

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-04-2419
Appellate Tracking No. 2018-00875

Dr. Marvin Anderson, Respondent.

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail Pros
Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Petitioner,

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Dr. Marvin Anderson, Respondent,

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises,
LLC; Brushy Creek BarBQ, Inc.; and Bail Pros Bail
Bonding, LLC, Defendants,

Of whom Mary Thomas is the Appellant.

Appellate Case No. 2018-000875

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2021-UP-088
Submitted January 1, 2021 – Filed March 17, 2021

AFFIRMED

William Patrick Yon, of W. Patrick Yon, LLC, of
Anderson, for Appellant.

Rodney F. Pillsbury, of Pillsbury Law Firm, LLC, of
Greenville, for Respondent.

PER CURIAM: Mary Thomas (Mary) appeals a money judgment against her for \$125,000. On appeal, Mary argues the trial court erred in applying the Statute of Elizabeth¹ and the doctrine of unjust enrichment to a property transfer from Prodigal Enterprises, LLC (Prodigal) to herself. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. First, we find clear and convincing evidence supports the trial court's finding that the property transfer was fraudulent under section 27-23-10(A) of the South Carolina Code (2007). *See Oskin v. Johnson*, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012) ("A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth."); *id.* ("An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies."); § 27-23-10(A) ("Every . . . conveyance of lands . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken . . . to be clearly and utterly void . . ."); *Coleman v. Daniel*, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) (explaining some of the "badges of fraud" a court should consider in determining whether a property transfer was fraudulent under section 27-23-10(A) include "[a] lack of consideration for the conveyance, [a] relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, [a] departure from the usual method of business, [and] the transfer of the debtor's entire estate"); *Lebovitz v. Mudd*, 293 S.C. 49, 52, 358 S.E.2d 698, 700 (1987) (holding section 27-23-10(A) "does not limit its application to judgment creditors" and "its protection extends to other types of parties defrauded in connection with the conveyance of property"). Evidence supporting the finding that the conveyance here was fraudulent includes the following: the conveyance was supported by only nominal consideration, Mary and Forest Thomas (Forest) were the only two remaining members of Prodigal, Mary and Forest were married at the time of the transfer, and the conveyance constituted a departure from the usual method of business because the property in question was worth more than \$200,000. Additionally, we note Forest liquidated his sole remaining asset when he consented to the property transfer and dissolution of Prodigal. Dr. Anderson obtained a judgment against Forest's property; however, due to Forest's insolvency, Dr. Anderson's judgment against Forest's property was returned *nulla bona*. Accordingly, we find clear and convincing evidence supports the trial court's order on this issue.

¹ S.C. Code Ann. § 27-23-10(A) (2007).

2. Second, we find the preponderance of the evidence supports the trial court's determination that Mary was unjustly enriched by the property transfer. *See Horry Cty. v. Ray*, 382 S.C. 76, 80, 674 S.E.2d 519, 522 (Ct. App. 2009) ("The appellate court's standard of review in equitable matters is our own view of the preponderance of the evidence."); *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001) ("However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial [court] is in the better position to assess the credibility of the witnesses."); *id.* ("Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial [court] committed error in his findings."); *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 202, 600 S.E.2d 105, 108 (Ct. App. 2004) ("The equitable doctrine of quantum meruit allows an aggrieved party to recover for unjust enrichment."); *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) ("A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another."); *id.* ("Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff."). Here, but for the fraudulent conveyance resulting in the immediate dissolution of Prodigal, Dr. Anderson would have been afforded the opportunity to charge Forest's distributional interest in Prodigal. *See* S.C. Code Ann. § 33-44-504(a) (2006) ("On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment."). Instead, Forest liquidated his sole asset when he consented to the property transfer to Mary on behalf of Prodigal for nominal consideration. Thus, we find the preponderance of the evidence supports the trial court's finding that Mary was unjustly enriched when she received the property for nominal consideration and used the property to secure bonds for her bail bonds business. Accordingly, we affirm.

AFFIRMED.²

HUFF, WILLIAMS, and GEATHERS, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

Dr. Marvin Anderson, Respondent,

v.

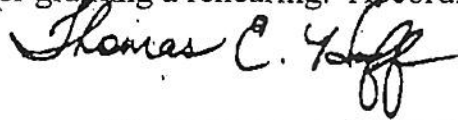
Mary Thomas; Forest Thomas; Prodigal Enterprises,
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Of whom Mary Thomas is the Appellant.

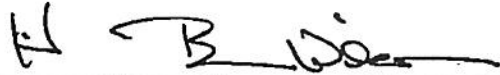
Appellate Case No. 2018-000875

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

FILED
Jun 11 2021

William Patrick Yon, Esquire
Rodney F. Pillsbury, Esquire
The Honorable J. Cordell Maddox, Jr.

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM ANDERSON COUNTY

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of whom, Mary Thomas is the Appellant,

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THE TRANSFER OF THE HWY. 81 PROPERTY TO APPELLANT WAS A FRAUDULENT CONVEYANCE
- 2.. DID THE TRIAL COURT ERR IN FINDING APPELLANT WAS UNJUSTLY ENRICHED BY A TRANSFER OF REAL ESTATE FROM A LIMITED LIABILITY COMPANY THAT WAS NOT RESPONDENT'S JUDGMENT DEBTOR?

STATEMENT OF THE CASE

Dr. Marvin Anderson (respondent) obtained a judgement against Forest Thomas (Thomas) for \$378,108.08 on March 6, 2013. Respondent filed an action against the appellant, Thomas and remaining defendants alleging (1) violation of S.C. Code Ann. § 27-23-10 and (2) unjust enrichment arising from a conveyance of real estate ("Hwy. 81 property") to appellant by the defendant Prodigal Sons LLC ("Prodigal").

The action was tried non-jury on February 21, 2017 before Circuit Court Judge J. Cordell Maddox, Jr. On May 19, 2017, Judge Maddox issued an Order finding that the respondent was entitled to a judgment against Mary Thomas in the amount of \$125,000.00 under either the unjust enrichment or fraudulent conveyance cause of action (R., p. 11).

Appellant filed a motion to reconsider on May 26, 2017.(R., pp.15-17). Following a hearing on the motion to reconsider, Judge Maddox issued an Order denying the motion and appellant filed this appeal (R., pp. 12-13).

FACTS

Prodigal Enterprises, LLC ("Prodigal") was formed on September 9, 1997 for the purpose of owning the Hwy. 81 property and leasing it to Brushy Creek BarBQ to operate a restaurant (R.,p 110). There were seven original owners of Prodigal including appellant and Thomas (R.,

pp. 110-111). Appellant and Thomas (who are wife and husband) eventually bought out all of the other owners and became the only owners of Prodigal and Brushy Creek BarBQ by 2005 (R., p.84).

The following sequence of events occurred:

- On April 5, 2007, appellant was issued a runner's license to work for Action Out Bail Bonding (R., p.100).
- On October 30, 2008, the respondent loaned \$125,000.00 to Thomas (R., p. 133).
- On December 3, 2009 appellant passed the professional bondsman exam (R., p. 101).
- Thomas signed a promissory note at respondent's request on March 2, 2010 that acknowledged the 2008 loan, stated that the amount then due on the loan was \$181,250.00 and required monthly payments in the amount of \$34,294.71 beginning April 1, 2010 (R., p. 63; pp. 134-135).

Bail Pros Bail Bonding, LLC was formed on December 2, 2010 with appellant as the sole member (R., p.100). Needing collateral to operate her new business, the appellant and Thomas decided to pledge the Hwy. 81 property held by Prodigal to the Anderson County Clerk of Court. They met with attorney Bill Hood September 2009 to draft the necessary documents to pledge the Hwy. 81 property (R., pp. 114-115). After the title search revealed that Prodigal owned the real estate, Mr. Hood informed them that appellant, as the professional bondsman, would have to own the Hwy. 81 property in order to pledge it as collateral for her bail bondsman business (R., p. 117). Up until that point, the appellant and Thomas believed the property could be pledged by Prodigal (R., p. 86). The title exam also revealed several open mortgages on the Hwy 81

property. Mr. Hood drafted the mortgage satisfactions and the appellant and Thomas began tracking down the mortgage holders to execute the satisfactions (R., pp. 115-116). This process took several months to complete (R., p. 96). Once all the mortgages were satisfied, Prodigal conveyed the Hwy. 81 property to appellant for nominal consideration on July 7, 2010 (R., pp. 172-175). On July 12, 2010, appellant pledged the Hwy. 81 property to Anderson County (R., pp. 176-180). Prodigal was subsequently dissolved.

No payment was ever made on the note and the respondent filed suit against Thomas. A judgment was entered against Thomas in favor of respondent on March 6, 2013 in the amount of \$378,108.08 (R., pp. 184-187). When respondent discovered the above transfer of the Hwy. 81 property, he brought the underlying action against appellant, Thomas and other defendants.

The action was heard without a jury. In its order, the trial court found that the purpose of the conveyance by Prodigal to appellant was to defraud the respondent (R., p. 9). Finding it impossible to re-title the Hwy. 81 property to a dissolved corporation, the trial court found that the "most appropriate relief" (R., p. 11) was to award a monetary judgment against appellant in the amount of \$125,000.00. The amount of the judgment was based upon what the court found to be the value and benefit appellant received from the transfer of the Hwy. 81 property to her.

ARGUMENT

Standard of Review

A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth. *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998). In an appeal from an action in equity, the appellate has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. *Doe v. Clark*, 318 S.C. 274, 457 S.E.2d 336 (1995). However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses. *Dorchester County Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 477 S.E.2d 476 (Ct.App.1996). Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings. *Id.*

I. THE TRIAL COURT ERRED IN FINDING THE TRANSFER OF THE HWY. 81 PROPERTY TO APPELLANT WAS A FRAUDULENT CONVEYANCE

Respondent is a judgment creditor of Thomas. Respondent brought this action under S.C. Code § 27-23-10 claiming, *inter alia*, that he was a judgment creditor of the grantor which conveyed the Hwy. 81 property to the appellant. However, the grantor in that transaction was Prodigal, a limited liability company. Prior to the current action, respondent had never sued Prodigal and admitted he held no judgment against Prodigal (R., p.72).

Generally, “ a limited liability company is a legal entity distinct from its members.” S.C. Code Ann. § 33- 44- 201 (2006). “ A member is not a co-owner of, and has no

transferable interest in, property of a limited liability company.” S.C. Code Ann. § 33- 44- 501(a) (2006 & Supp.2012). See also Comment to S.C. Code Ann. § 33- 44- 501 (“ Members have no property interest in property owned by a limited liability company.”)

South Carolina’s fraudulent conveyance statute is codified under S.C. Code Ann. §27-23-10(A):

Every gift, grant , alienation, bargain, transfer and conveyance of lands...and every bond, suit, judgment and execution which may be had or made to or for any intent or purpose to delay, hinder or defraud creditors...must be deemed and taken...to be clearly and utterly void...

The order cites the two conditions under which conveyances will be set aside as a fraudulent conveyance:

When a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.

Albertson v. Robinson, 371 S.C. 311, 317 (Ct. App. 2006), quoting *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995).

Additionally,

Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.

Windsor Properties v. Dolphin Head Const., 331 S.C. 466, 498 S.E.2d 858 (S.C., 1997),

citing *Gardner v. Kirven*, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937). In *Windsor*, the property was transferred from the corporation, wholly-owned by husband, to the wife. Finding that the transfer was in reality an intra-family transfer, the court imposed the burden on the wife to establish by clear and convincing evidence that there was consideration and that the transaction was bona fide.

However, *Windsor* is distinguishable from the present case in an important way. In *Windsor*, the corporation that conveyed the property was the judgment debtor. Therefore, S.C. Code Ann. §27-23-10 and the case law that has developed from it could be readily applied. In the present case however, the limited liability company is not a judgment debtor. It is a separate legal entity, separate and distinct from both Thomas and the appellant.

Although the respondent included an allegation in his complaint that Prodigal was the alter-ego of Thomas, no evidence was produced at trial to support the allegation. Sheridan Alan Hill, the corporate attorney for the appellant and Thomas, testified that Prodigal was not the alter-ego of Thomas (R, p. 113). He testified that none of the transaction undertaken by Thomas were out of the ordinary. On the contrary, the transactions were customarily done by limited liability corporations (R., p. 113).

Additionally, there was clear and convincing evidence that this was a bone fide transfer. Appellant began working in the bail bond business in 2007 (R., p. 100) prior to the initial loan. She took and passed the exam to be a professional bail bondsman in 2009 (R.,p. 101) when the professional bail bondsman she was working for was arrested for breach of trust. It is clear from the evidence that appellant had been pursuing this line of work since before the loan was even made. The property was transferred to appellant for a legitimate reason: she needed collateral to

secure the bonds she would be writing (R., pp. 102-103).

The trial court concluded that the timing of the transactions cast doubt on appellant's motives. However, the parties contacted attorney Bill Hood who testified and corroborated the testimony of both appellant and Thomas as to why they sought the transaction (R., pp. 115-120). Bill Hood's testimony also corroborated their testimony that explained why there was a delay between the time the appellant and Thomas first met with Bill Hood and the actual transfer of the property: there were outstanding mortgages that had to be satisfied (R., pp. 115-118). Finally, Mr. Hood corroborates the important testimony that the appellant and Thomas did not go to him asking to transfer the property from Prodigal to appellant, rather, they simply wanted to pledge the property as collateral for the bail bond business (R., pp. 116-117). It was Mr. Hood who brought to their attention that the property had to be in the bail bondsman's name (R., pp. 86, 116-117, 121).

Since Prodigal was not a judgment debtor of the respondent and, alternatively, there was no evidence that Prodigal was the alter-ego of Thomas, it was error for the court to find S.C. Code Ann. §27-23-10 applicable to the present case. Therefore, the fact that the transfer of Hwy. 81 to appellant was for nominal consideration is not relevant, as the transfer was not made by a judgment debtor and was made for a bona fide purpose.

II. THE TRIAL COURT ERRED IN FINDING THE TRANSFER OF THE HWY. 81 PROPERTY TO APPELLANT WAS A FRAUDULENT CONVEYANCE

Respondent's unjust enrichment action rests upon proof that appellant received a non-gratuitous gift *from the respondent* by virtue of the conveyance of the Hwy. 81 property from Prodigal, a limited liability company. Admittedly, the conveyance was made without valuable

consideration. However, the conveyance was made by Prodigal, not the respondent and not Thomas, individually. The order fails to apply the law regarding unjust enrichment to the evidence in the case. “ Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. *Ellis v. Smith Grading and Paving, Inc.*, 366 S.E.2d 12, 294 S.C. 470 (S.C. App., 1988) citing *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App.1984).

“ This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment.” *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 440 S.E.2d 129, 312 S.C. 259 (S.C., 1993); See also *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989).

“ Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Id.* citing *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct. App.1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct. App.1988).

The fact that a limited liability company conveyed the Hwy. 81 property to appellant is central to this case.

Respondent' s fraudulent conveyance action rests upon proof that he is the creditor of the grantor, which he admitted he was not. The order specifically finds (R., p. 10) that Thomas was the grantor in the conveyance of the Hwy 81 property to appellant Mary Thomas when the only evidence submitted at trial was that the grantor was Prodigal. Thomas had no legal interest in the real estate.

Likewise, there is no evidence to support respondent's cause of action for unjust enrichment. There was no allegation of an express contract between the respondent and appellant, therefore, any recovery for unjust enrichment would fall under quasi-contract. However, the evidence fails to support a quasi-contract. The allegation in respondent's complaint is that the transfer of the Hwy 81 property to appellant constituted unjust enrichment. However, that transfer was not made by the respondent and respondent conferred nothing on appellant by virtue of that transfer. The conveyance was made by a limited liability company that was a legally distinct entity from both the appellant and Thomas. There was no judgment against Prodigal and no action pending against Prodigal. If the respondent believed the loan he made to Thomas unjustly enriched appellant, that is a cause of action that was not pled in this action and would have been barred by the statute of limitations had it been.

In order for a plaintiff to show that a non-gratuitous gift was bestowed upon a defendant, the plaintiff must show either of the two following situations:

1. That the benefit was conferred upon the defendant at the defendant's request; or,
2. That circumstances exist where the plaintiff may reasonably rely upon the defendant for payment and the defendant knows or has reason to know that the plaintiff is relying upon the defendant for payment; and
3. The defendant's conduct induced the plaintiff to confer the benefit on the defendant.

Niggel Assoc., Inc. V. Polo's of North Myrtle Beach, Inc., 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

It was error to apply unjust enrichment to this case because the respondent (who is the plaintiff) never (1) conferred a benefit upon appellant; nor are there (2) any circumstances where

the respondent could reasonably rely upon appellant for payment of the debt owed respondent by Thomas and that appellant knew or had reason to know that respondent was relying upon appellant for payment; and, (3) appellant's conduct did not induce the respondent to confer the benefit on appellant.

The application of unjust enrichment has been muddled by respondent and the trial court, because neither was consistent about identifying the benefit. Was the benefit the conveyance of the Hwy. 81 property to appellant by Prodigal or was it the \$125,000.00 loan from respondent to Thomas?

If the benefit was the \$125,000.00 loaned by respondent to Thomas, unjust enrichment cannot be applied against appellant. This scenario would require a showing that appellant either benefitted from the loan or that she was an active, known participant in the loan transaction itself.

There is no evidence that appellant benefitted from this loan in any way. Likewise there is no evidence to support the scenario that the appellant was an active participant in procuring this loan. There is no evidence that respondent was relying upon appellant to repay the loan, that appellant knew she was expected to repay the loan or that appellant did anything to induce respondent to make the loan. There is no evidence that appellant played any role in the loan from respondent to Thomas and the respondent did not attempt to offer any such evidence. Therefore, the court's use of unjust enrichment could not have been based upon the benefit being the \$125,000.00 loan.

If the benefit was the Hwy. 81 property as the order suggests ("the most appropriate relief...is to award a judgment to the plaintiff...for the value of the property ...she received from the fraudulent transfer.") (R.,p. 11), unjust enrichment cannot be applied against the appellant.

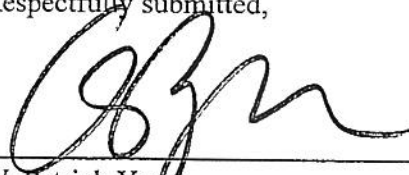
The benefit of the conveyance was conferred by Prodigal, not the respondent. Additionally, the respondent had no role to play in that transaction as it was between a limited liability corporation and the appellant. The respondent held no judgment against Prodigal. Therefore, the court's use of unjust enrichment to impose judgment against appellant, could not have been based upon the benefit being the transfer of the Hwy. 81 property.

The trial court seems to conflate the two transactions to find justification for its order. This was error. Appellant was aware of the Hwy. 81 transfer but not the loan. She benefitted from the Hwy. 81 transfer but not the loan. Respondent was not a party to the Hwy.81 transfer. There is no evidence that would support a finding of unjust enrichment against appellant under either transaction.

CONCLUSION

The trial court erred in finding a fraudulent transfer took place pursuant to S.C. Code Ann§ 27-23-10. The trial court also erred in finding the appellant had been unjustly enriched by the transfer. Therefore, this Court should reverse the trial court's judgment against the appellant.

Respectfully submitted,



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J. Cordell Maddox, Jr., Circuit Court Judge

JUN 05 2019

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FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT PROPERLY FIND APPELLANT LIABLE AS THE BENEFICIARY OF A FRAUDULENT CONVEYANCE FROM HER DEBTOR HUSBAND UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE?
2. DID THE TRIAL COURT PROPERLY FIND THAT APPELLANT UNJUSTLY BENEFITED FROM THE TRANSFER OF A JOINTLY HELD ASSET WITH HER HUSBAND SOLELY TO HERSELF WITHOUT ANY CONSIDERATION UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE?

STATEMENT OF THE CASE

Respondent filed an action against Debtor Husband ("Debtor Husband") on February 22, 2012 (*Marvin L. Anderson v. Forest Thomas*, C.A. No. 2012-CP-23-1323, Greenville County Court of Common Pleas), which resulted in a judgment for Respondent against Debtor Husband in the amount of \$378,108.08, entered March 6, 2013. [R.p.184] Respondent's attempted Execution Against Property of Debtor Husband on September 18, 2013. [R.p.188] Said execution was returned *nulla bona* on October 25, 2013. [*Id.*]

On October 22, 2014, Respondent filed this action against Appellant, Debtor Husband, Prodigal Enterprises, LLC, Brushy Creek BBQ, Inc. and Bail Pros Bail Bonding, LLC. [*Anderson v. Mary Thomas, etc.*, C.A. No. 2014-CP-04-02419 (Anderson County Court of Common Pleas)] Respondent asserted two (2) claims: fraudulent conveyance and unjust enrichment. [R.p. 18]

By consent of the parties, the action was tried non-jury on February 21, 2017 before Circuit Court Judge J. Cordell Maddox, Jr. At the conclusion of all evidence, the Court took the matter under advisement. [R.p.123] On May 19, 2017, Judge Maddox issued an Order and Judgment finding that Appellant (Wife of Debtor Husband) was liable to the respondent in the amount of \$125,000.00. [R.pp. 2-12]

Appellant filed a motion to reconsider on May 26, 2017 [R.p.16], which the Court heard on August 7, 2017. [R.p.125] Upon hearing the arguments of counsel and reviewing the submitted briefs, the Court denied Appellant's Motion to Reconsider on March 15, 2018. [R.p.13]

This appeal followed.

RELEVANT FACTS

The salient facts are poignantly set forth by the trial court in its order and judgment [R.pp. 5-7]. These factual findings are directly supported from the evidence at trial.

In October 30, 2008, Respondent loaned Debtor Husband \$125,000.00. Respondent testified Debtor Husband needed the funds for the quick flip of a property in Florida. [R.pp. 59-60; R.p. 133] According to the Respondent, Debtor Husband agreed to pay 50% (\$62,500.00) if it took six (6) months to repay principle and interest; and 100% (\$125,000.00) if it took a year to repay principle and interest. [R.pp. 59-61] There was no contemporaneous writing to memorialize this agreement. [*Id.*]

As the one-year deadline was approaching, Respondent began contacting Debtor Husband about payment. [R.pp. 62-63] Debtor Husband said that he would send payment, but no money was ever received. [R.p.62] Finally, on March 9, 2010, Respondent and Debtor Husband met to execute a promissory note, which Debtor Husband freely and voluntarily signed. [R.pp. 63-64] The terms of the note acknowledged the 2008 loan and stated the amount owed was \$181,250.00. [R.p. 64; R.p. 134] The promissory note called for Debtor Husband to start making monthly payments in the amount of \$34,294.71, beginning April 1, 2010. [R.p. 134]

The first payment became due, but no payment was made. [R.p. 113] When the second payment (May 1, 2010) had become due and was not made, Respondent contacted Debtor Husband. [R.p. 114] It was at that time that Debtor Husband told the Respondent that he was not going to pay anything. [Id.] Knowing that he was already behind on payments, Debtor Husband looked for a way to divest himself of his major asset at the time, his interest in Prodigal Enterprises, LLC, a limited liability corporation, that he shared with his wife. [R.pp. 83-84]

The sole asset of Prodigal Enterprises, LLC was land it owned at Highway 81 North, Piedmont, SC 29673 [hereinafter "Brushy Creek Bar-B-Q property"]. [R.p. 79] The land and the commercial building located on it was where Appellant operated the family business of Brushy Creek Bar-B-Q, Inc. [Id.]

By 2005, the members of Prodigal Enterprises, LLC other than Defendants Appellant and Debtor Husband, had been repaid for their interests. [R.pp. 79-80] Although none of the paperwork had been executed. [Id.] By 2010, Appellant and Debtor Husband were the only *de facto* members of Prodigal Enterprises. Debtor Husband was the managing member of Prodigal Enterprises, LLC. [R.p. 113] At the time of transfer to Appellant, the land and building were owned free and clear of any mortgage or liability to any other third party. [R.p. 81]

In September of 2009, Defendants Debtor Husband and Appellant consulted with Attorney Bill Hood to explore the possibility of transferring the title of the property to Appellant in connection with her opening a bail bond business. [R.p. 116] According to the promissory note signed by Debtor Husband in March 2010, September 2009 would have been just a few weeks after the \$181,250.00 was due the Respondent on July 30, 2009.

[Pl. Ex. 2] Mr. Hood testified that, while the Thomases did meet with him in September 2009, the file sat idle for several months with no activity. [R.p. 134] Indeed, it was not until late May and early June of 2010 that the Thomases had an urgent need to get the work completed. [R.p. 119, l.17 – p.120, l.4]

In June 2010, the other members of Prodigal Enterprises LLC all executed satisfactions of their mortgages relating to the Brushy Creek Bar-B-Q property. [R.pp. 79-80] Debtor Husband testified that these other parties were repaid their loans/investment years before, but they had not gotten around to do the paperwork until June 2010. [R.p. 79]

With the monthly payments on the promissory note past due and continuing to be missed, on July 7, 2010, Defendants Debtor Husband and Appellant executed a series of documents that did the following:

- 1) For nominal consideration, transfer the title of the Brushy Creek Bar-B-Q property from Prodigal Enterprises, LLC to Appellant. [R.p. 172] [R.pp. 80-81];
- 2) Appellant filed with the Anderson Clerk of Court pledging the property as collateral for a bond company, Bail Pros; [R.p.176; R.p.80]; and
- 3) Dissolved Prodigal Enterprises, LLC. [R.p. 181; R.p. 32]

At the time of transfer, the property was worth \$203,535. [R.p. 176; p. 80]. Debtor Husband admitted that, as a 50% owner of Prodigal Enterprises, LLC, the value of his interest in the property was worth more than \$100,000.00, which he transferred to Appellant for \$10.00. [R.p. 81]

Debtor Husband testified on cross-examination that at the time of this transfer, his interest in Prodigal Enterprises, LLC (with its unencumbered ownership of the Brushy

Creek Bar-B-Q property) was the single largest asset he owned at that time. [R.p. 83-84] He also admitted this transfer was made to his wife without any consideration. [R.p. 81] Further, he admitted that following this transfer, he did not have any assets to satisfy the amounts owed to the Respondent. [R.pp. 83-84]

The Respondent ultimately retained a lawyer to bring an action against Debtor Husband for collection of the promissory note. [R.p. 67] A judgment was entered in Respondent's favor against Debtor Husband in the amount of \$378,108.08 on March 6, 2013. [Pl. Ex. 18] Respondent's attempt to collect on that judgment to date have been unsuccessful. [R.p. 172] The judgment was placed in the hands of the Sheriff for collection and returned *nulla bona*. [R.p. 188] Respondent testified that he has never received a dime from the defendant for the original \$125,000.00 loan to Debtor Husband. [R.p. 63]

LEGAL ARGUMENT

1. Standard of Review

The parties tried the case non-jury by consent. Both of respondent's claims are equitable. For Respondent's claim for fraudulent conveyance under S.C. Code of Laws §27-23-10, *et seq.*, a clear and convincing evidentiary standard applies to fraudulent conveyance claims brought under the Statute of Elizabeth. Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012). "An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." *Id.* Regarding Respondent's claim for unjust enrichment, "[u]njust enrichment is an equitable doctrine." Dema v. Tenet Physician Servs.-Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). On appeal from a non-jury trial, an appellate court may find facts

according to its own view of the preponderance of the evidence; however, it is not required to ignore the trial judge's findings. K & A Acquisition Group, LLC v. Island Pointe, LLC, 383 S.C. 563, 571, 682 S.E.2d 252, 256-57 (2009); Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (S.C., 1976).

2. THE TRIAL COURT PROPERLY FOUND APPELLANT LIABLE FOR THE FRAUDULENT CONVEYANCE OF PROPERTY TO HER UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

When a party denies any fraudulent intent in transferring an asset outside the reach of a creditor, fraudulent intent is inferred if one or more of the following "badges of fraud" exist(s):

[T]he insolvency or indebtedness of the transferor, [a] lack of consideration for the conveyance, [a] relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, [a] departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

First Citizens Bank & Trust Co. v. Park at Durbin Creek, LLC, 419 S.C. 333, 797 S.E.2d 409 (S.C. App., 2017), quoting, Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973). It is generally recognized that, although the identification of one badge of fraud does not create a presumption of fraud, "whe[n] there is a concurrence of several such badges of fraud[,] an inference of fraud may be warranted." Coleman, at 209–10, 199 S.E.2d at 79–80 (quoting, 37 AM. JUR. 2D Fraudulent Conveyances §10 (1968)). "A badge of fraud creates a rebuttable presumption of intent to defraud." First Citizens Bank & Trust Co. v. Park at Durbin Creek, LLC, 419 S.C. 333, 797 S.E.2d 409 (S.C. App., 2017)

(quoting, Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999)).

Appellant first argues the Statute of Elizabeth does not apply because the grantor (Prodigal Enterprises) was an LLC; and not a direct debtor to the Respondent. The following facts are not disputed:

- (1) Debtor Husband signed a promissory note to Respondent on March 9, 2010 with the first installment payment due in April 2010 [R.p. 134];
- (2) Once Debtor Husband missed his second consecutive deadline for making an installment payment; Respondent began contacting Debtor Husband in May 2010 about payments he owed under the promissory note [R.p. 65];
- (3) While Debtor Husband and Appellant initially consulted Attorney Hood to discuss Appellant entering the bail bonds business in September 2009, the file sat dormant until May/June 2010, when there was an urgent need to get everything take care of right away [R.p. 121];¹
- (4) The original members of Prodigal Enterprises other than Debtor Husband and Appellant had been paid in full for their interests in Prodigal Enterprises in 1998, but no paperwork confirming this was generated until May/June 2010 [R.pp. 79-80];

¹ The attorney who prepared the transfer documents testified as follows:

[Question]: And so that is accurate that [the file] sort of sat dormant for along time until that May 2010 time period.

[Answer]: That would be correct.

[R.p. 121]

- (5) At the time of transferring the property to his wife (Appellant), Debtor Husband was a 50% owner of Prodigal Enterprises [R.p. 76];
- (6) At the time of transferring the property to his wife (Appellant), Debtor Husband was the managing member of Prodigal Enterprises [R.p. 76];
- (7) At the time of transfer (July 7, 2010), the property transferred was the sole asset of Prodigal Enterprises [R.p. 80];
- (8) At the time of transfer (July 7, 2010), Debtor Husband's ownership of Prodigal Enterprises was his only asset not subject to a homestead exemption [R.pp. 83-84];
- (9) At the time of transfer wife, the property was worth \$205,535.00 [R.p. 64; R.p. 176];
- (10) At the time of transfer to his wife, his share of the property was worth in excess of \$100,000.00 [R.p. 81];
- (11) Following the transfer to his wife, Debtor Husband was judicially insolvent [R.p. 83-84]; and
- (12) Immediately following the transfer, Debtor Husband simultaneously dissolved Prodigal Enterprises so that deeding back the property was no longer feasible. [R.p. 82; R.p. 181]
- (13) Appellant did not incorporate her bonding business until five (5) months later in December 2010. [R.p. 82; R.p. 182]

Because of the unique sequence of the events, some equitable maxims forged from South Carolina law are applicable. "Equity will not suffer a wrong to be without a remedy." Lane v. N.Y. Life Ins. Co, 147 S.C. 333, 145 S.E. 196, 207 (S.C., 1928). Equity abhors a

wrong without a remedy. State ex Rel. Daniel v. Strong, 185 S.C. 27, 192 S.E. 671 (S.C., 1937). Equitable power of court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all circumstances, to deny it would permit one party to suffer gross wrong at hands of other. Hooper v. Ebenezer Sr. Services and Rehabilitation Center, 687 S.E.2d 29 (S.C. 2009).

Another long-standing equitable maxim is “Equity regards substance rather than form.” After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011). The notion that equity looks to substance rather than form evolved out of judicial regard for that which ought to be done; this maxim applies by dispensing with pure formalities which would otherwise defeat the equity. *Id.*

The focal issue is that at the time the Debtor Husband and Appellant knew Respondent’s note was coming due and that his debt would be reduced to a judgment. To thwart Respondent from collecting against Debtor Husband’s singularly largest unencumbered asset, held by a closely held corporation where they were the sole members, Debtor Husband and Appellant Wife transferred their LLC’s lone asset solely in her name only. The transaction was designed to lay the ground work for the very arguments raised in this case by liquidating the sole asset held by Debtor Husband at that time, namely, his one-half interest in Defendant Prodigal Enterprises, LLC.² Then Debtor Husband and

² Appellant argues the transfer serves a legitimate purpose for serving as collateral for her newly operating bail bond business. [App. Br. at pp. 4-5]. The fact that Appellant did not incorporate her business for another five (5) months after the fraudulent transfer

Appellant Wife immediately closed Prodigal Enterprises down, knowing, if successful, that Respondent's claim against Debtor Husband would leave him empty-handed. See, e.g., Lebovitz v. Mudd, 293 S.C. 49, 358 S.E.2d 698 (1987) (Allegations that defendants' conveyances rendered partnership insolvent and were made with knowledge of Respondents' tort claims against partnership and with actual intention to defraud Respondents stated causes of action against defendants for fraudulent conveyances.)

