the lease purchase agreement?

A. I believe it is.

MR. NEWTON: Exhibit 8, which I'm going to mark.

(PLAINTIFF'S EXHIBIT 8 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)

Q. Now, if you go back to Exhibit 5 toward the bottom of the same page, Roman numeral B in underlined and bold, convenience store, it's about six lines up from the bottom.

A. I see it.

Q. And then you got another meets and bounds description. Turn to the next page which is page 31 of 34 of the Federal Court filing. And you see the for derivation see below in bold. And then you've got another tax map number, 035-06-02-005-00.

A. I see that, and it's the same number as on the tax

map, Exhibit 8.

Q. So let me just ask you this. So is there a convenience store located on this parcel, then?

A. That's correct.

Q. What's the name of the convenience store?

A. I believe it's Big -- well, today?

Q. Uh-huh.

A. I don't recall what it is today.

Q. Well, okay. What was it in 2010?

A. Big Water Country Store.

Q. Is it like, well, just a typical convenient store like a Pilot or something like that?

A. Similar. Has -- sells gasoline, diesel fuel. You can buy what you typically buy in a convenience store once you go on the inside.

Q. Was this parcel part of the Big Water Resort campground property?

A. Let's make sure we're communicating here. Are you talking about Big Water Resort, LLC or are you talking about the Big Water Resort campground?

Q. Well, let's start with Big Water Resort campground.

A. It was not -- well, part of the property is, if you want to refer back to the tax map that you gave me and look at the blue lines. If you -- you can see the roof of a building there. That's a convenient

store. If you look to your right of that you'll see what looks like RVs. And that part was utilized by the campground as storage for the people that wanted to store their RVs over time. It's secured with a high chainlink fence around it. So I would say that the storage area is part of the campground, but the convenience store was the convenience store.

Q. So that was available to the public?

A. The convenience store?

Q. The convenience store.

A. Yes, sir.

Q. Go back to Exhibit 7 for a second. I forgot to ask you, this little narrow parcel there, is that part of the Big Water Resort campground?

A. It is.

MR. WILKERSON: You're talking about the one wrapped around in blue?

MR. NEWTON: Let me look and see what you're looking at. Yes.

A. The blue?

Q. Yes, what's in blue, highlighted in blue.

MR. NEWTON: I'll mark this as Exhibit 9.

(PLAINTIFF'S EXHIBIT 9 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR

AERIAL PHOTOGRAPH.)
Q. Once you've taken a look, I'll give you a chance there. Going back to Exhibit 5.
A. Exhibit 5?
Q. Yes, the lease purchase agreement.
A. Okay.
Q. And we're continuing down now that says also and there's a meets and bounds and another also. It says all that certain piece of property and parcel strip of land known as an "access strip." Then if you turn to the next page at the top, page 32 of 34 of the Federal Court filing stamp, it says tract B1 an access strip being designated as Clarendon tax map number 035-06-02-008-00.
A. I see that. It's the same tax number as the parcel ID number that's on Exhibit 9.
Q. What was on this parcel in 2010?
A. It was basically as it says. It's an access from the state road down to the blue area. What's outlined in blue is part of the campground. There's RV sites that you're looking at there.
Q. Okay. So what's outlined in blue then was RV sites for the campground?
A. That's correct.
MR. NEWTON: Mark as Exhibit 10.

(PLAINTIFF'S EXHIBIT 10 MARKED FOR IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)
Q. Continuing back on Exhibit 5, still on page marked at the top is 32. It says also bold and underlined. It's got another meets and bounds description and then a tax map number about halfway down, said lot being designated as, and I'm going to point it out to you right there, 035-06-02-02-00 tax map number. Does this appear to be the property identified there in Exhibit 5 in --
A. Yes.
Q. -- Exhibit 10? Okay. And what was on this parcel?
A. It's a storage building with X amount of land around it.
Q. Okay.
A. Like about a two-and-a-half acre tract that has frontage on Dinglepond Road with a metal storage building.
Q. Was the storage building used for the campground?
A. I think it was used to store maybe tools and other items that were utilized by the campground.
Q. Now, I got one more of these.
MR. NEWTON: This is Exhibit 11.
(PLAINTIFF'S EXHIBIT 11 MARKED FOR

IDENTIFICATION PURPOSES (1 page) - COLOR AERIAL PHOTOGRAPH.)
Q. We're still going back to Exhibit 5, paragraph C then toward the bottom, bold and underlined and all capped, Rogers Tract. Do you see that?
A. I do.
Q. Got a meets and bounds description and all the way -- turn the page to page 33 of 34, the Federal Court stamp at the top. And the very last thing printed there is another tax map number, 035-00-00-013-00.
A. I see that, and it's the same parcel ID of the tax map labeled Exhibit 11.
Q. What was on this? Was there any buildings or anything on this tract?
A. No.
Q. What was it used for?
A. Nothing.
Q. Was it part of the campground?
A. No.
Q. Now, let me go back through these. Exhibit 6. Was Exhibit 6, was that property that was leased to Mr. Hudson under the lease purchase agreement?
A. All the property that we have reviewed here, all of it in its entirety was part of this lease purchase

agreement.
Q. Exhibits 6, 7, 8, 9, 10, 11, all of these parcels were part of the lease purchase agreement?
A. That's correct.
Q. How many of them were part of the campground property?
A. Well, there are bits and pieces. But Exhibit 6 was part of the campground itself. The outlined area in Exhibit 7 was part of the campground. Part of the outlined area in Exhibit 8, but not all was part of the campground area.
Q. In other words, the convenience store was not; is that correct?
A. Correct. Exhibit 9, this outlined area was part of the campground. Exhibit 10, you know, I don't know if I'd say that was part of the campground or not. The campground may have utilized that building, may not have. I'm not sure. For storage for equipment. I'm not totally sure of that one. And Exhibit 11 was not part of the campground.
Q. I've got another Exhibit for you.
MR. NEWTON: Mark Exhibit 12.
(PLAINTIFF'S EXHIBIT 12 MARKED FOR IDENTIFICATION PURPOSES (23 pages) - ASSIGNMENT OF MEMBERSHIP INTEREST AGREEMENT.)

Exhibit B

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)))	IN THE COURT OF COMMON PLEAS Civil Action No. 2015-CP-14-0615
TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell, Plaintiffs, vs. M. B. Hutson a/k/a M. B. Hudson, Defendant.	)	**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS**

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

BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

---

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

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

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

DISCUSSION

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

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

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

. . . .

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

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

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

. . . .

[I]t is hereby:

. . . .

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

. . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

AND IT IS SO ORDERED.

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

March 2, 2017

Manning, S.C.

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

Exhibit C

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

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

Plaintiffs,

vs.

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

Defendant.

PLAINTIFFS' MOTION TO AMEND THE COMPLAINT

Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell, hereby submit this Motion for Amend the Complaint, pursuant to Rule 15 of the South Carolina Rules of Civil Procedure. The basis of the Motion and the grounds for relief are set forth in a supporting memorandum, which is being filed herewith and which is incorporated by reference.

In accordance with Rule 11, S.C.R.C.P., undersigned counsel hereby certifies that prior to filing this Motion, he has communicated with opposing counsel and has attempted in good faith to resolve the matter contained herein.

TURNER PADGET GRAHAM & LANEY P.A.

s/ John S. Wilkerson, III
John S. Wilkerson, III, S.C. Bar No.: 6105
Richard S. Dukes, Jr., S.C. Bar No.: 16563
Carlyle R. Cromer, S.C. Bar No.: 100058
40 Calhoun Street, Suite 200 (29401)
P.O. Box 22129
Charleston, SC 29413
Telephone: 843-576-2801
Facsimile: 843-577-1649
Email: jwilkerson@turnerpadget.com
rdukes@turnerpadget.com
ccromer@turnerpadget.com

R. Wayne Byrd, S.C. Bar No.: 1068
P.O. Box 2116
Myrtle Beach, SC 29578
Telephone: 843-213-5500
Facsimile: 843-213-5620
Email: wbyrd@turnerpadget.com

ATTORNEYS FOR PLAINTIFFS

January 16, 2018

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

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

Plaintiffs,

vs.

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

Defendant.

MEMORANDUM IN SUPPORT OF MOTION TO AMEND COMPLAINT

Plaintiffs hereby submit this memorandum in support of their motion to amend the Amended Complaint. A copy of the proposed Second Amended Complaint is attached hereto as Exhibit 2. For the reasons set forth below, the Court should grant Plaintiffs' motion.

BACKGROUND

Plaintiffs filed this action in December 2015. With the consent of opposing counsel, Plaintiffs filed an amended complaint in November 2016. As detailed in the amended complaint, this lawsuit arises out of defamatory statements related to a transaction between Defendant Hutson and Plaintiffs in which Hutson purchased Big Water Resort, LLC, which operated the Big Water campground on the shores of Lake Marion, and also entered into a lease-purchase agreement to acquire the real estate on which the campground sits. This transaction closed in December 2010. Hutson ultimately defaulted on many of his obligations under the contracts, leading to his eviction from the property in March 2014. In the months leading up to his eviction, Hutson made a variety of defamatory statements against Plaintiffs, as discussed in the amended complaint.

Last week, for the first time, Plaintiffs discovered that Hutson had published yet another defamatory statement on the Ripoff Report website about Plaintiffs TLC Holdings and Clark, individually. This discovery occurred while Plaintiffs' counsel was researching internet postings involving Plaintiffs that may be relevant to damages sustained by Hutson's defamatory statements. The Affidavit of R. Wayne Byrd, attached as Exhibit 3, sets forth the circumstances under which the posting was discovered. The posting, which was made under his name ("Morris Hutson") on May 19, 2014, stated as follows:

> TLC Holdings, LLC Richard U. Clarke [sic] dishonest and fails to disclose in business deals tricky misleading knoxville Tennessee
>
> richard u. clark is misleading, intentionally fails to disclose important know [sic] facts while entering into contracts and dishonest. be careful when dealing with this man. i could say much more but for now, i want [sic].

A copy of this web posting is attached as Exhibit 4.[1] Hutson failed to disclose the existence of this statement to Plaintiffs. Plaintiffs desire to amend their complaint to reflect the existence of this defamatory web posting by Hutson.

APPLICABLE LAW

Rule 15(a), S.C.R.C.P., provides that leave to amend a pleading "shall be freely given when justice so requires and does not prejudice any other party." Rule 15(a) "strongly favors amendments and the court is encouraged to freely grant leave to amend." Patton v. Miller, 420 S.C. 471, 489, 804 S.E.2d 252, 261 (2017). "The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim

[1] Counsel for Plaintiff immediately notified defense counsel of this discovery on the same day it was found.

had been included in the original pleading or a timely motion to amend." Id. at 491, 804 S.E.2d at 262-63.

Regarding the relation back of an amended pleading, Rule 15(c) provides that "[w]henever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." "Rule 15(c) is based on the concept that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading." Thomas v. Grayson, 318 S.C. 82, 88, 456 S.E.2d 377, 380 (1995).

