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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2020-001581

Rudolph Cochran .....Appellant

v.

Omegas of Charleston Community Uplift Project .....Respondent

---

RECORD ON APPEAL

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ELECTRONICALLY FILED - 2020 Oct 07 9:40 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002784

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RUDOLPH COCHRAN Plaintiff, vs. OMEGAS OF CHARLESTON COMMUNITY UPLIFT PROJECT Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-02784 **FINAL ORDER**

This matter came before the court for a bench trial on September 28, 2020. After hearing testimony and examining the documents admitted in evidence, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In 2007 the Plaintiff Rudolph Cochran (hereafter "Cochran") was president of a nonprofit fraternal organization known as Low Country Men of Mu Alpha (hereafter "Mu Alpha"), which was affiliated with the national Mu Alpha fraternal organization.
2. On November 19, 2007, Mu Alpha purchased certain real property located at 6619 Toogoodoo Road in Charleston County from Toogoodoo Road, LLC and Ruthie M. Simmons for $105,000.00.
3. The purpose of the purchase was to provide a clubhouse and social gathering space for the fraternal organization.
4. Cochran, who was president of the Mu Alpha at the time, was tasked with purchasing the building and took sole responsibility of purchasing and refurbishing the building. Mu

1

Alpha provided funds to Cochran to purchase and refurbish the building; however, they soon realized the costs would exceed their budgeted funds.

5. At the time of the purchase, the building had no functioning central HVAC system.
6. Since there was not enough funds available to purchase and do all the refurbishing, Cochran offered to pay to have a central HVAC system installed at his expense, believing that he had a verbal understanding among the membership of Mu Alpha that he would be reimbursed at such time as the organization was able to afford to do so, but no later than the time that the organization elected to sell the property.
7. The by-laws of Mu Alpha required the approval of its board for any expenditures exceeding $500.00. There are no records of the board approving this transaction, nor are there are any documents supporting any agreement to reimburse Cochran for the HVAC purchase and installation.
8. Cochran contracted with Mr. William Brown of Brown Heating & Air Conditioning for the installation of three five-ton split heat pump units. Brown testified the price of the contract for installation was $23,000.00. Cochran paid Brown $13,800.00 on March 3, 2008, upon completion of sixty (60%) percent of the work. Cochran paid the balance of $9,200.00 on April 4, 2008, upon completion of the work.
9. Cochran did not make any demand or request for reimbursement during the ensuing ten years.
10. On March 27, 2013, the Defendant Omegas of Charleston Community Uplift Project (hereafter "Omegas") was incorporated. It is also affiliated with national Mu Alpha. This was apparently done at the request of the national Mu Alpha organization because it sought protection from lawsuits filed against local chapters nationwide.

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11. On September 26, 2013, Mu Alpha conveyed its interest in the property to Omegas by Quit Claim Deed with $0 consideration listed.
12. During the ensuing years the property was not used as much as in the past, and at some point, the aforesaid HVAC units were apparently stolen without anyone noticing they were gone.
13. On November 9, 2017, Omegas sold the property to JRC Real Properties, Inc. for $125,000.00.
14. The HVAC units were not attached to or located anywhere on the property at the time of the 2017 sale.
15. After the sale Cochran made both oral and written demands for reimbursement.
16. Omega's current officers assert that they are not aware of any promise to repay Cochran, and at the time of the sale the HVAC units were already stolen.
17. When payment was not forthcoming, Plaintiff filed the instant suit.

CONCLUSIONS OF LAW

1. **Breach of contract.**[1]

The court finds Cochran failed to prove by a preponderance of evidence the existence of an enforceable oral contract that he would be reimbursed for the funds he paid to have the HVAC units installed.

The necessary elements of a contract are offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the

[1] Cochran dropped his conversion cause of action at the directed verdict stage of the trial.

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other." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable. Gaskins v. Firemen's Ins. Co. of Newark, N. J., 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral). To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). There was not a written contract. The only evidence produced was of an oral contract was that Cochran paid for the HVAC units with an "understanding" that he would be reimbursed at some point in the future if the property was ever sold. Cochran admitted on cross-examination that no one ever explicitly promised him that he would be reimbursed, but rather the evidence was more that it was sort of a "gentleman's agreement". Cochran was president at the time, the club needed the money to pay for the HVAC since the project was running over budget, and he had the funds to pay for it. However, there was evidence presented that the club's bylaws required board approval for any expenditure exceeding $500.00, and there is no question neither the board nor the membership formally approved this understanding. Furthermore, there is no evidence of any consideration flowing between the parties to this arrangement. While Mu Alpha benefited from getting the HVAC units installed, there is no evidence of any benefit Cochran received in return.

Based upon this vague "gentleman's agreement" understanding that Cochran would be repaid the funds if and when the property was ever sold, along with the failure to prove any

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consideration to support such an agreement, the court finds Cochran has failed to prove the existence of an enforceable oral contract.

2. Unjust enrichment.

Unjust enrichment developed from the concept of the existence of an obligation "arising out of quasi-contract, that is, a contract arising out of the 'law of natural immutable justice and equity.' " See 66 Am.Jur.2d *Restitution and Implied Contracts* Section 2 (1973). The terms "restitution" and "unjust enrichment" are modern designations for the older doctrine of quasi-contracts. Martin v. Bozeman, 173 So.3d 382 (La.Ct.App.1965). "Unjust enrichment is usually a prerequisite for enforcement of the doctrine of restitution; if there is no basis for unjust enrichment, there is no basis for restitution.". Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (S.C. App. 1988) (quoting 474 66 Am.Jur.2d *Restitution and Implied Contracts* Section 4 (1973)).

The essential elements of a quasi-contract are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value. 66 Am.Jur.2d *Restitution and Implied Contracts* Section 4 (1973); Anno. 62 A.L.R.3d 288, 294 (1975).

While Mu Alpha realized a benefit in having the HVAC units installed and paid for by Cochran in 2007, the evidence is undisputed that the HVAC units were stolen by the time Omegas sold the property in 2017. Therefore, there is no way Omegas received any value from them in the price it received when it sold the property. Since Mu Alpha essentially gave the property to Omegas in 2013, they did not receive any benefit in the sales price either. There is simply nothing inequitable or unjust about the 2017 sale that needs the court

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to remedy since Omegas did not benefit from a sales price which reflected the existence of a HVAC unit being included with the property when it was sold.

3. Successor Liability.

Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims. Brown v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97 (1924).

While the evidence is clear that Omegas was a clear continuation of Mu Alpha, as stated above, Cochran failed to prove the existence of an enforceable oral contract, nor did he prove Omegas were unjustly enrichment when it sold the property in 2017 without paying him back for the funds he paid to have the HVAC units installed in 2007. Therefore, there can be no successor liability claim under the facts of this case.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT THE PLAINTIFF'S ACTION IS DISMISSED.

AND IT IS SO ORDERED.

October 5, 2020
Charleston, South Carolina

Roger M. Young, Sr.
Circuit Court Judge

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Charleston Common Pleas

Case Caption: Rudolph Cochran VS Omegas of Charleston Community Uplift Project

Case Number: 2018CP1002784

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-10-02784
RUDOLPH COCHRAN, Plaintiffs, V. OMEGAS OF CHARLESTON COMMUNITY UPLIFT PROJECT, Defendant.	))))))))))	PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO RULE 59, SCRCP

TO: GEORGE E. COUNTS, ESQUIRE, ATTORNEY FOR DEFENDANT

YOU WILL PLEASE TAKE NOTICE THAT PLAINTIFF, RUDOLPH COCHRAN, by and through his undersigned counsel, will move before the Honorable Roger M. Young, Sr., Trial Judge, for an Order to Alter or Amend the Final Order, entered and filed October 7, 2020, pursuant to Rule 59(a) of the South Carolina Rules of Civil Procedure. The basis for this Motion pertains to two findings within the Final Order, to wit: The Court made a finding that the by-laws of Mu Alpha required approval of the board for any expenditures exceeding $500.00; and, the Court found that Omegas, despite being the undisputed successor to Mu Alpha, was not unjustly enriched to any degree by Cochran's expenditure to install the HVAC units.

Counsel is informed and believes that the testimony and evidence presented at trial, which was notably lacking in an actual copy of the by-laws reflecting the requirement of board approval of expenditures in excess of $500.00, pertained to the by-law requirements of Omega and not of Mu Alpha. Assuming arguendo that this requirement also pertained to Mu Alpha, counsel is informed and believes that Vernon Pryor testified during the trial that a meeting of the board of Mu Alpha was held at Mr. Cochran's home, during which the board authorized Mr.

Cochran to expend his own money for the installation of the three HVAC units, with the understanding that he would be paid back at such time as the organization was able to do so. Mr. Pryor further testified that this was not the first time that authorization for such an arrangement had been granted to Mr. Cochran.

As to the issue of Unjust Enrichment, Mr. Cochran agrees with the Court's finding that it is uncontroverted that the HVAC units had been stolen from the property by the time Omega sold it in 2017. Thus, Omega did not realize full or even, depreciated, value for the HVAC units in the sales price. However, it is also undisputed that Mu Alpha and, by extension its successor organization, received the beneficial use of the HVAC units for a time during which they utilized the building for meetings and other events. Certainly, there is some value to the air conditioning and heating of the building during this period of use. While it is disputed as to how much time the building was used prior to the removal of the units, it appears that it was a duration of sometime between eighteen months and three years. The Defendant received the beneficial use of the HVAC units paid for by Mr. Cochran without compensating him in any for or fashion for same. That would seem, by its very definition, to be unjust enrichment for which Mr. Cochran is entitled to some level of compensation.

Plaintiff respectfully requests that the Court reconsider its Final Order of October 7, 2020, finding, instead, that Mr. Cochran did receive the proper board authorization, assuming it was even required under the Mu Alpha by-laws, and that he is entitled to some measure of compensation for the period of unjust enrichment enjoyed by the Defendant.

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PARKER NELSON AND ASSOCIATES

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Attorneys for Plaintiff

October 14, 2020

Charleston, South Carolina

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ELECTRONICALLY FILED - 2020 Oct 22 10:35 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002784

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-10-02784
RUDOLPH COCHRAN, Plaintiffs, V. OMEGAS OF CHARLESTON COMMUNITY UPLIFT PROJECT, Defendant.	))))))))))	DEFENDANT'S REPONSE TO PLANTIFF'S MOTION TO ALTER OR AMEND

Defendant, Omegas of Charleston Community Uplift Project, asks the Court to deny Plaintiff's, Rudolph Cochran's, motion to alter or amend the judgment made under South Carolina 59(a).

A. Introduction

1. Plaintiff sued Defendant for Breach of contract, unjust enrichment, and conversion.
2. The Court rendered judgment in favor of the Defendant, and the clerk entered judgment on October 7, 2020.
3. The Court's judgment was correct. Therefore, the Court should deny Plaintiff's motion to alter or amend judgment.

B. Argument & Authorities

4. The judgment should not be altered or amended, because Defendant presented witnesses who gave sworn testimony. Plaintiff made no objection to the witnesses' testimony. Therefore, the witnesses' testimony became evidence in the case. Issue not preserved without timely objection. State v. Hudgins, 319 S.C. 233, 460 S.E.2d 388 (1995). A party cannot raise an issue for the first time in a Rule 59 (e), SCRCP

motion which could have been raised at trial. MailSource, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370,374, 588 S.E.2d 639, 641 (Ct. App. 2003). Defendant's witness, Darilyn Grigsby, testified that he held the position of president of Mu Alpha for two (2) consecutive terms a total of four years. He testified that he was quite familiar with the rules and by-laws of Mu Alpha. Additionally, Defendant's witness, Gregory V. Harris, testified that he was president of Mu Alpha for one two-year term. Darilyn Grigsby testified that Mu Alpha's board along with Mu Alpha's general membership must approve any expenditures above five hundred Dollars ($500.00). This evidence was authenticated by the testimony of Defendant's witnesses who had personal knowledge of the evidence. Further, Plaintiff offered no evidence to rebut the testimony of the witnesses on this issue.

5. Additionally, Darilyn Grisby testified that as president of Mu Alpha the by- laws were the rules of Mu Alpha. Plaintiff testified that his interactions were with the presidents of Mu Alpha. Plaintiff testified that none of the presidents agreed to reimburse him.

6. The judgment should not be changed based on Vernon Pryor's testimony. Vernon Pryor was secretary of Low Country Men of Mu Alpha. Low Country Men of Mu Alpha was a nonprofit that was created by Mu Alpha to shield Mu Alpha's property from liability. The meeting testified to by Vernon Pryor was a Low Country Men of Mu Alpha meeting not a Mu Alpha meeting. Plaintiff was president of Low Country Men of Mu Alpha. Vernon Pryor neither testified that a president of Mu Alpha was present during the meeting nor did he testify that a president of Mu Alpha had authorized any expenditure to

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reimburse Plaintiff. Plaintiff as president of Low Country Men of Mu Alpha could not come to an oral contract with himself.

7. The judgment should not be changed because the testimony of all witnesses was considered at trial. Defendant's witness, Gregory V. Harris, testified that in July of 2008 while at the Toogoodoo road building the group noticed that one unit was missing. He, further, testified that a week or two later while at the building the group discovered that the other units were missing. It is uncontroverted evidence that the Defendant came into existence in 2013. Defendant derived no benefit for the use of the units. Further, Defendant did not receive any financial benefit from the sale of the units.

8. The judgment does not result in clear error of law or manifest injustice. The Court reviewed the evidence, evaluated the evidence, listen to the witnesses, and made a decision based on the weight of the evidence. The trial Judge's factual findings in an action at law, tried without a jury, must be affirmed unless there is no evidence that reasonably supports the trial judge's findings of fact that depend on the credibility of witnesses. Outdoor advertising, Co. Inc. v. Dean Abbott, 317 S.C. 14,16, 451 S.E. 2d 394, 395 (Ct. App. 1994), affirmed in part, and reversed in part, 322 S.C. 489, 473 S.E. 2d 47 (1996).

C. Conclusion

9. For these reasons, the Court should deny Plaintiff's motion to alter or amend the judgment.

COUNTS & HUGER, LLC

/S/ George E. Counts

Attorney for Defendant
27 Gamecock Ave., Ste. 200

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P.O. Box 80399
Charleston, South Carolina 29416
Tel. No.: (843) 573-0143

Dated at Charleston, South Carolina
this 22nd day of October 2020.

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ELECTRONICALLY FILED - 2020 Oct 26 9:41 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002784

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Rudolph Cochran, Plaintiff, vs. Omegas of Charleston Community Uplift Project, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-02784 **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**

This Motion comes before the Court on Plaintiff's Motion for Reconsideration of the Final Order of October 7, 2020. Specifically, Plaintiff asks the Court to reconsider two findings within the Final Order, to wit: The Court made a finding that the by-laws of Mu Alpha required approval of the board for any expenditures exceeding $500.00; and, the Court found that Omegas, despite being the undisputed successor to Mu Alpha, was not unjustly enriched to any degree by Cochran's expenditure to install the HVAC units. After reviewing the issues raised in Plaintiff's motion and Defendant's response, the Court hereby DENIES Plaintiff's Motion for Reconsideration.

And it is SO ORDERED.

