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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM BERKELEY COUNTY
Ninth Judicial Circuit**

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-001227

Gerald R. Smith Respondent

v.

**United Cable Construction Co., Inc.,
South Atlantic Communications, Inc.,
Brandon W. Linder, and
Karla Linder Appellants.**

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2018-CP-08-2241
	)	
GERALD R. SMITH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DECLARATORY ORDER
	)	
UNITED CABLE CONSTRUCTION CO.,	)	
INC., SOUTH ATLANTIC	)	
COMMUNICATIONS, INC., BRANDON	)	
W. LINDER and KARLA LINDER,	)	
	)	
Defendants.	)	
_____	)	

PROCEDURAL BACKGROUND AND PARTIES

This declaratory judgment proceeding came before me for a hearing on the merits at the Berkeley County Courthouse on May 15, 2019 at 11:30 A.M. pursuant to Order of Reference With Finality. Notice of hearing was properly made and served.

Present at hearing were the Plaintiff, Gerald R. Smith and his attorney John S. West, Esq. of the West Law Firm, PA of Moncks Corner, along with two witnesses for the Plaintiff, namely Grover C. Seaton, III, Esq. and George Talbert. Also present was Brandon W. Linder, appearing individually and as agent and authorized representative of all other Defendants and his attorney Adam Mlynarczyk, Esq. of the law firm of Koontz/Mlynarczyk, LLC of North Charleston.

The record reflects that the Defendants were electronically served with the Amended Summons and Amended Complaint and related pleadings through their attorney of record as established in the record. The record further reflects that no answer or other responsive pleadings were filed by the Defendants in response to the Amended Summons and Amended Complaint.

All Defendants were adjudged to be in default by Order of Default. Service of the Order of Default was affected electronically.

At the call of the case, notwithstanding the default status of the Defendants, Plaintiff consented to the full participation of the Defendants in the hearing given the declaratory nature of the proceedings.

FINDINGS OF SALIENT FACTS

From the record before me, from arguments by counsel, from the exhibits and testimony elicited in open Court and under oath, I find by a clear preponderance of the evidence the following salient facts:

1. The parties acknowledged in open court that there has been a long and largely cordial course of dealings among and between them going back to an original transaction which took place in 2006, when the corporate defendants purchased the assets of United Cable Construction Co., Inc., a company founded by the Plaintiff many years ago and which was owned solely by him at the time of sale.
2. Multiple agreements associated with and incidental to the original transaction were stipulated to and were admitted into evidence without objection which memorialized the understandings of the involved parties. Additionally, various subsequent agreements modifications and amendments thereto were admitted into evidence without objection, collectively, *Plaintiff's Ex. 1, 2, 3, 4 and 5*.
3. About the status and relations of the parties as to the agreements and understandings, as modified, contained in *Plaintiff's Ex. 1, 2, 3, 4 and 5*, there is no dispute or controversy before this Court.

4. What is before this Court however, is a real and considerable dispute and controversy concerning the validity of a single instrument dated May 22, 2017, which was admitted in evidence as *Plaintiff's Ex. 6*, without objection¹.
5. The disagreement about *Plaintiff's Ex. 6* is stark. Plaintiff contends that *Plaintiff's Ex. 6* reduces to writing and memorializes the clear and unambiguous expression of a binding contract. Plaintiff contends further that *Plaintiff's Ex. 6* embodies the product of a meeting of the minds of the parties and the same now controls their mutual promises and undertakings going forward.
6. Defendants assert just the opposite. They contend that *Plaintiff's Ex. 6* and the intentions of the parties expressed therein are aspirational only and not a valid contract.
7. Plaintiff unequivocally represented to the Court that the relief he seeks is not presently related to the enforcement of *Plaintiff's Ex. 6*.
8. Rather, Plaintiff contends that he has been compelled to seek an order of this Court determining the status and relations of the parties relative to *Plaintiff's Ex. 6*, after which Plaintiff may better determine which instrument(s) form the lawful basis for enforcement of any alleged breach by the Defendants and the remedies he may seek to pursue, if any.
9. Plaintiff specifically contends that he is required to seek the declaratory relief set forth in his Amended Complaint because of Defendants' position disavowing² any obligation or imperative by any and all Defendants to perform as set forth in *Plaintiff's Ex. 6*.
10. Defendants forcefully argued that while there are features to *Plaintiff's Ex. 6* which are very attractive to the Defendants; specifically a huge discount in the total payoff amount³,

¹ For purposes of this Order, I am attaching *Plaintiff's Ex. 6* hereto and incorporating the same into the Order by reference in its entirety.

