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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
The Honorable Deadra L. Jefferson, Circuit Court Judge  
Case No.: 2018-CP-10-0872

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Appellate Case No. 2019-002002

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Estate of Patricia B. Holliday.....Appellant,

v.

Ross S. Holliday.....Respondent.

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RECORD ON APPEAL - VOLUME II

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1       against him?

2               MS. PAYLOR: Well, no, no. The bank's, the bank's not  
3 a party to this case.

4               THE COURT: I mean, I understand that, but you can't  
5 ignore the ---

6               MS. PAYLOR: Well, they, they were getting paid  
7 actually.

8               THE COURT: Okay. I was about to say because I can't  
9 see ---

10              MS. PAYLOR: But ---

11              THE COURT: --- a bank waiting all that time to get  
12 paid.

13              MS. PAYLOR: No. Well, they kept rolling it over and  
14 they, they did get paid, and it was secured by a piece of  
15 property.

16              THE COURT: Okay.

17              MS. PAYLOR: So, they had security, and so she's, you  
18 know, she's claiming that he had an obligation under the  
19 note to pay her and Warren, and that's the way the note  
20 reads.

21              THE COURT: But really the crux of your argument is  
22 that it was disposed of, all property was disposed of in  
23 the family court proceeding.

24              MS. PAYLOR: Yes, ma'am.

25              THE COURT: And anything she didn't raise at that

1 time, she waived.

2 MS. PAYLOR: Yes, ma'am.

3 THE COURT: And that that provision you read to me in  
4 the order is a waiver of all of that property.

5 MS. PAYLOR: Correct. That, that's my best argument.  
6 I think it's a winner, yes, ma'am. I think we do have a  
7 backup statute of limitations argument, but I think the  
8 marital settlement agreement resolves everything and under  
9 that theory, the note was -- went to Warren and he could do  
10 with it as he would. And if it's still out there, Ross and  
11 Lee inherited it because they are the heirs under the will.  
12 Thank you, Your Honor.

13 THE COURT: You're welcome.

14 All right, Mr. Tillman, would you like to respond?

15 MR. TILLMAN: Yes, ma'am. How are you?

16 THE COURT: I'm well. How are you?

17 MR. TILLMAN: I'm doing well.

18 This marital agreement issue can be disposed of really  
19 quickly. This loan was made as joint tenants with a right  
20 of survivorship, and it wasn't addressed in the marital  
21 agreement.

22 THE COURT: Well, it really was because, you know, the  
23 family court -- and I served on family court.

24 MR. TILLMAN: Right.

25 THE COURT: Most people don't know how much power a

1 family court judge has. Actually in a lot of instances,  
2 especially when it comes to property in a marital  
3 situation, has more power than a circuit judge. It can  
4 appoint a receiver; you can take over somebody's company.

5 So, the statute says that the family court has  
6 complete jurisdiction over all personalty that is a part of  
7 the marriage, and that's why it's incumbent on the parties,  
8 especially when you have what could best be referred to as  
9 a savings clause. It's not the best example, but if you  
10 don't specifically talk about it and you lump -- you then  
11 say everything else, basically what the agreement says,  
12 everything else we haven't mentioned, that is considered  
13 personalty. It belongs to him. I don't think you can now  
14 take a opposite position on that ---

15 MR. TILLMAN: Well, that's, that's not what the ---

16 THE COURT: --- because it was incumbent on her due  
17 diligence to have raised this promissory note and to have  
18 said no, this is a part of our personalty and it needs to  
19 be divided just like a bank account.

20 MR. TILLMAN: Right, Your Honor, but the, the marital  
21 settlement agreement does not give to him notes that they  
22 held in joint ---

23 THE COURT: Doesn't have to. It doesn't have to give  
24 it to him.

25 MR. TILLMAN: But the ---

1 THE COURT: But when she says I give up everything  
2 else, I've gotten what I want, everything I haven't  
3 mentioned belongs to him, that's basically, in common  
4 parlance, that's what that paragraph says.

5 MR. TILLMAN: I, I disagree, Your Honor. They, they  
6 held this note as joint tenants with a right of  
7 survivorship, and the marital settlement agreement says I  
8 don't give up my rights in the note or anything else like  
9 that.

10 THE COURT: Where does it say that?

11 MR. TILLMAN: Well, it doesn't say that specifically,  
12 but it needs to specifically say, include -- to -- in order  
13 for them to get summary judgment, the marital settlement  
14 agreement needs to specifically include ---

15 THE COURT: What case supports that?

16 MR. TILLMAN: I, I don't have one off the top of my  
17 head, but, but, Your Honor, we're talking about a specific  
18 right of hers as a joint tenant with right of survivorship  
19 in -- and the marital settlement agreement does not give to  
20 him the, the rights as the creditor under the marital  
21 settlement agreement.

22 THE COURT: That is considered -- any debt is  
23 considered an asset of a business, and he got everything  
24 from the business. It doesn't have to be mentioned  
25 specifically.

1           MR. TILLMAN: Well, it wasn't a business asset. It  
2 was their personal assets. The -- this was owed to them  
3 individually.

4           THE COURT: Same thing. She said everything I haven't  
5 mentioned -- I've gotten everything I want. Everything I  
6 have not mentioned belongs to him. You don't have to  
7 specify. That would be like going through a house and  
8 listing every tchotchke, then -- and going back and saying  
9 well, you know, I didn't list my gravy boat and, therefore,  
10 I want it because I did not specifically give up my right  
11 to my gravy boat, and that's just not how the family court  
12 operates.

13           MR. TILLMAN: But, Your Honor, they were entitled to  
14 this as joint holders with, with right to survivorship.

15           THE COURT: Which they submitted all of their property  
16 to the jurisdiction of the family court. You don't get to  
17 parcel it out. You don't get to say, well, I'm going to  
18 deal with some of my stuff over here in family court and  
19 then when it suits me, I'm going to come over to circuit  
20 court and deal with the stuff that I think -- that defeats  
21 the whole purpose of family court statutorily having  
22 exclusive jurisdiction over all marital property, and that  
23 was marital property.

24           MR. TILLMAN: But at, at best, Your Honor, we have an  
25 issue of intent about whether they intended this property

1 to be as part of -- and I, and I'll give you a statutory  
2 reference. Let me, let me find it, Your Honor.

3 THE COURT: Sure.

4 MR. TILLMAN: Okay, 62-2-507 is a statute that was  
5 passed January 1st. It was effective January 1, 2005 --  
6 2014, excuse me. That's a probate court section, and  
7 basically what that says ---

8 THE COURT: That doesn't, that ---

9 MR. TILLMAN: Your Honor, will you please ---

10 THE COURT: Yeah, I'm going to listen, but probate  
11 court does not override what happens in family court when  
12 it deals with assets.

13 MR. TILLMAN: I understand but, but what it says in  
14 that section is that, that the property held as a joint  
15 tenant, which is what happened here because with the right  
16 of survivorship -- because as Your Honor knows, a joint  
17 tenancy with the right of survivorship means the one that  
18 dies first gets the -- excuse me, the one that doesn't die  
19 first gets the entire right to the property. So, in other  
20 words, if it survives when Warren died, Patricia got the  
21 entire right to the property. That's, that's the point of  
22 it.

23 The statute says that at the time of divorce, that  
24 right is automatically severed. So, it's clear that the  
25 probate code basically says that, that when that -- unless

1 the divorce decree specifically mentions how that's going  
2 to be handled, when the, when the one spouse dies -- or,  
3 excuse me, when the parties divorce, that right is severed  
4 such that they hold it essentially as tenants-in-common.  
5 They would each own half a note. Before that ---

6 THE COURT: If I follow your logic, she should have  
7 filed a claim when his estate was opened. You don't come  
8 over here to deal with that. You go over to the probate  
9 court and you file a claim saying that you own a part of  
10 that. Then the probate court disposes of it.

11 MR. TILLMAN: No. Well, no, I, I disagree, Your  
12 Honor. If that statute applies, and I'm not sure it does  
13 because it was effective after the, after the divorce, but  
14 let's say it applies. That would have meant following his  
15 death -- excuse me, at the time of divorce, their right in  
16 that property was separated such that he owned half and she  
17 owned half so that he -- when -- so ---

18 THE COURT: You've confused me.

19 MR. TILLMAN: All right, Your Honor, all ---

20 THE COURT: So, why -- if it -- if you're saying it  
21 was passed after the divorce, then why is it applicable?  
22 It's either applicable or it's not. If it's applicable  
23 and I follow your logic, she should have gone to the  
24 probate court and as a creditor filed a claim against his  
25 estate.

1 MR. TILLMAN: No, no, because she would've had her own  
2 claim to the note. In other words ---

3 THE COURT: Somebody has to declare that. She doesn't  
4 just get to say ---

5 MR. TILLMAN: She ---

6 THE COURT: --- I own it.

7 MR. TILLMAN: She did declare her rights in the note  
8 in their divorce documents.

9 THE COURT: Where? Tell me the paragraph.

10 MR. TILLMAN: I don't have it with me, Your Honor, but  
11 in the listing of assets, she, she declared her own -- and  
12 I can send it to Your Honor. She declared her ownership of  
13 the note as a separate asset.

14 THE COURT: But the family court disposed of the  
15 asset.

16 MR. TILLMAN: It did not dispose of the -- it did not  
17 specifically dispose of this, and it -- so at best what we  
18 have is an issue of fact of whether the marital settlement  
19 -- settlement agreement dealt with this.

20 THE COURT: Well, that's a matter of law. That's not  
21 a matter for a jury to decide. The court decides whether  
22 the family court order is dispositive, whether it's  
23 preclusive, whether there has been a release. Those are  
24 legal issues; those are not factual issues. Y'all agree on  
25 the facts. What you don't agree to is the applicability of

1 the law to the family court order and whether it has a  
2 preclusive effect to her and whether it judicially estops  
3 her. A jury doesn't sort that out.

4 Now, there are some factual issues a jury does sort  
5 out. Arguably, the statute of limitations could be a jury  
6 issue, and sometimes it is because conceivably it really  
7 could be an issue of fact as to when her right arose after  
8 exercising due diligence. And there could reasonably be an  
9 argument, as I pointed out to Ms. Paylor, as the banks do  
10 all the time, that every act of nonpayment starts the clock  
11 again. In other words, I have the option of when I call  
12 your note due. I can let you miss twenty payments and  
13 right before the statute ends, I can sue you on your note  
14 and call my, my -- the amount on my note due. Or, as banks  
15 do sometimes, you catch up and they let the clock start  
16 again, and then they sue you again when you miss three more  
17 payments or four more payments.

18 I think that is conceivable that, and arguably, that  
19 the statute of limitations could be a question of fact.  
20 Because of the way the law is written, conceivably every  
21 act of default -- every act of nonpayment is an act of  
22 default, which then starts the statute of limitations  
23 running again. And sometimes the bank will wait until the  
24 very last moment and sue somebody in foreclosure and say,  
25 you know, we tried to work with you. We tried to be

1 patient. You have still failed to make a payment, and  
2 every time you failed to pay us was an act of default, and  
3 it was optional to us as to whether we enforced that right.  
4 So, I think that that's a different kind of an issue which  
5 may well be factual.

6 MR. TILLMAN: Well.

7 THE COURT: But how the family court order applies to  
8 whether -- these affirmative defenses, that's a legal  
9 issue.

10 MR. TILLMAN: Well.

11 THE COURT: For the court to determine.

12 MR. TILLMAN: And that being the case, Your Honor.

13 THE COURT: Yeah.

14 MR. TILLMAN: I will say that the, the family court  
15 order does not reference the note. At the time the family  
16 court order was entered, Patricia and Warren Holliday were  
17 joint holders of the note with rights of survivorship.  
18 Then there's a statute, that probate code statute, that  
19 deals with what happens to rights in a, in a -- rights held  
20 jointly with a right of survivorship.

21 THE COURT: When was his estate opened?

22 MR. TILLMAN: I don't know. This is -- he died in  
23 2016.

24 THE COURT: Did she ever file to share anything as a  
25 creditor in his estate?

1 MR. TILLMAN: Not that I'm aware of.

2 THE COURT: Excuse me?

3 MR. TILLMAN: I don't think so, Your Honor, but she  
4 wouldn't -- at that time, she wouldn't have a claim against  
5 his estate because she, she was a holder ---

6 THE COURT: Anything ---

7 MR. TILLMAN: --- of the note.

8 THE COURT: Anything that he owned ---

9 MR. TILLMAN: She didn't have ---

10 THE COURT: --- and she's claiming ---

11 MR. TILLMAN: They were divorced at the time.

12 THE COURT: --- any ownership in, you are required to  
13 file a claim against his estate. Otherwise, technically  
14 the probate court could do whatever they wanted in  
15 collecting that debt, apportioning any proceeds that came  
16 in from that debt. When you die, all of your assets,  
17 whether jointly held or not.

18 MR. TILLMAN: Right.

19 THE COURT: That's why people title bank accounts the  
20 way they do: because they don't want it to go through an  
21 estate.

22 MR. TILLMAN: Right, and that's actually my point.

23 THE COURT: They want to be able to go to the bank and  
24 get the money and not have to deal with probate court.

25 MR. TILLMAN: That's actually my point. This note was

1 held as joint tenants with the right of survivorship. So,  
2 if that statute I talked about applied, it severed their  
3 interest so that she had her own interest in half the note.  
4 If it didn't apply, then when he died, she became the  
5 entire owner of the note and didn't need to file a claim  
6 with the estate, just like if she was a joint tenant in a  
7 -- with a right of survivorship in a piece of property so  
8 that her -- his estate didn't matter as far as her claims  
9 went. She either got it, got half of it, and then the  
10 other half went to his estate and she had no claim to that,  
11 or she got the whole thing, depending on whether that  
12 statute applies. Does that make sense? Did I ---

13 THE COURT: Say it one more time.

14 MR. TILLMAN: Let me back up. So, this is what the  
15 statute says. The statute says, and I'm sorry I'm  
16 paraphrasing. I'm trying to find it.

17 THE COURT: That's okay. It's easier to paraphrase  
18 sometimes and leave out the stuff that doesn't apply. I  
19 understand.

20 MR. TILLMAN: The, the statute says that when --  
21 divorce severs a joint interest unless the parties agree  
22 otherwise. That's what it says, okay? And so if that  
23 statute applies, when they got divorced, their interests,  
24 their joint interest in the note was severed. Are you with  
25 me on that? Okay.

1           So, in other words, he owns half. She owns half.  
2           Okay, if that statute didn't apply because it was  
3           effective, you know, several days after their divorce, the  
4           prior law was if the divorce doesn't deal with the joint  
5           tenancy issue, then the law in joint tenancy applies, which  
6           means when he died, the property, the entire right to the  
7           note went to her, which means she wouldn't have to file the  
8           claim against his estate. So, that's actually a big issue  
9           in this case that I think would have to be resolved by the  
10          trial judge whether the -- whether that statute applies or  
11          not. But either way, her claim is not ---

12           THE COURT: Well, if the ---

13           MR. TILLMAN: --- dependant on a claim against his  
14          estate.

15           THE COURT: If the statute applies, then what -- if  
16          the statute does apply, then what's the remedy?

17           MR. TILLMAN: If the -- here's what it is is we would  
18          get -- I'm assuming the jury would bring back a verdict for  
19          the total ---

20           THE COURT: Well, no, the jury is not going to decide  
21          whether or not ---

22           MR. TILLMAN: Oh, I understand, Your Honor.

23           THE COURT: --- that applies.

24           MR. TILLMAN: But ---

25           THE COURT: Yeah.

1 MR. TILLMAN: Just give me a little rope here.

2 THE COURT: Yeah.

3 MR. TILLMAN: The jury would come back with a verdict  
4 for the entire amount owed on the note, and then I believe  
5 the court would make a determination whether that statute  
6 applies. If the statute applies, it means she was only  
7 entitled to half the amount on the note. So, they'd halve  
8 the ---

9 THE COURT: How does the circuit court do that?  
10 Apportionment of property is solely within the province of  
11 the probate court sans death.

12 MR. TILLMAN: It wouldn't be a probate issue.

13 THE COURT: Unless you want a true trial on your  
14 probate, on your estate.

15 MR. TILLMAN: No, no, it wouldn't be a probate issue  
16 because if the statute applies, it means that their joint  
17 tenancy was severed in half at the time of the divorce  
18 before he died. So, Patricia only owns half the amount of  
19 the note. You follow me?

20 THE COURT: Uh-huh.

21 MR. TILLMAN: Okay, and so what would happen is that  
22 the trial court would issue a ruling. Let's say they come  
23 back and say 2 million is owed on this note. The court  
24 would determine when they were divorced, did this statute  
25 apply to sever that claim such that Patricia owns half,

1 Warren owns half, and then they would cut the amount in  
2 half. In other words, she'd be entitled to only half. If  
3 they find that that statute does not apply and the prior  
4 law applies -- which is essential to joint tenancy law --  
5 then when he died in 2016, the entire amount owed on the  
6 note went to her and the whole verdict stands. That's the  
7 way that would work in my mind. I don't know how else it  
8 would work.

9 But, you know, getting back to the point, the note  
10 wasn't dealt with in the matter of settlement agreement.  
11 She never intended to release her claim on the note, and  
12 it's, it's certainly an issue, I think an issue of fact  
13 whether she released a claim on the note in the marital  
14 settlement agreement or not. And, and, frankly, if in --  
15 every divorce decree has these implied terms, why would  
16 there be a statute that says, you know, your joint claims  
17 are severed as a matter of law upon divorce?

18 THE COURT: What statute? You're referring to the  
19 probate court statute?

20 MR. TILLMAN: Yeah, the 62-2-5 -- yeah, 62-2-507.

21 MS. PAYLOR: And I don't want to interrupt Mr.  
22 Tillman.

23 THE COURT: Sure. I'm going to give you a chance to  
24 respond.

25 MS. PAYLOR: He's misstating ---

1 THE COURT: I'm going to give you a chance to respond.

2 MR. TILLMAN: And I'm not ---

3 THE COURT: And it's not implied. The statute is very  
4 clear about equitable distribution. That's why you need to  
5 be specific about what you're doing. That's why you have  
6 all these lists of personal property that are attached to  
7 things. It is intended to be preclusive, and it is  
8 intended to be final. It is not intended to be  
9 relitigated. That's why the statute gives family court  
10 such broad discretion and authority regarding marital  
11 assets.

12 MR. TILLMAN: Well, Your Honor, just remember we're  
13 not relitigating a claim against Warren Holliday. We're  
14 relitigating, we're -- no, we're litigating for the first  
15 time Patricia's claims against Ross Holliday. Ross didn't  
16 get divorced from Patricia. This is her claim against Ross  
17 for the money, not her claim against Warren for the money.  
18 Does that follow -- do you follow me?

19 THE COURT: I follow you, but it's not...

20 MR. TILLMAN: This is Patricia Warren ---

21 THE COURT: She is claiming interest in a note that  
22 was a part of a marital estate.

23 MR. TILLMAN: And there's no question she ---

24 THE COURT: And they can raise all of the affirmative  
25 -- they are bound to raise the affirmative defenses that

1 they raised, and raising them are reasonable under the  
2 circumstances. And I understand what you're saying, but I  
3 don't think that -- I don't know that their argument is  
4 without merit.

5 MR. TILLMAN: Well, Your Honor, at best it's an issue  
6 of fact. I mean, she, Patricia, was a joint holder in this  
7 note; there's no question about that, a joint holder in  
8 this note. She was entitled to repayment. The note wasn't  
9 dealt with in the marital settlement agreement. She did  
10 not intend in her affidavit that I filed -- states that she  
11 did not intend to release any claim at any time on this  
12 note.

13 And then, then -- and they're arguing, well, we're --  
14 essentially they're arguing we're a third-party beneficiary  
15 of this -- of the marital settlement agreement. In other  
16 words, Ross is a third-party beneficiary as a released  
17 party under the marital settlement agreement. As Your  
18 Honor knows, the law on third-party beneficiary  
19 relationships has the primary parties to the agreement have  
20 to intend that the third-party benefit. In my affidavit,  
21 in Patricia's affidavit that I filed with the court and  
22 with my memorandum in opposition, she states: I did not  
23 intend to release any claim that I had on Ross Holliday.

24 So, it would be -- so, the intent's not there.  
25 There's no statute that precludes her claim. The marital

1 settlement agreement does not release her claim against  
2 Ross. It does release any claim she has against Warren, I  
3 understand that, and she never sued Warren. She never  
4 asked Warren for any money related to this. But this is a  
5 claim against Ross, and there's no clear release of any  
6 claim against Ross in any document, nor did she intend it,  
7 and that's what her affidavit says.

8 THE COURT: Thank you very much.

9 Anything further, Ms. Paylor?

10 MS. PAYLOR: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. PAYLOR: South Carolina Code Section  
13 62-2-507(C)(2) states, and I will read it to you:

14 Except as provided by the express terms of a  
15 governing instrument, a court order, or a  
16 contract relating to the division of the marital  
17 estate made between, between the divorced  
18 individuals -- that sub -- that is except as  
19 provided.

20 And we have an agreement that specifically, expressly  
21 provides that it takes care of all personal property and  
22 that he gets the business assets and the personal assets  
23 that are not stated therein.

24 You know, he says this wasn't brought up at the  
25 divorce. She never brought it up. Do you know when she

1 filed her financial declaration that he says he wants to  
2 send to you? Two days after the court order. She knew  
3 about this, and she was hoping to hide it and thinking she  
4 could slip by and still go after her son after her husband  
5 died, and he was a very ill man. So, it -- that's what  
6 that is.

7 Your Honor, I believe you're a hundred percent  
8 correct, and I think that the marital settlement agreement  
9 bars this action. And in addition, he said she didn't  
10 release Ross. She did. She says:

11 The parties do hereby waive, release, and forever  
12 acquit and do hereby discharge each other, their  
13 administrators, successors, heirs, and assigns  
14 from any and all action.

15 Ross was his administrator, successor, heir, and  
16 assign, and this was a marital asset. It says:

17 Including but not limited to all claims resulting  
18 from or arising out of the marital relationship  
19 between Warren and Patricia.

20 And that's how this arose, with -- out of the marital  
21 relationship. Thank you, Your Honor.

22 THE COURT: Thank you.

23 I'll take the matter under advisement. I need to read  
24 and research a little bit. However, I am inclined to agree  
25 with Ms. Paylor, and I'm going to ask her to submit --

1     which doesn't mean I might not change my mind after I  
2     research it. I haven't made a final decision.

3             But, Ms. Paylor, if you could provide me with a  
4     proposed order making any findings of fact and conclusions  
5     of law consistent with this record. I think the stronger  
6     arguments are the waiver of the release, the satisfaction  
7     and accord, and the revocation by divorce, as well as the  
8     admission. I'm iffy on the statute of limitations. I  
9     think that really may be a factual issue, but you can  
10    include that in the order.

11            And once I've made a decision, I'll let you all know.

12            **--- END OF TRANSCRIPT OF RECORD ---**

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 27TH DAY OF SEPTEMBER, 2019.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 5TH, 2019

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-CP-10-0872
	)	
	)	
THE ESTATE OF PATRICIA B. HOLLIDAY	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
ROSS S. HOLLIDAY	)	
	)	
Defendant	)	
	)	
	)	
	)	
_____	)	TRANSCRIPT OF RECORD

March 31, 2021  
WebEx Videoconferencing

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

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Attorney for the Estate of Patricia Holliday

ALICE F. PAYLOR, ESQ.  
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JOYCE C. RUEGER,  
Certified Verbatim Reporter-Master  
Circuit Court Reporter

[Certified Transcript Provided for: Matthew E. Tillman, Esq.]

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PROCEEDINGS

THE COURT: This was formerly Patricia B. Holliday verses Ross S. Holliday, 2018-CP-10-872. The caption has been amended due to the transition of Ms. Patricia B. Holliday so it is now captioned the Estate of Patricia B. Holliday verses Ross S. Holliday, 2018-CP-10-872.

On September 27th of 2019 I heard the defendant's Motion for Summary Judgment which was filed June 10th of 2019. On October 11th, 2019 I issued an order granting summary judgment. A Rule 59 Motion to Reconsider was filed on October 29th, '19. I issued an order denying that motion on November 25th, 2019.

On October 9th, 2020 the plaintiff filed a 60(b) motion for relief and on October 21st, 2020 the defense filed a memo in opposition. November 4th, 2020 the plaintiff filed its reply to the defendant's memo in opposition.

There was leave I assume filed with the Court of Appeals asking that the 60(b) motion be heard by this Court and remanded for that purpose. And if you will bear with me, I need to make sure that I am articulating what they said accurately. Hold on for me a moment.

[Whereupon, the Court reviews documents]

THE COURT: Okay. It appears that a Notice of Appeal was filed on December 3rd of 2019 by Mr. Tillman.

1 And then on October 9 of 2020 the Court of Appeals and  
2 I'm going to paraphrase what they said, after careful  
3 consideration appellant's motion for leave to file a Rule  
4 60 motion with the Circuit Court is granted. The appeal  
5 is held in abeyance pending the Circuit Court's ruling on  
6 the motion.

7 The appellant shall provide this Court with a status  
8 update in 30 days and every 30 days thereafter. Failure  
9 to provide the Court with a status update may result in  
10 dismissal of this appeal.

11 Now, I've read your memos so I don't -- I'm not  
12 particularly fond of those being read to me. But I did  
13 have some questions and that's really why I'm having this  
14 hearing after I've had some time to reflect and also  
15 after I had time to review my original order as well as  
16 the motion denying the reconsideration.

17 And I'm curious and you all can answer them;  
18 plaintiff can respond and then the defense can respond  
19 because I think the whole basis of my order was  
20 misapprehended. Why wasn't this originally filed in the  
21 Family Court for them to interpret their order because  
22 personalty is not a Promissory Note; personalty is bric-  
23 a-brac, its salt shakers. It's not a Promissory Note.  
24 And clearly from the Family Court action he got all the  
25 businesses, he got all the assets and the liabilities and

1 she got 16,000 dollars a month basically in a fair  
2 exchange; you get all the debts and you get all the  
3 assets and I get a finite sum of money a month to live  
4 on.

5 A Promissory Note is not personalty. A Promissory  
6 Note is an asset. And so, I guess I'm in a rare position  
7 because I was a Family Court judge. And if I were  
8 interpreting that order my interpretation would be that  
9 he got that Promissory Note in their settlement. So,  
10 after reading through everything again I did not want  
11 there to be some misapprehension that I thought a  
12 Promissory Note was personalty because that's not how you  
13 interpret a settlement agreement.

14 Personalty is all the stuff you don't want to have  
15 to order an appraiser to come in and look at in detail  
16 and spend that kind of money going through every little  
17 bit of clothing, knick-knacks; things that have  
18 sentimental value. It's not a Promissory Note. And  
19 clearly that marital agreement gives Mr. Holliday all the  
20 benefits and all the worries.

21 In other words, he gets all the businesses and all  
22 the liability of the businesses. And certainly, a  
23 Promissory Note is a liability because it's a debt owed.  
24 So, my first question is why didn't y'all go to Family  
25 Court and have them interpret the order and enforce it?

1 That's my first question. And why do you think it's even  
2 appropriately before the Circuit Court at all because I  
3 don't agree with any interpretation, that the catch-all  
4 in the original mediated agreement would encompass a  
5 Promissory Note.

6 And so, I'm curious to know why it was even brought  
7 in the Circuit Court because I just don't, I'm not  
8 convinced that this was the appropriate place for it to  
9 ever have originated. And after I read my order even  
10 though I, even though I talk about that I don't think it  
11 was talked about as forcibly as I intended for it to have  
12 been talked about or to be clear.

13 And of course, my order was guided by y'all's  
14 arguments to a large extent. So, I'm curious to know why  
15 that was never really as forcibly made an argument when  
16 really to me that's the real issue in this case. And I  
17 don't want to be misapprehended that somehow possession  
18 of this Promissory Note made a difference because in my  
19 mind it really was about how this agreement was  
20 interpreted.

21 And in some ways just a backhand way of trying to  
22 get something out of this marital settlement that was  
23 never intended. So, Mr. Tillman you can address it first  
24 and then Ms. Paylor or Mr. Ghom; whoever wants to address  
25 it I'll be glad to hear from you because after I read the

1 60(b) motion I was concerned. And so, I went back and  
2 looked through everything and I, and I, it's not -- again  
3 as I've indicated my rulings really were guided by y'all's  
4 arguments and so maybe I didn't state it as forcibly as  
5 intended. And maybe I should ask more questions you know  
6 but with the just the volume of motions sometimes that's  
7 not always -- you know good intentions.

8 But that's my concern because I spent five and a  
9 half, close to six years on the Family Court and I've  
10 never interpreted a paragraph about personalty to include  
11 a Promissory Note. That's just not, that would never be  
12 an intention. That's such a viable asset. That's  
13 something you talk about. That's something you specify.

14 That's not something -- I mean personalty like I  
15 said is your clothing, your doilies, your salt shakers.  
16 You know something that might have sentimental value to  
17 you, some piece of art. And you don't want to spend --  
18 have somebody like, I forget the big asset appraiser that  
19 used to come in and you end up spending more than your  
20 personalty was worth. Mr. Tillman?

21 MR. TILLMAN: Yes, ma'am. Well, on the  
22 jurisdictional issue I don't believe that was ever raised  
23 by the defendant. I mean I think that the Circuit Court  
24 has jurisdiction over this matter because the contention  
25 is that Ms. Holliday owed either half of the Note or the

1 entire Note; depending on the interpretation of the  
2 statute upon Warren's death and that she ---

3 THE COURT: --- I think that would negate -- would  
4 that not negate their agreement? How do you get around  
5 their agreement? Family Court has jurisdiction over  
6 everything that deals with a marriage.

7 So -- and it was raised because I did rule on it in  
8 my order that the Family Court, that you raised it by  
9 saying that the interpretation of this provision in their  
10 agreement meant something that I don't think any case law  
11 would stand for that proposition because personalty is  
12 not a Promissory Note so that -- maybe I inartfully  
13 postured the question or framed the question for you to  
14 respond.

15 But the other thing is you know jurisdiction can be  
16 raised at any time; by you, Ms. Paylor, or the Court  
17 according -- you know prevailing precedents. But I'm  
18 just; I guess it's just my own curiosity. And again, my  
19 rulings were guided by the arguments, which is they said  
20 there was a release. And that's really what y'all  
21 focused on in everything that you presented.

22 So, you know the Court always answers the question  
23 presented. It doesn't kind of go out on its own and act  
24 as an advocate. But I'm just curious why y'all didn't go  
25 to the Family Court because clearly a Promissory Note is

1 not personalty.

2 MR. TILLMAN: Well, honestly Your Honor I didn't  
3 see the reason to go to the Family Court. I believe that  
4 it is an asset that Ms. Holliday currently possesses or  
5 now it is her estate that currently possesses. And I did  
6 not see the reason to go to the Family Court.