These are the very reasons why the equitable powers of the Court are so broad. Not every fraudulent transfer fits neatly into a box. And this is why the Court's decision to enter a money judgment against Appellant in the amount of \$125,000.00 is the more just and appropriate available remedy under the unique circumstances of this case. She was the one who has directly benefited from the transfer of title for the property in her name only.

The trial court saw through Appellant and Debtor Husband's attempt to divest Debtor Husband of his sole asset at the time which was subject to being sold to satisfy any collection attempts by Respondent. Because Appellant and Debtor Husband immediately dissolved their LLC after the transfer, simply rescinding the fraudulent conveyance was no longer an option. Exercising its equitable powers authorized by long-standing South Carolina law, the trial court forged the only result that could do justice to the parties in this case. There is no dispute that Appellant was the beneficiary of a one-half interest in a commercial property for which she paid no consideration. Having witnessed the testimony of the witnesses and reviewed the corresponding documentation, the trial court's order and

further underscores the timing of the transfer was related to Respondent's demand for money and not her newly found interest in opening a bail bond business. [R.p. 82; p. 101; p. 182]

judgment simply divests Appellant of the benefit she received from this fraudulent conveyance.

The fraudulent conveyance statute envisions a money judgement as part of the equitable relief because it authorizes the Court to invalidate “any lease, rent, commons or other profit or charge out of the same ...” S.C. Code of Laws §27-23-10 (1976 Ann.) Thus, the Court’s award of \$125,000.00 against the Appellant disgorges her of the profit she received from the fraudulent conveyance.

The trial court correctly found that Respondent well met the clear and convincing standard to establish his recovery under the fraudulent conveyance statute. As such, the trial court’s order and judgment should be affirmed.

3. THE TRIAL COURT’S AWARD OF DAMAGES AGAINST APPELLANT FOR THE UNJUST ENRICHMENT WAS APPROPRIATE UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE.

In its order and judgment, upon finding the transfer was a fraudulent conveyance, the trial court recognized that voiding the transaction was neither feasible nor practical by the time of trial. For example, Debtor Husband and Appellant immediately dissolved their LLC following the transfer of its only asset to Appellant. As such, the transaction could not simply be “undone” because the Court did not have the power to resurrect the dissolved LLC. [Order p.7] Additionally, Appellant argued at trial that because the land currently serves as collateral for her bonding business, transferring title would dramatically disrupt her bail bond business. [R.p. 129, ll. 5-12]

Cognizant of these realities, the Court found that awarding damages to the Respondent was the only feasible remedy equitably available; namely, a monetary award

against the Appellant. [R. pp. 10-11] "Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff." Regions Bank v. Wingard Properties, Inc., 394 S.C. at 256-57, 715 S.E.2d at 356. "Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1998). "A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another." Dema v. Tenet Physician Servs.—Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009).

Although unjust enrichment is often associated with claims of *quantum meruit*, quasi-contract, or implied by law contract (*see, e.g., Bank v. Wingard Properties Inc.*, 394 S.C. 241, 715 S.E.2d 348 (S.C. App., 2011)), it is not limited to those circumstances. Here, the appellant certainly received a substantial benefit from the fraudulent conveyance, which "in justice and equity" belongs to Respondent. It is not disputed that if Respondent was a judgment creditor in 2010, he would have been able to seize Debtor Husband's one-half interest in the LLC, which was a one-half interest in the commercial property the LLC owned. Appellant benefited from the gift of this solely because she and her Debtor Husband consummated the transaction before Respondent could reduce husband's debt to a judgment.

Under the facts and circumstances of this case, it would be inequitable and unjust to permit Appellant to retain this benefit. For this reason, the trial court's award for unjust enrichment is proper and the order and judgment should be AFFIRMED.

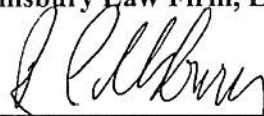
CONCLUSION

The unique facts and circumstances of this case underscore the importance of allowing South Carolina courts to enjoy broad equitable powers. In this case, when assessing the veracity of witnesses at trial and reviewing the totality of the evidence, the trial court found by clear and convincing evidence that Appellant and her Debtor Husband acted in concert to divest husband of the one significant asset which was subject to creditor collections: namely, his one-half interest in the LLC which he jointly owned with Appellant. Confronted with the difficulties of unwinding the deed transfer, the trial court found that awarding damages against Appellant was the best available equitable remedy under the circumstances. This decision is supported under either fraudulent conveyance or unjust enrichment.

For these reasons, the trial court's order and judgment should be affirmed.

Respectfully Submitted,

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June 3, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2018-000875

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SC Court of Appeals

Dr. Marvin Anderson,

Respondent,

v.

Mary Thomas, Forest Thomas, Prodigal Enterprises, LLC, Brushy
Creek BBQ, Inc. and Bail Pros Bail Bonding, LLC, Defendants,

of whom, Mary Thomas is the

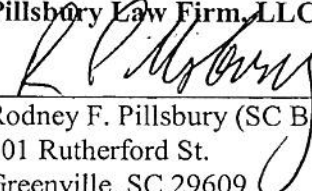
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief of Respondent complies with Rule 211(b),
SCACR.

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June 4, 2019

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Apr 01 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Tracking No. 2018-00875
Opinion No. 2021-U P-088

Dr. Marvin Anderson, Respondent.

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail
Pros Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant,

PETITION FOR REHEARING

March 29, 2021

/s/ W. Patrick Yon

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As authorized by the *South Carolina Appellate Court Rules*, Rule 221 and 240, the Petitioner moves for Reconsideration of the court's Opinion No. 2021-UP-088, filed March 17, 2021. The Petitioner respectfully submits that while the Court of Appeals correctly stated the law regarding fraudulent transfers and unjust enrichment, the laws were mis-applied. In the Opinion under review, the Court affirms the Trial Court's decision on two principal grounds:

1. The transfer of the Highway 81 property to Appellant was fraudulent under the Statute of Elizabeth; and,
2. The resulting transfer unjustly enriched the Appellant;

1) The transfer of the Hwy. 81 property by a non-judgment debtor cannot be a fraudulent transfer.

As to the first, the Court grounds its opinion principally upon the conclusion that a limited liability company is synonymous with one of its members. However, a limited liability company is a distinct and separate legal entity ["a limited liability company is a legal entity distinct from its members." S.C. Code Ann. § 33-44-201 (2006). "A member is not a co-owner of, and has no transferable interest in, property of a limited liability company." S.C. Code Ann. § 33-44-501(a) (2006 & Supp.2012). *See also* Comment to S.C. Code Ann. § 33-44-501 ("Members have no property interest in property owned by a limited liability company.")]]. The Respondent did not hold a judgment against the limited liability company. The limited liability company owned the Highway 81 real estate. Therefore, the Statute of Elizabeth does not apply to the transfer.

2) The Appellant cannot unjustly enriched by a transfer of property from a non- judgment debtor.

In addition to finding a limited liability company is legally synonymous with one of its members, the Court's conclusion that Appellant was unjustly enriched by a transfer from a non-judgment entity, and not the Respondent, is also a misapplication of the law.

Respondent holds a judgment against Forest Thomas, Appellant's husband. Forest held no legal interest in the Highway 81 property owned by the limited liability company. The transfer of that property to Appellant by an entity, legally distinct in every way from Forest, cannot serve as the basis of unjust enrichment. "Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. *Ellis v. Smith Grading and Paving, Inc.*, 366 S.E.2d 12, 294 S.C. 470 (S.C. App., 1988) citing *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App.1984). "This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment." *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 440 S.E.2d 129, 312 S.C. 259 (S.C., 1993); See also *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989). "Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Id.* citing *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct. App.1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct. App.1988).

Here, there was no benefit conferred by Respondent (plaintiff) on Appellant (defendant). For unjust enrichment or *quantum meruit* to apply, Respondent is required to prove that he has conferred a benefit upon Appellant. That was not done. There is no evidence that Respondent conferred any benefit on the Appellant. Yet the Court finds that a “preponderance of the evidence supports the trial court’s determination that (Appellant) was unjustly enriched by the property transfer.” The property transfer was conferred upon Appellant by a limited liability company, not the Respondent. Finding that the transfer conferred an unjust enrichment upon appellant at the expense of the Respondent was a misapplication of the law.

Conclusion

This Court has made the same mistakes as the trial court. First, it conflated two legally distinct entities in finding clear and convincing evidence of a fraudulent transfer. Second, the Court found that the transfer of the property by a limited liability company to Appellant was the legal equivalent of Respondent transferring the property. Both conclusions were error. Therefore, the Petitioner respectfully requests that this case be set for oral argument and that this court rehear the case and reverse the decision of the trial court.

Respectfully submitted,

March 29, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-04-2419
Appellate Tracking No. 2018-00875
opinion no. 2021-UP-088

Dr. Marvin Anderson, Respondent.

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail Pros
Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant,

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Respondent, Dr. Marvin Anderson by depositing a copy of the same in the United States Mail, postage prepaid, on March 29, 2021 addressed to his attorney of record, Rodney F. Pillsbury, Esq, 301 Rutherford St., Greenville, SC 29609.

March 29, 2021

/s/ W. Patrick Yon

W. Patrick Yon, #65394
2315 North Main Street, Suite 223
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Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED
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SC Court of Appeals

Case No. 2014-CP-04-2419

Dr. Marvin Anderson, Respondent.

v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail Pros Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant,

RECORD ON APPEAL

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 14 CP-2419

Dr. Marvin Anderson

Mary Thomas and Forest Thomas, et.al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Rodney F. Pillsbury, Esq.	Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Dr. Marvin Anderson	Mary Thomas	\$125,000.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Dr. Marvin Anderson,)
Plaintiff,)

C.A. No.: 14-CP-04-2419

v.)

Mary Thomas; Forest Thomas; Prodigal)
Enterprises, LLC; Brushy Creek BarBQ,)
Inc.; and Bail Pros Bail Bonding, LLC,)

**ORDER
and
JUDGMENT**

Defendants.)
_____)

This matter comes before the Court as a non-jury trial. On February 21, 2017, all parties consented to the trial of this case by the Court. Having heard the testimony and having carefully considered the evidence, the Court finds in favor of the plaintiff and orders judgment to be entered in his favor against Defendant Mary Thomas in the amount of One Hundred Twenty-five Thousand Dollars (\$125,000.00).

Findings of Fact

This case arises from the transfer of property from a closely-held corporation (Prodigal Enterprises, LLC) to Defendant Mary Thomas. Defendant Forest Thomas, a debtor to the Plaintiff, owned a one-half interest in the corporation at the time of transfer. In essence, with the transfer, Defendant Forest Thomas gave his *de facto* one-half interest in the property to his wife, Defendant Mary Thomas, for no consideration. Plaintiff asserts two (2) claims: (1) violation of the Statute of Elizabeth (S.C. Code §27-23-10) and (2) unjust enrichment.

The essential facts in this case are not disputed -- the parties primarily disagree on the interpretation of the inferences from those facts. By clear and convincing evidence,¹ the court finds the following facts to be true and supported by the testimony and evidence admitted at trial:

- 1) In October 30, 2008, Plaintiff loaned Defendant Forest Thomas \$125,000.00. Plaintiff testified Defendant Forest Thomas needed the funds for the quick flip of a property in Florida. According to the plaintiff, Defendant Thomas agreed to pay 50% (\$62,500.00 if it took six (6) months to repay principle and interest; and 100% (\$125,000.00) if it took a year to repay principle and interest. There appears to have been no contemporaneous writing to memorialize this agreement.
- 2) As the one-year deadline was approaching, Plaintiff began contacting Defendant Forest Thomas about payment. Defendant Forest Thomas would not return calls or messages. Finally, on March 9, 2010, Plaintiff and Defendant Forest Thomas met to execute a promissory note, which Defendant Thomas freely and voluntarily signed. The terms of the note acknowledged the 2008 loan and stated the amount owed was \$181,250.00. The promissory note called for Defendant Thomas to start making monthly payments in the amount of \$34,294.71, beginning April 1, 2010.
- 3) The first payment became due but no payment was made. When the second payment (May 1, 2010) had become due and was not made, Plaintiff began calling and texting the defendant. Defendant Forest Thomas, knowing that he was already behind on payments, then looked for a way to divest himself of his major asset at the time, his

¹ Windsor Props., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998).

interest in Prodigal Enterprises, LLC, a limited liability corporation, that he shared with his wife.

- 4) The sole asset of Prodigal Enterprises, LLC was land it owned at Highway 81 North, Piedmont, SC 29673 [hereinafter "Brushy Creek Bar-B-Q property"]. The land and the commercial building located on it was where Defendant Mary Thomas operated the family business of Brushy Creek Bar-B-Q, Inc.
- 5) By 2010, Defendants Mary Thomas and Forest Thomas were the sole members of Prodigal Enterprises. Defendant Forest Thomas was the managing member of Prodigal Enterprises, LLC. At the time of transfer to Mary Thomas, the land and building were owned free and clear of any mortgage or liability to any other third party.
- 6) In September of 2009, Defendants Forest Thomas and Mary Thomas consulted with Attorney Bill Hood to explore the possibility of transferring the title of the property to Mary Thomas in connection with her opening a bail bond business. According to the promissory note signed by Defendant Forest Thomas in March 2010, September 2009 would have been just a few weeks after the \$181,250.00 was due the plaintiff on July 30 2009. Mr. Hood testified that, while the Thomases did meet with him in September 2009, the file sat idle for several months with no activity. Indeed, it was not until late May and early June of 2010 that the Thomases had an urgent need to get the work completed.
- 7) In June 2010, the other members of Prodigal Enterprises LLC all executed satisfactions of their mortgages relating to the Brushy Creek Bar-B-Q property. Forest Thomas testified that these other parties were repaid their loans/investment years before, but they had not gotten around to do the paperwork until June 2010.

- 8) With the monthly payments on the promissory note past due and continuing to be missed, on July 7, 2010, Defendants Forest Thomas and Mary Thomas executed a series of documents that did the following:
 - a) For nominal consideration, transfer the title of the Brushy Creek Bar-B-Q property from Prodigal Enterprises, LLC to Mary Thomas. [by this transfer, Forest Thomas was, in essence, giving his wife his one-half interest in the property];
 - b) Mary Thomas filed with the Anderson Clerk of Court pledging the property as collateral for a bond company, Bail Pros; and
 - c) Effectively dissolved Prodigal Enterprises, LLC.
- 9) Mr. Thomas testified on cross-examination that at the time of this transfer, his interest in Prodigal Enterprises, LLC (with its unencumbered ownership of the Brushy Creek Bar-B-Q property) was the single largest asset he owned at that time. He also admitted this transfer was made to his wife without any consideration. Further, he admitted that following this transfer, he did not have any assets to satisfy the amounts owed to the plaintiff.
- 10) The plaintiff ultimately retained a lawyer to bring an action against Forest Thomas for collection of the promissory note. A judgment was entered in Plaintiff's favor against Defendant Forest Thomas in the amount of \$378,108.08 on March 6, 2013. Plaintiff's attempt to collect on that judgment to date have been unsuccessful. The judgment was placed in the hands of the Sheriff for collection and returned *nulla bona*. Plaintiff testified that he has never received a dime from the defendant for the original loan.

Conclusions of Law

Plaintiff brings this action with two equitable claims: (1) violation of the Statute of Elizabeth, as codified in S.C. Code Ann. §27-23-10 and (2) unjust enrichment. The court addresses the Statute of Elizabeth claim. S.C. Code Ann. §27-23-10 provides in relevant part:

Every . . . conveyance of lands . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful . . . debts . . . must be deemed and taken . . . to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

Id.

Conveyances shall be set aside under two conditions: First, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without consideration. McDaniel v. Allen, 265 S.C. 237, 217 S.E.2d 773 (1975). The latter situation is before this Court. However, the absence of consideration does not end the inquiry.

Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.

Albertson v. Robinson, 371 S.C. 311, 317 (S.C. Ct. App. 2006), quoting, Mathis v. Burton, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct.App. 1995).

It is well-established that "where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony." Windsor Properties, Inc. v. Dolphin Head Construction, 331 S.C. 466, 471 (S.C. 1998), quoting, Gardner v. Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).

Here, Defendants have failed to prove by clear and convincing evidence that the transfer was not made with fraudulent intent. The court is, in fact, satisfied by clear and convincing evidence that the transfer *did* have the intent to defraud the plaintiff as a creditor of Forest Thomas. This is primarily discernible from the timing of the transaction.

The testimony of the closing attorney (Bill Hood, a well-respected real estate attorney) was that the initial inquiry about transferring the land was raised by Defendant Forest Thomas in September/October 2009. This would have been right at the time when, according to the promissory note Forest Thomas later signed, owed the Plaintiff \$181,250.00. Mr. Hood testified that essentially nothing was done on this project for several months.

Even though Defendant Mary Thomas testified that she became fully licensed as a bail bondsman by the State of South Carolina in December 2009, it was not until June 2010 that Defendants Forest Thomas and Mary Thomas demonstrated any objective desire to transfer the property in question into her name for the purported purpose of collateralizing a bail bond business. The June 2010 timeframe exactly coincides with Plaintiff's demand for monthly payments under the promissory note. The court does not find Defendants' testimony and explanations to the contrary to be credible.

The Plaintiff has clearly established all of the elements set forth in Albertson v. Robinson, *supra*: (1) the grantor (Forest Thomas)² was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) Forest Thomas failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the plaintiff sought to collect the debt. Unquestionably, the Plaintiff has established that Forest Thomas' *de facto* transfer of his one-half interest in the Brushy Creek Bar-B-Q property to his wife for no consideration was a fraudulent conveyance attempting to hinder his creditor, the Plaintiff herein.

The problem the defendants have created is that they dissolved their closely-held corporation (Prodigal Enterprises, LLC) following the completion of this transaction. Historically when applying the Statute of Elizabeth, the Court will invalidate a transfer of land. In this case, the combined actions of the plaintiffs do not make the invalidation of the transfer of the property feasible.³ In lieu of returning title to the land to its pre-fraudulent transfer status, the Court recognizes that, in essence, with this transaction Defendant Mary Thomas received the use and benefit of ½ of the value of the Brushy Creek

² At trial, Defendants' counsel argued that the entity Prodigal Enterprises, LLC was not a creditor of the plaintiff, and therefore, the transaction did not qualify under §27-23-10. The transfer itself belies this argument. It defies logic that a corporation would give its only asset to a member without consideration. Defendants argued that there was no allegation to pierce the corporate veil. However, by the time the Plaintiff brought suit in 2012, and obtained a judgment in 2013, Prodigal Enterprises, LLC had been dissolved. It was dissolved on July 10, 2010 when its sole asset was given to Mary Thomas.

³ For example, the Court does not have the power to resurrect Prodigal Enterprises, LLC from the death bestowed upon it by the defendants. Further complicating a simple re-titling of the property is the fact that Defendant Mary Thomas has apparently obtained numerous bonds by and through Bail Pros Bail Bonding, LLC. Her counsel argued, without specificity or evidence, that transferring the property would have significant ramifications on these bonds. The Court is, however, cognizant that invalidating the transfer could have a disruptive effective bonds currently in place.

Bar-B-Q property for no consideration whatsoever. At trial, she testified that she has been able to write numerous bonds using the property in question as collateral.

For this reason, the Court determines that whether via unjust enrichment or fraudulent conveyance, the most appropriate relief under the unique facts and circumstances of this case, is to award a judgment to the plaintiff a monetary amount against Defendant Mary Thomas for the value of the property and the use of the property that she received from the fraudulent transfer. Section 27-23-10 envisions a money judgment as part of the equitable relief as evidenced from the allowance to invalidate any "any lease, rent, commons, or other profit or charge out of the same..." *Id.*

In reviewing the documents admitted into evidence and the testimony of the witnesses, the Court finds Defendant Mary Thomas has received the value and benefit of the transfer in amount of One Hundred Twenty-five Thousand and 00/100ths Dollars (\$125,000.00).

Accordingly, the Court finds in favor of the plaintiff and awards a judgment in his favor in the amount of One Hundred Twenty-five Thousand and 00/100ths Dollars (\$125,000.00) against Defendant Mary Thomas.

IT IS SO ORDERED, this ____ Day of April, 2017.

The Honorable J. Cordell Maddox, Jr.
Presiding Judge, Tenth Judicial Circuit



Anderson Common Pleas

Case Caption: Marvin Anderson VS Mary Thomas , defendant, et al
Case Number: 2014CP0402419
Type: Order/Judgment and Form 4

So Ordered

s/ J. Cordell Maddox Jr.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
Marvin Anderson,)
)
Plaintiffs,)
)
v.)
)
Mary Thomas,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-04-2419

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

This matter came before the Court through the Defendant's Motion for Reconsideration. After careful consideration and review, the Court finds that Defendant's Motion for Reconsideration should be denied. The previous order denying Plaintiff's motion for reconsideration is hereby vacated due to typographical errors.

It is hereby ordered that Defendant's Motion for Reconsideration is denied.

IT IS SO ORDERED.

The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court Judge

Anderson, South Carolina
_____, 2018

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Anderson Common Pleas

Case Caption: Marvin Anderson VS Mary Thomas , defendant, et al
Case Number: 2014CP0402419
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. #:2014-CP-04-2419

Dr. Marvin Anderson,)
Plaintiff,)
vs.)
Mary Thomas, Forest Thomas,)
Prodigal Enterprises, LLC, Brushy)
Creek BarBQ, Inc. and Bail Pros)
Bail Bonding, LLC.,)
Defendants.)

MOTION TO RECONSIDER

The Defendants move the court for an order altering or amending the Order dated May 19, 2017 pursuant to SCRCRCP Rule 59(e), based upon the following:

I. Plaintiff is a judgment creditor of the defendant Forest Thomas. Plaintiff brought this action under S.C. Code § 27-23-10 claiming, *inter alia*, that he was a judgment creditor of the grantor which conveyed title of property located on Hwy. 81 in Anderson County to the defendant Mary Thomas. However, the grantor in that transaction was the defendant Prodigal Enterprises, LLC. Prior to the current action, Plaintiff had never sued Prodigal Enterprises, LLC and admitted he held no judgment against Prodigal Enterprises, LLC.

Generally, “ a limited liability company is a legal entity distinct from its members.” S.C. Code Ann. § 33- 44- 201 (2006). “ A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.” S.C. Code Ann. § 33- 44- 501(a) (2006 & Supp.2012). *See also* Comment to S.C. Code Ann. § 33- 44- 501 (“ Members have no property interest in property owned by a limited liability company.”).

II. Plaintiff’s unjust enrichment action rests upon proof that Mary Thomas received a non-gratuitous gift *from the Plaintiff* by virtue of the conveyance of the Hwy. 81 property from the LLC. Admittedly, the conveyance was made without valuable consideration. However, the

conveyance was made by the LLC, not the plaintiff and not Forest Thomas, individually. The order fails to apply the law regarding unjust enrichment to the evidence in the case. “ Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. *Ellis v. Smith Grading and Paving, Inc.*, 366 S.E.2d 12, 294 S.C. 470 (S.C. App., 1988) citing *Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App.1984).

“ This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment.” *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 440 S.E.2d 129, 312 S.C. 259 (S.C., 1993); See also *Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989).

“ Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Id.* citing *Webb v. First Federal Savings and Loan Ass'n.*, 300 S.C. 507, 388 S.E.2d 823 (Ct. App.1989); *Ellis v. Smith Grading and Paving, Inc.*, 294 S.C. 470, 366 S.E.2d 12 (Ct. App.1988).

ARGUMENT

Both of these issues were raised by the defendants in the form of a directed verdict motion at both the close of plaintiff's case and at the end of trial. Although the court denied the motion at the close of the plaintiff's case, the motion at the end of trial was taken under advisement. However, the Final Order does not address these issues in light of the statutes and case law cited above.

The fact that an LLC conveyed the Hwy. 81 property to Mary Thomas is central to this case.

Plaintiff's fraudulent conveyance action rests upon proof that he is the creditor of the grantor, which he admitted he was not. The order specifically finds (page 7) that Forest Thomas was the grantor in the conveyance of the Hwy 81 property to Mary Thomas when the only

evidence submitted at trial was that the grantor was Prodigal Enterprises, LLC. Forest Thomas had no legal interest in the real estate.

Likewise, there is no evidence to support plaintiff's cause of action for unjust enrichment. There was no allegation of an express contract between the plaintiff and Mary Thomas, therefore, any recovery for unjust enrichment would fall under quasi-contract. However, the evidence fails to support a quasi-contract. The allegation in plaintiff's complaint is that the transfer of the Hwy 81 property to Mary Thomas constituted unjust enrichment. However, that transfer was not made by the plaintiff and plaintiff was conferring nothing on Mary Thomas by that transfer. The conveyance was made by an LLC that was a legally distinct entity from both the plaintiff and the defendant Forest Thomas. There was no judgment against the LLC and no action pending against the LLC. If the plaintiff believed the loan he made to Forest Thomas unjustly enriched Mary Thomas, that is a cause of action that was not pled in this action and would have been barred by the statute of limitations had it been.

The defendants, therefore move the court to alter or amend its order to set forth the basis for denying their motion for directed verdict in light of S.C. Code Ann. § 33-44-101 (2006) *et seq.* and the law on unjust enrichment. Alternatively, the defendants move the court to alter or amend its order by ruling in favor of the defendants on the motion and directing a verdict in favor of the defendants on all causes of action in plaintiff's complaint.

I SO MOVE:

/s/ W. Patrick Yon

W. Patrick Yon
Attorney for Defendant
P.O. Box 2506
Anderson, SC 29622
(864) 225-1411

Dated: May 26, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Dr. Marvin Anderson,)
)
Plaintiff,)

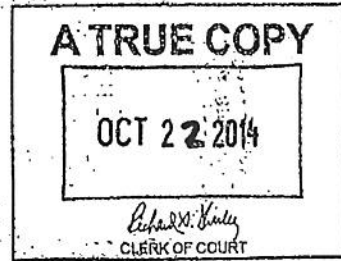
C.A. No.: 14-CP-04- 02419

v.)

SUMMONS

Mary Thomas, Forest Thomas, Prodigal)
Enterprises, LLC Brushy Creek BarBQ, Inc.)
and Bail Pros Bail Bonding, LLC.)

Defendants.)



TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Complaint in this action, a copy of which is attached hereto and herewith served upon you, and to serve a copy of your answer to same upon the subscribed at 1204 East Washington Street, Suite A, Greenville, South Carolina, 29601 within thirty (30) days after the service of same, exclusive of the day of such service. If you fail to answer same within the thirty (30) day period, the Plaintiff will apply to the Court for the relief demanded therein and judgment will be taken against you by default.

Respectfully Submitted,

Pillsbury & Read, P.A.

Rodney F. Pillsbury (SC Bar #13067)
1204-A E. Washington Street
Greenville, SC 29601
Phone: (864) 241-9828
Fax: (864) 241-9818
Email: rpillsbury@prlawpa.com

October 21, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Dr. Marvin Anderson,)
Plaintiff,)

C.A. No.: 14-CP-04- 02419

v.)

COMPLAINT

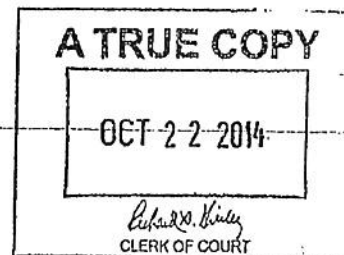
Mary Thomas, Forest Thomas, Prodigal)
Enterprises, LLC Brushy Creek BarBQ, Inc.)
and Bail Pros Bail Bonding, LLC.)
Defendants.)

TO THE ABOVE-NAMED DEFENDANTS:

Plaintiff, by and through his undersigned attorney, alleges the following:

JURISDICTIONAL STATEMENT

1. Plaintiff is a citizen and resident of Anderson County, South Carolina.
2. Upon information and belief, Defendants Mary Thomas and Forest Thomas are citizens and residents of Anderson County, South Carolina. Upon information and belief, Defendants Prodigal Enterprises, LLC, Brushy Creek BarBQ, Inc. and Bail Pros Bail Bonding LLC are the alter-egos of Defendants Mary Thomas and/or Forest Thomas with their principal places of business in Anderson County, South Carolina.
3. This Court has jurisdiction over the parties and subject matter of this action under Articles 5 and 7 of the South Carolina Constitution, Section 14-1-80 of the *Code of Laws of South Carolina* (1976, Annotated) and the common law of South Carolina.



FACTUAL ALLEGATIONS

4. At all relevant times, Defendants Forest Thomas and Mary Thomas are husband and wife. Upon information and belief, Defendant Forest Thomas is the sole member and manager of Defendant Prodigal Enterprises LLC. Upon information and belief, Defendant Forest Thomas was the manager and sole shareholder of Defendant Brushy Creek BarBQ, Inc. Upon information and belief, Mary Thomas is the sole member of Defendant Bail Pros Bail Bonding, LLC.

5. At all relevant times, Defendant Forest owned and operated the business of Brushy Creek BarBQ in Anderson County, South Carolina. The land upon which the business was located was owned by Defendant Forest Thomas' company, Prodigal Enterprises, LLC.

6. On or about October 30, 2008, Plaintiff made an unsecured loan to Defendant Forest Thomas in the amount of \$125,000.00.

7. Subsequently, Plaintiff and Forest Thomas executed a promissory note on or about March 2, 2010, in the amount of \$125,000.00, bearing interest at the rate of 45%. The interest rate on the note was established by the defendant. Upon information and belief, Defendant Forest Thomas proposed the execution of the promissory note with the deliberate intent to stall Plaintiff's collection of his debt so that Defendants could engage in a series of transactions to divest himself of real estate assets in an effort to defraud creditors, like the plaintiff.

8. Plaintiff never received any payment from the loan or promissory note.

9. Plaintiff filed suit against Defendant Thomas on February 22, 2012 to collect on the promissory note: Anderson v. Thomas, CA. No. 2012-CP-23-1323 (Greenville County Court of Common Pleas, 13th Judicial Circuit).

10. On March 5, 2013 judgment was entered in favor of the plaintiff against Forest Thomas in the amount of \$378,108.08. [Exhibit 1, Order dated March 5, 2013] The order was not appealed and has become a full and final adjudication on the merits.

11. On or about October 25, 2013, Plaintiff's writ of execution against was returned by the sheriff, *nulla bona*. [Exhibit 2, Sheriff's Return]

12. Plaintiff thereafter initiated supplemental proceedings against Forest Thomas to collect monies owed. During those proceedings, Defendant Forest Thomas produced information disclosing his current and former ownership of Defendant Brushy Creek BarBQ and Defendant Prodigal Enterprises.

13. Subsequent investigation revealed that by and through his company Prodigal Enterprises, on or about October 15, 1997, Defendant Forest Thomas acquired the property [referred to hereinafter as "Highway 81 North, Piedmont"] upon which his bar-b-que business operated. [Exhibit 3]

14. Faced with owing the plaintiff a substantial sum of money, on or about July 7, 2010, three (3) months after Defendant Forest Thomas had executed the promissory note to Plaintiff that Defendant had no intention of honoring, Defendant Forest Thomas and/or Defendant Mary Thomas transferred title to the Highway 81 North property to Mary Thomas, individually, for little or no consideration. [Exhibit 4]

15. Said transaction was made with the intent to defraud creditors, like the plaintiff.

16. On the same day, Defendant Mary Thomas pledged the same property as security for bonds with an unencumbered value of \$203,535.00, pursuant to S.C. Code §38-53-270. [Exhibit 5] Shortly thereafter, Defendant Mary Thomas incorporated this business as Defendant Bail Pros Bail Bonding, LLC. Upon information and belief, Defendant Bail Pros Bail Bonding,

LLC has operated at a loss (or yielding *de minimis* income) every year since its inception. Upon information and belief, Defendants constructed this transaction in an attempt to shield the fraudulent nature of the transfer of the property to Defendant Mary Thomas.

FOR A FIRST CAUSE OF ACTION
As to Defendants Forest Thomas, Mary Thomas,
and Prodigal Enterprises LLC
(Fraudulent Conveyances)

17. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

18. The above-described conveyances by Defendant Forest Thomas to his wife Mary Thomas, hindered, delayed, and defrauded creditors, like the Plaintiff.

