



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Circuit Court Case No. 2015-CP-07-02722
Appellate Case No. 2020-001309

Colleton River Plantation Club, Inc.,.....Respondent-Appellant,

v.

Joel S. Lee,.....Appellant-Respondent.

RECORD ON APPEAL,
VOLUME I

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INDEX

VOLUME I

Orders

Order Denying Motions to Reconsider, September 1, 2020	1
Trial Order, Feb. 13, 2020	4
Order of Reference, Sept. 8, 2016	24

Pleadings

Summons and Complaint, Nov. 17, 2015	25
Answer and Motion to Dismiss, Feb. 9, 2016	35
Amended Complaint, July 29, 2016	41
Answer to Amended Complaint, Oct. 12, 2016	52
Joint Stipulation of Exhibits, Dec. 4, 2018	59
Defendant's Comments and Objections to Plaintiff's Proposed Trial Order	61

Motions

Defendant's Motion to Reconsider, Feb. 24, 2020	73
Plaintiff's Motion to Reconsider, Feb. 24, 2020	92

Transcripts

Trial, December 5, 2018	100
Examination of Stephanie Kerr	118
Direct	118
Cross	147
Excerpts of Deposition of Burke	179

Examination of Joel Lee	202
Direct.....	202
Cross	214

VOLUME II

Exhibits

Trial Exhibit 1, Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc.	262
Trial Exhibit 2, Title to Real Estate, Joel Lee to Bluffton Properties, LLC	348
Trial Exhibit 3, Title to Real Estate, Colleton River Co., L.P. to Joel Lee.....	351
Trial Exhibit 4, Order of Judgment in <i>Colleton River Plantation Club, Inc. v. Joel S. Lee,</i> C.A. No.: 2012- CP-07-03525, filed August 8, 2013.....	355
Trial Exhibit 5, Satisfaction and Release of Judgment in <i>Colleton River Plantation Club, Inc. v. Joel S. Lee,</i> C.A. No.: 2012-CP-07-03525, filed September 23, 2014.....	359
Trial Exhibit 6, Order of Judgment in <i>Colleton River Plantation Club, Inc. v. Bluffton Properties, LLC,</i> C.A. No. 2014-CP-07-02827, filed May 12, 2015.....	360
Trial Exhibit 7, Colleton Club Payment Policy	365
Trial Exhibit 8, Colleton Club Balance Statement for Lee/Bluffton Properties, LLC	366
Trial Exhibit 9, Letter from Tek-Collect to Lee, dated Aug. 27, 2014.....	371

Trial Exhibit 10,	
Plaintiff’s Responses to Defendant’s Requests for Admission.....	372
Trial Exhibit 11,	
Beaufort County Tax Record for Lot A02.....	379
Trial Exhibit 12,	
Club Board Resolution of Sept. 28, 2010	380
Trial Exhibit 13,	
Deposition of Joel S. Lee, March 9, 2017	383
Trial Exhibit 14,	
Deposition of Thomas Burke, Feb. 13, 2018	438
Trial Exhibit 15,	
Colleton River Plantation Club Articles of Incorporation	479
Trial Exhibit 16,	
Deposition of Stephanie Kerr, May 3, 2018	485
Trial Exhibit 17,	
Articles of Organization.....	554
Trial Exhibit 18,	
Affidavit of Service	555
Trial Exhibit 19,	
Receipt for Payment to TekCollect	556
Trial Exhibit 20,	
Letter	558
Trial Exhibit 21,	
Feedback Form	560
Trial Exhibit 22,	
Beaufort County Tax Record for Barnacle Road	561
Trial Exhibit 23,	
Deed for Barnacle Road.....	563
Trial Exhibit 24,	
Timeline According to Defendant	566

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-07-02722

Colleton River Plantation Club, Inc.

Joel S. Lee

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

This came before me on Plaintiff's and Defendant's Motions to Alter and/or Amend; both filed on February 24th, 2020. After hearing from parties and review of the filed I hereby deny both motions.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

_____	3069	_____
Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

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

Barry L. Johnson

Stephen H. Williams

ATTORNEY(S) FOR THE PLAINTIFF(S)

Neil D. Thomson

Ainsley F. Tillman

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A



Beaufort Common Pleas

Case Caption: Colleton River Plantation Club Inc VS Joel S Lee

Case Number: 2015CP0702722

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-09-01 10:42:08 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-02722
	)	
COLLETON RIVER PLANTATION CLUB, INC.,	)	
	)	Trial Order
	)	(Case Not Ended)
Plaintiff,	)	
	)	
vs.	)	
	)	
JOEL S. LEE,	)	
	)	
Defendant.	)	
_____	)	

This case came before me for a non-jury trial on December 5, 2018, by Order Referring Non-Jury Action to the Beaufort County Master in Equity, signed by Jerri Roseneau, Beaufort County Clerk of Court and filed with this Court on September 8, 2016, with direct appeal to the South Carolina Court of Appeals. Appearing for the Plaintiff, Colleton River Plantation Club, Inc. ("Colleton"), were Barry L. Johnson, Esquire and S. Harrison Williams, Esquire, of the Beaufort County law firm of Johnson & Davis, P.A. Appearing for the Defendant, Joel S. Lee ("Lee"), was Neil D. Thomson, Esquire, of the Charleston County law firm of Ford Wallace Thomson LLC.

Colleton tried its case upon its Amended Complaint which contained two causes of action.

Colleton's first cause of action was for Breach of Covenant in the Nature of Contract. Upon this cause of action, Colleton sought a money judgment against Joel S. Lee for assessments, etc., alleged to be due and owing under the recorded Covenants and other Governing Documents of Colleton. When the suit was filed, Colleton had sought judgment for

\$78,789.63, together with subsequent assessments, etc., interest, attorneys' fees and costs. For reasons set forth herein, I rule for Colleton on this cause of action.

Colleton also tried its case upon its second cause of action for Breach of Contract Accompanied by a Fraudulent Act. Colleton alleged that Lee's conveyance, of his Lot A02 in Colleton River Plantation, to Bluffton Properties, LLC (Series 1), a Nevada Limited Liability Company, was a fraudulent act which accompanied Lee's breach of the Covenants, entitling Colleton, allegedly, to the recovery of its claim, as set forth in the first cause of action, for actual damages, plus interest and attorneys' fees, together with, under its second cause of action, punitive damages. Colleton acknowledged that, as to actual damages, it is entitled at most only to one recovery. Although significant evidence was presented in favor of Colleton's position, I decline to rule for the Plaintiff on this cause of action and enter a defense verdict.

Lee came to trial upon his filed Answer to Colleton's Amended Complaint. In Lee's Answer, in addition to the defense of a qualified general denial, he asserted 15 other affirmative defenses, identified as follows:

1. Accord and Satisfaction;
2. Failure to State a Claim;
3. Statute of Limitations;
4. Waiver and Laches;
5. Failure to Mitigate;
6. Estoppel;
7. Unclean Hands;
8. Unconscionability;
9. Lack of Contract;

10. Void Covenants and Contracts;
11. Mistake;
12. Rescission;
13. Rule Against Perpetuities;
14. Set-off and/or Limitation on Damages; and
15. Violation of South Carolina Nonprofit Corporation Act.

Based on Lee's Answer, he sought dismissal of Colleton's case as a matter of law for the reasons set forth in his various defenses.

Colleton had moved, prior to trial, for summary judgment as to all of the affirmative defenses asserted by Lee, arguing that the Court should grant summary judgement as to all of Lee's affirmative defenses pursuant to Rule 56, *SCRCP*.

On the day of trial, just before the commencement of trial, this Court heard the arguments on Colleton's Motion for Summary Judgment as to the various affirmative defenses alleged by Lee. Following such hearing, this Court denied the motion in part and granted the same in part, as follows: the Motion for Summary Judgment was denied as to the affirmative defenses of Accord and Satisfaction, Estoppel, Void Covenants and Contracts, Set-off and/or Limitation on Damages, and Violation of South Carolina Nonprofit Corporation Act; the Motion for Summary Judgement was granted as to these affirmative defenses: Failure to State a Claim, Statute of Limitations, Waiver and Laches, Failure to Mitigate, Unclean Hands, Unconscionability, Lack of Contract, Mistake, Rescission, and the Rule Against Perpetuities.

Thus, the case proceeded to trial upon the two causes of action laid out in Colleton's Amended Complaint, and upon Lee's defenses of qualified general denial, Accord and Satisfaction, Estoppel, Void Covenants and Contracts, Set-off and/or Limitation on Damages,

and Violation of the South Carolina Nonprofit Corporation Act. Evidence was presented by way of a joint stipulation of exhibits, the testimony of witnesses, the presentation of excerpts from the transcripts of depositions, and the admission by consent of several additional exhibits. Argument was had on certain points during and following the trial.

Based thereupon, and pursuant to Rule 52, *SCRCP*, I have found the facts to be as specifically set forth below; I have reached the conclusions of law as set forth below; and, also as set forth below, I have entered judgment, pursuant to Rules 54 and 58, *SCRCP*, in favor of Colleton and against Lee.

FINDINGS OF FACT

1. Plaintiff, Colleton River Plantation Club, Inc. ("Colleton" or the "Club"), is a South Carolina Non-Profit Corporation, and is a property owners association which operates Colleton River Planation for the benefit of its members.

2. Colleton is a member-owned, private club community in Bluffton, Beaufort County, South Carolina. Colleton River Plantation contains, in addition to residential Lots, two 18-hole golf courses, a 6-hole par-three golf course, a short-game golf practice anywhere facility, a golf learning center, a swimming pool, three private dining facilities, a community dock, six tennis courts, a playground, a dog park, and various other amenities for member use, has a 24-hour security presence on site, and includes all of the roadways within Colleton River Plantation, all within about 1,500 acres.

3. There are slightly less than 700 Lots in the Colleton community and about half of them have homes on them.

4. Colleton's Covenants, discussed in more detail below, are not structured for different assessment rates or responsibilities depending on whether a Lot is improved with a house on it or is unimproved with no house on it.

5. On and after April 26, 2007, Colleton possessed those rights, powers and duties as set forth in the "Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc." ("Covenants"), dated March 1, 2007, and recorded on April 26, 2007, and any amendments thereto, as recorded in the Office of the Register of Deeds for Beaufort County, and upon Defendant's 1993 acquisition of title to the subject property (Lot A02), he became a beneficiary and an obligor under the Covenants.

6. Colleton also possesses those rights, powers and duties as set forth in the Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc. ("By-Laws"), and any amendments thereto, and upon Defendant's acquisition of title to the subject property (Lot A02), he became a beneficiary and an obligor under the By-Laws.

7. The Covenants of 2007 and the Third Amended and Restated By-Laws are among the "amendments" referenced in the deed whereby Lee obtained title to Lot A02 in 1993, as described in ¶ 23 of these Findings of Fact.

8. The Covenants (and the 2018 South Carolina Homeowners Association Act (S.C. Code Ann. § 27-30-10, *et seq.*) define the Colleton "Governing Documents" as including, *inter alia*, the following:

- (A) the recorded Amended and Restated Declaration of Covenants (the "Covenants" herein);

- (B) recorded Supplements submitting additional property to the Declaration of Covenants, creating easements over the property described in the Supplement, imposing additional obligations or restrictions on such property, or any of the foregoing;
- (C) Articles of Incorporation of Colleton River Plantation Club, Inc. as they may be amended;
- (D) the By-Laws of Colleton River Plantation Club, Inc. as they may be amended (the “By-Laws” herein);
- (E) the Design Guidelines, being the design standards and architectural and aesthetic guidelines, as they may be amended, which govern new construction and modifications to Lots, including structures, landscaping, and other items on Lots;
- (F) Rules which regulate the use of property, activities, and conduct within Colleton River Plantation; and
- (G) Board Resolutions of Colleton adopted to establish rules, policies, and procedures for internal governance and Club activities and to regulate the operation and use of property which the Club owns or controls.

9. The Covenants define “Person” as referenced in the Governing Documents as an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

10. The Covenants define “Lot” as a portion of Colleton River Plantation depicted as a separately identified lot or parcel on a recorded subdivision plat or survey which may be independently owned and conveyed, as well as to any structure or other Improvements on the Lot.

11. The Covenants define "Owner" as each Person who holds record title to a Lot, except for those Persons who hold title merely as security for the performance of an obligation.

12. Section 12.6 of the Covenants provides in pertinent part: "By accepting a deed or entering into a recorded contract to purchase any Lot, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents', together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount ... Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full."

13. Section 12.7(b) of the Covenants provides in pertinent part: "The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien."

14. Section 8.4 of the Covenants provides in pertinent part: "In any action to enforce the Governing Documents, if the Club prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action."

15. Section 7.1 (c) of the Covenants provides in pertinent part:

...any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 30 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. *The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice and all amounts outstanding prior to transfer are paid in full, notwithstanding the transfer of title. (Italics supplied.)*

16. Section 14.2(a) (ii) of the Covenants provides as follows:

Joint Ownership and Ownership by a Legal Entity. In the event any Lot is owned by more than one Owner or a legal entity, the collective Owners of such Lot shall unanimously designate one of the Owners of at least a 25% interest in the Lot or entity as

the Designated User, who shall have the right, privilege, easement of access to, and use and enjoyment of the Recreational Facilities, for a minimum of 12 months.

17. Section 14.2(e) of the Covenants requires that Colleton's Board of Directors approve each proffered Designated User, with reference to the criteria of "standards related to conduct and credit worthiness."

18. Section 14.2(f) of the Covenants requires that every Designated User "shall be responsible for the payment of the annual operating assessments for such Lot."

19. The element of Section 7.1 (c) of the Covenants requiring the giving of "such other information as the Board may reasonably require" is used by Colleton's Board of Directors in evaluating each proffered Designated User under Section 14.2 (e) of the Covenants, as to "standards related to conduct and credit worthiness."

20. Section 19.2 of the Covenants states, in pertinent parts, as follows:

The Club shall have the exclusive option to purchase any Lot offered for sale in the Community at the price and on the terms and conditions of any bona fide offer for such Lot. Evidence of any such bona fide offer shall be in writing and shall be submitted to the Club by the selling Owner for verification.

Each Owner shall notify the Club of its intent to sell his or her Lot with notice setting forth the certified terms and conditions of the sale, the full name and primary address of the prospective bona fide purchaser (as distinguished from agents and intermediaries). The Club shall have 30 days after receipt of such notice to exercise its option to purchase under this Section 19.2

21. Pursuant to the Covenants and/or By-Laws, and any amendments thereto, and related documents (collectively, again, the "Governing Documents"), Colleton imposes upon the Lots within Colleton and upon the Owners and other Persons obligated, certain dues, assessments, reserve fees, and other authorized charges (collectively "Assessments"), for the purposes specified in the Governing Documents.

22. The Colleton golf courses, amenities and facilities are not open for public play or usage and the costs of those are fully supported by Assessments.

23. Except as set forth hereinafter, Defendant, Joel S. Lee ("Lee"), was, at all times material hereto, the owner of record upon the records of Beaufort County, South Carolina, of certain real property, "Lot A02", within Colleton River Plantation described and subject to the following:

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina and being shown and described as Lot A02, Phase I, Colleton River Plantation, on a plat thereof entitled "A Plat of Colleton River Plantation, Phase 1, Beaufort County, South Carolina", said plat being prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, said plat being dated August 1, 1990, last revised November 18, 1991, Sheets 1 through 3, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 43 at Page 100. For a more detailed description as to the courses and distances, metes and bounds of the above-mentioned lot, reference is had to said plat of record.

This conveyance is subject to all easements as shown on the plat of record and to that certain Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc., which Declaration is dated June 11, 1991, and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, in Deed Book 579 at Page 1796, and as may be amended from time to time.

This is the same property conveyed to Joel S. Lee, by Deed from Colleton River Company, L.P., dated September 20, 1993, and recorded on October 7, 1993 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 656 at Page 1816.

Beaufort County Tax Map Reference: R600-025-00A-0005-0000.

24. Lee is a former practicing lawyer with decades of extensive experience in commercial real estate and, thereafter, was a principal in his home state of Wisconsin, in substantial and sophisticated real estate transactions and investments.

25. When Lee bought the Colleton Lot A02 in 1993, he was represented by a South Carolina attorney; that attorney sat down with him and discussed with him, and answered his questions about, the Colleton Covenants and Governing Documents.

26. Lee for many decades has invested in, owned, used, bought and sold residential properties in private, gated, golf course communities in southern Beaufort County.

27. After having been the Owner since 1993 of Lot A02 in Colleton River Plantation, Lee executed a deed (Title to Real Estate), to Bluffton Properties, LLC, Series I, (hereinafter “Nevada Bluffton Properties, LLC”) bearing date of December 31, 2012, and not recorded in the Office of the Register of Deeds for Beaufort County, South Carolina until May 28, 2013, then recorded in Book 03242 at Pgs. 2923-2924-A, by which he purported to convey the said Lot A02 (the “Conveyance”), in these circumstances:

- A. The consideration for the Conveyance was only One and No/100’s Dollar (\$1.00), at best a nominal consideration.
- B. The address for Nevada Bluffton Properties, LLC as it was listed on the Deed involved in the Conveyance, as the preparer of the deed, is the same as the address for Thomas B. Burke (“Burke”), the preparer of this Deed, and an attorney at law in the State of Wisconsin, but not ever an attorney at law in the State of South Carolina (“Burke”) and is also the same as the address for Lee.
- C. Burke functioned as the attorney for both Lee and Nevada Bluffton Properties, LLC, and maintained his office with Lee.

- D. The Conveyance Deed, just like the Deed to Lee in 1993 for Lot A02, made the Conveyance to Nevada Bluffton Properties, LLC subject to the Covenants, etc. as amended.
- E. The Conveyance Deed did not identify the jurisdiction in which the grantee, Nevada Bluffton Properties, LLC was formed.
- F. The Conveyance, lacked both the required written notice to Colleton and the proffer of a Designated User.

28. In the title transfer described in ¶ 27 of these Findings of Fact, Lee did not comply with the Covenants as cited above and, pursuant to the provisions of Section 7.1(c) of the Covenants, Lee remained and remains jointly and severally liable, with Bluffton Properties, LLC Series I, a Nevada limited liability company, to Colleton for all obligations of the Owner (as defined in the Covenants) of Lot A02.

29. When Colleton became aware in or around July 2014 of the Conveyance, Colleton was not aware of the close and continuing relationships of Burke, Lee, and Nevada Bluffton Properties, LLC, nor was Colleton aware that there were two entities, both named Bluffton Properties, LLC, one formed in South Carolina and one formed in Nevada. With that limited awareness, Colleton requested of Burke that Bluffton Properties, LLC submit to Colleton a proposed Designated User, on a Colleton form, to comply with the Colleton Governing Documents in the particulars noted hereinabove and in the Governing Documents.

30. At that time, Colleton had only learned of a South Carolina Bluffton Properties, LLC and knew nothing about the Nevada Bluffton Properties, LLC.

31. Burke refused to have Bluffton Properties, LLC so comply and propose a Designated User to be a financially-responsible person for the obligations of Bluffton Properties, LLC, of whatever organizational vintage, to Colleton.

32. Lee had previously, through an agent of Colleton known as TekCollect, settled a prior outstanding judgment by Colleton against Lee.

33. Lee's only understanding of the effect of the settlement in 2014 through TekCollect of Colleton's judgment against Lee in 2012 was his understanding of what Lee says Burke told Lee in 2014: "Tom Burke came to me and said the settlement is \$8,975 and you're done with everything," with no definition of "everything" and no documentation thereof.

34. The documents related to the TekCollect settlement of the 2012 judgment against Mr. Lee do not address the "everything" component of Lee's understanding of the 2014 settlement and no other evidence or testimony does so.

35. Any factual issues related to the prior satisfaction of the judgment in Colleton's 2012 case against Lee, if necessary at all, were eliminated by the adjustment Colleton made at trial reducing its total claim by \$22,457.10.

36. Despite Colleton's demand, Lee has failed and/or refused to pay the amounts owed for his and Nevada Bluffton Properties, LLC's past-due Assessments, accrued interest, and attorney's fees and/or costs, no part of which has been paid by Nevada Bluffton Properties, LLC, either, or otherwise.

37. Lee was indebted to Colleton, as of March 31, 2016, in the total amount of \$78,789.63, in Assessments, attorney's fees and costs, plus such Assessments, prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees, and costs of collection continue

to accrue, and after having adjusted for a prior settlement of a prior judgment against Lee for monies owed by Lee to Colleton for prior periods.

38. Through trial and as adjusted and noted in Paragraph 36 above of these Findings of Fact, Defendant is indebted to Plaintiff, as of November 30, 2018, for \$218,999.33, including the \$78,789.63 owed as of March 31, 2016, as follows:

Regular Dues from 1/1/14 - 6/30/19:	\$ 81,525.00
Reserve Fee from 1/1/14 - 6/30/19:	\$ 15,725.00
Clubhouse Assessment from 10/1/13 - 3/31/17 (end):	\$ 10,000.00
Bushhog/Lot Maintenance from 9/30/14 - 11/30/18:	\$ 1,450.00
Johnson & Davis, PA Attorney's Fees from 7/1/14 - 11/30/18:	\$ 49,534.77
McNair Law Firm Attorney's Fees from 6/14/18 - 11/30/18:	\$ 450.00
Interest, Administrative & Delinquent Fees from 8/1/14 - 11/30/18:	\$ <u>82,771.66</u>
Subtotal:	\$241,456.43
Less Disputed 2012 TekCollect settlement:	<u>- 22,457.10</u>
Total:	<u>\$218,999.33</u>

Colleton specifically demanded personal judgment against Lee for the full amount found to be due to Colleton, including all sums set forth herein, including pre-judgment interest and attorney's fees and collections costs.

Any of the below Conclusions of Law that are deemed not to be Conclusions of Law but are deemed to be Findings of Fact shall be so deemed.

CONCLUSIONS OF LAW

1. It is the responsibility of the trial judge in this non-jury trial to assess the credibility of the witnesses, and to decide the facts accordingly. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (Ct. App. 2016).
2. Any of the Findings of Fact herein that are deemed not to be Findings of Fact but are deemed to be Conclusions of Law shall be so deemed.
3. The Colleton Covenants and other Governing Documents are valid and binding on Lee as to Lot A02.

4. The parties have a contractual relationship through Colleton's Covenants, By-Laws, and other Governing Documents.
5. This being an action for breach of contract, the burden was upon Colleton to prove the contract, its breach, and the damages caused by such breach. *Maro v. Lewis*, 389 S.C. 216, 222, 697 S.E.2d 684, 688 (Ct. App. 2010) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).
6. "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach."
Id.
7. To recover on an action for breach of contract, a plaintiff must prove its claim by a preponderance of the evidence.
8. Colleton has established its contract with Lee, as set forth in the Findings of Fact.
9. On at least several occasions, and continuing to date, Lee has breached his contractual relationship with Colleton:
 - A. The 2012 breach leading to the Judgment in favor of Colleton, subsequently settled;
 - B. The 2012 Deed of Conveyance and associated non-compliant related to Bluffton Properties, LLC; and
 - C. By failing to pay Colleton, and otherwise to comply with the Covenants and other Governing Documents, all as described above in the Findings of Fact.
10. Colleton has suffered actual damages because of Lee's breach of his contract with Colleton.

11. Despite having pleaded the Affirmative Defense of Violation of the South Carolina Non-Profit Corporation Act, Lee has demonstrated no violation thereof and the South Carolina Non-Profit Corporation Act has not been violated by Colleton regarding Lee or Lot A02.
12. Any issues of Lee's Affirmative Defenses of Accord and Satisfaction and Set-Off and Limitation of Damages that related to the prior satisfaction of the judgment in Colleton's 2012 case against Lee, if the defenses were at all viable, were eliminated by the adjustment Colleton made at trial reducing its claim by \$22,457.10.
13. Any issues of Lee's Affirmative Defense of Set-Off and Limitation of Damages that related to his claim of what he terms his "equity" are denied, as no proof of any such "equity" was adduced by Lee, nor was there any argument, much less demonstration, by Lee that if he had any such "equity" he was lawfully entitled to some Set-Off or Limitation of Damages for same.
14. Any issues of Lee's Affirmative Defense of Estoppel related to the Colleton suit against the South Carolina version of Bluffton Properties, LLC are barred by Lee's acts related to his transfer of Lot A02 to his company, Bluffton Properties, LLC of Nevada.
15. Lee failed to prove that the Colleton Covenants and Contracts are void in fact or as a matter of law.
16. Lee's qualified general denial failed as a defense on the facts and the law.
17. Lee is in breach of his financial and other obligations to Colleton.
18. Lee remains liable for the ongoing Assessments owed to Colleton under the Covenants despite the transfer of Lot A02 to Bluffton Properties, LLC of Nevada

due to Lee's noncompliance with the Covenants regarding the transfer of same. Covenants Section 7.1(c).

19. As a natural consequence, and a proximate cause, of Lee's breaches of contract with Colleton, Colleton has suffered actual damages, for which Colleton is entitled to personal judgment against Lee, for money damages in the sum of \$218,999.33, as of November 30, 2018, together with interest thereafter at the contract rate of eighteen (18%) per annum, with leave to Colleton to seek amendment of this judgment for additional Assessments, attorney's fees, and collection costs not included herein.
26. If any of these Conclusions of Law are deemed to be Findings of Fact, they shall be treated as such.

JUDGMENT OF THE COURT

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. Colleton River Plantation Club, Inc. is granted personal judgment against Joel S. Lee for actual money damages in the amount of \$218,999.33 as of November 30, 2018, together with interest thereafter at the contract rate of eighteen (18%) per cent per annum, with leave to Colleton River Plantation Club, Inc. to seek amendment of this judgment for additional Assessments, attorney's fees, and collection costs not included herein, but accruing after November 30, 2018.
2. A hearing will be set to determine the final judgment (ending case) amounts for the actual damages, together with additional Assessments, attorney's fees and collection costs since November 30, 2018.

3. To the extent not otherwise included in the judgment herein granted, Colleton River Plantation Club, Inc. is entitled to the recovery of costs from Joel S. Lee.

IT IS SO ORDERED.

FORM 4

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

JUDGMENT IN A CIVIL CASE**CASE NO.** 2015 CP-07-02722

Colleton River Plantation Club, Inc.

Joel S. Lee

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATIONThis order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Colleton River Plantation Club, Inc.	Joel S. Lee	\$218,999.33
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge	Judge Code	Date
----------------------------	-------------------	-------------

For Clerk of Court Office Use Only

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

Barry L. Johnson

Neil D. Thomson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Beaufort Common Pleas

Case Caption: Colleton River Plantation Club Inc VS Joel S Lee

Case Number: 2015CP0702722

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-02-12 15:56:39 page 20 of 20

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF BEAUFORT

)

CASE NO: 2015CP0702722

)

Colleton River Plantation Club Inc

)

ORDER REFERRING NON-JURY

)

ACTION TO THE BEAUFORT

Plaintiff(s)

)

COUNTY MASTER IN EQUITY

vs.

)

Joel S Lee

)

)

Defendant(s)

)

)

SEP - 8 PM 2:00
JERRI ROSENEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Pursuant to an Order of the South Carolina Supreme Court this Non-Jury matter is now referred to the Beaufort County Master in Equity with Finality. The Plaintiff is responsible for paying the Reference Fee pursuant to South Carolina Code of Laws Section 14-11-310. (\$100.00 for Partition Actions and Foreclosures and \$50.00 for all other cases); **however, if the Plaintiff's case is over, any remaining party seeking Affirmative Relief will be responsible for paying the fee.** The Reference Fee shall be paid within 30 days from the date this Order is signed or the Master will dismiss the case for non-payment of the Reference Fee.

IT IS SO ORDERED:



Jerri Roseneau

Beaufort County Clerk of Court

Dated: 9-7-16
Beaufort, South Carolina

Colleton River Plantation Club, Inc.,

vs.

Joel S. Lee,

Plaintiff(s),

Defendant(s).

2015-CP-07- 2722

Barry L. Johnson, Esquire
JOHNSON & DAVIS, PA
 The Victoria Building, Suite 200
 10 Pinckney Colony Road
 Bluffton, SC 29909

SC Bar #: 3006
 Telephone #: (843) 815-7121
 Fax #: (843) 815-7122
 Other:
 E-mail: barry@jd-pa.com

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

DOCKETING INFORMATION {Check all that apply}

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)**Contracts**

- ☐ Construction (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

Inmate Petitions

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

Special/Complex/Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)

Torts – Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20-CP-07-
☐ Notice/File Med Mal (230)
☐ Other (299)

Administrative Law/Relief

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

- ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an
 Out-of-County Action (660)
☐ Sexual Predator (510)

Torts – Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Judgments/Settlements

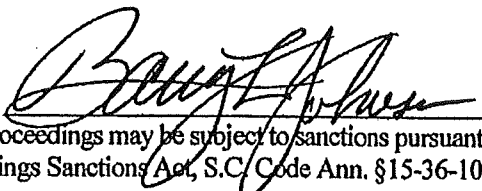
- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement
 Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation
 Settlement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

Real Property

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

Appeals

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

Submitting Party Signature: Date: Nov. 16, 2015

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina
 Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post-Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

C/A NO.: 2015-CP-07- 2722

COLLETON RIVER)
PLANTATION CLUB, INC.)

SUMMONS

Plaintiff,)

vs.)

JOEL S. LEE,)

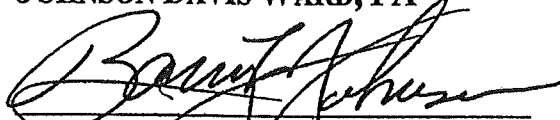
Defendant.)

2015 NOV 17 AM 8:36
JERRI ANN ROSENBAUM
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

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

JOHNSON DAVIS WARD, PA



By: Barry L. Johnson, Attorney at Law
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121- telephone
(843) 815-7122- facsimile
barry@jd-pa.com

Bluffton, South Carolina
November 16th, 2015

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COLLETON RIVER
PLANTATION CLUB, INC.

Plaintiff,

vs.

JOEL S. LEE,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2015-CP-07- 2722

VERIFIED COMPLAINT
(A Non-Jury Matter)

2015 NOV 17 AM 8:36
JERRI ANN ROSEHEAD
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff, Colleton River Plantation Club, Inc., complaining of and against the Defendant, Joel S. Lee, would allege and show unto this Honorable Court as follows:

1. The parties, subject matter, and all things alleged herein are within the jurisdiction of this Court.

2. Plaintiff, Colleton River Plantation Club, Inc. ("Colleton"), is a South Carolina Non-Profit Corporation whose members are the owners of property within Colleton River Plantation, Bluffton, Beaufort County, South Carolina.

3. Defendant, Joel S. Lee, was, at all times material hereto, the owner of certain real property within Colleton River Plantation described as follows:

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina and being shown and described as Lot A02, Phase I, Colleton River Plantation, on a plat thereof entitled "A Plat of Colleton River Plantation, Phase 1, Beaufort County, South Carolina", said plat being prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, said plat being dated August 1, 1990, last revised November 18, 1991, Sheets 1 through 3, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 43 at Page 100. For a more detailed description as to the courses and distances, metes and bounds of the above mentioned lot, reference is had to said plat of record.

This is the same property conveyed to Joel S. Lee, by Deed from Colleton River Company, L.P., dated September 20, 1993, and recorded on October 7, 1993 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 656 at Page 1816.

Beaufort County Tax Map Reference: R600-025-00A-0005-0000.

4. On and after April 26, 2007, Colleton possessed those rights, powers and duties as set forth in the "Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc." ("Covenants"), dated March 1, 2007, and recorded on April 26, 2007, and any amendments thereto, as recorded in the Office of the Register of Deeds for Beaufort County.

5. Colleton also possesses those rights, powers and duties as set forth in the Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc. ("By-Laws"), and any amendments thereto.

6. Pursuant to the Covenants and/or By-Laws, and any amendments thereto, Colleton imposes assessments and other authorized charges (collectively "Assessments"), for the purposes specified in the Covenants and/or By-Laws, and any amendments thereto.

7. Section 12.6 of the Covenants provides in pertinent part: "By accepting a deed or entering into a recorded contract to purchase any Lot, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents¹, together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount... Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full."

8. Section 12.7(b) of the Covenants provides in pertinent part: "The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving

¹ Section 1 of the Covenants lists the By-Laws and Covenants as "Governing Documents" in its definition of said term.

the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien."

9. Section 8.4 of the Covenants provides in pertinent part: "In any action to enforce the Governing Documents, if the Club prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action."

10. Despite demand, the Defendant has failed and/or refused to pay the amount owed for past-due assessments, authorized charges, accrued interest, and attorney's fees and/or costs.

11. There is due to Colleton, as of November 9, 2015, the total amount of \$81,346.46, in assessments, authorized charges, interest, attorney's fees and costs, plus such assessments, authorized charges, prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and costs of collection as continue to accrue.

12. In addition, Colleton is informed and believes that it is entitled to collect such additional assessments, authorized charges, interest at the rate of 18% per annum, costs of collection, and/or reasonable attorneys' fees as continue to accrue after November 9, 2015.

13. Colleton specifically demands judgment against the Defendant for the full amount found to be due to Colleton.

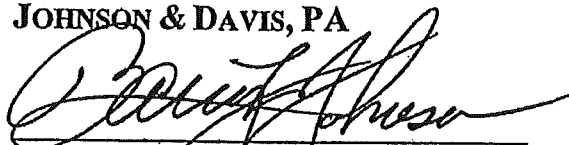
WHEREFORE, having fully set forth its Complaint against the Defendant, Joel S. Lee, the Plaintiff, Colleton River Plantation Club, Inc., prays that this Honorable Court inquire into the matters set forth herein and:

- a. Determine the amounts due Plaintiff, Colleton River Plantation Club, Inc., including prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and the costs of this action; and

- b. Grant Plaintiff, Colleton River Plantation Club, Inc., a personal judgment against the Defendant, Joel S. Lee for the amount found to be due Colleton River Plantation Club, Inc.; and
- c. Grant the Plaintiff, Colleton River Plantation Club, Inc., its attorney's fees and the costs of this action; and
- d. Retain jurisdiction to award such additional attorneys' fees and costs as may be incurred by the Plaintiff, Colleton River Plantation Club, Inc. until final disposition of the matter, including those fees and expenses incurred in the collection of any judgment rendered; and
- e. For such other and further relief as may be just and proper.

Respectfully submitted,

JOHNSON & DAVIS, PA



Barry L. Johnson, Attorney at Law
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121- telephone
(843) 815-7122- facsimile
barry@jd-pa.com

Bluffton, South Carolina
November 16th, 2015

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF BEAUFORT

)

C/A NO.: 2015-CP-07- 2722

COLLETON RIVER

)

PLANTATION CLUB, INC.

)

VERIFICATION OF COMPLAINT

Plaintiff,

)

vs.

)

JOEL S. LEE,

)

Defendant.

)

2015 NOV 17 AM 8:36
JERRY ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

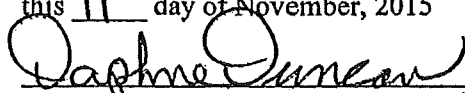
PERSONALLY APPEARED before me, Stephanie Kerr, as Chief Financial Officer of Colleton River Plantation Club, Inc., who after first being duly sworn, deposes and says that she has read the foregoing Verified Complaint and the statements contained therein are true, except those made on information and belief, and as to those she believes them to be true.

COLLETON RIVER PLANTATION CLUB, INC.

By: 

Stephanie Kerr, Chief Financial Officer

SWORN to and subscribed before me
this 11 day of November, 2015



Notary Public for South Carolina

My Commission Expires: _____

DAPHNE DUNCAN
NOTARY PUBLIC
SOUTH CAROLINA

MY COMM. EXPIRES: AUG 6, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-0 2722
COLLETON RIVER PLANTATION CLUB, INC.,	)	
	)	NOTICE UNDER THE FAIR DEBT
Plaintiff,	)	COLLECTION PRACTICES ACT
vs.	)	
JOEL S. LEE,	)	
	)	
Defendant.	)	

2015 NOV 17 AM 8:36
 JERRI ANN ROSENEAU
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

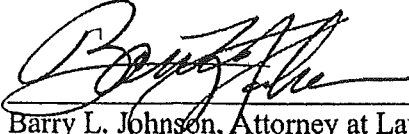
TO: THE DEFENDANT(S) ABOVE-NAMED:

1. The amount of the debt is stated in the Complaint in this matter.
2. The Plaintiff, Colleton River Plantation Club, Inc., as named in the Summons and Verified Complaint is the Creditor to whom the debt is owed, is attempting to collect the debt, and any information obtained will be used for that purpose.
3. The debt is described in the Complaint, and will be assumed to be valid by the Creditor's law firm, unless you, the Debtor, within thirty (30) days after the receipt of this Notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this Notice, that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.
5. Colleton River Plantation Club, Inc., the Creditor named as Plaintiff in the Summons and Verified Complaint is not the original Creditor.

6. Written requests should be addressed to Barry L. Johnson, JOHNSON & DAVIS, PA,
The Victoria Building, Suite 200, 10 Pinckney Colony Road, Bluffton, SC 29909.

7. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

JOHNSON & DAVIS, PA

A handwritten signature in black ink, appearing to read "Barry L. Johnson", is written over a horizontal line.

Barry L. Johnson, Attorney at Law
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121- telephone
(843) 815-7122- facsimile
barry@jd-pa.com

Bluffton, South Carolina
November 16th, 2015

Attorneys for Plaintiff

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

February 4, 2015

The Honorable Jerry Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road
Beaufort, SC 29902

Re: *Colleton River Plantation Club, Inc. vs. Joel S. Lee*
Case No. 2015-CP-07-02722
FWT File No. 00701

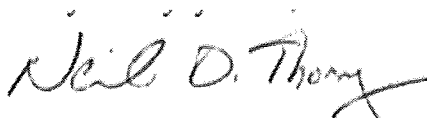
Dear Jerry Ann:

Enclosed for filing please find the original and one copy of the Defendant's Answer/Motion to Dismiss in the above-referenced matter. If you would, please file the original and return the clocked copy to us in the self-addressed stamped envelope provided for your convenience.

Your assistance in this matter is greatly appreciated. Should you require any additional information regarding this matter, please feel free to contact me.

With kind regards, I am,

Very truly yours,



Neil D. Thomson

NDT/smb

Enclosures: as stated

cc: All counsel of record

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

14th JUDICIAL CIRCUIT

COLLETON RIVER PLANTATION CLUB,
INC.

CASE NO.: 2015-CP-07-2722

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

JOEL S. LEE)

Defendant.)

Plaintiff's Attorney:

Barry L. Johnson, Bar No. _____

Address:

10 Pinckeney Colony Road, Suite 200
Bluffton, SC 29909

Phone: 843 815-7121 Fax _____

E-mail: barry@jd-pa.com Other: _____

Defendant's Attorney:

Neil D. Thomson, Bar No. _____

Address:

715 King Street
Charleston, SC 29403

Phone: 843 277-2011 Fax 843 614-6412

E-mail: Neil.Thomson@fordwallace.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss

Estimated Time Needed: 15 Minutes

Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED – AMOUNT DUE: \$** _____

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COLLETON RIVER PLANTATION
CLUB, INC.

Plaintiff,

vs.

JOEL S. LEE

Defendant.

IN THE COURT OF COMMON
PLEAS

Case No.: 2015-CP-07-2722

DEFENDANT'S ANSWER /
MOTION TO DISMISS
(Improper Party)

Joel S. Lee (hereinafter "Lee"), by and through its undersigned counsel, responds to Plaintiff's Complaint by answering the Complaint and moving for dismissal, with prejudice, from this action.

