

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

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APPEAL FROM ALLENDALE COUNTY  
Court of Common Pleas

SC Court of Appeals

Hon. R. Lawton McIntosh  
Circuit Court Judge

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Case No. 2016-CP-03-00286  
Appellant Case No.: 2019-000736

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William Hunter Youmans, .....APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, .....RESPONDENTS

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RECORD ON APPEAL  
VOLUME II – PAGES 247 THROUGH 486

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THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

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APPEAL FROM ALLENDALE COUNTY  
Court of Common Pleas

Hon. R. Lawton McIntosh  
Circuit Court Judge

---

Case No. 2016-CP-03-00286

---

William Hunter Youmans, APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, RESPONDENTS

---

NOTICE OF APPEAL

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Appellant William Hunter Youmans here files and serves Notice of Appeal of the Orders of the Hon. Lawton R. McIntosh, presiding circuit judge, dated November 8, 2018; January 8, 2019; March 28, 2019 and April 8, 2019 attached to this Notice of Appeal as Exhibit-A. The undersigned certifies receipt by e-file and receipt of the last Order of the lower court denying reconsideration April, 8, 2019.

Respectfully submitted,

HALFORD NIEMIEC & FREEMAN, LLP  
*/s/ J. Cameron Halford*

---

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April 29, 2019

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PROOF OF SERVICE AND MAILING

I hereby certify that I am the attorney for the Appellant and that I did on April 29, 2019 serve a copy of the foregoing NOTICE OF APPEAL and EXHIBIT-A prior orders of the court on counsel for the respondents, identified below, by e-mail delivery and U.S. mail, postage prepaid, and addressed as follows:

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April 29, 2019  
Fort Mill, South Carolina

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

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APPEAL FROM ALLENDALE COUNTY  
Court of Common Pleas

Hon. R. Lawton McIntosh  
Circuit Court Judge

---

Case no. 2016-CP-03-00286

---

William Hunter Youmans, APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, RESPONDENTS

---

Exhibit-A

To Notice of Appeal  
Prior Orders – Presiding Judge Hon. R. Lawton McIntosh  
(9) Total Pages

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STATE OF SOUTH CAROLINA )  
COUNTY OF ALLENDALE )

William Hunter Youmans, )  
 )  
Plaintiff, )

vs. )

Mark B. Tinsley and Diane E. Tinsley, )  
 )  
Defendants. )

IN THE COURT OF COMMON PLEAS FOR  
THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2016-CP-03-00286

**ORDER**

This order follows a Form 4 entered March 28, 2019.

The case is before the Court pursuant to the plaintiff's motion to alter or amend and for reconsideration. The motion concerns two orders granting the defendants' motion for summary judgment; the first order being a Form 4 and the second order being a formal order. The Form 4 was entered in November of 2018. The formal order was entered in January of 2019.

The plaintiff asks the Court to amend those orders and withdraw the grant of summary judgment to the defendants. The Court respectfully declines this request and believes the prior ruling reflects the correct application of the law. As explained in the January 2019 order, summary judgment is appropriate because the plaintiff's claims rely on language that is invalid and ineffective as a matter of law.

A 1988 deed from Calvin Youmans to Martin Youmans granted Martin title in fee simple absolute. The deed's granting and habendum clauses conspicuously include the language signifying fee simple absolute: they explain Calvin passed title to Martin and "his heirs and assigns."

The deed also contained two paragraphs that would diminish or "cut-down" the fee simple estate if they were given legal effect. If the paragraph granting Martin's brothers the right to use

the pond and pond cabin on Martin's land was effective and enforceable, it would necessarily reduce Martin's right to complete ownership of the property. Similarly, if the paragraph requiring Martin or his heirs to first offer the property to Martin's brothers or their heirs was effective and enforceable, it would significantly limit the right a landowner has to sell property to whomever he wishes, for whatever price.

The plaintiff offers several arguments for reconsideration.

First, the plaintiff argues the Court should have acknowledged his history of using the pond and cabin while Martin owned the property and that the Court should have viewed the facts in the plaintiff's favor. This argument does not support reconsideration. The Court does not doubt the plaintiff's prior use of the property, however, the question is whether the deed's language is legally enforceable. Also, the Court did not view the facts in anyone's favor. The question presented was the legal question of whether this language was enforceable.

Second, the plaintiff claims Martin did not receive the estate in fee simple absolute. As noted above, the Court disagrees. Calvin's deed to Martin specifically included language signifying a fee simple absolute estate. There is no reference in the deed to any remainder interest, reversionary interest, life estate, or other interest recognized by law.

Third, the plaintiff points to a 1993 statute and argues the Court applied this statute instead of the common law. Section 27-5-130 appears to modify the common law by creating a presumption that all deeds after 1993 pass title in fee simple absolute. This statute would appear to have no application to Calvin's deed of this property to Martin in 1988. Neither party argued this statute to the Court when arguing summary judgment. The Court determined Martin received fee simple absolute by examining the deed's language. The Court did not apply any statute.

Fourth, the plaintiff points to the Supreme Court's decision in *Stroman v. S.C. Power Co.*

as supporting his argument that this language would not impermissibly cut-down Martin's fee simple estate if given effect. *Stroman* construed certain language in a deed as being indistinguishable from an option contract. That language provided a specified tract of land would be sold to two individuals for a specific price—\$4,000—“within a reasonable time” of the land ceasing to be used for the purpose of generating power. 168 S.C. 538, 540, 167 S.E. 844, 845 (1933). The Supreme Court explained this option would be an enforceable agreement if it was executed as a stand-alone contract and that it should be no less enforceable because the parties chose to include it in the deed. *Id.* at 541, 167 S.E. at 845.

These clauses are not like that. The language purporting to require Martin or his heirs to offer the property to his brothers and their heirs is not an option contract. It has an infinite duration, an indefinite price, and there is no explanation of how it can be exercised or deemed satisfied. *Stroman* does not appear to have any relevance to the language purporting to grant Martin's brothers a right to access the pond and cabin. The effect of that language appears to be foreclosed by the cases cited in the Court's order from January of 2019 and by *Shealy v. SCE&G*, 278 S.C. 132, 293 S.E.2d 306 (1982), which the defendants cited in their summary judgment motion.

\*\*

The motion for reconsideration is respectfully denied. Any arguments not specifically addressed in this order are denied.

\_\_\_\_\_  
Judge R. Lawton McIntosh

\_\_\_\_\_, 2019  
\_\_\_\_\_, South Carolina

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STATE OF SOUTH CAROLINA )

COUNTY OF ALLENDALE )

) Court of Common Pleas  
) Case No. 2016-CP-03-00286

WILLIAM HUNTER YOUMANS, )

Plaintiff, )

vs. )

) Transcript of Record

MARK B. TINSLEY AND )  
DIANE E. TINSLEY, )

Defendant, )  
Third-party Plaintiffs, )

) DATE: June 21, 2017

vs. )

J. CAMERON HALFORD, )

Defendant. )

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

A P P E A R A N C E:

J. CAMERON HALFORD  
Attorney for the Plaintiff, William Youmans

JOHN S. NICHOLS,  
Attorney for Defendants, Diane E. Tinsley and  
Mark B. Tinsley

WILLIAM E. HOPKINS, JR.  
Attorney for the Third-party defendant,  
J. Cameron Halford

Karen V. Andersen, RMR, CRR  
Circuit Court Reporter

1 THE COURT: This is Youmans vs. Mark Tinsley and  
2 Diane Tinsley; is that correct?

3 MR. HALFORD: Yes, Your Honor.

4 MR. NICHOLS: Yes, Your Honor.

5 THE COURT: I have a motion for judgement on the  
6 pleadings; is that correct?

7 MR. HALFORD: That is correct, Your Honor. There  
8 are four motions pending, but that is one of them.

9 THE COURT: What are the other motions?

10 Stand up and identify the motion and whose motions  
11 they are for me, please.

12 MR. HALFORD: The motion are plaintiff's, Your  
13 Honor. I filed this. I'm Cameron Halford. I'm counsel for  
14 plaintiff.

15 MR. HOPKINS: Your Honor, we have a motion to  
16 dismiss Mr. Halford. He's been named as a third-party  
17 defendant in this case. So we have a motion to dismiss on  
18 that.

19 THE COURT: All right. Give me some background on  
20 the case. This is the first time I've seen or read anything  
21 about it.

22 MR. HALFORD: May it please the Court. This is a  
23 matter between my client, Mr. Youman, and Mr. Tinsley and his  
24 wife. There was a \$420,000 land purchase here in the  
25 Appleton community. Mr. Tinsley and his wife took title to

1 two tracts of land here, several acres of land, Your Honor.  
2 They are described in the complaint as Exhibit A and Exhibit  
3 B. One of these tracts has a pond cabin on it.

4 THE COURT: Has a what?

5 MR. HALFORD: Pond house, man cave, if you will.  
6 Your Honor, that is property that, if you go back in the  
7 complaint, there's a deed attached from the late father of  
8 these brothers, Calvin Causey Youmans, dated December 3rd,  
9 1988, certain deed restrictions, et cetera. We are not here  
10 to try the case today.

11 In any event, Mr. Tinsley and his wife purchased  
12 what I understand to have been a package deal of these lands  
13 from my clients.

14 THE COURT: Package deal?

15 MR. HALFORD: Yes, sir, meaning both tracts of  
16 land.

17 THE COURT: I got you.

18 MR. HALFORD: Again, the grantor, Mr. Tinsley --  
19 Mark Youmans's affidavit is in the file. And that's been  
20 passed up this morning. That is my client's brother. It's  
21 our understanding that his client from the Gooding firm  
22 represents Mr. Tinsley. I am not here this morning to pit  
23 attorney against client. I am not here this morning to try  
24 the case, but we filed a motion to compel. And when we filed  
25 discovery in this case, we served Mr. Tinsley with it

1 December 28th, along with the summons and complaint.

2 THE COURT: Let me stop you, if I may, so I get a  
3 better feel for what I'm doing with it. We have two tracts  
4 of land purchased by Mr. Tinsley and his wife from your  
5 client.

6 MR. HALFORD: That is correct, Your Honor.

7 MR. TINSLEY: No, Your Honor. I didn't purchase  
8 from his client. I purchased from his client's brother.

9 THE COURT: Okay, brother, your client's brother.  
10 And is the issue over the purchase itself or is the issue  
11 over this cabin that was placed on the property?

12 MR. HALFORD: Both. I'm sorry to interrupt. Both,  
13 Your Honor.

14 THE COURT: Both?

15 MR. HALFORD: We allege the purchase circumvents the  
16 deed of the father that's attached as Exhibit 1.

17 THE COURT: I'm really having a hard time hearing  
18 you.

19 MR. HALFORD: We are alleging the purchase  
20 circumvents the father's deed, Your Honor, which contained  
21 various deed restrictions, which they object to and we deem  
22 were valid. But on this acreage is a cabin that's been in  
23 the family for several decade. It's now --

24 THE COURT: Okay. So the cabin existed at the time  
25 of purchase?

1 MR. HALFORD: Yes, sir. Since Mr. Tinsley has  
2 acquired the tract with the cabin on it. My client has been  
3 locked out of it. He can ride by it, look at it. I'm  
4 familiar with the cabin. I familiar with the cabin. I grew  
5 up here in Barnwell. I've seen it.

6 We've asked for certain things. First and foremost,  
7 the closing file. And I get from Mr. Tinsley -- not from  
8 Mr. Nichols, from Mr. Tinsley -- there was no closing file, I  
9 didn't go to a closing.

10 So I'm looking for the equitable interest transfer,  
11 contract, staying clear of the Statute of Frauds and Statute  
12 of Elizabeth. And I don't think there's any objection to  
13 providing -- it hasn't been provided. That deed I referred  
14 to, Your Honor, attaches Exhibit 1 to the complaint, had  
15 certain restrictions in it. And it made this land and this  
16 cabin available to all brothers, according to the father,  
17 unless they should fail to maintain it. So since this  
18 acquisition, my client hasn't been able to access the  
19 property.

20 We are here today asking that the Court -- I am not  
21 here alleging discovery, Your Honor. I think it's leaning in  
22 that direction, but I'm asking the Court to get me certain  
23 various things that, if you read that deed, they need to  
24 provide us with. And I point out, there has been no  
25 objection to it. We served discovery on December the 28th.

1 We've been through four months requests for admissions. I  
2 mean, all I'm looking for is a signed settlement statement,  
3 not a closing attorney's file. That's also a court record.  
4 I'm looking for a contract, per Statute of Elizabeth.

5 This deed had a provision in it where it had to be  
6 offered to the brothers, including my client, Hunter Youmans,  
7 for 90 percent fair market value. And I am not seeing  
8 anything of the sort ever occurred.

9 So just for today's purposes on motion number one,  
10 the motion to compel, Judge, under Rule 26, there's no  
11 objection. I mean, it's relevant information. Should be  
12 public record. It's not over burdensome. They either have  
13 it or they don't. It's black or it's white. And if they are  
14 not giving it to me, I don't understand why.

15 And I brought this after trying to resolve it before  
16 bringing this motion. We don't see privilege attached to it.  
17 And, basically, it's a real estate file, Judge. This is a  
18 \$420,000 land purchase involving two tracts. And I'm looking  
19 for the preconditions of record.

20 I've done real estate for many years, Judge. Always  
21 kicks off with a contract. In this case, it should have been  
22 kicked off -- Mr. Tinsley alleges, or at least he's spoken to  
23 me and said, your client asked me about this thing. Show me  
24 something. Give me an offer, letter of intent. Give me a  
25 contract. But I can't get any of these things.

1 I tried to go through the firm. It's my first time  
2 meeting Mr. Nichols today, but I can't get any of it. And we  
3 are just looking for documents to produce. There's no excuse  
4 for not providing them. They either exist or they don't.  
5 And bringing Your Honor to the letter I sent you and your law  
6 clerk --

7 THE COURT: I did not receive a letter from you.

8 MR. HALFORD: It was filed. I apologize it didn't  
9 make it. But, Your Honor, we exchanged requests for  
10 admission of fact after discovery --

11 THE COURT: Sir?

12 MR. HALFORD: We exchanged requests for admissions  
13 of fact for discovery. The point is, No. 9 in discovery says  
14 they are in possession of something signed by my client where  
15 he waived his interest, gave it up.

16 Now, Judge, that's a thermonuclear bomb on my case  
17 if that fact exists, or if it doesn't exist, let's just amend  
18 our discovery responses from this side and say it doesn't  
19 exist and let's move on. Because, otherwise, they are  
20 attempting to fabricate facts. Either these things exist or  
21 they don't. It's either a contract or release. But I can't  
22 get anywhere.

23 And, again, I detest having to even file a motion on  
24 this.

25 THE COURT: What you are asking for is simply the

1 closing file from this transaction?

2 MR. HALFORD: I'm asking for an order that  
3 everything pertaining to the transaction where he acquired  
4 these tracts properly be produced, including the signed  
5 release of my client, if he has it.

6 THE COURT: Mr. Tinsley, why aren't you giving that  
7 up?

8 MR. TINSLEY: Well, Your Honor, his question was, in  
9 the interrogatory, was: Set forth the date of any contract  
10 between Martin Youmans and Mark Tinsley and/or Diane Tinsley  
11 with regard to tract A or tract B in the complaint.

12 And my answer was, there is no written contract.  
13 There is no written contract. It's very clear. There is no  
14 written contract. I've given him everything that I got. He  
15 subpoenaed Walter Sanders's file. Walter Sanders was Martin  
16 Youmans's lawyer.

17 And I'm going to give you a little bit more  
18 background, because he left out of a lot of stuff. There  
19 were three tracts. There was the residential home of Martin  
20 Youmans. There was the 67 acres that they bought tract B.  
21 And then there was the 39-acre tract that Martin and the  
22 plaintiff owned together.

23 And the plaintiff came to me and said, I don't have  
24 the money. I can't afford to buy. Martin is going to sell  
25 this to somebody I don't want to live besides, and would you

1 buy it? I was friends with the guy that he didn't want to  
2 living beside him because he was black and his granddaddy  
3 would rollover in his grave.

4 I remember distinctly him showing me the property  
5 line that he's having to survey to divide the 39 acres: This  
6 will be your half; I will keep this half that's closer.

7 I called Martin. I talked to Martin. They filed a  
8 grievance with ODC, Your Honor. One of the things that I  
9 filed as a record is my sworn statement to ODC that  
10 incorporates the affidavit of Walter Sanders, Woody Gooding  
11 and Martin Youmans, as well as the attachments and exhibits  
12 to my sworn statement, which are the text messages from  
13 Mr. Youmans where I told him that Martin had accepted the  
14 purchase price. And he said, good, you better get it in  
15 writing.

16 And after that, he continued to send me text  
17 messages, information about the surveyor. He then delivered  
18 the deeds, the plat -- I'm sorry, the plats to Walter Sanders  
19 so the land could be divided. All of this is completely  
20 inconsistent with this idea now that I've stolen his  
21 grandparents' property.

22 He sent me picture of his daughter's last  
23 chemotherapy treatment. This is the person who is stealing  
24 his grandparents' property, and he's going to send me this  
25 picture? And I say: Congratulations. That's a good thing,

1 and I know you are relieved.

2 Yes, thank you.

3 Then later, I wasn't interested in purchasing the  
4 home, the residential home. But Martin Youmans was only  
5 willing to sell the property, all of the property with the  
6 residential home included. They've submitted the affidavit.  
7 It comes very close to lying of Robert Burckhardt, who was  
8 the person who had agreed to purchase the home for \$150,000.  
9 I was paying \$270,000 for the balance of the property. And  
10 somewhere along the way, Robert thought that there were too  
11 many repairs on the residential home and he couldn't afford  
12 it. And he showed his behind and he got out of it and he  
13 said he wasn't interested. I have all the text messages.

14 They must not have realized I had all the text  
15 messages when they drafted this affidavit for him, but I got  
16 it.

17 At that point, I had talked to Woody. And Woody  
18 said, look, if you can't get along with this guy right now,  
19 there's no way you will get along with him later. You ought  
20 to buy the whole thing. So I bought the whole thing.

21 My intention was, I was going to tear the thing down  
22 and have the property, put cows on it. But my parents are  
23 elderly. They live in Anderson. I don't really have any  
24 other family in Anderson at this point in time. So my  
25 parents decided to come and move to Allendale. And we began

1 to renovate the residential home. We spent substantial  
2 amount of moneys renovating the residential home.

3 And Mr. Youmans would ride over on his Polaris and  
4 talk to us. And he would see us doing these things. And he  
5 never voiced one objection. What we were waiting on was  
6 Mr. Sanders to draft the deed to divide the property. He  
7 would come over there in the afternoon on his way to going to  
8 this buddy's property, repeatedly. He knew we were doing  
9 these things.

10 Ultimately, Mr. Youmans and his brother owned a  
11 number of properties together jointly in partnership. They  
12 haven't spoken in years. They can't stand each other. They  
13 won't talk. But they are dividing their properties.

14 Well, what I believe happened is, I believe he  
15 finally realized he could hold this sale hostage, or try to,  
16 to get a better deal and leverage his brother into division  
17 of partnership.

18 Ultimately, he hires Bill Short, a well-respected  
19 lawyer in Columbia. And he directs me to deal with Bill  
20 Short. And Bill Short is handling this matter for him. I  
21 talked to Bill Short. Bill Short says, I can't really get  
22 Walter Sanders to call me back. Would you act as an  
23 intermediary? Would you communicate, because you are much  
24 more communicative?

25 You don't have to believe me, Your Honor. All this

1 stuff is attached in this e-mail attached to my sworn  
2 statement to ODC, as well as text messages as exhibits in  
3 there. He asked me to continue to relay the messages. And  
4 that's what I was, I was essentially a mediator. I would  
5 say, this is Martin's offer, this is Hunter's demand. And we  
6 would go back and forth. And I talked mainly to Bill Short.

7 In the beginning, Bill Short says, at this point,  
8 Hunter doesn't agree with the sale. And that, Your Honor,  
9 was actually on September the 8th, 2015. For now, Hunter  
10 does not agree with the sale.

11 On September the 9th, we had an e-mail exchange.  
12 And then on September the 10th, I had replied that he said,  
13 Bill Short said that Hunter was upset because Martin had not  
14 offered the property to him.

15 Now, this property had been for sale for years.  
16 Martin, according to Martin, left because he couldn't stand  
17 living next to his brother who harassed him all the time. He  
18 already assaulted his other brother in Barnwell.

19 And so Martin moved and puts this property up for  
20 sale. Admittedly, he wanted too much money for it, but it's  
21 for sale for a long time. Hunter never makes any effort to  
22 buy it.

23 When I negotiated the price with Martin Youmans,  
24 Hunter never makes any offer to buy it. He's got a lawyer.  
25 They never make any offer to buy it. They never indicate

1 that they want to buy it. In fact, he didn't have the money  
2 to buy it.

3 But on September the 10th, 2015, Bill Short, his  
4 lawyer, who he told me to deal with, e-mails me and says that  
5 Hunter had not told him that he could have bought the  
6 property, but he agrees that Hunter is okay with you buying  
7 the property. That's a quote.

8 On September the 15th, there were some other offers  
9 that were exchanged. And I informed Bill at that time that  
10 Martin wasn't willing to accept his demands and that Martin  
11 had indicated that he was directing Walter Sanders to file a  
12 partition action over the partnership properties and that we  
13 would be going forward with the closing. That's on September  
14 the 15th. Closing is on September the 25th.

15 Between September 15th and September the 25th, there  
16 is not one word spoken, not one objection, nothing. We had a  
17 number of conversations during that time and he never  
18 indicates anything.

19 On September the 18th, 2015, which is Exhibit 1 to  
20 my sworn statement, Bill Short communicated Hunter's demand  
21 for everything. And at that time, the demand doesn't even  
22 include --

23 THE COURT: What do you mean "for everything"?

24 MR. TINSLEY: Their separation, his dispute with  
25 Martin Youmans, and it does not include any of this property.

1 They own a beach house together as well. It wasn't  
2 technically a partnership. And he was willing to give up  
3 partnership assets to get the beach house. Hunter wanted the  
4 beach house. He wasn't willing to give up those things --  
5 and that's in Martin Youman's affidavit -- to get this  
6 property here in Allendale.

7 On September 28th, after we closed on the 25th, Bill  
8 Short e-mailed me and said that it appears that the only  
9 issue left to resolve was the way to deal with the two  
10 stores. There were two stores in Hampton County that Martin  
11 contended were separate properties. Hunter contended they  
12 were one property and they couldn't be separated. And that  
13 was the only issue. It continues on and on. And there is no  
14 objection.

15 At some point, because we now own the 39 acres  
16 together, I said to Bill Short that I'm happy to buy Hunter  
17 out or we can have it divided. And at that point, in  
18 December of 2015, he says that Hunter does not agree with you  
19 getting the 39 acres. Nothing about the 67 acres. Nothing  
20 about the 1 acre that the house is on. And this was a  
21 package deal, because Martin would only sell the residential  
22 home with the 67 acres and his interest in the 39 acres. And  
23 I bought it all.

24 I relied on Mr. Youmans's statements, his text  
25 messages. He asked about the signed release. I got a text

1 message from him where he says, "that's good", when I tell  
2 him the purchase price. I got the text messages from Robert  
3 Burckhardt where we are going back and forth over the  
4 purchase price at the same time I'm telling Hunter. Hunter  
5 knew all of this stuff. And this is just absolute  
6 misstatement and fabricated claim that somehow now he's going  
7 to come back.

8 But what he really wants to do is, because I didn't  
9 attend the closing, and they put \$10,000 on my purchase price  
10 on the 39 acres, now he wants to come back and he wants to  
11 try to get it for less. That's what is really going on now.

12 THE COURT: He wants to do what?

13 MR. TINSLEY: They've taken the position that  
14 these -- Mr. Nichols is going to talk to you about the law in  
15 just a second. The provisions in the deed are completely  
16 void. They violate the Shelley's Rule. They violate the  
17 rule against perpetuities. We've got cases on that. They  
18 are completely void. They had no rights. But what he wants  
19 to do, because Martin Youmans had Walter Sanders put \$10,000  
20 on the interest in the 39 acres. He says, oh, I can afford  
21 90 percent of \$10,000. So I'm happy to pay that. That's not  
22 what I paid for it, but that is what's reflected on the HUD  
23 or the deed. It's not reflected on the HUD. It just shows  
24 \$420,000, which is what I paid for all of it.

25 So, technically, there's three. Technically, it was

1 a package deal. He had to buy it all. He wasn't willing to  
2 buy it all. And even when he knew that Robert Burckhardt had  
3 backed out and he knew that I was buying the property, he  
4 texted me. And one of those text messages says his wife  
5 Sherry, who's sitting right here, that her son was interested  
6 in buying the house. Again, it's wholly inconsistent with  
7 this idea I'm stealing your grandparents' property and you  
8 actually want the property. Because even when he sends that  
9 text message, it's not, hey, I want the rest of the property  
10 and Sherry's son is going to buy the house. None of that.  
11 There was no offer made. And I told him, no, I'm just going  
12 to keep it because my parents are coming.

13 We spent tens of thousands of dollars renovating  
14 this house, fixing the house up, built two buildings on the  
15 67 acres, all while he sits there and watches it being done.  
16 And he never voices an objection. He never makes an offer on  
17 the property. He's never done anything.

18 And so what they want -- now, somewhere around  
19 December, Your Honor, the pond house property began to flood.  
20 And I couldn't understand it because I had owned it since  
21 before June, the beginning of June all the way until  
22 December. And it's raining and there's no flooding going on.  
23 And I couldn't figure out what's going on.

24 So I rent a track hoe, backhoe. And I'm going to  
25 dig to try to divert some of this water out of the yard into

1 the pond. And my father says, hey, I better make sure that  
2 we can turn the well off if you hit a pipe, because we don't  
3 know where the pipes are. And he goes into the well house  
4 and he says, hey, come here, come here. And I went into the  
5 well house. And there's a two-inch line that's been cut.  
6 And it's pumping out and squirting water out 14 inches. And  
7 it's running continuously.

8 Well, I said, daddy, I couldn't have broken that  
9 line. It's cut. And then we get to looking and there are  
10 fish in it.

11 And what had happened is, is that he had cut the  
12 line. He had opened his valves. He stopped the overflow up  
13 in his pond. And he was overflowing his pond into the well  
14 house.

15 I put the fitting that was laying on the ground. I  
16 got a coupling. I glued it back on. I put it on and I  
17 turned the valve off. I went, I dug on my property, found  
18 the pipe, broke the pipe, dug a ditch, and put the water back  
19 into the pond where it didn't overflow into my pond.

20 Immediately, he turns the valve off that allowed  
21 that water to go into that pipe. He stops up his overflow  
22 and he begins to overflow his pond on the property, flooding  
23 property and make a mess. I open the overflow. He put --  
24 the water is running over the top of the dam. It will break  
25 the dam.

1 MR. HALFORD: Are we trying the case here today?

2 THE COURT: I will hear from you. Go ahead.

3 MR. TINSLEY: Thank you, Your Honor. I will hurry  
4 up. He then dug a trench. And he directed the water so that  
5 it would flow directly down the driveway. I took the  
6 backhoe, still sitting there. I dug the trench, put it in  
7 the trench. That was before. Well, then he takes his  
8 bulldozer and he digs a trench that's about 300 feet long so  
9 that all of the water flows into it and there's no way to get  
10 it back into the pond.

11 One of the things they are asking for is for him to  
12 be able to be told the security measures that I've taken with  
13 respect to that pond house and give him the security code.  
14 And I am not doing it, Your Honor. This is a person who is a  
15 violent person who would lie --

16 THE COURT: Tone it down, please.

17 MR. TINSLEY: Sure. Who has demonstrated an intent  
18 to damage my property. And there is nothing under the law  
19 that would require me to give him access. I am not claiming  
20 any improvements in that pond house as damages. I am not  
21 claiming any damage in that pond house as damages.

22 Even in my counterclaims, there is no complaint  
23 where I claim that. It's not relevant. And I would ask the  
24 Court not to allow him to enter. That's one of the things  
25 they asked for.

1           Another thing they asked for is a motion to compel.  
2           There is no contract. I have known these two people for a  
3           long time. I didn't know I needed to get a contract. I  
4           learned a lot in this, Your Honor. I didn't know that Hunter  
5           Youmans would lie to me. Now, I do.

6           THE COURT: Let me ask you this. To the extent  
7           there are closing documents, what is your objection to you  
8           providing the closing documents?

9           MR. TINSLEY: I have provided the documents that I  
10          have, which is a copy of the HUD. He has subpoenaed Walter  
11          Sanders's file. And he's got all of the closing documents.  
12          The only thing I had was the HUD and the copies of the deeds.  
13          And I've given him those things. There is nothing else.

14          THE COURT: Is there any -- are you telling that the  
15          closing attorney not give him this information?

16          MR. TINSLEY: No, sir.

17          THE COURT: At all?

18          MR. TINSLEY: No, sir.

19          THE COURT: Do you have any objection to him doing  
20          that?

21          MR. TINSLEY: No, sir. I've given him a copy of the  
22          check that I wrote as well. There's just nothing.

23          THE COURT: Does that not satisfy what you are  
24          looking for?

25          MR. HALFORD: No, sir. We subpoenaed for deposition

1 of closing attorney and the closing statement, which is one  
2 of the things he should have provided. And I do now have it  
3 from the closing attorney under subpoena. The point is, it's  
4 unsigned.

5 He did give me a copy of the check, out of fairness  
6 to Mr. Tinsley. I have no signed release under the request  
7 for admission I've attached to the letter. They seem to  
8 indicate there's something here signed by my client.

9 THE COURT: Is there anything out there that's  
10 signed by your client that you are contending, Mr. Tinsley,  
11 that you have that you have not provided?

12 MR. TINSLEY: No, Your Honor. I provided  
13 everything.

14 MR. HALFORD: We ask that he amend his discovery and  
15 so certify that at this point. Your Honor, first of all, you  
16 can tell the in-depth knowledge between these brothers.  
17 There have been disputes for years on hundreds of thousands  
18 of dollars of partnerships. You can also hear that he  
19 personally purchased from a client of his, my client's  
20 brother. They don't talk. He said, I'm between these boys  
21 and I was talking for them. They don't lie.

22 But, Judge, when you come to that deed that's  
23 recorded, Exhibit 1 to the complaint, it's got deed  
24 restrictions in it. Mr. Tinsley got that deed from the  
25 grantor who was bound by the father. And so his objections

1 here are the fact that, unfortunately, I can't ascertain --  
2 it appears he represented himself on a \$420,000 property  
3 transaction. That's fine. I guess we can do that as  
4 attorneys, but you are responsible.

5 So either he acted as his own closing attorney,  
6 perhaps to his parents, or he relied upon Mr. Sanders, which  
7 shows that Mr. Sanders is charging both his grantor and him  
8 for his deed and release preparations. But either way,  
9 somebody makes some very serious errors, not the least of  
10 which there's no contract. You just heard him say it.