Roger M. Young, Sr.
Circuit Court Judge

Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Oct 26 9:41 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1002784

Charleston Common Pleas

Case Caption: Rudolph Cochran VS Omegas of Charleston Community Uplift Project

Case Number: 2018CP1002784

Type: Order/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Rudolph Cochran,	)	CASE NO. 2018-CP-10-02784
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	ORIGINAL
	)	
Omegas of Charleston Community Uplift Project,	)	
	)	
DEFENDANT.	)	
	)	

September 28, 2020

Bench Trial

Charleston, South Carolina

B E F O R E:

The Honorable Roger Young

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

Thomas B. Pritchard, Esquire
For the Plaintiff

George S. Counts, Esquire
For the Defense

Certified Transcript Provided For: Thomas B. Pritchard

I N D E X

(PW) - DENOTES PLAINTIFF'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

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If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

PLAINTIFF EXHIBITS

NO.	DESCRIPTION	MARKED	ADMIT
1	Deed 11/19/07	12	13
2	Quit Claim Deed 9/26/13	20	20
3	Deed from Omegas 11/9/17	23	23
4	Invoice $23,000, Brown Htg.	15	17

DEFENDANT EXHIBITS

NO.	DESCRIPTION	MARKED	ADMIT
1	Request to Admit - Secretary of State Website	38	38

COURT EXHIBITS

NO.	DESCRIPTION	MARKED
1	Cochran Deposition, 1/15/20	113

1

1 THE COURT: We are here on 2018-CP-10-2784, Cochran
2 versus Omegas of Charleston, bench trial.
3 Mr. Pritchard, you represent the plaintiffs; Mr. Counts,
4 you represent the defense.
5 MR. PRITCHARD: Yes, sir.
6 MR. COUNTS: Yes, Your Honnor.
7 THE COURT: All right. Well, Mr. Pritchard, are you
8 ready to go?
9 MR. PRITCHARD: Yes, sir, Your Honor. Your Honor,
10 honestly, I don't believe I have tried anything non jury in
11 front of you since you were the Master. So I don't know how
12 much or how little you want me to ---
13 THE COURT: Give me a five-minute opening.
14 MR. PRITCHARD: Okay.
15 THE COURT: I read your pretrial briefs.
16 MR. PRITCHARD: Yes, sir.
17 THE COURT: Unless you have got something that is a
18 surprise that ---
19 MR. PRITCHARD: No, sir. The opening would be sort of a
20 summation of what I have provided to you.
21 **OPENING BY MR. PRITCHARD:**
22 But just for the record, Your Honor, of course I
23 represent Mr. Cochran, Rudolph Cochran. And Mr. Cochran is a
24 member of two organizations, one of which is the Lowcountry
25 Men of Phi Mu. And the other which is I refer to, Your

1 Honor, for ease of understanding, as O-C-C-U-P; but it is the
2 Omegas of Charleston Community Uplift Project.
3 And, Your Honor, back in November of 2007 Lowcountry Men
4 of Phi Mu purchased a building out on Toogoodoo Road. Mr.
5 Cochran is a member of that organization. And at the time
6 they purchased the building -- I'm sorry, Michael told me I
7 am supposed to take my mask off when I talk.
8 (WHEREUPON, pause for counsel to remove mask)
9 MR. PRITCHARD: At the time they purchased the building
10 they did not have any air conditioning in the building.
11 Mr. Cochran offered to front the money to put the
12 air-conditioning in the building with the understanding that
13 at some point - and he will admit, Your Honor, that that
14 point easily for him would have been when they sold the
15 building if they weren't in a position to do so before - he
16 would get reimbursed.
17 I think you will hear testimony that there were other
18 occasions on which Mr. Cochran fronted money and was
19 reimbursed in like-fashion, not necessarily having to wait on
20 the sale of the building; because sometimes we are talking
21 about significantly less sums of money than the $23,000
22 advanced here.
23 Your Honor, the hiccup here -- the hiccup here - and Mr.
24 Counts had raised it in his pleading is that in November of
25 2013 -- or, I'm sorry, September. I apologize. I believe it

1 was September of 2013 the Lowcountry Men of Phi Mu provided a
2 quit claim deed to the Omegas of Charleston Community Uplift
3 Project with zero dollars consideration, transferring the
4 ownership of the building to O-C-C-U-P.
5 It is our position that O-C-C-U-P for the purposes of
6 the ownership of this building is just the successor entity.
7 It is a like organization with I think somebody told me there
8 is one female member of O-C-C-U-P but otherwise identical
9 membership, leadership, the whole nine yards.
10 And so obviously when it was transferred from one to the
11 other also there was no proceeds of the sale from which Mr.
12 Cochran could be reimbursed. And neither did Mr. Cochran
13 anticipate being reimbursed at that time because he knew that
14 it was just a continuation of the same organization with the
15 same common purpose.
16 And of course Lowcountry Men of Phi Mu does still exist.
17 There is no question. But O-C-C-U-P took ownership of the
18 building and the continuous advancement of their common
19 purpose.
20 So in November of 2017 the building sold for $125,000 at
21 which time Mr. Cochran said, okay, fellas, you know, I would
22 like to get reimbursed now. And there was no reimbursement
23 forthcoming, so he made a written demand in early 2018 for
24 reimbursement. And there was still no reimbursement
25 forthcoming and an indication that there was not going to be

1 reimbursement, that they didn't see it the same way he saw it
2 and so.
3 And, Your Honor, I will tell you that there are some
4 arguments that in full candor to the Court that the other
5 side is going to advance that the units were not still
6 affixed to the property when O-C-C-U-P took ownership. There
7 is some indication that perhaps they were stolen. And it is
8 ambiguous to us as to whether or not an insurance claim was
9 ever filed. But, regardless, their units were not there.
10 But we felt like O-C-C-U-P being the same organization
11 of men with the same common membership and same common
12 governance and all of that that they also have derived
13 benefit from the use and enjoyment of the air-conditioning
14 units during the prior period before the quit claim deed was
15 entered.
16 So, Your Honor, I mean this is kind of a screwy case. I
17 recognize the statute of frauds issues. I -- but I also
18 recognize the equitable issues here. Here's a gentleman who
19 advanced $23,000 and will tell you and his witnesses will
20 tell you that this was a common practice for him throughout -
21 and he is still a member by the way - throughout his
22 membership and that he was always reimbursed without
23 question. Nobody had any problems with it.
24 So being a fraternal organization and a group of friends
25 he didn't think that he was going to need to have some kind

1 of a written agreement with them. He thought he had a common
2 understanding based on a course of dealing. And so he just
3 has an equitable argument that he is out $23,000. So that is
4 our case.
5 THE COURT: Mr. Counts.
6 MR. COUNTS: Your Honor, may it please the Court, I am
7 going to remove my mask.
8 THE COURT: Yes, please do.
9 (WHEREUPON, pause for counsel to remove mask.)
10 **OPENING BY MR. COUNTS:**
11 Your Honor, my clients take the position that Mr.
12 Cochran has sued the wrong people. My client's organization
13 came into existence in 2013. They came into existence as a
14 nonprofit. They registered with the Secretary of State of
15 South Carolina, a nonprofit to provide scholarships and other
16 things to the community.
17 When Mr. Cochran was president of the other
18 foundation -- our -- OCCUP is a foundation that is formed in
19 the State of South Carolina. Mr. Cochran was head of
20 Lowcountry Men which is the foundation formed, the State of
21 South Carolina. This is approximately ten years ago. He was
22 president of that organization.
23 Testimony would say that he took total control
24 concerning the purchasing of the building, the construc- --
25 the refurbishing of the building; and everything concerning

1 that building ran through Mr. Cochran.
2 There also will be testimony that around 2007 and 2008
3 members of MU Alpha, which is the Omegas organization, went
4 to the building, discovered that those HVAC units were gone.
5 There were two or three units. They were gone.
6 So from 2008 to 2013 Mr. Cochran never made a police
7 report, never filed an insurance report. Nothing -- nothing
8 ever -- he did nothing concerning the building.
9 Our position is that OCCUP is not a successor
10 organization to Lowcountry Men of Omegas. They are a totally
11 separate entity. And I think Mr. Pritchard sort of hit it on
12 the head, Omega is a fraternity with all men; OCCUP had at
13 least one woman who is a member of the organization. It was
14 formed as a community organization to assist the community
15 with scholarships.
16 Mr. Cochran never put a lien on the building. He never
17 did anything concerning -- indicating ownership of the
18 building. We went through depositions. He never indicated
19 that there was anyone who said that they were going to
20 reimburse him for any outlay of any funds.
21 Now mind you, Your Honor, MU Alpha gave Mr. Cochran
22 $265,000 to purchase the building and to refurbish the
23 building. Again, he was in control of everything. Why there
24 needed to be an advancement, they don't know. My clients
25 don't know. They weren't in existence.

1 Again, my clients are a foundation established in 2013
2 as a separate entity from Lowcountry Men and as a separate
3 entity from MU Alpha.
4 THE COURT: Thank you.
5 All right. Call your first witness.
6 MR. PRITCHARD: Mr. Cochran.
7 (WHEREUPON, the witness was duly sworn.)
8 THE COURT: Go ahead.
9 **DIRECT EXAMINATION BY MR. PRITCHARD OF RUDOLPH COCHRAN:**
10 Q. Good morning, Mr. Cochran.
11 Would you state your full name for the record, please, sir.
12 A. Rudolph Cochran.
13 Q. Okay. And where do you live, Mr. Cochran?
14 A. 13 Devereaux Avenue, Charleston, South Carolina.
15 Q. Okay. And are you currently in business or are you
16 retired?
17 A. I am retired.
18 Q. Okay. And what did you retire from, sir?
19 A. Real estate and construction.
20 Q. Okay. And approximately how long were you in the real
21 estate and construction business?
22 A. Probably 40 years.
23 Q. Okay. And tell me, Mr. Cochran, if you will, are you a
24 member of Lowcountry Men of MU Alpha?
25 A. Yes, I am. And I am a member of MU Alpha Chapter of

1 Omega Psi Phi, which are made up of members of OCCUP and
2 Lowcountry Men.
3 Q. Okay. And what are -- what is Lowcountry Men?
4 A. Lowcountry Men is a separate organization that was
5 created for financial protection from MU Alpha Chapter of
6 Omega Psi Phi so in case we received any monies, any
7 properties, it would be protected if MU Alpha Chapter of
8 Omega Psi Phi was ever sued.
9 Q. Okay. And how did Lowcountry Men come to purchase the
10 Toogoodoo Road property?
11 A. In 2007 there was a meeting of the members of MU Alpha
12 Omega Psi Phi and it was discussed that maybe we should buy a
13 property since we have always had a facility where we could
14 have our meetings. And it was decided upon since I was the
15 one with some sort of expertise in that area that I would
16 head up that situation.
17 (WHEREUPON, Plaintiff's Exhibit Number 1, 11/19/07 Toogoodoo
18 Road deed, was marked for identification.)
19 Q. Okay. And the document that has been handed up to you
20 which we have marked as Plaintiff's Exhibit 1, will you take
21 a quick look at that, please, sir.
22 A. Uh-huh.
23 Q. Does that appear to be to you the deed by which
24 Lowcountry Men of MU Alpha purchased the Toogoodoo Road
25 property in November of 2007?

1 A. Yes, it does.
2 Q. Okay. And at the time you were in what position with
3 Lowcountry Men?
4 A. At that time I was president of Lowcountry Men of MU
5 Alpha.
6 Q. Okay. And thereafter --
7 MR. PRITCHARD: Well, let me ask real quickly if we
8 could admit Exhibit 1.
9 (WHEREUPON, counselors confer)
10 MR. PRITCHARD: I'm sorry, do you have any objection to
11 the admission of Plaintiff's Exhibit 1 ---
12 MR. COUNTS: No, sir.
13 MR. PRITCHARD: --- as an exhibit? Okay.
14 Your Honor, we would move at this time Plaintiff's
15 Exhibit 1 be admitted.
16 THE COURT: Admitted.
17 MR. PRITCHARD: Thank you.
18 (WHEREUPON, Plaintiff's Exhibit Number 1 was admitted into
19 evidence.)
20 MR. PRITCHARD: Okay.
21 Q. Now, Mr. Cochran, when you were the president of the
22 organization tell me about work that was done on this
23 building when y'all purchased it.
24 A. Okay. We bought the building in 2007 for $105,000.
25 Q. Yes, sir.

1 A. We had previously looked at the building and we realized
2 before purchase that the building needed some extensive
3 renovation. The inside needed to be redone. The roof needed
4 to be done. The air conditioning systems needed to be
5 replaced.
6 We started work on the building; and when we got into
7 it, it was a little more than we had anticipated. We had
8 used up the funds that we had. We had approximately
9 $280,000, if I remember correctly, of which we used 105 to
10 purchase the building. And as we went in and started working
11 on the building we used up those funds that were remaining.
12 We redid the inside. We put a new roof on the building.
13 We redid the flooring. We did the electrical. We redid the
14 plumbing on the building. All of those things were done. By
15 the time we got to the air conditioning system, which was the
16 last item that we were going to do, we were running low on
17 funds.
18 We had a meeting of which we had the members of MU Alpha
19 there, and it was stated that we would continue on until the
20 building was finished. I say stated. I think that I will --
21 I think I said I will just go on and fix it out of my pocket
22 to make sure it gets done. I think I said that. Don't quote
23 me. But it was understood that I was going to go on and
24 finish the building.
25 So, anyway, the last contractor that we brought in was

1 the heating and air; and he mentioned something that, well,
2 Rudy, how am I going to get paid. I said I will guarantee
3 that your funds -- you would receive your funds for the work
4 you did.
5 He put in three units inside and outside plus ran the
6 duct work, and that came to approximately 23, $24,000; in
7 that area.
8 (WHEREUPON, Plaintiff's Exhibit Number 4, invoice $23,000
9 from Brown Heating and Air, marked for identification.)
10 Q. Okay. I have handed you what we have marked as
11 Plaintiff's Exhibit 4.
12 A. $23,000.
13 Q. Okay. And is this the contractor that you were dealing
14 with?
15 A. Yes, Brown Heating and Air. William Brown is the owner.
16 Q. Okay. Is Mr. Brown somebody you had dealt with in your
17 construction business previously?
18 A. He has been doing -- I have been doing business with Mr.
19 Brown for the last 30, 35 years.
20 Q. Okay. And the $23,000 represented here, was that paid
21 from funds that were still available to Lowcountry Men from
22 the pot of money that was given for the Toogoodoo property;
23 or did those funds come from somewhere else?
24 A. No, those funds came from Rudolph Cochran.
25 Q. Okay. And subsequent to paying the $23,000 did you have

1 any discussions with anybody about, hey, I spent this $23,000
2 and I need to figure out about it at some point?
3 A. I told several people that I fronted the money up to pay
4 for those units. I didn't make any demands for the money at
5 that point because we didn't really have any money at that
6 point. We had used up all of the money that we had on hand.
7 So there wasn't any need to make a demand for something that
8 we didn't have.
9 So I figured that at some point I will probably be
10 repaid, but I didn't put any pressure on the organization at
11 that point. For several years I didn't put any pressure on
12 them to refund that money to me.
13 Q. Okay. Now I would move at this point that Plaintiff's
14 Exhibit 4, the Brown invoice, be admitted into evidence.
15 (WHEREUPON, counselors conferred.)
16 MR. PRITCHARD: All right. You go ahead and ask him
17 some quick questions ---
18 MR. COUNTS: Your Honor ---
19 MR. PRITCHARD: Can you ask him a quick question on the
20 evidence before ---
21 MR. COUNTS: Uh-huh.
22 MR. PRITCHARD: Okay. Go ahead.
23 MR. COUNTS: Well, I would object --
24 (WHEREUPON, counselors confer)
25 MR. COUNTS: I have no objection, Your Honor.

1 MR. PRITCHARD: Okay.
2 THE COURT: I'm sorry, I couldn't understand what you
3 were saying with your mask.
4 MR. COUNTS: I have no objection.
5 THE COURT: Okay.
6 MR. PRITCHARD: He was asking if I was going to bring in
7 Mr. Brown to testify; and I said, yes, sir, I would.
8 THE COURT: Okay.
9 MR. PRITCHARD: So with that basis he doesn't have an
10 objection on that. Okay. So we would move that in.
11 THE COURT: All right. Admitted.
12 (WHEREUPON, Plaintiff Exhibit Number 4 was admitted into
13 evidence.)
14 MR. PRITCHARD: All right.
15 Q. Now, Mr. Cochran, prior to the purchase of the Toogoodoo
16 property had you had other occasions to advance monies to
17 Lowcountry Men of MU Alpha for any purpose?
18 A. Yes, I have. Over the years I have been the treasurer
19 of the organization, and I became president of the
20 organization. And I have advanced money to the organization
21 over those -- over those years, yes.
22 Q. Was there ever any issue with you be reimbursed?
23 A. No.
24 Q. Okay. Now, Mr. Cochran, tell me about what I refer to
25 as O-C-C-U-P -- or OCCUP I believe Mr. Counts refers to it

1 as. Tell me about that organization.
2 A. The organization is only in existence because of MU
3 Alpha Chapter of Omega Psi Phi. It is made up of members of
4 Omega Psi Phi. I am a member. All of the members of OCCUP
5 comes out of MU Alpha Chapter with the exception I think over
6 the past year or two they added one female from another
7 organization. But other than that it is all men of MU Alpha
8 that is a part of OCCUP.
9 Q. And what about the leadership of OCCUP versus the
10 leadership of Lowcountry Men?
11 A. The leadership of OCCUP and Lowcountry Men come out of
12 MU Alpha Chapter of Omega Psi Phi.
13 Q. Okay. So how did OCCUP come into being; I mean what was
14 the purpose of establishing it separate and apart from
15 Lowcountry Men?
16 A. I think over the years -- once I left the organization
17 don't know who became -- I can't remember who became
18 president of Lowcountry Men. But apparently they let that
19 charter lapse and started a new -- new charter with OCCUP.
20 And but it is still made up of members of MU Alpha Chapter of
21 Omega Psi Phi.
22 Q. Okay. Are you familiar with the fact that the
23 Lowcountry Men of MU Alpha deeded the property in question to
24 OCCUP in September of 2013?
25 A. I was not aware of that.