ARGUMENT

The Court should grant Plaintiffs' motion. Rule 15(a) provides for liberal amendment of pleadings. Furthermore, Hutson cannot argue that he will be prejudiced by the amendment, when the purpose of the amendment here is to include a libelous statement that he himself made and, of course, had knowledge of. Granting Plaintiffs' motion will not require Hutson to engage in any additional discovery; the substance of the defamatory statements in the web posting largely mirrors his other defamatory statements which are the subject of this litigation.

There is likewise no question that the amendment relates back under Rule 15(c) as it arises "out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." The posting about Clark on Ripoff Report is clearly a reference to Hutson's business dealings with Plaintiffs regarding the Big Water campground, as the parties have had no other dealings nor entered into any transactions other than the ones outlined in the original

Complaint and in the first Amended Complaint. Additionally, the amendment that Plaintiffs seek to make by this motion does not require adding an additional cause of action. They simply seek to allege an additional act of defamation committed by Hutson in support of their already-existing claim for libel.

In sum, Plaintiffs' proposed amendment clearly satisfies the standards set forth in Rule 15, S.C.R.C.P., and the Court should grant this motion.

CONCLUSION

For the reasons set forth above, the Court should grant Plaintiffs' motion to amend their complaint.

TURNER PADGET GRAHAM & LANEY P.A.

s/ John S. Wilkerson, III
John S. Wilkerson, III, S.C. Bar No.: 6105
Richard S. Dukes, Jr., S.C. Bar No.: 16563
Carlyle R. Cromer, S.C. Bar No.: 100058
40 Calhoun Street, Suite 200 (29401)
P.O. Box 22129
Charleston, SC 29413
Telephone: 843-576-2801
Facsimile: 843-577-1649
Email: jwilkerson@turnerpadget.com
rdukes@turnerpadget.com
ccromer@turnerpadget.com

R. Wayne Byrd, S.C. Bar No.: 1068
P.O. Box 2116
Myrtle Beach, SC 29578
Telephone: 843-213-5500
Facsimile: 843-213-5620
Email: wbyrd@turnerpadget.com

ATTORNEYS FOR PLAINTIFFS

January 16, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	Civil Action No. 2015-CP-14-0615
	)	
TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	**AFFIDAVIT OF R. WAYNE BYRD**
	)	
M. B. Hutson a/k/a M. B. Hudson,	)	
	)	
Defendant.	)	
	)	

PERSONALLY appeared before the undersigned Notary Public, R. Wayne Byrd, who upon being duly sworn did depose and say as follows:

1. I am over the age of eighteen years, have personal knowledge of the facts stated herein, and am competent to make this affidavit.

2. I am an attorney practicing with the law firm of Turner Padget Graham & Laney, P.A. I live and work in South Carolina.

3. On or around Wednesday, January 10, 2018, I was performing research in preparation of the upcoming trial in this matter on the issue of damages sustained by my clients as a result of the alleged defamation in this case.

4. During the course of my internet research, I discovered, for the first time, a posting made by Defendant Hutson on the Ripoff Report website on May 19, 2014, which posting contains defamatory statements about Plaintiffs TLC Holdings and Clark as set forth in Plaintiffs' motion to amend the complaint. A copy of the posting is attached as Exhibit 1.

5. The same day I discovered this posting, our office notified defense counsel of its existence.

6. Defendant Hutson had previously failed to disclose the existence of this posting.

7. This posting, which contains false and defamatory statements, makes allegations similar to those contained in Defendant Hutson's other defamatory statements that are the subject of this litigation.

FURTHER AFFIANT SAYETH NAUGHT.

R. Wayne Byrd, Esq.

SWORN to and subscribed before me
this 16th day of January, 2018.

Notary Public for South Carolina

My commission expires: 6/20/2026

Report: #1147857

Complaint Review: TLC Holdings, LLC

Submitted: Mon, May 19, 2014 **Updated:** Mon, May 19, 2014
Reported By: Morris Hutson — **summerton South Carolina**

TLC Holdings, LLC

knoxville , Tennessee
USA
Phone:
Web: (http://)
Category: Unusual Rip-Off (https://www.ripoffreport.com/reports//unusual-rip-off)

TLC Holdings, LLC Richard U. Clarke dishonest and fails to disclose in business deals tricky misleading knoxville Tennessee

richard u. clark is misleading, intentionally fails to disclose important know facts while entering into contracts and dishonest. be careful when dealing with this man. i could say much more but for now, i want.

Click Here to read other Ripoff Reports on TLC Holdings, LLC (/reports/specific_search/TLC+Holdings%2C+LLC)

Search for additional reports
If you would like to see more Rip-off Reports on this company/individual, search here:

TLC Holdings, LLC

Search

Report & Rebuttal

Respond to this report!

File a Rebuttal

Also a victim?

File a Report

Repair Your Reputation!

Get Started

Related Reports

golden bear realtor uses **dishonest** real estate agent north palm beach florida South Carolina (/reports/tlc-holdings-llc/summerton-south-carolina/golden-bear-realtor-uses-dishonest-real-estate-agent-north-palm-beach-florida-south-carol-1147866)

Cingular **Misleading, dishonest** practices **and** Harrassment **Knoxville Tennessee** (/reports/cingular/knoxville-tennessee/cingular-misleading-dishonest-practices-and-harrassment-knoxville-tennessee-210695)

UPS **Knoxville Tennessee** claim they delivered two parcels to me /delivered ? where/told investigate and notify me/ NOTHING in a month **Knoxville Tennessee** (/reports/ups-knoxville-tennessee/knoxville-tennessee-37920/ups-knoxville-tennessee-claim-they-delivered-two-parcels-to-me-delivered-wheretold-in-1222549)

Knoxville Locksmith Service Locksmithknoxville.com **Misleading and** unreasonable pricing, delayed service **Knoxville, Tennessee** (/reports/knoxville-locksmith-service/knoxville-tennessee-/knoxville-locksmith-service-locksmithknoxvillecom-misleading-and-unreasonable-pricing-de-752976)

Pep Boys **misleading** information regarding repairs **and** unethical **business** practices **knoxville Tennessee** (/reports/pep-boys/knoxville-tennessee/pep-boys-misleading-information-regarding-repairs-and-unethical-business-practices-knoxvi-1120211)

The RUSH Fitness Complex - Corporate, Knoxville, TN 10708 Kingston Pike, Knoxville, TN 37922 Unethical Business Practices / Predatory Contracts Knoxville, Tennessee (/reports/the-rush-fitness-complex/knoxville-tennessee-37932/the-rush-fitness-complex-corporate-knoxville-tn-10708-kingston-pike-knoxville-tn-379-561370)

Robert (Rob) Ritch, David (Dave) Riley, Business Money Finders, Paladin Global Holdings Serial rip-off artists! I personally know at least three individuals who lost greater than $17,000 collectively. Knoxville, TN Tennessee (/reports/robert-rob-ritch-david-dave-riley-business-money-finders-paladin-global-holdings/knoxville-tennessee-37912/robert-rob-ritch-david-dave-riley-business-money-finders-paladin-global-holdings-se-329546)

Orenda Holdings LLC Club Orenda Travel and Mana TLC Club Orenda Travel owe me and hundreds of other members thousands of dollars Scottsdale Arizona (/reports/orenda-holdings-llc/scottsdale-arizona-85259/orenda-holdings-llc-club-orenda-travel-and-mana-tlc-club-orenda-travel-owe-me-and-hundre-1423281)

Richard Eisenbach - C & PD, LLD & K L Real Estate Construction Company building Condo's in Knoxville and Lenoir City does not pay subs and employees BEWARE!!! Don't work for him you will NOT be PAID!!! Knoxville Tennessee (/reports/richard-eisenbach-c-pd-lld-k-l-real-estate/knoxville-tennessee-37922/richard-eisenbach-c-pd-lld-k-l-real-estate-construction-company-building-condos-432268)

QuiBids Holdings LLC They stole my money and wouldn't refund me very misleading web site Oklahoma City Oklahoma (/reports/quibids-holdings-llc/oklahoma-city-ok-73104-140-oklahoma-73104-140/quibids-holdings-llc-they-stole-my-money-and-wouldnt-refund-me-very-misleading-web-site-1280794)

National Fitness Center Knoxville Tennessee Lee Sloan Lied to and Ripped off in Court Internet (/reports/national-fitness-center-knoxville-tennessee/internet/national-fitness-center-knoxville-tennessee-lee-sloan-lied-to-and-ripped-off-in-court-inte-1002051)

EDitorial Comments

Political Signs Must Go! (/live)

(/live)

EDitorial Comment
ED Magedson – Founder
Ripoff Report

(/reports/sac-county-iowa-prosecutor-ben-smith-pays-750000-to-settle-ripoff-report-1983-civil-rights-lawsuit/sac-city-iowa-50583/sac-county-iowa-prosecutor-ben-smith-pays-750000-to-settle-ripoff-report-1983-civil-righ-1417505) Sac County Iowa Prosecutor Ben Smith pays $750,000 to settle Ripoff Report 1983 civil rights lawsuit.. Federal Judge stops prosecutors abuse of power against ED Magedson Founder of Ripoff Report (/reports/sac-county-iowa-prosecutor-ben-smith-pays-750000-to-settle-ripoff-report-1983-civil-rights-lawsuit/sac-city-iowa-50583/sac-county-iowa-prosecutor-ben-smith-pays-750000-to-settle-ripoff-report-1983-civil-righ-1417505)

Ripoff Report Investigates!

Bogus Celebrity Advertisements FACE & Skin CREAM Ripoff! Don't click on those slick Ads! (/reports/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-on-the-internet-dont-click-on-them/nationwide/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-us-based-and-foreign-companie-1409357)

(/reports/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-on-the-internet-dont-click-on-them/nationwide/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-us-based-and-foreign-companie-1409357)
Phony Ad using Ellen DeGeneres
& hundreds of other A-list Stars...