11 So, Judge, as long as they are willing to certify  
12 discovery is correct at this point, I think you've got a  
13 question of law lined up for down the road. But let's quit  
14 playing games. You either got my client's release or you  
15 don't. It is not a text message. It's not an e-mail. You  
16 either have something under his request for admit No. 9.  
17 They did not. And they say there's something out there which  
18 places me in a really weird position.

19 I hate bringing this type of motion. Again, if they  
20 got it, hurts my case, I'm entitled to see it. And if he  
21 doesn't, frankly, it hurts his case. But that's where we  
22 are.

23 I'm going to depose the closing attorney. I've got  
24 a very incomplete file from him as well. And let's be clear.  
25 There were four brothers, okay, four of them. There are

1 signed releases that appear, at least on one of these people  
2 got by the closing attorney. He wasn't present when he  
3 signed, appears improperly notarized.

4 And just to correct Mr. Tinsley, he didn't own  
5 anything in June of 2015. He had begun making repairs,  
6 because he's dealing with his client, but he purchases it in  
7 September. They had all of this time to get it all lined up  
8 and do it right.

9 I can't tell if he acted as his own closing  
10 attorney. I recognize he's a very talented trial lawyer here  
11 in Allendale, but somebody skipped some very serious steps  
12 here.

13 And briefly to address --

14 THE COURT: Let me make sure -- I'm letting  
15 everybody go with things. Obviously, this is a very  
16 heartfelt case, but as far as the closing documents, there's  
17 no reason why that can't be given over or authorized by you  
18 to be given over to them. The documents say what they say.

19 Now, this No. 9 on request to admit, does that need  
20 to be amended to correctly state that you had --

21 MR. TINSLEY: No. Request to admit was admit that  
22 on September 10th -- maybe it would be easier --

23 THE COURT: Let me say, I'm in the dark over here.

24 MR. TINSLEY: This is the letter that he had  
25 e-mailed you on two days ago.

1 THE COURT: Guys, I'm telling you, I don't have  
2 anything. Okay?

3 MR. TINSLEY: Request to admit No. 9, and I don't  
4 have a copy of it, Your Honor, but what Mr. Halford is  
5 arguing is that Hunter Youmans had to sign a specific piece  
6 of paper that said "release". And, in fact, he had to sign a  
7 specific release that Walter Sanders e-mailed to me. But  
8 there's a number of cases. There's case *Edwards v. Rouse*,  
9 which is 290 S.C. 449. It's a 1986 Court of Appeals  
10 decision. And there it talks about the fact that an option  
11 can be waived. The waiver is an intentional relinquishment  
12 of a known right. Waiver can be an expression of an  
13 intention not to demand certain things. Right of first  
14 refusal is a preemptive right. You have to affirmatively act  
15 to secure it.

16 THE COURT: I understand that. Here --

17 MR. TINSLEY: So I'm just explaining the answer to  
18 my request to admission. When he texted me and I said,  
19 Martin accepted the offer. And he says, that's good, you  
20 better get it in writing, I believe that that is an  
21 expression of his intention to waive. That's why I had  
22 answered that request to admit the way it is. I agree he  
23 didn't sign that form. I answered other --

24 THE COURT: Have you provided that to opposing  
25 counsel?

1 MR. TINSLEY: Yes, sir.

2 THE COURT: So the documents that you intend to use  
3 to establish that there was a release or at least a waiver  
4 has been provided to opposing counsel? There's no other  
5 documents out there?

6 MR. TINSLEY: No, sir. And it's Exhibit 7 to the  
7 documents that I produced.

8 THE COURT: Since this is discovery, I just want to  
9 make sure everybody has given up everything they need to  
10 do.

11 MR. TINSLEY: Sure. But there are no other  
12 documents. There is no release. Walter Sanders drafted the  
13 release that he did, in fact, refuse to sign. Walter Sanders  
14 gave an affidavit to send this document I produced to the  
15 Court that says I thought it was to obstruct the deal. He  
16 never indicated he wanted -- in fact, he explicitly told  
17 me -- this is Walter Sanders's sworn statement -- that he  
18 would not and could not buy the property. So that's why I  
19 answered that question, there are no other documents.

20 MR. NICHOLS: Judge, may I finally be heard?

21 THE COURT: Yes, sir, you may.

22 MR. NICHOLS: First off, it was represented to you  
23 Mr. Halford represented that Mr. Tinsley engaged in some kind  
24 of dealing with his client. Martin was not his client. This  
25 is the same thing he used to try to intimidate Mr. Tinsley in

1 settling the case. And when he didn't do it, he then filed a  
2 complaint with ODC, probably about a violation of Rule 4.5.  
3 But in any event, 1.8 does talk about self-dealing with  
4 clients and all. ODC dismissed this. And Mr. Tinsley is  
5 going to provide you with his response.

6 THE COURT: I think I have that up here right now.

7 MR. NICHOLS: But I'm offended here that he  
8 continues to mischaracterize this case as Mr. Tinsley dealing  
9 in self-dealing with the client. That didn't happen. He  
10 tried it in court. He tried to intimidate Mr. Tinsley first.  
11 And then he tried it before ODC. And ODC wouldn't have any  
12 part of it. And this Court shouldn't have any part of it.

13 But let's get right to the law. We heard a lot  
14 about the facts and everything. Everything that the  
15 plaintiff and the third-party defendant rely on is this, it  
16 is the deed from Causey Youmans to Martin Youmans in 1988.  
17 They live or die by this deed.

18 The second page of this deed, I've got it all  
19 highlighted, is an exhibit to everything they filed, Judge.  
20 This is their path to glory. But the law says no, for  
21 several reasons. Number one, it's pretty well settled. And  
22 Mr. Tinsley mentions Shelly's case. But Shelly's case was  
23 abolished by statute. But in any event, what the basic  
24 common law rule in South Carolina was and is and probably  
25 will be, is that when you give a fee simple absolute to

1 somebody, you can't then include a clause that takes it back.  
2 This is a fee simple absolute in granting clause and in the  
3 amendment clause. And I can cite you a few cases, Judge.

4 THE COURT: I don't need it.

5 MR. NICHOLS: I mean, I can give you a list as long  
6 as my arm.

7 The second thing is the *Webb* case. He's claiming a  
8 right of first refusal because of this language in the thing  
9 that says, now, Martin, if you are ever going to sell it,  
10 you've got to offer it to my other sons by 90 percent. That  
11 is the type of thing that the courts have said repeatedly is  
12 void. You can't do that. The theory is that once you give  
13 the fee simple absolute, you've got nothing else to give.  
14 And what he's trying to do is give a different right after  
15 giving a fee simple absolute.

16 Now, I don't have years of property law litigation.  
17 I don't have any published -- maybe I think I might have a  
18 few published opinions where I might have argued some  
19 property law out there, but I did pretty well in Ms.  
20 Paterson's property law class, including future interests and  
21 that kind of thing. This deed violates the idea that there's  
22 a subsequent clause that would render it invalid. It also  
23 violates the rule against perpetuities. And here's why.  
24 It's very much in the *Webb* case. The grant here -- what if  
25 Martin never sold the property? Martin never sells the

1 property, but this grant is a fee simple to Martin assigned  
2 to his heirs. And his heirs don't sell the property. And  
3 then they don't sell the property. The potential for this  
4 interest which they are claiming not to vest within 21 years  
5 of a life of being or within 90 years under the rule against  
6 perpetuities, the codified version of the rule against  
7 perpetuities, is exactly what the Court said in *Webb* renders  
8 it void. So that's number two.

9 Number one, they give it and then try to take it  
10 back, which is void under the common law.

11 Number two, they give an interest that may never  
12 vest within 90 years. And so, therefore, it violates the  
13 rule against perpetuities.

14 Mr. Tinsley discussed the waiver. There was a  
15 waiver of the interest. Even if we get passed one and two,  
16 which are very high hurdles for the plaintiff, were high  
17 hurdles before the plaintiff sent the first communication to  
18 Mr. Tinsley, before the plaintiff filed a complaint with ODC  
19 and before the plaintiff filed this complaint. If they had  
20 known the law, they would have known that. If they had  
21 looked at the law, they would have known that.

22 But even so, he's waived it. And then finally,  
23 let's say they get past high hurdle number one or high hurdle  
24 number two, or admittedly, a little bit lower hurdle number  
25 three, look at the grant they are relying on. The grant

1     itself, and they talk about how the intent of the testator --  
2     or intent of the grantor, excuse me, must control.

3             By the way, *Webb* case says intent can't get you past  
4     that rule about, you give the fee simple and then take it  
5     back. That intent will never prevail.

6             But in any event, says first offer the property --  
7     and I'm sorry to read to you, Judge, but -- first offer the  
8     property to Steven Causey Youmans, William Hunter Youmans and  
9     George Kevin Youmans. "And" is word of significance there.  
10    Two of those three signed waivers. It is impossible for him  
11    to exercise any option he thinks he may have, any illusionary  
12    option under the law, but any option he thinks he may have,  
13    because both of those guys have signed waivers.

14            And, Judge, they make a big deal out of the fact  
15    that two of the brothers signed waivers. That is a lawyer  
16    protecting his client against a potential cloud on the title  
17    down there. Doesn't mean that he's acknowledging that that  
18    is a valid right, but he's saying, look, somebody down the  
19    road may see this and might question it. Title insurance  
20    company might not write it. We don't know why, but we are  
21    going to get these and put this to bed. That was to clear  
22    the cloud on the title.

23            Judge, we will agree that there are no real facts in  
24    dispute. When you look at the language of this and actually  
25    apply the law to it, this entire matter ought to be

1 dismissed.

2 And I will be happy to answer any questions, but --

3 THE COURT: Would you pass up a copy of that deed.  
4 I haven't looked at it.

5 MR. NICHOLS: Mine is highlighted. Do you have a  
6 clean copy?

7 MR. HALFORD: I have no objection to the highlight.

8 THE COURT: As far as waiver, though, we agree  
9 that's not inherently a factual issue?

10 MR. NICHOLS: Well, at this point in time, we will  
11 send some requests to admit and take that off the table, if  
12 needed to.

13 THE COURT: Let me go back and make sure I'm being  
14 clear, because we kind of confused the issue, because  
15 everybody is getting their two cents in. But as far as the  
16 motion to compel the closing documents, Mr. Tinsley said he's  
17 giving you what he has. He's not going to object to you  
18 getting what you get from the closing attorney. So you can  
19 come by just as equally as he can. If he has to, he will be  
20 required to authorize him and not claim attorney/client  
21 privilege to it and you can get it there.

22 As to your request to admit, that is denied. He  
23 said he responded and I understand the response. That would  
24 be a trial matter.

25 Now, other than those issues, under the motion to

1 compel, any other issues I need to continue with,  
2 Mr. Halford?

3 MR. HALFORD: Not under the motion to compel.

4 THE COURT: Stop right there. So that ends the  
5 motion to compel. What's the next motion, please?

6 MR. HALFORD: Your Honor, the next motion was for us  
7 to be able to again enter this cabin. It lies on a tract  
8 adjacent to my client's home. Mr. Tinsley owns the title  
9 right now. But there's been some discussion about repairs  
10 that he began making in June, before his purchase now. And  
11 there's one house up here that belonged to his client. This  
12 was the residence. This was Martin Youman's former home.

13 This, Your Honor, if I may pass up, and I apologize,  
14 I will pass them copies, they produced to us, Your Honor.  
15 The problem is, they are two very different properties,  
16 Judge, two different tracts of land.

17 Now, the white house you see there, that's the  
18 former residence of Martin Youmans.

19 THE COURT: That's the one that Mr. Tinsley said had  
20 to be in the deal with the cabin? I am not saying it's true  
21 or not true. I'm just asking the question as to whether or  
22 not this is the one based on what he says had to be included  
23 in the package deal?

24 MR. HALFORD: Yes, sir, according to Mr. Tinsley,  
25 that's correct.

1 THE COURT: And the second one is the cabin that  
2 seems to be the hard dispute in this matter; is that right?

3 MR. HALFORD: Yes, sir.

4 THE COURT: Okay. So which of these properties are  
5 you wanting to get in on, both or just one of them?

6 MR. HALFORD: No, sir, the one that nobody's home,  
7 just a cabin. It's been in the family for years. And I am  
8 not going to argue like he's done this morning.

9 THE COURT: Let me ask you this. How -- normally  
10 with inspection of property, you do that automatically. How  
11 would that lead to discoverable information in this case?

12 MR. HALFORD: Because if there are, in fact, changes  
13 that have been made to that cabin, Your Honor, if he's making  
14 changes to the cabin that didn't exist under the brothers,  
15 we're going to add a motion for financial records right now.

16 If Your Honor will read the deed, I think you will  
17 see the issue. The issue is, had they begun or are they  
18 making changes to the cabin? But my client's always had  
19 access. It's not just to let us in for inspection. Your  
20 Honor, he's had access to this property for years, thanks to  
21 the father. And they are alleging the deed restrictions and  
22 the use granted to my client -- read the deed.

23 THE COURT: Pending resolution of this case, that's  
24 not the issue anymore. Based on what I heard a minute ago,  
25 this gentleman right here is not going to go on the property.

1 Now, if somebody wants to go there as an agent to go in there  
2 and take pictures, I don't have a real objection to that.

3 Is there a real objection to that?

4 MR. TINSLEY: Well, Your Honor, again, I am not  
5 claiming any damages. I am not claiming any damages in that  
6 cabin.

7 THE COURT: Point to me in the deed, please, sir,  
8 why -- what it is that I need to look at.

9 MR. HALFORD: Page 2 of the deed, Your Honor.

10 THE COURT: I've got that.

11 MR. HALFORD: And it points out -- I'm paraphrasing.  
12 I can find it real quickly -- that these sons of Calvin  
13 Youmans would have access to that pond, Your Honor. They  
14 would be able to use it. And the deed was conditioned upon  
15 acceptance by Robert Martin Youmans. So even during the  
16 period of Robert Martin Youmans, Mr. Tinsley owned it. If  
17 they wished to do so, unless they failed to maintain it, they  
18 could go out there, Judge.

19 THE COURT: I'm going to give -- your client needs  
20 to designate an agent by the end of this week -- no, excuse  
21 me, today is Thursday?

22 THE CLERK: Wednesday.

23 THE COURT: Wednesday. Any reason why if you  
24 designate somebody today, you can't go out there and somebody  
25 take photographs of the cabin by Friday at 5; any reason?

1 MR. HALFORD: Yes, sir. I leave for my wedding and  
2 honeymoon. I will be gone for two weeks, but I will try to  
3 get somebody out there real quick.

4 THE COURT: I will give you to next Friday.  
5 Mr. Tinsley, you need make the cabin available just for  
6 photographs and that's it.

7 MR. TINSLEY: Just to the agent, Your Honor?

8 THE COURT: Just the agent.

9 MR. TINSLEY: Okay. I'm happy to take Mr. Halford  
10 and let Mr. Halford along.

11 MR. HALFORD: That will be fine.

12 THE COURT: By next Friday. Now, because of the  
13 allegations, I am not saying they are true or not true, I'm  
14 going to keep that apart. Your client cannot go on that  
15 property pending further court order.

16 MR. HALFORD: Yes, sir.

17 THE COURT: You understand that?

18 MR. HALFORD: Yes, sir.

19 THE COURT: All right. Now, so anything else other  
20 than the motion to inspect property?

21 MR. HALFORD: Not other than the motion to  
22 inspect.

23 THE COURT: Okay. So the next motion would be what?

24 MR. HALFORD: All right. Next motion that was filed  
25 was judgement on the pleadings. And then we go back to the

1 deed.

2 THE COURT: Judgment of the pleadings by you?

3 MR. HALFORD: Yes, sir.

4 THE COURT: Okay. Let's take a five-minute break.

5 (Whereupon, recess transpired.)

6 THE COURT: Your motion for judgment of pleadings is  
7 directed to Mr. Tinsley's counterclaim; is that correct?

8 MR. HALFORD: Yes, sir.

9 THE COURT: I won't hear it yet. I will look at it.  
10 Glad to hear from you.

11 MR. HALFORD: Your Honor, I don't know that the  
12 matter is not now rendered moot based on your prior motion  
13 about access. I understand your ruling to be he's not going  
14 to be on the property, but we consent sending a third-party  
15 in to photograph. Thank you for doing that.

16 Again, bringing us into this motion, which is a  
17 motion for judgment on the pleadings. The deed that we  
18 argued here this morning contains language that you see  
19 that's been highlighted for you by Mr. Nicholson, the  
20 conveyance, acceptance of this deed, the conveyance, subject  
21 to right and/or privilege --

22 THE COURT: I read it. I don't need to have it read  
23 again.

24 MR. HALFORD: Your Honor, he's got an absolute  
25 privilege to access this land. He's crossed it for years and

1 years. And the pond has been part of it. I'm familiar with  
2 the property, because I grew up here. His father was good  
3 friends with my father. I don't know that your prior ruling  
4 doesn't render it moot. But, Your Honor, he's got an  
5 absolute right that's never failed. And this is why we are  
6 now in a rush for discovery and subpoenaing documents. And  
7 my client has got nothing to hide.

8 THE COURT: I want to hear you on the judgement of  
9 the motions.

10 MR. HALFORD: Viewing all matters, he's got an  
11 easement. He can cross this property any time he wants,  
12 unfettered access.

13 THE COURT: Not now.

14 MR. HALFORD: I'm aware. That is why I said I think  
15 your ruling may have changed that. But looking at the face  
16 of the deed, I mean, the intent is crystal clear. And,  
17 again, Mr. Tinsley gives this deed subject to that intent and  
18 restrictions unless the Court later deems it invalid. But  
19 purpose of our motion was, again, moot for just those two  
20 causes of action. We've been crossing it for over 20 years.  
21 We've been using it, not every day, but it's been available  
22 to my client all these years. And until Mr. Tinsley takes  
23 title, now we are denied. So we take issue with that.  
24 Obviously, raises some contention, you understand.

25 So our motion, to the extent not rendered moot by

1 your prior order, holding, Your Honor -- excuse me, I can't  
2 talk this morning -- is that basically the father gave all  
3 these to the boys, subject to if it's waived. And there's no  
4 evidence whether we are going to get into financial records.

5 But coming from the father, Calvin Youmans, these  
6 boys were to have this property. This was to have remained  
7 Youmans land. And even if it wasn't, they had the right to  
8 cross it and use it. They had a right to the pond cabin and  
9 the pond. And it's been that way for years. So I think Your  
10 Honor's prior ruling kind of speaks to that.

11 THE COURT: Just on the motion on the pleadings, I  
12 would deny that. I am not saying your argument is right or  
13 wrong. Just for the purpose I heard earlier and what's going  
14 on, just keep the peace until after this case has had a  
15 chance to be heard on the merits. Got it?

16 MR. HALFORD: Got it.

17 THE COURT: What's your next motion or have you had  
18 anything further to offer?

19 MR. HALFORD: My last one day, Judge --

20 THE COURT: This is a motion to --

21 MR. HALFORD: Sir, it was to designate the case  
22 complex and assign a senior judge, like yourself, to  
23 hopefully hear it. We are going to get into discovery  
24 matters. I think that's clear now to the Court.

25 Your Honor, I've read the profile. You are familiar

1 with a farm tract of land. As I understand, I'm also  
2 familiar with your involvement with Jimmy Smith in Anderson.  
3 You've seen this kind of stuff before.

4 THE COURT: Let me tell you, the issues don't seem  
5 very complex to me. They just seem like it's a bunch of  
6 emotion involved with it. And that can be settled with some  
7 orders restraining the parties or whatever. I mean, either  
8 this is absolute warranty deed or fee conditional or whatever  
9 the term was back when I was taking real estate. That's not  
10 a very complex issue.

11 The other issues are factually based. I would think  
12 that you would be better off having a scheduling order set,  
13 as opposed to trying to get it complex. Because you are  
14 going to have Judge Young coming here next six months. This  
15 is my last week down here. Thank God. And I've said that.

16 The concern I've had when it's assigned to him is,  
17 this case is not going to be disposed of by the time he  
18 leaves the circuit. And you have to wait for scheduling and  
19 different things. I would think that parties could get  
20 together, come up with a scheduling order, proposed  
21 scheduling order. If we can't, I don't mind getting it done  
22 myself so that you have some guidance, because I know that's  
23 what you are saying, let's move this along. Is that right?

24 MR. HALFORD: Yes, sir. I don't want to be stuck in  
25 successive motions in front of various judges.

1 THE COURT: I understand that.

2 MR. NICHOLS: Judge, can I suggest something here?  
3 First off, Mr. Halford converted his motion to dismiss with a  
4 motion for summary judgment with a number of attachments. So  
5 I would just point that out. And also, the attachments have  
6 evidentiary problems from stem to stern under the dead man's  
7 statute. Needless to say, you could probably rule on  
8 everything today. I mean, it's a question of law.

9 And if you look at the law, for instance, the  
10 Sanford case, 106 S.C. 304, 91 Southeast 294, the Supreme  
11 Court said, even the intention of the grantor will not be  
12 allowed to violate any rule of law.

13 THE COURT: I understood that. If you guys want to  
14 get together and turn it in on some stipulations, I'm glad to  
15 look at it. I do think Mr. Nichols did -- you know appellate  
16 issues a lot better than I do, but waiver is almost  
17 inherently factual determinations per case, if you all want  
18 to submit that into evidence as well. I mean, am I  
19 incorrect?

20 MR. NICHOLS: No, sir, but Mr. Halford came in to  
21 court today and said, really, there's no factual dispute, you  
22 can give us judgment as a matter of law. That was the gist  
23 of the motion that he attached and then converted to summary  
24 judgment by attaching these affidavits and all of this other  
25 stuff.

1 THE COURT: That's true. To the extent he asked for  
2 summary judgment and it's being converted, that's denied as  
3 well.

4 Mr. Halford, do you want to turn this in on  
5 stipulations and let me make a determination?

6 MR. HALFORD: Yes, sir. I would be fine with that  
7 if you want to make the determination.

8 THE COURT: Hang on. He said that he wants to turn  
9 it in on stipulation and let me make a ruling. If you all  
10 want me to do that, I will.

11 MR. NICHOLS: Judge, we will be fine with that.  
12 Assuming we can agree --

13 THE COURT: You're getting heard in court today. I  
14 don't want either one of you or you to make a determination  
15 until you have a chance to cool down, think about it, and see  
16 if that's what you want to do. If you do, y'all give me the  
17 stipulations, I will make the rulings. But you might walk  
18 out of here like I used to always do when I tried cases,  
19 damn, I didn't ask that question, or, I should have asked  
20 that question. You may not be thinking about something that  
21 you need to think about. So if you all let me know, I will  
22 be more than glad to dispose of it, if you all come up with  
23 stipulation of facts.

24 MR. HALFORD: I will let you know right now. I'm as  
25 cool as a cucumber. And I understand that there's some

1 emotional involvement here between the parties, but I'm cool  
2 with it today.

3 THE COURT: You're an attorney; you would be more  
4 professional. You might have some parties that need the  
5 stipulation. I'm asking the lawyers to come up with  
6 stipulation. All right?

7 MR. HALFORD: Yes, sir.

8 THE COURT: And, listen, I am not requiring it. I'm  
9 saying if you all want me to do it, that's what you want me  
10 to turn it into --

11 MR. NICHOLS: That would be fine. Frankly, we think  
12 you can rule up or down based on the law as it applies to  
13 this deed, not just some argument on what they wish that the  
14 deed did, but the actual law that applies in South Carolina.

15 The COURT: Procedurally, let me just tell you,  
16 procedurally, what I have are various motions from  
17 Mr. Halford. I have no motions from you --

18 MR. NICHOLS: That's correct

19 THE COURT: -- that I'm aware of. So the matter is  
20 not properly before me unless you agree to it by stipulation.  
21 And I will just turn the case in. Okay?

22 MR. HALFORD: I will just speak with Mr. Nichols.

23 THE COURT: I stopped you, Mr. Halford. You had,  
24 what, one last motion, and that was as objection to  
25 complex -- I'm not going to go there yet. I'm going to

1 observe that. I don't think it needs to be complex.

2 Are you done with all your motions? Do you  
3 understand my rulings?

4 MR. HALFORD: Yes, sir. Can I bring up one matter?

5 THE COURT: Yes, sir.

6 MR. HALFORD: I am on protective leave. I'm out of  
7 the state beginning Saturday. Can I get any latitude on this  
8 by next Friday for the purposes -- I am not going to go out  
9 there. I will be glad to talk to Mr. Tinsley. My client is  
10 not going to go out there. He's going to follow your order,  
11 but can I get some latitude on my wedding honeymoon? I have  
12 an order of protection from the court.

13 THE COURT: Listen, I'm going to be in Florida  
14 fishing, so I understand. I don't want anybody interrupting  
15 me for my fishing trip. Not by next Friday, not this Friday,  
16 but the two weeks from tomorrow or day after tomorrow. All  
17 right?

18 MR. HALFORD: I will be returning July 5th, Judge.  
19 And I am not going to go out there.

20 THE COURT: Let me just do this. 30 days to get out  
21 there. Only thing you are going to do is go out there and  
22 take pictures of the cabin and leave. Anything further than  
23 that is prohibited. Okay? Clear?

24 Mr. Tinsley, you are going to make it available to  
25 him just for that purpose.

1 MR. TINSLEY: Yes.

2 THE COURT: You are okay with that?

3 MR. HALFORD: Yes, sir.

4 THE COURT: You can comply with that?

5 MR. HALFORD: Yes, sir.

6 THE COURT: Okay. Now, as to discovery, I think I  
7 made a motion to compel. I think that's clear. Mr. Tinsley  
8 has given me what he can. He doesn't have to give the  
9 attorney's closing file. If the attorney requires it, he  
10 will have to give authorization for him to give you the file  
11 based on your subpoena. But you can get to it as easily as  
12 he can.

13 I'm denying your motion to change the request for  
14 admission based on your arguments. Okay?

15 MR. HALFORD: Understood.

16 THE COURT: Judgment on pleadings, summary judgment  
17 is denied. Complex is denied.

18 The other was inspect the property, which we dealt  
19 with.

20 Okay? Thank you, sir.

21 MR. HALFORD: Yes, sir. Thank you.

22 MR. HOPKINS: Good morning. Clay Hopkins. I  
23 represent Mr. Halford. He's been brought in as a third-party  
24 defendant in this matter.

25 THE COURT: Hang on. Let me read it. I'm sorry.

1 MR. HOPKINS: That's fine, Your Honor.

2 THE COURT: Okay.

3 MR. HOPKINS: I'm Clay Hopkins. I represent  
4 Mr. Halford. He's been brought in as a third-party defendant  
5 in this action. Hopefully, I'm going to digress from the  
6 facts of the disbursement with this a little easier.

7 Mr. Tinsley kind of gave you an overview of the  
8 facts. If you notice in the overview, Mr. Halford is totally  
9 removed from any sort of activity in the underlying suit.  
10 What's happened is, Mr. Halford filed this suit on behalf of  
11 Mr. Youmans, then turned around. And Mr. Halford, basically,  
12 is saying he's conspired or was part of some conspiracy with  
13 Mr. Youmans to harm the defendants.

14 Your Honor, as our motion says, that's not the  
15 purpose of Rule 14, to implead somebody in. The purpose of  
16 impleading somebody in is to disburse your own liability to  
17 the plaintiffs in the case, if there is any, or to seek  
18 indemnification purposes.

19 The correct person that Mr. Tinsley could have  
20 third-partied in would be his closing attorney or his  
21 representative in the underlying action. Totally improper to  
22 bring Mr. Halford in. Correct manner that he could have done  
23 is turned around, filed a suit against Mr. Halford and  
24 Mr. Youmans. As you see, Your Honor, the third-party  
25 defendant does not name Mr. Youmans as well. It's very clear

1 that they did not seek to do that. They went after  
2 Mr. Halford individually.

3 What they could have done is filed the case against  
4 Mr. Halford and Mr. Youmans, sought to consolidate it under  
5 Rule 42, as Your Honor is aware. But they didn't do that.  
6 They have gone around the purpose of Rule 14, totally  
7 improper. There's no basis for it, Your Honor. And it just  
8 doesn't comply with the rule, Your Honor.

9 THE COURT: All right. What's your response to  
10 that?

11 MR. NICHOLS: Well, Judge, there was an offer some  
12 time ago which there was no response. There was an offer  
13 some time ago to which Mr. Halford and Mr. Hawkins didn't  
14 respond to let that claim go.

15 But in direct response to that, so what I'm hearing  
16 is, we could have filed a different individual case involving  
17 the same claim, the conspiracy claim, individually against  
18 Mr. Halford, and then moved under Rule 42 to consolidate.  
19 But because we didn't come in the front door, you know, he  
20 now boots us out and let us in the side door.

21 THE COURT: I hear what you are saying from the  
22 standpoint of judicial economy, but I think he's right that  
23 you third-partied somebody in by way of identification or to  
24 share liability with. And under the theory that I'm hearing  
25 here, I've read your complaint, I've read the answers, I tend

1 to agree. But I wouldn't grant the motion to dismiss. Just  
2 make it be a separate action.

3 MR. HOPKINS: It disputes Mr. Nichols's offer, what  
4 they did do is offer --

5 THE COURT: I am not concerned about an offer.  
6 That's not before me today. I don't care about that at all.  
7 It's not before me.

8 Now, if the parties, after you consult with one  
9 another, want me to make a determination to the case on the  
10 merits based on stipulated facts, only way I would do that is  
11 that we hold the claim against Mr. Halford in abeyance to  
12 look at the conveyance itself and issues surrounding the  
13 conveyance. Let a determination be held. And the rest of  
14 it, I am not interested in hearing that. Making a  
15 determination of that, that just goes before a jury or goes  
16 away. Do you understand what I'm saying? Anybody have any  
17 questions of that?

18 MR. HOPKINS: Understood, Your Honor.

19 THE COURT: Otherwise, I'm going to order right now  
20 that the third-party complaint be refiled as a separate  
21 complaint against Mr. Halford and get a new case number.

22 MR. NICHOLS: Under Rule 42, you can sever that.

23 THE COURT: Sir?

24 MR. NICHOLS: You could sever that claim under Rule  
25 42 in a separate --

1 THE COURT: I don't know about the clerk's  
2 perspective whether you've got to file a new filing fee. Get  
3 a new case. That's what I'm doing.

4 MR. NICHOLS: Understood, Judge.

5 Do you want to do a Form 4 order?

6 THE COURT: Yeah, I'm going to do a Form 4. I'm  
7 going to ask that you draft the form order, Mr. Nichols.  
8 Okay? In it -- I'm going to hear from you. Let me just do  
9 this.

10 On the motion to compel, that it is denied. But  
11 Mr. Tinsley has to authorize his attorney, if necessary, to  
12 give Mr. Halford access to the closing file. To the extent  
13 it involves a motion -- I mean, the request for admission  
14 being denied, it is denied.

15 Inspection of the property is granted within 30  
16 days, not the defendant, but the defendant's agent to be  
17 determined by Mr. Halford, nonfamily members.

18 MR. HALFORD: Understood.

19 THE COURT: Okay? And if I hear that it's been  
20 monkeyed with, they will bring it back to me and you will  
21 have a problem. So let's just do it straight up. Okay?

