THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Nov 24 2021

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2018-CP-400-6344

Appellate Case # 2019-001488

MB Hutson/ MB Hudson — Appellant.

v.

Penn America Insurance Company,
Global Indemnity Group, Inc.,
Timothy J. Newton, Esq. and
J.R. Murphy, Esq., John Doe #1 and
John Doe # — Respondents.

CORRECTED RECORD ON APPEAL
(BINDER 2 of 3 -- pp. 494 - 974)

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(To be submitted by a Respondent, (at their request and with Appellant's permission per Rule 212), which was inadvertently left out of the record):

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***NOTE:** "The pages originally bates-stamped as pages 727-928 of the Amended Record are omitted, as the complete Exhibit 1 to the Newton Affidavit is provided in the separately filed Appendix."

Exhibit I

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:16-cv-01943-DCN

Penn-America Insurance Company,

Plaintiff,

v.

BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson;

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell a/k/a Jimmy "Steve" Lovell, James Thigpen, Ocoee, LLC;

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Defendants.

SETTLEMENT AGREEMENT AND RELEASE OF CERTAIN CLAIMS

This Settlement Agreement and Release of Certain Claims (hereinafter "Agreement") is entered into between Penn-America Insurance Company, (hereinafter "Penn-America") and M.B. Hutson a/k/a M.B. Hudson (hereinafter "Hutson").

WHEREAS, Penn-America issued policy number PAC7045167 to "BWR, Inc. d/b/a Big Water Resort" as the named insured (hereinafter "the Policy"). The policy contains both commercial general liability (CGL) and commercial property coverages, and it was in effect from October 16, 2013 through October 16, 2014; and

WHEREAS, Hutson was named as a defendant in two tort lawsuits styled as Reed v. Big Water Resort, LLC, *et al.*, Civil Action number 2:14-1583-DCN-MGB; and TLC Holdings, LLC, *et al.* v. M.B. Hutson a/k/a M.B. Hudson, Civil Action No. 2015-CP-14-00615 (hereinafter "the Underlying Lawsuits"); and

WHEREAS, Penn-America filed the above-captioned declaratory judgment action seeking a ruling as to its coverage with respect to the Underlying Lawsuits (hereinafter "the Declaratory Judgment Action"); and

WHEREAS, after the Declaratory Judgment Action was filed, and while it remains pending, Hutson filed a claim for coverage under the Policy relating to certain property loss (hereinafter "the Property Loss claim"); and

WHEREAS, Hutson represents that he intends to file counterclaims in the Declaratory Judgment Action relating to claim investigation and/or handling by Penn-America; and

WHEREAS, Penn-America and Hutson (hereinafter "the Parties"), desirous of avoiding the expense, uncertainties, and risks of further litigation between and among themselves, have reached an agreement to fully, finally and forever compromise, release, and forever settle all past, present and future claims between and among them involving, in any way, all claims that were raised or could have been raised by Hutson in the Declaratory Judgment Action, as well as the Property Loss claim, whether known or unknown, whether patent, latent or hereafter discovered.

NOW, THEREFORE, in consideration of the following actions, forbearances and mutual promises of the Parties, the Parties agree as follows:

1. The recitals set forth above are true and correct and are, by this reference, made part of this Settlement Agreement and Release.

2. Hutson, for and in consideration of the sum of Nine Thousand Five Hundred and 00/100 ($9,500.00) Dollars, receipt of which is hereby acknowledged, does hereby release and forever discharge Penn-America, its agents, servants, employees, affiliates, successors and assigns, and any and all other persons, firms or corporations from any and all actions, causes of action,

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demands and/or claims of any nature whatsoever which the undersigned may have against Penn-America relating to:

a. Penn-America's coverage for the Underlying Lawsuits; and

b. Penn-America's coverage for the Property Loss claim;

together with any claims relating to Penn-America's investigation and/or claim handling, including any causes of action for breach of contract, bad faith, improper claim practices, or any other cause of action which could be asserted, arising from the above-referenced matters (hereinafter "the Released Claims"). The consideration expressed herein constitutes payment in full to Hutson for all policy proceeds, damages, losses and/or injuries to persons or property or both, whether known or unknown, developed or undeveloped, which have resulted or may result from the incident aforesaid, whether the claims could have been asserted against Penn-America by way of counterclaim in the Declaratory Judgment Action or by separate lawsuit.

3. It is the agreed by the Parties that Penn-America will not challenge its duty to defend, nor will it seek a ruling as to coverage in the pending Declaratory Judgment Action with respect to its duty to defend Hutson in the Underlying Cases. Penn-America will continue to defend Hutson in the Underlying Cases pursuant to the terms of the Policy. This Agreement will not be construed to expand Penn-America's duty to defend beyond that called for by the terms of the Policy except as set forth herein.

4. Hutson agrees to cooperate with Penn-America according to the terms and conditions of the Policy. In the event of any future conduct by Hutson that constitutes a material breach of the terms or conditions of the Policy or of this Agreement, Penn-America will not be bound by Paragraph 3. with respect to such future conduct by Hutson.

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5. As part of the aforesaid agreement, Hutson agrees that he will enter into a Stipulation to abide by the judgment in the Declaratory Judgment action. It is further agreed that Hutson will not file any counterclaim or separate action against Penn-America with respect to the above-referenced matters, and that Hutson will not attempt to assign any rights he may have against Penn-America related to the above-referenced matters to any third party.

6. Hutson further agrees that he will not assert or attempt to assert any further coverage claims with Penn-America arising from the Released Claims.

7. The Parties expressly represent and warrant that they understand the effect of the things herein agreed to and that no statement or representations made by Penn-America or Hutson, or by any of their agents, representatives and attorneys have influenced the Parties to enter into this Agreement.

8. All parties agree that this Agreement is a product of negotiation and agreement among the parties.

9. The parties agree that entry into this Agreement is not an admission of liability or of any fact or circumstance out of which the claims and/or counterclaims in the Underlying Lawsuits or the Declaratory Judgment Action. The settlement made herein is solely for the purpose of avoiding further litigation between the Parties and is in full and final settlement of all claims released herein.

10. The execution of this Agreement is acknowledged to have taken place in the State of South Carolina. Further, that this Agreement shall be construed pursuant to South Carolina law.

11. All agreements and understandings between the parties hereto are embodied and expressed herein and the terms of this Agreement are contractual and not a mere recital. The

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Parties have read the foregoing Agreement and understand it to be a full, final and binding agreement.

12. This Agreement contains the entire agreement among the Parties with regard to the matters set forth in it. Except as set forth in this Agreement, no representation, warranties, or promises have been made or relied upon by the Parties to this Agreement. This Agreement shall prevail over prior communications between the Parties or their representatives regarding the matters contained herein.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16 day of September, 2016.

WITNESSES:

_________________________ _________________________(SEAL)
M.B. HUTSON a/k/a M.B. HUDSON

____

PENN-AMERICA INSURANCE COMPANY

_________________________ By:_________________________

_________________________ Its:_________________________

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Exhibit J

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

Penn-America Insurance Company,

Plaintiff,

v.

BWR, Inc., on its own behalf and d/b/a Big Water Resort; M.B. Hutson, a/k/a M.B. Hudson; Big Water Resort, LLC; TLC Holdings, LLC; Richard Clark; Jimmy S. Lovell, a/k/a Jimmy "Steve" Lovell; James Thigpen; Ocoee, LLC; William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Defendants.

C/A No.: 2:16-cv-1943 DCN

ORDER OF DISMISSAL

This matter is before the court upon plaintiff's motion to dismiss defendants BWR, Inc., on its own behalf and d/b/a Big Water Resort, and M.B. Hutson, a/k/a M.B. Hudson. This motion was filed on September 29, 2016. It is therefore

ORDERED that plaintiff's motion to dismiss is **GRANTED.** Defendants BWR, Inc., on its own behalf and d/b/a Big Water Resort, and M.B. Hutson, a/k/a M.B. Hudson are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

David C. Norton
United States District Judge

September 30, 2016
Charleston, South Carolina

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:16-cv-01943-DCN

Penn-America Insurance Company, Plaintiff, v. BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson; Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell a/k/a Jimmy "Steve" Lovell, James Thigpen, Ocoee, LLC; William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated, Defendants.	**MOTION TO DISMISS DEFENDANTS BWR, INC., ON ITS OWN BEHALF AND d/b/a BIG WATER RESORT, AND M.B. HUTSON a/k/a M.B. HUDSON**

Pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, Plaintiff Penn-America Insurance Company hereby moves to dismiss the following defendants: **BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson** (hereinafter "the Hutson defendants"). The grounds for this Motion are set forth in the attached stipulation, which is incorporated by reference.

"Rule 41 allows for the dismissal of fewer than all defendants." Protocomm Corp. v. Novell, Inc., 171 F. Supp. 2d 459, 471 (E.D. Penn. 2001). "Where a plaintiff moves for a voluntary dismissal with prejudice it has been held that the district court must grant the request." Id. (citations omitted). The remaining defendants suffer no prejudice from the dismissal of the Reed defendants because they remain able to contest the existence and/or amount of coverage under the policy of liability insurance at issue, as their interests may appear.

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Therefore, Plaintiff respectfully requests that this Court order the dismissal of the Hutson defendants from this action, with prejudice.

Respectfully submitted,

MURPHY & GRANTLAND, P.A.

s/Tim Newton

J. R. Murphy, Esquire (Fed. I.D. #3119)
Timothy J. Newton, Esquire (Fed. I.D. #9807)
4406-B Forest Drive
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff

Columbia, South Carolina
September 29, 2016

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

M & G
MURPHY & GRANTLAND, P.A.

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

September 29, 2016

SENT VIA EMAIL

M.B. Hutson a/k/a M.B. Hudson
BWR, Inc. d/b/a Big Water Resort
6215 Dingle Pond Road
Summerton, SC 2948

M.B. Hutson
1545 Bilmore St.
Orangeburg, S.C. 29115

Re: Penn-America Ins. Co. v. BWR, et al.
Civil Action No. 2:16-cv-01943-DCN
Claim No.: 16012732

Re: TLC Holdings, LLC, *et al.*, v. Hutson
Civil Action No.: 2:16-cv-00003-DCN-MGB
Claim No.: 15004802
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Re: William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder vs. Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC v. M.B. Hutson a/k/a M.B. Hudson
Civil Action No.: 2:14-cv-01583-DCN-MGB
Claim No.: BWR16010406
Insured: BWR, Inc. d/b/a Big Water Resort
Our File No.: 1565-0050

Dear Mr. Hutson:

This letter confirms our agreement by which Defendants **BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson** (hereinafter "the Hutson defendants") stipulate to be bound by the judgment in the above-referenced declaratory judgment action in exchange for a dismissal as parties. Penn-America Insurance Company (hereinafter "Penn-America") brought this action for a declaratory judgment as to its coverage in the above-referenced matters. By agreement between Penn-America and Hutson, the Hutson defendants do not wish to participate in this declaratory judgment and stipulate to be bound by the judgment. Based upon this stipulation, Penn-America will dismiss the Hutson defendants with prejudice.

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Kindly confirm this stipulation by signing on behalf of the Hutson defendants below. Once I receive signed confirmation, the Hutson defendants will be dismissed.

Sincerely,

s/Timothy J. Newton

Timothy J. Newton

TJN/

Morris B. Hutson, Individually,
and as principal in BWR, Inc.

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Exhibit K

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

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

vs.

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Defendants.

TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

ORDER

This matter is before the court on the motion for sanctions filed by third-party plaintiffs TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC ("third-party plaintiffs"), ECF No. 302. For the reasons set forth below, the court grants the motion for sanctions.

BACKGROUND

Third-party plaintiffs previously moved for sanctions against third-party defendant Hutson, ECF No. 179, and also moved for summary judgment on Hutson's

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counterclaims, ECF No. 183. In the previous sanctions motion, third-party plaintiffs pointed to a course of conduct by Hutson which they argued was tantamount to harassment and abuse of the judicial system. The conduct cited by third-party plaintiffs included Hutson's repeated filing of motions lacking factual and legal support, his accusations of criminal conduct and threats to contact law enforcement, and his accusations of unethical conduct by third-party plaintiffs' counsel. See ECF No. 179-1.

Magistrate Judge Mary Gordon Baker issued a report and recommendation acknowledging several improper actions by Hutson, including his continued filing of trial-related motions despite being told that such motions were premature and his refiling of a motion previously denied by Magistrate Judge Bristow Marchant. Magistrate Judge Baker recommended that third-party plaintiffs' previous motion be denied in light of the facts that Hutson was pro se, that he had not been previously warned that his conduct may merit sanctions, that he withdrew some of his offending filings, and that he would no longer be proceeding pro se if this court were to adopt her recommendations to dismiss his pro se counterclaims. ECF No. 270 at 13–14. In an order dated May 20, 2016, this court adopted Magistrate Judge Baker's report and recommendation, declining to impose sanctions on Hutson and granting summary judgment in favor of the third-party plaintiffs on Hutson's counterclaims. ECF No. 280 at 8, n.1.

On April 21, 2017, Hutson filed a motion to reconsider this court's order dismissing his counterclaims. ECF No. 298. Third-party plaintiffs filed a response to the motion, asserting that it failed to identify any new evidence, despite Hutson's claims to the contrary; failed to demonstrate any of the requirements for amending a judgment under FRCP 59(e), and was untimely under that rule; failed to satisfy the requirements of

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FRCP 60; and improperly asked the court to review a state court judgment in a separate proceeding. See ECF No. 300. This court denied Hutson's motion. ECF No. 306.

After Hutson filed his motion to reconsider, third-party plaintiffs then filed the instant motion for sanctions. They argue that Hutson's bad faith intent is evidenced by his motion to reconsider, which lacks legal support, falsely purports to offer new evidence, and repeats the same allegations he has made in numerous filings throughout the course of this litigation. Third-party plaintiffs further assert that no inference can be drawn from Hutson's conduct except that he desires to harass them and increase their legal expense. They incorporate by reference their prior motion for sanctions and supporting memorandum, which sets forth the history of Hutson's conduct. Third-party plaintiffs request both monetary and non-monetary sanctions, the latter in the form of an order barring Hutson from submitting further pro se filings to the court.

STANDARD

The court has the inherent power to impose sanctions on litigants when merited by their conduct:

> Rule 11 has not robbed the district courts of their inherent power to impose sanctions for abuse of the judicial system. In Chambers v. NASCO, Inc., 501 U.S. 32, 49 111 S.Ct. 2123, 115 L.Ed 2d 27 (1991), the Court was quite clear that "the inherent power of a court can be invoked even if procedural rules exist which sanction the same conduct." The Court stated that there was "no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanction for . . . bad-faith conduct . . . ."

Drake v. Ham, 2007 U.S. Dist. LEXIS 58060, at *4 (D.S.C. 2007) (quoting Methode Elecs. v. Adam Techs., 371 F.3d 923, 927 (7th Cir. 2004)). "Due to the very nature of the court as an institution, it must and does have an inherent power to impose order, respect, decorum, silence, and compliance with lawful mandates. This power is organic,

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without need of a statute or rule for its definition, and it is necessary to the exercise of all other powers." United States v. Shaffer Equip. Co., 11 F.3d 450, 461 (4th Cir. 1993). "Sanctions authorized under the court's inherent powers include the striking of frivolous pleadings or defenses, disciplining lawyers, punishing for contempt, assessment of attorney's fees, and outright dismissal of a lawsuit." Drake, 2007 U.S. Dist. LEXIS 58060 at *4-5. Sanctions imposed under the court's inherent power serve the purpose of penalizing and deterring violations of the judicial process. In re Howe, 800 F.2d 1251, 1252 (4th Cir. 1986). The court's inherent power to sanction includes penalties up to and including outright dismissal of the offending party's claims. Chambers v. Nasco, 501 U.S. 32, 44–45 (1991). "[A]n assessment of attorney's fees is undoubtedly within a court's inherent power." Id. at 45. "A court may assess attorney's fees when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons." Id. at 45–46. Unlike the statutory and rule-based sanctioning schemes, which reach only certain conduct, "the inherent power extends to a full range of litigation abuses." Id. at 46.

Further, pro se parties are not exempt from the Rules of Civil Procedure or from the requirements of respect and decorum before the court. District courts must "not allow liberal pleading rules and pro se practice to be a vehicle for abusive conduct." Spears v. Warden FCI Williamsburg, 2016 WL 2935894 (D.S.C. Apr. 20, 2016), at *1.

DISCUSSION

Hutson's status as a pro se party in this matter ended when this court granted summary judgment on his counterclaims in favor of third-party plaintiffs. Since that time, his capacity as a party to this case has been limited to his status as a third-party

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defendant defending the equity indemnity claim. Hutson, however, has continued to make pro se filings in this court.

In his motion to reconsider, Hutson claimed to present new evidence but instead repeated the same arguments he made in his prior filings and failed to identify any new documents or evidence, despite representing to the court that he had the latter.[1] He also asked the court for relief that it lacks jurisdiction to grant.[2] He failed to provide evidentiary support for the factual allegations in his motion. No inference can be drawn that the motion was filed in good faith. Hutson appears to have continued his pattern of frivolous filings and conduct designed to harass or burden third-party plaintiffs, and there is no indication that he intends to cease.

Hutson's response, ECF No. 310, to the pending sanctions motion again makes reference to the alleged fraud by third-party plaintiffs in obtaining the settlement agreement and the order signed by Judge James in the prior state court litigation. Hutson has made these allegations throughout the course of this litigation. He has never, however, specified what the fraud is or submitted evidence of it.

Third-party plaintiffs Clark, Lovell, and TLC have a pending action for defamation against Hutson in the Clarendon County Court of Common Pleas, which they filed in December 2015. While his counterclaims were still pending in this court, Hutson

---

[1] Specifically, Hutson cites the Big Water Resort, LLC meeting minutes of January 16, 2009 as the Rule 60(b) evidence which entitles him to relief from the Order. He asserts that he did not see or obtain this document until 2015. However, he was privy to this document at Steve Lovell's deposition in September 2014, at the latest. He has filed it with the court on at least ten separate occasions. (*See, e.g.*, ECF Nos. 191, 192, 200, 202-1, 216, 228, 233, 237, 251, and 252.) Hutson also relied on this document in opposing third-party plaintiffs' motion for summary judgment.

[2] Hutson asked this court to review a final order in a state court proceeding.

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filed counterclaims in the defamation case that were identical to those he filed in this matter. ECF No. 302-1, at 5–6. After this court ruled that Hutson's counterclaims were barred by res judicata, ECF No. 280, Hutson still refused to dismiss them in the Clarendon County action. Third-party plaintiffs in the state court matter then moved for summary judgment, which was granted in March of this year, in light of the fact that Hutson had previously released those claims in a settlement agreement and that two previous judges had ruled that the claims were barred. ECF No. 302-1, at 5–6.

The reasons that Magistrate Judge Baker gave for recommending the denial of the previous sanctions motion—the facts that Hutson now has counsel and has been warned of his conduct—have failed to alter his behavior.[3] Hutson's recent filing with the court makes repeated reference to his *pro se* status. Hutson has established a pattern of making misrepresentations to the court, of making unsupported allegations of unethical and criminal conduct by third-party plaintiffs, and of using the judicial process as a mechanism of harassment. His meritless filings have wasted untold hours of the court's time. He lacks any evidence to support his counterclaims and other allegations against third-party plaintiffs. Indeed, Hutson routinely fails to provide factual or legal support for anything he files with the court. Accordingly, the court finds that sanctions are appropriate under the court's inherent power.

Third-party plaintiffs request monetary sanctions in the amount of $14,908.50. Third-party plaintiffs' counsel submitted an affidavit of their qualifications and

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[3] Recently, in the state court defamation matter, Hutson sent the liability insurance carrier an email after learning of the carrier's offer of settlement to TLC Holdings, Clark, and Lovell. Hutson directed the carrier to withdraw the offer and threatened suit should the carrier settle the suit. ECF No. 312-1.

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experience, along with a fee detail breakdown showing that this was the amount of legal fees they incurred in responding to Hutson's motion for reconsideration and in preparing their sanctions motion. ECF No. 302-2. They also submitted an affidavit from attorney L. Morgan Martin asserting that third-party plaintiffs' counsel are qualified, well-regarded attorneys and that their rates and fees were reasonable and customary for the nature of the work done. ECF No. 302-3. The court finds that monetary sanctions against Hutson in the amount of $14,908.50 are appropriate. The court finds that the hourly rates of third-party plaintiffs' counsel and support staff are reasonable for the nature of the work done and the community in which it was done. The court further finds that the total hours expended by counsel are reasonable and expected in light of the circumstances and complexity of this case.

Third-Party Plaintiffs also ask the court to impose certain nonmonetary sanctions on Hutson. Specifically, they ask that Hutson be barred from submitting any more pro se filings with the court. The court declines to grant this non-monetary sanction.

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CONCLUSION

For the reasons set forth above, the court **GRANTS** third-party plaintiffs' motion for sanctions. **IT IS FURTHER ORDERED** that third-party defendant Hutson make payment to third-party plaintiffs' counsel in the amount of Fourteen Thousand Nine Hundred Eight and 50/100 ($14,908.50) within thirty days of the entry of this Order.

AND IT IS SO ORDERED.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

October 4, 2017
Charleston, South Carolina

Exhibit L

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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

Civil Action No.: 2:14-cv-01583-DCN-MGB

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Plaintiffs,

vs.

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Defendants.

TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Third-Party Plaintiffs,

vs.

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

Third-Party Defendant.

STIPULATION OF
DISMISSAL WITH PREJUDICE

It is hereby stipulated between the parties to this action that this case be and hereby is dismissed, discontinued, and forever ended with prejudice pursuant to Rule 41(a)(1) of the *Federal Rules of Civil Procedure*, with each party to bear their own attorney's fees and costs. The Third Party Plaintiffs further stipulate that the sanctions ordered by the court by order dated October 6, 2017 (ECF No. 314) in the amount of $14,908.50 have been fully paid and satisfied.

[*signatures on following page*]

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Orangeburg, SC 29116

PRO SE, THIRD PARTY DEFENDANT

TURNER PADGET GRAHAM & LANEY, PA

s/John S. Wilkerson, III

John S. Wilkerson, III, Federal ID No. 4657
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ATTORNEYS FOR DEFENDANTS AND THIRD-PARTY PLAINTIFFS

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ATTORNEY FOR THIRD-PARTY DEFENDANT

April 11, 2018
Charleston, SC

Exhibit M

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-14-00615

TLC HOLDINGS, LLC,
RICHARD CLARK,
JIMMY S. LOVELL,

Plaintiffs,

v.

M.B. HUTSON A/K/A
M.B. HUDSON,

Defendant.

VERDICT FORM

2018 JAN 26 PM 2:07
CLARENDON COUNTY, SC

1. AS TO THE CLAIMS OF ANY OR ALL PLAINTIFF(S), TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL, WE THE JURY UNANIMOUSLY FIND FOR: (check one)

__✓__ PLAINTIFF(S) TLC HOLDINGS, LLC, RICHARD CLARK, JIMMY S. LOVELL

______ DEFENDANT M.B. HUTSON

IF VERDICT IS FOR PLAINTIFF(S), GO TO QUESTION 2.
IF VERDICT IS FOR DEFENDANT, STOP.

2. IF VERDICT WAS FOR PLAINTIFF(S) IN QUESTION 1, THEN STATE THE TOTAL AMOUNT OF ACTUAL DAMAGES NEEDED TO FULLY COMPENSATE THE PLAINTIFF(S).

$ 3.5 Million Actual Damages

Letisha R. Cantey
FOREPERSON

Dated: January 26, 2018

Manning, S.C.

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Exhibit N

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ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2018 May 18 2:02 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CLARENDON COUNTY
COURT OF COMMON PLEAS

George M. McFaddin, Jr., Circuit Court Judge

Case No. 2015–CP–14–0615

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

v.

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

NOTICE OF APPEAL

M. B. Hutson appeals the order of the Honorable George M. McFaddin, Jr., entered April 19, 2018, denying appellant's motion for judgment notwithstanding the verdict or in the alternative for a new trial. Appellant received written notice of entry of this order on April 19, 2018. M. B. Hutson further appeals from the verdict of the jury rendered on January 26, 2018, and from judgment entered thereon or to be entered thereon. M.B. Hutson further appeals the trial court's giving of a jury instruction regarding the common law plea of justification. M. B. Hutson further appeals the denial of appellant's motions for directed verdict at the close of the plaintiff's evidence and at the close of all of the evidence, as well as all other adverse rulings issued at trial.

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by: Frank J. Gordon
Attorneys for Appellant.

May 18, 2018.

OTHER COUNSEL OF RECORD:

John S. Wilkerson, III, Esq.
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Charleston, SC 29413
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Attorneys for Respondent.

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ELECTRONICALLY FILED - 2018 May 18 2:02 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

Exhibit O

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ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2018 May 18 2:45 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

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

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

Plaintiffs,

vs.

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

Defendant.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR STAY OF EXECUTION OF JUDGMENT

Plaintiffs TLC Holdings, LLC, Richard Clark, and Jimmy S. Lovell hereby submit this memorandum in opposition to Defendant's motion for Stay of Execution of Judgment.

Defendant's motion is premised on S.C. Code Ann. § 18-9-130 and Rule 62, S.C.R.C.P. Section 18-9-130(A)(1)(b) provides, in relevant part as follows: "A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or . . . one million dollars, whichever is less." Rule 62(d) provides as follows: "When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court."

Although South Carolina appellate courts have not addressed what criteria are to be considered by the trial court in granting a bond, federal courts have construed Rule 62(d), F.R.C.P.[1] In In re Nassau County Strip Search Cases, 783 F.3d 414 (2d Cir. 2015), the Second Circuit adopted a list of five non-exclusive factors for the court's consideration, which the Seventh Circuit had previously enumerated:

> (1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.

Id. at 417-18 (quoting Dillon v. Chicago, 866 F.2d 902 (7th Cir. 1988)). The U.S. District Court for the Middle District of Florida also cited these factors in U.S. v. O'Callaghan and noted that the defendant "bear[s] the burden to objectively show that waiver of the appeal bond is warranted." 805 F.Supp.2d 1321, 1326 (M.D. Fla. 2011). "[T]he bond requirement should be waived only under 'extraordinary circumstances,' which include either a showing by the appellant that his ability to pay the judgment is so plain that the cost of the bond would be a waste of money, or that the bond requirement would put [appellant's] other creditors in undue jeopardy." Tri County Wholesale Dist., Inc. v. Labatt USA Operating Co., LLC, 311 F.R.D. 166, 172 (S.D. Ohio 2015) (citation and internal quotation marks omitted).

Nevada[2] has also addressed the bond requirement in Rule 62 and found that "a supersedeas bond posted under [Rule 62] should usually be set in an amount that will permit full

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[1] The Notes to South Carolina's Rule 62 state that "[t]his Rule 62 is drawn from the Federal Rule." Federal Rule 62(d) states as follows: "If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond."

[2] Nevada's Rule 62(d) is identical in substance to South Carolina's Rule 62(d).

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satisfaction of the judgment. A [trial] court, in its discretion, may provide for a bond in a lesser amount, or may permit security other than a bond, *when unusual circumstances exist and so warrant.*" McCulloch v. Jeakins, 659 P.2d 302 (Nev. 1983).

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ATTORNEYS FOR PLAINTIFFS

May 18, 2018

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Exhibit P

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2018 Dec 20 9:56 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

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

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

Plaintiffs,

vs.

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

Defendant.

SATISFACTION OF JUDGMENT

Plaintiffs and attorney for Plaintiffs hereby acknowledge accord and satisfaction by which Plaintiffs agreed to accept $1,875,000 as payment in full of the $3,500.000.00 (three million, five hundred thousand dollars and no cents) Judgment rendered for the Plaintiffs against the above named Defendant M. B. Hutson a/k/a M. B. Hudson on or about June 26, 2016 by the Honorable George M. McFadden, Jr. in the Court of Common Pleas, Clarendon County, South Carolina. By our signatures below, we hereby authorize the Clerk of Court to satisfy the Judgment on official court records.

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR PLAINTIFFS

December 20, 2018

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ELECTRONICALLY FILED - 2018 Dec 20 9:56 AM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit Q

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2019 Feb 25 8:42 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

STATE OF SOUTH CAROLINA COUNTY OF SUMTER MB HUTSON A/K/A MB HUTSON, Plaintiff, vs. PAUL WEISSENSTEIN (Attorney)/ PAUL WEISSENSTEIN, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT CASE NO.: 2018-CP-43-1583 **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant's motion for summary judgment. The parties have filed submissions in support of their respective positions, and the Court heard oral arguments from Plaintiff, pro se, and counsel for the Defendant on December 10, 2018. After careful consideration of the pleadings, affidavits, documentary evidence and the arguments of the parties, the Court grants the Defendant's motion for summary judgment.

BACKGROUND

This matter arises out of a long-term dispute between Plaintiff, M.B. Hutson, and non-parties TLC Holdings, LLC, and the individual members of TLC Holdings, LLC (collectively the "TLC Parties"). Defendant, Attorney Paul Weissenstein, represented Plaintiff in one of several lawsuits between Hutson and the TLC Parties. Although not directly related to Weissenstein's representation of the Plaintiff, a recitation of the history between Hutson and the TLC Parties aids in the disposition of this motion.

In fall of 2010, Plaintiff and the TLC Parties began discussing a potential real property and business transaction wherein Hutson would take over a campground known as "Big Water Resort"

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("BWR"), along with the real property on which it was located. At the time of the BWR Transaction, Hutson was not represented by the Defendant Weissenstein, but was represented by a lawyer based out of Tennessee, Andrew Tucker, Esq.

In connection with the BWR transaction, on December 10, 2010 Hutson executed a lease purchase agreement ("LPA") related to real property in Clarendon County, South Carolina on which BWR was located. Plaintiff also purchased the limited liability company that operated BWR ("BWR, LLC").

Prior to the BWR Transaction, BWR, LLC sold what the parties refer to as "lifetime retail membership agreements" ("Lifetime Memberships") to individuals and families who then became members of BWR. These agreements were entered into between BWR, LLC and the campground members, and purported to give the members exclusive access to the campground. Hutson alleges that he did not want to operate a campground, but rather wished to develop residential structures on certain portions of the unimproved Property[1]. At the time of the transaction, Hutson was aware of the Lifetime Memberships.

On November 11, 2010, Hutson's realtor wrote to the realtor for the TLC Parties:

> Attached is Susan's lifetime membership info. (sic) regarding Big Water camp ground. ***My buyer is concerned about the "life time" members and the impact they can have on the future development of the property***. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property.?

[1] For purposes of this motion, the evidence and all inferences which can be reasonably drawn from the evidence are viewed in the light most favorable to the Plaintiff.

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Consistent with Hutson's intention to develop the property, the LPA provided Hutson an opportunity to examine marketable title to the Property, identify any title defects, and potentially terminate the transaction if title defects were not cured. Page 5 of the LPA states:

> Purchaser shall, within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser. Purchaser shall within ninety (90) days after the Effective Date provide Seller notice of any such Title Exception. If Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions. If Purchaser timely notifies Seller of Title Exceptions (other than the Title Exceptions that can be cured by the payment of money to satisfy any liens as of the Closing, which Title Exceptions shall be cured as of the Closing), Seller may (but shall not be required to) cause all Title Exceptions to be deleted as Exceptions from the Title Commitment, as the case may be, on or prior to 30 days prior to closing (the "Cure Deadline"). If Seller fails or refuses to cure any Title Exceptions prior to the Cured Deadline, then Purchaser may, as its sole and exclusive remedy for the existence of, or Seller's failure to cure, such Title Exceptions before the Cured Deadline, elect to terminate this Agreement, or waive its right to terminate this Agreement in writing and accept the Title Commitment with all uncured Title Exceptions.

Hutson and the TLC Parties signed the LPA and related transaction documents in December of 2010.

By November 29, 2011, Hutson defaulted under the LPA and the TLC Parties filed to eject him from the subject property. Defendant Weissenstein represented Hutson in this ejectment action, in which Hutson asserted counterclaims against the TLC Parties for various misrepresentations, including a sewer moratorium, issues with the utility provider, and pending litigation which was to have been dismissed prior to closing on the LPA, but allegedly remained pending as of November 2011. Weissenstein, on behalf of Hutson, did not file a counterclaim

alleging fraudulent concealment of title defects created by the Lifetime Memberships and there is no evidence in the record that such a counterclaim was considered.

Ultimately, the 2011 ejectment action ended in a settlement incorporated into a consent order that, *inter alia*, extended Hutson's time to comply with his payment obligations and attempts to develop the property.

Thereafter, Hutson defaulted under the terms of the settlement agreement, and the TLC Parties again initiated an action to eject Hutson from the subject property. Defendant Weissenstein did not represent Hutson in this subsequent ejectment proceeding, which concluded with an order ejecting Hutson from the property.

In April 2014, a class action lawsuit was filed against the TLC Parties in Federal District Court by over 1,000 putative class members who purchased Lifetime Memberships. *Reed et al. v. Big Water Resorts et al.*, Case no. 2:14-cv-01583 (U.S. Dist. Court, D.S.C.). The TLC Parties filed a third-party complaint against Hutson alleging he was responsible for the damages alleged by the putative class members.

Hutson then counterclaimed against the TLC Parties alleging, *inter alia*, that the TLC Parties defrauded him by failing to disclose that the Lifetime Memberships created a title defect,[2] and that the settlement agreement resolving the 2011 ejectment action was procured by fraud since he was unaware of the alleged title defect created by the Lifetime Memberships.

The District Court adopted the Magistrate Judge's Report and Recommendation dismissing Hutson's counterclaims based upon a theory of *res judicata*. The Court held that

---

[2] Hutson alleges that the Lifetime Memberships were leases that clouded title to the subject property. For purposes of this motion, this allegation is construed in favor of the nonmoving party, Hutson. However, the Court expressly makes no ruling on the merits of this allegation as it is not material to the disposition of the motion.

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settlement of the 2011 ejectment action precluded the re-litigation of counterclaims that were or could have been asserted in the 2011 ejectment action.

In their decisions, the Magistrate Judge and District Judge noted that documentary evidence, deposition testimony, and open court statements by Hutson established that he was aware of the Lifetime Memberships prior to closing, he was aware they may impact title prior to closing, and was, thus, aware of these issues prior to entering into the settlement agreement as part of the 2011 ejectment action. In light of these findings, the Federal Court held that the subject settlement agreement was not procured by fraud. *Reed et al. v. Big Water Resorts et al.*, case no. 2:14-cv-01583 (U.S. Dist. Ct., D.S.C.) (5-20-2016 order of Judge D. Norton) (4-5-2016 Report & Recommendation of Judge M. Baker).

Hutson now alleges that Weissenstein committed legal malpractice by failing to recognize the title defect created by the Lifetime Memberships. In his Amended Complaint, Hutson advances two theories. First, Hutson alleges that Weissenstein failed to advise him that the Lifetime Memberships were a cloud on title that TLC concealed at the time of the LPA. Second, Hutson alleges that, but for Weissenstein allowing him to enter into the settlement agreement as part of the 2011 eviction action, Hutson would not have lost his counterclaim in the Federal class action. Hutson alleges that Weissenstein committed malpractice by failing to assert a counterclaim in the 2011 ejectment action for fraud based upon the TLC Parties' concealment of the cloud on title created by the Lifetime Memberships. Hutson alleges that he would have prevailed on a claim of fraudulent concealment against the TLC Parties.

In support of his claim, Hutson also submitted the expert affidavit of Mark Hardee, Esq., which alleges:

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h. M.B. Hutson intended to purchase and develop property on lake Marion through a lease purchase agreement which also included an on going business.

i. Unknown to Mr. Hutson was that a title defect existed on the property due to hundreds of 70 year right to sole use agreements which had been sold by TLC Holdings, LLC and Big Water Resort.

j. Mr. Hutson was unaware that these agreements constituted a title defect on the property which would keep him from developing the property as planned.

...

o. Mr. Weissenstein fell below the standard of care expected of attorneys in similar situation at the time, by failing to advise Mr. Hutson that the existence and effect of the long term leases would prevent him from ever developing the property as he intended, and that his default of the settlement agreement was inevitable, and that he would be forever barred from prosecuting and using as a defense the fraud perpetrated on him by TLC Holding LLC.

Weissenstein argues that he cannot be liable for Hutson's failure to discover the alleged title defect, as Hutson was represented by a different lawyer with respect to the initial transaction with the TLC Parties, including the LPA.

Weissenstein further argues that the evidence shows Hutson was both aware of the Lifetime Memberships before closing on the LPA, and aware that the Lifetime Memberships could potentially impact title prior to closing on the LPA. Weissenstein avers that after the LPA's ninety day examination period expired, Hutson's could not seek recourse against the TLC Parties for alleged title defects, including in the 2011 ejectment action.

Finally, Weissenstein argues that Hutson's legal malpractice claim is barred by the statute of limitations, since Hutson knew or should have known that no counterclaim for concealment of the alleged title defect created by the Lifetime Memberships was brought in the 2011 ejectment action at the time he signed the settlement agreement.

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LEGAL STANDARD

"Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Rule 56, SCRCP; *South Carolina Prop. & Cas. Guar. Ass'n. v. Yensen,* 345 S.C. 512, 528, 518, 548 S.E.2d 880, 883 (Ct.App.2001). "When ruling on a motion for summary judgment, the trial judge must consider all of the documents and evidence within the record, including the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits." *Anthony v. Padmar, Inc.,* 307 S.C. 503, 415 S.E.2d 828 (Ct. App. 1992). "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)). "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

ANALYSIS

I

In his Amended Complaint, Hutson asserts twelve causes of action styled as "counts of malpractice": (1) breach of duty by attorney #1; (2) breach of duty by attorney #2; (3) negligence; (4) damage to the client/plaintiff; (5) proximate causation of the client's damages by the breach; (6) fraudulent coverup by defendant(s); (7) gross negligence damaging plaintiff; (8) gross negligence; (9) gross negligence: failure to introduce S.C. Law 27-33-30; (10) negligence and lack of concern; (11) allowing fraud upon the court; (12) on-going damages from malpractice.

As an initial matter, although Hutson separately lists his counts of malpractice, each separate count alleges the same thing; that Defendant Weissenstein breached a duty arising out of

the attorney-client relationship. Accordingly, the Court construes all of these allegations as asserting a single claim for legal malpractice consistent with South Carolina Supreme Court precedent. *See, RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 336, 732 S.E.2d 166, 173 (2012) (where a separately plead cause of action is premised on the duty inherent in the attorney-client relationship and arises out of the same factual allegations, the claim for legal malpractice will encompasses the separately plead claim).

II

Moving next to an analysis of Hutson's allegations under the framework of a legal malpractice claim, under South Carolina law, a plaintiff must establish four elements in a legal malpractice action: "(1) The existence of an attorney-client relationship; (2) A breach of duty by the attorney; (3) Damage to the client; and (4) Proximate cause of the client's damages by the breach." *Argoe v. Three Rivers Behavioral Ctr. & Psychiatric Solutions*, 388 S.C. 394, 402, 697 S.E.2d 551, 555 (2010) (quoting *Rydde v. Morris*, 381 S.C. 643, 647, 675 S.E.2d 431, 433 (2009)). Failure to establish any one of the four elements of legal malpractice renders the legal malpractice claim insufficient as a matter of law. *See, e.g., Henkel v. Winn*, 346 S.C. 14, 18, 550 S.E.2d 577, 579 (Ct. App. 2001).