7 That certainly, the interpretation of the marital  
8 settlement agreement is an issue raised by the defendant  
9 in this case but I don't think it's dispositive of it.  
10 And that's ---

11 THE COURT: --- why wouldn't it be if you have a  
12 mediated agreement that says he gets all the assets and  
13 all the liabilities of the business and you have a  
14 Promissory Note that was guaranteed by one of the  
15 businesses.

16 MR. TILLMAN: Well, the Promissory Note wasn't  
17 guaranteed by one of the businesses.

18 THE COURT: Then I misread something. He did  
19 pledge one of the businesses as collateral for the Note  
20 that he got the loan for. You can't separate the two so  
21 it was collateral with the bank for the loan.

22 MR. TILLMAN: I don't remember it being collateral.  
23 They used a loan from another bank to fund this loan.  
24 And I don't ---

25 THE COURT: --- but he had to pledge one of the

1 businesses as collateral for that loan. The bank doesn't  
2 give a loan without some collateral.

3 MS. PAYLOR: That's correct, Your Honor. It was a  
4 mortgage. This was a building and they pledged the --  
5 they gave a mortgage for that property to secure the  
6 loan.

7 MR. TILLMAN: But -- and if you look at the marital  
8 settlement agreement, I understand it to say that it  
9 comes down to essentially when you look at the equitable  
10 apportionment and division of property section, section 3  
11 this could only be -- there is no question that the Note  
12 is not specifically mentioned in the marital settlement  
13 agreement ---

14 THE COURT: --- there is an addendum however that  
15 is attached and there is language that says every  
16 business and every asset belongs to him. And in exchange  
17 for that I'm going to pay you 16,000 dollars a month,  
18 which having practiced family law and having been a judge  
19 in a Family Court that's like your traditional I've been  
20 a stay-at-home spouse. I helped contribute to make this  
21 business what it is and in exchange for me now separating  
22 from you I want the benefit of what I have basically  
23 contributed to the value. But I don't want any of the  
24 responsibility for any of it. I don't want any of the  
25 asset part of it and I don't want any of the liability of

1 it. But the problem comes in when somebody dies. And I  
2 would imagine although I can't remember if I read that in  
3 the agreement, that she would have had an insurance  
4 policy to guarantee what amounted to a large alimony  
5 payment every month to secure that in the event that he  
6 died because of course alimony ceases when she dies or  
7 when he dies.

8 MR. TILLMAN: Your Honor, I don't believe that the  
9 marital settlement agreement is unambiguous. It doesn't  
10 mention the Note specifically. Business assets refer to  
11 a schedule of business assets hereby attached as exhibit  
12 A and the Note is not listed as a business asset.

13 The Note was given as a loan by Patricia and Warren  
14 Holliday individually to Ross Holliday, not from a  
15 business. And so, it I believe it falls under other  
16 items of property, which includes that language of the  
17 marital settlement agreement.

18 THE COURT: Yes ---

19 MR. TILLMAN: --- related in other accounts.

20 THE COURT: You don't deal with anything that  
21 substantial as other property. And the agreement clearly  
22 -- what the agreement says is Patricia hereby  
23 relinquishes and waives any claim she may have in or  
24 against these business assets except as provided in the  
25 Patricia B. Holliday trust. Warren shall retain sole

1 authority to manage these business assets personally or  
2 at his sole discretion delegate or appoint management of  
3 these business assets to a person holding durable power  
4 of attorney, management agreement appointment or election  
5 as an officer, trustee or any other lawful manner.

6         And then I skipped the first part, and that's  
7 subsection D business assets. Warren presently owns or  
8 holds an interest in several limited liability companies,  
9 corporations, or other business entities; a schedule of  
10 which is attached hereto as exhibit A. The parties agree  
11 that Warren shall retain and continue full ownership and  
12 interest in any and all such companies and other business  
13 assets which Warren holds at this time.

14         [Whereupon, the Court reviews documents]

15         THE COURT: And then the provision that you're  
16 referring to is G, other items of property. Except to  
17 the extent set forth in this agreement Warren and  
18 Patricia have made a physical division of all other  
19 personal property acquired during the marriage, including  
20 but not limited to, household furnishings, appliances,  
21 bank accounts, retirement accounts, money situated in  
22 other accounts, jewelry, sporting equipment, and all  
23 other personal property of value. The parties each  
24 release the other from all claims of interest to any  
25 monies or assets in the possession of the other or titled

1 in the name of the other party unless otherwise stated --  
2 unless stated otherwise herein. Each party shall retain  
3 sole ownership of all such properties in his or her  
4 possession or titled in his or her name unless such  
5 property is made the property of the other pursuant to  
6 the terms of this agreement.

7       Furthermore, unless stated otherwise herein each  
8 shall bear all costs and expenses related to the  
9 properties, which each takes sole ownership of pursuant  
10 to this agreement.

11       And it specifies those things. I don't believe for  
12 a moment that when they went into mediation that either  
13 one of them was oblivious or ignorant of this Promissory  
14 Note.

15       MR. TILLMAN: But their intent did not express  
16 unambiguously in this marital settlement agreement. It  
17 doesn't -- it's not -- the Note says Ross Holliday, the  
18 undersigned borrower, promises to Warren Holliday and  
19 Patricia Holliday ---

20       THE COURT: -- but you can give that away once you  
21 negotiate a marital settlement. I don't think that's  
22 dispositive. But I don't think it matters. I don't  
23 think paragraph D stands for your proposition that  
24 because she found a Promissory Note in her possession  
25 that somehow that means that belongs to her. I guess

1 maybe I should cut to the chase a little bit and I'm  
2 going to let you finish your argument Mr. Tillman, have  
3 y'all made -- because I've been doing this long enough to  
4 know that this really is not what it is about.

5 This is a squabble between kids who are upset that  
6 they were disinherited. And some children got more they  
7 feel of the benefit of their parent's estate and others  
8 don't. So, this is sort of a roundabout way to get an  
9 inheritance. At least that's the way I perceive it at  
10 this moment or a roundabout way for her to get more  
11 assets after the negotiation of this settlement.

12 And I might be wrong and my perception might be  
13 wrong; who knows. And I guess in the grand scheme of  
14 things it really doesn't matter. But have y'all gone to  
15 any type of mediation and made any attempts to resolve  
16 this because the bottom line is if he already paid back  
17 the money and the Note has been satisfied where does that  
18 leave you in any event because the Note was owed to the  
19 bank.

20 So, if he didn't make it and I'm sure there was  
21 additional interest on the loan, a loan of that size, so  
22 if he -- again, you know I'm a child of my parents. If I  
23 borrowed money from my momma and daddy and they went to  
24 the bank and got money for me if I'm paying them back, I  
25 assume they are going to pay the bank back because I

1 would not want them to have the deficit. Why would they  
2 have the albatross of the debt on them and just keep the  
3 money I gave them? That would make no sense because you  
4 have an enormous loan that is accruing interest that is  
5 guaranteed by a business asset that I assume you don't  
6 want the bank to take back because they are going to want  
7 to get their money.

8 So, let's just assume for argument's sake everything  
9 being equal that he borrowed this money from his parents.  
10 His dad goes and gets a loan from the bank. He secures  
11 that loan with a business asset. And let's just say for  
12 argument's sake Ross paid his daddy back. The money  
13 still has to go to the bank. It's not going to his  
14 father or to his mother. You got to satisfy this loan  
15 because that's the whole premise of him borrowing this  
16 money.

17 So, have y'all gone to mediation at all to see if  
18 y'all can resolve this? I mean what exactly is their  
19 bottom line because the bank still stands in a superior  
20 position and they got to get their money.

21 MR. TILLMAN: Your Honor, the bank from which the  
22 loan was taken out to fund this loan was paid back. But  
23 Ross did not make the payment.

24 THE COURT: I'm sorry, I didn't hear you.

25 MR. TILLMAN: But Ross Holliday did not, or at

1 least there is an argument as to whether Ross made the  
2 payment to pay that bank back. That bank was actually  
3 paid back by a business. And so, we don't believe Ross  
4 ever made the payments on this Note or if he did, he  
5 didn't pay all of it back. He claims he made payments in  
6 2005 and 2007 and 2010. And he has no record of that and  
7 my client has no from my ---

8 THE COURT: --- you can trace it back because it  
9 would coincide with the payments made to the bank.

10 MR. TILLMAN: That's not what worked though, Your  
11 Honor. The Note, the bank was not, the bank from which  
12 the money to make this loan came from was not paid back  
13 during the times that he claims he was making payments  
14 to.

15 THE COURT: But still, what is your bottom line?  
16 What is it you hope to gain from this Note?

17 MR. TILLMAN: A trial to start with. But short of  
18 a trial we had tried to mediate the case and we couldn't  
19 --

20 THE COURT: I'm listening. I didn't hear you; you  
21 went out.

22 MR. TILLMAN: I mean I don't know what my client's  
23 bottom line is monetarily. I would certainly be willing  
24 to discuss that in a mediation. But money is ---

25 THE COURT: --- have y'all mediated the case?

1 Well, there is a whole lot of emotion going around that  
2 ain't no litigation going to fix in this situation. And  
3 I suspect even if this goes to a trial it ain't going to  
4 fix this situation. It's going to be some more  
5 litigation somewhere down the line. Something is going  
6 to percolate and they going to find a way to still --  
7 there is a lot of wounded feelings involved in this. So,  
8 Ms. Paylor when did y'all mediate this?

9 MS. PAYLOR: Oh, it was before Covid so a year and  
10 a half ago. There are other actions, Your Honor so we  
11 mediated all of them together.

12 THE COURT: So y'all mediated all of them together?  
13 Who mediated it?

14 MS. PAYLOR: Former Judge Buddy Nicholson.

15 THE COURT: And did y'all make any headway?

16 MS. PAYLOR: We started -- no, not really because  
17 it just wasn't -- I mean it just wasn't going to -- they  
18 weren't going to be happy, Patricia and her two children  
19 that she left everything to. They wanted half of  
20 everything plus the two million dollars on this Note so  
21 --

22 MR. TILLMAN: Your Honor, that's, that's -- you  
23 know those are opening demands. That's a  
24 mischaracterization of ---

25 THE COURT: --- well you know I don't have a dog in

1 the fight. I'm just trying to figure out -- I'm going to  
2 quote something I told some other lawyers the other day  
3 that I just thought was a profound statement that I heard  
4 while I was watching a news show. And they had -- I  
5 don't know whether it was -- who is the historian -- it  
6 was either -- I know it wasn't Doris Kearns Goodwin but  
7 it was -- it might have been John Meacham or the other  
8 guy; I can't remember.

9 Or it might not have been either one of them. But I  
10 remember I was watching it and it made me sit up because  
11 I thought it was such a profound statement. And what he  
12 said was when two elephants fight the only thing that  
13 gets punished is the ground.

14 So, you got two elephants fighting and the only  
15 thing that is getting punished right now is the ground  
16 because they are going to end up spending anything they  
17 think they are going to recover in litigation and at the  
18 end of the day they're still are going to have like this  
19 dissention that is going to eat away at their life.

20 And of course, it doesn't affect us because you know  
21 that's what we -- that's what y'all do for a living; you  
22 litigate. I mean you go home at night and it doesn't eat  
23 away at your peace of mind. I don't know if peace of  
24 mind is the word I'm looking for.

25 But to the extent that y'all think you could I'm

1 just trying to investigate whether you think you could --  
2 while appeals are, what's the word that I'm looking for,  
3 they create a level of uncertainty that makes folk  
4 amenable sometimes to resolving things they would not be  
5 inclined to resolve.

6         And I think Covid has added a way now that we're  
7 coming sort of, I would pray to end of all this  
8 confinement we've been in. And I know at least for me  
9 being transparent it has added a level of clarity to my  
10 existence that there are just some things that are more  
11 important after you've been -- you know after life has  
12 you know you woke up one day and everything was like the  
13 way you're used to it and then the next day everything  
14 was like upside down.

15         And then for a year we've basically been confined to  
16 our homes or to our offices or to whatever pod we have  
17 created, you know pod of safety we've created at least in  
18 our minds that we've created for ourselves. I would just  
19 like to think it gives folk a level of clarity that makes  
20 them think about things a little bit differently.

21         And so, I guess what I'm asking because I don't have  
22 a position one way or the other is do y'all think it  
23 would be fruitful for you all to engage in mediation  
24 again? Now with this passage of time and with you know  
25 I'm sure whatever happens in the Court of Appeals that

1 someone will try to get Cert in the Supreme Court so  
2 that's another three years. So now we're at six years.  
3 I mean do y'all think it's worth your time to make an  
4 attempt to mediate it again?

5 MS. PAYLOR: Your Honor, I don't believe -- we've  
6 tried twice because we went back ---

7 THE COURT: --- oh, I didn't realize it was two  
8 times ---

9 MS. PAYLOR: --- I'm sorry, I didn't explain that.

10 THE COURT: That's okay. Y'all did it with Judge  
11 Nicholson both times?

12 MS. PAYLOR: Yes, ma'am. I don't see that there is  
13 going to be a resolution. There is just a lot of enmity  
14 between these siblings so.

15 MR. TILLMAN: And Your Honor just so you know I'm  
16 only involved in this case. There are other collateral  
17 cases that ---

18 THE COURT: --- so what other cases are out there?  
19 I have to plead ignorance. I wasn't aware there were  
20 other cases.

21 MR. TILLMAN: I have to as well.

22 MS. PAYLOR: Well, Judge Price has been assigned --  
23 he was assigned all after you had already ruled on this,  
24 he got the rest of the cases assigned to ---

25 THE COURT: --- who assigned them to Judge Price?

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March 31, 2021

1 MS. PAYLOR: I can't remember. It's been a while.

2 THE COURT: Judge McCoy?

3 MS. PAYLOR: It was Judge McCoy. Thank you very  
4 much. That's exactly who did that.

5 THE COURT: So, Judge McCoy assigned them to Judge  
6 Price. So how many cases are out there Ms. Paylor?

7 MS. PAYLOR: There's really only one now and that  
8 is -- there were more than one but the only one left is a  
9 Will contest.

10 THE COURT: Okay. So that's in the Probate Court?

11 MS. PAYLOR: Well, it's in Circuit Court ---

12 THE COURT: --- it was moved to the Circuit Court?  
13 Okay.

14 MS. PAYLOR: Yes, ma'am. We were moved to the  
15 Circuit Court.

16 THE COURT: Okay. So, you got a Will contest going  
17 on and you got this going on. So those are the only two  
18 cases?

19 MS. PAYLOR: There was one other but that got  
20 resolved.

21 THE COURT: Okay. And what was that case that got  
22 resolved?

23 MS. PAYLOR: It was a suit by Ms. Holliday against  
24 Ross Holliday claiming she feared that they would not  
25 keep making the 16,000 dollar a month payments although

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1 they had all been made so.

2 THE COURT: But that was in Family Court?

3 MS. PAYLOR: No, it was in the Circuit Court also.

4 THE COURT: How did they bring a Family Court  
5 enforcement action in the Circuit Court I wonder?

6 MS. PAYLOR: Well, it really wasn't an enforcement  
7 action because ---

8 THE COURT: --- why did she ---

9 MS. PAYLOR: --- she had been getting her payments  
10 ---

11 THE COURT: --- anything about their agreement  
12 would be I mean making payments that's Family Court so  
13 how was it brought to Circuit Court?

14 MS. PAYLOR: That didn't ever get raised. I was  
15 not in the case at the very beginning ---

16 MR. GHOM: --- Your Honor ---

17 MS. PAYLOR: --- I will say that ---

18 MR. GHOM: --- sorry I don't want to interrupt but  
19 it was originally brought in Probate Court because it was  
20 a breach of fiduciary duty claim. And then we removed it  
21 when we got involved to the Circuit Court.

22 THE COURT: Okay.

23 MS. PAYLOR: Thank you, Bijan. He's correct.

24 THE COURT: All right. So, Mr. Tillman are you of  
25 the same opinion that an additional mediation is not

1 going to help?

2 MR. TILLMAN: Honestly Your Honor I don't know. I  
3 would need to talk to my client. I was not involved in  
4 the second mediation. I will ---

5 THE COURT: --- do you think it's worth one more  
6 try Ms. Paylor? Do you think maybe a change in mediator  
7 might help perception? Not that Judge Nicholson wouldn't  
8 do a great job, I'm just maybe suggesting a clean slate  
9 because you know once people go through mediation and  
10 things are suggested sometimes, they -- if you already  
11 have a predisposition and enmity you sort of start  
12 perceiving that the mediator is inclined a particular  
13 way. Do you think...

14 MS. PAYLOR: I will certainly ask my clients but  
15 there has just been a lot of things going on outside of  
16 the litigation as well and my clients just want to, they  
17 want to be done with ---

18 THE COURT: --- well mediation is the quickest way  
19 to be done with it.

20 MS. PAYLOR: I know ---

21 THE COURT: --- because Court of Appeals ain't done  
22 with it you know. And then what if it all -- you know if  
23 it gets reversed it don't affect me but if it gets  
24 reversed then you got to come back six years later and  
25 have a trial.

1 MS. PAYLOR: It probably won't affect me either.

2 THE COURT: You going to be retired?

3 MS. PAYLOR: I'm just kidding.

4 THE COURT: Mr. Tillman, you going to be around?

5 MR. TILLMAN: I wish I could say the same. I think  
6 I'll be around.

7 MS. PAYLOR: I'm many years older than you are  
8 Matt.

9 MS. PAYLOR: Judge Jefferson is younger than I am  
10 also. I'll talk to my client.

11 [Off the record momentarily]

12 THE COURT: From a real practical standpoint, and  
13 again I don't have a position one way or the other, and I  
14 tell you the truth when something comes back from the  
15 appellate court, I don't recognize it anyway and I'm so  
16 far into something else -- sometimes the passage of time  
17 is a funny thing.

18 And if your thought process doesn't evolve there is  
19 something wrong with you. Sometimes when things come  
20 back, I completely agree with them because my thought  
21 process has changed in the interim and I go you know if I  
22 had to make that decision today, I agree with them; I'd  
23 make the same decision.

24 So, you know it's not like we take it personal  
25 because we don't. I mean I figure if I didn't mess up

1 sometimes you know they wouldn't have any purpose. I  
2 figure I'm doing my duty if I mess up at least once or  
3 twice a year or more.

4 But I'm just -- just from a practical sort of  
5 quality-of-life perspective I'm just wondering if just a  
6 clean slate sort of mediation might -- I mean you don't  
7 have anything to lose by it. But if their real goal is  
8 for this to be over with, I mean that is the quickest  
9 route to it just being over with because it ain't going  
10 away no time soon in the posture it is right now.

11 MS. PAYLOR: Well, they know that. I mean that's  
12 in fact ---

13 THE COURT: --- y'all want to maybe explore ---

14 MS. PAYLOR: --- they have just a lot going on ---

15 THE COURT: --- with your clients in the meantime

16 ---

17 MS. PAYLOR: --- I'll talk to them ---

18 THE COURT: --- while I'm looking at -- sort of  
19 looking at this whole situation in light of your  
20 arguments on 60(b). And Mr. Tillman, I apologize; I  
21 didn't mean to eclipse your argument. You can go ahead  
22 and make your arguments and then I'm going to let Ms.  
23 Paylor have any response. And if Mr. Ghom wants to chime  
24 in, I'll be glad to hear from him.

25 MR. TILLMAN: And Your Honor I will also, I would

1 agree with you about getting things over with. I will  
2 definitely have a talk with my client about this.

3 THE COURT: Is there somebody y'all think you could  
4 agree on?

5 MR. TILLMAN: I really like ---

6 THE COURT: --- y'all want to just use Judge -- or  
7 do y'all want to use Judge Nicholson again?

8 MR. TILLMAN: He did a fine job. I mean ---

9 THE COURT: --- he does a great job and he's very  
10 practical. Like I said what I suggested wasn't any  
11 reflection on him. I think he would be a great mediator.  
12 I just didn't know what the perceptions of the parties  
13 might be at this point after having done -- but he's  
14 developed a rapport with them so it may well be  
15 beneficial to continue with him.

16 MR. TILLMAN: I'm sort of the opinion you know if  
17 you keep drinking from the same well the water always  
18 tastes the same so.

19 THE COURT: So, why don't y'all stick with Judge  
20 Nicholson because again he's developed a rapport with  
21 them.

22 MR. TILLMAN: Right.

23 THE COURT: Okay. I'll be glad to hear from you  
24 Mr. Tillman.

25 MR. TILLMAN: Well, Your Honor, a lot of what I was

1 going to discuss we've already discussed. I mean our  
2 position is this is clearly -- it's either -- we don't  
3 think it's a business debt under the marital settlement  
4 agreement. If there is an argument to be made that it is  
5 then it's an ambiguity that is inappropriate for summary  
6 judgment. We think that ---

7 THE COURT: --- wouldn't it be an ambiguity that  
8 would need to be resolved by the Family Court since it  
9 involves their mediated agreement that needs to be  
10 interpreted?

11 MR. TILLMAN: I don't think so, Your Honor. I mean  
12 I think the Circuit Court can interpret agreements.

13 THE COURT: It can't interpret a marital settlement  
14 agreement that originated out of a final order from the  
15 Family Court.

16 MR. TILLMAN: Well, I mean it would need to be -- I  
17 mean supposedly if that's the case we would refer it to  
18 the Family Court for that purpose. But it would need to  
19 be interpreted one way or another because it's ambiguous  
20 at this point ---

21 THE COURT: --- which raises another interesting  
22 issue. Have y'all ever contemplated having the Family  
23 Court interpret the agreement?

24 MR. TILLMAN: I've not.

25 THE COURT: You may continue.

1 MR. TILLMAN: Okay. And like we discussed a minute  
2 ago we believe this would be the other item of property  
3 and the other item of property provision 3-G says that  
4 the parties shall retain sole ownership of properties in  
5 his or her possession. And if Patricia in fact had the  
6 Note in her possession, then that is evidence that the  
7 parties intended by this agreement that Note would be  
8 hers.

9 It's pretty clear that the -- in several places the  
10 marital settlement agreement refers to documents in  
11 possession of them. I understand that your order may not  
12 have fully contemplated your logic in reaching the result  
13 of a summary judgment order but the order does say in  
14 several areas that the property was in Warren's  
15 possession and therefore it's his.

16 So, I think just from the order standpoint and the  
17 fact that Patricia may have had possession of this Note  
18 and evidence that she had possession of this Note that  
19 that creates a further ambiguity as it relates to the  
20 marital settlement agreement that needs to be resolved by  
21 the fact finders.

22 And if you go down to the Rule 60 standard, and I  
23 apologize Your Honor, I have this as a power point  
24 presentation I was going to roll through but for some  
25 reason I can't share like I can't zoom so I'll try to go

1 through this without quoting a lot of text. But, the  
2 Rule 60 standard is the new trial should be granted where  
3 new evidence will probably change the result, has been  
4 discovered since trial, three; could not have been  
5 discovered before trial, four; material to the issue,  
6 five; is not merely cumulative or impeaching.

7 For the reasons that we've just discussed we believe  
8 that the result on summary judgment will change if not  
9 trial because possession of the Note is a big deal in the  
10 marital settlement agreement and if Patricia Holliday had  
11 possession, which looks like she may have, that would  
12 seem to indicate that the parties intended that Patricia  
13 Holliday owned the Note after the divorce.

14 And so, we think that that result definitely changed  
15 the thought process as it relates to summary judgment;  
16 the basis for the summary judgment ---

17 THE COURT: --- I'm a little confused. I don't see  
18 any references to him having possession of the Note in my  
19 original order.

20 MR. TILLMAN: Your Honor ---

21 THE COURT: --- you said there are several  
22 references and I was reviewing it as you were speaking  
23 and I don't, I can't discern that. There are two ---

24 MR. TILLMAN: --- right ---

25 THE COURT: --- there are two -- there is one

1 reference on page five and one on six but it does not  
2 directly say that it's in his possession that that was  
3 the basis of the Court's decision.

4 MR. TILLMAN: Right, at page two ---

5 THE COURT: --- and I'm referring to...

6 [Whereupon, the Court reviews documents]

7 MR. TILLMAN: At page two it says that ---

8 THE COURT: --- that's a quote from the Family  
9 Court order.

10 MR. TILLMAN: Page two? What I have looks like  
11 just -- it says at all time until the NBSC Note ---

12 THE COURT: --- yeah, I'm just quoting -- yes, page  
13 two; page two is simply a quote of procedural history  
14 from the Family Court. It's not a finding. What you're  
15 referring to it's just merely a recitation of the  
16 procedural history of the case. That's not a finding.

17 MR. TILLMAN: All right. I'm not sure we're  
18 looking at the same thing. I'm reading ---

19 THE COURT: --- I think it's just procedural. The  
20 first two pages goes into...

21 MR. TILLMAN: Okay. Well, at page five ---

22 THE COURT: --- even though it says findings of  
23 fact that's not what it really is. That's just a  
24 procedural recitation. On page five there is a reference  
25 in the middle of the page it says it is undisputed that

1 the loan made to Ross was done during the marriage of  
2 Patricia and Warren. All debts and receivables arising  
3 during the marriage of the parties constitutes marital  
4 property.

5 When Warren and Patricia obtained the divorce, they  
6 entered into a marital settlement agreement that gave  
7 Warren all property whether personal or business that was  
8 not specifically given to Patricia. Patricia expressly  
9 released Ross, who is an heir, personal representative,  
10 successor and assignee of Warren from all quote all  
11 suits, actions, causes of action that result or arise out  
12 of the marital relationship from the beginning of the  
13 world to the date of this agreement, end quote.

14 In addition, Patricia released all claims to the  
15 Note repeatedly throughout the document. The release  
16 specifically --

17 [Whereupon, there are buffering issues]

18 THE COURT REPORTER: Judge, I'm sorry. You were  
19 breaking up ---

20 THE COURT: --- shall remain ---

21 THE COURT REPORTER: --- you're breaking up a little  
22 bit ---

23 THE COURT: --- remain solely liable for any and  
24 all business debts that Warren has incurred --

25 [Whereupon, there are buffering issues]

1 THE COURT REPORTER: Judge, we're losing you.  
2 You're breaking up ---

3 THE COURT: --- the release specifically says that  
4 they shall remain liable all -- incurred, end quote. I'm  
5 directly -- I'm not on wireless; I don't know why it's  
6 doing that. Can you hear me now? Ms. Rueger, can you  
7 hear me?

8 THE COURT REPORTER: Yes ma'am, that's better now.  
9 It was just a moment ago you were breaking up.

10 THE COURT: You might want to check on your end  
11 because I'm hardwired in so I'm not on wireless. I  
12 shouldn't be having any difficulties with my audio or my  
13 video.

14 THE COURT REPORTER: Okay. Thank you.

15 THE COURT: Can you hear me okay now?

16 THE COURT REPORTER: Yes ma'am, I can.

17 THE COURT: Okay. The release specifically says  
18 that Warren Holliday shall remain solely liable for any  
19 and all business debts that Warren has incurred, end  
20 quote, and that Warren and Patricia are limited to the  
21 receipt of those properties or monies as outlined in the  
22 agreement, end quote.

23 That's the only thing that remotely could come close  
24 to what you are referencing but it does not say anything  
25 about him having possession of the Note. And then on

1 page six midway it says the Court finds that the language  
2 of the marital settlement agreement provides that  
3 Patricia expressly released any and all claims that she  
4 had to the marital assets both business and personal of  
5 Patricia and Warren except as provided in the agreement.  
6 The Court concludes that Patricia has no claim to or  
7 interest in the Promissory Note at issue in this matter.

8           So, I -- we went back through and studied a great  
9 deal before the hearing and that's why I asked my clerk  
10 just now if there were any specific references to him  
11 having possession of the Note because I don't recall  
12 there being any in the order. Are there any pages that  
13 you would point to, Mr. Tillman, that actually say that?

14           MR. TILLMAN: Well, Your Honor, I understand your  
15 position as it relates to page two that page two  
16 specifically says that. And then ---

17           THE COURT: --- yeah, but that's a procedural --  
18 that's just procedurally what has gone on up till now.  
19 Page two simply says, let's see here, Patricia testified  
20 that she was included as an obligee on the Promissory Note  
21 because she was married to Warren and it was a joint  
22 asset. And that's the deposition of Patricia Holliday at  
23 39 through 40.

24           But all of this is just the procedure. Inartfully,  
25 it says findings of facts; it really should say

1 procedural history. But it sort of suits the same  
2 purpose and may need to be amended for that purpose, but  
3 then goes to the conclusions of law which is the summary  
4 judgment standard.

5 But page one and page two onto page three near the  
6 end really is just a recitation of what happened up to  
7 that point and the procedural posture that y'all  
8 presented the matter to the Court.

9 MR. TILLMAN: Okay. Well, that's the specific  
10 reference to possession, for whatever purpose in the  
11 order. And then if you go down to page five it says when  
12 Warren and Patricia obtained the divorce, they entered  
13 into a marital settlement agreement that gave Warren all  
14 property whether personal or business that was not  
15 specifically given to Patricia.

16 And if the Note was in Patricia's possession that's  
17 certainly evidence that it was given to Patricia ---

18 THE COURT: --- yeah, but I didn't say that. So,  
19 to say that I said or made a finding that what in his  
20 possession belonged to him is inaccurate because if I was  
21 going to say that I would have said it.

22 MR. TILLMAN: Your Honor, I think we're going to  
23 have to agree to disagree because that's really exactly  
24 what page two says. And I understand that you ---

25 THE COURT: --- where are you referring to on page

1 two?

2 MR. TILLMAN: On page two -- I'm sorry, I'm looking  
3 at my power point presentation and I'm trying to find ---

4 THE COURT: --- that's okay ---

5 MR. TILLMAN: --- page two. Hang on for me for  
6 just a minute please.

7 [Whereupon, Mr. Tillman reviews documents]

8 MR. TILLMAN: About right in roughly the middle of  
9 page two ---

10 THE COURT: --- it's quoting the Family Court  
11 order.

12 MR. TILLMAN: No, not in the quote. Right above  
13 that it says in exchange Patricia gave, and I'm going to  
14 paraphrase, Patricia gave up all claims to any business.

15 THE COURT: Yeah, I don't see that on page two.  
16 Where are you referring to that on page two?

17 MR. TILLMAN: Do you see the block quotes?

18 THE COURT: Yes.

19 MR. TILLMAN: It's the sentence right before that.

20 THE COURT: The sentence before the block quote?

21 MR. TILLMAN: Correct.

22 THE COURT: Where it says the agreement provides in  
23 pertinent part?

24 MR. TILLMAN: I'm sorry, the sentence before that.

25 Excuse me.

1           THE COURT:    Oh, let's see.  The marital settlement  
2 agreement provided that Warren, his successors, heirs and  
3 assigns would pay to Patricia 16,000 dollars per month  
4 for her life, that Patricia would own the family home and  
5 most of the married couple's personal effects and that  
6 she would have a life insurance policy on Warren's life  
7 in the amount of 645,000 dollars.