1 Q. You were not aware of that?
2 A. No, I wasn't.
3 Q. Do you -- had you been aware of that would you have --
4 what would you have done had you been aware of that?
5 A. At that point I would not have done anything. I would
6 not have -- still not have demanded full payment. Because I
7 do know the financial straits that we were in at the time, so
8 I would not have attempted to put pressure on the
9 organization for the money.
10 But once -- once I saw the for-sale sign on the building
11 and the fact that the building was sold and the fact that
12 nobody filed a claim for the units that were taken I decided
13 that if they could do that they could pay me my money.
14 Q. Now do you know whether or not OCCUP paid Lowcountry Men
15 any money for the transfer of the deed from Lowcountry Men to
16 OCCUP?
17 A. From what my understanding is I think it was just a
18 transfer of title.
19 Q. Okay. I am going to show you the quit claim deed. I
20 understand that you may not have seen it previously, but I
21 wanted you to take a look at it just so you can familiarize
22 yourself with it.
23 MR. PRITCHARD: And, Your Honor, I would take the
24 position that this document is admissible under the business
25 records exception. It is clearly a document that is file

1 stamped with our Charleston County Register of Deeds. It
2 came -- and it has got the Register of Deeds recording page
3 affixed.
4 I don't know whether Mr. Counts takes issue with the
5 document. He may not take issue ---
6 MR. COUNTS: I have no objection.
7 MR. PRITCHARD: Okay.
8 THE COURT: It is admitted.
9 MR. PRITCHARD: Okay. So that would be Plaintiff's
10 Exhibit 2 admitted.
11 (WHEREUPON, Plaintiff's Exhibit Number 2, quit claim deed
12 9/26/13, marked for identification.)
13 (WHEREUPON, Plaintiff's Exhibit Number 2 was admitted into
14 evidence.)
15 Q. Now looking at that document, Mr. Cochran, do you see
16 that the transfer took place on September 26 of 2013?
17 A. Yes.
18 Q. And you see that the consideration listed there on the
19 front page?
20 A. Yes.
21 Q. Okay. So at that point was there any money even for
22 Lowcountry Men to -- or OCCUP to reimburse you?
23 A. No, not at that time.
24 Q. Okay. So you had no expectation in 2013 that you
25 would ---

1 A. No, once they did the transfer there was no money there.
2 Q. Okay. And you are familiar -- I'm sorry, this is the
3 last one. I promise. Let me let her hand that to you.
4 (WHEREUPON, document presented to witness)
5 Q. And you indicated that you saw a for-sale sign go up
6 sometime in 2017 ---
7 A. Yes, ---
8 Q. --- on Toogoodoo Road?
9 A. --- just -- just riding out there. Yes, saw the
10 for-sale sign.
11 Q. Were y'all still using that building at that point for
12 meetings or anything?
13 A. No.
14 Q. Okay. When is the last time to your recollection that
15 y'all were -- had been using that building for meetings or
16 anything?
17 A. We used that building up until I think maybe 2009. And
18 by that time you had some of the members saying that it was
19 too far. Then it just became a big kerfuffle.
20 MR. PRITCHARD: Can you get that down for the record,
21 kerfuffle.
22 A. With some of the members going left and some was going
23 right.
24 Q. Okay. So the building sat empty for a period ---
25 A. The building ---

1 Q. --- of about eight years?
2 A. --- sat empty for a number of years, yes.
3 Q. Do you know why no effort was made to try to sell it
4 sooner?
5 A. I don't -- I don't have a clue.
6 Q. Okay. Fair enough.
7 Now what I've handed you is marked as Plaintiff's
8 Exhibit 3 which is a general warranty deed dated November -
9 gosh, I need my glasses - 9th, is that what it says. Hold on
10 a second. I'm sorry. November 9th, 2017. Is that correct,
11 sir?
12 A. Yes. Yes. Uh-huh.
13 Q. And that is where the Omegas of Charleston Community
14 Uplift Project sold this property to JRC Real Properties,
15 Inc., for $125,000; is that correct, sir?
16 A. Yes. Whose -- and I don't know who J- --
17 Q. Sure. I wouldn't expect you to know who they are. The
18 question is, is do you know who received the proceeds from
19 the sale of this building. Was it the Omegas of Charleston
20 Community Uplift Project?
21 A. I don't know the transfer of funds how that went. I
22 don't know if it went to MU Alpha first and then to OCCUP. I
23 don't really know how that worked.
24 Q. But you will agree that the seller of the real estate
25 was OCCUP?

1 A. Yes.
2 Q. Okay. And you -- when did you make a demand for payment
3 thereafter?
4 A. Probably almost as soon as I heard that they sold the
5 building.
6 Q. Okay. And was payment forthcoming?
7 A. No, it wasn't.
8 Q. Okay. As we sit here today have you received payment
9 for the $23,000 you advanced ---
10 A. No, sir.
11 Q. --- for the air-conditioner?
12 MR. PRITCHARD: All right, Your Honor --
13 Do you have an objection on Exhibit 4?
14 MR. COUNTS: No.
15 MR. PRITCHARD: Okay.
16 MR. COUNTS: No.
17 MR. PRITCHARD: Without -- three. I'm sorry. You are
18 right. It was the fourth one I handed up but the third one I
19 marked. Without objection we would like to move for
20 admission of Exhibit 3.
21 THE COURT: Admitted.
22 (WHEREUPON, Plaintiff's Exhibit Number 3, deed from Omegas
23 11/9/17, marked for identification.)
24 (WHEREUPON, Plaintiff's Exhibit Number 3 was admitted into
25 evidence.)

1 MR. PRITCHARD: All right. I don't have anything
2 further at this point.
3 Mr. Counts.
4 MR. PRITCHARD: May it please the Court.
5 THE COURT: Yes. Go ahead. You can take your mask off.
6 MR. COUNTS: All right. Thank you, Your Honor.
7 Your Honor, may I avail myself of the (indicating) ---
8 THE COURT: Sure.
9 **CROSS-EXAMINATION BY MR. COUNTS OF RUDOLPH COCHRAN:**
10 Q. Mr. Cochran.
11 A. Yes, sir.
12 Q. No one promised you -- no one from Omega MU Alpha
13 promised you that they would reimburse you; is that correct?
14 A. Actually, sir, over my years I have never had anybody to
15 promise me that they would pay me back.
16 Q. Okay. So no one promised you that they would reimburse
17 you for the 23,000; is that correct?
18 A. No, sir.
19 Q. No one from OCCUP promised you that they would reimburse
20 you; is that correct?
21 A. No.
22 Q. And -- because OCCUP was not in existence; is that
23 correct?
24 A. There was Lowcountry Men. But the same people in
25 Lowcountry Men are the same people that's in OCCUP.

1 Q. But no one from OCCUP promised you that they would
2 reimburse you; is that correct?
3 A. No, they did not.
4 Q. Okay. And no one in Lowcountry Men promised you that
5 they would reimburse you; is that correct?
6 A. I was the president of Lowcountry Men. I didn't have to
7 promise myself anything.
8 Q. Okay. So you were president of Lowcountry Men?
9 A. Yes, I was.
10 Q. Did you have a board of directors?
11 A. I would assume -- yes, there were.
12 Q. But you took total control of finding the building,
13 purchasing the building, and refurbishing the building; is
14 that correct?
15 A. We all went and looked at the building before we bought
16 it, members of MU Alpha. We went out. We looked at the
17 building and decided as a group that we would buy the
18 building.
19 Q. Mr. ---
20 A. I did not arbitrarily make that decision.
21 Q. Do you know who Mr. Darylin Grigsby is?
22 A. Yes.
23 Q. And at one point Mr. Grigsby was president of MU Alpha;
24 is that correct?
25 A. Yes.

1 Q. And Mr. Grigsby never promised you that they would
2 reimburse you; is that correct?
3 A. I have asked him about my funds; yes, I did ask him.
4 Q. Mr. Grigsby never promised you that he would reimburse
5 you?
6 A. He said that we would -- he would look into it and we
7 would work it out.
8 Q. But he never promised you that he would reimburse you;
9 is that ---
10 A. Not in those words, no.
11 Q. And do you know who Mr. Gregory Harris is?
12 A. Yes, I do.
13 Q. And who is he?
14 A. He is also a former president of MU Alpha.
15 Q. And Mr. Harris never promised you that he would
16 reimburse you?
17 A. Same conversation. I've asked him. They will work it
18 out.
19 Q. And no one ever -- and so he did not promise you that
20 they would ---
21 A. He didn't. Those were his words, yes.
22 Q. Do you know who Mr. Haynesworth is?
23 A. Russell Haynesworth, yes.
24 Q. And what was he?
25 A. Former president of MU Alpha.

1 Q. And he never promised you that they would ---
2 A. Same conversation.
3 Q. Okay. He never promised you; is that right?
4 A. Same conversation we had: We will work it out, Mr.
5 Cochran.
6 Q. But he never promised you that he would ---
7 A. Never promised, no.
8 Q. Okay. Now, Mr. Cochran, do you recall taking a
9 deposition?
10 A. (No response)
11 Q. You sat in an office and you raised your hand and
12 you ---
13 A. Oh, yes. I'm sorry.
14 Q. And you in that deposition you said that MU Alpha, which
15 is the -- I'm going to call it the parent organization ---
16 A. Yes.
17 Q. --- gave you $265,000; is that correct?
18 A. They didn't give it to me. They made it available for
19 the purchase of the building and the repair of the building.
20 They did not put 200 and -- 200 and how many dollars in my
21 hands. No, sir, they did not.
22 Q. But you had $265,000 to purchase the building and
23 refurbish the building; is that correct?
24 A. Yes, it was made available; yes.
25 Q. And you just admitted a document into evidence that said

1 that you purchased the building for $105,000; is that
2 correct?
3 A. Yes, I did.
4 Q. So $105,000 from $265,000, that remaining money you had
5 that money to repair -- refurbish the building; is that
6 correct?
7 A. That is correct.
8 Q. And you have mentioned that you were a contractor, a
9 real estate person, before you retired?
10 A. Yes.
11 Q. And did you not give a proposal to MU Alpha as to what
12 you thought it would cost to purchase the building and
13 refurbish the building?
14 A. I don't know if I did. But probably off the top of my
15 head I would have thought that $165,000 would have been
16 enough, yes.
17 Q. What if -- I want to read this to you. You just tell me
18 if it is correct.
19 MR. PRITCHARD: Do you have a copy for him to look at?
20 Can you put it up on the ELMO ---
21 MR. COUNTS: Sure.
22 MR. PRITCHARD: --- so Mr. Cochran can see it.
23 (WHEREUPON, exhibit displayed on screen.)
24 Q. I am going to ask you to look at the bottom of it. Do
25 you see that name on there?

1 A. Yeah, I see Rudolph Cochran; yes.
2 Q. I want to ask you some questions about that.
3 A. I don't think you can ask me any question on this
4 because I don't recall seeing this document.
5 Q. Okay. But I can ask you -- you can say -- you can
6 answer how you wish to answer. I am going to ask you
7 some ---
8 A. Okay. But you are asking me to answer something that I
9 am not familiar with and have never seen.
10 MR. PRITCHARD: Let him ask you a question.
11 THE COURT: Well, he is not asking to have the document
12 admitted.
13 MR. PRITCHARD: I know. I said let him ask ---
14 THE COURT: He is asking ---
15 MR. PRITCHARD: --- you the question.
16 THE COURT: --- to go over the numbers with him.
17 WITNESS COCHRAN: Oh, okay.
18 Q. There's a question at the top of this document is how
19 can you afford to purchase a fraternity house. And the
20 proposed purchase price on this document it says $100,000,
21 does it not?
22 A. Yes.
23 Q. And you are a construction person. Could you tell me
24 what upfit means?
25 A. Bringing it up to standards.

1 Q. Okay. And on that it says $45,000?
2 A. Yes, it does.
3 Q. Okay. And the total it has there is $145,000; is that
4 correct?
5 A. That's what it says, yes.
6 Q. Okay. Now the assets on hand states that -- well,
7 assets on hand, $197,588.12; is that correct?
8 A. That is what it says, yes.
9 Q. And the total purchase, you have $145,000; is that
10 correct?
11 A. That is what it says, yes.
12 Q. And the remaining balance, $52,588.12?
13 A. That is what it says, yes.
14 Q. And this document says to keep -- the upkeep on it is
15 12 -- approximately $12,000 and $200 per month; is that ---
16 A. That is not what it says.
17 Q. And as even Charleston County recently purchased 320
18 acres in that area for $10 million; is that correct?
19 A. (Pause before answer)
20 Q. On the document.
21 A. That is what it says on the document, yes.
22 Q. And then the final thing on the document is you ask how
23 can we afford to make the purchase; and the document said, I
24 ask how can we not afford to; is that correct? On the
25 document.

1 A. That is what the document says, yes.
2 Q. Okay. Mr. Cochran, you said that MU Alpha selected you
3 to head Lowcountry Men of MU Alpha; is that correct?
4 A. Yes.
5 Q. And when they selected you to head Lowcountry Men of MU
6 Alpha you took control of purchasing the building and
7 refurbishing the building; is that correct?
8 A. Mr. Counts, we had a meeting of which Mr. Harris was
9 there, Mr. Grigsby was there. We had a meeting of past --
10 past presidents of MU Alpha. At that meeting it was asked
11 whether or not I will head up the effort to purchase -- to
12 find and purchase a fraternity house. At that meeting I said
13 are you really sure this is what you want to do.
14 We had -- we had approximately, like you said, two
15 hundred and some thousand dollars on hand. I said if you are
16 sure, I will do it. I said if you are not sure, I will not
17 do it.
18 So, yes, the past presidents, to include Mr. Grigsby and
19 Mr. Harris, agreed that that is what we will do and to move
20 forward. So yes.
21 MR. COUNTS: I beg the Court's indulgence.
22 (WHEREUPON, pause for counsel.)
23 MR. COUNTS: Judge?
24 THE COURT: I'm sorry?
25 MR. COUNTS: Your Honor, I have a depo- -- I want to ask

1 him some questions.
2 THE COURT: Go ahead.
3 MR. COUNTS: Would you like a copy of it?
4 THE COURT: I don't need copies, no.
5 MR. PRITCHARD: Mr. Counts, would you like to ask him
6 questions ---
7 MR. COUNTS: Yes.
8 MR. PRITCHARD: --- from the deposition?
9 MR. COUNTS: Yeah.
10 MR. PRITCHARD: He needs a copy of it.
11 MR. COUNTS: Yeah, I am going to give him ---
12 MR. PRITCHARD: Okay.
13 (WHEREUPON, deposition provided to witness and subsequently
14 marked as Court's Exhibit Number 1.)
15 Q. Mr. Cochran, if you could turn to Page 13 of that, that
16 document. And look at Line Number 19.
17 A. On Page 13?
18 Q. Page 13, top right.
19 A. Okay. Uh-huh.
20 Q. And Line Number 19.
21 A. What is the question that starts 19?
22 Q. Well, I am going to -- I want to read this to -- read
23 this to you and you tell me if that is -- if I am reading it
24 correctly.
25 A. Okay.

1 Q. The best answer I can give you is that at the time MU
2 Alpha was in charge of the funds the funds were under MU
3 Alpha. So even though I was president of Lowcountry or
4 heading up the Lowcountry organization the funds actually
5 came out of MU Alpha at that time because it was MU Alpha.
6 All those funds belonged to MU Alpha.
7 Is that correct?
8 A. Yes.
9 Q. Okay. So the funds came out of MU Alpha?
10 A. Yes.
11 Q. The parent organization?
12 A. Yes.
13 Q. Okay. I want you to turn to Page 14, Line Number 1:
14 And how much did MU Alpha pay to purchase Toogoodoo?
15 Your answer was: 105,000.
16 Were you involved with the closing of the purchase of
17 Toogoodoo?
18 Yes.
19 Did I read that correctly?
20 A. Yes.
21 Q. Line Number 10 I had:
22 Before it was purchased did you go out and look at the
23 property?
24 And your answer was: Yes.
25 Okay, and what did you find when you went out there?

1 Property building that we -- approximately 2,500 square
2 feet, cinderblock, on an acre of land that needed repairs.
3 Is that correct?
4 A. Yes.
5 Q. All right. If you will turn to Page 15, Line Number 3:
6 We had approximately 260- -- I think somewhere around
7 $265,000.
8 Is that correct?
9 A. Yes.
10 Q. If you will drop down to Line Number 12.
11 Question: When did you -- when did -- when you did your
12 due diligence and looked at Toogoodoo before you purchased
13 did you notice that it needed HVAC units?
14 And your answer was: Yes.
15 Is that correct?
16 A. Yes.
17 Q. And that was in 2007; is that correct? When --
18 A. Yes. Yes.
19 Q. That is when you purchase- -- that is when the building
20 was purchased?
21 A. Right, purchased and we looked at it; yes.
22 Q. And you did due diligence ---
23 A. Yes.
24 Q. --- and noticed that it had -- it needed HVAC units?
25 A. Yes.

1 Q. And you had approximately 160 -- $165,000 to refurbish
2 the building; is that correct?
3 A. Yes.
4 Q. And you took control of refurbishing the building; ---
5 A. Yes.
6 Q. --- is that correct?
7 A. Yes.
8 Q. And in fact you said that you hired the individuals who
9 worked on the building; is that correct?
10 A. Yes.
11 Q. And you had a unique way of paying them; is that
12 correct?
13 A. A unique way?
14 Q. Well, you said you wrote a check to them; you gave them
15 a check, they signed it; you took the check back, and then
16 you went to the bank; you got cash, ---
17 A. Yes.
18 Q. --- and then you paid them?
19 A. Yes, I did that. Yes.
20 Q. And so you paid everyone ---
21 A. In cash, yes.
22 Q. You paid everyone in cash?
23 A. Everyone in cash. Yes.
24 Q. You had no -- you have no receipts for that; is that
25 correct?

1 A. At this point no.
2 Q. Okay. In fact, you said that out of the $160,000 that
3 you had to refurbish the building, at the end of refurbishing
4 the building you had approximately $1,200 in the bank; is
5 that correct?
6 A. Probably somewhere around there, yes.
7 Q. And going into refurbishing the building in 2007 you
8 knew it needed HVAC units; is that correct?
9 A. Yes, I did. Yes.
10 Q. Now, Mr. Cochran, Lowcountry Men of MU Alpha is still in
11 existence; is that correct?
12 A. I can't really answer that.
13 Q. It was in existence at the time you filed this lawsuit;
14 is that correct?
15 A. I don't really know, sir.
16 Q. Do you recall that you answered some discovery
17 questions?
18 A. Yes.
19 Q. And one was request to admit?
20 A. A what?
21 Q. Did you look at that document ---
22 A. Yes.
23 Q. --- that I just handed to you?
24 A. I did this?
25 Q. Pardon?