19. Section 27-23-10 of the South Carolina *Code of Laws*, as amended, prohibits such conveyances as to be clearly and utterly void.

20. The transfer of the property should be voided and rescinded, but that Plaintiff may have it seized and sold at auction to be applied towards satisfaction of the judgment.

21. Plaintiff is entitled to have these conveyances set aside and to have the property sold at public auction with the proceeds applied to costs, attorney's fees, and the Plaintiff's judgment according to law.

FOR A SECOND CAUSE OF ACTION
As to Defendants Mary Thomas and
Bail Pro Bail Bonding, LLC
(Unjust Enrichment)

22. Plaintiff realleges all above paragraphs, to the extent not inconsistent herewith, as if each is set forth *in toto* hereunder.

23. By virtue of monies Plaintiff provided to Defendant Forest Thomas, and Defendants subsequent fraudulent transfer of interest in real property from which Defendants Mary Thomas and Bail Pro Bail Bonds, LLC thereby received a non-gratuitous benefit which they have converted and/or used for their own use and enjoyment.

24. It would be unjust, unfair and inequitable for Defendants to retain these benefits without having to pay for the same.

25. As a direct and proximate result, Plaintiff has been damaged and is entitled to the amount owed, plus pre-judgment interest accrued on the same, in an amount to be determined by the Court.

WHEREFORE, Plaintiff prays for the following relief and award:

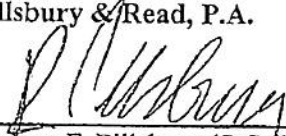
(a) for an order of this Court declaring the conveyance of the "Highway 81 North, Piedmont" property between Defendant Forest Thomas and/or Defendant Prodigal Enterprises, LLC to Mary Thomas to be null and void, so that it may be sold public auction to be applied towards the judgment owed to the plaintiff;

(b) for an award of monetary damages against Defendants Mary Thomas and Bail Pro Bail Bonding, LLC, jointly and severally, in the amount of \$203,535, plus prejudgment interest accrued thereon since July 7, 2010;

(c) for the costs of this action and any other relief the Court deems fair and just under the circumstances.

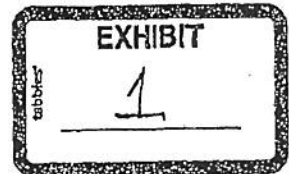
Respectfully submitted,

Pillsbury & Read, P.A.



Rodney F. Pillsbury (S.C. Bar No.: 13067)
1204-A East Washington Street
Greenville, SC 29601
Phone: (864) 241-9818
Fax: (864) 241-9828
Email: rpillsbury@prlawpa.com

October 14, 2014



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Marvin L. Anderson,

Plaintiff,

v.

Forest Thomas,

Defendant.

ENTERED COMPUTER

ORDER
C.A. No. 2012-CP-23-1323

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
MAR 6 9:31 AM '13

7/13 MAR -6 AM 9:31
wlb

Plaintiff commenced this action on February 22, 2012, by the filing of a Summons and Verified Complaint. The Defendant was thereafter served by publication. The Defendant is in default (see this Court's Order filed November 30, 2012, and this Court's Order filed January 11, 2013, denying the Defendant's Motion to Alter or Amend Judgment).

This is an action based on a Promissory Note. Pursuant to notice, a damages hearing was held before me on March 4, 2013. Present at the hearing were the Plaintiff and his attorney, Cecil H. Nelson, Jr. of Nelson Galbreath, LLC. Also present was Patrick Yon representing the Defendant.

Prior to the commencement of the hearing, Mr. Yon informed the Court that he received a text message from the Defendant informing him that the Defendant had a stomach virus and was unable to attend the hearing. Based on this text message, Mr. Yon requested a continuance of the hearing. Plaintiff opposed the request for a continuance and Plaintiff further testified that he had observed the Defendant driving his vehicle on Woodruff Road in Greenville County approximately one hour before the time of the hearing. Mr. Yon was unable to provide the Court with any documentation or certification from the Defendant's medical provider confirming that he was unable to attend the hearing because of an illness. Based on the testimony of the Plaintiff,

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and the previous conduct of the Defendant in this matter, Defendant's motion for a continuance was denied.

I have carefully reviewed the evidence before me and based on this evidence I find that the Plaintiff made an unsecured loan to the Defendant in the amount of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars on October 30, 2008, as evidenced by Plaintiff's check payable to the Defendant and introduced as Plaintiff's Exhibit 1. This check was endorsed by the Defendant and deposited into his account. I further find that the indebtedness was later evidenced by a Promissory Note in the amount of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars dated March 2, 2010, bearing interest at the rate of forty-five (45%) percent and entered into evidence as Plaintiff's Exhibit 2 (the "Note"). I find that the Plaintiff made demand on the Defendant for payment of the Note and no portion thereof has been paid by the Defendant. The interest rate on the Note was established by the Defendant.

Finally, I find that the Plaintiff is entitled to interest on the sum of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars at the rate of One Hundred Fifty-Four and 11/100 (\$154.11) Dollars per day from October 30, 2008 to March 4, 2013, which amount totals Two Hundred Forty-Four Thousand Four Hundred Eighteen and 46/100 (\$244,418.46) Dollars, for a total indebtedness due Plaintiff pursuant to the Note in the amount of Three Hundred Sixty-Nine Thousand Four Hundred Eighteen and 46/100 (\$369,418.46) Dollars and as set forth on Plaintiff's Exhibit 3.

I further find that the Note signed by Defendant provides in part that "in the event of default in the payment of this note, and if it is placed in the hands of an attorney at law for collection the undersigned hereby agrees to pay all costs of collection, including a reasonable

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attorney's fee." I find that the costs incurred by Plaintiff total Seven Hundred Nineteen and 62/100 (\$719.62) Dollars and further find that the Plaintiff has incurred attorney's fees in the amount of Seven Thousand Nine Hundred Seventy and no/100 (\$7,970.00) Dollars which I find to be reasonable. In determining an award of reasonable attorney's fees and costs, this Court has examined the six factors set forth by the South Carolina Supreme Court in Baron Data Systems,

Inc. v. Loter, et al., 297 S.C. 382, 377 S.E.2d 296 (1988, 1989). I have given careful consideration to all six criteria in establishing my award of reasonable attorney's fees as follows:

- a. The Nature, Extent and Difficulty of the Legal Services Rendered.
- b. The Time and Labor Necessarily Devoted to the Case as set forth in itemized and detailed time and billing records of Plaintiff's counsel.
- c. The Professional Standing of Counsel.
- d. The Contingency of Compensation. This factor is not applicable to this case since this was not a contingency fee case.
- e. The Fee Customarily Charged in Greenville County, South Carolina for similar legal services.
- f. The Beneficial Results Obtained. The Plaintiff was the prevailing party in this litigation.

Accordingly, I find that the Defendant is indebted to the Plaintiff in the total amount of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08) Dollars.

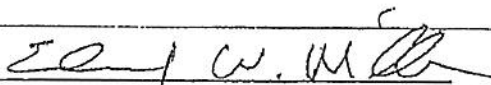
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant shall pay to Plaintiff the sum of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08) Dollars and judgment is hereby rendered against Defendant in the amount

of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08)

Dollars.

IT IS SO ORDERED.

Date: 3/5/13


Edward W. Miller, Judge, Thirteenth
Judicial Circuit

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Crawville County, SC
Dated March 5, 2013

~~ORIGINAL~~

EXHIBIT
tabular
2

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Marvin L. Anderson,

Plaintiff,

v.

Forest Thomas,

Defendant.

IN THE COURT OF COMMON PLEAS

Judgment Roll No.: 2013-CP-04-00841

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF THE COUNTY OF ANDERSON, GREETING:

WHEREAS, judgment was rendered in the above-entitled action on the 6th day of March 2013 in favor of said Plaintiff against the Defendant for the sum of Three Hundred Seventy Eight Thousand One Hundred Eight Dollars and 08/100 (\$378,108.08) dollars, as appears to us by the Order entered in Greenville County and by the Judgment Roll, filed in the office of the Clerk of Court of Anderson County;

AND WHEREAS, there is now actually due on the said judgment thus docketed in your County on the 12th day of April 2013, the principal sum aforesaid, with interest thereon from the date of the said judgment.

NOW THEREFORE, we recommend that you satisfy the said judgment, including principal, interest, costs, and your fees out of the personal property of the said judgment debtor in your County and if sufficient personal property cannot be found, then out of the real property in your County belonging to the said judgment debtor on the day when the said judgment was docketed in your County, or at any time thereafter, in whosoever hands the same may be, and that you duly return this execution according to law to the Honorable Clerk of Court at Anderson, South Carolina.

WITNESS the Honorable Clerk of Court at Anderson, South Carolina, the 18th day of September 2013.

Richard A. Shirley
Richard Shirley
Clerk of Court of Anderson County

R. Pillsbury
Rodney F. Pillsbury, Esq.
Attorney for Plaintiff

NULLA BONA Oct. 25, 2013

John Skooper
SHERIFF, ANDERSON COUNTY

029

"EXHIBIT A"

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 1.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 11, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921; and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Freeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Plat Book 825 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear.

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AND THE GRANTOR does hereby bind the Grantor, and the Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against the Grantor and the Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 7th day of October, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven.

Signed, Sealed and Delivered
in the Presence of:

Renita C. Crain

PR Investments, A South Carolina
General Partnership

S. Allan Hill

By: Rex A. Rice
Rex A. Rice

By: John C. Pearson
John C. Pearson

By: Wendy C. Pearson
Wendy C. Pearson

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

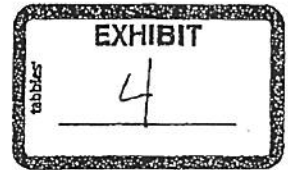
97028901
FILED, RECORDED, INDEXED
10/15/1997 10:58A
Rk: 2759 Pg: 119
Rec Fee: 10.00 St Fee: 533.00
Co Fee: 225.50 Pages: 3
R M C DEPARTMENT ANDERSON CO
Shirley H. McElhannon,
Administrator

Personally appeared before me the undersigned ~~witness and in~~ Renita C. Crain and S. Allan Hill who swear that (s)he saw the within-named Grantor sign, seal and, as their act and deed, deliver the within written Deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this
7th day of October, 1997.

S. Allan Hill
Notary Public for South Carolina
My commission expires: 11/3/98

Renita C. Crain



STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that PRODIGAL ENTERPRISES, LLC, (whether one or more, hereinafter referred to as "GRANTOR"), a Limited Liability Company existing under the laws of the State of South Carolina, in the County and State aforesaid, and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, the receipt of which is hereby acknowledged (affidavit filed), has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto MARY K. THOMAS (hereinafter referred to as "GRANTEE") and Grantee's heirs and assigns forever, the following described property:

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Anderson, and being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 94 at Pages 921, and according to a more recent plat entitled "Survey for Prodigal Enterprises, LLC, by Freeland & Associates, Inc., dated October 6, 1997, and recorded in the abovementioned Register's Office in Plat Slide 825 at Page 4.

This is the same property as conveyed to the Grantor herein by deed of PR Investments recorded on October 15, 1997, in the Office of the Register of Deeds for Anderson County, South Carolina in Book 2759 at Page 119.

This conveyance is specifically made SUBJECT TO any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition is subject to any of the foregoing which may appear from an inspection of the premises.

TMS Number: 214-00-08-006

GRANTEE'S ADDRESS: 112 Merri Lane
Easley, SC 29642

TOGETHER with all and Singular the Right, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee and to said Grantee's Heirs and Assigns forever.

And Grantor does hereby bind Grantor and Grantor's Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs and Assigns and against Grantor and Grantor's Successors and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness Grantor's hand and seal this 7th day of July, in the year 2010, A.D.

Signed, sealed and Delivered in the presence of:

PRODIGAL ENTERPRISES, LLC

By: [Signature]
Its: member

By: Mary K. Thomas
Its: Member

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, William C. Hood, a Notary Public for the State of South Carolina, do hereby certify that the Grantor(s) herein did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 7th day of July, 2010.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 3/17/18

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT

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

- 1. I have read the information on this Affidavit and I understand such information.
- 2. The property being transferred is located at Anderson Road, Piedmont, South Carolina, bearing Anderson County TMS Number 214-00-08-006, and was transferred by Prodigal Enterprises, LLC to Mary K. Thomas on July 7, 2010
Check one of the following. The deed is:

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) X subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (see Information section of Affidavit):

4. Check one of the following if either Item 3(a) or Item 3(b) above has been checked

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$182,130

5. Check _____ Yes or X No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: \$ 182,130
- (b) Place the amount listed in Item 5 above here: \$ _____
(If no amount is listed, place zero here)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ 182,130

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee is \$675.25.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee

9. I understand that a person required to furnish this Affidavit who wilfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

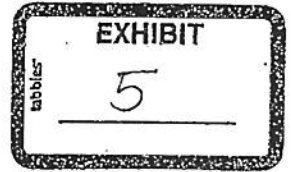
SWORN to before me this _____ day of _____ 2010.

Notary Public for South Carolina
My Commission Expires: 3/17/15

Mary K. Thomas
Responsible Person Connected with the Transaction

Mary K. Thomas
Print or Type Name Here

100013219 7/07/2010 08:55:45 AM
FILED, RECORDED, INDEXED
Bk: 09671 Pg: 00146 Pages: 004
Rec Fee: 10.00 St Fee: 474.50
Co Fee: 200.75
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon



STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
)
MARY K. THOMAS,)
(Property Owner))
)
INDEBTED TO)
)
STATE OF SOUTH CAROLINA)
Through the CLERK OF COURT)
FOR ANDERSON COUNTY)

NOTICE
OF PLEDGE OF
REAL ESTATE

7/7/2010 Approved for \$203,535.00
Marion D. Newton
Acting Clerk of Court

KNOW ALL MEN by these presents that the above property owner(s) hereby pledge(s) the below described real estate to the State of South Carolina through the Clerk of Court for Anderson County, pursuant to Sec. 38-53-270, Code of Laws of South Carolina (1976) as security deposit for bonds and undertakings written in this State on which the following bondsman is absolutely or conditionally liable:

Bail Bondsman: Mary K. Thomas, d/b/a Bail Pros

SEE LEGAL DESCRIPTION OF PLEDGED REAL ESTATE ATTACHED HERETO
AND MADE A PART HEREOF

The property owner(s) agrees(s) that said real estate will not be transferred, conveyed or encumbered without prior written notice to the State of South Carolina through the Clerk of Court for Anderson County and to the Anderson County Solicitor's Office.

This pledge shall remain in full force and effect until released by instrument attested to by the Clerk of Court for Anderson County and filed in the Register of Deeds Office for Anderson County.

Witness:

A large, stylized handwritten signature in black ink, written over a horizontal line.

Mary K. Thomas
Mary K. Thomas

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF ANDERSON)

I, William C Hood, a Notary Public for the State of South Carolina, do hereby certify that Mary K. Thomas did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 27th day of July, 2010.

(SEAL)

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/17/18

DESCRIPTION OF PLEDGED REAL ESTATE

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Anderson, and being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 94 at Pages 921, and according to a more recent plat entitled "Survey for Prodigal Enterprises, LLC, by Freeland & Associates, Inc., dated October 6, 1997, and recorded in the abovementioned Register's Office in Plat Slide 825 at Page 4.

This is the same property conveyed to Mary K. Thomas by deed of Prodigal Enterprises, LLC, recorded July 7, 2010, in Book 9671 at Page 146

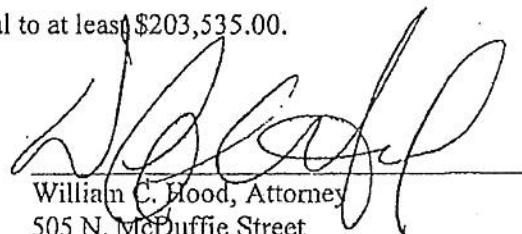
STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE OF
VALUE FOR SURETY BOND

This is to certify that title to the real estate designated as 3.81 acres, more or less, as shown in Plat Book 94 at Page 921 and in Slide 825 at Page 4, TMS No. 214-00-08-006, is vested in Mary K. Thomas, and is situate in the County of Anderson, State of South Carolina, the derivation of which is a deed (or estate of) from Prodigal Enterprises, LLC, recorded on July 7, 2010, in Book 9621 at Page 146 (or Estate File Number), in the Office of the Register of Deeds for Anderson County, South Carolina, and is more particularly described in the attached Deed. This Certificate of Value is being issued so that Mary K. Thomas, may pledge the real estate described herein, pursuant to Sec. 38-53-270, Code of Laws of South Carolina (1976), as security deposit for bonds and undertakings written in this State on which bail bondsman Mary K. Thomas, d/b/a Bail Pros, is absolutely or conditionally liable; and this is to certify that, after deducting from the assessed value of the property for tax purposes, the amount due under the liens affecting the said property, to include any outstanding Notice(s) of Pledge of Real Estate, and not including the value of any mobile home which may be situate on the property, that the net value of the property is equal to at least \$203,535.00.

Date:

July 7, 2010



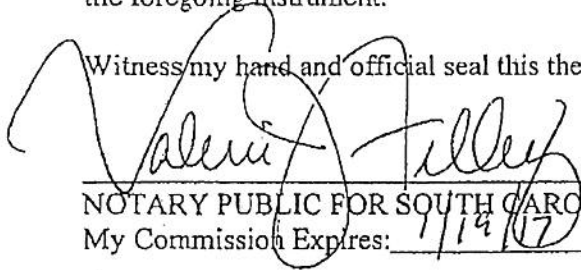
William C. Hood, Attorney
505 N. McDuffie Street
Anderson, SC 29621
375-0530

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, undersigned, a Notary Public for the State of South Carolina, do hereby certify that William C. Hood did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 17th day of July, 2010.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1/19/17

100013219 7/07/2010 09:55:45 AM
FILED, RECORDED, INDEXED
BK: 09671 Ps: 00166 Pages: 004
Reg Fee: 10.00 St Fee: 474.50
Gr Fee: 200.75
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

100013231 7/07/2010 Bk: 09671 Ps: 00201

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that **PRODIGAL ENTERPRISES, LLC**, (whether one or more, hereinafter referred to as "GRANTOR"), a Limited Liability Company existing under the laws of the State of South Carolina, in the County and State aforesaid, and in consideration of the sum of **TEN AND NO/100 (\$10.00) DOLLARS**, the receipt of which is hereby acknowledged (affidavit filed), has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **MARY K. THOMAS** (hereinafter referred to as "GRANTEE") and Grantee's heirs and assigns forever, the following described property:

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Anderson, and being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 94 at Pages 921, and according to a more recent plat entitled "Survey for Prodigal Enterprises, LLC, by Freeland & Associates, Inc., dated October 6, 1997, and recorded in the abovementioned Register's Office in Plat Slide 825 at Page 4.

This is the same property as conveyed to the Grantor herein by deed of PR Investments recorded on October 15, 1997, in the Office of the Register of Deeds for Anderson County, South Carolina in Book 2759 at Page 119.

This conveyance is specifically made **SUBJECT TO** any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition is subject to any of the foregoing which may appear from an inspection of the premises.

TMS Number: 214-00-08-006

GRANTEE'S ADDRESS: 112 Merri Lane
Easley, SC 29642

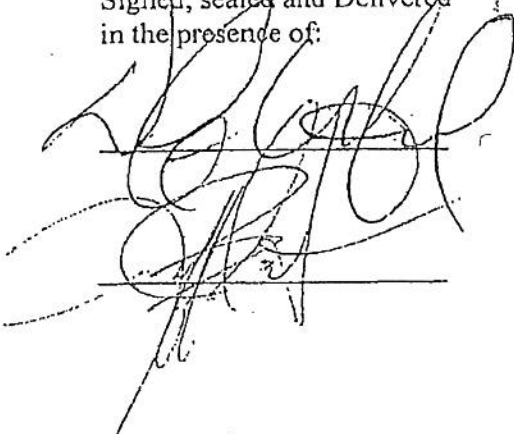
TOGETHER with all and Singular the Right, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee and to said Grantee's Heirs and Assigns forever.

And Grantor does hereby bind Grantor and Grantor's Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs and Assigns and against Grantor and Grantor's Successors and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness Grantor's hand and seal this 7th day of July, in the year 2010, A.D.

Signed, sealed and Delivered in the presence of:



PRODIGAL ENTERPRISES, LLC

By: [Signature]
Its: member

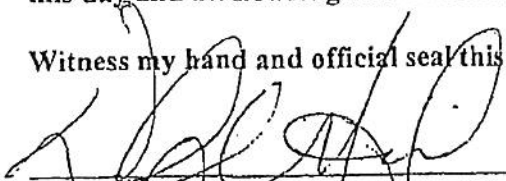
By: Mary K. Thomas
Its: member

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, William C Hood, a Notary Public for the State of South Carolina, do hereby certify that the Grantor(s) herein did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 7th day of July, 2010.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 3/17/18

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) AFFIDAVIT

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

- 1. I have read the information on this Affidavit and I understand such information.
 - 2. The property being transferred is located at Anderson Road, Piedmont, South Carolina, bearing Anderson County TMS Number 214-00-08-006, and was transferred by Prodigal Enterprises, LLC to Mary K. Thomas on July 7, 2010
- Check one of the following. The deed is:

- (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) X subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) exempt from the deed recording fee because (see Information section of Affidavit):

4. Check one of the following if either Item 3(a) or Item 3(b) above has been checked

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
- (b) The fee is computed on the fair market value of the realty which is _____.
- (c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$182,130

5. Check Yes or X No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: \$ 182,130
- (b) Place the amount listed in Item 5 above here: \$
(If no amount is listed, place zero here)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ 182,130

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee is \$675.25.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee .

9. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this _____ day of _____ 2010.

[Signature]
Notary Public for South Carolina
My Commission Expires: 3/12/15

Mary K. Thomas
Responsible Person Connected with the Transaction

Mary K. Thomas
Print or Type Name Here

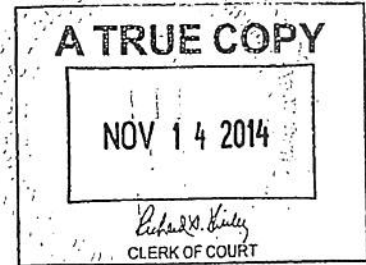
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Bk: 09671 Pg: 00196 Pages: 009
Rec Fee: 15.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
C.A. #:2014-CP-04-2419

Dr. Marvin Anderson,)
Plaintiff,)
vs.)
Mary Thomas, Forest Thomas,)
Prodigal Enterprises, LLC, Brushy)
Creek BarBQ, Inc. and Bail Pros)
Bail Bonding, LLC.,)
Defendants.)

ANSWER



The defendants, answering the complaint of the plaintiff, would show unto the court and allege:

FOR A FIRST DEFENSE

1. Each and every allegation of the complaint not specifically admitted, qualified, denied or explained is denied.
2. Paragraphs 1 is admitted.
3. Paragraph 2 is admitted insofar as it alleges Mary Thomas and Forest Thomas are residents of Anderson County, South Carolina and that the principle place of business for the corporate defendants is Anderson County, South Carolina. The remaining allegations are denied.
4. Paragraphs 3 states a legal conclusion. However, the defendants admit the court has jurisdiction of the matters and issues raised in the complaint.
5. Paragraph 4 is admitted in that Forest Thomas and Mary Thomas are and have been during the times alleged in the complaint, husband and wife. It is also admitted that Mary Thomas is the sole member of Defendant Bail Pros Bail Bonding, LLC. The remaining allegations are denied.
6. Paragraph 5 is denied.
7. Paragraph 6 is denied.
8. Paragraph 7 is denied with the exception that Defendant Forest Thomas did sign a promissory note on March 2, 2010.
9. Paragraph 8 is admitted.
10. Paragraph 9 is admitted.

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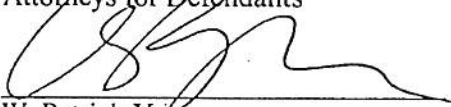
11. Paragraph 10 is admitted.
12. Paragraph 11 is admitted upon information and belief.
13. Paragraph 12 is admitted insofar as it alleges supplemental proceedings were initiated and information provided by Forest Thomas.
14. Paragraph 13 is denied.
15. Paragraph 14 is denied except for the allegation that the real estate referred to was transferred to Mary Thomas.
16. Paragraph 15 is denied.
17. Paragraph 16 is admitted except for the allegation that the transaction was constructed in an attempt to shield the fraudulent nature of the transfer which the defendants deny.
18. Paragraph 18 is denied.
19. Paragraph 19 is denied.
20. Paragraph 20 is denied.
21. Paragraph 21 is denied.
22. Paragraph 23 is denied.
23. Paragraph 24. Is denied..
24. Paragraph 25 is denied.

FOR A SECOND DEFENSE

25. The plaintiff's complaint fails to state facts sufficient to constitute a cause of action against one or more of the defendants and should be dismissed pursuant to S.C.R.C.P. 12(b)(6).

WHEREFORE, having fully answered the complaint of the plaintiff, the defendants pray for an order of the court dismissing the complaint of the plaintiff with prejudice.

CHAPMAN & YON, LLP
Attorneys for Defendants


W. Patrick Yon
SC Bar # 06534
117 West Benson Street
PO Box 2506
Anderson, SC 29622
864.225.1411

Dated: 11-16, 2014
Anderson, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM ANDERSON COUNTY
The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

File No. 2014-CP-04-2419

Dr. Marvin Anderson,.....Respondent

v.

Mary Thomas, Forest Thomas,
Prodigal Enterprises, LLC,
Brushy Creek BarBQ, Inc.,
And Bail Pros Bail Bonding, LLC,
Of whom Mary Thomas isAppellant

NOTICE OF APPEAL

Mary Thomas appeals the Order and Judgment of the Honorable J. Cordell Maddox, Jr., electronically filed May 19, 2017. Mary Thomas filed a motion to alter or amend judgment. The court issued its order on the motion which was electronically filed on April 5, 2018.

May 3, 2018

/s/ W. Patrick Yon
W. Patrick Yon
2315 North Main Street
Suite 223
PO Box 2506
Anderson, SC 29622
(864) 225-1411
Attorney for Appellant

Other Counsel of Record:

Rodney F. Pillsbury, Esq.
301 Rutherford St.
Greenville, SC 29609

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State of South Carolina
County of Anderson

In the Court of Common Pleas

Dr. Marvin Anderson,
Plaintiff,

-vs-

Mary Thomas, Forest Thomas,
Prodigal Enterprises LLC,
Brushy Creek BarBQ Inc., and
Bail Pros Bail Bonding LLC,
Defendants.

2014-CP-04-2419

February 21, 2017

Transcript of Record

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge

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

Rodney F. Pillsbury, Esquire
Attorney for Plaintiff

W. Patrick Yon, Esquire
Attorney for Defendants

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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I N D E X

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E x h i b i t s

For the Plaintiff:

Marked	Description	I.D.	Admitted
1	Cancelled check #3000 in the amount of \$125,000	11	12
2	Promissory note dated 3/2/10 for \$125,000	14	18
3	Letter dated 10/21/11 to Forest Thomas from Dr. Anderson	17	18
4	Articles of Organization		
5	Title to real estate-PR Investments		
6	Mortgage-Prodigal		
7	Mortgage-Sinopoli		
8	Mortgage-Cochrane	27	
9	Financing statement	27	
10	Mortgage-Upchurch	27	
11	Cochrane satisfaction of mortgage		
12	Sinopoli satisfaction of mortgage		
13	Upchurch satisfaction of mortgage		

Dr. Marvin Anderson vs. Mary Thomas, et al. 2014-CP-04-2419 February 21, 2017

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8	21	Bank statement		
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10	23	USC tickets	58	

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 11:22 a.m.)

4 THE COURT: Just for the record, this case was on
5 the jury roster, and after discussion with the
6 attorneys and their clients, decided to hear it
7 nonjury, which I think is the best thing to do. And
8 that way I can listen to it, and it would have been --
9 just for the clients -- this would have been a really
10 difficult case for a jury to understand.

11 Okay. Yes, sir.

12 MR. PILLSBURY: Your Honor, you just want to start
13 with testimony or --

14 THE COURT: Tell me a little bit about it. I
15 mean, you told me in the back, just for the record.

16 MR. PILLSBURY: May it please the court.

17 THE COURT: Yes, sir.

18 MR. PILLSBURY: Your Honor, Rodney Pillsbury for
19 Dr. Anderson in this case. There is no dispute that in
20 October of 2008, he lent the defendant, Forest Thomas,
21 \$125,000. And the agreement that they had was that
22 that debt would be repaid within 12 months. It was
23 repaid at one rate if it was paid off in six months,
24 and it was repaid at another rate if it was 12.

25 At the one-year anniversary, in 2009, Dr. Anderson

1 starts calling, saying, "Hey, you know, where is my
2 money? Where is payment?" and can't get ahold of the
3 defendant. Or whenever it is, it's always, "Your money
4 will be here." They ended up executing a promissory
5 note in March of 2010.

6 THE COURT: Now, there was nothing in writing in
7 2008, right?

8 MR. PILLSBURY: Correct.

9 2010, that promissory note memorialized the
10 agreement, and there was an agreement to repay \$187,000
11 with payments of approximately \$34,000 due at the
12 beginning of April the 1st of 2010. And there were
13 going to be six successive payments that would be made
14 to pay off the note.

15 Ultimately, there were no payments that were made.
16 There were no payments that were ever made, but there
17 were no payments that were ever made on that note. At
18 the time that the payments on that promissory note were
19 coming due, that's when the transaction at issue
20 happened.

21 And to do a little bit of background, 1997, the
22 defendants and some other people set up a corporation
23 called Prodigal Enterprises. It basically was Brushy
24 Creek BarBQ. And there were different members at
25 different times. And what the documents will show is

1 that Mr. Forest was the one who always signed on behalf
2 of Prodigal Enterprises LLC.

3 Then you just sort of fast-forward to -- those
4 transactions all took place in 1998. There was one in
5 2003. But fast-forward to 2010 when the payments were
6 coming due. There's no mortgage owed on the property
7 up there. And they do a transfer from Prodigal
8 Enterprises to his wife, defendant Mary Thomas. And
9 there was no money that exchanged hands.

10 And so at the time of that closing in July 2010,
11 those were the only two members of the LLC. After --
12 that's that transaction. And that transaction, on the
13 same day they record the transfer of the real estate,
14 they record setting that entity -- setting that
15 property as the basis of a surety bond for a bond, jail
16 bond company, that was opened in the wife's name. And
17 they dissolved Prodigal Enterprises LLC all on July 7th
18 2010. And Prodigal -- I mean the bonding company, Bail
19 Pros Bonds LLC, something like that, in the wife's
20 name, it wasn't actually incorporated until like later
21 in November..

22 THE COURT: Okay.

23 MR. PILLSBURY: And that's the gist of the issues
24 in dispute.

25 THE COURT: Okay. You agree with those facts?

1 MR. YON: I differ a little bit but not much.

2 As far as Forest Thomas' position on the money
3 owed, he would take the position that he did not
4 believe he owed the money to the plaintiff. There's no
5 dispute that he sued Forest Thomas and obtained a
6 default judgment against him for that amount. We're
7 not disputing that, but I think it's important, when
8 you're looking at when they're arguing intent and what
9 was in the mind of Forest Thomas at the time of the
10 transfer, he will testify that, due to the situation,
11 he did not believe he owed Dr. Anderson this money.

12 Other than that, I agree with what he says as far
13 as the timeline of everything that occurred. I don't
14 have any dispute with that.

15 THE COURT: Okay.

16 MR. YON: I do have one thing. I discussed this
17 briefly with Mr. Pillsbury. In his complaint, in his
18 requested relief, he's asking that the transaction, the
19 conveyance of the property from Prodigal to Mary, be
20 voided under the statute of Elizabeth. It's also
21 asking the property be seized and sold. I don't think
22 that's the appropriate remedy for a fraudulent
23 conveyance case.

24 I understand the part where you're trying to
25 declare the property -- transaction be voided, but not

1 the actual seizure and sale of the property.

2 It would be my understanding that if the property
3 was -- if the transaction was voided, it would return
4 to the LLC, since that was the grantor in the
5 transaction. But I think we're going to have to leave
6 that to the court as to what the appropriate remedy
7 would be in that situation.

8 THE COURT: Okay. All right. We'll figure that
9 out.

10 You can call your first witness.

11 MR. PILLSBURY: I call Dr. Marvin Anderson to the
12 stand, please.

13 MR. YON: And, Judge, just for housekeeping, I
14 have two attorneys who are going to testify. I have
15 instructed them to be here at 2:00 o'clock.