Here, it is undisputed that Hutson and Wiessenstein were in an attorney-client relationship with respect to the 2011 ejectment action. Thus, Hutson has established the first element of a legal malpractice claim with respect to the 2011 ejectment action.

It is likewise undisputed that no attorney-client relationship was present between Hutson and Weissenstein with respect to the initial transaction between Hutson and the TLC Parties, including the examination of title.

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The Court finds that the undisputed facts show that Weissenstein cannot be held liable for an alleged failure to identify title defects created by the Lifetime Memberships. It is indisputable that *before* closing on the LPA, Hutson's realtor sent an email to the TLC Parties' realtor stating, *inter alia,* **"my buyer is concerned about the "life time" memberships and the impact they can have on future development of the property…will these memberships have an impact on obtaining clear title for the property."**

Hutson had knowledge that the Lifetime Memberships could potentially impact title to the subject property. Pursuant to the terms of the LPA, Hutson was required to examine the possible impact of these Lifetime Memberships within ninety days of closing on the LPA. To the extent that an error was made in failing to identify a title defect caused by the Lifetime Memberships, Weissenstein cannot be held liable for such error.

III

Hutson also alleges that Weissenstein committed malpractice by allowing him to sign the settlement agreement ending the 2011 ejectment action without litigating a counterclaim for fraudulent non-disclosure of the title defects created by the Lifetime Membership. Hutson alleges that, as a result of signing the settlement agreement instead of litigating a fraudulent non-disclosure counterclaim, he was precluded from making the same claim in the Federal class action lawsuit against the TLC Parties, on which he would have prevailed. The Court disagrees.

Integral to defeating summary judgment on a claim for legal malpractice is expert testimony expressly stating that the Plaintiff "most probably" would have obtained a better result in the underlying matter "but for" the alleged breach of an attorney's standard of care. *See, Doe v. Howe*, 367 S.C. 432, 445-46, 626 S.E.2d 25 (Ct. App. 2005)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have received a greater

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settlement "but for" the attorney's breach of the standard of care); *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 290, 701 S.E.2d 742 (2010)(affirming summary judgment for attorney when plaintiff's expert did not testify that plaintiff would have obtained a better outcome had the attorneys not breached their standard of care). The question of the success of the underlying claim is a question of law. *Holmes v. Haynsworth, Sinkler, & Boyd, P.A.*, 408 S.C. 620, 636, 760 S.E.2d 399 (2014) citing, *Howe*, 367 S.C. at 442.

Here, the Court finds that Hutson cannot establish that he would have prevailed on a claim for fraudulent nondisclosure of title defects created by the Lifetime Memberships. First, Hutson's expert does not assert that Hutson "most probably" would have achieved a better result. Thus, Hutson cannot establish this essential element.

Furthermore, while ordinarily the issue of proximate cause is a jury question, where there is no genuine issue of material fact concerning proximate cause, the Court may grant summary judgment. *Singleton v. Sherer*, 377 S.C. 203, 659 S.E.2d 196, 206 (Ct. App. 2008). The Court finds that there is no genuine issue of material fact precluding summary judgment.

Here, the evidence is capable of only one reasonable inference. Hutson was aware of the Lifetime Memberships prior to closing on the LPA. Page 5 of the LPA required Hutson to "within ninety (90) days after the Effective Date [of the LPA], investigate Seller's title to the Premises and identify any exceptions to title which are not acceptable to Purchaser." The LPA further states "if Purchaser does not notify Seller in writing of Title Exceptions within ninety days after the Effective Date, then the Purchaser shall be deemed to have accepted title to the premises with all exceptions and conditions."

Accordingly, by the time the TLC Parties initiated the 2011 ejectment action, Hutson had accepted title to the premises with all exceptions and conditions based upon the plain and

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unambiguous terms of the LPA. Thus, Hutson could not prevail on a claim alleging title defects during the 2011 ejectment, as he had already contractually agreed to accept title "with all exceptions and conditions."

Moreover, Hutson had knowledge of the Lifetime Memberships *before* he closed on the LPA, and also was on notice that the Lifetime Memberships could impact clear title to the property *before* he closed on the LPA. Thus, a fraud claim against the TLC Parties with respect to alleged concealment of title defects created by the Lifetime Memberships would necessarily fail.

To establish fraud, the following nine elements must be shown: 1) a representation or nondisclosure of a material fact, 2) its falsity, 3) its materiality, 4) either knowledge of its falsity or a reckless disregard of its truth or falsity, 5) intent that the representation be acted upon, 6) the hearer's ignorance of its falsity, 7) the hearer's reliance on its truth, 8) the hearer's right to rely thereon, and 9) the hearer's consequent and proximate injury. *Kiriakides v. Atlas Food Sys. & Servs., Inc.,* 338 S.C. 572, 586, 527 S.E.2d 371, 378 (Ct.App.2000).

Although Hutson's expert affidavit suggests that Hutson was "unaware" the Lifetime Memberships created a title defect, the documentary evidence in the record before the Court shows that Hutson was, in fact, aware that the Lifetime Memberships could impact title to the subject property. In fact, the Federal District Court made very specific factual findings that Hutson knew about the membership agreements at the time he purchased the Big Water Resort. (4-5-16 Report & Recommendation of Judge Baker at 23, note 5.). Among other things, the District Court notes that Hutson's real estate agent contacted an attorney regarding the lifetime memberships and how they would impact obtaining clear title to the property, Hutson admitted at the District Court hearing he knew there were memberships, and Hutson stated he and his original attorney "sat at the table together and went over" the membership agreements before closing. Therefore, to the

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extent that Hutson alleges the TLC Parties fraudulently concealed that the Lifetime Memberships could impact clear title to the property, the evidence establishes that Hutson was not ignorant to this fact. Accordingly, as a matter of law, Hutson cannot show that he "most probably" would have prevailed against the TLC Parties in a claim for fraudulent nondisclosure of title defects.

The Court finds that, viewing the evidence in the light most favorable to Hutson, no material facts are in dispute and Hutson cannot satisfy all four elements of a legal malpractice claim against Weissenstein.

IV

Weissenstein also argues that Hutson's legal malpractice claim is barred by the statute of limitations. The Court agrees.

The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); *see Berry v. McLeod,* 328 S.C. 435, 444–45, 492 S.E.2d 794, 799 (Ct.App.1997) (concluding that section 15–3–530(5) of the South Carolina Code provides a three-year statute of limitations for legal malpractice actions).

Under the discovery rule, the limitations period commences when the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some claim against another party might exist. *Burgess v. Am. Cancer Soc'y, S.C. Div., Inc.*, 300 S.C. 182, 186, 386 S.E.2d 798, 800 (Ct.App.1989); *see* S.C. Code Ann. § 15–3–535 (2005) ("[A]ll actions initiated under Section 15–3–530(5) must be commenced within three

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years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action."). "This standard as to when the limitations period begins to run is *objective* rather than subjective." *Burgess*, 300 S.C. at 186, 386 S.E.2d at 800. "Therefore, the statutory period of limitations begins to run when a person *could or should have known*, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto." *Id.*

As the Court has described in detail, Hutson was aware of the Lifetime Memberships and the possibility that the Lifetime Memberships could impact clear title to the property prior to closing on the LPA. Therefore, to the extent that Hutson believes a fraud counterclaim should have been asserted by Weissenstein in the 2011 ejectment action against the TLC Parties related to nondisclosure of alleged title defects created by the Lifetime Memberships, Hutson knew or should have known of this claim prior to the conclusion of the 2011 ejectment action. The 2011 ejectment action concluded on April 13, 2012 when Judge James entered a consent order adopting the settlement agreement signed by the parties.

The Court finds that Mr. Hutson knew or should have known that Mr. Weissenstein did not assert a cause of action for fraudulent nondisclosure of alleged title defects caused by the Lifetime Memberships at that time. This action, alleging malpractice against Weissenstein was filed on September 9, 2018. The Court finds that this action was filed after the expiration of the three-year statute of limitations.

V

After consideration of the material in the record, the relevant law, the parties' memoranda, and the oral arguments of the parties, Defendant's motion for summary judgment is GRANTED.

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[Judge's Electronic Signature to Follow]

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Sumter Common Pleas

Case Caption: M B Hutson VS Paul Weissentein

Case Number: 2018CP4301583

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2019-02-23 11:27:58 page 15 of 15

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Exhibit R

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF ~~SUMTER~~ Lexington)

) Civil Action No. 2018-CP-__________

MB Hutson/MB Hudson,

Plaintiff,

2018CP3203879

vs.

FILED
2018 NOV -8 PM 1:58
LISA COMER
CLERK OF COURT
LEXINGTON, SC

Burn Law Firm, LLC,
Stephen "Chip" Burn, Esquire,
Sarah W. Gutherie, Esquire

SUMMONS

Defendants

TO THE DEFENDANTS NAMED ABOVE:

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

Stephen "Chip" Burn, Esquire
945 East Main Street, Suite D
Lexington, SC 29072
803-807-7249 (cell)

Burn Law Firm, LLC
945 East Main Street, Suite D
Lexington SC 29072
803-358-7220

Sarah W. Guthrie, Esquire
945 East Main Street, Suite D
Lexington, SC 29072
803-358-7220

SCANNED NOV-09-2018

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON) Civil Action No. ______________

BURNS
MB Hutson/MB Hudson,
Plaintiff,

2018CP3203879

vs.

Stephen "Chip" Burn, Esq.,
Sarah W Guthrie, Esq., John Doe #1, and

Burn Law Firm, LLC,
Defendants.

COMPLAINT FOR

LEGAL MALPRACTICE

FILED
2018 NOV -8 PM 1:58
LISA COMER
CLERK CP COURT
LEXINGTON SC

I. DEFINITIONS OF MALPRACTICE

A. "A plaintiff in a legal malpractice action must prove four elements:

(1) the existence of an attorney-client relationship,

(2) a breach of duty by the attorney,

(3) damage to the client and

(4) proximate causation of the client's damages by the breach".

The Law of Legal Malpractice in South Carolina. Gray, Jordan, Lindsay, Stepp and Watson (Sowell Gray Robinon Stepp & Laffite, LLC), South Carolina Bar. Continuing Legal Education Division, 2017. p 3.

B. "In Wildasin vs Mathis, 2016, Dist. Lexis 31672 M.D. Tenn. Mar. 11, 2016), a federal court was called to decide whether an association of lawyers could be held vicariously liable for the malpractice of a member. The court found it could."

"ASSOCIATION OF ATTORNEYS CAN BE FOUND VICARIOUSLY LIABLE FOR THE MALPRACTICE OF MEMBERS EVEN IF NOT A FIRM" Posted May 18, 2016 by fgiannoni. Crystal Lawyers for Lawyers a cgcfirm,com

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II. JURISDICTION AND VENUE

WHEREAS MB Hutson/Hudson, hereby referred to as Plaintiff, resides in Orangeburg, South Carolina and Defendant, Stephen "Chip" Burn, herein referred to as Defendant, whose law office is in Lexington, SC and said Malpractice occurred in Lexington County at Defendant's law office.

III. HISTORY

A. Plaintiff retained Defendant / Attorney Burn to represent him in litigation involving TLC Holdings, LLC and Big Water Resort on October 25, 2011. Defendants Burn and Guthrie both actively participated in the representation of the Plaintiff[1], who intended to purchase and develop property on Lake Marion through a Lease Purchase Agreement[2] that also included an on-going business, Big Water Resort.[3]

B. Unknown to Plaintiff was that a title defect existed on the property due to hundreds of one and two lifetime agreements for "rights to use campground facilities and services solely for Member's..." which had been sold by TLC Holdings, LLC and Big Water Resort which equated to approximately 30 to 70 years.[4]

[1] Exhibit 3.0: Letter from Guthrie, Esq. for Burn, Esq. to Tom Harper and TLC Holdings, LLC owners, Thigpen, Clark, and Lovell dated 12-30-2013.
[2] Exhibit 5.0: Lease Purchase Agreement
[3] Exhibit 4.0: Membership Interest Purchase Agreement
[4] Exhibits 1.1-1.3: Retail Membership Agreements; 3 samples, 2pp. each

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C. Plaintiff was unaware that these agreements constituted a title defect on the property that would prevent him from developing the property as planned. The project was doomed from the start due to those title defects created by the 740 Retail Membership Agreements and other misrepresentations made by TLC Holdings, LLC.

D. TLC Holdings, LLC brought an eviction action against Plaintiff and Burns Law Firm formally became attorney of record via substitution January 6, 2014[5]. This transfer was activated with a $4,500.00 cash deposit by the Plaintiff to the Defendants. *Verification of Malpractice element #1, the existence of an attorney-client relationship).*

E. Plaintiff was aware that Defendant had one or two additional full time attorneys working in that office during the contract period between the Defendant and Plaintiff. One of those attorneys, Sarah W. Guthrie, Esquire, wrote a letter dated December 30, 2013 relative to this defense[6].

F. Defendant reviewed Plaintiff's contracts which consisted of "Lease Purchase Agreement", "Membership Interest Purchase Agreement" (which was the purchase of the existing business, Big Water Resort), and the "Retail Membership Agreements" which was a contractual agreement to allow Family Memberships sold prior to Plaintiff's arrival to have sole use of the property for their recreation and enjoyment for up to one and/or two lifetimes, Settlement Agreement with plat and Consent Order.

[5] Exhibit 10: "Notice and Substitution of Attorney" 2011-CP-14-602
[6] "In Wildasin vs Mathis, 2016, Dist. Lexis 31672 M.D. Tenn. Mar. 11, 2016, a federal court was called to decide whether an association of lawyers could be held vicariously liable for the malpractice of a member. The court found it could."

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G. Plaintiff had various meetings with Defendant for the purposes of reviewing all contracts and other related paper work including proposed subdivision plats since Plaintiff's only desire, as outlined in the contracts, was to develop the property.

H. Within a few days, *Defendant advised Plaintiff that he did not have sufficient evidence to prevail in his proposed counter claims based on all the paper work that had been provided to him by the Plaintiff, including his own research and suggested that Plaintiff consider allowing Defendant to file for a Restraining Order in hopes of preventing the eviction. Defendant also stated to Plaintiff that he was not certain about a positive outcome due to little to no evidence to defend the on going eviction based on his professional opinion.*

I. Having been given no other choice Plaintiff took Defendant's negative summary as to be impossible to defend and consequently filed for Chapter 11 in hopes to have a negotiating position preventing the eviction. Plaintiff failed to survive under the Chapter 11 and was evicted losing all equitable interest appraised at $900,000.00 to $1.3M and was damaged in various other ways.

IV. COUNT ONE OF MALPRACTICE: A BREACH OF DUTY BY ATTORNEYS

A. BREACH OF DUTY: Defendants, after reviewing the contracts, failed to recognize that TLC Holdings, LLC concealed relevant and material statements of fact regarding the usefulness and ability to develop the property because factual evidence within the contracts proved that the property could never be developed nor sold for any uses other than the recreation of the owners of the Retail Membership Agreements. Therefore, Burn LLC and all the attorneys therein failed to recognize that the Lease Option to Purchase was fraudulent because the

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property could never be developed and sold for private residences out from under the "right to use" of all the land which was held contractually by the member families. Verification of Malpractice Element #2 : a breach of duty by the attorney.

B. DAMAGE TO CLIENT: Plaintiff was damaged well over $2M dollars, losing his equitable interest,[7] invested cash in monthly payments to Seller, monies toward professionals (surveyors, engineers, etc.), sued twice by Sellers (twice in Federal Court and once in State Court with a $3.5M Judgment.)

Elements of Malpractice (3) damage to the client

C. PROXIMATE CAUSATION OF CLIENT'S DAMAGES BY THE BREACH: Since the Defendant attorneys' failed to recognize that the Plaintiff had been caught in a fraud by the Sellers who acted and contracted to sell him land that was not legally theirs to sell due to a lack of good marketable title, caused by the contractual Retail Membership Agreements owned by 740 families for their recreational and "sole" use of all the land for one and two lifetimes, the Plaintiff struggled for months afterward to retain his equitable interest and to move forward on an impossible development that resulted in the Sellers dragging him through State and Federal Court actions for several years, and untold financial expense, hardship, and blind stress.

Elements of Malpractice (4) proximate causation of damage to the client

[7] Bon Gardner affidavit of Equitable Interest: Exhibit 8.0

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EXCEPTIONS TO THE REQUIREMENT OF EXPERT TESTIMONY[8]:

"One exception to the expert testimony requirement is based on "common knowledge."[9] This exception applies when the subject matter of the breach of duty is something of common knowledge to laypersons.[10] However, the applicability of this exception depends on the facts of each particular case, and "the plaintiff must offer evidence that rises above mere speculation or conjecture."[11]

This complaint for malpractice meets these exceptions to the requirement for Expert Testimony due to the fact that:

> any layman can understand that any Seller of real estate (land) cannot enter into a seventy (70) year contractual agreement, pre-collecting all moneys from 740 families giving THEM "sole" use of that property *while at the same time* quietly entering into a sales agreement to sell that same property to a third party which requiring the third party (Buyer) to close on or before 24 months and *develop that same property* for private homes. This is illegal and civil fraud combined.

STATUTE: Plaintiff noticed Defendants on the ninth day of November, 2015 of their breach of duty, his willingness to settle and plans to take other action. Defendants did

---

[8] The Law of Legal MALPRACTICCE in South Carolina, Gray, Jordan, Lindsay, Stepp, and Watson/Sosell gray Robinon Stepp & Laffitte, LLC, South Carolina Bar, pub., 2017.

[9] *See, e.g., Mali v. Odom* 295 SC 78, 80-81, 367 S.C.2d 166, 168 (Ct. App. 1988)' *Southeastern Hous. Found v. Smith*, 380 S.C. 621, 648, 670 S.E.2d 680, 694 (Ct.App. 2008).

[10] *Southeastern Hous. Found. V. Smith*, 380 S. C. at 648; *Sims v. Hall*, 357 S. C. 288, 295-96, 592 S.E.2d 315, 319 (Ct. App. 2003).

[11] *Cianbro Corp. v. Jeffcoat and Martin*, 804 F. Supp. 784, 791 (D.S.C. 1992) (quoting *Hickman v. Sexton Dental Clinic, P.A.*, 295 S.C. 164, 367 S.E.2d 453 (Ct. App. 1988)).

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not respond, given every opportunity and time. Therefore, this complaint is filed within the statute on November 8, 2018.

THEREFORE Plaintiff prays for the following:

A. This case be taken before a jury.

B. Defendant be held totally liable for all damages to the Plaintiff.

C. Permit all actions by the Honorable Court to make the Plaintiff whole.

D. Plaintiff requests a speedy trial due to on-going damages and suffering.

E. Plaintiff is Pro Se and diligently seeks complete justice.

F. Defendant not be allowed to sell, transfer, assign, legally hide any of his assets or any joint ownership of any kind including business, partnerships, stocks and/or bonds, weekly income (including any agreed percentage of income caused by any attorney working in his office part time or full time) until this case has been presented to a jury.

G. Plaintiff be given special consideration as Pro Se.

H. Plaintiff be allowed to file online to send and receive all documents regarding this case due to hardship and driving distance.

I. Plaintiff asks for Punitive damages due to gross negligence.

J. Allow the Defendant to be responsible for all Plaintiff's costs for having to sue Defendant for restitution and damages.

K. Allow Plaintiff to include in this complaint any associated attorneys due to association as additional defendants (John Doe) at the time this Malpractice

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occurred (2011-2014) based on "Wildasin vs Mathes 2016".

All document evidences are hereby attached to this Complaint.

Filed on the 8th day of November 2018

MB Hutson
803 308 2714
1545 Biltmore Street
Orangeburg, South Carolina
29115

SCANNED NOV-09-2018

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STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)

IN THE COURT OF COMMON PLEAS

MB Hutson / MB Hudson
Plaintiff(s)

CIVIL ACTION COVERSHEET

2018 NOV -8 PM 1:57

vs.

_____-CP-_____-_____

2018CP3203879

Burn Law Firm, LLC

CLERK OF COURT ... SC

Defendant(s)

Submitted By: MB Hutson / MB Hudson
SC Bar #:
*Address: P.O. Box 2755
Orangeburg S.C. 29116
*Telephone #: 803 308 2714
Fax #:
Other:
E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

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

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- ☐ PCR (500)
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Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
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- ☐ Death Settlement (700)
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- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

*Submitting Party Signature: [signature] Date: ______

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

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit S

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2019 Apr 10 3:51 PM - LEXINGTON - COMMON PLEAS - CASE#2018CP3203879

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 **CP**-32-3879

M. B. HUTSON

PLAINTIFF(S)

BURN LAW FIRM, LLC.

DEFENDANT(S)

Submitted by: COURT	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☒ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

This matter initially came before the Court on January 24, 2019 for a hearing on Defendant's motion to dismiss. By a form order dated February 12, 2019, the Court denied the Defendant's motion to dismiss and granted Plaintiff thirty-five (35) days to file an expert affidavit as required pursuant to Section 15-36-100.

The Plaintiff subsequently filed a motion for reconsideration on March 18, 2019 and an addendum on March 26, 2019. Defendant filed a memorandum in opposition on March 26, 2019. The Court has reviewed all subsequent filings and considered fully the issues in this case.

The requirements of Section 15-36-100 are clear. In a legal malpractice action, an expert affidavit must be filed with the pleadings attesting to the validity of the underlying action. Although Plaintiff maintains that his factual scenario represents a common knowledge exception to the affidavit requirement, the Court disagrees. As much as this Court may sympathize with Plaintiff's loss and the emotional stress this has caused him, this Court cannot ignore the law.

Accordingly, the Court finds that this matter must be dismissed due to Plaintiff's failure to file the affidavit required pursuant to Section 15-36-100 within the timeframe of the Court's February 12, 2019 Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : ______

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	2159	April 10, 2019
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

Pro Se	William Hammond Jordan
	J. Calhoun Watson
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter: Thelma Salters (for hearing of January 24, 2019)

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2019 Apr 10 3:51 PM - LEXINGTON - COMMON PLEAS - CASE#2018CP3203879

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Exhibit T

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA

COUNTY OF Richland

IN THE COURT OF COMMON PLEAS

ms Hutson/Hutson

Plaintiff(s)

CIVIL ACTION COVERSHEET

2018-CP-40 6156

vs.

Atlantic Coast Properties

Defendant(s)

Submitted By: M Hutson

Address:

SC Bar #:
Telephone #: 803 308 2714
Fax #:
Other:
E-mail: [illegible]@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION *(Check all that apply)*

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- [ ] This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- [ ] This case is exempt from ADR. (Proof of ADR/Exemption Attached)

RICHLAND COUNTY FILED 2018 NOV 26 JEANETTE W. McBRIDE C.C.P.

NATURE OF ACTION *(Check One Box Below)*

Contracts
- [ ] Constructions (100)
- [ ] Debt Collection (110)
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- [ ] Pre-Suit Discovery (670)

Submitting Party Signature: [signature] **Date:** Nov 26, 2018

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Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

RICHLAND COUNTY FILED
2018 [illegible] PM 1:[illegible]
JEANETTE W. MCBRIDE C.C.P. & G.S.

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ~~SUMTER~~ Richland	)	
	)	Civil Action No. 2018-CP-__________
MB Hutson/MB Hudson,	)	
Plaintiff,	)	SUMMONS
vs.	)	
Atlantic Coast Properties, John Doe #1, John Doe #2,	)	
Defendants	)	

RICHLAND COUNTY
FILED
2018 NOV 26 PM 1:34
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS NAMED ABOVE:

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

MB Hutson/Hutsen	Atlantic Coast Properties
Post Office Box 2755 Orangeburg, SC 29116-2755 803.308.2714	628 West Columbia Avenue Batesburg-Leesville, SC 29006 803.604.8540

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

) Civil Action No. 2018-CP-____________

Marcus Hutsen/Hutson,)

Plaintiff)

vs.)

Atlantic Coast Properties, John Doe #1, John Doe #2)

Defendants.)

COMPLAINT FOR BREACH OF CONTRACT/DURESS AND EQUITABLE INTEREST

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2018 [illegible] 26 PM 1:34
JEANETTE W. MCBRIDE C.C.P. & G.S.

The Plaintiff, upon information and belief, would respectfully show unto this Honorable Court:

JURISDICTION AND VENUE

1. Plaintiff, Marcus Hutsen/Hutson hereinafter referred to as Buyer, resides in Orangeburg, South Carolina.
2. Defendants hereinafter referred to as Sellers, is located at 628 West Columbia Avenue in Batesburg-Leesville, South Carolina.
3. The subject property consisting of 37.5 acres more or less[1] located on Cora Drive in Richland County, South Carolina.

[1] Beginning at an iron pin found on the northern right-of-way line of Cora Drive (S 40-2415), which is located 0.04 miles east of the northeast right-of-way intersection of Cora Drive and Singleton Drive and running from said iron pin found, leaving the road right-of-way and running with the property lines of residential lots five (5) calls: N29°04'47"E a distance of 164.63 ft. to an iron pin found; thence N28°59'08"E a distance of 189.70 ft. to an iron pin found; thence N29°05'45"E a distance of 189.66 ft. to an iron pin found; thence N28°59'22"E a distance of 214.94 ft. to an iron pin found; thence N30°12'49"E a distance of 578.10 ft. to an iron pin found, which is a corner of the Crane Forest Subdivision; thence running with the residential lots on Crane Forest Subdivision eight (8) calls: S60°55'56"E a distance

4. Venue is proper in this court pursuant to S.C. Ann. §15-7-30(C) because the most substantial part of the alleged acts giving rise to the cause of this action occurred in and/or relative to the property located in Richland County.
5. This Court has jurisdiction over the parties and the subject matter of this action.

FACTUAL ALLEGATIONS

6. Defendants' abandonment of the project years earlier left the project in the following condition:

   i. Property, a partially finished subdivision, had some utility/infrastructure improvements installed, but Defendant had abandoned the project back in 2008 and all existing permits had expired.

---

of 431.43 ft. to an iron pin found; thence S60°59'59"E a distance of 234.01 ft. to an iron pin found; thence S60°47'09"E a distance of 78.37 ft. to an iron pin found; thence S60°48'42"E a distance of 155.67 ft. to an iron pin found; thence S60°20'25"E a distance of 242.58 ft. to an iron pin found; thence S59°07'27"E a distance of 80.09 ft. to an iron pin found; thence S59°39'44"E a distance of 156.61 ft. to an iron pin found; thence S60°26'42"E a distance of 93.18 ft. to an iron pin found; thence, leaving the Crane Forest Subdivision line and running with the property line of several residential tract of land five (5) calls: S45°51'49"W a distance of 216.00 ft. to an iron pin found; thence S46°56'18"W a distance of 792.95 ft. to an iron pin found; thence S46°55'50"W a distance of 581.42 ft. to an iron pin found (crossing an iron pin found on line at 336.80 ft.); thence N76°32'01"W a distance of 438.14 ft. to an iron pin found on the southern right-of-way of Cora Drive; thence running with the southern right-of-way of Cora Drive (S 40-2415) two (2) calls: S79°46'10"E a distance of 117.79 ft. to an iron pin found; thence S72°17'00"E a distance of 24.22 ft. to an iron pin set; thence, crossing with the right-of-way of Cora Drive to the north side of Cora Drive (S 40-2415) N16°52'51"E a distance of 66.03 ft. to an iron pin set; thence running with the northern right-of-way of Cora Drive (S 40-2415) eight (8) calls: N73°28'17"W a distance of 31.72 ft. to an iron pin found; thence N79°33'29"W a distance of 50.00 ft. to an iron pin found; thence N79°37'03"W a distance of 170.92 ft. to an iron pin found; thence N79°36'09"W a distance of 134.94 ft. to an iron pin found; thence N79°33'44"W a distance of 135.27 ft. to an iron pin found; thence N79°31'14"W a distance of 53.68 ft. to an iron pin found; thence N83°54'25"W a distance of 80.75 ft. to an iron pin found; thence N83°39'41"W a distance of 188.66 ft. to an iron pin found, the point and place of beginning, containing 37.778 Acres, subject to all rights-of-way and easements. TMS # 9501-03-08 Property Address: One Cora Drive, Richland, S. C. 29203

[2] AGREEMENT, 08/02/2018, Exhibit "1.0"
[3] Lis Pendens; #2018LP4001597 filed November 7, 2018; EXHIBIT "2.0"
[4] The Fraud Trial, Association of Certified Fraud Examiners (ACFE) "Concealment of Material

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ii. The proposed subdivision was proposed and approved for 42 lots. The work had been engineered by Thomas Britt, PE, HB Engineering (in behalf of the Defendants). Proposed drawings had been approved to start construction and Defendants did start construction.

iii. Approximately halfway into developing the infrastructure, Defendants abandoned the project (around 2008) without getting the municipalities' required abandonment approvals that further complicated the project.

iv. Approximately ten (10) years later, Defendants decided to advertise that same unfinished development for sale.

7. Plaintiff entered into a contract to purchase this project.

8. • Plaintiff accumulated approximately $700,000.00 in equitable interest in said property due to his work in getting some approvals. However, Plaintiff ran out of time due to the numerous complications created by the Seller's abandonment and subsequent expired approvals.

9. On, August 2, 2018, Plaintiff went into Defendants' attorney's office to review and execute a new contract.[2] At that time, Plaintiff was desperate to continue to move forward due to his accumulated expenses. Plaintiff had obligated himself to $35,000.00 dollars to surveyors and engineers and had applied for a sketch-plan approval for 98 lots due to the fact that the zoning had changed over the past years. (Plaintiff's sketch-plan was approved by Richland County for 98 residential lots but Plaintiff was unable to obtain the full rights of his due diligence to allow Plaintiff to comply with other municipal requirements creating great financial exposure and lost to Plaintiff.)

[2] AGREEMENT, 08/02/2018, Exhibit "1.0"

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10. Therefore under duress, Plaintiff signed the agreement which contained: a fraudulent inducement prepared by Defendants' attorney, namely a built in release for any wrong-doings on the Defendants' part in exchange for allowing Plaintiff an additional sixty-seven (67) days to close.

11. Plaintiff has paid $3,000.00 to the Defendants to be applied toward the purchase price. Currently, Plaintiff holds a valid Lis Pendens[3] against said property.

FOR A FIRST CAUSE OF ACTION

BREACH OF CONTRACT

12. The contract allowed Plaintiff the right to "due diligence," but the Defendants refused to allow the Plaintiff to dig holes or drill in order to certify to the Richland County and City of Columbia that the roads and sub-base (including the ground under the streets) met the *new* standards of compaction testing. This is a municipality requirement prior to acquiring new permits. Those new permits are required due to Defendants' abandonment beyond the life of the original permits. All previously acquired *permits had expired years earlier due to the Defendants' unauthorized abandonment*. New permits must be obtained, or the municipalities could require the Buyer/Plaintiff to remove and replace all existing streets costing hundreds of thousands of dollars. The Plaintiff needed to be sure the subdivision could, in fact, be legally completed with all the new required inspections. The Defendants denied him that contractual right.

[3] Lis Pendens; #2018LP4001597 filed November 7, 2018; EXHIBIT "2.0"

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FOR A SECOND CAUSE OF ACTION:

(FRAUD: NON-DISCLOSURE OF SELLER TO BUYER OF REAL ESTATE)

13. Per the Municipalities, Defendants failed to apply for the proper abandonment approvals. The procedure for abandonment of a subdivision is subject to the following requirements and considerations:

A) Filing and Review. To initiate the procedure, an application for abandonment of a subdivision, describing thereon the reasons and future use of the affected property, must be filed with the planning director together with a map of the abandonment, letter(s) from utilities consenting to the abandonment, consents of applicable property owners, copy of the previously recorded subdivision plat, a current title report and all other related documents required by the county, and the appropriate processing fees as set forth in the adopted planning and development services and public works fee schedules.

B) County Review of Application: Upon acceptance of application for abandonment, the planning department, public works department and other applicable county departments shall review the proposed abandonment. The planning director shall correlate the findings of all applicable departments.

14. Defendants did not disclose to the Buyer pertinent material facts:

A) that there were illegal actions surrounding the abandonment of the property, and

B) That there were subsequent expirations of approvals claimed to be in place.

15. Concealment of Material Facts, when a Defendants has a *duty to disclose* as in real estate sales, is fraud.[4] The Defendants had knowledge of the inappropriate abandonment and incomplete status, which is a material fact that Defendanst had a duty to disclose, yet failed to do so with the

[4] The Fraud Trial, Association of Certified Fraud Examiners (ACFE) "Concealment of Material Facts", p.11, ¶ 2-3. EXHIBIT 3.0.

intent to mislead or deceive the Plaintiff/Buyer. This deliberate non-disclosure caused the Plaintiff/Buyer financial harm, and constitutes civil fraud[5]. Intentional fraud is not releasable.

FOR A THIRD CAUSE OF ACTION:

(DURESS)

16. Plaintiff was put into a position of Duress for had he not executed the extension contract (unfair release executed under duress in favor of the Defendants due to Defendants' concealment of material facts and lack of factual disclosures prepared by Defendants' attorney), Plaintiff would have lost all monies, equitable interest in the property and continued to hold a $35,000.00 liability.

17. During Plaintiff's hard work, Plaintiff had an out of state buyer who put in writing a purchase agreement for all lots of $2M dollars.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff is entitled to and prays for the following relief:

a) Entry of judgment in favor of Plaintiff on all causes of action against the Defendants including that Plaintiff be allowed to fully complete his due diligence by acquiring all necessary permits allowing Plaintiff to have a concurrent closing as stated in the original contract.

b) An award to Plaintiff of actual damages from Defendants in an amount to be determined at trial.

c) Judge will prevent Defendants from selling, assigning, conveying or encumbering the property described herein until a verdict from a jury is obtained.

[5] The Fraud Trial, Association of Certified Fraud Examiners (ACFE) "Elements of Criminal and Civil Fraud", p. 6, ¶1. EXHIBIT 4.0.

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d) An award to Plaintiff of punitive damages from Defendants in an amount to be determined at Trial.

e) An award to Plaintiff of costs (including that the $3,000.00 be applied towards the purchase closing cost), pre-judgment interest, and fees from Defendants;

f) A jury trial on all issues so triable and in a speedy manner;

g) Plaintiff be allowed to drill or dig at Plaintiff's own risk being responsible for any unforeseen damages in order to facilitate inspections.

h) Defendants must extend the contract until all necessary permits are obtained and satisfied including the required submittable plats to be approved by the municipalities.

i) Allow all disputes to be handled by the jury.

Respectfully Submitted on this 26th day of November. 2018.

MB Hutsen/Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116
803 308 2714

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EXHIBIT 10
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AGREEMENT

HERETOFORE, Atlantic Coast Properties, LLC on or about October 18, 2017 entered into an agreement (Contract of Sale) to sell approximately 37 acres identified as 1 Cora Drive in Richland County, South Carolina (also known as Cora Dr. AKA Heyward Brockington), to H.R. Boyd II IRA, LLC. Thereafter, on or about November 3, 2017 all rights under that agreement were assigned by H.R. Boyd II IRA, LLC to Marcus Hutsen (a/ka/ Morris Hutsen "Assignee").

WHEREAS, on or about April 11 and 12, 2018, Buyer Marcus Hutsen, as Assignee, and Seller Atlantic Coast Properties, LLC agreed to extend the original closing date until July 16, 2018.

WHEREAS, Assignee has requested an additional extension of the terms of the contract of sale requiring a closing date of on or before July 16, 2018, and Seller is agreeable to providing an extension upon the following conditions:

1. That Assignee hereby, as part of the consideration for the assignment, agrees to release and discharge, and by these presents, does for himself and his heirs, executors, administrators, representatives and assigns, release and forever discharge the Seller Atlantic Coast Properties, LLC (a/k/a Atlantic Coast Properties), its employees, agents, representatives, officers and directors, and all other persons, firms, and corporations both known and unknown, of and from any and all claims, demands, damages, actions, causes of action, or suits at law or in equity, of whatsoever kind or nature, for or because of any matter or thing done, omitted or suffered to be done by anyone prior to and including the date of execution of this agreement and arising out of any aspect of Assignee's assignment of the rights of H.R. Boyd II IRA, LLC regarding the approximately 37 acres identified as 1 Cora Drive, Richland County, South Carolina and any and all attempts to exercise his rights, or any part of them, under the assignment and any allegations by the Assignee of any wrongdoing whatsoever, including in addition to the above but not limited to, claims of tortious interference with contract, any and all damages caused by delays or alleged delays, lack of any disclosure or disclosures related to the land in any way by either the Seller, its agent or anyone affiliated with it as described more expansively above, and all of which alleged liability and damages being expressly denied by Seller; further Assignee Marcus Hutsen specifically acknowledges that the property has never been subdivided and that Seller has never represented, nor authorized any agent or other person or entity to represent that the property was ever subdivided or consisted of 42 lots or any other number of lots and that Seller has not, and does not, make any representations as to what use Buyer or anyone else may make of the land; and

2. Time for Buyer to close on the purchase of the property is extended, and the due diligence period is extended from July 16, 2018 to September 27, 2018 (approximately 67 days).

EXHIBIT 1.C
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3. Buyer will take whatever steps are necessary to have the Lis Pendens he has filed to be rescinded, cancelled or otherwise released and voided so that it does not place any cloud on the title or hinder Seller's ability to sell, transfer, encumber or otherwise utilize the property within 10 days of the execution of this Agreement.

4. ERA Wilder Realty can transfer the $3,000.00 earnest money being held by them to Atlantic Coast Properties, LLC.

5. Buyer to provide Seller with copy of his current driver's license or current U.S. passport at the time of execution to be attached to this Agreement.

The herein agreement, upon its full and complete execution by both parties is herewith made an integral part of the aforementioned contract of sale agreement between Seller and H.R. Boyd II IRA.

All other terms and conditions of the original contract dated October 13, 2017 shall remain the same.

This offer of extension expires unless accepted in written form and delivered to the seller prior to Tuesday, July 31st at 12:00 p.m. and is effective as of the date of the signature of the authorized representative of Atlantic Coast Properties, LLC.

BUYER: CAUTION READ BEFORE SIGNING. THIS AGREEMENT INCLUDES A FULL, FINAL, AND COMPLETE RELEASE OF CLAIMS OF THE BUYER. THIS RELEASE ENDS ALL CLAIMS OF BUYER, WHETHER KNOWN OR UNKNOWN, EXISTING PRIOR TO ITS EXECUTION.

The parties acknowledge that Daryl G. Hawkins and Law Office of Daryl G. Hawkins, LLC have only represented Atlantic Coast Properties, LLC in this matter and have not provided any representation to any other person or entity.