1 A. Did I do this?
2 Q. I am asking can you look at that document.
3 A. Okay.
4 Q. Are you familiar with that document?
5 A. No.
6 Q. Do you recall answering something called a request to
7 admit through discovery?
8 A. No, I don't.
9 MR. COUNTS: Your Honor, I am going to move that this
10 document be admitted. They have already admitted it.
11 MR. PRITCHARD: Yes, sir, we admitted it. And I
12 admitted it based on my review of the Secretary of State's
13 website. I mean obviously I looked and saw it was an entity
14 in good standing.
15 I'm sorry, I reviewed the Secretary of State's website
16 in connection with Mr. Counts' request for admission.
17 THE COURT: Okay.
18 MR. PRITCHARD: So I admitted it obviously because I saw
19 the Secretary of State's website and it was an entity in good
20 standing so I admitted that it is an entity of good standing.
21 So we admitted it, yes, sir.
22 THE COURT: Okay.
23 THE COURT REPORTER: And, I'm sorry, that is Defense
24 Exhibit Number 1?
25 MR. COUNTS: Yes.

1 THE COURT REPORTER: Thank you.
2 (WHEREUPON, Defendant Exhibit Number 1, Request to Admit -
3 Secretary of State website info, was marked for
4 identification.)
5 (WHEREUPON, Defendant's Exhibit Number 1 was admitted into
6 evidence.)
7 Q. Mr. Cochran, if you will turn in that deposition that
8 you have to Page 9. And I want you to look at Lines 21 to
9 25. And I want to read this and you tell me if it is
10 correct.
11 Starting with Line 18, Page 9:
12 All right, now, Lowcountry Men of MU Alpha, it was
13 formed as a nonprofit?
14 As far as I can determine, yes.
15 Was that an umbrella -- was that an umbrella
16 organization under the Omegas or it was separate?
17 Answer: It was separate.
18 Question: It was separate?
19 It was supposed to be separate, yes.
20 Did I read that correctly?
21 A. Yes.
22 Q. Could you turn to Page 7 of that document. Line Number
23 25 -- Line Number 23:
24 And why was Lowcountry Men of MU Alpha formed?
25 Line 25:

1 It was formed as an organization where we would -- we
2 would place any real property that we would buy or any money
3 that we had that would not be subject to any liabilities.
4 Did I read that correctly?
5 A. Yes, you did.
6 Q. So the organization was formed to protect property and
7 money; is that correct?
8 A. Yes.
9 Q. And OCCUP, Omegas Community Foundation, was formed in
10 2013; is that correct?
11 A. If you say. I don't know.
12 Q. It was not in existence when Lowcountry Men ---
13 A. Right. Right. Right, the two did not exist at the same
14 time.
15 Q. And it was formed as a separate foundation; is that
16 correct?
17 A. The same as Lowcountry Men, yes.
18 Q. Separate foundation?
19 A. Yes.
20 Q. And in 2008 or 2009 the HVAC units went missing from the
21 building; is that correct?
22 A. Yes, I rode out there one day and walked around the
23 building and noticed that the units were gone.
24 Q. And you were president of Lowcountry Men of MU Alpha?
25 A. Yes; still at that time, yes.

1 Q. Did you file a police report?
2 A. I reported it to the president of MU Alpha. I told them
3 that they -- since they had already taken control of the
4 building that they needed to file a report with the insurance
5 company to be -- to have those units paid for and
6 reinstalled, yes.
7 Q. As president you never filed a police report; is
8 that ---
9 A. I did not at the time. Not me.
10 Q. And as president you never filed an insurance?
11 A. No, not me.
12 Q. Mr. Cochran, you are not a member of OCCUP are you?
13 A. Yes, I am.
14 Q. You are a member of OCCUP?
15 A. I have to be if I am -- if I am a dues-paying member of
16 MU Alpha, because all MU Alpha members are members of OCCUP.
17 Q. Okay. And you mentioned that there is a woman who is a
18 member of OCCUP; is that correct?
19 A. What I have been told, yes.
20 Q. And there are no women who are members of Omega; is that
21 correct?
22 A. Not the last I heard.
23 Q. It is an all-men's fraternity; is that correct?
24 A. Yes.
25 Q. Could you take that document in front of you and look at

1 Page 38.
2 A. Page what?
3 Q. Thirty-eight.
4 A. Uh-huh.
5 Q. I want to read this to you. You tell me if I am reading
6 it correctly.
7 Question: So there was no written contract between you
8 or anyone from MU Alpha to reimburse you any funds, no
9 written contract?
10 Answer: No written contract, yes; but once I spent my
11 funds I would have expected to be reimbursed at some point
12 even though I didn't put pressure on the organization for my
13 money immediately.
14 Is that correct?
15 A. Yes.
16 Q. That sounds like a person who is wishing for something,
17 does it not?
18 A. It sounds like a person who is doing what?
19 Q. Wishing for something.
20 A. Wishing like what?
21 Q. Wishing that something would happen.
22 A. Why?
23 Q. I am asking you.
24 A. I am wondering why would I wish something would happen?
25 Q. Wishing that you would be reimbursed the 23,000.

1 A. Wishing?
2 Q. I would expect.
3 A. It is my money. Shouldn't I expect to be repaid?
4 Q. But there was no written contract; is that right?
5 A. No, sir, there wasn't.
6 Q. And you testified that no one made you any oral promises
7 to reimburse you; is that correct?
8 A. No, they did not.
9 MR. COUNTS: Your Honor, I have no further questions.
10 THE COURT: All right.
11 Redirect.
12 MR. PRITCHARD: Just real briefly.
13 **REDIRECT EXAMINATION BY MR. PRITCHARD OF RUDOLPH COCHRAN:**
14 Q. Mr. Cochran, when the discussion was being had to
15 purchase the Toogoodoo Road property Mr. Counts put up a
16 document and was asking you about it. Had you done a
17 detailed inspection of that property or had you simply gone
18 out there and done a walk-around?
19 A. We all just walked around the building.
20 Q. Okay.
21 A. That is all we did.
22 Q. So your number that he showed, reportedly your number,
23 of $45,000 to make repairs, that was just ---
24 A. Yes, ---
25 Q. --- a mental estimate; I mean ---

1 A. I don't know ---
2 Q. What detail?
3 A. I don't know where those numbers came from.
4 Q. Okay.
5 A. No.
6 Q. I don't have anything further then.
7 MR. PRITCHARD: Thank you, Your Honor.
8 THE COURT: Recross.
9 MR. COUNTS: Nothing further, Your Honor.
10 THE COURT: You may step down. Thank you.
11 MR. PRITCHARD: All right. Your Honor, I am going to
12 step out into the lobby just to get my next witness.
13 THE COURT: Okay. Well, why don't we take a 10-minute
14 break here so everybody can refresh.
15 (WHEREUPON, break was had 1/24/21, 10:31 a.m.)
16 (WHEREUPON, resume 1/24/21, 10:49 a.m.)
17 MR. PRITCHARD: We call Vernon Pryor.
18 (WHEREUPON, the witness was duly sworn.)
19 MR. PRITCHARD: All right. Mr. Pryor, you can remove
20 your mask just so the Court ---
21 THE COURT: Sure, you can take your mask off.
22 WITNESS PRYOR: Okay.
23 **DIRECT EXAMINATION BY MR. PRITCHARD OF VERNON PRYOR:**
24 Q. Mr. Pryor, will you state your full name for the record,
25 please, sir.

1 A. Sure. Vernon Leon Pryor.
2 Q. Okay. And where do you currently reside, Mr. Pryor?
3 A. I reside in Summerville, South Carolina.
4 Q. Okay. And what do you do for a living, sir?
5 A. I am a contracting officer for the Department of
6 Defense.
7 Q. Okay. And, Mr. Pryor, are you a member of Lowcountry
8 Men of MU Alpha?
9 A. I am a member of Omega Psi Phi Fraternity, Incorporated,
10 which had a foundation; so every member was a part of that,
11 yes.
12 Q. Okay. And is that also the case with what we call OCCUP
13 or Omegas ---
14 A. Yes, sir.
15 Q. Go ahead. I'm sorry.
16 A. Yes, sir.
17 Q. Okay. And are you still a member -- I guess you are
18 still a member because you are a member of the Omegas so you
19 are still a member of OCCUP as well?
20 A. From how I understand how it works that would be yes. I
21 know I am a financial member of Omega Psi Phi Fraternity, and
22 OCCUP is the foundation of that organization.
23 Q. Okay.
24 A. Of the Alpha -- MU Alpha Chapter.
25 Q. Now are you familiar with the purchase of what I refer

1 to as the Toogoodoo Road property in 2007?
2 A. I am.
3 Q. Okay. And were you involved in any way at that time in
4 any type of leadership position or anything with Lowcountry
5 Men of MU Alpha?
6 A. I was the -- I think my title was the recording
7 secretary. Whatever the terminology was, secretary.
8 Q. And do you have knowledge of the purchase of that
9 property?
10 A. I do.
11 Q. Okay. And there has been testimony -- and I will with
12 Mr. Count's permission just to move this along a little bit I
13 will sort of recap for a moment. There has been testimony
14 that the building was purchased for $105,000 and there was
15 some money available to do the necessary repairs, rehab,
16 upfit of the property. Is that your recollection as well,
17 sir?
18 A. That is correct.
19 Q. Okay. And, sir, at some point prior to the finish of
20 the repairs, renovations and upfit, do you know whether or
21 not the Omegas came up short to try to finish what needed to
22 be done out there?
23 A. Yes, it was determined throughout the course of
24 purchasing the building and getting the -- you know, getting
25 it upfitted and ready for this final project that we were

1 going to have a deficit; yes.
2 Q. Okay. And do you know how that deficit was addressed?
3 A. Sure. It was addressed through several meetings that we
4 had. And we expressed what our shortcomings would be. And
5 we were trying to I guess remedy the situation with how we
6 want to get it all -- all of the necessary money needed to
7 finish the project and where the money was going to actually
8 come from.
9 Q. Okay. And were any decisions made during those meetings
10 or conversations?
11 A. Well, yeah, there were some decisions made. As a matter
12 fact, to give a specific date if I may.
13 Q. Yes, sir.
14 A. It was January 15, 2008. And this is a recorded
15 document that I actually have from that date. We had a
16 meeting at 6:15 p.m. and several of the participants were
17 there. We were made explicitly aware of where we were at
18 that particular point and where we needed to be to get to a
19 finished product.
20 Q. Can I stop you for one second?
21 A. Sure.
22 Q. I have not seen that document. I don't know if Mr.
23 Counts is aware of that document.
24 A. No.
25 Q. That is a recorded -- that is a reflection of meeting

1 minutes or notes or something?
2 A. Just my notes ---
3 Q. Just your personal notes?
4 A. That is correct.
5 Q. All right. It may be that Mr. Counts or I may need to
6 look at them at some point because neither one of us has seen
7 them. But just you are using these to refresh your
8 recollection?
9 A. That is correct.
10 Q. Okay. Does your -- do the notes that you have there
11 reflect who was present at that meeting?
12 A. Yes. This says Mr. Cochran of course; one of our
13 deceased brothers, Father Louis, Theodore Louis.
14 Q. Okay.
15 A. Charles Allen, Anthony Robinson, and Mr. Wendell
16 Lawrence and myself.
17 Q. Okay. And were any decisions made at that meeting about
18 how to address the deficiency?
19 A. Well ---
20 MR. COUNTS: Your Honor, I am going to object at this
21 point. He is talking about a meeting among people that made
22 a decision, and I don't have an opportunity to cross-examine
23 those individuals. And I would say that that is hearsay.
24 MR. PRITCHARD: Mr. Robinson is here and available to
25 testify. Mr. Pryor is obviously here and was -- was a ---

1 THE COURT: Well, then they can testify as to what ---
2 MR. PRITCHARD: As to what ---
3 THE COURT: --- they said.
4 MR. PRITCHARD: Absolutely. No question.
5 THE COURT: He can't testify about what they said.
6 MR. PRITCHARD: That is correct. Yes, sir. And that is
7 what I was getting to is trying to understand from Mr.
8 Pryor's knowledge what he said or even --
9 And if you need to recall Mr. Cochran, Mr. Cochran is
10 right here and you have already had a chance ---
11 MR. COUNTS: Well, if he is testifying as to what he
12 said I can ask him ---
13 THE COURT: He can testify about what he said or ---
14 MR. PRITCHARD: Yes, sir.
15 THE COURT: --- what he observed.
16 MR. PRITCHARD: Yes.
17 THE COURT: That sort of thing. But he can't testify
18 about what other people said.
19 MR. PRITCHARD: That is correct. But he can also
20 testify, Your Honor, as to whether or not a decision was
21 made, based on his knowledge and reviewing his notes.
22 THE COURT: Well, under certain circumstances.
23 MR. PRITCHARD: All right, well, let me just see where
24 he is going with it. I am not familiar with the notes, Your
25 Honor. This is the first I was aware of the notes. So I

1 didn't even know he was going to be testifying as it related
2 to notes.
3 Q. Mr. Pryor, of your own personal discussion that was had
4 there did you offer any resolution of the issue?
5 A. I did.
6 Q. Okay. And what was your proposal?
7 A. Okay, my proposal was -- and if I could, just to give
8 you an answer here I need to give you a little bit of
9 foundation of how my personal decision of -- the answer I'm
10 about to give you came about, if that's okay.
11 Q. Well, I will let you start; and if His Honor has an
12 issue then we'll stop you.
13 A. Okay. Well, in our particular organization at certain
14 points we always came out with situations where we would have
15 mandated programs that we're actually responsible for that
16 may have come up a little short to get over a hurdle. And
17 I'll just give you a couple of prime examples, and then I
18 will answer that last question if that's okay for you.
19 Q. Yes, sir.
20 A. There were several instances where I remember personally
21 early on in my days becoming a member of MU Alpha Chapter of
22 Omega Psi Phi Fraternity, Incorporated, that started in 1989.
23 We had a fraternity house on 48 Parkwood Drive downtown. We
24 always used to meet in there. We had our meetings and, you
25 know, have different functions in there as well. We came up

1 short with some money that the heating oil that was needed
2 during that particular wintertime wasn't there to keep the
3 house warm. So of course Mr. Cochran being a part of the
4 organization, you know, just wanted to see everything
5 continue to carry on. He decided that he would go ahead and
6 have the tank full with fuel oil and we would pay him back at
7 a later date. That was done. We always agreed on that.
8 That was one particular incident.
9 We had several fundraisers where we had national
10 recording artists at what used to be the Old King Steet
11 Palace where we knew we wanted to get it done, we knew it was
12 a good idea, it was going to be a profitable event. Again we
13 didn't have enough upfront seed money to get that done. The
14 plea was made to Mr. Cochran. He assisted at that particular
15 point. At the end of the day and when everything was settled
16 he got his money back.
17 So this particular time as it pertains to the heating
18 and air unit at -- or to finish the project at -- on the
19 Toogoodoo Road project the same thing came about again. And,
20 you know, we just didn't want to get to the point that we
21 were 75 percent complete and didn't want to go any further.
22 MR. COUNTS: Your Honor, he again he is referring to
23 we.
24 THE COURT: Well, he hasn't said anything yet about what
25 anybody else has said.

1 MR. COUNTS: Okay.
2 A. To get to that particular point and not get over the
3 finish line. So if it was injected at that particular point,
4 sure. You know, I can do this to finish the product --
5 project to be reimbursed at the end.
6 Q. Okay. And so was it your understanding as the recording
7 secretary that Mr. Cochran was going to advance the funds
8 with the expectation that at some point he would be
9 reimbursed?
10 A. Absolutely.
11 Q. Okay. In these prior instances that you cited was there
12 anything written?
13 A. Absolutely not. We're all members of the same
14 organization. You know, we are gentlemen. And, you know, we
15 all have a vested interest in seeing success in that
16 organization.
17 And as I stated to you before -- and there were -- those
18 were just two examples that I listed to you that I was privy
19 to, you know, personally. But it never became an issue,
20 never became a problem; he was always reimbursed because it
21 was -- and nothing tied to it, no interest, no profit. It
22 was just for the good of the brotherhood and the organization
23 to complete those projects.
24 Q. Okay. Mr. Pryor, are you familiar with the fact that at
25 some point after the project was complete and that property

1 was being utilized that the air-conditioning units were --
2 went missing?
3 A. I'm sorry, could you repeat the question?
4 Q. Yes, sir. After the project was completed are you
5 familiar with that after the project was completed and
6 the building was being utilized, at some point the
7 air-conditioning, the HVAC units, went missing?
8 A. Yes, sir, I did hear that.
9 Q. Were you still -- you heard that or you didn't -- or you
10 had direct knowledge of it?
11 A. Oh, I -- I mean I know it for a fact that they were
12 actually gone.
13 Q. Okay.
14 A. But I mean I couldn't tell you when exactly ---
15 Q. Sure.
16 A. --- they were missing.
17 Q. Okay. You were still in any type of leadership position
18 at the point you learned that they were gone?
19 A. So probably not. And, you know, to my recollection
20 probably not after, you know, the units were missing.
21 Q. Okay. So you don't have ---
22 A. Because this ---
23 Q. You don't have any knowledge about whether or not an
24 insurance claim was filed, a police report was filed, or
25 anything like that?