16 THE COURT: That's perfect.

17 DR. MARVIN LYNN ANDERSON,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Once you're seated, if you would,
20 please, give us your full name for the court's record.

21 THE WITNESS: Marvin Lynn Anderson.

22 THE CLERK: Thank you, sir.

23 DIRECT EXAMINATION

24 BY MR. PILLSBURY:

25 Q Good morning, Dr. Anderson.

1 A Good morning.

2 Q Can you tell the court a little bit about your
3 background, please.

4 A I've been a dentist for about 27 and a half years,
5 and now I'm retired.

6 Q Where were you born and raised?

7 A I was born in Prosperity, South Carolina, and grew
8 up in Saluda County.

9 Q And the dental practice that you had, how long did
10 you have that practice?

11 A 27 and a half years.

12 Q And the -- what was the reason why -- what led you
13 to not -- are you practicing dentistry now?

14 A No. I have had some cervical problems, partly in
15 my neck, and then also some lumbar and had to retire,
16 then, in 2012.

17 Q And sold your practice?

18 A That's correct.

19 Q Okay. How is it that you came to know the
20 defendant, Forest Thomas?

21 A We had a mutual friend, Steve Garrison. I believe
22 he had insurance, and I also, at the time I met him, he
23 did some work for me. Steve Garrison had recommended
24 that he do some investigative work. He owned a company
25 at that particular time. It was called United

1 Investigations, and he did some legwork for me there.

2 Q And after -- approximately what time frame was
3 that interaction?

4 A That was in 2007.

5 Q And at some point along the way, was -- how did it
6 come up about there being any loan in this case?

7 A Steve had helped me get a lawyer to draw up an
8 agreement concerning the loan.

9 Q Let me back up.

10 A Okay.

11 Q When was the first time -- did the defendant ever
12 ask you to borrow money?

13 A It would have been in 2008.

14 Q Okay. How did that come up?

15 A He had mentioned that he had some real estate in
16 Florida, that it would be a quick turnaround, and that
17 he thought he could turn a profit and we both could
18 benefit from it.

19 Q What kind of profit was he telling you he was
20 going to make?

21 A Well, the money that I pulled out of retirement,
22 you know, it had to make, you know, worth my while to
23 do something like that. So he explained the terms,
24 that it would be 50 percent return on my money, six
25 months, or either double it in a year.

1 Q And what was the return that he was looking to get
2 from it?

3 A Now, that, I don't know.

4 Q Did he ever mention to you what he expected that
5 he was going to generate from the money he got from
6 you?

7 A Well, it obviously was a pretty good deal, from
8 what I understood.

9 Q And so what was the amount that he was asking you
10 for?

11 A 125,000.

12 Q And how is it that you got that money?

13 A I took money out of a retirement fund that I had,
14 put it in my business account. Put it in my business
15 account and then wrote a check against it.

16 (WHEREUPON, Plaintiff's Exhibit Number 1 was
17 marked for identification.)

18 Q Okay. Let me hand you what's been marked as
19 Exhibit Number 1.

20 Does that document look familiar to you?

21 A This is a copy of the check, yes, sir.

22 Q Okay. And what's the amount of the check?

23 A It's \$125,000.

24 Q And what's the date of the check?

25 A It's October -- it looks like 27 written on the

1 check.

2 Q And it cleared?

3 A Posted date was October 30, 2008.

4 MR. PILLSBURY: I would move to admit Exhibit 1.

5 THE COURT: Any objection?

6 MR. YON: No objection.

7 THE COURT: All right. Without objection.

8 (WHEREUPON, Plaintiff's Exhibit Number 1 was
9 admitted into evidence.)

10 MR. PILLSBURY: I have a copy for you or your
11 clerk.

12 THE COURT: That would be great.

13 BY MR. PILLSBURY:

14 Q Now, you mentioned the terms a little bit. What
15 were you supposed to get in six months, and what were
16 you supposed to get if it took 12 months?

17 A 50 percent on six months and then double if it
18 went a year.

19 Q Okay. And why is it that you were comfortable
20 lending him that kind of money at that particular time?

21 A Well, I had done some business with him, you know,
22 and he also was friends of -- we were friends. I
23 believe we dealt with some of the same people. He and
24 Steve Garrison were friends, and I had known Steve for
25 a long long time. We had insurance, and then I had

1 some other investments with him.

2 Q And so October 30th, 2008, when did you start to
3 look to receiving that loan back or portions of that
4 loan back?

5 A Well, we met all along. We had lunch together.
6 Like I said, we were friends. And as the six-month
7 period came around, you know, I began to ask him, I
8 said, "Well, will it go six months, or do you need more
9 time to flip it?"

10 Q And what did he say?

11 A "Well, we might need more time." That's what he
12 said.

13 Q Okay. And so coming up on the one-year
14 anniversary, what discussions, if any, did you have
15 about your money and getting paid?

16 A Mentioned to him about, you know, "It's time."
17 You know, "The year is up," and that, you know, "You
18 owe me the amount of money that you promised."

19 Q Okay. What did he say?

20 A He didn't give me any indication that I had a
21 problem. So he said he had it, so...

22 Q Okay. So he sort of led you to believe that the
23 check was in the mail or it was coming or something
24 like that?

25 A That's correct.

1 Q And what -- how long did it go by? Did he pay
2 you?

3 A No. He hasn't paid anything to this date.

4 Q So you met roughly October 2009. There was that
5 meeting?

6 A There was subsequent meetings.

7 Q And that's where I was headed. What happened at
8 the subsequent meetings?

9 A Well, we asked him in March of, I think it's 2010,
10 to sign a promissory note.

11 (WHEREUPON, Plaintiff's Exhibit Number 2 was
12 marked for identification.)

13 Q Let me hand you what's been marked as Exhibit
14 Number 2.

15 A Yes. March 2 of 2010.

16 Q Okay. What is that document?

17 A It's a promissory note promising to pay with
18 interest what he owed me.

19 Q And were you there when he signed it?

20 A Yes.

21 Q And who else was there?

22 A Steve Garrison and then a member of the Napoli's
23 staff. It was a restaurant where we met, and we put
24 all that on the document here.

25 Q And so the notation in the signature box, what day

1 was it executed?

2 A 3/9/2010.

3 Q And the defendant signed that promissory note?

4 A Yes, sir. His signature is on here.

5 Q And at that time did he express to you any problem
6 getting you paid?

7 A No, sir.

8 Q Up until that time, had there been any type of
9 promissory note or other writing of the \$125,000 loan?

10 A No, sir.

11 Q Is that the reason why you wanted something
12 reduced to writing?

13 A Yes, sir.

14 Q And now, according to the terms of that note, when
15 was the first payment supposed to be coming due?

16 A That would have been in April.

17 Q And what was the amount of that payment?

18 A It was \$34,294 and change.

19 Q And that would have been April 1st of 2010?

20 A That's correct.

21 Q And what, if anything, happened around April 1st?
22 Did you get that payment?

23 A No, sir. When I started calling him, then he
24 expressed he wasn't going to pay it.

25 Q At what point -- and let's sort of -- did you

1 start calling him right away, or did you give him a
2 little bit of time?

3 A I waited until after the first payment was due.

4 Q Okay. And so at that time -- now, at the time
5 that he signed it, did he protest at all or say, "I
6 don't owe this," or, "This isn't owed," or, "This isn't
7 what we agreed to"?

8 A The only thing that he said was that, "You don't
9 trust me." I said, "Well, sometimes you have to get
10 things in writing."

11 Q Okay. But there was no disagreement about the
12 terms?

13 A No, sir.

14 Q He didn't complain about the amounts owed?

15 A No, sir.

16 Q Or the payment schedule?

17 A No, sir.

18 Q And so after those first payments were due, were
19 you able to talk to him or -- let me ask it this way.
20 When you called, would he answer?

21 A Most times, yes, sir.

22 Q Okay. And about how long did it go by before he
23 said, "I'm not going to pay it"?

24 A That started after that first payment was due, and
25 then the second one. And, you know, he just flat told

1 me he wasn't going to pay me anything.

2 Q And so -- do you need some water? Hang on.

3 (Bailiff provided witness with water.)

4 Q So in May/June 2010 is when you were --

5 A That is correct.

6 Q Okay. And what happened after that?

7 A Well, I told him, you know, that my only recourse,
8 then, was to seek legal counsel.

9 (WHEREUPON, Plaintiff's Exhibit Number 3 was
10 marked for identification.)

11 Q Handing you what's been marked as Exhibit Number
12 3, do you recognize that?

13 A Yes, sir. This is a copy of a letter that's
14 trying to just resolve it without having to resort to
15 going and using a lawyer. That's what it is.

16 MR. PILLSBURY: Your Honor, I meant to move
17 Exhibit Number 2 into evidence.

18 THE COURT: Any objection?

19 MR. YON: No objection.

20 THE COURT: 2 and 3, I assume.

21 MR. PILLSBURY: Yes. And I move Exhibit 3 into
22 evidence.

23 MR. YON: Judge, I don't object to any of the
24 exhibits he's marked.

25 MR. PILLSBURY: Thank you.

1 THE COURT: Thank y'all.

2 (WHEREUPON, Plaintiff's Exhibit Number 2 was
3 admitted into evidence.)

4 (WHEREUPON, Plaintiff's Exhibit Number 3 was
5 admitted into evidence.)

6 BY MR. PILLSBURY:

7 Q And so in October of 2011 is when you were trying
8 to, I guess, the last resort on doing it yourself?

9 A Yes, sir. I mean, I was just trying to get the
10 principal amount, you know, just let him off the hook
11 as far as what he owed me. But he wouldn't budge one
12 way or the other.

13 Q Okay. And at some point you were -- did you go
14 get an attorney?

15 A That's correct.

16 Q And let's see. I didn't mark this.

17 (WHEREUPON, Plaintiff's Exhibit Number 18
18 was marked for identification.)

19 BY MR. PILLSBURY:

20 Q Exhibit 18 is what?

21 Let me see if I can help. Is that the judgment
22 that you obtained?

23 A This is the judgment that was rendered to me.

24 MR. PILLSBURY: And for the record, Your Honor,
25 that's Exhibit 1 to plaintiff's complaint.

1 THE COURT: The judgment?

2 MR. PILLSBURY: Yes, your Honor.

3 BY MR. PILLSBURY:

4 Q And what was the amount of that judgment?

5 A It was 300 -- let me look on here. \$378,108.

6 Q And the date that was entered?

7 A Let's see. This was on -- was it 2013? March 4,
8 2013.

9 (WHEREUPON, Plaintiff's Exhibit Number 19 was
10 marked for identification.)

11 Q I'm handing you what's marked as Exhibit 19,
12 Plaintiff's Exhibit 19 here and Exhibit 2 to
13 plaintiff's complaint.

14 At some point did you try to collect on that
15 judgment?

16 A We tried, but it failed.

17 Q Okay.

18 A And he didn't want to --

19 MR. PILLSBURY: I'd move in for admission 18 and
20 19.

21 MR. YON: No objection.

22 THE COURT: So admitted.

23 (WHEREUPON, Plaintiff's Exhibit Number 18 was
24 admitted into evidence.)

25 (WHEREUPON, Plaintiff's Exhibit Number 19 was

1 admitted into evidence.)

2 MR. PILLSBURY: That's all I have, Your Honor.

3 THE COURT: Okay.

4 Yes, sir.

5 MR. YON: May it please the court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. YON:

9 Q Now, Dr. Anderson, you said this money that you
10 gave to Mr. Thomas was for -- or he told you it was for
11 a real estate deal in Florida?

12 A That's correct.

13 Q Okay. And I believe you testified that he said if
14 y'all invested the money, you could both make money off
15 of it? That's how it was presented to you?

16 A Well, it was he was to get the loan and then pay
17 me out of the monies that he got out of it.

18 Q But that's where the numbers he was giving you
19 came up to is, "We could turn this over, and you could
20 make this much money and I could make this much money";
21 is that right?

22 A Well, the loan, he led me to believe that that
23 loan was secure. In other words, there wasn't any
24 ambiguity in terms of the money that he was putting in.
25 In other words, it wasn't like you were taking a risk

1 like you would in the stock market, what have you.

2 Q But the loan wasn't secured, was it? It was an
3 unsecured --

4 A No, it wasn't.

5 Q All right. And you, of course, had the
6 opportunity to get a secured loan, if that's what you
7 wanted to do?

8 A Well, I mean, he had the opportunity, too, but the
9 reason for him coming to me was that he needed the
10 money quick and that --

11 Q But you didn't have to loan it?

12 A I guess I didn't.

13 Q And you loaned it because you thought you could
14 double your money, correct?

15 A Well, the terms were his. And for me to take
16 money from my retirement, it had to be something that
17 would be substantial.

18 Q Okay. But that was your anticipation when you
19 gave him this money, correct?

20 A That's correct.

21 Q So wouldn't you have called that a joint venture
22 really instead of a loan?

23 A No, sir. That's not what he said. I had no
24 knowledge of -- for example, I had no knowledge of the
25 type of real estate he was putting it in, where it was.

1 In other words, this was his venture.

2 Q All right. But the loan, the check that you made
3 out to him, was made out to Forest Thomas; is that
4 correct?

5 A That's correct.

6 Q It wasn't made out to Prodigal Enterprises LLC,
7 was it?

8 A No, sir.

9 Q And the money, when you sued Forest Thomas in
10 court, you sued him individually and you didn't sue
11 Prodigal Enterprises LLC, correct?

12 A That may be a technical thing. I don't hardly
13 know how to answer that. I mean --

14 Q When you obtained the default judgment -- you
15 entered it into evidence -- that was you against Forest
16 Thomas, correct?

17 A That's correct.

18 Q And the LLC is not mentioned anywhere in that
19 lawsuit, is it?

20 A I'd have to go back and look through it.

21 Q All right. But to date, the LLC doesn't owe you
22 any money, correct?

23 A To my knowledge, it's Forest Thomas and whatever
24 entity he represents.

25 Q But all -- the lawsuit that you filed against

1 him -- I'm talking about the one in Greenville -- that
2 lawsuit was filed against Forest Thomas as an
3 individual, correct?

4 A I'd have to go back and look at the legal because
5 you're asking me a legal -- it's a --

6 MR. YON: Where are the exhibits?

7 MR. PILLSBURY: I think he has them in front of
8 him. The last two, I didn't have an extra copy of it.

9 MR. YON: Can I see the exhibits, the last two?
10 Thank you.

11 Q All right. This is marked as Plaintiff's Exhibit
12 Number 18. It's an order from the Court of Common
13 Pleas in Greenville County.

14 Would you agree that the caption of that is Marvin
15 L. Anderson versus Forest Thomas?

16 A Yes, sir. That's what it says.

17 Q All right. And Plaintiff's Exhibit 19 is the
18 execution against property, and that is Marvin L.
19 Anderson versus Forest Thomas, correct?

20 A Yes, sir.

21 Q And Prodigal Enterprises LLC is not mentioned in
22 either one of those documents, is it?

23 A Not Prodigal on either one of these documents,
24 correct.

25 Q That's because you never loaned Prodigal

1 Enterprises LLC any money; is that correct?

2 A That's correct. This was a personal loan for
3 property.

4 Q You don't have a judgment against Prodigal
5 Enterprises LLC, do you?

6 A Not the way this reads.

7 MR. YON: That's all the questions I have.

8 THE COURT: Anything on redirect?

9 MR. PILLSBURY: No, Your Honor.

10 THE COURT: Okay.

11 Thank you, sir. You can step down.

12 MR. PILLSBURY: At this time I'd call Forest
13 Thomas to the stand.

14 FOREST HUNTER THOMAS,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE CLERK: Please have a seat around on the
17 witness stand. Once you're settled, if you would also
18 please give us your full name for the court's records.

19 THE WITNESS: Forest Hunter Thomas.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. PILLSBURY:

23 Q Good morning. Or good afternoon, Mr. Thomas.

24 A Close.

25 Q We've only met briefly once before. I just want

1 to walk through some documents.

2 A Sure.

3 Q And I've shown them to your lawyer.

4 Let's see. We'll start with Exhibit Number 4. Do
5 you recognize that? That's --

6 A I don't think I recognize it, but I certainly
7 understand what it is and probably have seen it. This
8 is, like, an original filing for Prodigal way back in
9 1997.

10 Q Right. And so this was the original filing for
11 Prodigal Enterprises that was formed in September of
12 1997, correct?

13 A I believe that's right, yes, sir.

14 Q And you were listed as the agent for service of
15 process, correct?

16 A I could have been, yes, sir.

17 Q Well, on the first page?

18 A Uh-huh.

19 Q Do you see Item Number 3?

20 A Yes, sir. I see that. Yes, sir, uh-huh.

21 Q That's you?

22 A Yes, sir.

23 Q And then for the organizers, it's you and your
24 wife and five other people, correct?

25 A Correct.

1 Q Exhibit Number 5 is the title to the land. Now,
2 this is the land over there where Brushy Creek BarBQ is
3 or was?

4 A It looks like that, yes, sir.

5 Q Okay. And the amount back then was 205,000,
6 correct?

7 A Yes, sir.

8 Q All right. And I'm going to try to get through
9 these as quickly as I can.

10 Q Handing you what's been marked Exhibit Number 6,
11 is that the mortgage for the property that you would
12 have taken out at the time with Carolina First?

13 A I mean, it does look like a mortgage. The only
14 thing I'm looking at is the year, '98. The loan I took
15 out from Carolina First was in '97. So I don't know if
16 this was, like, redone maybe. Maybe they wanted to
17 redo it after a year. I'm not sure.

18 And the amount we took out initially was 120,000,
19 so I'm not sure what the -- again, this could have been
20 a renewal or something of the loan. But I follow what
21 you're saying.

22 Q And, I'm sorry. That exhibit number is?

23 A 6.

24 MR. PILLSBURY: Your Honor, that is 5 and that is
25 6.

1 THE COURT: All right.

2 BY MR. PILLSBURY:

3 Q And if you will flip over with me to the last page
4 of that document -- well, next-to-last page. That's
5 your signature on behalf of Prodigal?

6 A That is correct.

7 Q Handing you what's marked as Exhibit Number 7,
8 which is a mortgage to Prodigal from the Sinopolis.
9 And in looking at the signature page, that's your
10 signature on behalf of Prodigal?

11 A Yes, sir, it is.

12 Q Exhibit 8. This is the mortgage on the same
13 property entitled "Cochranes"?

14 A Yes, sir.

15 Q Correct?

16 A Yes, sir.

17 Q And, once again, you signed on behalf of Prodigal
18 Enterprises as the manager member, correct?

19 A Yes, sir.

20 Q Exhibit Number 9 is an UCC statement May of 1998.
21 Again, is that your signature on behalf of Prodigal on
22 Page 1?

23 A Yes, sir.

24 Q Exhibit Number 10, which is a mortgage from
25 Mr. Upchurch. Now, this one took place in 2003, I

1 believe, correct?

2 A Yes, sir.

3 Q And all the transactions that I'm going through,
4 they're all related to mortgages or liens on the
5 property in question that we're here today on, correct?

6 A I think so, yes, sir.

7 Q And the -- on Exhibit Number 10, once again,
8 you're the only one signing on behalf of Prodigal
9 Enterprises. And, in fact, you're signing as its
10 president, correct?

11 A Yes, sir.

12 Q Now, I'm handing you what we have already
13 introduced as Exhibit Number 2, the promissory note in
14 the case.

15 A Uh-huh.

16 Q Is that your signature?

17 A It is.

18 Q Okay. Let me give you Exhibits 12, 11, and 13.

19 Now, after that promissory note -- oh, let me back
20 up. I forgot to ask you about the check.

21 You got the check and cashed the check that was
22 Exhibit Number 1, correct?

23 A I believe it was deposited, correct, yes, sir.

24 Q In other words, you were the one that used the
25 funds?

- 1 A Yes, sir.
- 2 Q Okay. And then the promissory note was signed on
3 March 9th, 2010, correct?
- 4 A Yes, sir.
- 5 Q And that document, the promissory note, called for
6 monthly payments to start being made, correct?
- 7 A That's what I heard the -- I would have to read
8 it, but yes, sir.
- 9 Q Well, you don't have to take my word for it.
- 10 A I'll be glad to read it, if you like.
- 11 Q Yeah.
- 12 A I see that in Number 1.
- 13 Q Okay. And so those payments were to begin on
14 April of 2010, correct?
- 15 A Yes, sir.
- 16 Q And let me hand you Exhibits 11, 12 and 13.
17 Now, this is in the beginning of June of 2010 when
18 those affidavits were executed, correct?
- 19 A Yes, sir, uh-huh.
- 20 Q And what each of those documents represent are the
21 other members of Prodigal Enterprises that had their
22 own mortgages with the entity, and those are
23 satisfaction of mortgages for their individual
24 mortgages?
- 25 A Yes, sir.

1 Q And that satisfied -- I take it they had been paid
2 sometime way before then?

3 A Yes, sir. 1998.

4 Q Right. So they were paid a long time ago. This
5 was just sort of cleaning up the paperwork?

6 A Correct.

7 Q And those were signed at the first of June. I
8 think one is June 1st, one is June 2nd, the other is
9 June 3rd.

10 A Yes, sir. June 1st, 2nd and 3rd, it looks like.

11 Q I'm handing you what's marked as Exhibit 14. And
12 this is the transfer in title for the real estate.

13 And let me back up. Prodigal Enterprises owned
14 the dirt where Brushy Creek BarBQ was located?

15 A Correct.

16 Q Correct?

17 A I think so.

18 Q And that was Prodigal Enterprises' only asset?

19 A Yes, sir.

20 Q And so by 19- -- well, let's say by 2005, to be
21 safe, all the other members had been satisfied with
22 whatever financial obligation was owed to them,
23 correct?

24 A Certainly, yes, sir.

25 Q And so the only two remaining members at that

- 1 point in time were you and your wife, correct?
- 2 A Correct, yes, sir.
- 3 Q And you were a 50-percent owner?
- 4 A Correct, yes, sir.
- 5 Q And Exhibit Number 14, transferring the interest,
6 the transfer amount that -- the consideration was \$10,
7 correct?
- 8 A Yes, sir.
- 9 Q But the property was worth \$203,000, correct?
- 10 A I'm not sure what it was worth at that time. I
11 know what it was in the document you showed me in 1997,
12 1998.
- 13 Q Let me --
- 14 A But I hadn't seen anything else.
- 15 Q Let me hand you what's been marked as Exhibit 15.
16 And that's essentially the notice of pledge where
17 that real estate is being pledged as an asset, correct?
- 18 A I think so, yes, sir. Notice of pledge, uh-huh.
- 19 Q And the amount of value that was attached to that
20 is what?
- 21 A Looks like somebody had written in \$203,535.
- 22 Q And so that was entered in July 7th as well, the
23 same day that title was transferred?
- 24 A It is dated July 7th, yes, sir.
- 25 Q And that's the same day that title was transferred

1 over?

2 A Is that what this was?

3 Q Yes.

4 A This is dated July 7th as well. For some reason
5 it's got \$182,130 on it. That may mean something else.

6 Q And at the time of transfer, there was no mortgage
7 or any outstanding debt owed, correct, on that
8 property?

9 A I think that's correct, yes, sir.

10 Q And so as a 50-percent owner of Prodigal
11 Enterprises, your one-half interest in that property
12 would have been somewhere in excess of \$100,000?

13 A Yes, sir.

14 Q That you transferred to your wife for \$10?

15 A Correct.

16 Q Handing you what's been marked as Exhibit 16, I'll
17 represent to you these are the articles of termination
18 for Prodigal Enterprises. And under Item Number 3, the
19 date of dissolution is what date?

20 A July 7, 2010.

21 Q The same day that title was transferred, it was
22 posted as collateral for your wife's business, and then
23 Prodigal was shut down, correct, all in the same day?

24 A It looks like it, yes, sir.

25 Q Handing you what's been marked Exhibit 17, I

1 believe.

2 A Yes, sir.

3 Q And this is the articles of incorporation for Bail
4 Pro Bail Bonding LLC, correct?

5 A Yes, sir.

6 Q And that's your wife's company -- or that's the
7 company that's in your wife's name that is
8 collateralized by that property, correct?

9 A Correct, yes, sir.

10 Q And the date that this was filed was December 2nd
11 of 2010. Do you see that at the bottom?

12 A Yes.

13 Q So at the time that Prodigal transferred the
14 property for \$10 to your wife to set up this bonding
15 company, the bonding company itself hadn't even been
16 incorporated, correct?

17 A I don't know. I didn't have anything to do with
18 that.

19 Q Well, are you aware of it being incorporated any
20 time prior to December 2 of 2010?

21 A No, sir, huh-uh.

22 Q As we sit here today, you have never made any
23 payment for any portion of the money that you got from
24 Dr. Anderson, correct?

25 A No, sir.

1 Q Bad question on my part.

2 Have you made any payment at all to Dr. Anderson?

3 A No, sir.

4 Q Okay.

5 Other than in 2010, other than your half-interest
6 in Prodigal Enterprises, did you have any other assets
7 in your name?

8 A I probably did. In my name, yes, sir.

9 Q What would those have been?

10 A Well, my house, cars. We had -- I don't know, we
11 have a condo down at the beach. I'm just trying to --
12 I want to make sure I tell you everything.

13 Are you talking about real property, or are you
14 talking about -- I know you're familiar with, like,
15 some stock that I had. I mean, are you talking about
16 that, too?

17 Q Yes. Why don't we take it this way. Let's start
18 with real property that was in your name individually.

19 Was there any other property?

20 A Just in my name individually?

21 Q Correct.

22 A I don't know of anything.

23 Q And jointly held by you and your wife in 2010,
24 other than your personal residence, did you have any
25 other property of value?

1 A Just the condo and our vehicles. Well, we sold
2 that store, yeah. No, sir.

3 Q Okay. All right.

4 MR. PILLSBURY: That's all I have, Your Honor.

5 THE COURT: Yes, sir.

6 MR. YON: Thank you.

7 CROSS-EXAMINATION

8 BY MR. YON:

9 Q Mr. Thomas, I'm going to ask you to refer to some
10 documents that --

11 MR. PILLSBURY: I'm sorry, Your Honor,
12 housekeeping. Move for admission of all the exhibits.

13 MR. YON: No objection.

14 THE COURT: Without objection.

15 MR. PILLSBURY: I apologize for interrupting.

16 MR. YON: No problem.

17 BY MR. YON:

18 Q Do you have the documents that Mr. Pillsbury was
19 asking you about in front of you?

20 A Yes, sir.

21 Q All right. Now, he put into evidence some
22 mortgages that were given to the Sinopolis and, I
23 believe, to Joe Upchurch; is that correct?

24 A Yes, sir.

25 Q Do you recall what that was for?

1 A I do.

2 Q Okay. And just going back a little bit, correct
3 me if I'm wrong, but Produgal LLC, Produgal Enterprise
4 LLC, owned the real estate including the building that
5 Brushy Creek BarBQ is operated out of; is that correct?

6 A That's correct.

7 Q And Brushy Creek BarBQ Inc. actually owned the
8 business?

9 A Correct.

10 Q All right. So Brushy Creek BarBQ Inc. was leasing
11 the property from Produgal?

12 A Correct.

13 Q And, again, and correct me if I'm wrong, but it
14 appears the Sinopolis and Joe Upchurch were originally
15 a part of this?

16 A They were, and the Cochranes.

17 Q And the Cochranes. Did you subsequently buy them
18 out?

19 A Yes. Dr. Sinopoli and Dr. Cochrane got out, I
20 believe, right at the end of '98. Or that's when we
21 set up that mortgage, and I think, give or take, it
22 took about six months or so to pay them off.

23 Q And Joe Upchurch got out later?

24 A Yeah, he retired. He stayed with us and retired
25 in whatever year that was, 2003 or 2005.

1 Q But, at any rate, that's what these mortgages
2 represent --

3 A Yes.

4 Q -- is you or Prodigal LLC buying out their
5 interest?

6 A Correct.

7 Q Okay. And then we jump ahead to 2010. We have
8 the satisfaction of mortgages that were recorded?

9 A Yes.

10 Q Why is it that -- is that when these mortgages are
11 satisfied, in 2010, or --

12 A No, sir.

13 Q Why was it done in 2010?

14 A At the time my wife had been involved with another
15 bonding company, and something had taken place there
16 that required us to -- she was a bond runner, and she
17 needed to become what's called the main license holder.

18 Q The professional bondsman?

19 A Correct, professional bonds license holder. And
20 we went to the attorney who was one of my partners at
21 the time, Larry McKinney, and asked him, because we
22 needed more assets to put up at the clerk of court's
23 office to cover the bonds that were coming over and
24 that were being written.

25 It was about that time the attorney came back and

1 said that the law required that the property that would
2 be --

3 MR. PILLSBURY: Objection to hearsay, Your Honor.

4 THE COURT: Okay. Yeah. I'll allow it just for
5 the purposes --

6 MR. YON: It's not necessarily for the truth of
7 the matter, Your Honor.

8 THE COURT: Yeah. I assume he's going to talk
9 about the percentage needed.

10 Go ahead.

11 THE WITNESS: Yeah. Well, what happened, the
12 lawyer came back and said --

13 BY MR. YON:

14 Q Which lawyer are we talking about?

15 A This is Bill Hood. He was a real estate lawyer.

16 Q Right.

17 A We went to his office and sat down and told him
18 what we were trying to do to get the assets built up in
19 Anderson County, and it had to be property from
20 Anderson County. So I said to Larry, I said, "We have
21 that property." And came back, I guess, I don't know,
22 two or three weeks, whenever it was, Mr. Hood came back
23 and said we can't do that. The statute requires that
24 it be in the name of the main licensed bond holder.

25 Q Do you remember when you first went to Bill Hood

1 to do this?

2 A I don't. I don't recall for a fact. I believe it
3 was in 2009 or 2010 somewhere. It could even have been
4 earlier, but right in that time frame.

5 Q All right. So -- what did you do as a result of
6 that?

7 A When Mr. Hood told us that, we had no choice then
8 but to move Prodigal, which was in mine and her name,
9 into her name, the main license holder, as required by
10 South Carolina. We just followed his instructions.
11 And that's how that happened.

12 Q So that was the reason for the transfer from
13 Prodigal to Mary?

14 A Correct.

15 Q In 2010?

16 A Correct.

17 Q Okay. And did Bill Hood do a title search on this
18 property? Is that how these --

19 A He did, in fact, yes. And that's how we found out
20 that the mortgages that had been satisfied in 1998 and
21 then when Joe Upchurch retired had not been recorded,
22 so my wife went and revisited them. And I guess that's
23 why you see the first, second, third, she wrote to
24 their homes to get them to sign.

25 Q That's why these mortgage satisfactions are all

1 recorded in 2010 at the same time of the conveyance to
2 Mary?

3 A That is correct.

4 Q She was basically cleaning up title?

5 A That's correct. We didn't know that they had not
6 already been recorded.

7 Q But, at any rate, this was found as a result of a
8 title search done by Bill Hood --

9 A Yes, sir.

10 Q -- on this property?

11 A Yes, sir.

12 Q Okay. All right. And is the bail bonds business,
13 you were not the professional bondsperson, it was just
14 your wife; is that correct?

15 A That is correct.

16 Q So it couldn't have been put in your name?

17 A That's correct.

18 Q Not to achieve the purpose you wanted to achieve?

19 A Not according to Mr. Hood, no, sir.

20 Q You couldn't pledge it with it being in anybody's
21 name but Mary's?

22 A No, sir.

23 Q All right. And at that time was Brushy Creek
24 BarBQ up and running at that time?

25 A At what time?

1 Q At the time of getting the transfer.

2 A Yes, sir. Yes, sir, it was.

3 Q Okay. And is Brushy Creek BarBQ still up and
4 running?

5 A Not today. Not today.

6 Q When was it closed?

7 A Approximately the third week, give or take, of
8 December of 2015.

9 Q Why was that?

10 A My wife had had severe arthritis and had -- I
11 actually have these almost memorized, but January 6th
12 she had to have a full knee replacement on one knee and
13 then rehab off of that. Then April 6th she had the
14 other knee fully replaced. Then I believe it was
15 September, they had to break her foot and put it back
16 together. And so we haven't -- that rehab even lasted
17 longer.

18 Q Why did that lead to the closing of Brushy Creek?

19 A Because she's the one that runs it. I mean, there
20 isn't anybody else.

21 Q She ran the business?

22 A It wasn't me. I ate there.

23 Q So physically she couldn't run it anymore?

24 A No. She couldn't hardly walk. She couldn't get
25 up the stairs.

1 Q But she's able to do the bail bonds business?

2 A Yes.

3 Q All right. So the property that was transferred
4 was no longer being used or is no longer making money
5 with the restaurant; is that the problem?