Celebrity Skin Cream wrinkle cream rip-off advertisements US Based and Foreign companies bilked consumers out of Hundreds of Millions of dollars over the past 7 years (/reports/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-on-the-internet-dont-click-on-them/nationwide/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-us-based-and-foreign-companie-1409357)

WHAT IS YOUR STORY?
ARE YOU A VICTIM?
FORMER EMPLOYEE?
(/reports/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-on-the-internet-dont-click-on-them/nationwide/celebrity-skin-cream-wrinkle-cream-rip-off-advertisements-us-based-and-foreign-companie-1409357)
WE WANT TO HEAR IT (/investigates/contact)!
Contact Our Team Now! (/investigates/contact)
CLICK HERE (/investigates/contact)

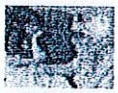
Featured Ripoff Reports (/reports/featured-reports)

View More Recent
Featured Reports (/reports/featured-reports)

Past Featured Reports (/past-featured-reports)

In The Media


Ripoff Report on CBS 19 (/consumers-say-thank-you/ripoff-report-in-the-media)


Ripoff Report on CBS 19 - Global Marketing Alliance (/consumers-say-thank-you/ripoff-report-in-the-media)


Ripoff Report on ABC 15 - Smart Shopper (/consumers-say-thank-you/ripoff-report-in-the-media)

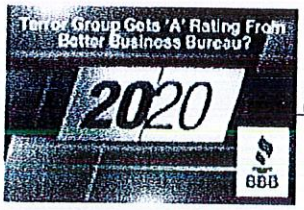

Ripoff Report - Girls Gone Wild (/consumers-say-thank-you/ripoff-report-in-the-media)


Ripoff Report on Fox 11 - Car Repair (/consumers-say-thank-you/ripoff-report-in-the-media)

See more videos (/consumers-say-thank-you/ripoff-report-in-the-media)

What the BBB has done to consumers for over 100 years is one of the many reasons why Ripoff Report was created. (http://www.edmagedson.com/who-is-ed/)

BBB: What consumers need to know



(http://abcnews.go.com/Blotter/business-bureau-best-ratings-money-buy/story?id=12123843)

20/20 exposes the real BBB

Featured Ripoff Reports (/reports/featured-reports)

Penny dewoehrel (AAPI) Penny dewoehrel Billy joe Falsifying information/ Harrassing me/ slandering my name/ Parker Pennsylvania (/reports/penny-dewoehrel-aapi/parker-pennsylvania-16049/penny-dewoehrel-aapi-penny-dewoehrel-billy-joe-falsifying-information-harrassing-me-1423394)

Gatehub Limited Gatehub Company is not upfront about fees and does not publish them upon deposit of funds London England (/reports/gatehub-limited/london-england-ec1n-8pn/gatehub-limited-gatehub-company-is-not-upfront-about-fees-and-does-not-publish-them-upon-1423383)

Polo Floors Polo Palms Painting and Flooring Polo Palms Painting Robert Polo Polo Floors Inc. & Polo Palm Paints, LLC Measured incorrectly, lied and charged... (/reports/polo-floors/orlando-florida-32828/polo-floors-polo-palms-painting-and-flooringpolo-palms-paintingrobert-polopolo-floors-1423369)

**Update June 1, 2015: INVESTIGATION UPDATE – Charges against Darren Meade dropped!!! **UPDATE January 1, 2015 * Ripoff Report reveals initial findings,... (/reports/update-june-1-2015-investigation-update-ben-smith-sac-county-iowa-attorney-charges-against-darren-meade-dropped-sac-county-attorney-ben-smith-dismisses-all-criminal-charges-against-darren-meade-related-to-his-posts-on-ripoff-report-sac-county-iowa-attorney-ben-smith-fails-to-identify-false-statements-fails-to-support-his-accusations-with-clarifications/sac-city-iowa-/update-june-1-2015-investigation-update-charges-against-darren-meade-droppedu-938843)

COLLINS HEAVY HAUL, TIM AND PENNY COLLINS TIM AND PENNY COLLINS, OWNERS OF COLLINS HEAVY HAUL Hired Collins to breakdown and haul 3 pieces of equipment,... (/reports/collins-heavy-haul-tim-and-penny-collins/gainesville-missouri-65609/collins-heavy-haul-tim-and-penny-collins-tim-and-penny-collins-owners-of-collins-heavy-1423323)

(((NAME(S) REDACTED DUE TO PERCEIVED HARASSMENT / CYBERSTALKING / CYBERBULLYING / REVENGE POST))) | RIPOFF REPORT POST-PUBLICATION CONTENT REVIEW: EDITORIAL... (/reports/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-post/internet/names-redacted-due-to-perceived-harassment-cyberstalking-cyberbullying-revenge-1210104)

Terry Hale, Hale Publishing TRUSTED Business REVIEW: Hale Publishing is a leader in providing Commercial Real Estate training not just on one topic or... (/reports/terry-hale-publishing-trusted-business-ripoff-report-verified-safe-businesses-consumers-can-trust-terry-hale-hale-publishing-is-a-us-based-real-estate-training-company-that-provides-the-highest-quality-education-and-mentoring-services-to-entrepreneurs-worldwide-terry-hale-hale-publishing-are-the-leading-experts-for-multi-family-and-self-storage-investing-with-a-team-of-industry-experts-who-are-dedicated-to-providing-the-best-services/nationwide/terry-hale-hale-publsihing-real-estateseminarscom-los-angeles-nationwide-1187761)

SA Fishing AVOID THIS COMPANY Boca Raton Florida (/reports/sa-fishing/boca-raton-florida-33487/sa-fishing-avoid-this-company-boca-raton-florida-1423307)

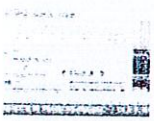
Tablet world Sent me the wrong hoverboard and it don't even work Boyes Hot Springs California (/reports/tablet-world/boyes-hot-springs-california/tablet-world-sent-me-the-wrong-hoverboard-and-it-dont-even-work-boyes-hot-springs-calif-1423302)

Phone Steck Store LeolaGalvez882@yahoo.com Never send the phone Internet (/reports/phone-steck-store/internet/phone-steck-store-leolagalvez882yahoocom-never-send-the-phone-internet-1423298)

Hillsteelbuildings Different item is received. No complaint of mine is being answered. Internet (/reports/hillsteelbuildings/internet/hillsteelbuildings-different-item-is-received-no-complaint-of-mine-is-being-answered-int-1423293)

energyluck.com I brought a service off the website and the service was never fulfilled. Stockbridge Georgia (/reports/energyluckcom/stockbridge-georgia-30281/energyluckcom-i-brought-a-service-off-the-website-and-the-service-was-never-fulfilled-st-1423285)

Orenda Holdings LLC Club Orenda Travel and Mana TLC Club Orenda Travel owe me and hundreds of other members thousands of dollars Scottsdale Arizona (/reports/orenda-holdings-llc/scottsdale-arizona-85259/orenda-holdings-llc-club-orenda-travel-and-mana-tlc-club-orenda-travel-owe-me-and-hundre-1423281)



BiodermRX - so called Free Sample is actually a 15 day trial!!! Houston Texas (/reports/biodermrx/houston-texas-77008/biodermrx-so-called-free-sample-is-actually-a-15-day-trial-houston-texas-1423165)

Ali Alimadadian Shirin Niami Stole funds and property, now running an illegal contracting business Redmond Washington (/reports/ali-alimadadian/redmond-washington-98052-2696/ali-alimadadian-shirin-niami-stole-funds-and-property-now-running-an-illegal-contractin-1423155)

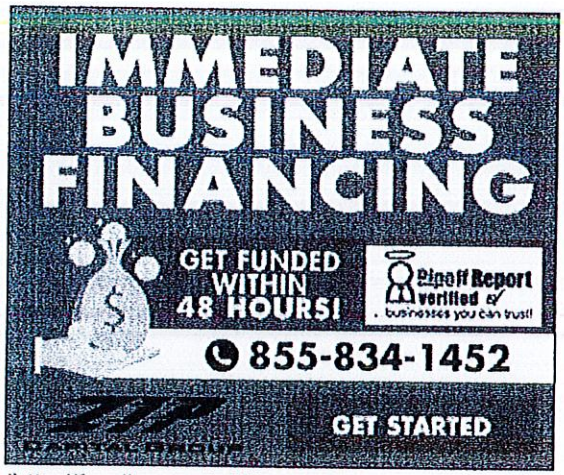
Maid Parade Denver Price They Quoted Was a Lie Denver Colorado (/reports/maid-parade-denver/denver-colorado-80214/maid-parade-denver-price-they-quoted-was-a-lie-denver-colorado-1423257)

Cooley's Cauldron of Corruption on Child Abuse Wheaton Illinois (/reports/william-cooley/wheaton-illinois-60187/cooleys-cauldron-of-corruption-on-child-abusenbspwheaton-illinois-1423084)

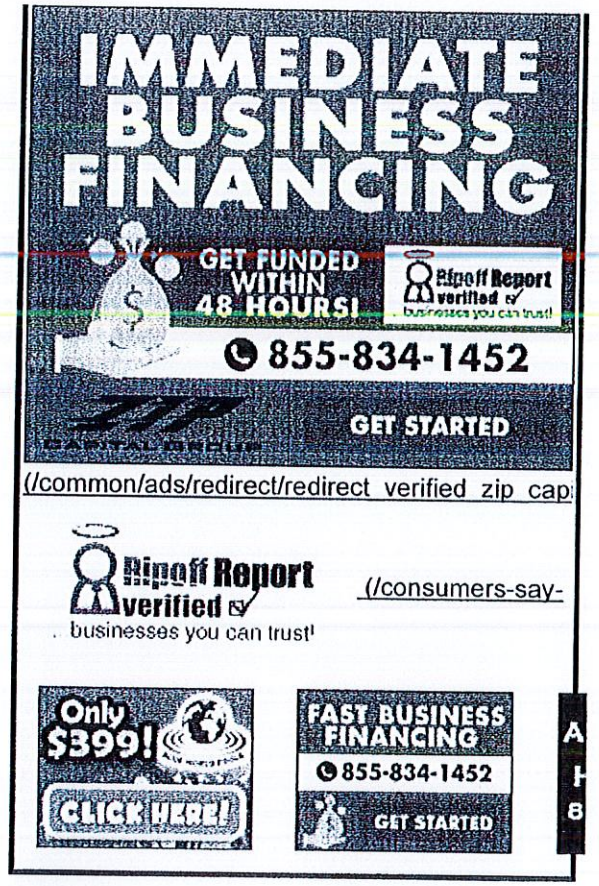
CoinJar CoinJar has taken $4000 and will not respond to my requests to inform me of it's whereabouts Victoria (/reports/coinjar/victoria/coinjar-coinjar-has-taken-4000-and-will-not-respond-to-my-requests-to-inform-me-of-it-1423223)

PromoGroup Kelly Drumm, Phyllis Drumm Commited Fraud Scottsdale Arizona (/reports/promogroup/scottsdale-arizona-85258/promogroup-kelly-drumm-phyllis-drumm-commited-fraud-scottsdale-arizona-1423212)

Poloniex, LLC Poloniex, LLC No tengo acceso a mi cuenta de poloniex New YorkPoloniex, LLC Poloniex, LLC I do not have access to my New York poloniex a... (/reports/poloniex-llc/new-york/poloniex-llc-poloniex-llc-no-tengo-acceso-a-mi-cuenta-de-poloniex-new-yorkpoloniex-llc-1423209)



(http://fundingcapitaldirect.com)



(http://www.serenityrehab.org/contact/)

Customer Service and More

- **Fix Your Reputation The Right Way:**
  Corporate Advocacy Program (/corporate-advocacy-program/change-report-from-negative-to-positive)
- In the Media (/consumers-say-thank-you/ripoff-report-in-the-media)
- Faq (/faq)
- General Questions and Suggestions (mailto:support@ripoffreport.com)
- For Media Only: Help With Victim Info (mailto:EDitor@ripoffreport.com)
- For Government Requests Only (mailto:EDitor@ripoffreport.com)

Customer Support for Technical Issues (mailto:support@ripoffreport.com)

- Terms of Service (/terms-of-service)
- About Us (/about-us)
- Want to sue Ripoff Report? (/consumers-say-thank-you/want-to-sue-ripoff-report)
- Thank You Emails! (/consumers-say-thank-you/thank-you-letters)
- Donate to our Efforts (/consumers-say-thank-you/donate)
- Contact Us (/contact-us)
- Who is ED Magedson - Founder, Ripoff Report (http://www.edmagedson.com/who-is-ed/)

(https://twitter.com/ripoffreport) (https://www.facebook.com/RORSocialMedia/) (/corporate-advocacy-program/cap-videos)

Total Visits since 1997: **8,986,978,521**
Estimated amount consumers saved since 1997: **$15,590,010,907**

(http://www.ripoffrevenge.com)

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

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

Plaintiffs,

vs.