8           In exchange Patricia gave up all claims to any  
9 personal property -- any business property of Warren as  
10 well as all personal property in Warren's possession not  
11 specifically mentioned in the agreement.  That's merely a  
12 parenthetical of the block quote.  I didn't make any -- I  
13 didn't say the Court here finds that that's -- it's  
14 merely a recitation of the procedural history of the  
15 case; that's why it precedes the block quote of exactly  
16 what's in their agreement.

17          MR. TILLMAN:   Well, okay; understood Your Honor.  
18 And I don't think that that is necessary to my argument  
19 that you found that possession was the -- that what your  
20 finding related to possession is not what requires in my  
21 mind the summary judgment order be overturned.

22          And because if you look at the actual language of  
23 marital settlement agreement section 3-G, and I don't  
24 want to beat this dead horse any more than I have to, but  
25 it says each shall retain ownership of all such

1 properties in his or her possession or titled in his or  
2 her name unless such property is made the property of the  
3 other pursuant to the terms of this agreement.

4 So, the marital settlement agreement itself  
5 contemplates possession as being a relevant factor. If  
6 you go to element two under Rule 60 it has to have been  
7 discovered since trial now. The Note itself, and this is  
8 actually how the cases that Ms. Paylor cites are  
9 distinguished, but the Note itself has not been  
10 discovered since trial.

11 We had a copy of the Note all along. What we didn't  
12 have was knowledge that it might have been in Patricia's  
13 possession. And so, she didn't know that at the time of  
14 the summary judgment hearing that it was in her  
15 possession. There is deposition testimony in the record  
16 where she did not realize that she had it. And so, the  
17 possession ---

18 THE COURT: --- but isn't the standard that due  
19 diligence is something that couldn't have been  
20 discovered? That's certainly something that she could  
21 have discovered couldn't she before the hearing through  
22 diligence?

23 MR. TILLMAN: Well, it was in her attic.

24 THE COURT: That's diligence.

25 MR. TILLMAN: I understand. But she's an elderly

1 woman; it was in her attic in some boxes ---

2 THE COURT: --- I don't think the law makes that  
3 distinction, does it?

4 MR. TILLMAN: Well, I cited the Serio case which is  
5 a Fifth Circuit case. There is nothing on point ---

6 THE COURT: --- I think there is a lot of South  
7 Carolina law that talks about after discovered evidence.  
8 And the circumstances that you are articulating I don't  
9 think come within the ambit of what has been articulated  
10 by our Courts. I don't have to look outside of South  
11 Carolina to determine a definition, a workable definition  
12 of after discovered evidence.

13 MR. TILLMAN: I understand. And I'll just point  
14 out to you Your Honor the Lanier case which Ms. Paylor  
15 cites in support is a situation where the party, the wife  
16 did not raise the issue of an antenuptial agreement  
17 during I believe it was a Family Court proceeding.

18 Then after the order was entered then raised it with  
19 the Court and the Court said you could have found the  
20 antenuptial agreement before trial using due diligence.  
21 And Lanier agreed. Lanier said that a new trial order  
22 was not appropriate there. But the Lanier case  
23 distinguished cases like this and this is what it said.

24 We recognize that in some out of state cases new  
25 trials are allowed when lost documents were subsequently

1 found. However, most of these cases sounded in equity  
2 and were decided before the advent of Rule 60. And  
3 here's the important language: Additionally, in all the  
4 cases cited existence of the lost document was alleged at  
5 trial. When the documents were found the Courts held  
6 that the original documents themselves were material and  
7 not merely cumulative of other evidence as to their  
8 contents thus retrials were merited.

9 And so, in this case the existence of the original  
10 document in her possession because of what the marital  
11 settlement agreement does and because of the implication  
12 that has as to the summary judgment order is important  
13 and is the issue and therefore it could be distinguished  
14 from Lanier. And that's why I cited the Serio case from  
15 the Fifth Circuit. That was about all I could find that  
16 was a similar fact scenario in which the document  
17 existed.

18 The party seeking to have the new trial motion  
19 granted knew it existed but couldn't find it -- but had  
20 assumed that it was destroyed in a fire. After the order  
21 was entered, they found that the document was not  
22 destroyed in a fire and that it was located somewhere  
23 else and the Court allowed -- the Court granted the Rule  
24 60 motion and sent it back for a new trial.

25 So, we believe this falls, and I understand Serio is

1 not South Carolina law but the South Carolina law that  
2 Ms. Paylor cites specifically accepts this particular  
3 fact scenario in our recitation.

4 THE COURT: But this document wasn't lost. It was  
5 in her attic. She just didn't exercise diligence to go  
6 look through all her stuff.

7 MR. TILLMAN: Well, she was under the assumption  
8 that she didn't have it.

9 THE COURT: But you know that doesn't mean it was  
10 lost. And I don't know that the basis of my ruling is  
11 who had it in their possession anyway. I don't think it  
12 really matters. I mean...

13 MR. TILLMAN: Well, I can understand that Your Honor  
14 and that's why I pointed out to you that the marital  
15 settlement agreement specifically contemplates possession  
16 so ---

17 THE COURT: --- but I don't think that was the  
18 basis of the Court's ruling. The Court's ruling what  
19 y'all basically argued was about the release. It wasn't  
20 about who had the document. Y'all all conceded you  
21 didn't know where the original was.

22 You didn't really know whose possession it was in  
23 but that the copy that you provided was authentic; that  
24 there was no reason to believe there was any material  
25 difference between the copy and the original. And I

1 don't think you ever really argued nor was it the basis  
2 of the Court's ruling about who had possession of it. I  
3 think it was about the fact was the verbiage in the  
4 actual documents; the marital documents itself, which is  
5 that there was a release. And she released any claim or  
6 ownership to anything that would be owed on this Note as  
7 a result of the marital litigation.

8 MR. TILLMAN: Well, I disagree with that  
9 interpretation of the marital settlement agreement.  
10 There is a general rule ---

11 THE COURT: --- no, no. I'm talking about what you  
12 argued and your memos support that. That was the crux of  
13 your argument. It was not about who had possession of  
14 it. The crux of y'all's argument went to the release  
15 language.

16 MR. TILLMAN: No -- well ---

17 THE COURT: --- and the other language in paragraph  
18 G.

19 MR. TILLMAN: Your Honor, the mutual -- and this was  
20 the argument I made. The argument I made at the hearing  
21 was obviously before we had an indication that Patricia  
22 might have had possession. So, my argument at the  
23 hearing was that the marital settlement agreement is  
24 ambiguous as to who is releasing what and to whom the  
25 Note belongs. And so, there is a general release of

1 liability that states the parties essentially waived  
2 claims against each other for -- to be guided by the  
3 language of the marital settlement agreement which  
4 includes the division of property which includes the  
5 language which must be interpreted looking at the  
6 language of other items of property. And so, with other  
7 items of property referring to possession is absolutely  
8 relevant as to whether Patricia is ---

9 THE COURT: --- but the real issue on a 60(b) is  
10 whether she could have discovered it prior to the  
11 hearing. Isn't that your burden of proof on a Rule 60  
12 motion?

13 MR. TILLMAN: It's one of the elements we have to  
14 prove.

15 THE COURT: Anything further for the record?

16 MR. TILLMAN: No, ma'am.

17 THE COURT: Ms. Paylor?

18 MS. PAYLOR: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MS. PAYLOR: Patricia's motion must fail for three  
21 separate and distinct reasons. As you've already said  
22 the Court's order of the discovery of the alleged  
23 original Note does not create an issue of material fact  
24 that is material to the grounds on which this Court  
25 granted Ross's Motion for Summary Judgment. Now in

1 addition what was totally unambiguous was Patricia's  
2 testimony that she did not and had never had possession  
3 of the Promissory Note. So, the fact that years after  
4 the marital settlement agreement was signed her two  
5 children who were in a heated battle with their other  
6 siblings say that they found the original that is not  
7 evidence that she had it when she signed the marital  
8 settlement agreement.

9 So, we don't think that there -- that has any basis  
10 and should be the basis of setting aside your order.

11 THE COURT: Does that create -- does that create --  
12 does who had it create a question of fact?

13 MS. PAYLOR: No, ma'am. I'm not making that  
14 argument. What I'm saying is that it does not matter  
15 under your order, under the order that you issued. In  
16 addition, as you've already discussed with Mr. Tillman  
17 Patricia cannot establish the required elements of Rule  
18 60(b)(2) in order to be entitled to a new trial.

19 And our third distinct reason is that we raised  
20 before you in our Motion for Summary Judgment that the  
21 statute of limitations barred the action and you did not  
22 rule on that because you ruled on other issues.

23 We believe that that is clearly an additional  
24 sustaining ground for the Court's granting us summary  
25 judgment. Looking at the burden you've already talked

1 about the due diligence. And basically, our Court has  
2 held that innate is not newly discovered evidence if the  
3 party had it in the parties' possession and moved that it  
4 existed somewhere. So that's what -- and we have cited  
5 the Lanier case Your Honor, which we think is on point  
6 and is not distinguished in any way by what Mr. Tillman  
7 argued.

8       Clearly, even if Patricia could not access her  
9 upstairs, she could have had someone else go up there and  
10 look through whatever documents were up there. She had a  
11 duty in the case to produce all relevant documents in her  
12 possession, custody and control and that would have  
13 included the original Note.

14       She had a duty to produce the document and that duty  
15 is not defeated by the party's inability to go upstairs  
16 and look. It is not newly discovered evidence under the  
17 Rule. In addition, Patricia must establish that the  
18 evidence would probably change the result if a new trial  
19 is granted has been discovered since the trial, could not  
20 have been discovered before the trial, is material to the  
21 issue, and is not merely cumulative for impeachment.

22       We argue that the discovery of the Note will  
23 probably, and this is all it is, not change the result of  
24 this Court's granting of summary judgment because the  
25 Court concluded that Patricia released her claim to the

1 Note in multiple ways in the marital settlement  
2 agreement. And none of those releases were conditioned  
3 on either party being in possession of the original Note.  
4 And I believe that's what you were telling Mr. Tillman.

5 As I read the order your legal conclusions relied  
6 solely on the terms of the marital settlement agreement  
7 and the legal precedent concerning the finality of  
8 divorce documents to find that Patricia had released any  
9 ownership interests that she might have had in the Note.

10 And with regard to whether or not this was a  
11 business asset Your Honor in her deposition Patricia  
12 Holliday testified that this was a business transaction.  
13 And she testified to that on pages 41 to 42 of her  
14 deposition.

15 As you've already stated, this had to be a business  
16 asset because he secured it with one of his properties.  
17 And based on the terms of the marital settlement  
18 agreement all, all business assets, not just those that  
19 were listed on Schedule A went to Warren Holliday.

20 As an additional ground Your Honor for denial of the  
21 motion the statute of limitations and the equitable  
22 doctrine of laches bar Patricia's action. We went  
23 through this earlier when we argued before you section  
24 36-3-118 provides the statute of limitations applicable  
25 to negotiable increments such as a Promissory Note

1 subsection (b) requires that an action be brought within  
2 six years after demand for payment. The only testimony  
3 was that Warren demanded that Ross begin to make payments  
4 on the Note and that that occurred in 2005. Six years  
5 after 2005 is 2011. This action was not brought until  
6 February of 2018.

7 Even if no demand had ever been made subsection (b)  
8 further provides that an action to enforce the Note is  
9 barred if neither principal nor interest on the Note has  
10 been paid for a continuous period of ten years.

11 Ross testified that the payments that he made to  
12 Warren were between 2005 and 2007. According to Ross,  
13 and Patricia did not deny that; she had no knowledge  
14 whatsoever. So, under those undisputed facts the case  
15 would have had to have been filed in 2017. It wasn't  
16 filed until 2018.

17 Your Honor, as a separate basis the doctrine of  
18 laches prevents a party who has knowledge of her rights  
19 but fails to seasonably assert them from enforcing said  
20 rights when doing would cause her adversary to incur  
21 expenses or enter into obligations or otherwise  
22 detrimentally changed his position.

23 But the detrimental change in position Your Honor is  
24 that Ms. Holliday waited until after Mr. Holliday died to  
25 bring this action on the Note. He died in 2016. She

1 brought it, she sent a letter in 2017 and then she  
2 initiated an action in 2018. My client, Ross, believed  
3 that the Note had been satisfied and Patricia's failure  
4 to say otherwise for 13 years put Ross in a very bad  
5 position. Primarily because he lost his father as well  
6 as losing documents showing payments that he had made.  
7 Also, if he had known that he still owed on the Note he  
8 would have taken actions to repay it. But Patricia never  
9 asserted any right to the Note for over 13 years.

10 Your Honor, we believe that your original order was  
11 entirely correct for all the reasons you state therein  
12 plus based on the statute of limitations as well as  
13 laches Patricia has failed to bring forth any evidence  
14 that would require this Court to give her a new trial and  
15 we would ask that her motion for relief from summary  
16 judgment be denied. Thank you, Your Honor.

17 THE COURT: You're welcome. Mr. Tillman, could you  
18 address Ms. Paylor's argument on the statute of  
19 limitations? Are y'all conceding that those are, that  
20 the facts are uncontested in that regard?

21 MR. TILLMAN: No, we're not. And that issue is not  
22 before the Court. They didn't ---

23 THE COURT: --- I know but she has made an argument  
24 and I need you to address it.

25 MR. TILLMAN: I understand that but you know one of

Estate of Patricia B. Holliday v Ross S. Holliday  
Motion for Relief from Order Granting Summary Judgment 10-9-20  
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1 the reasons ---

2 THE COURT: --- I want to give you the opportunity  
3 but you don't have to ---

4 MR. TILLMAN: --- okay ---

5 THE COURT: --- but I want to give you the  
6 opportunity to address it.

7 MR. TILLMAN: All right. Ross Holliday testified  
8 that he made a part payment in 2010 and that he was  
9 involved in another part payment in 2015. And so that  
10 part payment extends the statute of limitations for ten  
11 years based on the statute that Ms. Holliday -- I mean  
12 I'm sorry Ms. Paylor cited. And therefore, it is not  
13 appropriate for ---

14 THE COURT: --- how could it extend it for ten  
15 years?

16 MR. TILLMAN: Because that's what the statute says.  
17 And Your Honor honestly part of the problem here is that  
18 this is an argument that I was not prepared for because  
19 it wasn't before the Court. I'd have to go back and look  
20 at our pleadings.

21 But I do remember that, and this was fully briefed  
22 and fully argued at the original -- but the part payment  
23 extends the statute of limitations under South Carolina  
24 law and the statute of limitations is ten years. That's  
25 the law. And so, he claims he made a part payment in

1 2010. He said a payment that was actually made by his  
2 dad on the NBSC Note in 2015 I believe it was was a  
3 payment that he made. You know he is bound by that  
4 testimony. And so that means that when we brought the  
5 case in 2018 the case was not barred by the statute of  
6 limitations or at worst it is an issue of fact.

7 THE COURT: I'm sorry, at best is an issue of?

8 MR. TILLMAN: Or at best is an issue of fact.

9 THE COURT: I think my order says that I didn't  
10 need to reach the statute of limitations argument because  
11 the release language was dispositive and partially  
12 because the statute of limitations can always be  
13 considered a question of fact where the facts are not  
14 conceded or stipulated to.

15 But I didn't know that it was necessary for me to  
16 reach the statute of limitations issue because I had  
17 already ruled that summary judgment was appropriate based  
18 on other factors. And of course, Laches is always an  
19 equitable concept.

20 What I want you all to do for me is I, as I'm sure  
21 you all could tell I studied stuff ahead of time and I  
22 wanted the benefit of your argument. But if you all  
23 would like you can provide proposed orders to me on the  
24 Rule 60 with how much time do y'all need?

25 MS. PAYLOR: The end of next week is that okay?

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1 MR. TILLMAN: It could be ---

2 THE COURT: --- I mean I want to give y'all enough  
3 time. I know Easter is coming up and people take you  
4 know vacations around that time. I wanted to make sure  
5 that I gave a timeframe y'all thought y'all could work  
6 within.

7 MR. TILLMAN: How about next Friday, Your Honor,  
8 will that work?

9 THE COURT: What date is next Friday? The 9th;  
10 does that work for everybody?

11 MS. PAYLOR: Yes, ma'am.

12 THE COURT: That works.

13 MR. TILLMAN: Your Honor, I actually got an email  
14 from my client while we were talking and they are willing  
15 to mediate again.

16 THE COURT: I think y'all should explore it. You  
17 know mediation -- I mean litigation doesn't affect us. I  
18 mean that's the whole reason you hire a lawyer. You put  
19 the stress on them supposedly but that doesn't really  
20 happen because you know we got tons of cases but they  
21 only have one that they're thinking about.

22 And you know to the extent that we could look at  
23 this from a quality of life, just humanity sort of  
24 perspective if they can get it worked out and it's  
25 beneficial to everybody I mean where everybody is equally

1 uncomfotable and unhappy, I think it's worth a try  
2 because what is going to end up happening is they are  
3 going to spend everything they would have recovered. But  
4 I don't know. I mean how many, how much assets are we  
5 talking about in this estate? What did she leave her  
6 children? Does she at least have a house or something  
7 she left them, some insurance, some other proceeds?

8 MS. PAYLOR: She left; she had 670,000 dollars in  
9 insurance proceeds that she received at Mr. Holliday's  
10 death. Plus, she got the 16,000 dollars a month up until  
11 her death. And she owned a house and she left that to  
12 the other two children. All of that ---

13 THE COURT: --- was it mortgaged or was it free and  
14 clear?

15 MS. PAYLOR: It was free and clear.

16 MR. TILLMAN: And Your Honor, I ---

17 THE COURT: --- what was the value of that house,  
18 do we know?

19 MS. PAYLOR: I think it was -- I'm guessing, around  
20 350 I think or something like that; maybe 400.

21 THE COURT: Do y'all want to use Judge Nicholson  
22 again? Do y'all think that would -- like I said if he's  
23 already developed a rapport with them.

24 MR. TILLMAN: My client said yes.

25 MS. PAYLOR: Well, but my concern is that all of

1 our clients are not in South Carolina. None of them are  
2 in South Carolina so.

3 THE COURT: Where are they located?

4 MS. PAYLOR: Utah, my two are.

5 THE COURT: Okay. And -- I mean people have been  
6 doing virtual, as a matter of fact I don't know that we  
7 are ever going to go back to business the way we were  
8 doing it before. It's just become so convenient.

9 MS. PAYLOR: Let me check with my clients to see if  
10 they are interested.

11 THE COURT: Yes, check with them and get back with  
12 Mr. Tillman and then if y'all agree to that just let me  
13 know and then I'll extend out the time because I'm  
14 certain that the uncertainty about my ruling is going to  
15 soften some minds, I hope. Uncertainty generally makes  
16 people a little more reasonable than unreasonable in  
17 their positions. Well not unreasonable or reasonable;  
18 that might not be the right way to cast it but I think  
19 y'all know what I'm saying.

20 But I would imagine them not having to come from  
21 Utah would make life a whole lot -- and you could do it  
22 on Zoom or WebEx. I've talked to a lot of lawyers who  
23 have been doing, they are loving doing virtual mediations  
24 because you can put people in other rooms where they can  
25 -- you can do break-outs and everything.

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1 MS. PAYLOR: That's fine ---

2 THE COURT: --- and it's not like it's the first  
3 time they would have talked to Judge Nicholson. I mean  
4 they've developed a rapport with him and so it wouldn't  
5 be like starting from scratch. I think it's worth  
6 investigating. How long do you think you need to talk to  
7 your clients Ms. Paylor?

8 MS. PAYLOR: I could probably talk to them this  
9 afternoon and I'll let Mr. Tillman know and you know what  
10 they say.

11 THE COURT: And just so that I'm clear y'all never  
12 raised the jurisdictional issue because y'all just didn't  
13 feel it was one, is that correct?

14 MR. TILLMAN: Well, Your Honor, I've gotten a  
15 little more color for that ---

16 THE COURT: --- y'all just don't think ---

17 MR. TILLMAN: --- in fairness I wasn't anticipating  
18 that question. But Ross was not a party to the marital  
19 settlement agreement. And so that throws a little  
20 wrinkle in it, I think.

21 THE COURT: He wouldn't have to be. I mean the  
22 Family Court has very broad jurisdiction. As a matter of  
23 fact, I appointed more receivers in Family Court than I  
24 ever appointed in Circuit Court. Family Court has  
25 jurisdiction over everybody that touches every asset.

1 So, technically Family Court would have had jurisdiction  
2 over Mr. Ross. It was marital property so they would  
3 have had jurisdiction over him as well and how it was  
4 distributed to the extent it was distributed.

5 So, I don't know that that would have mattered. But  
6 I was just curious to know why nobody ever brought it,  
7 why nobody ever really argued it forcefully on why it  
8 seemed a peripheral issue to you all and why an action  
9 was never brought in Family Court to clarify what you  
10 claim is ambiguous. I was just curious.

11 MR. TILLMAN: Your Honor, all I can say is I did  
12 not consider it to be a Family Court issue rightfully or  
13 wrongfully.

14 THE COURT: Ms. Paylor?

15 MS. PAYLOR: I -- it just never crossed my mind.  
16 Maybe that's my shortcoming but I'm a less ---

17 THE COURT: --- I have the benefit of thinking  
18 globally because I don't have to win so I can look at  
19 things like totally differently.

20 Okay. All right guys, I'll look to get, I'll look  
21 to hear from y'all just either one of you can just give  
22 my clerk a call and let her know that y'all are going to  
23 do mediation and what kind of timeframe you're looking at  
24 doing it in. And then if you resolve it, it's no need in  
25 y'all going to the work of doing orders and sending them

1 to me. So, if y'all decide to mediate and you give me a  
2 timeframe I may extend the time that the orders are due  
3 because there is no point in y'all incurring the cost of  
4 doing orders if you get a result.

5 MS. PAYLOR: Thank you, Your Honor.

6 THE COURT: I have high hopes for the Holliday  
7 family and some sort of reconciliation with siblings.  
8 You know good, bad or indifferent your family is all you  
9 got.

10 MR. TILLMAN: That is very true, Your Honor.

11 THE COURT: All right guys, y'all have a good day.

12 MR. TILLMAN: Okay. Thank you very much.

13 MS. PAYLOR: Thank you.

14 THE COURT: You're welcome. Thank y'all.

15 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
16  
17  
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is, to the best of my ability, a complete  
Transcript of Record of the proceedings had, using WebEx  
videoconferencing, and evidence introduced in the trial  
of the captioned case, relative to appeal, in the Court  
of Common Pleas for Charleston County, South Carolina on  
the 31st day of March, 2021.

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

July 20, 2021

---

Joyce C. Rueger, CVR-M  
Court Reporter

---

**Deposition of:**  
**Patricia Holliday**

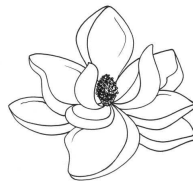
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**Holliday  
vs.  
Holliday**

**CASE NO. 2017-CP-10-872**

**September 19, 2018**

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

Patricia B. Holliday, )  
)  
Plaintiff, )  
) Civil Action No.:  
) 2017-CP-10-872  
v. )  
)  
Ross S. Holliday, )  
)  
Defendant. )

\*\*\*\*\*

DEPOSITION OF: PATRICIA B. HOLLIDAY  
DATE TAKEN: Wednesday, September 19, 2018  
TIME: 1:50 P.M.  
PLACE: Womble Bond Dickinson  
12 Exchange Street  
Charleston, South Carolina  
REPORTED BY: MARY ANN RIDENOUR, RPR, CLR  
Registered Professional Reporter,  
Certified LiveNote Reporter  
and Notary Public

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

MATTHEW E. TILLMAN, ESQUIRE  
Womble Bond Dickinson  
5 Exchange Street  
Charleston, South Carolina 29401  
matthew.tillman@wbd-us.com

REPRESENTING THE DEFENDANT:

F. TRUETT NETTLES, II, ESQUIRE  
Finkel Law Firm  
4000 Faber Place Drive, Suite 450  
North Charleston, South Carolina 29405  
tnettles@finkellaw.com

ALSO PRESENT:

ROSS S. HOLLIDAY

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I N D E X

Testimony of Patricia B. Holliday

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I N D E X

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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between  
the parties hereto, through their respective counsel,  
that the reading and signing of the transcript is  
waived by the Deponent.

1 (The deposition commenced at 1:50 p.m.)

2 PATRICIA HOLLIDAY, SWORN.

3 DIRECT EXAMINATION BY MR. NETTLES:

4 Q. Is it okay if I call you Patricia?

5 A. Sure.

6 Q. You know I represent the defendants, or  
7 respondents, actually, defendant, your son, Ross, in  
8 this lawsuit about the promissory note, right?

9 A. Yes.

10 Q. And I'm going to take your deposition today.  
11 And you're under oath.

12 What does that mean to you, when you're under  
13 oath? What does that mean?

14 A. You have to be truthful. You're obliged to  
15 be truthful.

16 Q. Okay.

17 A. And you accept that responsibility of being  
18 truthful.

19 Q. Good. So you and I can agree that everything  
20 you're going to say is true?

21 A. Yes.

22 Q. Like the instructions that your attorney gave  
23 to Ross in the deposition this morning, if I ask a  
24 question that's not clear, would you ask me to restate  
25 it or explain the question?

1           A.    Yes, I would.

2                    And could I just say one thing?  I'm not  
3   trying to be Hollywood; I'm extremely light-sensitive,  
4   so...

5           Q.    I know.

6           A.    These are my bifocals, too.

7           Q.    Yeah.  You wore sunglasses at the divorce  
8   hearing.

9           A.    I wear them indoors all the time, when  
10   there's any kind of bright lights.

11          Q.    That's right.

12                    Are you on any medications today?

13          A.    Today?

14          Q.    Yeah.

15          A.    Yes, I do take medications.

16          Q.    Which ones are you on, let's say the last 24  
17   hours?

18          A.    Well, Humalog insulin, with meals.

19          Q.    Okay.

20          A.    Tresiba, long-acting, to work with my  
21   insulin, once a day.

22          Q.    Okay.

23          A.    And Prilosec for acid reflux.

24          Q.    Okay.

25          A.    Wellbutrin.

1 Q. All right. I'm familiar with that one. And  
2 what else?

3 A. I take that as a way of -- I just recently  
4 started on it, to go through nonsmoking. You know, it  
5 eliminates the cravings or whatever.

6 Q. Is it working?

7 A. Yes, very much.

8 Q. How long since you had a cigarette?

9 A. I had one at lunchtime.

10 Q. What, is this helping you reduce your urge to  
11 smoke?

12 A. Yes. Yes.

13 Q. Is that the idea?

14 A. Yes.

15 Q. Okay.

16 A. In fact, I used to be a chain-smoker. I  
17 don't know whether I enjoyed the smoking or the  
18 lighting up.

19 Q. What other meds do you take?

20 A. I take Lexapro.

21 Q. Glaxipro?

22 A. No, Lexapro.

23 Q. Okay.

24 A. L-e-x-a-p-r-o.

25 Q. What's that about?

1 A. That's an antidepressant.

2 Q. Okay. What else?

3 A. I take -- these have two funny names.

4 Furosemide, F-u-r...

5 Q. What is that about?

6 A. That has to do with food retention.

7 Q. Is that related to your diabetic condition?

8 A. Yes. Yes.

9 Q. Okay. What else?

10 A. It's called Spiractin. It works, as well.

11 Q. And that, again, is to help you with sugar?

12 A. Diuretic.

13 Q. Diuretic?

14 A. Yeah.

15 Q. Okay. Others?

16 A. They just put me on one. I used to take a  
17 preventive blood pressure medication, Asenophil (ph),  
18 but they took me off because they said I really didn't  
19 need it. But it works to -- with my diuretics. And  
20 it's called -- I just started it this week. It's a  
21 short name, C-o -- I can't be sure.

22 Q. And what does it do, blood pressure?

23 A. Yes. Yes. But it -- it's to keep me, with  
24 these fluid pills, from becoming potassium deficient,  
25 so that I don't have to take potassium.

1 Q. Okay. What else?  
2 A. I have a breather, as needed --  
3 Q. What --  
4 A. -- for allergies.  
5 Q. What's the name of that?  
6 A. Breo, B-r-e-o.  
7 Q. Okay. Others.  
8 A. I have a prescription for nasal spray,  
9 Astelin, A-s-t-e-l-i-n, as needed.  
10 Q. And that, again, is for?  
11 A. Allergies, uh-huh.  
12 Q. Are there any others?  
13 A. Count down. See how many you have before the  
14 two sprays, please. Five or six?  
15 Q. Well, I've got -- it's -- it's seven, I  
16 believe, because there were two there about the --  
17 A. Oh, the two insulins, yes. But I'm talking  
18 about the pills. So take four of them off.  
19 Q. Okay. So four others and then two inhalers,  
20 or nasal spray and inhaler?  
21 A. No.  
22 Q. Is there anything else?  
23 A. No. Two and two. I take a total of six  
24 pills a day.  
25 Q. Now, do any of these pills affect your memory

1 or your speech?

2 A. No.

3 Q. Have you had any problems with your memory in  
4 the last, I don't know, while, last year or two?

5 A. No, sir.

6 Q. I'm going to show you, just so we can get on  
7 the same page, Exhibit 1 from the deposition of Ross  
8 Holliday this morning. It was a copy of a Promissory  
9 Note, which I'm showing to you right now.

10 A. Uh-huh.

11 Q. Is that what we're -- this lawsuit is  
12 about?

13 A. Yes, sir.

14 Q. You agree that that is the Promissory Note?

15 A. Yes.

16 Q. Okay. Were you present when Ross S. Holliday  
17 signed a Promissory Note?

18 A. I'm not sure. I don't recall. But I was  
19 aware of it, yes.

20 Q. Your attorney wrote a demand letter on July  
21 12, 2017, to Ross Holliday, demanding payment of this  
22 note. And it had a copy of the note, I believe,  
23 attached. Did you think, at that time, that \$2 million  
24 plus interest was due on this Promissory Note --

25 A. Yes, sir.

1 Q. -- when your lawyer wrote that opinion?

2 A. Yes, sir, I did.

3 Q. So is it your opinion that no payments were  
4 ever made by Ross on this loan?

5 A. I really couldn't say, because I had no  
6 involvement with the record keeping for the amusement  
7 company anymore or -- I know personally none was given  
8 to me.