ANSWER / FULL AND GENERAL DENIAL

1. Lee denies all allegations set forth in Plaintiff's Complaint, including Paragraphs 1 - 13 and all subparts thereto, and demands strict proof thereof.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Dismissal - SCRPC Rule 12(b)(6) and Rule 21 Misjoinder)

2. Lee is not a proper party to this action. All facts alleged giving rise to this cause of action are based on the supposition that Lee is the property owner in question. However, during all relevant times giving rise to this Complaint, Lee was not, and is not, the property owner of record, and thus, Plaintiff has failed to state facts sufficient to constitute a cause of action against Lee. Furthermore, Lee is improperly joined as a party and should be dismissed pursuant to SCRPC, Rule 21.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

3. Lee satisfied a prior Judgment with this Plaintiff concerning an alleged deficiency with the property at issue. Plaintiff discharged Lee from said Judgment on August 8, 2013 (Judgment Roll No. 2012-CP-07-03525). Plaintiff is hereby barred from seeking any alleged deficiency from Lee which has heretofore been satisfied, released and discharged.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Res Judicata / Estoppel / Preclusion)

4. Plaintiff's claims against Lee are barred by the doctrines of *res judicata*, issue/claims preclusion, and estoppel.

MOTION FOR DISMISSAL

PLEASE TAKE NOTICE that the undersigned attorney for Defendant Joel S. Lee will move for an Order of Dismissal, pursuant to *South Carolina Rules of Civil Procedure*, Rule 12(b)(6) and Rule 21. Specifically, Lee asserts that, as a matter of law, he is entitled to dismissal from this action - as he is not the property owner of the property in question.

Plaintiff has brought a collection action for an alleged deficiency of Club assessments purported to be owed by one of its members owning property at Lot A02, Phase I, Collection River Plantation (Beaufort County Tax Map Reference: R600-025-00A-0005-0000). *See*, Plaintiff's Complaint Para. 3.

All allegations made in Plaintiff's Complaint are based on the supposition that Lee is the owner of said property during all relevant times giving rise to the alleged deficiency. *See*, Plaintiff's Complaint Para. 3.

Lee was not, and is not, the property owner of record during all relevant times giving rise to the alleged deficiency, and thus, Plaintiff has failed to state facts sufficient to constitute a cause of action against Lee. As such, Lee is not a

proper party to this action. It is to the sound discretion of this Court to dismiss Lee for misjoinder, pursuant to SCRCP, Rule 21. *See, Demian v. S.C Health and Human Services*, 297 S.C. 1, 374 S.E.2d 510 (Ct. App. 1988).

Lee reserves the right to supplement this Motion with applicable case law and memoranda of law in advance of the hearing in this matter. Should the Court request to review any evidence, affidavits, or otherwise, outside the four corners of Plaintiff's deficient Complaint, Lee requests that this motion be treated as one for summary judgment under SCRCP, Rule 56. *See, McDonnell v. The Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 639 (1994).

WHEREFORE, having fully answered and denied Plaintiff's Complaint, Defendant Joel S. Lee prays that he be dismissed as a matter of law for the above-stated reasons.

FORD WALLACE THOMSON LLC

By: Neil D. Thomson
Neil D. Thomson, Esq.
SC Bar No. 71209
E-Mail: neil.thomson@fordwallace.com
715 King Street
Charleston, SC 29403
(843) 277-2011

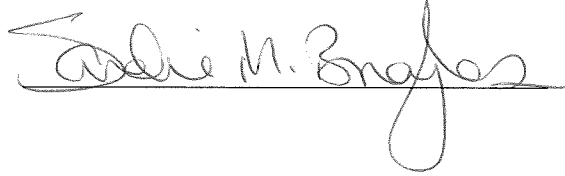
Attorney for Defendant Joel S. Lee

Charleston, South Carolina
February 4th, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that on February 4th, 2016, this document was served by electronic mail and/or first class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

A handwritten signature in cursive script, reading "Julie M. Braggs", written over a horizontal line.

JOHNSON & DAVIS, PA
ATTORNEYS AND COUNSELORS AT LAW

BARRY L. JOHNSON*
HUTSON S. DAVIS, JR. **
* Certified S.C. Mediator and Arbitrator
** Certified S.C. Mediator

THE VICTORIA BUILDING
SUITE 200
10 PINCKNEY COLONY ROAD
BLUFFTON, SC 29909

TELEPHONE (843) 815-7121
TELEFAX (843) 815-7122

BARRY L. JOHNSON
BARRY@JD-PA.COM

July 28, 2016

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
PO Drawer 1128
Beaufort, SC 29901

Re: Colleton River Plantation Club, Inc. vs. Joel S. Lee
C/A No.: 2015-CP-07-02722
J & D, PA File No.: C15-6156

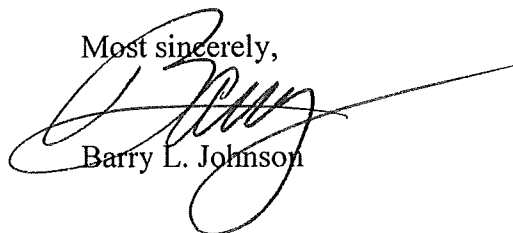
Dear Ms. Roseneau:

Enclosed please find the originals and copies of an Amended Verified Complaint and Certificate of Service for same. Please file the originals, clock-stamp the copies, and return same to our office via River Title, Inc.

By copy of this letter to Neil D. Thomson, counsel for Defendant, I hereby serve same on him.

Thanking you, and with best wishes, I am

Most sincerely,


Barry L. Johnson

BLJ:ger

Enclosures

cc: Neil D. Thomas, Esquire

FAWP\Colleton River Plantation\POA Work\Lee, Joel\Deed Issue\Corresp\20160728_Ltr to COC to file Amended Complaint.docx

ROA 0041

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	C/A NO.: 2015-CP-07-02722
	)	
COLLETON RIVER	)	
PLANTATION CLUB, INC.	)	
	)	VERIFIED AMENDED COMPLAINT
Plaintiff,	)	(A Non-Jury Matter)
	)	
vs.	)	
	)	
JOEL S. LEE,	)	
	)	
Defendant.	)	
_____	)	

The Plaintiff, Colleton River Plantation Club, Inc., complaining of and against the Defendant, Joel S. Lee, alleges and would show unto this Honorable Court as follows:

GENERAL ALLEGATIONS

1. The parties, subject matter, and all things alleged herein are within the jurisdiction of this Court.
2. Plaintiff, Colleton River Plantation Club, Inc. ("Colleton"), is a South Carolina Non-Profit Corporation whose members are the owners of property within Colleton River Plantation, Bluffton, Beaufort County, South Carolina.
3. Attached hereto as Exhibit A is Colleton's notice to Defendant Joel S. Lee, in compliance with the Fair Debt Collections Act.
4. Defendant, Joel S. Lee is financially obligated to the Plaintiff, all as hereinafter set forth.
5. On and after April 26, 2007, Colleton possessed those rights, powers and duties as set forth in the "Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc."

("Covenants"), dated March 1, 2007, and recorded on April 26, 2007, and any amendments thereto, as recorded in the Office of the Register of Deeds for Beaufort County, and upon Defendant's acquisition of title to the subject property, he became a beneficiary and an obligor under the Covenants.

6. Colleton also possesses those rights, powers and duties as set forth in the Third Amended and Restated By-Laws of Colleton River Plantation Club, Inc. ("By-Laws"), and any amendments thereto, and upon Defendant's acquisition of title to the subject property, he became a beneficiary and an obligor under the Covenants.

7. Section 12.6 of the Covenants provides in pertinent part: "By accepting a deed or entering into a recorded contract to purchase any Lot, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents¹, together with any collection costs, interest or late charges equal to 1.5% per month of the unpaid amount... Any delinquency shall be the personal obligation of each Owner and a lien upon each Lot until paid in full."

8. Section 12.7(b) of the Covenants provides in pertinent part: "The Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien."

9. Pursuant to the Covenants and/or By-Laws, and any amendments thereto, and related documents (collectively, the "Governing Documents"), Colleton imposes upon the Lots within Colleton and upon the Owners and other persons obligated, certain dues, assessments, reserve fees, and other authorized charges (collectively "Assessments"), for the purposes specified in the Governing Documents.

¹ Section 1 of the Covenants lists the By-Laws and Covenants as "Governing Documents" in its definition of said term.

10. Section 8.4 of the Covenants provides in pertinent part: "In any action to enforce the Governing Documents, if the Club prevails, it shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action."

11. Section 7.1(c) of the Covenants provides in pertinent part:

"...any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 30 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. *The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice and all amounts outstanding prior to transfer are paid in full, notwithstanding the transfer of title.*" (Italics and underlining supplied.)

12. Except as set forth hereinafter, Defendant, Joel S. Lee, was, at all times material hereto, the owner of record upon the records of Beaufort County, South Carolina, of certain real property, a "Lot", within Colleton River Plantation described as follows:

ALL that certain piece, parcel or lot of land, lying and being in Beaufort County, South Carolina and being shown and described as **Lot A02, Phase I, Colleton River Plantation**, on a plat thereof entitled "A Plat of Colleton River Plantation, Phase I, Beaufort County, South Carolina", said plat being prepared by Thomas & Hutton Engineering Co., Savannah, Georgia, Boyce L. Young, S.C.R.L.S. No. 11079, said plat being dated August 1, 1990, last revised November 18, 1991, Sheets 1 through 3, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 43 at Page 100. For a more detailed description as to the courses and distances, metes and bounds of the above mentioned lot, reference is had to said plat of record.

This is the same property conveyed to Joel S. Lee, by Deed from Colleton River Company, L.P., dated September 20, 1993, and recorded on October 7, 1993 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Deed Book 656 at Page 1816.

Beaufort County Tax Map Reference: R600-025-00A-0005-0000.

13. On information and belief, the Defendant executed a deed (Title to Real Estate), in favor of Bluffton Properties, LLC, Series I, dated December 31, 2012, and recorded in the Office

of the Register of Deeds for Beaufort County, South Carolina on May 28, 2013 in Book 03242 at Pgs. 2923-2924-A (the "Conveyance").

14. Defendant in the title transfer described in Paragraph 12 hereof, did not comply with the provisions of Section 7.1(c) of the Covenants, and remains jointly and severally liable, with Bluffton Properties, LLC Series I, to the Plaintiff for all obligations of the Owner of the subject property.

**FOR A FIRST CAUSE OF ACTION
(BREACH OF COVENANT IN THE NATURE OF CONTRACT)**

15. The foregoing allegations of this Amended Verified Complaint are here fully incorporated by reference, the same as if set forth *verbatim* herein.

16. Despite demand, the Defendant has failed and/or refused to pay the amount owed for past-due assessments, authorized charges, accrued interest, and attorney's fees and/or costs, no part of which has been paid by Bluffton Properties, LLC either.

17. Defendant is indebted to Colleton, as of March 31, 2016, in the total amount of \$78,789.63, in dues, assessments, reserve fees, authorized charges, interest, attorney's fees and costs, plus such assessments, authorized charges, prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and costs of collection as continue to accrue, after having adjusted for a prior settlement of a prior judgment against Defendant for monies owed by Defendant to Colleton for prior periods.

18. In addition, as Colleton is informed and believes, it is entitled to collect such additional dues, assessments, reserve fees, authorized charges, interest at the rate of 18% per annum, costs of collection, and/or reasonable attorneys' fees as continue to accrue after March 31,

2016, together with its attorney's fees and costs incurred in collection after February 29, 2016, not included in the calculation of the \$78,789.63 noted in Paragraph 11 of this Complaint.

19. Colleton specifically demands personal judgment against the Defendant for the full amount found to be due to Colleton.

**FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)**

20. The foregoing allegations of this Amended Verified Complaint are here fully incorporated by reference, the same as if set forth *verbatim* herein.

21. A copy of the Deed involved in the Conveyance is attached hereto as Exhibit B, and fully incorporated herein by reference.

22. The consideration for the conveyance was only One and N0/100's Dollar (\$1.00), at best a nominal consideration.

23. The address for Bluffton Properties, LLC was listed on the Deed involved in the Conveyance is the same as the address for Thomas B. Burke, a purported attorney at law in the State of Wisconsin ("Burke").

24. On information and belief, the said Burke functioned as the attorney for both Defendant Lee and Bluffton Properties, LLC.

25. Section 14.2(a) (ii) of the Covenants provides as follows:

Joint Ownership and Ownership by a Legal Entity. In the event any Lot is owned by more than one Owner or a legal entity, the collective Owners of such Lot shall unanimously designate one of the Owners of at least a 25% interest in the Lot or entity as the Designated User, who shall have the right, privilege, easement of access to, and use and enjoyment of, the Recreational Facilities, for a minimum of 12 months.

26. Bluffton Properties, LLC is a "legal entity", as the term is used in the foregoing Paragraph hereof.

27. Section 14.2(e) of the Covenants requires that Colleton's Board of Directors approve each proffered Designated User.

28. Section 14.2(f) of the Covenants requires that every Designated User "...shall be responsible for the payment of the annual operating assessments for such Lot."

29. When Colleton became aware in or about July 2014 of the Conveyance, it requested that Bluffton Properties, LLC, submit to Colleton a proposed Designated User, on a Colleton form, in order to comply with the Colleton Governing Documents in the particulars noted hereinabove and in the Governing Documents.

30. Bluffton Properties, LLC refused to so comply and submit a proposed Designated User to be a financially responsible person for the obligations of Bluffton Properties, LLC to Colleton.

31. The Governing Documents, including the Covenants, constitute a contract between the Plaintiff and the Defendant.

32. On information and belief, the Deed involved in the Conveyance, and the Conveyance, were a sham attempt by the Defendant Lee and Burke to avoid the application to Lee of the Colleton Governing Documents and to defraud Colleton.

33. The Conveyance, without the required written notice to Colleton, and without the further compliance by Bluffton Properties, LLC with the reasonable requirements of the Board of Colleton (pursuant to Covenants Section 7.1(c)), constituted a definite act, or series of acts, that were characterized by deception, dishonesty, unfair dealing and a reckless disregard for the truth, resulting, in effect, in the misappropriation by Defendant, Joel S. Lee, of Colleton's property by design.

34. On information and belief, the Plaintiff is entitled to the recovery from Defendant, Joel S. Lee, of the Assessments due, Plaintiffs' attorney's fees and collection costs, and punitive damages, all in such amounts as the Court shall determine.

WHEREFORE, having fully set forth its Verified Amended Complaint against the Defendant, Joel S. Lee, the Plaintiff, Colleton River Plantation Club, Inc., prays that this Honorable Court inquire into the matters set forth herein and:

- A. Determine the amounts of actual damages due Plaintiff, Colleton River Plantation Club, Inc., including prejudgment interest at the rate of 18% per annum, reasonable attorneys' fees and the costs of this action; and
- B. Grant Plaintiff, Colleton River Plantation Club, Inc., a personal judgment against the Defendant, Joel S. Lee, for the amount of actual damages found to be due Colleton River Plantation Club, Inc.; and
- C. Grant the Plaintiff, Colleton River Plantation Club, Inc., its attorney's fees, collection costs, and the costs of this action; and
- D. Grant the Plaintiff, Colleton River Plantation Club, Inc., judgment for punitive damages against the Defendant, Joel S. Lee, in such amount as the Court shall determine; and
- E. Retain jurisdiction to award such additional attorneys' fees, collection costs, and costs as may be incurred by the Plaintiff, Colleton River Plantation Club, Inc. until final disposition of the matter, including those fees and expenses incurred in the collection of any judgment rendered; and
- F. For such other and further relief as may be just and proper.

Respectfully submitted,

JOHNSON & DAVIS, PA



Barry L. Johnson, Attorney at Law
The Victoria Building, Suite 200
10 Pinckney Colony Road
Bluffton, SC 29909
(843) 815-7121- telephone
(843) 815-7122- facsimile
barry@jd-pa.com

Bluffton, South Carolina
May 28, 2016

July


Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

)

IN THE COURT OF COMMON PLEAS

)

COUNTY OF BEAUFORT

)

C/A NO.: 2015-CP-07-02722

COLLETON RIVER
PLANTATION CLUB, INC.

)

)

Plaintiff,

)

)

vs.

)

)

JOEL S. LEE,

)

)

Defendant.

)

)

VERIFICATION OF COMPLAINT

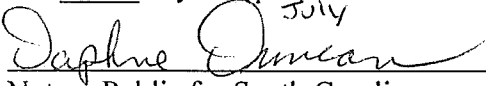
PERSONALLY APPEARED before me, Stephanie Kerr, as Chief Financial Officer of Colleton River Plantation Club, Inc., who after first being duly sworn, deposes and says that she has read the foregoing Verified Amended Complaint and the statements contained therein are true, except those made on information and belief, and as to those she believes them to be true.

COLLETON RIVER PLANTATION CLUB, INC.

By:


Stephanie Kerr, Chief Financial Officer

SWORN to and subscribed before me
this 25 day of ~~April~~ ^{July}, 2016



Notary Public for South Carolina

My Commission Expires: _____

**DAPHNE DUNCAN
NOTARY PUBLIC
SOUTH CAROLINA
MY COMM. EXPIRES: AUG 6, 2018**

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO.: 2015-CP-07-02722

)

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Neil D. Thomson, Esquire
FORD WALLACE THOMSON LLC
715 King Street
Charleston, SC 29403

Gay E. Reed

FORD WALLACE THOMSON LLC

ATTORNEYS AT LAW

October 4, 2016

The Honorable Jerry Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road
Beaufort, SC 29902

Re: *Colleton River Plantation Club, Inc. vs. Joel S. Lee*
Case No. 2015-CP-07-02722
FWT File No. 00701

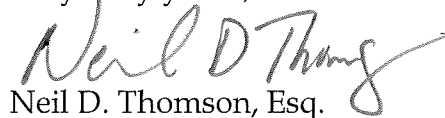
Dear Jerry Ann:

Enclosed for filing please find the original and one copy of Defendant's Answer to Plaintiff's Amended Complaint in the above-referenced matter.

Thank you for your attention. Should you require any additional information regarding this matter, please feel free to contact me.

With kind regards, I am,

Very truly yours,


Neil D. Thomson, Esq.

Counsel for Defendant, Joel S. Lee

NDT/smb
Enclosures: as stated

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COLLETON RIVER PLANTATION
CLUB, INC.

Plaintiff,

vs.

JOEL S. LEE

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2015-CP-07-2722

DEFENDANT'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT

Defendant Joel S. Lee (hereinafter "Lee"), by and through its undersigned counsel, responds to Plaintiff's Amended Complaint by answering as follows:

ANSWERING GENERAL ALLEGATIONS

1. Lee is without sufficient information to either admit or deny the allegations of Paragraphs 1 and 2, and therefore denies same.
2. Lee admits Paragraph 3.
3. Lee denies Paragraph 4.
4. Answering the allegations of Paragraphs 5 - 12, Lee craves reference to the language of the documents cited; all other allegations are hereby denied.
5. Lee denies Paragraphs 13 and 14.

ANSWERING THE FIRST CAUSE OF ACTION

(Breach of Covenant in the Nature of Contract)

6. No response is required in answering Paragraph 15. To the extent a response is required, it is hereby denied.
7. Lee denies Paragraphs 16 -19.

ANSWERING THE SECOND CAUSE OF ACTION

(Breach of Contract Accompanied By A Fraudulent Act)

8. No response is required in answering Paragraph 20. To the extent a response is required, it is hereby denied.

9. Answering the allegations of Paragraphs 21 and 22, Lee craves reference to the language of the documents cited; all other allegations are hereby denied.

10. Lee denies Paragraphs 23 and 24.

11. Lee admits Paragraph 25.

12. Lee denies Paragraph 26.

13. Answering the allegations of Paragraphs 27 and 28, Lee craves reference to the language of the documents cited; all other allegations are hereby denied.

14. Lee denies Paragraphs 29 through 34 and the WHEREFORE clause (inclusive of all subparts).

AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

1. Lee satisfied a prior Judgment with this Plaintiff concerning an alleged deficiency with the property at issue. Plaintiff discharged Lee from said Judgment on August 8, 2013 (Judgment Roll No. 2012-CP-07-03525). Plaintiff is hereby barred from seeking any alleged deficiency from Lee which has heretofore been satisfied, released and discharged.

AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiff's Amended Complaint fails to state a claim that is proper and cognizable under applicable law.

AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff's claims are barred by the applicable statutes of limitation and statutes of repose.

AFFIRMATIVE DEFENSE

(Waiver and Laches)

Plaintiff's claims are barred or limited by the doctrines of waiver and laches.

AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff's claims and damages should be denied, barred, or reduced due to its failure to mitigate.

AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's claims are barred by the doctrine of estoppel. This includes, but is not limited to, Plaintiff's prior Satisfaction of Judgment on this same property.

AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's claims are barred by the doctrine of unclean hands.

AFFIRMATIVE DEFENSE

(Unconscionability)

The provisions of the contracts or covenants that Plaintiff seeks to enforce are unconscionable and should be prohibited or declared invalid.

AFFIRMATIVE DEFENSE

(Lack of Contract)

Defendant was not a "member" of Plaintiff's Club and therefore has no

obligations as alleged and is not a proper party.

AFFIRMATIVE DEFENSE

(Void Covenants and Contracts)

The contracts, covenants, and declarations which Plaintiff seeks to enforce are not valid amendments to the relevant covenants, contracts, and/or declarations, and therefore are not enforceable. In the alternative, the contracts that Plaintiff seeks to enforce are based on invalid covenants and/or declarations, and therefore are not enforceable.

AFFIRMATIVE DEFENSE

(Mistake)

The contracts and other documents that Plaintiff seeks to enforce should be rescinded as a consequence of mistake of fact by the parties, which was induced by the fraud, deceit, misrepresentation, concealment, or imposition by the Plaintiff.

AFFIRMATIVE DEFENSE

(Rescission)

The contracts and other documents which Plaintiff seeks to enforce should be rescinded as a consequence of the issues stated herein, and by the very strong and extraordinary circumstances that would make it a great wrong to enforce the purported agreements.

AFFIRMATIVE DEFENSE

(Rule Against Perpetuities)

The documents and agreements referenced by the Plaintiff violate the rule against perpetuities and are unconscionable and unreasonable to such an extent as to shock the conscience of fair play and equity.

AFFIRMATIVE DEFENSE

(Set-off and/or Limitation on Damages)

Should Defendant be determined to be indebted to Plaintiff (which Defendant denies), any such indebtedness should be limited to, or off-set (debited) against, the equity paid by Defendant and/or by the prior Satisfaction of Judgment already obtained by Plaintiff.

AFFIRMATIVE DEFENSE

(Violation of South Carolina Nonprofit Corporation Act)

Plaintiff's claims violate the South Carolina Nonprofit Corporation Act, and Defendant(s) assert, *inter alia*, South Carolina Code §§ 33-31-101 -620, -621 *et seq.* as an additional defense to the damages and claims asserted by the Plaintiff. To the extent that it is determined that either, or both, of the Defendants own membership in the Plaintiff Club, the Defendant(s) have ended that membership and/or otherwise terminated their membership with the Club pursuant to South Carolina law, including but not limited to § 33-31-620 and § 33-31-621, ending any obligation for future dues fees or charges, such as is being claimed by the Plaintiff in this action. Plaintiff has not maintained a fair and reasonable process for the termination of or otherwise ending the memberships of its members, more specifically as to the Defendant(s) herein, including but not limited to in, the plan of membership, by-laws or other operational, governing or organizational documents. Upon information and belief, the refusal of the Club to terminate or expel the Defendant(s) is being done in violation of § 33-31-620, -621 *et seq.* and in knowing disregard to the legal rights of the Defendant(s). The Club has failed to give notice to the Defendant(s) as required for the suspension, expulsion or termination of a member.

WHEREFORE, having fully answered and denied Plaintiff's Amended Complaint, Defendant Joel S. Lee prays that he be dismissed as a matter of law for the above-stated reasons.

FORD WALLACE THOMSON LLC

By: Neil D Thomson
Neil D. Thomson, Esq.
SC Bar No. 71209
E-Mail: neil.thomson@fordwallace.com
715 King Street
Charleston, SC 29403
(843) 277-2011

Attorney for Defendant Joel S. Lee

Charleston, South Carolina
October 4th, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that on October 4th, 2016, this document was served by electronic mail and/or first class mail on all attorneys of record.

FORD WALLACE THOMSON LLC

Neil D Thomson

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-02722
	)	
COLLETON RIVER PLANTATION CLUB, INC.,	)	JOINT STIPULATION OF EXHIBITS
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JOEL S. LEE,	)	
	)	
Defendant.	)	
_____	)	

Plaintiff Colleton River Plantation Club, Inc. and Defendant Joel S. Lee hereby jointly designate the following exhibits to be used at the trial of this matter:

1. Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc., dated March 1, 2007, and recorded on April 26, 2007 in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 02559 at Pages 2357-2442.
2. Title to Real Estate transferring Colleton River Plantation Lot A02 from Joel S. Lee to Bluffton Properties, LLC, dated December 31, 2012.
3. Title to Real Estate transferring Colleton River Plantation Lot A02 from Colleton River Company, L.P. to Joel S. Lee, dated September 20, 1993.
4. Order of Judgment in *Colleton River Plantation Club, Inc. v. Joel S. Lee*, C.A. No.: 2012-CP-07-03525, filed August 8, 2013.
5. Satisfaction and Release of Judgment in *Colleton River Plantation Club, Inc. v. Joel S. Lee*, C.A. No.: 2012-CP-07-03525, filed September 23, 2014.
6. Order of Judgment in *Colleton River Plantation Club, Inc. v. Bluffton Properties, LLC*, C.A. No. 2014-CP-07-02827, filed May 12, 2015.
7. Colleton River Plantation Club, Inc, Payment Policy, last revised March 3, 2015.
8. Colleton River Plantation Club's Charges / Balance Statement Referencing Joel Lee / Bluffton Properties, LLC, 10/2/2012 – 11/30/2018 (produced by Plaintiff in discovery).
9. Correspondence from Tek-Collect to Defendant, dated 8/27/2014.
10. Defendant's First Set of Requests for Admission to Plaintiff and Plaintiff's Responses to same.
11. Beaufort County Tax screen for Joel Lee / Bluffton Properties for 1 Boone Hall Court / Lot A2 Colleton River Plantation.
12. Resolution of the Board of Directors of Colleton River Plantation Club, Inc., dated September 28, 2010.
13. Deposition of Joel S. Lee, taken March 9, 2017.

14. Deposition of Thomas Burke, taken February 13, 2018.
15. Colleton River Plantation Club, Inc. Articles of Incorporation.
16. Deposition of Stephanie Kerr, taken May 3, 2018.

Each party reserves the right to offer additional exhibits at the trial of this matter.

Respectfully submitted,

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

COLLETON RIVER
PLANTATION CLUB, INC.

Plaintiff,

vs.

JOEL S. LEE

Defendant.

IN THE COURT OF COMMON PLEAS

Case No.: 2015-CP-07-2722

DEFENDANT JOEL S. LEE'S
COMMENTS AND OBJECTIONS TO
PLAINTIFF'S PROPOSED
TRIAL ORDER

Pursuant to the Court's request, Defendant Joel S. Lee ("Defendant") hereby submits the following commentary, to include certain specific objections, to Plaintiff Colleton River Plantation Club, Inc.'s ("Plaintiff's") proposed / unfiled "Trial Order" in this matter.

GENERAL COMMENTS

Defendant has grave concerns as to Plaintiff's proposed language in its drafted "Trial Order." The "Finding of Facts" section is mostly a regurgitation of the allegations in Plaintiff's Amended Complaint, and the findings are not supported by the trial record. In particular, as further set forth below, the record lacks the clear and convincing evidence that would be necessary to support Plaintiff's proposed language going to fraud and punitive damages.

Defendant is amenable to a hearing, in person or telephonically, to address Plaintiff's proposed language, and these objections herein, at a time convenient to the Court and all counsel.

Before providing specific substantive objections to certain findings of fact and conclusions of law proposed by Plaintiff, Defendant directs this Court's attention that Plaintiff's entire basis for prevailing on a judgment is procedurally flawed.

The two causes of action asserted by Plaintiff in its Amended Complaint are: (1) "breach of covenant in the nature of contract" against Defendant; and (2) "breach of contract accompanied by a fraudulent act" against Defendant. Defendant urges the Court to execute an appropriate Order which provides findings of fact and conclusions of law, pursuant to those causes of action only.

It is important for this Court to consider what this case is *not*, before evaluating and ordering what it is:

- (1) Plaintiff elected to sue Joel S. Lee, individually, as the sole Defendant in this action (2015-CP-10-07-02722).
- (2) Bluffton Properties, LLC is not a party to this action.
- (3) Thomas Burke, deceased, is not a party to this action.
- (4) Plaintiff did not allege a piercing of the corporate veil against Bluffton Properties, LLC, or against any entity which may have ownership in the subject property at issue, LotA02 in Colleton River Plantation ("Property"). Plaintiff has no evidence that Joel Lee has any ownership, membership, or management interest in Bluffton Properties, LLC, or in any entity which may have ownership in the Property.
- (5) Plaintiff did not allege, or seek to set aside, a fraudulent conveyance of lands cause of action.

(6) Plaintiff did not allege slander of title.

(7) Plaintiff did not seek to quiet title; or seek to void the title; its conveyance thereto; or to invalidate the quitclaim deed; or otherwise seek a court's determination or judgment as to the validity of title of the Property.

(8) Plaintiff did not allege a Statute of Elizabeth cause of action.

SPECIFIC OBJECTIONS TO PLAINTIFF'S PROPOSED "FINDINGS OF FACT"

Para 11:

Objection. Plaintiff's reference to the Covenants' definition of "Owner" is incomplete and misleading. This finding should be amended to set forth:

"Each Person that holds record title to a Lot, as defined in the Chapter 3, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." *If a Lot is sold under a recorded contract for sale, and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be considered the Owner. . . Every Owner has a responsibility to comply with the Governing Documents...*" (emphasis added).

Providing a more complete citation of Plaintiff's own Covenants' definition of "owner" underscores the essence of assessment obligations in this case. That is, Defendant's assessment obligations, and thus its liability, should be properly measured during amounts outstanding and having accrued during his ownership of the Property - which, as supported by the facts in evidence, were ultimately negotiated and paid in full. Defendant has no responsibility, under the Covenants or otherwise, to pay for the subsequent grantee's obligations.

Para 16:

Objection. Plaintiff's reference to Section 14.2(a)(ii) is not relevant, and not applicable to the Defendant - as he owes no duty. There is no evidence in the trial record of joint ownership of the Property at any time.

Q: Okay. You do not have any evidence setting forth Mr. Lee having a membership or ownership interest in Bluffton Properties, LLC, do you?

A: I don't have any documentation that verifies that, no.

Trial Transcript, p. 48, ll. 16-21 (Testimony of Plaintiff CFO, Stephanie Kerr).

Designated User liability, if any, would be attributable to Bluffton Properties, LLC, the legal entity – as Owner.

Para 17:

Objection. Section 14.2(e) is not probative; does not apply to Defendant (he owes no duty). Designated User liability, if any, would be attributable to Bluffton Properties, LLC – as Owner.

Para 18:

Objection. Section 14.2(f) is not probative; does not apply to Defendant (he owes no duty). Designated User liability, if any, would be attributable to Bluffton Properties, LLC – as Owner.

Para 19:

Objection. Section 14.2(e) is not probative; does not apply to Defendant (he owes no duty). Designated User liability, if any, would be attributable to Bluffton Properties, LLC – as Owner.

Para 20:

Objection. Plaintiff's reference to Section 19.2, alone, is misleading and not complete. Plaintiff provided no evidence at trial that it suffered any prejudice, *attributable to Joel Lee, individually*, due to Defendant's failure to provide the written notice of transfer under 7.1(c), prior to Plaintiff having received actual notice-in-fact. Plaintiff's CFO testified at trial that, to that point, Colleton River had never purchased a lot from a previous owner (Trial Transcript pp. 60-61) pursuant to Section 19.2, and Plaintiff never alleged in its Complaint or asserted a theory in evidence that Defendant's failure to provide written notice deprived Plaintiff's ability to repurchase the lot.

Para 23:

Objection. Misleading. This finding should be amended to set forth Defendant's ownership period to run in accordance to the Property's executed deeds: September 20, 1993 – December 31, 2012 (May 28, 2013 recorded).

Para 27:

Objection. The findings of fact are that Defendant conveyed the deed to Bluffton Properties, LLC, as referenced in Trial Exh. 2. There is no evidence in the Trial Record that Defendant "purported" a conveyance to be -- set by any certain "circumstances". There is no evidence in the Trial Record that Defendant was involved in the drafting of the deed instrument. As a matter of law, there is nothing void or "purported" about the duly executed and recorded quitclaim deed.

Para 27(E):

Objection. Defendant objects to the adjective “deceptively” for numerous reasons. First, it modifies a deed. Second, there is no requirement that a deed identify the jurisdiction in which the grantee corporation was formed from which any deception can be extrapolated. Finally, there is no evidence in the Trial Record that Defendant was involved in the drafting of the deed instrument.

Para 27(F):

Objection. Defendant objects to the findings, which were not proven by clear and convincing evidence, that his conveyance without notice was “characterized by deception, dishonesty, unfair dealing, and reckless disregard for the truth.” Defendant testified that the failure to give notice was mistake, which was promptly cured on or before July, 2014, when Plaintiff admits and testifies that it had actual, in-fact notice of the transfer of title.

Defendant further objects to this paragraph to the extent that it imputes to him “the further required compliance of Nevada Bluffton Properties, LLC,” in not proffering a Designated User. Bluffton Properties, LLC, as the evidence shows, is a duly organized corporate entity, and Plaintiff has not sought to pierce its corporate veil or otherwise hold Defendant personally liable for the acts (or failure to act) of Bluffton Properties, LLC.

Defendant objects to the paragraphs’ finding that the deed transfer resulted “in a misappropriation by Joel Lee... of Colleton’s property rights to the collection of its Assessments, etc”. This was not proven by clear and convincing evidence, as the deed was duly recorded and public record, and Plaintiff had constructive notice and knowledge of it from the moment it was recorded (May 28, 2013) and thereupon had the opportunity to look to Bluffton Properties, LLC for the fulfillment of its property rights running with the parcel.

In fact, Plaintiff exercised those rights by filing suit against Bluffton Properties, LLC on November 7, 2014 (*Colleton River Plantation Club, Inc. v. Bluffton Properties, LLC*, C/A No. 2014-CP-07-02827), and then obtaining an Order of Judgment against Bluffton Properties, LLC - executed by His Honor on May 12, 2015. *See*, Trial Exh. 6 (“Bluffton Properties, LLC Judgment”). The Bluffton Properties Judgment covered Bluffton Properties, LLC’s alleged assessment arrearage on this same Property from December 31, 2012 (date of Property conveyance) to May 12, 2015, in the amount of \$81,374.56.

The Findings of Fact in that Judgment ordered that Bluffton Properties, LLC “was the owner as evidenced by the deed dated December 31, 2012 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 3242 at Page 2923.” *See Para 8*, of Trial Exh. 6.

Therefore, in the subject case, Defendant’s technical failure to provide written notice of title transfer was wholly cured by Plaintiff’s ability to subsequently obtain a Judgment against Bluffton Properties, LLC – the owner – commencing on the conveyance date of December 31, 2012.

Further, Plaintiff did not prove at trial that it suffered any prejudice, *attributable to Joel Lee, individually*, due to Defendant’s failure to provide the written notice of transfer

under 7.1(c), prior to Plaintiff having received actual notice-in-fact. Plaintiff's CFO testified at trial that, to that point, Colleton River had never purchased a lot from a previous owner (Trial Transcript pp. 60-61), and Plaintiff never alleged in its Complaint or asserted a theory in evidence that Defendant's failure to provide written notice deprived Plaintiff's ability to repurchase the lot. That is not what Plaintiff wants. Rather, Plaintiff is apparently frustrated at the grantee Bluffton Properties, LLC's inability to satisfy the 2014 "Bluffton Properties, LLC Judgment" for the grantee's obligations during grantee's ownership period. Importantly, neither the Covenants nor any of the facts in evidence permit Plaintiff to assign a grantee's ongoing liability to the prior grantor, provided that: (1) Plaintiff received notice of the transfer; and (2) all amounts outstanding prior to transfer were paid in full - which Defendant performed in its August 2014 settlement. *See*, 7.1(c) of Plaintiff's Covenants.

Para 27(G):

Objection. Defendant objects to these findings, which are laden with loaded but unproven adjectives. Defendant testified that he transferred the property for estate planning purposes. Characterizing his motives of transferring his title in 3 lots by quitclaim deed in 2012 versus transferring a Hilton Head Island home - a property he actively uses - into a revocable trust in May of 2018 as a "dishonest and deceptive act" is unfounded and highly prejudicial. Plaintiff's findings and conclusions here are not supported in the trial record.

Para 27(H):

Objection. Defendant's testimony about transferring the Property supports his belief that he no longer had ownership in the Property. His belief, whether correct or not, that he may still have an ownership interest in the Berkeley and Belfair properties is consistent with his belief, whether correct or not, that the serialized forms of Bluffton Properties, LLC were actually 3 different LLCs (referenced in Para 27(K)). Plaintiff's conclusion that this is conflicting testimony is unfounded.

Para 27(L):

Objection. This Court lacks jurisdiction to make findings against Bluffton Properties, LLC. Further, there is no evidence that Defendant has any ownership interest in Bluffton Properties, LLC.

Para 27(M):

Objection. Defendant objects to this paragraph as illogical and contrary to the law of real property. The plain language of the applicable covenants makes it clear that a property owner's liabilities and obligations to Colleton River are appurtenant to and run with the land itself. Plaintiff cannot reach beyond the property to attach *ongoing* personal liability to Defendant.

Para 27(N):

Objection. Defendant objects to this paragraph as overly broad (“conduct,” for example, is not defined), and not based on clear and convincing evidence. Further, this Court lacks jurisdiction to make findings against Burke, who is not a party. Regardless, with regard to intentional conduct, the trial record specifically refutes that: Burke testified that he did not make a conscious decision not to inform Plaintiff about the transfer of title. *See*, Trial Exh. 14, p. 33.

Para 27(O):

Objection. Defendant objects to this paragraph as unsupported by the evidence, which was certainly not clear and convincing as to fraud or a sham. As stated previously, there is no evidence in the trial record that Defendant drafted the deed, or had any ownership authority as to Bluffton Properties, LLC. Further, Plaintiff has neither brought suit for nor attempted to prove the elements necessary to pierce a corporate veil, or for Statute of Elizabeth, or for conspiracy, although that appears to be what Plaintiff seeks to do in this paragraph.

Para 28:

Objection. Defendant objects to this paragraph, too. What becomes particularly clear throughout this proposed Order is that Plaintiff was seeking to try a case against Burke and Bluffton Properties, LLC, who were not parties, and who did not put up a defense nor have the opportunity to do so. It is unjust and procedurally invalid to make findings against Defendant which hinge on determinations as to the motives and actions of persons and entities who are not parties.

Defendant further objects to the characterization of subparagraphs A-I as having been “deceptive and fraudulent” when no clear and convincing evidence was put forth as to the character of those acts. Although the items listed (which Plaintiff addresses below), might constitute breach of contract, they do not in and of themselves go toward deception and fraud.

Para 28(A):

Objection. Plaintiff did not provide any evidence that Defendant’s technical failure to give notice was anything other than simple neglect; his testimony goes to mistake not to intentional conduct.

Para 28(B):

Objection. There is nothing deceptive or fraudulent in a conveyance of property for nominal consideration; there is no evidence in the trial record demonstrating Defendant having any ownership interest in Bluffton Properties, LLC. Regardless whether Defendant was an owner of Bluffton Properties, LLC is immaterial as Plaintiff has not brought a cause of action against Bluffton Properties, LLC in this case.

Para 28(C):

Objection. This paragraph is unclear and vague. Further, there is nothing deceptive or fraudulent about the deed, which clearly sets forth on its face that it is subject to the Covenants. Plaintiff has not sought to void the deed, or to set aside the deed for fraudulent conveyance. Plaintiff sued the grantee (Bluffton Properties, LLC) in 2014-CP-07-02827 and obtained a Judgment against the grantee concerning continuing contractual responsibility, per the Covenants.