² *Plaintiff's Ex. 8* includes a letter from Attorney Mlynarczyk to Attorney Seaton declaring that *Plaintiff's Ex. 6* is not a valid contract. The position of Defendants at the hearing did not change.

³ The precise dollar figure of the agreed upon discount is \$784,244.51.

there is an element of *Plaintiff's Ex. 6*, that is to say the required conveyance to the Plaintiff by the record owners of certain real properties located at 144 Frankie Lane, Ladson, South Carolina, that according to Defendants cannot be done without creating collateral issues for the Defendants vis-a-vis other lienholders and creditors.

11. In support of their position regarding the 144 Frankie Lane properties, Defendants introduced *Defendants' Ex. 1, 2 and 3*, which are excerpts from the record in a mortgage foreclosure case bearing Case No. 2016-CP-08-2352.
12. Over the period from 2006 through April, 2017 periodic payments of varying amounts were paid to the Plaintiff by the named obligors. It is undisputed that as of the end of April, 2017, Gerald R. Smith was owed \$1,084,244.51.
13. During mid-May, 2017, Gerald R. Smith and Brandon Linder, acting individually and for the corporate defendants agreed that it was mutually beneficial that the then balance due be greatly reduced. Doing so would produce a direct benefit to Gerald R. Smith in that he would see his money during his lifetime and simplify his estate planning efforts.⁴ The payoff reduction would obviously assist the obligors by reducing the total debt service costs going forward substantially.
14. Gerald R. Smith and Brandon Linder then mutually decided to meet at the law offices of Gerald R. Smith's longtime attorney Grover C. Seaton, III of Moncks Corner for the purpose of communicating to Mr. Seaton the terms of their "deal" and to mutually ask Mr. Seaton to prepare an instrument in writing memorializing their latest agreement.⁵
15. Mr. Seaton met with Gerald R. Smith and Brandon Linder on May 21, 2017 at his office in Moncks Corner. Mr. Seaton made it clear to Brandon Linder that he represented

⁴ Gerald Smith was 81 years old in 2017. On the date of hearing he was 83 years old.

⁵ The only outstanding question when Gerald R. Smith and Brandon Linder appeared in Mr. Seaton's office was the balance due. Gerald R. Smith originally insisted on \$400,000. Brandon Linder proposed \$300,000. The parties agreed to \$300,000. All other terms were agreed upon in advance of arrival at Mr. Seaton's office.

Gerald R. Smith only in the matter. Mr. Seaton inquired of Brandon Linder whether he and/or his entities were represented by counsel and if so who was his/its lawyer.

16. Brandon Linder declared to Mr. Seaton that he did not need or want a lawyer to represent him; the agreement with Gerald R. Smith was simple, plain, straightforward and specific and that he wanted to proceed with reducing the latest agreement with Gerald Smith to writing.
17. Mr. Seaton then immediately drafted the agreement which was presented to Mr. Smith, Brandon Linder and his wife Karla Linder⁶ the following day by Mr. Seaton's employee George Talbert and the same was executed and witnessed in Mr. Talbert's presence.
18. From September, 2017 until November, 2018, Brandon Linder, individually and as agent for the other Defendants made payments to Mr. Seaton per ¶ 2 of *Plaintiff's Ex. 6* on account of the agreed upon balance due of \$300,000 in varying amounts for a total undisputed amount of \$33,000. *Plaintiff's Ex. 7*.

CONCLUSIONS OF LAW

I. Elements of a contract

The necessary elements of a contract are offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of “*some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.*” *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable. *Gaskins v. Firemen's Ins. Co. of Newark, N. J.*, 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral).

⁶ Karla Linder is a signatory to *Plaintiff's Ex. 6* because she was the owner of an undivided interest in the 144 Frankie Lane properties.

Each and all of the elements of a contract are met and satisfied by *Plaintiff's Ex. 6*. With respect to valuable consideration, it is manifestly clear to this Court that *Plaintiff's Ex. 6* embodies rights, interests, profits or benefits accruing to all parties together with mutual forbearances, detriments, losses and responsibilities given, suffered or undertaken.