9 Q. So if Ross paid the two million and it went  
10 through Holliday Amusements or Zeezrom, would you know  
11 it?

12 A. No, because I had no access to the records.

13 Q. Well, what was the basis for your thinking  
14 that two million plus interest was due from Ross?

15 A. Because I was never told that he had paid it  
16 off --

17 Q. Well --

18 A. -- to Warren. And I knew he hadn't paid it  
19 to me.

20 Q. Let's follow-up on that.

21 A. Uh-huh.

22 Q. Did you ever get any money from Ross to pay  
23 back this Promissory Note?

24 A. No, sir.

25 Q. And I don't want to assume too much. You

1 said, you know, you don't know the records of Holliday  
2 and Zeezrom and all that?

3 A. I used to be -- you know, do all that in the  
4 office.

5 Q. Yes.

6 A. And then they -- they hired other people.  
7 And I became less involved, and more involved in other  
8 ventures that we had.

9 Q. Yes.

10 A. We had an auto salvage on Highway 17. And I  
11 ran that for ten years.

12 Q. Uh-huh. You had a phone recorder in the  
13 attic, didn't you?

14 A. Excuse me?

15 Q. Do you remember wanting to listen in on some  
16 telephone conversations about parts getting gone from  
17 your business?

18 A. No, I did not.

19 Q. Okay.

20 A. I don't even know where that came from.

21 Q. I was representing you at the time.

22 A. No.

23 Q. The problem was solved, I think. That  
24 employee is gone, so...

25 A. Well, the business is gone.

1 Q. Yeah. You also had a taco business, didn't  
2 you?

3 A. We -- we -- yes. We bought a -- Taco Trio.  
4 It was a restaurant. Actually, it was on Coleman,  
5 where the Taco Bell is now. We bought that. It was an  
6 individual that owned Taco Trio. And he wanted to  
7 retire and go back to Ohio.

8 Q. Did you -- were you involved with running  
9 that business?

10 A. Not physically, day-to-day, no, sir. Part of  
11 the arrangement was, he had a son that was in his late  
12 thirties, early forties. He didn't want to go with his  
13 family back to Ohio. And he pretty much was a manager  
14 or whatever. And we just agreed to keep him on. He  
15 knew how the recipes worked, and the system and all  
16 that.

17 Q. Did you ever have a business over on the  
18 Bypass, close to that shopping center that had the  
19 bowling alley and the pool hall? I thought you had a  
20 business over there for a while. I don't know. Maybe  
21 I'm mistaken. That's okay.

22 Were there any other businesses?

23 A. At one time, we thought about buying that  
24 bowling -- putting a bowling alley where the skating  
25 rink was.

1 Q. Uh-huh.

2 A. Right behind the Volkswagen new car  
3 dealership.

4 Q. Oh. On this \$2 million note, do you know  
5 where the \$2 million came from?

6 A. Yes.

7 Q. Where?

8 A. It came from the bank. We pledged almost  
9 nine acres on Highway 17 North, where I had the salvage  
10 yard, which eventually became Sawgrass Technologies.

11 Q. Were you an owner of that property at the  
12 time, legal owner?

13 A. No.

14 Q. Did any of this \$2 million come out of your  
15 checking account?

16 A. No, sir.

17 Q. Did this money come out of any account that  
18 you had an interest in, like a joint account with --

19 A. No. It strictly was a loan from the bank.

20 Q. Okay. Did you sign the loan with the bank?

21 A. No. I wasn't required to.

22 Q. So you were not liable on that loan --

23 A. No. No.

24 Q. -- to the bank?

25 A. No.

1 Q. Did you contribute anything else toward  
2 making this loan, other than money or any other  
3 thing?

4 A. Well, I was responsible for purchasing that  
5 property, making that investment, pretty much all  
6 the -- all the properties that Warren and I bought,  
7 with the exception of one on Bees Ferry Road, that he  
8 dealt with. But we kept it a very short period of  
9 time. I secured financing, mostly owner financing, on  
10 all the properties. And managed -- you know, we had  
11 tenants. And we kept them over the years, pretty much  
12 the same tenants.

13 Q. Well, prior to putting all of those different  
14 properties in different LLC's, were they in the name of  
15 Warren P. Holliday?

16 A. I -- I can't remember. I think they were.  
17 And then there came a lawsuit. It was associated with  
18 video poker machines that he operated through Holliday  
19 Amusements.

20 Q. Yes.

21 A. And they -- I think they outlawed the use of  
22 those machines January 1st, 2000.

23 Q. Okay.

24 A. And this lawsuit -- I'm not sure. It was  
25 about that same time. Somebody had lost a bunch of

1 money in video poker machines. And they wanted us to  
2 have to give them back monies. Anyhow, the -- I just  
3 had a -- give me a second.

4 Q. Do you remember whose idea it was to put all  
5 the properties in the LLC's?

6 A. Yes. Warren and I discussed it because we  
7 wanted to make sure that -- by then, things were pretty  
8 much getting close to being paid for. And that was  
9 going to be, like, our retirement income. And we  
10 didn't -- we didn't want -- if anybody -- and then, you  
11 know, most of them were restaurants and bars. And, of  
12 course, Warren had, like, a captive tenant because of  
13 the machines and owning the property. But then, when  
14 all this litigation came up about video poker and being  
15 outlawed, whatever, it just allowed -- in South  
16 Carolina -- we didn't want to have liability where  
17 somebody would come and take all of our property in the  
18 event of a lawsuit or -- or try to. So that's why we  
19 formed separate LLC's. And the easiest way to keep  
20 track of it was to use the property address or brief  
21 description of the property.

22 Q. Okay. And that, as you recall, was 2000?

23 A. Real close, between 2000 and 2005.

24 Q. Okay.

25 A. And it wasn't done like that.

1 Q. All right.

2 A. It was over a period of time.

3 Q. Do you know why your name is on this  
4 Promissory Note?

5 A. Yes, because Warren and I had an estate plan,  
6 individual. And, at that time, our whole idea was to  
7 build something to take care of us in our old age,  
8 because we knew with the death of video poker machines,  
9 amusement machines are -- ultimately, would not bring  
10 in enough money for us to live the way we chose to  
11 live, so -- and also, the main thrust was that we would  
12 have monies for our children and their children and --  
13 you know, when we passed on. And if they had special  
14 medical needs in the interim, we could help.

15 Q. Well, how was this, your name being on the  
16 Promissory Note as a payee, how was that part of your  
17 estate plan? I mean, how does this help you accomplish  
18 your --

19 A. Well, we took a debt-free piece of property  
20 and encumbered it with the bank, with a loan for \$2  
21 million.

22 Q. Right.

23 A. We didn't have \$2 million when Warren was  
24 thinking about it buying into it himself. And we  
25 didn't want to encumber all the paid-for properties and

1 require appraisals on all of them and all. And it was  
2 simple that the value -- most valuable property was  
3 2233 Highway 17, which included Richard's Bar, next  
4 door, which ultimately got subdivided and that became  
5 2237.

6 Q. Yes.

7 A. And I think that that mainly happened because  
8 of two lawsuits from Richard's. So it just made sense  
9 to keep the loan on one property --

10 Q. Yeah.

11 A. -- rather than -- and then, if anything ever  
12 came up, we could sell, re-invest, or we could  
13 short-term borrow against it, any or all of them.

14 Q. Okay.

15 A. So...

16 Q. Is there any other reason why your name is on  
17 this Promissory Note, that you know of, any other  
18 reason why --

19 A. Well, I mean --

20 Q. -- you're a payee?

21 A. -- it was a marital agreement. We'd been  
22 married for many, many years. We had a common goal.  
23 That's why, even in the divorce, we -- we did not  
24 really have to argue or have any conversations about  
25 selling properties or appraising them and divvying up

1 individual parcels, one to him and one to me, or to  
2 sell them and split the money, because we always had an  
3 estate plan that was going to protect us and our  
4 children. And that's why he guaranteed me through a  
5 preferred interest in Zeezrom Properties, which covered  
6 all of the properties.

7 Q. Yes.

8 A. Protection for my old age, even then, in the  
9 midst of a divorce. I mean, we honored each other's  
10 commitments. Little things like dividing up -- we had  
11 precious metals in two bank boxes, two different banks.  
12 We agreed just to split them right down the middle. We  
13 had cemetery lots that we agreed to split down the  
14 middle.

15 (Discussion held off the record.)

16 (Plaintiff's Exhibit No. 8 marked for  
17 identification.)

18 BY MR. NETTLES:

19 Q. We've marked this document I'm going to hand  
20 to you as Exhibit No. 8 for all of today's depositions.  
21 And it is a copy of the Marital Settlement Agreement.

22 A. Thank you.

23 Q. You can go ahead and flip over to the last  
24 page, first of all. And we'll say, did you sign this  
25 Marital Settlement Agreement?

1 A. Yes.

2 Q. Does that look like a copy of the agreement  
3 you reached with Warren in your divorce?

4 A. Yes.

5 Q. And this was made a part of the divorce  
6 decree; is that right?

7 A. Correct.

8 Q. And also the -- I believe it's -- no,  
9 Patricia Anne Holliday Marital Trust was also attached  
10 to the divorce decree; was it not?

11 A. Correct. It was part of it.

12 Q. That's where you're getting your \$16,000 a  
13 month?

14 A. Well, I'm not sure where I'm getting it from.  
15 That's where I'm supposed to get it from.

16 Q. But it's through that mechanism?

17 A. Yes. And that was the intention.

18 Q. Okay. You were represented by a lawyer in  
19 that divorce; were you not?

20 A. Yes.

21 Q. Alan Toporek?

22 A. Yes, with co-counsel of David Michel.

23 Q. I believe David Michel got involved when we  
24 went back to court about the amount of life insurance;  
25 is that right?

1           A.    Well, yes.  But we -- I think we did have a  
2   consultation with him when we were trying to establish  
3   some of the details of the divorce and the discussions  
4   came up about the trust or whatever.

5                    But, actually, the actual person that  
6   consulted, was on record, was Heyward Carter.  Because  
7   we had him look it over, the final -- there were  
8   several drafts to that.  And we had Heyward Carter look  
9   those over, because he -- he drew our original estate  
10  and wills.

11           Q.    In your discussions with Warren about the  
12  divorce, was Warren mentally and intellectually  
13  competent to enter the Marital Settlement Agreement?

14                   MR. TILLMAN:  Object to the form.  You can  
15  answer.

16  BY MR. NETTLES:

17           Q.    Just your opinion.  I know you're not a  
18  doctor or a psychologist or whatever.

19           A.    Well, you, know it's hard.  I think he had  
20  diminished capacities in that he had a lot of days  
21  where dialysis and home dialysis, even the going  
22  through the kidney transplant and all that -- and he --  
23  he had moments when it really grabbed ahold of him, you  
24  know?  His blood pressure on dialysis days would drop  
25  dramatically low.  So I can't say that he fully had all

1 of that going on 24/7. But he was not a dumb man or --  
2 he was very frail, due to his illness and medications  
3 that he took to help with the, you know, antirejection  
4 of the kidney. And he also had blood clot issues.

5 Q. Look at page three of the agreement.

6 A. Uh-huh.

7 Q. You see that?

8 A. Yes, sir.

9 Q. The first section at the top of that page is  
10 B, General Release Of Liability.

11 Are we looking at the same spot?

12 A. Yes, sir.

13 Q. Did you agree not to sue your spouse for --  
14 you both, you and Warren, not to sue each other, and  
15 you discharged each other, their administrators,  
16 successors, heirs, assigns of and from any and all  
17 suits, actions, et cetera?

18 Did you understand that -- what that meant,  
19 that you and Warren were not going to sue each other?

20 MR. TILLMAN: Object to the form.

21 THE WITNESS: I'm sorry, what did you say?

22 MR. TILLMAN: I just placed an objection on  
23 the record, but you still need to answer.

24 THE WITNESS: Oh, okay.

25 BY MR. NETTLES:

1           A.    Basically, Warren was concerned that I  
2    wouldn't come back later with any kind of claims  
3    against his management or ownership or whatever of  
4    Holliday Amusements, that -- you know, in his  
5    day-to-day business operations, that I wouldn't  
6    interfere.

7           Q.    Uh-huh. Do you know what it means when it  
8    says, Hereby discharge each other, their  
9    administrators, successors, heirs, and assigns, and  
10   then it goes on to say discharge from what?

11                   Do you know what an administrator or a  
12   successor or an heir, do those words make sense to  
13   you?

14           A.    Oh, yes.

15           Q.    You know what they are?

16           A.    I'm familiar with it, yeah.

17           Q.    Is Ross Holliday a successor to the late  
18   Warren P. Holliday in Zeezrom Properties?

19                   MR. TILLMAN: Object to the form.

20           BY MR. NETTLES:

21           A.    Not that I'm aware. He was a manager, but  
22   not the owner.

23           Q.    Your other lawyer, Ms. Blair, has filed a  
24   petition for you in the probate case?

25           A.    Yes.

1 Q. Have you read Warren's will, the one that's  
2 being administered in that situation?

3 A. Are we talking about the one that Heyward  
4 Carter drew up for us, the original will?

5 Q. No, no. It's a later will.

6 A. I may have glanced at it, but I don't have a  
7 copy of it.

8 I found it interesting that in all of this --  
9 Warren's name was on our personal checking account, but  
10 I think only two times did he ever write checks. One  
11 was, like, a political contribution. He, you know,  
12 didn't want it to come to his company. And the other  
13 was to buy parts for a race car. And he didn't have --  
14 back then, it was "BC," before cards, credit cards.  
15 And he didn't have enough cash money, so he asked me to  
16 give him a check because he wasn't sure how much he was  
17 going to buy or spend.

18 Other than that -- so when all that came --  
19 this kind of conversation came up -- because the house  
20 was in my name, but the power bills came in his name,  
21 and the phone bills. And because I was the owner of  
22 the property, I was not required to put up a deposit.  
23 However, I had to take -- it was very involved getting  
24 his name off of it.

25 As a matter of fact, when he rented an

1 apartment, he called -- he didn't call it his main  
2 residence for the simple reason he didn't want to have  
3 to put up a tenant deposit on it and he wanted to ride  
4 off of that one. And the power company contacted me.  
5 And I said, No, we have an agreement. We're not mixing  
6 and commingling things. This house belongs to me. I  
7 live in it. And his address is an apartment. And he  
8 does not own it, so...

9 But I think that was one of those things. I  
10 don't think that it was a malicious thing on his part.  
11 That's the kind of indication he was dependent on other  
12 people to take care of those kind of things, pay his  
13 rent, pay his bills, you know, and somebody neglected  
14 to do it.

15 Q. You read this full Marital Settlement  
16 Agreement before you signed it, right?

17 A. Yes, I did. And there were still things that  
18 I didn't really like, but I was getting tired. This  
19 was about the third or fourth draft.

20 Q. You discussed all of your concerns with your  
21 lawyers?

22 A. Yes, sir.

23 Q. Go to page six of the Marital Settlement  
24 Agreement, Exhibit 8.

25 A. Yes.

1 Q. In the second sentence of Section D, I'm  
2 going to read it. And let's see if we understand it  
3 and agree on it.

4 The parties agree that Warren shall retain  
5 and continue full ownership and interest in any and all  
6 such companies and other business assets which Warren  
7 holds at this time. And Patricia hereby relinquishes  
8 and waives any claims she may have in or against these  
9 business assets, except as provided in the Patricia  
10 Anne Holliday Trust.

11 This Promissory Note, was it a business  
12 asset?

13 A. No, sir.

14 Q. What was it?

15 A. It was a personal loan.

16 Q. When you say "personal loan," you mean it  
17 was, you know, a note from a person to another person;  
18 is that what you mean?

19 A. Yes. It was personally from Warren and I.  
20 Instead of giving him the cash money, which we didn't  
21 have, as I said earlier, we pledged a piece of property  
22 and gave it to him that way.

23 Q. Well, NBSC is not a person, in that sense,  
24 are they? Is it?

25 A. No, Ross, the ultimate --

1 Q. Oh, yeah.

2 A. Yes.

3 Q. But the source of the loan funds was the  
4 bank, right?

5 A. Our credit and our asset, yes.

6 Q. You say "our asset." At the time of your  
7 divorce, that was all going to be -- well, it was given  
8 up by you, in exchange for 16,000 a month. He gets to  
9 keep Holliday Amusements and Zeezrom, and all those  
10 other properties. Isn't that the way it worked out?

11 A. The management of them, to assure that I got  
12 the 16,000 a month.

13 Q. Yes.

14 A. For life.

15 Q. Absolutely.

16 A. But the \$2 million note was not a part of  
17 that.

18 Q. Well, you have made a claim against Warren  
19 Holliday's estate; have you not?

20 MR. TILLMAN: Object to the form.

21 BY MR. NETTLES:

22 A. I guess, yes. In a way, yes. Yes.

23 Q. And what is your understanding of what --  
24 that claim you've made, what is that?

25 A. It's -- it's because now that he's deceased,

1 in this marital agreement, where he guaranteed to  
2 personally guarantee me -- I'm sorry, I'm getting a  
3 little froggy.

4 Q. You want to have some water?

5 A. No. I'll get a lozenge.

6 He obligated his heirs and executors, et  
7 cetera, to comply with those, in the -- in the -- well,  
8 not in the event, when he died. If --

9 Q. Yes.

10 A. If he died before me.

11 Q. Yes.

12 A. To assure me that, that I would always  
13 receive that. Like I said, it was -- at one point, we  
14 were talking about maybe a 6,500 to 8,000 a month in  
15 income. And rather than just diverse -- break up our  
16 portfolio, we took it to 16, which would cover taxes  
17 that I would be obligated for on that. And the -- the  
18 difference was to kind of go toward any interest in the  
19 properties.

20 Q. Right.

21 A. Partial or whatever. Couldn't say how much.

22 Because at the time, I mean, it was our  
23 intention to keep properties for as long as they were  
24 profitable and guaranteed a good cash flow. But it was  
25 always our intention to, if we sold, to replace and to

1 add to it. But we never seemed to get ahead  
2 financially, to add to it.

3 And I had quit selling real estate, and so I  
4 no longer could apply my commissions as parts of down  
5 payments. Almost all of these properties, I had the  
6 listing on.

7 Q. All right.

8 THE WITNESS: Anybody care for a lozenge?

9 MR. TILLMAN: No, thank you.

10 BY MR. NETTLES:

11 Q. Do you remember when and where you got a copy  
12 of the Promissory Note?

13 A. Yes. I don't remember the exact date.

14 Q. Well, approximately?

15 A. I -- Warren -- he handed it to me. Well, he  
16 didn't hand it to me. He came home. And he had a  
17 habit of slamming the mail -- because he liked to know  
18 what was going on. So he brought the mail in when he  
19 came home. And if anything he wanted -- he just kind  
20 of went through it. The rest of it, he put on top of  
21 the counter. We have, like, a cooktop, glass.

22 Q. Yes.

23 A. And he would put it there. And he came home  
24 that particular day and put the note and said, Now,  
25 there's your copy.

1 Q. Have you ever seen an original of the  
2 Promissory Note signed in ink pen or anything?

3 A. Yes, I did.

4 Q. Where did you see that?

5 A. At 16 -- I mean, 1808 Meeting Street, his  
6 office.

7 Q. Do you have a copy of that original, at this  
8 time?

9 A. Yeah. I just told you, Warren came home and  
10 brought it.

11 Q. So -- well, that was a copy, right?

12 A. He made me a copy from that original.

13 Q. Right. Do you have possession of the  
14 original, signed in ink?

15 A. No, no, no. He kept it in his office.

16 Q. Did you ever have actual, physical possession  
17 of the original Promissory Note that is the subject of  
18 this lawsuit?

19 A. I mean, I touched it. I held it. I read it.  
20 But I never...

21 Q. That was when you were at the Holliday  
22 offices at 1808 Meeting Street?

23 A. Yes.

24 Q. Well, you didn't -- did you take it out of  
25 the office?

1 A. No.

2 Q. Okay. And as far as you know, was it  
3 there -- at least, last you knew, is that where the  
4 original note was?

5 A. Yeah.

6 Q. So you do not have the original, signed  
7 Promissory Note --

8 A. No.

9 Q. -- in your possession today?

10 A. No, sir.

11 MR. TILLMAN: You need a break or are you  
12 okay?

13 THE WITNESS: No, no. No, no. I'm fine,  
14 thank you.

15 BY MR. NETTLES:

16 Q. In the Marital Settlement Agreement, you  
17 agreed not to inherit anything from Warren. Do you  
18 remember that? I'll tell you where it is. Look on  
19 page nine.

20 A. Are you looking under Release of Estate  
21 Claims?

22 Q. Yes. Yes.

23 A. Uh-huh.

24 Q. Have you read that again today?

25 A. I'm doing it right now.

1 Q. Okay.

2 A. Correct.

3 Q. So -- I'll just leave it right there.

4 I think you and I have agreed today that the  
5 source of the money to make this loan to Ross was NBSC  
6 Bank; is that right?

7 A. Yes.

8 MR. TILLMAN: Object to the form.

9 BY MR. NETTLES:

10 Q. And has that loan to NBSC been paid back?

11 A. I have no way to know. I don't have the  
12 records, or access to them, let me put it that way.

13 Q. Did you make any payments to NBSC on that  
14 loan?

15 A. Out of my personal checking account or  
16 anything?

17 Q. Yeah, or any other source of personal  
18 money?

19 A. No. No.

20 Q. Warren -- I mean, excuse me, Ross Holliday  
21 testified this morning in a deposition that he made  
22 payments on this \$2 million Promissory Note in the  
23 years 2005 till 2007. Do you have any evidence or  
24 knowledge that that did not happen?

25 A. No, I have no...

1 Q. Do you know whether or not Warren instructed  
2 Ross to make payments on the \$2 million loan?

3 A. He did call him on a couple of occasions,  
4 because we were in need of money. And I think, at that  
5 time, interest was almost 13,000. You know, as the  
6 loan paid down, the interest, of course, duly went  
7 down. And, so, you know...

8 Q. What did Warren say to him? Pay down this  
9 loan?

10 A. Well, you're going to have to make some  
11 effort to pay on this loan. And -- you know, and also,  
12 remember, you know, interest is getting billed every  
13 month.

14 Because, at that time, Ross's business with  
15 Holmes Homes was in very good stead.

16 Q. Say that again.

17 A. Holmes Homes, that he put the \$2 million  
18 investment -- the housing market was in a slow decline.  
19 You know, it was the beginning of a trend. But they  
20 had so many things going on that they were doing well.  
21 They were all living in big houses, driving nice cars,  
22 taking vacations, buying lavish gifts for each of  
23 themselves, one to the other.

24 Q. Such as?

25 A. I think Spencer Holmes gave Ross a very

1 valuable Rolex. There was a painting that Ross called  
2 me and wanted to ask me about, because I knew something  
3 about art, where he could get it, so that he could give  
4 that to Spencer.

5 Q. So those were expensive items between the  
6 owners?

7 A. Of the Holmes Homes, yeah, the three -- three  
8 partners, yes.

9 Q. How much money do you spend on clothes every  
10 month?

11 A. Every month?

12 MR. TILLMAN: Object to the form.

13 BY MR. NETTLES:

14 Q. Yeah. Or every year, if you can think of it  
15 that way?

16 A. Oh, gosh. I used to spend -- I can't say. I  
17 do -- I don't spend much now. My tastes have changed.  
18 I mean, I've gotten older, a little more sedate.

19 Q. Your lawyer wrote this letter, which is  
20 Exhibit 3 to the depositions, on July 12, 2017, last  
21 summer, basically, right?

22 A. Uh-huh.

23 Q. Why did you wait until that time to make this  
24 demand for payment?

25 A. Well, I just assumed all the conversations

1 that I had with Warren, that when he told Ross he was  
2 going to have to start making payments and all, I just  
3 assumed that that was being done, either he was paying  
4 the interest -- I know that he was rolling over the  
5 loans. Like he said this morning, you know, you just  
6 didn't go in there and get a new loan for the same  
7 balance. As the balance declined, they usually ask for  
8 a percentage, you know, to be paid on it, and then they  
9 would renew it. And I -- I don't even remember if the  
10 interest rate was a fluctuating one with each rollover,  
11 so to speak.

12 Q. We can learn that by looking at the loan --

13 A. Yeah. Yeah.

14 Q. -- documents. But what I'm asking is, why  
15 did you wait until July 2017 to make this demand on  
16 Ross to pay you \$2 million?

17 A. Because -- well, I had already tried to get  
18 copies of records and information about Zeezrom and  
19 other things into Warren's estate that would have  
20 affected me with these guaranteed monthly payments.

21 Q. That's in that other lawsuit you have against  
22 Ross --

23 A. Yes.

24 Q. -- and Lea about the marital trust; is that  
25 right?

1           A.    Correct.  Correct.  So I didn't -- I didn't  
2    have the wherewithal.  When Ross took over the running  
3    of Holliday Amusements and related businesses, when  
4    Warren was so ill, there came a time that he really  
5    didn't want me down there interfering or, you know,  
6    inquiring as to what was going on.  And so he kind of  
7    sort -- I mean, he made it real clear I was -- I was  
8    not welcome down there.

9           Q.    That is Ross made it clear?

10          A.    Yes.

11          Q.    So, what, did he ask you not to come to the  
12    office?

13          A.    Yes.  And so I had no way to get information.  
14    My sister worked there, but she wouldn't breach that  
15    confidentiality and give me information, nor would I  
16    insult her and ask her for it.

17                   And he was -- it was about the time -- might  
18    have been a little after the divorce.  Ross was at the  
19    house and come by, I don't know whether to look for  
20    some clothes or something for his father.  And he asked  
21    for my American Express card.  It was Holliday  
22    Amusements.  It was a corporate card.  And I hadn't  
23    been using it.  I didn't feel like I was entitled to  
24    it.  So -- but I just had it.  Nobody asked for it.  So  
25    I handed it to him.  It was my understanding he was

1 going to destroy it. I later found out that his wife  
2 was -- Kelly was using it. Now, whether she was  
3 signing my name or making phone purchases, there were  
4 charges on that card, after I had given it to him, that  
5 were authorized by her. So the card, in fact, was not  
6 destroyed.

7 Q. Was that after your divorce or before, or do  
8 you remember?

9 A. No, it was right after the divorce.

10 Q. Before the divorce, had you used that  
11 Holliday Amusements American Express credit card?

12 A. Yes.

13 Q. Did you use it for things you wanted to  
14 buy?

15 A. Yes.

16 Q. Like clothes?

17 A. Yes, gifts for children, grandchildren.

18 Q. But you think that Ross's wife should not use  
19 that card; is that what you're saying?

20 A. Correct. Because those -- she had nothing to  
21 do with running or whatever, or founding or whatever,  
22 for Holliday Amusements. She had no interest in it.  
23 The card was issued in my name. She's not Patricia B.  
24 Holliday. She's...

25 Q. I thought it was in the name of Holliday

1 Amusements?

2 A. That was a corporate card.

3 Q. Yeah.

4 A. But then it had individual accounts. And  
5 when you got a statement, it would have a statement for  
6 me, one for Warren. None of my expenses or charges on  
7 those cards, not even my gas, was written off as an  
8 expense. It was charged as income to Warren. And we  
9 shared joint filing tax returns.

10 Q. Okay. Let me get back to this. Is there --  
11 can you offer me any more information about why you  
12 waited until July 2017 to make this demand for 20 --  
13 for, excuse me, \$2 million?

14 A. Well, I had -- I had not received any  
15 accounting or information. And it did not show up as  
16 an asset on Warren's inventory of his estate, that  
17 there was money due. And I was trying to find out if  
18 there were payments made to Warren or on Warren's  
19 behalf to the bank or whatever. I mean, once you get  
20 divorced, things are hard to get, even a copy of a  
21 death certificate for a life insurance policy.

22 Q. So I want to make sure I understand this  
23 point. You didn't know when -- when you asked your  
24 lawyer, Mr. Tillman, to write this letter in July 2017,  
25 you didn't know how much, if any, payments Ross had

1 made on this note?

2 A. Right. I had no way to know.

3 Q. So you did not know whether it was paid or  
4 not?

5 A. Correct. I only know that proceeds from the  
6 sale of 16 -- I mean 1808 Meeting Street -- and I don't  
7 remember how, but, anyhow, was used to pay off the  
8 final balance on that \$2 million loan to the bank. So  
9 it didn't come from Ross's personal or personal  
10 business entities, so the loan was, in fact, satisfied.  
11 But it was satisfied by the sale of Warren and I -- you  
12 know, properties that we had owned or acquired or  
13 whatever.

14 Q. Well, at that point, when the NBSC loan was  
15 paid off, you didn't have any interest in 1808 Meeting  
16 Street, did you?

17 A. Uh-uh.

18 Q. You're saying no?

19 A. Not that I know of, other than the fact  
20 that -- potential income. But it didn't make sense,  
21 you know, under Zeezrom type properties' umbrella to  
22 charge yourself rent for the space you're running your  
23 business out of. So I think, at the end of the year,  
24 there was -- the CPAs put, like -- and I think the IRS  
25 requires, like, an imputed --

1 Q. Value?

2 A. -- value that you've got -- I remember that  
3 happened out at the junkyard, the salvage yard.

4 Q. Yeah.

5 A. You didn't have to take the money. But you  
6 should have, if you could have.

7 Q. Were there any other reasons why you asked  
8 your lawyer to write this letter on July 2017, to ask  
9 Ross to pay you \$2 million plus interest? Are there  
10 any other reasons why you had that note, that letter,  
11 written?

12 A. He was my collection. I had no conversation  
13 or communication with Ross at that point.

14 Q. Let me make sure I got this straight. You  
15 didn't contribute any of the \$2 million that was loaned  
16 to Ross; is that correct?

17 MR. TILLMAN: Object to the form.

18 BY MR. NETTLES:

19 A. Well, I kind of sort of guaranteed it in the  
20 way that, at that time, I was married to Warren. It  
21 was a joint asset. We -- we shared the income and took  
22 off the deductions for expenses on our personal income  
23 tax. I said we jointly filed. I feel like, yeah, I  
24 jeopardized -- I mean, at that time, there was no  
25 discussion about separation or divorce, so I was

1 looking for that to be like Warren and I had originally  
2 said. It was going to be in our retirement pool, so to  
3 speak. So I did feel as though I was being depleted of  
4 that.

5 Q. Did Ross propose the terms of this note to  
6 you? I mean, did he say, Mom, I need \$2 million?

7 A. It was a discussion between -- I don't  
8 remember -- recall specifically. We did have the  
9 conversation, at one time, between Warren and Ross and  
10 I about -- you know, well, us -- you know, it -- that  
11 was when it became clear that Warren was not going to  
12 invest \$2 million, encumber a piece of paid-for  
13 property. And, at the last minute, a monkey wrench was  
14 thrown into that deal. They were buying the father's  
15 share, Michael Holmes, out of Holmes Homes. And they  
16 had development loans and construction loans, and I  
17 don't know what all else.

18 Q. Yeah.

19 A. But they -- it was a little over \$40 million.  
20 And Warren said, Hold up. I'm -- even a third, I am  
21 not going to sign off on it. I can't. I won't risk my  
22 life's work. And your mother and I, we're just not  
23 going to do it.