22 MR. HALFORD: Yes, sir.

23 THE COURT: The motion for complex case is denied.

24 Motion for judgment pleadings or alternative summary  
25 judgment, both are denied.

1           If the parties want to have the court determine the  
2 underlying issues concerning the conveyance without  
3 consideration of the severed third-party complaint, then they  
4 are to submit stipulated findings of fact and exhibits and I  
5 will make a determination. Otherwise, third-party complaint  
6 is severed.

7           If you have to file a new filing fee, et cetera, et  
8 cetera, you have to do that. So the motion to dismiss  
9 third-party complaint is denied, but that would be resolved.  
10 Okay?

11           Any other issues I have out there I'm not looking  
12 at?

13           MR. TINSLEY: What I was going to suggest is, can we  
14 put in the order that we are giving leave to amending our  
15 answer? I will take the third-party complaint out and then I  
16 will file a new --

17           THE COURT: Any objection to amended complaint?

18           MR. HALFORD: Yes, sir. I'm sorry. We are this far  
19 into this now. No, sir.

20           THE COURT: It's a 2016 case. File your motion for  
21 amendment, if necessary. And the standard, as you well know,  
22 Mr. Halford, is whether it's just simply notice, so if you  
23 want to take up additional court time --

24           MR. HALFORD: You are correct, Your Honor. I'm  
25 aware of the standard. And I will withdraw.

1 THE COURT: So you will be allowed to amend.

2 MR. NICHOLS: All right. And one other thing in the  
3 first thing regarding the motion to compel, I just want to be  
4 clear, Walter Sanders was not Mr. Tinsley's lawyer. But  
5 insofar as he requires something from Mr. Tinsley, we will be  
6 happy to provide it.

7 THE COURT: I get you. You are right. And I've  
8 misspoken on that.

9 MR. HALFORD: That's the issue. Mr. Tinsley may  
10 have, in fact, been his own lawyer.

11 THE COURT: Well, he's one who will know. So if he  
12 --

13 MR. NICHOLS: We will make sure that Mr. Sanders is  
14 completely at peace giving Mr. Youmans anything he's got with  
15 regard to the transaction, Judge. I assure you of that.

16 THE COURT: If you have a problem, let's get a  
17 conference call. We will get him on the phone and see what's  
18 going on. I've got your photographs right here. I will give  
19 those back to you. I've got a copy --

20 MR. NICHOLS: Judge, like Mr. Halford, I'm getting  
21 ready to go out of town, like you and Mr. Halford.

22 THE COURT: We need to adjust time frame?

23 MR. NICHOLS: Well, I think Mr. Tinsley can deal  
24 with the inspection, can work that out, but for getting an  
25 order to you --

1 THE COURT: I didn't set a time frame. Just e-mail  
2 it. Here's what I want you to do. If you would, y'all  
3 communicate, if y'all can't agree on the wording of the  
4 order, tell me what your objections are. Don't prepare  
5 another proposed order. That gets too cumbersome. All  
6 right?

7 MR. NICHOLS: Very good. I will send it to  
8 Mr. Halford for his editing.

9 THE COURT: Okay. I'm going to give this back to  
10 Mr. Nichols.

11 MR. TINSLEY: Actually, that's the Court's file.

12 THE COURT: Oh, that is the Court's file? I'm  
13 sorry.

14 MR. NICHOLS: You will have the clerk looking for  
15 you.

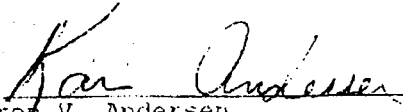
16 THE COURT: That's right. I've done it before.

17 (Whereupon, proceedings are adjourned.)  
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CERTIFICATE OF REPORTER

1  
2  
3 I, Karen V. Andersen, Registered Merit Reporter,  
4 Certified Realtime Reporter for the State of South Carolina  
5 at Large, do hereby certify that the foregoing transcript is  
6 a true, accurate and complete Transcript of Record of the  
7 proceedings.

8 I further certify that I am neither related to nor  
9 counsel for any party to the cause pending or interested in  
10 the events thereof.  
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STATE OF SOUTH CAROLINA  
IN THE FAMILY COURT  
COUNTY OF BEAUFORT

William Youmans,  
Plaintiff,

vs.

Transcript of Record  
Case. No.: 2016-CP-30-0286

Mark B. Tinsley, et al.  
Defendants.

October 8, 2018  
Beaufort, South Carolina

B E F O R E:

The Honorable R. LAWTON McINTOSH

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

J. Cameron Halford, Representing the Plaintiffs  
Blake A. Hewitt, Representing the Defendants

SHARON G. HARDOON, CSR  
Court Reporter, Notary Public

1 THE COURT: This is Youmans vs. Tinsley.  
2 This is slated as a motion for summary judgement; is  
3 that correct?

4 MR. HEWITT: Yes, Your Honor.

5 THE COURT: All right.

6 MR. HEWITT: For the record, Your Honor,  
7 I'm Balke Hewitt. I represent the defendants,  
8 Mark and Diane Tinsley. The low hanging fruit is  
9 that my clients were formerly represented by my  
10 former partner, John Nichols. There's a motion to  
11 relieve him as counsel, which is pending. I don't  
12 think it's been ruled on. I brought an order.  
13 Obviously, I'm happy to file it.

14 THE COURT: Well, he's certainly ODC. I  
15 know he can't be here today.

16 MR. HEWITT: That's prohibitive from  
17 practicing law.

18 THE COURT: There you go.

19 MR. HEWITT: That's the way to do it, if  
20 you're going to get out. Get out with prejudice.  
21 Thank you, Your Honor.

22 THE COURT: Yes, sir. Mr. Hewitt, I  
23 assume this is your motion.

24 MR. HEWITT: It is, Your Honor. If I can  
25 approach, I've got two things with respect to

1 that.

2 THE COURT: Have you provided them to  
3 Mr. Halford? You got them?

4 MR. HALFORD: No, I don't, Your Honor.

5 MR. HEWITT: That's the deed, and they  
6 were attached to your complaint.

7 MR. HALFORD: Yes, sir. That's  
8 correct.

9 THE COURT: You have them? Very good.

10 MR. HEWITT: Make sure I don't leave  
11 copies. Getting my exercise this morning.

12 THE COURT: All right.

13 MR. HEWITT: As you heard, Your Honor,  
14 this is our motion for summary judgment. I  
15 represent Mark and Diane Tinsley, the defendants  
16 in this case, along with my co-counsel  
17 Mr. Tinsley, who has a fool for a client, and  
18 Mr. Gooding.

19 As Your Honor may -- or what I recall from  
20 the last hearing in this case, it was sometime ago,  
21 this case involves a real estate transaction and  
22 closed in September of 2015. My clients were  
23 purchasers of the property in question, and the seller  
24 in that transaction was a gentleman named Martin  
25 Youmans.

1           The Court heard our summary judgment  
2 motion, and the Court claims that this lawsuit  
3 revolved around some language in the deed that  
4 Martin got from his father, Calvin Youmans in  
5 1988.

6           The language in that deed attempted to do  
7 two things. First, to reserve for Calvin's other  
8 children a right to enter the property and access  
9 upon a pond and a pond cabin. And the second  
10 thing the deed attempted to do was reserve a right  
11 of first refusal for Calvin's other children and  
12 their heirs if Martin or his heirs ever decided to  
13 sell the property.

14           This transaction closed in September of  
15 2015. This suit was filed in December of '16 by  
16 one of Martin's brothers, the plaintiff, hunter  
17 Youmans.

18           THE COURT: Tell me the closing date, the  
19 month.

20           MR. HEWITT: It closed in September of  
21 2015, September 25, and the lawsuit was filed in  
22 December of '16.

23           The complaint has four claims. The first  
24 is a declaratory judgment to construe the deed  
25 from Calvin to Martin, that right of first refusal

1 and right of access.

2 The second cause of action is to set  
3 aside the deed from Martin to my clients, Mark and  
4 Diane Tinsley.

5 The third cause of action is to compel  
6 the right of first refusal and to quiet title in  
7 the plaintiff.

8 And then the fourth cause of action is a  
9 temporary and permanent injunction directly at  
10 Mark Tinsley to stop interfering with plaintiff's  
11 right to access pond and the pond cabin.

12 THE COURT: What was the third one again,  
13 please, sir?

14 MR. HEWITT: The third one is to compel  
15 the right of first refusal and quiet title.

16 And our for argument for summary judgment  
17 is that this language in the deed, the right of  
18 first refusal, the grant of unrestricted and  
19 unlimited access to the pond and the pond cabin,  
20 violate the common law rule that you cannot cut  
21 down an estate that has been granted in fee simple  
22 absolute, even if that is the intention clearly  
23 expressed in the deed.

24 There are three key cases that we cited  
25 in the summary judgment memo. I highlighted them

1 in the copies that were given to you. They're on  
2 pages 4 and 5; Sanford vs. Sanford, Style Track  
3 vs. Thomas, County of Abbeville vs Knox, and then  
4 I found a fourth case that I thought was  
5 particularly pertinent, Hunt vs. Forestry  
6 Commission. That's not cited in the brief, but  
7 the citation for that is 358 South Carolina  
8 Reporter 564.

9 THE COURT: 564?

10 MR. HEWITT: Yes, sir.

11 THE COURT: What's the name of the case  
12 again?

13 MR. HEWITT: Hunt versus the Forestry  
14 Commission.

15 And if it's okay, I would like to take  
16 about a minute and just walk through those cases  
17 in an effort to show how I think their instructive  
18 to the summary judgment motion.

19 So in Sanford vs. Sanford, that's the first  
20 case, the operative language of the deed said to X,  
21 his heirs and assigns forever. I left the person's  
22 name out because it's not important. That language is  
23 important because that's fee simple absolute language.  
24 If it was a life, you would say X for life. If it was  
25 a fee simple to terminable, it would say, to X, and

1 then give the conditions subsequent of resident.

2 So the deed language in Sanford says, to X  
3 and his heirs and assigns forever. And then the  
4 conditions of sale are as follows: X is not to  
5 mortgage or in any way dispose of said land. After  
6 X's death, then the land is passed to five children.  
7 And this Court struck down that conditional language  
8 in the deed. And I'm quoting: "An attempt to convey  
9 an estate in fee simple and deprive the purchaser of  
10 the incident of ownership is not effective in law."

11 What are we saying there? We think a fee  
12 simple absolute ownership is all with rights, right,  
13 of the property in terms of bundle of rights. Some of  
14 the rights not all of them, but some of them and not  
15 others.

16 The Supreme Court says, "An attempt to debate  
17 fee simple absolute and deprive the purchaser of some  
18 of the bundle of sticks is not effective in law."

19 Fast forward, Style Track vs. Thomas, the  
20 language in the deed says to three people, their heirs  
21 and assigns, and then, it is specifically understood  
22 and agreed by all parties that the land is to be used  
23 for school purposes only. That language struck down  
24 as violating the same rule.

25 County of Abbeville vs. Knox, the

1 limiting language in the deed, it being understood  
2 by all parties that this conveyance is being given  
3 for the purpose of further industrial development.  
4 That language is struck down as violating this  
5 rule.

6 And finally, Hunt vs. Forestry Commission,  
7 which is not cited in the brief, the limiting language  
8 is that the grantee shall use the land for a fire  
9 tower or use the land for forest protection. As with  
10 the other three, that language struck down.

11 So here's how that principal applies to this  
12 case: As to the access easement, the unrestricted,  
13 potentially unlimited right to access the pond, the  
14 pond cabin and the remainder the 67-acre tract that  
15 was part of this deal, if this language is given  
16 effect, it's not really a fee simple absolute deed to  
17 Martin. I mean, it's a deed to Martin and his  
18 brothers jointly with language that the property is  
19 defeasible if his brother is telling the truth. It's  
20 inconsistent with fee simple absolute language.

21 And the second page of that second packet  
22 I handed to you of the exhibits, the fee simple  
23 absolute language is highlighted there on the  
24 second page and the third page. There is no  
25 question that the deed from Calvin to Martin

1 vested Martin with the estate in fee simple  
2 absolute.

3 Let me say the same thing a different  
4 way. One of the rights in the bundle of sticks,  
5 if you own property in fee simple absolute is the  
6 right to exclude others. This is not your land.  
7 This is mine land. If this language is given  
8 effect, Martin did not have the right to exclude  
9 others. It's inconsistent with ownership in fee  
10 simple absolute, and it violates the same rule as  
11 Sanford, Style Track, Abbeville and Hunt.

12 The right of first refusal fails for the  
13 same reason. As with the right of access, it  
14 purports to deprive Martin of an important bundle  
15 in the bundle of -- an important bundle of rights  
16 in the bundle of ownership. The right to sell the  
17 property to anyone he wants at any price.

18 It forces this language -- if this  
19 language is given effect, it forces Martin to take  
20 a ten percent loss because the right of first  
21 refusal says that Martin shall offer the property  
22 for sale to his brothers at 90 percent of the fair  
23 market value.

24 This language is also nebulous. It  
25 doesn't describe how fair market value is

1 determined. It doesn't say if there's a dispute  
2 over fair market value, appraisals would be  
3 appointed. It doesn't say that the Martin's  
4 brothers should be provided with written notice  
5 and they can execute it within 10 days.

6 This language violates the same rule that  
7 operated in Sanford, Style Craft, County of Abbeville  
8 and Hunt. It is inconsistent with the deed's language  
9 which granted Martin this estate in fee simple  
10 absolute.

11 That's our summary judgment, Your Honor.

12 THE COURT: All right. Thank you, sir.

13 Mr. Halford.

14 MR. HALFORD: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. HALFORD: Good to see you again,

17 Judge McIntosh.

18 THE COURT: Yes, sir.

19 MR. HALFORD: I will be referencing the  
20 same deed, but it's not surprising, I respectfully  
21 disagree with their argument.

22 First and foremost -- and we were last before  
23 you --

24 THE COURT: I'm sorry?

25 MR. HALFORD: We were last before you on

1 June 21st of 2017.

2 THE COURT: I have some memory, but I  
3 have no specific memory of it.

4 MR. HALFORD: Yes, sir. Well, the deed,  
5 when we're talking about the rule against  
6 perpetuity is that the first scintilla -- I know  
7 you're aware of the standard, but for the record  
8 purposes, my client need only produce a scintilla  
9 of evidence to survive this motion. All facts,  
10 all inferences, all conclusions have to be drawn  
11 in favor of the non-movant, Mr. Youmans.

12 Now, here we got an argument on a deed from  
13 December the 30th, 1988. It's Exhibit 1 in the  
14 lawsuit. Okay? And the problem with this argument  
15 is, first of all, they're quoting common law, the rule  
16 against perpetuities. Okay? We need to be talking  
17 about the statute in South Carolina. The statute in  
18 South Carolina is 27-6-10. It supersedes the common  
19 law.

20 THE COURT: What's the statute, please?

21 MR. HALFORD: 27-6-10, what they've cited  
22 in their brief. But, you know, are we talking  
23 about something that is a vested interest or a  
24 non-vested interest?

25 And the rule against perpetuity speaks to

1 something that may never vest. In the common law  
2 variant, the interest may never vest within 21  
3 years of some life then being at the creation of  
4 the trust. The South Carolina rule actually  
5 extends that out to 90 years, but they didn't  
6 mention that part of the statute to you.

7           Secondly, would it vest -- Judge, if I'm  
8 going to buy your house, your and your spouse's  
9 house, we're going to enter a contract. Why?  
10 Because that's how you transfer the equitable  
11 interest in the property to get to a closing table  
12 where we pay you the consideration and we get  
13 leave of title.

14           Now, here, we've got this deed from 1988,  
15 and there are four Youmans brothers. Okay? One  
16 of the brothers -- and they've been estranged and  
17 been in disputes for years. One of the brothers,  
18 Mark Youmans sells to Mr. Tinsley.

19           I want to point out what was before you  
20 last time when Mr. Nichols represented  
21 Mr. Tinsley -- and let me put on the record that  
22 we had some discovery disputes. We still have  
23 discovery disputes.

24           Mr. Tinsley stood up that day and said,  
25 you know, I learned a lot from this, Your Honor.

1 He spoke these words to you. I didn't know how to  
2 even get a contract. And even if that wasn't  
3 sworn testimony, we took his deposition December  
4 the 11th of last year where he confirms it was  
5 very clear there was no contract. Okay?

6 So what I'm telling you is, the equitable  
7 interest, irrespective of their position on the rule  
8 against perpetuities never transferred.

9 And if you will recall, going back to the  
10 first hearing in this case, this was the  
11 fraudulently induced -- and that's the way the  
12 counter claims -- package deal. They didn't get  
13 one parcel, they didn't two, they got three in a  
14 package deal, and one of those parcels comes with  
15 the restriction that's on that father's -- the  
16 Youmans' father's deed.

17 So I want to take you back to the deed  
18 briefly, and then I'll leave it. What do these  
19 gentlemen get, why does the rule of perpetuities  
20 not apply here?

21 Well, it states in the first paragraph  
22 before the conveyance, and this is in the first  
23 right of refusal, by the way. This is an option  
24 to purchase it among the brothers.

25 However, it says in the conveyance, and this

1 is Exhibit 1 of the record, and it's also in the  
2 memorandum. The subject to the right of first --

3 THE COURT: Let me stop you right quick.  
4 Do you have your memorandum?

5 MR. HALFORD: It's of record in the  
6 electronic copy of the exhibits.

7 THE COURT: I do not have it.

8 MR. HALFORD: Yes, sir. I don't have the  
9 exhibits attached.

10 THE COURT: Okay.

11 MR. HALFORD: But, Your Honor, we arrive  
12 here to ascertain through discovery depositions --  
13 there's another very important contract that  
14 should be a huge red flag, and this is your  
15 scintilla standard that we're under, and this is  
16 -- let me show you, Judge.

17 You granted us the right to go out there  
18 and inspect. And you said, how is this going to  
19 lead to the discovery of admissible evidence? Out  
20 of four motions, you denied us three, but you gave  
21 us that right. I want to make clear, my client  
22 has stayed clear of the property and follow your  
23 words at all times and followed my words at all  
24 times.

25 THE COURT: Again, I may have ordered

1 that. I don't have any memory of it, okay?

2 MR. HALFORD: It's in your order.

3 The point is, Judge, you're looking for  
4 scintilla. There's ten of them here. This cabinet is  
5 kind of indigenous of those door locks. Now,  
6 Mr. Tinsley won't produce it. The records of who  
7 bought it, when it was installed. All we know is they  
8 took occupancy and installed these prior to a  
9 September 2015 closing. Why would you do that? Okay?

10 So here Mr. Tinsley took -- we're going to  
11 start with the other three. We're going to go to 13.  
12 Hunter Youmans, Steven Youmans and Kevin Youmans, the  
13 three other brothers who got vested back in December  
14 of 1988. They got something by a deed of their  
15 father. You can't block somebody out of their  
16 inheritance. That's what's going on here. And that's  
17 why it's desperate that if we can pintail this into a  
18 rule, a rule under law, the rule against perpetuities.  
19 And then by way of their motion, wants their  
20 counterclaims to remain standing all these factual  
21 allegations. We didn't raise them.

22 All these issues involve no contract,  
23 no -- my guy didn't do any of this. We got one  
24 credible piece of evidence in this case, and  
25 that's the text messages.

1 THE COURT: And that's a what?

2 MR. HALFORD: A text message. You know  
3 what it says. We got a text message from my  
4 client to Mr. Tinsley, you better get him do  
5 right. He's a lay person.

6 THE COURT: You better do what?

7 MR. HALFORD: You're a lawyer. You  
8 better get him do right. Statute of frauds is  
9 there, Your Honor. It's a gigantic red flag.  
10 Viewing all the facts and inferences most  
11 favorable to the non-movement, all three of these  
12 brothers have got the equitable -- just like if  
13 you and I were to sign a contract, they got the  
14 equitable use and enjoyment of this land, subject  
15 to the condition they must maintain it together.  
16 Okay?

17 So when we change the lot, you know, this  
18 is where we get on to the waiver argument. If  
19 they fail -- if you call a strike today and rule  
20 against perpetuities, now we're talking a waiver.

21 You will recall from the case that they  
22 obtained from my client's written release, ever.  
23 But they took -- and I'm going to point out  
24 something for the record, Mr. Tinsley had the  
25 assistance of another element of lawyering and he

1 got the Cadillac -- I'm talking about Mercedes  
2 version of the deed. He's got the general  
3 warranty deed, Your Honor. So he's not hurting  
4 here.

5 But what we're looking at is a potential  
6 24-month trek through the Court of Appeals to come  
7 back right here where we are today.

8 THE COURT: Well, let me ask you this:  
9 Do you acknowledge that the deed he received was  
10 the general warranty fee simple deed?

11 MR. HALFORD: You're referring to the  
12 December 30, 1988 or the deed --

13 THE COURT: I'm talking about the deed  
14 that Mr. Tinsley got.

15 THE COURT: It was a general warranty  
16 deed, yes, sir.

17 THE COURT: And fee simple?

18 MR. HALFORD: No, sir.

19 THE COURT: All right.

20 MR. HALFORD: I do not, and let me tell  
21 you why.

22 THE COURT: Tell me -- yeah, please tell  
23 me why.

24 MR. HALFORD: First of all, it came  
25 conditioned on the fact that there were other

1 people who had the equitable interest in the  
2 property. And those people, again, would opt for  
3 a contract. But here, this is inheritance. This  
4 is not limiting language. They had the right to  
5 use the property forever.

6 What they're targeting here, Your Honor,  
7 is the option to purchase. It's not a first right  
8 of refusal. This is the option to purchase. And  
9 it's spelled out very clearly.

10 So if you look at the statute, and,  
11 again, the South Carolina statute, not the common  
12 law, these gentleman would have had up to 90  
13 years. Let's even go back, the South Carolina  
14 code under 27-6-10 supersedes the common law rule  
15 against perpetuities. We all memorized that in  
16 law school. Remember? No interest is good unless  
17 it must vest within twenty-one years after some  
18 life in being at the creation of trust. Vest is  
19 the key red flag of scintilla here, because all  
20 three of these brothers got the vested interest on  
21 December 30, 1988 from the father. That was their  
22 inheritance, and you cannot lock somebody out of  
23 their inheritance using the rule against  
24 perpetuities. And that's what we're seeking to  
25 do, Your Honor.

1           Other things I would just bring to the  
2 Court's attention before I finish up, you know,  
3 again, we're talking about the scintilla standard.  
4 I don't know what scintilla is. I guess it's  
5 something akin to a must receive in the law. How  
6 many you need, I'll give you, Your Honor, because  
7 I got 13 or 14 of them now. And the problem with  
8 the depositions that have occurred in this case --  
9 and that has been mediated. You know, nobody,  
10 particularly not my client, could let a trained  
11 lawyer to enter into a package deal without a  
12 contract.

13           THE COURT: You keep using that term  
14 "package deal", and I'm not sure if I comprehend  
15 what a package deal means besides there were three  
16 parcels included in the transfer.

17           MR. HALFORD: I'll be glad to explain it,  
18 or I'll let Mr. Hewitt elaborate. The point is,  
19 Robert Martin Youmans is the grantor to the to the  
20 Mr. Tinsleys. This is my client's estranged  
21 brother.

22           THE COURT: Say that again.

23           MR. HALFORD: Robert Martin Youmans who  
24 was the grantor to Mr. Tinsley sold a series of  
25 tracts, not one tract, and they were joined.

1       Okay? One of the tracts came with this deed  
2       condition restriction. But by doing a package  
3       deal, what they want to convince Your Honor of is,  
4       that language disappeared and it didn't matter  
5       anymore to violate the rule of against  
6       perpetuities. Not in South Carolina. The reason  
7       for that is we have three lives being when the  
8       interest was created, number 1. And, again,  
9       Hunter Youmans, Steven Youmans, and Kevin Youmans,  
10      the other three brothers. And then, two, we have  
11      that value of period.

12               So at the point that they could enjoy  
13      some of these bundle of sticks that Mr. Hewitt is  
14      referring to, no, he didn't have fee simple title  
15      on that transfer. And that's why the father made  
16      it very clear, offer it to the other brothers at  
17      90 percent of fair market value. It's not a  
18      restraint on alienation because of them could have  
19      stood back and said we don't want it.

20               THE COURT: Hang on second. Look up  
21      27-6-10. Well, under the statute, is there a  
22      certain language that you're supposed to use in  
23      order to transfer fee simple from some other type  
24      of interest in the property?

25               MR. HALFORD: Under the statute of --

1 THE COURT: You're saying that it's  
2 common law. I guess you're talking about the rule  
3 against perpetuities being extended out 90 years.  
4 But under the statute of the common law, what  
5 language in the deed has to be there to indicate  
6 that the grantor is transferring fee simple title  
7 versus some limited other title.

8 MR. HALFORD: Heirs and assigns forever  
9 backed by warranty language where he would say I  
10 warrant the defendant.

11 THE COURT: So does this deed that you're  
12 talking about on this particular parcel have that  
13 language.

14 MR. HALFORD: I believe it does, Your  
15 Honor.

16 THE COURT: So why would that not --

17 MR. HALFORD: Subject to a condition upon  
18 it.

19 THE COURT: So why would that not  
20 implicate the rule that I heard espoused to me  
21 that if you grant fee simple, and then you  
22 thereafter try to limit the grant, that it's  
23 ineffective as matter of law.

24 MR. HALFORD: Because the grant, prior to  
25 the conveyance, has conveyed equitable interest in

1 the property, use and enjoyment.

2 THE COURT: Say that again.

3 MR. HALFORD: Because the grant, prior to  
4 the conveyance of paragraph 1 of the exhibit --

5 THE COURT: Okay, point me to that. I'm  
6 trying to wrap my arms around this.

7 MR. HALFORD: I can approach if you'd  
8 like me to.

9 THE COURT: Sure.

10 MR. HALFORD: I don't know how many  
11 copies we passed up, but -- here you go.

12 Judge, to answer your question, page 2 of  
13 that deed is page 318. I've written in magic  
14 marker at the top. If you look at the first  
15 paragraph on that page, that was where the father  
16 conveys to these other brothers equitable interest  
17 which made it not a fee simple deed, not unless  
18 they waive off. Now they could all have said, we  
19 don't care anymore. They could have all failed to  
20 maintain it jointly.

21 We've been through enough discovery to  
22 show that these brothers have a partnership, and  
23 that the partnership was being used to maintain or  
24 move or renovate the cabin.

25 THE COURT: I guess the question I'm

1 asking you is, and I don't know the answer so I'm  
2 just asking, when I look at the first page on 317  
3 of the -- I guess that's a deed page, it says,  
4 Robert Martin Youmans, his heirs and assigns,  
5 doesn't that indicate a fee simple transfer by  
6 using that language, and a general warranty?

7 MR. HALFORD: I believe it would be a  
8 general warranty deed, but my answer to Your Honor  
9 would be it would subject to the brothers --

10 THE COURT: Sir?

11 MR. HALFORD: My answer would be it would  
12 be subject to the --

13 THE COURT: Well, I understand that's  
14 what you're arguing is. But I'm asking as a form.

15 MR. HALFORD: As a form?

16 THE COURT: When you use that language in  
17 the deed, that appears to be a grant of the entire  
18 piece of property. And then subsequently, on  
19 page 318, there seems to be a limitation after the  
20 transfer of a fee simple title. That's what I'm  
21 asking you by form.

22 MR. HALFORD: I would agree it says heirs  
23 and assigns, Your Honor, which intends to pass it  
24 out. I'll also point out that my clients, being  
25 related by blood, would be heirs and/or assigns.

1 THE COURT: Right. I understand. I  
2 guess what I'm trying to understand, if the cases  
3 that are referenced by Mr. Hewitt are correct,  
4 and, if you give a fee simple title, then you  
5 subsequently later on in the document say, but  
6 we're going to limit it as follows, then the  
7 attempted limitation is ineffective as a matter of  
8 law.

9 MR. HALFORD: If it's not a vested  
10 interest, yes, sir.

11 THE COURT: Sir?

12 MR. HALFORD: Again, here, we have a  
13 vested interest.

14 THE COURT: And this deed that I'm  
15 looking at, it's page 318 -- 317 and 318, that is  
16 the deed where the vested interest you allege took  
17 place, right?

18 MR. HALFORD: The vested interest into  
19 the three brothers, that is correct.

20 THE COURT: Right. And that's by virtue  
21 of the language on page 318.

22 MR. HALFORD: Yes, sir.

23 THE COURT: But, going back to my  
24 question, if the deed -- if that's the deed  
25 they're claiming the vested interest under, which

1 you say yes, if that deed has an ineffective  
2 limitation based on its attempt to limit a fee  
3 simple grant in the first instance, that never  
4 vested them, did it?

5 THE COURT: Your Honor, I believe the  
6 grantor could limit it in this instance. Because,  
7 again, the equitable rights were vested in these  
8 brothers.

9 THE COURT: Say that again.

10 MR. HALFORD: I believe the grantor here  
11 could because the equitable use of the property --  
12 it's clear that the grantor intended this property  
13 to stay with the brothers.

14 THE COURT: Let me ask you another way  
15 then: Do you agree or do you disagree that the  
16 form of the deed from Calvin Causey Youmans, this  
17 page 317 and 318, is violative of the cases that  
18 are set forth in the brief, that being Style  
19 Craft, the Abbeville case, and Webb vs. -- the  
20 Hunt vs. Forestry Commission, and also one more,  
21 Sanford, and that it is an attempted limitation  
22 after the grant of a fee simple title. Do you  
23 disagree with that proposition?

24 MR. HALFORD: Repeat that. After the  
25 grant of the fee simple title?

1 THE COURT: Yes, sir.

2 MR. HALFORD: Had the interest not been  
3 vested.

4 THE COURT: I thought this was the  
5 vesting instrument. That's what you answered.

6 MR. HALFORD: The vesting instrument  
7 would be the this deed, Your Honor. And, again,  
8 it vested these brothers.

9 THE COURT: So the question I'm asking --  
10 and, again, I'm not trying to rule. I'm just  
11 asking for my own edification. The instrument  
12 that you're using to claim this vested interest is  
13 the one that we keep referring to as page 317 and  
14 318, correct?

15 MR. HALFORD: Correct, Your Honor.

16 THE COURT: So if that deed violates the  
17 rule as expressed in the cases we just cited, and  
18 it was cited by defense counsel, wouldn't that be  
19 ineffective to vest anything?

20 MR. HALFORD: No, sir. It vested it for  
21 years.

22 THE COURT: Sir?

23 MR. HALFORD: No, sir. This interest has  
24 been vested for years. That's what I'm trying to  
25 explain.

1           THE COURT: That's why I'm not following,  
2           and that's why I'm asking. I mean, do you  
3           disagree with the proposition or the general rule  
4           that you can't grant a fee simple title, and then,  
5           subsequent in the same document, attempt to limit  
6           that grant of fee simple title?

7           MR. HALFORD: I agree with the  
8           proposition in general.

9           THE COURT: And then do you disagree in  
10          this particular deed that you claim was the vested  
11          interest, page 317 and 18 of the deed of Calvin  
12          Causey Youmans does exactly just that, that it  
13          grants fee simple on page 317, and then on page  
14          318 it seeks to limit that grant of fee simple?  
15          And that's what I'm asking.