1 A. No, sir, I can't say that.
2 Q. All right. Let me ask you one other question, and then
3 I promise I will turn you over to Mr. Counts for ---
4 A. No problem.
5 Q. --- cross-examination.
6 Do you know the circumstances under which the property
7 was conveyed from Lowcountry Men of MU Alpha in September of
8 2013 to Omegas of Charleston Community Uplift Project?
9 A. Do I have knowledge of how the ---
10 Q. Yeah, do you know anything about why that happened or
11 anything like that?
12 A. (Pause by witness.)
13 Q. If you don't, you don't.
14 A. Yeah, I -- yeah, I don't want to give you
15 misinformation, so I would have to say no.
16 Q. Okay. What is your understanding of the relationship
17 between Lowcountry Men of MU Alpha and Omegas of Charleston
18 Community Uplift Project?
19 A. From my understanding I think the foundation, the first
20 one, the Lowcountry Men of MU Alpha, when OCCUP came into
21 play the rationale behind that was I think as it relates to
22 our national mandate for our -- you know, our fraternity
23 itself, not the chapter but our fraternity as a whole, and I
24 think it gave the workings of it gives protection to the
25 organization at large. Because I think at that particular

1 time we were being inundated with a lot of lawsuits
2 throughout the country for the fraternity as a whole and it
3 was established that foundations had to be put in place to
4 buffer any type of lawsuits that would hit the fraternity,
5 the national organization.
6 Q. Okay. All right. I don't have anything further. Mr.
7 Counts may have some questions.
8 A. Okay.
9 THE COURT: Go ahead.
10 **CROSS-EXAMINATION BY MR. COUNTS OF VERNON PRYOR:**
11 Q. Mr. Pryor, you were the secretary for Lowcountry Men of
12 MU Alpha?
13 A. Yes, sir, at one point.
14 Q. And the president of Lowcountry Men at one point with
15 Mr. Cochran?
16 A. Yes, sir.
17 Q. And did you serve on -- you served as secretary under
18 Mr. Cochran; is that right?
19 A. Yes, sir.
20 Q. And as secretary of Lowcountry Men you have meetings,
21 pfor-sale signeetings?
22 A. Yes, sir.
23 Q. And at that -- at those meetings who were present?
24 A. Do you mean -- are you asking me to give you a list of
25 every meeting and who was present at each meeting?

1 A. I'm asking you -- you generally would have meetings; ---
2 A. Sure.
3 Q. --- is that correct?
4 A. Yes, sir.
5 Q. And was Mr. Cochran present; he was the president?
6 A. Yes, sir.
7 Q. And you were present as the secretary?
8 A. Yes, sir.
9 Q. And you had a treasurer, did you not?
10 A. I believe we did, yes.
11 Q. And his name was Mr. Wendell Lawrence?
12 A. Wendell Lawrence.
13 Q. And as secretary of Lowcountry Men of MU Alpha you were
14 tasked with taking notes for the meetings?
15 A. Yes, sir.
16 Q. Did you take notes for the meeting that you had where
17 you said we made a decision?
18 A. Sure. Uh-huh.
19 Q. Do you have those notes present?
20 A. I do not. That was turned over to the -- once my term
21 as the secretary at the time was over, just like it was given
22 to me by my predecessor, it was turned over into a briefcase,
23 all of the notes and information, and passed on to the
24 incoming person.
25 Q. So you would take notes at Lowcountry Men of MU Alpha

1 meetings; is that right?
2 A. Yes, sir.
3 Q. And at that -- at those meetings at none of those
4 meetings did anyone agree to reimburse Mr. Cochran; is that
5 correct?
6 A. At the meetings did anyone -- can you repeat the last
7 part? I want to make sure I heard it correctly.
8 Q. You said you were a member of Lowcountry Men of MU
9 Alpha?
10 A. Yes, sir.
11 Q. And you would have meetings periodically; I don't know
12 how often but periodically with Mr. Cochran, yourself as
13 secretary, and Mr. Lawrence as treasurer. Was that the total
14 number of people on your board?
15 A. I don't think so. I really think it was a little bit
16 more than that. Because we had members too. Officers and
17 members. So just like earlier, to my recollection, that was
18 six that I gave up.
19 Q. Okay. And there was no agreement to reimburse Mr.
20 Cochran for $23,000; is that correct?
21 A. No written agreement, no.
22 Q. Okay. No written agreement?
23 A. But verbal, yes.
24 Q. There was no written agreement?
25 A. No written. But verbal, yes.

1 Q. So you are saying that Lowcountry Men of MU Alpha,
2 Lowcountry Men agreed to reimburse Mr. Cochran?
3 A. If he would be able to front us the money to get the
4 rest of the project finished to completion, yes, sir. That
5 is my recollection.
6 Q. But not MU Alpha; is that correct?
7 A. Lowcountry Men. Not MU Alpha. Just those body of
8 gentlemen that were there that particular time at all of
9 those meetings.
10 Q. Okay.
11 MR. COUNTS: Your Honor, I have no further questions.
12 MR. PRITCHARD: No redirect.
13 THE COURT: All right. You can step down.
14 MR. PRITCHARD: Thank you, Mr. Pryor.
15 MR. PRYOR: Yes, sir. Thank you.
16 MR. PRITCHARD: Mr. Pryor, would you do me a favor on
17 your way out and ask Mr. William Brown to come in.
18 MR. PRYOR: Okay.
19 MR. PRITCHARD: And tell Mr. Robinson that I promise
20 I'll be really quick.
21 MR. PRYOR: Yes, sir.
22 (WHEREUPON, witness steps down from stand.)
23 (WHEREUPON, the next witness was duly sworn.)
24 MR. PRITCHARD: Would you hand him Plaintiff's Exhibit
25 Number 4, please.

1 (WHEREUPON, court reporter complied.)
2 MR. PRITCHARD: Mr. Brown, you can remove your mask
3 while you testify so we can understand you.
4 (WHEREUPON, witness complied)
5 **DIRECT EXAMINATION BY MR. PRITCHARD OF WILLIAM BROWN:**
6 Q. Mr. Brown, will you state your full name for the record,
7 please, sir.
8 A. William Harold Brown.
9 Q. Okay. And, Mr. Brown, are you the owner of Brown
10 Heating and Air Conditioning Service?
11 A. Yes, sir.
12 Q. Okay. And, Mr. Brown, just placed in front of you
13 moments ago was Plaintiff's Exhibit 4. Do you recognize this
14 document, sir?
15 A. Yes, sir, I do.
16 Q. Okay. And is this document reflective of the
17 installation of three five-ton split heat pump units at the
18 address of 6619 Toogoodoo Road?
19 A. Yes, sir. Yes.
20 Q. And the date of this invoice is April 4th, 2008; is that
21 correct?
22 A. Correct.
23 Q. And it is addressed to Rudy Cochran?
24 A. Yes.
25

1 Q. All right. And you know Mr. Cochran?
2 A. Yes, sir, I do.
3 Q. And I believe Mr. Cochran testified that y'all have
4 about a 35-year business relationship. Does that sound about
5 right?
6 A. Sounds about right.
7 Q. Okay. And did Mr. Cochran pay you the two sums
8 reflected here, the first sum being March 3rd of 2008 in the
9 amount of $13,800 and the second sum being on April 4th,
10 2008, in the amount of $9,200?
11 A. Correct.
12 Q. Okay. And that total amount was $23,000?
13 A. Yes.
14 Q. And that reflected the work for the purchase and
15 installation of those heat pump units; is that right?
16 A. Right.
17 Q. Okay. I don't have anything further.
18 MR. PRITCHARD: Counsel.
19 **CROSS-EXAMINATION BY MR. COUNTS OF WILLIAM BROWN:**
20 Q. Mr. Brown, you testified about Mr. Cochran's payment to
21 you?
22 A. Yes.
23 Q. And I want to ask you about that invoice that you have
24 in front of you.
25 A. Right.

1 Q. And that is an invoice that you gave Mr. Cochran for
2 payment of the units?
3 A. Yes.
4 Q. And did you do two invoices?
5 A. Did I do two invoices? What do you mean two?
6 Q. Look at that ---
7 A. Two separate?
8 Q. Look at the invoice that you have in front of you.
9 A. The only thing I can remember, we did an invoice and we
10 had to redo the same invoice. But it is the same --
11 everything is the same, the price and everything doesn't
12 changed.
13 Q. Okay. This one that is on the screen has a name on it,
14 Daralyn Grigsby. And it looks like it has February 20, '18.
15 Did you do that invoice?
16 A. I don't know Darylin Grigsby.
17 Q. You don't know Darylin Grigsby?
18 A. No.
19 MR. COUNTS: Your Honor, I want to admit this into
20 evidence.
21 MR. PRITCHARD: Your Honor, the only thing that I am
22 confused about is is I have never seen that document. And we
23 did serve discovery. And I just don't know where it came
24 from. I don't know anything about it.
25 THE COURT: Where did this document come from?

1 MR. COUNTS: I thought it was turned over. It is an
2 invoice.
3 MR. PRITCHARD: It was not provided by us, Your Honor.
4 I have never seen that document in my life. I don't even
5 know where it came from.
6 MR. COUNTS: Well, I thought it came with the discovery.
7 MR. PRITCHARD: No, sir, I have got my entire discovery
8 right here. And, as a matter fact, I went through it again
9 this morning just to make sure.
10 MR. COUNTS: Okay.
11 MR. PRITCHARD: I am just not familiar with it. I don't
12 know where ---
13 THE COURT: Apparently he is not familiar with it, ---
14 WITNESS BROWN: Yeah.
15 THE COURT: --- right? So you have got to be able to
16 get somebody to say ---
17 MR. COUNTS: Yeah, I just want to ask him about it.
18 THE COURT: --- where it came from.
19 MR. COUNTS: Your Honor, I have no further questions.
20 THE COURT: All right.
21 MR. PRITCHARD: No redirect.
22 THE COURT: Pardon?
23 MR. PRITCHARD: No redirect.
24 THE COURT: Okay. You can step down. Thank you.
25 (WHEREUPON, witness steps down from stand.)

1 (WHEREUPON, pause awaiting witness.)
2 (WHEREUPON, the next witness was duly sworn.)
3 **DIRECT EXAMINATION BY MR. PRITCHARD OF ANTHONY ROBINSON:**
4 Q. Mr. Robinson, good morning, sir. Could you state your
5 full record name for the record, please, sir.
6 A. Anthony B. Robinson.
7 Q. Okay. Where do you currently reside, sir?
8 A. I live in Mount Pleasant.
9 Q. Okay. What do you do for a living?
10 A. I am an electrical engineer for the Department of
11 Defense.
12 Q. Okay. And are you a member of MU Alpha Chapter of
13 Omegas?
14 A. Yes, sir.
15 Q. Okay. And in connection with your membership in MU
16 Alpha you would have also been a member or are also a member
17 of Lowcountry Men of MU Alpha as well as Omegas of Charleston
18 Community Uplift Project; is that correct, sir?
19 A. I was a member of Lowcountry Men of MU Alpha, and I
20 believe I am a member of OCCUP. I am not quite sure if I am
21 a member or not.
22 Q. That seems ---
23 A. You would have to ask that gentleman over there
24 (indicating) if I am a member or not.
25 Q. That seems to be a consistent theme. Everybody is like,

1 well, I think I am because I am a member of -- a dues-paying
2 member of MU Alpha. But okay.
3 Mr. Robinson, were you an officer in Lowcountry Men of
4 MU Alpha at the time the Toogoodoo Road property was
5 purchased?
6 A. Yes, sir.
7 Q. Okay. And what was your capacity as an officer?
8 A. I quite don't remember what my office position was. I
9 might have been secretary, treasurer; something like that. I
10 was on the board.
11 Q. Okay. And you are familiar with the purchase; is that
12 correct, sir?
13 A. Yes, sir.
14 Q. Okay. And are you familiar with the fact that there was
15 approximately $265,000 available to buy and to renovate and
16 upfit the property?
17 A. I knew we had money to purchase the property and
18 renovate the property, but I don't know -- that is about the
19 ballpark figure.
20 Q. Okay.
21 A. I don't know the exact dollar amount we specifically
22 had.
23 Q. Do you know whether y'all ultimately had enough money to
24 complete the project?
25 A. We went over it.

1 Q. Okay. And when you went over how did y'all address
2 that?
3 A. We told that gentleman there (indicating) to keep going.
4 Q. Well, but you told him to keep going; but how did you
5 expect he was going to keep paying for it?
6 A. We -- the Lowcountry Board we were going to make sure he
7 get his money.
8 Q. Okay.
9 A. We told him that he was going to get his money.
10 Q. Okay. So when you say keep going, you mean Mr. Cochran
11 could write a check or checks or whatever the case may be
12 with the expectation that he would be reimbursed at some
13 point?
14 A. Yes, sir.
15 Q. Okay. Is that something you're familiar with having --
16 y'all having asked Mr. Cochran to do before? In other words,
17 did that occur before this instance; were there other times
18 where Mr. Cochran fronted money and then y'all paid him back
19 when you could?
20 A. Speaking of this particular thing, he -- as I recall --
21 this happened a long time ago. As I recall he told us what
22 the expenses were and that he could finish the project as
23 long as we pay him back. That is what I recall.
24 Q. All right. So there has been some testimony about
25 $23,000 to pay for the HVAC units. Is that your recollection

1 of what Mr. Cochran did to finish the project?
2 A. At the time -- I think that is -- to my knowledge that
3 is correct.
4 Q. Okay. Let me ask you a question. What is your
5 understanding of the relationship between the MU Alpha
6 Chapter of Omega, the Lowcountry Men of MU Alpha, and the
7 Omegas of Charleston Community Uplift Project?
8 A. My understanding of it?
9 Q. Yes, sir.
10 A. It's MU Alpha Chapter is for the members of Omega Psi
11 Phi locally who pay their dues and who are -- you know, you
12 pay your dues; you are a member. As long as you can prove
13 that you are a member of Omega Psi Phi.
14 Q. Okay.
15 A. And Lowcountry Men was a separate entity that members of
16 Omega Psi Phi could also join.
17 Q. Okay.
18 A. Now OCCUP is a little different. I think I am a member
19 of OCCUP, but I am not -- OCCUP is a little -- they have got
20 their own rules. So I am not sure.
21 Q. Okay.
22 A. I assume I am a member; because I got a letter from them
23 saying, you know, my $90 that I paid was a tax deduction or
24 something like that. But I assume that I am a member.
25 Q. But you don't know why OCCUP came into being?

1 A. Oh, OCCUP came into being because they changed the
2 foundation -- they -- one foundation was closed and another
3 one was opened.
4 Q. And what foundation was closed?
5 A. Lowcountry Men ---
6 Q. Okay.
7 A. --- was -- OCCUP took over Lowcountry Men.
8 Q. So does Lowcountry Men -- we have already established --
9 Mr. Counts has established that Lowcountry Men still exists,
10 it hasn't been dissolved ---
11 A. Okay, I wasn't ---
12 Q. But, no -- let me finish the question.
13 To your knowledge is Lowcountry Men still doing
14 anything?
15 A. Not to my knowledge.
16 Q. Okay. So your understanding is is that OCCUP
17 essentially took over for what Lowcountry Men was doing?
18 A. That was my understanding. But I could be wrong.
19 MR. COUNTS: Your Honor, again, I -- I think he is
20 leading. But I'm going to object, Your Honor.
21 MR. PRITCHARD: Fair enough.
22 THE COURT: All right.
23 MR. PRITCHARD: I was trying to be brief but.
24 Q. Okay. Mr. Robinson, do you have any knowledge of the
25 deed transfer for -- of the Toogoodoo Road property from

1 Lowcountry Men to OCCUP in 2013?
2 A. I have no knowledge of that.
3 Q. And do you have any knowledge of the sale of the
4 property by OCCUP in 2017?
5 A. Only -- only what OCCUP presented to us.
6 Q. Do you have any knowledge as we sit here today of your
7 own personal knowledge as to whether or not Mr. Cochran has
8 ever received reimbursement of the $23,000?
9 A. No, he told me he has not received it.
10 Q. Okay. So your only knowledge is that Mr. Cochran has
11 told you?
12 A. And I know that we have not paid him. Omega Psi Phi had
13 not -- or OCCUP had not paid him $23,000.
14 Q. Okay. I don't have anything further.
15 MR. PRITCHARD: Mr. Counts.
16 THE COURT: Cross.
17 MR. COUNTS: Yes, Your Honor.
18 **CROSS-EXAMINATION BY MR. COUNTS OF ANTHONY ROBINSON:**
19 Q. Mr. Robinson, will you have never taken the OCCUP
20 meeting; is that correct?
21 A. I have never been to an OCCUP meeting.
22 Q. And you are aware that OCCUP has a woman as part of its
23 group?
24 A. Oh, yes, I knew then; yes.
25 Q. And OCCUP is a separate entity from Lowcountry Men of MU

1 Alpha; is that correct?
2 A. Yes.
3 Q. And it is a separate entity from Omega?
4 A. Yes.
5 Q. And you stated that Mr. Cochran told you -- told your
6 group what the expenses were to complete the building at
7 Toogoodoo; is that correct?
8 A. Mr. Cochran in the past during the time all of this was
9 happening told MU Alpha Chapter of Omega Psi Phi what he was
10 doing. He gave a report to MU Alpha Chapter during the time
11 he was managing construction of Toogoodoo Road.
12 Q. And he told MU Alpha, that is MU Alpha ---
13 A. He told MU Alpha ---
14 Q. MU Alpha Omegas; is that right?
15 A. MU Alpha, including the young man sitting next to you is
16 MU Alpha also. He was there also.
17 Q. So he told MU Alpha; is that correct?
18 A. MU Alpha, and we had a Lowcountry Men meeting where all
19 of this information was disseminated.
20 Q. And it was Lowcountry Men of MU Alpha that asked him to
21 complete the work; is that correct?
22 A. Omega Psi Phi. And MU Alpha chapter also did it.
23 Q. No further questions, Your Honor.
24 MR. PRITCHARD: Your Honor, I have no redirect.
25 THE COURT: All right. You can step down.