24 Q. So that's when --

25 A. That's when Ross said, Well, I think it's a

1 good deal.

2 We knew the people personally. It had  
3 nothing to do with that.

4 Q. No.

5 A. We liked them, genuinely liked them. They  
6 were in our home.

7 Q. Yeah.

8 A. And, you know, our boys were very close.  
9 Matter of fact, Pat Holmes was the best man for our  
10 oldest son's wedding. And Spencer was a missionary for  
11 our church in Charleston. He spent a lot of time with  
12 us. Played golf on days off from his missionary with  
13 Lea.

14 But it was just business sense, and so we  
15 weren't gifting. There was no idea or never any  
16 intention to gift Ross \$2 million. It was a business  
17 transaction.

18 So, by then, Ross was really confident that  
19 it could work and he was going to make it work.

20 Q. Let me confirm something. You just said the  
21 loan was for a business transaction between Ross and  
22 the Holmes?

23 A. Yes. And that's when Warren kind of made an  
24 announcement to the family, because we had even  
25 discussed it with the other children, that this would

1 be a great investment thing for our family. But then  
2 he had to put his tail between his legs and say, Look,  
3 I backed out. But I just want y'all to know, so  
4 nothing comes up. I'm lending Ross the money. And  
5 this is his deal and his deal alone.

6 And that was when there was some  
7 conversation, Well, that's a lot of damn money, Daddy.

8 And he said, Yes. But don't worry. We got a  
9 note. And I'm going to get Ross to sign it.

10 So that was -- it was handled in a business  
11 fashion, as -- as close as you can do without bringing  
12 in a bunch of Philadelphia lawyers --

13 Q. Okay.

14 A. -- for your children. You know what I'm  
15 saying? You know...

16 (Discussion held off the record.)

17 (A brief recess was taken.)

18 BY MR. NETTLES:

19 Q. You filed the divorce action against Warren  
20 Holliday, didn't you?

21 A. Yes.

22 Q. And I don't recall the grounds. Was it  
23 one-year separation?

24 A. Yes.

25 Q. And so you and Warren had been living apart

1 for some time?

2 A. Yes.

3 Q. In the divorce, you got the marital abode.  
4 We call it the house.

5 A. Well, I already had title to it.

6 Q. Right. But he released any claims he might  
7 have had to that?

8 A. Correct. Yes, sir.

9 Q. And you got some life insurance --

10 A. Yeah.

11 Q. -- on Warren's life?

12 A. Yes.

13 Q. And you've been paid that, right?

14 A. Yes, I received that.

15 Q. Do you recall how much you got?

16 A. On the life insurance?

17 Q. Yeah, from the insurance company?

18 A. Yeah. It was like -- I want to say 672,000,  
19 something like that.

20 Q. Okay. Have you gotten \$16,000 a month from  
21 the marital trust for every month since you got --

22 A. I don't -- well, I don't know where it's come  
23 from.

24 Q. No, I'm not asking that.

25 A. It's electronic.

1 Q. I'm asking, have you received it?

2 A. Yes, I have, \$16,000 per month.

3 Q. How long did you and Warren Holliday live  
4 separate and apart prior to the divorce? I mean, the  
5 divorce is one year. But how long had you guys been  
6 living separately?

7 A. It was probably 13, 14 months.

8 Q. Do you know where he was living in that  
9 time?

10 A. Yes. Matter of fact, I visited him. He was  
11 at -- it's called -- I get the Sawgrass and the  
12 Sweetgrasses mixed up.

13 Q. Sweetgrass on Mathis Ferry?

14 A. Yes. Correct. Matter of fact, I'd go over  
15 and helped him.

16 Q. How many times did you visit him there?

17 A. Oh, gosh. I really don't know. It was  
18 probably at least once a week, minimum.

19 Q. In the deposition of Ross Holliday this  
20 morning, you were here, right?

21 A. Yes.

22 Q. And you heard him say that in 2010 and '11,  
23 largely because of Warren's poor health, that you and  
24 Warren needed help running his businesses. Did you  
25 hear Ross testify to that?

1 A. Yes, I did hear it.

2 Q. Do you agree with that?

3 A. No.

4 Q. Did you need help?

5 A. It was appreciated, but it wasn't necessary.

6 We had competent legal and accounting people. We had

7 office help. We had collectors, et cetera, who had

8 been there for many, many years. It was almost kind of

9 like a family.

10 Q. Do you recall getting a Notice of Intent To  
11 Lien from the IRS in 2011?

12 A. 2011?

13 Q. 2010 or '11?

14 A. I'm not sure about the year. I do remember  
15 getting something and trying to discuss it with Warren.

16 And he...

17 Q. He what?

18 A. Well, at that time, I think that I recall we  
19 were still dealing with Herb McGuire for the accounting

20 firm, so I think my natural habit would be an

21 inclination to take it down there and let him verify if

22 we owed it, you know, and whatever. And if we did,

23 then he'd call us up and say, Bring a check.

24 Q. Did you and Warren, back in the early 2000s,  
25 were you behind for two years on income tax?

1 A. We always stayed a year behind.

2 Q. Okay. Well, so were you two years behind, at  
3 one point?

4 A. I -- I don't think so. Herbert was kind of a  
5 stickler for -- you know, we're going to file this  
6 stuff. We don't have the money. We'll let them send  
7 us a bill and then we'll -- by then, we will have  
8 bought some time. But we always got an extension.

9 Q. Okay. Let me step outside with my client. I  
10 might be finished.

11 MR. TILLMAN: Okay.

12 (A brief recess was taken.)

13 BY MR. NETTLES:

14 Q. We don't have any further questions. Thank  
15 you, Patricia.

16 MR. TILLMAN: I just have a couple of  
17 questions for you, Patricia.

18 THE WITNESS: Oh, okay.

19 MR. TILLMAN: This Marital Settlement  
20 Agreement, is that Exhibit 8?

21 MR. NETTLES: Yes.

22 CROSS-EXAMINATION BY MR. TILLMAN:

23 Q. Okay. Can you tell me what the date of that  
24 agreement is?

25 A. Yeah. Looks like the 9th of August.

1 Q. Of what year?

2 A. 2013.

3 Q. And is that approximately the date that your  
4 divorce with Warren Holliday was finalized?

5 A. No. That would be December the 9th.

6 Q. Of 2013?

7 A. Yes, sir.

8 Q. Okay.

9 A. Like I said, there were several drafts. And,  
10 finally, we got one. We said, We'll take that one.

11 Q. Has Ross Holliday ever provided you with  
12 evidence of any payments on the \$2 million loan?

13 A. No, sir.

14 Q. Okay. That's all I have. Thank you.

15 MR. NETTLES: Wait one second.

16 THE WITNESS: Who said, "Wait a second?"

17 MR. NETTLES: I did.

18 (Discussion held off the record.)

19 MR. NETTLES: No, no further questions.

20 (The deposition concluded at 3:19 p.m.)

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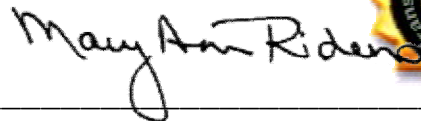

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:  
COUNTY OF CHARLESTON:

I, MARY ANN RIDENOUR, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Patricia B. Holliday; and that the transcript is a true record of the testimony given by the witness, and was sworn as such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 3rd day of October, 2018, in the City of Charleston, County of Charleston, State of South Carolina.

Mary Ann Ridenour, RPR, CLR  
and Notary Public  
My commission expires:  
March 14, 2021

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**Deposition of:**

**Ross Holliday**

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**Holliday**

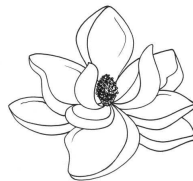
**vs.**

**Holliday**

**CASE NO. 2017-CP-10-872**

**September 19, 2018**

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**Magnolia Reporting, LLC**

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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

Patricia B. Holliday, )  
 )  
Plaintiff, )  
 ) Civil Action No.:  
 ) 2017-CP-10-872  
v. )  
 )  
Ross S. Holliday, )  
 )  
Defendant. )

\*\*\*\*\*

DEPOSITION OF: ROSS S. HOLLIDAY  
DATE TAKEN: Wednesday, September 19, 2018  
TIME: 10:00 A.M.  
PLACE: Womble Bond Dickinson  
12 Exchange Street  
Charleston, South Carolina  
REPORTED BY: MARY ANN RIDENOUR, RPR, CLR  
Registered Professional Reporter,  
Certified LiveNote Reporter  
and Notary Public

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

MATTHEW E. TILLMAN, ESQUIRE  
Womble Bond Dickinson  
5 Exchange Street  
Charleston, South Carolina 29401  
matthew.tillman@wbd-us.com

REPRESENTING THE DEFENDANT:

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Finkel Law Firm  
4000 Faber Place Drive, Suite 450  
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tnettles@finkellaw.com

ALSO PRESENT:

PATRICIA B. HOLLIDAY

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STIPULATIONS

It is hereby stipulated and agreed by and between  
the parties hereto, through their respective counsel,  
that the reading and signing of the transcript is  
waived by the Deponent.

1 (The deposition commenced at 9:55 a.m.)

2 ROSS HOLLIDAY, SWORN.

3 DIRECT EXAMINATION BY MR. TILLMAN:

4 Q. Mr. Holliday, I'm Matt Tillman. I represent  
5 your mother in this lawsuit involving the 2004 note.

6 Have you ever had your deposition taken  
7 before?

8 A. I have.

9 Q. In South Carolina?

10 A. I have.

11 Q. Okay. Well, I'll go over the rules. This  
12 may be repetitive for you, but let me go over the rules  
13 for you so that you -- in case you've forgotten them.

14 Don't answer any question that you don't  
15 understand. If you don't understand my question,  
16 please ask me to rephrase it for you. Do you  
17 understand that?

18 A. Uh-huh. Yep.

19 Q. Okay. Unless your attorney instructs you not  
20 to answer, you do need to answer the question. The  
21 rules require the witness to answer the question unless  
22 instructed otherwise; is that fair?

23 A. That's fair.

24 Q. Okay. If you need to take a break at any  
25 time, I'm happy to do it. Just tell me you need to

1 take a break and we'll do that, okay?

2 A. Okay.

3 Q. All right. And also, one last instruction  
4 is, don't look to anybody else for explanations of  
5 questions and so forth. You can only ask me to  
6 rephrase my question. So if you don't understand the  
7 question, just ask me to rephrase it; is that fair?

8 A. Maybe.

9 Q. Well, it's the rule.

10 A. I have the right to ask counsel, I assume. I  
11 can't, or no?

12 MR. NETTLES: I can't coach you during the  
13 deposition. We can go out and confer, if there's  
14 something that comes that up we were not aware of. But  
15 this is wide open, so we're ready to go.

16 THE WITNESS: All right.

17 BY MR. TILLMAN:

18 Q. Also, just for the court reporter's help,  
19 don't talk over me and I won't talk over you. In other  
20 words, let me finish my question and --

21 A. Sure.

22 Q. -- I'll let you finish your answer; is that  
23 fair?

24 A. Okay.

25 Q. Okay. Tell me about the depositions that

1 you've given in the past. What did the cases  
2 involve?

3 A. A case regarding our property management  
4 activities on a property.

5 Q. Was that in South Carolina?

6 A. That was in South Carolina, yeah.

7 Q. And who -- were you the property manager?

8 A. I was.

9 Q. And was it you individually or an entity?

10 A. I individually was, obviously, in the  
11 deposition. But it was the entity; it was not me,  
12 specifically. It was the entity that was involved in  
13 the lawsuit.

14 Q. Okay. And what company was that?

15 A. Zeezrom Properties. And specifically, I  
16 think it was 2233 Highway 17 North, LLC, which is one  
17 of the properties and companies that is managed by  
18 Zeezrom.

19 Q. So 2233 was the plaintiff in that case?

20 A. No.

21 Q. Who was the plaintiff?

22 A. We were the defendant.

23 Q. Right. Who was the plaintiff?

24 A. I don't remember the plaintiff's name.

25 Q. What year was it, roughly?

1           A.   Probably five years ago, but I can't tell you  
2 exactly when.

3           Q.   Right.  And was it in Charleston County?

4           A.   Yes.

5           Q.   Okay.  Have you ever, you or your companies,  
6 ever been involved in any other lawsuits?

7           A.   I, myself, I have.  Companies -- the ones  
8 that I manage or my own companies?

9           Q.   Either one.

10          A.   Yes.

11          Q.   Okay.  First, let's talk about the lawsuits  
12 against you, individually.  And I know about the  
13 litigation going on right now with Mr. Nettles as your  
14 attorney.  You don't have to go over that.

15          A.   Okay.

16          Q.   Are there any other lawsuits you've been  
17 involved in, individually?

18          A.   Over the years, yes.

19          Q.   Okay.  What's the first one that comes to  
20 your mind?

21          A.   I mean, ten, 12 years ago, we had a lawsuit  
22 in a dispute over buying a piece of property.

23          Q.   Was that in South Carolina?

24          A.   No.

25          Q.   Was it in Utah?

1 A. It was.

2 Q. Okay. What county was that lawsuit in?

3 A. Most likely, Salt Lake County, maybe Utah  
4 County. But I believe it's Salt Lake County.

5 Q. All right. Who was the dispute with?

6 A. A land developer selling us land.

7 Q. Okay. And what was the nature of the  
8 dispute?

9 A. They broke the contract because the value of  
10 the land had substantially increased and they did not  
11 want to sell it to us at the lower contracted amount.

12 Q. Okay. What other lawsuits have you been  
13 involved in, individually?

14 A. As an individual, that -- let me -- let me  
15 back up to the other one for a second. That was  
16 actually our real estate company suing that land  
17 developer, so that was not me as an individual suing.

18 Q. I understand.

19 A. As an individual, I don't believe I've been  
20 involved in one, other than the current litigation here  
21 in Charleston County, at this time.

22 Q. What was the name of the company that was  
23 involved in the litigation in Utah?

24 A. Holmes Homes.

25 Q. H-o-l-m-e-s, Homes?

1           A.    Yes.  And whether it was them or one of the  
2 subsidiary companies, I can't say for sure.  It was a  
3 long time ago.

4           Q.    Have any of the companies that you manage or  
5 own in South Carolina been involved in any litigation?

6           A.    Zeezrom Properties has been, yeah.

7           Q.    Okay.  And what were those?  Let's start with  
8 the first one that comes to your mind.

9           A.    Richard's Bar and Grill.  There was an event  
10 there, and there was an effort, a misguided effort, to  
11 try to include us as the property owner and place  
12 liability upon us, even though we were not directly  
13 involved and had no operational control on their  
14 business.  We weren't involved in their business.  It  
15 was a reaching effort to try to include us in a lawsuit  
16 over a fight that occurred in the bar.

17          Q.    Okay.  And that was in Charleston County?

18          A.    That was in Charleston County.

19          Q.    Any others that you can think of involving  
20 Zeezrom?

21          A.    I think there was one additional case around  
22 Richard's Bar, but I'm not really clear about all the  
23 details on that.

24          Q.    Okay.  And was that in Charleston County?

25          A.    It was in Charleston County.

1 Q. Can you just -- any other lawsuits involving  
2 Zeezrom?

3 A. Not during the time I was managing it.

4 Q. Okay. How about any companies that you own  
5 in South Carolina, have they been involved in any  
6 lawsuits?

7 A. No.

8 Q. Okay. Explain to me what Zeezrom does. What  
9 is its business?

10 A. Zeezrom is a company that holds individual  
11 properties. It's kind of a real estate holding  
12 company. And its main assets are a number of LLC's  
13 that individually own properties. And it oversees the  
14 management, rent collection, just the real -- general  
15 real estate activities of those properties.

16 Q. Okay.

17 A. So leasing activities, just everything needed  
18 to, you know, run a small kind of boutique real estate,  
19 you know, leasing company.

20 Q. And who are the owners or the members of  
21 Zeezrom, LLC?

22 A. It was Warren Holliday.

23 Q. Your father, Warren Holliday?

24 A. My father, Warren Phillip Holliday, yeah.

25 And, now, I am the owner, and my brother, Lea Holliday,

1 Warren Lea Holliday, Lea, L-e-a, Holliday, are the  
2 owners of Zeezrom Properties.

3 Q. When did you and your brother become owners  
4 of Zeezrom?

5 A. It was after my father passed, through his  
6 estate.

7 Q. Okay. And so Zeezrom fulfills the property  
8 management duties for its various LLC's under it; is  
9 that fair?

10 A. Correct.

11 Q. And prior to your father's passing, was he  
12 the sole owner of Zeezrom, LLC? Excuse me, sole member  
13 of Zeezrom, LLC?

14 A. Yes.

15 Q. Okay. Let's talk about just a few background  
16 questions. Did you go to college?

17 A. Yes.

18 Q. Where did you go?

19 A. I went to Brigham Young University. I later  
20 went and got an MBA at Thunderbird, which is an  
21 international business school in Glendale, Arizona.

22 Q. Okay. Have you had any other post high  
23 school education?

24 A. No.

25 Q. And did you go to high school here in

1 Charleston?

2 A. I did.

3 Q. Where did you graduate?

4 A. I went to Wando High School, in Mount  
5 Pleasant.

6 Q. Okay. What year did you graduate?

7 A. 1992.

8 Q. And today you live in Salt Lake City; is that  
9 right?

10 A. I live in a suburb of Salt Lake City.

11 Q. And are you married?

12 A. I am married.

13 Q. What's your wife's name?

14 A. Her name is Kelly.

15 Q. Do you have any children?

16 A. I do have four children.

17 Q. All right. Are you involved in any social  
18 clubs or churches?

19 A. I am a member of a church, the Church of  
20 Jesus Christ of Latter Day Saints. I'm a member -- by  
21 social clubs, like professional organizations or --

22 Q. Professional organizations, social clubs,  
23 like the Elks Lodge, those type things?

24 A. Oh, yeah, not necessarily social clubs, but  
25 professional clubs in the home building industry. And

1 I'm a member and involved in the leadership of those  
2 organizations.

3 Q. Okay. Can you list those organizations for  
4 me, as best you can recall?

5 A. So I'm a national director for the National  
6 Association of Homebuilders.

7 Q. Okay.

8 A. I am the president-elect of the Salt Lake  
9 Home Building Association.

10 Q. Okay.

11 A. Previously, I've been on the board of the  
12 State of Utah's Home Building Association.

13 Q. Okay.

14 A. I'm appointed by the governor of the State of  
15 Utah as a construction commissioner. And I am the vice  
16 chairman of the Construction Commission for the State  
17 of Utah.

18 Q. Okay. Any others?

19 A. None others that come to mind, no, sir.

20 Q. All right. So I take it that you are a  
21 homebuilder in Utah?

22 A. Yes.

23 Q. And do you have a general contractor's  
24 license there?

25 A. I do.

1 Q. And what is the name of the company that  
2 you -- do you own the company?

3 A. I own a number of construction companies.

4 Q. And they're all in Utah?

5 A. Yes.

6 Q. Do you do any construction work here in South  
7 Carolina?

8 A. Yes, for Zeezrom Properties. We remodel the  
9 properties. I don't do the construction, but I  
10 organize it. We typically would hire a local  
11 contractor who carries out the work here.

12 Q. Okay. So none of your Utah companies do the  
13 work here in South Carolina?

14 A. No.

15 Q. All right. I'm going to hand you what we're  
16 going to mark as Exhibit No. 1.

17 (Plaintiff's Exhibit No. 1 marked for  
18 identification.)

19 BY MR. TILLMAN:

20 Q. Just ask, can you identify Exhibit 1 for me?

21 A. This is an estate planning document that my  
22 father and I put together.

23 Q. Okay. What's it titled?

24 A. It is titled, Promissory Note.

25 Q. Okay. Is that your signature on the

1 document?

2 A. It appears to be.

3 Q. Do you remember signing this document?

4 A. Well, not this exact document. But a  
5 document like this, yes.

6 Q. Okay. Does this document -- well, do you  
7 remember signing a promissory note dated June 18, 2004,  
8 with a \$2 million principle amount?

9 A. We drafted an estate document together, to  
10 memorialize an agreement that he and I had, yes.

11 Q. Okay. And do you remember signing that  
12 document?

13 A. Yes.

14 Q. Okay. Does this appear to be an accurate  
15 copy of that document?

16 A. Could be. I can't say for sure, because I  
17 don't -- I don't know the source of it. I don't  
18 know -- I don't know -- I don't know much about it.

19 Q. Well, if you want to take a minute and read  
20 it, and let me know if there are any terms in this  
21 document that you think are -- that are inaccurate or  
22 changed from when you signed it?

23 A. There was a document like this, but it was  
24 marked "paid in full."

25 Q. I understand that. But I'm talking about at

1 the time --

2 A. But it was changed. And it said, "paid in  
3 full."

4 Q. I understand. At the time you signed this  
5 document, is this what it looked like?

6 A. Yes.

7 Q. Okay. Does this document reflect a \$2  
8 million loan that was made to you?

9 A. Not just a loan, but more of an equity  
10 agreement that was had by my father and myself.

11 Q. Okay. Did you receive \$2 million from your  
12 father?

13 A. Yes.

14 Q. All right. As a result of receiving that \$2  
15 million, did you sign this document?

16 A. Yes.

17 Q. Okay. I'm going to call this -- I understand  
18 you're calling it an estate document. I'm just going  
19 to call it "the note"; is that fair?

20 A. If that's simpler for you, that's fine.

21 Q. Okay. So when I talk about "the note," I'm  
22 talking about this document.

23 A. Okay.

24 Q. Who negotiated the terms of the note?

25 A. My father and I did.

1 Q. And that would be Warren Phillip Holliday?

2 A. Warren Phillip Holliday.

3 Q. And, generally, what was the purpose of this  
4 note and the loan?

5 A. To buy a construction company in Salt Lake  
6 City. That was the purpose of the funds.

7 Q. And who was making the purchase of the  
8 construction company?

9 A. Initially, Warren Holliday was. And it  
10 became clear that he would have to sign on the personal  
11 guarantees of the business, which would have been  
12 construction loans in excess of \$40 million. And he  
13 was not, at that time, willing to do that.

14 Q. So is it fair to say that you're the one that  
15 bought into the business?

16 A. Yeah. At his recommendation, I bought into  
17 the business, would work there and manage it.

18 Q. And did Warren Phillip Holliday ever have an  
19 ownership interest in that business?

20 A. Not a -- not a formal one. I was the one  
21 that was, you know, listed on the -- in the business,  
22 so to speak. But he and I had agreed that if it went  
23 well that we would -- there would be a sharing of  
24 profits with him after some period of time.

25 Q. And was that agreement regarding sharing

1 profits put in writing anywhere?

2 A. No. This was just a private, you know,  
3 agreement between he and I.

4 Q. Did you actually receive the \$2 million?

5 A. Yes.

6 Q. And how did you receive it?

7 A. I would assume it was a wire. I'm not sure  
8 if the funds were wired or cashier's check. But it  
9 would have been in 2004.

10 Q. Okay. And regardless of how you received the  
11 funds, who provided the funds to you?

12 A. Warren Holliday, exclusively.

13 Q. And did he do that from his own bank account  
14 or do you recall?

15 A. No, he did not. He borrowed the money  
16 against his business.

17 Q. Okay. And who did he borrow the money  
18 from?

19 A. NBSC, the National Bank of South Carolina.

20 Q. So did the money come directly to you from  
21 NBSC or did it go to Warren first and then NBSC or -- I  
22 mean, I'm sorry, and then to you?

23 A. I don't recall.

24 Q. Okay. Did you --

25 A. I think -- let me think about that for a

1 minute. I believe the money would have been sent  
2 directly from NBSC, on his behalf.

3 Q. Okay. Do you have any of the documents that  
4 show that?

5 A. No, not from 2004.

6 Q. Okay. Did you take the money and invest it  
7 in the construction company?

8 A. Yes.

9 Q. And what was the name of the construction  
10 company?

11 A. It was Holmes Homes.

12 Q. And are you still an owner of that company?

13 A. I am not.

14 Q. And who were -- okay. First of all, is it  
15 fair to say you were an owner of that company?

16 A. Yes.

17 Q. And what percentage interest did the two  
18 million buy?

19 A. A third of the business.

20 Q. And did you invest in the business in 2004?

21 A. Yes.

22 Q. Okay. What happened to that investment, just  
23 generally, in your words?

24 A. Things went well. And, you know, it was  
25 profitable, made good money, all the way up until the

1 end of 2007, which was the start of the real estate  
2 crisis. 2008 through 9, it became worse and worse.  
3 And, at that time, you know, the business was extremely  
4 distressed, as has been well documented as to what  
5 happened during that time period, across -- just kind  
6 of across the country. But we were no different.

7 Q. Did the business go under?

8 A. No. It teetered. It teetered. It went  
9 right to the edge. But it also ultimately ended up  
10 surviving.

11 Q. Is it still a going concern?

12 A. It is a going concern.

13 Q. But you are no longer an owner?

14 A. I am no longer an owner.

15 Q. Were you bought out of your ownership  
16 interest?

17 A. I don't know if I'd call it "bought out."

18 Q. Let me change the way I ask that.

19 A. Yeah.

20 Q. How did you go about getting rid of your  
21 ownership interest?

22 A. I exited the business.

23 Q. Okay.

24 A. I exited the business in exchange for a  
25 release of debt obligations of the business and removal

1 of personal guarantees.

2 Q. Okay. Did you receive any funds upon your  
3 exit?

4 A. Nominal. Very, very small.

5 Q. How much?

6 A. I think probably less than \$100,000.

7 Q. When did that occur?

8 A. Primarily -- we memorialized the agreement, I  
9 want to say 2010.

10 Q. Okay. And is Holmes Homes a Utah entity?

11 A. They are.

12 Q. Do they do any work in South Carolina, as far  
13 as you know?

14 A. No.

15 Q. I'm going to hand you what is going to be  
16 marked as Exhibit 2. Well, hold on. Let's stick with  
17 Exhibit 1 for a minute.

18 Are the terms set forth on Exhibit 1 an  
19 accurate depiction of the repayment terms that you  
20 agreed upon with your father?

21 A. There were other implied items that were not  
22 included herein.

23 Q. Okay. What are the -- well, first of all,  
24 did you agree to the terms that are in this document?

25 A. Generally, yes.

1 Q. Okay. And so what were the other implied  
2 terms to which you just referred?

3 A. Probably the biggest one was that, you know,  
4 I was running this business and, you know, the  
5 expectation was that it would -- you know, both his and  
6 mine, that it would be highly profitable, and that  
7 should it -- you know, should -- should it make a lot  
8 of money, that I would share in that, that equity, with  
9 my father.

10 Q. And when you say "this business," you're  
11 referring to Holmes Homes?

12 A. Holmes Homes, yeah.

13 Q. And were -- did you ever receive profit  
14 distributions from Holmes Homes, when times were  
15 good?

16 A. Yes. And those were used to -- those were  
17 used to pay back the loan.

18 Q. Okay. When did you receive those profit  
19 distributions?

20 A. 2005 through 2007.

21 Q. Okay. And roughly how much did you receive  
22 from Holmes Homes as profit distributions?

23 A. I don't know -- I don't know the exact  
24 amount, but I just know the amount that was used to pay  
25 the note back.

1 Q. Okay. What was the amount used to pay the  
2 note back?

3 A. Paid in excess of \$800,000 back to Warren  
4 Holliday.

5 Q. And was that from 2005 to 2007?

6 A. Yes.

7 Q. And that money came from profit distributions  
8 from Holmes Homes?

9 A. Yeah, went to me. And I paid it to Warren  
10 Holliday directly.

11 Q. Did you pay all of the profit distributions  
12 from Holmes Homes back to Warren Holliday or did you  
13 retain some?

14 A. I retained a small amount.

15 Q. And all of those payments were made to Warren  
16 Holliday between 2005 and 2007?

17 A. Yes.

18 Q. Is that fair?

19 A. Yep.

20 Q. Do you have any record of those payments?

21 A. No. Unfortunately, the bank is not able to  
22 retrieve statements after seven years.

23 Q. Okay. Now let's go to Exhibit 2.

24 (Plaintiff's Exhibit No. 2 marked for  
25 identification.)

1 BY MR. TILLMAN:

2 Q. And this, Mr. Holliday, is a set of documents  
3 that you all produced in discovery. And just ask for  
4 you to review it and let me know what Exhibit 2 is.

5 A. Appears to be a loan agreement between Warren  
6 Holliday and National Bank of South Carolina.

7 Q. Okay. I'm sorry to keep doing this. Let me  
8 jump back to Exhibit 1 for just a minute. I missed one  
9 question on that.

10 Did you understand, at the time that you  
11 signed this document entitled Promissory Note, that  
12 Patricia Holliday was a payee on the note?

13 A. No, I -- my recollection was that this was an  
14 agreement between my father and I. But for estate  
15 planning purposes, in the event that he passed away  
16 suddenly or unexpectedly, there would be something at,  
17 you know, at that time or shortly thereafter, that  
18 would indicate a need to figure out how to -- how to  
19 return some funds.

20 Q. Okay. But did you understand that regardless  
21 of the background, that she was a payee on the actual  
22 note?

23 A. No.

24 Q. Okay. So it comes to you as a surprise that  
25 the note had her as a payee?

1 A. Yes.

2 Q. Did you read the note when you signed it?

3 A. Yes. But it was, what, 14 years ago?

4 Q. Okay.

5 A. So...

6 Q. But you're not contesting that this Exhibit

7 1 --

8 A. It has her name on it, yeah.

9 Q. You're not contesting that it's been altered  
10 in any way, is that correct, from the time you signed  
11 it?

12 A. I'm not saying it's been altered. But I'm  
13 not saying it's a genuine copy. That I don't know.

14 Q. Okay. Do you have a copy of this note that  
15 doesn't look like this?

16 A. That doesn't look like that? I don't believe  
17 so, no.

18 Q. Okay. Back to Exhibit 2. These are the NBSC  
19 loan documents; is that correct?

20 A. Correct.

21 Q. And is this the loan by which the \$2 million  
22 was borrowed to fund the loan to you?

23 A. Correct. Yes.

24 Q. And is it fair to say that 2233 Highway 17  
25 North, Mount Pleasant was put up as collateral for this

1 loan?

2 A. I'd have to look through the loan documents.  
3 At some point with NBSC, it was. And -- but that was  
4 my understanding.

5 Q. Okay. Do you know who owned 2233 Highway 17  
6 North, Mount Pleasant at the time?

7 A. My father did.

8 Q. And do you know who owns that property now?

9 A. I do.

10 Q. You own it personally or through a company?

11 A. We own it through Zeezrom Properties.  
12 Zeezrom Properties owns the LLC that holds title to  
13 that property.

14 Q. Okay. And are you aware that your father --  
15 well, let's just look at the document. If you'd flip  
16 over to the portion of this exhibit that is entitled,  
17 Guaranteed By Corporation.