Para 28(D):

Objection. There is nothing inherently deceptive or fraudulent about the acts set forth in this paragraph, and the conflicting testimony indicated is not sufficient clear and convincing evidence to establish fraud. The ownership structure of Bluffton Properties, LLC is immaterial as Plaintiff has not brought a cause of action against Bluffton Properties, LLC in this case.

Para 28(E):

Objection. This paragraph does not make sense. The deed on its face refers to the Colleton River Covenants. There is nothing nefarious/deceptive/fraudulent about not conducting a title examination in a quitclaim transaction. Defendant had no role in the organization and management of the conveyance. Further, Plaintiff sued the grantee (Bluffton Properties, LLC) in 2014-CP-07-02827 and obtained a Judgment against the grantee concerning continuing contractual responsibility, per the Covenants.

Para 28(F):

Objection. This paragraph seeks to impose liability on a person or entity not a party. Defendant had no duty to obtain title insurance for Bluffton Properties, LLC.

Para 28(G):

Objection. This paragraph does not accurately reflect the law of South Carolina and would not in any event have provided any protection to Plaintiff. Further, the Property's deed was successfully recorded with the Register of Deeds for Beaufort County.

Para 28(H):

Objection. This paragraph does not accurately reflect the law, and it seeks to impose liability on a person or entity not a party. Defendant had no duty to verify that there were no conflicting names in South Carolina, nor would any organizer of a Nevada corporation; if anyone had that duty, which is denied, it would have been Bluffton Properties, LLC.

Para 28(I):

Objection. Acting on advice and counsel of counsel is actually a defense, which shows good faith. It does not indicate wrongdoing, and certainly not fraud, and this

paragraph should be soundly rejected by this Court. Plaintiff did not sue under a conspiracy theory.

Para 30:

Objection. Defendant objects to this paragraph, particularly to the extent that it seeks to hold Defendant liable for obligations of the Owner accruing: (a) after the deed to Bluffton Properties was recorded (May 28, 2013), at which point Plaintiff had constructive knowledge and notice of the conveyance; (b) after July 2014, at which point Plaintiff irrefutably had actual knowledge of the conveyance; (c) after obtaining a Judgment for obligations against the grantee, Bluffton Properties, LLC in 2014-CP-07-02827, for a period running from December 31, 2012 through 2015; and (d) after negotiating and accepting a settlement with Defendant in August 2014 (post notice of transfer), based on an accrued obligation amount that Plaintiff admits on the trial record as having contemplated and exceeded the first Judgment amount from 2012-CP-07-03525.

Para 31:

Objection. This paragraph demonstrates that Plaintiff had actual knowledge of the conveyance in July 2014, whereupon it is legally and contractually inconceivable that it could bind Lee for the appurtenant obligations of Bluffton Properties, LLC. Further, Defendant had no duty with respect to the Designated User provision in the Covenants.

Para 33:

Objection. Defendant had no duty with respect to the Designated User provision in the Covenants.

Para 34:

Objection. This paragraph is misleading and does not represent the full trial record. Defendant further testified at trial as to his understanding of what his settlement payment represented:

Q: So the record is clear, your settlement with Colleton River in August of 2014 was for – did that encompass all debts and liabilities owed, in your mind?

A: Yes. In my mind I was done at that point with any claims of Colleton River.

Trial Transcript, p. 109, ll. 13-18.

Q: Is it your testimony that after the board and the club received notice of the transfer of title, that all amounts outstanding owed prior to the transfer had been paid by you in full?

A: I believe that the \$8975 paid everything I owed. Period.

Trial Transcript, p. 113, ll. 9-15.

Para 35:

Objection. On the face of the Tek-Collect document, there is a \$34,265.95 "Balance Due". Plaintiff's CFO, Stephanie Kerr, testified at trial that this amount contemplated in negotiations with Defendant in August, 2014 exceeded the 2012-CP-07-03525 ("First Lee Judgment") amount + any accruing interest. *See*, Trial Transcript, pp. 52-54. The Tek-Collect document's "Balance Due" therefore supports Defendant's understanding that he settled "everything" with Colleton River in August, 2014 – *more than just the 2012 Judgment*.

Para 36:

Objection. Plaintiff's attempt to reduce its total claim by \$22,457.10 ignores the facts presented in evidence that Defendant negotiated and settled, in full, all alleged obligations asserted by Colleton River. Further, Defendant's settlement payment also covered the amount of alleged arrearage up through the time of transfer, so as to cure any obligations he had under 7.1(c) of the Covenants. Plaintiff is barred from collecting additional obligations against Defendant, pursuant to the doctrines of accord and satisfaction, and collateral estoppel.

The actions of the Plaintiff, and this Court pursuant to 2014-CP-07-2827 ("Bluffton Properties, LLC Judgment"), further support Defendant's position that no further monetary obligations are owed by Defendant other than what has been heretofore paid:

- (1) The \$8977.46 negotiated and paid by Defendant in September, 2014, (and accepted by Plaintiff) was the precise amount matching Defendant's arrearage owed up until December 31, 2012, the date of the conveyance – pursuant to Plaintiff's own accounting ledger (see Trial Transcript, pp. 59-60) – thus Plaintiff has acknowledged and given validity to the conveyance date/notice, at the time of its negotiation;
- (2) Two months later, on November 7, 2014, Colleton River filed a suit against Bluffton Properties, LLC for obligations accruing starting on December 31, 2012 for this same Property (and Colleton River obtained a Judgment against Bluffton Properties, LLC, for obligations commencing on December 31, 2012) – again, where Plaintiff has acknowledged and given validity to the conveyance date (and this Court has rightfully ordered Bluffton Properties, LLC as "owner", in its Order of Judgment for 2014-CP-07-02827). *See* Trial Exhibit 6; and
- (3) Both Colleton River, and this Court in 2014-CP-07-02827, acknowledge the December 31, 2012 conveyance date for purposes of seeking and ordering dues obligations against Bluffton Properties, LLC – as that is proper since, as Property Owner, its obligations run appurtenant to the land (see recorded

deed; see Covenants). And the \$8977.46 paid - matching Joel Lee's arrearage up until December 31, 2012 - is Defendant's fulfillment of his obligations since it cures the technical breach of 7.1(c) of the covenants.

Para 37:

Objection. There is no evidence in the trial record that Defendant chose to use grantee's name, or chose Bluffton Properties, LLC's origin of incorporation. Defendant had no duty to Plaintiff in this regard. Once Plaintiff received notice, Defendant was responsible for the obligations incurred up until "all amounts outstanding prior to transfer are paid in full" pursuant to 7.1(c) of the Covenants, and Defendant fulfilled that payment obligation. Once Plaintiff received notice of the transfer (which it admits it did), Defendant is not responsible for any obligations attributable to the grantee, Bluffton Properties, LLC.

Paras 41, 42, 43 and Conclusions of Law:

Objection to all. The trial record shows that Defendant bought this undeveloped lot in 1993 and paid \$129,500.00. Defendant was an owner of this Property for approximately 19 years and has paid over \$300,000.00 to the Plaintiff for assessment obligations. Defendant was sued in 2012 by Plaintiff for alleged unpaid obligations accruing during his Property ownership (2012-CP-07-03525). Defendant satisfied that Judgment, and he negotiated a payment which covered all outstanding obligations owed to Plaintiff. This negotiated payment occurred at a point in time when Plaintiff already had express notice-in-fact that Defendant was no longer the Property Owner. This negotiated payment cured the technical breach of 7.1(c) of the Covenants - to the penny. No other provision in the Covenants allows for ongoing liability against the grantor, Joel Lee. This makes sense because the assessment obligations run with the land, pursuant to the Covenants and the recorded deed. Plaintiff successfully sued and obtained a Judgment versus the subsequent grantee, Bluffton Properties, LLC (2014-CP-07-02827) - a Judgment measured at a day in time when Joel Lee's obligations ceased. Plaintiff is estopped from asserting any further claims for obligations against Defendant.

As such, the Findings of Fact support Defendant, by mistake, failed to comply with the technical written notice requirement of transfer of title under 7.1(c) of the Covenants. The Findings of Fact do not support any fraud attributable to Defendant. The Findings of Fact support that Defendant's non-compliance was cured when, upon Plaintiff's actual notice of the transfer, "all amounts outstanding prior to transfer were paid in full" by Defendant, pursuant to 7.1(c) of the Covenants.

(Signature on following page)

Respectfully submitted,

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January 23rd, 2020
Charleston, SC

STATE OF SOUTH CAROLINA**COUNTY OF BEAUFORT****COLLETON RIVER
PLANTATION CLUB, INC.****Plaintiff,****vs.****JOEL S. LEE****Defendant.****IN THE COURT OF COMMON PLEAS****Case No.: 2015-CP-07-2722****NOTICE OF MOTION AND
DEFENDANT JOEL S. LEE'S
MOTION PURSUANT TO
RULES 52, 59, AND 60**

Pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure, the Defendant Joel S. Lee ("Lee") hereby moves this Honorable Court for a new trial, a new trial nisi or, in the alternative, to alter or amend this Court's Trial Order, filed on February 13, 2020. Lee respectfully requests that a hearing on this Motion would be held ten (10) days from the date of this motion, or at a time and date set by this Honorable Court. The grounds for this relief, as set forth below, are that this Court's findings of fact, conclusions of law, and judgment are contrary to the record, unsupported by the contract, and in conflict with the law.¹

¹ Lee does not seek reconsideration by this Court of its ruling in favor of Lee on Plaintiff's second cause of action (properly denying plaintiff relief for alleged breach of contract accompanied by fraudulent act).

FACTS

The following undisputed facts, set forth in chronological order, are particularly important to this Motion:

- On September 20, 1993, Colleton River Company, L.P., conveyed Lot A02 to Defendant Lee, subject to the Colleton River Plantation Declaration of Covenants. (Order, ¶ 23; Trial Ex. 3).
- On October 9, 2012, Plaintiff Colleton River Plantation Club, Inc. (“Colleton”) brought suit against Lee for the collection of outstanding dues and assessments. (Trial Ex. 4).
- On December 31, 2012, Lee conveyed Lot A02 to Bluffton Properties, LLC (Order ¶ 27; Trial Ex. 2).
- On May 28, 2013, the conveyance deed from Lee to Bluffton Properties LLC was duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina. (*Id.*).
- On August 8, 2013, Colleton obtained an Order of Judgment against Lee for “the amount due and owing pursuant to the Covenants . . . as of **July 31, 2013.**” (Trial Ex. 4) (emphasis added).
- In July 2014, Colleton had actual notice of Lee’s conveyance of the lot to Bluffton Properties, LLC. (Order, ¶ 29).
- On August 27, 2014, Colleton accepted \$8,977.46 from Lee in settlement of outstanding dues and assessments through July 31, 2013. (Trial Ex. 9).

- On September 23, 2014, Colleton filed a Satisfaction and Release of the August 8, 2013 Judgment. (Trial Ex. 5).
- Bluffton Properties, LLC is not a party to this lawsuit.

APPLICABLE LAW

“[D]amages recoverable for breach of contract must either flow as a natural consequence of the breach or must have been reasonably within the parties’ contemplation at the time of the contract.” *Kline Iron & Steel Co. v. Superior Trucking Co., Inc.*, 261 S.C. 542, 201 S.E.2d 388 (1973). “In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor’s intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law. The intention of the grantor must be found within the four corners of the deed.” *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888 (S.C. App. 2014), citing *Windham v. Riddle*, 381 S.C. 192, 201, 672 S.E.2d 578, 582–83 (2009).

I. Many facts found by this Court are not supported by the evidence.

For the reasons set forth in Section II, below, this Court errs when it finds in Paragraph 38 of the Trial Order that Lee is liable for dues, fees, and assessments spanning from January 1, 2014 through June 30, 2019.²

² Paragraph 38 of the Order is inconsistent and confusing as to the dates—in one place described “as of November 30, 2018” but subsequently listing dates through June 30, 2019.

Further, the following findings of fact are not supported by the fair preponderance of the evidence, or they are irrelevant to the proper judgment of this Court. In particular:

- As to Paragraphs 16-18: Pursuant to the plain language of the cited sections of the Declaration (§ 14.2(a)(ii), (e), and (f)), the sections' obligations are irrelevant to and do not apply as against Lee, who was never a joint owner³ and nor is he a legal entity; therefore Lee had no obligation under the unambiguous terms of the covenant to designate a user.⁴
- As to Paragraph 19: Pursuant to the plain language of the cited § 7.2(c) of the Declaration, it is "subject to Section 19.2" – not to Section 14.2. (Trial Ex. 1).
- As to Paragraph 20: Please see below, Section II.
- As to Paragraph 21: This finding of fact is not supported by the evidence. The plain language of the Declaration, Chapter 12, states that assessments are to be "lev[ied] *against the Lots* and collect[ed] from the Owner of each Lot;" in other words, assessments are a covenant obligation running with the land and the burden for payment is on the Owner of a lot subject to the Declaration. (Trial Ex. 1) (emphasis added). The Declaration is clear, despite its language about Designated Users,⁵ that

³ Lee conveyed his entire interest in the lot to Bluffton Properties, LLC. (Trial Ex. 2).

⁴ Arguably, this section would apply to, and place obligations upon, Bluffton Properties, LLC. However, Bluffton Properties LLC is not a party to this lawsuit.

⁵ Which section, as set forth above, does not pertain to Lee.

the ultimate responsibility for assessments is inextricably bound to the land and is the obligation of the Owner of the real property.⁶

- As to Paragraph 23: This paragraph is unclear and should be altered to conform to the evidence, which shows that Lee was the record owner of Lot A02 from September 20, 1993 through May 28, 2013. (Trial Exs. 2 and 3).
- As to Paragraph 27: This paragraph should be altered so as to remove the word “purported.” The undisputed evidence shows that Lee did convey Lot A02 to Bluffton Properties, LLC. (Trial Ex. 3). Further, the circumstances described in subparagraphs A-E are completely irrelevant to Colleton’s cause of action for breach of covenant and to judgment by the Court. Further, the circumstances described in subparagraphs A-E have no bearing on the plain language of the covenants applicable to Lee.
- As to Paragraph 27(F): This paragraph should be altered from a sheer grammatical standpoint. As written, it suggests that the Conveyance required a proffer of a Designated User, which is not supported by the plain language of the Declaration.
- As to Paragraph 28: This paragraph should be altered to clearly set forth that Lee’s only covenant obligation as to the transfer is found in Section 7.2(c), which, as set forth below, did not impose ongoing personal liability on Lee.
- As to Paragraph 32: This paragraph should be altered to conform to the evidence, which demonstrates that on September 23, 2014, Lee settled a judgment for dues, assessments, late fees, and attorney’s fees calculated according to the Judgment

⁶ Pursuant to Chapter 12 of the Declaration, an Owner (which Lee ceased to be upon conveyance to Bluffton Properties, LLC) has the personal obligation to pay assessments on his Lots and may be sued “to recover **past due** assessments.” (Trial Ex. 1) (emphasis added).

“through July 31, 2013,” and which judgment continued to accrue interest and fees from that date. (Trial Exs. 4, 5).

- As to Paragraph 33: This paragraph should be altered to conform to remove the words “no documentation thereof,” because of the evidence contained in the Satisfaction of Judgment (Trial Ex. 5) and the testimony of Stephanie Kerr.
- As to Paragraphs 35-38: These paragraphs are unclear, inaccurate, and this Court should amend them to conform to the law and the Declaration as set forth below.

Furthermore, Lee respectfully requests that this Court would alter its findings of fact to reflect the testimony and evidence presented by Lee in support of his defenses as further set forth in Section II (D) below. In particular, evidence in the record demonstrates the failure by Colleton to apply its covenants equally to similarly situated Owners (as required by the Nonprofit Corporation Act and the Declaration).

II. The Court’s conclusions of law are not supported by the plain language of the governing documents, the law of South Carolina, nor the preponderance of the evidence.

This Court should amend its judgment to conform to the law of real property in South Carolina and the plain language of the covenants at issue.

A. There is no real property basis to attach post-conveyance liability to Lee.

Colleton’s cause of action against Lee is one for breach of covenants in the nature of contract. In this case, the contract is the Declaration of Covenants for Colleton River Plantation (the “Declaration”), which encumbers certain real property is Beaufort

County, South Carolina.⁷ By its terms, the Declaration “run[s] with the title to such property . . . and shall be binding upon the future owners of any portion of the property” (Trial Ex. 1, Declaration of Covenant). The Declaration has “a legal and binding effect on all owners and occupants of property in the Community.” (*Id.*, § 1.1, Scope and Applicability). An “Owner” is defined as a person who holds record title to a lot. (*Id.*, § 2.3). The evidence shows that, in 1993, Lee became the title holder of a lot subject to the Declaration. (Trial Ex. 3). The evidence also shows that, in 2013, Lee divested himself of title to the lot by conveying it to Bluffton Properties, LLC, Series 1. (Trial Ex. 2). **Bluffton Properties, LLC is not a party to this action.**

The Declaration is a covenant running with the land. The relationship between Lee and Colleton was inextricably bound to Lee’s lot in Colleton River Plantation. The obligation to pay assessments is bound to the land, for the benefit in the land.⁸ With the obligation to pay assessments came the right to use the common property within the development. So long as Lee owned property in Colleton burdened by the Declaration, he was obligated to pay the assessments tied to the land.⁹ However, once Lee divested

⁷ Colleton is charged with administration and enforcement of the Declaration. (Trial Ex. 1, Preamble).

⁸ Assessments are bound to the property and for the benefit of the land. (Trial Ex. 1, § 12.5 (“The obligation to pay assessments shall commence *as to each Lot* on the date on which the Lot is made subject to this Declaration”)). Assessments are levied against each lot by Colleton so that it can maintain the common areas of the property, which are exclusively for the benefit of lot Owners. (Trial Order, p. 9, ¶ 22). Colleton itself acknowledges that the rights and obligations of its members are appurtenant to the property. (Trial Ex. 16, p. 58, “Property ownership is the only form of membership that we have.”)

⁹ Assessments are levied against each lot. (Ex. 1, Ch. 12, “The primary source of funding is the assessments which this Chapter *authorizes the Club to levy against the Lots* and collect from the Owner of each lot.”).

himself of the property, he also divested himself of the obligations bound to, levied against, and running with the property. And yet, in this lawsuit, Colleton improperly seeks to hold Lee liable for ongoing assessments—for the benefit of the burdened property—accruing for a period of five years after Lee conveyed the property to a legal entity that is not a party to this lawsuit.¹⁰ **As a matter of law, Lee could not have had any ongoing obligation for assessments running with land that he no longer owns.**

This is also so because in order to enforce covenants running with land, privity of estate must exist. Upon Lee's conveyance of the lot, the privity between Lee and Colleton was severed. The Declaration expressly acknowledges this legal truth in Chapter 8, § 8.1, which delineates Colleton's enforcement power, which is tied to the land: "Every **Owner, occupant, and visitor** to a Lot must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter." (Trial Ex. 1) (emphasis added).

¹⁰ Colleton's argument that Lee might be a member of Bluffton Properties, LLC is a legal red herring. This is because Colleton has not argued that the deed from Lee to Colleton is invalid, nor has it sought to have the conveyance set aside as fraudulent or pursuant to the Statute of Elizabeth. For the purpose of this lawsuit, then, this Court must consider the conveyance to be valid. In other words, **Bluffton Properties LLC is the uncontested title holder to the subject lot.** Under the law of real property, Bluffton Properties LLC is in privity with Colleton, as the holder of property subject to the Declaration. Under the law of real property, Colleton's privity with Lee was severed the moment that Lee divested himself of property subject to the Declaration.

But, for the sake of argument, what if Lee is a member of Bluffton Property LLC (which is disputed and unproven)? **In the eyes of the law, it does not matter.** A limited liability company is a legal person, separate and apart from its individual members, whomever they may be. As a matter of law, liability cannot attach to an individual member of a company aside from by a suit to pierce the corporate veil, which Colleton has not brought in this instance. Any evidence going to Lee's membership in Bluffton Properties LLC is legally irrelevant (*e.g.*, Trial Order, p. 15, ¶ 14). Furthermore, any evidence of purported covenant breaches by Bluffton Properties, LLC is legally irrelevant and should not be considered by this Court (*e.g.*, Trial Order pp. 10-13).

This conforms with the law in South Carolina and in other states. “Restrictive covenants, sometimes referred to as ‘real covenants,’ are agreements ‘to do, or refrain from doing, certain things with respect to real property.’” *Kinard v. Richardson*, 407 S.C. 247, 754 S.E.2d 888, 893 (Ct. App. 2014) (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct.App.2006) (citation and quotation marks omitted)). “Restrictive covenants affecting real property cannot be properly and fully understood without resort to property law. **Restrictive covenants differ from contracts in that they run with the land**, meaning that they are enforceable by and against later grantees.” *Id.* (emphasis added); see also, *Rosenfeld, In re*, 23 F.3d 833 (4th Cir. 1994) (“Under the Declaration, the obligation to pay assessments is a function of owning the land with which the covenant runs. Thus, Rosenfeld’s obligation to pay the assessments arose from his continued post-petition ownership of the property and not from a pre-petition contractual obligation. The post-petition assessments were for the upkeep of common areas and other common expenses during Rosenfeld’s post-petition ownership. River Place’s right to payment for post-petition assessments did not arise pre-petition and was not extinguished by Rosenfeld’s bankruptcy discharge.”); *Leh v. Burke*, 331 A.2d 755 (Pa. Super. Ct. 1974) (“When a promise to do an affirmative act, such as in this case to make a monetary payment, is found to run with the land, the person in possession at the time the obligation matures is responsible for discharging it. Conversely, prior or subsequent owners of the property, including the original covenantor, are relieved of responsibility not arising contemporaneously with their interest in the land. ‘It has long been the law of this Commonwealth that the covenantor

of . . . an easement or a benefit attached to land is not liable after parting with his title, for a breach occasioned by subsequent possessors of the land subject to the covenant.’ As the Supreme Court stated, ‘while on the land both covenantor and covenantee, with their respective assigns, had a substantial interest in the life of the covenant. When either parted with the title he parted with that interest. The one thus separating himself from the land could not enter the aliened premises to prevent a breach, he could enjoy no benefit from it, nor could he perform the covenant. It was so intended by the parties and was effective alike on covenantor and covenantee. The interest thus created was centered in or attached to the land itself, for the benefit of the other parcel. When the person divested himself of title, he transferred to his grantee the same right in the covenant that he possessed, with the same obligation imposed. There was never any intention to impose personal responsibility apart from privity of estate or to enter into an engagement on personal credit. On the contrary, there was set up a contract operative and binding upon owners and future owners of the land as long as privity of estate lasted between them.’”) (internal citations omitted).

This Court should alter its judgment to find that Lee is not obligated to pay ongoing assessments appurtenant to property in which he holds no fee interest. Accordingly, the judgment against Lee should be reduced to an amount that only contemplates liability for the time period in which Lee was an Owner, as defined by the Declaration. The Declaration defines an Owner as the record title holder to a lot. The deed from Lee to Bluffton Properties, LLC was duly recorded on May 28, 2013, at which

point Lee no longer was the record title holder to any lot burdened by the Declaration. (Trial Ex. 2).

B. There is no contractual basis to attach post-notice liability to Lee.

Alternatively, (or in addition to the lack of any privity between Colleton and Lee, and Lee's lack of any ownership of burdened land, which would allow Colleton to pursue ongoing assessments from Lee), there is not a contractual basis to support judgment against Lee subsequent to Colleton's receipt of notice that Lee was no longer Owner of the burdened Lot. In an action for breach of contract, the plaintiff must prove (1) the contract, (2) its breach, and (3) damages caused by that breach. *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (burden on plaintiff to prove contract, its breach, and damages caused by such breach).

At the outset, as a matter of law, the Order errs in attaching liability to Lee for any breach by Bluffton Properties, LLC (Order at pp. 14-15, ¶¶ 9, 14).¹¹

Further, Colleton has only cited to one provision of the Declaration that could possibly apply to Lee, which section clearly links any purported liability to notice, and which by its plain terms restricts liability to the amount of assessments that is outstanding **prior to conveyance:**

¹¹ Colleton did not bring any sort of claim to pierce the corporate veil as to Bluffton Properties, LLC, which the law considers to be a wholly separate entity from its members, regardless of whether or not Lee was one of its members.

Section 7.1(c) *Transfer of Title*. **Subject to Section 19.2,**¹² an Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 30 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, **until the date upon which the Board receives such notice and all amounts outstanding prior to transfer are paid in full** notwithstanding the transfer of title.¹³

(Trial Ex. 1) (emphasis added).

By its plain terms, when read in the context of the Declaration as a whole, this Section operates to do nothing more than (1) gives Colleton a right of first refusal in certain circumstances; and (2) attempts to impose joint liability on a grantor for assessment obligations, running with the title to the lot, accrued **prior to transfer**. This Court errs to find that this section imposes ongoing, personal liability to Lee for assessments appurtenant to a lot that he does not own.

As to the right of refusal, no damages rightfully spring from that breach because Colleton testified that it never actually exercises that right.¹⁴

¹² Section 19.2, to which notice is subject, gives Colleton a right of first refusal, which the evidence shows was never actually exercised as a practical matter. (*e.g.*, Trial Transcript pp. 60-61).

¹³ This clause is a companion to, and intended to mirror, Declaration § 12.6, which states "Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges **due at the time of conveyance**." (Trial Ex. 1) (emphasis added). Read together, in context with the law of real property, it is clear that the intended joint and several liability is as to *outstanding* amounts, as of the date of conveyance/record notice.

¹⁴ Assuming, *arguendo*, that but for Lee's failure to give notice, Colleton would have elected to exercise its right of first refusal in this instance, the measure of damage would be the value of the lot, less assessments running with the lot, beginning at the time of conveyance. However, the burden was on Colleton to prove such damages, which it has failed to do. In fact, Colleton has not argued at all that it was damaged by its lost opportunity to exercise the rights found in Section 19.2.

As to the section's provision on joint liability, any (invalid) attempt to reach beyond the land to attach a person is expressly connected to the receipt of notice by Colleton and the payment of outstanding amounts **as of the time of transfer**. The plain meaning of those words—in context with the real property law which governs the Declaration—makes it clear that a former Owner is liable only for amounts accrued during the time of his lot ownership.

Further, the evidence is clear that, regardless of the particular notice required, Colleton received *constructive* notice of the transfer as of the date that the deed from Lee to Bluffton Properties, LLC was recorded (May 28, 2013). (Trial Ex. 2). (*See, Epps v. McCallum Realty Co.*, 139 S.C. 481, 138 S.E. 297 (1927) (holding a deed, once recorded, charges subsequent purchasers or incumbrancers with notice). The outstanding amounts were tabulated through July 31, 2013—two months after record of transfer—as set forth in the August 8, 2013 Order of Judgment against Lee. (Trial Ex. 4). In addition, the evidence is unequivocal—as this Court found—that Colleton had *actual* notice by July 2014. (Trial Order, ¶ 29). Finally, the evidence is unequivocal that “all amounts outstanding **prior to transfer** [were] paid in full” on or about September 23, 2014. (Trial Exs. 4-5, proving satisfaction of judgment against Lee for all amounts owed prior to transfer).

Case law is clear that when a party actually knows about an event, notice has been provided. “Generally, actual notice is synonymous with knowledge.” *Strother v. Lexington County Recreation Commn.*, 479 S.E.2d 822, 826 (S.C. App. 1996), *aff’d as modified*,

504 S.E.2d 117 (S.C. 1998) (citing *Hannah v. United Refrigerated Serv.*, 312 S.C. 42, 430 S.E.2d 539 (Ct.App.1993), *cert. denied*, (December 7, 1993)).

Numerous cases show that, when actual notice is given, additional written notice is not required to maintain a claim, even if additional written notice is specified by a writing; similarly, such circumstances can show that a written notice requirement was waived by a defendant. See *Hammond v. Tilghman Lakes, Inc.*, 367 S.E.2d 446, 295 S.C. 152, 154 (Ct. App. 1987) (“If the contract itself prescribes the manner of giving notice, the parties are bound to comply with its terms . . . However, notice in a prescribed manner is not required **where a party has actual notice** and has not suffered prejudice by the other’s failure strictly to follow the contract.”) (emphasis added); *Little Beaver Enterprises v. Humphreys Railways, Inc.*, 719 F.2d 75, 79 (4th Cir. 1983) (vessel owner was not barred from recovering from ship repairer for breach of express warranty against defective workmanship as the result of vessel owner’s failure to comply with contractual 30-day written notice requirement, because ship repairer had, and acted on, actual notice given by vessel owner and ship repairer was presented with a reasonable opportunity to effect repairs within the 30-day notice period); cf. *Raley v. City of Camden*, 222 S.C. 303, 311, 72 S.E.2d 572, 575 (1952) (where verbal notice was given, and actual notice provided, notice to city was sufficient to constitute actual notice under Workmen’s Compensation Act, even though written notice was not given); cf. *Burgess v. JHM Hotels, LLC*, 2010 WL 1493129, at *6 (D.S.C. Mar. 18, 2010), *report and recommendation adopted in part*, 2010 WL 1493132 (D.S.C. Apr. 13, 2010) (“As far as the Court can tell, the defendant’s actual notice is prima facie evidence that sufficient notice was, in fact, given. At worst, though, it would

seem that actual notice would at least absolve any deficiencies in an employee's attempted but otherwise legally wanting notice. The Court is unaware of any case where a plaintiff's interference claim failed for a technical deficiency in notice given, where the defendant nonetheless had actual notice of the need for FMLA leave.”)

Once Colleton had constructive and/or actual notice of Lee's conveyance, and all amounts outstanding prior to transfer had been paid, then the requirements of the Declaration's § 7.1(c) had been fulfilled, any breach had been cured, and no further damages could arise thereunder.¹⁵ This Court should alter its judgment to conform with the plain language of the covenant at issue and the law in this regard.

C. Alternatively, Section 7.1(c) of the Declaration is void or invalid.

If Colleton's argument as to the force and effect of the Declaration § 7.1(c), (which Colleton claims perpetually binds a former lot owner to ongoing payment obligation for assessments levied against a lot), is given credence, then this Court should strike the Section as void or invalid.

First, this Section potentially presents an unreasonable restraint on the alienation of property and is therefore void.¹⁶

Second, in seeking to hold a former owner liable for a covenant running with the land after his divestment of property, this section is in conflict with the law of real

¹⁵ (Assuming, *arguendo*, that this section of the Declaration is not void or invalid as a matter of law).

¹⁶ Section 1.3 of the Declaration states, “If there are conflicts between any of the Governing Documents and South Carolina law, South Carolina law shall control.” (Trial Ex. 1).

property, as set forth above, and it is therefore void. To get extremely technical, this Court should find as a matter of law that any language in the Declaration that purports to attach personal liability, outside of and apart from ownership of land (§ 7.1, for example) did nothing further than create a mere obligation in gross as between the Declarant and original owner of the property, which did not run with the land and was extinguished by operation of law upon conveyance.

Third, this section is in conflict with other sections of the Declaration, which otherwise make it clear that the obligation to pay assessments is appurtenant to the land, including but not limited to the Preamble,¹⁷ the Declaration of Covenant, Section 1.1 (“Scope and Applicability”), Chapter 12 (“this Chapter authorizes [Colleton] to levy [assessments] against the Lots and collect from the Owner of each Lot. Assessments are secured by a lien on each Lot”), Section 12.5 (“The obligation to pay assessments shall commence as to each Lot on the date on which the Lot is made subject to this Declaration”). Because of the conflict, Section 7.1(c) is ambiguous and should be construed against Colleton and in favor of limiting Lee’s personal liability for assessments to the time period in which he was record Owner of a burdened Lot.

D. The Trial Order overlooks evidence going to Lee’s defenses of accord and satisfaction, estoppel, and violation of the South Carolina Nonprofit Corporation Act.

This Court overlooks or misapprehends evidence showing that Colleton unfairly targeted Lee by virtue of suing him over alleged unpaid assessments in the subject action,

¹⁷ The Declaration “run[s] with the title to such property . . . and shall be binding upon the future owners of any portion of the property . . .” (Trial Ex. 1, Declaration of Covenant)

after having already: (1) obtained two prior judgments (one against Lee and one against Bluffton Properties, LLC); (2) negotiated and settled an alleged ongoing debt which encompassed more than the first judgment against Lee; and (3) satisfied a judgment with Lee – *all of which pertain to assessments for the same Lot A02*. As set forth above, the plain language of the Declaration binds liability for assessments to ownership of property within Colleton River.

Colleton filed this subject action in July, 2016, asserting that it had not received notice of transfer of title of the property – while contemporaneously in the Complaint admitting and asserting that Lee conveyed the lot three and a half years before (December 31, 2012), and admitting and asserting that the deed and title had been recorded in the Office of the Register of Deeds for Beaufort County on May 28, 2013 in Book 03242 at Pgs. 2923-2924-A, which was more than three years prior to this suit.

The evidence is clear that Lee has already paid for liability for his time period as record owner of Lot A02.¹⁸ Yet, Colleton filed the present lawsuit subsequent to Lee's negotiation and payment to it in complete satisfaction of its judgment against him for all obligations. As such, Lee maintains that by being sued a second time and after a negotiated payment for his liability under the plain meaning of the language in the Declaration, he is being treated disparately and unfairly as related to other current and prior lot owners at Colleton River:

¹⁸ Whether this Court wants to consider the \$8,977.46 paid by Lee on September 11, 2014 to be a full and final settlement forever releasing Lee, as Defendant submits it did, or whether it merely satisfied the 2013 judgment, it is undisputed that this payment covered his liability during his period as record owner of Lot A02. As such, Plaintiff is estopped from asserting any liabilities against Lee accruing post-conveyance, or at a minimum, post-notice of conveyance.

“Well, we had settled. There were all of these issues that have been raised after I made the payment, and I just thought the activities of Colleton River were amounting to malicious prosecution at this time, and I said I’m fighting back.” (Trial Tr. p. 112, ll. 13-18).

Further, Colleton has failed to demonstrate that it has any sort of practice of suing similarly-situated former individual property owner of Colleton River for a breach of covenants covering a damages period beyond that grantor’s divestment of his interest. *See*, Tr. Exh. 16, p. 52. The claims brought by Colleton in the subject 2016 lawsuit, and the damages sought therein, should be barred by the doctrines of accord and satisfaction, estoppel (issue/claim preclusion), and a statutory violation of the South Carolina Nonprofit Corporations Act for disparate treatment of its members.¹⁹

III. The relief granted is not properly measured under the facts and law.

As a matter of law, the judgment against Lee should be reduced so as to encompass only those assessments that were levied against lot A02 prior to Lee’s conveyance of the land on December 31, 2012. Alternatively, as a matter of law and in conformance with the Declaration, the judgment against Lee should be reduced so as to encompass only those assessments that were levied prior to the recording of the deed of conveyance, on May 28, 2013, whereupon Colleton had constructive notice of the new ownership of the lot, and Lee was no longer an Owner under the definition and terms of the Declaration. Alternatively, as a matter of equity based upon the facts found by this Court and the fair preponderance of the evidence, the judgment against Lee should be reduced so as to

¹⁹ *See*, S.C. Code § 33-31-610, Differences in rights and obligations of members.

encompass only those assessments that were levied prior to Colleton's undisputed actual notice of Lee's conveyance to Bluffton Properties, LLC in July of 2014, at which point all of Lee's obligations prior to transfer were satisfied. (Order, ¶ 29).

CONCLUSION

For the reasons set forth above, Lee respectfully requests that this Court would grant this Motion.

Respectfully submitted,

FORD WALLACE THOMSON LLC

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Attorneys for Defendant Joel S. Lee

February 24, 2020
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-02722
	)	
COLLETON RIVER PLANTATION CLUB, INC.,	)	NOTICE OF MOTION AND MOTION
	)	TO ALTER OR AMEND
Plaintiff,	)	
	)	
vs.	)	
	)	
JOEL S. LEE,	)	
	)	
Defendant.	)	
_____	)	

Please take notice that Plaintiff Colleton River Plantation Club, Inc. (“Colleton”), by and through its undersigned counsel, shall move before the Honorable Marvin H. Dukes, III, at the Beaufort County Courthouse, 102 Ribaut Road, Beaufort, South Carolina, on the tenth day after service hereof, or at such other time and place as set by the Court, for an Order altering or amending the Trial Order (Case Not Ended) entered by this Court on February 13, 2020 (“Order”). This Motion is made under the authority of Rule 59, SCRCP, on the grounds that the Court has improperly granted a defense verdict on Colleton’s cause of action for breach of contract accompanied by a fraudulent act and for failing to award punitive damages to Colleton based on the clear and convincing evidence of Plaintiff’s intentional, fraudulent conduct.

In the Order the Court stated as to Colleton’s second cause of action for breach of contract accompanied by a fraudulent act that “I decline to rule for the Plaintiff on this cause of action and enter a defense verdict.” (Order at 2). However, the Court’s ruling fails to take into account the vast amount of evidence shown at trial that clearly and convincingly showed that the Plaintiff intentionally and deceptively breached his contract with Colleton in an effort to avoid his debts to Colleton.

“To recover for breach of contract accompanied by a fraudulent act, a plaintiff must establish (1) the contract was breached; (2) the breach was accomplished with a fraudulent intention; and (3) the breach was accompanied by a fraudulent act. [T]he fraudulent act element is met by any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of the another’s property by design.” *Maro v. Lewis*, 389 S.C. 216, 223–224, 697 S.E.2d 684, 688 (Ct. App. 2010). “In an action for breach of contract accompanied by a fraudulent act, the fraudulent act element is met by any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design.” *Id.*

Specifically, Colleton established the following dishonest and unfair acts by the Plaintiff at trial:

1. After having been the Owner since 1993 of Lot A02 in Colleton River Plantation, Lee executed a deed (Title to Real Estate), to Bluffton Properties, LLC, Series I, (hereinafter “Nevada Bluffton Properties, LLC”) bearing date of December 31, 2012, and the deed was not recorded in the Office of the Register of Deeds for Beaufort County, South Carolina until May 28, 2013. Then, the deed was recorded in Book 03242 at Pgs. 2923-2924-A, by which he purported to convey the said Lot A02 (the “Conveyance”), in these circumstances:

- A. The consideration for the Conveyance was only One and No/100’s Dollar (\$1.00), at best a nominal consideration.
- B. The address for Nevada Bluffton Properties, LLC as it was listed on the Deed involved in the Conveyance, as the preparer of the deed, is the same as the address for Thomas B. Burke (“Burke”), the preparer of this Deed, and a purported attorney at law in the State of Wisconsin, but not ever an attorney at law in the State of South Carolina (“Burke”). Further, the address for

Nevada Bluffton Properties, LLC as it was listed on the Deed is also the same as the address for Lee.