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

Defendant.

SECOND AMENDED COMPLAINT
(JURY TRIAL DEMANDED)

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

JURISDICTION AND VENUE

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

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

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

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

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

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

FACTUAL ALLEGATIONS

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

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

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

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

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

12. When Hutson lost access to the Employer Identification Number ("EIN") assigned to Big Water Resort, LLC, he set up a new operating entity, BWR, Inc. d/b/a Big Water Resort, a South Carolina corporation, and thereafter operated the campground under that entity.

13. After the creation of BWR, Inc., all of Hutson's activities related to the operation of Big Water Resort Campground were performed in his capacity as an executive officer, director, agent and/or shareholder of BWR, Inc.

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

15. In March 2012, the parties to the lease–purchase agreement entered into a Settlement Agreement. The terms of the Settlement Agreement imposed many duties on Defendant Hutson, including the duty to make certain improvements to the campground property and the duty to make certain payments to Plaintiff TLC Holdings, LLC. The Settlement Agreement was approved by, and incorporated into, a consent order signed by the Honorable George C. James, Jr. in April 2012.

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

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

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

> I purchased the Big Water Resort business in 2010. I have since come to realize that members were scammed by paying thousands of dollars to Big Water Resort when formerly owned by TLC, Holdings [sic]. Those monies totaled about 5 million dollars paid by members when they signed their individual contracts to TLC, Holdings [sic] owned Big Water Resort. There was no feasible way that Big Water Resort could furnish the contractual benefits and the spirit as outlined

> in the contract, nor did TLC, Holdings [sic] have any desire to fulfill their end of the contract in actuality, nor in spirit.
>
> I, and others, will seek to demand a refund from TLC Holdings, by way of a class action lawsuit, charging TLC, Holdings [sic] with fraud and possible racketeering for the five million plus triple damages. Any existing or former member wanting to join this lawsuit may do so by contacting me at Big Water Resort as soon as possible or dialing [redacted]. I, too, have been scammed by TLC, Holdings [sic] as a member and purchaser of Big Water Resort. I will be able to put any member in touch with the attorney. The suit will be filed in the next ten days. Anyone who joins stands a good chance of recovering their money. I know that hundreds of members are convinced they were scammed. It appears that hundreds will join this effort. I am told that the statute runs from time of discovery of the scam. Let's join together now and get our money back.

19. In conjunction with the preparation of the aforementioned postcard, Hutson embarked upon a course of conduct designed in whole or in part to attempt to persuade TLC Holdings, LLC and its principals to forbear their right to have Hutson evicted from the Big Water Resort Campground and to avoid the loss of revenue stream Hutson and BWR, Inc. had enjoyed by virtue of their operation of the campground.

20. In furtherance of this scheme to attempt to persuade TLC Holdings, LLC and its principles to forbear their rights, Hutson prepared one or more outlines of alleged malfeasance committed by TLC Holdings, LLC and/or its principals which he circulated to one or more persons containing false and defamatory statements, a copy of which is attached as Exhibit 1, and presented the same to TLC Holdings LLC and/or its counsel with an offer to withhold the information contained in said outline from others, including attorneys, if TLC Holdings and its principals would agree to forbear their rights to evict Hutson and BWR, Inc. from the campground property.

21. Additionally, Hutson presented these false, defamatory and misleading statements, both written and orally, to counsel he had consulted to pursue class action litigation, and this false, defamatory and misleading information was ultimately incorporated into a

Complaint filed against the Plaintiffs herein et al., which allegations were shortly thereafter voluntarily withdrawn by counsel who filed them when presented with actual factual data and information totally refuting said allegations.

22. Hutson also posted on May 19, 2014 the following on the Ripoff Report website (a copy of the posting is attached hereto as Exhibit 2):

> TLC Holdings, LLC Richard U. Clarke [sic] dishonest and fails to disclose in business deals tricky misleading knoxville Tennessee
>
> richard u. clark is misleading, intentionally fails to disclose important know [sic] facts while entering into contracts and dishonest. be careful when dealing with this man. i could say much more but for now, i want [sic].

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

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

FOR A FIRST CAUSE OF ACTION
(LIBEL)

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

26. Defendant Hutson made false and defamatory statements about Plaintiffs in the December 2013 postcard and thereafter as alleged above.

27. Defendant Hutson distributed this postcard to hundreds of campground members and was the party at fault for the publication of the false and defamatory statements, which publication was not privileged. He further distributed false and defamatory statements in writing and orally to others, including counsel who incorporated said information into a pleading, portions of which were ultimately withdrawn. Hutson was not represented by these counsel and his publication to them and others was not privileged.

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

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

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

FOR A SECOND CAUSE OF ACTION
SLANDER

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

32. Defendant Hutson made false and defamatory oral statements about Plaintiffs as alleged above.

33. Defendant Hutson made false and defamatory statements orally to campground members and others, including counsel who incorporated said information into a pleading,

portions of which were ultimately withdrawn. Hutson was not represented by these counsel and his publication to them and others was not privileged.

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

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

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

PRAYER FOR RELIEF

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

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

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

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

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

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

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

TURNER PADGET GRAHAM & LANEY P.A.

s/ John S. Wilkerson, III
John S. Wilkerson, III, S.C. Bar No.: 6105
Richard S. Dukes, Jr., S.C. Bar No.: 16563
Carlyle R. Cromer, S.C. Bar No.: 100058
40 Calhoun Street, Suite 200 (29401)
P.O. Box 22129
Charleston, SC 29413
Telephone: 843-576-2801
Facsimile: 843-577-1649
Email: jwilkerson@turnerpadget.com
rdukes@turnerpadget.com
ccromer@turnerpadget.com

R. Wayne Byrd, S.C. Bar No.: 1068
P.O. Box 2116
Myrtle Beach, SC 29578
Telephone: 843-213-5500
Facsimile: 843-213-5620
Email: wbyrd@turnerpadget.com

ATTORNEYS FOR PLAINTIFFS

January 16, 2018

Exhibit D

TLC HOLDINGS Ripoff Reports, Complaints, Reviews, Scams, Lawsuits and Frauds Reported

Your Search: **tlc holdings**

There may be more reports for "tlc holdings"

For more results perform a general search for "tlc holdings" (https://www.ripoffreport.com/reports/search/tlc-holdings)

Showing 1-5 of **5** Found Reports For more results perform a general search for "tlc holdings" (https://www.ripoffreport.com/reports/search/tlc-holdings)

Wondering if a report is missing? **We DO NOT remove reports.** (?)

Specific Search (https://www.ripoffreport.com/reports/specific_search/tlc-holdings)

General Search (https://www.ripoffreport.com/reports/search/tlc-holdings)

1. Report #1149853

May 29 2014
03:03 PM

black river electric cooperative, inc. c.h. misrepresented and lied. over charged me in order to collect a bill owed by a unrelated third party sumter South Carolina (/reports/black-river-electric-cooperative-inc/sumter-south-

carolina/black-river-electric-cooperative-inc-ch-misrepresented-and-lied-over-charged-me-in-o-1149853)

2, Report #1149860

May 29 2014
02:34 PM

black river electric cooperative, inc herb leaird c.h. leaird liars thieves sumter South Carolina (/reports/black-river-electric-cooperative-inc/sumter-sc-south-carolina/black-river-electric-cooperative-inc-herb-leaird-ch-leaird-liars-thieves-sumter-south-1149860)

Author: summerton, South Carolina

3, Report #1148201

May 20 2014
09:54 AM

linda b joyce back stabbing and may become involved in federal lawsuit she helps to run big water resort llc/palmetto shoes rv resort summerton s.c. South Carolina (/reports/linda-b-joyce/santee-south-carolina/linda-b-joyce-back-stabbing-and-may-become-involved-in-federal-lawsuit-she-helps-to-run-b-1148201)

4, Report #1147857

May 19 2014
10:37 AM

TLC Holdings, LLC Richard U. Clarke dishonest and fails to disclose in business deals tricky misleading knoxville Tennessee (/reports/tlc-holdings-llc/knoxville-tennessee/tlc-holdings-llc-richard-u-clarke-dishonest-and-fails-to-disclose-in-business-deals-tr-1147857)

Author: summerton, South Carolina

5, Report #1147866

May 19 2014
09:56 AM

golden bear realtor uses dishonest real estate agent north palm beach florida South Carolina (/reports/tlc-holdings-llc/summerton-south-carolina/golden-bear-realtor-uses-dishonest-real-estate-agent-north-palm-beach-florida-south-carol-1147866)

Approximately **5** Reports Found

Showing 1-5 | **Showing Page 1 of 1**

Legend

New Updated Rebuttal Photo

(/common/ads/redirect/redirect_verified_wilshire_

_(/consumers-say-

(/common/ads/redirect/redirect_verified_wilshire_financial_1.htm)

(/common/ads/redirect/redirect_verified_lear_capital.htm)

Advertisers above have met our strict standards for business conduct (/consumers-say-thank-you/advertising-standards).