1 MR. PRITCHARD: Mr. Robinson, thank you so much, sir.
2 THE COURT: What is that?
3 MR. PRITCHARD: I said, Mr. Robinson, thank you so much,
4 sir. I'm sorry.
5 (WHEREUPON, witness steps down.)
6 THE COURT: Thank you. All right. Do you have any
7 other witnesses?
8 MR. PRITCHARD: No, sir.
9 THE COURT: Do you have any other witnesses?
10 MR. PRITCHARD: No, sir. That will be our case, Your
11 Honor. I was thanking him because -- as you might see, all
12 of these guys still get along. And every one of my witnesses
13 came without having to have a subpoena. So I appreciate
14 that.
15 THE COURT: Well, how come you haven't been able to work
16 it out then?
17 (WHEREUPON, plaintiff's counsel directs comment to defense
18 counsel.)
19 THE COURT: All right. So you rest.
20 MR. PRITCHARD: Yes, sir.
21 THE COURT: Have you got anything?
22 MR. COUNTS: Yes, Your Honor. I want to make a
23 motion ---
24 THE COURT: Sure.
25 MR. COUNTS: --- before we start. I want to make a

1 motion for an involuntary dismissal. I think through the
2 testimony of all of the witnesses from the plaintiff, the
3 plaintiff alleged in his complaint that he had an oral
4 contract in order to -- in order for the organization to
5 reimburse him for the $23,000.
6 There is nothing that I could discern that came out from
7 the testimony that anyone from any of the organizations,
8 whether it is MU Alpha, whether it is Lowcountry Men or
9 whether it is OCCUP, that met the burden to prove that it was
10 an oral contract.
11 Also, Your Honor, I would make a motion for involuntary
12 dismissal based on the fact that the foundation, the OCCUP
13 foundation, is not a successor organization of Lowcountry Men
14 of MU Alpha. OCCUP was formed in 2013 with separate and
15 distinct responsibilities.
16 As Mr. Cochran testified, Lowcountry Men of MU Alpha was
17 formed in order to protect money and property for MU Alpha.
18 OCCUP was formed in order to provide scholarships and other
19 matters for MU Alpha.
20 And if the Court were to examine the case of Nationwide
21 versus Eagle Window & Door and the case of Brown versus
22 American Railroad Express it gives four elements under
23 which ---
24 THE COURT: Do you have the citations for those?
25 MR. COUNTS: Yes, Your Honor. Brown versus American

1 Railroad Express, 128 South Carolina 428.
2 THE COURT: 428?
3 MR. COUNTS: Yes, Your Honor.
4 THE COURT: Okay.
5 MR. COUNTS: And 123 S.E. 97.
6 THE COURT: Okay.
7 MR. COUNTS: And that case, the Brown case, which were
8 adopted by the Nationwide case, outlines four criteria when
9 the Court looks at whether there is a successor organization.
10 And the four criteria, one is there was an agreement to
11 assume these debts. There is no agreement from OCCUP to
12 assume any debts from Lowcountry Men of MU Alpha.
13 The second element the Court says the circumstances
14 surrounding the transaction support a finding of
15 consolidation or merger of the two corporations. There is no
16 evidence that Lowcountry Men of MU Alpha merged with OCCUP.
17 The second -- the third criteria in which the Court says
18 that it needed to look at is whether the successor is a mere
19 continuation of the predecessor. I will address that, Your
20 Honor, after I address the fourth criteria.
21 The fourth criteria deals with fraudulent transfer. I
22 think in this particular case if you look at the third
23 criteria, the successor is a mere continuation of the
24 predecessor, again, Your Honor, that is not the case.
25 Lowcountry Men was established as a separate foundation from

1 MU Alpha Omegas. Its responsibility was to protect the
2 Omegas property and funds from lawsuits or liability issues.
3 OCCUP was established by Omegas in order to provide community
4 resources such as scholarships and other different activities
5 for people in the community.
6 So I think based on that, there is no successor
7 liability in case if you examine the four criteria that were
8 laid out in the Brown versus American Railroad Express
9 Company.
10 So under those circumstances, Your Honor, we would ask
11 that there be an involuntary dismissal of Mr. Cochran's case.
12 THE COURT: What about is there a conversion cause of
13 action still floating around?
14 MR. COUNTS: They were three causes of action. There
15 was a conversion, there was an unjust enrichment. Again,
16 OCCUP -- OCCUP never used HVAC units because it was formed in
17 2013. Those units were missing in 2...08 or 2...09. So
18 OCCUP never got the -- got the use of those HVAC units. They
19 were gone at least five years before OCCUP came into
20 existence. So it couldn't be unjust enrichment or conversion
21 regarding OCCUP.
22 THE COURT: Okay.
23 Mr. Pritchard.
24 MR. PRITCHARD: Yes, sir, Your Honor, first of all I
25 would like to point out that Mr. Pryor testified on the

1 witness stand that the circumstances under which OCCUP was
2 created were directed from national to further insulate and
3 to protect these local chapters due to ongoing litigation.
4 So I think there is a -- is evidence in the record of why
5 OCCUP was created and why it succeeded Lowcountry Men of MU
6 Alpha in what it was doing. That is part of the issue.
7 The other part of the issue is ---
8 THE COURT: I wasn't clear on that. So they were
9 created to protect the local chapter from the national
10 chapter ---
11 MR. PRITCHARD: No, sir.
12 THE COURT: --- or the national chapter; ---
13 MR. PRITCHARD: The national ---
14 THE COURT: --- or said change these to protect us from
15 the ---
16 MR. PRITCHARD: Correct.
17 THE COURT: --- lawsuits that were accruing ---
18 MR. PRITCHARD: They were ---
19 THE COURT: --- in the local chapters?
20 MR. PRITCHARD: According to Mr. Pryor's testimony they
21 were given a directive to strengthen their protections as
22 nonprofit organizations due to multiple pending litigations
23 that were going on throughout the country. That is how Mr.
24 Pryor testified. Now obviously I don't have any benefit of
25 that information. That is what his testimony was.

1 But, Your Honor, there is another issue here that is
2 somewhat perplexing to me; and that is if you didn't -- if
3 you weren't the successor entity then why is it that the
4 prior entity deeded you property for zero dollars. I mean
5 there would have had to have been some consideration
6 otherwise.
7 And the deed in 2013 is clearly for zero dollars. And
8 that is in the record. And it suggests a commonality of
9 purpose and a furtherance of that purpose.
10 At the end of the day when the property was sold who got
11 the benefit of the proceeds? OCCUP got the benefit of the
12 proceeds, despite the fact that Lowcountry Men of MU Alpha
13 had purchased the property.
14 So and that is all -- I mean that's all in the record,
15 not only the record in this court but in the record in this
16 courthouse through the register of deeds where it is clearly
17 indicated that in 2017 when the property was sold to JRC Real
18 Properties, Inc., the seller was OCCUP for $125,000.
19 So it is kind of specious to argue that we are not the
20 same when one entity buys it, deeds it to the other entity
21 down the line for zero dollars, so no consideration, and in
22 return the other entity then gets the benefit of the sale.
23 Extensively to use the money for good things; there is no
24 doubt about it. I mean scholarships or whatever.
25 But in the meantime Mr. Cochran who has spent the money

1 out of his own pocket to step up and do the right thing on
2 behalf of the brotherhood is the guy left holding the bag if
3 they want to play this, you know, loose affiliation, oh, no,
4 they are not really the same thing.
5 I mean how was he to get his money -- his testimony was
6 and others' testimony was, you know, that the expectation was
7 he was going to get repaid and the understanding was that it
8 may not occur until the building was sold.
9 Well, how was he to get repaid by the Lowcountry Men of
10 MU Alpha in 2013 if their consideration they received for,
11 quote, selling the building to OCCUP, was zero dollars.
12 He wasn't. And he knew that. And he didn't demand
13 payment in 2013 because he knew that there was no
14 consideration paid. He waited patiently until ultimately
15 valid consideration was paid for the sale of the building in
16 2017, at which time he said, gee, fellas, I would sort of
17 like to get paid back now.
18 And the response was too bad, so sad, we don't have --
19 we didn't have a written agreement and, you know, your
20 conversation was with Lowcountry Men of MU Alpha.
21 Which I mean everybody is -- so far has testified that
22 even though they don't really participate in OCCUP stuff they
23 are still members because the members have a commonality.
24 And the commonality is being local --
25 (WHEREUPON, pause for water)

1 I'm sorry, I had a voice issue -- being local to this
2 chapter of Omega, the new MU Alpha Chapter of Omega, which is
3 the local chapter.
4 And, Your Honor, just while I am standing, without
5 getting too far down the road, I think the Court needs to
6 consider one thing here that is a little unique to this
7 situation. And I recognize and I told you right up front I
8 recognize the lack of a written agreement is ordinarily a
9 difficult burden in a situation like this. But we are
10 talking about a group of fraternity members, brothers if you
11 will; and the course of dealing was that they understood, you
12 know, hey, we are brothers, if you do this we will make sure
13 you are taking care of.
14 I had to go back, because I admit I took Dean Randall a
15 long time ago and I didn't -- I didn't -- I had to remember
16 all of my equitable maxims, and I am thinking I'm dealing
17 with a guy who used to be the master in equity so he has
18 probably got them all right on the top of his head.
19 But we -- I mean there is clear equitable issues here
20 that I think should survive their motion for directed verdict
21 at this point, and we should hear their testimony and go from
22 there.
23 THE COURT: What about conversion; that one kind of
24 sticks out as the stuff is not there anymore ---
25 MR. PRITCHARD: Yes, sir, and that is a difficult ---

1 THE COURT: That is a problem.
2 MR. PRITCHARD: That is a problem. I agree. And we are
3 not sure how to address that; because our position is is that
4 Lowcountry Men of MU Alpha and OCCUP were the same
5 membership, they were the same guys. They were having --
6 they had the benefit of the use of it while it was there.
7 And we don't know -- you know, there has been testimony
8 was it gone in '08. It is hard for me to believe it was gone
9 that quickly if they were using the building. Was it gone in
10 '08; I'm not sure. Nobody seems to know exactly when it
11 disappeared.
12 But it disappeared at some point after a commonality
13 of membership had the use and benefit of it. And that is
14 where -- I guess that -- I know that conversion claim is a
15 tough one because of when it disappeared. But it is still a
16 commonality of membership. It is still the same guys. It is
17 still the same organization. They are still getting the
18 benefit throughout the process until it disappears.
19 And I don't know the circumstances about what
20 happened -- nobody has presented any documentation one way or
21 the other about whether a claim was filed, no claim was
22 filed, what fund ---
23 THE COURT: Well, the basis of a conversion claim is you
24 have got something that belongs to me ---
25 MR. PRITCHARD: Yes, sir.

1 THE COURT: --- and it is really -- you have converted
2 it to your own use and it is not there anymore. So ---
3 MR. PRITCHARD: Well, and ---
4 THE COURT: --- it is really hard to see how that cause
5 of action ---
6 MR. PRITCHARD: And I can -- I can concede that because
7 technically, Your Honor, in Mr. Cochran's own personal
8 opinion it didn't really belong to him. He gave it to them.
9 He gave it to them for their benefit. And he did it without,
10 you know, without thinking, you know, if I don't get paid
11 back by December 31 of 2008 I am going to go in there and
12 yank those things out. That was never his intention.
13 So I will concede the conversion cause of action,
14 because I do think you are right; I don't think that we --
15 that this -- that this falls within the classic definition of
16 conversion. Because we don't take the position that these
17 units belonged to him. We take the position that these units
18 belonged to them. He gave them to them with the expectation
19 that at some point he would get paid back.
20 So we will concede for the purposes of going forward the
21 conversion cause of action. Because I think it is probably
22 inartfully pled in the sense that we never intended to
23 suggest that he felt like he owned that property. He gave it
24 to them. And that is that. Okay.
25 THE COURT: So do you want to say anything else?

1 MR. COUNTS: Yes, Your Honor. If these are brothers it
2 is like Cain and Abel. Your Honor, again, from my opening
3 statement, my client's contention is that Mr. Cochran sued
4 the wrong people. Even in Mr. Pritchard's argument just now
5 he conceded that Mr. Cochran gave, gave, the units to MU
6 Alpha.
7 My clients were not in existence. They were not in
8 existence for five or six years after all of this occurred.
9 They had no use of the HVAC units. They are not in
10 commonality with Lowcountry Men of MU Alpha. They are a
11 separate and distinct foundation. And as such they made no
12 oral agreement with Mr. Cochran. Mr. Cochran even conceded
13 that there was no oral agreement with MU Alpha, there was no
14 oral agreement with Lowcountry, anyone from Lowcountry Men.
15 I don't think that based on the Brown case that there is
16 any commonality and that OCCUP as a separate foundation
17 should be held responsible to reimburse or pay Mr. Cochran
18 for HVAC units that it never used and the fact that it made
19 no oral or written agreement to Mr. Cochran to reimburse them
20 for any money or anything that took place between Mr. Cochran
21 and MU Alpha or Mr. Cochran and Lowcountry Men of MU Alpha.
22 MR. PRITCHARD: Your Honor, I am hesitant to talk again
23 given that this is a nonjury proceeding and Your Honor can
24 do ---
25 THE COURT: Well, that is the one thing I do remember

1 about Master-in-Equity the benefit of doing a bench trial is
2 you can just say, well, I will decide at the end. But other
3 than your conversion cause of action I will deny the rest of
4 them and grant the directed verdict for conversion and we
5 will just ---
6 MR. PRITCHARD: Keep moving?
7 THE COURT: --- decide at the end ---
8 MR. PRITCHARD: Yes, sir. Okay. Fair enough.
9 THE COURT: --- on the other ones.
10 MR. PRITCHARD: Okay.
11 THE COURT: Now I have got it is 11:40. You have got
12 two witnesses. Do you want to -- are they going to be short,
13 long; do you want to take a lunch break and come back and
14 finish?
15 MR. PRITCHARD: Your Honor, what ---
16 THE COURT: Originally y'all told me it would take two
17 days, but I have got a feeling we will be done in a couple of
18 hours max.
19 MR. COUNTS: Your Honor, it is at the Court's leisure.
20 I would think that each one of my witnesses may take 20
21 minutes each.
22 THE COURT: Are they here and available?
23 MR. COUNTS: Yeah, this gentleman here (indicating); and
24 one is on the outside.
25 THE COURT: Okay. Well, while don't we just go ahead

1 and finish then, him.
2 MR. COUNTS: Okay.
3 THE COURT: All right. Let's take a 10-minute break so
4 y'all can stretch your legs, use the restroom, and then we
5 will come back to finish up this morning.
6 (WHEREUPON, break 1/24/21.)
7 (WHEREUPON, resume 1/24/21, 11:54 p.m.)
8 (WHEREUPON, the witness was duly sworn.)
9 **DIRECT EXAMINATION BY MR. COUNTS OF DARYLIN L. GRIGSBY:**
10 Q. What is your name, sir?
11 A. Darylin Grigsby.
12 Q. Mr. Grigsby, where do you live?
13 A. 201 Kent Court, Ladson, South Carolina.
14 Q. And are you employed?
15 A. No, I am retired.
16 Q. As what?
17 A. Power project engineer.
18 Q. I want to ask you some questions concerning this case.
19 Are you a member of MU Alpha Omega?
20 A. Yes, I am.
21 Q. And how long have you been a member of MU Alpha Omega?
22 A. Thirty-eight, thirty-nine years.
23 Q. Can you tell us what type of organization MU Alpha is?
24 A. MU Alpha Omega Psi Phi is a service responding
25 fraternity built on friendships, manhood, scholarship,

1 perseverance, to help provide for other college students to
2 be able to go to school and stuff, you know.
3 Q. Have you ever held any office in MU Alpha Omegas?
4 A. Yes.
5 Q. What type of office have you held?
6 A. President and also district marshal of the Sixth
7 District of Omega Psi Phi Fraternity.
8 Q. And by president, you are president of MU Alpha Omega of
9 Charleston?
10 A. Yes.
11 Q. And when were you president of MU Alpha Omega of
12 Charleston?
13 A. 2005 to 2007, 2008 to 2009 -- 2010. I'm sorry.
14 Q. Are you familiar with Lowcountry Men of MU Alpha?
15 A. Yes, I am.
16 Q. And was that organization -- that foundation formed when
17 you were president?
18 A. No, that foundation was formed I would say back in late
19 '94, '92; something like that. From like, you know, years
20 ago, I am thinking. But no.
21 Q. Were you aware that Mr. Cochran at some point was
22 president of Lowcountry Men of MU Alpha?
23 A. Well, yes.
24 Q. Do you recall when approximately?
25 A. When I found out that he was president?