16          MR. HALFORD: I --

17          THE COURT: Because it appears to me  
18          that's what it does.

19          MR. HALFORD: Well, I don't know that's a  
20          limitation. The option to purchase. My first  
21          right of refusal came vested with these other  
22          brothers having the equitable use of this  
23          property.

24                 So it's not a matter of -- if we're  
25          sitting here talking about pure legal title, clear

1 title, we're talking about the equitable use of  
2 the property and the option to purchase.

3 THE COURT: Well, again, if the rule is  
4 effective and is appropriate that you said -- you  
5 agreed with just the general proposition that  
6 there's a grant of fee simple, any limitation that  
7 would limit as was earlier described, the full  
8 bundle of all your sticks, or whatever the proper  
9 terms were used as first year law students, would  
10 be a limitation, regardless of what it is, right?

11 MR. HALFORD: Your Honor, I don't think  
12 it's a limitation.

13 THE COURT: It's not?

14 MR. HALFORD: No, sir.

15 THE COURT: How would it not be a  
16 limitation?

17 MR. HALFORD: Because all these brothers,  
18 at some point, could, in fact, waive it.

19 THE COURT: But let me -- I own a farm --  
20 two farms up in the Upstate.

21 MR. HALFORD: Yes, sir.

22 THE COURT: One of which I have in my  
23 name. One of which I have in an LLC that I could  
24 -- a different story. But the one that's in my  
25 name, if I want to sell it, then I have a right to

1 sell it without limitation -- to anybody without  
2 limitation, correct?

3 MR. HALFORD: Yes, sir.

4 THE COURT: So, again, if you attempt to  
5 limit the -- any potential grantee to a certain  
6 designated class, is that not a limitation?

7 MR. HALFORD: Not in this instance,  
8 Your Honor.

9 THE COURT: Why would this instance make  
10 it any different than any other deed?

11 MR. HALFORD: Because all these brothers  
12 have an equitable use of the property and the  
13 option to purchase it.

14 THE COURT: So you think the option to  
15 purchase is not a limitation on the property?

16 MR. HALFORD: No, sir. The restriction  
17 perhaps would be, but an option to purchase just  
18 means that they had to offer it, which is another  
19 thing --

20 THE COURT: Say that again, please.

21 MR. HALFORD: The option to purchase by  
22 these brothers could have been exercised by any of  
23 them.

24 THE COURT: Sure.

25 MR. HALFORD: Our position is, hey, under

1 the --

2 THE COURT: But then you go back to the  
3 square one, if I have fee simple title, I have a  
4 right to sell it anybody in the world I want to,  
5 anybody, right?

6 MR. HALFORD: With a contract.

7 THE COURT: As long as they sui juris, I  
8 have a right to sell it to them, right?

9 MR. HALFORD: Yes, sir.

10 THE COURT: So if there's a purported  
11 limitation on who the grantees can be, then that  
12 is, in fact -- that is, in fact, just that, a  
13 limitation, is it not? Therefore, it would be  
14 violative of the rule, you can't give a fee simple  
15 title and then limit it later by subsequent  
16 language. I mean, that's what I'm asking. I  
17 mean, you seem, at first instance, to agree with  
18 the general proposition that you can't grant fee  
19 simple title and then thereafter limit it because  
20 it's ineffective. I mean, you agree with that,  
21 right?

22 MR. HALFORD: The general principal. I  
23 think you also have to look at the four corners of  
24 this deed, Your Honor.

25 THE COURT: Sure. I think you have to

1 look at all four corners of the deed. But at the  
2 same time, when you see the language "his heirs  
3 and assigns" in the description thereafter, that  
4 appears to be the full title to this property in  
5 fee simple. You disagree with that?

6 MR. HALFORD: I do disagree with it based  
7 on the language in this deed.

8 THE COURT: All right. Just based on the  
9 subsequent limiting language.

10 MR. HALFORD: Correct, Your Honor.

11 THE COURT: All right. And that's the  
12 language -- and, listen, I'm not ruling. I'm just  
13 making sure I understand the argument.

14 MR. HALFORD: Yes.

15 THE COURT: Your language, Mr. Halford,  
16 that you're referring to is the top paragraph on  
17 page 318 and the second paragraph. In other  
18 words, all of the language on the first two  
19 paragraphs on the top of page 318, right?

20 MR. HALFORD: Yes, sir.

21 THE COURT: Okay.

22 MR. HALFORD: In other words, something  
23 was vested in this deed.

24 THE COURT: Okay.

25 MR. HALFORD: And it was immediate and it

1 was realized in the deed.

2 THE COURT: Do you have any cases that  
3 would support your position that this is not a  
4 limitation of a fee simple grant?

5 MR. HALFORD: No, sir. Not with me. I  
6 do not.

7 THE COURT: Are you aware of any?

8 MR. HALFORD: No, sir.

9 THE COURT: Okay. Go ahead with your  
10 argument. I'm sorry to interrupt you. I keep do  
11 that.

12 MR. HALFORD: It's okay.

13 To finish my argument, I mean, if you view  
14 the facts in evidence -- if you view the facts and  
15 inferences most favorable to the non-moving party,  
16 Your Honor, the point is, the total -- Your Honor,  
17 lastly, my client has had use of this property for  
18 well over 30 years of his life. Okay. That changes  
19 when the lot was changed.

20 And, again, if this language means  
21 anything, if it's, in fact, not a restraint or  
22 alienation, these gentlemen, including my client,  
23 got two things; option to purchase and the vested  
24 ownership.

25 THE COURT: Well, and I think you're

1 hundred percent right. That is the question. And  
2 the question seems to be a matter of law. Would  
3 you not agree with that? It's not a matter of  
4 fact. It's a matter of construction of the deed  
5 as to whether or not it's a fee simple grant with  
6 subsequent limitation, or immediate vesting of  
7 some equitable or other type of interest in this  
8 property that gives him some rights in this  
9 suit.

10 MR. HALFORD: I would agree that's a  
11 question of law, Your Honor.

12 THE COURT: And that's a question of law  
13 to be decided today as opposed to a trial where  
14 facts -- there's no facts that really need to be  
15 borne out about this, is there?

16 MR. HALFORD: Well, yes, sir, there is.

17 THE COURT: What facts do you think we  
18 could flesh out that would shed light on whether  
19 or not this is a violation or whether your  
20 proposition is correct?

21 MR. HALFORD: Your Honor, we didn't raise  
22 those facts. They did.

23 THE COURT: But you're raising --

24 MR. HALFORD: And by the way, since  
25 you're speaking to it, Your Honor, whether or not

1       there was a valid right to purchase or not, I  
2       understand their legal position, but there was.  
3       There was a valid --

4               THE COURT: I mean, quite frankly, Mr.  
5       Halford, I really it's a question of law. I don't  
6       think it is a matter of -- you say there's  
7       discovery out there, there's factual issues, I  
8       don't think there's any factual issues. The deed  
9       says what it says from the four corners. And  
10      either as a matter of law, either it's a  
11      limitation of a fee simple or it's not a  
12      limitation of fee simple. I mean, it seems easy  
13      enough just construction of the deed.

14              MR. HALFORD: I can tell you this much,  
15      you don't have to take my word for it, Your Honor.,

16              THE COURT: Sir?

17              MR. HALFORD: You don't have to take my  
18      word for it.

19              THE COURT: Well, I mean --

20              MR. HALFORD: You can take his closing  
21      attorney's word for it. Would you like to see the  
22      letter to one of the other brothers?

23              THE COURT: If you want show me anything,  
24      I'll be glad to look it.

25              MR. HALFORD: It's actually attached,

1 Your Honor, to our memorandum.

2 THE COURT: Okay.

3 MR. HALFORD: It's attached to our  
4 memorandum as an exhibit. It was on the closing  
5 terms, Your Honor, in addition to soliciting but  
6 was never assigned, at least by my client. He  
7 sent a letter to the brother. It's my only copy,  
8 Your Honor.

9 THE COURT: Okay. Well, let me just give  
10 it to my law clerk. She'll make a copy for you.

11 MR. HALFORD: Thank you.

12 THE COURT: Do you mind doing that? Our  
13 clerk will.

14 MR. HALFORD: It's my understanding, as I  
15 was looking at this, Your Honor --

16 THE COURT: Hang on one second, please.

17 MR. HALFORD: Sure.

18 THE COURT: Thank you, ma'am.

19 The letter you're referring to is a  
20 July 14, 2015 letter from Walter H. Sanders, Jr.;  
21 is that correct?

22 MR. HALFORD: That's correct, Your Honor.  
23 He was the closing attorney for this transaction  
24 along with Mr. Tinsley. The plaintiffs  
25 represented themselves. And the point I was --

1 again, this is our Exhibit Number 4 to my  
2 memorandum in opposition. If you have -- the  
3 language is very clear, Judge.

4 That conveyance language that you're  
5 referring to that that deed is invalid, well, the  
6 closing attorney certainly didn't think so. It  
7 says, you have the option to purchase the property  
8 in the event Martin desires to sell or otherwise  
9 convey. Martin desires to sell the property. If  
10 you want retain your right to purchase it, please  
11 notify me.

12 This gentleman does end up signing a  
13 release, by the way. The release that they never  
14 obtained from Mr. --

15 THE COURT: I got you. And I'll note  
16 that. And let me tell you this, I didn't do real  
17 estate. I did litigation. I had two partners who  
18 did nothing but real estate. And I have watched  
19 them over the years when I was in practice with  
20 them, if they think there's any blemish, they turn  
21 over every stone that they can to make sure  
22 there's not a problem down the line, because with  
23 real estate, as we all know, if there is, it  
24 doesn't ever go away. They don't want somebody,  
25 20 years later, bringing up an issue.

1 MR. HALFORD: It's good when you --

2 THE COURT: Sir?

3 MR. HALFORD: I said, it's good when your  
4 real estates partners have --

5 THE COURT: That's right. But, at the  
6 same time, I believe, unless you can -- and I'm  
7 glad for you to give me a case. The construction  
8 of this deed that we keep referring to as 317, any  
9 subsequent conveyance is a matter of law. It's  
10 not a factual need for further development. It  
11 says what it says. It should be construed by what  
12 it says. That's the way I think is the proper  
13 way -- in other words, summary judgment would be  
14 appropriate or not appropriate in this case.

15 MR. HALFORD: I think Your Honor also  
16 needs to look at the limiting effect of the  
17 statute in South Carolina. There are other  
18 statutes that come to bare it and rule against  
19 perpetuities in the applicable, and you're talking  
20 statute of frauds.

21 You either got a contract or you don't.  
22 You either served a written offer to these boys or  
23 you didn't. And this avoidable. We got to be  
24 held to somewhat of a higher standard. But when  
25 he's told you --

1 THE COURT: Say that again, please.

2 MR. HALFORD: Well, Your Honor, there is  
3 a statute, the statute of frauds, and, again, they  
4 would respectfully disagree with it, as I  
5 understand, but even if their theory were to be a  
6 hundred percent correct, it doesn't change the  
7 fact that this violates the statute of frauds. So  
8 we'll be sitting here arguing this two years from  
9 now.

10 THE COURT: The deed violates the statute  
11 of frauds?

12 MR. HALFORD: No. The new transaction  
13 from Mr. Martin Youmans to Mr. Tinsley. You  
14 either had a contract or you didn't.

15 THE COURT: Well, even under the statute  
16 of frauds, if you do substantial performance, it  
17 takes it out of the statute of frauds. And the  
18 preparation of a deed would do just that, would it  
19 not, and the payment of any consideration?

20 MR. HALFORD: Well, any valid contract as  
21 you decide --

22 THE COURT: I mean, you're position --

23 MR. HALFORD: -- the Court decides any  
24 consideration.

25 THE COURT: Your position, if I

1 understand what you're saying, is that in order  
2 for there to be a conveyance of real estate that  
3 there is a condition precedent that it's necessary  
4 that you have a written contract in order for that  
5 transaction to go forward. Is that what you're  
6 saying?

7 MR. HALFORD: You need a written contract  
8 from an equitable interest so the transverse of  
9 the transaction can go forward, yes, sir. And I'm  
10 pretty sure there's case law on that point, but I  
11 don't have any.

12 THE COURT: Well, I'll be glad -- listen,  
13 I'll be glad to hear from you. If you get  
14 something you want to turn in to me, can you do it  
15 this week?

16 MR. HALFORD: Yes, sir.

17 THE COURT: All right. And I'll be  
18 glad -- if you want to turn in a case that says  
19 that my idea of construction is wrong, in other  
20 words, it is factual based as opposed to a matter  
21 of law based on the four corners of this contract,  
22 I'll be glad to hear that too.

23 But as I sit here now, quite frankly, I  
24 think it is a matter of law based on the wording  
25 or the four corners of this document. Okay, sir?

1 That's what I think.

2 MR. HALFORD: Yes, sir.

3 THE COURT: So if you would get that to  
4 me and my law clerk this week, I'd appreciate  
5 it.

6 MR. HALFORD: I'll be glad to do so, Your  
7 Honor.

8 THE COURT: I mean, I know you probably  
9 got a lot of stuff going on. How long do you  
10 think you need to give me this information.

11 MR. HALFORD: End of the week, Your  
12 Honor.

13 THE COURT: Sir?

14 MR. HALFORD: Would end of the week be  
15 fine?

16 THE COURT: Sure. Yeah.

17 MR. HALFORD: Thank you.

18 THE COURT: No later than Friday at 5:00.  
19 Is that okay?

20 MR. HALFORD: Yes, sir.

21 THE COURT: If you need -- if you run  
22 against a stone wall for that, let me know. Okay.  
23 I'm not going to hold you to it necessarily, but I  
24 don't want this thing to go on ad infinitum  
25 either.

1 MR. HALFORD: Yes, sir.

2 THE COURT: Okay. Go ahead, Mr. Halford.  
3 Anything further?

4 MR. HALFORD: No, sir.

5 THE COURT: All right. Anything in  
6 response, Mr. Hewitt?

7 MR. HEWITT: Just two quick points,  
8 Your Honor. There are factual issues in the case,  
9 generally. My brother correctly observes my  
10 client's counterclaims against the plaintiff.  
11 There are also factual issues, for example, if  
12 summary judgment would be denied, about a waiver  
13 which is factual. But you did not hear me raise  
14 any of those issues in my initial presentation  
15 because we're not moving for summary judgment on  
16 those issues.

17 You're exactly correct that the validity  
18 of this deed's language is a pure question of law,  
19 and we think it's appropriate for the Court to  
20 resolve the validity of this deed's language, and  
21 speaking of the deed from Calvin to Martin, to  
22 resolve the validity of that deed's language as a  
23 matter of law.

24 Just to protect the record, I do want to  
25 take issue with the representation that, at least

1 with respect to the option of the right of first  
2 refusal, that's something vested in that deed. It  
3 was given in 1988. In Webb vs. Reems it says, "A  
4 right of first refusal is a contingent non-vested  
5 interest because -- in the grantee and the  
6 grantee's heirs because they might never choose to  
7 sell the property. And that, of course, is the  
8 problem here.

9 We differ that the right of first refusal  
10 was granted to Hunter and didn't include the  
11 language heirs or assigns or whatnot. Of course,  
12 the heirs or assigns might never sell.

13 Now, the reason I do not talk about the  
14 statutory rule against perpetuities or the common law  
15 rule against perpetuities is there is a subsection in  
16 that statute that says it's invalid under the common  
17 law rule, but it might be valid if it vests within  
18 90 years.

19 And so it is arguable that when Calvin  
20 decided to sell this tract to my clients that  
21 contingency and the right of first refusal option  
22 was triggered. That's why I didn't argue the  
23 statutory rule against perpetuities.

24 THE COURT: Well, I don't think I'm  
25 following you there, Mr. Hewitt. Go ahead and

1 tell me what you mean by that, please, sir.

2 MR. HALFORD: Okay. So the common law  
3 rule against perpetuities was articulated by my  
4 brother 21 years ago. South Carolina has modified  
5 the common law rule against perpetuities by  
6 enacting a specific statute that has the common  
7 law rule, and then it also says that interest can  
8 be valid if it vests within 90 years of its  
9 creation.

10 So this contingent non-vested interest  
11 of -- was non-vested when the deed was given in  
12 '88, but it arguably vested when the Martin  
13 decided to sell the property. That was the  
14 triggering --

15 THE COURT: Well, let me ask you the same  
16 question I asked Mr. Halford. It would seem that  
17 when you raise the issue -- and maybe I'm just  
18 being dense, and that's not the first time, but  
19 you have this issue of rule against perpetuities  
20 either is a valid vested interest or it's a red  
21 herring in that the deed was either a fee simple  
22 deed with the subsequent limitation that's  
23 invalid, and therefore the rule against  
24 perpetuities doesn't have any application.

25 MR. HEWITT: That's right.

1           THE COURT: Or that it is immediately  
2 vested and the rule of perpetuities is not  
3 implicated anyway because it's already vested.

4           MR. HEWITT: So it's obviously not  
5 immediately vested. Webb vs. Reems says that  
6 specifically.

7           And I -- I appreciate my brother's  
8 argument, but I disagree strenuously with the  
9 suggestion that my argument in chief at all  
10 involved the rule against perpetuities. It is not  
11 the common law rule that I think is the clearest,  
12 most direct, and correct reason we should be  
13 granted summary judgment.

14           The common law rule, as articulated in  
15 Sanford, County of Abbeville, whatever, is that  
16 this sort of broad and unrestricted language, the  
17 right of access forever, and the right of first  
18 refusal in perpetuity is inconsistent with the fee  
19 simple absolute language and is struck as a matter  
20 of common law.

21           I don't know of any case or authority  
22 standing for the proposition that that common law  
23 rule is at all effected by the common law rule  
24 against perpetuities or the statutory rule against  
25 perpetuities.

1           And so I have difficulty understanding  
2           how an order or opinion could be written getting  
3           around Sanford, County of Abbeville. I think the  
4           only way they get around it is if they said  
5           they've effectively overruled. No authority says  
6           that.

7           So I appreciate my brother's position  
8           that he articulates very well, but I strenuously  
9           disagree with the proposition, our chief summary  
10          judgment that it all involves the rule against  
11          perpetuities.

12          THE COURT: All right.

13          MR. HEWITT: Our argument is that these  
14          purported reservations are just too much, and  
15          because they are inconsistent with the language  
16          that clearly signifies fee simple absolute, they  
17          are struck as a matter of law.

18          THE COURT: All right. Thank you, sir.  
19          Anything further, Mr. Halford?

20          MR. HALFORD: Just briefly. I think you  
21          got to look at the South Carolina statute, and the  
22          only reason South Carolina's legislator adopted  
23          this statute. It superseded the common law.  
24          That's because it's available in South Carolina, I  
25          do believe real estate paints forfeiture, Judge.

1           So if you're applying the common law  
2           versus the statute, again, 90 years, let's go  
3           back. Something vested -- this is where we -- my  
4           brother and I -- it's something vested. It was  
5           the right to use that property and enjoy that  
6           property and had family time at that property.  
7           Those were equitable benefits vested.

8           The question here is how legal title  
9           ultimately transfers. Does it violate the rule  
10          against perpetuities under the common law or the  
11          statutory -- clearly under the statute of South  
12          Carolina, it does not. Creation of the trust, an  
13          actual thing that vested that day, December 30,  
14          1988, and it was called inheritance, Judge. You  
15          can't just wipe out somebody's lifetime use  
16          rights. He's saying it's open ended. It's too  
17          far fetched.

18          This is a family property and these  
19          brothers had the right to waive. Okay? They  
20          could have just walked away and not maintained or  
21          just left. And, in fact, one of them did.

22          But until that time occurred, he had  
23          lifetime rights to be out there enjoying the  
24          property.

25          And the only limitation that you're

1 looking at in the deed is whether or not -- that  
2 90 percent fair market is very clearly spelled out  
3 that it should be offered to him first and he can  
4 easily say, I don't want it. That's not what  
5 happened here.

6 THE COURT: All right. Thank you, sir.

7 All right. Gentlemen, I will take this  
8 under advisement and I will let you know my  
9 decision.

10 If you'll get that information to me  
11 before 5:00 on Friday, Mr. Halford, I'd appreciate  
12 it.

13 MR. HALFORD: Good to see you again.

14 THE COURT: Good to see you again.

15 MR. HEWITT: Thank you, Your Honor.

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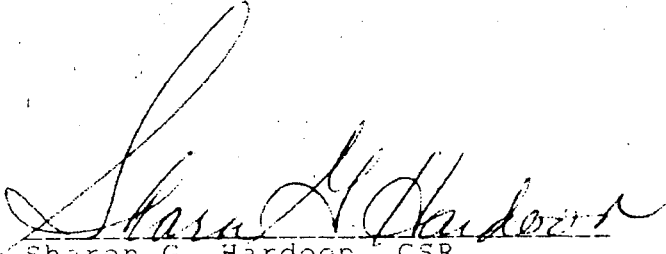
CERTIFICATE OF REPORTER

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I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina, AT-LARGE, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record by digital recording of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina.

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

January 4, 2019



Sharon G. Hardeen, CSR  
Official Circuit Court Reporter, II

STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
COUNTY OF ALLENDALE ) 2016-CP-03-00286  
)  
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)  
WILLIAM HUNTER YOUMANS, )  
PLAINTIFF, )  
)  
vs. ) TRANSCRIPT OF RECORD  
)  
MARK B. TINSLEY AND )  
DIANE E. TINSLEY, )  
DEFENDANTS. )  
\_\_\_\_\_ )

March 27, 2019  
Greenwood, South Carolina

B E F O R E:

THE HONORABLE R. LAWTON McINTOSH, JUDGE

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

J. CAMERON HALFORD, ESQ.  
Attorney for the Plaintiff

BLAKE A. HEWITT, ESQ.  
Attorney for the Defendant

CHERYL A. SMITH  
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
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There were no exhibits introduced.

P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 1:59 p.m.)

THE COURT: All right. This is the case of William Hunter Youmans vs. Mark B. Tinsley and Diane Tinsley, Case Number 2016-CP-03-00286.

This is a motion for reconsideration from the plaintiff. We're in Greenwood County today.

Mr. Halford, I assume that you agree to have venue in this matter heard and disposed of in Greenwood?

MR. HALFORD: Yes, Your Honor. We did agree to be here, and I appreciate the Court's scheduling of us.

THE COURT: Very good.

And, Mr. Hewitt, I assume that you do as well?

MR. HEWITT: Yes, Your Honor.

THE COURT: Very good. All right.

Mr. Halford, be glad to hear from you.

MR. HALFORD: Yes, sir. May it please the Court. Thank you for hearing us.

Your Honor, this motion is the plaintiff's. It was heard back in Allendale, if you recall. And Your Honor probably recalls the deed that's been an issue in several hearings in this case prior to now. We brought this motion before your court seeking that you reverse your order, because we're alleging that there is an error of

1 law, Your Honor, and I'll get there in just a minute.  
2 That will be the first preface to my argument.

3 The second is, Judge, in viewing this deed or in  
4 construing this deed, I'm suggesting that inadvertently,  
5 the Court has viewed all the facts and all inferences on  
6 the wrong side of the case in favor of the movant. So  
7 I'll start with the error of law, Your Honor.

8 The hearing before Your Honor was on October the 8th  
9 in Allendale, October the 8th of 2018. And you'll recall  
10 the deed in this case. The grantor to Mr. Tinsley was my  
11 client's brother, Martin. Martin seems to be the most  
12 famous name in the case so far.

13 Martin was granted a deed by his father as were  
14 several other of the sons, but only one deed's in evidence  
15 before the Court. In that deed, the Court focused in on  
16 the language "heirs and assigns." And what we're alleging  
17 today here at law, Your Honor, is in the long and  
18 distinguished and unbroken line of cases that my respected  
19 colleague has cited, I don't know that the Stroman case  
20 that we cited to Your Honor made it into your review.

21 The Stroman case was a '33 decision, 1933 from the  
22 South Carolina Supreme Court, and it's unchallenged since  
23 that time.

24 THE COURT: May I ask you to do me a favor?

25 MR. HALFORD: Yes, sir.

1 THE COURT: Do you have a copy of the deed with you  
2 or can you give me a copy or somebody give me a copy so I  
3 can refresh my memory? I know the issue was -- and I've  
4 read your brief ---

5 MR. HALFORD: Do you happen to have it handy, Blake?

6 MR. HEWITT: I do.

7 THE COURT: You have what appeared to be ---

8 MR. HALFORD: I have it, Your Honor.

9 THE COURT: --- a fee simple grant with a subsequent  
10 limitation on that grant. Isn't that -- that's pretty  
11 much the issue, Mr. Halford? Do you agree?

12 MR. HALFORD: You have a copy?

13 MR. HEWITT: I do. But save you the ---

14 THE COURT: We'll make you a quick copy, if you don't  
15 mind, and then give it back. Thank you, Mr. Halford.

16 But weren't those -- that's basically the issue  
17 before the Court is that it was alleged to be a fee simple  
18 grant with a subsequent limitation of that grant and the  
19 deed as -- that was defendant's position that I agreed  
20 with?

21 MR. HALFORD: You did agree with that position along  
22 with the line of reasoning in the list of approximately  
23 nine cases they sent to you.

24 THE COURT: Okay. And tell me why that would not be  
25 the case.

1 MR. HALFORD: Your Honor, the common law, you'll  
2 remember the rule against perpetuity is that the cited and  
3 somewhat -- we're not going there.

4 THE COURT: Yeah. If I could ever cite it, I do.  
5 I've had one case in my entire career that implicated  
6 that.

7 Go ahead.

8 MR. HALFORD: For the same reason, however, the  
9 statutory law in South Carolina adopted after 1993 applies  
10 to cases like this.

11 What we're alleging is that Your Honor has  
12 inadvertently but yet done so retroactively applied the  
13 current state of common law to a 1988 deed. And the  
14 important thing about the 1988 deed is we argued very much  
15 on prior times before this court is my client is one of  
16 four brothers that got vested with something, in other  
17 words, by agreement. I will agree that, again, my  
18 established colleague's long line of cases stand  
19 unchallenged nine times out of ten. However, viewing that  
20 tenth in favor of the non-movant, which would have been  
21 plaintiff here, Your Honor, is entirely clear under South  
22 Carolina law. Depending on which case Your Honor -- which  
23 way Your Honor goes on this, that fee simple could be  
24 limited.

25 And what we're arguing to the Court is that Martin,

1 my client's brother, he was the seller in 2015 to the  
2 Tinsley defendants, got a limited defeasible fee. The  
3 reason we state that is -- and I understand the Court has  
4 focused on the language, his heirs and assigns, as  
5 creating a fee simple. But, again, nine out of ten times  
6 under the current state of law, that might be correct.  
7 The one where it's not correct, Your Honor, is where  
8 there's an agreement between ---

9 THE COURT: There's an agreement?

10 MR. HALFORD: Yes, sir. Your Honor actually saw it.  
11 I've got the transcript that was before you previously.  
12 However, there was an agreement ---

13 THE COURT: In all candor, Mr. Halford, I do not  
14 recall any agreement. The agreement between the Tinsleys  
15 and the grantor in this case?

16 MR. HALFORD: No, sir. Let's separate the deeds just  
17 briefly.

18 THE COURT: Okay. Please.

19 MR. HALFORD: There's a 1988 deed, December 30, '88.  
20 Again, that's well before the change under the statute,  
21 which is cited for Your Honor in our exhibits.

22 THE COURT: That's from Calvin to Robert.

23 MR. HALFORD: Yes, sir. Calvin Causey Youmans to  
24 Robert Martin Youmans.

25 THE COURT: Right. I've got you. Okay. Thank you.

1 MR. HALFORD: And what we're arguing is, Judge, under  
2 this deed, my client's been going out on that property for  
3 well over 40 years of his life, but let's just focus in on  
4 the time from Martin to Tinsley, 27 years.

5 THE COURT: Okay.

6 MR. HALFORD: There's never been a revocation. My  
7 client's used it all that time. And more importantly, the  
8 grantee, Martin, accepted that from the grantor, and it  
9 was exercised over all those years.

10 Now, let's spring forward for just a minute to 2015.  
11 Okay. And the briefs before this court and the  
12 memorandums, it's argued that there's no dispute that  
13 Martin grants to Tinsley September 22, 2015, fee simple  
14 absolute rights.

15 THE COURT: Say that again? There's no dispute that  
16 he do what?

17 MR. HALFORD: Yes, sir. There's argued in their  
18 prior memorandums before this court that in 2015, Martin  
19 grants to the defendants, the Tinsleys, fee simple  
20 absolute. The point is, Martin had to have fee simple  
21 absolute in order to convey it ---

22 THE COURT: Right.

23 MR. HALFORD: --- if the Court views it under  
24 Stroman.

25 Secondly, Judge, when you talk about the right to

1 exclude others, you'll recall you first heard this case I  
2 believe June 21st in Allendale, 2017.

3 THE COURT: Was that a discovery issue about access  
4 to the property or something?

5 MR. HALFORD: Yeah. The discovery issues have  
6 remained ongoing. In fact, there were two motions to  
7 compel up when you ruled as law in this case.

8 THE COURT: I know it was fairly contentious, but go  
9 ahead.

10 MR. HALFORD: And in any event, Your Honor, there's  
11 no evidence the right to exclude here is first exercised  
12 by Mr. Tinsley. You may recall the huge exhibit with the  
13 door locks and the codes on them. But prior to that time,  
14 and I'm not trying to jump to the summary judgment that we  
15 filed, but rights of Martin Youmans under that '88 deed,  
16 even if your legal holding was correct, that's not what  
17 happened here.

18 So over the course of the years, I've long argued my  
19 client was vested with something. And what should have  
20 been reserved for the trier of fact in this case,  
21 respectfully, Your Honor, is, at some point inside that  
22 deed as well, if true under the Stroman decision I've  
23 cited, there is triggered a vesting of his rights. It's  
24 no longer a contingent right. There's ---

25 THE COURT: Let me ask you this. How would the

1 construction of this deed be anything but a legal issue?

2 MR. HALFORD: Two reasons, Your Honor. Number one,  
3 the law changed in '93. We're applying it retroactively  
4 to whatever Martin could have received in '88, which I  
5 respectfully assert as an heir.

6 Secondly, under that deed, my client has -- the right  
7 to exclude was never exercised. The record is devoid of  
8 anything where Martin tried to say, hey, stay off this  
9 property. Now, he may have had that right under that  
10 language, but that's not what occurs here, Your Honor.

11 Hence, at the last hearing, we did pass up some  
12 exhibits. I don't think the Court viewed them as  
13 favorable to Mr. Youmans, and strictly ruled, zoning in on  
14 issue of law. But the question is, is your ruling of law  
15 correct under Stroman, or do we view it under the  
16 subsequent line of cases cited by the defense? And I  
17 think with the change in the law in '93, applying that  
18 retroactively to a 1988 deed, I think you've got to look  
19 at the deed from Causey to Martin and what was accepted in  
20 that deed. And the one strike where, again, nine out of  
21 ten times this is correct, the one where it's not correct,  
22 Your Honor, is if it's accepted, and it was.