18 A. Yes.

19 Q. Okay. Do you see that?

20 A. Yep.

21 Q. Okay. What corporation guaranteed this  
22 loan?

23 A. It says, Holliday Amusement Company.

24 Q. And it's signed by your father as president;  
25 is that fair?

1 A. That is fair.

2 Q. And do you know who owned Holliday Amusement  
3 Company, Inc. at the time?

4 A. Yeah, my father, Warren Holliday,  
5 exclusively.

6 Q. All right. Did you have to provide any  
7 information or documents as part of the loan  
8 application process for this loan?

9 A. Not -- not specifically, as forward it to the  
10 bank. But they wanted to understand the intent of the  
11 source of funds, where they're going to be used for, as  
12 you can imagine. So there was discussion regarding  
13 where the funds would be utilized.

14 Q. Okay. Did you have direct conversations with  
15 NBSC?

16 A. Not -- not early in 2004, no.

17 Q. Did you --

18 A. Later, I did.

19 Q. Okay. When you say "later," when?

20 A. I met with my father. And it was Eddie  
21 Tuttle, who was a branch manager in charge of preparing  
22 the loan packages. We met a number of times.

23 Q. And was that before the money was loaned or  
24 after?

25 A. It was probably -- yeah, it was after.

1 Q. And what was the purpose of the meeting?

2 A. Just generally, how are things going? You  
3 know, wanted an update.

4 Q. Did the bank ever attempt to call that loan?  
5 When I say "that loan," I mean the NBSC loan.

6 A. No. There was never -- they never made a  
7 demand for payment or to terminate the loan. It would  
8 roll over every year or two. It was kind of more like  
9 a line of credit loan. So you'd have to, in essence,  
10 kind of reapply. And -- but, no, they never -- they  
11 never said they didn't want to make the loan. They,  
12 you know, they made a continuous loan from 2004, for  
13 quite some time.

14 Q. And how many times did you meet with Eddie  
15 Tuttle?

16 A. I don't recall an exact number, but probably  
17 less than ten.

18 Q. Okay. And when did those meetings occur,  
19 roughly? You can just give me years.

20 A. Yeah, in that -- you know, during the 2000s,  
21 leading up to -- I don't know when he -- he exited the  
22 bank, kind of retired, in essence. So I don't know.  
23 Kind of through the 2000s.

24 Q. And the 800,000, roughly 800,000 that you say  
25 you paid to Warren Holliday between 2005 and 2007, was

1 that paid directly to him or was it paid to NBSC?

2 A. It was paid to Warren Holliday.

3 Q. Okay. Do you know if that money was then  
4 paid to NBSC?

5 A. I believe it was.

6 Q. Do you have any documentation showing that,  
7 one way or another?

8 A. No.

9 Q. Did you have any discussions with NBSC after  
10 you exited Holmes Homes?

11 A. Not immediately thereafter. But we had a  
12 reapplication of the loan where we had to reapply for  
13 the loan. Like I said, it was like a line of credit.  
14 So, yeah, met with them.

15 Q. Did you ever have to disclose to NBSC that  
16 you had exited Holmes Homes?

17 A. No. It was never -- never a concern for  
18 them.

19 Q. Okay. And I'm trying to understand that. I  
20 think your testimony was that you were meeting with  
21 NBSC because they were wanting to understand what was  
22 going on with the loan funds, or did I mishear that?

23 A. Not -- not with the loan funds. I mean, they  
24 wanted to know the nature of where the funds were  
25 going. But they were well collateralized. And so, no,

1 their -- you know, they would just meet, you know, see  
2 if we had other needs, did we have other lending needs?  
3 We would meet with them, like I said, when it was time  
4 to reup the loan. So we would just have kind of normal  
5 meetings with them. They'd ask us to, you know, send  
6 them stuff. Hey, send us a tax return. We've got to  
7 reup the loan. And, you know, there were -- at times,  
8 they required an application to be made.

9 Q. And did you handle filling out the  
10 application or did your father?

11 A. Starting around 2010, I managed all of that  
12 exclusively, as my father became very ill.

13 Q. Do you have any of those documents?

14 A. The only documents we have are the ones that  
15 have been provided so far.

16 Q. Do you know how much was still owed on the  
17 NBSC loan when you started managing it?

18 A. I don't know the exact amount.

19 Q. Do you have a ballpark figure?

20 A. I -- a million two, a million three. But  
21 I -- like I said, I don't recall exactly. It would  
22 depend exactly when you would consider that I took  
23 over. You know, like I said, my father was sick in  
24 2010. That's where I became involved, towards the end  
25 of 2010, in really running his business affairs.

1 Q. Okay. So let's be more precise, then.  
2 Starting in -- beginning in 2011, you were now running  
3 your father's affairs; is that fair?

4 A. Yes. Yeah.

5 Q. At that time, how much was still owed on the  
6 NBSC loan?

7 A. I don't know exactly, at that point of time.  
8 I don't know.

9 Q. Okay. And you gave me a 1.2 to \$1.3 million  
10 figure. Was that when you first started running your  
11 father's affairs or was it later on, or do you  
12 remember?

13 A. I don't. I'd have to try to go look that up  
14 or find a way to get back -- or, you know, back to that  
15 point in time. But I don't know that exactly, at that  
16 time.

17 Q. Okay. On Exhibit 1, the Promissory Note, did  
18 you and your father ever alter this note in writing, in  
19 any way?

20 A. He had provided, at a later date, that it was  
21 paid in full.

22 Q. Is that the only alteration to the note that  
23 you can recall?

24 A. That is my understanding.

25 Q. All right. And when you say he provided that

1 it was paid in full, what does that mean to you?

2 A. That I had no obligation to him for this  
3 amount of money.

4 Q. Did he actually write "paid in full" on the  
5 note or did he give you a separate satisfaction?

6 A. I believe -- I don't recall exactly. But  
7 there was a moment in time when the -- when the NBSC  
8 loan was paid off, where, you know, I had gone above  
9 and beyond in resolving this.

10 Q. Did your father give you anything in writing  
11 that denoted that this note was paid in full?

12 A. There was a copy of the note that said "paid  
13 in full."

14 Q. And is it fair to say that you don't have  
15 that copy in your possession?

16 A. I don't have it in my possession, no.

17 Q. Did he give it to you?

18 A. Yes.

19 Q. What happened to it?

20 A. We don't know. We're trying to find it.

21 Q. Do you -- well, what did you do with it  
22 immediately after you got it?

23 A. He -- he had actually retained it.

24 Q. So -- okay. Was it or was it not ever given  
25 to you?

1 A. It was.

2 Q. It was physically given to you?

3 A. Yeah.

4 Q. Okay. After it was physically given to you,  
5 what did you do with it?

6 A. I believe it was placed in a file in our  
7 office.

8 Q. When you say "our office," where is that?

9 A. The office where we manage Zeezrom Properties  
10 and Holliday Amusements, our Charleston office.

11 Q. What's the address of that office?

12 A. At the time, it was 1808 Meeting Street.

13 Q. And fair to say you don't know what happened  
14 to it after that?

15 A. No. We moved.

16 Q. Okay.

17 A. We moved. A lot of things were cleaned out,  
18 as we moved.

19 Q. And did your mother ever mark the note paid  
20 in full or give you a satisfaction of the note?

21 A. No, because she wasn't involved in it.

22 Q. Did your mother ever verbally agree to  
23 satisfy the note?

24 A. She had told me, at the time that my father  
25 was very sick, that her and my father felt that there

1 was no further obligations required.

2 Q. Okay. And when was that?

3 A. 2010.

4 Q. Is 2010 roughly the time frame when your  
5 father agreed to satisfy the note?

6 A. Yes.

7 Q. Is that roughly the time frame where you  
8 received the written satisfaction of the note?

9 A. No, written satisfaction was later.

10 Q. Okay. Was it just prior to your father's  
11 passing?

12 A. No, it -- well, it was substantially before  
13 that. It was -- it was given at the time that NBSC was  
14 paid off.

15 Q. Okay. Well, that helps.

16 A. Yeah.

17 Q. All right.

18 A. And it -- it was done because, like I said,  
19 just to clear up estate items, those kinds of -- those  
20 kinds of things.

21 Q. Your -- this -- did you have one conversation  
22 with your mother where she agreed to satisfy the note  
23 or forgive the loan?

24 A. No, there were multiple.

25 Q. And those occurred in 2010?

1           A.    Yes.  Well, 2010, 2011.

2           Q.    Where did those conversations occur?

3           A.    In 2010, my father was hospitalized here or,  
4    sorry, in Salt Lake City.  My mother was with him.  She  
5    stayed there for a number of months.  We had numerous  
6    conversations.

7                    I began -- I was asked by my mother and  
8    father, at that point, to go check in on their business  
9    affairs, as he was gravely ill.  And so I began to fly  
10   back here to Charleston and to manage the businesses,  
11   to try to get a pulse as to what was going on.  At that  
12   time, obviously, you know the businesses weren't being  
13   managed well because, you know, my father was absentee,  
14   being ill.

15                   And it became clear they owed a large amount  
16   of money to the IRS through just payments that have not  
17   occurred.  I'm running the business.  They were  
18   extremely concerned they were going to lose properties.  
19   There were imminent tax liens to be placed on  
20   properties and individual income taxes that had not  
21   been paid.

22                   I mean, my father was extremely ill before  
23   2010.  So he had kidney failure, was on home dialysis,  
24   got a transplant in the spring of 2010.  Less than six  
25   months later, the kidney failed.  So there had been a

1 substantial amount of time where the businesses were  
2 not being managed and run by either of them, right? My  
3 mother didn't step in, when he was sick, to run them,  
4 right? I mean, they just kind of floundered.

5 So they were eminently looking at tax liens,  
6 losses of property. They were in an emergency  
7 situation, asked me to come in and be involved, and try  
8 to help.

9 During 2011, I spent almost 32 weeks in  
10 Charleston, trying to turn around and keep a ship from  
11 sinking, at which time there was, as you would imagine,  
12 tremendous gratitude and thanks for keeping them from,  
13 you know, really what was a very dire situation.  
14 Multiple times staying in her own home, having these  
15 conversations with her, that, you know, I had more than  
16 met the obligation and satisfied that. And both of  
17 them had, obviously, verbally acknowledged that.

18 Q. And these conversations occurred in your  
19 parents' home?

20 A. Parents' home, yeah.

21 Q. Roughly, how many conversations did you have  
22 in which your mother agreed to forgive the loan?

23 A. More than I could count.

24 Q. And these all occurred in 2010 and 2011?

25 A. That is correct.

1 Q. And you did not receive anything in writing  
2 from either of them at that time; is that correct?

3 A. No. The note -- my father demanded payment,  
4 put a demand for payment, in 2005.

5 That was -- you know, my agreement with him  
6 was, we'd get in, I'd get into this business for a  
7 year, 2004, and that, you know, as soon as there were  
8 profits -- he made a demand in 2004, at the end of  
9 2004, 2005, and just early 2005, and said, you know, I  
10 need to pay it back. And I began making payments.

11 Q. And that demand, was that in writing?

12 A. No. It was my father. I mean, he called me  
13 and said, I need you to pay the loan.

14 Q. And then you paid roughly 800,000; is that  
15 correct?

16 A. Yeah, in a series of payments between, you  
17 know, '05, '06 and '07.

18 Q. And did he make any further demands on the  
19 note after that?

20 A. No. He was very aware what was going on in  
21 the real estate market, being that he owned real estate  
22 himself. And he understood that I was not, at that  
23 time, going to be able to make additional payments  
24 after 2007. So...

25 Q. Okay. And is it fair to say that he didn't

1 agree to satisfy -- to forgive or acknowledge that the  
2 loan was satisfied immediately after that \$800,000  
3 payment?

4 A. No. It was shortly thereafter, in 2010 and  
5 '11, when he was in dire need of help and he asked me  
6 to run his affairs. And, you know, his biggest concern  
7 was paying off NBSC. And so I went to work  
8 relentlessly trying to pay off NBSC.

9 So, at that time, he said, Listen, we're  
10 square. You don't owe us any more money. I  
11 appreciate that you're the only one in our family who  
12 can do this and are willing to do it.

13 So I began to run those things, right? And  
14 run all those business affairs. And we did that. And  
15 we were ultimately able to pay off the NBSC note in  
16 January 2016. It was paid in full.

17 Q. It's after that, that you received this  
18 written satisfaction?

19 A. Yeah.

20 Q. And the written satisfaction of the note --  
21 and I apologize if this is a repeat. Was that a  
22 paid-in-full mark on the note itself or was it a  
23 separate document?

24 A. It was on a copy, because the original -- we  
25 did not have the original. And it was on a copy. And

1 it just said "paid in full."

2 Q. And was it signed by your father?

3 A. No. It just said, "paid in full."

4 Q. I'm going to hand you what we're going to  
5 mark as Exhibit 3.

6 (Plaintiff's Exhibit No. 3 marked for  
7 identification.)

8 BY MR. TILLMAN:

9 Q. And ask if you recognize this document?

10 A. Yes.

11 Q. Okay. What is Exhibit 3?

12 A. It's an erroneous demand being made to pay a  
13 loan to someone that was not owed the money.

14 Q. Okay. Let me ask it this way: Was it a  
15 demand from my office for payment on the loan from  
16 Patricia Holliday; is that fair?

17 A. It was an erroneous effort to demand payment.

18 Q. Upon receiving this document, Exhibit 3, did  
19 you make any payments to Patricia Holliday?

20 A. No, because she was not entitled to any  
21 payments.

22 Q. Did you receive this demand in July of  
23 2017?

24 A. Yes.

25 Q. Let's take a quick break.

1 (Discussion held off the record.)

2 (A brief recess was taken.)

3 BY MR. TILLMAN:

4 Q. We're back on the record. Is it your  
5 understanding that at the time Exhibit 1 was signed,  
6 and at the time you received the \$2 million loan, that  
7 your father expected that that would be repaid?

8 A. Yes. Yeah, he expected to be repaid.

9 Q. All right. And I think it's your contention  
10 that you did make payments on that loan, correct?

11 A. Made payments and paid it in full.

12 Q. And we've already talked about one set of  
13 payments from 2005 to 2007 that amounted to around  
14 800,000; is that correct?

15 A. Correct.

16 Q. And do you remember the exact amount that was  
17 paid between 2005 and 2007?

18 A. It was just slightly more than \$800,000.

19 Q. But you don't remember an exact number?

20 A. I remember \$800,000, but I think it was not  
21 800,000 even; it was slightly more than \$800,000.

22 Q. Okay. I'm going to hand you what's going to  
23 be marked as Exhibit 4.

24 (Plaintiff's Exhibit No. 4 marked for  
25 identification.)

1 BY MR. TILLMAN:

2 Q. This was a document that we received in your  
3 discovery responses. Can you explain to me what this  
4 is?

5 A. I had made a request for bank statements  
6 and -- from Zions Bank, where I banked at the time, and  
7 I no longer bank there, asking them if they could go  
8 back and retrieve any old bank statements at that time.  
9 And they could not.

10 Q. And the payments to your father between 2005  
11 and 2007 were made out of a Zions Bank account?

12 A. Correct.

13 Q. This is the information you were trying to  
14 obtain from Zions; is that correct?

15 A. Yes.

16 Q. And is Zions Bank in Utah?

17 A. Yes.

18 Q. And they were unable to find the records; is  
19 that correct?

20 A. They just don't keep records that long.

21 Q. Were those payments to your father reflected  
22 in any of your personal tax returns or documents given  
23 to your tax accountant at the time?

24 A. No. I think they were just payments back to  
25 my father.

1 Q. So is it fair to say that those payments were  
2 not reflected in any of the materials that you  
3 submitted to the IRS in your personal tax returns?

4 A. Sure. I earned the income from Holmes Homes,  
5 filed taxes based on that income, and then I took the  
6 money and I passed the cash on. So, yes, it's  
7 reflected in the taxes. Taxes were paid on all of  
8 those -- all of those monies.

9 Q. There were no deductions or those repayments  
10 weren't treated as some sort of expense; is that  
11 fair?

12 A. Right, no.

13 Q. And did you get paid on a K-1 from Holmes  
14 Homes or was it some other document or -- I'm sorry,  
15 were the payments from Holmes Homes reflected on a K-1  
16 or some other IRS document?

17 A. At the end of the year, we would file our  
18 corporate filings. And, you know, we had an S corp.  
19 We had LLC's. There were a number of entities where we  
20 were building and selling.

21 Q. And did those entities separately make  
22 distributions to you or was it from one entity?

23 A. Was primarily from one.

24 Q. And that is Holmes Homes?

25 A. Yes.

1 Q. And is Holmes Homes an LLC?

2 A. It's an S corp.

3 Q. Do you have any of the records reflecting  
4 those payments from Holmes Homes?

5 A. No.

6 Q. Do you have any documents which show payments  
7 from yourself to Warren Holliday in the 2005-to-2007  
8 time frame?

9 A. No. Being that it's past the seven-year tax  
10 window, no.

11 Q. Is it fair to say you didn't personally  
12 retain any records from Zions Bank, either in paper  
13 form or electronically, from the 2005-to-2007 time  
14 frame?

15 A. No. All that stuff's been thrown out and  
16 shredded, years ago.

17 Q. Okay. Did you make any other payments on the  
18 note and loan other than the roughly 800,000 paid  
19 between 2005 and 2007?

20 A. Yes. We had a small piece of property that  
21 was sold to CSX Railroad. And those funds were  
22 provided to my father.

23 Q. Okay. Any other payments? And those -- that  
24 was --

25 A. It was around 2010. Maybe it was 2011. I

1 think it was the end of 2010.

2 Q. Okay. I have some documents on that. We'll  
3 look at that.

4 A. Yeah.

5 Q. But were those payments made for the purpose  
6 of repaying this \$2 million loan?

7 A. Well, when we had discussed it with my  
8 father, he said that we were clear. And I said, Well,  
9 you know, the one remaining thing that we have is that.  
10 And we provided the extra -- that \$400,000 to him.  
11 And, really, at that point, we were done.

12 Q. Okay. And that payment --

13 A. It resolved.

14 Q. -- was made to your father? That payment --

15 A. Yeah. Yeah.

16 Q. Do you have any written evidence of that  
17 payment?

18 A. We provided that.

19 Q. Okay. Did you make any other payments on  
20 this loan, on the \$2 million loan?

21 A. We just finished off the payments to NBSC,  
22 made payments through the business activities and paid  
23 it off in total in 2016, January 2016. It was paid  
24 off.

25 Q. Okay. So other than the 800 -- roughly

1 800,000 paid between 2005 and 2007, the proceeds from  
2 the sale of the railroad company, the railroad  
3 properties, in roughly 2010, and the payments to NBSC  
4 in 2016, were any other payments made on this \$2  
5 million loan?

6 A. No. Because, like I said, it was satisfied  
7 at the time around the railroad, right? I mean, they  
8 were -- both acknowledged that, multiple times, that no  
9 money -- additional money was owed. I assumed the  
10 responsibility to continue to resolve the financial  
11 burden with NBSC, took that over, and began making,  
12 like I said -- and solved that.

13 Q. Did you personally, not through companies,  
14 you personally, make any payments to NBSC?

15 A. Companies I was controlling and managing --  
16 yeah, I -- through those companies, yes. But, no. I,  
17 as an individual, Ross Holliday, did not mail NBSC  
18 any -- you know, or make any payments to them, no,  
19 after -- after the CSX Railroad closing, in that time  
20 frame, general time frame, no.

21 Q. Have you requested the NBSC records from that  
22 loan? Do you know if your attorney has subpoenaed  
23 those records or if you asked for them informally?

24 A. Be more specific. What type of --

25 Q. The payment records showing how that loan was

1 paid off?

2 A. Well, we have it, because I wired the money  
3 to them, to pay it off. We had a real estate closing  
4 that closed in January. And within a day or two, a few  
5 days, we wired -- we asked them for a payoff. They  
6 provided us a payoff at NBSC. And we wired them the  
7 money and closed out the loan.

8 Q. Did NBSC provide monthly statements to you  
9 after you took over the control of your father's  
10 affairs?

11 A. Sure. We got monthly bank statements from  
12 them, if that's what you mean. They didn't necessarily  
13 invoice us for the loan. I think they -- there was a  
14 time period where I think maybe they did. They would  
15 send kind of a monthly payment, you know, obligation.  
16 But didn't seem like they always did that. And I think  
17 it was primarily because of the -- yeah, I think they  
18 did, for a period of time.

19 Q. And did you retain those documents?

20 A. I wouldn't think so. I don't know.

21 Q. Okay. Well, were the statements being sent  
22 to you?

23 A. No, not -- they were sent -- we kept -- you  
24 know, they were a South Carolina lender. We kept the  
25 payments going to where Zeezrom Properties was located.

1 Q. And -- okay. And did you actually see those  
2 statements or did they go to someone else?

3 A. We had someone, an office manager, who kind  
4 of would handle that kind of stuff, and write those  
5 checks, and do that, do those kinds of affairs. We've  
6 had multiple, over -- during that time period. And  
7 they would just write the check for me.

8 Q. Okay.

9 A. I would authorize them to make that payment.

10 Q. Was the office manager a Zeezrom Properties  
11 employee?

12 A. Yeah, they were. They were an employee of --  
13 I don't know if it was technically Holliday. I think  
14 it was more Holliday Amusement, actually.

15 Q. And who were those office managers?

16 A. There was a lady named Kathy, who was there  
17 in 2010, when I began to be involved in the business.  
18 And then we hired Martha Brothers and -- shortly  
19 thereafter. I want to say 2011. She was there through  
20 2015. And then we went and had a CPA who would come in  
21 and actually write the checks, as opposed to having an  
22 office manager.

23 Q. Who was the CPA?

24 A. The company is called Business Advisory  
25 Services.

1 Q. Are they a local Charleston --

2 A. They are, yeah.

3 Q. Who was the individual with whom you  
4 coordinated with Business Advisory Services?

5 A. Her name is Tammera Hale.

6 Q. Are they still -- is that H-a-i-l?

7 A. A-l-e.

8 Q. Okay. And is Business Advisory Services  
9 still providing services to --

10 A. Yeah.

11 Q. -- these various companies?

12 A. Yeah.

13 Q. And do you remember Kathy's last name?

14 A. Bushnell, Bushell, something of that nature.  
15 I honestly don't know --

16 Q. Okay.

17 A. -- the exact spelling.

18 Q. So Business Advisory Services would have  
19 received some of these NBSC statements before that loan  
20 was paid off; is that fair?

21 A. I don't know that we always received loan  
22 statements. We were just consistently making a  
23 payment. I think, at different times, there were  
24 different amounts.

25 Q. Okay. I'm going to mark as Exhibit 5 a group

1 of documents related to the 0.362-acre Meeting Street  
2 property.

3 (Plaintiff's Exhibit No. 5 marked for  
4 identification.)

5 BY MR. TILLMAN:

6 Q. Can we just call that "the railroad  
7 property"; is that fair?

8 A. Yeah.

9 Q. Okay. And Exhibit --

10 MR. NETTLES: Exhibit 5?

11 MR. TILLMAN: 5, yeah.

12 BY MR. TILLMAN:

13 Q. Okay. Just generally tell me the story  
14 behind the railroad property, as you remember it.

15 A. They had negotiated for a period of time.  
16 They were trying to -- they had -- this is a sliver of  
17 grass on Meeting Street, where the railroad runs  
18 somewhat adjacent to the property. They needed to  
19 change the angle slightly, needed to come onto the  
20 property. They had reached out in some form or fashion  
21 in 2010, to us, and, you know, just kind of went back  
22 and forth.

23 When there were discussions regarding, you  
24 know, that we were paid up, talked with my father very  
25 specifically and just said, you know -- this -- this

1 piece of property was actually owned by my younger  
2 brother, Warren Lea Holliday. He was on the title of  
3 the property.

4 Q. Okay. When did Warren Lea Holliday become  
5 the owner of the property?

6 A. Oh, I don't know, 25 years ago. He was in  
7 his probably early twenties. He's 40, early forties.  
8 Twenty years ago. At least 20 years ago, maybe 25.

9 Q. Okay. And who owned it before he did; do you  
10 know?

11 A. I don't. I don't remember the individual's  
12 name.

13 Q. It was somebody related to you?

14 A. No.

15 Q. Do you remember how much Warren paid for the  
16 property, Warren Lea Holliday, paid for the property?

17 A. No.

18 Q. And so it sounds like CSX needed this  
19 property for some realignment; is that fair?

20 A. Yeah. But they were kind of  
21 on-again-off-again. I mean, it was -- it was, quite  
22 frankly, kind of a long thing. They weren't a hundred  
23 percent sure they needed it, so they went back and  
24 forth. I mean, there were a lot of discussions,  
25 on-again-off-again, so...

1 Q. And when did those discussions occur; roughly  
2 in 2010?

3 A. Yeah, really kind of in 2010. My dad had  
4 talked to me about it and asked that, you know, I  
5 have -- kind of handle it. That was actually one of  
6 the first things that he asked me to handle when -- you  
7 know, at the time he was getting his transplant. And,  
8 you know, they had -- they, you know, had to kind of  
9 agree to terms. CSX went back out. So I took it over  
10 and negotiated a much higher sales price from them.  
11 And they ended up closing.

12 Q. Okay. And at the time -- well, obviously, if  
13 you look at Exhibit 5, at the time of the closing, you  
14 were now the owner of that property; is that correct?

15 A. I was, yeah.

16 Q. All right. And how did that come about?

17 A. In order to help my parents, that -- like I  
18 said, they were in dire straights in 2010. My younger  
19 brother gifted me the real estate. And I sold it to  
20 the railroad, the proceeds going to my father.

21 Q. Okay. Did you give anything to your brother  
22 for that --

23 A. No.

24 Q. -- gift?

25 A. No.

1 Q. Was that gift a taxable event?

2 A. Yeah. There was a gift return and everything  
3 filed with it.

4 Q. Why didn't your brother just gift it to your  
5 parents, if they were the ones in dire straights?

6 A. Well, I was the one that owed the money, so  
7 it made sense for me to -- to -- to, you know, pay my  
8 father back.

9 As I had indicated, there were tremendous  
10 financial harm going on in the real estate market at  
11 that time. I had a very -- I had some very substantial  
12 losses, tax losses. And by him gifting it to me, it  
13 gave me the opportunity to give my parents more money.  
14 Because if he would have sold the property, he would  
15 have had a larger tax gain and there would have been  
16 less proceeds to go to them. But I had enough to  
17 offset the tax, in formal losses. And so it was just  
18 an effort to get them more money.

19 Q. All right. So it was gifted to you, for you  
20 to use the money to pay on the loan, essentially?

21 A. That's right.

22 Q. And is that what happened?

23 A. Yeah.

24 Q. Okay. So it looks like you sold the property  
25 on or about December 30, 2010; is that right?

1 A. Yeah.

2 Q. Okay. And how much -- is it fair to say,  
3 looking at the Seller's Statement, Exhibit 5, that you  
4 received a net of \$361,613.39?

5 A. Correct.

6 Q. Okay. And --

7 A. Plus, we retained the deposit, as it shows.  
8 So there's really \$371,613.

9 Q. Okay. And were all -- was all of that money  
10 paid to your father?

11 A. All of it was paid to my father.

12 Q. And that was in repayment of the loan?

13 A. Uh-huh.

14 Q. Okay. So, in other words, you didn't pay  
15 \$400,000; you paid roughly 371,000 to your father?

16 A. That's right. Yeah.

17 Q. Okay. Did you --

18 A. But I also didn't -- you know, I didn't take  
19 a commission, right? So, you know, there was all those  
20 other factors. So if you factor all the commissions  
21 that I've gifted and didn't collect on behalf of this,  
22 you know...

23 Q. And when I asked you earlier about whether  
24 there was documentation of the payment made to your  
25 father, you said, Well, we produced all that.

1 I'll be fair to you; I read the documents and  
2 I see these documents where you received this money as  
3 a result of that sale. But I didn't see documents  
4 showing where it was paid over to Warren. Do you  
5 recall having any documents where you -- that evidenced  
6 the actual payment to Warren Holliday, your father,  
7 Warren Holliday?

8 A. I would think -- I would think that there  
9 are. Either this money was directly transferred to  
10 him --

11 Q. Okay.

12 A. -- or it came to me and was immediately  
13 transferred over.

14 Q. And just based -- and, at this time, were you  
15 managing your father's affairs?

16 A. Yeah.

17 Q. And so what bank account of his would it have  
18 gone into?

19 A. It would have -- at the time, I think they  
20 were using a combination of Bank of South Carolina and  
21 NBSC. Those are the banks I -- yeah...

22 Q. And was this roughly \$371,000 transferred  
23 directly to NBSC as repayment of the NBSC loan or was  
24 it paid to your father and then --

25 A. It was paid to my father.

1 Q. All right. Was it paid by check to both of  
2 your parents or just your father?

3 Let me rephrase that, I'm sorry, because you  
4 didn't say it was paid by a check.

5 Was it -- was the money to paid to both of  
6 your parents or just to your father?

7 A. It was paid to my father.

8 Q. So understanding that you contend there were  
9 some -- there was some service value provided to your  
10 parents, let's just talk about just the money right  
11 now. As far as actual money paid to your father, as of  
12 this date, December 30, 2010, you got roughly 800,000  
13 paid, back in 2005 to 2007, correct?

14 A. Yep.

15 Q. Plus the roughly \$371,000 proceeds from the  
16 sale of the railroad property; is that correct?

17 A. Correct.

18 Q. Okay. So as of December 30, 2010, or shortly  
19 thereafter, you have repaid roughly -- what is that,  
20 \$1,071,000 on the loan, \$2 million loan, made by your  
21 parents?

22 MR. NETTLES: One million 176.

23 BY MR. TILLMAN:

24 Q. I'm sorry. You've roughly paid one million  
25 171 on the loan?

1           A.    Yeah, slightly more than that.  Because, like  
2    I said, it was slightly more than 800,000.  But, yes.

3           Q.    Okay.

4           A.    In direct cash payments.

5           Q.    Okay.  When you say "direct cash payments,"  
6    was there any other consideration paid at that time,  
7    prior to that date?

8           A.    Just even items like this, where I didn't --  
9    you know, I forfeited commissions on behalf -- to  
10   make -- make deals work and things like that.

11          Q.    Have you quantified that nonmonetary  
12   compensation that you're contending was paid to -- or  
13   was given to repay the loan?

14          A.    It would be hard -- would be hard to put an  
15   exact number to it.  Like I said, 2011, you know, I  
16   spent 30 weeks here.  So what's that worth?  Fly in on  
17   Sunday, Monday.  Fly out on Thursday, Friday.  Spent 30  
18   weeks.  Someone with my background, my skills, to do  
19   something like that, you'd pay hundreds of -- hundreds  
20   of thousands of dollars to.