1 Q. Yes, sir.
2 A. Once when I was serving from like 2005 to 2007 a year of
3 president of MU Alpha.
4 Q. Did -- while you were present -- and you were president
5 for two terms?
6 A. Yes, sir.
7 Q. From 2005 to two thousand ---
8 A. ... seven.
9 Q. --- ten? Seven?
10 A. Then 2008 to 2010.
11 Q. While president of MU Alpha did you ever make an
12 agreement with Mr. Cochran to reimburse him for HVAC units?
13 A. No, I didn't. Because ---
14 Q. Do you recall when you purchased -- when Lowcountry Men
15 of MU Alpha purchased Toogoodoo Road property?
16 A. I would say that had to be maybe 2006, 2007.
17 Q. And when -- before that property was purchased did you
18 or your organization go out and look at the property?
19 A. Yes.
20 Q. Do you recall who went to look at it -- well, did you go
21 to look at it?
22 A. Yes, I went to look at Toogoodoo property prior to
23 purchase.
24 Q. Now during the time that it was purchased did MU Alpha
25 Omega give Mr. Cochran any funds to purchase the property?

1 A. No, not MU Alpha or Omega Psi Phi.
2 Q. Did Lowcountry Men of MU Alpha give any funds for him to
3 purchase the property?
4 A. Yes, because that is where the funds was located in a
5 bank and savings for Lowcountry Men of MU Alpha. Not MU
6 Alpha of Omega Psi Phi Fraternity.
7 Q. So there were two banking accounts?
8 A. Yes.
9 Q. There was a banking account for MU Alpha Omega?
10 A. Yes.
11 Q. And there was a banking account for Lowcountry Men of MU
12 Alpha?
13 A. Yes.
14 Q. And they were separate and distinct accounts?
15 A. Yes.
16 Q. Now at some point Toogoodoo was purchased and
17 refurbished; is that correct?
18 A. Yes.
19 Q. When it was purchased and refurbished was OCCUP in
20 existence?
21 A. No.
22 Q. After Toogoodoo Road was purchased did MU Alpha have
23 meetings there?
24 A. Yes.
25 Q. Approximately how many meetings?

1 A. I would say maybe six.
2 Q. And after -- at some point it was discovered that HVAC
3 units at MU Alpha -- at Toogoodoo were missing?
4 A. Yes.
5 Q. Do you recall when that occurred?
6 A. I am thinking maybe around the June, July timeframe of
7 2008.
8 Q. Were you president of MU Alpha at that time?
9 A. Yes.
10 Q. Did -- did MU Alpha make any police reports concerning
11 missing HVAC units?
12 A. No, they didn't.
13 Q. Did MU Alpha make any insurance claims?
14 A. No.
15 Q. Do you know whether or not any police reports were made
16 by Lowcountry Men of MU Alpha?
17 A. Not to my thinking. I don't think there ever were a
18 police report done.
19 Q. Did you ever attend any meetings of Lowcountry Men of MU
20 Alpha?
21 A. Yes, prior to the purchase of Toogoodoo Road and prior
22 to the sale of the property on 48 Parkwood Avenue they had
23 sporadic meetings at the time; but that was about it.
24 Q. I want to ask you about Lowcountry Men of MU Alpha. Is
25 it -- is it incorporated?

1 A. No, Lowcountry Men of MU Alpha was -- is a 501(c)(3).
2 And I don't know if it has been incorporated or not, but I
3 know it is a (c)(3).
4 Q. 501(c)(3)?
5 A. Right.
6 Q. Okay.
7 A. Whereas MU Alpha Omega Psi Phi Fraternity is a
8 501(c)(7), which is totally different from each other as
9 properties wise.
10 Q. So as I understand it, Lowcountry Men and MU Alpha is a
11 501(c)(3) nonprofit?
12 A. Yes.
13 Q. And MU Alpha Omega is a 501 ---
14 A. ... (c) ---
15 Q. --- (c)(7)?
16 A. Yes.
17 Q. Which is a totally different nonprofit?
18 A. Yes, sir.
19 Q. And you know this by being president of MU Alpha at some
20 point?
21 A. Yes, I knew that -- I know -- I know that by being
22 president at that time and then also by having training
23 previously prior to that, up until now.
24 Q. Now at some point in 20 -- at some point OCCUP was
25 formed; is that correct?

1 A. Yes, sir.
2 Q. Do you recall when OCCUP was formed?
3 A. I am thinking 2013 if I am not mistaken. It could have
4 been in January up until they first got filed to the State
5 revenue of being a nonprofit organization.
6 Q. And do you know why, the purpose of OCCUP being formed
7 by the foundation; what was -- what was it formed to do?
8 A. There were a sense that since Lowcountry Men of MU Alpha
9 hasn't -- wasn't being functionalized as a normal 501(c)(3)
10 and pretty much had went kind of like defunct, I would say,
11 so, therefore, the body for MU Alpha decided that they needed
12 to have a new operating non-contributed foundation; and that
13 is when they voted to have a new establishment and named it
14 OCCUP, Omegas of Charleston Community Uplift Project.
15 Q. And what was the purpose of forming that foundation,
16 OCCUP?
17 A. To help support MU Alpha mandated programs for high
18 school kids, young mens, and boys and girls.
19 Q. Now did you hold any office in OCCUP?
20 A. Yes, I did.
21 Q. What was your position in OCCUP?
22 A. I was appointed president when OCCUP was formed.
23 Q. Did you have a board of directors?
24 A. Yes, we did.
25 Q. And did you have meetings?

1 A. Yes, we did.
2 Q. And did you have a secretary that took minutes from the
3 meeting?
4 A. Yes, we did.
5 Q. At some point Mr. Cochran approached you or approached
6 OCCUP about reimbursement for HVAC units?
7 A. Yes, that is correct.
8 Q. Do you recall when that occurred?
9 A. I cannot pinpoint the date and time. But I can remember
10 that once the foundation OCCUP was founded -- organized, I
11 would say, then Mr. Cochran introduced and said that OCCUP
12 owed for some A/C units.
13 And with that, a discussion came. Because I went back
14 to the Board of Directors and said, I said we need to try to
15 see how does this here affect OCCUP when OCCUP didn't have
16 anything at the present to do with the air-conditioning
17 units. And this is where we were at.
18 Q. At some point did you discover when the units were
19 missing, that the units were missing?
20 A. Well, the unit -- yes, the units was missing once back
21 in 2008, 2009 timeframe. I don't know the specific date. We
22 went to turn the units on and all we heard was the fan
23 blowing inside. So, therefore, the brothers who were there
24 went outside, looked around the building, and the units were
25 gone. Clean-cut, wire cable.

1 Q. This was in 2008, 2009?
2 A. Yes, sir, it was in that timeframe. I don't want to pin
3 myself down on one particular date, because I don't know. I
4 can remember that exactly.
5 Q. As president of MU Alpha from -- you say 2008 to 2010?
6 A. Yes, sir.
7 Q. Did Mr. Cochran come to you about reimbursement for the
8 units ---
9 A. No, not ---
10 Q. --- after you discovered they were missing?
11 A. No, not to me directly. And during the time that when
12 we have our meetings any type of subject that comes up it
13 should be able to come up during the meeting. But the way
14 that -- the way that is situated is that foundation
15 information and fraternity information is two different
16 things, so you have to try to get on the agenda to be able to
17 express what your concerns are. So it never were on my
18 agenda about that, about the A/C unit.
19 And I as president at that particular time the bylaws
20 said that only the president of the basileus can only execute
21 $500 at the most without coming to the body of the
22 brotherhood requesting for extra money.
23 Q. So if someone comes to MU Alpha and it has a cost of
24 over $500 you have to bring it to your board?
25 A. Yes.

1 Q. And to the body?
2 A. Yes.
3 Q. Did that ever happen concerning Mr. Cochran's request
4 for ---
5 A. Not in -- not in none of my meetings it didn't happen.
6 Q. And if it was less than 500 you can make a sole
7 decision?
8 A. Yes. You know, that as an example it is like going and
9 getting some books for some kids in high school and you just,
10 you know, write a check to yourself and then turn a voucher
11 in; the fraternity would reimburse you up to that.
12 Q. At some point did as president of OCCUP did Mr. Cochran
13 approach you for reimbursement for 23,000?
14 A. Yes.
15 Q. Do you recall when that happened?
16 A. That happened -- I don't know the specific. But after
17 OCCUP was formed or established me, myself, and Mr. Cochran
18 and some -- the Board of Directors who was three more guys
19 that -- two more fraternal brothers met Mr. Cochran and tried
20 to see what the resolved matter were.
21 Q. Where did this occur?
22 A. This occurred at California Dreaming.
23 Q. And did -- do you recall the outcome of that meeting?
24 A. The outcome of the meeting were that the Board had
25 directed Mr. Cochran to get some invoices, expense checks, to

1 bring back to submit to the Board for reconciliation for
2 payment?
3 Q. Did he ever do that?
4 A. He mailed one copy of the A/C unit for the amount of
5 $23,000.
6 Q. Well, did you ever get any checks, copies of checks?
7 A. No.
8 Q. Or invoices?
9 A. No.
10 Q. So as president of MU Alpha Omegas it was -- it allowed
11 for the legal creation of Lowcountry Men of MU Alpha; is that
12 correct?
13 A. No, I need -- clear -- I can clear that up.
14 Q. I will repeat my question. MU Alpha of the Lowcountry,
15 Omegas, existed; and then Lowcountry Men of MU Alpha was
16 created as a separate entity, separate foundation?
17 A. Yes, prior to that, years prior to OCCUP.
18 Q. Okay.
19 A. Yes.
20 Q. So Lowcountry Men and MU Alpha was a separate ---
21 A. Separate entity, just like OCCUP and Lowcountry Men. It
22 just goes back to the 501(c)(3), 501(c)(7). 501(c)(3),
23 OCCUP; 501(c)(7), MU Alpha.
24 MR. COUNTS: Your Honor, I have no further questions for
25 this witness. Answer any questions.

1 THE COURT: Cross.
2 MR. PRITCHARD: Yes, sir.
3 **CROSS-EXAMINATION BY MR. PRITCHARD OF DARYLIN GRIGSBY:**
4 Q. Mr. Grigsby, ---
5 A. Yes, sir.
6 Q. --- good afternoon.
7 A. Thank you. How are you?
8 Q. I believe we met before in my office. I think you might
9 have been there that day when depositions took place, if my
10 memory serves. But I may be fuzzing it up. So if so, I
11 apologize.
12 A. Yes, sir.
13 Q. Mr. Grigsby, you testified that you really weren't 100
14 percent certain when the HVAC units disappear from the
15 project; sometime in 2008, 2009, but you weren't sure?
16 A. Yes, and I think that would be everybody's testimony.
17 Q. Okay. And as I understand your testimony - and I think
18 you wrote it down exactly as you said it - OCCUP was formed
19 some time in 2013; is that correct?
20 A. Yes.
21 Q. And, again, as I wrote down, you said since Lowcountry
22 wasn't functioning and essentially went defunct the MU Alphas
23 decided to start OCCUP as a new nonprofit; is that correct?
24 A. Pretty much, because it was two.
25 Q. Yes, sir. So they were stepping in where Lowcountry had

1 fallen short?
2 A. I wouldn't -- I don't know that.
3 Q. Well, you said Lowcountry was defunct. It actually
4 wasn't operating anymore?
5 A. As far as having meetings.
6 Q. Yes, sir. Okay.
7 A. That is what I mean by that.
8 Q. Okay. But then you said that they -- that OCCUP started
9 up at a nonprofit at that point; is that correct, sir?
10 A. Yes.
11 Q. Okay. Are you familiar with deed of the property from
12 Lowcountry Men to OCCUP?
13 A. Yes.
14 Q. Okay. And can you tell me why there would be any reason
15 other than that OCCUP was moving forward where Lowcountry was
16 no longer functioning that Lowcountry would have deeded that
17 property to OCCUP for zero dollars; can you tell me why that
18 would have been?
19 A. No, I -- because I don't understand what, what -- when
20 the lawyers and them got together with when they was putting
21 the paperwork together to do that.
22 Q. But you will agree that no money changed hands between
23 Lowcountry and OCCUP when OCCUP was getting title to the
24 property; is that right?
25 A. I agree with that.

1 Q. Okay. And then ---
2 A. That is true.
3 Q. And OCCUP was stepping in at that point and moving
4 forward to try to do charitable works within the community on
5 behalf of the MU Alpha Chapter of Omega; is that right?
6 A. That is correct.
7 Q. Okay. And that is the function that Lowcountry had had
8 before that time; is that correct?
9 A. Yes. And had other functions too.
10 Q. Okay. And when the property sold in 2017 it was sold
11 by OCCUP to an entity called JRC Real Properties, Inc.; is
12 that -- do you have any knowledge of that?
13 A. Yes.
14 Q. Okay. And the $125,000 that was received from the sale,
15 who did that go to; did that go to OCCUP?
16 A. It went to O-C-CUP. That is what the check was made out
17 to.
18 Q. Okay. And no money went back to Lowcountry Men of MU
19 Alpha at that point, did it?
20 A. The bank account and everything was still closed.
21 Q. Okay.
22 A. Not even -- it was not operating.
23 Q. All right. Do you recall when the 48 Parkwood Avenue
24 property was sold?
25 A. I would say maybe '95, '96 era.

1 Q. Okay. So sometime in the mid 90's you believe?
2 A. I -- yeah.
3 Q. Okay. Would you agree with me that Lowcountry Men of MU
4 Alpha was not incorporated until 1999?
5 A. Well, I -- if that is what the documents say. I'm just
6 going by my memory.
7 Q. I believe -- I don't know if you --
8 MR. PRITCHARD: Did you mark that as a document, George?
9 A. I mean I can verify.
10 MR. COUNTS: No, yeah, it is in ---
11 MR. PRITCHARD: It is in the record?
12 MR. COUNTS: Yeah.
13 MR. PRITCHARD: Okay. I believe that Defendant's
14 Exhibit 1 is the document that we are referring to. If you
15 would just show that to him for him to confirm that for me.
16 (WHEREUPON, exhibit provided to witness)
17 Q. Do you see where it says down there incorporation
18 3/22/1999?
19 A. Yes, I see it.
20 Q. Okay.
21 A. I see it.
22 Q. So is it possible that the monies that were received
23 from the Parkwood Avenue sale actually went to MU Alpha
24 instead of Lowcountry Men; because Lowcountry Men didn't
25 exist at that point, did it?

1 A. No, they didn't exist. And I cannot sit to say that
2 that is what really happened, because I wasn't an executive
3 on the business side of either organization.
4 Q. Would you have any reason to disagree with me if I
5 suggested to you that funds were deposited with Mr. Keith
6 Waring for investment for the purposes of the benefit of MU
7 Alpha Omegas?
8 A. I would say that to a point and then disagree with you
9 on the backside.
10 Q. Okay. What backside?
11 A. Because Mr. Keith Waring was given some money from out
12 of the sale of Parkwood.
13 Q. Yes, sir.
14 A. But some money was left in a bank account because they
15 was going to do a grant and lost money on the grant.
16 Q. Okay.
17 A. So they didn't bother with Mr. Waring anymore after that
18 grant process did not go through.
19 Q. Okay. But I guess the gist of my question is the money
20 actually was MU Alphas' money at the time; because Lowcountry
21 Men didn't even exist, right?
22 A. Well, I am not -- I'm not -- I'm not saying that I
23 don't -- I can't really tell you the real date on when was
24 the house at 48 Parkwood was sold, by my memory. If you have
25 got documentation that can show me that then we can be able

1 to address that.
2 Q. Okay. Well, I am just going off what you testified to
3 which was you said you thought it was sometime around '95,
4 '96. I don't have any reason to know. I am just -- I was
5 going off of what you testified to.
6 So if that is -- if your -- if your indication now is
7 that you don't recall then I will just accept that as your
8 indication.
9 But the question I have is, is the funds that were then
10 given to purchase the Toogoodoo Road property did those come
11 from an account belonging to MU Alpha or did they come from
12 an account belonging to Lowcountry Men?
13 A. Lowcountry Men.
14 Q. Okay. And you're confident of that because Lowcountry
15 Men would have received the proceeds of the Parkwood sale?
16 A. Yes.
17 Q. All right. And you testified that at some point after
18 the inception of OCCUP or O- -- however you say it. Let's
19 just call it Omegas of Charleston Community Uplift Project.
20 After the inception of that organization at some point Mr.
21 Cochran came to you and said I would like to be reimbursed
22 for the $23,000 I spent on putting in the HVAC units on the
23 Toogoodoo Road property; is that right?
24 A. That is correct.
25 Q. And your testimony is that y'all looked into it and

1 determined that you didn't owe the money; is that right?
2 A. That is correct.
3 Q. Okay. I don't have anything further. Thank you.
4 MR. COUNTS: No redirect, Your Honor.
5 THE COURT: All right. You may step down.
6 (WHEREUPON, witness steps down from witness stand.)
7 THE COURT: Next witness.
8 MR. COUNTS: Your Honor, I call Mr. Gregory Harris.
9 (WHEREUPON, the witness was duly sworn)
10 **DIRECT EXAMINATION BY MR. COUNTS OF GREGORY HARRIS:**
11 Q. What is your name, sir?
12 A. Gregory Van Harris.
13 Q. Okay. Where do you live, Mr. Harris?
14 A. I live at 130 Hidden Pond Circle, Goose Creek.
15 Q. And are you working?
16 A. No, I am retired.
17 Q. Mr. Harris, you are a member of MU Alpha Omegas?
18 A. Yes, I am.
19 Q. How long have you been a member?
20 A. Twenty-six years.
21 Q. Mr. Harris, have you ever held office?
22 A. Yes, I was the president for MU Alpha also the carer of
23 rest, which is like the secretary.
24 Q. And you were president of MU Alpha?
25 A. Two years, yes. They only have a running term of two

1 years and then you have to be reelected if we had to go back.
2 Went back there. You only served two-year terms.
3 Q. Do you recall when your term was?
4 A. Mine was 2000 to 2002.
5 Q. Mr. Harris, you are aware that Lowcountry Men of MU
6 Alpha existed?
7 A. Yes.
8 Q. And you are aware that they were purchasing a building
9 on Toogoodoo Road?
10 A. Yes.
11 Q. Did you before the building was purchased did you ever
12 go out and examine the building?
13 A. Yes, I went out and watched -- looked at it.
14 Q. Did you look at the outside and the inside?
15 A. Yes.
16 Q. Do you recall when that was?
17 A. No, not exactly. It was during the time -- during the
18 time that he was -- Mr. Cochran was trying to present the
19 building to the Chapter so people could look at it to see
20 what we was trying to buy.
21 Q. And the purchase would have been made by Lowcountry Men
22 of MU Alpha?
23 A. Yes.
24 Q. And was Mr. Cochran in total control of the purchase of
25 the building?