In simpler terms, both sides got what they wanted and everybody gave up some things to get it. Thereafter, Defendants partially performed under *Plaintiff's Ex. 6* by paying money to the Plaintiff and Plaintiff accepted the payments. The total payments represented significant dollars and totaled more than ten (10%) of the balance due.

II. Meeting of the Minds

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (emphasis in original); *see also Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct.App.1987) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.”). “*The necessary elements of a contract are an offer, acceptance, and valuable consideration.*” *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). In *Player v. Chandler*, the South Carolina Supreme Court asserted:

The “meeting of minds” required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

Here, there is a clear and obvious meeting of the minds. There were no secrets. There was no confusion. There was no equivocation. Plaintiff openly wanted to wrap up his deal with Defendants with a reasonable measure of security and Defendants openly wanted to capture the windfall that would be the product of the significant reduction of the payoff.

III. South Carolina Uniform Declaratory Judgment Act (S.C. Code Ann. § 15–53–10)

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree. *S.C. Code Ann. § 15–53–20*.

To state a cause of action under South Carolina’s Uniform Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). “*A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.*” *Id.* Thus, “[a]ny person interested under a ... written contract... may have determined any question of construction or validity arising under the ... contract... and obtain a declaration of rights, status or other legal relations thereunder.” *S.C. Code Ann. § 15–53–30* (2005).

A justiciable controversy is plainly before this Court regarding *Plaintiff’s Ex. 6*. This is not a vague or academic disagreement. A clear and concrete issue exists between and among the parties.

Moreover, the fact that Plaintiff is not seeking an enforcement for an alleged breach in this case is of no consequence. *S.C. Code Ann. § 15–53–40* specifically contemplates the very situation before this Court and empowers this Court to determine the outcome independent of the enforcement aspects of this dispute... “*a contract may be interpreted before and after a breach.*”

Plaintiff has properly invoked the provisions of the South Carolina Declaratory Judgment Act. He is entitled to a determination of this Court regarding *Plaintiff’s Ex. 6*.

ORDER

Based upon the findings of fact and conclusions of law, I find, conclude and declare that *Plaintiff's Ex. 6* is a valid and binding contract between and among the parties to this case.

AND IT IS SO ORDERED.

SIGNED ELECTRONICALLY BY DALE E. VAN SLAMBROOK,
MASTER IN EQUITY FOR BERKELEY COUNTY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-08-2241

GERALD R. SMITH,

UNITED CABLE CONSTRUCTION CO., INC,
SOUTH ATLANTIC COMMUNICATIONS,
INC, BRANDON W. LINDER and KARLA
LINDER,

PLAINTIFF(S)

DEFENDANT(S)

John S. West
PO Box 1869
Moncks Corner, SC 29461

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

(Signature Page to Follow)

For Clerk of Court Office Use Only

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

John S. West

PO Box 1869

Moncks Corner, SC 29461

ATTORNEY(S) FOR THE PLAINTIFF(S)

Adam Mlynarczyk

1058 E. Montague Ave

N. Charleston, SC 29405

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2018CP0802241
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2019-07-30 08:06:15 page 11 of 11

AGREEMENT FOR PURCHASE OF ASSETS OF UNITED CABLE CONSTRUCTION CO., INC.

ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. BOTH PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS AGREEMENT TO ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.

WHEREAS, UNITED CABLE CONSTRUCTION CO, INC. (hereinafter "SELLER") is an Illinois corporation organized and operating in compliance with the laws of Illinois, having a physical address of 107 Eureka Street, #2, Eureka Illinois 61530-1239 and Daniel M. Harrod is the registered agent at such address;

WHEREAS, SELLER has its corporate headquarters located in South Carolina at 206 Frankie Lane, Ladson, South Carolina 29456;

WHEREAS, GERALD R. SMITH (hereinafter "SMITH") is the sole shareholder and operator of SELLER and as part of this Agreement for the Purchase of Assets of United Cable Construction Co., Inc. (hereinafter "Agreement") has made binding oaths and affirmations which are binding against him individually, and these oaths and affirmations are taken as part of the valuable and legal consideration of this Agreement;

WHEREAS, South Atlantic Communications, Inc. (hereinafter "BUYER") is a South Carolina corporation organized and operating in compliance with the laws of South Carolina, having a physical address of 740 North Wise Drive, Sumpter, SC 29150 and Brandon W. Linder is the registered agent at such address;