Ripoff Report

LEGAL DIRECTORY

(http://www.ripoffreportlegaldirectory.com/listing/)

Customer Service and More

- **Fix Your Reputation The Right Way:**
  Corporate Advocacy Program (/corporate-advocacy-program/change-report-from-negative-to-positive)
- In the Media (/consumers-say-thank-you/ripoff-report-in-the-media)
- Faq (/faq)
- General Questions and Suggestions (mailto:support@ripoffreport.com)
- For Media Only: Help With Victim Info (mailto:EDitor@ripoffreport.com)
- For Government Requests Only (mailto:EDitor@ripoffreport.com)
- Customer Support for Technical Issues (mailto:support@ripoffreport.com)
- Terms of Service (/terms-of-service)
- About Us (/about-us)
- Want to sue Ripoff Report? (/consumers-say-thank-you/want-to-sue-ripoff-report)
- Thank You Emails! (/consumers-say-thank-you/thank-you-letters)
- Donate to our Efforts (/consumers-say-thank-you/donate)
- Contact Us (/contact-us)
- Who is ED Magedson - Founder, Ripoff Report (http://www.edmagedson.com/who-is-ed/)

(https://twitter.com/ripoffreport) (https://www.facebook.com/RipoffReportOfficial/) (/corporate-advocacy-program/cap-videos)

Total Visits since 1997: **8,986,978,521**
Estimated amount consumers saved since 1997: **$15,590,010,907**

(http://www.ripoffrevenge.com)

Ripoff Report

Report: #1147866

Complaint Review: TLC Holdings, LLC - *Summerton South Carolina*

Submitted: Mon, May 19, 2014 **Updated:** Mon, May 19, 2014 **Reported By:** Morris Hutson —

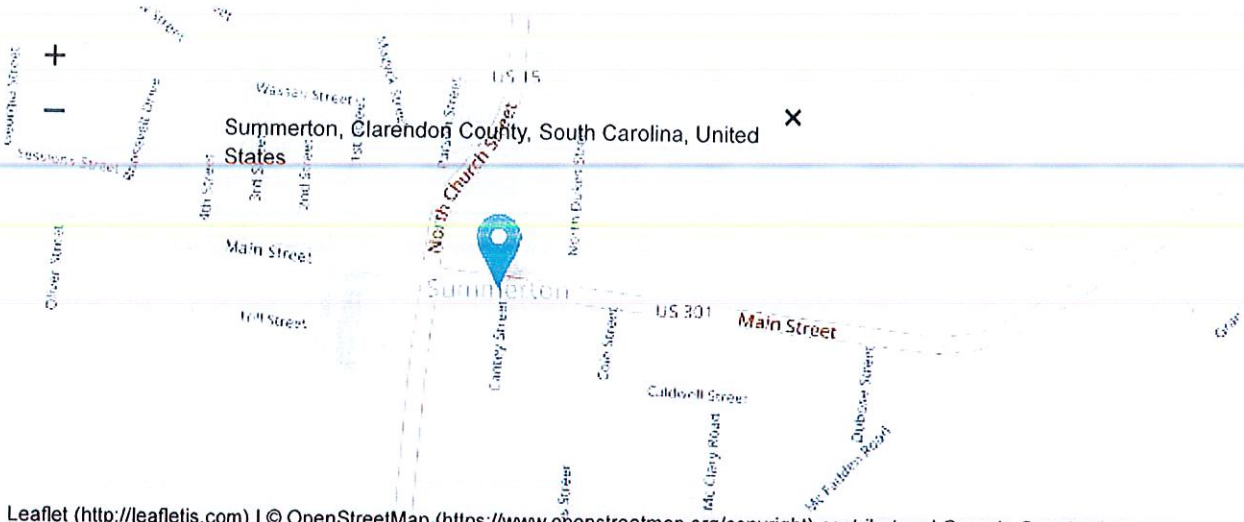
TLC Holdings, LLC
Summerton, South Carolina
USA

Phone:

Web: (http://)

Category: Unusual Rip-Off (https://www.ripoffreport.com/reports//unusual-rip-off)

golden bear realtor uses dishonest real estate agent north palm beach florida South Carolina



Leaflet (http://leafletjs.com) | © OpenStreetMap (https://www.openstreetmap.org/copyright) contributors | Open In Google Maps (https://www.google.com/maps/place/Summerton, Clarendon County, South Carolina, United States/@33.6082323,-80.35126,11z)

REBUTTAL BOX™ | Respond to this Report! (/file/comment/1147866) | Consumer Comment (/file/comment/1147866)

Add Rebuttal to this Report (https://www.ripoffreport.com/file/comment/1147866)

File New Report (/file-report)

golden bear realtor who is located in summerville s.c. summerton s.c., north palm beach florida are using an agent by the name of susan stroman. she is dishonest and back stabbing. i have contacted the owner of golden bear realtor regarding the problems but he appears to over look such actions. i plan to file a complaint with the s.c. board of real estate commission. be aware of doing business with this company for the owner of golden bear realtor let's things slip under the rug until he's caught. be aware of this company. susan stroman was operating in summerville s.c. but now has moved to 5215 dingle pond road, summerton s.c. be ware for she is dishonest and will back out of a deal that she makes with you.

Exhibit E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL,	)	
Plaintiffs,	)	**BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION TO AMEND COMPLAINT**
vs.	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
Defendant.	)	

Plaintiffs' Motion to Amend the Amended Complaint should be denied because allowance of the motion would be futile. Specifically, the applicable two-year statute of limitations on Plaintiff's proposed amendment has already expired and the proposed new claim does not "relate back" to the original pleading because it does not arise out of the "conduct, transaction or occurrence set forth in the original pleading," as provided in Rule 15(c) of the South Carolina Rules of Civil Procedure. Rule 15(c) is not to be used to circumvent the applicable statute of limitations. Therefore, Plaintiff's Motion should be denied *in toto*.

FACTUAL BACKGROUND

Plaintiffs allege that "[i]n a postcard dated December 18, 2013, and addressed to current and former members of the Big Water Resort campground," Defendant Hutson made ". . . false and defamatory statements about Plaintiffs" and distributed them to "hundreds of campground members." (Complaint, ¶¶ 16, 20, and 21) ("the December 2013 Statements"). Almost two years later, on December 7, 2015, Plaintiffs filed this libel action against Defendant, which is founded upon Defendant allegedly making and publishing the December 2013 Statements, as defined and described herein.

Approximately ten days ago, on January 10, 2017, Plaintiffs notified Defendant that they had discovered "yet another defamatory statement" – a May 19, 2014 posting by Defendant about the Plaintiffs on the "Ripoff Report" website (Memorandum in Support of Motion to Amend Complaint, p. 2) ("the May 2014 Statement"). Plaintiffs now seek to amend their Complaint "to allege an additional act of defamation committed by Hutson [the making and posting of the May 2014 Statement] in support of their already-existing claim for libel." ("Proposed Amendment") (Memorandum in Support of Motion to Amend Complaint, p. 4).[1]

APPLICABLE LAW AND ANALYSIS

A. Plaintiffs' Proposed Amendment is Subject to a Two-Year Statute of Limitations Which Expired on May 14, 2016.

In South Carolina, defamation claims are subject to a two-year statute of limitations. S.C. Code Ann. § 15-3-550 (2017). It is well-settled that the limitations period begins when the alleged defamatory statement is made, not when the plaintiff discovers it. Harris v. Tietex Int'l, Ltd., 417 S. C. 533, 542, 790 S.E.2d 411, 416 (2016) citing Jones v. City of Folly Beach, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) (affirming trial court's grant of summary judgment on defamation claim by applying the "date of utterance" rule and refusing to adopt the "discovery" rule for libel and slander claims).

As noted above, the Proposed Amendment is based upon an allegedly libelous statement posted on the internet on May 14, 2014 (the May 2014 Statement). May 14, 2014 is the "date of utterance" of the alleged libel. Accordingly, the two-year statute of limitations on Plaintiffs'

[1] In recounting, describing, and referencing the factual underpinnings of Plaintiffs' claims throughout this Opposition, Defendant does not intend to and does not make any admission, statement against interest, acknowledgement, or any concession regarding the facts or inferences to be drawn therefrom in this matter.

Proposed Amendment commenced on May 14, 2014 and expired two years later, on May 14, 2016.

B. Plaintiffs' Proposed New Claim Does Not Arise Out of the "Conduct, Transaction or Occurrence" Set Forth in the Original Proceeding because it is a Separate and Distinct Claim. Therefore, the Proposed New Claim Can Not "Relate Back" to the Original Pleading.

In their Motion to Amend Complaint, Plaintiffs now seek to circumvent the two-year statute of limitations on libel through misapplication of Rule 15(c) of the South Carolina Rules of Civil Procedure. Under Rule 15(c), courts apply the following test to determine whether a new claim should be allowed to "relate back" to the date of the original claim to avoid the statute of limitations: "whether the claim . . . asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading." Thomas v. Grayson, 318 S. C. 82, 88, 456 S.E.2d 377, 380 (1995).[2]

The allegations underlying the Proposed Amendment, as defined and described herein, constitute a separate and distinct publication and necessarily a new claim, and accordingly can not arise out of the conduct, transaction, or occurrence set forth in the original pleading, which alleges a separate and distinct act of defamation. In other words, the Proposed Amendment (which is based upon the May 2014 Statement) can not relate back to the December 2013 Statements, because they are two separate claims in the eyes of South Carolina law.

1. The May 2014 Statement Underlying the Proposed Amendment is a Separate and Distinct Publication and Cause of Action.

In South Carolina, "[t]he general rule is that every separate and distinct publication of a libelous matter constitutes a distinct offense for which a separate action will lie." Jennings v.

[2] This "test" for the "relation back" of amendments is expressly set forth in Rule 15(c), which provides "[R]elation Back of Amendments. Whenever the **claim** . . . asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading." Rule 15(c), SCRCP (emphasis supplied).

Southern R. Co., 156 S. C. 92, 98, 152 S.E.2d 821, 823 (1930). In Jennings, the Plaintiff filed a two-count civil action sounding in defamation against Southern Railway Company and several of its employees. Id. at 93-96, 152 S.E.2d at 821-23. Each count was based upon a separate and distinct publication of an allegedly libelous statement made and published by Southern Railway employees and/or Southern Railway, a foreign corporation. Id. The first count was against all of the Defendants and was based upon publication of the statement on September 10, 1928. Id. at 93, 152 S.E.2d at 821. The second count was against Defendant Southern Railway and its counsel for using and publishing **the same statement** at trial six months later, on March 28, 1929. Id. at 95, 152 S.E.2d at 822.

In ruling that Southern Railway was entitled to removal of the two-count civil action to federal court, the Supreme Court of South Carolina recognized that the publication of the statement at trial by Southern Railway ". . . clearly and unquestionably makes that publication a separate and distinct one by Southern Railway Company, . . .; and that therefore, the second cause of action states a separate controversy as between the company and the plaintiff. ..." Id. at 98-99, 152 S.E.2d at 823.

Similarly, in the context of publication of defamatory matter, Subsection 1 of Section 577A of the Restatement (Second) of Torts provides "[e]xcept as stated in Subsections (2) and (3), each of several communications to a third person by the same defamer is a separate publication."[3]

[3] Sections (2) and (3) are inapplicable in the instant case: "(2) A single communication heard at the same time by two or more third persons is a single publication." and "(3) Any one edition of a book or newspaper, or any one radio or television broadcast, exhibition of a motion picture or similar aggregate communication is a single publication." Restatement (Second) of Torts, § 577A(2) and (3).

The Comment on Subsection 1 is particularly illuminating:

> It is the general rule that **each communication** of the same defamatory matter by the same defamer, whether to a new person or to the same person, **is a separate and distinct publication, for which a separate cause of action arises.**

Comment on Subsection (1), Section 577A, Restatement (Second) of Torts (emphasis added).

The Illustration of Subsection (1) is also instructive:

> On one occasion A says to B that C is a murderer. On a later occasion A repeats the same statement to B. On a third occasion A makes the same statement to D. **Each of the three communications is a separate publication and C has three causes of action against A.**

Illustration to Comment on Subsection (1), Section 577A, Restatement (Second) of Torts (emphasis added).