23 So then we spring forward into the -- 2015. The code  
24 section I've cited is 27-5-130(C).

25 THE COURT: What's that section again, please.

1 MR. HALFORD: 20 -- excuse me, Your Honor.

2 25-5-130(C). I probably misquoted it last time before  
3 you.

4 But in looking at it, Judge, and I've got the record  
5 before the Court last time, the acceptance is what's  
6 critical here. There weren't just one deed. There were  
7 four. But only one's in evidence before you now.

8 This condition has survived as observed by all the  
9 grantees and violated until this one transfer in 2015. So  
10 the right to exclude, in this case, is first exercised,  
11 unknowingly to my client, by the way, by Mr. Tinsley.

12 And then secondly, Judge, under the Stroman case,  
13 which I cite 168 SC 538 -- again, there's a long line of  
14 cases my respective colleague has quoted against that one.  
15 That's the one that we argue counts here. It's entirely  
16 possible to limit a fee simple grant, particularly where  
17 -- these are heirs, these are sons -- where acceptance.

18 And so over the course of the years, even if in the  
19 language read in that deed in isolation, I would add, I  
20 think you've got to view the whole -- the entire four  
21 corners of the whole deed, not the granting clause, if  
22 you're under '88, 1988. This entire time, there's no  
23 right to exclude my client.

24 And that's the other issue I'd respectfully point to  
25 your court today. Under your first ruling, we were first

1 before your court January 21st, I believe it was, of --  
2 it's been a while back.

3 THE COURT: Right.

4 MR. HALFORD: You know, you heard a whole lot from  
5 one of the -- the defendant who happens to be counsel, but  
6 there's a whole lot of facts that got out there, and my  
7 client's never had a chance to address the Court. But you  
8 told us that day, hey, Cameron, you go out there, you look  
9 at this property. Your client stays off. And you forbade  
10 him to go back, and he's honored your instruction to the  
11 letter.

12 But then we come forward to your next order, which is  
13 the 8th of November, I believe. I'm doing this from  
14 memory. And that one holds a little bit differently. And  
15 it's like that one states that Martin had the right to  
16 exclude. And that's just not what happened, Your Honor,  
17 over the course of more than 20 years. I can't really  
18 cite to you 50, 40, 30, how many years, but it was never  
19 exercised during his ownership.

20 And then lastly, the order, which is well written by  
21 my colleague and adopted by this court, my client's not a  
22 trespasser because Martin had the right to exclude. Never  
23 exercised.

24 And so I don't think those facts got viewed most  
25 favorably to the non-movant, and we're asking for -- we're

1 asking you reverse. I think whether my client got vested  
2 rights or not is triggered by the decision to sell. Okay.  
3 And you'll recall, there's no contract here for some  
4 reason, and we've argued the statute of frauds to no  
5 avail. There's no contract here. All we have is a deed  
6 and a settlement that occurs on September 22, 2015, when  
7 my client's rights were vested, if there was, in fact, a  
8 contract other than the deed, which would take it out of  
9 the statute of frauds. Irrespective of that, those were  
10 jury questions. And my client would respectfully ask it's  
11 not like ---

12 THE COURT: What exactly is the jury question?

13 MR. HALFORD: Whether my client's rights vested under  
14 the deed. We've abandoned the perpetuities. Let's don't  
15 say that word again.

16 THE COURT: Thank you.

17 MR. HALFORD: However, at the point that there is  
18 some desire to sell.

19 THE COURT: So you say that the rights being vested  
20 under a deed is a question of fact or makes question of  
21 law and fact for a jury to decide.

22 MR. HALFORD: A, yes. And, B, if viewed under  
23 Stroman -- and I'll acknowledge I didn't have Stroman in  
24 front of you the first day, but you gave me till Friday to  
25 get it to you that week.

1 THE COURT: Okay.

2 MR. HALFORD: And under that case, you can limit fee  
3 simple.

4 THE COURT: All right.

5 MR. HALFORD: The question is, did Martin get fee  
6 simple absolute. And out of the incident of rights or the  
7 bundle of sticks you get, the one he didn't get was  
8 exclusivity.

9 THE COURT: All right. Thank you, sir. Anything  
10 further?

11 MR. HALFORD: Not at this time, Your Honor.

12 THE COURT: Thank you, Mr. Halford.

13 All right. Mr. Hewitt, be glad to hear from you.

14 MR. HEWITT: Thank you, Your Honor. May it please  
15 the Court.

16 THE COURT: Yes, sir.

17 MR. HEWITT: Just a couple of quick points. And as I  
18 think Your Honor will recall from the discussion, what  
19 we're talking about is a construction of two clauses in  
20 the 1988 deed from the plaintiff's father, Calvin Youmans,  
21 to the plaintiff's brother, Martin Youmans. The first  
22 clause purports to give what the deed itself calls a right  
23 to access a cabin and a pond on a piece of property in  
24 rural Allendale County, South Caroline.

25 And the second clause purports to grant a right to be

1 offered to purchase the property for 90 percent of its  
2 fair market value if Martin Youmans, the plaintiff's  
3 brother, ever decides to sell.

4 And so I approach sort of three quick points, I  
5 think. First is I don't quite know how to respond to the  
6 argument that maybe facts weren't viewed in the  
7 plaintiff's favor or that there are jury questions  
8 presented. I don't see how the construction of the deed  
9 and whether that language is effectual, is a matter of  
10 law, could ever present a jury question or why the Court  
11 would view facts one way or the other. And my  
12 recollection may be wrong, but I think when we were before  
13 Your Honor in Allendale several months ago, everybody  
14 agreed that the question whether this language was legally  
15 enforceable was a question of law. So I don't quite  
16 understand that point, but my wife frequently reminds me  
17 that my understanding is limited.

18 The second point is I don't quite follow the argument  
19 that Martin Youmans, who sold this property to my clients,  
20 did not have fee simple absolute. I think the order Your  
21 Honor entered looked at the granting clause in the deed  
22 and the habendum clause in the deed which had that key  
23 language that was required at common law. The property  
24 was granted to Martin and his heirs and assigns forever,  
25 and Martin's father, Calvin, warrantied that Calvin and

1 his heirs would defend the validity of the title granted  
2 to Martin and his heirs.

3 So we're dealing with fee simple absolute. There's  
4 no reverter interest or reversionary interest or anything  
5 like that.

6 And so once we answer those two questions, I come at  
7 these clauses and say, okay, what do these clauses purport  
8 to do, and are they similar to anything that the law would  
9 recognize as valid? So let's take them in turn as Your  
10 Honor did in the written order.

11 First, the right to access. It's not an easement.  
12 Easements existed in 1988. If that was Calvin's  
13 intention, he could have granted -- tried to grant an  
14 easement. What the plaintiff wants is to construe that  
15 clause as having granted the 67 acres and the pond and the  
16 pond cabin to Martin and his brothers as joint tenants,  
17 and they could sue each other if they didn't contribute to  
18 the upkeep of the property. But that's not what it is.  
19 It's a deed to Martin, a fee simple absolute, supposedly  
20 revocable if any of the brothers don't contribute to the  
21 upkeep of the pond and the cabin.

22 This language, I think, is plainly unenforceable as a  
23 matter of common law, based on the cases that were cited  
24 in Your Honor's order, and also based, really, the case  
25 that's most directly on point is Shealy vs. South Carolina

1 Electric & Gas, a case we cited in the summary judgment  
2 memo. I'm happy to talk about the facts of that case if  
3 that would be helpful. But the case says this sort of  
4 language is clearly precatory, aspirational, not  
5 enforceable at common law.

6 And so then we get to the right to be offered, not a  
7 right of first refusal, but a right granted supposedly to  
8 the plaintiff and any of his heirs. If Martin or any of  
9 his heirs ever decide to sell the property, the plaintiff,  
10 if this language is given effect, is entitled the right to  
11 be offered this property at 90 percent of the fair market  
12 value. That language differs from the language in the  
13 Stroman case, which I'll talk about in just a second,  
14 because the language in this deed is indeterminate. It's  
15 indeterminate in how long it lasts. It purports to last  
16 in perpetuity. It doesn't apply just to Martin. If  
17 Martin ever decides to sell, he has to offer it to his  
18 brothers. Martin or any of his heirs ever decides to  
19 sell, he has to offer the property to Hunter or any of his  
20 heirs.

21 And it also is indeterminate as to price. 90 percent  
22 of fair market value, who determines fair market value?  
23 Who decides the actual fair market value if there's a  
24 dispute?

25 So let's talk for a second about the Stroman case.

1     Stroman is an action for money damages based on the breach  
2 of what the Supreme Court in 1933 called an option  
3 contract. The grantor in that case, which was a power  
4 company -- this arose out of a flooding of property in  
5 Lexington County for building Lake Murray. The deed in  
6 that case says that if the power company ever decides --  
7 ever ceases to use this property for power generation --  
8 I'm getting my facts confused. I'm talking about Shealy.

9     Stroman did involve a power company, but it was in  
10 Orangeburg County. And the deed said if the property ever  
11 ceases to be used for power generation, you have to sell  
12 the property to these specific individuals for \$4,000.  
13 Determinate period of time, determinate price. And then  
14 when the property ceased to be used for power generation  
15 purposes, those individuals sued the power company for  
16 money damages for breach of that promise.

17     Here we have an indeterminate price, indeterminate  
18 duration, and not what you could call an option contract.  
19 It was important in Stroman. The Supreme Court says this  
20 was like people put an option contract in the deed. They  
21 could have put it in a separate instrument. It would have  
22 stood alone as valid. They chose to put it in the deed.  
23 We're not going to "gig" them for that.

24     You couldn't enter a valid contract that said if  
25 Martin or his heirs ever decide to sell this property,

1 they have to first offer it to somebody else for no  
2 consideration, for 10 percent less than fair market value.  
3 It would be plainly unenforceable. So that's how we deal  
4 with Stroman.

5 We think this case is much more like Shealy, because  
6 when you lay that and you lay the right of access, which  
7 is unrestricted, together, you say what do these clauses  
8 do? Are they consistent with the grant of fee simple  
9 absolute? Fee simple absolute is all the bundle of  
10 rights, right? The right to exclude others, the right to  
11 use property as you see fit, the right to say this is not  
12 your land. This is my land. Or do they try to chip away  
13 at fee simple absolute? And there's that common law rule  
14 that says you cannot limit what has already been granted,  
15 apply.

16 We think the Court correctly reasoned that if these  
17 clauses were given effect, it would chip away at the fee  
18 simple absolute, which everyone agrees Martin was granted.

19 And so I'm happy to try to answer any questions Your  
20 Honor has, but that's our position.

21 THE COURT: I'm good. Thank you.

22 Anything in response to that, Mr. Halford?

23 MR. HALFORD: Just briefly. What he describes as an  
24 option, Your Honor, came true.

25 THE COURT: I'm sorry?

1 MR. HALFORD: What he argues as an option in the  
2 guiding principle of Stroman is that it's entirely  
3 possible under South Carolina law to limit a fee simple  
4 grant. So we have fee simple, and then we have fee simple  
5 absolute, every bundle of sticks in a stack. And what  
6 we're respectfully arguing to the Court is viewing the  
7 current state of law we've retroactively applied, and  
8 Martin, fast forward to 2015, can only give what he's got  
9 from the father. He does not have the right to exclude.  
10 And even if he did, it was never exercised, and that's  
11 facts I think you have to view, even if you view it as  
12 mixed facts and law in favor of the plaintiff here and his  
13 brothers. So at some point, going to the options,  
14 something best, four named beneficiaries.

15 As for indefinite, Judge, the closing attorney and  
16 the exhibits that we passed forward at the last hearing,  
17 they describe the option as valid. They passed out  
18 releases to my client being represented at the time by an  
19 attorney, Bill Short. Very well respected in Columbia.  
20 They didn't get my client to sign a release. Why were  
21 four of those releases needed and they only got three?

22 THE COURT: Sir?

23 MR. HALFORD: Why were four releases needed but you  
24 only got three? It's real simple. In order for Martin to  
25 pass full 100 percent bundle of rights, fee simple

1 absolute -- which, under post-statue '93, under that  
2 statute now, it's automatically rebuttably presumed. In  
3 the law, that's what you pass somebody in a deed  
4 irrespective of the language used, heirs and assigns.

5 But, again, take that concept back to '88, Martin can  
6 only pass what Martin has. And so he didn't have  
7 exclusivity. Even under your ruling of law, if he did, he  
8 never exercised it. The record's just void of that.

9 So we're asking for reversal. I realize it's a tall  
10 order. If you can't reverse, Judge, I think you've got to  
11 modify here and recognize the use.

12 THE COURT: Listen, I don't mind correcting myself  
13 ever.

14 But, gentlemen, I'm going to look at the cases cited  
15 by Mr. Halford, look at the statute again. I quite  
16 strongly believe it's a question of law, I think, if you  
17 look at the four corners of the deed, and that's the  
18 analysis that needs to be performed. But I will look at  
19 it again. I will reread your submissions, and I will --  
20 if appropriate, I will reverse myself. If not, I won't.  
21 Fair enough?

22 All right. Y'all have a good day.

23 (WHEREUPON, proceedings concluded at 2:23 p.m.)  
24  
25

CERTIFICATE OF REPORTER

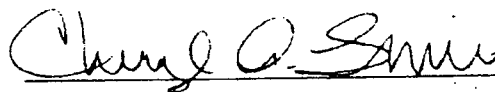
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STATE OF SOUTH CAROLINA        )  
COUNTY OF ALLENDALE            )

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Allendale County, South Carolina, on the 27th day of March, 2019.

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

May 23, 2019



Cheryl A. Smith, CVR-M  
Court Reporter

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STATE OF SOUTH CAROLINA  
COUNTY OF ALLENDALE

COURT OF COMMON PLEAS

WILLIAM HUNTER YOUMANS,  
Plaintiff,

vs.

CASE NO. 2016-CP-03-00286

MARK B. TINSLEY and DIANE  
E. TINSLEY,  
Defendants.

DEPONENT: MARK B. TINSLEY

DATE: December 11, 2017

TIME: 10:04 a.m.

LOCATION: Bluestein, Nichols, Thompson  
& Deligado  
1615 Taylor Street  
Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: KIMBERLY T. POWER, CR

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ALSO PRESENT: WILLIAM HUNTER YOUMANS

(INDEX AT REAR OF TRANSCRIPT)

1 MARK B. TINSLEY,

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. HALFORD:

5 Q. Good morning, Mark. It's good to see you  
6 again. We've met previously at the cabin and we've  
7 talked by phone several times before and after this  
8 case. I don't know if you remember. But for the  
9 record, I'm Cam Halford and I represent Hunter  
10 Youmans.

11 We're here today to take your deposition  
12 under Rule 30 of the South Carolina Civil Procedure.  
13 I know you're probably more familiar with that rule  
14 than I am. I'm sure you've taken many depositions.  
15 What I'm proposing this morning is if you will let me  
16 just ask my question in full and then I'll give you  
17 the chance to respond in full. Is that fair enough?

18 A. Sure.

19 Q. All right. If I ask you a question and  
20 should I ask it badly or you not understand, just ask  
21 me to repeat the question please or ask me to  
22 clarify. What I'm trying to avoid, as you well know,  
23 is us talking over one another for transcript  
24 purposes. Can we agree on that?

25 A. Yep.

1 MR. HALFORD: Counsel, that was No.  
2 1, just to let you know.

3 MR. HEWITT: Okay.

4 MR. HALFORD: Can I have that marked,  
5 please?

6 (PLF. EXH. 1, Notice of Deposition,  
7 was marked for identification.)

8 BY MR. HALFORD:

9 Q. Mr. Tinsley, the court reporter has passed  
10 you what has been marked No. 1. Have you seen that  
11 document before?

12 A. I don't think so.

13 Q. Can you take a look at the document and  
14 tell me what it is?

15 A. Well, I mean, it purports to be a notice  
16 of my deposition, but, like I said, I haven't seen it  
17 before. You've omitted me from most of the  
18 correspondence and e-mails for some unknown reason.

19 Q. Are you saying your counsel didn't get  
20 that notice?

21 A. I'm here and I haven't looked at it.

22 Q. But you're responding to -- you're here  
23 because your deposition was notice today, correct?

24 A. I'm here because I agreed to come here.  
25 Right.

1 Q. And you agreed to have your deposition  
2 taken under Rule 30; is that correct?

3 A. Yeah.

4 Q. And so all I was asking was if your  
5 counsel had provided that to you or not?

6 A. I don't know that I have to tell you what  
7 my counsel has provided to me, but I have not looked  
8 at that document before.

9 Q. Would you like to look at it before we go  
10 further?

11 A. I'm not sure why I would need to. Can you  
12 explain to me why I would need to?

13 Q. It's a notice of deposition and we're  
14 here --

15 MR. HALFORD: Mr. Hewitt, do you have  
16 any objection?

17 THE WITNESS: What's your point,  
18 though? It's a notice of deposition. Okay.

19 BY MR. HALFORD:

20 Q. Fair enough. Let's move on.

21 A. That's what I said to begin with.

22 Q. Fair enough, Mark. We're going to be  
23 going over some things that you produced in  
24 discovery. I brought -- I want to start with Tract A  
25 which is the tract that you own jointly or that you

1 and your wife own jointly with Hunter Youmans. That <sup>6</sup>  
2 is the 39 acres described as Tract A in the  
3 complaint. Are you familiar with that tract?

4 A. I'm familiar with 39 and some change  
5 acreage tract, yes.

6 Q. And when you took title of that property,  
7 you received it from Martin Youmans; is that correct?

8 A. That's right.

9 Q. Okay. Did you know at the time that you  
10 were taking title jointly with my client, Hunter?

11 A. Yeah.

12 Q. Okay. Have you recently paid the taxes on  
13 that property?

14 A. Could have. My wife would have done it,  
15 but I don't know the answer to that. I believe so,  
16 but I'm not sure.

17 Q. Has Hunter paid you in the past for paying  
18 the taxes if you advanced them?

19 A. I think he did once.

20 Q. Mr. Tinsley, I brought a check to the  
21 table which I will be glad to provide to your  
22 counsel. I just want to pass that over to you. I'll  
23 give it to Blake first.

24 A. Okay.

25 Q. Does that check reference the tax map

1 number?

2 A. I don't know. It may. It looks like it  
3 does.

4 Q: Let me point you to the top right here.

5 A. I see it. I don't know what the tax map  
6 number is. I mean, it looks like it references a tax  
7 map number. I don't know what the number is.

8 Q. If that's payment for one-half of the  
9 taxes, are you willing to accept that from  
10 Mr. Youmans today?

11 A. Sure. Just like I did the last one.

12 Q. All right. And for the record, I just  
13 want to be clear that we have tendered you the taxes  
14 and just saved on registered mail.

15 A. Okay. I didn't know that was in dispute.

16 Q. All right. Mr. Tinsley, I've looked at  
17 Diane's affidavit. Let's just start with your  
18 background. I know you're not originally from  
19 Allendale. Where did you grow up?

20 A. Anderson.

21 Q. Where in Anderson did you attend high  
22 school?

23 A. Pendleton.

24 Q. And what year did you graduate?

25 A. '89.

1 Q. Did you attend any other college other  
2 than law school after that?

3 A. Well, you have to go to college before you  
4 go to law school. So, yes, I went to Clemson.

5 Q. Okay. And what did you study at Clemson?

6 A. Forestry.

7 Q. What year did you receive your degree at  
8 Clemson University?

9 A. '93.

10 Q. After graduating in '93, did you go on to  
11 law school immediately?

12 A. No.

13 Q. What did you do between college and law  
14 school?

15 A. What do you mean, what did I do?

16 Q. What did you do for an occupation or  
17 career?

18 A. I think I built swimming pools some and  
19 then I went to graduate school and then I went to law  
20 school.

21 Q. You mentioned graduate school. Where did  
22 you go to graduate school at?

23 A. Clemson.

24 Q. And what field of study did you pursue?

25 A. It was in forestry as well.

1 Q. Did you obtain a graduate degree?

2 A. I didn't. I sat for the orals. I did  
3 everything. I just never turned in the thesis and --  
4 because I started law school.

5 Q. And what year did you start law school?

6 A. '95, I think. Time flies whether you're  
7 having fun or not.

8 Q. And you attended the University of South  
9 Carolina?

10 A. I did.

11 Q. What year did you graduate?

12 A. '98.

13 Q. Did you work in the legal field anywhere  
14 before working for Gooding and Gooding?

15 A. I did.

16 Q. What year did you take the bar? Was that  
17 also 1998?

18 A. It was.

19 Q. And upon passing the bar, where did you go  
20 to work at?

21 A. Turner, Padgett, Graham and Laney.  
22 Actually, I was already working there, but that's  
23 where I was working.

24 Q. And what years did you work at Turner  
25 Padgett?

1           A.       I'm not sure. I clerked there some of my  
2 first year, I worked there my third year, and then I  
3 left sometime '99, early 2000 and came to Allendale.  
4 Been in Allendale since.

5           Q.       When you worked with Turner Padget, what  
6 was your field of practice at that time? What areas  
7 of law did you engage in?

8           A.       I'm not sure I understand your question.

9           Q.       What type of law did you practice at  
10 Turner Padget?

11          A.       All I've ever done is litigation.

12          Q.       What types of litigation did you do at  
13 Turner Padget?

14          A.       I was -- I was on -- it was divided into  
15 teams and I was on the products team. I mainly  
16 worked in synthetic stucco and did a bunch of  
17 coverage work relating mostly to construction claims  
18 and so that's pretty much where I was. My field of  
19 study had been geared towards getting into  
20 environmental law. And by the time I finished, there  
21 were no more environmental cases unless you worked  
22 for the government or big company. And so -- because  
23 there were exclusions in insurance policies. And so  
24 the team I worked for handled environmental-type  
25 claims, but that was -- that was primarily what I

1 did. And I did some every now and then. Just for  
2 experience I would do some representing, just  
3 defending claims.

4 Q. Was the bulk of this insurance work  
5 defense?

6 A. Probably not in the sense that you would  
7 be familiar with it, but it was all representing  
8 insurance companies pretty much. Synthetic stucco  
9 manufacturers that we represented, we were involved  
10 in several class actions. So that was a lot of what  
11 I did, was representing manufacturers or insurance  
12 companies, but not traditional insurance defense. I  
13 did very little of that.

14 Q. Was any of your work at Turner Padgett  
15 devoted to real estate practice or real estate  
16 transactions?

17 A. No.

18 Q. Take me forward when you went to  
19 Allendale. You said you moved to Allendale about the  
20 year 2000; is that accurate?

21 A. I think so.

22 Q. Did you work anywhere between Turner  
23 Padgett and Gooding and Gooding? Were there any other  
24 firms?

25 A. No.

1 Q. And do you remember when you joined  
2 Woody's firm exactly?

3 A. Other than what I just told you, I don't.

4 Q. And when you started with Mr. Gooding,  
5 what was your position?

6 A. I don't know that I had a position. I was  
7 just a lawyer.

8 Q. Are you a partner with the firm today?

9 A. I am.

10 Q. Did you start as a partner?

11 A. I did not.

12 Q. Were you an associate attorney before you  
13 became partner?

14 A. I told you I didn't -- I don't know that  
15 there was any term. I was an attorney.

16 Q. But you described an attorney and now  
17 you're a partner. You would have had to have started  
18 as an associate, would you not have?

19 A. I don't know what that means. I started  
20 there as an attorney. I worked for Gooding and  
21 Gooding.

22 Q. Did you work for Woody?

23 A. Sure.

24 Q. Okay. So at some point you worked for him  
25 and then you became partner, is the point I'm trying

1 to make?

2 A. That's right.

3 Q. Have you ever been self-employed?

4 A. I think I'm self-employed now, but I work  
5 with a firm.

6 Q. Since joining Gooding and Gooding, how  
7 much of your practice has been devoted to real  
8 property?

9 A. I'm not sure what you mean. Have I closed  
10 loans? Do I do that sort of thing?

11 Q. Do you close real estate transactions?

12 A. Do not.

13 Q. Have you ever closed real estate  
14 transactions for Gooding and Gooding?

15 A. I may have closed my own one time years  
16 and years ago.

17 Q. When you say your own, is that for your  
18 property in Allendale that you live at as your  
19 primary residence?

20 A. No, I don't think so. I think it was a  
21 different house I bought.

22 Q. Where is that different house located at?

23 A. In Allendale. I don't own it any longer.

24 Q. How many closings would you say that you  
25 have done over the course of your career?

1 A. One if I did that one.

2 Q. Prior to the transactions that took place  
3 here, had you closed any other property matters at  
4 Gooding and Gooding?

5 A. I'm not sure I understand your question.

6 Q. Actually, let me rephrase that question.  
7 Prior to this transaction involving these tracts of  
8 land which are described in the complaint, had you  
9 engaged in any closing practice at Gooding and  
10 Gooding involving real estate transactions?

11 A. Other than the possibility that I closed  
12 one loan for myself, I have not closed any other loan  
13 or been involved in it.

14 MR. HALFORD: I'd like to have that  
15 marked as 2, please.

16 (PLF. EXH. 2, E-mail Transmittal  
17 dated 08/02/2017, was marked for identification.)

18 BY MR. HALFORD:

19 Q. That's an e-mail that you sent me,  
20 Mr. Tinsley. Did you communicate that to me with  
21 your lawyer's consent?

22 A. I don't do anything with my lawyer's  
23 consent. I am my own lawyer. Let me -- let me read  
24 the e-mail, if you give me just a second.

25 Q. Please.

1           A.       Okay.  I read it.

2           Q.       Can you pass it back for me?  What No. 2  
3 is marked as is an e-mail dated August 2nd from you  
4 to me.  This e-mail states, "I was the buyer and I  
5 was not represented in the transaction, which from my  
6 perspective involved writing a check."  Was that an  
7 accurate statement at the time?

8           A.       Did you read it accurately or is what I  
9 said accurate?  I'm trying to understand your  
10 question.

11          Q.       I'm asking if I read the third line  
12 accurately.  I'm going to repeat it for you -- excuse  
13 me, fourth line, Mark.  It says, "I was the buyer and  
14 I was not represented in the transaction, which from  
15 my perspective involved writing a check."

16          A.       You read that correctly and that is  
17 accurate.

18          Q.       And you're stating that you represented  
19 yourself in this transaction?

20          A.       I said I was not represented.  I didn't do  
21 anything but write a check.  In the closing, I assume  
22 that's what you're asking about.

23          Q.       And I've reviewed the affidavit that's  
24 been prepared on behalf of Ms. Tinsley.

25                   MR. HALFORD:  Mark this 3, please.

1 (PLF. EXH. 3, Affidavit of Diane E.  
2 Tinsley, was marked for identification.)

3 BY MR. HALFORD:

4 Q. Have you seen that document before today?

5 A. I have.

6 Q. Did you assist in the preparation of that  
7 document?

8 A. Did not.

9 Q. That document --

10 A. I mean, other than to read it and say if  
11 that pacifies Cam, then that's fine.

12 Q. I'll have to let you talk to my spouse  
13 sometime. I like that answer. But, Mr. Tinsley,  
14 what I'm asking is this is an affidavit or a proposed  
15 affidavit for Ms. Tinsley prepared by your lawyer,  
16 correct?

17 A. I don't know if it was prepared by him or  
18 somebody that works for him, but, yes, I believe so.

19 Q. And it references a check, if I'm not  
20 mistaken. Did you write that check?

21 A. No. I mean, I don't know what check  
22 you're looking at, but I -- if it's the check that's  
23 referenced here, I did not write it because she wrote  
24 it.

25 Q. On September 25, 2015, did you go to

1 Walter Sanders's law office?

2 A. No.

3 Q. Did you attend closing at all?

4 A. No.

5 Q. Did your wife attend for you?

6 A. I don't think so. I think she just  
7 delivered a check. I don't even think I was in the  
8 country.

9 Q. Do you know whether Ms. Tinsley sat  
10 through a real estate settlement?

11 A. She only delivered a check. She did not.

12 Q. Did she sign the settlement statement?

13 A. She did not.

14 Q. Did you sign the settlement statement?

15 A. I did not.

16 Q. Why didn't either one of you sign the  
17 settlement statement?

18 A. Why would either one of us sign the  
19 settlement statement?

20 Q. Because it shows you closing on the  
21 property. And I get to ask the questions today and  
22 I'm trying to be polite. Why did you not sign the  
23 settlement statement?

24 A. I didn't see the settlement statement. I  
25 didn't get the settlement statement until I asked for

18  
1 it after you got involved. I was buying it. I knew  
2 what I was buying and that's all I needed to do.

3 Q. Mr. Tinsley, the point that you moved to  
4 Allendale and joined Gooding and Gooding, how long  
5 was it before you met Martin and before you met  
6 Hunter?

7 A. I suspect I met Martin pretty quick. I  
8 don't know about Hunter. It seems like they may have  
9 been suing Kenny Austin or something back then and  
10 that would have been -- that could have possibly been  
11 going on when I came to Allendale, but I don't  
12 remember exactly.

13 Q. And is Martin a client of yours?

14 A. I don't think so.

15 Q. Not in this transaction, but have you  
16 represented Martin with regard to partnership assets?

17 A. No.

18 Q. Did you serve as a communications link or  
19 mediator between Martin and Hunter regarding  
20 partnership properties?

21 A. Yeah. I talked to them because they  
22 wouldn't talk to each other.

23 Q. How did you learn that they wouldn't talk  
24 to one another?

25 A. Well, they both called the other one a son

1 of a bitch, crazy son of bitch, and they wouldn't  
2 talk to him. I'm not fucking talking to him.

3 Q. But you agreed to relay messages?

4 A. Yeah.

5 Q. In fact, I think in court back on June  
6 21st you said you served as mediator.

7 A. I don't know. You've got the transcript.  
8 I'll be happy to look at it and refresh my  
9 recollection as to what I said, but I believe that I  
10 have said something to that effect like a mediator.

11 Q. During the time that you have been  
12 practicing law, have you become certified to do  
13 mediation?

14 A. I have not.

15 Q. You don't hold a valid certification with  
16 the bar to do mediation?

17 A. I do not. I've probably mediated  
18 thousands of cases, but I do not.

19 Q. At the time that the contention developed  
20 between you parties, was Martin a client of yours or  
21 your firm?

22 A. I don't know what you mean by "the  
23 contention developed." But at some time in 2015, I  
24 believe Robby Youmans was sued. The caption read  
25 Robert M. Youmans. I don't know if it's the II or

1 III, what Robby's son is supposed to be. And so  
2 Martin was named, but it was Robby that was being  
3 sued.

4 Q. And I think I saw that lawsuit. Was that  
5 also involving an appeal that you handled for Martin  
6 Youmans?

7 A. No, you're confused. That is not even the  
8 same. That's a black guy in Allendale. That's not  
9 even the same Robert Youmans.

10 Q. Okay. I'm going to fast forward kind of  
11 to the closing that you say that you didn't attend.

12 A. I don't say it. I didn't attend it.

13 Q. Well, actually, you said you were out of  
14 the country. You need me to back up? I'm not trying  
15 to trick you.