WHEREAS, BUYER and SELLER have executed a valid letter(s) of intent expressing their intentions as to the terms and conditions set forth below, and that all parties have acted in good faith and fair dealing to consummate the conditions that are the purpose of this Agreement;

WHEREAS, all parties to this Agreement have given legal and valuable consideration for the covenants, conditions and promises herein, receipt and sufficiency of which is hereby acknowledged; and

NOW THEREFORE, BUYER, SELLER and SMITH enter into this Agreement individually, or through their legally designated agents and representatives, and all parties, after careful consideration and the opportunity to review this Agreement with counsel, agree and assent to the following terms and conditions which make up the entirety of this Agreement:

1. Purchase Price. SELLER has agreed to sell and BUYER has agreed to buy the tangible and intangible assets of United Cable Construction Co., Inc. for a price of three hundred thousand (\$300,000.00) dollars and zero cents. The "Purchase Price" as set forth in this paragraph is agreed upon by both parties as evidenced by the signatures and initials of all parties to this Agreement, their legal representatives or assigns, and all of the exhibits attached hereto.



**CONSULTATION AGREEMENT FOR GERALD R. SMITH
WITH UNITED CABLE CONSTRUCTION CO., INC.**

ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. BOTH PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS AGREEMENT TO ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.

WHEREAS, UNITED CABLE CONSTRUCTION CO, INC. (hereinafter "UCC") is an Illinois corporation organized and operating in compliance with the laws of Illinois, having a physical address of 107 Eureka Street, #2, Eureka Illinois 61530-1239 and Daniel M. Harrod is the registered agent at such address;

WHEREAS, UCC has its corporate headquarters located in South Carolina at 206 Frankie Lane, Ladson, South Carolina 29456;

WHEREAS, GERALD R. SMITH (hereinafter "SMITH") was formerly the sole shareholder and operator of UCC and as part of this Consultation Agreement for Gerald R. Smith with United Cable Construction Co., Inc. (hereinafter "Agreement") has made binding oaths and affirmations which are binding against him individually, and these oaths and affirmations are taken as part of the valuable and legal consideration of this Agreement and for the Agreement for the Purchase of Common Stock of United Cable Construction Co., Inc.;

WHEREAS, South Atlantic Communications, Inc. (hereinafter "SAC") is a South Carolina corporation organized and operating in compliance with the laws of South Carolina, having a physical address of 740 North Wise Drive, Sumpter, SC 29150 and Brandon W. Linder is the registered agent at such address;

WHEREAS, SAC has purchased all of the outstanding and issued common stock owned by SMITH in UCC, and that both parties have acted in good faith and fair dealing to consummate the transfer of stock ownership in accordance with the Agreement for the Purchase of Common Stock of United Cable Construction Co., Inc., and both parties realizing the importance of SMITH's continued cooperation for the success of UCC;

WHEREAS, all parties to this Agreement have given legal and valuable consideration for the covenants, conditions and promises herein, receipt and sufficiency of which is hereby acknowledged and;

NOW THEREFORE, UCC and SMITH enter into this Agreement individually, or through their legally designated agents and representatives, and all parties, after careful consideration and the opportunity to review this Agreement with counsel, agree and assent to the following terms and conditions which make up the entirety of this Agreement:

- 1. Consultation Period. SMITH agrees to remain a consultant of UCC, after the execution of this Agreement, for a period of five (5) years. It is understood by all parties that the value of the**



business of UCC is based largely upon the relationships created and maintained by SMITH as the sole contact and operator for UCC for the previous years of UCC's existence. This Agreement shall include, but not be limited, to the following guidelines:

- (a) SMITH shall make himself available to answer any and all questions UCC or SAC shall have in regard to the operations of UCC after the execution of this Agreement for the prescribed five (5) year period;
- (b) SMITH shall take any and all reasonable actions requested by UCC during the term of the consultation agreement, as long as such requests are reasonable within the scope of a consultant to a corporation. Such requests may include, but are not limited to, talking to subcontractors of UCC, talking to individuals contracted with UCC, talking with vendors of UCC, aiding in agreements for purchases of equipment, etc. and any and all other reasonable actions necessary to continue the operations of UCC and foster its success, growth and continuation;
- (c) any and all actions taken by SMITH on behalf of UCC after the execution of this Agreement shall be deemed paid for and compensated by the allocation of the purchase price listed in paragraph three (3) below; and
- (d) all parties agree that good faith, fair dealing and reasonableness will be used in determining what falls within the scope of this Agreement, and that any tasks undertaken by SMITH, at UCC's request, which require an excessive amount of time to perform, shall be compensated for separately in an amount to be agreed upon by both parties.