BUYER: [signature] Date: Aug 2, 2018 Time: 11:31
Marcus Hutsen a/k/a Morris Hutson
(Signature)

WITNESS: [signature] Date: 8/2/18 Time: 11:31

SELLER: Atlantic Coast Properties, LLC Date: 8/2/18 Time: 11:46

By: [signature] M. Holmes
Signature
Jerry M. Holmes
Print Name

WITNESS: Karen Jenkins Date: 8/2/18 Time: 11:47

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EX. 1.2

second extention

ADDENDUM/AMENDMENT TO

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☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: ______

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: ______

Further described or commonly known as:

Address 0 Cora Drive AKA Heyward Brockington Unit # ______

City Columbia State of South Carolina

Other ______ TMS 09501-03-08

The undersigned Parties hereby agree as follows:

Buyer and seller agree to extend the contract closing date until April 15th, 2018 to allow for the necesary approvals of government agencies.

Realtor & Seller were aware that Title was defective. the contract in the spring of the contract

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at ______ ☐ AM ☐ PM on ______ ______ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: DocuSigned by: Marcus Hutson 6341B7F51A6945D... **Date:** January 10, 2018 **Time:** 1:22 PM EST

BUYER: ______ **Date:** ______ **Time:** ______

______ **Date:** ______ **Time:** ______

______ **Date:** ______ **Time:** ______

SELLER: DocuSigned by: [signature] 4CF0D6F9FE36465... **Date:** January 9, 2018 **Time:** 1:21 AM EST

SELLER: ______ **Date:** ______ **Time:** ______

______ **Date:** ______ **Time:** ______

______ **Date:** ______ **Time:** ______

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[____] BUYER [____] BUYER [____] SELLER [____] SELLER HAVE READ THIS PAGE

ERA Wilder Realty - Irmo, 1084 Lake Murray Blvd Irmo, SC 29063 Phone: 803 445-5456 Fax: Untitled
Thomas Webb
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Ex 1.4

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LAST extention

ADDENDUM/AMENDMENT TO

☐ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: ______
COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: ______

Further described or commonly known as:

Address Cora Dr AKA Heyward Brockington Unit # ______
City Columbia State of South Carolina
Other ______ TMS 09501-03-008

The undersigned Parties hereby agree as follows: Buyer and Seller agree to extend contract closing date until July 16, 2018. All terms and conditions of the original contract dated October 13, 2017 shall remain the same.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at ______ ☐ AM ☐ PM on ______ ______ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: DocuSigned by: Marcus Hutsen — April 11, 2018 | 5:09 PM EDT
Marcus Hutsen Date: 04/11/2018 Time: ______
BUYER: ______ Date: ______ Time: ______
______ Date: ______ Time: ______
______ Date: ______ Time: ______

SELLER: DocuSigned by: [signature] Date: April 12, 2018 | 5:10 PM EDT Time: ______
Atlantic Coast Properties
Catherine Carrol for Atlantic Coast Properties
SELLER: ______ Date: ______ Time: ______
______ Date: ______ Time: ______
______ Date: ______ Time: ______

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ERA Wilder Realty - Lexington, 5078 Sunset Blvd Lexington, SC 29072 Phone: 803-518-9384 Fax.
Phil Carter Howard Boyd
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LAND, LOTS AND ACREAGE OFFER TO PURCHASE

(Standard Form of The Greater Columbia Association of REALTORS®, Rev. 01/05.) This form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics and Standards of Practice.

BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

THE ☐ BUYER ☐ SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. **DATE** A contract to purchase is offered this 13th day of October, 2017 by HRBOYDII IRA LLC, Purchaser(s) to Atlantic Coast Properties, Seller(s).

2. **PROPERTY DESCRIPTION** Subject to terms and conditions herein, Seller agrees to sell and Purchaser agrees to buy the following described property with improvements and fixtures thereon:

   Lot ______ Block ______ Section ______ Subdivision ______

   Address 1 Cora Dr

   Tax Map # 09601-03-008 City Columbia Zip 29203

   County of Richland, State of South Carolina. [initials: CEAC]

3. **PRICE** The sales price is $ ~~249,000.00~~ $300,000.00 [initials] 10/17/17 to be paid as follows:

   [handwritten] HB 10/17/17 EM$3000 ---$1000 to be non Refundable after Thirty days and balance non Refundable after sixty days all to be [initials: CEAC]

   A. applied as credit at closing to buyer ~~4,000.00~~ Earnest Money paid by ☐ cash, ☒ check, ☐ other held in trust by ERA Wilder Realty

   B. $ ______ Balance of down payment at closing is to be in the form of a cashier's check or certified funds.

   C. $ ______ Loan amount (type marked below) to be obtained by Purchaser.

4. **FINANCING** CONVENTIONAL X SELLER __ CASH (NO FINANCING REQUIRED) __ OTHER TERMS ______

   A. If Seller financing is included in the financing of this property, Selling Broker and/or Listing Broker and their Agents in this transaction make no representation as to the credit-worthiness of Purchaser and suggest that Seller determine for himself that Purchaser's credit is satisfactory.

   B. In a cash transaction, Purchaser agrees to provide Seller or Seller's agent, within ten (10) business days of acceptance of this Contract, written verification of sufficient and available funds for the specified date of closing.

5. **CLOSING COSTS DISCOUNT POINTS** Purchaser's closing costs shall be paid by Purchaser. Purchaser's prepaid items shall be paid by ______. Discount points (if any) shall by paid by ______. If Seller pays closing costs, prepaid items, and or discount points on behalf of Purchaser, Seller will pay costs of Purchaser, not to exceed $ ______.

6. **LOAN PROCESSING APPLICATION FINANCING** Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agrees to provide Seller, within five (5) business days from the date of acceptance, confirmation from Lender that application has been made and funds advanced for credit report and appraisal. Purchaser to furnish Lender any documentation required for the processing of this loan in a timely manner. Purchaser's failure to apply as required above shall constitute a default under this Contract. Purchaser further hereby gives permission to Lender to disclose pertinent information concerning the Purchaser's loan to the Listing or Selling Brokers or Agents. If loan is rejected by initial lender, Purchaser or Purchaser's Agent must notify the Listing Agent immediately, and Seller shall then have the option to void Contract. Contract is contingent upon above financing. If loan cannot be obtained, earnest money will be refunded to Purchaser.

7. **ADDITIONAL CONTINGENCIES, CONDITIONS** Purchaser to be allowed 90 days for due diligence. [initials: CEAC 10/13/17]

   Closing to be 30 days after 90 day due diligence. CONCURRENT CLOSING OR 1031 EXCHANGE.

   Sellers to provide any known information concerning this property. Water taps, Sewer taps, permits, approvals of previously submitted plans/letters to the County. BUYER TO HAVE FULL ACCESS TO PROPERTY INCLUDING BUYER'S AGENT(S) FOR PURPOSES OF STUDY NEGOTIATIONS WITH GOVERNMENT AGENCIES AND [initials] BUYER SHALL SELECT CLOSING ATTORNEY. HB 10/13/17 [initials: CEAC]

[handwritten margin note] waited to put time period to notice information

Purchaser's Initials (HB / __) DATE 10/13/17 HAVE READ THIS PAGE Seller's Initials (CEAC / __) DATE October 18, 2017 | 11:12 AM EDT HAVE READ THIS PAGE

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8. SURVEY, TITLE EXAMINATION INSURANCE

The Listing and Selling Brokers and their Agents recommend that Purchaser have a survey of the property prepared. If a survey indicates that property does not meet the following minimum specifications ________________ (dimensions, square feet, acres), Purchase may elect to terminate the Contract by notifying Seller or Seller's Agent in writing of Purchaser's intent to terminate or Purchaser shall complete this sale according to the terms and conditions of this Contract.

The Listing and Selling Brokers and their Agents recommended that Purchaser select an attorney to examine the title to the property, and obtain all appropriate insurance coverage, including that required by the lender.

9. CONDITION OF PROPERTY

The Seller shall not remove any timber, dirt, minerals or otherwise affect the condition of the property after the signing of this Contract. All timber, dirt, minerals, etc., shall remain with the property and be a part of the property and be transferred to Purchaser. The Seller shall not bring any trash, refuse, debris, medical or hazardous waste, or other improper materials upon the property. In the event any condemnation proceeding is brought by any governmental authority, agency, utility, etc., prior to the closing, then Purchaser may elect to rescind this Contract and receive a refund of the earnest money deposit.

A. The Seller represents that the property is ☐ or is not ☒ located in a flood zone.

B. Seller represents that the property is ☐ or is not ☒ subject to a mandatory association fee (i.e., homeowner's association/ regime or otherwise). If property is subject to a mandatory fee, the fee is $ ______________ per ______________ and shall be current at closing.

C. Seller represents that the property is ☐ or is not ☒ subject to a special assessment of any governing body, including but not limited to a homeowner's association/regime, utility or otherwise. If the property is subject to a special assessment, the assessment has ☐ or has not ☐ been paid. If assessment has not been paid, it shall be paid by ☐ Seller in the amount of $ ______________ and/or ☐ Purchaser in the amount of $ ______________.

D. If the property may be connected to public/community water or sewer systems, the tap fees of $ ______________ shall be paid by ______________.

E. Seller represents that the property is ☐ or is not ☒ subject to a current lease or property management agreement. If agreements are in effect, Purchaser shall honor them. Agreements shall be attached to and made a part of this Contract.

10. WELL, SEPTIC SYSTEMS, ENVIRONMENTAL INSPECTIONS

All required reports and certifications concerning environmental matters, wells, septic systems, wetlands, hazardous materials or a special study area shall be done by professional inspectors or government authority qualified in the appropriate fields. Such reports or studies shall be done at the expense of Purchaser and shall be completed within twenty (20) business days after acceptance of this Contract by both parties. If Seller or Seller's agent does not receive Purchaser's written response to the inspections or studies and a copy of such reports within the same twenty (20) business day period, this section is nullified in its entirety.

A. If Purchaser finds the results of said reports unacceptable, Purchaser may elect to terminate this Contract by notifying Seller in writing of Purchaser's intent. Should Purchaser terminate this Contract, Seller agrees to immediately sign all documents necessary for the release of this Contract and refund of Purchaser's earnest money.

B. If Purchaser elects to proceed with this sale, Purchaser has the option of accepting the property in current condition as referenced by the reports or Purchaser must notify Seller or Seller's agent by signed addendum along with a copy of the reports specifying the defects Purchaser expects Seller to remedy.

C. Seller may agree by written addendum within five (5) business days of written notification to remedy, repair or treat any defects or conditions at the Seller's expense. In return Purchaser agrees to complete this sale according to the terms of this Contract. Otherwise, Seller may give written notice to terminate this Contract within five (5) business days. Purchaser shall have the right to accept the property with whatever defects exist and complete this sale according to the terms and conditions of this Contract. To exercise this right, Purchaser must provide Seller or Seller's agent with written notice of such intention, within two (2) business days after receipt of Seller's notice to terminate, or this Contract is void.

Purchaser's failure to notify Seller or Seller's agent in writing of any problem found by said reports within the time limits herein provided, or Purchaser's acceptance of the deed at closing, shall constitute full acceptance of the condition of the property and a waiver of Purchaser's right to object to any defects found by said reports.

11. CONVEYANCE DATE OF CLOSING

Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated. All statutory deed recording fees shall be the responsibility of Seller. The deed shall be prepared in the name of HRBOYD II IRA LLC ______________ and delivered to the stipulated place of closing. This transaction shall be closed on or before February 17, ~~2017~~ 2018 HB 7/19/17

12. POSSESSION

Absent a written agreement to the contrary, Seller shall give Purchaser possession at closing, subject to tenant's rights or property management agreements which must be disclosed at time of Contract. Seller shall give Purchaser access to the herein described property for the purpose of a final inspection within twenty-four (24) hours prior to closing.

13. EXTENSION OF AGREEMENT

Time is of the essence. If Purchaser or Purchaser's agent has provided written loan commitment but not closed within the stipulated time limit of this Contract, both parties agree to extend this Contract for a period not to exceed ten (10) calendar days from the original closing date. In cash transaction, if terms and conditions of Section 4.B. have been met, both parties agree to extend this Contract for a period not to extend ten (10) calendar days from the original closing date.

14. BROKERAGE FEE

All real estate brokerage fees as specified in the Listing Agreement or in the Buyer's Brokerage Representation Agreement if applicable, are earned upon the acceptance of this offer and are due and payable at the time of closing, subject to any contingencies specified therein.

15. EARNEST MONEY

Broker does not guarantee payment of check or checks accepted as earnest money. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of this Contract. In the event of any action wherein Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker, are subject to an action in the nature of Interpleader, and Broker is made a party, Broker shall be entitled to recover reasonable attorney's fees and court costs, the same to be charged and assessed against Purchaser or Seller or both as the court may decide. Earnest money shall not be refunded for any reason until the check has cleared the financial institution on which it was written.

"The South Carolina Real Estate Practices Act allows the Broker holding the earnest money to deposit it into an interest bearing account. Purchaser agrees to and understands that he has been informed of his right to ownership of the interest and relinquishes to the Broker by this written agreement said right of ownership. The earnest money so noted ___ will _X_ will not be deposited into an interest bearing account with the interest accruing to the benefit of the Broker."

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3/3 EX.

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16. **ADJUSTMENTS** Taxes, water, sewer charges, fuel oil, propane, electricity, natural gas, rents when applicable, and all other assessments, including homeowner's association fees, regime fees or the like shall be adjusted as of the date of closing. Tax prorations pursuant to this Contract are to be based on the tax information available on the date of closing, and are to be prorated on that basis unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by Purchaser and/or Seller when the current year's taxes are determined.

17. **ROLLBACK TAXES** If applicable, rollback taxes shall be the responsibility of SELLER 10/13/17.

18. **NON-RESIDENT TAXES** Seller agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

19. **FIRE OR CASUALTY** In case this property is damaged wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) business days after the notice of such damage to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser nor Seller elects to terminate the Contract, the parties shall proceed according to the terms of this Contract.

20. **DEFAULT** If Purchaser shall default under this Contract, Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, one-half of the earnest money shall then be paid to the Broker(s), not to exceed the commission due such Broker, and the remaining balance of earnest money shall be paid to Seller. Upon default by Seller, Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by Seller, if Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract, the prevailing party and Broker(s) shall be entitled to the award of their costs, including reasonable attorney's fees.

21. **MEDIATION** Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Purchaser, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Contract pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any Contract signed by the parties pursuant to the mediation conference shall be binding. South Carolina Code Ann. Section 15-48-10. et. seq. shall not apply to this Contract.

22. **ENTIRE CONTRACT AND BINDING CONTRACT** The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, their principals, heirs, personal representatives, successors and assigns as state law permits.

23. **EXPIRATION OF OFFER** This offer from Purchaser shall be withdrawn at 6 o'clock p .m (ET) on October 17, 2017, unless accepted or countered by Seller in written form prior to such time.

24. **FAX** Both Purchaser and Seller agree that receipt of a signed contract by facsimile (FAX) will be the same as receipt of an original signed contract.

25. **SURVIVAL** If any provision herein contained which by its nature and affect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the parties hereto until fully observed, kept or performed.

26. **DEFINITIONS** In this Contract, a single business day is defined as a twenty-four (24) hour period, beginning at the time of acceptance of this Contract, excluding Saturdays, Sundays and South Carolina legal holidays.

27. **HUD/CLOSING STATEMENT RELEASE** Seller and Purchaser authorize their respective attorneys and the settlement agent to furnish to listing Broker and Selling Broker copies of the HUD-1 settlement statement for the transaction.

28. **DISCLAIMER** The parties acknowledge that the Listing and Selling Broker(s) and their Agent(s): (A) Give no warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvements, services or systems, thereto, including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems, or to the structure; (B) Give no warranty, express or implied, concerning the condition of the property, any matters which would be reflected by a current survey of the property, or the accuracy of the published square footage; (C) Give no warranty, express or implied, as to title; (D) Give no warranty, express or implied, as to the fitness for a particular purpose of the property or improvements thereto; (E) Give no warranty, express or implied, that the property being purchased is in compliance with all necessary zoning ordinances and restrictions; (F) Give no warranty, express or implied, as to projected income, value or other possible benefits to the Purchaser.

This is a legally binding contract. Purchaser and Seller should seek legal advice if the contents are not understood. Both Purchaser and Seller acknowledge the receipt of a copy of this Contract. Signatures below signify acceptance of all terms and conditions stated herein.

IN WITNESS THEREOF, this Contract has been duly executed by the parties hereto.

Rebecca Boyd-Rose Witness as to Purchaser	Howard R. Boyd III & ASSIGNEES 10/13/17 Purchaser HRBOYDII IRA LLC	Date	SSN
Witness as to Purchaser	Purchaser	Date	SSN
Witness as to Seller	Seller Atlantic Coast Properties	Date	SSN
Witness as to Seller	Seller	Date	SSN
Listing Agent Thomas Webb	ERA Wilder Realty Office	(803)445-5456 Telephone Number	
Selling Agent Phillip Carter	ERA Wilder Realty Office	(803)518-9384 Telephone Number	

FINAL CONTRACT ACCEPTED BY BOTH PARTIES AT ________ O'CLOCK _____.M. (ET) ON ____________________.

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EXHIBIT 2.0
1/2

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT 2018LP4001597
Marcus Hutsen, Plaintiff, v. Atlantic Coast Properties, Landowner	)	LIS PENDENS (Notice of Pendency of Action)

2018 NOV 27 PM 12:44
RICHLAND COUNTY
FILED

NOTICE IS HEREBY GIVEN that this legal issue consists of the Seller/Defendant having conducted the following:

1. Breach of contract regarding due diligence causing Plaintiff enormous damage.
2. Existing equitable interest claim.

Said property is located in Richland County, South Carolina more commonly known As One Cora Drive. The property, which is the subject of said

Being all that certain piece, parcel or tract of land lying, being and situate approximately 6.5 miles north of Columbia City Limits, in Richland County, state of South Carolina and being shown and designated as the property on a plat of survey for Cora Drive Subdivision by Neil R. Phillips & Company, Inc. dated 15 June 2018 and from which plat of survey a more particular description is as follows:

Beginning at an iron pin found on the northern right-of-way line of Cora Drive (S 40-2415), which is located 0.04 miles east of the northeast right-of-way intersection of Cora Drive and Singleton Drive and running from said iron pin found, leaving the road right-of-way and running with the property lines of residential lots five (5) calls: N29°04'47"E a distance of 164.63 ft. to an iron pin found; thence N28°59'08"E a distance of 189.70 ft. to an iron pin found; thence N29°05'45"E a distance of 189.66 ft. to an iron pin found; thence N28°59'22"E a distance of 214.94 ft. to an iron pin found; thence N30°12'49"E a distance of 578.10 ft. to an iron pin found, which is a corner of the Crane Forest Subdivision; thence running with the residential lots on Crane Forest Subdivision eight (8) calls: S60°55'56"E a distance of 431.43 ft. to an iron pin found; thence S60°59'59"E a distance of 234.01 ft. to an iron pin found; thence S60°47'09"E a distance of 78.37 ft. to an iron pin found; thence S60°48'42"E a distance of 155.67 ft. to an iron pin found; thence S60°20'25"E a distance of 242.58 ft. to an iron pin found; thence S59°07'27"E a distance of 80.09 ft. to an iron pin found; thence S59°39'44"E a distance of 156.61 ft. to an iron pin found; thence S60°26'42"E a distance of 93.18 ft. to an iron pin found; thence, leaving the Crane Forest Subdivision line and running with the property line of several residential tract of land five (5) calls: S45°51'49"W a distance of 216.00 ft. to an iron pin found; thence S46°56'18"W a distance of 792.95 ft. to an iron pin found; thence S46°55'50"W a distance of 581.42 ft. to an iron pin found (crossing an iron pin found on line at 336.80 ft.); thence N76°32'01"W a distance of 438.14 ft. to an iron pin found on the southern right-of-way of Cora Drive; thence running with the southern right-of-way of Cora Drive (S 40-2415) two (2) calls: S79°46'10"E a distance of 117.79 ft. to an iron pin found; thence S72°17'00"E a distance of 24.22 ft. to an iron pin set; thence, crossing with the right-of-way of Cora Drive to the north side of Cora Drive (S 40-2415) N16°52'51"E a distance of 66.03 ft. to an iron pin set; thence running with the northern right-of-way of Cora Drive (S 40-2415) eight (8) calls: N73°28'17"W a distance of 31.72 ft. to an iron pin found; thence N79°33'29"W a distance of 50.00 ft. to an iron pin found; thence N79°37'03"W a distance of 170.92 ft. to an iron pin found; thence N79°36'09"W a distance of 134.94 ft. to an iron pin found; thence N79°33'44"W a distance of 135.27 ft. to an iron pin

EXHIBIT 2C
p 2/2

ELECTRONICALLY FILED - 2019 May 30 3:51 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

found; thence N79°31'14"W a distance of 53.68 ft. to an iron pin found; thence N83°54'25"W a distance of 80.75 ft. to an iron pin found; thence N83°39'41"W a distance of 188.66 ft. to an iron pin found, the point and place of beginning, containing 37.778 Acres, subject to all rights-of-way and easements.

Recorded _______________ in the Office of The Register of Deeds for Richland County in Deed/Record Book # ______ at Page ______.

TMS # 09501-03-08

Property Address: One Cora Drive, Richland, S. C. 29203

Marcus Hutsen, Plaintiff

Post Office Box 2755
Orangeburg, SC 29116-2755
(803) 308-2714

Columbia, South Carolina
This 7th day of November, 2018.

EXHIBIT 3.6

Moreover, there is no such thing as an accidental or negligent fraud. For example, mistakenly entering incorrect numbers on a financial statement is not fraud; however, knowingly entering incorrect numbers with the intent that someone will take action in reliance on them is fraud if the other elements are present.

Negligent Misrepresentation

Although a misrepresentation fraud case may not be based on negligent or accidental misrepresentations, in some instances a civil action may be filed for negligent misrepresentation. This tort action is appropriate if a defendant suffered a loss because of the carelessness or negligence of another party upon which the defendant was entitled to rely. Examples would be negligent false statements to a prospective purchaser regarding the value of a closely held company's stock or the accuracy of its financial statements.

Concealment of Material Facts

An action for fraud may be based on the concealment of material facts, but only if the defendant had a duty to disclose in the circumstances. The essential elements of fraud based on failure to disclose material facts are:

- That the defendant had knowledge
- Of a material fact
- That the defendant had a duty to disclose
- And failed to do so
- With the intent to mislead or deceive the other party

The duty to disclose usually depends on the relationship between the parties. Those people who occupy a special relationship of trust, such as the officers or directors of a corporation, an attorney, accountant, trustee, stockbroker, or other agent, may be found to have a duty to completely disclose material facts to the parties who rely upon them. Statutes might expand the duty to disclose to areas in which traditionally there was no such duty, such as to the sellers of personal or real property, or the purchasers or sellers of securities.

Proof that the concealed fact was material probably is the most important element in a concealment case; there can be no liability if the withheld information would not have affected the other party. In addition to fraudulent concealment, a defendant might also be liable for negligent failure to discover and disclose material facts. An accountant, for example, might be liable for failure to discover or report material facts in a financial statement or audit. Of course, as with negligent misrepresentation, the penalties are less severe for negligence than fraudulent misrepresentation, and there is no criminal liability.

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EXHIBIT 4.0

In practice, fraud embraces all the multifarious means that human ingenuity can devise for one person to gain an advantage over another by false suggestion or suppression of the truth. No final, invariable rule can be laid down in defining fraud—according to *Black's Law Dictionary*, the act of *fraud* includes surprise, trick, cunning, and a range of unfair ways by which people are cheated. The only boundaries are those that limit human knavery.

Modern tools and methods have extended the limits of fraud into new territory. The authors of *Inside Job*, an exposé of a savings-and-loan scandal, mused on the difficulty of tracking "the ways and methods of professional white-collar criminals, their intricate paper trails and Byzantine multimillion-dollar frauds. Untangling the deals is in itself an art, and explaining them to a jury of 12 honest men and women borders on the miraculous."[3]

Elements of Criminal and Civil Fraud

Fraud as a human activity can be hard to get a handle on, but the legal elements of a fraud are more readily defined. Generally stated, these include:

- Misrepresentation of a material fact
- Made with knowledge of its falsity
- Made with intent to induce the victim to rely on the misrepresentation
- The victim relies upon the misrepresentation
- The victim suffers damages as a result

The key distinction between fraud and other types of theft hinges on the first element: the perpetrator acts by *misrepresentation*, as opposed to larceny, in which the perpetrator uses force or stealth to secure another's property.

Civil Fraud Actions

In *Southern Development Co. v. Silva*, 125 U.S. 247, 8 S.Ct. 881, 31 L.Ed. (1887), the U.S. Supreme Court defined the legal elements of a civil fraud as follows:

- The defendant has made a representation in regard to a material fact

> Note: Statements that express an opinion or judgment, honestly entertained, are excluded. It is not fraud when an investment adviser causes big losses with a bad recommendation, as long as everything in the deal is aboveboard. Statements made during commercial exchanges have special protection. Only deliberate misrepresentations are actionable as fraud.

[3] Pizzo, Stephen et al. *Inside Job. The Looting of America's Savings and Loans.* Harper-Perennial, 1991: p. 318.

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EX. 5.0

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ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit U

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2019 Apr 11 3:35 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006156

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CA#: 2018-CP-40-06156
MB Hutson/MB Hudson,	)	
Plaintiff,	)	**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**
vs.	)	
Atlantic Coast Properties, John Doe #1, John Doe #2,	)	
Defendants.	)	

THIS MATTER came to be heard after proper notice, on March 12, 2019 upon Defendant's Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Present at the hearing was the Plaintiff, who appeared *pro se*, and Brian L. Boger, counsel for Defendant Atlantic Coast Properties ("Defendant" hereinafter).

This matter concerns the sale of real estate by the Defendant to the Plaintiff. The sale was not consummated. When the sale did not go through, the Defendant gave the Plaintiff another ninety days to complete the sale. Additionally, the parties agreed that at the end of ninety days, if the sale was not completed, the Plaintiff agreed to release and discharge, *inter alia*, the Defendants from any and all claims, demand, damages, and causes of action. The agreement was prepared by counsel; the Plaintiff and Defendant signed it.

A few months later, in contravention of the agreement, the Plaintiff filed this action for "Breach of Contract/Duress, Fraud for Non-Disclosure, and Equitable Interest." Defendant asserted that Plaintiff's Complaint failed to state a cause of action upon which relief can be granted, and offered as evidence the above-mentioned signed Agreement. The Plaintiff, at the

Motion hearing, argued that he signed the Agreement under duress, yet provided no evidence whatsoever which would support such an assertion.

After due consideration of arguments from both the Plaintiff and the Defendant, this court finds that the Motion to Dismiss should be granted. The Agreement that was signed by Plaintiff speaks for itself and prohibits Plaintiff from initiating legal action against Defendant for the allegations upon which Plaintiff's Complaint was based.

NOW, THEREFORE,

IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant is granted. Accordingly, Plaintiff's Complaint is hereby dismissed with prejudice.

Robert E. Hood, Judge, Fifth Judicial Circuit

April ______, 2019

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Richland Common Pleas

Case Caption:	Mb Hutson , plaintiff, et al vs Atlantic Coast Properties , defendant, et al
Case Number:	2018CP4006156
Type:	Order/Dismissal and Cancellation of Lis Pendens

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-04-11 15:01:22

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ELECTRONICALLY FILED - 2019 Apr 11 3:35 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006156

Exhibit V

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 11:00 AM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01089.WAV

IP Office Voicemail redirected message

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 2:47 PM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01090.WAV

IP Office Voicemail redirected message

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Saturday, August 11, 2018 9:04 PM
To:	Tim J. Newton
Subject:	Setting aside the Judgement
Attachments:	Blank.pages; ATT00001.txt

Total Control Panel

Login

To: tnewton@murphygrantland.com   Remove this sender from my allow list

From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.

2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.

3. Those 700 family memberships had been soled and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".

4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.

5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.

6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 109 acres.

7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an impossible position to honor the long term contracts.

8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.

9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

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Tim J. Newton

From:	Cynthia Exum <cindy.exum@gmail.com>
Sent:	Saturday, August 11, 2018 9:25 PM
To:	Tim J. Newton; Hutsen
Subject:	consent order
Attachments:	3.1 Consent Order.pdf

Total Control Panel

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To: tnewton@murphygrantland.com — Remove this sender from my allow list

From: cindy.exum@gmail.com

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CONSENT ORDER

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS CASE NUMBER: 11-CP-14-602
TLC Holdings, LLC, Plaintiff, v. M.B. Hudson a/k/a M.B. Hutson, Defendant.	)	Judicata CONSENT ORDER
M.B. Hudson a/k/a M.B. Hutson, Defendant and Third Party Plaintiff, v. Richard U. Clark, Jimmy S. Lovell and James C. Thigpen, Third Party Defendants.	)	4/13/12 fraud

THIS MATTER comes before me pursuant to (a) a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of Receiver filed in the above-captioned action by Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or "Landlord"), against Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"); and (b) a Motion to Dismiss filed by Defendant in this action.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns a Lease Purchase Agreement dated December 15, 2010 (the "Lease" or the "Agreement"), by and among Plaintiff, as landlord, Hudson, as tenant, and Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen (the "Third Party Defendants"), for property located in Clarendon County, South Carolina, more fully

WCSR 7205819v1

described in the Lease and commonly known as the Big Water Resort (the "Premises" or the "Property"). Plaintiff has filed this ejectment action against Defendant with respect to the Agreement. Defendant has also recorded a Lis Pendens in this action against the Premises and the Plaintiff and Third Party Defendants (the "Lis Pendens"). In his Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action, Hudson has asserted counterclaims against Plaintiff, as well as other claims against the Third Party Defendants. However, the Third Party Defendants have not been served with pleadings filed in this action, and none of the Third Party Defendants have made an appearance in this action.

It appears that the parties have agreed to a settlement of the pending motions, and all other matters at issue with respect to the Agreement, or which could have been asserted in this litigation, on those terms set forth in that certain Settlement Agreement dated as of March 30, 2012, a copy of which is attached hereto as **Exhibit "A"** and its terms incorporated herein by this reference (the "Settlement Agreement").

ORDER

NOW, THEREFORE, upon Motion of the Plaintiff, and with the consent of the Defendant, as the only parties having appeared in this action, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement is hereby approved by this Court and incorporated into this Consent Order by this reference;

2. In the event that Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in the Settlement Agreement, time being of the

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

essence, then the Plaintiff is entitled to file an Affidavit of Default in this action, without notice to Defendant or his counsel of record, and, effectively immediately upon the filing of such Affidavit of Default, Plaintiff is hereby awarded the following immediate relief, without the need for further Order of this Court:

a) The Agreement shall be deemed automatically terminated and of no further force or effect;

b) The Lis Pendens shall be deemed automatically cancelled, terminated of record, and of no further force or effect;

c) Mr. Hudson shall be required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he shall be obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs (the "Vacation Deadline").

3. In the event that Hudson fails to vacate the Premises by the Vacation Deadline, then the Sheriff of Clarendon County is hereby directed to immediately evict Hudson therefrom, remove any personal property then and there remaining on the Premises, and put the Landlord in peaceful possession of the Premises. Landlord is hereby authorized to change the locks of the Premises effective 11:59 p.m. on the Vacation Deadline.

4. Prior to any such default by Hudson under the Settlement Agreement and the Lease as modified by the Settlement Agreement, the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the Primary Term (as defined in the Lease, and as may be extended as provided in the Settlement Agreement), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by the Settlement Agreement.

SO ORDERED.

____
Judge

Manning, South Carolina
April 3, 2012

[Signatures Continue on Following Page]

(Liens still on property Bank & 60 yr. Leases Oct 2012

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE MOVE:

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr., Esq.
5 Exchange Street
Post Office Box 999
Charleston, SC 29402
(843) 722-3400

Attorneys for Plaintiff TLC Holdings, LLC

Charleston, South Carolina
April 3, 2012

WE CONSENT:

WEISSENSTEIN LAW FIRM, LLC

Paul Weissenstein, Jr., Esq.
106 Broad Street
Post Office Box 2446
Sumter, SC 29151
(803) 418-5700

Attorneys for Defendant and Third Party Plaintiff M.B. Hudson a/k/a M.B. Hutson

Sumter, South Carolina
April 3, 2012

[*Signatures Continue on Following Page*]

WCSR 7205819v1

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STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE AGREE:

TLC HOLDINGS, LLC

Richard U. Clark, its Member

April 3, 2012

Plaintiff and Third Party Defendant

[*Signatures Continue on Following Page*]

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STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

I AGREE:

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

April 3, 2012

Defendant and Third Party Plaintiff

WCSR 7205819v1

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT "A"

(Copy of Settlement Agreement)

SEE ATTACHED

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Cynthia Exum <cindy.exum@gmail.com>
Sent:	Saturday, August 11, 2018 9:27 PM
To:	Tim J. Newton; Hutsen
Subject:	title company letter
Attachments:	C-Stewart Title Letter.pdf

Total Control Panel

Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: cindy.exum@gmail.com

You received this message because the sender is on your allow list.

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ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

From: hutson4444@gmail.com
Date: October 2, 2015 at 10:35:45 AM EDT
To: OFFICE MAX OB <ODS06535CPC@officedepot.com>, cindy exum <cindy.exum@gmail.com>
Subject: Fwd: 5215 Dingle Pond Rd, Summterton SC

Hutson
803.308.2714

Begin forwarded message:

From: Michael Medlock <Michael.Medlock@stewart.com>
Date: October 2, 2015 at 10:32:36 AM EDT
To: "hutson4444@gmail.com" <hutson4444@gmail.com>
Subject: 5215 Dingle Pond Rd, Summterton SC

108 Acres
Clarendon County

To Whom it May Concern:

I have been advised that the property mentioned above in encumbered by several hundred private membership and use agreements. These agreements do not appear in the public record; however, any title policy will contain exceptions to these interests once known to the company regardless of recording status.

If there are hundreds of membership agreements for exclusive use of portions of the property for 2 lifetimes, that is a cloud on title that would be excepted to in any title insurance policy.

My opinion is that no lending institution would lend on this as they would require a subordination and non-disturbance agreement from each interested party in order to obtain a clear title policy

Michael S. Medlock
South Carolina Underwriting Counsel
North Carolina State Counsel / Underwriting Counsel
Stewart Title Guaranty Company

South Carolina Office
4406-B Forest Drive, Suite 102
Columbia, SC 29206
O (803) 765-1631 | M (803) 414-6272 | F (866) 811-2066

North Carolina Office
831 E. Moorehead Street, Suite 355
Charlotte, NC 28202
O (704) 912-3542 | M (803) 414-6272

From:	Mr. H <hmr226621@gmail.com>
Sent:	Saturday, August 11, 2018 9:59 PM
To:	Tim J. Newton
Subject:	Slander Letter TLC.pdf
Attachments:	Slander Letter TLC.pdf; ATT00001.txt

Tim, notice in this defamatory letter to the members, TLC states that all the property was owned by them and used for the members.

Also notice that they intentionally fail to tell the members that they sold me the Big Water Resort and memberships and I could not operate said business due to the lack of land and lack of contractual agreements.

We can checkmate the crooks and ride the 3.5 by getting the Fraudulent judgement set aside. I beg you to move quickly and let's get a game plan to move forward. Merely filing to set aside will cause TLC to fall to their feet.

TLC has been in the drivers seat long enough. Bill Padget put them in their place. We must do the same thing and fasttttttttttt.

Total Control Panel

Login

To: tnewton@murphygrantland.com

Remove this sender from my allow list

From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

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3rd P D Response 2:14-CV01583-DCN-WWD

Reed

EXHIBIT # 18-1

3rd P D Response 2:14-CV01583-DCN-WWD

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

TLC Holdings, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148
Ph: (803) 478-6336

slander letter

April 3, 2014

Members of Big Water Resort Campground

Re: Membership Agreements; New Management

Dear Member:

TLC Holdings, LLC is, and has been at all times since its development, the owner of the land and improvements on which the campground previously known as the Big Water Resort has been operated. In December of 2010, TLC Holdings, LLC entered into a Lease Purchase Agreement with M. B. Hutson. Under the terms of that Agreement and related documents, in addition to the various obligations that Mr. Hutson owed to TLC Holdings, Mr. Hutson assumed responsibility for the operation, maintenance, and upkeep of the Big Water Resort Campground. Before we signed the Agreement, Mr. Hutson assured TLC Holdings, LLC that his intentions were to continue to operate the campground on TLC Holdings, LLC's property, while developing the rest of the property in a way that complemented the resort and the club experience. Those assurances were important to TLC Holdings, LLC, and it agreed to proceed with the Agreement with Mr. Hutson.

Over the course of the last three (3) years, Mr. Hutson breached his obligations under the Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to protect the property and the club. These breaches damaged TLC Holdings, LLC, and they hurt the property and the club operated on it. TLC Holdings, LLC has been forced to make tax payments and insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.

Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC Holdings, LLC was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has

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resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.

TLC Holdings, LLC has just been successful in regaining control of the property. The state court ruled that Mr. Hutson had breached the Agreement, and that TLC Holdings, LLC was permitted to terminate the Lease Purchase Agreement. As a result, Mr. Hutson is no longer in residence at the property, nor is he conducting any business on the campground property. Therefore, Mr. Hutson and his companies have no right to charge or receive payments of any kind whatsoever related to the campground.

As a result of TLC Holdings' successes in the state court and the bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed. TLC Holdings, LLC has decided to transfer the campground property, including the amenities, to an affiliated company named Ocoee, LLC. Thereafter, Ocoee, LLC intends to honor the terms of your Membership Agreements going forward, and will issue similar Campground Rules.

Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort. Please, also, provide us documentation of your payments of dues each year since 2010, including dues for calendar year 2014. If you have prepaid for any rentals in the campground, please also provide documentation of any such payments.

As noted, the records we received are incomplete. If you become aware of any member who did not receive this correspondence, please share it with them. Also, please ask them to contact us by phone at (803) 478-6336. You should also feel free to call that number if you have any questions. Ask for Mary Lou, who has worked at the property for years, or leave a message and she or another representative will be in touch.

For all of you Members who have paid your annual dues and charges and are in good standing for 2014 and prior years, your rights will be honored by Ocoee, LLC. Moreover, if you were otherwise current through 2013, but did not pay your dues for 2014, then TLC Holdings, LLC and Ocoee, LLC have agreed to give you sixty (60) days from the date of this letter to pay those dues. Please make checks payable to "Ocoee, LLC", not to "Big Water Resort".

We understand that this protracted litigation may have confused or frustrated you. It certainly has us. With it behind us, we are excited about the future. More information will follow from the new management in the coming weeks. In the meantime, thank you for your understanding, and please call us at the number above if you have any questions.

TLC Holdings, LLC

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 10:03 PM
To: Tim J. Newton
Subject: Let's not give them any prior notice, simply serve them. This will cause them to gently fall apart while trying to act like the filing is no big deal. We know different. Filing this solves several major concerns.

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Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Sunday, August 12, 2018 12:40 PM
To:	Tim J. Newton
Subject:	From Hutson
Attachments:	Blank 2.pages; ATT00001.txt

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Notes to Tim from Hutson

Failed to disclose that BWR was losing $300,000 per year.