- C. Burke functioned as the attorney for both Lee and Nevada Bluffton Properties, LLC, and maintained his office with Lee.
- D. The Conveyance Deed, just like the Deed to Lee in 1993 for Lot A02, made the Conveyance to Nevada Bluffton Properties, LLC subject to the Covenants, etc. as amended.
- E. The Conveyance Deed deceptively did not identify the jurisdiction in which the grantee, Nevada Bluffton Properties, LLC was formed.
- F. The Conveyance, lacking the required written notice to Colleton, and lacking the required further compliance by Nevada Bluffton Properties, LLC with the reasonable requirements of the Board of Colleton (pursuant to Covenants Section 7.1(c)), and without the proffer of a Designated User, constituted a definite act, or series of acts, including by silence, that were characterized by deception, dishonesty, unfair dealing, and a reckless disregard for the truth, resulting, in effect, in the misappropriation by Lee, by design of Lee and Burke, of Colleton's property rights and to the collection of its Assessments.¹
- G. Lee's and Burke's argument of the rationale of estate planning to remove Lot A02 (and other lots in the similar communities of Belfair Plantation and Berkeley Hall Plantation) from Lee's individual name, so as to avoid ancillary proceedings, clearly lacks credibility and in fact was a dishonest and

¹ See Paragraphs 6, 7, 8, 12, 13, 14, 15, 16, 17, 18, 19, and 20 of the Order's Findings of Facts, which define and describe the sections of Amendment to the Third Amended and Restated Colleton River Plantation Declaration of Covenants and Provisions for Membership in Colleton River Plantation Club, Inc that are applicable to Lee and that Lee violated and failed to comply with.

deceptive act presenting both unfair dealing and a reckless disregard for the truth. This conclusion was demonstrated at trial when it was proven that Lee disavowed knowledge or understanding of ancillary administration, while, after December 31, 2012, Lee owned other real estate in Beaufort County that he did not transfer out of his name for alleged estate planning purposes to avoid ancillary administration, to wit:

- i. Lot and home at 21 Barnacle Road in the Town of Hilton Head Island, that he purchased in 1989 and held in his own name past 2012, into May of 2018, when he transferred that property into his revocable living trust; and
- ii. he did not know at trial if the 21 Barnacle Road property would or would not have to go through ancillary proceedings if he had died between December 31, 2012 and May 16, 2018.

H. Lee's efforts at trial to explain that, in his estate planning with Burke, Lee transferred Lot A02 in Colleton River Plantation, and the lots in the other two communities to Tom Burke because "you're 20 years younger than me. These lots are valueless. Someday they may be worth something. I'm going to transfer them and they're yours. The theory that someday they might be worth something again," lacked any meaningful credibility. This lack of credibility is particularly shown by noting the conflicting testimony of Lee that he did still own the lots in Berkeley and Belfair through a couple of LLCs, which are the same lots which, with Lot A02 of Colleton River Plantation, were deeded on December 31, 2012 to Nevada Bluffton Properties, LLC. Contributing to

this conclusion was Burke's testimony that he had no ownership of Nevada Bluffton Properties, LLC, in spite of Lee's testimony.

- I. The deeds into Nevada Bluffton Properties, LLC for the Colleton Lot A02 and the other lots at Belfair Plantation and Berkeley Hall Plantation were simultaneous, dated December 31, 2012.
- J. Burke selected Nevada for the organization of Nevada Bluffton Properties, LLC because they offered the ability to have "series." As such, the transfer of Lot A02 of Colleton River Plantation was made to Nevada Bluffton Properties, LLC, Series 1, and the transfers of the Berkeley and Belfair lots were made, respectively, to the same LLC, Series 2 and then Series 3.
- K. Lee believed the serialized forms of Nevada Bluffton Properties, LLC were actually three different LLCs.
- L. No arrangements were made to capitalize Nevada Bluffton Properties, LLC adequately to carry forward the liabilities associated with ownership of Colleton Lot A02 and the other lots at Belfair Plantation and Berkeley Hall Plantation.
- M. In executing these three deeds into Nevada Bluffton Properties, LLC, Lee made no inquiry into whether or not those transfers terminated his personal liabilities to Colleton or what was required for the transfer to comply with the Covenants.
- N. The conduct of Lee and Burke was intentional.
- O. The Deed involved in the Conveyance, and the Conveyance to Nevada Bluffton Properties, LLC, was a sham attempt by the Defendant Lee and

Burke to avoid the application to Lee of the Colleton Governing Documents and to defraud Lee's creditor, Colleton.

2. Furthermore, Lee's conduct, with the assistance of Burke, in breaching Lee's contractual relationship with Colleton was also accompanied by at least the following additional deceptive and fraudulent acts:

- A. By avoiding the giving of contractually required notices to Colleton;
- B. By granting the Deed of Conveyance for at most nominal consideration, while retaining ownership of Nevada Bluffton Properties, LLC, after having denied his ownership;
- C. By a Deed of Conveyance that specifically subjected the transfer and Lot A02 to continuing contractual responsibility to Colleton under the Covenants, without any consideration, investigation, or compliance with the requirements of that contractual responsibility.
- D. By using Burke, his personal lawyer who had represented Lee for about thirty-five years when his deposition was taken in 2018, to help a staff person in Lee's office to organize the Nevada limited liability company, Bluffton Properties, LLC, and then obfuscating the ownership thereof by stating, in his own testimony in this matter, variously that Lee was the owner of Bluffton Properties, LLC and/or that Burke was the owner or member of Bluffton Properties, LLC, while the testimony of Mr. Burke was that he had no knowledge of the identity of the members of Bluffton Properties, LLC;

- E. By not conducting a pre-Closing title examination which would have revealed again the applicability of the Colleton Covenants and other Governing Documents, and their contractual requirements;
- F. By not obtaining title insurance for Nevada Bluffton Properties, LLC;
- G. By not using – as required by law in South Carolina for transfers of residential property – a licensed South Carolina lawyer to prepare the Deed of Conveyance, then to supervise the Closing thereof including appropriate notices and cooperation with Colleton, and then to supervise the recording of the Deed of Conveyance and other public-record documents with the Office of the Register of Deeds for Beaufort County, South Carolina;
- H. By not verifying that there were no conflicting names in South Carolina for Bluffton Properties, LLC; and
- I. By condoning and being responsible, as client principal, for the acts of Mr. Burke, Lee's attorney and agent.

Lee's breach of his contractual relationship with Colleton was clearly accomplished by Lee with fraudulent intention, accompanied by the deceptive and fraudulent acts described above, constituting dishonesty in fact, unfair dealing, and the design to appropriate Colleton's property rights—its right to collect its Assessments from Lee. Due to Lee's fraudulent, intentional, and deceptive conduct Colleton is entitled to the recovery of a personal judgment against Lee for breach of contract accompanied by a fraudulent act and for punitive damages in an amount to be determined by the Court at a subsequent hearing, according to law. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985); S.C. Code Ann. §§ 15-32-510, *et seq.*

Colleton respectfully asks this Court to amend its Order in this matter to grant judgment against Lee for breach of contract accompanied by a fraudulent act, and to award punitive damages against Lee and in favor of Colleton for Lee's deceptive, dishonest, and intentionally fraudulent conduct.

Respectfully Submitted,

JOHNSON & DAVIS, PA

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Bluffton, South Carolina
February 24, 2020

COLLETON RIVER vs JOEL S. LEE
2015-CP-07-02722 -

1 IN THE COURT OF COMMON PLEAS
2 FOURTEENTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA
4 COUNTY OF BEAUFORT

5 COLLETON RIVER PLANTATION CLUB, INC.,
6 Plaintiff,

7
8
9
10 vs. CIVIL ACTION NUMBER
11 2015-CP-07-02722

12
13
14 JOEL S. LEE,
15 Defendant.

16 -----/

17
18 The trial of the above-entitled cause,
19 taken pursuant to Notice and agreement, before
20 Amanda Bowen, Stenographic Reporter and Notary
21 Public, at Beaufort Magistrate Court in front of
22 the Honorable Judge Marvin Dukes, 104 Ribaut
23 Road, Beaufort, South Carolina, on the 5th day
24 of December 2018, commencing at or about the
25 hour of 11:46 a.m.



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18 - - -



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21
22
23
24
25

I N D E X

PAGE

EXHIBIT INDEX	----- 4
EXAMINATION OF STEPHANIE KERR:	
By Mr. Johnson	----- 20
By Mr. Thomson	----- 48
EXAMINATION OF JOEL LEE:	
By Mr. Thomson	----- 103
By Mr. Johnson	----- 115
CERTIFICATE	----- 143



1	D O C U M E N T A R Y E V I D E N C E		
2	NUMBER	DESCRIPTION	PAGE
3	EX-1	Amendment to third amended	
4	EX-2	Title to real estate	
5	EX-3	Title to real estate	
6	EX-4	Order of judgment	
7	EX-5	Satisfaction and release of judgment	
8	EX-6	Order of judgment	
9	EX-7	Payment policy	
10	EX-8	Charges/balance statement	
11	EX-9	Correspondence from TekCollect	
12	EX-10	Defendant's requests for admission	
13	EX-11	Beaufort County tax screen	
14	EX-12	Resolution of board of directors	
15	EX-13	Deposition of Joel S. Lee	
16	EX-14	Deposition of Thomas Burke	
17	EX-15	SC Secretary of State	
18	EX-16	Deposition of Stephanie Kerr	
19	EX-17	SC Secretary of State	
20		Articles of organization	74
21	EX-18	Affidavit of service	75
22	EX-19	Receipt	110
23	EX-20	Letter	123
24	EX-21	Feedback form	123
25			



1 (continued)

D O C U M E N T A R Y E V I D E N C E

2

NUMBER	DESCRIPTION	PAGE
--------	-------------	------

3

EX-22	Barnacle Road	127
-------	---------------	-----

4

EX-23	SC Quit claim deed	127
-------	--------------------	-----

5

EX-24	Timeline according to defendant	134
-------	---------------------------------	-----

6

7

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9 REPORTER'S NOTE - EXHIBITS 1 THROUGH 16 WERE

10 STIPULATED JOINT EXHIBITS FROM BOTH PARTIES

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1 THE COURT: That's it. We did
2 just take a break, but if anyone needs
3 a break, we can do that before we
4 start.

5 So my plan would be to put -- if
6 my mother stops calling me --

7 MR. JOHNSON: She's got more
8 priority over any of us here, Judge.

9 THE COURT: And maybe go to about
10 12:30, try to eat lunch, and keep on
11 going after that. All right.

12 So well, then call your first
13 witness, then, please, sir.

14 MR. JOHNSON: All right, sir. I'd
15 like to publish a couple of things
16 first.

17 THE COURT: All right.

18 MR. JOHNSON: As with the
19 discussion we had on the motion, I hope
20 it will simplify the issue and focus on
21 them. I like to draw the court's
22 attention to what is marked as Exhibit
23 15 under the joint stipulation of the
24 exhibits.

25 THE COURT: Thank you all for



1 doing that, by the way.

2 MR. JOHNSON: Counsel on both
3 sides thought it was a good idea for
4 the court to expedite the entire
5 process.

6 THE COURT: That's great.

7 MR. JOHNSON: We appreciate Mr.
8 Thomson's cooperation with that.

9 MR. THOMSON: Likewise.

10 MR. JOHNSON: I want to bring this
11 to the Court's attention. I did notice
12 a minute ago that Mr. Thomson in regard
13 to the last element of the summary
14 judgment motion said it's undisputed
15 that the plaintiff, Colleton River
16 Plantation Club, is a South Carolina
17 corporation. We made this an exhibit
18 because the first or second paragraph
19 of Mr. Lee's amended answer states that
20 they lack information sufficient to
21 form -- to know to form an opinion as
22 to the truth or accuracy of our
23 allegation. The plaintiff is such a
24 corporation, and so we have Exhibit 15
25 and now Mr. Thomson's acknowledgment



1 that it's a nonprofit corporation under
2 South Carolina law.

3 And if you look at the pages
4 there, you will see it was filed in the
5 early '90s. It was subsequently -- and
6 it was filed under the old corporate
7 code as you can tell by the form, and
8 it subsequently amended and it shows up
9 as a mutual benefit or member-type
10 corporation, which is completely
11 typical and consistent as I understand
12 it with practice regarding POAs around
13 the state. So I wanted to clear that
14 up to begin with.

15 And second thing I want to draw to
16 the Court's attention is Exhibit 3.
17 Exhibit 3 is a copy of the deed to Mr.
18 Lee back in 1993. The grand toll was
19 Colleton River Company, LP or limited
20 partnership, for the subject lot which
21 is Lot A-02 Phase 1. Mr. Lee paid
22 \$129,500 here and the deed indicates it
23 was drawn by the State of Georgia in
24 Griffin, and I want to point out to the
25 court that the property description in



1 this deed in the first paragraph
2 contains the legal description of the
3 Lot A-02 by reference to a recorded
4 plat.

5 The second paragraph of the legal
6 description states that this conveyance
7 is subject to all easements shown on
8 the plat of record and to that certain
9 Colleton River Plantation declaration
10 of covenants and provisions for
11 membership in Colleton River Plantation
12 Club, Inc., which declaration is dated
13 June 11th of 1991, and recorded in the
14 office of the Register of Main
15 Conveyances for Beaufort County, South
16 Carolina in Deed Book 579 at Page 1796,
17 and this is the point I want to
18 emphasize, and may be amended from time
19 to time.

20 And then on that same theme, I
21 would refer the Court to Exhibit 2 from
22 the stipulated exhibits, which is a
23 deed that Mr. Lee apparently executed
24 with a date of December 31, 2012,
25 conveying subject property in terms of



1 what's reflected by this deed to
2 Bluffton Properties, LLC, Series 1, and
3 it contains the same language. It
4 looks to be a literal copy of the
5 property description from the deed into
6 Mr. Lee referring to the original 1991
7 covenants and as may be amended from
8 time to time, although, this deed was
9 done 19 years or so later.

10 Then I would call to the Court's
11 attention to Exhibit 1, and I'm going
12 to ask the Court to permit to publish
13 some of the covenants section that we
14 have been discussing today and note
15 they're also referenced in the amended
16 complaint in the case.

17 First is Section 12.6.

18 THE COURT: Help me out with some
19 pages, if you would.

20 MR. JOHNSON: Let me see. Is it
21 page 31 in here?

22 MR. WILLIAMS: Yes.

23 THE COURT: I got it. 31.

24 MR. JOHNSON: 31. 12.6. I want
25 to publish a little bit of this. 12.6,



1 obligation for assessments. I'm
2 quoting it. "By buying a lot in
3 Colleton River Plantation, each owner
4 agrees to pay all assessments levied
5 against his or her rot. If the owner
6 does not pay on time, that owner will
7 be charged late fees or charges of all
8 amounts due. Owners may not claim a
9 reduction in their assessments due to
10 the actions or inactions by the club.
11 By accepting a deed or entering into a
12 recorded contract to purchase any lot,
13 each owner covenants and agrees to pay
14 all assessments in the governing
15 documents, which is a defined term in
16 these covenants. Together with any
17 collection costs, interest or late
18 charges equal to 1.5 percent per month
19 of the unpaid amount not to exceed the
20 maximum charges allowed by law. Any
21 delinquency shall be the personal
22 obligation of each owner and lien upon
23 each lot until paid in full. Upon a
24 transfer of title to a lot, the grantee
25 shall be jointly and severally liable



1 for any assessments and other charges
2 due at the time of conveyance."

3 I'm going to skip the next
4 paragraph because I don't think it
5 needs focus.

6 Continuing with the quotation, "no
7 owner may exempt himself or herself by
8 liability for assessments by nonuse of
9 common property, abandonment of his or
10 her lot or nonuse of services provided
11 to all lots. The obligations to pay
12 assessments is a separate and
13 independent covenant on the part of
14 each owner. No diminution or abatement
15 of assessments or setoff shall be
16 claimed or allowed for any alleged
17 failure of the club or board to take
18 some action or perform some function
19 required of it or inconvenience or
20 discomfort arising from the making of
21 repairs or improvements or from any
22 other action it, the club or board
23 takes."

24 All right. Then I would ask the
25 Court to look at Section 12.7B on page



1 32 of **Exhibit 1**, which says, "The club
2 may bid for the lot at the foreclosure
3 sale and acquire a whole lease or can
4 convey the lot."

5 And then it goes on and talks
6 about who can vote. And it says at the
7 end of that paragraph, "The club may
8 sue for unpaid assessments and other
9 charges authorized here under without
10 foreclosing or waiving the liens
11 securing the same in addition to
12 pursuing any and all remedies by law to
13 enforce the lien."

14 And then I would like to go to
15 Section 8.4 on page 22 of **Exhibit 1**
16 entitled, "Attorney's fees and costs."

17 "In any action to enforce the
18 governing documents if the club
19 prevails, it shall be entitled all
20 costs including without limitation;
21 attorney's fees and court costs
22 reasonably occurred in such action."

23 I'd like to go to 14.2 on page 40.
24 Subparagraph A, Determining designated
25 user. "Subject to the terms and



1 provisions of this declaration and
2 other rules and regulations established
3 by the board, each lot that is not
4 exempt from assessments under Section
5 12.8," which we were close to. I don't
6 think this lot anywhere in that
7 category, so I'm not focusing on that.

8 Continuing a quote, "Shall have a
9 person who shall be the designated user
10 of such lot. Each lot may assign only
11 one designated user for the lot."

12 Subpart 1 of 14.2, Subparagraph A,
13 refers to ownership by an individual
14 and describes who the designated user
15 is when an individual owns the lot and
16 Subpart 2, refers to joint ownership
17 and ownership by a legal entity and
18 says, "In the event any lot is owned by
19 more than one owner or a legal entity,
20 the collective owners of such lot shall
21 unanimously designate one of the owners
22 of at least a 25 percent interest in
23 the lot or entity as the designated
24 user who shall have the right,
25 privilege, easement of access to and



1 use enjoyment of the recreational
2 facilities for a minimum of 12 months."

3 Continuing quote, "Notice of this
4 designation shall be delivered to the
5 board and is subject to board approval
6 as provided in Section 14.2 E below.
7 If approved by the board, such
8 individuals shall be deemed the
9 designated user of such lot and shall
10 be entitled to the use privileges set
11 forth herein."

12 Section 14, Sub E on page 41
13 concerns, as we just referenced, the
14 board approval of designated users. It
15 states, "The board shall establish
16 reasonable criteria for approval of
17 designated users included but not
18 limited to standards relating to
19 conduct and creditworthiness. Name of
20 the proposed designates user of each
21 lot other than a designated user under
22 14.2 A1, which refers to the ownership
23 by an individual, shall be provide to
24 the board by the owner of such lot for
25 prior approval and annually reviewed by



1 the board. No owner may change the
2 designated --" "no owner may change the
3 designated user more than once per year
4 except upon the death or incapacity of
5 the designated user. The board shall
6 keep appropriate records of the
7 designated user of each lot."

8 Section 14.2, Subparagraph F also
9 on page 41 on Exhibit 1 is entitled
10 "Payment of operating assessments."

11 "Every designated user shall be
12 entitled to use privileges as set forth
13 in this Chapter 14 and shall be
14 responsible for the payment of the
15 annual operating assessment for such
16 lot. In the event any nonowner or
17 co-owner designated user does not pay
18 his or her operating assessments, the
19 owner of such lot or in the case of
20 co-owners, the remaining co-owners
21 shall be responsible for such payment."

22 And then I would like to turn
23 Section 7.1 of Exhibit 1 on page 17.
24 This is entitled, "Use occupancy and
25 transfer of interest in lots." Excuse



1 me. Subsection C is on page 18,
2 "Transfer of title."
3 Subject to section 19.2 and I will
4 just reference for the record that 19.2
5 concerns circumstances where the club
6 exercises what is granted in that
7 section as a right of repurchase after
8 appropriate notice should it determine
9 to repurchase a lot. So it says here
10 in -- excuse me -- 7.1, Sub C on page
11 18 of **Exhibit 1** entitled, "Transfer of
12 title," subject to Section 19.2, "Any
13 owner design to sell or otherwise
14 transfer title to his or her lot shall
15 give the board at least 30 days prior
16 written notice or transferee, the date
17 of such transfer of title and such
18 other information as the board may
19 reasonably require. The person
20 transferring title shall continue to be
21 jointly and severally responsible with
22 the person accepting title for all
23 obligations of the owner including
24 assessment obligations until the date
25 upon which the board receives such



1 notice and all amounts outstanding
2 prior to transfer are paid in full not
3 withstanding the transfer of title."

4 I ask the Court to take notice of
5 the interrelationship in 17 -- excuse
6 me -- 7.1 C, the information that the
7 board may be reasonably require with
8 the mandate in Section 14.2 E
9 concerning reasonable criteria
10 standards relating to conduct and
11 creditworthiness.

12 MR. THOMSON: And I may object to
13 that.

14 THE COURT: What's the objection?

15 MR. THOMSON: As far as Mr.
16 Johnson's characterization of the
17 interrelation between those two
18 covenants. And to me, that seems to be
19 more of a characterization of testimony
20 that should be offered from a witness
21 not from an attorney interpreting
22 whether these -- whether these
23 covenants how they are related or not.

24 THE COURT: Okay. And I'm going
25 to let it in. I'm sure we will come



1 back over and over again, so I'm going
2 to end up reading them myself, but I
3 appreciate anybody's help one way or
4 the other with them.

5 MR. JOHNSON: With that said, Your
6 Honor, I'll call to the stand Stephanie
7 Kerr, K-e-r-r.

8 THE COURT: All right.

9 MR. JOHNSON: Do you want her to
10 move down here, Judge?

11 THE COURT: I think our court
12 reporter will probably appreciate that.

13 STEPHANIE KERR,
14 a witness herein, having been duly sworn,
15 testified upon her oath as follows:

16 THE WITNESS: I do.

17 THE COURT: Can you state your
18 whole name for the record, please?

19 THE WITNESS: Stephanie Lindenburg
20 Kerr.

21 THE COURT: And I'm going to ask
22 you to speak up just a little bit in
23 your answers and please answer the
24 questions that Mr. Johnson may have for
25 you.



1 THE WITNESS: Okay.

2 EXAMINATION

3 BY MR. JOHNSON:

4 Q Ms. Kerr, would you give us first a
5 statement of what your current occupation and
6 job is?

7 A Yes. I am the -- I work for Colleton
8 River. I'm the chief financial officer and the
9 assistant treasurer.

10 Q And that's Colleton River Plantation
11 Club, Inc.?

12 A Correct.

13 Q All right. And how long have you been
14 in that capacity?

15 A Since July of 2013.

16 Q And prior to that, what was your
17 employment?

18 A Prior to that, I was the chief
19 financial officer most recently at Moss Creek
20 Plantation.

21 Q That's in the Bluffton area?

22 A Correct. It's next door to Colleton
23 River. I worked there from June of 2007 until
24 July 2013.

25 Q Which is when you went to Colleton,



1 correct?

2 A Correct.

3 Q Tell us what your academic background
4 is.

5 A I have a bachelors degree from the
6 University of Virginia. I have a masters degree
7 in accounting and tax also from the University
8 of Virginia. I'm a certified public accountant
9 with a license in Virginia.

10 Q Okay. When did you finish your
11 education that you just described?

12 A I received my undergraduate in December
13 1992 and I received my masters degree in June of
14 1997.

15 Q What, generally, was your work activity
16 between 1997 and when you went to work at Moss
17 Creek?

18 A Beginning in 1997 I worked as a public
19 -- certified public accountant in Virginia for a
20 public accounting firm. Beyond that, I worked
21 predominantly as -- in control chief financial
22 officer for several small, privately-held
23 companies, and I also worked for a year as a tax
24 accountant in city government in
25 Charlottesville, Virginia.



1 Q So what you've described in your
2 testimony pretty much covers your work
3 experience; is that right?

4 A Yes.

5 Q In your position at -- if we can all
6 stipulate as Colleton, we're talking about the
7 plaintiff unless we say otherwise?

8 MR. THOMSON: Sure. Keep the
9 record straight.

10 BY MR. JOHNSON:

11 Q Tell us what your duties are and your
12 job at Colleton today?

13 A My duties include -- I'm responsible
14 for all of the accounting and financial
15 reporting for the club. I'm responsible for
16 insurance. I'm responsible for collection of
17 monies owed to the club, which is why I'm here
18 today. I'm responsible as an officer to uphold
19 the governing documents and ensure compliance
20 with the documents. I also report monthly to
21 both the board of directors and the finance
22 committee.

23 Q Okay. Do you have someone in the staff
24 of Colleton to whom you also report?

25 A Yes. I report directly to the general



1 manager and chief operating officer.

2 Q And what is that person's name?

3 A Timothy Bakels.

4 Q B-a-k-e-l-s.

5 Have those been the same duties since
6 you came to work at Colleton?

7 A Yes.

8 Q All right. Now, just for the record,
9 generally, describe the amenities and
10 recreational facilities of Colleton.

11 A Colleton is a member-owned, private
12 club community, contains two 18-hole golf
13 courses; a six-hole, Par 3 course, short game
14 practice anywhere for golf as well as a golf
15 learning center, a swimming pool; three private
16 dining facilities, a community dock, six tennis
17 courts, a playground, most recently a dog park
18 and various other amenities for member use.

19 Q All right. It has a controlled entry
20 gate system as well?

21 A Correct. The community is -- has
22 24-hour security presence onsite and it's
23 encompassed in one, 1,500-acre parcel.

24 Q All right. Can you tell us
25 approximately how many lots are inside of



1 Colleton?

2 A There are just under 700 lots in the
3 community. About half of which have homes on
4 them at this point.

5 Q All right. Who owns those recreational
6 facilities and amenities that you have
7 described?

8 A The members own those amenities and the
9 common property by virtue of their deed to the
10 property.

11 Q So -- and does that include the
12 roadways inside of Colleton?

13 A Yes.

14 Q So there's not some other corporation
15 or entity that owns any of the amenities and
16 common areas and recreational facilities at
17 Colleton. Is that what you're saying?

18 A That's correct.

19 Q Now, you have become familiar with the
20 covenants, I presume?

21 A Yes.

22 Q Under the Colleton covenants structure
23 are different assessment rates or
24 responsibilities applied to a lot depending on
25 whether it is unimproved with no house or



1 improved with a house on it?

2 A No. Right now membership -- membership
3 in a property is the only form of membership or
4 ownership at this point in time. There is no
5 differentiation between a property that has a
6 house on it and a property that does not have a
7 house on it.

8 Q So a property that has no house is
9 literally the same amount that a property that
10 has a house on it?

11 A Yes.

12 Q In terms of the assessments?

13 A Yes, the same rates and privileges.

14 Q And that has always been that way as
15 far as you know?

16 A As far as I know.

17 Q Are other such establishments that are
18 open to the public inside Colleton River's
19 boundaries?

20 A No.

21 Q Is the Colleton River -- are the
22 Colleton River golf courses open for public
23 play?

24 A No.

25 Q And the same is true with the other



1 facilities that you described?

2 A Correct.

3 Q Okay. Placed before you is a copy of
4 Exhibit 1 to these proceedings. This document's
5 entitled "Amendment to the Third Amended and
6 Restated Colleton River Plantation Declaration
7 of Covenants and Provisions for Membership in
8 Colleton River Plantation Club, Inc." It has
9 Beaufort County, South Carolina ROD or
10 registered deed stamp dated December 6, 2007.

11 Are you familiar with this document?

12 A Yes.

13 Q Have there been any iterations of the
14 covenants since this iteration in April -- it's
15 recorded in April 2007. Have there been any new
16 versions of it?

17 A No.

18 Q Have there been a couple of amendments?

19 A There have been amendments.

20 Q Okay. All right. I'm going to ask you
21 to tell me or tell us for the record how in the
22 exercise of your responsibilities on behalf of
23 Colleton, you consider the covenants and any
24 amendments in managing your job description with
25 regard to the finances and the assessments and



1 the collections for Colleton?

2 A All of our -- all of our work is based
3 on the guidance that is provided in the
4 covenants and any other governing documents
5 related to thereto, whether it be bylaws,
6 policies, or board resolutions.

7 Q All right. Okay. Based on all of
8 that -- you have a staff that works for you?

9 A Correct.

10 Q And you have several people?

11 A Correct.

12 Q And I say worked for you, they work for
13 Colleton, but work under your direction,
14 correct?

15 A Yes.

16 Q Based on that, do you have procedures
17 or -- rephrase that, please.

18 Based on that, do you determine how
19 much each owner owes at any given time to the
20 club?

21 A Yes.

22 Q Do you or your office set the
23 assessments per owner?

24 A No.

25 Q Who sets those?



1 A The board of directors.

2 Q Of Colleton?

3 A Correct.

4 Q And who elects the board of directors
5 of Colleton?

6 A The owner members elect the board of
7 directors.

8 Q In the course of your duties, have you
9 become familiar with the name of Joel Lee?

10 A Yes.

11 Q Okay. I'm going to ask you to turn to
12 -- excuse me -- I'll do something different.
13 Turn to Exhibit 7 here, if you would, please. I
14 think I got one page too far. This is a
15 document in the record entitled Colleton River
16 Plantation Club, Inc. payment Policy," and it's
17 apparently last revised March 2015. Do you see
18 that?

19 A Yes.

20 Q Describe for us generally what this
21 document is and how it relates to you in your
22 job at Colleton.

23 A This document is a summary of the
24 company's payment policies and the collection
25 efforts we make in that regard.



1 Q Okay. Now, I want you to look next to
2 Exhibit 8 that's in the record. Tell us what
3 that is.

4 A This is an accumulation of the billing
5 history and payment history for Joel Lee with a
6 start date of October 2nd. This was discussed
7 in the motion prior to this. Starts with legal
8 fees on October 2nd.

9 Q Of 2012?

10 A Of 2012. Reflects the payments that
11 were made or the credits that were made as a
12 result of the settlement previously discussed
13 related to the original lawsuit against Mr. Lee
14 and then continues to the most current billing
15 date, which is November 30th of this year.

16 Q All right. And this accumulation over
17 these several pages comes to the total of how
18 much?

19 A \$241,456.43.

20 Q As of November 30, 2018?

21 A Correct.

22 Q And, of course, future things may
23 continue to accrue, correct?

24 A Correct.

25 Q In terms of the category of what's in



1 here, ask you to just go through and just
2 repeat, not each entry, but the category, for
3 example, the first entry is legal fees?

4 A Correct.

5 Q The second is delinquent fee and the
6 third is administrative fees and the fourth is
7 membership dues. Do you see that?

8 A I understand.

9 Q So I want you -- we agreed on those
10 four and just identify the other categories of
11 charges that are reflected in this Exhibit 8?

12 A Do you want me to begin with the legal
13 fees?

14 Q Sure. And the categories?

15 A Category legal fee as charged in the
16 collection of the account per the payment
17 policy, which we just looked at, and per the
18 guidance provided in the covenants, specifically
19 in Section 12.6, I believe.

20 Delinquency fee, that also comes from
21 the payment policy. I don't believe we charged
22 this at that time, but we did charge that.

23 Administration, that would be the same
24 thing in order of payment policy.

25 Membership dues as provided for in the



1 covenants as a requirement and as determined by
2 the board of directors. The billing cycle for
3 that is specified by the board.

4 At this point this is semi-annual
5 billing to all members for both operating
6 assessments and replacement reserve assessments.
7 The interest is provided for --

8 Q Let me back up to the reserve fees.
9 What is that?

10 A Replacement reserve assessment is a
11 separate assessment that is also outlined in the
12 covenants. It is simply a separate category of
13 assessments, but it applies to all members.

14 Q All right.

15 A And again that's provided for in the
16 covenants.

17 Q Then you have a category of interest?

18 A Interest, that is provided for in the
19 covenants in Section 12.6 and again in the
20 payment policy. The clubhouse assessment, which
21 you see, beginning in March of 2013 is a prior
22 special assessment that has expired, but that
23 was a special assessment that was approved by a
24 membership vote as outlined in the covenants.

25 Q All right. And there's a lot



1 maintenance. I'm skipping down.

2 A Lot maintenance is another fee related
3 to the cleanup to bush-hogging or lot-clearing
4 work, work that is done on unimproved lots.
5 This is provided for in the corporate documents.
6 I'm not sure where, but if we need to know
7 specifically, we could get that answer.

8 Q Okay. And then skipping down there is
9 a locker fee. What is that?

10 A That would be for the use of the
11 locker, a golf locker, on property.

12 Q In the men's locker room --

13 A Correct.

14 Q -- presumably?

15 A Correct.

16 Q All right. And then you mentioned
17 bush-hogging and I see further down there is
18 reference to bush-hogging.

19 A Bush-hogging is really the same thing
20 as lot maintenance. It's one -- one is
21 bush-hogging and/or land maintenance are really
22 interchangeable terms. The work that was done
23 anywhere between mowing and a little more
24 extensive clearing work depending on the state
25 of the property.



1 Q All right. All right. Do you see any
2 other categories of charges that we have not
3 discussed?

4 A No. I see one.

5 Q All right.

6 A I'll just clarify.

7 Q Give us the date.

8 A July 1st of 2017. There's an entry for
9 hurricane cleanup service. This is also along
10 the same lines as bush-hogging and lot clearing.
11 Substantially more work after the hurricane when
12 there were trees to be removed and items of that
13 nature.

14 Q Okay.

15 A Same category, just described
16 differently.

17 Q All right. Now, do you have -- let me
18 ask you this: On page 1 of Exhibit 8, the top
19 item entree is October 2, 2012, legal fees. I'm
20 just reading here the amount. \$750, correct?

21 A Correct.

22 Q And that left a balance of \$750,
23 correct?

24 A Correct.

25 Q So that would be mean the immediately



1 preceding balance was zero?

2 A Yes.

3 Q All right. In the notes, there is a
4 category in Exhibit 8, additional information,
5 down the center column and several pages over in
6 the November 2016, additional information, there
7 is a designation of full year. Please explain
8 that.

9 A According to our payment policy, which
10 we just looked at, when an account becomes
11 delinquent or, in other words, is in a state of
12 nonpayment for several periods of time, our
13 policy provides for the acceleration of the
14 billing of an entire year's dues in order to
15 make all sums for the year due at payable as
16 soon as possible. This simplifies the
17 collection process.

18 Q All right. And further down on that
19 same page, which is page 3 of Exhibit 8, in that
20 center column of additional information is a
21 couple of words, a couple of appearances of the
22 word "accelerated," is that the same thing as
23 full year?

24 A Yes, it's the same thing.

25 Q Okay. All right. Were -- all right.



1 Now, tell us again when you came to work at
2 Colleton?

3 A I came to work at Colleton in July of
4 2013.

5 Q All right. July of 2013. Okay. Were
6 you directly involved in the TekCollect
7 settlement business in 2014?

8 A I was not directly involved, but it
9 would have been managed by my department.

10 Q All right. Looking at page 2 of
11 **Exhibit 8** where there are several entries for
12 payment and adjustments related to TekCollect.
13 Can you -- there are four lines. Can you walk
14 through each one of those and explain what you
15 know about those?

16 A The attempt -- the reflection here is
17 for the entire settlement to show up in a form
18 of a credit. The breakdown, in my recollection,
19 would be along the lines -- just take one line
20 at a time?

21 Q Yes, ma'am.

22 A The \$70,630 number is what I believe
23 the amount we received from TekCollect after
24 they received money from Mr. Lee. The line
25 underneath that would be the balance of what Mr.



1 Lee paid that TekCollect reserved for itself in
2 the form of a fee. The rest of the entries
3 there are simply establishing the credit for the
4 balance of the judgment.

5 Q All right. Okay. And so once that was
6 applied, it left a balance due of how much money
7 on October 31, 2014?

8 A \$22,457.10.

9 Q Okay. Is your department in any way
10 involved in the designated user process between
11 the members and the board?

12 A Yes.

13 Q And describe that, please.

14 A We -- my department is responsible for
15 real estate closings and in that process,
16 generally, with it --with exchange with closing
17 attorneys, we collect the information that the
18 board asks us to collect as required by the
19 documentation in the covenants and the other --
20 our other corporate documents. We -- the
21 information that we collect relative to property
22 ownership, member information, and designated
23 user information, the designated user
24 information, we then submit to the board for
25 approval.



1 On an annual basis, we do take the
2 designated user information for owner-designated
3 user and nonowner designated users, albeit that
4 is not what we're talking about today, to the
5 board every year.

6 Q Okay. So is it fair to say that your
7 office is the funnel to get that information to
8 the board?

9 A Correct.

10 Q All right. I ask you to take a look at
11 covenants section that would be Exhibit 1, 14.2
12 E.

13 A I'm there.

14 Q And I'm focused on the first part of
15 that. First sentence, "The board shall
16 establish reasonable criteria for proof of
17 designated users including but not limited to
18 standards related to conduct and
19 creditworthiness."

20 What information in light of those
21 covenants do you provide to the board regarding
22 designated users?

23 A For owner-designated users, we
24 generally request a copy of individual tax
25 returns in the event of an individual as far as



1 creditworthiness goes. We also for designated
2 users for legal entity owners or purchasers, we
3 provide information as to the relative ownership
4 of the entity, percentages of ownership, and
5 conformation of deed information, et cetera.

6 Q And do you provide information of other
7 clubs that folks have been involved in so they
8 can be checked out for their conduct standards?

9 A We do that for -- yes, we do that on a
10 limited basis, yes.

11 Q All right. And what financial
12 information do you provide for the designated
13 user of a legal entity like an LLC?

14 A At this point we ask for a tax return.

15 Q Okay. All right. **Exhibit 2** is a deed
16 for

17 Mr. Lee from Bluffton Properties, LLC, Series 1
18 that bears the date of December 31, 2012, but
19 was not recorded in the Beaufort ROD until May
20 28, 2013, according to the stamp at the top of
21 this exhibit. Do you see that?

22 A Yes.

23 Q All right. Has anybody ever provided
24 your department or to your knowledge anybody in
25 Colleton any information that would include the



1 ownership of Bluffton Properties, LLC, Series 1
2 or whatever. Has that ever happened?

3 A No.

4 Q Has anybody ever whether formal or
5 informal process ask for the designation of a
6 designated user to be approved by the board on
7 behalf of Bluffton Properties, LLC, Series 1?

8 A Have we requested that?

9 Q Has anybody?

10 A Provided.

11 Q Asked for board approval -- I'm sorry
12 my question was not clear.

13 To your knowledge, has anyone ever
14 asked for approval of a person to be a
15 designated user on behalf of Bluffton
16 Properties, LLC?

17 A No.

18 Q Okay. Were you involved -- strike
19 that.

20 Was there a point in time when you came
21 to learn that Mr. Lee had recorded a deed to
22 Bluffton Properties, LLC?

23 A Yes.

24 Q Do you know when that point in time
25 was?



1 A I believe it was July of 2013 or '14.

2 Q All right. I think the record would
3 indicate that was July of '14.

4 A Okay.

5 Q We can take that up separately and
6 clarify the record. And how did you come to
7 find that information out?

8 A I believe we learned from our attorney,
9 Jason Ward, who had performed a title search.

10 Q On the same lot, A-02?

11 A Yes.

12 Q And at that time Mr. Ward was an
13 attorney that I'm affiliated with?

14 A Yes, that's correct.

15 Q Okay. Did -- were any steps taken to
16 obtain compliance by Mr. Lee and Bluffton
17 Properties, LLC with covenants with regard to
18 the apparent proposed ownership?

19 A Did we take any steps?

20 Q Yes.

21 A That's the question? I believe we
22 reached out to Mr. Burke, Mr. Lee's attorney,
23 for that information.

24 Q Okay. And where is Mr. Burke?

25 A In Wisconsin, in Milwaukee.



1 Q All right. And that would be the
2 person whose name appears on Exhibit 2, the deed
3 for Mr. Lee to Bluffton Properties, LLC,
4 correct?

5 A That's correct.

6 Q Did you ever get any response from Mr.
7 Burke?

8 A No.

9 Q Did Mr. Burke in incident to this
10 process of transferring title or anyone
11 connected with that transaction ever contact
12 Colleton to ask what Colleton's requirements
13 were for transfer of a lot in Colleton?

14 A No.

15 Q Did Mr. Lee or Mr. Burke or anyone else
16 associated with this Lot A-02 or on behalf of
17 Bluffton Properties, LLC, ever seek any
18 information or advice from Colleton as to the
19 requirements for transfer of property within
20 Colleton?

21 A No.

22 Q Okay. Was there a point in time when
23 the club had reason to believe that Bluffton
24 Properties, LLC, was not affiliated with Mr. Lee
25 and then in a point in time that it must be



1 affiliated with Mr. Lee?

2 A When we learned of the conveyance, the
3 summer which would be either 2013 or 2014, we
4 were not at that point immediately aware of what
5 the relationship was or was not. I believe we
6 learned later of the affiliation upon review of
7 the documents with the affiliation with Mr.
8 Burke and, therefore, Mr. Lee.