6 A With Brushy Creek?

7 Q Yes.

8 A Not now, no. It's not open.

9 Q Okay. All right.

10 Now, the check that Mr. Pillsbury put into
11 evidence, I'm not sure what the number is, but it was
12 the check that Dr. Anderson wrote to you. You, of
13 course, recall that transaction?

14 A Yes, sir.

15 Q And you agree with Dr. Anderson's characterization
16 of what that was for?

17 A Not at all.

18 Q And what was it for? Why did he give you
19 \$125,000?

20 A Mr. Anderson had -- I had been a pass-through guy
21 with him on two previous occasions, large sums of
22 money, and he had contacted me about investing
23 \$125,000.

24 I made the call to the gentleman in Chicago that
25 we had been dealing with that he knows named Anthony

1 Panico (phonetic). And part of that story that he told
2 is accurate, but some of it is not.

3 Q What part was accurate?

4 A The part that he, in fact, wanted to invest
5 \$125,000. He contacted me. I didn't contact him. I
6 contacted the gentleman in Chicago that he knew and had
7 been there before, been to his house and -- but the
8 part -- it had nothing to do with Florida. He's aware
9 of another investment in Florida and, I guess, for
10 whatever reason he wanted to bring that up. He didn't
11 have anything to do with that at all.

12 Q All right. Now, this was in 2008?

13 A I'm not -- when was the -- if I knew when the
14 check -- yes. 2008.

15 Q All right. So let's get to the gist of it. In
16 2008 when he wrote you this check, did you feel like
17 you were indebted to him for \$125,000?

18 A No, sir. I sent \$125,000 to directly the same
19 person that I had passed through previously.

20 Q Now, in 2010 you signed this note that was put
21 into evidence?

22 A Correct.

23 Q Why did you sign that if you didn't feel like you
24 owed him any money?

25 A Well, it was pretty stupid. I had been meeting

1 with Mr. Anderson, as he said. We had been having
2 lunch. We had become friends. We had a mutual friend
3 that he named, Steve Garrison. Marvin and I met
4 routinely. We talked all the time. He was aware of
5 where his money, but he couldn't get his money out of
6 him.

7 Q Out of who?

8 A Mr. Panico, Anthony Panico. And we had lots of
9 conversations back and forth. And it wasn't just about
10 that money, it was also other monies that he wasn't
11 able to recover. Probably rightfully so, he should,
12 but he didn't. But it wasn't my fault.

13 When we met at the little Italian restaurant,
14 Marvin came in. We had been friends. He talked to me
15 about his wife when he first met her before they got
16 married. I was at their wedding in Las Vegas. We were
17 good -- I tried to tell him everything.

18 But he came in, and our discussions had been that
19 when -- because he didn't know what to believe. He
20 didn't know because he was getting a denial on the
21 other side as well. And he said that if I showed him
22 the checks that were sent, which I do have, were sent
23 to either Mr. Panico or whatever name he gave me to put
24 them in, that everything would be okay.

25 Well, when he came in, it was kind of a surprise

1 that he had that note for me that day.

2 MR. PILLSBURY: Your Honor, I think this is
3 improper parol evidence. I mean, the document speaks
4 for itself.

5 THE COURT: Well, again, since it's a nonjury -- I
6 understand. You're noted for the record.

7 Go ahead.

8 MR. PILLSBURY: Thank you.

9 THE WITNESS: And I had become close friends.
10 Mr. Anderson, as far as I knew, Mr. Garrison had been a
11 very, very good friend of his and had gone -- they had
12 told me he had gone through some things where he had
13 almost died in the hospital, and Mr. Anderson had
14 shared that with me as well.

15 Well, he said, "I need you to sign this if you're
16 a man of character," da, da, da. And I looked at him,
17 and I said, "This isn't right. This won't work." But
18 I did sign it because I thought we had dozens of
19 conversations about this issue, and when I showed him
20 those checks that had been sent -- and they were sent.
21 We have them -- that it would go away. Of course, that
22 was my mistake.

23 Q All right. So, at any rate, in 2010, even when
24 you signed this note, did you feel like you owed
25 Dr. Anderson any money?

1 A Not at all.

2 Q And even to this date --

3 A No. He knows where his money is at.

4 Q All right. So at any time during these transfers
5 or the time these documents were signed, the
6 satisfaction of these mortgages, the transfer of the
7 property from the LLC to Mary, any of that time, during
8 that time you didn't feel like you owed him any money
9 at all; is that correct?

10 A Never, never.

11 Q And he filed the lawsuit a few years after this
12 transfer was made; is that correct?

13 A It was quite some time. I know it was, I don't
14 know, two or three years.

15 Q Well, he put in a letter he wrote in 2011 to you,
16 and he mentioned he was going to a lawyer after that?

17 A Correct. That would be right.

18 Q All right.

19 MR. YON: That's all.

20 THE COURT: Anything on redirect?

21 REDIRECT EXAMINATION

22 BY MR. PILLSBURY:

23 Q Mr. Thomas, you went to go see Mr. Hood in the --
24 I believe he can verify this, but does it sound right
25 that you saw him in the summer of 2009?

1 A I mean, I think that would sound -- I mean, in all
2 fairness, give or take, yes, sir.

3 Q It was like a nine-month period, correct, between
4 when you originally saw him and when the documents were
5 finalized?

6 A I mean, that sounds right based on what I'm
7 looking at right now, yes, sir.

8 Q And so you had an initial consultation about what
9 you might want to do?

10 A Uh-huh.

11 Q And then isn't it true that it wasn't until May of
12 2010 that you went back to see him about doing this
13 transaction and finalizing it?

14 A I'll be glad to look at it. I'm not trying to
15 avoid the -- I just don't know. I just remember us
16 going to see him. We wanted to put up that property.
17 Then I just remember that our next conversation and/or
18 meeting down there. I do remember another one was when
19 he showed us the notes and the documents that he had
20 that we had to switch it, but I don't recall exactly
21 what that time frame was.

22 Q Let me see if I can be more specific.

23 A Yes, sir.

24 Q You had an initial consultation. Essentially
25 nothing happened for a long period of time. After the

1 promissory note was signed, you went to go back and see
2 Mr. Hood about finalizing the transaction; is that
3 fair?

4 A I'd have to look at the dates. The time frame was
5 totally, I think, based on what Mr. Hood had asked us
6 to do whatever we could do and get back to him and
7 whatever he had to do. I mean, we were trying to move
8 along, the best I can remember. I mean, there was --
9 there was no delay. Now, there may appear to be one,
10 but I don't know why.

11 Q Last question. I was surmising through the
12 testimony that the property isn't worth what it was at
13 the time of transfer; is that your belief?

14 A So I make sure I understand, could you ask me that
15 one more time?

16 Q Is the property worth now what it was in 2010, in
17 your opinion?

18 A I would think so, yes, sir.

19 MR. PILLSBURY: That's all I have, Your Honor.

20 THE COURT: Okay. Thank you, sir. You can step
21 down.

22 MR. PILLSBURY: Your Honor that's the plaintiff's
23 case.

24 THE COURT: Okay. Let's take a short break.

25 Do you want to -- have you got a witness you want

1 to call?

2 MR. YON: Mary Thomas can testify. We won't be
3 that long.

4 THE COURT: Let's take ten minutes. I'll be right
5 back.

6 (WHEREUPON, a recess was taken from 12:31 p.m. to
7 12:43 p.m.)

8 THE COURT: Any motions since he's rested?

9 MR. YON: Judge, on the -- on his causes of
10 action, I believe he pled unjust enrichment and
11 fraudulent conveyance. I don't see evidence to support
12 an unjust enrichment cause of action. I'd ask for a
13 directed verdict on that. I don't believe the
14 situation fits that cause of action.

15 And on the fraudulent conveyance, I think it's
16 undisputed that conveyance was between an LLC and to
17 Mary Thomas. And Dr. Anderson admitted he didn't have
18 the judgment against the LLC, the LLC didn't owe him
19 any money. There is a mechanism for pursuing an LLC or
20 a member's interest in an LLC, but as far as proving
21 fraudulent conveyance, the grantor in this situation
22 did not owe Dr. Anderson any money. There was no debt.

23 I understand that Forest Thomas was a member of
24 the LLC; however, his interest in the LLC is just a
25 distributional interest, which is not the same as

1 owning an interest in real estate which is what was
2 transferred.

3 Anyway, I would ask for a directed verdict on that
4 issue also.

5 To the extent I know he's alleged or they mention
6 in his complaint, essentially, alleging that Mr. Thomas
7 is the alter ego of the LLC, I do not believe he has
8 proven that either. Not that it's a cause of action,
9 but I think he has failed in that regard, too.

10 I would ask for a directed verdict on those
11 grounds on both of those causes of action.

12 THE COURT: Yes, sir.

13 MR. PILLSBURY: Your Honor, to begin with, on the
14 fraudulent conveyance, the information -- the documents
15 are clear that the only one that ever signed on behalf
16 of Prodigal Enterprises before the title got switched
17 out of its name was Mr. Thomas. He signed all of those
18 documents. And there are -- because he had, you know,
19 his interest had value and that was what was being
20 divested for no consideration, it's not material that
21 the claim was against Prodigal Enterprises directly.
22 The issue on the transaction was, was there an attempt
23 to defraud creditors. And, clearly, when this property
24 had no liens, it was owned free and clear and he's
25 acknowledged that it was a hundred thousand -- his half

1 of it was one hundred plus thousand dollars that he
2 gave way for nothing, you know, that well defeats the
3 directed verdict standard, Your Honor.

4 THE COURT: Okay. What I'll do, I'll deny it now.
5 I'm going to leave some wiggle room for me if I try to
6 fix this thing, so I'll deny it for now.

7 You can call your first witness, then we will take
8 a break.

9 MR. YON: Call Mary Thomas.

10 MARY KENYON THOMAS,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 THE CLERK: Please give us your full name.

13 THE WITNESS: Mary Kenyon Thomas.

14 DIRECT EXAMINATION

15 BY MR. YON:

16 Q All right. Ms. Thomas, you've heard your husband
17 testify just a few moments ago regarding the bail bonds
18 business; is that correct?

19 A Yes.

20 Q I'm going to ask you a little bit about that.
21 Currently, are you participating or are you active in
22 the bail bonds business?

23 A Yes.

24 Q What is the name of the business?

25 A Bail Pros Bail Bonding LLC.

1 Q And there was a document entered into evidence.
2 It was Plaintiff's Exhibit 17, which shows that Bail
3 Pros Bail Bonding LLC was created -- I'm trying to find
4 that date -- looks like November of 2010. Does that
5 sound right?

6 A Yes.

7 Q That's when the articles of organization were
8 filed with the Secretary of State's office?

9 A Okay.

10 Q Okay.

11 Now, prior to you organizing this business as an
12 LLC, were you actively engaged in being a bail bondsman
13 prior to that?

14 A Yes.

15 Q And how long have you been doing that? How many
16 years?

17 A I started in 2007.

18 Q And did you own your own business at that time or
19 did you work for someone?

20 A In 2010 I was a runner.

21 Q A runner?

22 A Yes, sir.

23 Q Could you tell us what a runner is?

24 A You mainly have a professional bondsman who has to
25 either pledge money or land, property, and a runner may

1 work for just one professional bondsman.

2 Q So you were working under a professional bondsman
3 at that time?

4 A Yes.

5 Q What was the name of the company?

6 A Action Out Bail Bonding.

7 Q And when did you become a professional
8 bondsperson?

9 A It was in 2009.

10 Q Why did you become -- why did you change your
11 status from a runner to a professional bondsperson?

12 A The person that I was working for was arrested for
13 a breach of trust.

14 Q Okay. And so why did you just not get out of the
15 business? Why did you continue?

16 A They were doing a lot of bonds. They were making
17 a lot of money.

18 Q Who is they?

19 A The company was Action Out Bail Bonding with Larry
20 McKinney. Tim Bouche was involved, and Forest was
21 involved.

22 Q So you just saw it as a way to make money,
23 essentially?

24 A Yes, sir. We just needed to pay our bills, yes.

25 Q So did you have to take a test, or what did you

1 have to do to become a professional bondsperson?

2 A Well, since I was already a runner and we had to
3 talk to Willie Seawright, who was over the Department
4 of Insurance as far as the bail bonding, to have it
5 approved, and then I think they -- I don't think I had
6 to take another test, just pay an additional fee at
7 that time, and I became the professional.

8 Q Did you work as a professional under Action Out or
9 did you change the name?

10 A We changed the name to get away from what Tim
11 Bouche had done, and it became just Bail Pros at that
12 time.

13 Q So that was before the LLC, so just Bail Pros?

14 A Correct.

15 Q Was it organized as any kind of official
16 organization at that time?

17 A It was, but I believe Larry McKinney had set it up
18 at the time and just -- I believe they put up some
19 money to be bonding, to use as the bonding.

20 Q So, eventually, how did it come to pass that you
21 needed to get this property on Highway 81, pledge it
22 for -- to secure bonds that you were going to write?
23 How did we get to that point?

24 A We were writing a lot of bonds, and you can tie up
25 a lot of cash, which we didn't put a whole lot, but

1 they didn't want to tie up any more cash. We had
2 talked to Bill Hood about pledging the property, and at
3 that time he said, through the South Carolina State
4 Code of Laws, since I was the professional and I was
5 responsible for the bonds, I -- it had to be in my
6 name.

7 Q So it couldn't have been in the LLC's name
8 pledged?

9 A No, it had to be -- I'm personally responsible.

10 Q So at the time you did this, it was Bail Pros; is
11 that correct?

12 A Yes.

13 Q And then subsequently you made it Bail Pros
14 Bonding LLC?

15 A Only because they were also letting a couple of
16 the runners write some bonds that were not secure,
17 like, \$50,000. I was worried about them being
18 estreated, didn't want them to -- you know, didn't want
19 to have to pay the money if the person ran. So I,
20 since the land was in my name and I was the
21 professional, that's when we set up Bail Pros Bail
22 Bonding LLC so I could separate myself and be a little
23 bit more pickier of writing secure bonds.

24 Q So who are the members of Bail Pros LLC?

25 A Then or now?

- 1 Q Now.
- 2 A Now. I'm the professional, and then I have --
- 3 Q I'm talking the members of the LLC.
- 4 A Oh, just myself.
- 5 Q So it's a sole-member LLC?
- 6 A Yes, sir. Yes, sir.
- 7 Q Okay. And was there anybody else that was ever a
- 8 member of the LLC?
- 9 A No.
- 10 Q Now, you continued to write bonds since the
- 11 property has been pledged; is that correct?
- 12 A Yes.
- 13 Q And you have bonds written against that property
- 14 today?
- 15 A Yes.
- 16 Q Do you have any idea how much?
- 17 A 6-, 700,000 roughly.
- 18 Q I understand it changes all the time.
- 19 A Yes, it does fluctuate, yes.
- 20 Q Is that an accurate ballpark figure? Is that in
- 21 addition to the property, do you have any cash put up?
- 22 A You have to put up at least 10,000, and that's
- 23 what's secured with it. The property and \$10,000 is
- 24 secured.
- 25 Q And that's it, okay.

1 Do you have any idea what would happen to these
2 bonds if the property was conveyed or this transaction,
3 when the property was conveyed to you, if that was
4 declared void, do you have any idea what would happen?

5 A I mean, I'm held responsible for the bonds myself,
6 so that would be between the clerk of court, I guess.

7 Q Do you have any ways of replacing that amount of
8 assets?

9 A No, no.

10 Q All right. Now, the property that was moved from
11 the LLC to you, were you making any money off of that
12 property as far as the rental income, the restaurant?

13 A I mean, not at that time. It just -- it was just
14 for accounting purposes it was set up that way.

15 Q And did that play into your decision at all as far
16 as using that property as pledging it for your bail
17 bonding company?

18 A Well, I mean, it would be a way to help pay our
19 bills.

20 Q In other words, pledge it for your bail bonding
21 company, and it would make more money because you write
22 more bonds?

23 A Yes.

24 Q Okay. And -- all right.

25 MR. YON: That's all the questions I have, Judge.

1 THE COURT: All right.

2 Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. PILLSBURY:

5 Q Ms. Thomas, I apologize for the delay. If you can
6 look at Exhibits 20, 21, and 22. I'll represent to you
7 those were bank records that were produced, I guess, in
8 a rule to show cause in 2014.

9 Do you recognize some of those bank statements?

10 A Yes, sir.

11 Q And I think it's Exhibit 20 is the one that are
12 the check registers.

13 A Okay.

14 Q Is that your handwriting?

15 A Yes.

16 (WHEREUPON, Plaintiff's Exhibit Number 23 was
17 marked for identification.)

18 Q All right. And you are free -- let me mark
19 this -- you are free to look through it and confirm.

20 What I am handing you is marked Exhibit Number 23,
21 which let me start with this. You said that if the
22 transaction was reversed, there would be no way for you
23 to capitalize it or recover, I guess, some of the
24 liability on the bonds. Do you remember that
25 testimony?

1 A Uh-huh.

2 Q Yes? For her benefit.

3 A Yes.

4 Q So these are bank records just for what, one or
5 two years?

6 A Whatever you gave me, yes, sir.

7 Q And is it fair to say that, between you and your
8 husband, you have spent over \$82,000 for USC football
9 tickets and the Gamecock Club?

10 A I have not -- I mean, he would have done that, but
11 no, I don't -- I don't do the tickets.

12 Q But you're the ones that made -- look at -- for
13 example, look at the check registers, the \$1,534 every
14 month.

15 A I mean, I may have wrote something in the check
16 register, but I don't do the tickets.

17 Q Right. But is it fair to say you're members of
18 the Gamecock Club, right? What is it, the Caboose?

19 A Right.

20 Q I should know more about my law school alma matter
21 than I do, but what's the name of the alumni club, the
22 big one that you --

23 A You'll have to ask him. I go to some of the
24 games. I have not been in a few years. But that would
25 be questions for him.

1 Q Okay. But does 82-, \$83,000 seem about right?

2 A Again, you'll have to ask him about the football
3 tickets. I don't do the Gamecock Club.

4 Q So you don't know, within your household budget,
5 whether \$83,000 is spent on football --

6 A Again, you'll have to ask him everything about the
7 tickets. I don't do anything with the tickets.

8 Q When you're going through and making the registry
9 entry --

10 MR. YON: Judge, I think she's asked and answered
11 that several times.

12 THE COURT: You can ask this question. I know
13 where you're going. Go ahead and ask this question and
14 then we'll...

15 BY MR. PILLSBURY:

16 Q If you look at the handwritten notation for
17 \$50,000 for USC tickets, that's your entry, correct?

18 A Right. I would have logged in from the bank
19 statement, yes, sir.

20 Q And at the time you made that entry, you asked no
21 questions?

22 A Again, you'll have to ask him about the tickets.

23 Q Okay. All right.

24 MR. PILLSBURY: That's all I have, Your Honor.

25 THE COURT: Okay. Anything on redirect?

1 MR. YON: No, sir.

2 THE COURT: Okay.

3 Thank you, ma'am. You can step down.

4 Y'all want to start back about 2:15.

5 (WHEREUPON, lunch recess taken from 1:06 p.m. to
6 2:31 p.m.)

7 THE COURT: You can call your first witness.

8 MR. YON: Allan Hill.

9 SHERIDAN ALLAN HILL,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: You may have a seat around here on the
12 witness stand. Once you are seated, please state your
13 name for the record.

14 THE WITNESS: Sheridan Allan Hill.

15 DIRECT EXAMINATION

16 BY MR. YON:

17 Q What is your occupation?

18 A Attorney and CPA.

19 Q You practice in Greenville; is that correct?

20 A That's correct.

21 Q Are you familiar with limited liability company
22 known as Prodigal Enterprises LLC?

23 A Yes, sir. I did the organizational documents for
24 it.

25 Q And as well as Brushy Creek BarBQ Inc.?

1 A Brushy Creek BarBQ Inc., yes, I did at the same
2 time. They were set up simultaneous.

3 Q What was the purpose of setting up those two
4 corporations?

5 A Brushy Creek BarBQ Incorporated was the operating
6 entity for the barbecue restaurant down on, is it 81, I
7 think. And the Prodigal Enterprises LLC is the entity
8 that owned the land. And I typically set them up so
9 the land was owned by the LLC, and it leased the land
10 in a triple net lease arrangement to a corporation.

11 Q And is that the advisable way of setting that up?

12 A Yes. Tax-wise and liability-wise, it's the
13 typical.

14 Q And have you set up other businesses in a similar
15 fashion?

16 A Hundreds.

17 Q All right. And at the time this was done, I
18 believe it was back in the late '90s; does that sound
19 right?

20 A '97, I believe, when I pulled my file.

21 Q And do you remember who it was that actually set
22 that up?

23 A There was two doctors and their spouses, Sinopoli
24 and Cochrane, I think was their names, Forest Thomas
25 and his wife Mary who is sitting beside you, and a guy

1 named Joe Upchurch, an older fellow.

2 Q And after doing the initial transaction or setting
3 up these organizations for them, did they purchase that
4 Highway 81 property at that time?

5 A I'm sorry, did they purchase what?

6 Q Did they purchase the Highway 81 property at that
7 time when these entities were set up?

8 A Yes. It was a fellow that was going into the
9 ministry, as I recall, that was selling that barbecue
10 restaurant, and they had built that new building. And
11 he sold the restaurant and the land, and I want to say
12 he may have financed, it if I recall it correctly.

13 Q And subsequent to that transaction, did you have
14 any dealings with Prodigal LLC or Brushy Creek BarBQ
15 Inc.?

16 A Yeah, I did some transactions after that. I drove
17 straight from Spartanburg here, so I didn't stop to get
18 my file, but there was some transfers of interest. The
19 doctors got out of it and sold their interest. And I
20 think they financed their interest when Forest and Mary
21 bought them out. And Joe Upchurch got out. I want to
22 say they got out at different times, just off the top
23 of my head. I remember going to a little retirement
24 party that Joe Upchurch had. They had a little cake
25 for him and everything, so I want to say he got out

1 before the doctors did.

2 Q There were documents introduced that were actually
3 mortgages that apparently the LLC gave to the doctors
4 and Joe Upchurch when they were buying their part out.
5 Does that sound right?

6 A Yeah, if they were -- if my memory is correct,
7 when they sold their interest, if they financed it,
8 they would want security for that so they took back a
9 mortgage.

10 Q And those mortgages were signed by Forest Thomas
11 as the manager member of the LLC. Is there anything
12 unusual about that?

13 A No.

14 Q I mean --

15 A Need somebody to do it.

16 Q Right. Did that seem out of line that only Forest
17 Thomas would have signed that document?

18 A No. We would have had -- we would have had a
19 resolution or something probably in the file, you know,
20 that said that everybody voted and -- or everybody that
21 was left voted that he was authorized to sign that.

22 Q So it wouldn't be just him running around doing
23 these things on his own. It would have been something
24 the LLC had resolved to do?

25 A Yes, sir.

1 Q And are you familiar with the term "alter ego" in
2 relation to corporations?

3 A Sure.

4 Q At any time during your reputation or doing
5 business for the LLC or this corporation, anything ever
6 concern you that this was being handled as an alter ego
7 situation?

8 A No. They started out with a whole bunch of people
9 in it, so it certainly wouldn't -- any time at the
10 beginning, and then after that, they just continued to
11 run it. I continued to eat barbecue down there, so it
12 was typical of any client of mine. They had a
13 restaurant, they had a corporation that operated it and
14 the LLC that owned the property, and they went along
15 like that probably until --

16 Q And when the Thomases were buying out the other
17 members, they followed your advice on how to handle
18 that?

19 A Right. We would have done the paperwork on it,
20 new certificates. We typically prepare certificates
21 for LLCs and new stock certificates for the
22 corporation.

23 MR. YON: That's all the questions I have. Thank
24 you.

25 MR. PILLSBURY: I don't have any, Your Honor.

1 THE COURT: Okay.

2 Thank you, sir.

3 Can he be released?

4 MR. PILLSBURY: Yes, your Honor.

5 THE COURT: You're released. Thank you.

6 MR. YON: Call Bill Hood.

7 WILLIAM C. HOOD,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: Please state your name for the record.

10 THE WITNESS: My name is William C. Hood.

11 DIRECT EXAMINATION

12 BY MR. YON:

13 Q Mr. Hood, you are the attorney that handled the
14 transfer of the Highway 81 property from Prodigal LLC
15 to Mary Thomas; is that correct?

16 A That's correct.

17 Q I see you brought your file. Is that filed
18 related to that transaction?

19 A It is.

20 Q Have you been able to refresh your memory on this
21 situation?

22 A Yes, I have.

23 Q Do you recall when the Thomases first came to you
24 about this?

25 A Well, it appears I think I first had contact with

1 them on this matter in 2009, sometime around
2 September of that year.

3 Q Do you have any notes there that indicate what
4 they were asking you to do or why they came to see you
5 that day?

6 A Well, it had to do with the fact that Mary Thomas
7 was in the bail bond business, and they were
8 undertaking to use the property in question here to
9 secure bail bonds, and in order to do that, there
10 needed to be a title examination done and certain
11 documents prepared for filing with the clerk of court.

12 Q And did you do that title examination?

13 A I did.

14 Q Or had someone do it.

15 What did the title exam reveal?

16 A Well, initially, as I said, this was in 2009, and
17 the title examination turned up three mortgages on
18 record. And those mortgages were to, I believe, the
19 parties that Mr. Hill just referred to in his
20 testimony, a Mr. Cochrane, Mr. and Mrs. Cochrane,
21 Sinopoli, and to an Upchurch.

22 Q Okay. And, obviously, that posed a problem in
23 transferring or conveying it to Ms. Thomas; is that
24 correct?

25 A That's right. The title needed to be clear as far

1 as the clerk of court was concerned. And as I recall,
2 when that came up, I advised the Thomases of that and,
3 I think, prepared documents to get those. They
4 informed me that that had all been squared away, but
5 the mortgages apparently had never been satisfied, so I
6 prepared the documents to do that.

7 And then it seems some time went by. I'm not sure
8 exactly why. I guess maybe it took a while to get that
9 done. And then on over into the next year is when we
10 actually did the documents, the bail bond documents,
11 for filing.

12 Q Okay. And when you do or when real estate is
13 being pledged for that purpose, can it be in a name
14 other than the professional bondsperson?

15 A Well, that's not a matter of real estate law, but
16 it was my understanding then and I think still is -- as
17 a matter of fact, I think maybe we had in the course of
18 this somewhere a meeting with the then-acting clerk of
19 court, who I believe at that time was Judge Newton was
20 acting as the clerk of court, and there was some
21 discussion about that. But my understanding was that
22 under the regulations that apply to this type thing, it
23 was a requirement that the property to be used as
24 security had to be in the name of the licensed person.

25 Q So do you recall whether or not the Thomases came

1 to you and said, "Hey, we need to put this in Mary's
2 name," or, "We just need to pledge this"? Do you
3 remember what the initial conversation was?

4 A Well, it's been a long time ago so I can't really
5 say other than what I've already said. I know the
6 purpose of it, the gist of the transaction was to get
7 this property pledged for use with bail bonds.

8 Q I guess what I'm saying is, at some point it came
9 to your attention that this needs to be put in Mary's
10 name in order for this to work?

11 A Yes. Now, I don't know whether that came up at
12 the very beginning or somewhere along the way, but,
13 yes, it came to light, came to my attention that in
14 order for it to be pledged for use by her as a licensed
15 bail bondsman, that the property had to be in her name.

16 Q And you recall at least that you had a meeting
17 with Martha Newton, the acting clerk of court at that
18 time, regarding that issue?

19 A Well, I just have references in my file to having
20 had a meeting with her, and I really can't recall
21 specifically what took place at that meeting, but I
22 think we generally discussed the requirements for
23 getting this done. And I think she was communicating
24 with somebody in Columbia getting guidance from them as
25 to what was required.

1 Q And, ultimately, the deed was prepared
2 transferring this property from Prodigal LLC to Mary
3 Thomas in 2010?

4 A That's correct.

5 Q All right. And in the course of the title search
6 that you had done on this piece of property, did you
7 ever run across a lis pendens on this property?

8 A I don't see any reference to it in my notes.

9 Q And there's no judgment against Prodigal LLC?

10 A I hope not.

11 Q Thank you.

12 MR. YON: That's all the questions I have.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION

15 BY MR. PILLSBURY:

16 Q Mr. Hood, did you bill hourly on the project?

17 A Well, no. I mean, for something of this type,
18 it's more of a transactional fee.

19 Q I have a solo office myself, so it sort of depends
20 a little bit. I guess what I was trying to get a sense
21 for, they originally came to you in September of 2009,
22 correct?

23 A Well, that's when the title examination was first
24 done, so I think it was during that time period.

25 Q And do your notes say any -- the satisfactions of

1 mortgages that were prepared, when were those done, do
2 you know?

3 A When were they done?

4 Q Yeah. When did you draft those?

5 A Well, there's nothing in my file that really
6 reflects exactly when I drafted them. I can tell you
7 when they were signed,

8 Q Well, I'll represent -- I know that they were
9 signed in June of 2010. I was trying to get a sense
10 for whether the assignments were done shortly before
11 they were executed or whether they had been drafted and
12 sat around for a while and --

13 A I really honestly don't recall, but my belief
14 would be that they were done sometime fairly
15 contemporaneously with the title search, but I'm not
16 absolutely sure about that.

17 Q I think we spoke once on the phone. You were kind
18 enough to chat with me. And during our conversation,
19 my recollection was you said that you had opened a file
20 in September of 2009 and it just sort of sat dormant
21 until like May of 2010, and then that's when all the
22 activity took place about making the deal happen. Is
23 that fair?

24 A I believe the documents were actually signed and
25 recorded in June.

1 Q And so that is accurate that it sort of sat
2 dormant for a long time until that May 2010 time
3 period?

4 A That would be correct. But as I say, I really
5 just don't recall what was going on during that period
6 of time.

7 MR. PILLSBURY: That's all I have. Thank you,
8 Your Honor.

9 THE COURT: Anything on redirect?

10 MR. YON: Nothing on redirect.

11 THE COURT: Okay. Can he be released from his
12 subpoena?

13 MR. YON: Judge, I just have one more short
14 witness, but he may testify as to a conversation he had
15 with Mr. Hood, so --

16 THE COURT: Okay. You might as well stick around.

17 MR. YON: Call Forest Thomas.

18 FOREST HUNTER THOMAS,

19 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. YON:

22 Q Mr. Thomas, you're still under oath.

23 A Yes, sir.

24 Q Now, you heard Mr. Hood, of course, just testify
25 regarding this transaction that you and your wife went

1 to him for?

2 A Yes, sir.

3 Q Did the dates, the timelines that he spoke about,
4 sound right to you?

5 A Sounded right, yes, sir.

6 Q All right. And when you first approached Mr. Hood
7 about this, doing this transaction, you and your wife,
8 did you have any knowledge of the requirements of who
9 held title as far as pledging the property for bonds?

10 A No, not any detail or specific knowledge. It was
11 actually -- we gained that information from Mr. Hood
12 through some conversation that he had on, I think it
13 was a secondary visit down there. And he had notes
14 where somebody had told him, and I'm just assuming it's
15 whoever he talked to, said we couldn't transfer
16 Prodigal, the LLC, it would have to be in the name of
17 the main bondholder. That was the gist of what I got
18 out of that conversation.

19 Q So when you first went to him, you didn't know the
20 property would have to be transferred?

21 A No, sir, not at all.

22 Q Now, going back to some of the questions that were
23 asked of your wife earlier about football tickets.

24 A Yes.

25 Q Can you explain the transaction involving the

1 football tickets?

2 A I can. I've been a member of the Gamecock Club.
3 This is my 20th year. If you are a member of the
4 Gamecock Club or IPTAY, you know that basically what
5 you do is you build seniority. As my children were
6 growing up, I took them. We had a number of season
7 tickets. We were able to afford them at that time.
8 And we took them to games, home and away, every year.

9 For the past, I don't know, just let's say seven,
10 eight, nine years, I don't know how long, I have had to
11 sell those tickets. And I have six and ten -- 14
12 season tickets. Six of them are in the zone, which a
13 friend of mine, Beatty Ashmore, actually buys every
14 year. Those are \$1,100 apiece just for the seat fee
15 for that. Then you pay 365 times the ticket price.
16 And he has four of my parking places. The reason I
17 maintain those -- and then the other two gentlemen do
18 the same. They get first right. The idea is not to
19 lose that seniority in the tickets in the hope that
20 maybe some day I'll get to go back.