2. Agreement Not to Compete. It is understood and agreed upon by SMITH that he shall not engage in any activities that are in direct competition with UCC after the execution of this Agreement and in accordance with the terms and conditions of the Agreement for the Purchase of Common Stock of United Cable Construction Co., Inc. This Agreement Not to Compete shall include, but is not limited to, starting any business in South Carolina or Illinois that is in any way related to, or in competition with, the like business of United Cable Construction Co., Inc. ("UCC") or South Atlantic Communications, Inc. ("SAC") including any of their affiliates and/or subsidiaries. To "Compete" shall include attaining ownership, investor interest, or interest of any kind in any business similar to UCC and SAC. It shall also include advising, consulting, participating or aiding in any way, any business, individual or entity which operates in the like area of business as SAC, UCC or any of their affiliates and/or subsidiaries. SMITH shall not solicit any employees, current clients or potential clients of UCC, SAC or any of their affiliates and/or subsidiaries. SMITH shall not enter into the like business of UCC and SAC in any state where UCC or SAC, its affiliates and/or subsidiaries conducts business which is similar or like the business currently conducted by UCC and SAC. This Agreement Not to Compete shall become effective immediately upon the execution of this Agreement and shall endure for 2 (two) years after the expiration of this Agreement.

- (a) SMITH agrees that this Agreement Not to Compete is reasonable both in its scope of time and geographic limitations to ensure that the value of UCC corporation is not diminished by unfair competition from SMITH as a direct competitor, and that this Agreement Not to Compete has been purchased for valuable and legal consideration as outlined in the Allocation of the Purchase Price attached hereto as Exhibit A;

(b) It is agreed upon by both parties that SMITH owns and operates multiple businesses in Illinois that are related to the cable industry and any and all installation or laying of cable in furtherance of those businesses existing at the time of this sale shall not constitute a breach of this Agreement; and

(c) SMITH agrees that any violation of this Agreement Not to Compete would be devastating to the economic value of UCC and that UCC and SAC would be entitled to any and all costs to enforce such agreement, including, but not limited to, injunction from continuing violations, costs, compensatory and punitive damages, attorney's fees, and any and all other damages available at law.

3. Payment. It is agreed upon between the parties that SMITH shall be paid a sum of one million eight hundred and fifty eight thousand ~~(\$1,858,000.00)~~ dollars in total compensation (consulting fee) for this Agreement and payment shall be made according to the following schedule:

- (a) SMITH shall be paid a consulting fee of two hundred forty thousand (\$240,000.00) dollars a year for a period of five (5) years (\$1,200,000.00 total). This consulting fee shall be made in sixty ~~(60)~~ equal monthly payments of twenty thousand ~~(\$20,000.00)~~ dollars. Payments are to begin two (2) month after the execution of this Agreement. First payment under this Agreement shall be due on March 1, 2005.
- (b) At the end of the five (5) year period and after the final consulting fee payment is made, a final payment of five hundred thousand ~~(\$500,000.00)~~ dollars will be made and is payable one month after the five year payment term expires.
- (c) At the end of the five (5) year period the sum of one hundred fifty eight thousand ~~(\$158,000.00)~~ dollars shall be paid to SMITH as compensation for the Agreement Not to Compete set forth in paragraph two (2) above.

4. Payment to Smith upon Disability or Death. Should SMITH become incapacitated or disabled (to an extent that he is unable to perform the functions necessary under this Agreement) or predecease (collectively hereinafter "Incapacitated") the completion of his obligations under this Agreement, the following terms and conditions shall be applied:

- (a) If the Incapacitation should occur within the first thirty (30) months of this sixty (60) month Agreement, then UCC shall guarantee payment of eight hundred fifty thousand (\$850,000.00) dollars under this Agreement to his estate and in accordance with the payment terms set forth herein until such amount has been paid; and
- (b) If the Incapacitation should occur after the first thirty (30) months has been completed by SMITH, then UCC shall continue to make payments to SMITH's estate or beneficiaries under the terms of this Agreement until such obligations and payments are completed in full.