9 Q All right. Did you learn that there's
10 a Bluffton Properties, LLC, that was organized
11 in South Carolina?

12 A Yes.

13 Q By a person named Vecchio?

14 A Yes.

15 Q All right. And did you later learn
16 that Bluffton Properties, LLC, was an entity
17 organized in November?

18 A Yes.

19 Q That is the one that seems to be
20 affiliated with Mr. Lee?

21 A Correct.

22 Q Did you have an understanding with
23 regard to the TekCollect settlement as to
24 whether it -- let's start this. I think we all
25 agree the TekCollect settlement included the



1 first of what we'll call "the 2012 judgment
2 against Mr. Lee."

3 A Correct.

4 Q All right. Did you then or do you now
5 have any understanding as to whether that
6 settlement included any amounts that had accrued
7 on the account other than the judgment amount?

8 A Can you ask that again, please?

9 Q Yep. Maybe a different way to phrase
10 it would be the settlement that was made via
11 TekCollect, to your information and
12 understanding did that include only the judgment
13 amount at issue of the 2012 judgment or any
14 other accrued items up to that time?

15 A My understanding is the that TekCollect
16 company was that given that specific judgment to
17 pursue and would not have been given any
18 additional authority to negotiate any other
19 settlement beyond that.

20 Q Okay. So is your understanding the
21 TekCollect was limited to --

22 A That judgment.

23 Q -- that judgment amount?

24 A Yes.

25 Q All right.



1 May I take a short break for lunch or
2 can we break for lunch and finish up around
3 12:30. It's up to you.

4 THE COURT: Whatever you like to
5 do. I'm good either way and, of
6 course, you understand you can't
7 discuss your testimony during the
8 break.

9 THE WITNESS: Okay.

10 THE COURT: Why don't we break for
11 lunch, if that suits everyone, and it
12 takes about 45 minutes to get out of
13 this place and get back, so if that
14 suits everybody, 45 minutes. If it
15 runs over a little bit, fine. There's
16 a Starbucks across the street and some
17 other places.

18 You-all feel like you need an hour
19 or is 45 minutes enough?

20 MR. THOMSON: 45 sounds good to
21 us.

22 THE COURT: All right. It's 12:42
23 so like 1:30. So be back at 1:30. If
24 we run over, no worries. All right.

25 So ma'am, no discussing your



1 testimony during the break and we'll
2 see you at 1:30. Thank you.

3 (Whereupon, a lunch break was taken
4 at 12:42 p.m.)

5 THE COURT: Let's do this. You're
6 still sworn, ma'am. So back on the
7 record and off we go.

8 (Back on the record at 1:29 p.m.)

9 EXAMINATION

10 BY MR. JOHNSON:

11 Q Ms. Kerr, I ask you to look at
12 covenants Section 7.1 C and take a minute to
13 reread that because each word is important and
14 then I have a couple of questions.

15 A Okay. Okay.

16 Q Then I want you to look at Section
17 14.2.

18 A 14.2, Section A-2?

19 Q 14.2, Sub A, Sub 2, read that.

20 A I've read it.

21 Q 14.2 E?

22 A Okay.

23 Q Colleton has taken the position that
24 Mr. Lee remains jointly and severally liable
25 with Bluffton Properties, LLC, to the plaintiff



1 for the amounts of money that's set forth in the
2 account statement that we looked at earlier,
3 which is Exhibit 8, correct?

4 A That's correct.

5 Q All right. Looking at these sections
6 of the covenants that I have referenced, do
7 you -- does Colleton base its position with
8 respect to Mr. Lee's joint and severally
9 liability on those sections on 14 and 7 or on
10 other things as well?

11 A As to these, yes. As to other things
12 as far as his obligations to produce information
13 that the club has requested, some of that would
14 have been through our board -- other rules,
15 resolutions, or covenants, yes.

16 Q Okay. All right. What resolutions are
17 you referring to?

18 A Specific to -- well, on these document
19 we're relying --

20 Q You're talking about the covenants?

21 A The covenants sections that you just
22 had me review. We're relying on Section 14.2A
23 as well as ownership and legal entity, Bluffton
24 Properties, LLC, which we believe Mr. Lee to
25 have an ownership interest in it. Relative to



1 the ownership, this requires us to demonstrate a
2 minimum of 25 percent ownership interest to
3 satisfy that particular rule of that covenant.
4 We're also relying on the fact that 14.2E
5 requires the board to approve that
6 owner-designated user, the one that is
7 designated -- who's not been able to accomplish
8 that yet. And we're relying on 14.2F in that
9 the designated user is responsible for the
10 payment of assessments and fees and other
11 amounts owed and/or any owners of the legal
12 entity being Bluffton, LLC, are jointly and
13 severally liable for the amounts owed.

14 Q Okay.

15 A As for Section 7.1C, we still need to
16 have the notice and the other -- not only the
17 payment of what is owed, which has been
18 discussed some and the other information that
19 the board may reasonably require, which as of
20 now, I think we just discussed, goes to things
21 such as ownership, financial means, et cetera.

22 Q All right. I don't think I have any
23 further questionings of you at this time.

24 A Okay.

25 Q Mr. Thomson may have some questions.



1 EXAMINATION

2 BY MR. THOMSON:

3 Q Ms. Kerr, good afternoon.

4 A Good afternoon.

5 Q You just testified about -- there's
6 been a lot of testimony and discussion of the
7 transfer of Joel Lee to Bluffton Properties,
8 LLC, to -- in regards to this subject lot,
9 correct?

10 A Correct.

11 Q And if I heard right, you just
12 testified you believe that Mr. Lee has a
13 membership or ownership interest in the LLC.
14 Did you just testify as to that?

15 A That is our belief, yes.

16 Q Okay. You do not have any evidence
17 setting forth Mr. Lee having a membership or
18 ownership interest in Bluffton Properties, LLC,
19 do you?

20 A I don't have any documentation that
21 verifies that, no.

22 Q Okay. You do have the -- as of July of
23 2014 during a title search done by Jason Ward
24 and provided to the club and to the board,
25 you-all were armed with that notice of transfer



1 of title -- actual expressed notice of the
2 transfer of title of the ownership of the lot
3 from Joel Lee to Bluffton Properties, LLC; is
4 that correct?

5 A Can you ask that again? I'm sorry.

6 Q It was July of 2014, right, as is in
7 the complaint and you testified in your
8 deposition, July of 2014 was the time frame in
9 which you-all received notice via a title search
10 of the deed of the transfer of title from Joel
11 Lee to Bluffton Properties, LLC, correct?

12 A We became aware of the transfer, yes,
13 in July of 2014.

14 Q And let's talk about your awareness of
15 the transfer. It was -- in hand, you-all had
16 the copy of the deed, which is -- which is
17 stipulated Exhibit Number 2, correct?

18 A Yes.

19 Q And you -- in July of 2014, you were
20 notified that the title transferred to Bluffton
21 Properties, LLC, on December 31, 2012, correct?

22 A By our attorney, yes, but I want to
23 make sure to clarify in our opinion that doesn't
24 satisfy the notice requirement in our governing
25 documents.



1 Q And we'll get to the notice
2 requirements of that.

3 A Okay.

4 Q I just -- it is important to understand
5 a timeline received actual notice of the
6 transfer and you're not disputing that received
7 actual notice July of 2014, correct?

8 A Correct.

9 Q All right. I want to go to -- I've got
10 a blow-up here, Your Honor, if I may to
11 monitored to the exhibit that I passed out
12 before this timeline. I think it just helps
13 with some of these questions?

14 THE COURT: All right. We don't
15 have an easel for you.

16 MR. THOMSON: It's okay. And I
17 just want to establish the sense of
18 what the club knew and when they knew
19 it and what actions occurred. Okay?

20 BY MR. THOMSON:

21 Q The first lawsuit against Mr. Lee, the
22 club obtained a judgment for \$21,503.87 back on
23 August 8th, 2013. Do you agree with that?

24 A Yes.

25 Q And we went through July 2014 is when



1 you admitted obtaining the notice of the
2 transfer of title to Bluffton Properties, LLC,
3 right?

4 A Yes.

5 Q Now, it was after that notice of
6 transfer of title that on August 27, 2014 -- and
7 let me get that document out.

8 It is stipulated Exhibit Number 9, Your
9 Honor. You have a copy in front of you I
10 believe.

11 THE COURT: Yes, I do.

12 MR. THOMSON: And Your Honor, you
13 have a copy of that in front of you?

14 THE COURT: I have Number 9. Yes.

15 Thank you.

16 BY MR. THOMSON:

17 Q Now, TekCollect was the agency that the
18 club had retained to negotiate and consummate a
19 settlement with Mr. Lee regarding the subject
20 lot, correct?

21 A For the judgment, yes.

22 Q You testified that was for the judgment
23 amount; is that right?

24 A Yes.

25 Q Okay. Now, the judgment amount we



1 talked about is \$21,503.87 as of August 8, 2013,
2 right?

3 A Correct.

4 Q TekCollect notifies Mr. Lee in Exhibit
5 9 of an acceptance of settlement in the amount
6 of \$8,977.46 in one lump sum due no later than
7 September 15th, 2014, so that's in about, you
8 know, 20 days after this letter, and if payment
9 is not received, settlement will be null and
10 void and balance will be due immediately. Do
11 you see that?

12 A Yes.

13 Q Do you see at the top the balance is
14 \$34,265.95, correct?

15 A Yes.

16 Q Now, I've gone to the ledger and the
17 account statements and we're talking about an
18 approximate one-year period from the date of the
19 judgment of \$21,000 to the date of the
20 settlement, where TekCollect is referencing a
21 negotiated amount of \$34,000.

22 Do you see that?

23 A Yes.

24 Q And it's about \$12- or \$13,000
25 difference, an increase. Is that -- would you



1 agree with that math?

2 A Yes.

3 Q And if you compute -- and you-all have
4 interest of one-and-half percent per month or 18
5 percent annual, correct?

6 A That's correct.

7 Q And I've got a calculator with me. We
8 can go through that, but I've calculated
9 post-judgment interest. I've calculated the 18
10 percent per annum interest penalties, and all of
11 those fall short of an increase from \$21,000 up
12 to \$34,000 for a one-year time period. Would
13 you agree with me or what I'm -- my question is
14 what is the basis of this \$34,000 that the club
15 and TekCollect is asserting is the balance due
16 to Mr. Lee?

17 A That, I don't know.

18 Q Would you agree with me that it is in
19 excess of the order of judgment that was
20 instituted against Mr. Lee the year prior?

21 A It is.

22 Q And it would be more than the order of
23 judgment along with an accrued 18 per annum
24 penalty?

25 A Yes. It could also include other



1 things such as legal fees. I'm not sure.

2 Q And it also could include continued
3 membership dues or continued clubhouse
4 assessments per the balance statement, correct?

5 A I don't believe it would have.

6 Q Now, you did not -- you did not in a
7 firsthand way negotiate with my client, Mr. Lee,
8 as to the basis for the \$34,000 or for the
9 acceptance of the \$8,900, correct?

10 A Correct.

11 Q But there's no question that the club
12 approved that settlement amount and there's no
13 question that the club, in fact, received on
14 September 12th prior to this deadline an amount
15 \$8,977.46, correct?

16 A Correct. Minus any fees that we would
17 have been charged by TekCollect --

18 Q Okay.

19 A -- for the collection efforts.

20 Q Okay. Fair enough. The club did not
21 provide any documentation to Joel Lee setting
22 forth specifically that the \$8,977 payment was
23 simply for the past judgment only, did they?

24 A I don't recall.

25 Q I have not seen any documentation in



1 this case, have you?

2 A I don't think so.

3 Q All right. So again, going through the
4 timeline and what the club affirmatively did do,
5 once you obtained notice of the transfer of
6 title, the club did reach a -- confirm a
7 settlement with Mr. Lee, and then you did file a
8 satisfaction of judgment on the original
9 judgment, correct?

10 A Yes.

11 Q And the satisfaction of judgment does
12 not contain any language referencing the amount
13 of consideration negotiated for, did they, it
14 referenced the original judgment amount and we
15 can go to satisfaction if you'd like to. It's
16 Exhibit Number 5. It sites the original \$21,000
17 amount, correct?

18 A Correct.

19 Q There's no language in there parsing
20 out that the negotiated \$8,977 that Mr. Lee paid
21 was exclusively allocated to the satisfaction
22 only or any language of that sort, is there, in
23 that document?

24 A No, not in that document.

25 Q Is there -- and I think I just asked



1 you this. There is no document that you're
2 aware of that sets forth your understanding or
3 contention that the \$8,977 went exclusively for
4 the past judgment and not for any other ongoing
5 assessments or obligations, is there?

6 A I don't know of any documentation for
7 that, no.

8 Q And then you -- the next thing you-all
9 did, the club did, November 7, 2014, is you
10 filed a lawsuit, a collection action, for this
11 same subject property against the new owners,
12 against Bluffton Properties, LLC, and that's
13 Case Number 2014-CP-07-2827.

14 Do you see that?

15 A Yes.

16 Q And for that -- and there's an order of
17 judgment that you obtained May 12th of 2015 and
18 these documents are in evidence. Do you agree
19 with that sequence?

20 A Yes.

21 Q And the amount of judgment -- the order
22 of judgment that you obtained against Bluffton
23 Properties was \$81,374.56, correct?

24 A Correct.

25 Q And the basis for that judgment you



1 relied on the date of transfer, the date of
2 transfer of title of 12/31 of '12 up until the
3 date of the order of judgment of 5/12/15,
4 correct?

5 A Correct.

6 Q So you have the notice of the transfer,
7 you had it now for almost a year, and you used
8 the notice of transfer date or -- when you had
9 the transfer of title, you used the 12/31/12
10 date in order to start the clock ticking and
11 start charging Bluffton Properties, LLC,
12 correct?

13 A Correct.

14 Q You never had any conversations
15 directly with Mr. Lee as to what his express
16 understanding of his \$8,977 settlement offer
17 that was accepted by the club, you didn't have
18 any firsthand conversations with him, did you?

19 A No.

20 Q Now, let's go to the covenants, 7.1,
21 that your attorney had you read earlier.

22 I guess, is that in stipulated Exhibit
23 1?

24 MR. JOHNSON: Yes.

25 MR. THOMSON: Okay.



1 BY MR. THOMSON:

2 Q 7.1C?

3 A What exhibit?

4 Q It's Exhibit 1, and it is on page 18, I
5 believe. Chapter 7 -- 7.1C, transfer of title.
6 It's also in your complaint, the language.

7 A Okay. I'm there.

8 Q Now, I'm quoting here. "The person
9 transferring title shall continue to be jointly
10 and severally responsible with the person
11 accepting title for all obligations of the owner
12 including assessment obligations until the date
13 upon which the board receives such notice and
14 all amounts outstanding prior to transfer are
15 paid in full, notwithstanding the transfer of
16 title."

17 Do you see that language?

18 A Yes.

19 Q Would you agree with me that Mr. Lee's
20 payment, settlement payment of 8977 and then
21 your filing a satisfaction of judgment serves to
22 constitute the amounts outstanding that Mr. Lee
23 individually owed prior to the transfer?

24 A Can you ask that again? I'm sorry.

25 MR. THOMSON: Can you read that



1 back, please?

2 (Whereupon, the record
3 was read back as requested.)

4 THE WITNESS: All of the amounts,
5 I don't know, so the answer is no. I
6 know it satisfies the judgment.

7 BY MR. THOMSON:

8 Q Let's go to his member state. Okay.
9 That's important. But the -- that's I think
10 Exhibit 8. If you can -- and if you go to the
11 member statement, do you see that? And if you
12 go to the entry of 12/31 of '21, read the
13 balance in the record, please.

14 MR. JOHNSON: Excuse me. Repeat
15 that date, please.

16 MR. THOMSON: I'm sorry. 12/31 of
17 '12.

18 BY MR. THOMSON:

19 Q On the first page, page 1 of 5.
20 There's a balance on that date. What's that
21 balance?

22 A \$8,977.46.

23 Q So the amount that Joel Lee offered to
24 negotiate and settle with to TekCollect that
25 they ultimately accepted, when the balance they



1 asserted was \$34,000, Mr. Lee offered the exact
2 same amount that was due and payable according
3 to your ledger as of what the actual date of
4 transfer of title was, correct, \$8,977.46?

5 A Correct.

6 Q The amount that he paid, and I know
7 it's your contention that amount was used --
8 whether it was used in part or exclusively for,
9 but that payment was made and you filed a
10 satisfaction of judgment, correct?

11 A Correct.

12 Q And my question goes to -- back to the
13 covenants of 7.1, amounts outstanding prior to
14 the transfer are paid in full, would you agree
15 with me that this is evidence of Mr. Lee having
16 paid the amount outstanding prior to the actual
17 date of transfer?

18 A Per this record, yes.

19 Q Now, we're on 7.1. I asked you in your
20 deposition, there was -- you may recall this
21 line of questioning, but the club does not buy
22 back lots, do they, from owners who are either
23 delinquent or has the club ever bought back lots
24 that the developer previously sold to the
25 owners?



1 A The club never owned any of those lots,
2 but the club has not purchased a lot from a
3 previous owner up to this point, no.

4 Q And I believe there was some testimony
5 where your attorney said you'd agree that the
6 club is not in the lot development business, are
7 we?

8 A Not at this point, right.

9 Q Okay. Now, if you go to 7.1C and the
10 transfer of title, it starts out saying it's
11 subject to 19.2. Do you see that?

12 A Correct.

13 Q Well, we go to 19.2. That speaks to
14 the club's right of repurchase. Do you see
15 that?

16 A Correct.

17 Q Okay. Do you know of any provision in
18 the covenants applicable to Mr. Lee that would
19 give the club the authority to prevent his
20 transfer of title?

21 MR. JOHNSON: Objection to form.

22 BY MR. THOMSON:

23 Q That you're aware of?

24 MR. JOHNSON: Same objection.

25 THE COURT: The form? Let's see.



1 That she's aware if she's familiar with
2 the covenants. What's the objection?

3 MR. JOHNSON: Calls for legal
4 opinion.

5 THE COURT: Well, you're just
6 looking for language, right, in the
7 question, is there any language?

8 MR. THOMSON: Any language.

9 MR. JOHNSON: That she's aware of.

10 MR. THOMSON: Any language in the
11 covenants that you're aware of that
12 would prevent -- would prevent a
13 transfer of title from an owner to
14 either an entity or to another
15 individual?

16 MR. JOHNSON: My objection stands.
17 Transfer of title is a very complicated
18 legal issue.

19 THE COURT: I'll let her answer if
20 she can. You, know, I'm going to end
21 up reading the whole darn thing, but if
22 she can point to language based on her
23 knowledge of the document that has
24 those words in it for that purpose,
25 I'll let her answer, if she knows.



1 THE WITNESS: Is the question, do
2 I know of any language in the covenants
3 that would prevent the board from
4 exercising its first right of refusal
5 under 19.2? Is that the question?

6 MR. THOMSON: You know what, I'm
7 going to strike the question.

8 THE COURT: Okay.

9 BY MR. THOMSON:

10 Q All right. Let's go to Section 14 of
11 the covenants, Exhibit 1, the designated user
12 section. Do you see that?

13 A Yes.

14 Q And is there any language in 14.2, and
15 please take as much time as you need, that would
16 assign joint and several responsibility to the
17 prior owner, language that is similar to the
18 language we found in 7.1C?

19 A For a previous owner, no.

20 Q Would you agree with me that Mr. Lee
21 would be deemed the prior owner in this
22 transaction?

23 A No.

24 Q Why not?

25 A Because we believe he is affiliated



1 with Bluffton Properties, LLC. The LLC that his
2 attorney in Wisconsin set up for him, which I
3 believe in his deposition he agreed he had set
4 up by his attorney, so our understanding of how
5 to handle Mr. Lee's case based on our governing
6 documents is as continuing to be jointly and
7 severally liable.

8 Q So you operated under an assumption
9 that he continued to be an owner even after the
10 transfer of title?

11 A Correct, based on what we know.

12 Q And is that -- what is that -- you're
13 saying he's a part owner of the LLC?

14 A That's our understanding.

15 Q And that understanding is not based on
16 anything written, correct?

17 A His testimony.

18 Q His testimony?

19 A In his deposition.

20 Q You're asserting that my client
21 testified that he's an owner of Bluffton
22 Properties, LLC?

23 A No. I'm not saying he testified he's
24 an owner. I'm saying in his deposition he
25 explained the process whereby his lawyer set up



1 the LLC.

2 Q His lawyer set up the LLC, a
3 member-managed LLC and Mr. Lee was not a member,
4 correct?

5 A I don't know that.

6 MR. JOHNSON: Objection to form.

7 THE COURT: Well, I's sure at some
8 point someone will point the relevant
9 portions of the deposition?

10 MR. JOHNSON: Yes, sir.

11 BY MR. THOMSON:

12 Q So Mr. Burke's setting up of the LLC is
13 the basis of your understanding that Mr. Lee is
14 affiliated with the LLC?

15 A Yes. That's my understanding. Yes.

16 Q And the club then took the position
17 that Mr. Lee continued to be -- tell me -- tell
18 me what effect the club -- what position the
19 club took in light of that understanding.

20 A Well, the club takes the position that
21 he's jointly and severally liable based on that
22 understanding, but it also relies on the fact
23 that Mr. Lee never properly gave notice required
24 by Section 7.1C as part of the transfer process
25 and the club is still waiting for that.



1 Q But you're not denying that the club,
2 in fact, had actual expressed notice as of July
3 2014?

4 A Through the discovery process, yes, but
5 not from Mr. Lee which the governing documents
6 required.

7 Q Right. But going back to my original
8 question, there is no language as to a prior
9 owner being jointly and severally responsible
10 for anything with respect to designated user
11 under 14.2, correct?

12 A Under 14.2, no.

13 Q And in November of 2014, the club took
14 the position to affirmatively sue Bluffton
15 Properties, LLC, but did not sue Mr. Lee
16 individually, correct?

17 A Correct. And I believe that's why we
18 later filed an amended complaint.

19 Q But there is no lawsuit involving both
20 entities as co-defendants, correct, both Mr. Lee
21 and Bluffton Properties, LLC?

22 A I don't think so.

23 Q Once you received a copy of the deed
24 during the title search in July of 2014, you
25 didn't send written notice to Mr. Lee requiring



1 that he would provide additional information,
2 did you?

3 A We may have communicated through our
4 attorneys. I don't recall.

5 Q Do you know of any documents that have
6 been provided in this case which would evidence
7 notice from the club to Mr. Lee requesting that
8 -- for additional information concerning the
9 transfer?

10 A No, but again, I would check with
11 counsel on that.

12 Q Check with your own counsel?

13 A Yes. And at the time that would have
14 been Jason Ward.

15 Q So you used the notice date of 12/31/12
16 as the basis of your lawsuit against Bluffton
17 Properties, LLC, correct?

18 A Yes.

19 Q You relied on that date of transfer of
20 title, correct?

21 A Yes.

22 Q And you have no documentation or
23 allegation that the transfer of title was in and
24 of itself defective for purposes of being able
25 to obtain a filed order of judgment against



1 subsequent owner, correct?

2 A Can you repeat the question?

3 MR. THOMSON: Can you read that
4 back?

5 (Whereupon, the record
6 was read back as requested.)

7 THE WITNESS: I don't know.

8 BY MR. THOMSON:

9 Q You don't know one way or the other?

10 A (Shakes head.)

11 MR. JOHNSON: Say yes or no.

12 THE WITNESS: Yes. Correct.

13 BY MR. THOMSON:

14 Q Bear with me one second, please.

15 Okay. You don't have any evidence, do
16 you, that Joel Lee ever used the club or any of
17 its amenities subsequent to the date of December
18 31st, 2012, correct?

19 A That's correct.

20 Q And you would agree with me there is no
21 outstanding arrearage in membership dues,
22 assessments, obligations assignable to Joel Lee
23 from the time period of 1993 when he bought the
24 lot up until December 31st, 2012, correct?

25 A Correct.



1 Q So just so the record is clear as to
2 what the club has received in various membership
3 payments and in judgments throughout this lot's
4 history, I just want to go through this and have
5 you confirm that for, roughly, 19 years as a
6 member and owner of the subject lot, the club,
7 in fact, received payments from Mr. Lee for all
8 of his membership obligations and assessments,
9 correct?

10 A As far as I'm aware, but I can't speak
11 to the history before what we have in front of
12 us.

13 Q Okay. But you have access to his club
14 history ledger and so forth and there's nothing
15 that's been presented to you that shows there is
16 any outstanding arrearage for that 19-year
17 period, correct?

18 A That's correct.

19 Q So that's one component. The second
20 component is there's a judgment where you-all
21 satisfied where you-all received roughly --
22 there might have been payments back to
23 TekCollect, but for the first lawsuit that you
24 filed against Mr. Lee, you received a payment of
25 \$8,977.46, correct?



1 A Correct.

2 Q And the third component of money or of
3 a judgment having been received or ordered on
4 the subject lot was against the grantee entity,
5 Bluffton Properties, LLC, and that the club
6 received an order of judgment of \$81,377.56,
7 correct?

8 A Correct.

9 Q And just so the timeline is clear, the
10 only time in which the club did not have, in
11 fact, actual notice of the transfer of title
12 would have been from the time period of December
13 31 of 2012 when he actually did it up until July
14 of 2014 when you-all obtained notice, correct?

15 A Correct.

16 Q We talked a lot about the club having
17 received notice in July 2014. Is it fair to say
18 that the board also received notice at that time
19 frame?

20 A Or shortly thereafter, yes.

21 Q And again, this was prior in time to
22 the negotiated settlement between my client and
23 the collection agency, correct?

24 A Correct.

25 Q And you are not making any contention



1 that TekCollect did not have the requisite
2 authority to consummate, finalize the negotiated
3 settlement with my client in August 2014,
4 correct?

5 A For that judgment, correct. I don't
6 recall exactly when we became aware of the
7 affiliation between Mr. Lee and Bluffton
8 Properties, but at the time we hired
9 TekCollect -- the time we hired TekCollect to go
10 offer the debt, we weren't aware of the
11 affiliation.

12 Q But the amount that you authorized
13 TekCollect to provide as an updated balance
14 against my client exceeded the judgment in any
15 calculable post-judgment interest, correct?

16 A Correct.

17 Q I think we've been over this, but the
18 differential of \$34,265.95 in August 2014, you
19 don't know the basis for TekCollect having
20 provided that balance number?

21 A That's correct.

22 Q Okay. I believe that's all the
23 questions I have. Thank you, Ms. Kerr.

24 A Thank you.

25 THE COURT: Any more questions of



1 this witness, Mr. Johnson?

2 MR. JOHNSON: We don't have any
3 further questions for Ms. Kerr. She
4 may be excused.

5 THE COURT: Any objection?

6 MR. THOMSON: None.

7 THE COURT: Thank you so much.

8 THE WITNESS: Thank you.

9 MR. JOHNSON: You can go ahead and
10 sit down there. At a point before I
11 rest, I have a few more things to do
12 before then. I would like the Court's
13 permission and counsel's permission for
14 me to have a conversation with Ms.
15 Kerr. She's finished her testimony.

16 THE COURT: Maybe this is a good
17 time for a break. She is no longer a
18 witness. No objection, I assume --

19 MR. THOMSON: None.

20 THE COURT: -- defense counsel
21 with that conversation, so why don't we
22 take a break for 10 minutes anyway
23 before we get into any -- whatever
24 anybody needs and no impediment to the
25 conversation with Ms. Kerr.



1 (Whereupon, a brief recess was
2 taken at 2:18 p.m.)

3 THE COURT: Back on the record.
4 Mr. Johnson, I'd like to hear from you,
5 sir.

6 (Back on the record at 2:35 p.m.)

7 MR. JOHNSON: If it pleases the
8 Court, in view of the recent colloquy,
9 I pulled a couple of documents from our
10 firm's file relative to the 2014
11 Colleton case against Bluffton
12 Properties, and I want to tender those
13 documents into the record, and Mr.
14 Thomson as I understand has no
15 objection, but we would ask why I'm
16 doing it, which I will do, and he may
17 have some comments about what that
18 means; is that correct?

19 MR. THOMSON: Yes.

20 THE COURT: Okay.

21 MR. JOHNSON: First of all, I
22 don't have -- I only have the one copy
23 we pulled out of the file, so maybe we
24 can somehow get replacement copies a
25 bit later, but the first is a copy from



1 the South Carolina Secretary of State
2 of articles of organization of a
3 limited liability company filed May 29,
4 2001, for Bluffton Properties, LLC,
5 indicating that the initial agent for
6 service of process is Richard Vecchio,
7 V-e-c-c-h-i-o, and he's also the
8 organizer.

9 The second is the screenshot from
10 secretary of state's office as to that
11 limited liability company as part of
12 this package that we got from them, so
13 whatever the next exhibit number is
14 would be -- next number is 17, I think.

15 THE COURT: Okay.

16 (Whereupon, Exhibit
17 Number 17 was marked for
18 identification.)

19 MR. JOHNSON: And the second part
20 of this is the affidavit of service in
21 that same 2014 case against Bluffton
22 Properties, which was filed March 25th,
23 2015, in the Beaufort Clerk of Court's
24 office serving Bluffton Properties,
25 LLC, by serving Richard Vecchio at his



1 address in Boca Raton, Florida, so, I
2 guess, that would be the next exhibit
3 number.

4 (Whereupon, **Exhibit**
5 **Number 18** was marked for
6 identification.)

7 MR. JOHNSON: The explanation is
8 in view of this discussion about
9 somehow the judgment against Bluffton
10 Properties, LLC, should be considered
11 as income related to Mr. Lee and this
12 lot, it's been a concern for me for a
13 while that we got the judgment
14 potentially against the wrong LLC and
15 then when we took Mr. Burke's
16 deposition, it became clear that we did
17 have the judgment against the wrong LLC
18 because Mr. Burke's deposition, it's in
19 the record, so I can refer it to this
20 way, says that the LLC that was formed
21 in regard to this lot to which Mr. Lee
22 transferred title to the property was a
23 Nevada LLC, and they chose Nevada
24 because it allowed series, like -- as I
25 recall his testimony, like departments



1 in a corporation and, hence, you will
2 notice in the deed to Bluffton
3 Properties, LLC, that Mr. Burke
4 prepared for Mr. Lee from A-02 at
5 Colleton, it's addressed or it's
6 granted in that sense to Bluffton
7 Properties, LLC, Series 1.

8 And so I went to tender that to
9 clear up the record that the judgment
10 to the extent is there is not against
11 the LLC Bluffton Properties, LLC, that
12 we have been talking about that would
13 be liable to Colleton, and once I heard
14 Mr. Burke's testimony, I didn't know
15 what to do with it, and decided to see
16 what the outcome of the case was and
17 then I probably just satisfy that
18 judgment because I think it's against
19 the wrong entity if that's what the
20 result of this case shows.

21 THE COURT: All right. So let me
22 -- two things first, Exhibit 17 and 18
23 are admitted without objection; is that
24 correct? 17 being the secretary of
25 state's documents previously



1 referenced, and 18 being the affidavit
2 of service on some fellow from Florida.

3 MR. JOHNSON: Vecchio.

4 THE COURT: At this point, the
5 plaintiff asserts is not really
6 associated with this case because the
7 deed, which is Exhibit 2, is into
8 Bluffton Properties, LLC, Series 1, and
9 you're saying the testimony thus far,
10 the testimony somewhere in here is that
11 Bluffton Properties, LLC, Series 1, is
12 not the same entity as the Bluffton
13 Properties, LLC, that the plaintiff
14 received a judgment against previously?

15 MR. JOHNSON: Correct.

16 THE COURT: Okay. All right.

17 MR. THOMSON: Just the comment on
18 the reason for that introduction, I
19 want to make it clear from our
20 perspective that Bluffton Properties,
21 LLC, either the Series 1 entity or the
22 South Carolina entity, neither one has
23 ever been a party to this litigation.
24 Neither one has ever been a client, and
25 I would submit that on the documents



1 being introduced, there is no reference
2 to my client, Joel Lee, as being a
3 member or designated user or any
4 reference to Joel Lee on the documents
5 being introduced with respect to the
6 other Bluffton Properties' litigation.

7 THE COURT: My understanding is
8 the assertion is that Joel Lee has
9 nothing to do with Bluffton Properties,
10 LLC, the South Carolina LLC that Mr.
11 Vecchio --

12 MR. JOHNSON: That is our
13 understanding, Your Honor.

14 THE COURT: Okay. Okay. So
15 you-all agree on that?

16 MR. JOHNSON: We do.

17 MR. THOMSON: As far as the South
18 Carolina versus Nevada, yes.

19 THE COURT: Okay. So the
20 assertion, whether it was agreed to or
21 not, is that the Bluffton Properties,
22 LLC, that the plaintiff is associated
23 with Mr. Lee is the Nevada version, the
24 Series 1 --

25 MR. JOHNSON: Yes, sir.



1 THE COURT: -- version? Okay.

2 MR. THOMSON: But I will say the
3 lawsuit, the litigation, the judgment
4 that was ordered was all pertaining to
5 the same lot, the same property that
6 we're here for today. As far as
7 whether there was a error with respect
8 to whether -- whether that's the
9 appropriate judgment debtor, again, is
10 out of our hands and out of Mr. Lee's
11 hands and his name is not on any of
12 these documents being introduced.

13 THE COURT: Right. And you-all
14 would agree that it wouldn't be because
15 it's a whole different operation?

16 MR. THOMSON: Correct.

17 THE COURT: Okay. All right. I
18 think I understand. All right.

19 MR. THOMSON: And if there's
20 documentation from the Nevada Bluffton
21 Properties, LLC, do we have that in
22 evidence?

23 MR. JOHNSON: No. I don't have it
24 at all, except what Mr. Burke said
25 about it.



1 MR. THOMSON: Okay.

2 THE COURT: Okay. All right. I
3 think I understand that.

4 MR. JOHNSON: Your Honor, I don't
5 have any other witnesses to call, but I
6 do want to publish to the Court some
7 excerpts from Mr. Burke's deposition as
8 Exhibit 14.

9 THE COURT: 14. Okay.

10 MR. JOHNSON: Page 6, Line 7, I
11 asked Mr. Burke to give us a brief
12 summary of the areas of legal work in
13 which he had professional experience as
14 a lawyer. Continuing his answer
15 quoting, "In the 35 or so years I was
16 engaged in the law business, I had what
17 you might call a general practice, so I
18 did a number of things including real
19 estate, some commercial litigation,
20 evictions, probate, whatever, that type
21 of thing."

22 Page 7, Line 3:

23 "Q. Have you ever had clients who
24 were developers of residential
25 subdivisions?



1 A. No."

2 Continuing at Line 6:

3 "Have you ever visited Hilton Head
4 Island or Bluffton, South Carolina?

5 A. No."

6 At Line 9:

7 "Q. Have you ever been licensed
8 or sat for the bar to be licensed in
9 South Carolina?

10 A. No."

11 I call your attention to the deed,
12 which is Exhibit 2 from Mr. Lee to
13 Bluffton Properties, LLC, that that
14 deed does not indicate the state of
15 organization of the LLC and that as
16 typed on the last page of the deed,
17 that it was prepared by Mr. Burke, who
18 is not a South Carolina lawyer by his
19 testimony.

20 Page 8, Line 14.

21 "How long have you known Mr. Lee?

22 A. Oh, I've known Mr. Lee for at
23 least 35 years."

24 Page 9, Line 7:

25 "Q. Did you subsequently start to



1 provide legal representation to Mr.
2 Lee?"

3 Continuing:

4 "A. Yes. Over the years I've
5 represented Mr. Lee in certain
6 matters."

7 Page 10, Line 4:

8 "Q. Did you have anything to do
9 with the organization of Bluffton
10 Properties, LLC?"

11 Continuing:

12 "A. Yes."

13 Continuing:

14 "Q. And what did you have to do
15 with the organization of the Bluffton
16 Properties, LLC?

17 A. This goes back to, I believe,
18 2012 or 2013. I may have -- I worked,
19 I believe, with someone else in Mr.
20 Lee's office who organized Bluffton
21 Properties."

22 At Line 13 on Page 10:

23 "Q. What was your role in that
24 activity."

25 A. My role was that I helped her



1 organize Bluffton Properties.

2 Q. In what state was it
3 organized?

4 A. It was organized in Nevada.

5 Q. Why was that?

6 A. The reason Bluffton
7 Properties was organized in Nevada is
8 because Nevada unlike Wisconsin had
9 series LLCs, so the properties you
10 referenced beside Colleton, I think,
11 Berkeley Hall, yes, and what was the
12 other one?

13 Q. Belfair.

14 A. Belfair."

15 On top of Page 11, answer, Line
16 2:

17 "A. Belfair could be in a single
18 LLC."

19 Continuing:

20 "Q. All right. Explain how this
21 series works."

22 Continuing:

23 "A. Well, my understanding is how
24 a series works that is instead of
25 starting three separate LLCs, you can



1 have one single LLC with separate
2 compartments.

3 Q. So they're like divisions of
4 corporations in terms of operational
5 divisions?

6 A. No. Division in terms of --
7 well, I suppose the answer to that is
8 yes. I suppose the answer to that is
9 yes."

10 At Line 15 on Page 11:

11 "Q. Okay. What is the benefit of
12 a series versus a non-series LLC?

13 A. Well, my understanding is that
14 they amount to separate entities under
15 one umbrella."

16 Continuing question on Line 20:

17 "Do they have separate tax ID
18 numbers for each series?

19 A. No. I mean, I really can't --
20 the short answer to that is I don't
21 know the answer to that question, but I
22 don't believe so."

23 Line 25, Page 11."

24 "Q. Was there an operating
25 agreement for Bluffton Properties,



1 LLC?"

2 "The short answer is I don't know.

3 I don't remember."

4 Okay. Now go to Page 13 at Line

5 5.

6 "Q. Do you have any knowledge of

7 who the owner or owners of Bluffton

8 Properties, LLC was or were when was it

9 was organized?

10 A. Yes.

11 Q. Who were its owner or owners

12 when it was organized?"

13 Continuing:

14 "A. Well, as I recall I believe

15 that you met Mr. Lee or took Mr. Lee's

16 deposition."

17 Line 13, Page 13:

18 "Q. Yes, sir."

19 Answer continuing at Line 14:

20 "I believe the impetus for -- one

21 of the impetuses is creating Bluffton

22 Properties and transferring those

23 titles was for estate planning purposes

24 for Mr. Lee. Estate planning purposes

25 essentially.



1 Okay.

2 A. So that ancillary probates
3 would not have to be commenced. The
4 problem as I understand it is that
5 these -- those properties, Colleton and
6 the other properties, are essentially
7 worthless or have a negative value."

8 Page 15, Line 9:

9 "Q. Who would have the
10 information as to the ownership of
11 Bluffton Properties, LLC, from its
12 organization to date?

13 A. Well, that would either exist
14 with Mr. Lee or with me."

15 Line 14:

16 "Q. Okay."

17 Line 15:

18 "A. Or some file in the office."

19 Question continues Page 15, Line
20 16:

21 "My interpretation of Mr. Lee's
22 deposition is he kind of transferred
23 knowledge of all the details of
24 Bluffton Properties, LLC, to you. So
25 again, I ask if you would provide



1 copies of that ownership information
2 from Bluffton Properties, LLC, from the
3 date of its organization to date to Mr.
4 Thomson, if you can put your hands on
5 it or work with Mr. Lee to assist him
6 in putting his hands on it."

7 Top of Page 16, Line 1:

8 "A. Yes, I will do that."

9 Side note that information has
10 never been provided to us, and I assume
11 -- and certainly, it's not been
12 provided to Mr. Thomson or he would
13 have provided it to us.

14 Page 16, Line 2:

15 "Q. Some of the information I had
16 showed Mr. Lee's address being the same
17 --" excuse me -- "as the same as your
18 office address. Do you-all share
19 office space or were you just serving
20 as a clearing house for his mail?