21 Q Basically, are you buying these tickets with your
22 own money?

23 A No. Each of those send me a check every year for
24 the seat. The seat fee for each of those seats are
25 different. Like the ones in the zone are much higher

1 than others. So it's added up based on that. They pay
2 one third of the Gamecock Club fee, each of those. Two
3 of them sends me a check and one through a PayPal
4 account. And that money then, in turn, is spent to
5 make the payments that you see.

6 MR. YON: All the questions I have.

7 THE COURT: Sir, anything?

8 MR. PILLSBURY: Nothing, Your Honor.

9 THE COURT: Thank you, sir.

10 You can step down.

11 MR. YON: I would ask that Mr. Hood be allowed to
12 be released.

13 THE COURT: Thank you, Bill. Have a good one.

14 MR. YON: That's the defendants' case, Judge.

15 THE COURT: Anything from the plaintiff in
16 response?

17 MR. PILLSBURY: None, Your Honor.

18 THE COURT: Okay. I would assume you both would
19 make motions for a directed verdict, which, you know --

20 MR. PILLSBURY: Yes, Your Honor.

21 THE COURT: You're protected for the record.

22 MR. YON: Okay.

23 THE COURT: I'll incorporate all your other
24 motions.

25 Look, I'm going to go through this. I'm in

1 Beaufort next week, so it will be the week after next
2 before you hear from me. So don't be sitting by the
3 phone. If I need something, I'll let y'all know.
4 Thank y'all.

5 (WHEREUPON, proceedings concluded at 2:50 p.m.)

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

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STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON)	
Dr. Marvin Anderson,)	
)	
Plaintiff,)	
v.)	Case No(s).
)	2014-CP-04-02419
Mary Thomas, Forest Thomas,)	
Prodigal Enterprises, LLC,)	
Brushy Creek BarBq, Inc.,)	
and Bail Pros Bail Bonding, LLC)	
)	
Defendants.)	

ORIGINAL
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 9, 2017, before The Honorable J. Cordell Maddox in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Rodney F. Pillsbury, Esq.
Appearing for Plaintiff.

William Patrick Yon, Esq.,
Appearing for Defendants.

Vivian H Cross
Circuit Court Reporter - 10th Judicial Circuit (Retired)
221 Fairforest Way, Apt. 24106
Greenville, SC 29607
crossv697@aol.com

Dr. Marvin Anderson -v- Mary Thomas, et al.
Case No. 2014-CP-04-02419
Hearing of August 9, 2017
Before The Honorable J. Cordell Maddox

2

I-N-D-E-X

DR. MARVIN ANDERSON

-v-

MARY THOMAS, ET AL.
(MOTIONS HEARING)
(2014-CP-04-02419)
AUGUST 9, 2017

	<u>PAGE</u>
COLLOQUY	3
REPORTER'S CERTIFICATE:	9

E-X-H-I-B-I-T-S

IDENTIFICATION ENTERED

*****NO EXHIBITS PRESENTED*****

PROCEEDINGS

(10:55 A.M.)

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THE COURT: The next one we have is *Marvin Anderson versus Mary Thomas?*

4

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MR. PILLSBURY: Yes.

6

MR. YON: Yes, Your Honor.

7

THE COURT: A Motion to Alter or Amend?

8

MR. YON: Yes, Your Honor.

9

THE COURT: Whose Motion is it?

10

MR. YON: It's our Motion, Judge---

11

THE COURT: Okay.

12

MR. YON: ---the Defendants'.

13

THE COURT: All right; yes, sir.

14

15

MR. YON: Uh, Your Honor, just to familiarize you with this, this was tried non-jury before Your Honor, um, earlier this year. Um, the Plaintiff brought actions against my clients -- I represent all the Defendants, some individuals and corporate, um, Defendants -- um, under the Statute of Elizabeth and Unjust Enrichment. Um, your -- um, you issued an Order, um, awarding the Plaintiff a judgement against one of the Defendants, Mary Thomas, in the amount of a hundred-and-twenty-five-thousand dollars. Now, we had filed this action, um, under this Motion, um, seeking to alter or amend that judgement.

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First of all, to clarify under the Order, um, the basis for awarding the judgement under the Statute Elizabeth, um, and/or Unjust Enrichment, to give the -- some factual background, uh, this action involved a piece of property on Highway 81 that was being used by the Defendants -- some of the Defendants --

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1 to -- as a restaurant. And the property was held in an LLC, um, since the early
2 '90's when several people got together and formed the LLC. Um, and it had been
3 used for that purpose since that time.

4 Um, in two thousand, I believe, eight (2008), um, the Plaintiff loaned
5 Mr. Thomas -- Forest Thomas -- um, some money that was unsecured. And
6 about the same time, Mr. Thomas and his wife, who were the sole remaining
7 owner members of the LLC, um, had decided to use the property for another
8 purpose other than renting it to a business -- the restaurant business -- because
9 she was the one running the business, her health was declining, and she just
10 wasn't able to do it anymore so they were gonna have to shut the business
11 down. The property was not going to be making any money under that situation
12 so she was gonna start the Bail Bonds business and they were gonna transfer the
13 property, um -- or, put the property up as collateral for the Bail Bonds business.
14 And that's what started the transfer of this property.

15 Um, during that time -- or, around that same time, the Plaintiff was filing a
16 law suit against Mr. Thomas because he had not paid back this money that he
17 alleged that Mr. Thomas owed him. He subsequently obtained a judgement
18 against Mr. Thomas. Um, it was only against him; nobody else, it was just
19 Mr. Thomas. And, prior -- but prior to that, several -- a couple years before that,
20 um, the Thomases had gone to Bill Hood about getting this property put up as
21 collateral for the Bail Bonds business. They were informed that the property
22 had to be in the name of the Bail Bondsman -- the licensed bondsman -- it could
23 not remain in the name of the LLC, so they transferred the property to Mary
24 Thomas, individually, for that purpose.

25 After the Plaintiff had obtained this judgement against Mr. Thomas, um,

1 he brought this action -- Mr. Pillsbury brought this action, um, trying to set aside
2 that transfer from the LLC to Mary Thomas under the Statute of Elizabeth
3 alleging there was going to be fraudulent intent to defraud a creditor, who is the
4 Plaintiff in this. And he also added the Unjust Enrichment Action.

5 Now, we filed a Motion because, like I said, the -- the most -- the Order
6 awarded Mary -- or, awarded the Plaintiff a-hundred-and-twenty-five-thousand-
7 dollar judgement against Mary Thomas. It found that the -- the transfer of the
8 property did violate the Statute Elizabeth; however, since there were bonds
9 issues against the property, it was encumbered, that -- and plus that the fact that
10 the LLC was dissolved -- that it would serve no purpose or was practically -- it
11 would be legally impossible to void the transfer so therefore awarded the
12 hundred-and-twenty-five-thousand dollar judgement against Mary Thomas.

13 Now, our first basis for the Motion under Statute Elizabeth is that that
14 applies to transfers by a judgement debtor, um, of real estate to avoid a creditor.
15 Now, the grantor in this case was the LLC. Throughout the Order, the grantor --
16 Forest Thomas is referred to as the grantor. In our Motion we cite the law of --
17 dealing with LLC's and ownership of real estate. A member of the LLC does not
18 own the real estate; the LLC owns the real estate. Mr. -- or, Doctor Anderson
19 admitted he did not have a judgement against the LLC; he had a judgement
20 against Forest Thomas. The law also states that the members of the LLC don't
21 own any interest in the real estate; what they own is a distributional interest in
22 the proceeds from the LLC. That's totally -- entirely different. Throughout this
23 Order, Forest Thomas is referred to as the grantor, not the LLC. In fact, we've
24 argued the Statute of Elizabeth wouldn't be applicable in this case since
25 Doctor Anderson doesn't have a judgement against the LLC; he has it against

1 Forest Thomas. So that's the first thing.

2 Secondly, under Unjust Enrichment, they are required to show that the
3 Defen- -- or, the Plaintiffs confer some sort of benefit upon the Defendant and
4 that, um, they are kept to his detriment. Now in this case, the -- we admit that
5 the LLC transferred its real estate to Mary Thomas; it was not -- it was
6 transferred under nominal consideration and -- however, the Plaintiff, Doctor
7 Anderson, did not confer any benefit to her by that transfer. And, I don't think
8 Unjust Enrichment would even be applicable in this case. Um, the facts just don't
9 support what the law requires them to show in order to obtain a judgement
10 against that. So, we're asking The Court alter or amend, Judge. You need to
11 clarify the basis for awarding a ruling under Statute Elizabeth regarding towards
12 the LLC and not the judgement debtor and also, um, explaining how an award of
13 Unjust Enrichment would be applicable in this case when the Plaintiff has not
14 conferred any sort of benefit upon the Defendant upon which the judgement was
15 granted.

16 In the alternative, we're asking that The Court grant the Directed Verdict
17 Motions of the Defendants as to both causes of action. Um, return a verdict in
18 favor of the Defendants.

19 **THE COURT:** Okay; yes, sir.

20 **MR. PILLSBURY:** Yes, Your Honor. Um, I had submitted a Brief; I believe
21 it was e-filed this morning. I don't know if The Court -- and it's a very brief Brief.
22 Um, if -- if I may approach?

23 **THE COURT:** Yeah.

24 **MR. PILLSBURY:** Um. The -- the -- as a -- as a refresher, Your Honor,
25 the -- the key in this case was the timing and the sequence of the events.

1 When -- when they had the discussion about setting up this transaction, that --
2 that project sat on the shelf until everything was coming due to my client, which
3 is why the evidence supported the finding of The Court.

4 The -- the first point that I would make is that there was no real -- these
5 are same arguments that they made at Directed Verdict that The Court denied.
6 And so, there is no new argument being made at this point on why a -- a
7 judgement of any kind would be improper under either cause of action.

8 Um, the -- the second thing that I would point out -- and this was really
9 sort of the focus of my Brief -- both of these causes of action are, uh, equitable.
10 And this is one of those situations where the facts are so unique about how the
11 transactions unfolded that it doesn't neatly fit in any particular box. For
12 example, they -- the Defendants, um, who were the sole owners of the LLC, this
13 property was an unencumbered asset. Uh, they made the transfer and they
14 dissolved the LLC the same day. So, the really -- under Statute -- traditional
15 Statute Elizabeth, there's no way to really unwind that transaction because the
16 LLC is dissolved. Um, and -- uh, when you look at the -- the case law that I -- I
17 cited, is that when -- when the parties know that they're on notice that a claim is
18 coming, um, and then they take actions down the road, it -- it -- it's not a
19 requirement that the judgement be finalized or the claim be finalized. And the
20 way that The Court entered judgement in this case is the best way to craft a
21 remedy under its equitable powers that puts the Plaintiff in the position that he
22 should be in. Which is, that he already has a judgement against Defendant
23 Forest Thomas which has been returned nulla bona for three-hundred-and-
24 something-thousand-dollars. This asset, uh, which was a-two-hundred-plus-
25 thousand-dollar asset, was given to her and he had a half interest in that. But

1 that was -- and -- and it's just tracing the equitable interest that he had in the
2 LLC and the property that she got as a pure benefit for no consideration.

3 Uh, and -- and that's why the judgement should stand.

4 **THE COURT:** Okay. Um, and so this has been filed -- e-filed?

5 **MR. PILLSBURY:** Yes, Your Honor.

6 **THE COURT:** Have you had a chance to respond to this if you want a
7 chance?

8 **MR. YON:** Well, Judge, I -- I just got his Brief. I would point out that I
9 briefed the law in my Motion when I filed that---

10 **THE COURT:** Okay.

11 **MR. YON:** ---so that stands as my Brief. Um...

12 **THE COURT:** And this was an odd set of circumstances. I -- I'll make sure
13 that I agree with what I thought I agreed with at one time. I -- but I haven't
14 seen -- I haven't seen the file yet. I haven't even looked at the electronic file
15 because yesterday was such a -- a long day. So I'll read your, um, memorandum
16 and your Motion and let you-all know something in the next few weeks. I'm
17 going to be in New York from tomorrow through next Tuesday. Um, sometime
18 in the next week or two.

19 **MR. PILLSBURY:** Okay.

20 **THE COURT:** Okay?

21 **MR. PILLSBURY:** All right; thank you, Your Honor.

22 **THE COURT:** Very good.

23 (WHEREUPON, HEARING ENDED AT 11:07 A.M.)

24 *****END OF REQUESTED TRANSCRIPT*****

25

P1

This is a LEGAL COPY of Your check. You can use it the same way you would use the original check.

10/30/2008

MARVIN L. ANDERSON, D.M.D., P.A.
2111 ANDERSON FIELD
SPRINGVILLE, LA 70582

64-133-811
3000

One hundred twenty five thousand 00/100

10/27 Forest Thomas

DOLLARS \$125,000.00

REMOVES GUM
612700A

0003000

0003000

RECEIVED BANK

10/30/2008

10/27/08

10/27/08

10/27/08

Do not endorse or write below this line.

Posting Date Oct 30 2008

DB/CR D

Amount \$125,000.00

Item Bank 60

Account [REDACTED]

Check No 3000

Posting Seq No [REDACTED]

Teller Seq No 0000000000

Forest Thomas
112 Merri Lane
Easley, SC 29642

177

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P2

PROMISSORY NOTE

Simpsonville, South Carolina
March 2, 2010

\$125,000.00

WHEREAS, Marvin Anderson, at the request of and promise to re-pay of Forest Thomas, loaned to Forest Thomas on October 30, 2008 the sum of One Hundred Twenty-Five Thousand and 00/100ths (\$125,000.00) DOLLARS with interest accruing at the rate of Forty-Five (45%) Percent per month; and

WHEREAS, Forest Thomas agreed to re-pay the principal and interest in the amount of Fifty Six Thousand Two Hundred Fifty (\$56,250.00) Dollars on or before July 30, 2009; and

WHEREAS, neither said principal nor interest has been paid and the parties hereto are desirous of memorializing their agreement.

NOW THEREFORE, FOR VALUE RECEIVED, Forest Thomas, promises to pay to Marvin Anderson, or order, the sum of One Hundred Eighty-One Thousand Two Hundred Fifty and 00/100ths (\$181,250.00) DOLLARS with interest thereon from date of this note at FORTY-FIVE (45%) PERCENT Per Annum on the unpaid balance until paid. The said below described payment shall be payable at Marvin L Anderson, or such other place as the holder hereof may designate in writing, in payments as follows:

1. Payments shall be due and payable on the 1st day of every month, beginning April 1, 2010 and ending September 1, 2010, in the amount of \$34,294.71 per month.

We have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When we make a prepayment, we will tell the Noteholder in writing that we are doing so.

We may make a full prepayment or partial prepayments without paying any prepayment charge. The Noteholder will use all of my prepayments to reduce the amount of principal that we owe under this Note. If we make a partial prepayment, there will be no changes in the due date unless the Noteholder agrees in writing to those changes.

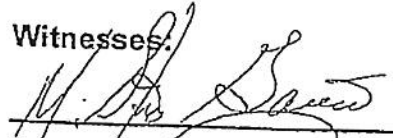
If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, the undersigned hereby agrees to pay a late charge to the Note Holder equal to \$25.00. The late charge shall be paid promptly but only once on each late payment.


If default be made in the payment of any installment under this Note, and if the default is not made good within Thirty (30) days, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default in the payment of this Note, and if it is placed in the hands of an attorney at law for collection, the undersigned hereby agrees to pay all costs for collection, including a reasonable attorney's fee. In the event of default said interest shall continue to accrue on all unpaid balances until date of judgment, after which they shall continue to accrue at the statutory rate of interest.


Presentment, protest and notice are hereby waived.

Given under the hand(s) and seal(s) of each party on the day above written.

Witnesses:







FOREST THOMAS

Signed at Napolis 3-9-10
near of Anderson

Friday, October 21, 2011

Copy of letter
to sign over
stocks in Glucotek
CPA has now issued 1099

P3

Dear Forest,

I have enclosed a copy of my cancelled check of \$125,000.00 (check # 3000) written to you on October 30, 2008, and a copy of the promissory note you signed, with witnesses, to secure the \$125,000.00 debt. To date, I have not received any of the funds or even a mention of your intentions to pay the money you owe me. I have acquired legal counsel and advice from my CPA.

I will accept shares of stock in Glucotek totaling \$125,000.00 in value for collateral for this debt. The documents enclosed must be signed and notarized and stock certificates must be delivered to Steve Garrison to hold until such stock can be redeemed to pay off your promissory note.

You will have only ten days from the date of this letter to sign and deliver stocks and signed documents. Please contact Steve so you can schedule the delivery of the enclosed items.

This offer is only good for 10 days, and after such time, I have no option but to send a 1099 to the IRS. This is only fair and reasonable since you have made no attempt to settle the payment of your obligation.

Sincerely,

M.I. Anderson

PROMISSORY NOTE

\$125,000.00

Simpsonville, South Carolina
March 2, 2010

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We may make a full prepayment or partial prepayments without paying any prepayment charge. The Noteholder will use all of my prepayments to reduce the amount of principal that we owe under this Note. If we make a partial prepayment, there will be no changes in the due date unless the Noteholder agrees in writing to those changes.

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Presentment, protest and notice are hereby waived.

Given under the hand(s) and seal(s) of each party on the day above written.

Witnesses:

[Handwritten signature]
[Handwritten signature]

[Handwritten signature]
FOREST THOMAS

Signed at Napolis 3-9-10
near Anderson

\$125,000.00

PROMISSORY NOTE

Simpsonville, South Carolina
March 2, 2010

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PLEDGE AGREEMENT

THIS AGREEMENT made and entered effective the ____ day of _____, 2011, by and between FOREST THOMAS (sometimes hereinafter referred to as "Forest") and MARVIN ANDERSON (sometimes hereinafter referred to as "Marvin").

WHEREAS, Marvin has loaned Forest One Hundred Eighty-one Thousand Two Hundred Fifty and No/100 (\$181,250.00) Dollars as evidenced by a Promissory Note of Forest for such amount effective March 2, 2010 ("Promissory Note"); and

WHEREAS, as security for the loan, Forest has delivered to M. Steven Garrison _____ (_____) shares of common stock of Glucotec, Inc., representing _____ (%) of the Corporation, along with a fully executed Stock Power Assignment (separate from the certificate) covering the pledged shares.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties agree that this pledge is on the following terms:

1. All dividends and/or distributions hereafter declared upon or with respect to the shares are to be received by Forest, as well as all voting rights and privileges thereto.
2. All new shares created in respect of the above shares are to be held by M. Steven Garrison for Marvin the same as the original shares, and all costs of assessments thereon shall be paid by Forest.
3. M. Steven Garrison, upon Marvin being repaid the principal sum of One Hundred Eighty-one Thousand Two Hundred Fifty and No/100 (\$181,250.00) Dollars, as provided in the Promissory Note, shall transfer back to Forest, all shares and all newly created shares, if any.
4. In the event that Forest shall default in payment of the Promissory Note (or any other promissory note due Marvin), on or before the due date, or shall default in payment of costs or assessments on the stock when they shall become due, Marvin may, at any time thereafter, on giving Forest 15 days written notice of intention so to do, sell so many of the shares and any such new shares as aforesaid, at such price or prices, and in such manner in all respects, as Marvin shall deem proper in his sole and exclusive discretion without review by Forest or any other party including judicial review, and out of the proceeds of sale Marvin may reimburse himself the amount then due to him with interest thereon, up to such time, and all costs or expenses in connection with such sale, rendering to Forest such surplus which may arise from said sale.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

Forest Thomas

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Marvin Anderson

encumbrances, ANDERSON may, at his option, pay said taxes and assessments or pay off said encumbrances, and any amount so expended shall be deemed additional principal money and shall be due and payable when payments under the Note are due in addition to the amounts then otherwise due and payable.

IT IS FURTHER AGREED that if Debtor shall well and truly do and perform all things specified to be done, and shall pay or cause to be paid unto ANDERSON the sums required under the Note when due, then this Security Agreement is to be void.

BUT IF DEBTOR SHALL FAIL or neglect to pay the sums due under the Note, or any interest thereon as the same may hereinafter become due, or any amount expended by ANDERSON as herein provided, then, upon default by Debtor for a period of thirty (30) days, then the unpaid balance of sums due under the Note, together with all accrued interest, shall at the option of ANDERSON become due and payable. Then and in either event ANDERSON, his heirs and assigns, shall have the right, which is hereby given or granted without suit or process, to take possession of the said Property, or any part or portion thereof, or may take the same wherever it may be found and may sell the same or so much thereof as may be necessary at public or private sale in the County of Greenville, or elsewhere if ANDERSON desires, and shall apply the proceeds of said sale to the discharge of the debt owed ANDERSON, together with interest, costs and expense of sale and seizing of said Property, including an amount of attorney's fees to be added as part of said debt, and secured thereby, and thereafter pay any surplus to Debtor or his successors and assigns.

IN WITNESS WHEREOF, Debtor has executed this Agreement the ____ day of _____, 2011.

WITNESSES:

Forest Thomas

STATE OF SOUTH CAROLINA)
)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared before me _____ and made oath that (s)he was present and saw the within named, Forest Thomas, sign, seal and as his act and deed deliver the foregoing Security Agreement and that (s)he with _____ witnessed the execution thereof.

SWORN to and Subscribed before me this _____ day of _____, 2011.

(L.S.)
Notary Public for South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

STOCK POWER

FOR VALUE RECEIVED, I, Forest Thomas, do hereby sell, assign and transfer unto Marvin Anderson, of Greenville, South Carolina, _____ () shares of stock of Glucotec, Inc., standing in the name of Forest Thomas, on the books of said Corporation represented by Certificate No. _____ herewith, and do hereby irrevocably constitute and appoint Peter J. Manning to transfer the said stock on the books of the within named Company with full power of substitution in the premise. This Stock Power is made pursuant to the Promissory Note which was effective March 2, 2010.

Date: _____

Forest Thomas

Witness

Witness

203 569 6835

INCORPORATED UNDER

NUMBER
137



THE LAWS OF SOUTH CAROLINA

SHARES
33,333

GLUCOTEC, INC.

Authorized Common Stock 40,000,000 Shares

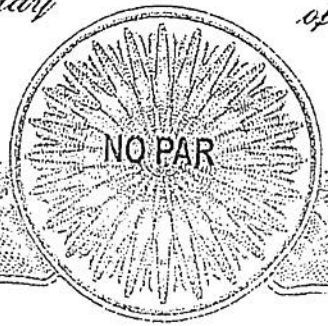
This Certifies that Forest and Mary Thomas (JV) is the registered holder of Thirty Three Thousand Three Hundred Thirty Three (33,333) Shares of GLUCOTEC, INC.

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

FULLY PAID AND NON-ASSESSABLE

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this 11th day of May A. D. 2007

Richard A. Howell
PRESIDENT



Lou A. Kalite
SECRETARY

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CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Jul 22 2016

REFERENCE ID: 1607221208401



STATE OF SOUTH CAROLINA
SECRETARY OF STATE
JIM MILES
ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

Prodigal Enterprises, LLC

The undersigned deliver the following articles of organization to form a South Carolina limited liability company pursuant to § 33-44-202 and § 33-44-203 of the 1976 South Carolina Code, as amended.

1. The name of the limited liability company which complies with § 33-44-105 of the South Carolina Code of 1976, as amended is

Prodigal Enterprises, LLC

2. The office of the initial designated office of the limited liability company in South Carolina is:

**Hwy 81 N.
Piedmont, South Carolina 29673**

3. The initial agent for service of process of the limited liability company is

Forest Thomas

and the street address in South Carolina for this initial agent for service of process is:

**Hwy 81 N.
Piedmont, South Carolina 29673**

4. The name and address of each organizer is:

(a) **Forest Thomas** **112 Merri Lane
Easley, SC 29642**

(b) **Mary Thomas** **112 Merri Lane
Easley, SC 29642**

97-029652BC
191

Jul 22 2016

REFERENCE ID: 1607221208401


Mark H. Hammond
Secretary of State of South Carolina

- (c) Angelo Sinopoli 104 Greenleaf Lane
Easley, SC 29642
- (d) Melissa Sinopoli 104 Greenleaf Lane
Easley, SC 29642
- (e) Leonard James Cochrane, Jr. 109 Westchester Way
Easley, SC 29642
- (f) Leslie Deneau Cochrane 109 Westchester Way
Easley, SC 29642
- (g) Joe E. Upchurch 4120 Old Easley Bridge Road
Greenville, SC 29611
5. Check this box only if the company is to be term company. If so, provide the term specified:

December 31, 2047
6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.
7. Check this box only if one or more of the members of the company are to be liable for its debts and obligations under Section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.
-
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time:

Upon Receipt
9. Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

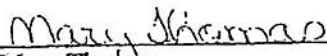
Jul 22 2016

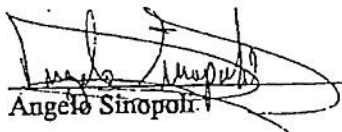
REFERENCE ID: 1607221208401

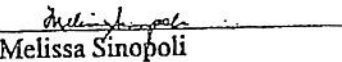

Mark Hammond
CLERK OF THE STATE OF MISSISSIPPI

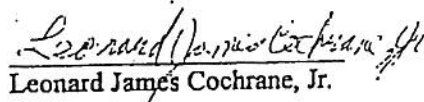
10. Signature of each organizer:

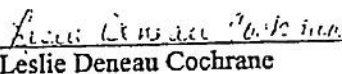

Forest Thomas


Mary Thomas


Angelo Sinopoli


Melissa Sinopoli


Leonard James Cochrane, Jr.


Leslie Deneau Cochrane


Joe E. Upchurch

Date: 9-23-97

P5

97028901 10/15/1997 B2759 P119

Space above this line for recording information

STATE OF SOUTH CAROLINA)	
)	TITLE TO REAL ESTATE
COUNTY OF ANDERSON)	

KNOW ALL MEN BY THESE PRESENTS, that PR INVESTMENTS, A SOUTH CAROLINA GENERAL PARTNERSHIP, herein referred to as Grantor, for and in consideration of the sum of TWO HUNDRED FIVE THOUSAND AND 00/100 (\$205,000.00) Dollars to me paid by PRODIGAL ENTERPRISES, LLC, hereinafter referred to as Grantee, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns forever;

SEE EXHIBIT "A" ATTACHED

This being the same property conveyed unto the Grantor herein by deed from Boyd D. Mills and Helen D. Mills dated October 4, 1994, and recorded on October 5, 1994, in the RMC Office for Anderson County, S.C., in Deed Book 1966 at Page 238.

This conveyance is made subject to any and all existing reservations, easements, rights of way, zoning ordinances, setback lines, and restrictions or protective covenants that may appear of record, on the recorded plat(s), or on the premises.

Grantee's Address: Highway 81 North
Piedmont, SC 29673

Tax/Map No. 214-00-08-006

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, his heirs and assigns forever.

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AND THE GRANTOR does hereby bind the Grantor, and the Grantor's heirs, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against the Grantor and the Grantor's heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS my Hand and Seal this 7th day of October, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven.

Signed, Sealed and Delivered in the Presence of:

Rex A. Rice

PR Investments, A South Carolina General Partnership

S. Allan Hill

By: Rex A. Rice
Rex A. Rice

By: John C. Pearson
John C. Pearson

By: Wendy C. Pearson
Wendy C. Pearson

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

97028901
FILED, RECORDED, INDEXED
10/15/1997 10:58A
Bk:2759 Pg:119 St Fee:533.00
Rec Fee:10.00 Co Fee:225.50 Pages:3
R M C DEPARTMENT ANDERSON CO
Shirley H. McElhannon,
Administrator

Personally appeared before me the undersigned witness and made oath that (s)he saw the within-named Grantor sign, seal and, as their act and deed, deliver the within written Deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 7th day of October, 1997.

S. Allan Hill
Notary Public for South Carolina
My commission expires: 11/3/98

Rex A. Rice

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98015837 05/19/1998 B2962 P256

State of South Carolina)
County of ANDERSON) Mortgage of Real Estate and Security Agreement CAROLINA FIRST BANK

THIS MORTGAGE AND SECURITY AGREEMENT made this 5th day of May 1998 by PRODIGAL ENTERPRISES, LLC (hereinafter referred to as "Mortgagor") and given to Carolina First Bank (hereinafter referred to as "Mortgagee"), whose address is 917 Haywood Road, Greenville, SC 29615

WITNESSETH:
THAT WHEREAS, PRODIGAL ENTERPRISES, LLC is indebted to Mortgagee in the maximum principal sum of ONE Hundred Fifty thousand and no/100 (\$150,000.00) Dollars (\$150,000.00), which indebtedness is evidenced by the Note made by Produgal Enterprises, LLC, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, which is 5 years after the date hereof; the terms of said Note and any agreement modifying it are incorporated herein by reference.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the said Mortgagor, for and in consideration of the aforesaid indebtedness and in order to secure the payment thereof together with any renewals or extensions or modifications thereof upon the same or different terms or at the same or different rate of interest and also to secure in accordance with Section 29-3-30, as amended, Code of Laws of South Carolina (1976): (i) all future advances and readvances that may subsequently be made to Mortgagee by Mortgagee evidenced by the aforesaid Note, or by other promissory notes, and all modifications, renewals and extensions thereof; and (ii) all other indebtedness of Mortgagee to Mortgagee, now or hereafter existing, whether direct or indirect, the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed \$150,000.00, plus interest thereon, all charges and expenses of collection incurred by Mortgagee including court costs and reasonable attorney's fees, has granted, bargained, sold, released and by these presents does grant, bargain, sell and release unto the Mortgagee, its successors and assigns, the following described property (collectively hereinafter referred to as the "Property"):

SEE EXHIBIT "A" ATTACHED

TOGETHER WITH

- (a) all singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto;
(b) all buildings and improvements of every kind and description now or hereafter erected or placed on the Land (the "Improvements") and all materials intended for construction, reconstruction, alteration and repair of such Improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises hereby conveyed immediately upon the delivery thereof to the aforesaid Land, and all fixtures and articles of personal property now or hereafter owned by the Mortgagor and attached to or contained in and used in connection with the aforesaid Land and Improvements or any part thereof or derived from or acquired by any proceeds of the Land or Improvements or any part thereof, including, but not limited to, all goods, furniture, appliances, furnishings, apparatus, machinery, equipment, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment, telephone systems, televisions and television systems, computer systems and fixtures and appurtenances thereto and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to the Land and Improvements in any manner (the "Tangible Personality");
(c) all easements, rights of way, egress of land, streets, ways, alleys, passages, sewer rights, wharves, water courses, water rights and powers, and all estates, rights, ditches, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinafter described, or which hereafter shall in any way belong, relate or be appurtenances thereto, whether now owned or hereafter acquired by Mortgagee, and the reversion and reversions, remainder and remainders, reversion and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, as law as well as in equity, of Mortgagee of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (a) and (b) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (a) and (b) hereof or any part thereof, or to any rights appurtenant thereto (together the "Easements and Other Interests");
(d) as additional collateral and further security for the indebtedness, the Mortgagor hereby conditionally assigns to the Mortgagee all the security deposits, rents, issues, profits, revenues, accounts, accounts receivable, contract rights, rights in payments for goods sold or leased or services rendered, checks, notes, drafts, acceptances, instruments, deposit accounts, chattel paper, documents, securities, rentals receivables, installment payment obligations, book debts, actions, choses in action, judgments, awards, money, general intangibles, other forms of obligations and receivables, all monies due or to become due and all returned or repossessed goods now or hereafter pertaining to or resulting from the Property or any part thereof or constituting or derived from or acquired by any proceeds of the Property or any part thereof (the "Rents and Profits") reserving only the right to the Mortgagee to collect the same as long as there shall exist no Default (as hereinafter defined). Together with all proceeds, including cash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of the Rents and Profits or any part thereof, and all replacements, modifications, renewals and substitutions thereof or thereto;
(e) as additional collateral and further security for the indebtedness, the Mortgagor does hereby assign to the Mortgagee and grants to the Mortgagee a security interest in all of the rights, title and interest of the Mortgagor in and to any and all leases (including equipment leases), rental agreements, management contracts, franchise agreements, construction contracts, architect's contracts, technical services agreements, licenses and permits now or hereafter affecting the Property (the "Intangible Personality") or any part thereof, and the Mortgagor agrees to execute and deliver to the Mortgagee such additional instruments, in form and substance satisfactory to the Mortgagee, as may hereafter be requested by the Mortgagee to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by the Mortgagee to any lease, rental agreement, management contract, franchise agreement, construction contract, technical services agreement or other contract, license or permit, or to impose upon the Mortgagee any obligation with respect thereto;
(f) all proceeds of any sales or other dispositions of the property described in paragraphs (a), (b), (c), (d) and (e) hereof or any part thereof, including cash proceeds, noncash proceeds, insurance proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing ("Proceeds"); and
(g) all the Tangible Personality which comprise a part of the Property shall, as far as permitted by law, be deemed to be affixed to the aforesaid land and conveyed therewith. As to the balance of the Tangible Personality and the Intangible Personality, this Mortgage shall be considered to be a security agreement which creates a security interest in such items for the benefit of the Mortgagee. In that regard, the Mortgagor grants to the Mortgagee a security interest in the Tangible Personality, the Intangible Personality and the Rents and Profits, and grants to Mortgagee all of the rights and remedies of a secured party under the South Carolina Uniform Commercial Code.