5. Confidentiality and Non-Disclosure. SMITH agrees that any and all information in the possession of SMITH as to the operations of UCC are confidential and private in nature, and that all information regarding UCC's financial statements, taxes, field operations, assets, standard operating procedures, salaries, billing, clients, contacts, contracts, sub-contractors, accounting

and all other operations of UCC of any kind, are valuable to the SELLER corporation and BUYER and that none of the information listed in this paragraph, including any and all information not specifically listed but similar in nature, shall be kept secret and confidential and shall not be shared with, or disseminated to, any individuals or entities without the prior written authorization of UCC.

6. Early Termination. It is agreed upon by all parties that, at the sole discretion of UCC, UCC may terminate this Agreement by immediately paying any and all monies that are still owed under this Agreement at the time of termination, and that any and all obligations that endure the termination of this Agreement shall remain binding upon all parties. It is also agreed upon by all parties that when SMITH is called upon to act on behalf of UCC, that he shall do so in the manner prescribed by UCC and shall conduct himself in a manner relative to when he owned and operated UCC.

7. Survival of Terms. It is understood by all parties that the terms of this Agreement shall survive and endure beyond the date of execution, and that this Agreement contains many terms and conditions that may require action of any party involved even after the execution of this Agreement has taken place. All parties agree that they shall execute these duties or actions with due diligence and good faith with all of the parties involved.

8. Good Faith. Both parties to this Agreement will exercise good faith and fair dealing in compliance with all of the terms and conditions herein. Any disputes of the parties during this Venture will be handled in good faith and every attempt will be made to come to a reasonable and acceptable resolution.

9. Applicable Law. This Agreement is executed under the contract laws of South Carolina and any and all disputes arising out of this agreement shall be subject to binding arbitration as stated at the top of this Agreement in compliance with South Carolina Statutes and Laws. The prevailing party to any dispute under this Agreement shall be entitled to the attorneys fees and costs.

10. Plain Meaning. The headings of each paragraph are not a part of the Agreement and are for title purposes only. All words and terms in this Agreement shall be given their plain and ordinary meaning. All technical terms shall be afforded their plain and ordinary technical meaning.

11. Entire Agreement. This Agreement represents the entire Agreement of the parties and any and all negotiations, discussions, understandings and terms not a part of this written Agreement shall not be binding on any party hereto.

12. Modifications. Any modifications to this Agreement must be in writing and signed by both parties to be enforceable.

13. Severability. If any paragraph, part or portion of this Agreement shall be determined to be unenforceable, it shall not affect the remaining Agreement and any and all remaining paragraphs, terms and conditions shall remain enforceable.

14. Execution. This Agreement shall be executed in the presence of all parties thereto or their authorized agents or officers, and all parties shall secure an original copy for their records.

15. Exhibits and Addendums. All exhibits and addendums attached to this Agreement and signed or initialed by all parties are incorporated herein as if set forth in their entirety.

WHEREFORE, the parties to this Consulting Agreement for Gerald R. Smith with United Cable Construction Co., Inc. hereby assent and agree to be bound by all of the terms and conditions set forth above, as is evidenced by their signature below.

Gerald R. Smith
UNITED CABLE CONSTRUCTION CO., INC. (UCC)
Authorized Agent

1-04-06
DATE

[Signature]
Witness

Gerald R. Smith
GERALD R. SMITH (SMITH)
Individually

1-04-06
DATE

[Signature]
Witness

Charleston, South Carolina

Subscribed to and sworn before me this 4th day of June, 2008

Daylen Robinson
NOTARY PUBLIC

My Commission Expires: 06/11/2008

PERSONAL GUARANTY TO CONSULTATION AGREEMENT

ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. BOTH PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS AGREEMENT TO ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, and as an inducement for GERALD R. SMITH (Hereinafter "Creditor"), to enter into this Consultation Agreement with UNITED CABLE CONSTRUCTION CO., INC. (Hereinafter "Debtor"), it is hereby agreed that the undersigned does hereby guaranty to Creditor the prompt, punctual and full payment of all monies now or hereinafter due Creditor from Debtor in relation to the Consultation Agreement between United Cable Construction Co., Inc. and Creditor.

Until termination, this guaranty is limited to all amounts owed or owing under the Consultation Agreement between Debtor and Creditor and shall remain in full force and effect notwithstanding any extension, compromise, adjustment, forbearance, waiver, release or discharge of any party obligor or guarantor, or release in whole or in part of any security granted for said indebtedness or compromise or adjustment thereto, and the undersigned waives all notices thereto.