Failed to disclose to me that because of that, BWR was be obligated for $20 million dollars to honor the hundreds of family members.

At the time of the Settlement Agreement which TLC pushed hard for, I did not know the following and TLC did:

A. All of the property except the small gas station was fully used by the family members and each family member had the "Sole Use" of all property causing defective title due to the "Sole Use" of all property, therefore, all monies I paid for the option to purchase was wasted and lost due to the fact I could never develop the property nor a divide small lots for a 200 lot subdivision.
B. It stated in the Option to Purchase that my method of paying for the property was to allow TLC to collect 35 percent of each individual lot sale at each individual closing.
C. TLC required me to buy and take ownership of BWR simultaneously executing the Option to purchase the 108 acres of land.
D. QUESTION: What did I receive by buying the BWR as required? After signing the Settlement Agreement and the Consent Order,
E. I later learned that the only thing I acquired was a hidden $20 million dollars worth of indebtedness in order to operate the campground for 70 years which was required.
F. BWR did not own ANY land to honor the hundreds of members who TLC had pre-collected the cost for the 70 years nor had TLC allocated any contractual agreement providing protection to BWR to be able to have land to service the $20 million dollars of obligation.
G. TLC furnished a fraudulent financial statement showing that BWR was worth $1,7 million dollars when in fact it was worth nothing leaving me no way to survive operating BWR nor buying the 108 acres due to defective title.
H. The Honorable Court merely took the word of the layers who drafted the Settlement Agreement and the Consent Order that all was well. It never entered into the Court's mind that the Court that TLC was withholding and concealing grave issues that would cause me not to be successful exposing me to many lawsuits. Hutson was doomed and consequently has lost 5 years of his life, profit on what could have been made with the land subdivision. This entire thing was pre planned and plotted.

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 5:27 AM
To: Tim J. Newton
Subject: Question

Good morning, wondering if you have checked to see what is considered fraud upon the court and what the court is subject to do if evidence proves the fraud. Is the defendant fined besides having his judgement reversed?

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Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Monday, August 13, 2018 10:04 AM
To:	Tim J. Newton; Hutson 4072 C
Subject:	Another affidavit

August 13, 2018

Good morning Tim. In the next week I will have my second affidavit regarding my second malpractice attorney who ran title on the TLC Holdings property for me. Likewise, the statute runs out the same time as Paul Weissenstein. I have been told that the value of the malpractice is about the same as Paul's. Will need to file very soon likewise.

Please let me know what you are thinking and how you plan to protect my money. Lord I need it. Also, let me know the name and phone number of Torus Insurance and who the contract for I must give both Penn America and Torus Insurance notice.

Seems the only solution is getting a complaint prepared and file to set aside the State judgement regarding the Settlement Agreement.

I am willing to help in anyway I possibly can. We need Frank Gordon and quick. I will be more than happy to meet with you. Scared to death and desperate as you can appreciate.

Hutson

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Tim J. Newton

From: Tim J. Newton
Sent: Monday, August 13, 2018 10:50 AM
To: 'Mr. H'
Subject: RE: Setting aside the Judgement

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.
2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.
3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.
4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any . . . agreement for the use . . . of real estate" to be recorded.
5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).
6. The campground membership agreements I have seen do not specify what particular property is included in "BWR's present and future campground recreation facilities."
7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.
8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.
9. The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.
10. The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.
11. The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.
12. Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.

13. The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.
14. Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.
15. I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
16. It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.

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From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Setting aside the Judgement

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM
To: Tim J. Newton; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?

2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.

3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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Tim J. Newton

From: Tim J. Newton
Sent: Monday, August 13, 2018 1:23 PM
To: 'Mr. H'
Subject: RE: Questions

Mr. Hutson,

The agreement was to "put everything on hold" until the mediation. Under that agreement, not only TLC's execution on the judgment, but also Penn-America's DJ and the appeal of the judgment, have all been put on hold.

It might benefit Penn-America and your defense if you are able to get the Consent Order set aside, if that somehow undermines the judgment in the defamation action. But we can't renege on the agreement to wait until after we mediate. By the way, that agreement was made for your benefit—so we could hopefully resolve everything before TLC starts trying to come after you personally. We didn't know about the statute of limitations issue on your separate claim against Weissenstein.

Until the mediation, there is no argument that you are somehow damaged. Again, the appeal bond does nothing to negate the judgment. Even if an appeal bond is posted, you still have a judgment against you , and that is only satisfied by payment of the judgment or a settlement. The appeal bond is to protect TLC, not you.

If TLC attempts to assert a claim against your possible settlement with Weissenstein prior to the mediation, we will look into what might need to be done. They might have a time limit and need an extension or something. If they start to pursue it, we will remind them of the agreement and demand that they stand down. If they won't then we will look into what we might need to do in response.

I don't know what else to say. An agreement is binding, so we are kind of stuck with it for now. But again, we are talking about your claims against other parties. It doesn't have anything to do with Penn-America, at least not directly.

Tim N.

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From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM

To: Tim J. Newton <tnewton@murphygrantland.com>; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?

2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.

3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Tuesday, August 14, 2018 9:26 AM
To:	Tim J. Newton; Kim M Jackson. Torus
Cc:	hmr226621@gmail.com
Subject:	NOTICE: Lack of protecting client by not posting bond nor settling case

Confirmation of receipt is requested.

NOTICE

August 14, 2018

Re: Outstanding $3.5M Judgement Against MB Hutson

Dear Mr. Tim Newton and Mr. Kim Jackson:

Approximately seven months ago a jury trial resulted in a $3.5M judgement against myself in which your companies provided an attorney, Frank Gordon to defend me.

Since that judgement, neither Penn America, nor Torus, have provided a bond to satisfy that judgement, which is required. Consequently, I have been prevented from moving forward financially with my life. Therefore, I have been and am continuing to be substantially damaged financially.

Unless a solution is provided within the next three to five days, I will be left with no other alternative but to file formal complaints. At this point, time is of the essence.

Regrettably,
MB Hutson
803.308.2714

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Tim J. Newton

From: Tim J. Newton
Sent: Wednesday, August 15, 2018 2:37 PM
To: 'Mr. H'
Subject: RE: Hutson vs: Insurance companies

The answer is no, although they are continuing to review the situation.

M & G
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From: Mr. H <hmr226621@gmail.com>
Sent: Wednesday, August 15, 2018 2:33 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Hutson vs: Insurance companies

August 15, 2018

Tim, you know my situation. Please let me know as soon as possible regarding the offer I made the other day to you. If it's a no, I can gain time working on paper work with some folks.

Thank you in advance,

Hutson

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Exhibit W

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DISTRICT COURT

Case Number 2:14-cv-01583-DCN-MGB

Attention: The Honorable Judge Norton and The Honorable Judge Baker

MEMORANDUM IN RESPONSE TO THIRD-PARTY PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO THIRD-PARTY DEFENDANT'S COUNTERCLAIMS

Third-Party Defendant, hereby submits this Memorandum in support of his response to the Third-Party Plaintiffs' Motion for Summary Judgment as to Third-Party Defendant's Counterclaims.

Facts

The Plaintiffs in this action are a group of owners of memberships and they represent prospective class of owners of memberships in Big Water Resort campground. The Defendants and Third-Party Plaintiffs are three individuals, Richard U. Clark, Steve Lovell, and James Thigpen, they are the owners of Big Water Resort, LLC. The memberships in question were for the exclusive use of a campground facility that is owned by TLC Holdings, LLC. Big Water Resort, LLC has no ownership interest in any real property located in Clarendon County, South Carolina. Big Water Resort, LLC had no lease on any property located in Clarendon County South Carolina. Despite these facts Big Water Resort sold some 1200 "memberships in a campground facility in which it held NO INTEREST. Defendants and Third-Party Plaintiffs have agreed to pay an amount of approximately $1,500,000.00 to the members for not providing "exclusive use" of the campground in question (the Defendants allowed people not having membership to use the property which was a violation of the membership the Plaintiffs were sold).

Third-Party Defendant was operating under a set of facts during the transaction between him and the Defendants and Third-Party Plaintiff. This set of facts was not truthful due to no fault of the Third-Party Defendant. The Defendants and Third-Party Plaintiffs unknown to the had developed a fraudulent scheme to extract money and effort from an unsuspecting Purchaser to improve their property (TLC Holing, LLC's property) with no intent to effectuate a transfer of the property due to a lack of marketability of the property caused by the sale of "memberships." It was not until September 25, 2014 that Third-Party Defendant was provided exhibit 8 – the minutes of a meeting between the three members of Big Water Resort, LLC/TLC Holdings, LLC – that was presented at the deposition of Steve Lovell in this action. Since the Third-Party Defendant has slowly but surely uncovered the fraudulent scheme that was crafted, executed and completed by the three individual Defendants and Third-Party Plaintiffs and their attorneys.

This plan was to extract all the funds possible from Third-Party Defendant; have the Third-Party Defendant improve the property, obtain permits and water and sewer; and then if and when he approached the point of closing on the property to select a default under the contract (although

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there was not a valid contract between the parties due to fraud) to cut him out or worst case scenario to "repurchase" the property to protect the property and the scheme executed against the membership owners.

Defendants and Third-Party Plaintiffs never deny the claims of Third-Party Defendant they just claim he has not presented evidence of the claims or that the case has already been decided not on the merits, those have never been heard, but that he has waived those claims.

LEGAL STANDARD

The Fourth Circuit was entirely correct that there can be an exception to res judicata based upon fraud, deception, accident, or mistake. The United States Supreme Court has stated for at least ninety years that only "in the absence of fraud or collusion" does a judgment from a court with jurisdiction operate as res judicata. Riehle v. Margolies, 279 U.S. 218, 225 (1929). (emphasis supplied)

When a party challenges the preclusive effect of a previously obtained judgment based upon the winner's fraud, courts often begin by asking what kind of fraud the loser alleges. A common distinction courts draw is between extrinsic and intrinsic fraud. The Florida Supreme Court, for example, defines extrinsic fraud as: [T]he prevention of an unsuccessful party [from] presenting his case, by fraud or deception practiced by his adversary; keeping the opponent away from court; falsely promising a compromise; ignorance of the adversary about the existence of the suit or the acts of the plaintiff; fraudulent representation of a party without his consent and connivance in his defeat; and so on. Parker v. Parker, 950 So. 2d 388, 391 (Fla. 2007) (quoting Fair v. Tampa Electric Co., 27 So. 2d 514, 515 (Fla. 1946)). Extrinsic fraud, as its name implies, is fraud outside the workings of the case, fraud that stereotypically prevents a party from fully putting on her case or being heard by the court. See Long v. Shorebank Dev. Corp., 182 F.3d 548, 561 (7th Cir. 1999) (labeling allegation that the defense attorney told the plaintiff not to come to court as within the "classic definition" of extrinsic fraud); see also Zelek v. Brosseau, 136 A.2d 416, 421-22 (N.J. Super. 1957).

Intrinsic fraud, on the other hand, is "fraudulent conduct that arises within a proceeding and pertains to the issues in the case that have been tried or could have been tried." Parker v. Parker, 950 So. 2d 388, 391 (Fla. 2007) (quoting Fair v. Tampa Electric Co., 27 So. 2d 514, 515 (Fla. 1946)). This classic definition of intrinsic fraud encompasses things like false or perjured testimony, Falcon v. Faulkner, 567 N.E.2d 686, 694 (Ill. App. Ct. 1991) false or misleading documents and affidavits, DeClaire v. Yohanan, 453 So. 2d 375, 380 (Fla. 1984), superseded on other grounds by FLA. R. CIV. P. 1.540(b), as recognized in Lefler v. Lefler, 776 So. 2d 319, 322 (Fla. Dist. Ct. App. 2001); Puzio v. Puzio, 155 A.2d 115, 121-23 (N.J. Super. 1959) (applying New York law). or any other misrepresentations that do not prevent a party from making its own case. See Cummins, Inc. v. TAS Distrib. Co., 676 F. Supp. 2d 701, 716 (C.D. Ill. 2009) ("[The exception] does not apply if the other party was on notice that there could be a claim, as a party still has its own duty to make its own case. Only where there is no way that the party wishing to avoid res judicata could have realized that it had a claim will the . . . exception apply."). Of course the Defendants and Third-Party Plaintiffs have used both in this case.

To sanction the preclusion of the plaintiffs' claim via res judicata under facts such as these would be to sanction the defrauding of any litigant by an opponent fast enough and shifty

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enough to get a state court order pertaining to the issues which the innocent litigant seeks to argue before a court. Surely res judicata was not created to protect such fraud upon the courts.

In fact South Carolina courts have held that res judicata will not be upheld where fraud is involved. In the case of Arnold v. Arnold, 285 S.C. 296, 328 S.E.2d 924 (1985) a domestic case where a husband discovered after the wife had been previously granted custody of the minor child. When the wife sought an absolute divorce the husband counterclaimed contesting the paternity of the minor child, because she had made oral and written misrepresentation both before the marriage and after the marriage. The marriage had lasted more than nine years He had been tested and it was determined that he was sterile. The trial court granted summary judgment for the wife citing res judicata and collateral estoppel. The South Carolina Supreme Court ruled the doctrines of res judicata and collateral estoppel do not bar collateral attack of a judgment based on fraud.

The leading case discussing the application of the doctrine of res judicata as it relates to an action to vitiate a decree obtained by fraud is Sea Land Services, Inc. v. Gaudet, 414 U.S. 573, 94 S. Ct. 806, 39 L.Ed. (2d) 9 (1974). There the United States Supreme Court defined the doctrine of res judicata as follows:
The rule provides that when a court of competent jurisdiction has entered a final judgment on the merits of a cause of action, the parties to the suit and their privies are thereafter bound not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. ... The judgment put an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatever, absent fraud or some other factor invalidating the judgment. (Emphasis supplied) 414 U.S. at 578-579, 94 S. Ct. at 811-12 (emphasis added); accord, Wold v. Funderburg, 250 S.C. 205, 157 S.E. (2d) 180 (1967); see also, Lowe v. Clayton, 264 S.C. 75, 212 S.E. (2d) 582 (1975).

The Defendant Third-Party Plaintiffs reference in their memorandum with regard to the settlement agreement/consent order makes the point that by the use of that method Third-Party Defendant was deterred in seeking a hearing on the facts and merits of the case. That is exactly the behavior that is disapproved of by the Courts when fraud is involved. They also point to the "waiver clause" in the settlement agreement/consent order. A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Janasik v. Fairway Oaks Villas Horizontal Property Regime,307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992). The party claiming waiver bears the burden of establishing "that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all material facts upon which those rights depended." Heritage Federal Sav. and Loan Assoc. v. Eagle Lake and Golf Condominiums, 318 S.C. 535, 545, 458 S.E.2d 561, 567 (Ct.App.1995) (citing Janasik, 307 S.C. at 344, 415 S.E.2d at 387-8). In a case of fraud which this is Third-Party Defendant was not in possession of all material facts at the time the waiver was signed and therefore the waiver was ineffective. Further no one can waive their right to sue for an intentional act or even for an act of gross negligence. The Third-Party Plaintiffs actions were intentional and not subject to waiver.

Third-Party Defendant has addressed Defendant and Third-Party Plaintiff other assertion that he has not produced any evidence to support the claims in his counterclaim reference to those documents is hereby made and is included herein by reference as if fully set forth.

|

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A factual dispute can arise from what the implication of the facts are, for example in this case Defendant and Third-Party Plaintiff is operating on the premise that there was a valid contract and a breach of that contract by Third-Party-Defendant. The Third Party-Defendant is operating upon the true facts and that is that there never was a valid contract because there never was a meeting of the minds. Since there was not a valid contract the Third-Party Defendant could not possible be in breach of it. The use of the court system by the Defendants and Third-Party Plaintiffs is all a part of the scheme they hatched. It is all a part of their fraudulent scheme. The Third-Party Defendant was at the mercy of the Defendants and Third-Party Plaintiffs (and they showed him none) until he received a copy of the business meeting. The business meeting minutes from 2009 and the deposition testimony of the Defendants and Third Party Plaintiffs provide the evidence that supports Third-Party Defendant's conclusions of no valid contract and fraud on the part of Defendants and Third Party Plaintiffs. The discovered evidence demonstrates the fraudulent scheme hatched at the meeting, and the supply the underlying motive for the fraud, they were losing money and they were darn well tired of it especially since one of the members was not contributing his fair share to cover the loses. This is not something the Third-Party Defendant made it is from the computer of and mouths of the individual Defendants and Third Party Plaintiffs. Whether there was or was not a valid contract is a factual dispute. Whether or not these facts constitute fraud is also a question of fact. Of course since the evidence of the fraud comes from the Defendants and Third Party Plaintiffs' own computer and testimony and the lack of meeting of the minds is demonstrated in the contract drafted by the Defendants and Third Party Plaintiffs own attorneys acknowledging Third-Party Defendant's intent with respect to his sole reason for purchasing the property in question it is in reality a legal question that must be answered in favor of the Third-Party Defendant. The worst case scenario is that the matter must be submitted to a jury. Defendants and Third Party Plaintiffs are so far removed from being in a position to have Summary Judgment granted in their favor that it should be offensive to the court for them to even attempt to argue for that outcome.

The Honorable Court should deny Third-Party Plaintiffs motion for Summary Judgement against Third Party Defendant while through ing them out of the Courtroom and approve Third Party Defendant's motion for Summary Judgement against the dishonest Third Party Plaintiffs.

Submitted on this 10th day of March, 2016 and placed in the U.S. Mail the same day

Respectfully,

MB Hutson. Pro Se
803 308 2714

Cc: Wayne Byrd, John Wilkerson, Chip Emge, Tom Harper, Brady Thomas, MB Hutson

Exhibit X

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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

CIVIL ACTION NO. 2:14-cv-01583-DCN MGB

RECEIVED CLERK'S OFFICE
2017 SEP 25 A 8:58
DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

WILLIAM REED, Donna Reed Bonnie Youmans, Jane Yates, Phillips Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Plantiffs,

vs.

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC,

Defendants.

TLC Holdings, LLC, Richard Clark, James Thigpen, Jimmy "Steve" Lovell, and Ocoee, LLC

Third Party Plaintiffs,

vs.

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

Third Party Defendant

RESPONSE TO THIRD PARTY PLAINTIFF'S SUPPLEMENT TO THEIR MOTION FOR SANCTIONS AGAINST THIRD PARTY DEFENDANT

(Entry # 308)

RESPONSE BY THIRD PARTY DEFENDANT

Comes Now, Third Party Defendant who states the following:

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1. Third Party Defendant was unaware of Third Party Plaintiff's fraud upon the Honorable Judge George James (State Court) and Third Party Defendant when the Settlement Agreement (primarily prepared by Third Party Plaintiffs) was submitted to Judge George James for his signature, which took place without a formal hearing on that Settlement Agreement.
2. Third Party Defendant later discovered that the same Settlement Agreement was severely fraudulent and damaging. The Settlement Agreement remains fraudulent against the Honorable State Court and Third Party Defendant.
3. Third Party Defendant has been informed of this fraud by officers of the Summerton Sheriff's Department, SLED (upon referral by the SC State Attorney General's office, and other attorneys who have reviewed the same.

4. Third Party Defendant will employ a South Carolina attorney to represent him in filing for the Setting Aside of the Settlement Agreement in State Court due to fraud. Also, Third Party Defendant, through his attorney, will have two (2) Expert Witnesses who will prepare sworn affidavits. Those witnesses shall appear before the Honorable State Court Judge during the hearing of such Motion to Set Aside due to fraud. Third Party Defendant's attorney will present proof that the Settlement Agreement was, in fact, fraudulent at the time the Honorable State Court Judge George James reviewed the Settlement Agreement. Since no knowledge of, nor mention of, fraud was made at the time the Settlement Agreement was signed, the Honorable State Court Judge had no reason to suspect any intentional wrong doings and

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therefore signed the prepared agreement unaware, making the same an order.

5. The sole reason that Third Party Plaintiffs managed to slip through both the State and Federal Court systems was that they hid behind *res judicata* due to Judge George James's lack of knowledge as to the intentional fraud that was created within the Settlement Agreement and the associated Lease Purchase Agreement.
6. Third Party Defendant has lost hundreds of thousands of dollars plus years of his senior life and did not have the moneys to be represented by an attorney leaving him no choice but to act as Pro Se. Third Party Defendant was up against five skilled, seasoned attorneys representing the Third Party Plaintiffs. Third Party Defendant has spent more than 6,000 hours trying to defend

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his case but has not prevailed for Third Party Plaintiffs used the *res judicata* as a shield to protect themselves.

7. This soon to be filed Motion to Set Aside is legally right and just for Third Party Defendant desires justice.

8. All motions filed and all hearings will be conducted by seasoned South Carolina attorneys and South Carolina Expert Witnesses presenting their sworn affidavits in State Court, where the original fraud occurred.

9. I spoke with the Federal Clerk a few minutes ago and she mentioned that a motion was filed on June 23, 2017. I have not received any motion filed on June 23, 2017. I am responding to the motion entry number 308 filed on 08/31/17, of which I did receive a copy.

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

THEREFORE, Third Party Defendant prays the following:

1. Third Party Plaintiff's Motion be fully denied.

2. That no Sanctions be granted to the Third Party Plaintiffs. The Defendant has less that six hundred dollars (<$600) per month income and is not attempting to create a baseless Motion in State Court and he will be fully represented by attorneys.

3. Third Party Defendant's attorney(s) not be shut out from filing a Motion to Set Aside in State Court, for the State Court should rule that the Settlement Agreement and Consent Order be set aside, not the Federal Court.

4. This Honorable Court not prevent Justice and allow fraud upon the Honorable State Court, the Honorable Judges to continue,

otherwise this Honorable Court would be preventing concealed fraud from surfacing.

Submitted on this 22nd day of September 2017

Respectfully,

MB Hutson, Pro Se

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit Y

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

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

RECEIVED CLERK'S OFFICE

CIVIL ACTION NO. 2:14-cv-01583-DCN

8: 46
DISTRICT COURT

WILLIAM REED, et al,

Plantiffs,

vs.

BIG WATER RESORT, LLC, et al,

Defendants.

TLC HOLDINGS, LLC, et al

Third Party Plaintiffs,

vs.

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

Third Party Defendant

DATE CORRECTED **AFFADAVIT**

AND

MEMORANDUM IN RESPONSE TO THIRD PARTY PLAINTIFFS' MEMORANDUM IN OPPOSITION TO THIRD PARTY DEFENDANT'S MOTION FOR RECONSIDERATION

Third Party Defendant hereby submits a date corrected affidavit and response to Third Party Plaintiffs' Opposition to Third Party Defendant's Motion for Reconsideration (Dkt. No. 300).

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

The typo correction from 2015 to 2014 has been made and the error(s) in the first affidavit are corrected thereto on both pages one and three. A newly executed affidavit reflecting those corrections is attached.

Although attorneys for Third Party Plaintiff cites (entry #300) that Judge Baker's Order on May 20, 2016, granting Summary Judgement to same, and Judge Norton (Dkt. No. 280, p. 14) states that "Judge James's order is plainly a final judgment on the merits of the state court case," the case before Judge James in State Court was not defended in early 2014 with the knowledge of the Third Party Plaintiffs' fraud, as neither Hutson, nor his attorney, Paul Weisenstein, knew of the calculated, planned fraud orchestrated by Third Party Plaintiffs until some four (4) months later at the September 2014 (not 2015) depositions, when the January 2009, Board Minutes of the Third Party Plaintiffs' were entered into the court records. NEITHER did the Sellers (now Third Party Plaintiffs) make such a disclosure in State Court, thereby masking the fraud in the State Court Case(s) and creating unclean hands and fraud upon the State Court. Therefore, Hutson's defense and his attorney's representation thereof in the State Court in the spring of 2014 did not incorporate the fraud as part and parcel to the defense in State Court.

This fraud upon the State Court continued to be active under Judge Cothran's Order upon which he ruled that (Buyer) now Third Party Defendant, had released

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

his claims in 2012 through the Settlement Agreement. It has already been established in previous submissions that fraud cannot be released, and particularly unknown fraud. Therefore, as previously submitted to the Federal Court by Third Party Defendant, *res judicata*, cannot be valid when fraud is involved.

Furthermore, under (DKT 300, p.4) submitted by Third Party Plaintiffs, they claim that there are only "three grounds for amending an earlier judgment pursuant to Rule 59e." The three they mention cleverly avoids one (60d) which includes (60-d-3): "set aside a judgment for fraud on the court." Contrary to the allegation by attorneys for Third Party Plaintiffs, that Hutson is untimely, his requests for reconsideration is clearly within the one year, or twelve months, to file for reconsideration.

Also, The Rooker – Feldman doctrine does not apply in this situation. The United States Court of Appeals for the Fourth Circuit decided a case called Resolute Insurance Co. v. North Carolina, 397 F.2d 586 (4th Cir. 1968) and in that case the court stated: "While a federal court may entertain a collateral attach on a state court judgment which is alleged to have been procured through fraud, deception, accident, or mistake, there is no basis in the instant case for such an attack." Although the exception did not exist in that 1968 case the exception was articulated there. This exception has that allows federal courts to have subject matter jurisdiction has never been overturned by the United States Supreme

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Court. So, *a federal court may exercise subject matter jurisdiction when fraud, deception, accident, or mistake exist in the state court decision.*

It should also be pointed out that the Plaintiff's in this case, who now complain about subject matter jurisdiction, themselves filed this action in federal court and alleged that the federal court has subject matter jurisdiction. I am sure these plaintiffs will object that they did not contemplate the issue currently under discussion to arise in federal court, but they should have and defendant in defense against plaintiffs' claims and in prosecution of defendant's own claims must be allowed to pursue this claim under the exception to the Rooker-Feldman doctrine.

The Fourth Circuit was entirely correct that there can be an exception to res judicata based upon fraud, deception, accident, or mistake. The United States Supreme Court has stated for at least ninety years that only "in the absence of fraud or collusion" does a judgment from a court with jurisdiction operate as res judicata. (Riehle v. Margolies, 279 U.S. 218, 225 (1929)

Some courts have reasoned when fraud is alleged, it is not that a legal error by the state court occurred; rather, the fraud was a wrongful act by the adverse party." Thus, the Rooker-Feldman should not apply.

It is not an attack on the state court but an appropriate attack against the wrongful actions of the adverse party.

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It would be inherently unfair to allow the Plaintiffs in this to secured subject matter jurisdiction for their allegations but then to disallow Defendant to proceeds on his allegations.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THIRD PARTY DEFENDANT ASKS THAT THIS COURT DENY Sanctions and GRANT Third Party Defendant's Motion for Reconsideration based on new evidence.

Respectfully submitted this 28th day of June, 2017.

M B Hutson, Pro Se

803-308-2714

cc: John Wilkerson, Atty., Turner Padget

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

CASE NUMBER C/A NO.: 2:14-cv-01583-DCN

RECEIVED CLERK'S OFFICE
2017 JUN 30 A 8:46

AFFIDAVIT OF MB HUTSON, PRO SE. ***WITH DATE CORRECTIONS (pp. 1, 3)***

DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

PERSONALLY APPEARED BEFORE ME MB HUTSON WHO, BEING DULY SWORN, DOES STATE:

My attorney of record, Paul Weissenstein, never had the knowledge nor understanding to include the four most critical pieces of defense evidence that should have been included in his defense filing in my behalf, as Third Party Defendant. Apparently neither he, and subsequently, I did not know of the fraud by Third Party Plaintiffs. Paul Weissenstein, induced me, Third Party Defendant, to execute the Settlement Agreement of April 13, 2012.

I, myself, having no ability to fully understand the fraud being perpetrated on me by Third Party Plaintiffs, signed the Settlement Agreement. I only learned about the fraud and Third Party Plaintiffs conspiracy in the latter part of 2014, whereby a copy of the minutes of the Big Water Resort and TLC Holdings, LLC's concurrent Board Meetings dated January 16th, 2009, appeared at my place at depositions for another case.

attached to the reconsideration Motion.

1. Weissenstein never mentioned to me the long term contractual obligations to family members to use "all" the land for up to (approximately) 70 years while he actively sought subdivision approvals to develop said property for me, his client, on land that (obviously after the minutes of '09 was made available to me,) could not be developed until after a 70+ years "right to use" had expired.

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2. Weissenstein never mentioned Big Water Resort's lack of ownership of any property on which to do business, nor the subsequent need for a contractual agreement/lease of one to two lifetimes (70+ years) between Big Water Resort and TLC Holdings, LLC, who actually held title to the property BWR was doing business on, and, in fact, had and were selling 1-2 lifetimes of its "right to use" during any of the time of Weissenstein's represented me. Also, Weissenstein failed to recognize that South Carolina law requires any and all long term leases for use of real estate to be recorded (Code Section 27-33-30). Apparently, Weissenstein never bothered to check on this. He did not recognize that Big Water was operating illegally.

3. Paul Weissenstein never mentioned to me that the moment I executed the Purchase Agreement for the Big Water Business, some 18 million dollar obligation instantly became my responsibility.

4. In a recently discovered private email from Paul Weissenstein to Tom Harper, attorney for TLC Holdings, LLC, Paul writes the following:

"Dear Tom,

Mr. Hudson has signed the agreement and same is attached hereto. Please provide us a copy signed by your clients as soon as possible.

Please provide the wiring instructions so that we can send the initial $8000 payment.

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I look forward to receiving the consent order from you soon which I understand will be signed by me and Mr. Hutson as well as by you and your clients.

I trust that this resolves the court hearing scheduled for Wednesday, and I am taking it off my calendar.

Thank you for all of your hard work, especially over the past few days, in preparing the drafts and the final settlement agreement.

I believe that you and I have negotiated a fair and equitable agreement for both our clients that hopefully will make both of them a lot of money over the next two years.

I hope that you have a good rest of the weekend.

Yours very truly,

Paul Weissenstein, Jr."

end of quote from email.

5. Third Party Defendant's Attorney did not know nor have the knowledge to the above fraudulent facts nor ever advised Third Party Defendant of such important facts nor potential consequences. Third Party Defendant Hutson had no way of understanding what he was executing within the Settlement Agreement since he did not learn of the major fraud until the latter part of 2014.

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My attorney Paul Weissenstein of record, holds a wealth of new evidence that needs to be presented by way of Subpoena in my behalf since he was my attorney who I paid thousands of dollars to yet he refuses to assist me for fear of liability. This case represents more than 6,000 hours of my time fighting for justice and what's right.

FURTHER AFFIDAVIT SAYETH NOT

MB HUTSON

SWORN TO AND SUBSCRIBED BEFORE ME THIS 28th DAY OF JUNE, 2017

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES 01-21-2025

Exhibit Z

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT 3

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2018 Dec 07 9:44 AM - SUMTER - COMMON PLEAS - CASE#2018CP4301583

Outlook.com Print Message

Print

Close

Big Water life time membership info.

From: **Renee Roark** (reneeroark@hotmail.com)
Sent: Thu 11/11/10 10:52 AM
To: Claudia (claudia@coffeychandlerkent.com)
1 attachment
Big Water membership.pdf (920.9 KB)

Mr. Coffey,

Attached is Susan's lifetime membership info. regarding Big Water camp ground. My buyer is concerned about the "life time" members and the impact they can have on the future development of the property. In other words, in your opinion, what is the easiest, legal way to terminate the lifetime memberships of Big Water? Will these memberships have an impact on obtaining clear title for the property?

Would it be better for you to call him and talk to him OR draft an email to him? PLease let me know your thoughts. I can also give him your number if you would rather him call you.

Thanks,

Renee Roark, Realtor ®
Multi-Million Dollar Producer
Re/Max by the Lake
Manning, South Carolina

803-460-4373-cell
803-433-7355 ext:104 -office
803-236-0871-home

www.reneeroark.lakemarionproperty.com
reneeroark@hotmail.com

Roark 0025

Exhibit AA

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ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2017 Feb 23 12:36 PM - CLARENDON - COMMON PLEAS - CASE#2015CP140615

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	CASE NO.: 2015-CP-14-0615
	)	
TLC HOLDINGS, LLC, RICHARD CLARK, AND JIMMY S. LOVELL,	)	
	)	
Plaintiffs,	)	**CONSENT MOTION AND ORDER FOR SUBSTITUTION OF COUNSEL**
	)	
vs.	)	
	)	
M.B. HUTSON A/K/A M.B HUDSON,	)	
	)	
Defendant.	)	

THIS MATTER is before the Court upon motion of Attorney Laura Paton of Carlock, Copeland & Stair LLP and, with the consent of Attorney Frank Gordon of Millberg Gordon Stewart, PLLC for an Order relieving Mrs. Paton and Carlock, Copeland & Stair LLP from any further obligations in the defense of Defendant M.B. Hutson a/k/a M.B. Hudson, substituting Frank Gordon of Millberg Gordon Stewart, PLLC, as counsel of record in defense of the claims against Defendant M.B. Hutson. Mr. Gordon and Millberg Gordon Stewart do not represent M.B. Hutson with respect to any of his counterclaims in this matter.

IT IS HEREBY ORDERED that Laura Paton and Carlock, Copeland & Stair, LLP are hereby relieved from any and all further duties and obligations to Defendant M.B. Hutson and Frank Gordon of Millberg Gordon Stewart, PLLC is hereby substituted as counsel for this Defendant in the defense of claims made against him from this point forward.

AND IT IS SO ORDERED.

____
The Honorable R. Ferrell Cothran, Jr.

Charleston, South Carolina

February ___, 2017

I SO CONSENT:

S/ Frank Gordon
Frank Gordon
State Bar No.: 71769
1101 Haynes Street, Suite 104
Raleigh, NC 27604
fgordon@mgsattorneys.com
Ph: (919) 836-0090

I SO MOVE:

S/ Laura Paris Paton
Laura Paris Paton
State Bar No.: 74125
Carlock, Copeland & Stair LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
lpaton@carlockcopeland.com

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2017 Feb 23 12:36 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

ELECTRONICALLY FILED - 2019 May 30 3:58 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344
ELECTRONICALLY FILED - 2017 Feb 23 12:36 PM - CLARENDON - COMMON PLEAS - CASE#2015CP1400615

Clarendon Common Pleas

Case Caption: TLC Holdings LLC , plaintiff, et al VS M B Hutson , defendant, et al

Case Number: 2015CP1400615

Type: Order/Substitution Of Counsel

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2017-02-23 08:54:46 page 3 of 3

ELECTRONICALLY FILED - 2019 Jun 05 9:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND | CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,
Plaintiff,

v.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy N. Newton, Esquire, JR Murphy, Esquire, John Doe #1 and John Doe #2,

Defendants.

AMENDED MOTION

TO: MB HUTSON/MB HUDSON, PLAINTIFF PRO SE AND TO THE PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Defendant, Timothy N. Newton, Esquire, pro se, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Courthouse at 10:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard for an Order dismissing the Plaintiff's Complaint against him pursuant to South Carolina Rules of Civil Procedure 12(b)(6) and 56 on the grounds that the Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against him and/or that there is no genuine issue as to any material fact and Defendant Newton is entitled to judgment as a matter of law. The basis for this motion will be more clearly set out in the filed memorandum of law.

s/Timothy J. Newton
Timothy J. Newton, Esquire, pro se
(SC Bar #71640)
Murphy & Grantland, PA
P.O. Box 6648
Columbia, SC 29260

Columbia, South Carolina
June 5, 2019

ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND | CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,

Plaintiff,

vs.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2,

Defendants.

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT TIMOTHY J. NEWTON'S MOTION TO DISMISS OR MOTION FOR SUMMARY JUDGMENT

Defendant Timothy J. Newton submits the following Reply Memorandum in support of his Motion to Dismiss or for Summary Judgment as to all claims brought by Plaintiff Hutson. [1]

In his Memorandum filed May 7, 2019 (hereinafter "Memorandum"), Hutson makes numerous allegations. It would be nearly impossible to respond to them all. However, certain key facts undercut all of Hutson's claims.

First, Hutson alleges he was not properly served in the declaratory judgment action that Penn-America filed. This is a sham allegation. As a matter of public record, Hutson was served on July 22, 2016. (Exh. BB: Filed Aff. of Service.)

Second, Hutson continues to allege that Defendant Newton knew that extrinsic fraud upon the court was committed. In his Amended Complaint, Hutson points to certain factors he alleges rendered the Big Water Resort property undevelopable and worthless.

[1] The Court docket indicates that Plaintiff filed a "Memorandum to Defendants Response" on May 7, 2018. A filed copy of this document was never served on Defendant Newton. On June 10, 2019, Newton obtained from the Court an 11-page Memorandum. Plaintiff has e-mailed numerous additional documents, some of which purport to be additional exhibits to Plaintiff's Complaint. This Reply is responsive to the filed Memorandum. Newton reserves his right to respond separately to any new material Plaintiff may file.

In his Memorandum, Hutson lays out the conduct Newton allegedly knew was fraudulent. Hutson claims the Big Water Resort property had a title defect due to the campground membership agreements granting lifetime use rights in the property. (Memorandum, p. 4-5.) Hutson claims the Settlement Agreement and Consent Order he entered into in a prior case (Amended Complaint, Exh. 5.0 and 6.0) were fraudulent because the property was encumbered by the campground memberships. (Id. at p. 5.) Hutson claims that the "Sellers", *i.e.*, TLC Holdings, LLC (hereinafter "TLC"), lacked a contractual agreement guaranteeing the use of the land to the campground members, concealed the fact that they were losing money on the project, failed to escrow money they realized from the purchasers of the campground memberships, and falsified financial statements. (Id.)

Hutson is collaterally estopped to argue that he was defrauded in his purchase of Big Water Resort. See Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (explaining that collateral estoppel bars a party from relitigating an issue that was decided in a previous action). In a prior action, Magistrate Judge Baker determined that Hutson could not prove fraud that took place after December 11, 2013. (Exh. A: R&R at p. *14.) That ruling was adopted by Judge Norton. (Exh. B: Norton Order.)

These rulings were not based upon any conduct over which Penn-America or its counsel had control. Instead, they were based upon evidence that Hutson knew about the campground memberships before he purchased the Big Water Resort property. (Exh. B: Norton Order at p. *7; Exh. A: R&R at *13 n.5; Exh. Q: Curtis Order at p. 2; Exh. Z: E-mail.) Neither Penn-America nor its counsel had anything to do with Hutson's purchase transaction with TLC—Penn-America's policy did not even take effect until October 16, 2013—nearly three years after Hutson purchased the property. (Compare Amended Complaint, Exh. 11.0, ¶ 17 with Exh. 5.0.)

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Hutson subsequently began claiming that he was defrauded because he did not know until after he entered into the Settlement Agreement with TLC that all of the Big Water Resort property was undevelopable because it was subject to the campground membership agreements, and that this information was withheld from him at that time. There is some corroboration for this claim in that Bonnie Youmans, who was the class representative for the campground members in their class action against TLC, testified in her deposition that she thought all of the Big Water Resort property was part of the campground. (Amended Complaint, Exh. 4, ¶ 14.)

However, this testimony, even if believed, does not prove fraud upon the court. Youmans' hearsay testimony cannot prove which property was subject to the campground membership agreements. It is a matter between TLC, Hutson, and the campground members.