TO HAVE AND TO HOLD all and singular the Property unto Mortgagee and the successors or assigns of Mortgagee forever.

MORTGAGOR covenants that Mortgagee is lawfully seized of the Property in fee simple absolute, that Mortgagee has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly provided herein. Mortgagee further covenants to warrant and forever defend all and singular the Property unto Mortgagee and the successors or assigns of Mortgagee from and against Mortgagee and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED ALWAYS, nevertheless, and it is the true intent and meaning of Mortgagee and Mortgagee, that if Mortgagee pays or causes to be paid to Mortgagee the debt secured hereby, the estate hereby granted shall cease, determine and be utterly null and void; otherwise said estate shall remain in full force and effect.

IT IS AGREED that Mortgagor shall be entitled to hold and enjoy the Property until a Default has occurred.

MORTGAGOR further covenants and agrees with Mortgagee as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Mortgagee absolutely and unconditionally assigns to Mortgagee all Rents and Profits arising from the Property; provided however, that so long as no Default has occurred, Mortgagee shall be entitled, as trustee for the use and benefit of the Mortgagee, to collect and retain all such Rents and Profits as they become due and payable (but in no event for more than two (2) months in advance); provided, however, that if the Rents and Profits exceed the payments due under the Note, Mortgagee may, at its option, first, for the operation and benefit of the Property and, second, for the general benefit of Mortgagee, upon the occurrence of a Default Mortgagee may, at its option, remove the Mortgagee as trustee for the collection of the Rents and Profits and appoint any other person including, but not limited to, itself as a substitute trustee to collect, receive, accept and use all such Rents and Profits in payment of the obligations secured by this Mortgage, in such order as Mortgagee shall elect in its sole and absolute discretion, whether or not Mortgagee takes possession of the Property. Mortgagee hereby directs each of the respective tenants under all leases of any part of the Property now and hereafter existing (the "Leases"), and any rental agent, to pay to Mortgagee all such Rents and Profits, as may now be due or shall hereafter become due, upon demand for payment thereof by Mortgagee without any obligation on the part of any such tenant or rental agent to determine whether or not a Default has in fact occurred. Upon a Default, the permission hereby given to Mortgagee to collect, receive and accept such Rents and Profits as trustee shall terminate and such permission shall not be reinstated upon a cure of the Default without Mortgagee's specific written consent. Further, upon a Default, Mortgagee shall immediately turn over to Mortgagee all Rents and Profits in the actual or constructive possession of Mortgagee, its affiliates, contractors, or its agents, together with an accounting thereof. Exercise of Mortgagee's rights under this Section, and the application of any such Rents and Profits to the obligations secured by this Mortgage, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto, but shall be cumulative and in addition to all other rights and remedies of Mortgagee.

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"EXHIBIT A"

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921, and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Preeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Slide 825 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear.

This is that property conveyed to Mortgagor by deed of PR Investments, A South Carolina General Partnership recorded October 15, 1997 in the RMC Office for Anderson County, S.C., in Deed Book 2759 at Page 119.

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2. **Maintenance.** Mortgagee will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Mortgagee will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair or restoration. Mortgagee will not remove or demolish any improvement or fixture which is now or hereafter part of the Property and will cut no Timber on the Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.

3. **Insurance.** Mortgagee will keep all improvements and fixtures which are now or hereafter part of the Property insured by such company or companies as Mortgagee may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood and earthquake. Such insurance will be payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and will not be cancellable by either the Insurer or the Insured without at least ten (10) days prior written notice to Mortgagee. Mortgagee hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed to Mortgagee upon any policy of insurance covering any portion of the Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Mortgagee from any such policy of insurance may, at the option of Mortgagee, (i) be applied by Mortgagee to payment of any sum secured by this Mortgagee, (ii) be applied to the replacement, repair or restoration of any portion of the Property damaged or destroyed, or, (iii) be released to Mortgagee upon such conditions as Mortgagee may determine, or, (iv) be used for any combination of the foregoing purposes. No portion in any indemnity payment which is applied to replacement, repair or restoration to any portion of the Property of which is released will deliver to Mortgagee the original to each policy of insurance required hereby. Mortgagee will keep the Property continuously insured as herein required and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium coming due on any such policy of insurance and termination of any such policy of insurance. Mortgagee will furnish to Mortgagee at least ten (10) days prior to such expiration or termination the original to a renewal or replacement policy of insurance meeting the requirements hereof. If Mortgagee fails to insure the Property as herein required, Mortgagee may, after giving (10) days written notice to Mortgagee, so insure the Property in the name of Mortgagee or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagee, including the right to unearned premiums, shall vest in the purchaser of the Property at foreclosure, and Mortgagee hereby appoints Mortgagee as the attorney in fact of Mortgagee to assign all right, title and interest of Mortgagee in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. **Taxes and Assessments.** Mortgagee will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and will deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent provided, however, that Mortgagee shall be entitled by appropriate proceedings to contest the amount or validity of such tax, assessment or charge so long as the collector of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagee deposits with the authority to which such tax, assessment or charge is payable or with Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. **Environmental Site Assessment.** The Mortgagee shall pay when due the cost of providing to Mortgagee, at Mortgagee's request from time to time, a then-current environmental site assessment, audit, or survey ("Assessment") of the Property, which Assessment shall be prepared by an environmental auditor acceptable to Mortgagee, in Mortgagee's sole discretion; provided, however, that Mortgagee shall make such request no more frequently than once every year unless the Note is being renewed, extended, modified, or accelerated, or unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such Assessment more frequently than once a year. Notwithstanding anything herein to the contrary, Mortgagee may require an Assessment upon each renewal, extension or modification of the Note or upon the occurrence of any Default under the Note or upon the commencement of any foreclosure proceedings against or acceptance of any deed in lieu of foreclosure on the Property. If Mortgagee fails to pay the cost of any Assessment or the cost of any remediation to the Property to correct deficiencies highlighted in the Assessment, when due, Mortgagee may pay such cost on Mortgagee's behalf and the same shall constitute principal under the Note and be secured by the Property, and shall be due and payable on demand. Borrower's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of Default entitling the Mortgagee to accelerate the maturity of the Note.

6. **Appraisal.** Mortgagee shall pay when due the cost of providing to Mortgagee, at its request from time to time, a then-current appraisal of the market value of the Property prepared by an appraiser or by another appraiser acceptable to Mortgagee in its discretion; provided, however, that Mortgagee shall make such request no more frequently than once every third year, unless Mortgagee is required by any law, regulation, order, or other directive from any regulatory agency having jurisdiction over Mortgagee to obtain any such appraisal more frequently than every third year. If Mortgagee fails to pay such cost when due, Mortgagee may pay such cost on Mortgagee's behalf and the same shall constitute principal under the Note, shall bear interest at the applicable rate provided in the Note, and shall be due and payable on demand. Mortgagee's failure to pay such amount (with all accrued interest) in full within ten (10) days of the date of such demand shall constitute an event of Default entitling the Mortgagee to accelerate the maturity of the Note.

7. **Expenditures by Mortgagee.** If Mortgagee fails to make payment for restoration or repair to the Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the legal rate. Payments made for taxes by Mortgagee shall be a first lien on the Property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority to this Mortgage. Mortgagee shall pay to Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

8. **After Acquired Property.** The lien of this Mortgage will automatically attach, without further act, to all fixtures now or hereafter located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Property of any part thereof.

9. **Condemnation.** Mortgagee shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power or eminent domain of any portion of the Property. Mortgagee hereby assigns to Mortgagee the right to collect and receive any payment or award in which Mortgagee would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Any such payment or award received by Mortgagee may, at the option of Mortgagee, (i) be applied by Mortgagee to payment of any sum secured by this Mortgage, (ii) be applied to the repair or restoration of the remaining portion of the Property or, (iii) be released to Mortgagee upon such conditions as Mortgagee may determine, or, (iv) be used for any combination of the foregoing purposes. No portion in any indemnity payment which is applied to replacement, repair or restoration to any portion of the Property or which is released to Mortgagee shall be deemed a payment against any sum secured by this Mortgage.

10. **Transfer.** At the option of the Mortgagee, the indebtedness secured by this Mortgage shall become due and payable if, without the written consent of the Mortgagee, the Mortgagee shall convey away the mortgaged premises, or if the title shall become vested in any other person in any manner whatsoever than by death to the Mortgagee. It is understood and agreed that in consideration for the consent to the Mortgagee to any transfer of title to the mortgaged premises, the Mortgagee at its option may charge a loan transfer fee and/or require changes in the rate of interest, term to loan, monthly payments to principal and interest and other terms and conditions to this Mortgage and/or the Note secured hereby.

11. **Default.** A "Default" shall be the occurrence or existence of any of the events listed in the Loan Agreement.

12. **Remedies.** In addition to the remedies set forth in the Loan Agreement, upon the occurrence of a Default, Mortgagee may, without notice to Mortgagee, declare all sums secured by this Mortgage immediately due and payable and may commence proceedings to collect such sums, foreclose this Mortgage and sell the Property. If default shall be made in the payment of any amount due under the Note, the Mortgagee or any other instrument securing the Note, then, upon Mortgagee's demand, Mortgagee will pay to Mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagee shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable attorney's fees and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof. At the foreclosure Mortgagee shall be entitled to bid and to purchase the Property and shall be entitled to apply the debt secured hereby, or any portion thereof, in payment for the Property. In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of the sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest. The remedies provided to Mortgagee in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Mortgagee independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised. Without in any way limiting the generality of the foregoing, Bank shall also have the following specific rights and remedies:

- To make any repairs to the collateral which Bank deems necessary or desirable for the purposes of sale.
- To exercise any and all rights of set-off which Bank may have against any account, fund, or property of any kind, tangible or intangible, belonging to Borrower which shall be in Bank's possession or under its control.
- To cure such defaults, with the result that all costs and expenses incurred or paid by Bank in effecting such cure shall be additional charges on the Loan which bear interest at the interest rate of the Loan and are payable upon demand.
- If the Loan is secured by a lien on any real property, to foreclose on such real property and to pursue any and all remedies available to Bank at law or in equity, and in any order Bank may desire, in Bank's sole discretion.

13. **No Waiver of One Default to Affect Another.** No waiver of any event of default hereunder shall extend to or affect any subsequent or any other event of default then existing, or future any right, power or remedy consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Property from the lien of this Mortgage or any other instrument securing the Note; or (e) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, the Mortgage or otherwise of Mortgagee, or any subsequent purchaser of the Property or any part thereof or any maker, assignor, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any event of Default then existing or of any subsequent event of Default nor, except as otherwise expressly provided in a instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby.

14. Appointment of Receiver. Upon the occurrence of a Default, Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bond, costs of repairs to the Property, premiums in insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligations or liability of Mortgagee as lessor or landlord of the Property and then in the name secured by this Mortgage. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagee, anyone claiming under or through Mortgagee, or anyone having an interest in the Property by reason of anything done or left undone by Mortgagee under this paragraph. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents, Mortgagee, at its sole option, may advance moneys to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagee to Mortgagee secured by this Mortgage. Unless Mortgagee and Mortgagee agree in writing to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagee requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagee under applicable law. The entering upon and taking and maintaining of control of the Property by Mortgagee or the receiver and the application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Mortgagee hereunder.

15. Waiver by Mortgagee. Mortgagee may, in the sole discretion of Mortgagee, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Mortgagee of any other right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

16. Waiver by Mortgagee. Mortgagee understands that upon default hereunder, among other remedies set out herein and in the above referenced Promissory Note, the Mortgagee may foreclose upon the mortgaged premises and ask for a deficiency judgment pursuant to Section 29-3-669, South Carolina Code of Laws (1976). The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days bid and may decrease the amount of any deficiency owing in connection with the transaction. THE MORTGAGOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH LEANS THE RIGHT TO BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

17. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid by U.S. Mail, certified mail, return receipt requested, to the party to whom directed to the address stated above or to the latest address of such party known to the party sending the same. Rejection of or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

18. Greater Estate. In the event that Mortgagee is the owner of a leasehold estate with respect to any portion of the Property and, prior to the satisfaction of the indebtedness and the cancellation of this Mortgage record, Mortgagee obtains a fee estate in such portion of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of Mortgagee, be and become subject to the security lien of this Mortgage.

19. Imposition of Tax. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Mortgagee, the Mortgagee will promptly pay any such tax on or before the due date thereof, and if the Mortgagee fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits Mortgagee from making such payment or would penalize Mortgagee if Mortgagee makes such payment, then the entire balance of the Loan shall become due and payable upon demand at the option of the Mortgagee.

20. Changes, etc. Neither the Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagee and Mortgagee relating to the Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

21. Partial Foreclosure. In the event the Property is comprised of more than one parcel of real property, Mortgagee hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Property prior to the foreclosure or exercise of said remedies against other portions of the Property.

22. Security Agreement. This Mortgage constitutes a security agreement within the meaning of and shall create a security interest under the Uniform Commercial Code as adopted by the State of South Carolina and as amended from time to time. The addresses for the Mortgagee as debtor and the Mortgagee as secured party are set forth in the introductory paragraph to this Mortgage.

23. Miscellaneous.

- (a) It is understood and agreed that all indebtedness of Mortgagee to Mortgagee at any time hereafter existing resulting from advances and readvances hereunder, now or hereafter made by Mortgagee to Mortgagee, regardless of whether such advances and readvances are made at the option of the Mortgagee, or otherwise, will be secured by this instrument up to the maximum principal amount hereinabove set forth, plus interest thereon, court costs and attorney's fees until all of said indebtedness has been satisfied in full.
- (b) The agreements herein shall inure to the benefit of Mortgagee, its successors and assigns, and any successor or assign of Mortgagee may make advances hereunder, and all advances and all other indebtedness of Mortgagee to such successor or assign shall be secured hereby.
- (c) Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagee or by or on behalf of the Mortgagee shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.
- (d) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.
- (e) If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if such clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage, in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect.
- (f) This Mortgage shall be construed and enforced in accordance with the laws of South Carolina.
- (g) INTEREST SECURED BY THIS MORTGAGE MAY BE DEFERRED, ACCRUED OR CAPITALIZED.

IN WITNESS WHEREOF, Mortgagee has executed this Mortgage under seal the day and year first above written.

Signed, sealed and delivered in the presence of:

W. W. Williams

W. W. Williams

W. W. Williams

[Individual Mortgagee]
(Seal)

Prodigal Enterprises, LLC

LLC

[Partnership or LLP]

[General Partner or Manager]

[Corporation]

By: _____

Title: _____

Attest by: _____

Title: _____
(Corporate Seal)

State of South Carolina

County of ANDERSON

PRODIGAL ENTERPRISES, LLC

To

CAROLINA FIRST BANK

98015837
Mortgage of Real Estate

Received in Office

this 05th day of

MAY 19/1998 A.D.

and recorded in Book

Page

B2962 P260

COU
S.C.

State of South Carolina)

County of Greenville)

Probate

Before me, the undersigned Notary Public, personally appeared the undersigned witness who, being duly sworn, deposed and said that (s)he saw Partner of Prodigal Enterprises, LLC, and deliver the foregoing Mortgage and Security Agreement and that (s)he, together with the other subscribing witnesses, warranted the execution thereof.

SWORN to and subscribed before me this 05th day of May 19 98

Notary Public for South Carolina (SEAL)

My commission expires: 11/3/99

W. W. Willey

EW
SECURE TITLE
311 PITTIGRU STREET
GREENVILLE, SC 29601

98015837
FILED, RECORDED, INDEXED
05/19/1998 01:16P
Bk: B2962 Pg: 256
Rec Fee: 11.00 St Fee: 0.00
Co Fee: 0.00 Pages: 5
REGISTER OF DEEDS, ANDERSON CO
Shirley McElhannon,
Register of Deeds

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P7

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, PRODIGAL ENTERPRISES, LLC

(hereinafter referred to as Mortgagor) is well and truly indebted unto ANGELO SINOPOLI AND MELISSA SINOPOLI, whose address is 104 Greenleaf Lane, Easley, SC 29642,

(hereinafter referred to as Mortgagee), as evidenced by the Mortgagor's Promissory Note of even date herewith, the terms of which are incorporated herein by reference, in the sum of Forty Four Thousand Seven Hundred Twenty & no/100 Dollars (\$44,720.00) due and payable as per the terms of said Note, with interest thereon from May 5, 1998, at the rate of Eight and 50/100 (8 1/2%) percent per annum, to be paid as per the terms of said Note, with the full debt, if not paid earlier, due and payable on November 5, 1998;

AND WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purposes;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof, and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for his account by the Mortgagee, and also in consideration of the further sum of Three Dollars (\$3.00) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its heirs, successors and assigns, the following described real estate:

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921, and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Freeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Slide 825 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear.

DERIVATION: This is that property conveyed to Mortgagor by deed of PR Investments, A South Carolina General Partnership recorded October 15, 1997 in the RMC Office for Anderson County, S.C., in Deed Book 2759 at Page 119.

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TO HAVE AND TO HOLD, all and singular, the said premises unto the Mortgagee, its heirs, successors and assigns, forever.

The Mortgagor covenants that it is lawfully seized of the premises hereinabove described, in fee simple absolute; that it has good right and is lawfully authorized to sell, convey or encumber the same; and that the premises are free and clear of all liens and encumbrances except as provided herein or as previously disclosed by the Mortgagor to the Mortgagee. The Mortgagor further covenants to warrant and forever defend all and singular the said premises unto the Mortgagee forever from and against the Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor further covenants and agrees as follows:

- (1) That this mortgage shall secure the Mortgagee for such further sums as may be advanced hereafter, at the option of the Mortgagee, for the payment of taxes, insurance premiums, public assessments, repairs or other purposes pursuant to the covenants herein. This mortgage shall also secure the Mortgagee for any further loans, advances, readvances or credits that may be made hereafter to the Mortgagor by the Mortgagee so long as the total indebtedness thus secured does not exceed the original amount shown on the face hereof. All sums so advanced shall bear interest at the same rate as the mortgage debt and shall be payable on demand of the Mortgagee unless otherwise provided in writing.
- (2) That it will keep the improvements now existing or hereafter erected on the mortgaged property insured as may be required from time to time by the Mortgagee against loss by fire and any other hazards specified by the Mortgagee, in an amount not less than the mortgage debt, or in such amounts as may be required by the Mortgagee, and in companies acceptable to it, and that all such policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of, and in form acceptable to the Mortgagee, and that it will pay all premiums therefor when due; and that it does hereby assign to the Mortgagee the proceeds of any policy insuring the mortgaged premises and does hereby authorize each insurance company concerned to make payment for a loss directly to the Mortgagee, to the extent of the balance owing on the mortgage debt, whether due or not.
- (3) That it will keep all improvements now existing or hereafter erected in good repair and, in the case of a construction loan, that it will continue construction until completion without interruption and, should it fail to do so, the Mortgagee may, at its option, enter upon said premises, make whatever repairs are necessary, including the completion of any construction work underway, and charge the expenses for such repairs or the completion of such construction to the mortgage debt.
- (4) That it will pay, when due, all taxes, public assessments and other governmental or municipal charges, fines or other impositions against the mortgaged premises; and that it will comply with all governmental and municipal laws and regulations affecting the mortgaged premises.
- (5) That it hereby assigns all rents, issues and profits of the mortgaged premises from and after any default hereunder and agrees that, should legal proceedings be instituted pursuant to this instrument, any judge having jurisdiction may, at Chambers or otherwise, appoint a receiver of the mortgaged premises, with full authority to take possession of the mortgaged premises and collect the rents, issues and profits, including a reasonable rental to be fixed by the Court in the event said premises are occupied by the Mortgagor and, after deducting all charges and expenses attending such proceeding and the execution of its trust as receiver, shall apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.
- (6) That if there is a default in any of the terms, conditions or covenants of this mortgage, or of the note secured hereby, then, at the option of the Mortgagee, all sums then owing by the Mortgagor to the Mortgagee shall become immediately due and payable, and this mortgage may be foreclosed. Should any legal proceedings be instituted for the foreclosure of this mortgage, or should the Mortgagee become a party of any suit involving this mortgage or the title to the premises described herein, or should be debt secured hereby or any part thereof be placed in the hands of any attorney at law for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee, and a reasonable attorney's fee shall thereupon become due and payable immediately or on demand, at the option of the Mortgagee, as a part of the debt secured hereby and may be recovered and collected hereunder.
- (7) That the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the note secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions and covenants of the mortgage, and of the note secured hereby, that then this mortgage shall be utterly null and void; otherwise to remain in full force and virtue.

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(8) That the covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, personal representatives, administrators, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the Mortgagor's hand and seal this 5th day of May, 1998.

Signed, sealed and delivered in the presence of:

[Signature]
[Signature]

[Signature]
PRODIGAL ENTERPRISES, LLC (SEAL)

BY: _____ (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness who, on oath, states that (s)he saw the within-named Mortgagor(s) sign, seal and, as its act and deed, deliver the foregoing written Mortgage of Real Estate and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

[Signature]

SWORN TO AND SUBSCRIBED before me this
5th day of May, 1998.

[Signature] (SEAL)
Notary Public for South Carolina

My commission expires: 11/3/98

98015839
FILED, RECORDED, INDEXED
05/19/1998 01:18P
Rk:2962 Pg:264
Rec Fee:10.00 St Fee:0.00
Co Fee:0.00 Pages:3
REGISTER OF DEEDS, ANDERSON CO
Shirley McElhannon,
Register of Deeds

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STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

MORTGAGE OF REAL ESTATE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, PRODIGAL ENTERPRISES, LLC

(hereinafter referred to as Mortgagor) is, well and truly indebted unto L. JAMES COCHRANE, JR., AND LESLIE D. COCHRANE, whose address is 109 Westchester Way, Easley, SC 29642, (hereinafter referred to as Mortgagee), as evidenced by the Mortgagor's Promissory Note of even date herewith, the terms of which are incorporated herein by reference, in the sum of Forty Four Thousand Seven Hundred Twenty & no/100 Dollars (\$44,720.00) due and payable as per the terms of said Note, with interest thereon from May 5, 1998, at the rate of Eight & 50/100 (8 1/2%) percent per annum, to be paid as per the terms of said Note, with the full debt, if not paid earlier, due and payable on November 5, 1998;

AND WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purposes;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof, and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for his account by the Mortgagee, and also in consideration of the further sum of Three Dollars (\$3.00) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its heirs, successors and assigns, the following described real estate:

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921, and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Freeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Slide 825 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear.

DERIVATION: This is that property conveyed to Mortgagor by deed of PR Investments, A South Carolina General Partnership recorded October 15, 1997 in the RMC Office for Anderson County, S.C., in Dead Book 2759 at Page 119.

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TO HAVE AND TO HOLD, all and singular, the said premises unto the Mortgagee, its heirs, successors and assigns, forever.

The Mortgagor covenants that it is lawfully seized of the premises hereinabove described, in fee simple absolute; that it has good right and is lawfully authorized to sell, convey or encumber the same; and that the premises are free and clear of all liens and encumbrances except as provided herein or as previously disclosed by the Mortgagor to the Mortgagee. The Mortgagor further covenants to warrant and forever defend all and singular the said premises unto the Mortgagee forever from and against the Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor further covenants and agrees as follows:

(1) That this mortgage shall secure the Mortgagee for such further sums as may be advanced hereafter, at the option of the Mortgagee, for the payment of taxes, insurance premiums, public assessments, repairs or other purposes pursuant to the covenants herein. This mortgage shall also secure the Mortgagee for any further loans, advances, readvances or credits that may be made hereafter to the Mortgagor by the Mortgagee so long as the total indebtedness thus secured does not exceed the original amount shown on the face hereof. All sums so advanced shall bear interest at the same rate as the mortgage debt and shall be payable on demand of the Mortgagee unless otherwise provided in writing.

(2) That it will keep the improvements now existing or hereafter erected on the mortgaged property insured as may be required from time to time by the Mortgagee against loss by fire and any other hazards specified by the Mortgagee, in an amount not less than the mortgage debt, or in such amounts as may be required by the Mortgagee, and in companies acceptable to it, and that all such policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee, and that it will pay all premiums therefor when due; and that it does hereby assign to the Mortgagee the proceeds of any policy insuring the mortgaged premises and does hereby authorize each insurance company concerned to make payment for a loss directly to the Mortgagee, to the extent of the balance owing on the mortgage debt, whether due or not.

(3) That it will keep all improvements now existing or hereafter erected in good repair and, in the case of a construction loan, that it will continue construction until completion without interruption and, should it fail to do so, the Mortgagee may, at its option, enter upon said premises, make whatever repairs are necessary, including the completion of any construction work underway, and charge the expenses for such repairs or the completion of such construction to the mortgage debt.

(4) That it will pay, when due, all taxes, public assessments and other governmental or municipal charges, fines or other impositions against the mortgaged premises; and that it will comply with all governmental and municipal laws and regulations affecting the mortgaged premises.

(5) That it hereby assigns all rents, issues and profits of the mortgaged premises from and after any default hereunder and agrees that, should legal proceedings be instituted pursuant to this instrument, any Judge having jurisdiction may, at Chambers or otherwise, appoint a receiver of the mortgaged premises, with full authority to take possession of the mortgaged premises and collect the rents, issues and profits, including a reasonable rental to be fixed by the Court in the event said premises are occupied by the Mortgagor and, after deducting all charges and expenses attending such proceeding and the execution of its trust as receiver, shall apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.

(6) That if there is a default in any of the terms, conditions or covenants of this mortgage, or of the note secured hereby, then, at the option of the Mortgagee, all sums then owing by the Mortgagor to the Mortgagee shall become immediately due and payable, and this mortgage may be foreclosed. Should any legal proceedings be instituted for the foreclosure of this mortgage, or should the Mortgagee become a party of any suit involving this mortgage or the title to the premises described herein, or should be debt secured hereby or any part thereof be placed in the hands of any attorney at law for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee, and a reasonable attorney's fee shall thereupon become due and payable immediately or on demand, at the option of the Mortgagee, as a part of the debt secured hereby and may be recovered and collected hereunder.

(7) That the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the note secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions and covenants of the mortgage, and of the note secured hereby, that then this mortgage shall be utterly null and void; otherwise to remain in full force and virtue.

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(8) That the covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, personal representatives, administrators, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the Mortgagor's hand and seal this 5th day of May, 1998.

Signed, sealed and delivered in the presence of:

S.P.R. 4/1
W. R. [Signature]

[Signature] (SEAL)
PRODIGAL ENTERPRISES, LLC

BY: FREEST THOMAS (SEAL)
MANAGER / MEMBER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness who, on oath, states that (s)he saw the within-named Mortgagor(s) sign, seal and, as its act and deed, deliver the foregoing written Mortgage of Real Estate and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

[Signature]

SWORN TO AND SUBSCRIBED before me this 5th day of May, 1998.

S.P.R. 4/1 (SEAL)
Notary Public for South Carolina

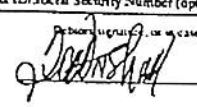
My commission expires: 11/3/98

98015838
FILED, RECORDED, INDEXED
05/19/1998 01:18P
Bk: 2962 Pg: 261
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 3
REGISTER OF DEEDS, ANDERSON CO
Shirley McElhannon,
Register of Deeds

206

162

98015942 05/19/1998 B2963 P160

1 FINANCING STATEMENT - FORM UCC-1 STATE OF SOUTH CAROLINA OFFICE OF SECRETARY OF STATE JIM MILES		For Office Use Only FILED-CLERK'S OFFICE ANDERSON COUNTY, S.C. MAY 19 3 02 PM '98 # 21653	
Debtor #1 (Last Name, First, Middle, Mailing Address) Brushy Creek Bar-B-Q, Inc. Highway 81 North Piedmont, SC 29673 Tax ID/Social Security Number (optional):			
Debtor #2 (Last Name, First, Middle, Mailing Address) Prodigal Enterprises, LLC Highway 81 North Piedmont, SC 29673 Tax ID/Social Security Number (optional):			
Debtor #3 (Last Name, First, Middle, Mailing Address) Tax ID/Social Security Number (optional):		Name and Address of Secured Party Angelo Sinopoli & Melissa Sinopoli 104 Greenleaf Lane Easley, SC 29642 Leonard James Cochran, Jr. & Leslie Denebu 109 Westchester Way Easley, SC 29642 Cochran	
Debtor (guarantor) or, in cases below, Secured Party signature: 		Assignee and Address:	
Is the debtor a transmitting utility as defined by §36-9-105(a)?		If applicable, describe real estate and, unless the collateral is crops, name the record owner of the debtor does not have an interest of record in the real estate, and this statement will be filed in the real estate records. The below described collateral includes: <input type="checkbox"/> crops <input type="checkbox"/> fixtures <input type="checkbox"/> building number <input type="checkbox"/> minerals or interests arising from minerals	
Signature of Secured Party instead of Debtor is permissible when: <input type="checkbox"/> Collateral was subject to a security interest perfected by filing a financing statement in another state when brought into South Carolina. <input type="checkbox"/> Debtor's location has been changed to South Carolina. <input type="checkbox"/> Additional filing is necessary to obtain a security interest in certain types of proceeds (See §36-9-306 (3)). <input type="checkbox"/> The filing as to the collateral has lapsed. <input type="checkbox"/> The debtor's name, identity or corporate structure has changed (See §36-9-302(3)).		Description of the real estate: See Exhibit A attached	
Description of Collateral: <input checked="" type="checkbox"/> Check if products of collateral are also covered. See Exhibit B attached		TERMINATION STATEMENT: This Statement of Termination of Financing is provided to a Filing Office for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown below. Name and Title of Secured Party: Signature of Secured Party/Assignee of Record: _____ Date: _____	
Return Acknowledgement Copy to: Merline & Thomas, P.A. P.O. Box 10796 Greenville, SC 29603		1. Except for pre-paid account users, enclose filing fee of \$8.00. 2. Each additional debtor name is \$2.00. Additional pages \$2.00. Indexing in Real Estate records is an additional \$2.00. 3. For Pre-Paid Sec. of State Accounts: Account #: _____ Client #: _____ Amount: _____	

FOR FILING OFFICE USE - DO NOT WRITE BELOW THIS LINE - (Form: Y104DD-H18-0455) Form UCC-1 11/81/92

UCC-1 Exhibits

EXHIBIT A

Real Estate

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 3.01 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921, and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Freeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Plat Book 225 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear..

EXHIBIT B

Collateral

All personal property and fixtures in which Brushy Creek Bar-B-Q, Inc. or Prodigal Enterprises, LLC have any interest, now owned or hereafter existing or acquired, and wherever located, tangible and intangible, including but not limited to the following:

- a. all furniture, fixtures, equipment and appliances wherever located;
- b. all inventory now owned or hereafter acquired and products and proceeds thereof;
- c. all accounts, contract rights, and accounts receivable, now or hereafter in existence and all proceeds thereof, and all returned or repossessed goods arising from or relating to any of said accounts or rights;
- d. all substitutes and replacements for, accessions, attachments, and other additions to, and tools, parts, and equipment used in connection with any of the above;
- e. all property similar to the above hereafter acquired;
- f. all general intangibles, now owned or hereafter acquired or arising;
- g. all cash or non-cash proceeds of any of the foregoing, including insurance proceeds; and
- h. all ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes and related electronic data processing software) evidencing an interest in or relating to the above;

Together with all products, proceeds, increases, substitutions, replacements, additions, license fees, rentals, successions, accessions and parts thereto.

P10

STATE OF SOUTH CAROLINA)

MORTGAGE OF REAL ESTATE

COUNTY OF ANDERSON)

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, Prodigal Enterprises, LLC (hereinafter referred to as Mortgagor) is truly indebted to Joe E. Upchurch whose address is 304 Galerie Drive, Easley, South Carolina 29642 (hereinafter referred to as Mortgagee), as evidenced by an Installment Promissory Note of even date, the terms of which are incorporated herein by reference, in the sum of Forty Thousand and no/100 Dollars (\$40,000.00) due and payable as per the terms of said Note.