16 A. I don't need you to back up. I just said  
17 I didn't attend it.

18 Q. You stated that you were not represented  
19 in the transaction; is that correct?

20 A. Are you saying today or that you're  
21 reading that e-mail?

22 Q. I'm reading the e-mail that we discussed  
23 as Exhibit No. --

24 A. I wasn't represented in any closing. I  
25 didn't have a lawyer involved.

1 Q. Let me ask you: The deeds in this case  
2 which we will go over, did you prepare any of those  
3 deeds?

4 A. I did not.

5 Q. Who did?

6 A. I assume Walter Sanders prepared them.

7 Q. Okay. We'll get there in a minute, but  
8 why did you not prepare the deeds?

9 A. Why would I prepare the deeds? I just  
10 wrote a check and bought the property.

11 Q. In order to have a property transaction  
12 and have property transferred, somebody has to draft  
13 a deed. So my question is: Why didn't you prepare  
14 them?

15 A. Well, Walter is familiar with the  
16 property. Typically, I believe, the seller provides  
17 the deeds and so that's why I didn't draft them. I  
18 wrote a check and bought the property.

19 Q. But Walter prepared the deeds; is that  
20 correct?

21 A. Walter or somebody in his office did.

22 Q. In fact, most of the deeds I've looked at  
23 bear his office identification at the top. We'll go  
24 over them in a minute, but did you permit Walter to  
25 prepare deeds?

1           A.     No, I didn't have anything to do with it.  
2     I just bought the property.

3           Q.     I understand. I understand your position,  
4     is you just wrote a check.

5                     Have you looked at the deeds that were  
6     prepared in this case?

7           A.     Yeah, I've looked at them.

8           Q.     I don't want to get them in reverse order.

9           A.     My lawyer is getting them all mixed up.

10                    MR. HEWITT: I think I'm doing a  
11     fantastic job.

12                    (PLF. EXH. 4, Release of Right to  
13     Purchase, was marked for identification.)

14                    MR. HEWITT: Cam, can you tell me  
15     which one that is? It looks like I've got an  
16     unsigned copy of the 39.

17                    MR. HALFORD: The one I'm looking at  
18     now is the deed to the Tract B, the 67 acres.

19                    MR. HEWITT: Thank you.

20     BY MR. HALFORD:

21           Q.     Mark, I'm passing you the deed the  
22     67 acres which has the pond cabin on it. Do you know  
23     who prepared that deed?

24           A.     I've already answered that. I mean, as  
25     far as I know, Walter or somebody in Walter's office.

1 This is not a deed. This is a release.

2 Q. Oh, I'm sorry. I may have marked the  
3 release. Let me pass that back. You're correct.  
4 This is a release and it's signed by George Kevin  
5 Youmans. Have you ever met George Kevin Youmans?

6 A. I don't think so.

7 Q. Do you know who George Kevin Youmans is?

8 A. I think so.

9 Q. And the release, likewise, appears to be  
10 drafted by Walter Sanders's firm. Would you agree  
11 with me?

12 A. That it appears to be drafted? I believe  
13 Walter Sanders prepared all these documents if that  
14 helps speed things along. Water Sanders or somebody  
15 in his office, I believe, prepared all of the closing  
16 title deed documents.

17 Q. Why would Walter be preparing a release of  
18 purchase?

19 A. I have no idea. I didn't know Walter was  
20 doing this. That's probably not true. I probably  
21 did know Walter was doing this.

22 Q. Suffice it to say, did you ask Walter to  
23 write Stephen Youmans for any reason?

24 A. No.

25 Q. Did you ask Walter to write Kevin Youmans

1 for any reason?

2 A. No.

3 Q. You didn't prepare any of these release  
4 documents, is your testimony?

5 A. That's my testimony.

6 (PLF. EXH. 5, Release of Right to  
7 Purchase, was marked for identification.)

8 MR. HALFORD: That's 5. That's the  
9 release of Stephen Youmans.

10 MR. HEWITT: 4 is for Kevin, 5 is for  
11 Stephen.

12 MR. HALFORD: That is correct.

13 BY MR. HALFORD:

14 Q. So, Mr. Tinsley, did you serve as escrow  
15 agent in this transaction at all?

16 A. No, I did not.

17 Q. So it didn't involve your personal trust  
18 account or any trust at Gooding and Gooding, correct?

19 A. It didn't involve any trust account at  
20 Gooding and Gooding.

21 Q. Do you know who did serve as escrow agent?

22 A. I don't believe anybody did. I wrote a  
23 check.

24 Q. Do you know where the check got deposited  
25 at?

1 A. I have no idea.

2 Q. We'll get there in a minute. Is it  
3 possible that Walter Sanders acted as escrow agent on  
4 this transaction?

5 A. I don't know what you mean by escrow  
6 agent, but I don't know what happened after Diane  
7 delivered the check to Walter Sanders's office.

8 Q. You're not aware of the check bouncing,  
9 are you?

10 A. I don't believe the check bounced.

11 Q. I don't believe it did either. Did you  
12 provide any checks for recording to the clerk of  
13 court?

14 A. I don't think so. There was some -- it  
15 was my understanding -- it's my recollection sitting  
16 here today that Martin was going to pay the recording  
17 fees. There were some -- the taxes were prorated and  
18 we had to divide the taxes and the recording fees may  
19 have been more than what Martin anticipated and he  
20 and I may have split that, but I don't have a  
21 specific recollection if another check was issued or  
22 who the check was issued to and I just don't know.

23 Q. Have you reviewed the documents that  
24 Walter Sanders has produced in this case?

25 A. No, I don't think so.

1 Q. If I told you that Walter Sanders actually  
2 issued checks for recording, would you dispute that?

3 A. I haven't looked at them and I don't know.  
4 So no, I don't -- I don't know if it was part of that  
5 original check that you couldn't find a few minutes  
6 ago or there was a subsequent check issued. I just  
7 don't remember.

8 Q. But you didn't issue a check to Martin  
9 direct, did you?

10 A. I don't have any -- I just don't remember.  
11 I don't remember who the check -- my recollection  
12 sitting here is that I did pay some more money, but I  
13 don't know who the check was written to or what  
14 the -- what the check was or exactly what I paid.

15 Q. Let me find the check.

16 (PLF. EXH. 6, Check No. 3043, was  
17 marked for identification.)

18 BY MR. HALFORD:

19 Q. What I'm showing you has been marked as  
20 Exhibit 6. Have you ever seen that check?

21 A. Yeah. Well, I never saw the check. I've  
22 seen a copy of the check.

23 Q. And that's the check the affidavit of  
24 Diane Tinsley says was taken to Walter Sanders?

25 A. That's right.

1 Q. Are you aware of any other checks that you  
2 wrote on this transaction?

3 A. Like I just told you, I believe that  
4 there's a possibility that I paid part of the  
5 recording fees and I know that the issue with the  
6 taxes -- now, whether -- whether I paid the taxes  
7 and -- maybe that's what happened. Maybe I had to  
8 pay the taxes and Martin had to write me a check. I  
9 don't remember. But there was something -- there was  
10 something to do with the taxes. I think we split the  
11 recording costs.

12 (PLF. EXH. 7, Settlement Statement,  
13 was marked for identification.)

14 BY MR. HALFORD:

15 Q. I'm getting a little ahead of myself and I  
16 apologize for that, but what I'm passing you over is  
17 the settlement statement receipt from Walter Sanders.  
18 Do you want to take a moment and review the back page  
19 of that?

20 A. Okay.

21 Q. On Page 2, does it show fees being paid by  
22 you to Walter Sanders?

23 A. I don't know. I guess it shows me  
24 splitting the costs. I didn't know that we split  
25 that cost. I knew that we were splitting the cost

1 generally.

2 Q. And I saw some e-mail correspondence about  
3 this that we'll get to in a minute, but on Page 2 of  
4 the settlement, is there a line for document  
5 preparation?

6 A. Yeah, there is.

7 Q. Can you tell me what this cost is on the  
8 document preparation?

9 A. What the total cost is or what my cost  
10 was? What is your question?

11 Q. Let me rephrase. That was a bad one.

12 A. It was.

13 Q. What was your cost on the document  
14 preparation?

15 A. It says \$412, but you can see I wrote a  
16 check for \$420,121.92. The purchase price was  
17 \$420,000 which means I paid 121.92 more than what it  
18 was that I agreed to pay. I don't believe I paid  
19 \$412 to Walter Sanders even though it's reflected  
20 here because I paid \$420,121.92.

21 Q. That's my question. Why are you paying  
22 Walter Sanders if you handled this yourself or if you  
23 weren't represented?

24 A. I didn't. I just told you that.

25 Q. If you look here at Page 2 of the

1 settlement statement, Mark, and I'm just cluing you  
2 in to which line it is --

3 A. This is the settlement statement I didn't  
4 sign.

5 Q. 1105 is the line.

6 A. Right.

7 Q. Do you understand this has a buyer side  
8 and a seller side on it?

9 A. I understand it can have 40 different  
10 sides. I just didn't sign it. I wasn't there and I  
11 didn't sign it.

12 Q. Does it show a disbursement going from the  
13 purchaser? You were the purchaser, correct?

14 A. It purports to show lots of things. I  
15 wasn't there and didn't sign it.

16 Q. I understand. If that disbursement was  
17 actually made to Walter Sanders, did you authorize  
18 it?

19 A. No. How would you authorize something in  
20 one of these HUD forms if you don't sign it? That's  
21 the purpose of signing it.

22 Q. That's also the purpose of signing at  
23 closing. Since you bring that up, Page 3 of this  
24 document, does it bear your signature?

25 A. Does not. Can you read?

1 Q. Whose signature is on it?

2 A. It looks like Robert Youmans and  
3 Walter Sanders. See my name is right there. That's  
4 my name, M-A-R-K. Blank right there above it.

5 Q. I agree with you. I don't see Diane's  
6 name on here. Where is that?

7 A. I don't know. I didn't prepare it.

8 Q. You didn't go to the closing, correct?

9 A. Yeah, that's correct.

10 Q. I mean, you're laughing for the record.  
11 I'm not trying to --

12 A. I'm laughing because you're becoming --  
13 you're just trying to harass me. You've asked that  
14 same question now about ten times. I didn't go to  
15 the closing.

16 Q. I understand. You didn't serve as escrow  
17 agent. You just wrote one check, is what I  
18 understand you to say?

19 A. I believe that's right.

20 Q. Walter Sanders signed this, did he not?

21 A. Appears to have. It looks like his  
22 signature.

23 Q. Are you disputing that Walter Sanders was  
24 paid \$412.50?

25 A. I didn't pay him.

1 Q. Are you disputing that he may have taken  
2 \$412.50 out of your disbursement to him?

3 A. If I don't write a check for the \$412, I  
4 don't care what he does.

5 Q. There were some e-mail correspondence  
6 about county and tax and deed stamps. Did you agree  
7 to split that with Martin?

8 A. That's my recollection today, is that we  
9 agreed to split it.

10 Q. But, again, you didn't write a check for  
11 \$231, did you? It appears it charged evenly to you  
12 and Martin \$231 each side, purchaser and seller, on  
13 Page 2 of the settlement statement which we marked as  
14 Exhibit 7?

15 A. My recollection sitting here is that I  
16 paid the taxes and there was something that didn't  
17 match which is why it was an odd number that I paid  
18 the taxes or they came back and they did some  
19 assessment. I'm not real sure.

20 Q. Let's move on. Did you do a title search  
21 on this property? Well, let me rephrase. Did you do  
22 a title search on the 39 acres you now own half with  
23 Hunter?

24 A. I guess, generally. I looked to make sure  
25 there were no liens against it.

1 Q. My question specifically is: Did you do  
2 the title search?

3 A. No, no, no.

4 Q. If you did not do it, did you let Walter  
5 Sanders do it for you?

6 A. No.

7 Q. Would that have been Rita Crocker?

8 A. Rita looked.

9 Q. Which property did you ask Rita to look  
10 at, the 39 acres or the 67 acres?

11 A. I don't think -- I don't know that -- I  
12 don't know if she didn't look at both and the one  
13 acre.

14 Q. We'll discuss the one acre in a minute  
15 because I know there was an issue there. If I  
16 understand you correctly, you didn't write any of  
17 these deeds?

18 A. No, I didn't.

19 Q. You didn't do any of these disbursements.  
20 You just wrote a check; is that correct?

21 A. I didn't write the check. My wife wrote  
22 the check.

23 Q. Your wife would have been writing the  
24 check on your behalf with her, correct?

25 A. That's correct.

1 Q. Y'all were acquiring property?

2 A. We did.

3 Q. All right. And prior to the acquiring the  
4 property if you were unrepresented, did you do a  
5 title search?

6 A. No, I didn't.

7 Q. Why would you not? If you were acquiring  
8 property -- if you were going to close on this  
9 property, why didn't you do a title search?

10 A. Well, I read what Rita went and saw which  
11 was consistent with what I believed and there were no  
12 liens. There wasn't anything that I didn't know  
13 about and so he had good title.

14 Q. When you say "he had good title," who had  
15 good title?

16 A. Martin and Martin's wife.

17 Q. And did that include title to the 67 acres  
18 and the pond?

19 A. The pond is on the 67 acres.

20 Q. And the pond cabin is too. But when you  
21 said "he had good title," whose opinion was that,  
22 yours?

23 A. Yeah.

24 Q. It was not provided to you by another  
25 attorney?

1 A. No.

2 Q. Were you aware of the first right of  
3 refusal on the deed?

4 A. I was aware that the deed said what it  
5 says.

6 Q. And we're referring to the deed that's  
7 attached to the complaint as Exhibit 1. I've got a  
8 copy here, but did you read the deed before you  
9 purchased the property?

10 A. Sure.

11 Q. Mark, your paralegal is Wanda Lawson; is  
12 that correct?

13 A. One of them.

14 Q. She is one of them?

15 A. Yeah.

16 Q. I think the date she responded to  
17 discovery was May 4th. I'm not sure about that. But  
18 you did produce some information in your file from  
19 Crocker Abstracting. Is that Rita Crocker?

20 A. Yes.

21 Q. And what you produced to me was a title  
22 search on the 39 acres, the property that you own  
23 jointly with Mr. Hunter Youmans?

24 A. I think it's a title abstract, but okay.

25 Q. The point is I didn't have a title

1 abstract on the pond acreage. Did you do one?

2 A. No.

3 Q. Did Rita do one for you?

4 A. I think what Rita looked up covered it all  
5 because I remember saying that they didn't get the  
6 release when they bought the property from Stephen  
7 and --

8 MR. HALFORD: Let me have that marked  
9 next, please.

10 (PLF. EXH. 8, E-mail Transmittal  
11 dated 08/12/2015, was marked for identification.)

12 MR. HALFORD: Mr. Hewitt, this is an  
13 e-mail dated 8/12/2015.

14 BY MR. HALFORD:

15 Q. Mark, I'm going to show you No. 8. Did  
16 you see this e-mail before? Let me rephrase my  
17 question because it was horrible. Did you see this  
18 e-mail before you bought the properties?

19 A. I don't know. I don't remember seeing  
20 this e-mail before I bought it, but I don't -- I  
21 don't know. I get a lot of e-mails and I just don't  
22 have a particular recollection of it.

23 Q. But you don't dispute this is coming from  
24 Rita Crocker to you?

25 A. I think I printed the e-mail. No, this

1 e-mail didn't come from Rita Crocker.

2 Q. Who did it come from?

3 A. There was -- well, I guess there is one  
4 down there in this chain. This e-mail is from  
5 Walter Sanders to me and I was printing Walter's  
6 e-mail.

7 Q. What does the last sentence read?

8 A. "It looks like the pond house and larger  
9 tract will need waivers from three brothers."

10 Q. Who are the three brothers?

11 A. I can only assume they are Hunter, Kevin,  
12 and Stephen.

13 Q. And you didn't prepare any of the release  
14 documents or any waivers; is that correct?

15 A. That's correct.

16 Q. Ms. Crocker seems to send you an e-mail  
17 and she says, "Mark, call me if you have any  
18 questions." Did you have any questions?

19 A. It seems like she and I talked at one  
20 point, but I don't necessarily know that I had  
21 questions.

22 Q. All right. But she is referencing the  
23 pond house and the larger tract. Which one is the  
24 larger tract in this case, is it Tract A or Tract B?

25 A. I don't know what she means.

1 Q. Is the 39 acres larger than the 67 acres,<sup>37</sup>  
2 the one that has --

3 A. Not to me, but it may be to you.

4 Q. It may be because these are new glasses,  
5 but I'm just curious. This e-mail does reference a  
6 pond house. That doesn't sit on the 39 acres, does  
7 it?

8 A. I don't know what she means. I don't know  
9 if she meant the residential home where Martin and  
10 his wife had lived. I don't know if she means the  
11 cabin that you call it. I don't know what she means  
12 when she says the pond house and the larger tract.  
13 If it is the pond house, it is on the 67 acres.

14 Q. I just want to make sure the date here on  
15 No. 8. What's the date of the communication chain?

16 A. Which date? One is June, one is August.

17 Q. That's okay. Let's focus on the bottom  
18 one. The one from Rita Crocker, what is the date of  
19 that communication?

20 A. June 24th.

21 Q. June 24th. And when was the deed?

22 A. I don't have any idea. You have it. It  
23 was recorded on September 25th. It says it was done  
24 September 22nd, but I believe the check is the 23rd.

25 Q. But this e-mail referenced in Exhibit No.

1 8 came to you well before that date, did it not?

2 A. Obviously.

3 Q. Is that a yes or a no, Mr. Tinsley?

4 A. It means obviously it did. It's dated in  
5 June. That's obviously before September.

6 Q. Okay.

7 A. Just like 39 is less than 68.

8 Q. Mark, did you communicate at some point  
9 directly with Bill Short?

10 A. I did.

11 Q. Tell me about the time frame. When did  
12 Hunter become represented by Bill Short?

13 A. I don't know. I would have to look. He  
14 may have become represented by Bill Short before he  
15 told me about it, but he told me that Bill Short was  
16 handling it in a text. You got the text. Show it to  
17 me and that's the date. At least it's the date I  
18 knew.

19 Q. I've got several texts. We'll go there in  
20 a minute.

21 A. Well, he's got one that says Bill Short is  
22 handling this for me. That's the one I'm talking  
23 about.

24 Q. All right. Did Bill Short ever tell you  
25 that Hunter refuses to settle?

1           A.       No. He told me and Walter to begin with  
2 when he first got involved at this point, Hunter  
3 wouldn't do something. And then later after I had  
4 closed, he said Hunter refuses -- doesn't agree with  
5 you getting the 39 acres when I offered to buy Hunter  
6 out of the 39 acres. But other than that, I mean,  
7 the only thing he ever told me was Hunter was good  
8 with me buying it.

9                               (PLF. EXH. 9, E-mail Transmittal  
10 dated 08/25/2015, was marked for identification.)

11 BY MR. HALFORD:

12           Q.       Mr. Tinsley, what I'm showing you is an  
13 e-mail between Walter and Bill Short. Were you  
14 copied on that communication?

15           A.       I believe so.

16           Q.       And I think I've placed an underline there  
17 just so I can direct your attention to it, but what  
18 does Walter state in that message to Bill Short?

19           A.       Are you asking me what you underlined?

20           Q.       Yes.

21           A.       Or do you want me to read the whole  
22 paragraph to you? I mean, it says what it says.  
23 "Hunter will need to sign the deed to Martin and the  
24 two releases." I don't know what two releases it  
25 means.

1 Q. We'll get there shortly. At this point at  
2 least Martin's lawyer is saying that Hunter needs to  
3 sign a release, correct?

4 A. Well, you know, at that point that was the  
5 easiest way to deal with it. I mean, Hunter knew I  
6 was buying it. Hunter asked me to buy it. And so,  
7 yeah, I mean, at that point it was -- because there  
8 are people -- maybe you do real estate. There's  
9 people who think certain boxes need to be checked and  
10 square holes have to be filled with square pegs.  
11 That's not the way it really has to work. All he  
12 has, if he has anything, is a right to be offered the  
13 property. It had been offered to him. He didn't buy  
14 it, but he didn't have a right to hold the deal up  
15 and that's what he --

16 Q. When you said --

17 A. Let me finish my answer.

18 Q. Yes, sir, I will. Go ahead.

19 A. Well, I've let you finish your questions,  
20 so you let me finish my answers. At some point in  
21 this -- the problem with what you're doing is you're  
22 trying to take these things out of context. I mean,  
23 whether or not it's void or it's valid in the deed  
24 and he's got some right of first refusal, as you want  
25 to call it, is one thing. But he has to act on that.

1 And what he was doing by September, is he's just  
2 holding it up just to be an obstructionist just to  
3 gain an advantage in his negotiations in with Martin  
4 or just because they both think each other is sons of  
5 bitches and they don't want to talk to each other,  
6 but he couldn't hold it up. So had it been offered  
7 to him? Yeah, it was offered to him. Did he buy it?  
8 No, he didn't buy it. And so at the point in time  
9 when I decided to go forward with it, that's why. He  
10 can't hold it up.

11 Q. Where is the offer that you described to  
12 Hunter? Did you give him a written offer?

13 A. I didn't have to give him a written  
14 anything.

15 Q. Why is that, Mr. Tinsley?

16 A. Why would I?

17 Q. Because you're buying a piece of property,  
18 for starters.

19 A. Sure. But I think you've got some  
20 mistaken assumption that I as the buyer would need to  
21 make some offer to him or go have an appraisal. I  
22 mean, I've read what you've written and it's crazy.  
23 I don't have any such obligation. I didn't give him  
24 anything.

25 Q. Did your seller have an obligation?

1           A.     I don't think so. I don't think there's  
2 any formal obligation, as you seem to think that  
3 there is. I think that if somebody were in here  
4 being fair and honest about this, then there wouldn't  
5 be any argument about this. If he had a right, if it  
6 were valid, he would have to act on that right. He  
7 couldn't sit back and wait years. He couldn't sit  
8 back and try to be an obstructionist and he couldn't  
9 hold the deal hostage if he --

10           Q.     What deal?

11           A.     The purchase. Martin selling the  
12 property.

13           Q.     I guess what I was getting at on this  
14 e-mail, the part that I underlined, did Walter state  
15 that Hunter needed to sign two releases?

16           A.     It's on that e-mail.

17           Q.     Okay. Thank you. You've mentioned a text  
18 message that Hunter knew. Did you ever sign a  
19 contract as to the pond acreage?

20           A.     No.

21           Q.     Did you ever sign a contract as to the  
22 39 acres?

23           A.     No.

24           Q.     How about the house that your dad bought,  
25 did you ever sign a contract on that?

1 A. I didn't. I bought the house, by the way.

2 Q. I understand. And you testified --

3 A. Well, that's not what you said.

4 Q. I don't want to argue with you, Mark. I'm  
5 just trying --

6 A. Well, you said my dad bought it, but I  
7 bought the house.

8 Q. Your dad now resides there?

9 A. Uh-huh.

10 Q. You bought all three of these as a package  
11 deal?

12 A. Yes.

13 Q. And that included Martin's former home?

14 A. It did.

15 Q. All right. Did my client ever discuss  
16 buying the home that your father now lives in?

17 A. No, he -- he discussed that he didn't want  
18 to buy the home, that he couldn't buy -- afford to  
19 buy any of the property. And at some point after the  
20 Burkharts decided they weren't going to buy it, he  
21 sent me a text that said that his -- I think it was  
22 fiance then, son or somebody like that may be  
23 interested in the house, but that was it.

24 Q. You guys used to talk and text one  
25 another; is that correct?

1           A.       That's correct.

2                               (PLF, EXH. 10, Text Message, was  
3 marked for identification.)

4 BY MR. HALFORD:

5           Q.       Is this the text that you're relying upon  
6 as a waiver of my client's rights?

7           A.       Again, I think that you are under a  
8 mistaken belief that -- I think this is part of the  
9 waiver, but his failure to act is, in fact, the  
10 waiver.

11          Q.       How about his failure to sign?

12          A.       There's no requirement that he sign an  
13 equity to waive this right. He waived it by his  
14 failure to act. He waived it by our reliance on his  
15 statements. He waived it by our change in position  
16 based on his statements. I mean, he was coming by  
17 the house when my father and I were starting  
18 renovations before I ever closed on it. He knew we  
19 were working on it. He knew everything.

20          Q.       Were y'all also working on the cabin at  
21 the time?

22          A.       You know, I don't -- it was a mess and --  
23 I mean, it was really a mess. There was all this  
24 garbage and food and all kind of nasty stuff in  
25 there, and so I don't know that I had done any work

1 on it other than trying to start cleaning up the  
2 mess.

3 Q. When you went to law school, did you take  
4 contract class?

5 A. Did I take it? Yeah, but I had  
6 matter (phonetic).

7 Q. I don't know what that means.

8 A. Yeah. Well --

9 Q. You took one or two semesters of it?

10 A. I took two.

11 Q. You understand for a valid offer and  
12 acceptance, it has to be supported by valid  
13 consideration, right? That's a contract?

14 A. I understand that there are multiple ways  
15 in which a person can be bound by his actions and one  
16 of those is, is for the other person to detrimentally  
17 rely on his representation and that in equity there  
18 can be formed a contract. I believe that offer and  
19 acceptance is a part of, as you say, contract, but I  
20 think it's a lot more complicated than what you're  
21 trying to make it to be.

22 Q. I think I'm trying to make it out to be  
23 very simple. Let me take a look at your text right  
24 here. Is this you in the bold print, "Got time to  
25 talk?"

1 A. Yeah.

2 Q. Do you remember this text?

3 A. Yeah.

4 Q. Okay. It's dated June 7, 2015. That's  
5 before your purchase, right?

6 A. Yeah.

7 Q. And you say, "Got time to talk?" And he  
8 says yeah. "Want me to come over?" Did you go to  
9 his house?

10 A. No.

11 Q. You did not?

12 A. I don't think so.

13 Q. He says, "I'll ride over." Did he come  
14 over to your house?

15 A. I believe so.

16 Q. And the text says, "He agreed to take it."  
17 What is it?

18 A. The \$420,000.

19 Q. What does my client tell you in the next  
20 sentence, Mark?

21 A. That I better get it in writing from  
22 Martin because Martin is a son of a bitch. He'll  
23 back up on it.

24 Q. I know you knew both of these gentlemen.

25 A. No, that's what he said about it, but the

1 text says, "K. Better get it in writing."

2 Q. Why didn't you get it in writing?

3 A. Why would I get it in writing? I didn't  
4 need it in writing.

5 Q. The statute of fraud count?

6 A. Only in your mind, Cam. I mean, no, it  
7 doesn't count. Once the deed closes and the deal  
8 closes, it doesn't count.

9 Q. I'm trying to understand your claims,  
10 Mark, and you've -- I remember your first answer and  
11 you've amended recently. I saw that. But you're  
12 alleging fraud, right? My client fraudulently  
13 induced you or tricked you into buying three tracts  
14 of property?

15 A. If what he now says is true, then yes.

16 Q. Where is the representation of my client  
17 that you are purchasing all three tracts?

18 A. I don't understand your question.

19 Q. Where is your or your clients or your  
20 sellers representation to Hunter in writing? Is  
21 there one?

22 A. It doesn't have to be in writing.

23 Q. Okay. Thank you for your response. Was  
24 that very nice white house, the one your father is  
25 now in, did Hunter ever express an interest in that

1 house? That was Martin's home?

2 A. I don't know what you mean by an interest  
3 in it, but I do not believe so.

4 Q. In fact, I've looked at e-mails, but it  
5 appears that you investigated whether or not there  
6 was a first right of refusal on that property, didn't  
7 you?

8 A. I told him, this was well before I had  
9 ever even considered buying it, that the first right  
10 of refusal I didn't think went -- that if -- his  
11 concern was that he couldn't afford to buy it and  
12 that Martin's property was for sale and that what  
13 Martin was supposed to do is offer it to him at  
14 90 percent of whatever the deed says is the market  
15 value. And what I told Hunter was that that first  
16 right of refusal wasn't in the residential property.  
17 So in my opinion, if he wanted to try to buy it, he  
18 would have to buy the residential home. Martin  
19 wasn't willing to sell it without selling it all  
20 together.

21 MR. HALFORD: Let me have that marked  
22 next, please.

23 (PLF. EXH. 11, Text Message, was  
24 marked for identification.)

25

1 BY MR. HALFORD:

2 Q. Mr. Tinsley, that's a text message you  
3 sent my client. Can you read the highlighted portion  
4 into the record, please?

5 A. "The house lot does not have the right of  
6 first refusal which means you don't have to buy  
7 house," which is what I just said to you.

8 Q. Okay. You also just said that Martin  
9 wanted to sell it as one package deal. That's what  
10 you entered into, correct?

11 A. Sure.

12 Q. Now, Martin and Hunter don't talk; is that  
13 correct?

14 A. They don't talk much. And if it was, it  
15 was usually to cuss each other out. Whether they  
16 talk now or not, I don't know.

17 Q. But they did talk to you, correct?

18 A. That's correct.

19 Q. All right. And so at least at some point  
20 you're talking to Hunter about the house that your  
21 father now lives in, the one acre?

22 A. No, it wasn't a discussion. Neither he  
23 nor I wanted the house. Okay. I didn't want the  
24 house, as you well know if you've read any of this  
25 stuff. I didn't want the house. At some point I was

1 interested in buying the property and somebody else  
2 was going to buy the house. That fell through. At  
3 this point in time, this is -- he came -- or he  
4 called me about his son. I'm good friends with  
5 Charles Williams and I was going to send  
6 Charles Williams his son's resume for his son to try  
7 to get in here at USC and I did that. And that's  
8 what this Hunter II is, "Got it, will be next week  
9 before I can talk with him, but I will." That's what  
10 that references.

11 And at some point he told me that Martin  
12 is selling his house. He told me that Martin was --  
13 or maybe even he thought -- Hunter thought at the  
14 time that Chris Smith was about to buy the house and  
15 the property and that he was supposed to be able to  
16 buy it -- buy the property at 90 percent. And so I  
17 said I don't know how that could be. I don't know  
18 how if you transfer the property that you can have  
19 this, but let me go -- because he didn't have the  
20 deed. So I went and I looked at the deed and the --  
21 based on what I looked at, the deed to the one acre  
22 didn't have any kind of restriction on it. And if he  
23 had a right of first refusal, it would seem to me  
24 that he would not have to purchase the residential  
25 home if he exercised his right of first refusal. He

1 didn't have the money. It didn't change the fact  
2 that he couldn't do it.

3 So that's what I'm -- that's what I'm  
4 telling him there. If you want to buy it, it looks  
5 like to me that all you have to buy -- have to buy is  
6 the property if he has to offer it to you, although I  
7 don't think that that's valid.

8 Q. How would you come by -- how would you  
9 know that? Did you get this information through  
10 Crocker Abstracting?

11 A. What are you talking about, how did I -- I  
12 went and looked at the deed.

13 Q. So did you look at the deed to the  
14 67 acres as well?

15 A. Did I look -- yeah, I believe so. I think  
16 I looked at both deeds. I didn't look at the 39 acre  
17 deed, but that --

18 Q. It's okay. I'm not referring to the  
19 39 acres right now. What I'm referring to is the  
20 house that Martin used to own. Did you look at the  
21 deed and ascertain whether or not there was a first  
22 right of refusal?