21          Q.    At the time, were you employed otherwise?

22          A.    I had business activities going, yes.

23          Q.    What business activities?  And let me be more  
24   precise.  You were flying in and out of Charleston,  
25   helping your parents in the 2010-to-2011 time frame,

1 correct?

2 A. Yep.

3 Q. And that's what I'm referring to.

4 A. Right.

5 Q. That's the date --

6 A. Sure.

7 Q. -- I'm referring to. What business  
8 activities did you have going on during that period?

9 A. We had -- upon leaving Holmes Homes, in that  
10 kind of early, you know, mid 2010, I began -- I set up  
11 a number of other businesses that I began to  
12 transition. One was a construction company, Element  
13 Homes. One was a -- just a number of -- Holliday  
14 Holdings. Just a -- just a number of businesses were  
15 set up. And began the work of moving forward in those  
16 businesses.

17 Q. And were those all in Utah?

18 A. They were.

19 Q. Did you receive any compensation or profit  
20 distributions from any of those companies in 2010 and  
21 2011?

22 A. Quite frankly, I didn't get a whole lot of  
23 work done in them, you know, honestly. I had to kind  
24 of put them aside, in order to come and do this. So  
25 there was very little, nominal things coming out of

1 that. Unfortunately, I set them up. I began going  
2 that way. In the summer of 2010 -- and by -- when my  
3 dad -- by the time the fall had come, and he was in  
4 Utah, in a hospital, all that had to be put on hold.  
5 So, for me, the opportunity cost of that was extremely  
6 high.

7 Q. What is Element Construction Company?

8 A. It's build -- build residential properties.

9 Q. Is it still a going concern?

10 A. It is.

11 Q. All right. You still building homes through  
12 that entity?

13 A. Uh-huh.

14 Q. Okay. When you were helping your parents  
15 out, in the 2010-to-2011 time frame, were you an  
16 employee of any of the businesses that your father or  
17 both of them owned?

18 A. No. I was not an employee of -- like,  
19 Zeezrom Properties or Holliday Amusement, those  
20 businesses?

21 Q. Right.

22 A. No, I was not a W-2'd employee.

23 Q. Were you an owner of any of those  
24 businesses?

25 A. Not at the time.

1 Q. Did you receive any compensation from any of  
2 the businesses that your father or mother had an  
3 interest in, during the 2010-2011 time frame?

4 A. Obviously, those businesses were -- you know,  
5 I paid for a number of my own airfare and whatnot, to  
6 help. But they began to transition, as we got them  
7 financially stable, to start paying the expenses of the  
8 comings and goings. And there were reimbursements of  
9 expenses. And then, as it got a little bit further on,  
10 it was able to pay a little bit of income to me for  
11 just the property management activities, at that time.  
12 But, initially, it could not. They were not in a  
13 financial position to be able to do that.

14 Q. When did you start receiving income payments  
15 from businesses owned by your father and/or mother?

16 A. May have been some nominal amounts in 2011.  
17 But, really, it was 2012 that I think it was kind of a  
18 consistent thing, amounts of money for property  
19 management.

20 Q. Who was receiving equity income, like, profit  
21 distributions and those sort of things, from Holliday  
22 Amusements in 2010 and 2011?

23 A. My father was.

24 Q. Were you?

25 A. No.

1 Q. Same question for Zeezrom Properties.

2 A. Yeah. Just like I said, some nominal ones.

3 And sometimes there were -- you know, listen, the ship  
4 was sinking. So there were times when, you know,  
5 Holliday Amusement would pay the ticket for me to come  
6 out. When I was here, you know, I was helping both  
7 businesses. They weren't, you know, exclusive. I  
8 mean, we were trying to help both. Sometimes, you  
9 know, Zeezrom had a little extra money, then that could  
10 reimburse expenses. Sometimes it was Holliday  
11 Amusement. We tried to divide that, as we went, to try  
12 to not have it just hit one company. But, honestly,  
13 really, it got down to who had enough cash to pay,  
14 because they were in a bad way.

15 Q. Did any of the companies that are -- that  
16 make up part of Zeezrom's portfolio make any payments  
17 to you during those 2010-2011 time frame?

18 A. No.

19 Q. All right. Did your father own any other  
20 businesses in 2010 or 2011, other than Holliday  
21 Amusements or Zeezrom Properties?

22 A. There was a time when there was a little  
23 company kind of affiliated with Holliday Amusement  
24 called Hope, LLC. But I think that was shut down  
25 shortly thereafter.

1 Q. What did that company do?

2 A. Same thing. It was just like Holliday  
3 Amusement. I think it was just a -- I never really  
4 understood why that was set up. But, yeah. But, to my  
5 knowledge, there's no others.

6 Q. Did you receive any payments of any --

7 A. No, no, no. Sorry, let me take that back.  
8 Warren Holliday did have ownership in a company called  
9 Sawgrass. He did hold stock in a company called  
10 Sawgrass.

11 Q. Okay. Did you receive any payments from  
12 Hope, LLC or Sawgrass?

13 A. Not from Hope. During -- are we talking the  
14 same time period, 2010-'11?

15 Q. Correct?

16 A. I don't believe I received any payments from  
17 Sawgrass during that time.

18 Q. Did you receive any payments from Sawgrass  
19 afterwards?

20 A. Yes. I joined their board and received some  
21 payments for being on the board. Well, not even  
22 initially. My father actually received all those  
23 payments. But after he was deceased, I mean, around  
24 the time he was deceased, I began to receive those  
25 payments for kind of a board fee, for being on the

1 board.

2 Q. Did you receive any compensation directly  
3 from your father or your mother when you were helping  
4 manage the affairs in 2010 and 2011?

5 A. From them directly, as individuals?

6 Q. Correct.

7 A. There may have been a few things here -- I  
8 don't know, small, nominal amounts. I mean, I don't  
9 know if there was a time when there was a small amount  
10 of money given to me.

11 Q. When you say "small" or "nominal amounts,"  
12 what are you talking about?

13 A. \$5,000 or less.

14 Q. Did you receive any additional promises of  
15 inheritance or estate type monies from your parents as  
16 a result of your work in 2010 and 2011?

17 A. No. I think mainly that, you know, they --  
18 that the value that I had created for them was worth  
19 financially a lot more to them than the remaining money  
20 that was owed. At the time, Zeezrom Properties  
21 probably was bringing in \$100,000. They only had --  
22 they didn't -- most of the properties weren't leased.  
23 So when we got formal leases, raised everything to  
24 market rates, all of a sudden, Zeezrom Properties began  
25 to, you know, bring in, you know, 4, \$500,000 a year.

1 And that increase was much, much greater than, you  
2 know, any additional amount owed to them at that time.

3 Q. Do you have the documents showing Zeezrom's  
4 revenue during that time frame, 2010-2011?

5 A. I would -- I would assume they would just be  
6 in the -- kind of in that accounting system, yeah.

7 Q. Who is Zeezrom's accountant; do you know?  
8 Or, let me --

9 A. At that time, it was Herbert McGuire.

10 Q. What company was Herbert with?

11 A. He was a CPA. Let me say this. He was the  
12 CPA that prepared the tax returns, but he was not doing  
13 bookkeeping.

14 Q. Okay. Who was doing the bookkeeping?

15 A. Kathy, that we had talked about. Later,  
16 Martha Brothers. They were kind of inputting. You  
17 know, checks came in, they deposited them. You know,  
18 when there were expenses, you know, wrote out checks  
19 for expenses. So they did the bookkeeping, per se.  
20 And -- yeah.

21 Q. Okay. And do you have those records  
22 electronically or in paper form?

23 A. Probably not in paper, but I would assume  
24 they -- we would have a QuickBooks kind of accounting  
25 that would have it. One of the challenges was, when I

1 became involved, was to kind of clean that up and get a  
2 little bit more organized.

3 Q. During the 2010 and 2011 time frame, did  
4 Holliday Amusements bring in revenue?

5 A. Yeah.

6 Q. Okay. Do you remember how much?

7 A. You know, revenue in terms of total sales --

8 Q. Sales?

9 A. -- or income?

10 Q. Sales?

11 A. Sales, yeah. No, that business was kind of  
12 in a downward trend since 2000. But during that time,  
13 it was about \$800,000 of revenue, top-line revenue.

14 Q. What -- did it have any net income?

15 A. Close to, you know, 50 grand to 100 grand, a  
16 year.

17 Q. Who were the paid employees for Holliday  
18 Amusements, if any?

19 A. Paid back then?

20 Q. Yeah, in the 2010-to-2011 time frame?

21 A. There was a Carl Ashfelter. A fellow named  
22 Joe. And I don't remember Joe's last name. I'll  
23 remember that in a second. Rick. There was another  
24 clerk or one additional employee, and then the office  
25 manager, Kathy. So there were about five people.

1 Q. And did Holliday Amusements' business pick up  
2 after 2010 to 2011, or did it continue to decline?

3 A. No, it just continued to decline. The video  
4 game and mobile apps world has pretty much ruined the  
5 video game business. And digital -- you know, music is  
6 free. You can get a free app and play what you want.

7 Q. Right.

8 A. So nobody pays for it, really, anymore. It's  
9 been just a really slow decline.

10 Q. And, again, you didn't receive any payments  
11 as an employee or contractor from Holliday Amusements  
12 during 2010 to 2011?

13 A. Not as -- like I said, I was never W-2'd, no.  
14 There were reimbursements and things like that, and  
15 whatnot. But...

16 Q. Sawgrass Technologies, what do they do?

17 A. They make ink, specifically a type of ink  
18 called -- it's a sublimation ink. It's a water-based  
19 ink that you transfer it onto materials through heat.

20 Q. Who was the CPA for Holliday Amusements back  
21 in the 2010-to-2011 time frame?

22 A. Herbert McGuire was.

23 Q. Okay. Same thing for Sawgrass?

24 A. No. They used somebody else.

25 Q. Your father wasn't an exclusive -- wasn't the

1 sole owner of Sawgrass?

2 A. No.

3 Q. Okay. Did you take over management of  
4 Sawgrass Technologies during 2010-2011?

5 A. We don't manage that business. I mean, they  
6 have their own team of people. It's run by a CEO. We  
7 don't -- we -- my dad, at the time, was a private  
8 investor from 20 years back. And, you know, he was not  
9 involved in the operations of that business on a  
10 day-to-day basis, in any way, shape or form, so...

11 Q. So your father was just basically receiving  
12 passive income from that business?

13 A. No. They were trying to grow the business  
14 for some time. And, actually, it had really not  
15 produced. It produced income. But the decision was to  
16 try to grow the business, so they kept the income  
17 inside of the business, and grow it and grow it. And  
18 so he didn't really -- he didn't receive income from  
19 them. I think they're...

20 Q. Looking back to Exhibit 5, this payment that  
21 was made to your father after the sale of the railroad  
22 property, did you receive any confirmation of that  
23 payment or do you have any documents showing  
24 confirmation of that payment?

25 A. I'm not sure what we've sent you. You'd have

1 to show me what we've sent you. But I see the closing  
2 statement. I see the...

3 Q. All right. Let me ask you this way: Have  
4 you sent to us every document that you have --

5 A. Every document that's in the file that we  
6 have --

7 Q. Let me finish that question.

8 A. -- in our possession.

9 Q. Let me finish that question real quick.

10 A. Sorry.

11 Q. Have you sent to us every document that you  
12 have related to the sale of the railroad property and  
13 any payments made to Warren or Patricia Holliday as a  
14 result of that sale?

15 A. I don't know about every document, just the  
16 ones that we had in our possession. There may -- you  
17 know, obviously, there could be other documents that we  
18 don't have in the file. I'm not going to say that  
19 that's the entire list of documents. I'm just saying  
20 what we had, we provided.

21 Q. Okay. That's fair.

22 Are you okay to keep going or do you want a  
23 break?

24 A. Yeah, I'm good. I might want some water, in  
25 a minute.

1 Q. Why don't we take quick break?

2 (A brief recess was taken.)

3 BY MR. TILLMAN:

4 Q. Have you ever had a South Carolina real  
5 estate license?

6 A. No.

7 Q. Have you ever had a South Carolina property  
8 manager's license?

9 A. Specific to -- no.

10 Q. All right. So we've established, as of  
11 roughly December 2010, you've made monetary payments of  
12 about one-point -- or \$1,170,000 to Warren Holliday as  
13 repayment on the note; is that fair?

14 A. Yes.

15 Q. Okay. And we're about to talk about -- well,  
16 let me mark this as Exhibit 6.

17 (Plaintiff's Exhibit No. 6 marked for  
18 identification.)

19 BY MR. TILLMAN:

20 Q. Exhibit 6 is a document that you all provided  
21 in discovery, that I believe is the bank account  
22 statement showing the payoff of the NBSC loan; is that  
23 fair? I can direct you to where I'm talking about.  
24 Right here, second page.

25 A. Yeah. Yes.

1 Q. Okay. And this -- that payment to NBSC,  
2 which is now Synovus; is that correct?

3 A. Correct.

4 Q. That payment was made January 22, 2016; is  
5 that correct?

6 A. That is correct.

7 Q. All right. So between December 30 of 2010  
8 and January the -- January 22 of 2016, did you make any  
9 payments to Warren Holliday related to the \$2 million  
10 loan, monetary payments?

11 A. No.

12 Q. Okay. Did you make any monetary payments to  
13 NBSC on the loan that Warren Holliday took out, that we  
14 discussed earlier?

15 A. Through Zeezrom Properties, they did, yes.

16 Q. Do you have those records?

17 A. Yeah.

18 Q. Okay. During that time frame, again, between  
19 December 30, 2010 and January 22, 2016, approximately  
20 how much money was paid from Zeezrom?

21 A. For -- sorry. Let me make sure I heard the  
22 dates right. Sorry.

23 Q. I may have just misspoke. Between December  
24 30, 2010, which is the date the railroad property money  
25 was paid to your father, correct?

1 A. Yeah.

2 Q. And January 22 of 2016, which was when the  
3 \$1.1 million payment was made to NBSC, how much was  
4 paid, either -- from Zeezrom to NBSC on that loan?

5 A. I don't know. I mean, there were monthly  
6 payments made on a monthly basis. I don't -- I don't  
7 have that in front of me right now.

8 Q. Okay. At that time, who was the owner of  
9 Zeezrom Properties?

10 A. Warren Holliday was the owner of Zeezrom  
11 Properties.

12 Q. And that's your father?

13 A. Yeah.

14 Q. Was he the only owner during that time  
15 frame?

16 A. Yeah.

17 Q. And I'm sorry for asking this, but what date  
18 did your father pass?

19 A. That's okay. He passed on September 26th of  
20 2016.

21 Q. Okay. So getting back to Exhibit 7. Your  
22 father was still alive when this payment was made; is  
23 that correct?

24 A. Yeah.

25 Q. All right. So --

1 MR. NETTLES: Six?

2 BY MR. TILLMAN:

3 A. Is this Exhibit 7 or 6? That's right,  
4 because this was 5.

5 Q. Right. I'm sorry. Getting back to Exhibit  
6 6.

7 On January 22, 2016, a payment of  
8 \$1,104,374.46 is made from Zeezrom Properties'  
9 Wells-Fargo bank account to Synovus Bank; is that  
10 correct?

11 A. Correct.

12 Q. And it's your understanding that that payment  
13 was made to completely satisfy the NBSC loan that your  
14 father took out in 2004?

15 A. That is correct.

16 Q. Why was that payment made on this date?

17 A. Well, we had closed just a few days prior on  
18 another piece of real estate. We sold the property at  
19 1808 Meeting Street and some of the surrounding  
20 parcels. And, you know, he owned that property  
21 individually, right? That was where Holliday  
22 Amusements was. That property was not -- was somewhat  
23 managed by Zeezrom, but it was technically -- you know,  
24 the ownership -- it was owned by him, as an individual.  
25 So when that closed -- I negotiated the sale of that

1 property. And when it closed, it went to him,  
2 personally. And then, as you can see, as you look on  
3 that bank statement, the funds were transferred over  
4 into the Zeezrom account as a capital contribution.  
5 And then it was -- those funds were used to pay off  
6 NBSC.

7 Q. Okay. So the funds were transferred as a  
8 capital contribution from your father; is that  
9 correct?

10 A. Yeah.

11 Q. All right. So your father made a capital  
12 contribution to Zeezrom in the amount of about \$1.1  
13 million, or exactly \$1.1 million --

14 A. Yeah.

15 Q. -- on January 22nd; is that correct?

16 A. Yeah.

17 Q. And then that money is paid out to satisfy  
18 the NBSC account?

19 A. Yeah.

20 Q. On that same day?

21 A. Yeah.

22 Q. And at this point, did you consider the \$2  
23 million loan paid in full?

24 A. It was paid in full at the time, like I told  
25 you, 2010 and '11. There was an agreement that that

1 was paid in full. My agreement is that I'd make my  
2 best efforts to resolve the obligation to NBSC. So I  
3 went out and structured a sale of 1808 Meeting Street.  
4 We sold it well, well, well above appraisal to a  
5 strategic buyer. And that provided plenty of funds.  
6 And we were able to close that out, at that time.

7 Q. And 1808 Meeting Street, was that owned by  
8 your father?

9 A. It was owned by Warren Holliday,  
10 individually.

11 Q. Okay. And then, sometime after this payment  
12 is made on January 22, 2016, it's your testimony that  
13 Warren Holliday provided you a copy of our note, which  
14 is Exhibit 1, with a marked "paid in full" on it?

15 A. Yes. But it was agreed to that this was paid  
16 in full before. But that was -- Patricia's litigious  
17 nature, he gave me a copy of that. And, you know, this  
18 was resolved, you know, a long, long time ago.

19 Q. How did he deliver the copy of the note with  
20 "paid in full" on it to you?

21 A. I was with him, in his home.

22 Q. So he delivered it to you by hand?

23 A. Yeah. I was in his presence. I was there  
24 with him.

25 Q. Do you recall how long after January 22,

1 2016, that occurred?

2 A. It was almost simultaneous, same -- you know,  
3 within a day, if not the same day. My father was very  
4 excited to know that NBSC had been fully resolved.

5 Q. Had you asked for him to provide that  
6 paid-in-full -- a copy of the paid-in-full note?

7 A. Yeah. We decided that there would be value.  
8 Because even after the divorce, Patricia was, you know,  
9 constantly trying to create, you know, legal issues  
10 over -- over kind of very unimportant things. And so  
11 just decided that that -- you know, just keep this for  
12 your files, right, for estate planning.

13 Q. But did you ask for it or he gave it to you  
14 spontaneously?

15 A. We just both had talked about it, and how  
16 that this is paid for. You know, he was very happy and  
17 had a copy. And said, you know, We ought -- we ought  
18 to do this. We ought to mark it. Here, keep a copy  
19 for yourself, paid in full.

20 That was actually at his recommendation. In  
21 my mind, it was resolved so long ago that I didn't  
22 think about it that way. But he had offered it. So I  
23 was like, Fine, that's great.

24 Q. So in your mind, it was resolved back when  
25 the railroad payment was made, the railroad property

1 was made?

2 A. I think for all parties it was resolved back  
3 then. But, yeah.

4 Q. Okay. And, again, I want to make sure I  
5 understand your testimony on this. Your testimony is  
6 that your mother verbally forgave the debt, the two  
7 million -- her portion of the \$2 million debt back in  
8 2010 and 2011; is that correct?

9 A. It was not forgiven. There was no debt --  
10 quote, debt forgiveness. It was that I had provided  
11 other services that had satisfied it.

12 Q. Okay. So --

13 A. I think that's an important difference.

14 Q. I understand. So it was your mother's  
15 testimony that -- I'm sorry, it's your testimony your  
16 mother verbally agreed the loan was satisfied back in  
17 2010?

18 A. Yes. But, you know, to be clear, the loan  
19 was from my dad, not from my mom.

20 Q. I understand.

21 A. She was aware that my dad had provided funds,  
22 you know, that he and I had this business kind of  
23 transaction. But she was aware that there was no  
24 further obligation.

25 Q. And is that to say that you don't have

1 anything in writing that showed your mother had agreed  
2 to satisfy any interest that she may have had in the  
3 loan?

4 A. No, other than the fact that I stayed at her  
5 house, ran her business, and kept her from losing her  
6 personal residence. I mean, you know, she was on the  
7 edge of being financially destitute, until I became  
8 involved in the business.

9 Q. I understand your position. I just want to  
10 make sure. You didn't get anything writing; is that  
11 fair?

12 A. No. It was my mom. I was staying at her  
13 house for a year of my life. No, these were all --  
14 these were extensive verbal conversations every  
15 evening. You know, we would talk at dinner. I'd come  
16 run the business affairs. No, it wasn't in writing.

17 Q. Okay. And other than the paid in full -- the  
18 copy of the note that had "paid in full" marked on it,  
19 you'd never received anything in writing from your  
20 father related to satisfaction of the loan, either; is  
21 that correct?

22 A. Well, there was -- there were other levels of  
23 satisfaction, where it was -- you know, just to be --  
24 no. Even in their divorce proceedings, it said that  
25 there was -- everything was paid in full.

1 Q. But I just want to focus specifically on --

2 A. But it lists me as an heir in that divorce  
3 proceeding, so that there was no additional amounts of  
4 money or that there was nothing...

5 Q. Well, actually, let me hand you what I'll  
6 mark -- I don't really have -- I'll let Truett look at  
7 it first.

8 MR. TILLMAN: If you need talk about him  
9 about it, that's fine.

10 MR. NETTLES: Yep, good.

11 MR. TILLMAN: You good?

12 MR. NETTLES: This the only one you've got?

13 MR. TILLMAN: That's only one I've got, yeah.

14 MR. NETTLES: I'd like to carry that with me.  
15 We can make some copies.

16 (Discussion held off the record.)

17 (A brief recess was taken.)

18 (Plaintiff's Exhibit No. 7 marked for  
19 identification.)

20 BY MR. TILLMAN:

21 Q. I've handed you, Mr. Holliday, what I've  
22 marked as Exhibit 7, and ask that -- do you recognize  
23 this document?

24 (Discussion held off the record.)

25 BY MR. TILLMAN:

1           A.    I have not received a copy of this document  
2 prior.

3           Q.    You've never seen it before?

4           A.    Uh-uh.  No.

5           Q.    All right.  Can you flip over to page four of  
6 five with me.

7                   Well, first of all, does this appear to be  
8 the Financial Declaration of Patricia Holliday from the  
9 divorce proceeding with your father?

10          A.    Yeah, it does.

11          Q.    And do you see that it's sworn, the signature  
12 is sworn on December 9, 2013?

13          A.    Yes.

14          Q.    And do you see in the Other Property Section  
15 where she lists debt from Ross Holliday, \$1,006,000?

16          A.    I do see that that is noted.

17          Q.    And had you ever seen that before?

18          A.    Never.

19          Q.    Okay.  And so your testimony that your mom  
20 did not list this debt as part of the divorce  
21 proceedings was based on your understanding at the  
22 time, is that right, at the time you testified?

23          A.    Well, I haven't seen this, so it's said --  
24 it's in error.

25          Q.    I understand.

1           A.    But I had not seen it.

2           Q.    Okay.

3           A.    No, it's the first time I've seen this.

4           Q.    All right.  Okay.  I think that's all I have.

5    I really appreciate your time today.  I don't know if

6    Truett may have a question or two for you, as well.

7                   MR. NETTLES:  Let me just look at this a

8    second.  I don't have any questions.

9                   MR. TILLMAN:  All right.  Thank you.

10                   (The deposition concluded at 11:53 a.m.)

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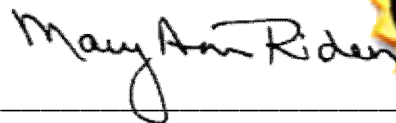

C E R T I F I C A T E

STATE OF SOUTH CAROLINA:  
COUNTY OF CHARLESTON:

I, MARY ANN RIDENOUR, Registered Professional Reporter and Notary Public, State of South Carolina at Large, certify that I was authorized to and did stenographically report the foregoing deposition of Ross S. Holliday; and that the transcript is a true record of the testimony given by the witness, and was sworn as such.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS MY HAND AND OFFICIAL SEAL this 3rd day of October, 2018, in the City of Charleston, County of Charleston, State of South Carolina.

Mary Ann Ridenour, RPR, CLR  
and Notary Public  
My commission expires:  
March 14, 2021

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OLDREGO JUN 23 2004

WARREN P HOLLIDAY  1808 MEETING STREET ROAD CHARLESTON, SC 29405-  <b>BORROWER'S NAME AND ADDRESS</b> <small>"I" includes each borrower above, jointly and severally.</small>	National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401  <b>LENDER'S NAME AND ADDRESS</b> <small>"You" means the lender, its successors and assigns.</small>	Loan Number <u>0776707950 - 1</u> Date <u>June 17, 2004</u> Maturity Date <u>June 17, 2005</u> Loan Amount \$ <u>2,000,000.00</u> Renewal Of _____ Appl #: 0000031131
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For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of \*\*TWO MILLION DOLLARS AND ZERO CENTS\*\* Dollars \$ 2,000,000.00

Single Advance: I will receive all of this principal sum on \_\_\_\_\_. No additional advances are contemplated under this note.

Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On \_\_\_\_\_ I will receive the amount of \$ \_\_\_\_\_ and future principal advances are contemplated.

Conditions: The conditions for future advances are \_\_\_\_\_

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on 06/17/2005.

Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 06/17/2004 at the rate of 4.500 % per year until the next change in the index rate, if any.

Variable Rate: This rate may then change as stated below.

Index Rate: The future rate will be BASED ON the following index rate: NBSC PRIME RATE FLOATING PLUS ONE HALF PERCENT

No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

Frequency and Timing: The rate on this note may change as often as SAME DAY. A change in the interest rate will take effect IMMEDIATELY W/CHANGES IN NBSC PRIME RATE

Limitations: During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_ % or less than \_\_\_\_\_ %. The rate may not change more than \_\_\_\_\_ % each \_\_\_\_\_.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

The amount of each scheduled payment will change.  The amount of the final payment will change.

SAME DAY

ACCRUAL METHOD: Interest will be calculated on a ACT/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

on the same fixed or variable rate basis in effect before maturity (as indicated above).

at a rate equal to \_\_\_\_\_

LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of the lesser of 5% of payment or \$50

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which  are  are not included in the principal amount above: LOAN FEE \$10,000.00 OR 1/2% FLOOR FEE \$14.00

PAYMENTS: I agree to pay this note as follows:

Interest: I agree to pay accrued interest in 12 payment(s) MONTHLY STARTING July 17, 2004

Principal: I agree to pay the principal in 1 payment(s) in the amount of THE ENTIRE UNPAID BALANCE AT MATURITY June 17, 2005

Installments: I agree to pay this note in \_\_\_\_\_ payments. The first payment will be in the amount of \$ \_\_\_\_\_ and will be due \_\_\_\_\_. A payment of \$ \_\_\_\_\_ will be due \_\_\_\_\_ thereafter. The final payment of the entire unpaid balance of principal and interest will be due \_\_\_\_\_.

SECURITY: This note is separately secured by (describe separate document by type and date): \_\_\_\_\_

(This section is for your internal use. Failure to get a separate security document does not mean the agreement will not secure this note.)



PURPOSE: The purpose of this loan is REVOLVING LINE OF CR FOR BUSINESS INVESTMENTS

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

JAW JOHN A WALLACE, JR

Warren P. Holliday  
WARREN P HOLLIDAY

BP

**DEFINITIONS:** As used on page 1, "I" means the terms that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

**APPLICABLE LAW:** The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

**COMMISSIONS OR OTHER REMUNERATION:** I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

**PAYMENTS:** Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

**INTEREST:** Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of interest accrual is sent and is in error, we mutually agree to correct it, and if you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

**INDEX RATE:** The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

**ACCRUAL METHOD:** The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

**POST MATURITY RATE:** For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

**SINGLE ADVANCE LOANS:** If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

**MULTIPLE ADVANCE LOANS:** If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

**PAYMENTS BY LENDER:** If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

**SET-OFF:** I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

- "Right to receive money from you" means:
- (1) any deposit account balance I have with you;
  - (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
  - (3) any repurchase agreement or other nondeposit obligation.
- \*Any amount due and payable under this note means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

**REAL ESTATE OR RESIDENCE SECURITY:** If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

**DEFAULT:** I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

**REMEDIES:** If I am in default on this note you have, but are not limited to, the following remedies:

- (1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).
- (2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.
- (3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.
- (4) You may refuse to make advances to me or allow purchases on credit by me.
- (5) You may use any remedy you have under state or federal law.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

**COLLECTION COSTS AND ATTORNEY'S FEES:** I agree to pay all costs of collection, replevin or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

**WAIVER:** I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

**OBLIGATIONS INDEPENDENT:** I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us will not release me from my duty to pay it. (Of course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

**FINANCIAL INFORMATION:** I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

**NOTICE:** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give you notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

**WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION:** If this loan is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

DATE OF TRANSACTION	PRINCIPAL ADVANCE	BORROWER'S INITIALS (not required)	PRINCIPAL PAYMENTS	PRINCIPAL BALANCE	INTEREST RATE	INTEREST PAYMENTS	INTEREST PAID THROUGH:
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	
	\$		\$	\$	%	\$	

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
WARREN P HOLLIDAY 1808 MEETING STREET ROAD CHARLESTON SC 29405-	National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401
Type: <input checked="" type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation <input type="checkbox"/> _____ State of organization/registration (if applicable) <u>SOUTH CAROLINA</u> <input type="checkbox"/> If checked, refer to addendum for additional Debtors and signatures.	ACCOUNT NUMBER: 0776707950 NOTE: 1

**COMMERCIAL SECURITY AGREEMENT**

The date of this Commercial Security Agreement (Agreement) is June 17, 2004.  
SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one)  Debtor  WARREN P HOLLIDAY (Borrower) owes to Secured Party:

Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

ACCOUNT NUMBER 0776707950 NOTE NUMBER 1

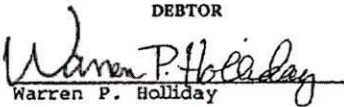

All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.  
SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

FIRST REAL ESTATE MORTGAGE ON PROPERTY AND IMPROVEMENTS KNOWN AS  
2233 HWY 17 N MT PLEASANT SC

USE OF PROPERTY. The Property will be used for  personal  business  agricultural  \_\_\_\_\_ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.	
DEBTOR	SECURED PARTY
 Warren P. Holliday	

**GENERAL PROVISIONS.** Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

**APPLICABLE LAW.** This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

**NAME AND LOCATION.** Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

**WARRANTIES AND REPRESENTATIONS.** Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

**DUTIES TOWARD PROPERTY.** Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

**PERFECTION OF SECURITY INTEREST.** Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

**INSURANCE.** Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

**AUTHORITY TO PERFORM.** Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement. If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

**PURCHASE MONEY SECURITY INTEREST.** If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

**DEFAULT.** Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
  - (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
  - (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
  - (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.
- WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION.** Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.
- REMEDIES.** After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any. By choosing any one or more of these remedies, Secured Party does not waive its right to use any other remedy. Secured Party does not waive a default by not using a remedy.