1 A. Yes.
2 Q. And the refurbishing of the building?
3 A. Yes.
4 Q. The building was purchased and refurbished; is that
5 correct?
6 A. Yes.
7 Q. And that began by Mr. Cochran acting as president of
8 Lowcountry Men of MU Alpha?
9 A. Yes.
10 Q. After the building was refurbished did MU Alpha have any
11 meetings in the building?
12 A. We had some.
13 Q. At some point MU Alpha stopped having meetings in the
14 building, did it not?
15 A. Yes, sir. The brotherhood felt that -- the majority of
16 them felt that it was too far and they didn't want to drive
17 that distance to come to meetings.
18 Q. Did the building at any point fall into disrepair after
19 it was refurbished?
20 A. It did. Like I say, nobody went out to the building at
21 all for anything. So grass grew up around the building, all
22 across the -- on the side.
23 Q. It was not being used?
24 A. No.
25 Q. At some point you discovered that the HVAC units were

1 missing; is that correct?
2 A. I was one of the few that went out there and noticed
3 that they were gone, yes.
4 Q. Do you recall when that was, approximately what year?
5 A. It was July of 2008. And why I remember that, we just
6 came back from our conclave which is our national meeting.
7 And that was in Birmingham. We had just got back. And we
8 was trying to get the building back up to be usable. So we
9 got a group of people together to go out and cut the grass,
10 clean the walls, try to get it back up to being able to be
11 occupied.
12 Q. So this was 2008?
13 A. That was 2008.
14 Q. Okay. And did you -- did you go out with your group and
15 try to clean things up?
16 A. Yes.
17 Q. Now when we found the unit missing we only noticed there
18 was one only at that time. So ---
19 Q. So July of 2008 ---
20 A. July 2008 there was only one when we went out there that
21 day.
22 Q. You discovered that one unit was missing?
23 A. One unit was gone.
24 Q. How many units were there?
25 A. Three.

1 Q. At some point did you go back out after that date?
2 A. Yeah, I can't remember exactly when we went. But it
3 seems like it was less than a week, and we went back out and
4 the other two were gone. So all three is gone.
5 Q. So they were ripped from the building?
6 A. Whoever did it knew what they were doing. They cut it
7 clean as it could be. You wouldn't even notice, to tell you
8 the truth. It was clean-cut.
9 Q. Clean-cut.
10 A. When -- they had to drive up into the area. So and one
11 of the units had a crate built around it, and they didn't
12 disturb the crate at all. They got the unit out somehow.
13 Q. Without disturbing the crate?
14 A. Yes.
15 Q. Okay. So they knew what they were doing?
16 A. Oh, whoever it was, definitely.
17 Q. After you discovered the units were missing did you --
18 did your organization MU Alpha make a police report?
19 A. No one made a police report, and no one filed insurance
20 that I recall.
21 Q. At some point, Mr. Harris, Mr. Cochran came to you
22 concerning the 23,000 -- $23,000 that he allegedly paid for
23 the units?
24 A. He never did come to me directly. He, like I said, he
25 approached Mr. Grigsby and Mr. Grigsby brought it back to the

1 board. And I and along with the president of the chapter, MU
2 Alpha Chapter, we talked with Mr. Cochran; and he said he
3 still was stating flat he was not backing off, he wanted his
4 23,000. So we left it alone.
5 Q. Did you at any point -- let me back up. At some point
6 you became president of OCCUP; is that correct?
7 A. Yes.
8 Q. When did you become president of OCCUP?
9 A. 2019.
10 Q. And you never made any promises to Mr. Cochran to
11 reimburse him?
12 A. No.
13 MR. COUNTS: Your Honor, I have no further questions for
14 this witness.
15 MR. PRITCHARD: Brief.
16 **CROSS-EXAMINATION BY MR. PRITCHARD OF GREGORY HARRIS:**
17 Q. Good afternoon, Mr. Harris.
18 A. Good afternoon.
19 Q. How are you, sir?
20 A. All right.
21 Q. Mr. Harris, so just so I can understand, tell me what
22 the status of Lowcountry Men of MU Alpha was at the time
23 OCCUP was formed.
24 A. As far as we knew they weren't having any meeting and
25 they was defunct. Nobody was doing anything from Lowcountry

1 Men.
2 Q. Okay. So y'all started OCCUP, and why did y'all start
3 OCCUP?
4 A. The chapter started OCCUP and assigned Mr. Grigsby as
5 the president. And that is where we started from for the
6 chapter. We wanted to get the building up to par so we could
7 sell it.
8 Q. Okay. And so is that why the property was deeded from
9 Lowcountry to OCCUP?
10 A. Right.
11 Q. Okay. And OCCUP was -- is, still to this day, a
12 501(c)(3) nonprofit charitable organization; is that correct?
13 A. Yes. Yes, we are.
14 Q. And y'all's purposes is for the advancement, if you
15 will, of charitable works on behalf of the MU Alpha Chapter
16 of Omegas; is that correct?
17 A. They were one of them. We were trying to work with the
18 community because we gave money to other people. We give
19 money to churches ---
20 Q. Okay.
21 A. --- also.
22 Q. Was that your understanding of what Lowcountry was
23 supposed to have existed for as well?
24 A. My understanding, when Lowcountry started Mr. Cochran
25 was trying to get the building up and running to give us a

1 place to meet.
2 Q. Okay. So 1999 Lowcountry was incorporated?
3 A. Somewhere around there.
4 Q. Okay. The building wasn't purchased until 2007; is that
5 correct?
6 A. Yeah, but the building was out there for -- well,
7 forever.
8 Q. Yeah, but it wasn't purchased until 2007; ---
9 A. No, right.
10 Q. --- is that correct?
11 A. Correct.
12 Q. Right. Okay. And so Lowcountry Men was started as a
13 non-profit organization; is that correct?
14 A. As far as my knowledge, yes.
15 Q. As far as you know did Lowcountry Men ever do any
16 charitable works or provide any funds for any purpose in the
17 community?
18 A. I don't remember them putting on events. My
19 understanding it was -- where is was signed to get us -- get
20 the building up ---
21 Q. Okay.
22 A. --- and presentable.
23 Q. All right. And once they went belly up then OCCUP was
24 started and OCCUP then took over ownership of the building;
25 is that correct?

1 A. Correct.
2 Q. And there was no consideration, no money, no actual
3 exchange of money, from OCCUP to Lowcountry Men; is that
4 correct?
5 A. Correct.
6 Q. And the reason behind that was is that it was basically
7 all the MU Alpha Omegas and all intended on having a
8 nonprofit organization that was viable and workable; is that
9 right?
10 A. For a house. We sold a house, then we -- so we can buy
11 another house. We had property. We sold it, and we were
12 trying to get the property -- get another property.
13 Q. Okay. So but you're -- what you are saying though is
14 that the purpose was -- what you are saying is Lowcountry's
15 purpose was to own the house, and then you are saying that
16 OCCUP's taking over it was also so that it could sell and
17 then get another property?
18 A. Well, I think was just trying to sell it to see where we
19 would go from there.
20 Q. Okay.
21 A. And no more talk was talked about another building. We
22 was just trying to get that one up to par so we could sell
23 it.
24 Q. Okay. And Mr. Cochran didn't make the request directly
25 to you to be reimbursed for the ---

1 A. No.
2 Q. --- air-conditioning? But you were involved in the
3 decision to not reimburse him; is that correct, ---
4 A. Yes.
5 Q. --- as part of the board? I don't have anything
6 further. Thank you.
7 MR. COUNTS: No redirect, Your Honor.
8 THE COURT: You can step down.
9 (WHEREUPON, witness steps down from witness stand.)
10 THE COURT: All right. Do you have any other witnesses?
11 MR. COUNTS: No, Your Honor.
12 THE COURT: Anything in reply?
13 MR. PRITCHARD: No, sir.
14 THE COURT: All right, well, in -- why don't y'all make
15 your closing. You renew your motions and we will just treat
16 them as closing arguments.
17 So, Mr. Pritchard, why don't you go first.
18 MR. PRITCHARD: Yes, sir, Your Honor.
19 **CLOSING BY MR. PRITCHARD:**
20 As I indicated at the outset this is a little bit of a
21 strange situation in that we are dealing with a group of
22 gentlemen who are all in the same fraternal organization and
23 outside of this proceeding have a collegial relationship. As
24 Your Honor said, why can't they work it out. I wish they
25 could, but they couldn't.

1 And so I think that there is a genuine disagreement
2 obviously as to why it hasn't been worked out. And that
3 disagreement is that, "A", they are standing behind this
4 notion that OCCUP is a different organization from Lowcountry
5 Men. Which, Your Honor, I think has been answered here by
6 both of the defense witnesses both of whom have indicated
7 that OCCUP stepped up because Lowcountry essentially wasn't
8 operating anymore. So clearly the advancement of the same
9 agenda was intended with the creation of OCCUP.
10 And they took ownership of a building that had been
11 owned by Lowcountry Men and did so without any consideration
12 changing hands, which is further validation of the point that
13 they simply were just stepping into the shoes that had been
14 vacated by Lowcountry Men. For whatever reasons Lowcountry
15 Men just quit operating in the same manner in which they had
16 been operating before. So I think that is not really a valid
17 argument.
18 Your Honor, the issue, the crux of the issue here, is is
19 it equitable to deny Mr. Cochran the reimbursement of the
20 monies that he spent. And the issue as I understand it is
21 they want to say, well, when we stepped into the building the
22 air-conditioning units weren't there. But yet they were also
23 part of the organization that did utilize the building when
24 the air-conditioning units were there and that Mr. Cochran
25 paid for to put there so they could utilize the building.

1 And the fact that somebody came along and stole the
2 property, they want Mr. Cochran to have to step up and eat
3 that theft when in fact they took ownership of the building,
4 sold it for value, and then didn't reimburse Mr. Cochran
5 despite testimony that it was a practice that they
6 understood.
7 I think somebody, Mr. Pryor, cited two specific
8 examples, one being the heating oil at the old Parkwood
9 Avenue property and another being putting on a number of
10 shows with national entertainment at Charleston County Hall,
11 King Street Palace, whatever you want to call it - I guess
12 I'm showing my age now - and that Mr. Cochran would step up
13 and advance funds and then would get reimbursed.
14 So we had a course of dealing within this organization.
15 And Mr. Cochran, I guess to his credit, what I would think is
16 his credit, but apparently they want to think to his
17 detriment, did not step up immediately after spending the
18 $23,000 and say all right, guys, pay me back now.
19 He did what he thought was in keeping with the best
20 interest of the organization and waited patiently for almost
21 ten years. Actually -- well, almost ten years from the time
22 he spent the money. Ten years from the time the building was
23 actually purchased. But almost ten years from the time he
24 spent the money.
25 And when he spent -- when he asked for reimbursement,

1 Your Honor, it is not like he said, okay, guys, y'all owe me
2 $23,000 plus nine-and-a-half years of accruing interest and,
3 you know, loss of my opportunity to spend this money
4 elsewhere or anything. That was never his intention.
5 All he ever wanted was to be paid back when they could
6 afford to pay him back. And logically he felt like when they
7 could afford to pay him back was when they sold the property.
8 They then had $125,000 and he thought they can pay me back 23
9 of that 125, everybody is back to, you know, status quo anti
10 as we would say and I'm fine.
11 But they chose instead to say, no, we are not going
12 to -- you know, we are not going to live with that
13 obligation, we -- we are not -- you know, we don't feel
14 like, "A", it was made with OCCUP; "B", you know, the
15 air-conditioning units are gone now; and, "C", we just don't
16 think we owe you the money.
17 Well, was Mr. Cochran too trusting and too generous of
18 spirit. I guarantee you he was. I feel like he was. But I
19 don't believe in equity that the law would punish him for
20 that generosity and sort of free approach to this because he
21 was dealing with fraternity brothers. And that is really the
22 crux of our case.
23 THE COURT: All right.
24 MR. COUNTS: Your Honor, may it please the Court.
25 **CLOSING BY MR. COUNTS:**

1 Again I renew my motion for dismissal. As testified by
2 several witnesses, OCCUP was a separate and distinct entity
3 from MU Alpha Omega and Lowcountry Men of MU Alpha. They
4 were a separate 501(c) corporation. Lowcountry Men of MU
5 Alpha was a 501(c) corporation, and MU Alpha Omega was a
6 501(c)(7) organization. Separate and distinct entities. So
7 we -- our argument is that there was no successor liability
8 based on the criteria set out in the Railroad Express case.
9 Your Honor, I think an even more stronger case for OCCUP
10 is that at no point did Mr. Cochran say anyone from MU Alpha
11 made an agreement to reimburse him for $23,000.
12 Mr. Grigsby testified that the bylaws of the
13 organization, which Mr. Cochran clearly knows, require that
14 if there is going to be any amount paid by that organization
15 of $500 or more then the president of that organization has
16 to go to the board of directors and they have to make -- they
17 have to take it to the body.
18 Clearly $23,000 is much more than $500. He didn't
19 indicate that any president of MU Alpha made an agreement to
20 reimburse him nor did he make a statement or provide evidence
21 that anyone from OCCUP agreed to reimburse him for $23,000.
22 Mr. Cochran put no lien on the property. He understood
23 in 2008, 2009, that the units were missing. He made no -- he
24 made no police report, yet he claimed that the organization
25 has to reimburse him $23,000 for the unit.

1 He had no insurance on the property. He was president
2 of Lowcountry Men of MU Alpha. He was tasked with making
3 sure that everything ran in a businesslike fashion. I don't
4 know if the insurance lapsed or he never put any insurance on
5 the building.
6 Your Honor, it appears that he has taken advantage of a
7 situation. It was ten years ago, ten years ago. Latches I
8 think kicks in. But ten years ago he said that this
9 occurred, and when OCCUP was formed and sold the property in
10 2017 he is now making this claim that some time ago, some
11 time ago, somebody in a distant past made an agreement with
12 him to reimburse him if the property was sold. It is our
13 contention that that never occurred. There was no evidence
14 that has been put forward which indicate that anyone made
15 that agreement.
16 Again, we think and contend that he sued the wrong
17 entity and OCCUP has no obligation whatsoever to reimburse
18 him $23,000. Just because land was given to OCCUP that
19 doesn't mean that that debt was given to OCCUP. Again, it is
20 a separate entity. It is a separate organization. And he
21 should -- OCCUP should not be ordered to reimburse him any
22 funds.
23 THE COURT: All right. Well, normally in a trial this
24 is where I would charge the jury and then tell them I am
25 going to send y'all out and you come up with a verdict. But

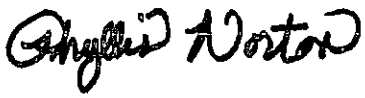
1 we are not at a jury trial. But it is the point where I need
2 to go and think about what I am going to do.
3 And so I will give it some thought and let you know what
4 my decision is. I will try to get it resolved one way or the
5 other this week. Okay. So I will let you know. Thank you.
6 (WHEREUPON, Court's Exhibit Number 1, Cochran Deposition from
7 1/15/20, marked for identification.)
8 (WHEREUPON, the bench trial adjourned.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina, on September 28, 2020.

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



PHYLLIS NORTON, CVR

Date: January 29, 2021

Certified Transcript Provided For: Thomas B. Prithcard

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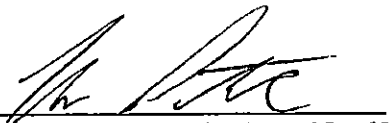
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any and all parties and not any other material.

September 28, 2021



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