23 A. Yeah, I looked at that deed.

24 Q. Did you communicate that back to  
25 Mr. Hunter Youmans?

1           A.     That's what this is communicating right  
2 here.

3           Q.     So you know there's not a first right of  
4 refusal on Martin's home that your dad now occupies,  
5 correct?

6           A.     I don't think there's a first right of  
7 refusal on anything, but yes.

8           Q.     I understand that's your -- is a first  
9 right of refusal mentioned in the deed to the  
10 67 acres?

11          A.     You know, I don't know what -- if you show  
12 me the deed, then I can tell you exactly. I don't --  
13 that's what you're calling it. I don't know that it  
14 uses those words specifically, but it has something  
15 to that effect.

16          Q.     Let's take a minute and go there. Let's  
17 go off the record for a second.

18                                 (PLF. EXH. 12, Deed, was marked for  
19 identification.)

20 BY MR. HALFORD:

21          Q.     Mr. Tinsley, we've all looked at this  
22 document several times over, but is that a deed from  
23 Calvin Causey Youmans to Robert Martin Youmans?

24          A.     Yes.

25          Q.     Who prepared the deed?

1           A.     I think Walter Sanders prepared it.

2           Q.     Thank you. Was Robert Martin Youmans a  
3 son of Calvin Causey Youmans?

4           A.     As far as I know.

5           Q.     And he was your grantor; is that correct?  
6 He sold it to you?

7           A.     That's right.

8           Q.     Let's go to the language on the back about  
9 the use of the pond. Does it describe any right of  
10 my client to access the property? Not own it, not  
11 first right of refusal. I'm asking if Hunter Youmans  
12 can use this property?

13          A.     Well, it said that he had the right to use  
14 the pond house and pond conditioned on him sharing  
15 equally in the repairs and/or maintenance of the pond  
16 house and pond. And provided further if he didn't do  
17 that or refused to do that, it says fails or refuses  
18 to pay his portion of the repairs and/or maintenance  
19 the right and/or privilege is revoked as to him.

20          Q.     Just dealing with that language alone,  
21 when did you come to Allendale?

22          A.     I think I told you, but --

23          Q.     Approximately the year 2000?

24          A.     You mean to live in Allendale?

25          Q.     Yes, sir.

1 A. Yeah, about 2000.

2 Q. When did you first see this property?

3 A. I got no idea. I probably saw that  
4 property in 1989 -- during spring break of 1989 when  
5 I was turkey hunting in Allendale.

6 Q. When did you first see this deed?

7 A. I suspect that I first saw this deed the  
8 same day as that text whatever it was.

9 Q. Are you alleging that Hunter -- prior to  
10 your ownership, Hunter had no right to use this pond  
11 cabin?

12 A. Yeah, that's my position. He didn't share  
13 in -- now whether he refused, whether there was a  
14 demand made on him or he just didn't do it and the  
15 maintenance or -- but from Martin, that is my  
16 understanding that he didn't do those things, but I  
17 don't --

18 Q. Stop there, please.

19 A. No, I'm going to finish my answer. But I  
20 don't believe that either of these provisions is  
21 valid.

22 Q. I understand your legal position.

23 A. Okay. Well, then yeah.

24 Q. What cause does Martin give you to believe  
25 that he didn't share in the maintenance of the cabin?

1 A. Well, I asked him.

2 Q. You got anything in writing, Mark?

3 A. I don't have anything in writing, no. I  
4 mean, just him telling me.

5 Q. This is another situation where we don't  
6 need something in writing?

7 A. Well, I think I do have it in writing.  
8 He's got an affidavit which he put it in and I  
9 produced that affidavit to you. Yeah, I do have it  
10 in writing.

11 Q. But this would be information you gleaned  
12 from Martin specifically, right?

13 A. Martin's affidavit, yeah. Sure. That  
14 came from Martin.

15 Q. But Martin would have provided the  
16 information to you, Mark Tinsley, correct?

17 A. Martin did. That's right.

18 Q. And you were talking with Hunter. Did you  
19 ever ask Hunter if he had, in fact, refused to  
20 maintain the cabin?

21 A. No, no, no, no, no, no. None of this  
22 comes up until you file your lawsuit. This has  
23 never -- this is all stuff you've cooked up.

24 Q. But it would have defeated the purpose to  
25 even notify Hunter, would it not?

1 A. I don't understand your question.

2 Defeated what purpose of what?

3 Q. Whether Hunter had maintained the cabin?

4 A. It wasn't an issue.

5 Q. How do you know it wasn't an issue?

6 A. It just wasn't an issue.

7 Q. How do you know it wasn't an issue? Where  
8 does this information come from?

9 A. Because neither one of them said anything  
10 about it, particularly Hunter.

11 Q. Provided, however, let's assume that they  
12 had maintained it. You take the position that the  
13 deed is not valid; is that correct?

14 A. No, I don't take the position that the  
15 deed is not valid. I take the position that those  
16 two clauses -- those two paragraphs -- those two  
17 attempts to restrain the alienation of that property  
18 are void.

19 Q. Okay. Looking at the language, though,  
20 Mark, did the grantor give him the right to use the  
21 pond?

22 A. You and I are having fundamental --

23 Q. Let me back up. I asked that very badly.

24 A. Yeah.

25 Q. Did the Youmans' father condition

1 acceptance of this deed upon Martin Youmans?

2 A. No.

3 Q. You want to read the deed over one more  
4 time, Mark?

5 A. I don't need to. I mean, he conveys it to  
6 him and his heirs and assigns on the first page.

7 Q. Okay. And he also conveys the right to  
8 use and enjoy the pond, does he not?

9 A. There is an attempt at a restraint on  
10 alienation subsequent to the grant of the property in  
11 the deed.

12 Q. Is there not also an attempt to make sure  
13 all the Youmans brothers could enjoy this property  
14 and use this property?

15 A. There is an attempt at a restraint on the  
16 alienation of this property. The owner of the  
17 property you have -- you're entitled to a bundle of  
18 rights and these two provisions attempt to reduce  
19 that after it's been conveyed in fee to  
20 Martin Youmans. Those are void.

21 Q. May I borrow the deed, please?

22 A. Sure.

23 Q. Let's talk about which restraint comes  
24 first. The first paragraph on Page 318 says  
25 conveyance of subject to the right and/or privilege

1 of my sons, naming all of them, to use the pond house  
2 and the pond. Does it not state that?

3 A. I don't know. You took it from me.

4 Q. The first paragraph.

5 A. Let me just get a copy because I don't --  
6 I don't -- I never understand why you insist on  
7 reading documents in a deposition.

8 Q. Yes, reading documents, it's something.

9 A. Well, I mean, they say what they say and  
10 I've said what it says and you've marked it. For us  
11 to now have to put it on the record, it just seems  
12 like it's --

13 Q. Redundant?

14 A. -- a waste of time. No. I mean, it just  
15 seems to be a ridiculous waste of time. Maybe if  
16 you're billing by the hour, it's not. But it's a  
17 waste of time to sit here and read what this says  
18 into the record once we've said, yep, that's what it  
19 says.

20 Q. Okay. But that language does reference  
21 the right to use the pond and pond house, does it  
22 not?

23 A. It says that there is a right or privilege  
24 provided that they do certain things.

25 Q. Now, between the year of 1988 -- let's

1 specifically reference the deed. Between the date of  
2 December 30, 1988, the date of this deed, and your  
3 purchase, other than the affidavit of Robert Youmans,  
4 how do you know if Mr. Hunter Youmans did or did not  
5 maintain the property?

6 A. Well, I mean, I saw when they were -- they  
7 were doing the work fixing the house up, raising it  
8 up because it was rotting away and renovating. I  
9 mean, I knew who was doing the work.

10 Q. And who was doing that work?

11 A. Martin and his wife. I mean, they were  
12 paying Jerry Lamb to do it. They weren't physically  
13 doing the work.

14 Q. And I think I understand you to say that  
15 you got this information from Martin Youmans. Did  
16 you subpoena bank accounts from the bank on Youmans  
17 Brothers partnership?

18 A. I don't know remember what I subpoenaed.  
19 I believe -- I know I subpoenaed Hunter's.

20 Q. And I've not been provided that  
21 information. I'm going to show you some checks, but  
22 you're aware that Hunter and Martin were in a  
23 partnership, correct?

24 A. I'm aware that they had a partnership or  
25 they had assets that they held in a partnership, yes.

1 Q. And one of those things would have  
2 included a bank account. Have you seen that?

3 A. I don't know what I've seen. I told you,  
4 I mean, I've got a copy of it. If you haven't gotten  
5 it, it's an oversight. I'll give it to you.

6 Q. We'll get there in a minute. But if they  
7 have an asset, which is a bank account which is  
8 writing checks on the pond cabin, how are you saying  
9 my client didn't contribute?

10 A. Well, let's put it this way: So I don't  
11 know how they did their accounting. But if you will  
12 look in the partnership checking account, you will  
13 see Martin -- I mean, Hunter is writing checks to his  
14 wife -- to his ex-wife, that he's paying that stuff.  
15 Now you can't contend that that's partnership asset  
16 and --

17 Q. Mark, were you a member of this  
18 partnership?

19 A. No, I wasn't.

20 Q. Okay. You weren't involved in the  
21 bookkeeping, correct?

22 A. I was not.

23 Q. In fact, you weren't even privy to what's  
24 going on at this property until you at least get your  
25 deed?

1 A. I don't think that's fair.

2 Q. Okay. I'll back up. I want to be fair.  
3 There are a significant number of years before you  
4 even arrive in Allendale where Hunter is using this  
5 property. Are you disputing that?

6 A. I think that you're -- that you're  
7 confused again. This says the pond and the pond  
8 house. This doesn't say the acreage. And you've  
9 said that repeatedly, you say it in your letters, you  
10 say it in your e-mails, you said it out of your  
11 mouth. It doesn't say the pond acreage. It doesn't  
12 say the 67 acres. It says the pond and the pond  
13 house.

14 Q. Okay.

15 A. If it says acreage, show me where it says  
16 it.

17 Q. All right. And you've described --

18 A. Show me where it says it.

19 Q. -- there were restraints on alienation.  
20 Where is that, in the first paragraph or the second  
21 paragraph on Page --

22 A. They are both void attempts to restrain  
23 the ownership -- a fee simple ownership of this  
24 property.

25 Q. So if they are granting a usage, how is

1 that a restraint on alienation?

2 A. That was determined many, many hundreds of  
3 years before I was ever born. I don't know how they  
4 determine that that's what that is. It just is.

5 Q. So if the grantor, which is the father, is  
6 bestowing upon his sons the right to use the pond and  
7 the pond cabin, that's a restraint on alienation in  
8 your legal interpretation?

9 A. That is a restraint on the -- I'm trying  
10 to think of what they call it -- the incidence of  
11 ownership. The second one is really the restraint on  
12 alienation and the void restraint on alienation.  
13 That's, as you call it, the right of first refusal  
14 which when we got on this tangent, you wanted me to  
15 say a right of first refusal and I said it doesn't  
16 say that and it doesn't say that. It says to first  
17 offer. I knew it used words to that effect, but they  
18 were different than the words you were using.

19 Q. Thank you, Mr. Tinsley. We may move on.

20 (PLF. EXH. 13, Order, was marked for  
21 identification.)

22 BY MR. HALFORD:

23 Q. Mark, I'm showing you what we've marked as  
24 No. 13. Are you familiar with that order in the  
25 case?

1 A. Okay.

2 Q. Do you remember the hearing June 21st  
3 where we all met?

4 A. I remember the hearing.

5 Q. Mr. Nichols was your attorney at that  
6 time?

7 A. He was one of my attorneys, yes.

8 Q. Good guy. Do you remember Judge McIntosh  
9 saying y'all can go out there and inspect the  
10 property?

11 A. No. I remember Judge McIntosh asking me  
12 if I had any problem with you doing that and I said  
13 no, I did not.

14 Q. Ultimately does it become part of his  
15 court order?

16 A. Ultimately he signed the order that  
17 John Nichols prepared and sent to him what I agreed  
18 to.

19 Q. All right. And subsequent to that order,  
20 did I come out and meet with you at the cabin or  
21 pond?

22 A. Yep.

23 Q. On that date did you permit me inside the  
24 cabin?

25 A. The date that you -- your question -- I

1 mean, the date that we met at the pond house?

2 Q. Yes. I apologize. I don't remember the  
3 exact date.

4 A. Yeah.

5 (PLF. EXH. 14, Photograph, was marked  
6 for identification.)

7 (PLF. EXH. 15, Photograph was marked  
8 for identification.)

9 BY MR. HALFORD:

10 Q. I'm just showing you photographs that were  
11 taken while we were there that day. What does the  
12 first, No. 14, depict?

13 A. Looks like the front door.

14 Q. What is the code box on that door?

15 A. What is the code box on the door?

16 Q. Yes.

17 A. I don't understand your question.

18 Q. What is that device on the door?

19 A. A deadbolt.

20 Q. What's the box above?

21 A. It's part of the deadbolt.

22 Q. Does it have codes on it?

23 A. It doesn't take a key. Well, it may take  
24 a key as well, but you can unlock it with a code.

25 Yes.

1 Q. Did you install that on the cabin?

2 A. I did not.

3 Q. Did you pay somebody else to install that  
4 on the cabin?

5 A. I did not.

6 Q. How did it get on the cabin?

7 A. A friend of mine put it on the cabin.

8 Q. I asked for these documents in discovery,  
9 but did you pay this friend to put it on there?

10 A. I did not.

11 Q. That code device didn't come originally  
12 with the cabin, though?

13 A. No.

14 Q. When was it put on?

15 A. I don't know.

16 Q. Would it have been before or after you  
17 took deed to the property?

18 A. I don't know the answer to that either  
19 because, you know, I -- I began acting as though the  
20 property were mine well before the closing. We  
21 started making the repairs to the home, I started  
22 cleaning up the yard, I started cleaning up and doing  
23 things at the pond house. And so my gut is it was  
24 before the closing, but I'm not 100 percent certain  
25 on that.

1 Q. But you had a friend install those codes.  
2 Who is that friend?

3 A. Charlie Shell. I didn't have him do it.  
4 I mean, he was down there staying. He was helping  
5 me -- you know, the place was falling apart. There  
6 was lots of rotten wood. When they had done their  
7 repairs, I don't know, say, six or seven years  
8 earlier and whatever they had done, they had not used  
9 treated wood. So it was falling apart. That big  
10 pile of wood on the porch was all stuff that was  
11 rotten and falling apart. There were boards that  
12 needed to be replaced. The house hadn't been  
13 maintained.

14 You can see in this photo, it's dark. I  
15 stained it to try to preserve the cabin and Charlie  
16 was there. Charlie hunts with me and he was helping  
17 me do some things and one of the things -- he did  
18 that. He put that lock on while he was there.

19 Q. Would he have done it as a courtesy or  
20 would he have --

21 A. Sure.

22 Q. -- charged you a fee for it?

23 A. No, he didn't.

24 Q. Why are you putting locks on something you  
25 don't have a deed to?

1           A.       Because I believe that Martin was going to <sup>67</sup>  
2 transfer the property to me as Martin had said. The  
3 property had been for sale a long, long time. Nobody  
4 was willing to pay what I had paid for it and there  
5 was no question he wasn't going to back out because  
6 he wanted away from Hunter.

7           Q.       And we sent you some requests, but this  
8 was an arm's length transaction with Martin, correct?

9           A.       Correct.

10          Q.       And what was the consideration paid for  
11 the cabin and the pond?

12          A.       So when I negotiated with Martin, the  
13 Burkharts had agreed to pay 150 for the residential  
14 home and the one acre and I was buying everything  
15 else. So at the time I was willing to pay, I guess,  
16 the difference is \$270,000. Now as far as we're  
17 talking about this cabin is worth -- if Martin says  
18 it's worth 75, I said it's not worth 75 to me. It's  
19 a burden to me because I'm not going to ever stay  
20 across the street from my house. I'm not going to  
21 spend the night over there. It's different if you  
22 live in Rock Hill and you have a pond cabin in  
23 Barnwell or Allendale. But if you're several hundred  
24 yards away, it's just something else to maintain.  
25 And so --

1 Q. You didn't need the cabin?

2 A. I didn't want the cabin.

3 Q. But you ultimately purchased the cabin.  
4 Why did you do that?

5 A. Same reason I purchased the pine trees and  
6 that crepe myrtle sitting there in the front yard.  
7 It was affixed to the land that I was buying.

8 Q. I understand. But you entered into a  
9 transaction to buy not one, not two, but three tracts  
10 of property, right?

11 A. That's correct.

12 Q. Who imposed that upon you as a contract?

13 A. I don't understand your question. It  
14 doesn't make sense.

15 Q. Who offered it that way?

16 A. Who offered the three tracts?

17 Q. Yes.

18 A. I was buying Martin out.

19 Q. Okay. So Martin would have been the one  
20 offering it to you?

21 A. Martin and to the extent that his wife was  
22 an owner, I guess they were. They were usually there  
23 on the phone together when I talked to them.

24 Q. And you told Hunter at some point that he  
25 agreed to take it. Was that the -- you said that was

1 the global price?

2 A. He knew exactly -- yeah, he knew what I  
3 was offering per acre. He knew -- he went it's way  
4 too much. He knew about the Burkharts. He knew  
5 everything.

6 Q. Okay: How did he know everything?

7 A. Because I was talking to him.

8 Q. Did you ever show him anything in writing?

9 A. There wasn't anything in writing to show  
10 him.

11 Q. Mark, do you remember the hearing that we  
12 had before the court back on June 21st?

13 A. I've already answered that question for  
14 you.

15 Q. Okay. I'm going to take you to Page 19 of  
16 the transcript.

17 A. Okay. Well, I haven't seen the  
18 transcript. I'm happy to look at it.

19 Q. I left you a copy, I thought. I apologize  
20 if I didn't.

21 A. You didn't. All right. I'm on Page 19.

22 Q. I'm on Page 19 with you, Mark. What's the  
23 first two sentences -- what's the second sentence  
24 read?

25 A. The first two -- you're talking about Line

1 2?

2 Q. Line 2, can you read that for me?

3 A. "There is no contract."

4 Q. Okay. All right. Also states that you  
5 had known these people for a long time. What does  
6 the next line state?

7 A. Line 3?

8 Q. Line 3.

9 A. "Long time, period. I didn't know I  
10 needed to get a contract, period. I."

11 Q. What's Line 4 say?

12 A. "Learned a lot in this, Your Honor.  
13 Didn't -- I didn't know that Hunter."

14 Q. Well, the transcript -- are these truthful  
15 and accurate statements at the time that you're  
16 making them?

17 A. It's the same thing I told you today.

18 Q. But it says, "I didn't know I needed to  
19 get a contract."

20 A. Right.

21 Q. What did the text message from Hunter tell  
22 you? I mean, I know Hunter is not legally chained,  
23 but didn't he send you a text?

24 A. You're confusing things again. I know  
25 you're intentionally trying to confuse things. He's

1 telling me that I better get it in writing because  
2 Martin is going to back up. I'm saying I didn't know  
3 that I needed to get anything in writing because  
4 Martin wasn't going to back up. Martin didn't back  
5 up. Martin signed the deeds and he conveyed the  
6 property. I wrote the check and I paid for the  
7 property.

8 Q. I'm just asking you -- )

9 A. That --

10 Q. -- if my client --

11 A. Let me finish -- let me finish my answer.

12 That takes it out of the statute of frauds. You  
13 don't have to have this -- I know this is -- this is  
14 basic law and maybe you're intentionally being  
15 obtuse, but that's why I didn't know that I needed a  
16 contract. I didn't need a contract with Hunter and I  
17 didn't need a contract and, in reality, I didn't have  
18 to have a contract with Martin because he made an  
19 offer, I accepted it, and I paid.

20 Q. How did my client know what the full offer  
21 was?

22 A. Because I told him on the phone.

23 Q. So you're stating that it was a verbal  
24 agreement?

25 A. Verbal agreement? There was no agreement.

1 He knew what I was offering Martin. I don't -- there  
2 was no --

3 Q. It's your testimony that you told him  
4 verbally?

5 A. Oh, absolutely. And that's why I told him  
6 and then he confirmed in writing when I said he would  
7 take it. I mean, he knew what the discussions were.

8 Q. And then he said what next, better get it  
9 in writing, did he not?

10 A. He did say that, yes.

11 Q. And then in court you said there is no  
12 contract, did you not?

13 A. That's correct.

14 Q. You're not saying this testimony is  
15 inaccurate or false, are you?

16 A. No.

17 Q. Okay. Didn't know I needed to get a  
18 contract. You stated that to the court, did you not?  
19 It says, "I learned a lot in this, Your Honor."  
20 Let's move on to some other pages.

21 A. All right.

22 Q. Page 9. If you will come to Page 9 with  
23 me.

24 A. Okay.

25 Q. Line 14. Does that reference the text

1 message that you've been testifying to?

2 A. Yep.

3 Q. Read it for the record, Mark.

4 A. Read Line 14. "Purchase price. And he  
5 said, good, you better get it in."

6 Q. What does the last word on 15 say?

7 A. You didn't ask me to read 15. You said  
8 14. "Writing."

9 Q. Did you get it in writing?

10 A. Yeah, I got it in writing. You marked  
11 them as exhibits.

12 MR. HEWITT: What are you looking  
13 for?

14 THE WITNESS: The deeds.

15 MR. HEWITT: They haven't been  
16 marked.

17 THE WITNESS: Oh, okay. He just said  
18 he marked them. I got you. The deeds are the  
19 writing.

20 BY MR. HALFORD:

21 Q. Let's go to Page 12 of that transcript.  
22 I'm at Line 4. After was, can you read that, please?

23 A. After the comma?

24 Q. Yes.

25 A. "I was essentially a mediator."

1 Q. And the last part of Line 6?

2 A. Short.

3 Q. What's the sentence after the period?

4 A. Which period? There are two periods on  
5 Line 6.

6 Q. Right after, "We will go back and forth,"  
7 can you read that?

8 A. "And I talked mainly to Bill Short."

9 Q. Thank you. At what point during the time  
10 that you're acting as a mediator did you tell Hunter  
11 you had installed those codes on the door?

12 A. Well, I wasn't acting as mediator. I said  
13 I was essentially a mediator. I carried messages  
14 back and forth. That's what I said.

15 Q. Did you ever carry the message back and  
16 forth that you had installed security codes through  
17 your friend? The door locks, Mark. The picture.  
18 What time did you tell -- when did you tell Hunter  
19 you had done that?

20 A. You know, I don't think I told Hunter that  
21 I did that ever. At some point Hunter sent me a text  
22 after you became involved saying that he was going to  
23 have a party on Friday at the pond house and he  
24 needed the codes and I said no, you're not. But I  
25 don't think I ever told Hunter. Now, I mean,

1 obviously Hunter was there because he went down there  
2 and cut the pipes and I could see his cigarette  
3 butts.

4 Q. Do you have cameras at the property, Mark?

5 A. I'm not answering that question. I've  
6 told you --

7 Q. You don't have anything that shows my  
8 client smoking cigarettes and cuttings pipes, do you?  
9 Because you would have given me that in discovery,  
10 right?

11 A. Yeah, you're right. I don't have that,  
12 but he did. And -- and, I mean, and I can -- well, I  
13 can tell you why, but I know he did.

14 Q. In any event, my client doesn't have  
15 access to the codes on that door, does he?

16 A. He does not have access to the numbers  
17 that have to be put into that to unlock that lock,  
18 correct.

19 Q. So if there are any repairs that are going  
20 on inside the cabin or even on the back porch for  
21 that matter, he wouldn't really know about it, would  
22 he?

23 A. Those are different repairs. You're  
24 confusing things again. You're mistaken.

25 Q. But you have alleged in your complaint

1 that he has failed to jointly contribute or maintain  
2 the property, correct?

3 A. Not -- no, that's -- again, I've told you  
4 this before in the e-mails, you're confused. I'm not  
5 talking about those repairs. I'm talking about when  
6 Martin owned it. Those are the things that he failed  
7 to do.

8 Q. Have you seen any documents that evidence  
9 that there was a demand made upon Hunter?

10 A. Did I see any? No, I didn't see there was  
11 any demand made upon Hunter. I did see when Martin  
12 rented a backhoe and was down there digging it out  
13 and Hunter had his own backhoe, I did see Martin  
14 doing work down there that Hunter didn't pay for.

15 Q. Did Bill Short ever advise Walter Sanders  
16 with a copy to you that Hunter didn't agree to the  
17 sale?

18 A. He advised -- his words were, I believe,  
19 for now when Bill Short first got involved and then  
20 subsequent to that he said that he agrees Hunter is  
21 okay with me buying it.

22 Q. But you never received Hunter's signature,  
23 did you?

24 A. No, that was a representation from his  
25 lawyer. I mean, that's one of the things that I do

1 understand and know is that you are bound by the  
2 statements of your lawyer.

3 Q. How do you know that he was bound by the  
4 statements of Bill Short if they were vague?

5 A. It wasn't vague.

6 Q. What if somebody other than Mark thought  
7 they were vague?

8 A. Somebody other than Mark?

9 Q. Other than Mark Tinsley.

10 A. I was only buying this property and the  
11 lawyer said he is okay with you buying it. We had  
12 conversations and e-mails subsequent to that where he  
13 understood that I was buying it. There was never any  
14 demand that he be allowed to buy it. In fact, even  
15 in his demands of the division of property, other  
16 than one and then it went away, there was never any  
17 demand that he even be given any of the property.

18 Q. And I'm familiar with the communication  
19 that you're referencing between Bill Short and I  
20 believe Walter Sanders and you were copied on it.

21 A. I don't think so. These were e-mails  
22 between Bill Short and myself and we talked on the  
23 phone many times.

24 Q. Would you have provided me all those  
25 e-mails?

1 A. I did.

2 Q. We'll take a minute and find them, but  
3 does that e-mail reference the property bounds, metes  
4 or tracts, for that matter? Which property are you  
5 guys talking about at that time?

6 A. The property that I bought.

7 Q. How did Bill know which property you  
8 bought?

9 A. Walter had sent him the deeds, for one,  
10 before this. So he knew what it was I was buying and  
11 it was the property that Martin was selling that I  
12 was buying and that I did buy.

13 Q. You have alleged waiver by my client. Do  
14 you remember the issue with Rita Crocker she told  
15 you -- well, let me find it. I'm not going to say  
16 what she told you, but Rita told you at some point  
17 you would need to get signed waivers from the three  
18 brothers. Do you remember that?

19 A. I remember the e-mail. That's correct.

20 MR. HEWITT: If you're looking for  
21 it, Cam, that was in Exhibit No. 8.

22 MR. HALFORD: Thank you, Blake.

23 BY MR. HALFORD:

24 Q. She didn't say signed releases, did she?

25 A. I don't know what she said. Rita is not a

1 lawyer.

2 Q. That's my point. You are a lawyer?

3 A. That's right.

4 Q. Okay. So if Rita told you you need to get  
5 the signature of three brothers -- you're obviously  
6 buying it from Martin, correct? Why didn't you get  
7 the signature --

8 A. I bought -- I bought it from Martin and  
9 Angela, but correct.

10 Q. In fact, in your request to admit, you  
11 have admitted that you don't have the signature of  
12 Mr. Hunter Youmans, have you not?

13 A. Have the signature of Mr. Hunter Youmans  
14 on what?

15 Q. On a release.

16 A. I agree that there's not a -- he didn't  
17 sign a release like those two brothers that you  
18 marked.

19 Q. When you reference the codes, are you  
20 saying my client waived before the codes were put on  
21 the cabin?

22 A. Oh, yeah. Well, no, you're talking  
23 about -- you started talking about a certain waiver.  
24 in the answer. He's waived multiple things. So  
25 you're confusing things again. He waived any right

1 to use the pond or the pond house when Martin owned  
2 it by failing to take part in the expenses and  
3 maintaining it. Not -- not paid some. Not, hey,  
4 Jerry Lamb, it says on here that I paid this one part  
5 of this one thing. It says to share equally in all  
6 those expenses and he didn't do that. Then I assert  
7 waiver in the answer. The waiver there I'm talking  
8 about is he's waived whatever rights he had  
9 independent of what he didn't do when Martin owned  
10 it, he waived failing to purchase the property.  
11 That's what I'm talking about.

12 (PLF EXH. 16, Checkbook Ledger, was  
13 marked for identification.)

14 BY MR. HALFORD:

15 Q. I'm showing you a ledger out of the  
16 checkbook for Youmans Brothers partnership. The  
17 check at the top references a pond house. Can you  
18 tell me the date when that check was written?

19 A. 4/28/06. But this -- all right. So the  
20 pipe that he cut, at one time that well would pump  
21 into his pond and --

22 Q. We're not talking about the pond. We're  
23 talking about the checkbook. Does it reference a  
24 pond house?

25 A. Well, it says landfill, house, and pond.

1 There was a house and pond over by the landfill. I  
2 don't know what it references. It says Rivers Well  
3 Drilling. But just because it says house and pond,  
4 there was a house and pond by the landfill which was  
5 a separate piece of property. I got no idea what  
6 this is for.

7 (PLF. EXH. 17, Youmans Brothers  
8 Checks, was marked for identification.)

9 BY MR. HALFORD:

10 Q. I've highlighted what's been now marked as  
11 No. 17. Can you describe what that check references  
12 in the bottom?

13 A. It says Oswalt and Sons, \$3,000, and then  
14 it says pond house on the subject for the for line.

15 Q. Are you aware of when the property was --  
16 the cabin was relocated on the property?

17 A. No, I think I remember that. But as far  
18 as being able to date it, no, I don't remember.

19 Q. But you weren't a member of the Youmans  
20 Brothers partnership in the year 2006, were you?

21 A. Yeah, Cam, I was. In 2006, they  
22 voluntarily got me in there for a couple of days and  
23 then they kicked me out. No, I wasn't. I've told  
24 you that. You know that.

25 Q. So you don't know if that check was

1 written for the pond or not?

2 A. I have no idea what the check was written  
3 for.

4 Q. But you do know Martin and Hunter --

5 A. Or how they did their accounting.

6 Q. -- was in a partnership, don't you?

7 A. Pardon me?

8 Q. You do know they were in a partnership,  
9 don't you?

10 A. Yeah, they were in a partnership.

11 Q. And they had a checkbook -- the  
12 partnership had a checkbook? Let me be accurate.

13 A. I think Hunter had the checkbook, but they  
14 had an account.

15 Q. And if that account wrote checks on the  
16 pond cabin, that would be them jointly writing  
17 checks, would it not?

18 A. I don't think so. Just like I don't think  
19 when Hunter would pay his wife or pay his child  
20 support or pay the other things, I don't think that  
21 that was partnership asset or partnership expense or  
22 liability. I think that that was just Hunter using  
23 it. Now, I don't know about that check. The only  
24 thing I know is what Martin says which is that he  
25 didn't pay and what Angela says which is he didn't

1 pay. They paid those things.

2 Q. But Martin was a member of the Youmans  
3 Brothers partnership?

4 A. He was.

5 Q. Is it possible Martin would have told you  
6 that Hunter personally didn't contribute?

7 A. No, no. We asked because you raised it.  
8 You said that he did it through the partnership or he  
9 sent an e-mail that you forwarded that had him on it  
10 and so I asked him about that.