**WAIVER.** Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

**NOTICE AND ADDITIONAL DOCUMENTS.** Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

DEBTOR NAME AND ADDRESS (Pledgor)	SECURED PARTY NAME AND ADDRESS
2233 HIGHWAY 17 NORTH LLC 1808 MEETING STREET ROAD CHARLESTON SC 29405	National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401
Type: <input checked="" type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation <input type="checkbox"/> _____	
State of organization/registration (if applicable) <u>SOUTH CAROLINA</u>	
<input type="checkbox"/> If checked, refer to addendum for additional Debtors and signatures. ACCOUNT NUMBER: 0776707950 NOTE: 1	

**COMMERCIAL SECURITY AGREEMENT**

The date of this Commercial Security Agreement (Agreement) is June 17, 2004.  
 SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one)  Debtor  WARREN P HOLLIDAY (Borrower) owes to Secured Party:

Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

ACCOUNT NUMBER 0776707950 NOTE NUMBER 1


All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.  
 SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

FIRST REAL ESTATE MORTGAGE ON PROPERTY AND IMPROVEMENTS KNOWN AS  
 2233 HWY 17 N MT PLEASANT SC

USE OF PROPERTY. The Property will be used for  personal  business  agricultural \_\_\_\_\_ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.	
DEBTOR	SECURED PARTY
2233 HIGHWAY 17 NORTH LLC	
BY: <u>Warren P. Holliday (Managing Member)</u> Warren P Holliday	

**GENERAL PROVISIONS.** Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

**APPLICABLE LAW.** This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

**NAME AND LOCATION.** Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

**WARRANTIES AND REPRESENTATIONS.** Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

**DUTIES TOWARD PROPERTY.** Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

**PERFECTION OF SECURITY INTEREST.** Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

**INSURANCE.** Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

**AUTHORITY TO PERFORM.** Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement. If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

**PURCHASE MONEY SECURITY INTEREST.** If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

**DEFAULT.** Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

**WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION.** Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.

**REMEDIES.** After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

**WAIVER.** Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

**NOTICE AND ADDITIONAL DOCUMENTS.** Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

GUARANTY BY CORPORATION

06/17/2004

CHARLESTON  
(City)

SC  
(State)

HOLLIDAY AMUSEMENT CO., INC

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce National Bank of South Carolina (herein, with its participants, successors and assigns, called "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of \_\_\_\_\_

WARREN P HOLLIDAY

(herein called "Borrower") or to engage in any other transactions with Borrower, the Undersigned hereby absolutely and unconditionally guarantees to the Lender the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of the debts, liabilities and obligations described as follows:

A. If this  is checked, the Undersigned guarantees to Lender the payment and performance of the debt, liability or obligation of Borrower to Lender evidenced by or arising out of the following ACCT# 0776707950 and any extensions,

NOTE# 1 renewals or replacements thereof (hereinafter referred to as the "Indebtedness").

B. If this  is checked, the Undersigned guarantees to Lender the payment and performance of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Lender (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several, or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness"). Without limitation, this guaranty includes the following described debt(s): \_\_\_\_\_

The term, "Indebtedness" as used in this guaranty shall not include any obligations entered into between Borrower and Lender after the date hereof (including any extensions, renewals, or replacements of such obligations) for which Borrower meets the Lender's standard of creditworthiness based on Borrower's own assets and income without the addition of a guaranty or for which a guaranty is required but Borrower chooses someone other than the joint Undersigned to guaranty the obligation.

The Undersigned further acknowledges and agrees with Lender that:

1. No act or thing need occur to establish the liability of the Undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the Undersigned or modify, reduce, limit or release the liability of the Undersigned hereunder.

2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the Undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof.

The Undersigned represents and warrants to the Lender that the Undersigned has a direct and substantial economic interest in Borrower and expects to derive substantial benefits therefrom and from any loans and financial accommodations resulting in the creation of Indebtedness guaranteed hereby, and that this guaranty is given for a corporate purpose. The Undersigned agrees to rely exclusively on the right to revoke this guaranty prospectively as to future transactions, by written notice actually received by Lender if at any time, in the opinion of the directors or officers of the Undersigned, the corporate benefits then being received by the Undersigned in connection with this guaranty are not sufficient to warrant the continuance of this guaranty as to future Indebtedness. Accordingly, so long as this guaranty is not revoked prospectively in accordance with this guaranty, the Lender may rely conclusively on a continuing warranty, hereby made, that the Undersigned continues to be benefited by this guaranty and the Lender shall have no duty to inquire into or confirm the receipt of any such benefits, and this guaranty shall be effective and enforceable by the Lender without regard to the receipt, nature or value of any such benefits.

3. If the Undersigned shall be dissolved or shall be or become insolvent (however defined) or revoke this guaranty, then the Lender shall have the right to declare immediately due and payable, and the Undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the Undersigned voluntarily commences or there is commenced involuntarily against the Undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

4. The liability of the Undersigned hereunder shall be limited to a principal amount of \$ \_\_\_\_\_ (If unlimited or if no amount is stated, the Undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the Undersigned hereunder. The Lender may apply any sums received by or available to the Lender on account of the Indebtedness from Borrower or any other person (except the Undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the Undersigned hereunder. If the liability of the Undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the Undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.

5. The Undersigned will pay or reimburse the Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

This guaranty includes the additional provisions on page 2 hereof, all of which are made a part hereof.

This guaranty is  unsecured;  secured by a mortgage or security agreement dated \_\_\_\_\_ ;  secured by \_\_\_\_\_

IN WITNESS WHEREOF, this guaranty has been duly executed by the Undersigned the day and year first above written.

By Warren P. Holliday  
HOLLIDAY AMUSEMENT CO., INC  
By President (Title)  
By \_\_\_\_\_

BY: ~~UNRECORDED~~ ~~TELETYPE~~ ~~TO~~ all entities who sign this guaranty, individually and jointly.

#### ADDITIONAL PROVISIONS

6. Whether or not any existing relationship between the Undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, the Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the Undersigned and without any notice to the Undersigned. The liability of the Undersigned shall not be affected or impaired by any of the following acts or things (which the Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the Undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver adjustment, forbearance, compromise or indulgence granted to Borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any release, modification, substitution, discharge, impairment, deterioration, waste, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under §1111(b)(2) of the United States Bankruptcy Code.

7. The Undersigned waives any and all defenses, claims and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the Undersigned will not assert, plead or enforce against the Lender any defense of waiver, release, estoppel, statute of limitations, res judicata, statute of frauds, fraud, forgery, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against the Lender to Borrower or any such other person, whether or not on account of a related transaction. The Undersigned expressly agrees that the Undersigned shall be and remain liable, to the fullest extent permitted by applicable law, for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision. The undersigned shall remain obligated, to the fullest extent permitted by law, to pay such amounts as though Borrower's obligations had not been discharged.

8. The Undersigned further agree(s) that the Undersigned shall be and remain obligated to pay Indebtedness even though any other person obligated to pay Indebtedness, including Borrower, has such obligation discharged in bankruptcy or otherwise discharged by law. "Indebtedness" shall include post-bankruptcy petition interest and attorneys' fees and any other amounts which Borrower is discharged from paying or which do not accrue to Indebtedness due to Borrower's discharge, and Undersigned shall remain obligated to pay such amounts as fully as if Borrower's obligations had not been discharged.

9. If any payment applied by the Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

10. The Undersigned waive(s) any claim, remedy or other right which the Undersigned may now have or hereafter acquire against Borrower or any other person obligated to pay Indebtedness arising out of the creation or performance of the Undersigned's obligation under this guaranty, including, without limitation, any right of subrogation, contribution, reimbursement, indemnification, exoneration or any right to participate in any claim or remedy the Undersigned may have against the Borrower, collateral, or other party obligated for Borrower's debt, whether or not such claim, remedy, or right arises in equity, or under contract, statute or common law.

11. The Undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

12. The liability of the Undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the Undersigned to the Lender as guarantor or otherwise without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

13. The Undersigned represents and warrants to the Lender that (i) the Undersigned is a corporation duly organized and existing in good standing and has full power and authority to make and deliver this guaranty; (ii) the execution, delivery and performance of this guaranty by the Undersigned have been duly authorized by all necessary action of its directors and shareholders and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or by-laws or any agreement presently binding on it; (iii) this guaranty has been duly executed and delivered by the authorized officers of the Undersigned and constitutes its lawful, binding and legally enforceable obligation (subject to the United States Bankruptcy Code and other similar laws generally affecting the enforcement of creditors' rights); and (iv) the authorization, execution, delivery and performance of this guaranty do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

14. This guaranty shall be effective upon delivery to the Lender, without further act, condition or acceptance by the Lender, shall be binding upon the Undersigned and the successors and assigns of the Undersigned and shall inure to the benefit of the Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. Except as allowed by the terms herein, this guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the Undersigned and the Lender. This guaranty shall be governed by the laws of the State in which it is executed. The Undersigned waives notice of the Lender's acceptance hereof.

(page 2 of 2)

<b>WARREN F HOLLIDAY</b>  1808 MEETING STREET ROAD CHARLESTON, SC 29405-  <b>BORROWER'S NAME AND ADDRESS</b> <small>"I" includes each borrower above, jointly and severally.</small>	National Bank of South Carolina 44 BROAD STREET CHARLESTON, SC 29401  <b>LENDER'S NAME AND ADDRESS</b> <small>"You" means the lender, its successors and assigns.</small>	Loan Number <u>0776707950 - 1</u> Date <u>June 17, 2004</u> Mat. Date <u>June 17, 2005</u> Loan Amount \$ <u>2,000,000.00</u> Renewal Of _____
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**DISBURSEMENT AUTHORIZATION**

I hereby authorize and request the following disbursement from the loan referenced above:

a. Amount given to me directly	\$ _____	o. _____	\$ _____
b. Amount paid on my account (# _____)	\$ _____	p. _____	\$ _____
c. To Lender	\$ _____	q. _____	\$ _____
Amounts paid to others on my behalf:		r. _____	\$ _____
d. Insurance Companies (Property)	\$ _____	s. _____	\$ _____
e. Public Officials	\$ _____	t. _____	\$ _____
f. <u>Credit Life Insurance</u>	\$ _____	u. _____	\$ _____
g. <u>A &amp; H Insurance</u>	\$ _____	v. _____	\$ _____
h. _____	\$ _____	w. _____	\$ _____
i. _____	\$ _____	x. _____	\$ _____
j. _____	\$ _____	y. _____	\$ _____
k. _____	\$ _____	z. _____	\$ _____
l. _____	\$ _____	aa. _____	\$ _____
m. _____	\$ _____	bb. _____	\$ _____
n. _____	\$ _____	cc. _____	\$ _____

Comments:  
 FUTURE ADVANCES TO BE MADE  
 LOAN FEE I/A/O \$10,000.00 OR 1/2%  
 FLOOD DETERMINATION I/A/O \$14.00

X Warren F. Holliday  
 WARREN F HOLLIDAY  
 X \_\_\_\_\_  
 X \_\_\_\_\_

X \_\_\_\_\_  
 X \_\_\_\_\_  
 X \_\_\_\_\_

Loan Officer: JAW JOHN A WALLACE, JR

**COMMERCIAL LOAN APPLICATION - SUMMARY**

**IMPORTANT APPLICANT INFORMATION:** Federal law requires financial institutions to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law. **App#:** 0000031131 **Acct#:** /

<b>WARREN P HOLLIDAY</b>	National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401	Date May 20, 2004
1808 MEETING STREET ROAD		Telephone # 843-884-2204
CHARLESTON SC 29405-		Taxpayer I.D.# 250684716
Applicant's Name and Address	Creditor's Name and Address	Nature of Business
		Business Year End Date

**General Information**

Legal Relationship:  Corporation  Partnership  Sole-Proprietorship  Other

Authorization Resolution Dated:  Submitted with Statement  On File With Creditor  To Be Provided

Income Tax Return Filed Through What Date: \_\_\_\_\_ Are Any Returns Being Contested or Audited:  Yes  No

Name of Accountant or Accounting Firm: \_\_\_\_\_

Names of Persons Authorized to Borrow Money on Behalf of and in the Name of the Applicant: **WARREN P HOLLIDAY**

**Loan Request**

Amount Requested \$ **2,000,000.00**  Secured  Unsecured  Initial Request  Additional Advance

Purpose of Loan **REVOLVING LINE OF CREDIT** Terms **INTEREST ONLY ONE YEAR ALL P&I AT MATURITY**

**FOR BUSINESS INVESTMENTS**

**Financial Summary (See page 2 for explanation)**

<input type="checkbox"/> Financial Statement Submitted with this Summary.		<input type="checkbox"/> Current Financial Statement on File with Creditor.	
Assets		Liabilities	
Current Assets		Current Liabilities	
Account/Trade Receivables		Long Term Liabilities	
Inventory - Gross		Other Liabilities	
Fixed Assets	REFER TO FILE	Total Liabilities	REFER TO FILE
Other		Net Worth (Total Assets minus Total Liabilities)	
Total Assets		Total Liabilities and Net Worth	

**Profit and Loss**

**Additional Information Requested**

From	To	Date of Birth - (for individuals only)
Net Sales		
Gross Profit	REFER TO FILE	
Net Operating Profit		
Net Profit/Loss		

**Equal Credit Opportunity Notice**

Were your gross revenues \$1,000,000 or less in your previous fiscal year?  
 Yes  No

If you answered "yes" and the Creditor denies your application for credit, you have the right to a written statement of the specific reasons for the denial. To obtain the statement please contact:

Senior Commercial Loan Administrator  
1241 Main Street  
P O Box 1457  
Columbia, SC 29202

within 90 days from the date you are notified of Creditor's decision. The Creditor will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement. The notice at right describes additional protections extended to you.

NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (providing the applicant has the capacity to enter into a binding contract), because all or a part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act, the federal agency that administers compliance with this law concerning this creditor is:

\*\*\*\*\*  
Comptroller of the Currency  
Customer Assistance Group  
1301 McKinney Street, Suite 3450  
Houston, TX 77010-9050  
\*\*\*\*\*

**NOTICE - JOINT CREDIT:**

We intend to apply for joint credit. (initials) \_\_\_\_\_

This information and the information provided on all accompanying financial statements and schedules is provided for the purpose of obtaining credit for the Applicant(s) or for the purpose of Applicant(s) guaranteeing credit for others. Applicant(s) acknowledge that representations made in this statement will be relied on by Creditor in its decision to grant such credit. This Statement is true and correct in every detail and accurately represents the financial condition of the Applicant(s) on the date given below. Creditor is authorized to make all inquiries it deems necessary to verify the accuracy of the information contained herein and to determine the creditworthiness of the Applicant(s). Applicant(s) will promptly notify Creditor of any subsequent changes which would affect the accuracy of this Statement. Creditor is further authorized to answer any questions about Creditor's credit experience with Applicant(s). Applicant(s) are aware that any knowing or willful false statements regarding the value of the above property for purposes of influencing the actions of Creditor can be a violation of federal law, 18 U.S.C. § 1014, and may result in a fine or imprisonment or both.

In addition, each individual signing below authorizes the Creditor to check their individual credit account and employment history and have a credit reporting agency prepare a consumer credit report on them.

By signing below, the undersigned agree(s) to all the terms and conditions beginning on page 1 through the bottom of page 2 of this Application.

By <u>Warren P Holliday</u> 05/20/2004	By _____
Signature <b>WARREN P HOLLIDAY</b> Date	Signature      Date
By _____	By _____
Signature      Date	Signature      Date

## DEFINITIONS

1. **Current Assets** - Cash, marketable securities, accounts receivable - trade (net), inventory (net) and other current assets.
2. **Account/Trade Receivables** - All current accounts and notes and deferred notes, less reserve for bad debts.
3. **Inventory-Gross** - Value of finished goods, work in progress and raw materials.
4. **Fixed Assets** - Net value of all land, buildings, machinery, equipment, fixtures, furniture, etc.
5. **Total Assets** - All current assets, receivables, inventory, fixed assets and amounts due from officers and employees, investments, deferral/prepaid expenses, cash surrender value of life insurance policies and others.
6. **Current Liabilities** ; Bank notes payable, other trade notes payable, accounts payable-trade, other accounts payable, due to officers and employees, taxes-income other, accrued expenses, long term debt due within one year, other current liabilities.
7. **Long Term Liabilities** - Notes, bonds, and mortgages and other accounts coming due in one year or more.
8. **Total Liabilities** - All current, long term and other liabilities.
9. **Net Sales** - All sales less discounts, charge-backs and allowances.
10. **Gross Profit** - Net sales less the cost of goods sold.
11. **Net Operating Profit** - Gross profit less: expenses, (selling, general and administrative, interest, depreciation), officer's compensation, provision for bad debt and other expenses.
12. **Net Profit or Loss** - Net operating profit, plus other income, less federal, state and local taxes.
13. **Gross Revenues** - Value of all sales and services provided prior to deducting discounts, charge backs and allowances. This amount is requested to determine Applicant's rights and Creditor's obligations under the Equal Credit Opportunity Act. The term has no exact accounting definition and Creditor will rely on value provided by Applicant.

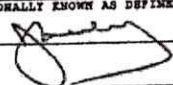

page 2 of 21

Account Information Sheet

Date: 05/20/2004

<b>Institution Name &amp; Address</b> National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401  Acct #: Appl #: 0000031131	<b>Internal Use</b>    
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**IMPORTANT ACCOUNT OPENING INFORMATION:** Federal law requires us to obtain sufficient information to verify your identity. You may be asked several questions and to provide one or more forms of identification to fulfill this requirement. In some instances we may use outside sources to confirm the information. The information you provide is protected by our privacy policy and federal law.

Individual Information		Individual Information
Name	WARREN P HOLLIDAY	
Relationship to Account (owner, joint owner, borrower, etc.)		
Address		
Mailing Address (if different)		
Home Phone	843-884-2204	
Work Phone		
Mobile Phone		
E-Mail		
Birth Date	09/17/1942	
SSN/TIN	250-68-4716	
Driver's License No., State, Issue Date, Exp. Date		
Other ID (Description, Details)	PERSONALLY KNOWN AS DEFINED IN THE BANK TRANSACTION POLICY	
Employer's Name & Address		
Previous Financial Inst.		

Individual Information		Individual Information
Name		
Relationship to Account (owner, joint owner, borrower, etc.)		
Address		
Mailing Address (if different)		
Home Phone		
Work Phone		
Mobile Phone		
E-Mail		
Birth Date		
SSN/TIN		
Driver's License No., State, Issue Date, Exp. Date		
Other ID (Description, Details)		
Employer's Name & Address		
Previous Financial Inst.		

Non-Individual Entity Information	
Name	Nature of Business
Address	Phone
Mailing Address (if different)	Mobile Phone
EIN	E-Mail
Type of Entity	Authorization/Resolution Date
State/Country & Date of Organization	Previous Financial Inst.
	Other ID (Description, Details)

WARREN P HOLLIDAY	National Bank of South Carolina 46 BROAD STREET CHARLESTON, SC 29401	Line of Credit No. <u>1</u>
1808 MREETING STREET ROAD		Date <u>June 17, 2004</u>
CHARLESTON, SC 29405-		Max. Credit Amt. <u>2,000,000.00</u>
BORROWER'S NAME AND ADDRESS	LENDER'S NAME AND ADDRESS	Loan Ref. No. <u>0776707950 - 1</u>
"I" includes each borrower above, jointly and severally.	"You" means the lender, its successors and assigns.	

You have extended to me a line of credit in the AMOUNT of **\*\*TWO MILLION DOLLARS AND ZERO CENTS\*\*** \$ 2,000,000.00

You will make loans to me from time to time until 05:00 P.M. on June 17, 2005. Although the line of credit expires on that date, I will remain obligated to perform all my duties under this agreement so long as I owe you any money advanced according to the terms of this agreement, as evidenced by any note or notes I have signed promising to repay these amounts.

This line of credit is an agreement between you and me. It is not intended that any third party receive any benefit from this agreement, whether by direct payment, reliance for future payment or in any other manner. This agreement is not a letter of credit.

1. AMOUNT: This line of credit is:

- OBLIGATORY: You may not refuse to make a loan to me under this line of credit unless one of the following occurs:
- I have borrowed the maximum amount available to me;
  - This line of credit has expired;
  - I have defaulted on the note (or notes) which show my indebtedness under this line of credit;
  - I have violated any term of this line of credit or any note or other agreement entered into in connection with this line of credit;
- a. \_\_\_\_\_

- DISCRETIONARY: You may refuse to make a loan to me under this line of credit once the aggregate outstanding advances equal or exceed **\*\*TWO MILLION DOLLARS AND ZERO CENTS\*\*** \$ 2,000,000.00

Subject to the obligatory or discretionary limitations above, this line of credit is:

- OPEN-END (Business or Agricultural only): I may borrow up to the maximum amount of principal more than one time.
- CLOSED-END: I may borrow up to the maximum only one time.

2. PROMISSORY NOTE: I will repay any advances made according to this line of credit agreement as set out in the promissory note, I signed on June 17, 2004, or any note(s) I sign at a later time which represent advances under this agreement. The note(s) set(s) out the terms relating to maturity, interest rate, repayment and advances. If indicated on the promissory note, the advances will be made as follows:

\_\_\_\_\_

\_\_\_\_\_

3. RELATED DOCUMENTS: I have signed the following documents in connection with this line of credit and note(s) entered into in accordance with this line of credit:

- security agreement dated June 17, 2004
- mortgage dated June 17, 2004
- guaranty dated June 17, 2004

4. REMEDIES: If I am in default on the note(s) you may:

- a. take any action as provided in the related documents;
- b. without notice to me, terminate this line of credit.

By selecting any of these remedies you do not give up your right to later use any other remedy. By deciding not to use any remedy should I default, you do not waive your right to later consider the event a default, if it happens again.

5. COSTS AND FEES: If you hire an attorney to enforce this agreement I will pay your reasonable attorney's fees, where permitted by law. I will also pay your court costs and costs of collection, where permitted by law.

6. COVENANTS: For as long as this line of credit is in effect or I owe you money for advances made in accordance with the line of credit, I will do the following:

- a. maintain books and records of my operations relating to the need for this line of credit;
- b. permit you or any of your representatives to inspect and/or copy these records;
- c. provide to you any documentation requested by you which support the reason for making any advance under this line of credit;
- d. permit you to make any advance payable to the seller (or seller and me) of any items being purchased with that advance;

e. \_\_\_\_\_

7. NOTICES: All notices or other correspondence with me should be sent to my address stated above. The notice or correspondence shall be effective when deposited in the mail, first class, or delivered to me in person.

8. MISCELLANEOUS: This line of credit may not be changed except by a written agreement signed by you and me. The law of the state in which you are located will govern this agreement. Any term of this agreement which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation.

FOR THE LENDER

SIGNATURES: I AGREE TO THE TERMS OF THIS LINE OF CREDIT. I HAVE RECEIVED A COPY ON TODAY'S DATE.

Title JAW JOHN A WALLACE, JR

>>>>>

Warren P Holliday  
WARREN P HOLLIDAY

**COMPLIANCE CHECKLIST  
FOR APPLICATIONS SECURED BY A DWELLING or REAL ESTATE**

Applicant Name(s) WARREN P HOLLIDAY  
 Property Location (Street Address) 2233 Hwy 17 N. Mt Pleasant SC  
 Account [or Application] Number 0776707950 Note Number 1

Complete this form with any application for a loan:

- (1) Secured by a dwelling (1-4 family, an individual condominium unit, mobile or manufactured home, etc - even if dwelling not attached to real property), OR  
 (2) Secured by real property.

Each regulation has been numbered. For each regulation, answer each question until a "NO" is reached or all questions have been answered. Indicate the type of credit application from the following.

- Business closed-end credit must address regulation 2.
- Business open-end credit must address regulation 2.
- Consumer closed-end credit must address all regulations except 3.
- Consumer open-end credit, including home-equity secured, must address regulations 2, 3, 4, 6, and 7.

**1) RESPA**

Yes No

- 1. Is applicant a live human being?
- 2. Will loan be secured by a first or subordinate lien on residential real property upon which:
  - (a) A 1-4 family home, condo, or mobile home is located? OR
  - (b) A 1-4 family home, condo, or manufactured home will be constructed using the loan proceeds? OR
  - (c) A mobile home is located? OR
  - (d) A mobile home will be placed using loan proceeds?
- 3. Does RESPA apply? If any following exception applies, mark the exception and mark the answer as "No." Otherwise, answer "Yes." Exceptions:
  - Loan will be on property of 25 acres or more.
  - Loan term, including any extensions, renewals or commitments for future financing, is less than 2 years, and no loan proceeds will finance transfer of title to the land.
  - Loan will be for general business purpose.

If all answers are "Yes",

- (a) At time of application, applicant must sign and receive a completed 'Servicing Disclosure Statement', (Applicable only if application is for purchase money or other first mortgage).
- (b) Within 3 working days of receipt of completed application (if not denied), deliver or mail to applicant:
  - (1) 'Settlement Costs' booklet (CN18), (Applicable only if application is for purchase-money first mortgage);
  - (2) Completed 'Good Faith Estimate' of settlement costs;
  - (3) Completed 'Early Truth-In-Lending' disclosure statement, (Applicable only if application is for purchase money, construction with transfer of title to land, or construction/permanent of principal dwelling); AND
- (c) At closing (must be available for inspection 1 working day before closing), have completed
  - (1) 'HUD-1 Settlement Statement' (only if transaction involves both a buyer and a seller), OR
  - (2) 'HUD-1A Settlement Statement' (only if no seller involved in transaction).

**2) FLOOD DISASTER PROTECTION ACT**

Yes No

- 1. Will loan be secured by real property improved with a walled and roofed structure or a title lien on a mobile home? If the following exception applies, mark the exception and mark the answer as "No." Otherwise, answer "Yes."
  - Loan proceeds will be \$5,000 or less, and the repayment term will be 1 year or less.

If answer is "Yes",

- (a) (1) Obtain a flood determination from bank's flood services provider, OR
  - (2) Review existing determination from bank's flood services provider to ensure both its validity and applicability.
  - (b) Upon receipt or review of determination, if property is located in a special flood hazard area [SFHA]:
    - (1) Mail applicant(s) a copy of the 'Notice of Special Flood Hazards'.  
Note: If property not in SFHA, no notice is required.
    - (2) At closing, have applicant(s) sign and date the 'Notice of Special Hazards'.
    - (3) Before funding, obtain from applicant(s) evidence of flood insurance, as follows:
      - (A) A copy of flood insurance policy; OR
      - (B) A copy of flood insurance declaration/endorsement page(s); OR
      - (C) A copy of flood insurance application with copy of check and/or receipt from insurance agency showing paid premium.
- Note: The policy, declaration/endorsement page(s), or application must list the effective and expiration dates of policy, property address, coverage amounts, and NBSC as the mortgagee.

**COMPLIANCE CHECKLIST  
FOR APPLICATIONS SECURED BY A DWELLING or REAL ESTATE**

**3) REGULATION Z - HOME EQUITY LINE OF CREDIT EARLY DISCLOSURE REQUIREMENTS**

Yes No

1. Is application for a Blank Check Home Equity Line of Credit?

If answer is "Yes,"

(a) At time of application, provide applicant with a copy of the 'Blank Check - Home Equity Lines' application (early) disclosure (CN93-HE), AND

(b) The booklet, 'What You Should Know About Home Equity Lines of Credit' (CN92B).

**4) REGULATION Z - RIGHT OF RESCISSION**

Yes No

1. Will loan be secured by a lien on the applicant's principal residence (1-4 family dwelling, condo, manufactured [mobile] home, etc. - even if that dwelling is not attached to real property)?

2. Is this dwelling occupied as the principal residence by any individual who has an ownership interest in the property?

3. Will loan be for consumer (personal, family, or household) purposes?

4. Is applicant a live human being?

5. Does Right of Rescission apply? If any following exception applies, mark that exception and mark the answer as "No." Otherwise, answer "Yes." Exceptions:

Loan will construct or purchase a principal dwelling.

Note: A loan secured by a new dwelling, that will to be the principal dwelling when purchased or upon completion of construction, and a principal dwelling IS subject to rescission. A consumer can only have one principal dwelling at a time.

Loan will refinance an existing loan with NBSC, secured by a dwelling, but without any advance of new funds.

If all answers are "Yes",

(a) Each person, with an ownership interest in the dwelling, must be given a copy of the loan agreement, AND

(b) 2 copies of (individual) rescission notice ('Notice of Right to Cancel').

**5) REGULATION Z - ADJUSTABLE RATE MORTGAGE**

Yes No

1. Will loan be secured by a lien on principal dwelling of the borrower (1-4 family dwelling, condo, manufactured [mobile] home, etc. - even if that dwelling is not attached to real property)?

2. Will term be longer than one year?

3. Will rate be subject to change after closing?

4. Will loan be for consumer (personal, family, or household) purposes?

5. Is applicant a live human being?

If all answers are "Yes," you are in violation of bank policy, and you must take whatever corrective steps are necessary to (a) adjust the term, and/or (b) fix the rate for the contract term.

**6) SC CONSUMER PROTECTION CODE - PREFERENCE STATEMENT**

Yes No

1. Will loan be secured by a lien on real property?

2. Will loan be for consumer (personal, family, or household) purposes?

3. Is applicant a live human being?

If all answers are "Yes", applicant(s) must complete the 'Borrower's Preference for Attorney and Insurance Agent' on the credit application.

**7) SC CONSUMER PROTECTION CODE - NOTICE TO COSIGNER**

Yes No

1. Will loan be for consumer (personal, family, or household) purposes?

2. Is applicant a live human being?

3. Will anyone (including applicant's spouse) sign a guaranty agreement or the loan agreement, but not receive any benefit (money, property, or services) from the loan?

If all answers are "Yes",

(a) At closing, each cosigner or guarantor must sign and receive a completed copy of 'Notice to Cosigner', AND

(b) Each cosigner or guarantor must receive a copy of the loan agreement.

I certify that I have completed this form, where applicable, based upon the answers furnished me by the applicant(s) and/or by examining the existing loan documents. I hereby certify that the requirements for each applicable regulation have been met.

Loan Officer John Wallace Officer Number 319 Branch Number 28

Note: If someone completes this form OTHER THAN the Loan Officer, the person completing the form should fill in the loan officer's name and their own initials.

**RECEIVED**

**Feb 22 2022**

**SC Court of Appeals**

**CERTIFICATE OF COUNSEL**

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Pursuant to Rule 210(g), SCACR, the undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)  
The Law Office of Jesse Sanchez, LLC  
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Charleston, South Carolina 29401  
(843) 814-8181

Attorney for Appellant

February 22, 2022  
Charleston, South Carolina