21 A. No. We share an office or I
22 still office in his suite of offices."

23 I'm not going to read the whole
24 transcript, Your Honor. But I do want
25 to emphasize a few of these things.



1 Page 16, Line 10:

2 "Q. Are you aware that there's an
3 entity, LLC entity, that was organized
4 in South Carolina by the name Bluffton
5 Properties, LLC?

6 A. Yes.

7 Q. When did you become aware of
8 that?

9 A. I became aware of that if I --
10 at least I became aware of that
11 Saturday whatever the date was, the
12 10th -- February 10th of this year when
13 I saw that referenced in Mr. Lee's
14 deposition."

15 Line 21 on Page 16:

16 "Okay. The organizer of that
17 entity is Richard Vecchio, if I read
18 the document correctly, V-e-c-c-h-i-o.
19 Do you have any knowledge or
20 information about Mr. Vecchio.

21 A. No."

22 Line 2, top of Page 17.

23 Continuing on page 17:

24 "Q. Do you have any knowledge or
25 information about his organization of



1 Bluffton Properties, LLC?

2 A. No."

3 Page 17, Line 7:

4 "When you organized or helped
5 organize, help somebody in Mr. Lee's
6 office to organize, which may be
7 accurately states your testimony,
8 Bluffton Properties, LLC, in Nevada,
9 did you check to determine if there any
10 conflicting name uses in South
11 Carolina?

12 A. No."

13 At Line 14 on Page 17:

14 "Q. Has Bluffton Properties, LLC,
15 Nevada been used for any purposes other
16 than South Carolina real estate?

17 A. No."

18 Point out that on Page 18, Line
19 19, I begun to ask Mr. Burke questions
20 about the notice required in Section
21 7.1C of Exhibit 9 to Mr. Lee's
22 deposition, the covenants, which are
23 Exhibit 1 here, I believe. And we
24 sorted through some mechanics of
25 getting on the right page, literally,



1 so to speak. That was a telephone
2 deposition and he was viewing things on
3 a computer screen in Wisconsin.

4 Over to page 20 at Line 9 --
5 excuse me -- Line 16 -- Page 20, Line
6 16:

7 "Q. Did you on behalf of Mr. Lee
8 and/or Bluffton Properties, LLC,
9 provide to Colleton the notice that is
10 required in that section?"

11 It's referring to 7.1C.

12 At Line 19 of Page 20:

13 "A. To the best of my
14 recollection, I did not."

15 Page 25 at Line 14:

16 "Q. Did you give notice to
17 Colleton as outlined in Section 19.2?"

18 Referring to the covenants.

19 Answer, Line 16:

20 "No."

21 THE COURT: Which page are we on?

22 I'm sorry.

23 MR. JOHNSON: 25 at Line 14.

24 THE COURT: Okay. Got it. Thank
25 you.



1 MR. JOHNSON: 15 and 16. Call the
2 Court's attention to Page 25 at Line
3 18. I ask Mr. Burke if he prepared the
4 deed, a copy of which is a certain
5 exhibit number to Mr. Lee's deposition,
6 and after wondering through the Dropbox
7 exhibits that he was working with, Page
8 26, we discussed the recording
9 information on the exhibit he's looking
10 at, and bottom of the page, Line 22
11 through 25, he and I come into
12 agreement that that deed that we're
13 talking about that he prepared has the
14 book and pages that corresponds with
15 what is Exhibit 3 here today.

16 And on the top of Page 27, the
17 first four lines, Mr. Burke agrees that
18 he prepared the deed and he notarized
19 it, continuing down there, and the two
20 witnesses. He explains in Lines 12
21 through 15 were folks who worked in his
22 or Mr. Lee's offices there at the time.
23 He confirms the date of execution of
24 the deed that was December 31, 2012.

25 Bottom of Page 27, Line 22, I



1 asked him if he investigated the South
2 Carolina requirements for lawyers to
3 draw deeds for residential property in
4 South Carolina and conduct closings of
5 title transfers of such properties in
6 South Carolina.

7 Top of Page 28, Line 3, his
8 answer, "No."

9 Carries on, he didn't do title
10 examination, title insurance. He
11 explains on Page 28, Lines 12 through
12 17, that he got the legal description
13 from the deed in the early '90s when
14 Mr. Lee purchased the property, which
15 he talked about today.

16 Top of Page 29, Line 1:

17 "Incident to preparing this deed,
18 this is a deed from Mr. Lee to Bluffton
19 Properties, LLC, did you review
20 Colleton covenants of 1991 as amended
21 from time to time?

22 A. I do not believe I did."

23 Page 31 -- excuse me -- Page 32 --
24 after several pages of talking about
25 the covenants and amendments and the



1 Colleton documents --

2 Page 32, Line 1, his answer."

3 "The short answer is that I may
4 have in general looked at some of those
5 documents. I say some of those
6 documents may have been a file, but not
7 well-organized that Mr. Lee
8 maintained."

9 Line 5 -- excuse me -- Line 6:

10 "Did you use summary review if
11 that happened of those documents in any
12 way to structure how you prepared the
13 deed --" exhibit so and so -- "and the
14 choice not to give Colleton any notice
15 as related to that deed?

16 A. That's a two-part question."

17 So we broke it down. Line 18 on
18 Page 32:

19 "Did you rely upon any specific
20 portions of what I will call the
21 Colleton River documents, that group I
22 just reviewed with you to inform,
23 guide, or assist you in preparing the
24 deed?" Which is a certain exhibit to
25 these depositions.



1 Line 23:

2 "A. The general answer to that
3 question would be no."

4 Top of Page 33:

5 "Q. Is it therefore correct to
6 say you did not use what we have
7 collectively called here the 'Colleton
8 River documents' to inform, guide, or
9 direct you into making a decision as to
10 whether or not to give Colleton River
11 notice of the deed?" Exhibit
12 so-and-so.

13 "A. Well, if I understand the
14 question or you are -- if I understand
15 the question -- are you asking me did I
16 make a conscious decision not to inform
17 Colleton River of the transfer?

18 Q. We can take the question that
19 way for the time being, so what is the
20 answer to that?"

21 Line 12, Page 33:

22 "The answer to that is no."

23 Line 13:

24 Q. So is it fair to conclude that
25 you just simply did not consider the



1 issue or the possibility?"

2 Line 16, Page 33:

3 "A. At the time the deeds were
4 prepared, it is fair to say that at the
5 time the deeds were prepared, the idea
6 was to take these properties out of Mr.
7 Lee's name and put them in another
8 entity so that for -- basically estate
9 planning purposes."

10 Okay. Page 34 at Line 2, I had
11 asked him to pull up on his screen a
12 copy of the satisfaction and release of
13 judgment, the one related to the 2012
14 judgment that we have been discussing,
15 and we get it all identified.

16 And at Line 21 on Page 34 I ask
17 this question:

18 "And you and Mr. Ward --" that
19 would be Jason Ward -- "had some
20 discussions as I understand it that
21 resulted in that document, the
22 satisfaction and release of judgment;
23 is that correct?"

24 A. I have no recollection of
25 talking to Mr. Ward."



1 Page 35, Line 1:

2 Q. Did you have correspondence?

3 A. My recollection is that -- my
4 recollection is that I dealt with a --
5 we dealt through a collection agency."

6 Continuing:

7 "All right, sir. Would that be an
8 agency called 'TekCollect'?

9 The answer to that is correct,
10 TekCollect.

11 Do you have any documentation of
12 those dealings with TekCollect?

13 I may have.

14 Would you provide them? I don't
15 think we ever got them from Mr. Burke."

16 Bottom of Page 37, Line 25:

17 "Why did you not investigate the
18 requirements of Colleton related to the
19 transfer of title to lots within
20 Colleton before providing the deed from
21 Mr. Lee to Bluffton Properties, LLC?

22 Answer -- continuing:

23 "Well, the short answer is given
24 the fact that the idea was to get that
25 property -- those properties, not one



1 specifically, out of Mr. Lee's name,
2 individual name, for estate planning
3 purposes. I don't believe we spent any
4 time making that consideration."

5 Line 12, Page 38.

6 "Q. So would it be fair to say if
7 there were any Colleton requirements
8 about transfers of lots within
9 Colleton, you did not take them into
10 consideration in connection with the
11 deed?" Copy is exhibit so-and-so.

12 Page 38, answer continuing:

13 "It is fair to say that I didn't
14 take them into consideration at the
15 time that we prepared the deed.
16 Whether or not we would have had to at
17 a later date was something that I just
18 didn't consider necessary at that
19 moment."

20 All right. Page 38, Line 23:

21 "Q. The deed exhibit so-and-so we
22 discussed is dated December 31, 2012,
23 and the recording data on the upper
24 right-hand corner on the first page
25 shows it was recorded May 28, 2013,



1 which is five months later. What was
2 the reason for the delay in recording?"

3 I'm at the top of Page 39.

4 Answer at Line 5, Page 39: "Well,
5 you are asking me to guess, but I will
6 make a guess. I'm guessing that at
7 that time we were cleaning things up as
8 of the end of the year. This was one
9 of the things we did at that moment,
10 and the next thing that happened is we
11 put in the file or let it sit there,
12 and as I recall that file, my
13 recollection is -- and that's sort of a
14 vague recollection -- is that file on a
15 filing cabinet or credenza in my office
16 for a long period of time. I looked at
17 and one day I picked it up and said,
18 'oh, we got to take care of this,' and
19 we took care of it."

20 So those are the things I want to
21 point out from Mr. Burke's deposition.
22 And I have other things about Mr. Lee's
23 deposition, but I may not go into all
24 of them quite yet, but there is one
25 part of Mr. Lee's deposition, which is



1 **Exhibit 13** in this record, on Page 8 at
2 Line 10 -- excuse me -- Line 8 after
3 Mr. Lee had discussed his history
4 practicing law.

5 Question -- Page 8, Line 8:

6 "All right. And what's the
7 current name of that firm?

8 A. The firm is no longer in
9 business. Went out of business at
10 about 1991."

11 Continuing:

12 "Q. All right, sir. And that's
13 approximately when you stopped
14 practicing?

15 A. It is when I stopped
16 practicing."

17 Continuing Page 8, Line 15:

18 "All right, sir. What kind of law
19 did you practice?

20 A. I did merges, acquisitions,
21 tax work. I guess, you can call it
22 transactional law versus trial law."

23 Question on Line 20:

24 " Yes, sir. When did you become
25 acquainted with this part of the



1 country, Beaufort County, South
2 Carolina?

3 A. Thirty-five years.

4 Q. All right. So that's
5 approximately when you stopped
6 practicing law?"

7 And Page 9, Line 1.

8 "A. Yes, sir." And 2:

9 "Q. All right, sir. So you came
10 down here on vacation?

11 A. I came down here to play
12 tennis and fell in love with the place.

13 Q. Good. Did you acquire
14 property here?

15 A. I have had a number of
16 properties here."

17 Question at Line 8 on Page 9:

18 "Okay. One of them obviously was
19 at least one property at Colleton River
20 Plantation?

21 A. Correct.

22 Q. Where else did you have
23 properties?

24 "Our first property was a condo in
25 Shipyard. My second property was a



1 condo in, I guess, it's part of Port
2 Royal Plantation called Devonshire, and
3 my third property was a house on
4 Barnacle Road in Port Royal.

5 Q. And then there was a fourth
6 property?

7 A. If you mean lots and houses as
8 both being properties?

9 Q. Yes, sir.

10 A. The fourth acquisition was a
11 lot in Colleton River.

12 Q. Were there any other
13 acquisitions and lots?"

14 Page 10, Line 10:

15 "A. Yes. A lot in Belfair and a
16 lot in Berkeley Hall."

17 Line 3:

18 "Q. All right, sir. Do you still
19 own any of these properties? I think
20 altogether it was about six roughly.

21 A. Yes. I own the house on
22 Barnacle Road and through a couple of
23 LLCs, I own lots in Berkeley and
24 Belfair."

25 Line 9:



1 "What are the names of those
2 LLCs?"

3 Line 10:

4 "A. I think they are all under
5 the name of Bluffton Properties."

6 Line 12:

7 "Q. So one LLC or separate LLCs
8 that are owned by Bluffton Properties?"

9 A. I think it is one LLC called
10 Bluffton Properties."

11 Line 16, Page 10:

12 "So Bluffton Properties, LLC?"

13 Line 17:

14 "A. Yeah, but it could be
15 Bluffton Properties, LLC 2 and 3. I
16 have a lawyer that does that stuff for
17 me. I don't do any legal work
18 anymore."

19 Page 10, Line 21:

20 "Is that Mr. Burke?"

21 A. Tom Burke."

22 I may deal with other parts of Mr.
23 Lee's deposition in the course of such
24 testimony as he may offer, but that
25 being said plaintiff rests.



1 THE COURT: All right. Do you
2 have any motions? We can take them up
3 after the break.

4 MR. THOMSON: Yeah. 10, 15
5 minutes would be great.

6 THE COURT: Sounds good.

7 (Whereupon, a short recess was
8 taken at 3:10 p.m.)

9 (Back on the record at 3:24 p.m.)

10 THE COURT: Back on the record.

11 Sir, can you raise your right
12 hand?

13 JOEL LEE ,
14 having been produced and first duly sworn as a
15 witness, testified as follows:

16 THE WITNESS: Yes.

17 THE COURT: Thank you so much.

18 EXAMINATION

19 BY MR. THOMSON:

20 Q Mr. Lee, good afternoon. Couple of
21 questions, and we may get into some biographical
22 stuff, but while it's fresh on everybody's mind,
23 I do want to get your sense or your testimony as
24 to the transfer of title of the subject lot. So
25 if you could walk us through the reasons when



1 you did it and so forth with regard to the
2 subject lot at Colleton River.

3 A Okay. I was doing an estate planning
4 in late '12. When I showed the estate planning
5 attorney what assets I have and so forth, he
6 said we should get those lots in South Carolina
7 out of --

8 MR. JOHNSON: Objection to what
9 the estate planning attorney told him.

10 THE COURT: That does sound
11 hearsay-ish.

12 BY MR. THOMSON:

13 Q Are you referencing Tom Burke?

14 A No.

15 Q No? Okay. So if you keep the
16 hearsay --

17 A I was doing estate planning.

18 Q Estate planning was the purpose behind
19 the transfer of the Colleton River lot out of
20 your name individually to Bluffton Properties,
21 LLC?

22 A Yes.

23 Q Okay. And when -- I believe that deed
24 is in evidence, do you recall the date of that
25 transfer?



1 A I assume it was the end of '12.

2 Q December 31st, 2012 --

3 A Okay.

4 Q -- is that right?

5 Do you have knowledge of who the owner
6 or members are -- member or members are of the
7 Bluffton Properties, LLC, the grantee of this
8 lot?

9 A Tom Burke.

10 Q Okay. And give the court a basis of
11 your knowledge for that.

12 A Well, at the end of '12, I was doing
13 the estate planning. I said Tom, you're 20
14 years younger than me. These lots are
15 valueless. Someday they may be worth something.
16 I'm going to transfer them and they're yours.
17 The theory was someday they might be worth
18 something again.

19 Q Did your ever retain any ownership or
20 membership or co-ownership interest in the
21 subject lot in conjunction with that transfer?

22 A No.

23 Q Were you ever approached by any
24 representative of Bluffton Properties, LLC, at
25 any point in time to be a designated user of



1 that lot?

2 A No.

3 Q And you first bought the property in
4 1993; is that correct?

5 A Correct.

6 Q And you paid dues, assessments, and
7 other membership obligations from 1993 up until
8 the end of your membership and ownership on
9 December 31, 2012?

10 A To the best of my knowledge.

11 Q And you never built on that property?

12 A No.

13 Q And the approximate price you paid was
14 \$129,000 or so?

15 A Correct.

16 Q And there is no mortgage on that
17 property?

18 A No.

19 Q Or there was none at the time you
20 transferred it?

21 A No.

22 Q Okay. Have you ever used any of the
23 club's amenities at Colleton River subsequent to
24 your December 31, 2012, transfer of title?

25 A No.



1 Q Now, you recall you were sued
2 previously in a collection action by the same
3 plaintiff back in 2012. That was case
4 2012-CP-07-03525.

5 A I can't see that far. I got to put
6 some glasses on. Yes. Yeah, I see it.

7 Q This is for the timeline. Okay?

8 A I see it.

9 Q And you were sued in October 2012. In
10 August 8th, 2013, Colleton River obtained a
11 judgment against you individually for \$21,000,
12 correct?

13 A Correct.

14 Q And you were the only defendant in that
15 lawsuit, correct?

16 A Correct.

17 Q Now, skipping forward to August 27 of
18 2014 and asked Ms. Kerr about this, and you were
19 present for her testimony, but I think it is
20 important for us to go through that. Let me get
21 -- do you recall being involved in a settlement
22 with Colleton River through its collection
23 agency in or around August 2014?

24 A Yes.

25 Q And at that point, you had already



1 transferred title of the property, correct?

2 A Correct.

3 Q And at that point in time, it was your
4 understanding the club had notice of the
5 transfer of title as well, correct?

6 A Yes.

7 Q And you tell me about the nature of
8 what you were settling for, the amount you
9 proposed and what it was ultimately settled for.

10 A Well, simply, I thought I was out of
11 ownership of this Colleton property at the end
12 of 2002. I thought -- and I don't pay the
13 bills. They get paid through my office.
14 Everything was paid because I was current for 20
15 years. I wouldn't knowingly be short \$9,000.
16 So Tom Burke came to me and said we got a
17 lawsuit and we can settle for \$9,000. And I had
18 given him the lot, so it shouldn't be his
19 problem that there is a suit after, but the cost
20 of coming back and forth to South Carolina and
21 everything, I said let's just pay it and get it
22 done, but this has got to be the end. I want to
23 be through with everything, so it has to be a
24 settlement in full and that's what this is and
25 paid the money.



1 Q And Colleton River accepted your
2 proposed amount of \$8,977.46, correct?

3 A Yes, and to my knowledge they claimed
4 that was -- that was equal to what I claimed I
5 owed and I wasn't aware I owed anything.

6 Q And looking at the account statement,
7 we went through this with Ms. Kerr, the amount
8 that the club has noted that you owed as of the
9 date of transfer, December 31st, 2012, was
10 \$8,977.46. Was that your understanding?

11 A That was their claim. I still don't
12 know if that money was owed.

13 Q So the record is clear, your settlement
14 with Colleton River in August of 2014 was for --
15 did that encompass all debts and liabilities
16 owed, in your mind?

17 A Yes. In my mind I was done at that
18 point with any claims of Colleton River.

19 Q And you'll see on the document in front
20 of you, which is **Exhibit 9** -- Joint **Exhibit 9**,
21 by that time the club had an ongoing or a
22 charge, a balance due of \$34,265.95; is that
23 right?

24 A Correct.

25 Q And they gave you until September 15th



1 to pay the 8,977. "If payment is not received,
2 settlement will be null and void and balance
3 will be due immediately."

4 Do you recall seeing that?

5 A Yes.

6 Q And you did pay that amount within that
7 time period. Correct?

8 A Yes.

9 Q I'm going to offer, Your Honor, without
10 objection from counsel, an exhibit evidencing
11 the check dated September 11th, 2014, in the
12 amount of \$8,977.46.

13 Do you see that?

14 A Yes.

15 Q Okay.

16 (Whereupon, Exhibit
17 Number 19 was marked for
18 identification.)

19 THE COURT: That will be 19
20 without objections. Okay.

21 BY MR. THOMSON:

22 Q And when you were negotiating with the
23 collection agency, is it your recollection that
24 you were aware that the club knew that they
25 already procured the title search and knew of



1 the transfer of title?

2 A I didn't negotiate at all with
3 TekCollect. The knowledge of the club having
4 the information on the transfer, I was aware of.

5 Q Okay.

6 MR. JOHNSON: Can I ask that his
7 answer be played back because I didn't
8 quite hear his voice?

9 (Whereupon, the record
10 was read back as requested.)

11 MR. JOHNSON: Thank you.

12 BY MR. THOMSON:

13 Q You are -- you were never a party or
14 witness to any litigation initiated by Colleton
15 River by Bluffton Properties, LLC, correct, you
16 individually?

17 A You got to repeat that question.

18 Q You were never a party or a witness to
19 any collection litigation initiated by Colleton
20 River against Bluffton Properties, LLC, were
21 you?

22 A No, no.

23 Q But you're aware that they, Colleton
24 River, filed a lawsuit on this property against
25 Bluffton Properties, LLC, who is the grantee,



1 and they received an order of judgment in May of
2 2015 --

3 A Vaguely aware.

4 Q -- right?

5 A Because Tom Burke was solely involved
6 at that point.

7 Q And subsequent to that, they -- let me
8 ask it this way: When you settled your
9 arrearage in August of 2014, did you ever expect
10 to be sued again by Colleton River?

11 A No.

12 Q Tell me why.

13 A Well, we had settled. There were all
14 of these issues that have been raised after I
15 made the payment, and I just thought the
16 activities of Colleton River were amounting to
17 malicious prosecution at this time, and I said
18 I'm fighting back.

19 Q Now, is it true that when you
20 transferred title to Bluffton Properties, LLC,
21 on December 31st, 2012, at that point in time,
22 to your knowledge, there was no notification
23 provided to the club at that time, correct?

24 A Not to my knowledge.

25 Q But it has come to your knowledge that



1 the club did receive actual notice of the
2 transfer vis-à-vis the title search as of July
3 2014?

4 A Yes.

5 Q And your knowledge of the club's notice
6 preceded your negotiations with the club to
7 settle your debts, correct?

8 A Correct.

9 Q Is it your testimony that after the
10 board and the club received notice of the
11 transfer of title, that all amounts outstanding
12 owed prior to the transfer had been paid by you
13 in full?

14 A I believed that the 8975 paid
15 everything I owed. Period.

16 Q Okay. And Tom Burke has passed away in
17 the midst of this litigation?

18 A Just recently.

19 Q When -- are you aware of any -- or were
20 you ever notified of any obligation to become a
21 designated user of the lot after you had
22 transferred it to Bluffton Properties, LLC?

23 A Got to repeat that.

24 MR. THOMSON: Can you read that
25 back, please?



1 (Whereupon, the record
2 was read back as requested.)

3 THE WITNESS: I was never going to
4 be a designated user of that lot, if
5 that's your question.

6 BY MR. THOMSON:

7 Q Okay. And you've never been to
8 Colleton River since the change of ownership and
9 the transfer of title at the end of 2012,
10 correct?

11 A No.

12 Q Did you ever receive any capital
13 contributions or equity deposit back when you
14 ceased to be a member from the club, did they
15 ever pay you anything?

16 A No.

17 Q And could you estimate how much monthly
18 you paid the club in your 20 years of membership
19 and ownership of the lot?

20 A Close to \$300,000.

21 Q Did you play any role in the drafting
22 or the execution of the Bluffton Properties,
23 LLC, whether it's the Nevada entity or South
24 Carolina entity? Did you ever play any direct
25 role in that?



1 A In either. I didn't even know about
2 the South Carolina one.

3 Q That's all the questions I have. Thank
4 you.

5 THE COURT: Thank you.
6 Mr. Johnson.

7 MR. JOHNSON: Please the Court?

8 EXAMINATION

9 BY MR. JOHNSON:

10 Q Good afternoon, Mr. Lee.

11 A Good afternoon.

12 Q The reason for the estate planning
13 deeds was to eliminate the necessity for
14 ancillary probate proceeding in South Carolina
15 by Mr. Burke?

16 A That was the basis by it.

17 Q Do you know what an ancillary probate
18 proceeding is?

19 A No.

20 Q And so to that end, you transferred the
21 three -- I'm going to call them "golf course
22 community lots" in Bluffton into that LLC,
23 correct, by different deeds?

24 A I didn't do it. I just authorized it
25 to be done.



1 Q You had to sign the deeds?

2 A Yeah.

3 Q So by signing the deeds you transferred
4 it, correct?

5 A (Nods head.)

6 Q And that would have been this lot we've
7 been talking about in Colleton and as well a lot
8 in Berkeley Hall and a lot in Belfair
9 Plantation?

10 A Correct.

11 Q Fair to say you played a lot of tennis
12 and golf during your years of ownership of these
13 things?

14 A Well, I played golf during the 20 years
15 I owned it. I played tennis the 20 years before
16 that.

17 Q Okay. All right. Have you ever read
18 any of the Colleton covenants and governing
19 documents?

20 A Just as a result of this litigation.

21 Q Prior to the litigation?

22 A No.

23 Q So prior to this litigation, did anyone
24 ever tell you or explain to you anything about
25 what's in the Colleton covenants and governing



1 documents?

2 A When I bought the property, I had a
3 South Carolina attorney.

4 Q Right.

5 A Like all attorneys, they sit down and
6 they tell you and you ask them some questions.
7 Are these kind of standard documents, et cetera,
8 et cetera? You do a look at the little brochure
9 which outlines what is contained by way of
10 trying to sell you the lot.

11 Q Right.

12 A And nobody ever told me there was
13 anything unusual about these documents, so yes,
14 I had no reason to go beyond that.

15 Q So you had nobody -- prior to this
16 litigation, nobody to talk to you about these
17 Colleton covenants and governing documents since
18 the -- basically, the closing table when you
19 bought this lot in 1993, correct?

20 A Correct.

21 Q All right. What's the status today of
22 the Berkeley lot? There's -- Berkeley sued over
23 that lot?

24 A I have -- I -- I don't know. I don't
25 think they have.



1 Q Belfair sued over its lot?

2 A I don't know.

3 MR. THOMSON: Objection.

4 Can we go off the record for a
5 second.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 THE COURT: Let's say that on the
9 record. I'll allow it. My
10 understanding of the testimony thus far
11 is these were done as simultaneous
12 transactions.

13 MR. THOMSON: Okay.

14 THE COURT: It may be relevant,
15 but I don't know.

16 MR. THOMSON: Okay.

17 THE COURT: So you can re-ask or
18 if you remember the question, Mr. Lee,
19 you can continue.

20 THE WITNESS: I don't know. I
21 have counsel that handles almost any
22 type of litigation. I haven't been
23 involved in the practice since about
24 1990.

25 THE COURT: Right.



1 THE WITNESS: And it would be
2 foolish for me to try at this age.

3 BY MR. JOHNSON:

4 Q Is there a lawyer who handles things
5 for you since Mr. Burke unfortunately passed
6 away?

7 A We have three attorneys who might be
8 handling it. A guy by the name of Spencer
9 Sotolongo. Guy by the name of Larry Traybon and
10 probably Josh Gimble.

11 Q Do they work for you or one of your
12 companies?

13 A No. They are only independent. I have
14 only two lawyers in my office now that Tom has
15 passed. I had three.

16 Q Those lawyers --

17 A Spencer is one of those.

18 Q And he rents space from you?

19 A No, no. Spencer works for our
20 development company.

21 Q Okay. And just for the record, is your
22 development company involved in residential
23 development or commercial?

24 A Commercial.

25 Q And what part of the country?



1 A Milwaukee.

2 Q All right, sir. So Spencer is -- is
3 Spencer an estate planning attorney?

4 A No, no. Spencer's like this young man.

5 Q You mean age-wise?

6 A Yes. Just out of school. We hired him
7 a couple of years ago.

8 Q And what was his name again?

9 A Sotolongo.

10 Q Yes, sir. All right, sir. Do you have
11 any -- normally in estate planning when you own
12 property, you not only provide the disposition
13 of your assets, but also for dealing with
14 liabilities, correct?

15 A Correct.

16 Q Do you know what arrangements were made
17 to capitalize Bluffton Properties, LLC, so that
18 it could carry these liabilities forward?

19 A I do not, no.

20 Q Did you make any inquiry incident to
21 your execution of these three -- three deeds,
22 the Colleton, Berkeley, Belfair, into Bluffton
23 Properties, LLC, Series 1, at the end of
24 December 2012, as to whether that terminated
25 your obligations to any or all of those



1 community associations?

2 A My only --

3 Q Excuse me. That's yes or no, and then
4 you can explain.

5 A I can't answer that. Did I personally
6 make any -- no.

7 Q Yes, sir.

8 A No.

9 Q I'm sorry. Did you make the inquiry?

10 A No.

11 Q So the answer to that is no?

12 A Okay. No.

13 Q Thank you, sir. At the time you and
14 Mr. Burke negotiated this settlement with
15 TekCollect that we've talked about at great
16 length today, which is perceived to be summer of
17 2014, I think that is what the chart says here.
18 You with me? Just to get the time frame right.
19 Is that August of 2014; is that correct?

20 A Yeah. Okay. I see it.

21 Q At the time you-all negotiated that,
22 was anyone tasked with the responsibility of
23 preparing an overall settlement agreement
24 between you and Colleton River Plantation Club,
25 Inc.?



1 A I did not get involved in the
2 settlement negotiations at all until Tom Burke
3 came to me and said the settlement is \$8,975 and
4 you're done with everything and I said okay.
5 That was it.

6 Q Where is that documented?

7 A The TekCollect, the document. Was
8 it --

9 Q All right. Talk about **Exhibit 9** --

10 A Yes.

11 Q -- to today's proceeding?

12 A If that's **Exhibit 9**.

13 Q To the TekCollect exhibit. Is that
14 right, the exhibit number? Someone tell me.

15 THE COURT: Yes.

16 BY MR. JOHNSON:

17 Q To the extent the document of this
18 overall settlement is **Exhibit 9** and the new
19 **Exhibit 19**, which is a copy of the check that we
20 just put into evidence, correct, there is no
21 other documentation of that agreement?

22 A Not to my knowledge.

23 Q All right, sir. In the course of your
24 active involvement with Colleton, are these
25 exhibits -- okay. Let he consult with counsel



1 about two other exhibits.

2 THE COURT: Sure.

3 (Whereupon, Exhibit
4 Numbers 20 and 21 were marked for
5 identification.)

6 MR. JOHNSON: I offer two other
7 exhibits. I don't have additional
8 copies of them with me.

9 THE COURT: Those all are without
10 objection.

11 MR. JOHNSON: Sorry, Your Honor.

12 THE COURT: That's all right.

13 MR. WILLIAMS: Neil's got a copy.

14 THE COURT: Thank you very much.

15 BY MR. JOHNSON:

16 Q Mr. Lee, I know you're looking at these
17 two exhibits, 20 and 21 to refresh your memory.
18 You see in the lower right-hand corner of both
19 of these, they were exhibits in your deposition
20 we discussed from there. Without going back to
21 your deposition, I just wanted to ask you if you
22 know what Exhibit 20 was? I mean, it's
23 obviously on the letterhead of the club, April
24 1st, 2008, addressed to members. This was an
25 update and information piece on a number of



1 issues, right, just to summarize it?

2 A I can't read the whole thing quickly,
3 but -

4 Q I know that.

5 A I mean, that's definitely the way I
6 initial things, so that is my initial.

7 Q So in the upper section of that page,
8 there is handwriting on page 1 of Exhibit 20, it
9 says approved --

10 A Yep.

11 Q And I'm reading the date as 4/08/08,
12 which should be April 8th of 2008 and your
13 initials, correct?

14 A Yes.

15 Q All right, sir. And I just want to
16 call attention to page 2 of Exhibit 20, the
17 bottom paragraph which is for some reason is
18 dominated as E.2, which makes reference to
19 certain provisions in the Covenants. Last
20 page --

21 A Oh --

22 Q Paragraph enumerated E.2.

23 A C.2 or E.2?

24 Q E.2 at the bottom of the page?

25 A E.2. Okay. What about it?



1 Q I just pointed out it makes reference
2 to the Covenants of Colleton and reference CRDC,
3 which on the first page is Colleton River
4 Development Company.

5 Do you know what that entity is, by any
6 chance?

7 A No.

8 Q Do you know they were involved in the
9 Phase 2 side what became Colleton -- what's
10 called Phase 2 or the Dye course side?

11 A I vaguely remember a second phase and
12 having to agree with some guy who owned the land
13 that they bought, but that's all I remember.

14 Q Right. That would be Mr. Cram?

15 A Who?

16 Q Mr. Cram, you had to deal with. All
17 right, sir. Thank you. And then Exhibit 21,
18 you have before you, it's called "Colleton River
19 Plantation Club feedback plan." We talked about
20 this at your deposition also. There's very
21 elements of handwriting under the topics on this
22 feedback form. Is that your handwriting?

23 A Yes.

24 Q All right. And at the bottom, it's got
25 member name, please print. Of course, that's



1 your name, contact number. Is that your office
2 number?

3 A Yes.

4 Q At the bottom there's a note from
5 somebody named Kim. She faxed this back in
6 December of 2000 --

7 A Kim was a secretary.

8 Q Your secretary?

9 Yes, sir. Your secretary?

10 A No. Just the receptionist.

11 Q In your company?

12 A Yes.

13 Q And she handled the faxing?

14 A Yes.

15 Q All right. Show these two documents in
16 '06 and then in '08, Exhibit 21 and 20. They
17 kind of bracket the time frame when the 2007
18 covenants went into effect, which is obviously
19 the year you saw, correct?

20 A I don't know.

21 Q All right, sir. Now give me just a
22 second.

23 I'm almost done, Your Honor.

24 THE COURT: Take your time.

25 MR. JOHNSON: Take a look at that



1 and this. Without objection, Your
2 Honor, I offer the next two exhibits.
3 It should be 22 and 23. 22 is a copy
4 of the Beaufort County tax screen
5 record regarding property on Barnacle
6 Road on Hilton Head.

7 THE COURT: Is this note in this
8 notebook already or is it a different
9 property?

10 MR. WILLIAMS: Different property.

11 THE COURT: Okay. All right. So

12 --

13 (Whereupon, Exhibit
14 Numbers 22 and 23 were marked for
15 identification.)

16 THE COURT: No objection?

17 MR. THOMSON: No.

18 BY MR. JOHNSON:

19 Q Mr. Lee, I don't expect you necessarily
20 to be in familiar with the form of the
21 documents, that is Exhibit 22, that is before
22 you. It's a print-out from the Beaufort County
23 Government property tax records. We call it a
24 property tax screen concerning property at 21
25 Barnacle Road in Hilton Head, which, if you look



1 at the bottom of the page, is property that
2 seemingly came into your title in 1989 and then
3 was conveyed by you, according to these
4 disclosures, on May 16, 2008; is that correct,
5 sir, that you bought in your own personal name
6 in 1989 and then in May of 2018, you conveyed it
7 to your revocable living trust?

8 A I mean, I vaguely remember this, but it
9 looks like it is correct.

10 Q Okay. And then Exhibit 23 is the deed
11 in Book 3683 at Page 672 as stamped at the top
12 by the county register of deeds on Exhibit 23
13 that corresponds with that notation on Exhibit
14 22, correct?

15 A I'll take your word for it. I don't
16 know. It's the same property, I mean if that's
17 your question, Barnacle Road.

18 Q The Barnacle road property?

19 A It's the Barnacle Road property.

20 Q And in your deposition you talked about
21 you bought the Barnacle Road property and still
22 own it, correct?

23 A No. It was in a revocable trust and
24 now it is in my estate plan in a different form.
25 I can't tell you what that is.



1 Q All right, sir. Well, **Exhibit 23** is
2 now published is a South Carolina quick claim
3 deed from Joel S. Lee individually as tenants
4 in common united joint tenants to Joel S. Lee or
5 his successors as trustee of the Joel S. Lee
6 revocable living trust dated August 7, 2007, as
7 amended from time to time, a 50 percent interest
8 Arlene A. Lee or her successors as trustee of
9 the Arlene A. Lee revocable living trust dated
10 August 5, 2016, as amended from time to time, a
11 50 percent interest in this Barnacle Road
12 property that's described on Exhibit A. That
13 deed says at the top left corner, it was Spencer
14 Sotolongo?

15 A Yes, that is the name I just gave you.

16 Q Right. And after recording, you go
17 back to him and -- is he licensed to practice
18 law in South Carolina?

19 A I doubt it.

20 Q All right, sir. There's not a
21 derivation clause in this deed like is normally
22 required for recording. You didn't have any
23 conversation with Mr. Sotolongo about the
24 technical formalities associated with this deed?

25 A No.



1 Q And is it correct that you signed this
2 deed on May 16th, 2018? Look on page 2, top of
3 page and then the notary section at the bottom?

4 A Well, my guess would be -- and I don't
5 know -- I did sign it and my guess would be it's
6 part of the updated estate planning that we're
7 doing every year.

8 Q All right, sir. So if you had passed
9 away -- I pray that will be a long time from now
10 for all of us.

11 A Thank you for all of us.

12 Q Yes, sir. Between December 31, 2012,
13 and May 16, 2018, would you agree with me that
14 this Barnacle Road property would have had to go
15 through ancillary probate proceedings in South
16 Carolina?

17 A I don't know.

18 Q Thank you, sir.

19 I like to take a break for a short
20 minute, Your Honor.

21 THE COURT: All right.

22 MR. JOHNSON: I don't think we
23 need to disband the whole thing. Just
24 give me a couple minutes.

25 THE COURT: Sure. Let's take a



1 couple. Just don't discuss your
2 testimony with anyone during the --
3 pardon me -- don't discuss your
4 testimony with anyone during the break.

5 (Whereupon, a brief recess was held
6 at 4:10 p.m.)

7 THE COURT: Back on. Thanks.

8 (Back on the record at 4:12 p.m.)

9 MR. JOHNSON: If it please the
10 Court, I don't have any more questions
11 of Mr. Lee at this time.

12 Do you have any follow up?

13 MR. THOMSON: I don't, Your Honor.

14 MR. JOHNSON: Before we close the
15 record and I'm not planning to put a
16 reply case, but I will put a reply case
17 if need be to make the one statement I
18 want to make on the record.

19 THE COURT: Okay. Well, you were
20 in the middle.

21 MR. THOMSON: Before I rested, I
22 just wanted to offer -- I've been
23 talking about this demonstrative dates.
24 It's got some commentary on it.
25 Everybody's seen it. We've referenced



1 it. I wanted to purpose to admit this
2 document as an exhibit -- as a trial
3 exhibit.

4 THE COURT: You got a small
5 version, I hope.

6 MR. THOMSON: I do. I do.

7 MR. JOHNSON: I have no objection
8 to it being admitted with one caveat
9 that I don't agree with the
10 characterizations of the events that
11 appear on there.

12 THE COURT: Right.

13 MR. JOHNSON: For example, the one
14 that's in bold in the middle of the
15 page, it's a discharge of all
16 liabilities, and I don't agree with
17 that.

18 THE COURT: I understand.

19 MR. JOHNSON: So I would agree it
20 being admitted and maybe more
21 appropriately to do so for
22 identification in some way or some way
23 where it's not itself is evidence
24 because it is a summary of some things,
25 but because it has --



1 THE COURT: Summary of the
2 defendant's case.

3 MR. JOHNSON: -- it has the
4 advocacy interpretation of that
5 timeline that I really object to. The
6 time line itself, I don't only object
7 to.

8 MR. THOMSON: In response, I will
9 say I waited to proffer this up after
10 receiving testimony from Mr. Lee, so I
11 wanted -- you know, to the extent there
12 is some characterizations and
13 editorials in here, from the
14 defendant's perspective, there is at
15 least been testimony -- I'm not saying
16 it's undisputed, but there's been
17 testimony in evidence as to these
18 characterizations.

19 THE COURT: I mean, I can
20 certainly remember this, but if it will
21 make everyone feel better, perhaps you
22 can write timeline according to
23 defendant on the top --

24 MR. THOMSON: Okay.

25 THE COURT: And just according to



1 defendant and then --

2 MR. JOHNSON: That's acceptable.

3 THE COURT: Okay.

4 MR. JOHNSON: Than I have no
5 objection.

6 THE COURT: And then if somehow I
7 completely lose my memory of this
8 document, I'll at least be refreshed by
9 it.

10 MR. THOMSON: I'm handwriting
11 according to defendant at the top and
12 we'll sticker this.

13 THE COURT: So with that
14 modification, that's 22, I believe --
15 3?

16 COURT REPORTER: 4.

17 THE COURT: 4. I've lost track of
18 these things. Oh, yeah. Thank you.
19 So that's 24 without objection.

20 (Whereupon, Exhibit
21 Number 24 was marked for
22 identification.)