AND WHEREAS, the Mortgagor may hereafter become indebted to the said Mortgagee for such further sums as may be advanced to or for the Mortgagor's account for taxes, insurance premiums, public assessments, repairs, or for any other purposes;

NOW, KNOW ALL MEN BY THESE PRESENTS, that the Mortgagor, in consideration of the aforesaid debt, and in order to secure the payment thereof, and of any other and further sums for which the Mortgagor may be indebted to the Mortgagee at any time for advances made to or for his account by the Mortgagee, and also in consideration of the further sum of Three Dollars (\$3.00) to the Mortgagor in hand well and truly paid by the Mortgagee at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Mortgagee, its heirs, successors and assigns, the following described real estate:

All that certain piece, parcel or tract of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J.C. Smith, III, dated January 31, 1986, and recorded in the Office of the Clerk of Court for Anderson County, SC, in Plat Book 94, at Page 921, and according to a more recent plat entitled "Survey for Prodigal Enterprise, L.L.C." by Freeland & Associates, Inc., dated October 6, 1997 and recorded in the RMC Office for Greenville County, S.C., in Slide 825 at Page 4, reference being made hereto to said more recent plat for the exact metes and bounds as upon said plat appear.

DERIVATION: This is that property conveyed to Mortgagor by deed of PR Investments, A South Carolina General Partnership recorded October 15, 1997 in the RMC Office for Anderson County, S.C., in Deed Book 2759 at Page 119.

TO HAVE AND TO HOLD, all and singular, the said premises unto the Mortgagee, its heirs, successors and assigns, forever.

The Mortgagor covenants that it is lawfully seized of the premises hereinabove described, in fee simple absolute; that it has good right and is lawfully authorized to sell, convey or encumber the same; and that the premises are free and clear of all liens and encumbrances except as provided herein or as previously disclosed by the Mortgagor to the Mortgagee. The Mortgagor further covenants to warrant and forever defend all and singular the said premises unto the Mortgagee forever from and against the Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

The Mortgagor further covenants and agrees as follows:

(1) That this mortgage shall secure the Mortgagee for such further sums as may be advanced hereafter, at the option of the Mortgagee, for the payment of taxes, insurance premiums, public assessments, repairs or other purposes pursuant to the covenants herein. This mortgage shall also secure the Mortgagee for any further loans, advances, readvances or credits that may be made hereafter to the Mortgagor by the Mortgagee so long as the total indebtedness thus secured does not exceed the original amount shown on the face hereof. All sums so advanced shall bear interest at the same rate as the mortgage debt and shall be payable on demand of the Mortgagee unless otherwise provided in writing.

(2) That it will keep the improvements now existing or hereafter erected on the mortgaged property insured as may be required from time to time by the Mortgagee against loss by fire and any other hazards specified by the Mortgagee, in an amount not less than the mortgage debt, or in such amounts as may be required by the Mortgagee, and in companies acceptable to it, and that all such policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee, and that it will pay all premiums therefor when due; and that it does hereby assign to the Mortgagee the proceeds of any policy insuring the mortgaged premises and does hereby authorize each insurance company concerned to make payment for a loss directly to the Mortgagee, to the extent of the balance owing on the mortgage debt, whether due or not.

(3) That it will keep all improvements now existing or hereafter erected in good repair and, in the case of a construction loan, that it will continue construction until completion without interruption and, should it fail to do so, the Mortgagee may, at its option, enter upon said premises, make whatever repairs are necessary, including the completion of any construction work underway, and charge the expenses for such repairs or the completion of such construction to the mortgage debt.

(4) That it will pay, when due, all taxes, public assessments and other governmental or municipal charges, fines or other impositions against the mortgaged premises; and that it will comply with all governmental and municipal laws and regulations affecting the mortgaged premises.

(5) That it hereby assigns all rents, issues and profits of the mortgaged premises from and after any default hereunder and agrees that, should legal proceedings be instituted pursuant to this instrument, any judge having jurisdiction may, at Chambers or otherwise, appoint a receiver of the mortgaged premises, with full authority to take possession of the mortgaged premises and collect the rents, issues and profits, including a reasonable rental to be fixed by the Court. In the event said premises are occupied by the Mortgagor and, after deducting all charges and expenses attending such proceeding and the execution of its trust as receiver, shall apply the residue of the rents, issues and profits toward the payment of the debt secured hereby.

(6) That if there is a default in any of the terms, conditions or covenants of this mortgage, or of the note secured hereby, then, at the option of the Mortgagee, all sums then owing by the Mortgagor to the Mortgagee shall become immediately due and payable, and this mortgage may be foreclosed. Should any legal proceedings be instituted for the foreclosure of this mortgage, or should the Mortgagee become a party of any suit involving this mortgage or the title to the premises described herein, or should the debt secured hereby or any part thereof be placed in the hands of any attorney at law for collection by suit or otherwise, all costs and expenses incurred by the Mortgagee, and a reasonable attorney's fee shall thereupon become due and payable immediately on demand, at the option of the Mortgagee, as a part of the debt secured hereby and may be recovered and collected hereunder.

(7) That the Mortgagor shall hold and enjoy the premises above conveyed until there is a default under this mortgage or in the note secured hereby. It is the true meaning of this instrument that if the Mortgagor shall fully perform all the terms, conditions and covenants of the mortgage, and of the note secured hereby, that then this mortgage shall be utterly null and void; otherwise to remain in full force and virtue.

(8) That the covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, personal representatives, administrators, successors and assigns of the parties hereto. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

WITNESS the Mortgagor's hand and seal this 1st day of November, 2002.

Signed, sealed and delivered in the presence of:

Lyman F. Crine
Seely

Prodigal Enterprises, LLC:
[Signature] (SEAL)
By: Forest Thomas
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness who, on oath, states that (s)he saw the within-named ~~Brushy Creek Bar-B-Q, Inc., by and through their authorized member, sign, seal and, as her act and deed, deliver the foregoing written Mortgage of Real Estate and that (s)he, with the other witness subscribed above, witnessed the execution thereof.~~

Lyman F. Crine

SWORN TO AND SUBSCRIBED before me this

1st day of November, 2002.

Seely (SEAL)
Notary Public for South Carolina

My commission expires: 3/16/08

030006629 02/20/2003 11:48:41AM
FILED, RECORDED, INDEXED
Bk:05257 Pg:00166 Pages:3
RecFee:10.00 St Fee:0.00
Co Fee:0.00
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

P11

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT OF MORTGAGEE

Personally appeared before me the undersigned, **L. James Cochrane, Jr. and Leslie D. Cochrane** and made oath that they are the owner and holder of the mortgage given by **Prodigal Enterprises, LLC** and recorded in the Office of the Register of Deeds for Anderson County, S.C. in **Mortgage Book 2962 at Page 261**, and that the same is paid; that at the time of payment the same had not been assigned, transferred, hypothecated or otherwise disposed of, and that the same has been lost or destroyed, and after diligent search, cannot be found.

Sworn to before me this 1st
day of June, 2010.

L. James Cochrane, Jr.
L. James Cochrane, Jr.

Shirley McElhannon
Notary Public for South Carolina
Commission Expires: July 2011

Leslie D. Cochrane
Leslie D. Cochrane

CANCELLED OF RECORD

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

SATISFACTION OF MORTGAGE

The named mortgagees, **L. James Cochrane, Jr. and Leslie D. Cochrane**, hereby acknowledge that they have received full satisfaction of the mortgage recorded in **Mortgage Book 2962 at Page 261** in the Office of the Register of Deeds for Anderson County, South Carolina, and of the note it was intended to secure, executed by the Mortgagor and said Mortgagor is therefrom hereby forever discharged.

Witness my hand and seal this 1st day of June, 2010

Signed, Sealed and Delivered
in the Presence of:

Sabrina M. Gordon

L. James Cochrane, Jr.
L. James Cochrane, Jr.

Sabrina M. Gordon

Leslie D. Cochrane
Leslie D. Cochrane

x Queen P. Spillers

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the within named **L. James Cochrane, Jr. and Leslie D. Cochrane** did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 1st day of June, 2010

(SEAL)

Shirley McElhannon
Notary Public for South Carolina
My Commission Expires: July 2011

100013280 7/07/2010 03:04:18 PM
FILED, RECORDED, INDEXED
BK: 09672 Pg: 00094 Pages: 001
Rec Fee: 5.00 St Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

P12

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT OF MORTGAGEE

Personally appeared before me the undersigned, Angelo Sinopoli and Melissa Sinopoli and made oath that they are the owner and holder of the mortgage given by Prodigal Enterprises, LLC and recorded in the Office of the Register of Deeds for Anderson County, S.C. in Mortgage Book 2962 at Page 264, and that the same is paid; that at the time of payment the same had not been assigned, transferred, hypothecated or otherwise disposed of, and that the same has been lost or destroyed, and after diligent search, cannot be found.

Sworn to before me this 2nd
day of June, 2010.

Angelo Sinopoli
Angelo Sinopoli

Jean P. Spiller
Notary Public for South Carolina
Commission Expires: 2-5-20

Melissa Sinopoli
Melissa Sinopoli

CANCELLED OF RECORD

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

SATISFACTION OF MORTGAGE

The named mortgagees, Angelo Sinopoli and Melissa Sinopoli, hereby acknowledge that they have received full satisfaction of the mortgage recorded in Mortgage Book 2962 at Page 264 in the Office of the Register of Deeds for Anderson County, South Carolina, and of the note it was intended to secure, executed by the Mortgagor and said Mortgagor is therefrom hereby forever discharged.

Witness my hand and seal this 2nd day of June, 2010.

Signed, Sealed and Delivered
in the Presence of:

Jean P. Spiller

Angelo Sinopoli
Angelo Sinopoli

Jean P. Spiller

Melissa Sinopoli
Melissa Sinopoli

John Anderson

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the within named Angelo Sinopoli and Melissa Sinopoli did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 2nd day of June, 2010.

(SEAL)

Jean P. Spiller
Notary Public for South Carolina
My Commission Expires: 2-5-20

100013279 7/07/2010 03:04:17 PM
FILED, RECORDED, INDEXED
Bk: 09672 Pg: 00093 Pages: 001
Reg. Fee: 5.00 St. Fee:
Co. Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

214

P13

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT OF MORTGAGEE

Personally appeared before me the undersigned, Joe E. Upchurch and made oath that he is the owner and holder of the mortgage given by Prodigal Enterprises, LLC and recorded in the Office of the Register of Deeds for Anderson County, S.C. in Mortgage Book 5257 at Page 166, and that the same is paid; that at the time of payment the same had not been assigned, transferred, hypothecated or otherwise disposed of, and that the same has been lost or destroyed, and after diligent search, cannot be found.

Sworn to before me this 3
day of June, 2010

Joe E. Upchurch
Joe E. Upchurch

Dawn N. Byrd
Notary Public for South Carolina
Commission Expires: 2-25-2013

CANCELLED OF RECORD

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

SATISFACTION OF MORTGAGE

The named mortgagee, Joe E. Upchurch, hereby acknowledge that he has received full satisfaction of the mortgage recorded in Mortgage Book 5257 at Page 166 in the Office of the Register of Deeds for Anderson County, South Carolina, and of the note it was intended to secure, executed by the Mortgagor and said Mortgagor is therefrom hereby forever discharged.

Witness my hand and seal this 3 day of June, 2010

Signed, Sealed and Delivered
in the Presence of:

Lache Muravin

Joe E. Upchurch
Joe E. Upchurch

Raven Smith

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, the undersigned Notary Public for the State of South Carolina, do hereby certify that the within named Joe E. Upchurch did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 3 day of June, 2010

(SEAL)

Dawn N. Byrd
Notary Public for South Carolina
My Commission Expires: 2-25-2013

100013281 7/07/2010 03:04:19 PM
FILED, RECORDED, INDEXED
Bk: 09672 Pg: 00095 Pages: 001
Rec Fee: 5.00 St Fee:
Co Fee:
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

P14

STATE OF SOUTH CAROLINA

TITLE TO REAL ESTATE

COUNTY OF ANDERSON

KNOW ALL MEN BY THESE PRESENTS that PRODIGAL ENTERPRISES, LLC, (whether one or more, hereinafter referred to as "GRANTOR"), a Limited Liability Company existing under the laws of the State of South Carolina, in the County and State aforesaid, and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, the receipt of which is hereby acknowledged (affidavit filed), has granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto MARY K. THOMAS (hereinafter referred to as "GRANTEE") and Grantee's heirs and assigns forever, the following described property:

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Anderson, and being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 94 at Pages 921, and according to a more recent plat entitled "Survey for Prodigal Enterprises, LLC, by Freeland & Associates, Inc., dated October 6, 1997, and recorded in the abovementioned Register's Office in Plat Slide 825 at Page 4.

This is the same property as conveyed to the Grantor herein by deed of PR Investments recorded on October 15, 1997, in the Office of the Register of Deeds for Anderson County, South Carolina in Book 2759 at Page 119.

This conveyance is specifically made SUBJECT TO any and all recorded rights-of-way, easements, conditions and restrictions pertaining to the property herein conveyed, and in addition is subject to any of the foregoing which may appear from an inspection of the premises.

TMS Number: 214-00-08-006

GRANTEE'S ADDRESS: 112 Merri Lane
Easley, SC 29642

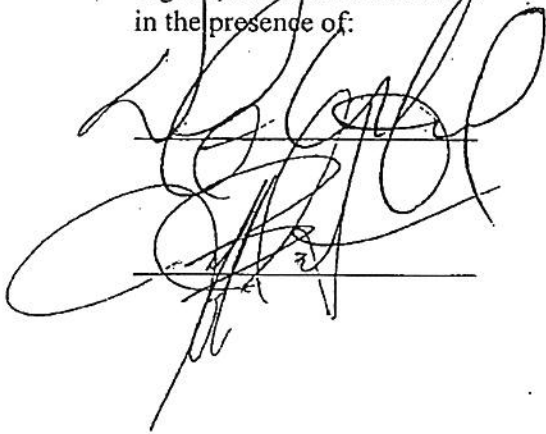
TOGETHER with all and Singular the Right, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee and to said Grantee's Heirs and Assigns forever.

And Grantor does hereby bind Grantor and Grantor's Successors and Assigns to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs and Assigns and against Grantor and Grantor's Successors and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness Grantor's hand and seal this 7th day of July, in the year 2010, A.D.

Signed, sealed and Delivered in the presence of:



PRODIGAL ENTERPRISES, LLC

By: 
Its: member

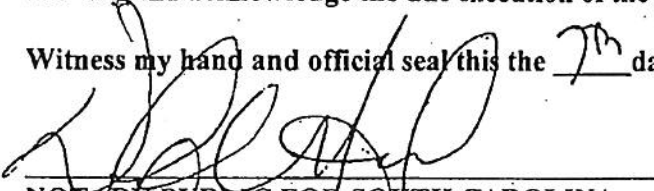
By: Mary K. Thomas
Its: member

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, William C. Hood, a Notary Public for the State of South Carolina, do hereby certify that the Grantor(s) herein did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 7th day of July, 2010.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 3/17/18

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

AFFIDAVIT

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

- 1. I have read the information on this Affidavit and I understand such information.
- 2. The property being transferred is located at Anderson Road, Piedmont, South Carolina, bearing Anderson County TMS Number 214-00-08-006, and was transferred by Prodigal Enterprises, LLC to Mary K. Thomas on July 7, 2010
Check one of the following. The deed is:

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) X subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (see Information section of Affidavit):

4. Check one of the following if either Item 3(a) or Item 3(b) above has been checked

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
- (b) _____ The fee is computed on the fair market value of the realty which is _____
- (c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$182,130

5. Check _____ Yes or X No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in Item 4 above here: \$ 182,130
- (b) Place the amount listed in Item 5 above here: \$ _____
(If no amount is listed, place zero here)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ 182,130

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee is \$675.25.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantee

9. I understand that a person required to furnish this Affidavit who wilfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this _____ day of _____, 2010.

Notary Public for South Carolina
My Commission Expires: 3/12/15

Mary K. Thomas
Responsible Person Connected with the Transaction

Mary K. Thomas
Print or Type Name Here

100013219 7/07/2010 08:55:45 AM
FILED, RECORDED, INDEXED
Bk: 09671 Pg: 00146 Pages: 004
Rec Fee: 10.00 St Fee: 474.50
Co Fee: 200.75
REGISTER OF DEEDS, ANDERSON CO, SC
Shirley McElhannon

P15

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
)
 MARY K. THOMAS,)
 (Property Owner))
)
 INDEBTED TO)
)
 STATE OF SOUTH CAROLINA)
 Through the CLERK OF COURT)
 FOR ANDERSON COUNTY)

NOTICE OF PLEDGE OF REAL ESTATE

7/7/2010 Approved for \$203,535.00
Marshall Newton
Acting Clerk of Court

KNOW ALL MEN by these presents that the above property owner(s) hereby pledge(s) the below described real estate to the **State of South Carolina through the Clerk of Court for Anderson County**, pursuant to Sec. 38-53-270, Code of Laws of South Carolina (1976) as security deposit for bonds and undertakings written in this State on which the following bondsman is absolutely or conditionally liable:

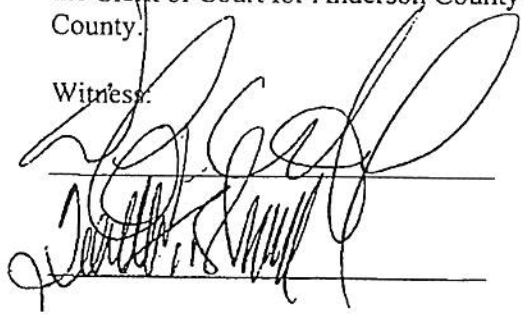
Bail Bondsman: Mary K. Thomas, d/b/a Bail Pros

SEE LEGAL DESCRIPTION OF PLEDGED REAL ESTATE ATTACHED HERETO AND MADE A PART HEREOF

The property owner(s) agrees(s) that said real estate will not be transferred , conveyed or encumbered without prior written notice to the **State of South Carolina through the Clerk of Court for Anderson County and to the Anderson County Solicitor's Office.**

This pledge shall remain in full force and effect until released by instrument attested to by the Clerk of Court for Anderson County and filed in the Register of Deeds Office for Anderson County.

Witness:



Mary K. Thomas
 Mary K. Thomas

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF ANDERSON)

I, William C. Hood, a Notary Public for the State of South Carolina, do hereby certify that Mary K. Thomas did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 27th day of July, 2010.

(SEAL)

William C. Hood
Notary Public for South Carolina

My Commission Expires: 3/17/15

DESCRIPTION OF PLEDGED REAL ESTATE

ALL that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Anderson, and being shown and designated as 3.81 acres, more or less, as shown on that certain survey entitled "Survey for Ned Davis" prepared by J. C. Smith, III, dated January 31, 1986, and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Plat Book 94 at Pages 921, and according to a more recent plat entitled "Survey for Prodigal Enterprises, LLC, by Freeland & Associates, Inc., dated October 6, 1997, and recorded in the abovementioned Register's Office in Plat Slide 825 at Page 4.

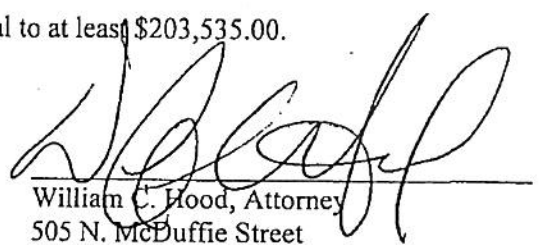
This is the same property conveyed to Mary K. Thomas by deed of Prodigal Enterprises, LLC, recorded July 7, 2010, in Book 9671 at Page 146

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE OF
VALUE FOR SURETY BOND

This is to certify that title to the real estate designated as 3.81 acres, more or less, as shown in Plat Book 94 at Page 921 and in Slide 825 at Page 4, TMS No. 214-00-08-006, is vested in Mary K. Thomas, and is situate in the County of Anderson, State of South Carolina, the derivation of which is a deed (or estate of) from Prodigal Enterprises, LLC, recorded on July 7, 2010, in Book 9621 at Page 146 (or Estate File Number), in the Office of the Register of Deeds for Anderson County, South Carolina, and is more particularly described in the attached Deed. This Certificate of Value is being issued so that Mary K. Thomas, may pledge the real estate described herein, pursuant to Sec. 38-53-270, Code of Laws of South Carolina (1976), as security deposit for bonds and undertakings written in this State on which bail bondsman Mary K. Thomas, d/b/a Bail Pros, is absolutely or conditionally liable; and this is to certify that, after deducting from the assessed value of the property for tax purposes, the amount due under the liens affecting the said property, to include any outstanding Notice(s) of Pledge of Real Estate, and not including the value of any mobile home which may be situate on the property, that the net value of the property is equal to at least \$203,535.00.

Date: July 7, 2010

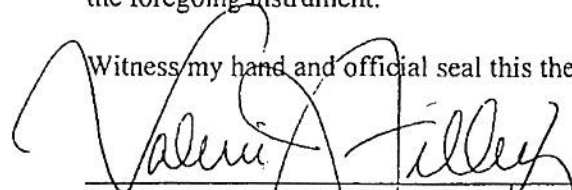

William C. Hood, Attorney
505 N. McDuffie Street
Anderson, SC 29621
375-0530

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

ACKNOWLEDGMENT

I, undersigned, a Notary Public for the State of South Carolina, do hereby certify that William C. Hood did personally appear before me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this the 7th day of July, 2010.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1/14/17

P16

Jul 22 2016
REFERENCE ID: 1607221208401

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Print Form

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF TERMINATION
Limited Liability Company – Domestic
Filing Fee - \$10.00

TYPE OR PRINT CLEARLY IN BLACK INK

The following limited liability company having dissolved and completed its winding up, terminates its existence by filing these articles of termination in accordance with S.C. Code of Laws §33-44-805:

- The name of the limited liability company is Prodigal Enterprises LLC
- The date the articles of organization were filed is 09/29/1997
- The date of the dissolution of this limited liability company was 07/07/2010
- Has the company wound up its business and terminated its legal existence? yes
- Unless otherwise specified, these articles are effective when endorsed for filing by the Secretary of State. Specify the time and date of any delayed effective date _____

Mary K. Thomas
Signature (Please see the Filing Checklist below)

Mary K Thomas
Print or Type Name

Capacity/Position of Person Signing (You must check one box.)

Date 03/16/2016

- Manager Member Organizer
 Fiduciary Attorney-in-Fact

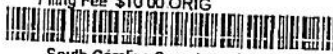
Filing Checklist

- Articles of Termination (filed in duplicate)
- \$10.00 made payable to the Secretary of State's Office
- Self-Addressed, Stamped Return Envelope
- Make sure the proper individual has signed the form (Please see S.C. Code of Laws §33-44-205(a))
Limited Liability Company forms filed with the Secretary of State must be signed in the name of the company by a:
 - manager of a manager-managed company
 - member of a member-managed company
 - person organizing the company, if the company has not been formed or
 - fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary
- Return all documents to:
 South Carolina Secretary of State's Office
 Attn: Corporate Filings
 1205 Pendleton Street, Suite 525
 Columbia, SC 29201

LLC – Domestic – Articles of Termination

Form Revised by South Carolina
Secretary of State, May 2011

160328-0035 FILED: 03/21/2016
PRODIGAL ENTERPRISES, LLC
Filing Fee \$10.00 ORIG



Mark Hammond South Carolina Secretary of State

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P17

Dec 09 2015

REFERENCE ID: 1512090919340

Mark Hammond
Secretary of State of South Carolina



STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company - Domestic
Filing Fee - \$110.00

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company (Company ending must be included in name*)

Bail Pros Bail Bonding LLC

*NOTE: The name of the limited liability company must contain one of the following endings: "limited liability company" or "limited company" or the abbreviation "LLC.", "LLC", "L.C." or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."

2. The address of the initial designated office of the limited liability company in South Carolina is

112 Merri Lane

Street Address

Easley

29642

City

Zip Code

3. The initial agent for service of process is

Mary Thomas

Mary Thomas
Signature of Agent

Name

and the street address in South Carolina for this initial agent for service of process is

112 Merri Lane

Street Address

Easley

29642

City

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

- (a) Mary Thomas

Name

112 Merri Lane

Street Address

Easley

SC

29642

City

State

Zip Code

- (b)

Name

Street Address

City

101202-0135 FILED: 12/02/2010
BAIL PROS BAIL BONDING LLC

Filing Fee: \$110.00 ORIG



Mark Hammond

South Carolina Secretary of State

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Dec 09 2015

REFERENCE ID: 1512090919340

Mark Howard
Secretary of State of South Carolina

Name of Limited Liability Company Ball Pros Ball Bonding LLC

5. Check this box only if the company is to be a term company. If the company is a term company, provide the term specified. _____
6. Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) _____
Name

Street Address

City State Zip Code
- (b) _____
Name

Street Address

City State Zip Code
7. Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

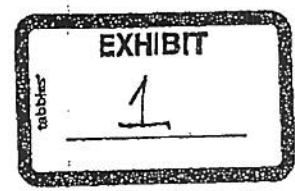
9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign.

Mary Thomas
Signature of Organizer

11-15-10
Date

Signature of Organizer

Date



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Marvin L. Anderson,
Plaintiff,

ENTERED COMPUTER

ORDER
C.A. No. 2012-CP-23-1323

FILED-CLERK OF COURT
GREENVILLE CO., S.C.
MAR 6 AM 9:31
wlb

v.

Forest Thomas,
Defendant.

Plaintiff commenced this action on February 22, 2012, by the filing of a Summons and Verified Complaint. The Defendant was thereafter served by publication. The Defendant is in default (see this Court's Order filed November 30, 2012, and this Court's Order filed January 11, 2013, denying the Defendant's Motion to Alter or Amend Judgment).

This is an action based on a Promissory Note. Pursuant to notice, a damages hearing was held before me on March 4, 2013. Present at the hearing were the Plaintiff and his attorney, Cecil H. Nelson, Jr. of Nelson Galbreath, LLC. Also present was Patrick Yon representing the Defendant.

Prior to the commencement of the hearing, Mr. Yon informed the Court that he received a text message from the Defendant informing him that the Defendant had a stomach virus and was unable to attend the hearing. Based on this text message, Mr. Yon requested a continuance of the hearing. Plaintiff opposed the request for a continuance and Plaintiff further testified that he had observed the Defendant driving his vehicle on Woodruff Road in Greenville County approximately one hour before the time of the hearing. Mr. Yon was unable to provide the Court with any documentation or certification from the Defendant's medical provider confirming that he was unable to attend the hearing because of an illness. Based on the testimony of the Plaintiff,

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and the previous conduct of the Defendant in this matter, Defendant's motion for a continuance was denied.

I have carefully reviewed the evidence before me and based on this evidence I find that the Plaintiff made an unsecured loan to the Defendant in the amount of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars on October 30, 2008, as evidenced by Plaintiff's check payable to the Defendant and introduced as Plaintiff's Exhibit 1. This check was endorsed by the Defendant and deposited into his account. I further find that the indebtedness was later evidenced by a Promissory Note in the amount of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars dated March 2, 2010, bearing interest at the rate of forty-five (45%) percent and entered into evidence as Plaintiff's Exhibit 2 (the "Note"). I find that the Plaintiff made demand on the Defendant for payment of the Note and no portion thereof has been paid by the Defendant. The interest rate on the Note was established by the Defendant.

Finally, I find that the Plaintiff is entitled to interest on the sum of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars at the rate of One Hundred Fifty-Four and 11/100 (\$154.11) Dollars per day from October 30, 2008 to March 4, 2013, which amount totals Two Hundred Forty-Four Thousand Four Hundred Eighteen and 46/100 (\$244,418.46) Dollars, for a total indebtedness due Plaintiff pursuant to the Note in the amount of Three Hundred Sixty-Nine Thousand Four Hundred Eighteen and 46/100 (\$369,418.46) Dollars and as set forth on Plaintiff's Exhibit 3.

I further find that the Note signed by Defendant provides in part that "in the event of default in the payment of this note, and if it is placed in the hands of an attorney at law for collection the undersigned hereby agrees to pay all costs of collection, including a reasonable

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attorney's fee." I find that the costs incurred by Plaintiff total Seven Hundred Nineteen and 62/100 (\$719.62) Dollars and further find that the Plaintiff has incurred attorney's fees in the amount of Seven Thousand Nine Hundred Seventy and no/100 (\$7,970.00) Dollars which I find to be reasonable. In determining an award of reasonable attorney's fees and costs, this Court has examined the six factors set forth by the South Carolina Supreme Court in Baron Data Systems,

Inc. v. Loter, et al., 297 S.C. 382, 377 S.E.2d 296 (1988, 1989). I have given careful consideration to all six criteria in establishing my award of reasonable attorney's fees as follows:

- a. The Nature, Extent and Difficulty of the Legal Services Rendered.
- b. The Time and Labor Necessarily Devoted to the Case as set forth in itemized and detailed time and billing records of Plaintiff's counsel.
- c. The Professional Standing of Counsel.
- d. The Contingency of Compensation. This factor is not applicable to this case since this was not a contingency fee case.
- e. The Fee Customarily Charged in Greenville County, South Carolina for similar legal services.
- f. The Beneficial Results Obtained. The Plaintiff was the prevailing party in this litigation.

Accordingly, I find that the Defendant is indebted to the Plaintiff in the total amount of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08) Dollars.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant shall pay to Plaintiff the sum of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08) Dollars and judgment is hereby rendered against Defendant in the amount

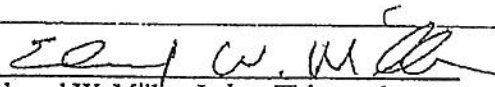
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of Three Hundred Seventy-Eight Thousand One Hundred Eight and 08/100 (\$378,108.08)
Dollars.

IT IS SO ORDERED.

Date: 3/5/13


Edward W. Miller, Judge, Thirteenth
Judicial Circuit

A Certified Copy
Paul B. Williams
Clerk of Court C.P. & G.S.
Geastville County, SC
Dated March 6, 2013

ORIGINAL

EXHIBIT
2

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

Marvin L. Anderson,

Plaintiff,

v.

Forest Thomas,

Defendant.

IN THE COURT OF COMMON PLEAS

Judgment Roll No.: 2013-CP-04-00841

EXECUTION AGAINST PROPERTY

TO THE SHERIFF OF THE COUNTY OF ANDERSON, GREETING:

WHEREAS, judgment was rendered in the above-entitled action on the 6th day of March 2013 in favor of said Plaintiff against the Defendant for the sum of Three Hundred Seventy Eight Thousand One Hundred Eight Dollars and 08/100 (\$378,108.08) dollars, as appears to us by the Order entered in Greenville County and by the Judgment Roll, filed in the office of the Clerk of Court of Anderson County;

AND WHEREAS, there is now actually due on the said judgment thus docketed in your County on the 12th day of April 2013, the principal sum aforesaid, with interest thereon from the date of the said judgment.

NOW THEREFORE, we recommend that you satisfy the said judgment, including principal, interest, costs, and your fees out of the personal property of the said judgment debtor in your County and if sufficient personal property cannot be found, then out of the real property in your County belonging to the said judgment debtor on the day when the said judgment was docketed in your County, or at any time thereafter, in whosesoever hands the same may be, and that you duly return this execution according to law to the Honorable Clerk of Court at Anderson, South Carolina.

WITNESS the Honorable Clerk of Court at Anderson, South Carolina, the 18th day of September 2013.

Richard A. Shirley
Richard Shirley
Clerk of Court of Anderson County

R. Pillsbury
Rodney F. Pillsbury, Esq.
Attorney for Plaintiff

NULLA BONA Oct. 25, 2013

John Skoner
SHERIFF, ANDERSON COUNTY

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

The Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2014-CP-04-2419

Dr. Marvin Anderson, Respondent.


v.

Mary Thomas; Forest Thomas; Prodigal Enterprises, LLC; ; Brushy Creek BBQ, Inc. ; and Bail
Pros Bail Bonding, LLC, defendants

of whom, Mary Thomas is the Appellant, .

CERTIFICATION

I, W. Patrick Yon, attorney for Appellant, certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material and complies with the Order of the South Carolina Supreme Court dated August 13, 2007 addressing personal data identifiers and other sensitive information.



W. Patrick Yon
2315 North Main Street
Suite 223
PO Box 2506
Anderson, SC 29622
(864) 225-1411
Attorney for Appellant