Furthermore, Newton questioned Richard Clark on this subject during the Rule 30(b)(6) deposition of TLC Holdings, LLC in the declaratory judgment filed by Penn-America. Clark testified that some of the property conveyed in the Lease Purchase Agreement was not part of the Big Water Resort campground. (Exh. CC: Dep. excerpts.) Clark testified as follows:

> Q. Exhibits 6, 7, 8, 9, 10, 11, all of these parcels were part of the lease purchase agreement?
>
> A. That's correct.
>
> Q. How many of them were part of the campground property?
>
> A. Well, there are bits and pieces. But Exhibit 6 was part of the campground itself. The outlined area in Exhibit 7 was part of the campground. Part of the outlined area in Exhibit 8, not all was part of the campground area.
>
> Q. In other words, the convenience store was not, is that correct?
>
> A. Correct. Exhibit 9, this outlined area was part of the campground. Exhibit 10, you know, I don't know if I'd say that was part of the campground or not. The campground may have utilized that building, may not have. I'm not sure. For storage for equipment. I'm not totally sure of that one. And Exhibit 11 was not part of the campground.

(Exh. CC: Dep. excerpts, p. 40.)

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Thus, the most that can be said is that there was an issue of disputed fact as to which of the parcels that Hutson acquired under the Lease Purchase Agreement were subject to the campground memberships. On the one hand, one of the campground members testified she thought all of the property was campground property. On the other, one of TLC's principals testified that all the property was not part of the campground.

Furthermore, counsel for TLC objected to this line of questioning during the deposition. (Exh. CC: Dep. excerpts, pp. 30.) The basis for the objection was that this line of questioning had nothing to do with the declaratory judgment and that this issue had been litigated in prior cases. (Id.) Attorney Newton was unable to pursue the issue further because the issue of which parcels of Big Water Resort property were part of the campground was not material to the issues in the Declaratory Judgment action to determine liability coverage.

Newton was not involved in any other case in the Big Water Resort litigation. Thus, Attorney Newton had no way of ascertaining the truth or falsity of Hutson's allegation that he was defrauded by TLC.

Hutson's remaining arguments relate to various alleged violations of the Rules of Professional Responsibility. None of the rules Hutson cited have any relevance to this case.

The key fact is that Newton has never represented either Hutson or TLC. Newton represented Penn-America in the declaratory judgment action involving Penn-America's coverage. (See Amended Complaint, Exhs. 4.0, 7.0, 11.0, and 12.0.) Newton had no involvement whatsoever in the dispute between Hutson and TLC over Big Water Resort. Hutson's allegation that Newton was retained by Penn-America to represent Hutson is simply false. (See Memorandum, pp. 1-2.)

Rule 1.7 of the South Carolina Rules of Professional Responsibility governs attorney-client relationships. Specifically, it prohibits lawyers from representing clients when there is a conflict

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of interest. Because Newton did not represent Hutson, this Rule does not apply. The ABA Ethics Rule Hutson quoted is inapplicable for the same reason. (See Memorandum at p. 2.)

Rule 1.2 prohibits a lawyer from engaging or assisting a client in committing a crime or a fraud. Hutson does not allege that Newton represented TLC, who allegedly defrauded Hutson. Therefore, this rule does not apply to Newton in this case.

Rule 3.3 prohibits a lawyer from knowingly offering evidence the lawyer knows is false. Again, Hutson's allegation is not that Newton offered false evidence, but rather that TLC defrauded the court. Newton has never represented TLC. Therefore, this Rule does not apply to Newton in this case.

Rule 4.1 prohibits a lawyer from knowingly making a false statement to others. It also requires lawyers to disclose material facts when disclosure is necessary to prevent a client from committing a fraud. Newton did not represent TLC, who allegedly defrauded Hutson. Newton represented Penn-America, an adverse party to both TLC and Hutson. Nothing in this Rule imposes a duty on a lawyer who represents an adverse party to file an action to set aside the result of a prior action, regardless of whether there are allegations of fraud against that party.

Rule 8.4(e) prohibits lawyers from engaging in conduct that is prejudicial to the administration of justice. Newton did not represent either TLC or Hutson. This Rule does not require a lawyer representing a third party to intervene in a dispute merely because one of the parties claims they are being defrauded.

Finally, Hutson claims that Newton provided him with legal advice. Hutson's allegation that he was a victim of fraud upon the court put Newton in a difficult position. On the one hand, Newton represented an adverse party and could not represent Hutson's interests in vindicating the alleged fraud. On the other hand, Newton represented the liability insurer for one of Hutson's

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companies.[2] Hutson repeatedly threatened to sue Penn-America based upon his claim that the fraud he alleged in his counterclaims against TLC was interrelated with the defense of TLC's claims against him. Since liability insurers have certain special duties to insureds, coupled with Hutson's continuing barrage of threats of litigation, Newton could not avoid addressing this issue with Hutson. Additionally, as discussed previously, a common interest existed in that if Hutson could prove the judgment against him was tainted with fraud, it could benefit Penn-America also.

Furthermore, Hutson alleged fraud upon the court. "Fraud upon the court is a serious allegation involving corruption of the judicial process itself." Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003). Although Newton could not represent Hutson, and Penn-America lacked standing to assert his claims, the seriousness of the allegation warranted an investigation.

The e-mail Hutson attached to his pleading demonstrates that Newton did everything in his power to protect Hutson's ability to vindicate himself from the alleged fraud upon the court. (Amended Compl., Exh. 4.0.) Newton provided Hutson with all non-privileged evidence material to Hutson's claim. Since the issue involved voluminous documents and protracted litigation, Newton went so far as to summarize the key facts of which he was aware that might corroborate Hutson's position. He even cited cases that Hutson had brought to his attention. Newton encouraged Hutson to find an attorney who could file a claim, if that attorney thought it was meritorious. All Hutson had to do to protect himself was to take the e-mail to a prospective lawyer and find one that would take the case.

[2] Hutson has repeatedly claimed he was the insured under Penn-America's policy. In fact, Hutson's status as an insured was a disputed issue in the declaratory judgment action. (Amended Compl., ¶¶ 72-81.) Penn-America's policy was issued to "BWR, Inc.," an entity that did not even exist when Hutson purchased the Big Water Resort property in his own name.

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However, Hutson admits he did not sue TLC. (Memorandum, p. 4.) He claims that, having failed to protect his own interests, he has a cognizable cause of action against Penn-America and its counsel for failing to prosecute his claim for him. Even if Hutson could not find a lawyer to represent him, Hutson has repeatedly demonstrated that he knows how to file lawsuits as a *pro se* litigant—as he did in this action.

What more could Newton have done? Over the course of multiple cases in the Big Water Resort litigation, there is no conclusive evidence that Hutson was defrauded. In fact, the results of several prior cases point in the opposite direction. Evidence developed in prior actions demonstrates that the factual basis for the alleged fraud is uncertain at best. There is no authority to support Hutson's contention that counsel for a liability insurer has a duty to prosecute a doubtful and disputed claim on behalf of a putative insured—particularly when prosecuting that claim would require the setting aside of several prior judicial rulings. Newton could not represent Hutson because he represented Penn-America, an adverse party. Penn-America had no standing to prosecute Hutson's claim.

The only one who can act to vindicate the alleged fraud against Hutson is Hutson. If Hutson believes he was defrauded, he has every right to sue the alleged perpetrators. However, Hutson has no cognizable claim that third parties must prosecute his claim. Accordingly, Hutson's claims against Newton should be dismissed.

The documents Newton has submitted are not necessary for the dismissal of this action. They are provided to demonstrate that Hutson's claim is not only procedurally defective, it is also devoid of merit. They demonstrate that this action is merely a rehash of issues that have been litigated in several prior actions. They also demonstrate that Hutson is now recycling these same allegations for use against a wider net of defendants.

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In this action, Hutson has personally sued an adverse attorney who made every effort to ensure that his rights were safeguarded (Newton). Hutson has also personally sued a lawyer against whom he makes no allegations whatsoever (Murphy), and a liability carrier that defended him and paid its limit to indemnify him in the only two actions in which it was involved (Penn-America and its parent, Global Indemnity Group).

Many of Hutson's key allegations in this action are patently false, as can be demonstrated by the court record and documents produced in prior actions. But he nevertheless made them in this action in apparent attempt to force the case into discovery. Hutson has also made numerous other nonsensical allegations in what appears to be an attempt to rush past the standard for a motion to dismiss by sheer voluminosity.

Hutson has demonstrated a continuing pattern of abusing the judicial system for the purpose of harassment. One need only peruse Hutson's some forty-seven (47) court filings in the Class Action to satisfy oneself as to why Hutson was sanctioned and why this action should not be permitted to proceed. See Big Water Resort, LLC, et al. v. TLC Holdings, LLC, C/A: 2:14-cv-1583-DCN-MGB, Docket Entries No. 17, 59, 60, 112, 125, 138, 141, 148, 155, 159, 160, 161, 162, 168, 177, 186, 190, 191, 193, 198, 200, 202, 203, 208, 209, 213, 215, 216, 217, 220, 223, 224, 225, 228, 230, 233, 237, 252, 255, 260, 263, 264, 265, 272, 274, 298, and 305. These documents are available online through the website for the District of South Carolina.

Finally, in an effort to head off further frivolous filings by Hutson, Newton takes this opportunity to address two arguments Hutson has used in e-mails for the purpose of extorting a settlement.

First, Hutson likely intends to argue that a liability insurer's knowledge of extrinsic facts triggers a duty to act. See Illinois Tool Works, Inc. v. Travelers Cas. and Sur. Co., 2015 IL App (1st) 132350, 26 N.E.3d 421 (Ill. App. Ct. 2015); Burlington Ins. Co. v. CHWC, Inc., 559 Fed.

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App'x 639 (9th Cir. 2014); Williford Roofing, Inc. v. Endurance American Specialty Ins. Co., No. 2:16-cv-01830-DCN, 2017 WL 479507 (D.S.C. signed Feb. 6, 2016). These cases are inapposite for two reasons. In the first place, they address an entirely different situation—a liability insurer's assessment of its duty to defend. Furthermore, Penn-America did not deny coverage to Hutson. Penn-America defended Hutson in both actions in which it was put on notice, and settled both claims, including the sanctions Hutson incurred due to his own misconduct. These cases do not stand for the proposition that a liability insurer and its coverage counsel must file legal actions to prosecute alleged fraud upon the court against a putative insured that was perpetrated in prior actions, as Hutson alleges.

Second, Hutson likely intends to argue that knowledge of facts adverse to a party's position triggers a duty to act. See Sullins v. State Bar, 15 Cal. 3d 609, 542 P.2d 631 (Cal. 1975); Ray v. Ray, 374 S.C. 79, 647 S.E.2d 237 (2007). These cases are not relevant because they address a lawyer's duty of candor toward the court. In Sullins, a lawyer was successful in a suit to disinherit a daughter from her mother's estate. When the lawyer notified the nephew that he would inherit the property, the nephew wrote back and said he wanted the daughter to have the property. The lawyer concealed this letter from the court in securing court approval of a 50 percent contingency fee agreement. 15 Cal. 3d at 613-17, 542 P.2d at 633-34. In Ray, a party litigant deliberately concealed $130,000 until after the marital property had been divided. 374 S.C. at 82, 647 S.E.2d at 238.

These circumstances are not present in this case. Newton did not represent either Hutson or TLC. Moreover, the evidence Hutson refers to was not concealed. In fact, it was presented the court in several prior cases. The testimony of the class representative who said she thought all of the Big Water Resort property was subject to the campground memberships was read into the record at trial in the Defamation Action. (Amended Compl., Exh. 4.0, ¶ 14.) Furthermore, Newton

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had no opportunity to raise the issue of possible fraud before the cases were decided. Newton had no involvement in the Ejectment Action, the Class Action, or the Defamation Action. Whatever fraud may have been committed was irrelevant to the Coverage Action in which Newton was involved, except to the extent it might undermine the judgment against Hutson. Finally, Newton did not conceal the evidence in his possession from Hutson. The e-mail Hutson filed demonstrates that Newton provided the information material to possible fraud to Hutson so he could protect his interests.

CONCLUSION

Hutson has failed to plead a cognizable cause of action in this action. Additionally, his allegations concern issues that have been previously litigated in several prior lawsuit and found to lack merit. For the reasons set forth above, Hutson's claims against Defendant Newton should be dismissed, and Newton should be dismissed as a party from this action.

Respectfully submitted,

s/Timothy J. Newton

Timothy J. Newton, Esquire
State Bar No. 71640
P.O. Box 6648
Columbia, South Carolina 29260
(803) 782-4100

Columbia, South Carolina
June 13, 2019

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Exhibit BB

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION
CASE NUMBER: 2:16-cv-01943-DCN

Penn-America Insurance Company,

Plaintiff,

v.

BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson;

Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell a/k/a Jimmy "Steve" Lovell, James Thigpen, Ocoee, LLC;

William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and on behalf of all others similarly situated,

Defendants.

NOTICE OF FILING AFFIDAVIT OF SERVICE

Attached for filing in the above matter is an Affidavit of Service of service of Summons and Complaint on Defendant, M.B. Hutson a/k/a M.B. Hudson.

MURPHY & GRANTLAND, P.A.

s/Timothy J. Newton

J. R. Murphy, Esquire (Fed. I.D. #3119)
Timothy J. Newton, Esquire (Fed. I.D. #9807)
4406-B Forest Drive (29204)
Post Office Box 6648
Columbia, South Carolina 29260
(803) 782-4100
Attorneys for Plaintiff Penn-America Insurance Company

Columbia, South Carolina
July 27, 2016

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AFFIDAVIT OF SERVICE

UNITED STATES DISTRICT COURT
District of South Carolina

Case Number: 2:16-CV-01943-DCN

Plaintiff:
Penn-America Insurance Company

vs.

Defendant:
BWR, Inc., on its own behalf and d/b/a Big Water Resort, M.B. Hutson a/k/a M.B. Hudson; Big Water Resort, LLC, TLC Holdings, LLC, Richard Clark, Jimmy S. Lovell, James Thigpen, Ocoee, LLC; William Reed, Donna Reed, Bonnie Youmans, Jane Yates, and Phillip Caulder, all individually and for the benefit and behalf of all others similarly situated

For:
Murphy & Grantland, P.A.
Post Office Box 6648
Columbia, SC 29260

Received by Palmetto Legal Gophers, LLC to be served on **M.B. Hutson a/k/a M.B. Hudson, 1545 Bilmore St., Orangeburg, SC 29115**.

I, Matthew Michaelis, being duly sworn, depose and say that on the **22nd day of July, 2016 at 6:30 pm, I:**

SUBSTITUTE served by delivering a true copy of the **Letter, Plaintiff's Answers to L.R. 26.01 Interrogatories, Notice of Electronic Filing, Summons, Complaint, Civil Cover Sheet, Exhibits** to: **Cynthia Exum as Co-resident** at the address of: **1545 Bilmore St., Orangeburg, SC 29115**, the within named person's usual place of **Abode**, who resides therein, who is fifteen (15) years of age or older.

Description of Person Served: Age: 45, Sex: F, Race/Skin Color: White, Height: 5'10", Weight: 190, Hair: Dark Blonde, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 26th day of July, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC
EXP. DATE

RON GROSSBERG
Notary Public, South Carolina
My Commission Expires
April 19, 2020

Matthew Michaelis

Palmetto Legal Gophers, LLC
PO Box 6108
Columbia, SC 29260
(803) 216-1621

Our Job Serial Number: LPW-2016001916
Ref: 1560-0050

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Exhibit CC

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1 THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF SOUTH CAROLINA
3 CHARLESTON DIVISION
4
5 PENN-AMERICA INSURANCE)C.A. NO.: 2:16-cv-01943-DCN
6 COMPANY,)
7 Plaintiff,)
8 v.) 30(b)(6)
9) Deposition of
10 BIG WATER RESORT, LLC, TLC) TLC HOLDINGS, LLC
11 HOLDINGS, LLC, RICHARD) AND
12 CLARK, JIMMY S. LOVELL a/k/a) BIG WATER RESORT, LLC
13 JIMMY "STEVE" LOVELL, JAMES) November 14, 2017
14 THIGPEN, OCOEE, LLC,)
15 Defendants.)
16 ________________________)
17 30(b)(6) deposition of TLC Holdings, LLC and Big Water
18 Resort, LLC, on oral examination of Richard Clark,
19 reported by Lisa F. Huffman, Verbatim Court Reporter and
20 Notary Public in and for the State of South Carolina;
21 said deposition taken pursuant to notice of deposition,
22 by agreement and in accordance with Federal Rules of
23 Civil Procedure, at the law offices of Turner Padget, 40
24 Calhoun Street, Suite 200, Charleston, South Carolina,
25 on November 14, 2017, at the hour of 9:57 a.m.

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1 APPEARANCES
2
3 TIMOTHY J. NEWTON, ESQUIRE
4 Murphy & Grantland, P.A.
5 4406-B Forest Drive
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8 ATTORNEY FOR PLAINTIFF
9
10 JOHN S. WILKERSON, ESQUIRE
11 Turner Padget Graham & Laney, P.A.
12 40 Calhoun Street, Suite 200
13 Charleston, South Carolina 29401
14 jwilkerson@turnerpadget.com
15 -and-
16 R. WAYNE BYRD, ESQUIRE
17 Turner Padget Graham & Laney, P.A.
18 2411 North Oak Street, Suite 301
19 Myrtle Beach, South Carolina 29577
20 wbyrd@turnerpadget.com
21 ATTORNEYS FOR DEFENDANTS, BIG WATER RESORT, LLC, TLC
22 HOLDINGS, LLC, RICHARD CLARK AND JIMMY "STEVE LOVELL
23
24 Also Present: Arden Lowndes and Steve Lovell
25 * * * * *

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20
21
22 LEGEND OF THE TRANSCRIPT
23 dashes [-] intentional or purposeful interruption
24 [ph] denotes phonetically written
25 [sic] written as said

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1 STIPULATIONS
2 It is hereby stipulated and agreed by and
3 between counsel for the respective parties that
4 the Witness will not waive the reading and signing
5 of the deposition transcript.
6 Whereupon,
7 RICHARD CLARK,
8 having been first duly sworn,
9 was examined and testified as follows:
10 DIRECT EXAMINATION
11 (By Mr. Newton)
12 Q. Mr. Clark, my name is Tim Newton. I'm here
13 representing Penn-America Insurance Company. This
14 is a coverage action. I'll just put the case
15 number on the record. Pending in Federal Court
16 Charleston Division 2:16-cv-01943-DCN. We're here
17 pursuant to the Federal Rules of Civil Procedure
18 for a deposition. Have you ever given a deposition
19 before?
20 A. I have.
21 Q. And in South Carolina, have you?
22 A. I have.
23 Q. Okay. So I won't belabor the details. If you
24 would, just direct any questions that you have from
25 hereon to me rather than your attorney. If you

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1 need a break let me know. If you would, state your
2 responses in yes or no form rather than nodding or
3 something like so the court reporter can get
4 everything. So we'll go ahead and begin.
5 MR. NEWTON: Just for the record, what
6 we're going to do first is we're going to do
7 the two 30(b)(6) depositions together. I've
8 agreed to do that. So let's make Exhibit
9 Number 1 the 30(b)(6) Notice.
10 MR. WILKERSON: This is actually all the
11 notices --
12 MR. NEWTON: That's correct.
13 MR. WILKERSON: What we're doing here is
14 the first two?
15 MR. NEWTON: Yes.
16 MR. WILKERSON: Okay. These are the
17 depositions of TLC Holdings, LLC and the
18 deposition of Big Water Resort, LLC. And Mr.
19 Clark will be he spokesperson for both.
20 MR. NEWTON: Okay.
21 (PLAINTIFF'S EXHIBIT 1 MARKED FOR
22 IDENTIFICATION PURPOSES (10 pages) - NOTICE
23 OF DEPOSITION.)
24 A. Am I supposed to have this?
25 MR. WILKERSON: Yes, sir.

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

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1 MR. NEWTON: I'm going to mark this
2 Exhibit 2.
3 (PLAINTIFF'S EXHIBIT 2 MARKED FOR
4 IDENTIFICATION PURPOSES (9 pages) - AMENDED
5 COMPLAINT.)
6 Q. This is a pleading in Civil Action Number 2015-CP-
7 14-0615 in State Court, the County of Clarendon,
8 Court of Common Pleas. Have you seen this document
9 before?
10 A. I believe I have.
11 Q. It's an Amended Complaint in a case captioned as
12 TLC Holdings, LLC, et al., versus M.B. Hutson filed
13 November 29, 2016. Did you participate in
14 providing information for this Complaint?
15 A. I did.
16 MR. NEWTON: I'm going to mark this next
17 one as Exhibit 3.
18 (PLAINTIFF'S EXHIBIT 3 MARKED FOR
19 IDENTIFICATION PURPOSES (14 pages) -
20 COMPLAINT.)
21 Q. Exhibit 3 is a Complaint in case captioned William
22 Reed versus Big Water Resort, LLC, et al., Civil
23 Action Number 2:14-CV-01583-DCN. Have you seen
24 this document before?
25 A. I have.

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

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

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

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

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

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

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

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

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

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

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1 A. Say again, please.
2 Q. Prior to December 2010, what entity operates the
3 campground?
4 A. Which entity?
5 Q. Yes.
6 A. Big Water Resort, LLC.
7 Q. What is the mechanism by which Big Water Resort,
8 LLC has access to the campground property?
9 A. There was a lease between Big Water Resort, LLC and
10 TLC. And the ownership was common.
11 Q. When you say the ownership was common, what does
12 that mean?
13 A. That means that the individuals owning membership
14 interests in the entity TLC Holdings, LLC were
15 exactly the same in the same proportion that the
16 individuals holding the membership interest in Big
17 Water Resort, LLC.
18 Q. Let's talk about that for a minute. TLC Holdings,
19 LLC, how many principals are there in it?
20 A. Three.
21 Q. And the name of those principals are?
22 A. Richard Clark, Steve Lovell and Jim Thigpen.
23 Q. Jim Thigpen, is he here today?
24 A. No, he isn't.
25 Q. What's his condition?

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

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1 lease payment.
2 Q. When was the lease entered into?
3 A. I don't recall for sure, but I think 2003.
4 Q. Did Big Water Resort, LLC ever make payments to
5 TLC, LLC pursuant to that lease we're talking
6 about?
7 A. No.
8 Q. Did Big Water Resort ever cease operations?
9 A. No.
10 MR. NEWTON: I will mark as Exhibit 5.
11 (PLAINTIFF'S EXHIBIT 5 MARKED FOR
12 IDENTIFICATION PURPOSES (34 pages) - LEASE
13 PURCHASE AGREEMENT.)
14 Q. Do you recognize this document?
15 A. I do.
16 Q. Tell me about this document. What is it, Exhibit
17 5?
18 A. This is a document that was entered into between
19 TLC Holdings, Richard Clark, Jimmy Steve Lovell and
20 Jim Thigpen with M.B. Hudson to lease the
21 properties that were owned by TLC Holdings at the
22 location we discussed earlier. It was to lease
23 that property and with an obligation to purchase.
24 Q. What was the purchase price?
25 A. Well, actually, there was two options on the

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1 purchase price. I believe there was one option
2 where if it was purchased by a certain date, the
3 purchase price was six million dollars. And if it
4 didn't meet that date, but purchased at a later
5 date then it was seven million dollars, so.
6 Q. And the lessee was who, Mr. Hudson; is that
7 correct?
8 A. That's correct.
9 Q. So if you turn to page 3 of the lease purchase
10 agreement. At the beginning of the first full
11 paragraph there in the middle of the page, would
12 you read that sentence?
13 A. (As read) The parties acknowledge that the
14 purchaser intends to develop and construct
15 condominiums or other residential dwelling
16 structures on certain portions of the unimproved
17 premises.
18 Q. What was the intent of the parties there?
19 MR. WILKERSON: Object to the form.
20 A. Well, the intent as it pertains to that specific
21 sentence --
22 Q. Yes.
23 A. -- or as it pertains to this agreement?
24 Q. Well, let's start with the agreement. What was the
25 intent of the parties for the agreement?

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

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1 captured in these agreements.
2 Q. Have you been present at any of M.B. Hudson's
3 testimony in the litigation over Big Water?
4 A. I have.
5 Q. Would it surprise you if Mr. Hudson's testimony is
6 different from what you've just stated?
7 A. I've been involved in this and the testimony from
8 Mr. Hudson in restraining -- temporary restraining
9 order that he had tried to overturn. I've listened
10 to his testimony in a bankruptcy examination. I've
11 listened to his testimony in this particular case.
12 And it wouldn't surprise me what you might hear Mr.
13 Hudson's say.
14 Q. Now, was Hudson supposed to make lease payments
15 under this lease purchase agreement, Exhibit 5?
16 A. He was.
17 Q. How much were the payments?
18 A. I think it was for the first seven months, I
19 believe, seven or eight months they were $10,000 a
20 month and then after that they went to $8,000 a
21 month, I believe.
22 Q. Okay. So you got, 70,000 plus 40,000, 110,000.
23 And then what was it for the second year?
24 A. I'm sorry?
25 Q. What was it for the second year?

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1 A. I believe it was 8,000 a month for the second year.
2 But you'd have to go back and look -- it's in the
3 agreement.
4 Q. Would you agree that that comes out to be around
5 100,000 per year for lease payments?
6 A. Yeah, I think somewhere around 100,000.
7 Q. Now, if you'd flip to the back. I'm trying to
8 understand what properties we're talking about
9 here. I'm going to show you a series of printouts
10 that I did from the Clarendon County website.
11 MR. NEWTON: This first one, Exhibit 6.
12 (PLAINTIFF'S EXHIBIT 6 MARKED FOR
13 IDENTIFICATION PURPOSES (1 page) - Color
14 Aerial Photograph.)
15 Q. Actually, let me back up. If you go to the Lease
16 Purchase Agreement, Exhibit A, then you have A and
17 then in bold and underlined, Campground known as
18 Big Water Resort. It goes on into the second page.
19 Then it says, For derivation, see below. Said
20 tract being designated as Clarendon tax map number
21 035-05-00-001-00. I'm going to represent to you
22 that I went to the Clarendon County website and
23 printed this off. If you take a look you see
24 parcel ID number. Does this appear to be the tract
25 that we're talking about?

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1 MR. WILKERSON: Object to the form. What
2 are you talking about? The picture or the
3 entirety of the blue or part of the blue or
4 what are you talking about?
5 Q. Do you see the below the photo on the left there
6 where it says parcel ID number?
7 A. Correct.
8 Q. And then what is the number that's after that
9 listing?
10 A. The number after the parcel ID number?
11 Q. Yes.
12 A. The alternate ID number?
13 Q. No. What is the parcel ID number that's listed on
14 Exhibit 6?
15 A. 035-05-00-001-00.
16 Q. And compare that then to Exhibit 5, what we just
17 read off. The next page there, I believe. No, no.
18 I'm sorry. It's on page 30 of 34 of this Federal
19 Court filing at the top.
20 A. Okay, I'm with you. They're the same.
21 Q. Okay. So it's the same parcel ID number?
22 A. Uh-huh.
23 Q. So if I printed this off, this is -- well, look at
24 the blue highlighted portion of the picture. Does
25 that appear to be to you to be an aerial photo with

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1 the perimeter or the outline of the property
2 identified as campground known as Big Water Resort
3 in Exhibit 5?
4 MR. WILKERSON: Object to the form. Which
5 one?
6 Q. Well, let me ask you this, then. You see a blue
7 line that sort of angles through the middle of it?
8 A. I do.
9 Q. Is there a right-of-way or some sort of power line
10 or something that goes through the middle of the
11 campground?
12 A. There is.
13 Q. Okay. So let's ignore the right-of-way through the
14 middle there and look at the total area. Does that
15 appear to be the Big Water Resort campground
16 property?
17 A. No, not all of it. It's part of it, but not all of
18 it.
19 Q. Okay.
20 MR. WILKERSON: Counsel, could I ask which
21 question this relates to on your 30(b)(6)
22 notice? I just lost touch of where we're
23 going here.
24 MR. NEWTON: It's paragraph six of TLC's.
25 MR. WILKERSON: Six of TLC's?

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1 MR. NEWTON: Uh-huh.
2 MR. WILKERSON: Let's talk about it for a
3 second. From which the above referenced
4 actions arose. Now, the above referenced
5 actions are the actions in which we brought
6 claims against Mr. Hudson, correct?
7 MR. NEWTON: Well, your company
8 knowledge's of the nature of the transactions
9 between TLC Holdings and Hudson, which above
10 reference transactions arose.
11 MR. WILKERSON: But the actions that
12 you've identified were the action where we
13 sued Mr. Hudson both in Cross-Complaint in the
14 Reed matter and a direct action in the matter
15 pending in Clarendon County. I don't know
16 that we've ever -- that these facts, the
17 nature of the property that you're trying to
18 identify here has anything to do with claims
19 that we asserted against him in any of those
20 cases. And, further, these issues have been
21 discovered ad nauseam in the underlying
22 action. And it sounds to me like you're
23 really trying to retry the merits of
24 those underlying actions. I just don't know
25 where we're going here and how this relates to

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1 the 30(b)(6) notice. Can you articulate that
2 for me?
3 MR. NEWTON: Sure. The nature of the
4 transactions between TLC Holdings and M.B.
5 Hudson from which the above referenced actions
6 which are the two underlying lawsuits, and
7 this is we're just identifying the property
8 that relates to this lease purchase agreement.
9 And all of those two actions had to do with
10 this lease purchase agreement and membership
11 agreement.
12 MR. WILKERSON: Well, not to be
13 argumentative, but I am. In the first one
14 you're talking about the claims against M.B.
15 Hudson by us, number one. Number two, the
16 amount of the damages against M.B. Hudson in
17 our claims. Number three, our company's
18 knowledge of the basis for the lawsuit in
19 Clarendon County and the damages in Clarendon
20 County. And I just don't see where this has
21 anything to do with our claims against Mr.
22 Hudson and more importantly, I'm not smart
23 enough to figure out how it has anything to do
24 with coverage. So, you know, this witness has
25 testified to these matters many times under

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1 oath. You've had access to that information.
2 And if you think I'm making a speaking
3 objection, stop me and I'll do it with him
4 outside of the room. I don't intend to do
5 that. But it just seems to me that we're
6 prolonging discovery in this case on matters
7 that, A, have nothing to do with coverage, B,
8 have been explored ad nauseam and, C, are
9 not part of your 30(b)(6) notice.
10 MR. NEWTON: They're part of the 30(b)(6)
11 notice. And I'm, you know, -- they are -- we
12 are talking about the nature of the
13 transaction. And, you know, it's the subject
14 matter of what was leased that's on --
15 identifying the property. Help me understand
16 so that we can -- I mean, you've -- Penn-
17 America for, you know, multi millions. And so
18 the least we can do is figure out what
19 property we're talking about in this lease
20 purchase agreement.
21 MR. WILKERSON: Our objection stands. I
22 don't understand it. I'm not instructing him
23 not answer questions, but I'm in the situation
24 where I'm going to have to buy a transcript of
25 all this stuff where it has already been

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1 explored ad nauseam. You've got plenty of
2 testimony where you can identify these facts.
3 We will stipulate to certain facts concerning
4 the underlying case. I just wonder why we
5 have to go through this process is the basis
6 of my objection.
7 MR. NEWTON: I've explained it to you.
8 And I will say that I've read hundreds of --
9 thousands of pages in this case and have not
10 ever been able to quite figure this out, so I
11 just want to make sure I understand.
12 MR. WILKERSON: Fair enough. Fair enough.
13 Our objection stands, so go ahead.
14 MR. NEWTON: Okay. I'm going to mark
15 another one of these as Exhibit 7.
16 (PLAINTIFF'S EXHIBIT 7 MARKED FOR
17 IDENTIFICATION PURPOSES (1 page) - COLOR
18 AERIAL PHOTOGRAPH.)
19 Q. I'll give you a second to look at it. If you go
20 back to Exhibit 5 then just under the number we
21 just read, it's about the third line down, it says
22 tract two in capital bold type. You got a meets
23 and bounds description. Then you come down to
24 another tax map number about halfway down.
25 And I'll point it out for you. It's right there.

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1 It's 035-06-02-007-00.
2 A. I see that. They're the same as the tax map.
3 Q. Now, if you look at the parcel ID number, the same
4 exercise that we just did with Exhibit 6, does this
5 appear to be a tract two? Does what's printed out
6 in Exhibit 7, does that appear to be tract two
7 identified in the lease purchase agreement?
8 A. I believe it is.
9 MR. NEWTON: Exhibit 8, which I'm going to
10 mark.
11 (PLAINTIFF'S EXHIBIT 8 MARKED FOR
12 IDENTIFICATION PURPOSES (1 page) - COLOR
13 AERIAL PHOTOGRAPH.)
14 Q. Now, if you go back to Exhibit 5 toward the bottom
15 of the same page, Roman numeral B in underlined and
16 bold, convenience store, it's about six lines up
17 from the bottom.
18 A. I see it.
19 Q. And then you got another meets and bounds
20 description. Turn to the next page which is page
21 31 of 34 of the Federal Court filing. And you see
22 the for derivation see below in bold. And then
23 you've got another tax map number, 035-06-02-005-
24 00.
25 A. I see that, and it's the same number as on the tax

Page 35

1 map, Exhibit 8.
2 Q. So let me just ask you this. So is there a
3 convenience store located on this parcel, then?
4 A. That's correct.
5 Q. What's the name of the convenience store?
6 A. I believe it's Big -- well, today?
7 Q. Uh-huh.
8 A. I don't recall what it is today.
9 Q. Well, okay. What was it in 2010?
10 A. Big Water Country Store.
11 Q. Is it like, well, just a typical convenient store
12 like a Pilot or something like that?
13 A. Similar. Has -- sells gasoline, diesel fuel. You
14 can buy what you typically buy in a convenience
15 store once you go on the inside.
16 Q. Was this parcel part of the Big Water Resort
17 campground property?
18 A. Let's make sure we're communicating here. Are you
19 talking about Big Water Resort, LLC or are you
20 talking about the Big Water Resort campground?
21 Q. Well, let's start with Big Water Resort campground.
22 A. It was not -- well, part of the property is, if you
23 want to refer back to the tax map that you gave me
24 and look at the blue lines. If you -- you can see
25 the roof of a building there. That's a convenient

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1 store. If you look to your right of that you'll
2 see what looks like RVs. And that part was
3 utilized by the campground as storage for the
4 people that wanted to store their RVs over time.
5 It's secured with a high chainlink fence around it.
6 So I would say that the storage area is part of the
7 campground, but the convenience store was the
8 convenience store.
9 Q. So that was available to the public?
10 A. The convenience store?
11 Q. The convenience store.
12 A. Yes, sir.
13 Q. Go back to Exhibit 7 for a second. I forgot to ask
14 you, this little narrow parcel there, is that part
15 of the Big Water Resort campground?
16 A. It is.
17 MR. WILKERSON: You're talking about the
18 one wrapped around in blue?
19 MR. NEWTON: Let me look and see what
20 you're looking at. Yes.
21 A. The blue?
22 Q. Yes, what's in blue, highlighted in blue.
23 MR. NEWTON: I'll mark this as Exhibit 9.
24 (PLAINTIFF'S EXHIBIT 9 MARKED FOR
25 IDENTIFICATION PURPOSES (1 page) - COLOR

ELECTRONICALLY FILED - 2019 Jun 13 10:22 AM - RICHLAND - COMMON PLEAS - CASE#2018CP400634

Page 37

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

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

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

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

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Overview

Legend

- Parcels
- Roads

Parcel ID	035-05-00-001-00	**Alternate ID**	26696	**Owner Address**	TLC HOLDINGS LLC
Sec/Twp/Rng	035-05-00	**Class**	COMMERCIAL		3124 GREAT WOOD WAY
Property Address	10 District 10	**Acreage**	30.4		KNOXVILLE, TN 37922

District 10

Brief Tax Description 30.69 ACRE TRACT

(Note: Not to be used on legal documents)

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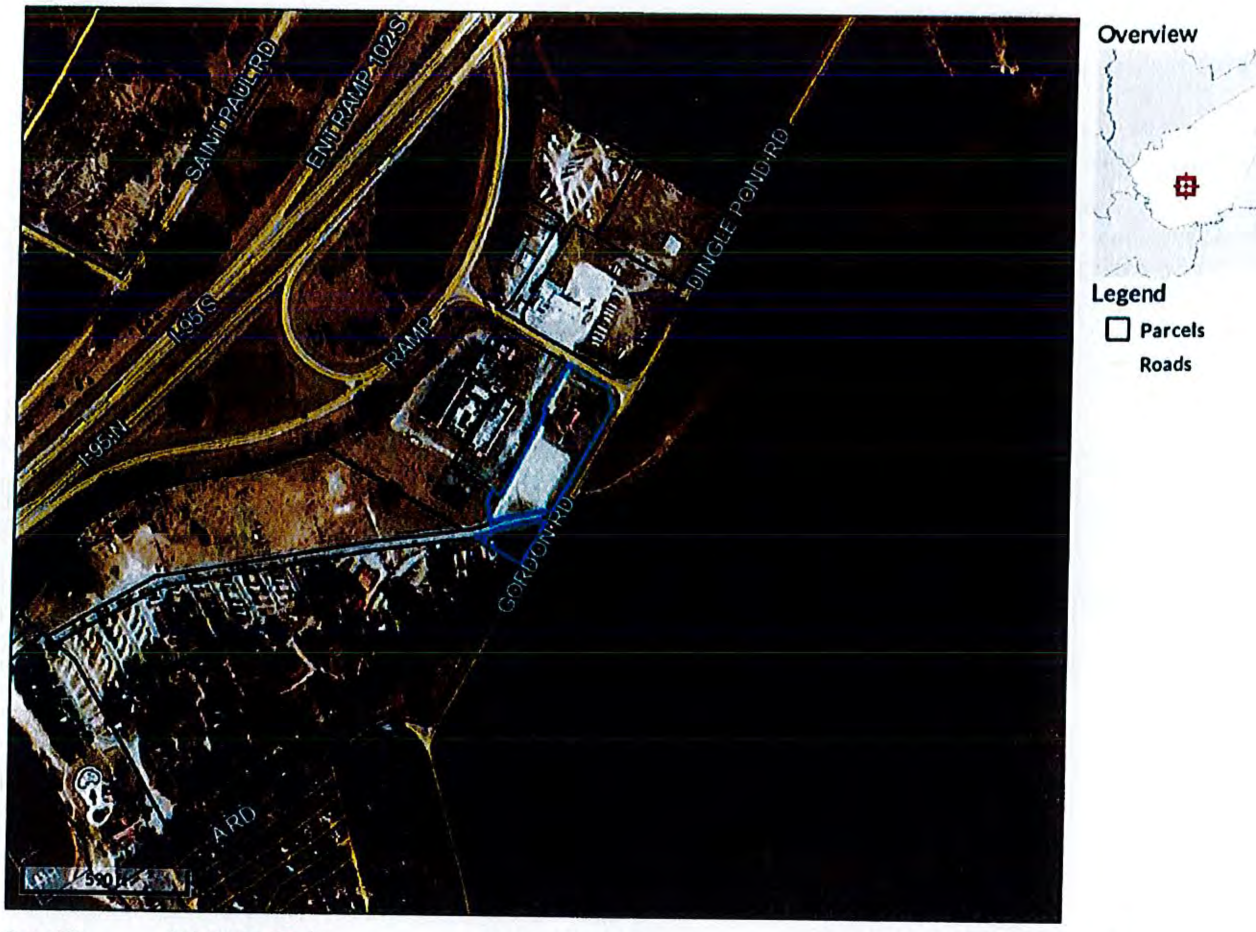