23 MR. THOMSON: And with that, Your
24 Honor, we have no more witnesses and
25 just reference the exhibits that have



1 been submitted and the testimony in the
2 record, so we'll rest.

3 THE COURT: I have a question with
4 regard to the fees that are sought.
5 Mr. Johnson, you had fees and sometimes
6 we wait for verdict and then we come
7 back and deal with the fees.

8 MR. JOHNSON: I very much would
9 like to do that. There wasn't any way
10 to project all of this for today.

11 THE COURT: Right.

12 MR. JOHNSON: And I know that is
13 normal practice.

14 THE COURT: Is that acceptable to
15 you or do you have any -- certainly,
16 I'm sure Mr. Johnson can give testimony
17 as we sit here right now with regards
18 to the fees. I don't know if you're
19 prepared to do that, but we can
20 withhold that.

21 MR. JOHNSON: Spent too many hours
22 in the last few days working on this
23 case to have counted time rather than
24 writing it down.

25 THE COURT: All right. When --



1 MR. JOHNSON: I like to leave that
2 open like Your Honor usually does in a
3 complex matter like this.

4 THE COURT: We can certainly do
5 that, and assuming we get to that point
6 and it's appropriate and there is such
7 a number, I'll certainly give you the
8 option to bring Mr. Johnson with a
9 court reporter and we'll do the whole
10 situation. That can be waived, of
11 course, but I have to get the factors
12 on the record one way or the other.

13 MR. THOMSON: I don't mind
14 suspending that until later.

15 THE COURT: Okay.

16 MR. JOHNSON: Okay.

17 THE COURT: That makes a lot of
18 sense in this situation. Thanks. I
19 forgot that.

20 Mr. Johnson, you had something you
21 wanted to say?

22 MR. JOHNSON: Yes, sir. It's a
23 statement about a piece of the evidence
24 with an explanation. Colleton takes
25 very seriously its responsibilities to



1 all the homeowner -- excuse me -- all
2 the property owners and to people like
3 Mr. Lee whose obviously, depending on
4 whose interpretation of the situation
5 is ultimately determined by the court,
6 is somewhere in that ambit of
7 responsibility. We see that there is
8 confusion between TekCollect and
9 Colleton, and there's certainly no, as
10 you would expect there to be, overall
11 settlement agreement.

12 So we're prepared to have the
13 court consider, if you'll look at
14 Exhibit -- the ledger -- the account
15 ledger -- I just want the exhibit
16 number for the record.

17 THE COURT: It's Number 8.

18 MR. JOHNSON: Number 8. To be
19 fair to Mr. Lee, we are prepared to go
20 so far as on October 31, 2014, where
21 the various TekCollect credits have
22 been applied and a balance is reflected
23 due of \$22,457.10 on that date,
24 10/31/14, that we will adjust this
25 account to a zero balance as of that



1 day to be fair to Mr. Lee because we
2 don't think TekCollect made a full
3 settlement of everything after that
4 date, and it's not clear and TekCollect
5 was working for Colleton, and we do not
6 want that to be the mountain on which
7 this case pivots, and so that would
8 change the bottom line number of the
9 claim through November 30, 2018, by
10 subtracting that number -- somebody
11 with more math than me or handy phone
12 or calculator can figure that.

13 \$22,457.10 subtract. It's going to be
14 a number that resembles 219,000 net.
15 Just to take that issue off the table
16 where there's some lack of clarity. We
17 think everything else is crystal clear.

18 THE COURT: So essentially you
19 would subtract, what, the amount of the
20 settlement from 47,745 and reduce that
21 number from the final number or take
22 that number off the final number?

23 MR. JOHNSON: Let me ask, Your
24 Honor, to look at Page 2 of Exhibit 8.

25 THE COURT: Got it.



1 MR. JOHNSON: The fourth line
2 down.

3 THE COURT: \$22,932.10?

4 MR. JOHNSON: Yes -- well --

5 THE COURT: I see. \$22,457.10.

6 MR. JOHNSON: Yes, sir. That is
7 an element of dispute. There are other
8 elements of dispute. That is an
9 element of dispute that --

10 THE COURT: So that would be zero.

11 MR. JOHNSON: That would be zero.
12 And rather than hand calculate three
13 pages, which you're really doing is
14 net, is taking that number off the
15 otherwise typed bottom line number on
16 page 4 and also appears on page 5.

17 THE COURT: Okay.

18 MR. JOHNSON: Of 241,000 --

19 THE COURT: So the amount sought
20 then is reduced --

21 MR. JOHNSON: Through November 30,
22 2018, but there's subsequent accruals
23 according to -- who made iPhone? Mr.
24 Jobs?

25 MR. WILLIAMS: Apple.



1 MR. JOHNSON: According to Mr.
2 Apple, the number's \$218,999.33. When
3 I said it was about \$219,000, I rounded
4 it off by seven cents.

5 THE COURT: Very impressive. All
6 right.

7 MR. JOHNSON: With that
8 clarification so the Court doesn't have
9 to spend all its time on that issue,
10 and we can be certain to be fair to Mr.
11 Lee, we don't have any anything further
12 to say in reply.

13 THE COURT: I understand the
14 defendant doesn't agree with any of
15 that.

16 MR. THOMSON: And I would like to
17 state that -- I yeah, I don't -- we do
18 object to the characterization of the
19 effect and discussion in which Colleton
20 River is placing on the settlement with
21 TekCollect and its impact arrearage or
22 alleged arrearage or the balance or so
23 forth, so we're not waiving or agreeing
24 to any reduced figure as nullifying in
25 the arguments we have are legally and



1 factually.

2 THE COURT: I get it.

3 MR. THOMSON: You got that, so I
4 just want to make that clear.

5 MR. JOHNSON: And we acknowledge
6 that. This is not a back door to shut
7 it down.

8 THE COURT: It is just a reduction
9 in the prayer.

10 MR. JOHNSON: And at some point, I
11 would suggest a conference of counsel
12 with the court before we retire today.

13 THE COURT: I think that's a great
14 idea. All right. Anything else then
15 for this record? Hold on one second,
16 sir. Obviously, we may or may not hold
17 the record open for purposes of
18 attorney's fees, but except for that,
19 anything else for this record?

20 All right, then. Subject to that
21 statement, that will conclude the
22 record for today.

23 And ask your lawyer for asking --
24 I don't know.

25 MR. LEE: That was a question for



1 this gentleman if we're done.

2 **THE COURT:** Okay. We are done. I
3 will conclude the record. Thank you.

4 (Whereupon, the trial proceedings
5 have been concluded at 4:22 p.m.)

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BEAUFORT COUNTY:

I, Amanda Bowen, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Amanda Bowen

Amanda Bowen

Court Reporter

Notary Public

Beaufort, South Carolina



144Index: \$12--2

CCR

COLLETON RIVER vs JOEL S. LEE
2015-CP-07-02722 -

145Index: 20–accomplish

100:8 102:15 124:16
 125:9,10 130:2 138:24

20 52:8 84:16 90:4,5,12
 99:23 105:13 108:14
 114:18 116:14,15
 123:4,17,22 124:8,16
 126:16

2000 126:6

2001 74:4

2002 108:12

2007 20:23 26:10,15
 126:17 129:6

2008 123:24 124:12
 128:4

2012 9:24 29:9,10 33:19
 38:18 43:1,13 49:21
 68:18,24 70:13 82:18
 91:24 95:13 97:22
 105:2 106:9,24 107:3,9
 109:9 112:21 114:9
 120:24 130:12

2012-CP-07-03525
 107:4

2013 20:15,24 31:21
 35:4,5 38:20 40:1 42:3
 50:23 52:1 82:18 97:25
 107:10

2014 35:7 36:7 42:3
 48:23 49:6,8,13,19
 50:7,25 51:6 52:7 56:9
 66:3,13,24 70:14,17
 71:3,18 73:10 74:21
 107:18,23 109:14
 110:11 112:9 113:3
 121:17,19 137:20

2014-CP-07-2827
 56:13

2015 28:17 56:17 74:23
 112:2

2016 34:6 129:10

2017 33:8

2018 29:20 128:6 130:2,
 13 138:9 139:22

21 59:12 88:15 95:16
 102:19 123:4,17 125:17
 126:16 127:24

219,000 138:14

22 13:15 91:10,25
 127:3,14,21 128:14
 134:14

23 94:1 97:20 127:3,14
 128:10,12 129:1

24 134:19,21

24-hour 23:22

241,000 139:18

25 14:22 47:2 84:23
 90:15,23 91:2,11 96:16

25th 74:22

26 91:8

27 51:6 91:16,25 107:17

28 38:20 92:7,11 97:25

29 74:3 92:16

2:18 73:2

2:35 73:6

2nd 29:6,8

3

3 8:16,17 23:13 34:19
 80:22 91:15 92:7
 101:17 102:15 134:15

30 17:15 29:20 138:9
 139:21

30th 29:15

31 9:24 10:21,23,24
 36:7 38:18 49:21 70:13
 91:24 92:23 97:22
 106:9,24 130:12 137:20

31st 68:18,24 105:2
 109:9 112:21

32 13:1 92:23 93:2,18

33 94:4,21 95:2

34 95:10,16

35 80:15 81:23 96:1

3683 128:11

37 96:16

38 97:5,12,20

39 98:3,4

3:10 103:8

3:24 103:9

4

4 82:7 134:16,17 139:16

4/08/08 124:11

40 13:23

41 15:12 16:9

45 44:12,14,19,20

47,745 138:20

4:10 131:6

4:12 131:8

5

5 55:16 59:19 85:5 93:9
 98:4 129:10 139:16

5/12/15 57:3

50 129:7,11

579 9:16

6

6 26:10 80:10 81:2 93:9

672 128:11

7

7 28:13 46:9 56:9 58:5
 80:10,22 81:24 89:3
 129:6

7.1 16:23 17:10 18:6
 45:12 57:20 60:13,19

7.1C 47:15 58:2,5 61:9
 63:18 65:24 89:21
 90:11

700 24:2

8

8 29:2 30:11 33:18 34:4,
 19 35:11 46:3 52:1
 59:10 81:20 99:1,2,5,17
 100:17 137:17,18
 138:24

8,977 110:1

8.4 13:15

8975 113:14

8977 58:20

8th 50:23 107:10
 124:12

9

9 51:8,14 52:5 81:6,24
 86:8 89:21 90:4 100:7,
 17 101:25 109:20
 122:9,12,18

90s 8:5 92:13

A

A-02 8:21 9:3 40:10
 41:16 76:4

A-2 45:18

abandonment 12:9

abatement 12:14

academic 21:3

accelerated 34:22

acceleration 34:13

acceptable 134:2
 135:14

acceptance 52:5 54:9

accepted 57:17 59:25
 109:1

accepting 11:11 17:22
 58:11

access 14:25 69:13

accomplish 47:7



account 30:16 34:10 43:7 46:2 52:17 109:6 137:14,25	admitted 51:1 76:23 132:8,20	92:20 129:7,10	approve 47:5
accountant 21:8,19,24	advice 41:18	Amendment 26:5	approved 15:7 31:23 39:6 54:12 124:9
accounting 21:7,20 22:14	advocacy 133:4	amendments 26:18, 19,24 92:25	approximate 52:18 106:13
accruals 139:22	affidavit 74:20 77:1	amenities 23:9,18 24:6,8,15 68:17 106:23	approximately 23:25 99:13 100:5
accrue 29:23	affiliated 40:13 41:24 42:1,20 63:25 65:14	amount 11:19 25:9 33:20 35:23 43:7,13,23 51:23,25 52:5,21 54:12, 14 55:12,14,17 56:21 59:23 60:2,6,7,16 71:12 84:14 108:8 109:2,7 110:6,12 138:19 139:19	April 26:14,15 123:23 124:12
accrued 43:6,14 53:23	affiliation 42:6,7 71:7, 11	amounting 112:16	area 20:21
accumulation 29:4,16	affirmatively 55:4 66:14	amounts 11:8 18:1 43:6 46:1 47:11,13 58:14,22 59:4 60:13 113:11	areas 24:16 80:12
accuracy 7:22	afternoon 48:3,4 103:20 115:10,11	ancillary 86:2 115:14, 17 130:15	arguments 140:25
accurately 89:7	age 119:2	and/or 32:21 47:11 90:8	arising 12:20
acknowledge 141:5	age-wise 120:5	annual 16:15 37:1 53:5	Arlene 129:8,9
acknowledgment 7:25	agency 51:17 70:23 96:5,8 107:23 110:23	annually 15:25	armed 48:25
acquainted 99:25	agent 74:5	annum 53:10,23	arrangements 120:16
acquire 13:3 100:13	agree 42:25 50:23 53:1, 13,18 56:18 58:19 60:14 61:5 63:20 68:20 78:15 79:14 125:12 130:13 132:9,16,19 140:14	answers 19:23	arrearage 68:21 69:16 112:9 140:21,22
acquisition 101:10	agreed 30:9 64:3 78:20	anybody's 19:3	articles 74:2
acquisitions 99:20 101:13	agreeing 140:23	anymore 102:18	asks 36:18
action 12:18,22 13:17, 22 56:10 107:2	agreement 84:25 91:12 121:23 122:21 137:11	apparent 40:18	asserted 60:1
actions 11:10 50:19	agrees 11:4,13 91:17	apparently 9:23 28:17	asserting 53:15 64:20
active 122:24	ahead 72:9	appearances 34:21	assertion 78:8,20
activities 112:16	albeit 37:3	appears 41:2 139:16	asserts 77:5
activity 21:15 82:24	allegation 7:23 67:23	Apple 139:25 140:2	assessment 16:15 17:24 24:23 31:10,11, 20,22,23 58:12
actual 49:1 50:5,7 60:3, 16 66:2 70:11 113:1	alleged 12:16 140:22	applicable 61:18	assessments 11:1,4, 9,14 12:1,8,12,15 13:8 14:4 16:10,18 25:12 26:25 27:23 31:6,13 47:10 54:4 56:5 68:22 69:8 106:6
addition 13:11	allocated 55:21	applied 24:24 36:6 137:22	assets 104:5 120:13
additional 34:4,6,20 43:18 67:1,8 123:7	allowed 11:20 12:16 75:24	applies 31:13	assign 14:10 63:16
address 75:1 87:16,18	altogether 101:20	approached 105:23	assignable 68:22
addressed 76:5 123:24	ambit 137:6	appropriately 132:21	assist 87:5 93:23
adjust 137:24	amended 7:19 8:8 9:18 10:7,15 26:5 66:18	approval 15:5,14,16,25 36:25 39:11,14	assistant 20:9
adjustments 35:12			associations 121:1
Administration 30:23			assume 72:18 87:10
administrative 30:6			
admit 132:1			

105:1
assuming 136:5
assumption 64:8
attempt 35:16
attention 6:22 7:11
8:16 10:11 81:11 91:2
124:16
attorney 18:21 40:8,13,
22 49:22 57:21 61:5
64:2,4 104:5,9 117:3
120:3
attorney's 13:16,21
141:18
attorneys 36:17 67:4
117:5 119:7
August 50:23 51:6 52:1
71:3,18 107:10,17,23
109:14 112:9 121:19
129:6,10
authority 43:18 61:19
71:2
authorized 13:9 71:12
115:24
aware 42:4 49:12 56:2
61:23 62:1,9,11 69:10
71:6,10 88:2,7,9,10
109:5 110:24 111:4,23
112:3 113:19
awareness 49:14

B

B-A-K-E-L-S 23:4
bachelors 21:5
back 8:18 19:1 31:8
44:13,23 45:6,8 50:22
59:1,3 60:12,22,23 66:7
68:4,6 69:22 73:3,6
82:17 103:9,10 107:3
108:20 111:7,10 112:18
113:25 114:2,13 123:20
126:5 129:17 131:7,8
135:7 141:6
background 21:3
Bakels 23:3

balance 33:22 34:1
35:25 36:4,6 52:10,13
53:15 54:4 59:13,20,21,
25 71:13,20 109:22
110:2 137:22,25 140:22
bar 81:8
Barnacle 101:4,22
127:5,25 128:17,18,19,
21 129:11 130:14
base 46:7
based 27:2,7,16,18
62:22 64:5,11,15 65:21
basically 95:8 117:18
basis 37:1 38:10 53:14
54:8 56:25 65:13 67:16
71:19 105:10 115:16
Bear 68:14
bears 38:18
Beaufort 9:15 26:9
38:19 74:23 100:1
127:4,22
begin 8:14 30:12
beginning 21:18 31:21
begun 89:19
behalf 26:22 39:7,15
41:16 90:7
Belfair 83:13,14,17
101:15,24 116:8 118:1
120:22
belief 48:15

believed 113:14
benefit 8:9 84:11
Berkeley 83:11 101:16,
23 116:8 117:22 120:22
bid 13:2
billing 29:4,14 31:2,5
34:14
bills 108:13
biographical 103:21
bit 10:25 19:22 44:15
73:25

blow-up 50:10
Bluffton 10:2 20:21
38:17 39:1,7,15,22
40:16 41:3,17,23 42:10,
16 45:25 46:23 47:12
48:7,18 49:3,11,20 51:2
56:12,22 57:11 64:1,21
66:14,21 67:16 70:5
71:7 73:11 74:4,21,24
75:9 76:2,6,11 77:8,11,
12,20 78:6,9,21 79:20
81:4,13 82:9,15,20
83:1,6 84:25 85:7,21
86:11,24 87:2 88:4
89:1,8,14 90:8 92:18
96:21 102:5,8,10,12,15
104:20 105:7,24
111:15,20,25 112:20
113:22 114:22 115:22
120:17,22
board 12:17,22 14:3
15:5,7,14,15,24 16:1,5
17:15,18,25 18:7 22:21
27:6 28:1,4,6 31:2,3
36:11,18,24 37:5,8,15,
21 39:6,11 46:14 47:5,
19 48:24 58:13 63:3
70:18 113:10

Boca 75:1
bold 132:14
book 9:16 91:14 128:11
bottom 91:10,25 96:16
124:17,24 125:24 126:4
128:1 130:3 138:8
139:15
bought 60:23 68:23
106:3 117:2,19 125:13
128:5,21
boundaries 25:19
bracket 126:17
break 6:2,3 44:1,2,8,10
45:1,3 72:17,22 103:3
130:19 131:4
breakdown 35:18
bring 7:10 136:8
brochure 117:8

broke 93:17
built 106:11
Burke 40:22,24 41:7,9,
15 42:8 76:3 79:24
80:11 81:17 89:19 91:3,
17 96:15 102:20,21
104:13 105:9 108:16
112:5 113:16 115:15
119:5 121:14 122:2
Burke's 65:12 75:15,18
76:14 80:7 98:21
bush-hogging 32:3,
17,18,19,21 33:10
business 35:7 61:6
80:16 99:9
buy 60:21
buying 11:2
bylaws 27:5

C

C.2 124:23
cabinet 98:15
calculable 71:15
calculate 139:12
calculated 53:8,9
calculator 53:7 138:12
call 6:12 10:10 19:6
43:1 80:5,17 81:11 91:1
93:20 99:21 115:21
124:16 127:23
called 94:7 96:8 101:2
102:9 125:10,18
calling 6:6
Calls 62:3
capacity 20:14
capital 114:12
capitalize 120:17
care 98:18,19
Carolina 7:16 8:2 9:16
26:9 42:11 74:1 77:22
78:10,18 81:4,9,18 88:4



89:11,16 92:2,4,6 100:2
104:6 108:20 114:24
115:2,14 117:3 129:2,
18 130:16

Carries 92:9

carry 120:18

case 10:16 16:19 55:1
56:13 64:5 67:6 73:11
74:21 76:16,20 77:6
107:3 131:16 133:2
135:23 138:7

categories 30:10,14
33:2

category 14:7 29:25
30:2,15 31:12,17 33:15
34:4

caveat 132:8

ceased 114:14

center 23:15 34:5,20

cents 140:4

certified 21:8,19

cetera 38:5 47:21
117:7,8

chance 125:6

change 16:1,2 114:8
138:8

Chapter 16:13 58:5

characterization
18:16,19 140:18

characterizations
132:10 133:12,18

charge 30:22 109:22

charged 11:7 30:15,21
54:17

charges 11:7,18,20
12:1 13:9 30:11 33:2

charging 57:11

Charlottesville 21:25

chart 121:17

check 67:10,12 89:9
110:11 122:19

checked 38:8

chief 20:8,18 21:21
23:1

choice 93:14

chose 75:23

circumstances 17:5

city 21:24

claim 11:8 109:11
129:2 138:9

claimed 12:16 109:3,4

claims 109:18

clarification 140:8

clarify 33:6 40:6 49:23

clarity 138:16

clause 129:21

cleaning 98:7

cleanup 32:3 33:9

clear 8:13 39:12 69:1
70:9 75:16 76:9 77:19
109:13 138:4,17 141:4

clearing 32:24 33:10
87:20

Clerk 74:23

client 54:7 64:20 70:22
71:3,14 77:24 78:2

clients 80:23

clock 57:10

close 14:5 114:20
131:14

closing 36:16 117:18

closings 36:15 92:4

club 7:16 9:12 11:10
12:17,22 13:1,7,18 17:5
20:11 22:15,17 23:12
26:8 27:20 28:16 41:23
46:13 48:24 50:18,22
51:18 53:14 54:11,13,
20 55:4,6 56:9 57:17
60:21,23 61:1,2,6,19
65:16,18,19,20,25 66:1,
13 67:7 68:16 69:2,6,13
70:5,10,16 108:4 109:8,

21 110:24 111:3 112:23
113:1,6,10 114:14,18
121:24 123:23 125:19

club's 61:14 106:23
113:5

clubhouse 31:20 54:3

clubs 38:7

co-defendants 66:20

co-owner 16:17

co-owners 16:20

co-ownership 105:20

code 8:7

collect 36:17,18,21

collection 11:17 22:16
28:24 30:16 34:17
54:19 56:10 70:23 96:5
107:2,22 110:23 111:19

collections 27:1

collective 14:20

collectively 94:7

Colleton 7:15 8:19 9:9,
11 11:3 20:7,10,22,25
22:6,12,24 23:6,10,11
24:1,12,17,22 25:18,21,
22 26:6,8,23 27:1,13
28:2,5,15,22 35:2,3
38:25 41:12,13,18,20
45:23 46:7 73:11 76:5,
13 83:10 86:5 90:9,17
92:20 93:1,14,21 94:7,
10,17 96:18,20 97:7,9
100:19 101:11 104:2,19
106:23 107:10,22
108:11 109:1,14,18
111:14,19,23 112:10,16
114:8 116:7,18,25
117:17 120:22 121:24
122:24 125:2,3,9,18
136:24 137:9 138:5
140:19

Colleton's 41:12

colloquy 73:8

column 34:5,20

commenced 86:3

comment 77:17

commentary 131:24

comments 73:17

commercial 80:19
119:23,24

committee 22:22

common 12:9 24:9,16
129:4

communicated 67:3

community 23:12,16,
21 24:3 115:22 121:1

companies 21:23
119:12

company 8:19 43:16
74:3,11 119:20,22
125:4 126:11

company's 28:24

compartments 84:2

complaint 10:16 49:7
58:6 66:18

completely 8:10 134:7

complex 136:3

compliance 22:19
40:16

complicated 62:17

component 69:19,20
70:2

compute 53:3

computer 90:3

concern 75:12

concerns 15:13 17:5

conclude 94:24 141:21

condo 100:24 101:1

conduct 15:19 18:10
37:18 38:8 92:4

conference 141:11

confirm 55:6 69:5

confirms 91:23

conflicting 89:10



conformation 38:5
confusion 137:8
conjunction 105:21
connected 41:11
connection 97:10
conscious 94:16
consideration 55:13
97:4,10,14
considered 75:10
consistent 8:11
constitute 58:22
consult 122:25
consummate 51:18
71:2
contact 41:11 126:1
contained 117:9
contention 56:3 60:7
70:25
continue 17:20 29:23
58:9 118:19
continued 54:2,3 64:9
65:17
continues 29:14 86:19
continuing 12:6 14:8
15:3 64:6 80:14 81:2
82:3,11,13 83:19,22
84:16 85:13,19 88:23
91:19 96:6,22 97:12
99:11,17
contract 11:12
contributions 114:13
control 21:21
controlled 23:19
conversation 72:14,
21,25 129:23
conversations 57:14,
18
convey 13:4
conveyance 9:6 12:2
42:2

Conveyances 9:15
conveyed 128:3,6
conveying 9:25
cooperation 7:8
copies 73:24 87:1
123:8
copy 8:17 10:4 26:3
37:24 49:16 51:9,13
66:23 73:22,25 91:4
95:12 97:11 122:19
123:13 127:3
corner 97:24 123:18
129:13
corporate 8:6 32:5
36:20
corporation 7:17,24
8:1,10 24:14 76:1
corporations 84:4
correct 20:12,22 21:1,2
23:21 24:18 26:2 27:9,
11,14 28:3 29:21,23,24
30:4 32:13,15 33:20,21,
23,24 37:9 40:14 41:4,5
42:21 43:3 46:3,4 48:9,
10 49:4,11,17,21 50:7,8
51:20 52:3,14 53:5,6
54:4,9,10,15,16 55:9,
17,18 56:23,24 57:4,5,
12,13 60:4,5,10,11
61:12,16 64:11,16 65:4
66:11,16,17,20 67:17,
20 68:1,12,18,19,24,25
69:9,17,18,25 70:1,7,8,
14,15,23,24 71:4,5,15,
16,21 73:18 76:24
77:15 79:16 94:5 95:23
96:9 100:21 106:4,5,15
107:12,13,15,16 108:1,
2,5 109:2,24 110:7
111:15 112:23 113:7,8
114:10 115:23 116:4,10
117:19,20 120:14,15
121:19 122:20 124:13
126:19 128:4,9,14,22
130:1
correctly 88:18
correspondence 96:2

corresponds 91:14
128:13
cost 108:19
costs 11:17 13:16,20,
21
counsel 7:2 67:11,12
72:20 110:10 118:21
122:25 141:11
counsel's 72:13
counted 135:23
country 100:1 119:25
county 9:15 26:9 100:1
127:4,22 128:12
couple 6:15 26:18
34:21 45:14 73:9
101:22 103:20 120:7
130:24 131:1
courses 23:13 25:22
court 6:1,9,17,25 7:4,6
8:25 9:21 10:12,18,23
12:25 13:21 18:4,14,24
19:8,11,17,21 44:4,10,
22 45:5 50:14 51:11,14
61:25 62:5,19 63:8 65:7
71:25 72:5,7,16,20
73:3,8,20 74:15 76:21
77:4,16 78:7,14,19
79:1,13,17 80:2,6,9
90:21,24 103:1,6,10,17
104:10 105:10 110:19
115:5,7 118:8,14,17,25
122:15 123:2,9,12,14
126:24 127:7,11,16
130:21,25 131:7,10,19
132:4,12,18 133:1,19,
25 134:3,6,13,16,17
135:3,11,14,25 136:4,9,
15,17 137:5,13,17
138:18,25 139:3,5,10,
17,19 140:5,8,13 141:2,
8,12,13
court's 6:21 7:11 8:16
10:10 72:12 74:23 91:2
courts 23:17
covenant 12:13 47:3
covenants 9:10 10:7,
13 11:13,16 18:18,23

24:20,22 26:7,14,23
27:4 30:18 31:1,12,16,
19,24 36:19 37:11,21
40:17 45:12 46:6,15,20,
21 57:20 60:13 61:18
62:2,11 63:2,11 89:22
90:18 92:20,25 116:18,
25 117:17 124:19 125:2
126:18
covers 22:2
Cram 125:14,16
CRDC 125:2
creating 85:21
credenza 98:15
credit 35:18 36:3
credits 29:11 137:21
creditworthiness
15:19 18:11 37:19 38:1
Creek 20:19 21:17
criteria 15:16 18:9
37:16
crystal 138:17
current 20:5 29:14 99:7
108:14
cycle 31:2

D

darn 62:21
data 97:23
date 9:24 17:16,24
29:6,15 33:7 38:18
52:18,19 57:1,3,8,10
58:12 59:15,20 60:3,17
67:15,19 68:17 86:12
87:3 88:11 91:23 97:17
104:24 109:9 124:11
137:23 138:4
dated 9:12 26:10 97:22
110:11 129:6,9
dates 131:23
day 98:17 138:1
days 17:15 52:8 135:22



deadline 54:14	delinquency 11:21 30:20	determined 31:1 137:5	dock 23:16
deal 102:22 125:16 135:7	delinquent 30:5 34:11 60:23	Determining 13:24	document 26:11 28:15,21,23 46:18 51:7 55:23,24 56:1 62:23 88:18 95:21 109:19 122:7,17 132:2 134:8
dealing 120:13	delivered 15:4	developer 60:24	document's 26:4
dealings 96:12	demonstrate 47:1	developers 80:24	documentation 36:19 48:20 54:21,25 56:6 67:22 79:20 96:11 122:21
dealt 96:4,5	demonstrative 131:23	development 61:6 119:20,22,23 125:4	documented 122:6
death 16:4	denying 66:1	Devonshire 101:2	documents 11:15 13:18 22:19,20 27:4 32:5 36:20 42:7 49:25 56:18 64:6 66:5 67:5 73:9,13 76:25 77:25 78:4 79:12 93:1,5,6,11, 21 116:19 117:1,7,13, 17 126:15 127:21
debt 71:10	department 35:9 36:9, 14 38:24	difference 52:25	documents' 94:8
debtor 79:9	departments 75:25	differential 71:18	dog 23:17
debts 109:15 113:7	depending 24:24 32:24 137:3	differentiation 25:5	dominated 124:18
December 9:24 21:12 26:10 38:18 49:21 68:17,24 70:12 91:24 97:22 105:2 106:9,24 109:9 112:21 120:24 126:6 130:12	deposit 114:13	differently 33:16	door 20:22 141:6
decided 76:15	deposition 49:8 60:20 64:3,19,24 65:9 75:16, 18 80:7 85:16 86:22 88:14 89:22 90:2 91:5 98:21,23,25 102:23 123:19,21 125:20 128:20	diminution 12:14	doubt 129:19
decision 94:9,16	depositions 93:25	dining 23:16	drafting 114:21
declaration 9:9,12 14:1 26:6	derivation 129:21	direct 94:9 114:24	draw 6:21 8:15 92:3
deed 8:17,22 9:1,16,23 10:1,5,8 11:11 24:9 26:10 38:5,15 39:21 41:2 49:10,16 66:23 76:2 77:7 81:11,14,16 91:4,12,18,24 92:13,17, 18 93:13,15,24 94:11 96:20 97:11,15,21 104:23 128:10 129:3, 13,21,24 130:2	describe 23:9 28:20 36:13	direction 27:13	drawn 8:23
deeds 92:3 95:3,5 115:13,23 116:1,3 120:21 128:12	describes 14:14	directly 22:25 35:6,8 57:15	Dropbox 91:6
deemed 15:8 63:21	description 8:25 9:2,6 10:5 26:24 92:12	directors 22:21 28:1,4, 7 31:2	due 11:8,9 12:2 34:15 36:6 52:6,10 53:15 60:2 109:22 110:3 137:23
defective 67:24	design 17:13	disband 130:23	dues 30:7,25 34:14 54:3 68:21 106:6
defendant 107:14 133:23 134:1,11 140:14	designate 14:21	discharge 132:15	duly 19:14 103:14
defendant's 133:2,14	designated 13:24 14:9,11,14,23 15:9,14, 17,21 16:2,3,5,7,11,17 36:10,22,23 37:2,3,17, 22 38:1,12 39:6,15 47:7,9 63:11 66:10 78:3 105:25 113:21 114:4	disclosures 128:4	duties 22:11,13 23:5 28:8
defense 72:20	designates 15:20	discomfort 12:20	Dye 125:10
defined 11:15	designation 15:4 34:7 39:5	discovery 66:4	
degree 21:5,6,13	details 86:23	discuss 44:7 131:1,3	E
delay 98:2	determine 17:8 27:18 89:9	discussed 29:6,12 33:3 47:18,20 91:8 97:22 99:3 123:20	E.2 124:18,23,24
		discussing 10:14 44:25 95:14	E.2. 124:22,25
		discussion 6:19 48:6 75:8 118:7 140:19	
		discussions 95:20	
		disposition 120:12	
		dispute 139:7,8,9	
		disputing 50:6	
		Division 84:6	
		divisions 84:3,5	

earlier 46:2 57:21
early 8:5 92:13
easel 50:15
easement 14:25
easements 9:7
eat 6:10
editorials 133:13
education 21:11
effect 65:18 126:18
140:19
efforts 28:25 54:19
elect 28:6
elects 28:4
element 7:13 139:7,9
elements 125:21 139:8
eliminate 115:13
emphasize 9:18 87:25
employment 20:17
encompass 109:15
encompassed 23:23
end 13:7 19:2 62:20
98:8 105:1,12 106:8
108:11,22 114:9 115:20
120:23
enforce 13:13,17
engaged 80:16
enjoyment 15:1
ensure 22:19
entering 11:11
entire 7:4 34:14 35:17
entities 66:20 84:14
entitled 13:16,19 15:10
16:9,12,24 17:11 26:5
28:15
entity 14:17,19,23
24:15 38:2,4,13 42:16
46:23 47:12 62:14 70:4
76:19 77:12,21,22 88:3,
17 95:8 114:23,24
125:5

entree 33:19
entries 35:11 36:2
entry 23:19 30:2,3 33:8
59:12
enumerated 124:22
equal 11:18 109:4
equity 114:13
error 79:7
essentially 85:25 86:6
138:18
establish 15:15 37:16
50:17
established 14:2
establishing 36:3
establishments 25:17
estate 36:15 80:19
85:23,24 89:16 95:8
97:2 104:3,4,9,17,18
105:13 115:12 120:3,11
128:24 130:6
estimate 114:17
event 14:18 16:16
37:25
events 132:10
everybody's 103:22
131:25
evictions 80:20
evidence 48:16 56:18
60:15 67:6 68:15 79:22
104:24 122:20 132:23
133:17 136:23
evidencing 110:10
exact 60:1
examination 20:2 45:9
48:1 92:10 103:18
115:8
exceed 11:19
exceeded 71:14
excerpts 80:7
excess 53:19

exchange 36:16
exclusively 55:21 56:3
60:8
excuse 16:25 17:10
18:5 28:12 59:14 87:17
90:5 92:23 93:9 99:2
121:3 137:1
excused 72:4
executed 9:23
execution 91:23
114:22 120:21
exempt 12:7 14:4
exercise 26:22
exercises 17:6
exercising 63:4
exhibit 6:22 7:17,24
8:16,17 9:21 10:11
13:1,15 16:9,23 17:11
26:4 28:13 29:2 30:11
33:18 34:4,19 35:11
37:11 38:15,21 41:2
46:3 49:17 50:11 51:8
52:4 55:16 57:22 58:3,4
59:10 63:11 74:13,16
75:2,4 76:22 77:7 80:8
81:12 89:21,23 91:5,9,
15 93:13,24 94:11
97:11,21 99:1 109:20
110:10,16 122:9,12,13,
14,18,19 123:3,22
124:8,16 125:17 126:16
127:13,21 128:10,12,13
129:1,12 132:2,3
134:20 137:14,15
138:24
exhibits 6:24 9:22 91:7
122:25 123:1,7,17,19
127:2 134:25
exist 86:13
expect 112:9 127:19
137:10
expedite 7:4
experience 22:3 80:13
expired 31:22
explain 34:7 35:14

83:20 116:24 121:4
explained 64:25
explains 91:20 92:11
explanation 75:7
136:24
express 57:15
expressed 49:1 66:2
extensive 32:24
extent 76:10 122:17
133:11

F

facilities 15:2 23:10,16
24:6,16 26:1
fact 47:4 54:13 65:22
66:2 69:7 70:11 96:24
factors 136:11
factually 141:1
failure 12:17
fair 37:6 54:20 70:17
94:24 95:4 97:6,13
116:11 137:19 138:1
140:10
fall 53:11
familiar 24:19 26:11
28:9 62:1 127:20
faxed 126:5
faxing 126:13
February 88:12
fee 30:5,15,20 32:2,9
36:2
feedback 125:19,22
feel 44:18 133:21
fees 11:7 13:16,21 29:8
30:3,6,13 31:8 33:19
47:10 54:1,16 135:4,5,
7,18 141:18
fell 100:12
fellow 77:2



fighting 112:18
figure 138:12 140:24
file 55:7 73:10,23 86:18
 93:6 98:11,12,14
filed 8:4,6 56:10 60:9
 66:18 67:25 69:24 74:3,
 22 111:24
filing 58:21 98:15
final 138:21,22
finalize 71:2
finance 22:21
finances 26:25
financial 20:8,19 21:21
 22:14 38:11 47:21
find 40:7
fine 44:15
finish 21:10 44:2
finished 72:15
firm 21:20 99:7,8
firm's 73:10
firsthand 54:7 57:18
Florida 75:1 77:2
focus 6:20 12:5
focused 37:14
focusing 14:7
folks 38:7 91:21
follow 131:12
foolish 119:2
foreclosing 13:10
foreclosure 13:2
forgot 136:19
form 7:21 8:7 25:3
 35:17 36:2 61:21,25
 65:6 125:22 127:20
 128:24
formal 39:4
formalities 129:24
formed 75:20

forward 107:17 120:18
found 63:18
fourth 30:6 101:5,10
 139:1
frame 49:8 70:19
 121:18 126:17
fresh 103:22
front 51:9,13 69:11
 109:19
full 11:23 18:2 34:7,23
 58:15 60:14 108:24
 113:13 138:2
function 12:18
funnel 37:7
future 29:22

G

game 23:13
gate 23:20
gave 65:23 109:25
 129:15
general 22:25 80:17
 93:4 94:2
generally 21:15 23:9
 28:20 36:16 37:24
Georgia 8:23
Gimble 119:10
give 17:15 20:4 33:7
 61:19 80:11 90:16
 93:14 94:10 105:10
 126:21 130:24 135:16
 136:7
glasses 107:6
golf 23:12,14 25:22
 32:11 115:21 116:12,14
good 7:3 44:5,20 48:3,4
 72:16 100:13 103:6,20
 115:10,11
governing 11:14 13:18
 22:19 27:4 49:24 64:5
 66:5 116:18,25 117:17

government 21:24
 127:23
grand 8:18
granted 17:6 76:6
grantee 11:24 70:4
 105:7 111:25
great 7:6 103:5 121:15
 141:13
Griffin 8:24
group 93:21
guess 57:22 75:2 98:5,
 6 99:21 101:1 130:4,5
guessing 98:6
guidance 27:3 30:18
guide 93:23 94:8
guy 119:8,9 125:12

H

half 24:3
Hall 83:11 101:16 116:8
hand 49:15 103:12
 139:12
handle 64:5
handled 126:13
handles 118:21 119:4
handling 119:8
hands 79:10,11 87:4,6
handwriting 124:8
 125:21,22 134:10
handy 138:11
happened 39:2 93:11
 98:10
head 68:10 81:3 116:5
 127:6,25
hear 73:4 111:8
heard 48:11 76:13
hearsay 104:16
hearsay-ish 104:11

held 118:7 131:5
helped 82:25 89:4
helps 50:12
Hilton 81:3 127:6,25
hired 71:8,9 120:6
history 29:5 69:4,11,14
 99:3
hold 141:15,16
homeowner 137:1
homes 24:3
Honor 19:6 50:10 51:9,
 12 78:13 80:4 87:24
 110:9 123:11 126:23
 127:2 130:20 131:13
 134:24 136:2 138:24
hope 6:19 132:5
hour 44:18
hours 135:21
house 24:25 25:1,6,7,8,
 10 87:20 101:3,21
houses 101:7
hurricane 33:9,11