In the instant action, the December 2013 Statement is alleged to be a libelous communication, via postcard, from Defendant to the "current and former members of the Big Water Resort campground" on December 18, 2013. (Complaint, ¶ 16). On the other hand, the May 2014 Statement (which is the basis of the Proposed Amendment) is alleged to be a libelous communication posted by Defendant to the public-at-large on the "Ripoff Report" website five months later, on May 19, 2014 (Memorandum in Support of Motion to Amend Complaint, p. 2). The December 2013 Statement and the May 2014 Statement (the basis of the Proposed Amendment) are unquestionably factually distinct and irrefutably separate and distinct publications for which separate causes of action arise as a matter of law. Therefore, as shown herein, the May 2014 Statement does not arise ". . . out of the conduct, transaction or occurrence set forth in the original pleading [*i.e.*, the December 2013 Statements]." Rule 15(c), SCRCP.

2. The May 2014 Statement Underlying the Proposed Amendment Does Not "Relate Back" to the Complaint Because It Does Not Arise ". . . Out of the Conduct, Transaction or Occurrence Set Forth in the Original Pleading."

As noted above, each communication of a defamatory statement, even if identical in content, constitutes a separate publication and a separate cause of action. See e.g., Jennings v. Southern R. Co., 156 S. C. 92, 98, 152 S.E.2d 821, 823 (1930); Section 577A, Restatement (Second) of Torts. Thus, a claim arose when Defendant sent out allegedly defamatory postcards on December 18, 2013 to "current and former members of the Big Water Resort campground." Five months later, another claim arose when Defendant posted another allegedly defamatory statement on the "Ripoff Report" website. Consequently, a claim based on a subsequent defamatory statement does not arise from the same conduct, transaction or occurrence as the claim based on the first defamatory statement (*i.e.*, the December 2013 Statements). Burt v. CBS, Inc., 769 F.Supp. 1012, 1015-16 (S.D. Ohio 1991); Foretich v. Glamour, 753 F.Supp. 955, 962 (D.D.C. 1990); Richman v. Cone Mills Corp., 129 F.R.D. 181, 185-86 (D. Kan. 1989); Herron v. King Broadcasting Co., 109 Wash.2d 514, 746 P.2d 295, 300 (Wash. 1987); State v. Superior Court, 186 Ariz. 294, 921 P.2d 697 (1996).

For these reasons, courts have repeatedly ruled that a new claim of defamation cannot relate back to an earlier claim under Rule 15. For example, in Burt v. CBS, Inc., 769 F.Supp. 1012 (S.D. Ohio 1991),[4] Plaintiff alleged he had been defamed by the airing of **the same television broadcast report** on three separate dates. Id. at 1014-15. The Burt Court held that

[4] Defendant has been unsuccessful in finding any case law in which a South Carolina court addresses the interplay between Rule 15(c) and the "relation back" of subsequent defamation claims to the original pleading through amendment. Fortunately, the Supreme Court of South Carolina held that "[w]here there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." Patton v. Miller, 420 S.C. 471, 493, 804 S.E.2d 252 (2017) citing Garnder v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). Moreover, "in construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules." Id.

Plaintiff's three defamation claims were each a distinct and separate cause of action and that each was time-barred by the statute of limitations unless the alleged defamation claim arising from the third and final broadcast was saved by the "relation back" provision of Rule 15(c). Id. at 1015. The Burt Court ruled that since each broadcast of the allegedly defamatory report constituted a distinct cause of action for defamation, the final broadcast did not arise out of the conduct, transaction or occurrence as the prior broadcasts and thus did not "relate back" to the original Burt pleading. Id. The Burt Court further noted that "[c]ourts and commentators alike have said that relation back should not apply in instances where the plaintiff is asserting a new claim for defamation based upon the separate publication of a defamatory statement." Id. citing Rickman v. Cone Mills Corp., 129 F.R.D. 181 (D. Kan. 1989); Jackson v. Ideal Publishing Corp., 274 F. Supp. 318 (E.D. Pa. 1967).

One such commentator is Wright, Miller and Kane who, in their seminal treatise Federal Practice and Procedure, observe:

> when plaintiff attempts to allege an entirely different transaction by amendment, as for example, **the separate publication of a libelous statement**, or the breach of an independent contract, the new claim will be subject to the defense of statute of limitations.

6A Wright, Miller & Kane Federal Practice and Procedure, § 1407 at 70-74 (emphasis added).

In Rickman v. Cone Mills, 129 F.R.D. 181 (D. Kan. 1989), the court granted summary judgment on Plaintiff's defamation claims on grounds that they were time-barred and did not "relate back" to the original pleading under Rule 15(c). Id. at 185. In so ruling, the Rickman Court held:

> [h]ere, plaintiff set forth in his amended petition, not alterations, but new instances of defamation. While the content of the defamatory

> statements was the same or similar to the content of statements alleged to be defamatory in plaintiff's original petition, the new counts named new parties to whom the alleged defamatory words were published as well as new dates of publication.

Id. at 186.

Similarly, in the case at bar, the Proposed Amendment alleges "named new parties to whom the alleged defamatory words were published" -- the public-at-large on the "Ripoff Report, "as well as new dates of publication" – May 19, 2014, when the May 2014 Statement was posted (as opposed to December 18, 2013, when Defendant mailed the postcards).

The Rickman Court ruled that "[a]llowing these added claims [of defamation] to relate back would, in effect, allow the plaintiff to amend around the statute of limitations, a result clearly not contemplated by Rule 15(c)." Id. at 185.[5] In the instant case, Plaintiffs seek the same result – a circumvention and even a complete abrogation of the two-year statute of limitations on defamation claims under Section 15-3-550 (2017) of the South Carolina Code.

Plaintiffs argue that ". . . the amendment [the Proposed Amendment] relates back under Rule 15(c) as it arises "out of the conduct, transaction or occurrence set forth or attempted to be sent forth in the original pleadings." (Memorandum in Support of Motion to Amend Complaint, p. 2) In support of this conclusion, Plaintiffs state "[t]he posting about Clark on Ripoff Report is clearly a reference to Hutson's business dealings with Plaintiffs regarding the Big Water campground, as the parties have had no other dealings nor entered into any transactions other

[5] Similarly, in ruling that the "relation back" provision of Rule 15(c) did not apply to new defamatory statements because each act of defamation is a separate tort, the Fourth Circuit held "[r]elation back in a case like this would 'leave the statute of limitations open-ended for additional acts . . .even though these acts involved different parties [*i.e.*, different recipients of allegedly defamatory communications] on different dates.'" English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc., 172 F.3d 862, No. 97-2397 (published in full-text format at 1999 U.S. App. LEXIS 2725) 1999 WL 89125 at 3.

than the ones outlined in the original Complaint and in the first Amended Complaint." (Id. at 2-3). Plaintiffs even assert that "the amendment that Plaintiffs seek to make by this motion does not require adding an additional cause of action." (Id. at 3).

Plaintiffs' arguments are misplaced. Under Plaintiffs' scenario, the two-year statute of limitations would remain "open-ended" for whatever additional defamatory statements are made or are allegedly made by the Defendant.

Moreover, the Rule 15(c) "conduct, transaction or occurrence" language does not refer to Plaintiffs' business dealings with the Defendant, as Plaintiffs suggest in the Memorandum, as set forth above (Id. at 2). "The conduct, transaction or occurrence" language of Rule 15(c) actually refers to the making and publishing of defamatory statements by the Defendant, which feeds into the ultimate question of whether the May 2014 Statement (the basis of the Proposed Amendment) is a separate alleged defamatory communication and therefore, a separate cause of action from the December 2013 Statements (which was pled in the original pleading).[6]

The May 2014 Statement is a separate cause of action. Therefore, it does not arise from the "conduct, transaction or occurrence" of the already alleged libel claim in the original pleading (the December 2013 Statements) and does not "relate back" to it. Thus, the Plaintiffs' Motion to Amend Complaint should be denied *in toto*.

Respectfully submitted this the 19th day of January, 2018.

MILLBERG GORDON STEWART PLLC

---

[6] The Rule 15(c) "conduct, transaction or occurrence" language refers to the underlying tort or, in the instant case, the making and publishing of defamatory statements – not the parties' prior business dealings. See e.g., State v. Superior Court, 186 Ariz. 294, 299, 921 P.2d 697, 702 (Ct.App. Ariz. 1996) (rejecting the applicability of the Rule 15(c) "relation back" provision to a subsequent defamatory statement by a Defendant in part, by ruling that the "conduct from which these claims arise are the statements themselves [the defamatory statements], not the underlying prosecution [plaintiff had sued for "malicious prosecution]." Id.

BY: Frank J. Gordon

Frank J. Gordon, SC Bar Number 71769
Andrew B. Spradlin, *pro hac vice*
Millberg Gordon Stewart PLLC
1101 Haynes Street, Suite 104
Raleigh, NC 27604
Telephone: (919) 836-0090
Fax: (919) 836-8027

Attorneys for defendant, M. B. Hutson

Exhibit F

TLC Holdings, et al. v. Hutson, et al., c.a. no. 2015-CP-14-00615

Sandra R. Branson <sbranson@murphygrantland.com>
Fri 1/19/2018 1:59 PM

To: gmcfaddinj@sccourts.org <gmcfaddinj@sccourts.org>; gmcfaddinlc@sccourts.org <gmcfaddinlc@sccourts.org>
Cc: Tim J. Newton <tnewton@murphygrantland.com>; wbyrd@turnerpadget.com <wbyrd@turnerpadget.com>; ccromer@turnerpadget.com <ccromer@turnerpadget.com>; John Wilkerson <jwilkerson@turnerpadget.com>; fgordon@mgsattorneys.com <fgordon@mgsattorneys.com>; Wesley B. Sawyer <wsawyer@murphygrantland.com>

1 attachments (594 KB)
DOC011918-004.pdf;

Dear Judge McFadden:

Attached please find a motion to intervene in the above matter for your review and consideration.

By copy of this email we are advising opposing counsel of our communication with the court and providing a copy of same.

The exhibit will be submitted for the record with the filing. Please advise if you would like a copy via email.

Thank you.

Sandra R. Branson
Legal Assistant to J.R. Murphy and Tim J. Newton
Murphy & Grantland, P.A.
sbranson@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1265
803-782-4140 fax
www.murphygrantland.com

M & G

M & G
MURPHY & GRANTLAND, P.A.

Timothy J. Newton
Direct dial 803-454-1242
tnewton@murphygrantland.com

January 19, 2018

Beulah G. Roberts
Clarendon County Clerk of Court
P.O. Drawer E
3 West Keitt St.
Manning, SC 29102

Re: TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell v. M.B. Hutson a/k/a M.B. Hudson

Civil Action No.:	2015-CP-14-00615
Claim No.:	BWR16010406 and 15004802
Insured:	Big Water Resort, LLC
Our File No.:	1565-0050

Dear Ms. Roberts:

Enclosed please find herewith for filing with the Court the original and one (1) copy of an Notice Of Motion And Motion To Intervene By Penn-America Insurance Company For The Limited Purpose Of Submitting A Special Verdict Form Or Special Interrogatories in the above-referenced matter. I would appreciate your filing the original and returning a clocked copy to me in the envelope provided. By copy of this letter I am serving same on opposing counsel.