Parcel ID	035-06-02-007-00	**Alternate ID**	26695	**Owner Address**	TLC HOLDINGS LLC
Sec/Twp/Rng	035-06-02	**Class**	COMMERCIAL		3124 GREAT WOOD WAY
Property Address	5215 DINGLE POND RD SUMMERTON	**Acreage**	3.2		KNOXVILLE, TN 37922
District	10				
Brief Tax Description	n/a				

(Note: Not to be used on legal documents)

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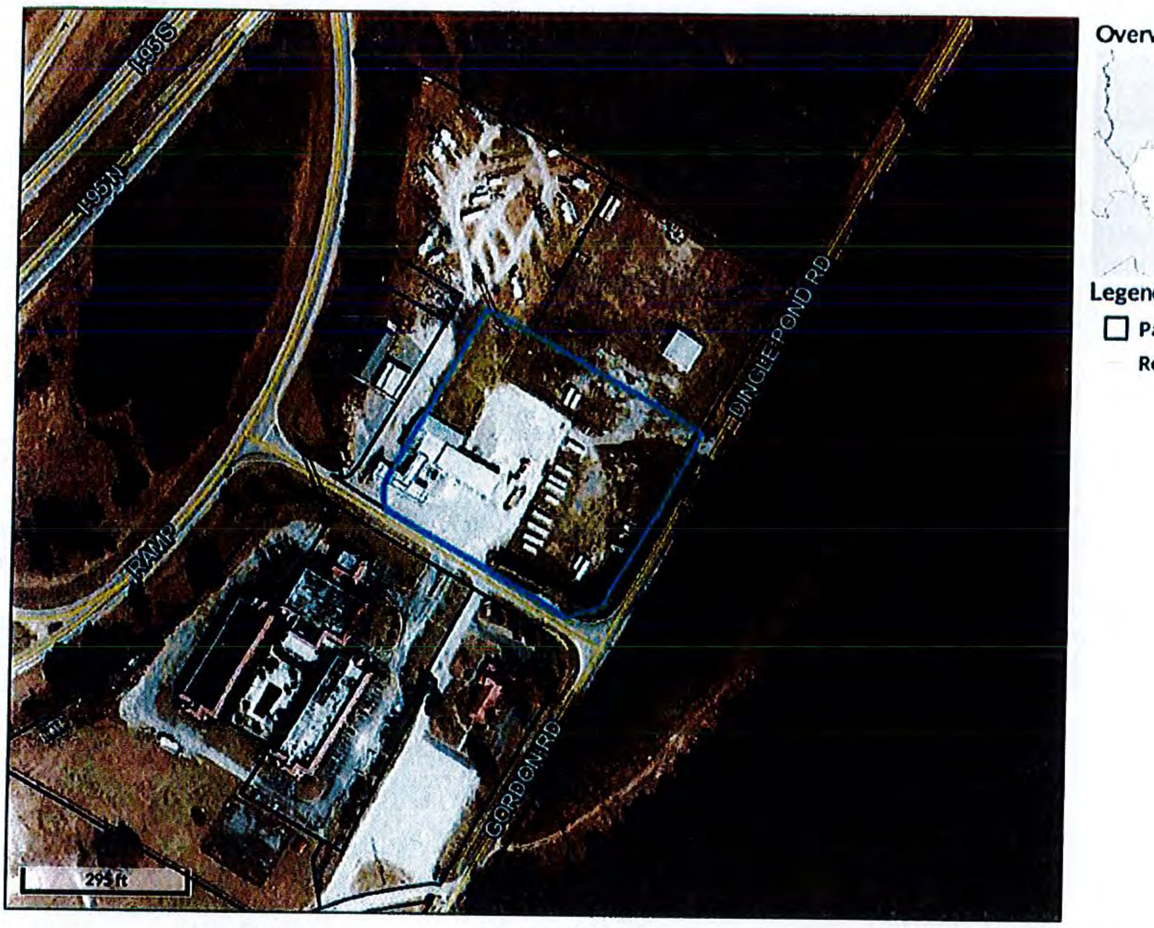

Parcel ID	035-06-02-005-00	**Alternate ID**	26692	**Owner Address**	TLC HOLDINGS LLC
Sec/Twp/Rng	035-06-02	**Class**	COMMERCIAL		3124 GREAT WOOD WAY
Property Address	5236 DINGLE POND RD SUMMERTON	**Acreage**	3.77		KNOXVILLE, TN 37922

District 10

Brief Tax Description 3.77 AC TR STOP SPOT

(Note: Not to be used on legal documents)

Date created: 10/16/2017
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Overview

Legend

Parcels

Roads

COOPER LN

SAINT PAUL RD

RAMP

I-95 S

I-95 N

ENT RAMP 102 S

DINGLE POND RD

EXIT RAMP 102 N

GORDON RD

Parcel ID	035-06-02-008-00	Alternate ID	26694	Owner Address	TLC HOLDINGS LLC
Sec/Twp/Rng	035-06-02	Class	COMMERCIAL		3124 GREAT WOOD WAY
Property Address	10 District 10	Acreage	2.5		KNOXVILLE, TN 37922

District	10
Brief Tax Description	2.50 AC TR B-1 (Note: Not to be used on legal documents)

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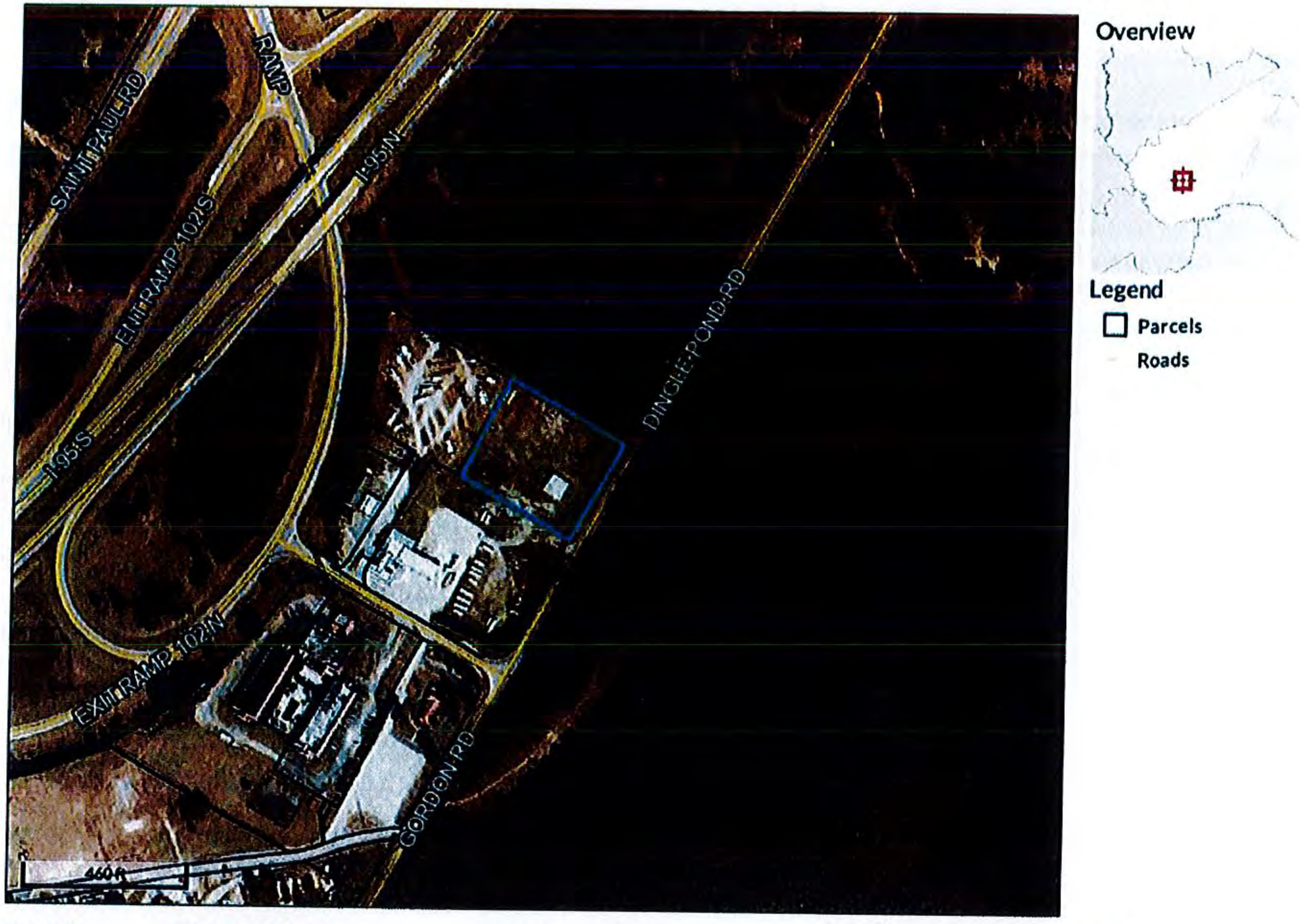

Parcel ID	035-06-02-002-00
Sec/Twp/Rng	035-06-02
Property Address	5220 DINGLE POND RD SUMMERTON
District	10
Brief Tax Description	2.5 AC TR-2 S 14-400 (Note: Not to be used on legal documents)

Alternate ID	26693
Class	COMMERCIAL
Acreage	2.5

Owner Address TLC HOLDINGS LLC
3124 GREAT WOOD WAY
KNOXVILLE, TN 37922

Date created: 11/10/2017
Last Data Uploaded: 11/10/2017 12:31:11 AM

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The Schneider Corporation

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95

1,948 ft

Overview

Legend

Parcels

Roads

Parcel ID	035-00-00-013-00	**Alternate ID**	17005	**Owner Address**	TLC HOLDINGS LLC
Sec/Twp/Rng	035-00-00	**Class**	QUALIFIED AG USE 4%		3124 GREAT WOOD WAY
Property Address	10 District 10	**Acreage**	57.81		KNOXVILLE, TN 37922

District 10

Brief Tax Description PLAT 39-204 (57.80 ACRE TRACT)

(Note: Not to be used on legal documents)

Date created: 10/16/2017

Last Data Uploaded: 10/13/2017 11:10:57 PM

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ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
MB Hutson/MB Hudson,	)	Civil Action No. 2018-CP-40-06344
Plaintiff,	)	
vs.	)	**DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT**
Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esquire, J.R. Murphy, Esq., John Doe #1, and John Doe #2,	)	
Defendants.	)	

TO: MB HUTSON A/K/A MB HUDSON, *PRO SE* PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendants Penn America Insurance Company and Global Indemnity Group, Inc. (collectively "PAIC"), by and through its undersigned counsel, will move before the presiding Judge of the Fifth Judicial Circuit in the Richland County Court of Common Pleas, on the tenth (10th) day after service hereof or at such other time and place as shall be convenient to the Court and counsel, for an Order granting summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, in favor of PAIC in the above-captioned matter.

PAIC maintains that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Hunt v. Happy Valley Ltd. P'ship, 315 S.C. 428, 430, 434 S.E.2d 285, 286 (Ct. App. 1993).

Plaintiff raises claims in contract and tort against his former insurer and their coverage counsel related to the defense rendered to him in two prior lawsuits—a federal class action case in which Plaintiff was sued under a third party claim for equitable indemnity and a related state defamation action—as well as a declaratory judgment action regarding PAIC's coverage

obligations in those two lawsuits. PAIC denies all allegations of wrongdoing, including breach of contract, bad faith, negligence, fraud, misrepresentation, interference with the attorney-client relationship, or vicarious liability for legal malpractice.

Stated simply, Plaintiff is unable to adequately satisfy the elements of any of his claims. Accordingly, Plaintiff's claims fail as a matter of law. Moreover, Plaintiff executed a valid Release in favor of Penn-America, precluding Plaintiff from pursuing the instant claims.

This Motion is based upon the pleadings in the action, the Affidavits attached hereto or which may be served prior to the hearing, upon the memoranda in support of this motion and attachments thereto, upon Rule 56, SCRCP, and upon such additional law and argument as shall be appropriate.

PAIC respectfully requests argument on its motion. PAIC reserves the right to amend this motion prior to argument and disposition of the motion. Further, PAIC reserves the right to supplement its argument by a written memorandum of law, affidavits, and other materials permitted under Rule 56, SCRCP.

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Respectfully submitted,

COLLINS & LACY, P.C.

By: *s/Christian Stegmaier*

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ATTORNEYS FOR DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.

DEFENDANTS PENN AMERICA INSURANCE COMPANY AND GLOBAL INDEMNITY GROUP, INC.'S MOTION FOR SUMMARY JUDGMENT

June 14, 2019
Columbia, South Carolina

ELECTRONICALLY FILED - 2019 Jun 14 10:00 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND) Civil Action No. 2018-CP-400-6344

MB Hutson/MB Hudson,

Plaintiff

vs.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1 and John Doe #2,

Defendants.

SUPPLEMENTAL

TO

MEMORANDUM

RICHLAND COUNTY
FILED
2019 JUN 19 PM 2: 15
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

1. Regarding the letter of legal advice written and emailed to Plaintiff Hutson on August 13, 2018, by Defendant, Tim Newton, Esq. of Murphy & Grantland, P.A., while Defendant Newton / Murphy & Grantland were actively representing his firm's clients, Defendants Penn America / Global Insurance / Torus-Starstone (Exhibit 7.0), in a 16 paragraph admission letter to this Plaintiff, acknowledging that he, Newton, as counsel for the insurance carriers and representative of Murphy & Grantland, was aware of Extrinsic Fraud upon the Courts carried out by TLC Holding's attorneys:

" Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E. 2nd 605 (2003)."

--(Exhibit 4.0, p. 2 of 3, Item # 16, ll. 3-7).

This paragraph is an issue of material facts that only a Jury can rule on once all and complete evidence has been raised and presented. Plaintiff has demanded a Jury trial on all matters. Since the reasonableness of the actions of the Defendants in handling the claim are in dispute, that question is one for a Jury to decide. Hutson also points out that the law states that the evidence must be viewed in the light most favorable to the Plaintiff.

2. This evidences shows Newton had researched all the case information including the supporting cases to substantiate the existence of the Fraud Upon the Court by the former attorneys. The material facts were at Newton's disposal--supported by Exhibit (7.0). Furthermore, this substantiates the attached affidavit (Exhibit 31.0) whereby Plaintiff swears under oath that Defendant, Newton, stated (verbatim) that he was "aware of the Extrinsic Fraud." HOWEVER, Newton failed to execute his DUTY to report his findings to the courts. Defendants Murphy & Grantland (Servants) --and the licensed South Carolina attorneys (also officers of the Court) for Penn America, Global, and Torus/ Starstone-- (Masters) were all cognizant of those facts through their professional relationship with Murphy and Grantland, P.A.. Each attorney involved had a PROFESSIONAL DUTY to report --by at least a Notice to the Courts-- that TLC Holdings, LLC's lawyers were committing Extrinsic Fraud and, therefore, all present and past hearings/orders should be set aside as they obstructed justice via Civil Rights Violations on Plaintiff Hutson, the policyholder. (This paragraph is an issue of material facts that only a jury can rule on after hearing all evidence.) The Plaintiff has given many instances of "bad faith and conduct" by the Defendants. Among those are alleged violations by attorneys of varying ethical code sections. While those may not be a separate cause of action (Hutson does not concede such to be the case - in fact, Hutson argues that those violations themselves are separate causes of actions) they do support the argument that the actions constituting ethical violations do

constitute unreasonable actions on the part of the Defendants in the handling of the claim.

A. There was a pending mediation in 2018 with TLC Holdings, LLC and their attorneys (who had committed the Fraud upon the Court) scheduled right after Newton's letter (Exhibit 7.0) was written. Defendant, Tim Newton, Esq., was in constant contact with Plaintiff, Hutson, during the time directly preceeding the scheduled mediation. Newton openly stated to Hutson that he wanted to pressure TLC Holdings, LLC and their attorneys (Turner, Padget, Graham & Laney) into a lower settlement amount in order to save money for his clients, Penn America, Global Insurance, and Torus/Starstone Companies. (See affidavit, Exhibit 31.0). Newton clearly stated in 2018 that he believed that if this Plaintiff (Hutson) filed a complaint naming Extrinsic Fraud against TLC Holdings, LLC's attorneys at Turner Padget, Graham & Laney, P.A., that it could possibly encourage those attorneys to negotiate at mediation for far less money than the $3.5M judgment. This was, in fact, Newton's motivation in providing the multi-point legal advice letter on August 13, 2018 (Exhibit 7.0) to Plaintiff Hutson, urging Hutson to file his complaint prior to the mediation scheduled for early September, 2018. (Exhibits 31.0, and 32.0). (This paragraph is an issue of material facts that only a Jury can rule on after hearing all detailed evidence.)

B. Plaintiff Hutson pleaded with Defendants Murphy & Grantland's Tim Newton, Esq., as well as attorneys at the insurance carrier companies, to file a notice to the three Federal Judges and four S.C. State Judges that Turner Padget Graham and Laney, P.A. (representing TLC Holdings, LLC) had and were still committing Extrinsic Fraud upon the Court and that they were then carrying the fraud over onto Hutson's

Insurance Companies as well as their insured, this Plaintiff, Hutson. (This paragraph is an issue of material facts that only a jury can rule on after hearing all the evidence.). Since the reasonableness of the actions of the Defendants in handling the claim are in dispute, that question is one for the Jury to decide. Hutson also points the law that the evidence must be viewed in the light most favorable to the Plaintiff.

C. Newton advised Hutson that he (speaking for Murphy & Grantland as the servant) and Penn America / Global / Torus/Starstone) would not serve a notice of the Extrinsic Fraud... **"because lawyers just don't do each other like that."** This was a clear violation of South Carolina Rules of Professional Conduct, **(Rule 3.3-b) "Duty to Reveal Criminal or Fraudulent Conduct to the Tribunal",** (Rule 12), "Scope **of Representation", (Rule 8.4-a) "Misconduct", (Rule 4.1) "Truthfulness in statements to Others", (Rule 8.4-d), "Dishonesty, Fraud, Deceit and Misrepresentation," (Rule 8.4-c) "Misconduct Legal Advice," (Rule 3.3-a-3) "Mandatory Duty to Report Serious Misconduct**," which in this instance was by TLC Holdings, LLC's attorneys. (This paragraph is an issue of material facts that only a Jury can rule on after hearing all evidence is presented.)

D. Nevertheless, these Defendants did nothing to report, or file notice, to any of the six (6) Federal and/or State Judges that Turner Padget Graham & Laney, P.A. had committed Extrinsic Fraud upon the Court by withholding material facts, to intentionally damage this Plaintiff millions of dollars. (This paragraph is an issue of material facts that only a Jury can rule after hearing all evidence. Probable cause exists and this case should be bound over to a Jury.)

SOME OF THE EXTRINSIC FRAUD CONCEALMENTS ARE AS FOLLOWS:

A. In failing to disclose the Vacation Time Shares encumbering the property;

B. In failing to record the memberships as required pursuant to Sections 27-32-10 through 27-32-250 of the 1976 Code are designated as Article 1 of Chapter 32, Title 27 and entitled "Vacation Time Sharing Plans";

C. In failing to pay and subsequently hiding the debt owed to Black River Electric;

D. In failing to provide any additional consideration for subsequent attempts to modify their agreement;

E. In failing to properly disclose the true conditions of the business and properties at issue in the Agreements and putting them into the stream of commerce;

F. In making fake representations as to the condition of the business and properties at issue in the Agreements and / or representations as to the condition of the business and properties at issue in the Agreements in reckless disregard as to the truth of the representations;

G. In failing to analyze and preserve reserves for maintenance and operation of the business and concealing same;

H. Advising Mr. Hutson that the Retail Memberships could be divested to allow for development of the lakefront land as discussed;

I. In failing to advise Mr. Hutson that the land being purchased under the Lease Option Purchase could not be sold due to defective title;

J. In failing to advise Mr. Hutson that Big Water Resort had no land to operate it's business on preventing Hutson from honoring the memberships;

K. In failing to disclose to Mr. Hutson that Big Water Resort had a hidden 22M dollar obligation with no means to raise or pay that hidden obligation; and

L. Other such concealments/misrepresentations as may be discovered during discovery. (Numbers 1 through 12 are issues of material fact that only a Jury can rule on after hearing all evidence.)

3. All current defendants (especially Murphy & Grantland) were acutely aware of these concealed facts and fully understood these facts each time TLC Holdings, LLC's attorneys appeared at hearings, presented evidence, filed motions, helped the Honorable Judges (both Federal and State) prepare orders and even at the Jury trial where TLC Holdings, LLC's attorneys won the 3.5M dollar judgment against Plaintiff Hutson while never disclosing to the Courts the intentional concealments and misrepresentations intentionally allowing TLC Holdings, LLC a great legal advantage above Plaintiff Hutson and presenting Plaintiff Hutson a great disadvantage, and also preventing Plaintiff, Hutson the equal right to present his case or to be heard which violated Plaintiff's civil rights and caused great mental and financial damage to Plaintiff, Hutson. (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence.). Since the reasonableness of the actions of the defendants in handling the claim are in dispute, that question is one for the Jury to decide. Hutson also points the law that the evidence must be viewed in the light most favorable to the Plaintiff.

4. **All defendants merely sat back and their only concern was simply getting the case closed, no matter what laws they ignored, disobeyed or violated, whether civil, criminal or South Carolina Rules of Professional Conduct**. South Carolina Courts have also applied the reasonableness standard to an insurer's actions in making settlement decisions. Compare Tyger River Pine Co., 170 S.E. At 346 with Am.

Gas. Co. Of Reading Pa. V. Howard, 187 F. 2d 322 (4th Cir. (S.C.) 1951). And, if the evidence raises a question of reasonableness, the question is one for the jury to decide. (Emphasis supplied.) Smith v. Md. Gas. Co., 742 F. 2d 167, 170 (4th Cir. 1984) Defendants have grossly violated the insured intentionally and deliberately. (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence from discovery.)

5. The August 13, 2018, sixteen paragraph e-mailed letter prepared by Newton, Esq. of Murphy & Grantland (Exhibit 7.0) fully supports Plaintiff, Hutson, in every way. However, when Plaintiff, Hutson, learned that all defendants had co-conspired by way of Extrinsic Fraud with Turner, Padget, Graham and Laney, P.A., (attorneys for TLC Holdings, LLC) by settling the judgment and not noticing all Courts of the underlying extrinsic fraud, Plaintiff Hutson filed a lawsuit against all defendants as none reported the Extrinsic Fraud. South Carolina courts have also applied the reasonableness standard to an insurer's actions in making settlement decisions. **Compare Tyger River Pine Co., 170 S.E. At 346 with Am. Gas. Co. Of Reading Pa. V. Howard, 187 F. Ed 322** (**4th Cir. (S.C.) 1951** (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence.)

6. Upon receiving Hutson's complaint in this case, Defendant Murphy & Grantland's Tim Newton, Esq. filed a twenty two page memorandum, outlining all negative court actions resulting from former Court rulings and stating that they were caused, and due to Plaintiff Hutson's lack of judicial expertise and ethics when in fact all negative actions and results were caused by the concealments and lack of required

disclosures before the Courts and the Honorable Judges. Newton's legal advice in the three page email supporting Plaintiff Hutson (prior to his defense memorandum) now turns totally negative in an attempt to cover his tracks.

7. This attempt by Newton is merely an attempt to cover up the fact that the August 13, 2018, was a genuine legal advice letter from himself to Hutson to assist Hutson in moving forward with his lawsuit against TLC Holdings, LLC's attorneys. Newton's current memorandum contradicts everything that Newton personally typed, prepared and emailed to Plaintiff Hutson in the August 13, 2019, legal advice letter. His Memorandum is merely an attempt to defend himself and escape serious legal trouble of wrongdoing by all Defendants including the insurance carriers. (This paragraph is an issue of material facts that only a jury can rule on after hearing all evidence. This case has more than a scintilla of evidence, as there is a plethera of evidence including issues of material fact which must be bound over for jury trial.)

8. A few days after Plaintiff Hutson had filed his complaint, Defendant Newton telephoned Plaintiff Hutson and stated that filing would be nothing less than "throwing me under the bus" by filing a complaint and including his (Newton's) three page letter of August 13, 2018, as part of the lawsuit. Newton added that it would ruin him: possibly causing him lawsuits and disbarment. Now, in Memorandum, Newton tries to create illusions of "Hutson lacking candor to the Court," (This paragraph is an issue of material fact that only a Jury can rule on after hearing all the evidence to determine the truth.) **And, if the evidence raises a question of reasonableness, the question is one**

for the jury to decide. (Emphasis supplied) Smith v. Md. Cas. Co., 742 F.2d 167, 170 (4th Cir. 1984).

9. List of issue of facts from Newton's August 13, 2018, letter:

A. **Paragraph #3, Newton writes :** "The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year". This meant that Plaintiff Hutson purchased Big Water business thinking it had 108 acres to use for 70 years to honor the family members in when, in fact, had no property to honor any memberships. There were 740 family memberships that Plaintiff Hutson had no way to honor and Newton was aware of that all along, yet said nothing until the August 13, 2018, legal advice letter to Hutson due to Newton of Murphy and Grantland, P.A.'s motive to pressure TLC Holdings, LLC and their attorneys to settle for less. Plaintiff Hutson will provide affidavit attesting to the material fact that Defendant Penn America / Global's Defendant and counsel / Defendant Murphy & Grantland Tim Newton **acknowledged** to Plaintiff Hutson on more than three times their knowledge of TLC's attorneys committing "Extrinsic Fraud Upon the Courts / Judges and upon me, Plaintiff. Newton, nor JR Murphy, of Murphy Grantland, P.A. ever reported the Extrinsic Fraud to the Courts, nor did they either defend Hutson against the Extrinsic Fraud. Newton stated to Plaintiff that "Penn America would not agree to defend any part of the Extrinsic Fraud". (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to determine truth and Justice.). AN INSURED MAY ALSO RECOVER CONSEQUENTIAL BAD FAITH DAMAGES IF THE

INSURED CAN SHOW BAD FAITH OR UNREASONABLE ACTION BY THE INSURER IN ITS HANDLING OF THE CLAIM. (Emphasis supplied) Ocean Winds, 241 F. Supp. 2d at 576 (citing Tadlock Painting Co., 473 S. E. 2d at 52), Varnadore v. Nationwide Mut. Ins. Co., 345 S.E. 2d 711 (S.C. 1986.)

B. **Newton writes** "The membership agreements between the campground members and Big Water Resort, LLC were *never recorded.* Possibly they should have been, since they granted campground members rights to use Big Water Resort, LLC's facilities for periods of time over one year and up to a life-time plus the lifetime of a survivor for a period of consecutive years that could easily be over one-half a century. See S.C. Code s 27 -33-30 (requiring any....agreement for the use.... of real estate to be recorded". Newton was completely aware that since the memberships were not recorded, it made an impossible task for Plaintiff Hutson to comply with the Settlement Agreement/Consent Order legally. Newton also was aware that the lack of recordation had been done intentionally by TLC Holdings, LLC and their attorneys, who were acutely aware of the same, yet concealed this information from the Courts and Judges. This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to allow for Justice.)

C. **Newton writes** "The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached here to." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property". Newton and the TLC Holdings,

LLC's attorneys were fully aware that no property could ever be developed due to the unrecorded membership agreements and their rights to use the land and its amenities. This legal situation doomed Hutson. Newton and Murphy of Murphy & Grantland, P.A. were *fully aware of this situation.* All defendants were aware that Plaintiff Hutson was being defrauded by Extrinsic Fraud allowing a great advantage to TLC Holdings, LLC and their attorneys while leaving Plaintiff Hutson with a great disadvantage with no way for his defense fight to ever have the ability to win due to concealments. Defendants Penn America, Global insurance, JR Murphy, Tim Newton and Murphy and Grantland all were aware of the extrinsic fraud and sat back never reporting it. All these defendants were aware that Plaintiff Hutson was not aware of the legal issues. (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to determine truth and justice.)

D. **Newton writes:** "The Consent Order filed April 13, 2012, incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord - tenant dispute". Defendant Newton fully understood this legal factor and could have merely stepped in by filing a motion bringing the Courts and Judges up to date on the Extrinsic Fraud through intentional concealment of documents. **Notifying the Court of the Extrinsic Fraud on Newton's part would have reversed the *res judicata* which was formed due to the Extrinsic Fraud into a restitution for Plaintiff, Hutson, who had lost millions and**

ended the $3.5M judgment. (This Paragraph is an issue of material facts that only a Jury can rule on after hearing all evidence to determine truth and Justice.)

E. Newton writes, "I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships". This is further evidence that the Defendants were fully aware that Plaintiff could never comply with the Consent Order or the Settlement Agreement due to Extrinsic Fraud upon the Court through the intentional concealment of documents. YET, Newton and the other defendants **did nothing to notify the courts**, the Tribunal, or the Federal and State Judges by even as much as a simple motion which would have caused the Court to throw out or dismiss all failed actions against Plaintiff Hutson. The ***res judicata*** **would have been reversed due to the Extrinsic Fraud.** **(South Carolina Rules of Professional Conduct, Rule 3.3-b "Duty to Reveal Criminal or Fraudulent Conduct to the Tribunal; Rule 3.3 - a-3, page 406 " Duty to Report Serious Misconduct:** Since the reasonableness of the actions of the Defendants in handling the claim are in dispute, that question is one for the Jury to decide. Hutson also points the law that the evidence must be viewed in the light most favorable to the Plaintiff.

No one did anything and failed to act based on a duty to do so and no one defended Plaintiff Hutson against the Extrinsic Fraud even though they had a complete awareness and obligation to do so according to the Ninth Circuit Court and the South Carolina Supreme Court as attached. (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence to gain full truth and Justice.)

F. **Newton further writes:** "It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the Court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent order. See *Chewning v. Ford Motor Co.* 354 s.c. 72, 579 S.E. 2d 605 (2003)". Again, all defendants were aware of this for they all had an obligation to investigate and they did. These Defendants simply would not help or report the extrinsic fraud through concealment of documents as is required by law. (This paragraph is an issue of material fact that only a jury can rule on after hearing all evidence to determine truth and Justice.)

G. I remind the Honorable Judge that Murphy & Grantland P.A..'s Tim Newton, Esq. is the same Defendant who filed a twenty-two page memorandum protraying Plaintiff as a nobody. Defendants (servants) are simply

trying to hide their guilt and their clients guilt (master) to prevent any form of punishment by way of money or lawsuits or additional lawsuits. The insurance companies (master) and Murphy & Grantland (servants) are guilty of failing to comply with State and Federal rules, consequently, this is why Newton described the situation as being "thrown under the bus" and pleaded with Plaintiff by phone not to go forward with this complaint.

H. **Newton writes,** in his last sentence of the August 13, 2018, page of legal advice while representing Penn America and Global Insurance, "If you need the documents supporting the above, let me know". Newton is still offering legal advice and assistance should Plaintiff Hutson need it. Newton is in hopes that Plaintiff Hutson would have already filed his extrinsic fraud case against TLC attorneys prior to the final mediation of which Plaintiff Hutson was barred from being a part of. Defendant Newton's entire memorandum is false or "misstated" to protect the slick, seasoned attorneys and insurance carriers. (This paragraph is an issue of material fact that only a Jury can rule on after hearing all evidence.)

10. Plaintiff Hutson is opposing the motion for summary judgment or dismissal due to Rule 56 (e) which states "made explicit that a party opposing a motion could not rest on the pleading but had to come forward by affidavit or otherwise with specific showing that there was a genuine issue for trial". Plaintiff Hutson has far exceeded meeting that requirement and shows his affidavit as well as the Defendants own letters as written proof and evidence.

11. Murphy & Grantland (servants) for Penn America (master) wrote two letters. The issue of facts from the second letter, three months later written November 8, 2018, are as follows:

A. **Newton wrote** Hutson on November 8, 2018, in behalf of Penn America that reads on page three, paragraph five: **"At no point has Penn-America or its counsel ever acknowledged the existence of fraud upon the court".** Here, Newton is attempting to wriggle out of his written letter providing the legal advice to Hutson of August 13 by saying that he (the servant) nor Penn America (master) has never mention the words "fraud upon the court". These two letters contradict each other and prove that Murphy & Grantland (servants) and Penn America (master) intentionally misrepresented the truth and intentionally lied attempting to 1) cover up their earlier acknowledgment of Extrinsic Fraud and 2) mask their lack of required duty to defend Extrinsic Fraud. In the liability context, the two key policy provisions, the breach of which gives rise to both breach of contract and bad faith claims, are the provisions providing for a duty to indemnify by the insurer and the provision providing for a duty to defend the insured. **(Emphasis supplied) Sloan Constr. Co. V. Central Nat'l Ins. Co., 236 S. E. 2d 818 (1977); Nationwide Mut. Ins. Co. V. Tate, 438 S. E. 2d 266, 268 (S.C. Ct. App. (1993).**

B. This is a direct violation of South Carolina Rules of Professional Conduct." A lawyer's conduct should conform to the requirements of the law, both in professional service to the clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate

purposes and not to harass or intimidate others. A Lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process" law whereby Murphy & Grantland and attorney Tim Newton violated his oath of being honest to the public, to the insured (Plaintiff Hutson) for he is a licensed attorney who holds a valid badge as an officer of the Courts and represents himself to Courts and Judges as a honest law abiding attorney when if fact his actions makes himself and his clients out as liars which certainly indicates that both the insurance company's (master) are liars and attorneys for the insurance company are liars and frauds AND THE HONORABLE COURT SHOULD RECOGNIZE THESE ATTORNEYS AS DISHONEST AND UNTRUSTWORTHY including any defense the carriers present.

12. Lawyers representing the insurance carriers have violated:

A. **Rule 8.4-e** "Misconduct legal advice: “It is professional misconduct for a lawyer to:…(e) engage in conduct that is prejudicial to the administration of justice;”

B. **Rule 3.3** "Duty to reveal criminal or fraudulent conduct to the Tribunal." “A party may obtain relief from a judgment for fraud on the court…South Carolina courts have distinguished between extrinsic fraud, for which relief is available….Extrinsic fraud is collateral to the question examined and prevents the party” (Hutson, Plaintiff, in this instance) “from presenting a case…in *Chewning v. Ford Motor Co.*, 354 S.C. 72,

579 S.E. 2d 605 (2003), the court stated that the involvement of an attorney in ....intentionally concealing documents amounts to extrinsic fraud: "intentional concealment of documents by an attorney are actions which constitute extrinsic fraud..." Id. at 82, 579 S.E. 2d at 610-611." Page 258-259, Rules of Professional Conduct (2016) Wilcox and Crystal, SC Bar Association, Pub. ALTHOUGH the initial extrinsic fraud on the court was perpetrated by TLC Holdings, LLC's attorneys, (with which Tim Newton, Esq. and J.R. Murphy, Esq. of Murphy and Grantland were negotiating a settlement on a related issue) it was discovered...BUT NOT REPORTED... by Murphy and Grantland's attorneys....which would have been their DUTY to disclose. In addition to breaking the Rules of Conduct, it caused great harm to Plaintiff, Hutson, as their disclosure of the extrinsic fraud would have led to relief from the judgment, because extrinsic fraud—**1.** for which relief is available (SC Rules of Professional Conduct, p. 258), but was not requested or obtained due to their not reporting it to the Court/Tribunal, and **2.** Left Hutson, Plaintiff, with a $3.5M judgment on his record, causing damages in this Plaintiff being able to move forward in business. Newton's emailed letter on behalf of Murphy Grantland, P. A. and all the insurance companies (Penn America, Global, Torus/Starstone) (Exhibit 7.0) is material evidence that he / they fully were aware of the Extrinsic Fraud, yet did not uphold their Professional Duty to Report it to a Tribunal, which would have demanded a reversal of the Consent Order and Settlement Agreement, the *res judicata*, and the $3.5M judgment, as the attorneys for TLC Holdings,

LLC had orchestrated a grand plot built on the Extrinsic Fraud to destroy and paralyze Plaintiff, Hutson, who was unable (through their deceit) to be heard, and thereby receive justice. By NOT disclosing the Extrinsic Fraud, Murphy and Grantland became co-conspirators with its authors: *"concealment of documents by an attorney are actions which constitute extrinsic fraud...where an attorney—an officer of the court...intentionally conceals documents, he or she effectively precludes ....(from) having his day in court."* (page 259, S.C. Rules of Professional Conduct. 3.3).

13. These Defendants' violation of their obligation to investigate and their duty to defend *when they knew the difference, and they did,* was all caused by personal greed and a lack of respect for the law and for their insured. This should be sent to the news media for it is corruption that should not be allowed to continue and should be made public to warn the public that Murphy & Grantland, Penn America, Global, Tim Newton, Esq. and J.R. Murphy, Esq. will violate the law for their own personal interest. (This paragraph is an issue of material fact that only a Jury can rule on after hearing and seeing all evidence in order to make a fair ruling.) Note: An insured may also recover consequential bad faith damages if the insured can show bad faith or unreasonable action by the insurer in its handling of the claim. (Emphasis supplied) Ocean Winds, 241 F. Supp. 2d at 576 (citing Tadlock Painting Co., 473 S.E. 2 d at 52); see also Mixson, a562 S.E. At 662 (advancing a novel theory to deny a claim); Varnadore v. Nationwide Mut. Ins. Co., 345 S.E. 2d 711 (S.C. 1986.)

14. Plaintiff Hutson is not barred from filing this complaint for all of the Defendants have intentionally become liars and cons against the insured costing him

millions of dollars and crippling his future. Furthermore, the Settlement Agreement, which the Defendants speak of, relates to another case and does not prevent Plaintiff from filing a complaint against Defendants, who intentionally, at a later date, plotted, lied, misled, gave legal advice to this Plaintiff with the motive of having the Plaintiff acting upon what was provided as legal advice (Exhibit 7.0).

15. THE HONORABLE COURTS SHOULD KNOW that their are thousands of lawyers and insurance companies every year who are disbarred or sanctioned by the State Regulators and by various Insurance Commissioners for breaking or violating rules and laws. In addition, there are hundreds of lawsuits filed every year for malpractice, breach of contract, cause of damages by the general public against lawyers and insurance carriers. Extrinsic Fraud Upon the Court is very serious. That fraud, particularly, destroys the public's trust in the Judicial System of our country. Having been brought to the attention of the Court, if the Court does nothing to rectify such violations, our Judicial System becomes a farce. Judges have the same responsibility to abide by the laws and ethical standards as lawyers do. As a war veteran, this situation is utterly unacceptable to me, and MUST be rectified! Our courts MUST be honorable! (This paragraph has issues of material facts which require a Jury to examine all evidence and make a ruling.)