I

I's 65:7
ID 84:17
idea 7:3 95:5 96:24
 141:14
identification 74:18
 75:6 110:18 123:5
 127:15 132:22 134:22
identified 95:15
identify 30:10
immediately 33:25
 42:4 52:10 110:3
impact 140:21
impediment 72:24
impetus 85:20
impetuses 85:21



important 45:13 50:4
59:9 107:20

impressive 140:5

improved 25:1

improvements 12:21

inactions 11:10

incapacity 16:4

incident 41:9 92:17
120:20

include 22:13 24:11
38:25 43:12 53:25 54:2

included 15:17 42:25
43:6

including 13:20 17:23
37:17 58:12 80:18

income 75:11

inconvenience 12:19

increase 52:25 53:11

independent 12:13
119:13

indicating 74:5

individual 14:13,15
15:23 37:24,25 62:15
97:2

individually 58:23
66:16 104:20 107:11
111:16 129:3

individuals 15:8

inform 93:22 94:8,16

informal 39:5

information 7:20
17:18 18:6 34:4,6,20
36:17,21,22,23,24 37:2,
7,20 38:3,5,6,12,25
40:7,23 41:18 43:11
46:12 47:18 67:1,8
86:10 87:1,9,15 88:20,
25 91:9 111:4 123:25

initial 74:5 124:6

initials 124:13

initiated 111:14,19

inquiry 120:20 121:9

inside 23:25 24:12
25:18

instituted 53:20

insurance 22:16 92:10

interchangeable
32:22

interest 11:17 14:22
16:25 31:7,17,18 46:25
47:2 48:13,18 53:4,9,10
71:15 105:20 129:7,11

interpretation 86:21
133:4 137:4

interpreting 18:21

interrelation 18:17

interrelationship 18:5

introduced 78:1,5
79:12

introduction 77:18

investigate 96:17

investigated 92:1

involved 35:6,8 36:10
38:7 39:18 107:21
112:5 118:23 119:22
122:1 125:8

involvement 122:24

involving 66:19

iphone 139:23

Island 81:4

issue 6:20 43:13 62:18
95:1 138:15 140:9

issues 112:14 124:1

item 33:19

items 33:12 43:14

iteration 26:14

iterations 26:13

J

Jason 40:9 48:23 67:14
95:19

job 20:6 22:12 26:24
28:22

Jobs 139:24

Joel 28:9 29:5 48:7
49:3,10 54:21 59:23
68:16,22 78:2,4,8
103:13 129:3,4,5

Johnson 6:7,14,18 7:2,
7,10 10:20,24 19:5,9,24
20:3 22:10 45:10 57:24
59:14 61:21,24 62:3,9,
16 65:6,10 68:11 72:1,
2,9 73:4,7,21 74:19
75:7 77:3,15 78:12,16,
25 79:23 80:4,10 90:23
91:1 104:8 111:6,11
115:6,7,9 119:3 122:16
123:6,11,15 126:25
127:18 130:22 131:9,14
132:7,13,19 133:3
134:2,4 135:5,8,12,16,
21 136:1,8,16,20,22
137:18 138:23 139:1,4,
6,11,18,21 140:1,7
141:5,10

Johnson's 18:16

joint 6:23 14:16 46:8
63:16 109:20 129:4

jointly 11:25 17:21
45:24 47:12 58:9 64:6
65:21 66:9

Josh 119:10

Judge 6:8 19:10

judgment 7:14 36:4
43:1,7,12,13,16,22,23
50:22 51:21,22,25
52:19 53:19,23 54:23
55:8,9,11,14 56:4,17,
21,22,25 57:3 58:21
59:6 60:10 67:25 69:20
70:3,6 71:5,14 75:9,13,
17 76:9,18 77:14 79:3,9
95:13,14,22 107:11
112:1

judgments 69:3

July 20:15,24 33:8
35:3,5 40:1,3 48:22
49:6,8,13,19 50:7,25
66:2,24 70:13,17 113:2

June 9:13 20:23 21:13

K

K-E-R-R 19:7

Kerr 19:7,13,20 20:4
45:11 48:3 71:23 72:3,
15,25 107:18 109:7

Kim 126:5,7

kind 86:22 99:18 117:7
126:17

knew 50:18 110:24,25

knowingly 108:15

knowledge 38:24
39:13 62:23 85:6 86:23
88:19,24 105:5,11
106:10 109:3 111:3
112:22,24,25 113:5
122:22

L

lack 7:20 138:16

land 32:21 125:12

language 10:3 55:12,
19,22 58:6,17 62:6,7,8,
10,22 63:2,14,17,18
66:8

Larry 119:9

late 11:7,17 104:4

law 8:2 11:20 13:12
80:16 99:4,18,22 100:6
129:18

lawsuit 29:13 50:21
56:10 66:19 67:16
69:23 79:3 107:15
108:17 111:24

lawyer 64:25 65:2
80:14 81:18 102:16
119:4 141:23

lawyers 92:2 119:14,16

learn 39:21 42:9,15

learned 40:8 42:2,6



learning 23:15
lease 13:3
leave 136:1
ledger 52:16 60:3
69:14 137:14,15
Lee 8:18,21 9:23 10:6
28:9 29:5,13 35:24 36:1
38:17 39:21 40:16 41:3,
15,24 42:1,8,20 43:2
45:24 46:24 48:7,12,17
49:3,11 50:21 51:19
52:4 53:16,20 54:7,21
55:7,20 57:15 58:22
59:23 60:1,15 61:18
63:20 65:3,13,17,23
66:5,15,20,25 67:7
68:16,22 69:7,24 71:7
75:11,21 76:4 78:2,4,8,
23 81:12,21,22 82:2,5
85:15,24 86:14 87:5
90:7 92:14,18 93:7
96:21 99:3 103:13,20
115:10 118:18 123:16
127:19 129:3,4,5,8,9
131:11 133:10 137:3,19
138:1 140:11 141:25
Lee's 7:19 40:22 46:8
58:19 64:5 79:10 82:20
85:15 86:21 87:16
88:13 89:5,21 91:5,22
95:7 97:1 98:22,25
102:23
left 33:22 36:6 129:13
legal 9:2,5 14:17,19
29:7 30:3,12,15 33:19
38:2,13 46:23 47:11
54:1 62:3,18 80:12 82:1
92:12 102:17
legally 140:25
length 121:16
letter 52:8
letterhead 123:23
levied 11:4
liabilities 109:15
120:14,18 132:16
liability 12:8 46:9 74:3,
11

liable 11:25 45:24
47:13 64:7 65:21 76:13
license 21:9
licensed 81:7,8 129:17
lien 11:22 13:13
liens 13:10
light 37:20 65:19
Likewise 7:9
limitation 13:20
limited 8:19 15:18
37:17 38:10 43:21 74:3,
11
Lindenburg 19:19
lines 33:10 35:13,19
91:17,20 92:11
literal 10:4
literally 25:9 89:25
litigation 77:23 78:6
79:3 80:19 111:14,19
113:17 116:20,21,23
117:16 118:22
living 128:7 129:6,9
LLC 10:2 38:13,17 39:1,
7,16,22 40:17 41:3,17,
24 42:10,16 45:25
46:24 47:12 48:8,13,18
49:3,11,21 51:2 56:12
57:11 64:1,13,22 65:1,
2,3,12,14 66:15,21
67:17 70:5 74:4,25
75:10,14,17,20,23 76:3,
7,11 77:8,11,13,21
78:10,22 79:21 81:13,
15 82:10,16 83:18 84:1,
12 85:1,8 86:11,24 87:2
88:3,5 89:1,8,14 90:8
92:19 96:21 102:7,9,12,
15 104:21 105:7,24
111:15,20,25 112:20
113:22 114:23 115:22
120:17,23
LLCS 83:9,25 101:23
102:2,7
locker 32:9,11,12

long 20:13 81:21 98:16
130:9
longer 72:17 99:8
looked 30:17 34:10
46:2 93:4 98:16
lose 134:7
lost 134:17
lot 8:20,21 9:3 11:2,12,
23,24 12:10 13:2,4
14:3,6,10,11,15,18,20,
23 15:9,21,24 16:7,16,
19 17:9,14 24:24 31:25
32:2,20 33:10 40:10
41:13,16 48:6,8 49:2
51:20 61:2,6 68:24 69:6
70:4,16 75:12,21 79:5
101:11,15,16 103:24
104:2,19 105:8,21
106:1 108:18 113:21
114:4,19 116:6,7,8,11
117:10,19,22,23 118:1
136:17
lot's 69:3
lot-clearing 32:3
lots 12:11 16:25 23:25
24:2 32:4 60:22,23 61:1
96:19 97:8 101:7,13,23
104:6 105:14 115:22
love 100:12
lower 123:18
LP 8:19
lump 52:6
lunch 6:10 44:1,2,11
45:3

M

made 7:17 29:11 43:10
60:9 112:15 120:16
138:2 139:23
mail 87:20
Main 9:14
maintained 93:8
maintenance 32:1,2,
20,21

make 28:25 34:15
49:23 77:19 94:16 98:6
120:20 121:6,9 131:17,
18 133:21 141:4
makes 124:18 125:1
136:17
making 12:20 70:25
94:9 97:4
malicious 112:17
man 120:4
managed 35:9
manager 23:1
managing 26:24
mandate 18:8
March 28:17 31:21
74:22
marked 6:22 74:17
75:5 110:17 123:4
127:14 134:21
masters 21:6,13
math 53:1 138:11
matter 136:3
matters 82:6
maximum 11:20
means 47:21 73:18
mechanics 89:24
member 23:18 36:22
59:8,11 65:3 69:6 78:3
105:6 114:14 125:25
member-managed
65:3
member-owned 23:11
member-type 8:9
members 24:8 28:6
31:5,13 36:11 105:6
123:24
membership 9:11
25:2,3 26:7 30:7,25
31:24 48:13,17 54:3
68:21 69:2,8 105:20
106:7,8 114:18



memory 123:17 134:7
men's 32:12
mentioned 32:16
merges 99:20
met 85:15
middle 131:20 132:14
midst 113:17
Milwaukee 40:25
120:1
mind 103:22 109:16,17
136:13
minimum 15:2 47:2
Minus 54:16
minute 7:12 45:12
130:20
minutes 44:12,14,19
72:22 103:5 130:24
modification 134:14
moment 97:19 98:9
money 35:24 36:6 46:1
70:2 108:25 109:12
monies 22:17
monitored 50:11
month 11:18 53:4
monthly 22:20 114:17
months 15:2 98:1
mortgage 106:16
Moss 20:19 21:16
mother 6:6
motion 6:19 7:14 29:7
motions 103:2
mountain 138:6
move 19:10
mowing 32:23
mutual 8:9

N

named 42:13 126:5
names 102:1
nature 33:13 108:7
necessarily 127:19
necessity 115:13
negative 86:7
negotiate 43:18 51:18
54:7 59:24 111:2
negotiated 52:21
55:13,20 70:22 71:2
121:14,21
negotiating 110:22
negotiations 113:6
122:2
Neil's 123:13
net 138:14 139:14
Nevada 75:23 78:18,23
79:20 83:4,7,8 89:8,15
114:23
nods 116:5
non-series 84:12
nonowner 16:16 37:3
nonpayment 34:12
nonprofit 8:1
nonuse 12:8,10
normal 135:13
notarized 91:18
notary 130:3
notation 128:13
note 10:14 87:9 126:4
127:7
notebook 127:8
noted 109:8
notes 34:3
notice 7:11 15:3 17:8,
16 18:1,4 47:16 48:25
49:1,9,24 50:1,5,7 51:1,

5 55:5 57:6,8 58:13
65:23 66:2,25 67:7,15
70:11,14,17,18 76:2
89:20 90:9,16 93:14
94:11 108:4 113:1,5,10

notification 112:22

notified 49:20 113:20

notifies 52:4

November 29:15,20
34:6 42:17 56:9 66:13
138:9 139:21

null 52:9 110:2

nullifying 140:24

number 35:22 49:17
51:8,14 55:16 56:13
71:20 74:13,14,17 75:3,
5 80:18 91:5 100:15
110:17 122:14 123:25
126:1,2 134:21 136:7
137:16,17,18 138:8,10,
14,21,22 139:14,15

number's 140:2

numbers 84:18 123:4
127:14

O

oath 19:15

object 18:12 133:5,6
140:18

objection 18:14 61:21,
24 62:2,16 65:6 72:5,18
73:15 76:23 104:8
110:10 118:3 123:10
127:1,16 132:7 134:5,
19

objections 110:20

obligation 11:1,22
113:20

obligations 12:11
17:23,24 46:12 56:5
58:11,12 68:22 69:8
106:7 120:25

obtain 40:16 67:25

obtained 50:22 55:5

56:17,22 70:14 107:10

obtaining 51:1

occupancy 16:24

occupation 20:5

occurred 13:22 50:19

October 29:6,8 33:19
36:7 107:9 137:20

off-the-record 118:6

offer 57:16 71:10
102:24 110:9 123:6
127:2 131:22

offered 18:20 59:23
60:1

office 9:14 27:22 37:7
74:10,24 82:20 86:18
87:18,19,21,22 89:6
98:15 108:13 119:14
126:1

officer 20:8,19 21:22
22:18 23:1

offices 87:22 91:22

one-and-half 53:4

one-year 52:18 53:12

ongoing 56:4 109:21

onsite 23:22

open 25:18,22 136:2
141:17

operated 64:8

operating 16:10,15,18
23:1 31:5 84:24

operation 79:15

operational 84:4

opinion 7:21 49:23
62:4

option 136:8

order 30:24 34:14
53:19,22 56:16,21 57:3,
10 67:25 70:6 112:1

ordered 70:3 79:4

organization 74:2
81:15 82:9,15 86:12



87:3 88:25
organize 83:1 89:5,6
organized 42:10,17
82:20 83:3,4,7 85:9,12
88:3 89:4
organizer 74:8 88:16
original 10:6 29:13
55:8,14,16 66:7
outcome 76:16
outlined 31:11,24
90:17
outlines 117:9
outstanding 18:1
58:14,22 60:13,16
68:21 69:16 113:11
owed 22:17 47:11,13,
17 58:23 109:5,8,12,16
113:12,15
owes 27:19
owned 14:18 61:1
102:8 116:15 125:12
owner 11:3,5,6,13,22
12:7,14 14:19 15:24
16:1,2,19 17:13,23
27:19,23 28:6 58:11
61:3 62:13 63:17,19,21
64:9,13,21,24 66:9 68:1
69:6 85:7,11 105:5
owner-designated
37:2,23 47:6
owners 11:8 14:20,21
38:2 47:11 56:11 60:22,
25 85:7,11 137:2
ownership 14:13,16,
17 15:22 25:4 36:22
38:3,4 39:1 40:18
46:23,25 47:1,2,21
48:13,18 49:2 86:10
87:1 105:19 106:8
108:11 114:8,19 116:12
owns 14:15 24:5,15

P

p.m. 45:4,8 73:2,6

103:8,9 131:6,8
package 74:12
pages 8:3 10:19 29:17
34:5 91:14 92:24
139:13
paid 8:21 11:23 18:2
36:1 55:20 58:15 60:6,
14,16 106:6,13 108:13,
14,25 113:12,14 114:18
Par 23:13
paragraph 7:18 9:1,5
12:4 13:7 124:17,22
parcel 23:23
pardon 131:3
park 23:17
parsing 55:19
part 12:13 37:14 60:8
64:13 65:24 74:11,19
98:25 99:25 101:1
119:25 130:6
partnership 8:20
parts 102:22
party 77:23 111:13,18
passed 50:11 113:16
119:5,15 130:8
past 54:23 56:4
pay 11:4,6,13 12:11
16:17 108:12,21 110:1,
6 114:15
payable 34:15 60:2
payment 16:10,14,21
28:16,24 29:5 30:16,21,
24 31:20 34:9 35:12
47:10,17 52:8 54:22
58:20 60:9 69:24 110:1
112:15
payments 29:10 69:3,
7,22
penalties 53:10
penalty 53:24
people 27:10 137:2
perceived 121:16

percent 11:18 14:22
47:2 53:4,5,10 129:7,11
percentages 38:4
perform 12:18
performed 40:9
period 52:18 53:12
68:23 69:17 70:12
98:16 110:7 113:15
periods 34:12
permission 72:13
permit 10:12
person 14:9 17:19,22
39:14 41:2 42:13 58:8,
10
person's 23:2
personal 11:21 128:5
personally 121:5
perspective 77:20
133:14
pertaining 79:4
phase 8:21 125:9,10,11
phone 138:11
phrase 43:9
picked 98:17
piece 123:25 136:23
pivots 138:7
place 44:13 100:12
places 44:17
placing 140:20
plaintiff 7:15,23 22:7
45:25 77:5,13 78:22
102:25 107:3
plan 6:5 125:19 128:24
planning 85:23,24 95:9
97:2 104:3,4,9,17,18
105:13 115:12 120:3,11
130:6 131:15
Plantation 7:16 9:9,11
11:3 20:10,20 26:6,8
28:16 100:20 101:2
116:9 121:24 125:19

plat 9:4,8
play 25:23 100:11
114:21,24
played 111:7 116:11,
14,15
playground 23:17
pleases 73:7
POAS 8:12
point 8:24 9:17 24:4
25:4 31:4 38:14 39:20,
24 41:22,25 42:4 61:3,8
62:22 65:8 72:10 77:4
89:18 98:21 105:25
107:25 108:3 109:18
112:6,21 136:5 141:10
pointed 125:1
policies 27:6 28:24
policy 28:16 30:17,21,
24 31:20 34:9,13
pool 23:15
Port 101:1,4
portions 65:9 93:20
position 22:5 45:23
46:7 65:16,18,20 66:14
possibility 95:1
post-judgment 53:9
71:15
potentially 75:14
practice 8:12 23:14
80:17 99:19 118:23
129:17 135:13
practicing 99:4,14,16
100:6
pray 130:9
prayer 141:9
preceded 113:6
preceding 34:1
predominantly 21:21
prepared 76:4 81:17
91:3,13,18 93:12 95:4,5
97:15 135:19 137:12,19



preparing 92:17 93:23
121:23

presence 23:22

present 107:19

presented 69:15

presume 24:20

pretty 22:2

prevails 13:19

prevent 61:19 62:12
63:3

previous 61:3 63:19

previously 29:12
60:24 76:25 77:14
107:2

price 106:13

print 125:25

print-out 127:22

prior 15:25 17:15 18:2
20:16,18 29:7 31:21
53:20 54:14 58:14,23
60:13,16 63:17,21 66:8
70:21 113:12 116:21,23
117:15

priority 6:8

private 23:11,15

privately-held 21:22

privilege 14:25

privileges 15:10 16:12
25:13

probate 80:20 115:14,
17 130:15

probates 86:2

problem 86:4 108:19

procedures 27:16

proceeding 115:14,18
122:11

proceedings 26:4
130:15

process 7:5 34:17
36:10,15 39:5 41:10
64:25 65:24 66:4 74:6

procured 110:25

produce 46:12

produced 103:14

professional 80:13

proffer 133:9

project 135:10

proof 37:16

properly 65:23

properties 10:2 38:17
39:1,7,16,22 40:17
41:3,17,24 42:10,16
45:25 46:24 48:7,18
49:3,11,21 51:2 56:12,
23 57:11 64:1,22 66:15,
21 67:17 70:5 71:8
73:12 74:4,22,24 75:10
76:3,7,11 77:8,11,13,20
78:9,21 79:21 81:13
82:10,16,21 83:1,7,9
84:25 85:8,22 86:5,6,
11,24 87:2 88:5 89:1,8,
14 90:8 92:5,19 95:6
96:21,25 100:16,23
101:8,19 102:5,8,10,12,
15 104:20 105:7,24
111:15,20,25 112:20
113:22 114:22 120:17,
23

Properties' 78:6

property 8:25 9:25
10:5 12:9 24:9,10 25:3,
5,6,8,9 32:11,25 36:21
41:19 56:11 75:22 79:5
92:3,14 96:25 100:14,
19,24,25 101:3,6 106:3,
11,17 108:1,11 111:24
117:2 120:12 127:5,9,
10,23,24 128:1,16,18,
19,21 129:12 130:14
137:2

proposed 15:20 40:18
108:9 109:2

prosecution 112:17

provide 15:23 37:21
38:3,6,12 54:21 67:1
71:13 82:1 86:25 90:9
96:14 120:12

provided 12:10 15:6
27:3 30:18,25 31:7,15,
18 32:5 38:23 39:10
48:24 67:6 71:20 87:10,
12,13 112:23

providing 96:20

provision 61:17

provisions 9:10 14:1
26:7 124:19

public 21:8,18,19,20
25:18,22

publish 6:15 10:12,25
80:6

published 129:2

pull 95:11

pulled 73:9,23

purchase 11:12

purchased 61:2 92:14

purchasers 38:2

purpose 62:24 104:18
132:1

purposes 67:24 85:23,
24 89:15 95:9 97:3
141:17

pursue 43:17

pursuing 13:12

put 6:5 87:4 95:7 98:11
107:5 122:20 131:15,16

putting 87:6

Q

question 39:12 40:21
53:13 54:11,13 60:12
62:7 63:1,5,7 66:8 68:2
84:16,21 86:19 93:16
94:3,14,15,18 95:17
99:5,23 100:17 111:17
114:5 118:18 128:17
135:3 141:25

questioning 60:21

questionings 47:23

questions 19:24 45:14

47:25 50:13 71:23,25
72:3 89:19 103:21
115:3 117:6 131:10

quick 129:2

quickly 124:2

quotation 12:6

quote 14:8 15:3

quoting 11:2 58:8
80:15

R

raise 103:11

raised 112:14

rates 24:23 25:13

Raton 75:1

re-ask 118:17

reach 55:6

reached 40:22

read 45:19,20 57:21
58:25 59:3,12 68:3,6
87:23 88:17 111:10
113:24 114:2 116:17
124:2

reading 19:2 33:20
62:21 124:11

real 36:15 80:18 89:16

reason 41:23 77:18
83:6 98:2 115:12
117:14 124:17

reasonable 15:16 18:9
37:16

reasons 103:25

recall 54:24 60:20 67:4
71:6 75:25 85:14 98:12
104:24 107:1,21 110:4

receive 113:1 114:12

received 21:12,13
35:23,24 49:9 50:5,6
52:9 54:13 66:23 69:2,
7,21,24 70:3,6,17,18
77:14 110:1 112:1
113:10



receives 17:25 58:13	refers 14:13,16 15:22	rephrase 27:17	responsibilities 24:24 26:22 136:25
receiving 133:10	reflected 10:1 30:11 137:22	replacement 31:6,10 73:24	responsibility 63:16 121:22 137:7
recent 73:8	reflection 35:16	reply 131:16 140:12	responsible 16:14,21 17:21 22:13,15,16,18 36:14 47:9 58:10 66:9
recently 20:19 23:17 113:18	Reflects 29:10	report 22:20,24,25	rest 36:2 72:11 135:2
receptionist 126:10	refresh 123:17	reporter 19:12 134:16 136:9	Restated 26:6
recess 73:1 103:7 131:5	refreshed 134:8	reporting 22:15	rested 131:21
recollection 35:18 90:14 95:24 96:3,4 98:13,14 110:23	refusal 63:4	representation 82:1	rests 102:25
record 9:8 17:4 19:18 22:9 23:8 26:21 28:15 29:2 40:2,6 45:7,8 59:2, 13 60:18 68:5 69:1 73:3,6,13 75:19 76:9 99:1 103:9,10 109:13 111:9 114:1 118:4,9 119:21 127:5 131:8,15, 18 135:2 136:12 137:16 141:15,17,19,22	regard 7:12 26:25 28:25 40:17 42:23 75:21 104:1 135:4	representative 105:24	result 29:12 76:20 116:20
recorded 9:3,13 11:12 26:15 38:19 39:21 97:25	register 9:14 128:12	represented 82:5	resulted 95:21
recording 91:8 97:23 98:2 129:16,22	registered 26:10	repurchase 17:7,9 61:14	retain 105:19
records 16:6 127:23	regulations 14:2	request 37:24	retained 51:18
recreational 15:1 23:10 24:5,16	related 18:23 27:5 29:13 32:2 35:12 37:18 75:11 93:15 95:13 96:18	requested 39:8 46:13 59:3 68:6 111:10 114:2	retire 141:12
reduce 138:20	relates 28:21	requesting 67:7	return 38:14
reduced 139:20 140:24	relating 15:18 18:10	require 17:19 18:7 47:19	returns 37:25
reduction 11:9 141:8	relationship 42:5	required 12:19 36:18 65:23 66:6 89:20 90:10 129:22	review 42:6 46:22 92:19 93:10
refer 9:21 75:19	relative 36:21 38:3 46:25 73:10	requirement 31:1 49:24	reviewed 15:25 93:22
reference 9:3 17:4 32:18 78:1,4 124:18 125:1,2 134:25	release 95:12,22	requirements 41:12, 19 50:2 92:2 96:18 97:7	revised 28:17
referenced 10:15 15:13 46:6 55:14 77:1 83:10 88:13 131:25	relevant 65:8 118:14	requirement 31:1 49:24	revocable 128:7,23 129:6,9
referencing 52:20 55:12 104:13	relied 57:1 67:19	requires 47:1,5	Richard 74:6,25 88:17
referring 10:6 46:17 90:11,18	relies 65:22	requiring 66:25	right-hand 97:24 123:18
	rely 93:19	requisite 71:1	River 7:15 8:19 9:9,11 11:3 20:8,10,23 25:21, 22 26:6,8 28:15 93:21 94:8,10,17 100:19 101:11 104:2,19 106:23 107:10,22 109:1,14,18 111:15,20,24 112:10,16 114:8 121:24 125:3,18 140:20
	relying 46:19,22 47:4,8	reread 45:13	River's 25:18
	remaining 16:20	resembles 138:14	road 101:4,22 127:6,25 128:17,18,19,21 129:11 130:14
	remains 45:24	reserve 31:6,8,10	roadways 24:12
	remedies 13:12	reserved 36:1	
	remember 85:3 118:18 125:11,13 128:8 133:20	residential 80:24 92:3 119:22	
	removed 33:12	resolutions 27:6 46:15,16	
	rents 119:18	respect 46:8 66:10 78:5 79:7	
	repairs 12:21	response 41:6 133:8	
	repeat 30:2 59:14 68:2 111:17 113:23		

ROD 26:9 38:19
role 82:23,25 114:21,25
room 32:12
rot 11:5
roughly 69:5,21 101:20
rounded 140:3
Royal 101:2,4
rule 47:3
rules 14:2 46:14
run 44:24
runs 44:15

S

sale 13:3
sat 81:8
satisfaction 55:8,11,
15,21 58:21 60:10
95:12,22
satisfied 69:21
satisfies 59:6
satisfy 47:3 49:24
76:17
Saturday 88:11
school 120:6
screen 90:3 95:11
127:4,24
screenshot 74:9
search 40:9 48:23 49:9
66:24 110:25 113:2
secretary 74:1,10
76:24 126:7,8,9
section 10:13,17 12:25
13:15 14:4 15:6,12
16:8,23 17:3,7,12 18:8
30:19 31:19 37:11
45:12,16,18 46:22
47:15 63:10,12 65:24
89:20 90:10,17 124:7
130:3
sections 46:5,9,21

securing 13:11
security 23:22
seek 41:17
seemingly 128:2
sell 17:13 117:10
semi-annual 31:4
send 66:25
sense 50:17 76:6
103:23 136:18
sentence 37:15
separate 12:12 31:11,
12 83:25 84:1,14,17
102:7
separately 40:5
September 52:7 54:14
109:25 110:11
sequence 56:19
series 10:2 38:17 39:1,
7 75:24 76:7 77:8,11,21
78:24 83:9,21,24 84:12,
18 120:23
serves 58:21
service 33:9 74:6,20
77:2
services 12:10
serving 74:24,25 87:19
set 15:10 16:12 27:22
46:1 64:2,3,25 65:2
setoff 12:15
sets 27:25 56:2
setting 48:17 54:21
65:12
settle 59:24 108:17
113:7
settled 108:9 112:8,13
settlement 29:12 35:7,
17 42:23,25 43:6,10,19
51:19 52:5,9,20 54:12
55:7 57:16 58:20 70:22
71:3 107:21 108:24
109:13 110:2 121:14,23
122:2,3,18 137:11

138:3,20 140:20
settling 108:8
severally 11:25 17:21
45:24 46:8 47:13 58:10
64:7 65:21 66:9
shakes 68:10
share 87:18,21
Shipyard 100:25
short 23:13 44:1 53:11
84:20 85:2 93:3 96:23
103:7 108:15 130:19
shortly 70:20
show 35:17 126:15
showed 87:16 104:4
shown 9:7
shows 8:8 69:15 76:20
97:25
shut 141:6
side 87:9 125:9,10
sides 7:3
sign 116:1 130:5
signed 130:1
signing 116:3
similar 63:17
simplifies 34:16
simplify 6:20
simply 31:12 36:3
54:23 94:25 108:10
simultaneous 118:11
single 83:17 84:1
sir 6:13,14 65:10 73:5
78:25 85:18 96:7 99:12,
18,24 100:8,9 101:9,18
103:11 120:2,10 121:7,
13 122:23 124:15
125:17 126:9,21 128:5
129:1,20 130:8,12,18
136:22 139:6 141:16
sit 72:10 98:11 117:5
135:17

sites 55:16
situation 136:10,18
137:4
six-hole 23:13
skip 12:3
skipping 32:1,8 107:17
small 21:22 132:4
so-and-so 94:12
97:11,21
sold 60:24
solely 112:5
someday 105:15,17
sort 55:22 98:13
sorted 89:24
Sotolongo 119:9 120:9
129:14,23
sought 135:4 139:19
sound 104:10
sounds 44:20 103:6
South 7:16 8:2 9:15
26:9 42:11 74:1 77:22
78:10,17 81:4,9,18 88:4
89:10,16 92:1,4,6 100:1
104:6 108:20 114:23
115:2,14 117:3 129:2,
18 130:15
space 87:19 119:18
speak 19:22 69:10 90:1
speaks 61:13
special 31:22,23
specific 43:16 46:18
93:19
specifically 30:18 32:7
54:22 97:1
Spencer 119:8,17,19
120:2,3 129:13
Spencer's 120:4
spend 140:9
spent 97:3 135:21
staff 22:23 27:8



stamp 26:10 38:20
stamped 128:11
stand 19:6
standard 117:7
standards 15:18 18:10
37:18 38:8
stands 62:16
Starbucks 44:16
start 6:4 29:6 42:24
57:10,11 81:25
starting 83:25
starts 29:7 61:10
state 8:13,23 19:17
32:24 34:11 59:8 74:1
81:14 83:2 140:17
state's 74:10 76:25
statement 20:5 46:2
54:4 59:11 109:6
131:17 136:23 141:21
statements 52:17
states 7:19 9:6 15:15
89:7
status 117:21
Stephanie 19:6,13,19
steps 40:15,19
sticker 134:12
stipulate 22:6
stipulated 9:22 49:17
51:8 57:22
stipulation 6:23
stopped 99:13,15
100:5
stops 6:6
straight 22:9
street 44:16
strike 39:18 63:7
structure 24:22 93:12
stuff 102:16 103:22
subdivisions 80:25

subject 8:20 9:7,25
13:25 15:5 17:3,12 48:8
51:19 56:11 61:11 69:6
70:4 103:24 104:2
105:21 141:20
submit 36:24 77:25
submitted 135:1
Subparagraph 13:24
14:12 16:8
Subpart 14:12,16
Subsection 17:1
subsequent 68:1,17
106:23 112:7 139:22
subsequently 8:5,8
81:25
Substantially 33:11
subtract 138:13,19
subtracting 138:10
successors 129:5,8
sue 13:8 66:14,15
sued 107:1,9 112:10
117:22 118:1
sufficient 7:20
suggest 141:11
suit 108:19
suite 87:22
suits 44:11,14
sum 52:6
summarize 124:1
summary 7:13 28:23
80:12 93:10 132:24
133:1
summer 42:3 121:16
sums 34:15
suppose 84:7,8
suspending 136:14
swimming 23:15
sworn 19:14 45:6
103:14

system 23:20

T

table 117:18 138:15
takes 12:23 44:12
65:20 136:24
taking 139:14
talk 49:14 117:16 122:9
talked 52:1 70:16 92:15
121:15 125:19 128:20
talking 22:6 37:4 46:20
52:17 76:12 91:13
92:24 95:25 116:7
131:23
talks 13:5
tasked 121:22
tax 21:7,23 37:24 38:14
84:17 99:21 127:4,23,
24
technical 129:24
Tekcollect 35:6,12,23
36:1 42:23,25 43:11,15,
21 51:17 52:4,20 53:15
54:17 59:24 69:23 71:1,
9,13,19 96:10,12 111:3
121:15 122:7,13 137:8,
21 138:2,4 140:21
Tekcollect' 96:8
telephone 90:1
tenants 129:3,4
tender 73:12 76:8
tennis 23:16 100:12
116:11,15
term 11:15
terminated 120:24
terms 9:25 13:25 25:12
29:25 32:22 84:4,6
testified 19:15 48:5,12
49:7 51:22 64:21,23
103:15
testify 48:14

testimony 18:19 22:2
44:7 45:1 48:6 61:4
64:17,18 72:15 75:25
76:14 77:9,10 81:19
89:7 102:24 103:23
107:19 113:9 118:10
131:2,4 133:10,15,17
135:1,16
theme 9:20
theory 105:17
thereto 27:5
thing 8:15 30:24 32:19
34:22,24 56:8 62:21
80:21 98:10 124:2
130:23
things 6:15 29:22
46:10,11 47:20 54:1
72:11 76:22 80:18
87:25 90:2 98:7,9,20,22
116:13 119:4 124:6
132:24 134:18
Thirty-five 100:3
Thomson 7:9,12
18:12,15 22:8 44:20
47:25 48:2 50:16,20
51:12,16 57:25 58:1,25
59:7,16,18 61:22 62:8,
10 63:6,9 65:11 68:3,8,
13 72:6,19 73:14,19
77:17 78:17 79:2,16,19
80:1 87:4,12 103:4,19
104:12 110:21 111:12
113:24 114:6 118:3,13,
16 127:17 131:13,21
132:6 133:8,24 134:10,
23 136:13 140:16 141:3
Thomson's 7:8,25
thought 7:3 108:10,12
112:15
ticking 57:10
time 9:18,19 10:8 11:6
12:2 25:4 27:19 30:22
34:12 35:20 39:20,24
40:12 41:22,25 43:14
47:23 49:8 53:12 63:15
67:13 68:23 70:10,12,
18,21 71:8,9 72:17
91:22 92:21 94:19 95:3,
5 97:4,15 98:7,16



105:25 106:19 108:3
109:21 110:7 112:17,
21,23 121:13,18,21
126:17,24 129:7,10
130:9 131:11 133:6
135:23 140:9

timeline 50:5,12 55:4
70:9 107:7 133:5,22

Timothy 23:3

title 11:24 17:2,12,14,
17,20,22 18:3 40:9
41:10 48:23 49:1,2,9,
10,20 51:2,6 55:6 57:2,
9 58:5,9,11,16 60:4
61:10,20 62:13,17
64:10 66:24 67:20,23
70:11 75:22 92:5,9,10
96:19 103:24 106:24
108:1,5 110:25 111:1
112:20 113:2,11 114:9
128:2

titles 85:23

today 10:14 22:12,18
37:4 79:6 91:15 92:15
117:21 121:16 135:10
141:12,22

today's 122:11

told 104:9 117:12

toll 8:18

Tom 102:21 104:13
105:9,13 108:16 112:5
113:16 119:14 122:2

top 33:18 38:20 52:13
83:15 87:7 88:22 91:16
92:7,16 94:4 98:3
128:11 129:13 130:2
133:23 134:11

topics 125:21

total 29:17

track 134:17

transaction 41:11
63:22

transactional 99:22

transactions 118:12

transcript 87:24

transfer 11:24 16:25
17:2,11,14,17 18:2,3
41:13,19 48:7,25 49:2,
10,12,15 50:6 51:2,6
55:5 57:1,2,6,8,9 58:5,
14,15,23 60:4,14,17
61:10,20 62:13,17
64:10 65:24 67:9,19,23
70:11 94:17 96:19
103:24 104:19,25
105:16,21 106:24 108:5
109:9 111:1,4 113:2,11,
12 114:9

transferee 17:16

transferred 49:20
75:22 86:22 106:20
108:1 112:20 113:22
115:20 116:3

transferring 17:20
41:10 58:9 85:22

transfers 92:5 97:8

Traybon 119:9

treasurer 20:9

trees 33:12

trial 99:22 132:2

true 25:25 112:19

trust 128:7,23 129:6,9

trustee 129:5,8

truth 7:22

turn 16:22 28:11,13

two-part 93:16

type 80:20 118:22

typed 81:16 139:15

typical 8:11

U

ultimately 59:25 108:9
137:5

umbrella 84:15

unanimously 14:21

undergraduate 21:12

underneath 35:25

understand 8:11 30:8
44:6 50:4 73:14 79:18
80:3 86:4 94:13,14
95:20 132:18 140:13

understanding 42:22
43:5,12,15,20 56:2
57:16 64:4,14,15 65:13,
15,19,22 78:7,13 83:23
84:13 108:4 109:10
118:10

undisputed 7:14
133:16

unimproved 24:25
32:4

united 129:4

University 21:6,7

unlike 83:8

unpaid 11:19 13:8

unusual 117:13

update 123:25

updated 71:13 130:6

uphold 22:18

upper 97:23 124:7

user 13:25 14:9,11,14,
24 15:9,20,21 16:3,5,7,
11,17 36:10,23 37:2,3
38:13 39:6,15 47:6,9
63:11 66:10 78:3
105:25 113:21 114:4

users 15:14,17 37:3,17,
22,23 38:2

V

V-E-C-C-H-I-O 74:7
88:18

vacation 100:10

vague 98:14

vaguely 112:3 125:11
128:8

valueless 105:15

Vecchio 42:13 74:6,25

77:3 78:11 88:17,20

verdict 135:6

verifies 48:21

version 78:23 79:1
132:5

versions 26:16

versus 78:18 84:12
99:22

view 73:8 75:8

viewing 90:2

Virginia 21:6,8,9,19,25

virtue 24:9

vis-à-vis 113:2

visited 81:3

voice 111:8

void 52:10 110:2

vote 13:6 31:24

W

wait 135:6

waited 133:9

waiting 65:25

waived 136:10

waiving 13:10 140:23

walk 35:13 103:25

wanted 8:13 123:21
131:22 132:1 133:11
136:21

Ward 40:9,12 48:23
67:14 95:18,19,25

well-organized 93:7

WILLIAMS 10:22
123:13 127:10 139:25

Wisconsin 40:25 64:2
83:8 90:3

withhold 135:20

withstanding 18:3
58:15



witnesses 80:5 91:20
134:24

wondering 91:6

word 34:22 45:13
128:15

words 34:11,21 62:24

work 20:7 21:15,16
22:2 23:6 27:2,12,13
32:4,22,24 33:11 35:1,3
80:12 87:5 99:21
102:17 119:11

worked 20:23 21:18,
20,23 27:12 82:18
91:21

working 91:7 135:22
138:5

works 27:8 83:21,24
119:19

worries 44:24

worth 105:15,17

worthless 86:7

write 133:22

writing 135:24

written 17:16 64:16
66:25

wrong 75:14,17 76:19

Y

year 16:3 21:23 29:15
34:7,15,23 37:5 53:20
57:7 88:12 98:8 126:19
130:7

year's 34:14

years 10:9 69:5 80:15
81:23 82:4 100:3
105:14 108:15 114:18
116:12,14,15 120:7

you-all 44:18 48:25
49:9,15 53:3 56:8
69:20,21 70:14 78:15
79:13 87:18 121:21

young 120:4

younger 105:14