Sincerely,

s/ Tim Newton

Timothy J. Newton

TJN/sb
Enclosures

cc: R. Wayne Byrd, Esquire
Carlyle R. Cromer, Esquire
John W. Wilkerson, III, Esquire
Francis J. Gordon, Esquire
M.B. Hutson
Glenn Paul (via email)

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON TLC Holdings, LLC, Richard Clark and Jimmy Lovell ☐ Plaintiff v. M.B. Hutson a/k/a M.B. Hudson, ☐ Defendant.	))))))))))	IN THE COURT OF COMMON PLEAS CASE NO. 2015-CP-14-00615 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: R. Wayne Byrd, Esquire Address: P.O. Box 2116, Myrtle Beach, SC 29578 Phone: 843-213-5500 Fax: 843-213-5620 Email: wbyrd@turnerpadget.com	Defendant's Attorney: Timothy J. Newton, Esquire Address: P.O. Box 6648, Columbia, SC 29260 phone: 803-782-4100 fax: 803-782-4140 e-mail: tnewton@murphygrantland.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Intervene

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

_____ January 19, 2018
Signature of Attorney for ☐ Plaintiff / ☐ Defendant — Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	CIVIL ACTION NO: 2015-CP-14-00615
TLC Holdings, LLC, Richard Clark, and Jimmy Lovell, Plaintiff, vs. M.B. Hutson a/k/a M.B. Hudson, Defendants.	**NOTICE OF MOTION AND MOTION TO INTERVENE BY PENN-AMERICA INSURANCE COMPANY FOR THE LIMITED PURPOSE OF SUBMITTING A SPECIAL VERDICT FORM OR SPECIAL INTERROGATORIES**

TO: ALL COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT pursuant to Rule 24(a)(1), SCRCP, or, in the alternative, pursuant to Rule 24(b)(2), SCRCP, Applicant, Penn-America Insurance Company (hereinafter Penn-America) hereby moves to intervene in this action for the limited purpose of submitting a special verdict form or special interrogatories to the jury.

Penn-America is entitled to intervention as the commercial general liability ("CGL") insurer that issued a policy to BWR, Inc., whose principal is M.B. Hutson, as its rights may be affected by a disposition of this case on the merits. This motion is made on the following grounds:

1. BWR, Inc. is the named insured under a CGL policy (hereinafter "the Policy") issued by Penn-America. Policy number PAC7045167 went into effect on October 16, 2013. The Policy was originally scheduled to remain in effect until October 16, 2014. However, it was cancelled at the request of the finance company effective April 7, 2014. The policy limits are $1,000,000 per occurrence and $2,000,000 in the aggregate. A Copy of the Policy is attached.

2. With respect to the claims at issue, Coverage B of the Policy only covers claims for "personal and advertising injury" caused by an offense that was committed during the policy period. (Policy Form CG 0001, ¶ 1.B.1.b.)

3. The Policy only covers claims for "personal and advertising injury" that were caused by an offense arising out of the business of BWR, Inc. (Id.)

4. Under the terms of the policy, Hutson is an insured only when acting on behalf of BWR, Inc. (Id. at Section II – Who Is An Insured.)

5. The Policy contains endorsement S2041 (06/03), entitled "Limitation of Coverage to Designated Classifications of Operations." This endorsement limits coverage to only those activities that are listed in the Classification section in the Policy declarations. The activities listed in the Classification section of the declarations all pertain to the operation of the Big Water Resort campground.

6. The Policy excludes coverage for punitive damages. (Policy, endorsement S2002 (06/02)).

7. The Policy excludes coverage for "personal and advertising injury" by the insured with knowledge that the act would violate the rights of another and cause "personal and advertising injury." (Policy, ¶ I.B.2.a.)

8. The Policy excludes coverage for "personal and advertising injury" arising out of a defamatory statement published by the insured with knowledge of its falsity. (Policy, ¶ I.B.2.b.)

9. Penn-America is defending Hutson in this action under reservation of rights.

10. Upon information and belief, the Plaintiffs in this matter have recently moved to amend their Complaint and intend to present evidence of an alleged defamatory statement by Hutson that was published to the internet on May 19, 2014.

11. Coverage does not exist for damages awarded for the alleged defamatory statement made on May 19, 2014. This offense did not occur during the policy period because the policy was cancelled effective April 7, 2014. It does not appear to arise out of the business of BWR, Inc. or to have been made by Hutson in his capacity as a principal or agent of BWR, Inc. This alleged

statement does not appear to arise out of any activity listed in the Policy declarations under the Classification section since Hutson was evicted from the property in late March or early April 2014 at the latest. To the extent damages are awarded against Hutson for the internet posting made on May 19, 2014, they are not damages to which the Policy applies, and they are therefore not covered.

12. Any damages awarded in this action for "personal and advertising injury" caused by Hutson with knowledge his actions violated the rights of the Plaintiffs or for defamatory statements made by Hutson with knowledge of their falsity are not covered.

13. Any punitive damages are awarded against Hutson are not covered.

14. The contractual terms of the Policies and South Carolina law require an allocation between covered and non-covered damages.

15. Penn-America contends that this allocation does not involve relitigating the issue of damages; it is rather a determination of the amount of covered damages under the contractual terms of the Policy and South Carolina law based upon a review of the evidence submitted at trial in this action. Nevertheless, the Supreme Court of South Carolina has recently held in *dicta* that this contractual allocation of covered damages may not be made in a separate coverage action. Harleysville Group Ins. v. Heritage Cmties, Inc., *et al.*, 2017 WL 105021, Op. No. 27698 (S.C. Sup. Ct. filed Jan. 11, 2017) (Shearouse Adv. Sh. No. 2 at 21, 36 n.11).

16. The court did not clarify this holding in its final opinion. Harleysville Group Ins. v. Heritage Cmties, Inc., *et al.*, 420 S.C. 321, 803 S.E.2d 288 (2017). Instead, the court cited a prior case in which allocation was not allowed due to failure to raise the issue in an underlying arbitration proceeding. See Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 198, 684 S.E.2d 541, 547 (2009). Thus, it appears that South Carolina law may not allow insurers to obtain facts necessary for determinations involving liability coverage in separate declaratory judgment actions.

17. Generally, insurers lack standing to intervene in underlying actions to determine liability. Ex Parte Gov't Employee's Ins. Co., 373 S.C. 132, 138-39, 644 S.E.2d 699, 702-03 (2007); Baker Hosp. v. Fireman's Fund Ins. Co., 314 S.C. 98, 101, 441 S.E.2d 822, 823 (1994) (citing Blue Cross and Blue Shield of S.C. v. S.C. Indus. Comm'n, 274 S.C. 204, 262 S.E.2d 35 (1980)). These holdings were based upon the understanding that factual determinations for coverage purposes could be litigated in separate coverage actions. See Ex Parte GEICO, 373 S.C. at 137, 644 S.E.2d at 702. Harleysville appears to contradict this prior understanding.

18. Notice and opportunity to be heard are fundamental requirements of due process. If Penn-America is denied any forum for obtaining facts necessary for its allocation for coverage purposes, then its due process rights are violated in violation of both state and federal law.

19. Accordingly, Penn-America hereby moves to intervene in this action for the limited purpose of participating in the drafting of a special verdict form or submitting special interrogatories to the jury regarding the amount of any damages award that is for covered damages.

20. Under South Carolina law, a party seeking intervention under Rule 24(a)(2), SCRCP, must: (1) establish timely intervention; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. In re Horry County State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004).

21. Penn-America's motion to intervene is timely. This motion is being filed in response to a motion to amend filed by the Plaintiffs this week that purports to add claims that are not covered by the policy. The parties participated in a mediation held in December 2017 in a good faith effort to resolve the case out of court, but a settlement could not be reached.

22. Penn-America has an interest relating to the property or transaction which is the subject of this action. As discussed above, this action represents the only forum in which Penn-America can obtain an allocation as to the amount of covered damages under the Policies.

23. Penn-America is in a position such that, without intervention, disposition of this action will impair or impede its ability to protect that interest. The Supreme Court appears to have held that if intervention is not sought, an insurer waives its right to seek an allocation as to the amount of covered damages. Harleysville, 2017 WL 105021 at *7 n.11; Newman, 385 S.C. at 198, 684 S.E.2d at 547.

24. Penn-America is not adequately represented by other parties to this action. None of the parties to this action have an incentive to seek an allocation as to the amount of covered damages. The interests of the Plaintiffs and Hutson are aligned against the interest of Penn-America. Indeed, federal courts often realign parties to coverage litigation to reflect the fact that the interests of the liability carrier are adverse to the interests of both the plaintiffs and the defendants in the underlying tort litigation. See Bi-Lo, LLC v. Nat'l Union Fire Ins. Co. of Pittsburgh, C.A. No. 0:14-cv-00335-CMC, 2014 WL 12605522 at *7-8 (D.S.C. Apr. 30, 2014). When the interests of the party seeking intervention are adverse to the interests of the party litigants, "there is an obvious lack of adequate representation." In re Horry Bounty State Bank, 361 S.C. at 509, 604 S.E.2d at 726.

25. Accordingly, Penn-America has satisfied all of the elements for intervention of right under Rule 24(a)(2). The use of the mandatory term "shall be permitted to intervene" demonstrates that this right is not subject to this Court's discretion.

26. In the alternative, Penn-America also moves to intervene under Rule 24(b). Permissive intervention is allowed at the court's discretion based upon the existence of a common question of fact or law between the underlying litigation and the intervenor's claims or defenses.

S.C. Tax Comm'n v. Union County Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988). Sound administrative procedure favors the disposition of all claims or defenses in a single action. Id. As discussed above, this action represents the only forum in which an allocation of covered versus non-covered damages can be made.

27. Penn-America's motion to intervene is made for the limited purpose of presenting the jury with a special verdict or special interrogatories for a finding as to allocation between covered and non-covered damages. Courts have allowed limited intervention for a special purpose. Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991) (holding that intervention is appropriate for third-party challenges to protective orders).

28. Upon information and belief, the granting of this motion will not unduly delay or prejudice the adjudication of the rights of the original parties to the instant action, in that intervention is for the limited purpose of determining the form of the verdict to be submitted to the jury, and intervention will not impact the ability of the original parties to present their claims and/or defenses at trial.

Penn-America respectfully moves to intervene in this action pursuant to Rule 24(a) and (b) for the limited purpose of participating in the drafting of a special verdict or submitting special interrogatories to the jury in order to obtain findings of fact necessary for an allocation between covered and non-covered damages under the Policies. The grounds for this Motion are set forth above.