Plaintiff Hutson is entitled to actual, direct, consequential, incidental, special, and punitive damages as aforesaid all in an amount to be determined by a Jury.

THEREFORE, Plaintiff Hutson prays for the following;

1. Allow this case to be forward to a Jury Trial. Jury Trial demanded.
2. Allow for a speedy trial.
3. Allow for enough time for Plaintiff / Pro Se to present his case in full.
4. Include all other prayers presented by Plaintiff.
5. Should the Honorable Judge have a conflict in presiding over this case, that he recuse himself since Plaintiff has lost millions of dollars and needs complete Justice.
6. Deny request for Summary Judgment Dismissal in favor of Defendants, and rule in favor of Plaintiff, allowing this to go to jury, as Plaintiff is the victim and a plethora of evidence exists.

Respectfully submitted this 19th day of June, 2019.

MB Hutson

P.O. Box 2755
Orangeburg, South Carolina 29116-2755
Telephone: (803) 308-2714

SERVICE ON NEXT PAGE

ORig.

Exhibit 31.0--PG 1 10
MBH Affadavit

STATE OF SOUTH CAROLINA	)	2018-cp-40-6344
COUNTY OF ORANGEBURG	)	**AFFIDAVIT OF M B HUTSON**

RICHLAND COUNTY
FILED
2019 JUN 19 PM 2: 15
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

ON THIS 19th DAY OF JUNE, 2019, MB Hutson states the Following under a Sworn Statement to me:

1. Timothy Newton, Esq. of Murphy & Grantland, P.A., verbally acknowledged to me on at least 4 occasions in and around August, 2018, that he was aware of the Extrinsic Fraud conducted by TLC Holdings, LLC and their attorneys at Turner Padget Graham & Laney P.A., of Charleston, S.C., involving lawsuits where I was their Defendant in both S.C. State and Federal Courts.

2. I asked Newton, on or about the first of August (2018) why he and Penn America Insurance Company, my insurance carrier, would not come to my aid by filing a Motion with the Courts to Notice them that Extrinsic Fraud was underlying TLC Holdings, LLC's actions and exposing the extrinsic fraud would make the associated judgments (including the $3.5M judgment which they were then defending/negotiating), null and void issues. He merely answered, "We lawyers don't do each other like that, somebody could go to jail. " Newton did, however, later in August, decide to assist me with my efforts in that regard.

3. Shortly thereafter, in August of 2018, I was preparing a rough draft of my lawsuit against Turner Padget Graham and Laney, P.A. and Tom Harper or Womble Carlyle Sandridge and Rice, P.A. for the Extrinsic Fraud Upon the Court that I had just discussed over the phone with Tim Newton, Esquire. I emailed Newton a copy of my draft, **Verification emails attached**.

We also discussed by phone how it could possibly play out at the up-coming mediation between TLC Holdings, LLC's attorneys (Turner Padget Graham and Laney, P.A.) and the insurance companies (Penn America and Torus) and his firm (Murphy Grantland, P.A.). Newton clearly stated to me that his hope was that by my filing an Extrinsic Fraud Case and serving it on Turner Padget Graham and Laney, P.A. and Tom Harper, Esq. of Womble, Carlyle, Sandridge, and Rice, P.A., it could influence their law firm to take less money at the mediation.
Verification of collaboration attached.

4. Newton and I had many discussions about strategy regarding the filing against Turner Padget Graham and Laney and Tom Harper, Esq. of Womble, Carlyle, Sandridge and Rice, P.A.. To support my efforts, Newton had prepared a 16 point, detailed letter of legal advice for me. Newton stated to me that he had attempted to send it to Frank Gordon, the attorney Newton and Penn America had hired to defend me in the defamation suit filed by TLC Holdings, LLC. Newton stated that Gordon was "not available to accept" that letter. Newton stated to me that he wanted Gordon to transfer Newton's letter onto Gordon's own letterhead and then send it to me. However, on August 13, 2018, Newton sent it to me directly. It is my belief that Frank Gordon did not want to get involved. I trusted Tim Newton for he personally told me twice "he was praying for me." That meant a lot to me and caused me to trust him even more.

5. Just prior to December, 2018, I began to realize that Newton and Penn America had copies of all files regarding my continued losses in the Courts against TLC and their attorneys. I did some research and found out that an insurance company has a duty to investigate all issues regarding client cases. I also found out that should Extrinsic Fraud be recognized by the attorneys representing the insurance company, or should the insurance

company discovered that Extrinsic Fraud was preventing their client from prevailing with the Courts, they had an *obligation* to represent their client against the fraud. Murphy and Grantland knew they too could not get justice unless the Extrinsic Fraud were exposed and resulting judgments were overturned.

6. Therefore, had the insurance company and Newton (Murphy & Grantland) simply filed a motion informing the Judges that TLC's attorneys had and were committing Extrinsic Fraud against the Courts, and asked those judges to swear in the those attorneys who had committed the fraud, and question them with about 10 questions such as Newton's legal advice letter reflected, the Judges would have been compelled to throw out all the cases including the $3.5M judgment. Newton had a duty to report the Extrinsic Fraud to the judge residing over the Defamation case that would have stopped the Jury trial and prevented a $3.5M judgment against me.

7. Legal definition of Extrinsic Fraud:

A. "On the part of an officer of the court"

B. "That is directed to the judicial machinery' itself."

C. "That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth."

D. "That is a positive averment or is concealment when one is under a duty to disclose," and

E. "That deceives the court."

8. Laura Paton, Esq., whom Penn America and Newton first hired to represent me, listed approximately ten direct concealments and lack of disclosures that both Turner Padget

Graham & Laney, P.A.'s attorneys and Tom Harper, Esq. of Womble Carlyle Sandridge & Rice had committed. Murphy Grantland, P.A. were completely aware of her list for she furnished Newton a copy of all her paper work. Newton alleges to the Richland County Court (SC) not to be aware of the Extrinsic Fraud but that is untrue. He not only had copies of Patton's work, but he himself carefully outlines the factors that contribute to that Extrinsic Fraud in his detailed email to me in August, 2018.

9. I kept calling Newton asking where was the legal advice letter and after two or three days Newton decided to email it directly to me from his computer. It is my theory that Newton was trying to get a arm's length away from that legal advice. Had Newton not fully believed that what he was writing in the legal advice notice to me was accurate in August, 2018...knowing that I was going to act upon his advice, he would not have provided me that information.

10. After Newton realized that I was going to hold him and his associates accountable by way of a lawsuit for not reporting the Extrinsic Fraud, he called me and asked me why I was "throwing him under the bus" adding that he believed it would "ruin me and possibly cause me to be disbarred." He knew what his professional obligations were and he knew he did not fulfill them because, as he said to me months prior to that: "we lawyers just don't do each other that way." Newton also stated to me that "Penn America Insurance Company would not agree to defend any part of the Extrinsic Fraud." Although by that, he was purporting that Penn America made all the final calls regarding the case, that does not excuse him from his fiduciary duties as an attorney in the State of South Carolina, nor does it excuse Penn America and its subsidiary insurance companies from their obligation to defend a policyholder being attacked via Extrinsic Fraud in this state.

M B Hutson

SWORN TO before me this 19 day of June, 2019.

NOTARY PUBLIC FOR SC

My Commission Expires: 10-17-2024 SEAL

Witness

Attachments referenced are included.

Exhibit 31 0--PG 6 10
MBH Affadavit

A favor

Hutson <hutson4444@gmail.com>
To: tnewton@murphygrantland.com

Mon, Aug 27, 2018 at 9:20 AM

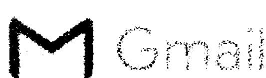
Good morning Tim. I need a favor that I think will be easy for you.

There is a book sold at the Bar entitled The Law of Malpractice in South Carolina. It cost $55.00 dollars. If you could order that book where I could pick it up I will bring you the cash including taxes today. I would greatly appreciate this favor. God Bless You and thank you again for your meaningfully prayers.

I would gladly pick up the book as well and pay if the Bar store would allow me to. Thank you

Hutson

Exhibit 31.0--PG 7 19
MBH Affadavit



Bar told me they would sell it to me. I am own my way to the book store. Thank you

Tim J. Newton <tnewton@murphygrantland.com> Mon, Aug 27, 2018 at 10:46 AM
To: Hutson <hutson4444@gmail.com>

OK good. I called the lady in the bookstore section and it went to voice mail

Murphy & Grantland, P.A.

Tim J.Newton, Esquire

tnewton@murphygrantland.com

Post Office Box 6648

Columbia, South Carolina 29260

803-782-4100 ext. 1242

803-454-1242 dd

803-782-4140 fax

www.murphygrantland.com

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From: Hutson <hutson4444@gmail.com>
Sent: Monday, August 27, 2018 10:41 AM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Bar told me they would sell it to me. I am own my way to the book store. Thank you

Exhibit 31.0--PG. 8 19
MBH Affadavit

Bar told me they would sell it to me. I am own my way to the book store. Thank you

H Hutson <hutson4444@gmail.com>
To: "Tim J. Newton" <tnewton@murphygrantland.com>

Mon, Aug 27, 2018 at 6:04 PM

Tim I think I will file to set aside I have one question if you can call me I would appreciate it
[Quoted text hidden]

Exhibit 31.0--PG. 9 19
MBH Affadavit

M Gmail

A favor

Tim J. Newton <tnewton@murphygrantland.com> Thu, Aug 30, 2018 at 12:56 PM
To: Hutson <hutson4444@gmail.com>

Attached is a copy of the complaint with the summons

Murphy & Grantland, P.A.

Tim J.Newton, Esquire

tnewton@murphygrantland.com

Post Office Box 6648

Columbia, South Carolina 29260

803-782-4100 ext. 1242

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www.murphygrantland.com

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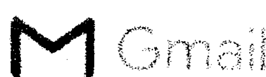
[Quoted text hidden]

[1-1] State court Complaint.pdf
242K

Exhibit 31 0--PG 10 19
MBH Affadavit



FW: Chewning v. Ford Motor Co.

Tim J. Newton <tnewton@murphygrantland.com> Mon, Oct 22, 2018 at 2:31 PM
To: Hutson <hutson4444@gmail.com>

Mr. Hutson,

I believe this is the case you were asking about. See pp. 609-610.

Tim N.

Murphy & Grantland, P.A.

Tim J.Newton, Esquire

tnewton@murphygrantland.com

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803-782-4140 fax

www.murphygrantland.com

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communications or may otherwise be privileged or confidential and are intended solely for the individual or entity to whom they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited.

From: Westlaw@westlaw.com <Westlaw@westlaw.com>

Exhibit 31.0--PG. 11 19
MBH Affadavit

Sent: Monday, October 22, 2018 2:30 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Chewning v. Ford Motor Co.

Tim Newton sent you content from Westlaw.
Please see the attached file.

Item: Chewning v. Ford Motor Co.
Citation: 354 S.C. 72
Sent On: Monday, October 22, 2018
Sent By: Tim Newton
Client ID: 5010-0050

Note:

Westlaw © 2018 Thomson Reuters. No claim to original U.S. Government Works.

Chewning v Ford Motor Co.pdf
191K

Exhibit 31.0--PG. 12 19
MBH Affadavit

FW: Chewning v. Ford Motor Co.

H Hutson <hutson4444@gmail.com>
To: "Tim J. Newton" <tnewton@murphygrantland.com>

Mon, Oct 22, 2018 at 7:02 PM

Tim it's Monday night please call me first thing in the morning have an idea
[Quoted text hidden]

image002.png
3K

Exhibit 31.0--PG 13 19
MBH Affadavit

M Gmail

NOTICE to Turner Padgett Graham & Laney.pdf

Hutson <hutson4444@gmail.com> Wed, Aug 29, 2018 at 1:47 PM
To: tnewton@murphygrantland.com

NOTICE to Turner Padgett Graham & Laney.pdf
38K

August 28, 2018

Dear Wayne Byrd, and John Wilkerson, of Turner Padgett Graham and Laney P.A.:

I am preparing a complaint to set aside the 2012 Settlement Agreement and Consent Order. I am fully aware that my statute is still active.

These items are some of the requirements necessary to set aside a judgement:

The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct:

> "1. On the part of an officer of the court; 2. That is directed to the 'judicial machinery' itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court."
> —Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

I acknowledge that I was aware of the long-term, annually renewable memberships. However, I was not aware at the time of the Lease Purchase Agreement (2010) nor the Settlement Agreement and Consent Order (2012) (both of which you enforced and co-prosecuted with attorney Thomas Harper of Womble Carlyle Sandridge & Rice (ref. #2) and that those memberships created clouds to the title of the land which prohibited development of any of the one hundred eight acres. I was purposely deceived through your fraud upon the court throughout your prosecution of me before both SC State and Federal Judges' courtrooms over the following:

a. The Lease Purchase Agreement which was composed on behalf of your client(s), TLC Holdings, LLC, which clearly stated that the Buyer planned to develop private family dwellings on the campground land, which you knew had a clouded/defective title (ref.#3) due to Retail Membership Agreements,

b. A wrongful eviction in South Carolina State Court due to a charge of non performance against that same fraudulent Lease Purchase Agreement that was intentionally structured to assure non-performance to sell and develop property which had a non-disclosed defective/clouded title.

> Marketable title means the property can be conveyed without the reasonable probability of litigation by third parties. If third parties have special property interests that would enable them to sue for the enforcement and preservation of their use of the property, that clouds the title. In fact, the campground members did sue to enforce their right to use the property.

c. A complaint filed in Federal Court wherein you called my insurance company in to act and cover damages when, in fact, your fraud upon the court, should have made all insurance interventions exempted and to which TLC Holdings, LLC's insurance company filed to be excused on alleged fraud.

Additionally, you failed to notice the Big Water Resort's family membership owners of TLC Holdings, LLC's intention to sell the property for development and offer them their legal right to attend court and present their claims for the use of the TLC Holdings, LLC's property on which Big Water Resort operated and issued them individual family contracts for a right to use that property for one to two lifetimes.

As a duly licensed attorney and officer of the court (ref. #1):

1. You were aware that the land was contractually obligated to member families for approximately seventy (70) years of "sole" use for their recreation and enjoyment. In fact, Turner Padgett Graham & Laney defended and LOST a class action lawsuit brought by those member families.

2. You were aware that the "marketable title" for development purposes became clouded due to the contractual memberships and that it prevented construction and development loans for 70+ years.

3. You were aware and used the Court (by NOT disclosing to the Judge (ref. # 5) that the Consent Order required me, the Buyer, to perform (develop property) which was NOT POSSIBLE due to the defect on the title created by those long term contracts. (Ref. #3)

FURTHERMORE, I have an expert Witness' affidavit stating that the property had defective title for the purpose of development which you and your TLC clients purposely did not disclose in State or Federal Court thereby creating fraud upon the Court at the time of the Settlement Agreement and Consent Order (which we have already covered as being your work on behalf of the Seller, TLC Holdings, LLC) (ref # 4). This extrinsic fraud was not recognized by me nor my attorney of record at the time, Paul Weissenstein.

Above, there are five (5) items that constitutes Fraud upon the Court. Your client, TLC Holdings, LLC and Turner Padget Graham & Laney are all guilty. Turner Padget Graham and Laney's attorneys are officers of the Court (ref. #1). You withheld disclosures that should have been brought to the Court's attention on behalf of the Seller of real Property in SC State Court (ref. #4). You acted repeatedly as if you were blind to the truth that the land could not be developed for over 70 years due to the clouded title (ref. #3) and you prosecuted me on the grounds of that fraudulent Lease Purchase Agreement and Settlement Agreement and even the Judge's Consent Order of 2012 written by a TLC Holdings, LLC's attorney, Tom Harper. (Ref. #2) for not being able to develop and close the property that was not legally able to be developed nor sold out from under the memberships for private residence. Were it not for your intentional concealment of the facts, the Honorable Judge George James would NOT have executed an order to perform impossible tasks (ref. #5) unless he was, if fact, in collusion with you and your clients to hide the fraud in the Lease Purchase Agreement under a veil of a *Res Judicata*. The evidence shows you committed fraud upon the court.

I recommend you notice your insurance company.

Respectfully,

MB Hutson

803-308-2714

cc: The Supreme Court of SC Office of Disciplinary Counsel
John Wilkerson, CEO, Turner Padgett Graham & Laney P.A.
Wayne Byrd, Turner Padgett Graham & Laney P.A.

Exhibit 31.0--PG. 17 19
MBH Affadavit

Gmail

NOTICE to Harper.pdf, Turner Padget

Hutson <hutson4444@gmail.com> Tue, Aug 28, 2018 at 1:20 PM
To: "Thomas L. Harper, Jr." <THarper@wcsr.com>, "John S. Wilkerson" <JWilkerson@turnerpadget.com>, Wayne Byrd <wbyrd@turnerpadget.com>, tnewton@murphygrantland.com, fgordon@mgsattorneys.com, Hutson 4072 C <hutson4444@gmail.com>

NOTICE to Harper.pdf
25K

August 28, 2018

Dear Thomas Harper;

I am preparing a complaint to set aside the 2012 Settlement Agreement and Consent Order. I am fully aware that my statute is still active.

These items are some of the requirements necessary to set aside a judgement:

The United States Court of Appeals for the Sixth Circuit has set forth five elements of fraud upon the court which consist of conduct:

> "1. On the part of an officer of the court; 2. That is directed to the 'judicial machinery' itself; 3. That is intentionally false, willfully blind to the truth, or is in reckless disregard for the truth; 4. That is a positive averment or is concealment when one is under a duty to disclose; 5. That deceives the court."
>
> —Demjanjuk v. Petrovsky, 10 F.3d 338, 348 (6th Cir. 1993).

I acknowledge that I was aware of the long-term, annually renewable memberships. However, I was not aware at the time of the Lease Purchase Agreement (2010) nor the Settlement Agreement and Consent Order (2012) (both of which you penned and co-prosecuted with Wayne Byrd, then CEO of Turner Padget Graham & Laney P.A. (ref. #2) and that those memberships created clouds to the title of the land which prohibited development of any of the one hundred eight acres. I was purposely misled due to your statements in writing the following:

a. The Lease Purchase Agreement which you composed on behalf of your client(s), TLC Holdings, LLC, which clearly stated that the Buyer planned to develop private family dwellings on the campground land, and

b. your written correspondence to the Clarendon County Planning Commission (April 3, 2012) requesting that they view and accept my proposal for the development of a subdivision consisting of approximately 50 percent of the actual campground as shown by a plat.

Additionally, you failed to notice the Big Water Resort's family membership owners of TLC Holdings, LLC's intention to sell the property for development and offer them their legal right to attend court and present their claims for the use of the TLC Holdings, LLC's property on which Big Water Resort operated and issued them individual family contracts for a right to use that property for one to two lifetimes.

As a duly licensed attorney and officer of the court (ref. #1):

1. You were aware that the land was contractually obligated to member families for approximately seventy (70) years of "sole" use for their recreation and enjoyment.

2. You were aware that the "marketable title" for development purposes became clouded due to the contractual memberships.

3. You were aware and used the Court (by NOT disclosing to the Judge (ref. # 5) that the Consent Order required me, the Buyer, to perform (develop property) which was NOT POSSIBLE due to the defect on the title created by those long term contracts. (Ref. #3)

FURTHERMORE, I have an expert Witness' affidavit stating that the property had defective title for the purpose of development which you and your TLC clients purposely did not disclose thereby creating fraud upon the Court at the time of the Settlement Agreement and Consent Order (which we have already covered as being your work on behalf of the Seller, TLC Holdings, LLC) (ref # 4). This extrinsic fraud was not recognized by me nor my attorney of record at the time, Paul Weissenstein.

Above, there are five (5) items that constitutes Fraud upon the Court. You, TLC and Turner Padget are all guilty. You and Turner Padget are officers of the Court (ref. #1). You withheld disclosures that should have been brought to the Court's attention on behalf of the Seller of real property (ref. #4). You wrote the Lease Purchase Agreement and Settlement Agreement and even the Judge's Consent Order of 2012. (Ref. #2). Were it not for your intentional concealment of the facts, the Honorable Judge would NOT have executed an order to perform impossible tasks (ref. #5)

I recommend you notice your insurance company.

Respectfully,

MB Hutson
803-308-2714

cc: The Supreme Court of SC Office of Disciplinary Counsel
John Wilkerson, CEO, Turner Padgett Graham & Laney P.A.
Wayne Byrd, Turner Padgett Graham & Laney P.A.

Exhibit 32.0

From: **H Hutson** hutson4444@gmail.com
Subject: PRINT JOB 4 HUTSEN
Date: June 14, 2019 at 10:48 AM
To: OFFICE MAX OB ODS06535CPC@officedepot.com
Bcc: cindy.exum@gmail.com

---------- Forwarded message ---------
From: **Tim J. Newton** <tnewton@murphygrantland.com>
Date: Tue, Sep 11, 2018, 1:51 PM
Subject: Fw: Penn-America Ins. Co. v. Big Water Resort, LLC, et al
To: H Hutson <hutson4444@gmail.com>

Frank is in NC and may be tied up preparing for the hurricane. Here is the letter.

From: Tim J. Newton
Sent: Sunday, September 9, 2018 1:32 PM
To: Bill Lyles; J. R. Murphy; John Wilkerson; Kim M. Jackson
Cc: fgordon@mgsattorneys.com
Subject: Re: Penn-America Ins. Co. v. Big Water Resort, LLC, et al

Bill,

Attached is Penn-America's submission for the mediation. It is being circulated to opposing counsel.

Tim N.

From: Bill Lyles <bill@billlyleslaw.com>
Sent: Wednesday, September 5, 2018 7:15:45 PM
To: Tim J. Newton; J. R. Murphy; John Wilkerson; ahager@turnerpadget.com; Kim M. Jackson
Subject: Penn-America Ins. Co. v. Big Water Resort, LLC, et al

Dear Colleagues,

This is to confirm that the mediation in the above-referenced matter has been scheduled for September 12, 2018 beginning at 10 am at the offices of Turner Padget Graham & Laney, PA, 40 Calhoun Street, Suite 400, Charleston, SC 29401.

It is certainly not required that you provide me anything prior to mediation. At the same time, however, I am happy to receive any material you wish to forward. Consistent with the mediation agreement that will be circulated and signed at mediation, any submission I receive prior to mediation will remain strictly confidential, unless you give me permission to provide it to others. If time permits, I am also happy to discuss the matter with any of you prior to mediation. Feel free to call, email, or text.

Finally, in accordance with SC ADR rules, please make every effort to have those persons with authority to settle the case present at the mediation. As each of you likely will agree, unless agreed to by all parties prior to mediation, having clients/carriers participate by phone can be an impediment to reaching a settlement.

As always, thank you very much for selecting me as your mediator. I look forward to working with each of you.

With kindest regards, I am

BL

--

Bill Lyles, Esq.
BILL LYLES LAW, LLC
P.O. Box 20487
Charleston, SC 29413
342 East Bay St., 1st Fl.
Charleston, S.C. 29401

Tel. 843.696.7730
www.BillLylesLaw.com

Mediator Charleston SC | Bill Lyles Law - Mediator ...

www.billlyleslaw.com

BILL LYLES LAW Mediator & Attorney MEDIATOR & ATTORNEY This site is currently under construction. Please check back soon for our latest update.

** Please feel free to visit my website for mediation availability

Lyles 09-10-18
re med...n.docx

ELECTRONICALLY FILED - 2019 Jun 24 6:06 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,

Plaintiff,

vs.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2,

Defendants.

AFFIDAVIT OF TIMOTHY J. NEWTON

TO: M.B. HUTSON, PRO SE:

PERSONALLY APPEARED BEFORE ME, the undersigned Timothy J. Newton, who after being duly sworn, deposes and says:

1. My name is Timothy J. Newton.
2. I am above 18 years of age.
3. I make this affidavit based on my knowledge and observations.
4. On June 21, 2019, I traveled to Clarendon County Courthouse in Manning, South Carolina where I copied substantially all of the court record from the case of TLC Holdings, LLC v. M.B. Hutson a/k/a M.B. Hutson, *et al.*, Civ. Action No. 2011-CP-14-00602. To my knowledge, the only documents of which that I did not copy are

   a. the Notice of Appearance of certain counsel for TLC Holdings, LLC on January 2, 2014, since it did not appear relevant to the allegations in this case;

b. certain correspondence of an administrative nature which did not appear relevant to this case, and

c. duplicative copies of the Lease Purchase Agreement and the Membership Interest Purchase Agreement, to avoid waste since they have already been filed in this action.

If this Court requires a complete copy of the court file from the prior case, I would be happy to provide it.

5. The court file for the above-referenced action is not available online.

6. I had not previously reviewed or received the complete court file for the above-referenced action.

7. The only reason for my obtaining the court file from that action is to defend myself against the allegations made against me in this action.

8. A scanned copy of what I copied from the court file in the above-referenced action is attached. (Exh. 1.)

9. A copy of the Public Index from that action, printed from the South Carolina Judicial website, is also attached for reference. (Exh. 2.)

10. For ease of reference, a Bates labeled copy of Exhibit V to Newton's Memorandum in Support of his Motion to Dismiss or Motion for Summary Judgment is also attached. (Exh. 3.)

FURTHER AFFIANT SAYETH NOT

[Signature page follows]

ELECTRONICALLY FILED - 2019 Jun 24 6:06 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Timothy J. Newton

SWORN to and subscribed before me
this 24 day of June, 2019.

____________________________(L.S.)
Notary Public for South Carolina
My Commission Expires: 3/3/2023

ELECTRONICALLY FILED - 2019 Jun 24 6:06 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Exhibit V

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 11:00 AM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01089.WAV

IP Office Voicemail redirected message

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Phone System
Sent:	Friday, August 10, 2018 2:47 PM
To:	Tim J. Newton
Subject:	Voicemail Message (WIRELESS CALLER > TNewton) From:98033082714
Attachments:	MSG01090.WAV

IP Office Voicemail redirected message

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Saturday, August 11, 2018 9:04 PM
To:	Tim J. Newton
Subject:	Setting aside the Judgement
Attachments:	Blank.pages; ATT00001.txt

Total Control Panel

Login

To: tnewton@murphygrantland.com   Remove this sender from my allow list

From: hmr226621@gmail.com

You received this message because the sender is on your allow list.

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Reasons why the Settlement Agreement was Fraudulent:

1. There were over 700 family members who prepaid for two life times of "Sole Use" of the property held by TLC Holdings, LLC.

2. The Settlement Agreement agreed to by the Court and the Honorable Judge James ordered Hutson to purchase the 108 acres of land and develop the proposed subdivision in a confined time frame when in fact, the 108 acres was defective in title due to the 700 family members prepaid two life times "Sole Use" of all property.

3. Those 700 family memberships had been soled and in most cases, all monies had been pre-collected by TLC Holdings, LLC. All memberships had been pre-sold years prior to Hutson's arrival creating the defective title whereby no loans could be made for lot take out nor no loans could be obtained for construction for private occupation and ownership of new proposed homes to the general public due to the membership 70 year "Sole Use".

4. The defective property did not have public sewer or water which was required but a moratorium existed on such public water and public sewer preventing Hutson to move forward with the project being a factor in his inability to develop.

5. Hutson holds a sworn affidavit by an expert attorney outlining that the option to buy property was defective in title. TLC Holdings, LLC was aware of that fact at the time of the execution of the Settlement Agreement but withheld this information from the Court.

6. In addition, TLC Holdings, LLC three members also prepared a contract to sell the Big Water Resort to Mr. Hutson which required Hutson to accept and assume full responsibility of some 700 family members for up to 70 years all having "Sole Use" of the property which prevented Hutson from ever closing or purchasing the 109 acres.

7. TLC Holdings, LLC three members withheld the full knowledge that Big Water Resort owned no right to use any of the 108 acres of land nor was there any type of contractual agreement between TLC Holdings, LLC and the three members to allow Big Water Resort the right to provide said 108 acres to it's 700 family members. This action placed Big Water Resort in an impossible position to honor the long term contracts.

8. The entire contracts named Settlement Agreement and Consent order was fraud upon the Honorable Judge and Court and since such two orders were legally impossible to honor or comply to, such Settlement Agreement and Consent Order were and are null and void. The intentions of TLC and it's three members were to deceive and trick both Hutson, his attorney, the Judge and the Honorable Court.

9. TLC's only reason for conducting such dishonesty upon the Court was to gain an unfair advantage over Hutson causing Hutson to fail and be evicted.

Tim J. Newton

From: Cynthia Exum <cindy.exum@gmail.com>
Sent: Saturday, August 11, 2018 9:25 PM
To: Tim J. Newton; Hutsen
Subject: consent order
Attachments: 3.1 Consent Order.pdf

Total Control Panel Login

To: tnewton@murphygrantland.com Remove this sender from my allow list
From: cindy.exum@gmail.com

You received this message because the sender is on your allow list.

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CONSENT ORDER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	CASE NUMBER: 11-CP-14-602

TLC Holdings, LLC,

Plaintiff,

v.

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

Defendant.

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

Defendant and Third Party Plaintiff,

v.

Richard U. Clark, Jimmy S. Lovell and James C. Thigpen,

Third Party Defendants.

Judicata

CONSENT ORDER

Removed for redundancy: view on page 189.

4/13/12

fraud

THIS MATTER comes before me pursuant to (a) a Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of Receiver filed in the above-captioned action by Plaintiff, TLC Holdings, LLC ("Plaintiff", "TLC" or "Landlord"), against Defendant, M.B. Hudson a/k/a M.B. Hutson ("Defendant", "Hudson", or "Tenant"); and (b) a Motion to Dismiss filed by Defendant in this action.

BACKGROUND AND PROCEDURAL HISTORY

This action concerns a Lease Purchase Agreement dated December 15, 2010 (the "Lease" or the "Agreement"), by and among Plaintiff, as landlord, Hudson, as tenant, and Richard U. Clark, Jimmy S. Lovell, and James C. Thigpen (the "Third Party Defendants"), for property located in Clarendon County, South Carolina, more fully

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

described in the Lease and commonly known as the Big Water Resort (the "Premises" or the "Property"). Plaintiff has filed this ejectment action against Defendant with respect to the Agreement. Defendant has also recorded a Lis Pendens in this action against the Premises and the Plaintiff and Third Party Defendants (the "Lis Pendens"). In his Answer and Counterclaim and Affirmative Defense and Motion to Dismiss and Third Party Complaint filed in this action, Hudson has asserted counterclaims against Plaintiff, as well as other claims against the Third Party Defendants. However, the Third Party Defendants have not been served with pleadings filed in this action, and none of the Third Party Defendants have made an appearance in this action.

It appears that the parties have agreed to a settlement of the pending motions, and all other matters at issue with respect to the Agreement, or which could have been asserted in this litigation, on those terms set forth in that certain Settlement Agreement dated as of March 30, 2012, a copy of which is attached hereto as **Exhibit "A"** and its terms incorporated herein by this reference (the "Settlement Agreement").

ORDER

NOW, THEREFORE, upon Motion of the Plaintiff, and with the consent of the Defendant, as the only parties having appeared in this action, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. The Settlement Agreement is hereby approved by this Court and incorporated into this Consent Order by this reference;

2. In the event that Hudson fails to comply with the terms of the Settlement Agreement, unless such failure is a direct and proximate result of TLC's failure to perform an action expressly required of it in the Settlement Agreement, time being of the

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

essence, then the Plaintiff is entitled to file an Affidavit of Default in this action, without notice to Defendant or his counsel of record, and, effectively immediately upon the filing of such Affidavit of Default, Plaintiff is hereby awarded the following immediate relief, without the need for further Order of this Court:

a) The Agreement shall be deemed automatically terminated and of no further force or effect;

b) The Lis Pendens shall be deemed automatically cancelled, terminated of record, and of no further force or effect;

c) Mr. Hudson shall be required immediately to vacate the Property, except only with respect to his personal residence located thereon, as to which he shall be obligated to vacate the same within fifteen (15) days following receipt of a copy of the Affidavit of Default, or the posting of a copy of the Affidavit of Default upon such residence, whichever first occurs (the "Vacation Deadline").

3. In the event that Hudson fails to vacate the Premises by the Vacation Deadline, then the Sheriff of Clarendon County is hereby directed to immediately evict Hudson therefrom, remove any personal property then and there remaining on the Premises, and put the Landlord in peaceful possession of the Premises. Landlord is hereby authorized to change the locks of the Premises effective 11:59 p.m. on the Vacation Deadline.

4. Prior to any such default by Hudson under the Settlement Agreement and the Lease as modified by the Settlement Agreement, the Lease remains in full force and effect in accordance with its terms, as modified by this Settlement Agreement, and during

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

the Primary Term (as defined in the Lease, and as may be extended as provided in the Settlement Agreement), Hudson shall have full possession of the Property in accordance with, and subject to, the terms of the Lease as modified by the Settlement Agreement.

SO ORDERED.

____
Judge

Manning, South Carolina
April 3, 2012

[*Signatures Continue on Following Page*]

(Liens still on property Bank & 60 yr. Leases Oct 2012

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE MOVE:

WOMBLE, CARLYLE, SANDRIDGE & RICE, LLP

Thomas L. Harper, Jr., Esq.
5 Exchange Street
Post Office Box 999
Charleston, SC 29402
(843) 722-3400

Attorneys for Plaintiff TLC Holdings, LLC

Charleston, South Carolina
April 3, 2012

WE CONSENT:

WEISSENSTEIN LAW FIRM, LLC

Paul Weissenstein, Jr., Esq.
106 Broad Street
Post Office Box 2446
Sumter, SC 29151
(803) 418-5700

Attorneys for Defendant and Third Party Plaintiff M.B. Hudson a/k/a M.B. Hutson

Sumter, South Carolina
April 3, 2012

[*Signatures Continue on Following Page*]

WCSR 7205819v1

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

WE AGREE:

TLC HOLDINGS, LLC

Richard U. Clark, its Member

April 3, 2012

Plaintiff and Third Party Defendant

[*Signatures Continue on Following Page*]

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

STATE OF SOUTH CAROLINA, COUNTY OF CLARENDON
IN THE COURT OF COMMON PLEAS
CASE NO. 11-CP-14-602
TLC HOLDINGS, LLC, VS. M.B. HUDSON A/K/A M.B. HUTSON

CONSENT ORDER

I AGREE:

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

April 3, 2012

Defendant and Third Party Plaintiff

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

EXHIBIT "A"

(Copy of Settlement Agreement)

SEE ATTACHED

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From:	Cynthia Exum <cindy.exum@gmail.com>
Sent:	Saturday, August 11, 2018 9:27 PM
To:	Tim J. Newton; Hutsen
Subject:	title company letter
Attachments:	C-Stewart Title Letter.pdf

Total Control Panel

Login

To: tnewton@murphygrantland.com   Remove this sender from my allow list

From: cindy.exum@gmail.com

You received this message because the sender is on your allow list.

934 - I

EXH_V_000015

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ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

From: hutson4444@gmail.com
Date: October 2, 2015 at 10:35:45 AM EDT
To: OFFICE MAX OB <ODS06535CPC@officedepot.com>, cindy exum <cindy.exum@gmail.com>
Subject: Fwd: 5215 Dingle Pond Rd, Summterton SC

Hutson
803.308.2714

Begin forwarded message:

From: Michael Medlock <Michael.Medlock@stewart.com>
Date: October 2, 2015 at 10:32:36 AM EDT
To: "hutson4444@gmail.com" <hutson4444@gmail.com>
Subject: 5215 Dingle Pond Rd, Summterton SC

108 Acres
Clarendon County

To Whom it May Concern:

I have been advised that the property mentioned above in encumbered by several hundred private membership and use agreements. These agreements do not appear in the public record; however, any title policy will contain exceptions to these interests once known to the company regardless of recording status.

If there are hundreds of membership agreements for exclusive use of portions of the property for 2 lifetimes, that is a cloud on title that would be excepted to in any title insurance policy.

My opinion is that no lending institution would lend on this as they would require a subordination and non-disturbance agreement from each interested party in order to obtain a clear title policy

Michael S. Medlock
South Carolina Underwriting Counsel
North Carolina State Counsel / Underwriting Counsel
Stewart Title Guaranty Company

South Carolina Office
4406-B Forest Drive, Suite 102
Columbia, SC 29206
O (803) 765-1631 | M (803) 414-6272 | F (866) 811-2066

North Carolina Office
831 E. Moorehead Street, Suite 355
Charlotte, NC 28202
O (704) 912-3542 | M (803) 414-6272

ELECTRONICALLY FILED - 2019 Jun 25 10:47 AM - RICHLAND - COMMON PLEAS - CASE#2018CP4006344

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:59 PM
To: Tim J. Newton
Subject: Slander Letter TLC.pdf
Attachments: Slander Letter TLC.pdf; ATT00001.txt

Tim, notice in this defamatory letter to the members, TLC states that all the property was owned by them and used for the members.

Also notice that they intentionally fail to tell the members that they sold me the Big Water Resort and memberships and I could not operate said business due to the lack of land and lack of contractual agreements.

We can checkmate the crooks and ride the 3.5 by getting the Fraudulent judgement set aside. I beg you to move quickly and let's get a game plan to move forward. Merely filing to set aside will cause TLC to fall to their feet.

TLC has been in the drivers seat long enough. Bill Padget put them in their place. We must do the same thing and fasttttttttttt.

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To: tnewton@murphygrantland.com Remove this sender from my allow list
From: hmr226621@gmail.com

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TLC Holdings, LLC
5215 Dingle Pond Rd.
Summerton, SC 29148
Ph: (803) 478-6336

slander letter

April 3, 2014

Members of Big Water Resort Campground

Re: Membership Agreements; New Management

Dear Member:

TLC Holdings, LLC is, and has been at all times since its development, the owner of the land and improvements on which the campground previously known as the Big Water Resort has been operated. In December of 2010, TLC Holdings, LLC entered into a Lease Purchase Agreement with M. B. Hutson. Under the terms of that Agreement and related documents, in addition to the various obligations that Mr. Hutson owed to TLC Holdings, Mr. Hutson assumed responsibility for the operation, maintenance, and upkeep of the Big Water Resort Campground. Before we signed the Agreement, Mr. Hutson assured TLC Holdings, LLC that his intentions were to continue to operate the campground on TLC Holdings, LLC's property, while developing the rest of the property in a way that complemented the resort and the club experience. Those assurances were important to TLC Holdings, LLC, and it agreed to proceed with the Agreement with Mr. Hutson.

Over the course of the last three (3) years, Mr. Hutson breached his obligations under the Agreement in numerous respects. Those breaches began just months after he took over the property. For example, he failed to pay rents he owed to TLC Holdings, LLC, and taxes owing to Clarendon County that were his responsibility under the Agreement. He failed to pave or repave the roads as required by the Agreement, which would have been a benefit to everyone at the campground. At times, he failed to carry insurance that was necessary to protect the property and the club. These breaches damaged TLC Holdings, LLC, and they hurt the property and the club operated on it. TLC Holdings, LLC has been forced to make tax payments and insurance payments to protect the property that were Mr. Hutson's responsibility under the Agreement.