11 Q. Did you receive other bank records from  
12 your subpoena?

13 A. Other than these two pages?

14 Q. Well, did you receive bank records at all?  
15 Because they weren't produced to me.

16 A. No, I -- they are stacked on my desk. I  
17 think -- I think I got from Hazel whatever her name  
18 is who did the taxes, I think I got Tommy Transom,  
19 and then I got this stuff from the Allendale County  
20 Bank.

21 Q. Why haven't you produced them?

22 A. I told you earlier if I haven't, it's an  
23 oversight. Rhonda should have produced it.

24 Q. Will you please give it to Mr. Hewitt to  
25 be provided to me?

1 A. Sure. Yeah.

2 Q. Thank you. Appreciate it.

3 (PLF. EXH. 18, Youmans Brothers  
4 Partnership Checks, was marked for identification.)

5 BY MR. HALFORD:

6 Q. I'm showing you what's been marked as 18.  
7 There appears to be a check at the bottom right  
8 signed by Angela. Who is that? That would be  
9 Martin's ex-wife?

10 A. No.

11 Q. Current wife?

12 A. I think so. I didn't know he had an  
13 ex-wife.

14 Q. And it's signed by Angela Youmans,  
15 correct?

16 A. Yeah.

17 Q. And there's a notation at the bottom. Can  
18 you read what the notation is?

19 A. Well, I don't see any notation at the  
20 bottom. I see where probably Hunter has written pond  
21 house deck right there, but I don't see any notation  
22 on the check. Maybe somebody else did. I don't know  
23 where this copy came from. I don't believe it came  
24 from the bank with that writing on there.

25 Q. But in any event, there was a partnership

1 that you have testified to between Martin and Hunter  
2 and you have no reason to dispute that there were  
3 checks written for the pond at some point, do you?

4 A. Again, how they did their accounting and  
5 divided up their money, I have no idea about that. I  
6 can tell you that the pond house and the pond are not  
7 carried on their taxes -- on their partnership taxes.  
8 I can tell you that --

9 Q. Why would you be looking?

10 A. Why?

11 Q. Yes.

12 A. When I subpoenaed the documents, I know I  
13 looked in there.

14 Q. Why did you look in there?

15 A. Because you're taking the position that he  
16 did pay it.

17 Q. Okay.

18 A. I didn't -- I didn't subpoena it until you  
19 said it.

20 Q. All right. That was my question earlier.  
21 I know Martin probably told you Hunter didn't pay.  
22 Did Martin ever tell you the partnership failed to  
23 pay?

24 A. Yes. The partnership -- he never paid.  
25 Now whether -- whether or not that Angela writes a

1 check or Hunter writes 50 checks to his ex-wife, I  
2 mean, I assume all that gets sorted out at the end of  
3 the year when the accountant does this is what you  
4 made this year and this is what you made and that it  
5 got sorted out then. But just because the  
6 partnership wrote a check, I don't think that answers  
7 the question.

8 And, again, it's not did you pay one or  
9 two payments. It's did you share in those costs  
10 equally and that's -- according to what I understand,  
11 they didn't do all this work with \$657, \$876. I  
12 don't know what that Greg Hutto or who that is. You  
13 got that one highlighted and checked as well.

14 Q. Hunter couldn't have contributed to the  
15 repairs or the improvements, rather, that I seen  
16 after these codes were installed. How would he know  
17 about them? Did you tell him?

18 A. And I'm not -- and I haven't -- as I told  
19 you in the e-mail and I thought very clearly, I am  
20 not taking the position that the work that I did on  
21 the pond house and have done on the pond house, that  
22 Hunter's failure to contribute to that as affected  
23 his ability to use the property. That's not at all  
24 what I'm saying.

25 Q. In fact, my understanding of your position

1 was you're not claiming damages as to the pond cabin,  
2 are you?

3 A. You know, I don't know -- he collected and  
4 dumped water onto the property. He flooded the  
5 property. He did it --

6 Q. How do you know this?

7 A. I mean, I got the video and people saw him  
8 digging the trench with his bulldozer. So --

9 Q. And I saw some video.

10 A. Let me -- how do I know this, so this is  
11 how I know it. So the property is flooded and I  
12 don't just mean a little bit of water and it's wet.  
13 I mean, it's completely flooded. And so the only  
14 thing that I can think of is it wasn't that way when  
15 I bought it. It wasn't that way when I was cleaning  
16 it up.

17 This is about the time that the lawsuit  
18 gets filed. And I went and got a backhoe and I said,  
19 well, I'm just going to dig a trench on the Hunter  
20 side of the pond house in the yard to try to force  
21 some of that water into the pond because it's just an  
22 unbelievable amount of water. And as I'm digging, my  
23 father says let me go over here in case you hit a  
24 pipe and make sure we can cut the well off. I don't  
25 think there's any pipes out here where I'm digging.

1 And so he says, whoa, whoa, you've hit one.

2 And so I go into the pond house -- I mean,  
3 into the pump house and there's a two inch line and  
4 it's squirting water out about 18 inches inside the  
5 well house. And at first I'm confused and thinking  
6 how did I break this? And then I look and it's sawed  
7 off and the fitting is laying on the ground and the  
8 water is spewing and I can't figure out what's going  
9 on. And then I noticed there are fish in there in  
10 the pond house -- I mean, the pump house.

11 Q. There are fish?

12 A. Fish.

13 Q. Fish?

14 A. Fish inside the pump house. And so I  
15 said, daddy, this is not coming out the well.

16 There's fish in here. And what it was, was at one  
17 time they had used -- and Hunter told me this, that  
18 they would pump -- so there's Hunter's pond which is  
19 above my pond and they would use that well and they  
20 would pump water from that well into Hunter's pond.

21 And so what he did was he came down and he  
22 cut the pipe and he opened the valve -- he had a  
23 valve up there that would allow the water to flow  
24 into his pond from the well. But if you cut the pipe  
25 and you open the valve, the water would flow out of

1 the pond back down and that's what he was doing. And <sup>89</sup>  
2 so when I realized what he was doing, I went -- and I  
3 went to the base of the dam on my property somewhere  
4 and I dug until I found the pipe and I cut the pipe  
5 and I dug a ditch and then I let it flow back into  
6 the ditch where it would normally overflow.

7 Well, that afternoon he comes by and he  
8 sees it. And so he immediately shuts off the valve  
9 that he had opened and then he takes his tractor --  
10 well, first, he then covered the overflow so that the  
11 water is running overflowing over the pond and  
12 flooding the road. Well, then after that, what he  
13 did was he came and he took his tractor and he dug a  
14 trench so that the water would then do the same  
15 thing, but flow directly into the driveway. Well, I  
16 dug a bigger trench. That's the text that you sent  
17 me, this is your handywork, Mark.

18 I dug that to divert that water that he  
19 was flooding into the driveway pouring hundreds of  
20 thousands of gallons onto the property and back into  
21 the ditch. And then he took his bulldozer and he dug  
22 a trench that was probably a hundred yards long so  
23 there's no way to divert the water.

24 Q. How do you know his pond is higher than  
25 your pond?

1 A. Because I have two eyes and I can see.

2 Q. Did you see that before you bought the  
3 property, Mark?

4 A. I did see that before I bought the  
5 property.

6 Q. Kind of like you looked at the property  
7 records. You can visually see his pond at a higher  
8 elevation than yours?

9 A. I can.

10 Q. Okay. Do you have videotape of my client  
11 doing this?

12 A. I don't have videotape of that. I've got  
13 a videotape of your client. I've got a videotape of  
14 him riding his --

15 Q. Ranger?

16 A. Yeah, Polaris.

17 Q. I did see that. Why was that taken? What  
18 does it show?

19 A. It shows him riding on the property.

20 Q. It shows him riding on the dam, I believe.

21 A. No, it shows him riding on the property.  
22 Part of the dam -- most of the dam is on my property,  
23 but the road that he was coming down on and riding on  
24 through is on me.

25 Q. How far away did you take that video?

1           A.       From the deck of the -- from the porch of  
2 the pond house.

3           Q.       And how much would you estimate that  
4 yardage is?

5           A.       Varied from 176 yards to about 98 yards.

6           Q.       You deer hunt, so you know your yardage?

7           A.       I do hunt.

8           Q.       What did you take this video with?

9           A.       My cell phone.

10          Q.       Your iPhone?

11          A.       Yeah.

12          Q.       So you took it -- what model iPhone do you  
13 have?

14          A.       A six.

15          Q.       And that's what you shot the video with?

16          A.       That's what I shot the video with.

17          Q.       Does it show the boundaries of the  
18 property line in this video?

19          A.       I don't think I had it surveyed then. But  
20 if I did, then it could have.

21          Q.       But it probably did not at that time. Let  
22 me take you back to the Rob Burkhart matter. You saw  
23 his affidavit. Did you do any survey when you were  
24 negotiating that sale and it fell through? Did you  
25 place flags on the property or markers on the

1 property?

2           A.       So Hunter had Lawton Manor survey the  
3 39 acres to divide and Hunter took me and showed me  
4 what he had had surveyed and what he was going to  
5 have Lawton draw the plats for. And I said, yep, I'm  
6 okay with that. And then I got -- because Lawton  
7 Manor was -- had just surveyed it, I got in touch  
8 with Lawton and I said I want to know where the  
9 boundary is not so much between Hunter and what I was  
10 buying, but on the lower end. I didn't know where  
11 the line was on the lower end. So how about mark  
12 that for me.

13                   And at the time the Burkharts were going  
14 to buy the house. Now the house is on one acre and  
15 there's a little fence around the yard, around the  
16 house, and I don't believe that that is exactly on  
17 the one acre. So, in other words, they owned the one  
18 acre first, then they owned the 67 acres and they  
19 just put their house and stuff wherever they wanted  
20 to put it.

21                   So one of the things that Rob and I talked  
22 about was that it was a house and one acre, but I was  
23 willing to cut out more of the yard. In fact, I was  
24 willing to go all the way to the -- there was a tree  
25 line where the dog kennels and what now is where we

1 built the building and so those flags were -- I had  
2 gone out there to put that out. This is what I was  
3 proposing to Rob. Now, we were going to discuss  
4 those things, but Rob saw that it was too much work,  
5 in my opinion, to buy the house. So Rob didn't want  
6 to buy it. His wife wanted to buy it.

7 So the answer is no, I didn't do any  
8 surveying. I put flags out that where roughly  
9 marking the corner that I was going to propose to be  
10 cut out and that Rob was going to get.

11 Q. How about that 39 acres that y'all own  
12 jointly, did you buy that without knowing where the  
13 dividing line was?

14 A. No, he showed me where it was. Hunter  
15 showed me where it was.

16 Q. In fact, he was going --

17 A. It already had tee posts marking where  
18 the --

19 Q. I've been out there and seen the deer  
20 stand on his side and seen the property. But by my  
21 point is there wasn't an agreement necessarily  
22 between y'all before you bought it, was there?

23 A. Oh, absolutely.

24 Q. Were those surveys done before or after  
25 the purchase?

1           A.       The survey was done before he took the  
2 plat. I don't know what date he took the plat, but  
3 it was after the text that he agreed to take it. He  
4 took the plat so Walter could draw the deeds for the  
5 plat to transfer it.

6           Q.       You said he agreed to take it. What is  
7 "it?"

8           A.       That was the text. ; That's what I was  
9 referring that he agreed to take --

10          Q.       The text message?

11          A.       Yes.

12          Q.       When you say "he," you're referring to  
13 your grantor, Martin Youmans?

14          A.       I was stating that he took the plats to  
15 Walter Sanders after the he-agreed-to-take-it text  
16 that you marked earlier.

17          Q.       Okay. And then at some point the  
18 property -- he never does sign a release on the  
19 39 acres and sell it to you or he never does divide  
20 it; is that correct?

21          A.       No. We told his lawyer that we were going  
22 to close and did he want to -- did Hunter want to go  
23 ahead and divide the 39 acres at that point and Bill  
24 advised that he would get back to me. He never did  
25 and so we closed it.

1 Q. Do you know if Walter ever got back with  
2 Bill?

3 A. I don't understand the question.

4 Q. Do you know whether or not Walter Sanders  
5 ever got back up with Bill and told him there was a  
6 closing date?

7 A. I told him that we were going to close.

8 (PLF. EXH. 19, E-mail Transmittal  
9 dated 09/30/2015, was marked for identification.)

10 BY MR. HALFORD:

11 Q. I apologize for the poor quality of the  
12 print. I've highlighted an e-mail there at the top.  
13 Can you read that statement into the record, please?

14 A. It's a question. "We understand that your  
15 purchase has closed on 9/25 without Hunter signing a  
16 release on his right to buy?" And that's  
17 September 30, 2015.

18 Q. And who is that e-mail exchange between?

19 A. It's from Bill Short to me.

20 Q. And did you respond to Bill Short and tell  
21 him that you had closed?

22 A. You know, I believe I did. I think I did  
23 and I think I would have done it from my phone. Some  
24 of those e-mails -- I printed the e-mails that I had  
25 that were on my computer. Oftentimes I try to copy

1 myself so that I would have records of what -- when I  
2 send an e-mail from my phone, but sometimes I didn't.  
3 I believe I sent Bill Short an e-mail in response.

4 Q. But the date of your deeds and closing,  
5 that was September 25, 2015; is that correct?

6 A. That's what I told you before, I'm not  
7 real sure. I know what date she wrote the check. I  
8 know what date the deeds say. Since I wasn't there,  
9 I'm not real sure. They're recorded on the 25th.

10 Q. And you didn't record them?

11 A. I did not record them.

12 MR. HALFORD: Let's take a break.

13 (Off the record.)

14 (PLF. EXH. 20, E-mail Transmittal  
15 dated 12/09/2015, was marked for identification.)

16 (PLF. EXH. 21, E-mail Transmittal  
17 dated 09/15/2015, was marked for identification.)

18 BY MR. HALFORD:

19 Q. I'm going to pass over an e-mail from Bill  
20 Short to you, Mark, marked as No. 20. Can you give  
21 me the date on this e-mail?

22 A. That's December 9, 2015.

23 Q. All right. Can you read what's  
24 highlighted there at the top?

25 A. "Hunter refuses to sell. Please file to

1 partition the 39 acres. I will accept service."

2 Q. Okay. Have you filed a partition action  
3 on this property yet?

4 A. No, I sued for specific performance.

5 Q. Okay. I did see that. My apologies. The  
6 point is in between the time that went by and this  
7 lawsuit being filed, you didn't file a partition  
8 action?

9 A. I did not file a partition action. I sued  
10 Hunter for specific performance.

11 Q. You didn't do that until Hunter sued you,  
12 right?

13 A. This is true. I did not do it until  
14 Hunter sued me.

15 Q. I'm showing you what's now been marked as  
16 No. 21. What's the date on that correspondence?

17 A. Which one? There's three e-mails on here.  
18 Two are on September 15th, one is September 8th.

19 Q. The portion which is underlined for you.  
20 I'm not sure I can see the dates from here.

21 A. That's September 15th. That's from me to  
22 Bill Short copying Walter Sanders.

23 Q. Yes, sir. What does the underline read?

24 A. "Also we are moving forward with the  
25 closing on Martin's property that I'm buying

1 including Martin's half interest in the 30 acres --  
2 39.38 acres."

3 Q. Who is "we?"

4 A. That would be we as in me and Martin, I  
5 assume. That's the we that I meant.

6 Q. Would that also include Diane Tinsley?  
7 She's on the title, correct?

8 A. And Angela Youmans, but that's not --  
9 that's not what -- you didn't ask me that. You said  
10 who is we and that is what I meant.

11 Q. But as of this date, you tell  
12 Mr. Bill Short, is that right --

13 A. That was --

14 Q. -- on September 15th that you're moving  
15 forward?

16 A. Right.

17 Q. You weren't the attorney that handled the  
18 closing. How are you going to move forward with  
19 anything?

20 A. Walters Sanders is copied on it. I'm  
21 moving forward with the closing.

22 Q. But you weren't the closing attorney?

23 A. Let me think about that a minute. Nope, I  
24 wasn't.

25 Q. Then going back to No. 19. It seems to me

1 that Mr. Short is e-mailing you wanting to know if  
2 the property in fact closed; isn't that right?

3 A. I don't think so.

4 Q. What do you think looking at it?

5 A. Well, he's saying we understand that your  
6 purchase has closed on 9/25 without Hunter signing  
7 and he's got a question mark there.

8 Q. That's a statement from Bill Short, but at  
9 what point did you guys tell Hunter it was going  
10 forward?

11 A. On September 15, 2015 at 10:17 a.m.

12 Q. And this seems to drag on after you  
13 acquire the half interest in the 39 acres. That's  
14 Tract A in the complaint. But as you acquire that,  
15 did you ever ask Martin is there a joint tenancy  
16 agreement in place?

17 A. Your question was very bad. This seems to  
18 drag on? I don't know what you mean. Did I ask  
19 Martin was there a joint tenancy agreement? No, I  
20 did not ask Martin about any agreement.

21 Q. In fact, you knew there wasn't too much of  
22 an agreement between Martin and Hunter at most times?

23 A. You know, I guess I've known lots of  
24 people who have owned property jointly and I don't  
25 know that I have ever seen something what you just

100  
1 said as a joint tenancy agreement. I don't know that  
2 I've ever seen it. If the property was rented and  
3 the farm rights were rented and there was revenue  
4 from that, I would assume that the people who owned  
5 it would split it evenly. I would assume that you  
6 pay your taxes and other expenses evenly, but I  
7 don't -- I've just never seen one.

8 Q. Okay. You just used the term "assume"  
9 twice, Mark.

10 A. Uh-huh.

11 Q. Now, with the agreement between Martin and  
12 Hunter here, you've sued for some kind of lost rent  
13 or converted rent. What are you talking about in  
14 your lawsuit in that?

15 A. He took the -- we rented the farm rights  
16 to Michael Cone and he kept all the money. Hunter  
17 kept all the money.

18 Q. Who is Michael Cone?

19 A. A farmer who farmed the 39 acres.

20 Q. Okay. What kind of crops?

21 A. I think he planted soybeans.

22 Q. And so did you ever see some agreement  
23 between Hunter and him for planting or leasehold  
24 rights?

25 A. No, I didn't see. I mean, I assume --

1 because he -- Michael told me there was a lease and  
2 what he was paying.

3 Q. You've seen a lease?

4 A. I just told you Michael told me that he  
5 had to have a lease.

6 Q. Okay. Do you know whether or not Martin  
7 and Hunter ever split crops before that they planted?

8 A. This is something that happened while  
9 Hunter and I owned the property. It didn't have  
10 anything to do with Martin.

11 Q. Well, that's my point. You now own the  
12 property half, right? You're joint tenants with my  
13 client, aren't you?

14 A. I am.

15 Q. On the 39 acres?

16 A. Yes.

17 Q. How did that work out?

18 A. I don't understand your question.

19 Q. Has Hunter always -- didn't Hunter give  
20 you a check here today here at the table?

21 A. He gave me a check because he's got in his  
22 mind that somehow if he pays the taxes or I pay the  
23 taxes, it gives you some superior right in ownership  
24 or something. I mean, he's got some crazy notion  
25 about that, but he didn't give me half the check on

1 the rent.

2 Q. How do you know he has some crazy notion?

3 A. Because he's told me. I heard it. I  
4 heard him talk about it. Martin has said what he  
5 thinks about it.

6 Q. So you're citing hearsay again, Mark, and  
7 assumptions? You've used the term "assume" three  
8 times in this deposition so far that I can count.  
9 Did my client --

10 A. I bet I used it more than that. I would  
11 assume that I have because I like the word and I use  
12 it a lot, particularly when somebody is asking me  
13 questions that don't -- that are so vague and  
14 difficult to understand as what you're asking.

15 Q. Well, I want to know if there's an  
16 agreement between you and Hunter to pay the taxes.  
17 That's all.

18 A. I guess there's an implicit agreement in  
19 that he's either paid them or I paid them and then  
20 he's either written me a check or I have written him  
21 a check. We have not had any discussion together.

22 Q. Would it be helpful to have discussions  
23 together now that you own one-half?

24 A. It would be helpful to do a lot of things.  
25 For whatever reason, he has not been willing to have

1 those discussions and so this is the way that we've  
2 done it.

3 Q. But he has in the past mailed you a  
4 check -- a certified check, has he not?

5 A. He mailed me a check. Not certified  
6 check. He mailed me a personal check.

7 Q. Did you cash it?

8 A. I don't think I cashed it. I think I -- I  
9 suspect I gave it to my wife and it probably got  
10 deposited, but I have no idea. If it didn't, it  
11 wasn't because of any reason that we didn't.

12 Q. Wouldn't it be better to have an  
13 understanding in general?

14 A. It would be better to divide the 39 acres  
15 and he take his half like he had it surveyed and I  
16 take my half like he told me I was getting and we go  
17 and live separate parts and we start Trump's wall  
18 right there on Concord Church Road and we build it  
19 all the way to the backside of the property. He  
20 doesn't have to see me. I don't have to see him.

21 Q. Isn't that your intent in installing them  
22 codes on the door too?

23 A. No.

24 Q. Well, you realize that Hunter asked to use  
25 them, right? He didn't come to you and say, Mark,

1 can I use it for --

2 A. No. No, he didn't.

3 Q. You testified earlier that Hunter has  
4 asked you for it for a party or something.

5 A. That's not what I said.

6 Q. What was it you said then?

7 A. I told you that he -- after you became  
8 involved and you -- I don't know what you told him,  
9 but then he sent me a text that said he was having a  
10 party there on Friday night. What are the codes?  
11 That's not him coming and asking me. That's not  
12 anything. That's -- that's the --

13 Q. I've got a question for you, Mark. As of  
14 today, December 11, 2017, does he have access to the  
15 pond and the pond cabin?

16 A. No. The judge told him he can't go on the  
17 property. You were there and he was there..

18 Q. But the judge didn't adjudicate his rights  
19 to use that property, did he?

20 A. You asked me as of today. I'm telling you  
21 as of today, he can't go on the property because the  
22 judge told him you better not go on the property.

23 Q. And he's abided by that by my command, but  
24 when you -- whatever date you installed the codes, he  
25 couldn't access the property anyway, could he?

1 A. He wasn't accessing the property before.

2 Q. How do you know that?

3 A. Because his nephew lived there and that's  
4 part of the reason why Martin says they left because  
5 he hated his nephew and his nephew hates him.

6 Q. Are you saying that Hunter had to use it  
7 every week or every other week or with some degree of  
8 frequency?

9 A. He wasn't using it at all. Robby lived  
10 there.

11 Q. How do you know he wasn't using it at all?  
12 On what evidence are you relying?

13 A. The fact that Robby was living there.

14 Q. And who is Robby?

15 A. That's his nephew.

16 Q. That's his family, correct?

17 A. That's Martin's son.

18 Q. Okay. All right.

19 (PLF. EXH. 22, E-mail Transmittal  
20 dated 12/01/2015, was marked for identification.)

21 BY MR. HALFORD:

22 Q. At some point you communicate back with  
23 Bill Short?

24 A. Is that a question?

25 Q. Yes, sir.

1           A.     I communicated with Bill Short many, many,  
2 many times before and after that September 30th  
3 e-mail, if that's what you're referencing, before and  
4 after December 9th when I had said I'm willing to buy  
5 Hunter out of the 39 acres. But I communicated with  
6 Bill Short many times.

7           Q.     There was no bar to your communicating  
8 with Bill Short, correct?

9           A.     Hunter told me to communicate with  
10 Bill Short. That's what I did.

11          Q.     Isn't that where it really gets  
12 contentious between you guys when he said he had a  
13 lawyer?

14          A.     No.

15          Q.     When did it become contentious between you  
16 guys?

17          A.     I guess it became contentious between us  
18 when you came and had me served on Christmas Eve or  
19 whenever you did because if you will look, even in  
20 Bill Short's e-mails, Bill still says that I can talk  
21 to Hunter. It's not this one.

22          Q.     Then why couldn't you get my client's  
23 signature on a release?

24          A.     I didn't -- first of all, there was no  
25 need to get the signature on a release. He couldn't

1 hold the transaction up. If he had a right, which I  
2 dispute that he had for legal reasons, it was a right  
3 that required him to act. He couldn't do what he was  
4 doing. You can't -- because you've got a right of  
5 first offer or whatever or even if it's a right of  
6 first refusal, it doesn't mean you can keep somebody  
7 else from selling it. It just means that you have  
8 the opportunity. He had the opportunity. He didn't  
9 take it.

10 Q. And how do you know that, for example, he  
11 couldn't afford it?

12 A. He told me that.

13 Q. Did he ever show you any bank records  
14 proving it?

15 A. That's what he told me. That's what he  
16 told me --

17 Q. Have you ever seen --

18 A. -- he told Woody Gooding and he told  
19 Walter Sanders.

20 Q. I don't want to talk over you. Did he  
21 ever show you any financial statements?

22 A. I took his word for it. I took his word  
23 for a bunch of things. I mean, maybe he can afford  
24 it. It didn't look like it when I got the bank  
25 statements recently that he could have, but maybe he

1 . could have. I don't know. I tell you what he could  
2 have done, he could have traded partnership  
3 properties and bought it. But he didn't want to and  
4 he didn't do it.

5 Q. Back up. Wait a minute. What partnership  
6 property are you talking about?

7 A. With Martin.

8 Q. Your client, Martin?

9 A. Not my client, Martin. With his brother,  
10 Martin.

11 Q. Wait. You were communicating with these  
12 gentlemen about the Piggly Wiggly and the Check  
13 Express, were you not?

14 A. Sure.

15 Q. In fact, I saw an e-mail that said --

16 A. Well, no, no. That's not right. I wasn't  
17 communicating with these gentlemen. I was talking to  
18 Martin and to Bill Short.

19 Q. At one time you were talking to Hunter?

20 A. Not about that.

21 Q. But at some point partnership properties  
22 and their division come up?

23 A. Not really. So they had already decided  
24 on the division of the partnership properties. And  
25 from Hunter's understanding, Walter was supposed to

1 be drafting the documents to separate. That is  
2 before I ever buy the property. It is before I'm in  
3 the picture. And it's dragging on and on and we  
4 don't know what Walter is doing or why Walter is not  
5 doing it. And so --

6 Q. But at some point you sent an e-mail and  
7 said we're going forward?

8 A. That's a different subject. We're going  
9 forward with my purchase, the closing.

10 Q. And you purchased both the --

11 A. And what that -- what that said was we're  
12 going forward with my closing and that Martin has  
13 instructed Walter to move to partition the Youmans  
14 Brothers partnership.

15 Q. And this is the same partition action you  
16 never filed, correct?

17 A. No. It's not even remotely close to the  
18 same. My partition action had to do with the 39  
19 acres. This clearly is have all the Youmans Brothers  
20 property sold and the proceeds of the sale divided.  
21 It's right there in your Exhibit 21.

22 Q. Are you saying that was one of the  
23 properties of the Youmans Brothers? They owned it  
24 jointly, didn't they?

25 A. You and I are having problems

1 communicating because either you're intentionally  
2 being obtuse or you're just trying to give me a hard  
3 time. This e-mail on the 21st said two things: One  
4 is, is that Martin is not willing to take what Hunter  
5 says which is to give him his grandma's land and  
6 house or grandparents' land and house. I assume  
7 that's the pond house and the 67 acres, but that's me  
8 assuming. It was on the list that's attached to this  
9 September 15th. "Just spoke to Martin. He is not in  
10 agreement. He will not accept Hunter's proposal.  
11 Martin has decided to move forward and have Walter  
12 partition -- file a partition action to have all of  
13 the Youmans Brothers property sold."

14 Q. And what was the date of that  
15 communication?

16 A. September 15, 2015. And then it says,  
17 "Also, we are moving forward with the closing on  
18 Martin's property that I am buying." There are two  
19 different subjects here. One is the Youmans Brothers  
20 partnership stuff that they're fighting about. The  
21 other is the property that I'm buying there really is  
22 no fight about. Nobody is fighting about. This is  
23 all something that he's come up with since, I  
24 suspect, because they've seen -- or he thinks that he  
25 could have afforded the consideration in those deeds

1 or part of it.

2 (PLF. EXH. 23, Title to Real Estate,  
3 was marked for identification.)

4 BY MR. HALFORD:

5 Q. Mark, what I've passed you is now  
6 identified as No. 23. Is that, in fact, the deed  
7 from Martin Youmans to you and your wife,  
8 Diane Tinsley, on the 39 acres?

9 A. Yes.

10 Q. All right. And we've described an e-mail  
11 September 15th. The property transaction hasn't even  
12 taken place yet, correct, on September 15th?

13 A. It has not.

14 Q. Okay. So when you take title to this  
15 39.389 acres and the deed that you're looking at  
16 which is No. 23, you're aware that Hunter owns half  
17 of this property, aren't you?

18 A. I am.

19 Q. Okay. Y'all aren't getting along at this  
20 time. Why would you enter into a transaction to take  
21 title jointly with somebody you don't get along with?

22 A. I bought Martin's interest out. At this  
23 time I don't know we're not getting along.

24 Q. You know he's engaged Bill Short as his  
25 counsel, though, don't you because that's who you're

1 communicating with?

2 A. Sure.

3 (PLF. EXH. 24, Release of Right to  
4 Purchase, was marked for identification.)

5 BY MR. HALFORD:

6 Q. Have you ever seen what's been marked as  
7 No. 24, Mark?

8 A. No.

9 Q. Can you identify for the record what they  
10 are?

11 A. Yeah. I mean, it purports to be the  
12 releases. I assume these are the releases that  
13 Walter prepared because it says "prepared by" at the  
14 top. So that's why I made the assumption. I know  
15 you don't like it when I do that, but you're asking  
16 me to assume a lot of things when you ask me to  
17 identify these documents that I didn't prepare.

18 Q. But there's no assumption that it's saying  
19 Walter prepared the deeds and releases on these  
20 matters, correct?

21 A. I don't -- I mean, I don't know what you  
22 mean by prepared, but I assume his office did.

23 Q. By prepared I mean drafted personally?

24 A. I do not know.

25 Q. But they weren't drafted by your office?

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

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APPEAL FROM ALLENDALE COUNTY  
Court of Common Pleas

Hon. R. Lawton McIntosh  
Circuit Court Judge

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Appellant Case No.: 2019-000736

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William Hunter Youmans, ..... APPELLANT

vs.

Mark B. Tinsley and Diane E. Tinsley, ..... RESPONDENTS

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PROOF OF SERVICE - RECORD ON APPEAL  
AND SCACR 2010(g) CERTIFICATION BY APPELLANT COUNSEL

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Appellant Counsel hereby certifies that the Record on Appeal was served upon all parties having submitted a brief this 8<sup>th</sup> day of November, 2019. Pursuant to Rule 210(g) of the South Carolina Appellate Court Rules the undersigned certifies that Appellant Counsel and Respondent Counsel have conferred on the matters being included in the Record of Appeal and that the Record on Appeal contains all material proposed to be included and not any other material.

Respectfully submitted this 8th day of November, 2019.

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