[*Signature page follows*]

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

J.R. Murphy, Esquire (SC Bar #7941)
Wesley B. Sawyer (SC Bar #100229)
Timothy J. Newton, Esquire (SC Bar 71640)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100; ext. 1242
(803) 782-4140 (facsimile)
Email: tnewton@murphygrantland.com
Attorneys for Penn-America Insurance Company

Columbia, South Carolina
January 18, 2018

Exhibit G

RE: TLC Holdings, et al. v. Hutson, et al., c.a. no. 2015-CP-14-00615

McFaddin, George M. <gmcfaddinj@sccourts.org>

Fri 1/19/2018 2:23 PM

To: Sandra R. Branson <sbranson@murphygrantland.com>; McFaddin, George M. Law Clerk (Madison Harte) <gmcfaddinlc@sccourts.org>
Cc: Tim J. Newton <tnewton@murphygrantland.com>; wbyrd@turnerpadget.com <wbyrd@turnerpadget.com>; ccromer@turnerpadget.com <ccromer@turnerpadget.com>; John Wilkerson <jwilkerson@turnerpadget.com>; fgordon@mgsattorneys.com <fgordon@mgsattorneys.com>; Wesley B. Sawyer <wsawyer@murphygrantland.com>

We will address this Monday. How long will it take, based on a reasonable degree of legal certainty, to try this case? Please do not just throw out an estimate but please be realistic. GMM

From: Sandra R. Branson [mailto:sbranson@murphygrantland.com]
Sent: Friday, January 19, 2018 2:00 PM
To: McFaddin, George M. <gmcfaddinj@sccourts.org>; McFaddin, George M. Law Clerk (Madison Harte) <gmcfaddinlc@sccourts.org>
Cc: Tim J. Newton <tnewton@murphygrantland.com>; wbyrd@turnerpadget.com; ccromer@turnerpadget.com; John Wilkerson <jwilkerson@turnerpadget.com>; fgordon@mgsattorneys.com; Wesley B. Sawyer <wsawyer@murphygrantland.com>
Subject: TLC Holdings, et al. v. Hutson, et al., c.a. no. 2015-CP-14-00615

Dear Judge McFadden:

Attached please find a motion to intervene in the above matter for your review and consideration.

By copy of this email we are advising opposing counsel of our communication with the court and providing a copy of same.

The exhibit will be submitted for the record with the filing. Please advise if you would like a copy via email.

Thank you.

Sandra R. Branson
Legal Assistant to J.R. Murphy and Tim J. Newton
Murphy & Grantland, P.A.
sbranson@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1265
803-782-4140 fax
www.murphygrantland.com

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Total Control Panel

Login

To: tnewton@murphygrantland.com
From: prvs=2557b1eeb3=gmcfaddinj@sccourts.org

Message Score: 70
My Spam Blocking Level: Low

Block this sender
Block sccourts.org

High (60): Fail
Medium (75): Pass
Low (90): Pass

This message was delivered because the content filter score did not exceed your filter level.
~~~

Exhibit H

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

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

January 22-25, 2018
Manning, South Carolina

B E F O R E :

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

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

JOHN S. WILKERSON, III, ESQ.
R. WAYNE BYRD, ESQ.
WILLIAM H. JOHNSON, ESQ.
Attorneys for the Plaintiff

FRANCIS J. GORDON, ESQ.
ANDREW B. SPRADLIN, ESQ.
Attorneys for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

INDEX

EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Lease purchase agreement	8/136
2	Hutson email	8/136
3	Letter from Harper	8/136
4	Tucker email	8/136
5	Linda Baxley email	8/136
6	Hutson attorney letter	8/136
7	Weissenstein letter	8/136
8	Eviction papers	8/136
9	Weissenstein letter	8/136
10	Big Water annual financials 2003-2010	8/136
11	Consolidated financials Big Water	8/136
12	Postcard	8/136
12-A	Postcard	8/136
13	Roark email	8
14	Roark email	8
15	Big Water, LLC membership interest purchase agreement with schedules	8/136 8/136
16	Lovell email to Tucker	8/136
17	RV park business plan	8/136
18	TLC financials	8/136
19	Lease purchase agreement	8/136
20	Big Water Resort, LLC minutes of members meeting	8/136
21	Spreadsheet	8/136
21-A	Adjustments for Thigpen's capital contribution deficiencies	8/136
22	TLC letter to members	8/136
23	Motion for temporary restraining order	8/136
24	Judge James' order	8/136
25	Hutson memo re: Claims	8
26	Email from Stroman	8/136
27	Class action Complaint	8/136
28	Class action amended Complaint	8/136
29	Clark email to Lovell	8/136
30	Class certification pleadings	8/136
30-B	Coversheet	8/136
31	Consent order and settlement agreement	8/136
32	Affidavit of default	8/136
33	Summons and Complaint	8/136
34	Lovell email to Baxley	8/136
35	Ripoff reports	8
36	Order sanctioning Hutson	8/697
37	Eight-five small photos	8/136

E X H I B I T S (CONT.)

STATE'S:

No.	Description	I.D./EVD.
38	Google earth photo	8/136
39	Lovell to Clark - Hutson contract issues	8/136
40	Roark to Kay Shirer	8/136
41	Roark to Stroman	8/136
42	Roark to Timmons	8/136
43	Roark to Stroman	8/136
44	Roark to Stroan	8/136
45	Clark to thestromanteam	8/136
46	Stroman to Lovell and Clark	8/136
47	Clark to Lovell	8/136
48	Clark to Lovell and Harper	8/136
49	Clark to Harper and Lovell	8/136
50	Harper to Lovell and Clark	8/136
51	Harper to Harper and Lovell	8/136
52	Lovell to Harper	8/136
53	Lovell to Clark and Harper	8/136
54	Tucker to Clark and Lovell	8/136
55	Tucker to Clark and Lovell	8/136
56	Clark to Lovell	8/136
57	Harper to Lovell and Clark - site plan	8/136
58	Plat (brochure)	8/136
59	Harper to Clark and Lovell	8/136
60	Lovell to Aftlegal@gmail.com	8/136
61	Tucker to Clark and Lovell	8/136
62	Baxley to Lovell and Clark	8/136
63	Chart	8
64	Harper to Clark and Lovell	8/136
65	Harper to Clark and Lovell	8/136
66	Photo	137/136
67	Sales price from TLC	137/137

DEFENDANT'S:

No.	Description	I.D./EVD.
1	BWR Family Adventures brochure	603/605
2	BWR Lake Club rules and regulations	603/605
3	BWR Family Adventures for Life advertisement	603/605

E X H I B I T S (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
4	Mission Statement & About the Owners	603/605
5	Letter from Thigpen to Clark & Lovell	603/605
6	BWR business scenarios	603/605
7	BWR business plan	603/605
8	Email re: press release fact sheet	603/605
9	BWR fast facts	603/605
10	BWR 2004 marketing plan	603/605
11	BWR feature story	603/605
12	Letter to Summerton mayor from Thigpen re: Water and sewer services	603/605 603/605
13	Letter to Summerton mayor from B.P. Barber & Associates re: Possible water line extension	603/605 603
14	Letter to Thigpen from Summerton mayor re: Denial to fulfill water service request	603/605
15	Letter to Thigpen from Timmons Engineering re: BWR analysis for condos	603/605
16	Email to M.B. Hutson from Ken Parnell re: Tap fee	603/605
17	Email to Ken Parnell from M.B. Hutson re: Number of tie-ins to be given	603/605
18	Letter to Charles Parnell from Public Works of Summerton re: Water and service for proposed BWR cabin developments	603/605
19	Correspondence to Mr. Hutson from Summerton Public Works re: SC DHEC approval of wastewater system improvements	603/605
20	Email chain re: Summerton capacity and consent order and moratorium	603
21	Email from Clark to Lovell	603/605
22	Email chain re: Fiscal issues	603/605
23	BWR members meeting	603/605
24	TLC members meeting	603/605
25	Emails from Lovell re: BWR &TLC capital calls	603/605
26	Letter from BWR to Robert & Laura Fowler re: Collection of account balance	603/605
27	BWR U.S. Return of Partnership Income	603/605
28	Email from Clark to Lovell	603/605
29	Email from Lovell to Andrew Tucker re: list of debts and obligations	603/605
30	Total fixed assets list	603/605

E X H I B I T S (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
31	BWR financial condition	603/605
32	Title search	603/605
33	Emails re: Wiring instructions	
34	Lease purchase agreement	603/605
35	Membership Interest Purchase Agreement	603/605
36	Assignment of Membership Interest Agreement	603/605
37	Pledge Agreement	603/605
38	Payments by Hutson	603/605
39	Letter from Wells Fargo re: Financing	603/605
40	Promissory note	603/605
41	Letter to Hutson from Rikard Enterprises	603/605
42	Emails to Mr. Hutson from camp members	603
43	Email from Charles & Diane Degnan	603
44	Email from David & Sybil Lawrence	603
45	Email from Lori Longhurst	603
46	Email from Tracy & Fran Inman	603
47	Email from member to Mr. Hutson	603
48	BWR map and contact information for Kelly Coker and Larry Stewart	603/605
49	Email from Christopher H. Jones	603
50	Letter from Van & Kim Owens	603
51	Email from Mickey Grant & Rubin Watford	603
52	Correspondence from Bonnie Youmans	603
53	Email from GErald & Jane Yates	603
54	Handwritten correspondence from Roger Jordan	603
55	Letter from T.D. Williams re: McLeod membership	603
56	Letter from James Jackson re: McLeod membership	603
57	Complaints from campers	603
58	Postcard sent to BWR members	603/605
59	BWR membership agreement with Reeds	603/605
60	BWR membership agreement with Youmans	603/605
61	BWR membership agreement with Caulders	603/605
62	Membership purchase price and payment schedule re: Yates	603/605
63	Lifetime & Deluxe Lifetime Retail Membership Agreement	603/605
64	Class action settlement	603/605

E X H I B I T (CONT.)

DEFENDANT'S:

No.	Description	I.D./EVD.
65	4/13/12 letter from Harper to Clarendon County	603/605
66	Phase 2 plan	603/605
67	3/3/14 letter, TLC to campers	603/605
68	Plat	603/605
69	Plat - Big Water Resort	603/605
70	Tax partial photo	603/605
71	Tax parcel photo	603/605
72	Tax parcel photo	603/605
73	Tax parcel photo	603/605
74	Tax parcel photo	603/605
75	Tax parcel photo	603/605
76	Email	603/605
77	Email	603/605
78	Email	603/605
79	Email	603/605

COURT'S:

1	Ripoff report	512
2	Deposition of Bonnie Youmans	605

(WHEREUPON, Plaintiff Exhibits 1 through 65 were marked for identification only.)

THE COURT: Mr. Wilkerson, you want to put on the record that ---

MR. WILKERSON: That motion about that withdrawn, the motion to amend?

THE COURT: The motion to amend, consequently means the motion to intervene is also not before the court anymore, right? Okay. Gentlemen, anything else before we endeavor to qualify a jury?

MR. GORDON: No, sir. Yes, sir, may I approach.

THE COURT: Yes, sir.

(WHEREUPON, counsel approached the Bench for an off-the-record discussion.)

THE COURT: I need to go back and take care of two matters.

THE CLERK OF COURT: Number 33 and 140.

THE COURT: Ms. Canty, Jasmine Canty, ma'am. The reference made in our prior conversation earlier, I'm going to excuse you.

THE POTENTIAL JUROR: Okay, thank you.

THE COURT: 140 was the other one, ma'am?

THE CLERK OF COURT: Yes, sir.