Beginning in 2011, TLC Holdings has endeavored to enforce the obligations of Mr. Hutson with regard to the campground. As a result of Mr. Hutson's breaches, TLC Holdings, LLC sued him in state court back in 2011. Mr. Hutson has vigorously resisted TLC Holdings' efforts to enforce his obligations. After protracted litigation in the state court, when TLC Holdings, LLC was finally on the verge of success in evicting Mr. Hutson from the property, Mr. Hutson then filed for bankruptcy on January 8th of this year, delaying for a few more months TLC Holdings' recovery of the property. For all these months that Mr. Hutson has

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resisted TLC Holdings' efforts to recover the property, he has continued the breaches of the Agreement that have hurt TLC Holdings, LLC, and the club members who have used the property.

TLC Holdings, LLC has just been successful in regaining control of the property. The state court ruled that Mr. Hutson had breached the Agreement, and that TLC Holdings, LLC was permitted to terminate the Lease Purchase Agreement. As a result, Mr. Hutson is no longer in residence at the property, nor is he conducting any business on the campground property. Therefore, Mr. Hutson and his companies have no right to charge or receive payments of any kind whatsoever related to the campground.

As a result of TLC Holdings' successes in the state court and the bankruptcy court, TLC Holdings, LLC is now finally in control of the campground property for the first time since December, 2010. Much has changed over those three years, and it appears that much work is needed. TLC Holdings, LLC has decided to transfer the campground property, including the amenities, to an affiliated company named Ocoee, LLC. Thereafter, Ocoee, LLC intends to honor the terms of your Membership Agreements going forward, and will issue similar Campground Rules.

Unfortunately, because the records recovered by TLC Holdings, LLC from Mr. Hutson are incomplete in some respects, we ask that you provide to us your understanding of your current status with regard to your membership agreement with Big Water Resort. Please, also, provide us documentation of your payments of dues each year since 2010, including dues for calendar year 2014. If you have prepaid for any rentals in the campground, please also provide documentation of any such payments.

As noted, the records we received are incomplete. If you become aware of any member who did not receive this correspondence, please share it with them. Also, please ask them to contact us by phone at (803) 478-6336. You should also feel free to call that number if you have any questions. Ask for Mary Lou, who has worked at the property for years, or leave a message and she or another representative will be in touch.

For all of you Members who have paid your annual dues and charges and are in good standing for 2014 and prior years, your rights will be honored by Ocoee, LLC. Moreover, if you were otherwise current through 2013, but did not pay your dues for 2014, then TLC Holdings, LLC and Ocoee, LLC have agreed to give you sixty (60) days from the date of this letter to pay those dues. Please make checks payable to "Ocoee, LLC", not to "Big Water Resort".

We understand that this protracted litigation may have confused or frustrated you. It certainly has us. With it behind us, we are excited about the future. More information will follow from the new management in the coming weeks. In the meantime, thank you for your understanding, and please call us at the number above if you have any questions.

TLC Holdings, LLC

Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Saturday, August 11, 2018 10:03 PM
To:	Tim J. Newton
Subject:	Let's not give them any prior notice, simply serve them. This will cause them to gently fall apart while trying to act like the filing is no big deal. We know different. Filing this solves several major concerns.

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Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Sunday, August 12, 2018 12:40 PM
To:	Tim J. Newton
Subject:	From Hutson
Attachments:	Blank 2.pages; ATT00001.txt

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Notes to Tim from Hutson

Failed to disclose that BWR was losing $300,000 per year.

Failed to disclose to me that because of that, BWR was be obligated for $20 million dollars to honor the hundreds of family members.

At the time of the Settlement Agreement which TLC pushed hard for, I did not know the following and TLC did:

A. All of the property except the small gas station was fully used by the family members and each family member had the "Sole Use" of all property causing defective title due to the "Sole Use" of all property, therefore, all monies I paid for the option to purchase was wasted and lost due to the fact I could never develop the property nor a divide small lots for a 200 lot subdivision.
B. It stated in the Option to Purchase that my method of paying for the property was to allow TLC to collect 35 percent of each individual lot sale at each individual closing.
C. TLC required me to buy and take ownership of BWR simultaneously executing the Option to purchase the 108 acres of land.
D. QUESTION: What did I receive by buying the BWR as required? After signing the Settlement Agreement and the Consent Order,
E. I later learned that the only thing I acquired was a hidden $20 million dollars worth of indebtedness in order to operate the campground for 70 years which was required.
F. BWR did not own ANY land to honor the hundreds of members who TLC had pre-collected the cost for the 70 years nor had TLC allocated any contractual agreement providing protection to BWR to be able to have land to service the $20 million dollars of obligation.
G. TLC furnished a fraudulent financial statement showing that BWR was worth $1,7 million dollars when in fact it was worth nothing leaving me no way to survive operating BWR nor buying the 108 acres due to defective title.
H. The Honorable Court merely took the word of the layers who drafted the Settlement Agreement and the Consent Order that all was well. It never entered into the Court's mind that the Court that TLC was withholding and concealing grave issues that would cause me not to be successful exposing me to many lawsuits. Hutson was doomed and consequently has lost 5 years of his life, profit on what could have been made with the land subdivision. This entire thing was pre planned and plotted.

Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 5:27 AM
To: Tim J. Newton
Subject: Question

Good morning, wondering if you have checked to see what is considered fraud upon the court and what the court is subject to do if evidence proves the fraud. Is the defendant fined besides having his judgement reversed?

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934 - Q

EXH_V_000023

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Tim J. Newton

From:	Mr. H <hmr226621@gmail.com>
Sent:	Monday, August 13, 2018 10:04 AM
To:	Tim J. Newton; Hutson 4072 C
Subject:	Another affidavit

August 13, 2018

Good morning Tim. In the next week I will have my second affidavit regarding my second malpractice attorney who ran title on the TLC Holdings property for me. Likewise, the statute runs out the same time as Paul Weissenstein. I have been told that the value of the malpractice is about the same as Paul's. Will need to file very soon likewise.

Please let me know what you are thinking and how you plan to protect my money. Lord I need it. Also, let me know the name and phone number of Torus Insurance and who the contract for I must give both Penn America and Torus Insurance notice.

Seems the only solution is getting a complaint prepared and file to set aside the State judgement regarding the Settlement Agreement.

I am willing to help in anyway I possibly can. We need Frank Gordon and quick. I will be more than happy to meet with you. Scared to death and desperate as you can appreciate.

Hutson

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934 - R

EXH_V_000024

Tim J. Newton

From:	Tim J. Newton
Sent:	Monday, August 13, 2018 10:50 AM
To:	'Mr. H'
Subject:	RE: Setting aside the Judgement

Mr. Hutson,

I need to remind you that I don't represent you and I can't represent you because I represent Penn-America. To the extent there is a common interest, I note the following:

1. Renee Roark testified at trial in the defamation action that you contacted her in October 2010 looking for waterfront property to develop.
2. Susan Stroman admitted at trial sending you an e-mail dated November 11, 2010 in which she indicated the campground could possibly be moved or the members bought out. However, she denied having said that on behalf of TLC.
3. The alleged lease between Big Water Resort, LLC and TLC Holdings, LLC, if it existed, was never recorded, although it was for a term of more than a year.
4. The membership agreements between the campground members and Big Water Resort, LLC were never recorded. Possibly they should have been, since they granted campground members a rights to use Big Water Resort, LLC's facilities for life plus the lifetime of a survivor. See S.C. Code s 27-33-30 (requiring "any . . . agreement for the use . . . of real estate" to be recorded.
5. There is some case law indicating lifetime memberships are for the duration of the club member, and can only be terminated for cause. Paul Gabrillis, Inc. v. Dahl, 154 Or. App. 388, 961 P.2d 865 (Or. Ct. App. 1998); Martin v. Town & Country Dev., Inc., 230 Cal. App. 422, 41 Cal. Rptr. 47 (Cal. Ct. App. 1964).
6. The campground membership agreements I have seen do not specify what particular property is included in "BWR's present and future campground recreation facilities."
7. The Lease-Purchase Agreement pertains to all of TLC's property at the Big Water Resort site.
8. The Membership Interest Purchase Agreement in Big Water Resort, LLC does not specify what property is subject to the campground membership agreements.
9. The Settlement Agreement dated March 30, 2012 is between TLC Holdings, LLC (and its principals) and Hutson only. TLC is represented as the landlord, and Hutson is represented as the tenant. Big Water Resort, LLC and the campground members are not parties.
10. The Settlement Agreement, in para. 5, obligates Hutson to submit a Qualified Plat for a proposed subdivision "as shown on Exhibit 'A' attached hereto." There are provisions for an acreage release, and it appears the payments owed to TLC may be paid from the proceeds of the subdivision and sale of parcels of the property.
11. The copy of this Settlement Agreement that was made an exhibit at Hutson's bankruptcy deposition had two hand drawings immediately after the last page, which reads "Exhibit A." These drawings depict the approximate location of the proposed development as being on the campground parcel.
12. Despite the language in the Lease-Purchase Agreement and the Settlement Agreement that the subdivision and sale pertained to unimproved portions of the property, the letter that TLC's attorney Tom Harper submitted to the Clarendon County Planning Commission with TLC's approval depicts a development on the campground property.

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13. The Consent Order filed April 13, 2012 incorporates the Settlement Agreement but does not otherwise mention Big Water Resort, LLC or the campground members. It reads as if it pertains to a mere landlord-tenant dispute.
14. Bonnie Youmans testified at trial (by way of her deposition) that she thought all of TLC's property was part of the Big Water Resort campground and she would have considered it a violation of the campground memberships to have developed condominiums on the campground property. This testimony was unopposed.
15. I can see how you could argue that the Consent Order is invalid because it attempts to adjudicate the rights of parties not before it. If you were ordered to develop property that was subject to lifetime use rights, that probably should have been brought to the court's attention. Furthermore, I can see how you could argue you did not realize you were being obligated to violate the rights of the campground members by developing since TLC never specified exactly which property was subject to the campground memberships.
16. It's hard to see why TLC and its lawyers should not have, in good faith, simply told you (and the court) that the Big Water Resort property was undevelopable because it was already obligated to double lifetime memberships as a private club. It appears that could easily have averted the entire fiasco. Since attorneys were involved, and it resulted in your inability to present your case in court, and possibly led to the sanctions order and judgment against you, there might possibly be extrinsic fraud on the court to support setting aside the Consent Order. See Chewning v. Ford Motor Co., 354 S.C. 72, 579 S.E.2d 605 (2003).

However, that is something you would have to follow up with on your own. I can't undertake that. Possibly Frank could file a motion if Penn-America approves it, but he and I both have agreed to put everything on hold until the mediation.

I highly recommend that you get a lawyer involved, even if it's a pro bono lawyer. If you need the documents supporting the above, let me know.

Tim N.

Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
Columbia, South Carolina 29260
803-782-4100 ext. 1242
803-454-1242 dd
803-782-4140 fax
www.murphygrantland.com

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From: Mr. H <hmr226621@gmail.com>
Sent: Saturday, August 11, 2018 9:04 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Setting aside the Judgement

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Tim J. Newton

From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM
To: Tim J. Newton; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?

2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.

3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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Tim J. Newton

From: Tim J. Newton
Sent: Monday, August 13, 2018 1:23 PM
To: 'Mr. H'
Subject: RE: Questions

Mr. Hutson,

The agreement was to "put everything on hold" until the mediation. Under that agreement, not only TLC's execution on the judgment, but also Penn-America's DJ and the appeal of the judgment, have all been put on hold.

It might benefit Penn-America and your defense if you are able to get the Consent Order set aside, if that somehow undermines the judgment in the defamation action. But we can't renege on the agreement to wait until after we mediate. By the way, that agreement was made for your benefit—so we could hopefully resolve everything before TLC starts trying to come after you personally. We didn't know about the statute of limitations issue on your separate claim against Weissenstein.

Until the mediation, there is no argument that you are somehow damaged. Again, the appeal bond does nothing to negate the judgment. Even if an appeal bond is posted, you still have a judgment against you , and that is only satisfied by payment of the judgment or a settlement. The appeal bond is to protect TLC, not you.

If TLC attempts to assert a claim against your possible settlement with Weissenstein prior to the mediation, we will look into what might need to be done. They might have a time limit and need an extension or something. If they start to pursue it, we will remind them of the agreement and demand that they stand down. If they won't then we will look into what we might need to do in response.

I don't know what else to say. An agreement is binding, so we are kind of stuck with it for now. But again, we are talking about your claims against other parties. It doesn't have anything to do with Penn-America, at least not directly.

Tim N.

Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
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Columbia, South Carolina 29260
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From: Mr. H <hmr226621@gmail.com>
Sent: Monday, August 13, 2018 12:50 PM

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To: Tim J. Newton <tnewton@murphygrantland.com>; hmr226621@gmail.com
Subject: Questions

August 13, 2018. To Tim Newton

1. Is it true that filing the suit or motion to set aside the State Judgement based on fraud would strengthen your position now, prior to the mediation?

2. Why wait since your agreement relates to TLC not coming after me prior to the mediation? If you wait, Penn America and Torus will be liable for me losing approx. One million dollars or double. Wondering why you can't see that.

3. The mere fact of not waiting until the mediation and the filing of the complaint to set aside the State Judgement should neutralize TLC. Why expose me to this extreme amount of monies that I am certain I will lose?

Hutson

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934 - X

EXH_V_000030

From:	Mr. H <hmr226621@gmail.com>
Sent:	Tuesday, August 14, 2018 9:26 AM
To:	Tim J. Newton; Kim M Jackson. Torus
Cc:	hmr226621@gmail.com
Subject:	NOTICE: Lack of protecting client by not posting bond nor settling case

Confirmation of receipt is requested.

NOTICE

August 14, 2018

Re: Outstanding $3.5M Judgement Against MB Hutson

Dear Mr. Tim Newton and Mr. Kim Jackson:

Approximately seven months ago a jury trial resulted in a $3.5M judgement against myself in which your companies provided an attorney, Frank Gordon to defend me.

Since that judgement, neither Penn America, nor Torus, have provided a bond to satisfy that judgement, which is required. Consequently, I have been prevented from moving forward financially with my life. Therefore, I have been and am continuing to be substantially damaged financially.

Unless a solution is provided within the next three to five days, I will be left with no other alternative but to file formal complaints. At this point, time is of the essence.

Regrettably,
MB Hutson
803.308.2714

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Tim J. Newton

From: Tim J. Newton
Sent: Wednesday, August 15, 2018 2:37 PM
To: 'Mr. H'
Subject: RE: Hutson vs: Insurance companies

The answer is no, although they are continuing to review the situation.

M & G
Murphy & Grantland, P.A.
Tim J.Newton, Esquire
tnewton@murphygrantland.com
Post Office Box 6648
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From: Mr. H <hmr226621@gmail.com>
Sent: Wednesday, August 15, 2018 2:33 PM
To: Tim J. Newton <tnewton@murphygrantland.com>
Subject: Hutson vs: Insurance companies

August 15, 2018

Tim, you know my situation. Please let me know as soon as possible regarding the offer I made the other day to you. If it's a no, I can gain time working on paper work with some folks.

Thank you in advance,

Hutson

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2018-CP-40-06344

MB Hutson/MB Hudson,

Plaintiff,

vs.

Penn America Insurance Company, Global Indemnity Group, Inc., Timothy J. Newton, Esq., J.R. Murphy, Esq., John Doe #1, John Doe #2,

Defendants.

DEFENDANT TIMOTHY J. NEWTON'S AMENDED RESPONSE TO PLAINTIFF'S SUPPLEMENTAL MEMORANDUM

Defendant Timothy J. Newton submits the following Response to Plaintiff Hutson's "Supplemental To Memorandum" and Affidavit filed June 19, 2019. [1]

Newton denies Hutson's allegations in the above-referenced filings. However, mindful of the standard for dispositive motions, Newton would show that whatever Newton may have told Hutson about his claim of fraud upon the court is irrelevant because it is evident from the record that Hutson cannot prevail on such a claim.

I. Hutson developed his theory of fraud upon the court on his own.

As an initial matter, Hutson's theory of "extrinsic fraud upon the court" is not based upon Newton's "legal advice." As early as March 24, 2016, Hutson had filed legal memoranda in which he defined extrinsic fraud, differentiated it from intrinsic fraud, and discussed relevant case law. (Exh. W: Hutson Mem. in Resp. to TLC Mot. for Summ. J. at p. 2.) The factual basis for Hutson's theory did not come from Newton. Hutson has admitted and represented to courts in other proceedings in the Big Water Resort litigation that he discovered that all of the Big Water Resort

[1] Newton reserves his right to respond separately to any new material Plaintiff may file.

property was subject to the campground memberships through reading an unspecified judicial order in the Class Action [2] on December 15, 2015. (Exh. DD: Attachment to Emergency Mot. for Recons., p. 4.) Hutson has never specified which order he is referring to. Nonetheless, by his own admission, Hutson had the factual basis for his claim of fraud upon the court before any of the defendants were aware of the Big Water Resort litigation. Penn-America began defending Hutson on or about February 28, 2016. (See Exh. EE: Notice of Appearance.)

II. Hutson has no good faith basis for representing to courts and opposing parties that all of the property he purchased was campground property.

Furthermore, Hutson had no good faith basis for representing to Newton and Penn-America that he had grounds for setting aside Judge James' Order (Exh. G), or the Settlement Agreement and Consent Order (Am. Compl., Exh. 9.0 and 10.0), based upon fraud upon the court. By the time Hutson proposed this course of action to Newton in August 2018 (See Am. Compl., Exh. 4.0; Newton Mem. in Supp. of Mot. to Dism., Exh. V), courts had ruled that Hutson breached the Settlement Agreement (Exh. G: James Order), and thereby released TLC from any claims relating to the original purchase transaction and the Settlement Agreement. (Exh. C: Cothran Order.) Courts had also ruled that the Settlement Agreement was not procured by fraud. (Exh. A: R&R; Exh. B: Norton Order.) Hutson represented to Newton that he had recently found documentary evidence that TLC had promised the campground members that all of the property Hutson purchased was subject to the campground memberships.

If such information had been withheld at the time Hutson entered into the Settlement Agreement, Hutson might possibly have a claim for fraud upon the court. However, it appears that Hutson knew at the time he made this representation that it was false.

[2] William Reed, et al., v. Big Water Resort, LLC, *et al.*, Civ. Action No. 2:14-cv-01583-DCN (D.S.C.).

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Prior to the time any defendants in this action became involved in the Big Water Resort litigation, Susan Stroman was deposed in the Class Action. (Exh. FF: Dep. of Stroman.) The deposition took place on May 20, 2015. (Id. at p. 1.) Hutson was present at this deposition. (Id. at p. 3.) None of the defendants in this action were there. Stroman was the realtor for TLC for purposes of the transaction that culminated in the Lease Purchase Agreement. [3] (Id. at 15.) Stroman was also a campground member. (Id. at p. 11.)

During direct examination, Stroman was asked which property was subject to the campground membership agreements. Stroman answered as follows:

> Q. As a club member, were you concerned that he may be taking away the land for your club?
>
> A. There was 57 acres across the road undeveloped that could have been developed, and at that time the sewer was coming down the road. There was plenty of land there.
>
> Q. So you assumed he was talking about the other land?
>
> A. There were also two additional undeveloped acres within the campground. There was plenty of land other than the campsites.

(Id. at pp. 32-33.) Not only was Hutson present at this deposition, he had the opportunity to personally cross-examine Stroman in his capacity as a *pro se* litigant. (Id. at pp. 3, 65.) Not only did Hutson have this opportunity, he in fact personally questioned Stroman about this testimony during his cross-examination. Her response was as follows:

> Q. Ma'am, if I leased the property with the exclusive option to purchase it, wasn't it your understanding from me, as you have earlier testified, that I wanted to develop the property for condominiums?
>
> A. Yes sir.

---

[3] Newton is not the only one about whom Hutson has misrepresented the nature of his relationship. (See Exh. FF: Dep. of Stroman at p. 45 (objecting to Hutson's testimony that Stroman was his realtor.)

> Q. And where did you discuss with me – what portion of the property did you talk with me about developing?
>
> A. There are approximately two acres that were undeveloped within the 37 acres of the campground and 57 acres across the street. . . . .

(Id. at p. 86.) Hutson knew all the property he purchased was not campground property before Penn-America and its coverage counsel were even aware of the Big Water Resort litigation.

Furthermore, TLC argued in its Reply Memorandum in support of its motion for summary judgment as to Hutson's counterclaims in the Class Action that Hutson knew the property he could develop. (Exh. GG: TLC Reply Memo. at pp. 4-5.) The Lease Purchase Agreement only authorized Hutson to develop the *unimproved* portions of the property. (Id. at p. 5.)

TLC's motion for summary judgment as to Hutson's counterclaims was granted. (Exh. B: Norton Order.) Hutson may be collaterally estopped to argue that he did not know all the property could not be developed as a result of this order.

III. Hutson knows he was not defrauded in the 2012 Settlement Agreement.

Newton denies that he had any duty to prosecute Hutson's claim, as Hutson alleges. In fact, Newton repeatedly told Hutson that Newton could not represent him and he needed to retain counsel. (See Am. Compl, Exh. 4.0.) But even if Newton had such a duty, it is clear from the public record that Hutson's claim he was defrauded lacks merit.

Hutson alleged in this action that TLC failed to disclose to him that the Big Water Resort property was subject to the campground memberships. (Am. Compl., ¶ 11.) Hutson further claims that Newton's knowledge of this nondisclosure constitutes knowledge of the alleged fraud. (Newton Aff., Exh. 1: Ejectment Action, Pl's. Mem. filed May 7, 2019.) Hutson alleged:

> This evidence included an undisclosed and unrecorded title defect which was cloaking/masking a non-existent, long-term 'contractual lease' for the use of the land by the business operating thereon, which had sold hundreds of one to two lifetime agreements for a "right to use" the property for over seventy years and thereby made the Settlement Agreement and Consent Order which required

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Plaintiff to develop those previously unencumbered and now undevelopable 108 acres *fraudulent*.

(Id. at ¶ 5 (emphasis in original).) [4]

Hutson made this same allegation in the Ejectment action. [5] The Settlement Agreement and Consent Order Hutson claims were fraudulent were entered into in the Ejectment Action. (Am. Compl., Exh. 9.0 and 10.0.) The court file for that action is not available online. Therefore, Newton traveled to Manning and copied all of the relevant pleadings. (Aff. of Newton, ¶ 4.) The copies Newton made are attached as Exhibit 1 to the Affidavit (hereinafter "Exh. 1"). It turns out that Hutson filed an affidavit in the Ejectment action in which he testified as follows:

> 6. After the LPA and MIPA were executed in December 2010, I quickly learned that there were two major obstacles to the successful development of the Resort and the operation of the business. *Neither of these obstacles were disclosed to me prior to the signing of the LPA and the MIPA.*
>
> 7. The first obstacle was that TLC and [its principals] had entered into lifetime membership contracts with the members of the public that allowed them to use the Resort for free. These contracts, the full nature of which was not disclosed to me, substantially impaired my ability to operate the business at a profit, which in turn impaired my ability to fund the development. I was able to work my way through these problems only by (a) substantially reducing the number of employees at the Resort, and (b) reducing the number of memberships by increasing the costs at the Resort, which outraged the members.

(Exh. 1: Aff. of M.B. Hutson filed Mar. 4, 2014 (emphasis added).)

A. Hutson knew about the campground memberships when he purchased the property.

Hutson knows his allegations in this action, and in the Ejectment action, that he was not aware of the campground membership prior to his purchase of the Big Water Resort property, are

[4] The property conveyed under the Lease Purchase Agreement, plus the leased waterfront property, totaled approximately 108 acres. (See Exh. CC: Dep. of TLC, Exh. 6 through 11.)

[5] TLC Holdings, LLC v. M.B. Hutson a/k/a M.B. Hutson, *et al.*, Civ. Action No. 2011-CP-14-00602.

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false. Not only has this issue been judicially determined (Exh. A: R&R; Exh. B: Norton Order), it flies in the face of documentary evidence known to Hutson.

In the Defamation Action Penn-America defended, TLC and its principals alleged Hutson defamed them by mailing a postcard to the campground members asserting that they and Hutson were victims of a scam perpetrated by TLC. (Exh. C: Cothran Order, p. 4.) Hutson claimed truth as a defense. At trial, TLC offered the testimony of Hutson's realtor, Renee Roark She testified to the following:

- Hutson misrepresented his true name to her. (Exh. HH: Trial Tr. excerpts, p. 384.) Roark testified this was very unusual. (Id. at p. 408-09.)
- Hutson instructed Roark to "[f]ind out how many lifetime memberships there are and how long before all the yearly memberships expire." (Id. at pp. 388-90 and Pl. Exh. 13.)
- "Hutson was very familiar with the contract process." (Id. at p. 392.)
- As of November 10, 2010, Hutson knew there were lifetime memberships at the Big Water Resort property. (Id. at p. 393.)
- Roark sent an e-mail to Billy Coffey requesting his legal opinion regarding the impact the lifetime memberships had on the Big Water Resort property. (Id. at p. 395 and Pl. Exh. 14.) Susan Stroman's campground membership agreement was attached to this e-mail. (Id. at pp. 409-10) This e-mail is dated November 10, 2010. (Id. at p. 396). Coffey spoke with Roark and told her he would be glad to discuss it with Hutson. (Id. at p. 397.)

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- Stroman discussed the implications of the campground membership agreements with Roark during Hutson's due diligence period. (Id. at p. 397-401 and Pl. Exh. 41.) Roark provided this information to Hutson. (Id. at pp. 399, 401.)
- Roark gave a copy of Stroman's membership agreement to Hutson. (Id. at p. 410.)
- Hutson discussed the possibility of moving the campground across the street with Roark. (Id. at pp. 419-20.)
- Hutson was concerned about "the red flags for title work where the lifetime memberships are concerned." (Id. at p. 422.) Roark asked Stroman how Hutson could get clear title to the property if there were lifetime memberships on it. (Id. at pp. 422-23, 25.)

Stroman also testified at trial. (Exh. HH: Trial Tr. excerpts, pp. 435-60.) Stroman testified that she discussed various possibilities of dealing with the campground memberships before Hutson purchased the property. (Id. at 452-55.)

Hutson was at this trial—he was the sole defendant. Thus, Hutson knows that his testimony in the Ejectment action, and his allegation in this action, that he did not know about the campground memberships when he purchased the property, are demonstrably false. As discussed above, Hutson knew which portions of the property he could develop and which portions he could not. Moreover, a review of the court filings in the Ejectment Action shows that Hutson had a plan for disposition of the campground memberships when he entered into the Settlement Agreement.

B. A review of the court filings in the Ejectment Action demonstrates that Hutson chose to attempt to develop condominiums on the campground property.

From the court filings in the Ejectment Action, it is evident that none of the defendants in this action were involved in that action. Hutson was represented by counsel throughout the course of the Ejectment Action. From its inception until January 3, 2014, Hutson was represented by Paul

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Weissenstein. Stephen "Chip" Burn was substituted as counsel for Hutson on January 8, 2014. (Exh. 1: Notice and Substitution of Attorney filed Jan. 8, 2014.) Freeman Belser appeared for Hutson after Burn was relieved as counsel. (Id.: Notice of Appearance filed Mar. 7, 2014.) Hutson has sued Weissenstein and Burn for malpractice. (Newton Mem., Exh. F and R.)

The court file indicates that TLC brought the action against Hutson seeking Ejectment. (Exh. 1:, Appl. For Ejectment, filed Nov. 29, 2011.) The Complaint also asserted a cause of action for Breach of Lease. (Id.: Complaint filed Dec. 14, 2011.) TLC alleged Hutson breached the Lease Purchase Agreement by failing to pay rent and insurance premiums. (Id. at ¶¶ 4-10.)

Hutson asserted numerous counterclaims. (Id.: Hutson Answer and Countercl. filed Jan. 3, 2012.) A review of Hutson's counterclaims demonstrates that most of his claims in this action were raised in the Ejectment Action. (Compare Hutson Supp. Mem. filed May 7, 2019 at p. 5.)

On February 24, 2012, TLC filed its Motion for Order Requiring Tenant to Pay All Rent Due, or, in the Alternative, for Appointment of a Receiver. TLC claimed that Hutson owed $165,840.07. (Exh. 1: TLC Mot., Exh. B.) A supporting Affidavit indicates that Hutson was fully aware of the lack of water and sewer capacity before he purchased the property. (Id.: TLC Mot filed Feb. 24, 2012, Aff. of Richard Clark, ¶ 9.) Clark averred he became concerned about Hutson when he learned that Hutson had misrepresented his true name for purposes of the transaction. (Id. at ¶ 12.) Clark testified he became even more concerned after a background check revealed that "Hutson had been an interstate fugitive from Georgia, extradited from the State of Florida, and had been involved in real estate or business transactions in Tennessee and Georgia for which the other parties had filed or posted public complaints against his conduct." (Id. at ¶ 13.)

The next document in the court file is the Settlement Agreement that Hutson claims the defendants in this case know is fraudulent. (Ejectment Action, Settlement Agreement dated Mar. 30, 2012; see also Compl. (in this action), Exh. 9.0.) Importantly, settlement negotiations are

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confidential. None of the defendants in this action were parties to that settlement, but Hutson was a party. Thus, the only information accessible to the defendants in this action as to the terms of the settlement are those contained in the executed and filed document. It is Hutson who has direct personal knowledge of the settlement negotiations.

In the Settlement Agreement, Hutson agreed to submit a plat for approval of a proposed subdivision development on the property. (Exh. 1: Settlement Agreement, ¶ 5.) The location of the proposed development is depicted in Exhibit A. (Id.) Exhibit A is a drawing with handwritten notes indicating the "Approx Location" of the development. (Id.) The location marked appears to be on the campground property.

Hutson claims this is fraudulent. However, at the time this settlement was entered into, Hutson was the principal in Big Water Resort, LLC, which held the campground membership agreements. (Am. Compl., Exh. 1.0 and 6.0.) At that time, TLC was merely the landowner—it was Hutson who was operating the campground. Hutson had assumed the duty to protect the campground members through his purchase of Big Water Resort, LLC. If it was fraudulent to enter into a settlement in which Hutson agreed to develop and sell campground property, then it was Hutson himself who was perpetrating the fraud.

On December 11, 2013, TLC filed its Affidavit of Default. Hutson moved to set aside the default. (Exh. 1: Motion to Set Aside Aff. of Default, filed Dec. 30, 2013.) On the date set for the hearing, Hutson did not appear. Instead, he filed bankruptcy. (Exh. G: James Order.) The bankruptcy court lifted the stay for the limited purpose of determining whether Hutson had any equitable interest in the property. (Id.)

Hutson filed his Affidavit in support of his argument that he had an equitable interest in the property. (Exh. 1: Aff. of M.B. Hutson filed Mar. 4, 2014.) As discussed above, Hutson falsely represented to the court in this affidavit that he did not learn of the campground memberships until

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after he purchased the property. (Id. at ¶ 6.) Hutson's argument that he had an equitable interest in the property only digs himself in deeper.

Hutson refers to his duty to the campground members in his capacity as principal in Big Water Resort, LLC as a "major obstacle." (Id. at ¶ 7.) Hutson testified that these campground memberships impaired his ability to develop and sell the property. (Id.) Hutson dealt with this by attempting to force the campground members to give up their lifetime memberships by (a) firing all the staff at Big Water Resort, and (b) raising costs to the campground members. These actions "outraged the members." (Id.) Thus, Hutson's own testimony, from his own mouth, is that he intentionally breached his duties to the campground members by attempting to force them out so he could build on the property, causing them to become outraged.

Hutson hired an expert to testify that he had an equitable interest in the property. Hutson's expert's Affidavit opined that Hutson "added significant value to the Big Water Resort" by, among other things, "chang[ing] the membership structure for the development, which provides a revenue stream that was not in existence before his arrival." (Exh. 1: Aff. of Bonham K. Gardner, ¶ 5.c.) Gardner notes the following in his report:

In the first paragraph at the top of page 3 of his report, Gardner states that in order for Hutson to develop an equitable interest in the property, he "needs to show evidence that fee simple estate can be obtained unencumbered." Gardner explains how Hutson went about accomplishing this: "Approvals for the proposed improvements can be obtained based on his involvement. Clear evidence that he has increased cash flow as a result of his direct management and business practices that were not part of the original business when purchase agreement was entered." (Id.) This demonstrates that Hutson was aware of the title issue associated with the campground memberships.

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On page 4, in the middle paragraph, Gardner expanded on this. After noting that Big Water Resort was advertised as a resort subject to lifetime memberships, Gardner described Hutson's actions:

> It is my understanding that Mr. Hu[d]son made the necessary business decisions to reduce the membership to the point that he could open the resort to the public. This decision by Mr. Hu[d]son has resulted in additional cash flow that did not exist when he executed the purchase agreement. The opinions I have made as to the memberships is based on verbal data that has been provided by Mr. Hu[d]son and data from past members.

(Exh. 1: report of Gardner.) Thus, Hutson's expert opined, based upon what Hutson told him, that the opening up of Big Water Resort to the public was the result of Hutson's efforts to develop an equitable interest in the property. The conversion of Big Water Resort from public to private was the core allegation of the campground members against TLC in the Class Action. See Order preliminary approving settlement, Reed v. Big Water Resort, LLC, 2016 WL 374816 at *1 (D.S.C. signed Feb. 1, 2016) ("The core allegation in the case was that the club was wrongfully converted from a private club to a public establishment.").[6]

Importantly, Gardner specified the parcels upon which Hutson claimed an equitable interest. (Exh. 1: Aff. of Gardner at p. 2.) The three parcels listed are identified by Tax Map number:

- 035-06-02-007-00 (3.2 acres – Fee Simple Estate)
- 035-06-02-001-00 (30.4 acres – Fee Simple Estate)
- 035-05-00-004-00 (5.77 acres – Leasehold Estate)

The parcel identified as Tax Map number 035-06-02-007-00 corresponds to Exhibit 7 to the Rule 30(b)(6) deposition of TLC Holdings, LLC taken in the Coverage Action. (See Exh. CC: Rule

[6] As a result of Newton and Penn-America's efforts, TLC's claims against Hutson have all been settled. Newton is not aware that the campground members have ever released their potential claims against Hutson. Such a claim would not be covered under Penn-America's policy.

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30(b)(6) Dep. of TLC.) Hutson could not purchase or build on the parcel identified as Tax Map number 035-05-00-004-00 because this was waterfront property leased from Santee Cooper. (Exh. HH: Trial Tr. at p. 412-14.) The third parcel appears to be improperly identified. Tax Map number 035-06-02-001-00 is a 3.66-acre tract located across the interstate from Big Water Resort and owned by non-parties. The only 30.4-acre tract transferred through the Lease Purchase Agreement is Tax Map number 035-05-00-001-00. This corresponds to Exhibit 6 to TLC's deposition when it was taken in the Coverage Action. (See Exh. CC.)

Richard Clark testified that Exhibits 6 and 7 were part of the campground. (Exh. CC: Rule 30(b)(6) Dep. of TLC, p. 40.) Thus, the three parcels Hutson selected to claim an equitable interest in were: (a) the waterfront property that was leased from Santee Cooper which could not be developed, and (b) two parcels upon which the main portion of the campground was located. These were improved portions of the property upon which Hutson had no authorization to build under the terms of the Lease Purchase Agreement. (See Compl, Exh. 5.0, p. 3 ("The parties acknowledge that the Purchaser intends to develop and construct condominiums or other residential dwelling structure on certain portions of the *unimproved* Premises.") (emphasis added).)

Thus, the public court record from the Ejectment Action demonstrates that Hutson, with full knowledge of his duties to the campground members, contracted in the Settlement Agreement, (and received court approval in the Consent Order) to develop and sell, not the unimproved property he had a right to develop, but rather the improved property upon which the campground was situated. Hutson wanted to develop the waterfront property upon which the campground was situated, not the unimproved property across the street. [7] (Exh. HH: Trial Ts. at pp. 379, 412-14.)

[7] Hutson walked the property with Roark on Thanksgiving Day in 2010. He knew that the only waterfront property at Big Water Resort was the campground. (Exh. HH: Trial Tr. at pp. 403-04, 413-14.)

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Hutson entered into this Settlement Agreement to further his own interest as lessor / purchaser of the land in his own name. Hutson entered into this Settlement Agreement, and the Consent Order, despite the fact that he was also the principal in Big Water Resort, LLC, which owed the duties and lifetime memberships to the campground members. When he failed in this endeavor, Hutson blamed his own misconduct on TLC, which resulted in a $3,500,000 judgment against Hutson in the Defamation Action. After Penn-America paid its limit to settle that judgment, Hutson now seeks to blame his misconduct on Penn-America and its coverage counsel.

Hutson has admitted that even a layman should have seen this misconduct was wrongful. Hutson argued no affidavit was required in support of his malpractice claim against Burn because "a layperson, in any field of work, can clearly understand that the same property cannot be sold to two different entities for non-similar and exclusive purposes." (Exh. DD: Attachment to Emergency Mot. for Recons. ¶ 2.) Hutson thereby admits that he should have known he could not develop and sell property that he was obligated, as principal of Big Water Resort, LLC, to hold for the campground members.

Judge James ruled that Hutson breached the Settlement Agreement. (Exh. G: James Order.) It is this Order (along with the Settlement Agreement and Consent Order), that Hutson claims should be set aside based upon fraud upon the court. Hutson's argument to Judge James relied upon (a) a materially false misrepresentation (*i.e.*, that Hutson did not know about the lifetime campground memberships when he purchased the property) and (b) admitted, intentional breaches of the campground Retail Membership Agreements (see Am. Compl., Exh. 1.0).

Fraud upon the court is an equitable doctrine. Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003); Bryan v. Bryan, 220 S.C. 164, 167, 66 S.E.2d 609, 610 (1951) ("There is no doubt that a court of equity has inherent power to grant relief from a judgment on the ground of fraud."). Equitable relief is not available to a party who has unclean hands. Straight

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v. Goss, 383 S.C. 180, 206-07, 678 S.E.2d 443, 457–58 (Ct. App. 2009). At a minimum, the above facts from the case in which Hutson claims he was defrauded raise serious questions as to whether Hutson could recover for fraud upon the court due to his unclean hands. This is sufficient to defeat any claim Hutson may have that Defendants should have either reported the alleged fraud or acted on his behalf to attempt to counteract it.

Based upon the court record from the Ejectment Action, there simply are no grounds upon which Hutson, much less third-parties such as the defendants in this action, could reasonably conclude that provable and reportable fraud against Hutson occurred in that action. Accordingly, even if the Defendants in this action had a duty to report and/or prosecute Hutson's claim for fraud upon the court, there was no obligation to act in this case because it is evident from the court record in the Ejectment Action that Hutson has no meritorious claim he was defrauded.

CONCLUSION

Newton has previously established that Hutson cannot prove standing on his part or a duty on Newton's part. For the reasons set forth above, Hutson's claim fails on the merits even if Hutson overcomes those hurdles. Accordingly, Hutson's claims against Defendant Newton should be dismissed, and Newton should be dismissed as a party from this action.

Respectfully submitted,

s/Timothy J. Newton
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