The obligations of the undersigned shall be at the election of Creditor, shall be secondary, and Creditor shall be required to exhaust its remedies as against Debtor prior to enforcing its rights under this guaranty against the undersigned.

The guaranty hereunder shall be unconditional and absolute and the undersigned waives all rights of subrogation and set-off until all sums under this guaranty are fully paid. The undersigned further waives all suretyship defenses or defenses in the nature thereof, generally.

If there are two or more guarantors to this guaranty, the obligations shall be joint and several and binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

Each of the undersigned warrants and represents it has full authority to enter into this guaranty.

This guaranty shall be binding upon and inure to the benefit of the parties, their successors, assigns and personal representatives.

Gerald R. Smith has agreed to release David B. Crockett from this personal guaranty if Linder completes the following at any time after the execution of this Guaranty:

1. Attains life insurance with UCC as the beneficiary in an amount of \$3,000,000.00 within 45 days of closing and proceeds to be earmarked by the corporation for payment of the debt to Gerald R. Smith upon his demise; and



2. Illustrates to Gerald R. Smith's satisfaction that Brandon W. Linder and UCC have attained enough net worth to cover the debt in its entirety.

This guaranty shall be construed and enforced under the laws of the State of South Carolina.

Signed this 4th day of January, 2016.

In the presence of:

[Signature]
Witness

[Signature]
Brandon W. Linder, Guarantor

[Signature]
Witness

[Signature]
David B. Crockett, Guarantor

**MODIFICATION AND ADDENDUM TO CONSULTATION AGREEMENT FOR
GERALD R. SMITH WITH UNITED CABLE CONSTRUCTION CO., INC. AND
AGREEMENT FOR THE PURCHASE OF COMMON STOCK WITH UNITED CABLE
CONSTRUCTION CO., INC.**

ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS UNDER THIS ADDENDUM SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. BOTH PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS ADDENDUM TO ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.

WHEREAS, UNITED CABLE CONSTRUCTION CO, INC. (hereinafter "UCC") is an Illinois corporation organized and operating in compliance with the laws of Illinois, having a physical address of 206 Frankie Lane, Ladson, South Carolina and Brandon W. Linder is the registered agent at such address;

WHEREAS, UCC has its corporate headquarters located in South Carolina at 206 Frankie Lane, Ladson, South Carolina 29456;

WHEREAS, BRANDON W. LINDER (hereinafter "LINDER") is the majority shareholder and operator of UCC;

WHEREAS, SOUTH ATLANTIC COMMUNICATIONS, INC. (hereinafter "SAC") a South Carolina corporation, UCC, LINDER and GERALD R. SMITH (hereinafter "SMITH") entered into binding contracts with each other on or about January 4, 2006, specifically; the Consultation Agreement for Gerald R. Smith with United Cable Construction Co., Inc. (hereinafter "CONSULTATION AGREEMENT") and the Agreement for the Purchase of Common Stock with United Cable Construction Co., Inc. (hereinafter "STOCK AGREEMENT");

WHEREAS, all parties to the CONSULTATION AGREEMENT and STOCK AGREEMENT noted above desire to make, create and enforce this Modification and Addendum To Consultation Agreement For Gerald R. Smith With United Cable Construction Co., Inc. and Agreement For The Purchase Of Common Stock With United Cable Construction Co., Inc. (hereinafter "ADDENDUM") and which ADDENDUM is authorized under each Agreement by paragraphs 12 and 22 respectfully;

WHEREAS, all parties to this ADDENDUM have given legal and valuable consideration, more fully explained herein, for the covenants, conditions and promises herein, receipt and sufficiency of which is hereby acknowledged; and

NOW THEREFORE, UCC, SAC, LINDER and SMITH enter into this ADDENDUM individually, or through their legally designated agents and representatives, and all parties, after careful consideration and the opportunity to review this ADDENDUM with counsel, agree and assent to the following terms and conditions which make up the entirety of this ADDENDUM:



1. Scope and Purpose. The purpose of this ADDENDUM is to address arrears in payments that are owed by UCC to SMITH under the previous mentioned STOCK AGREEMENT and CONSULTING AGREEMENT. This ADDENDUM is created and intended to accomplish the following:

- a) SMITH will refinance the total outstanding debt under the STOCK AGREEMENT and the CONSULTING AGREEMENT according to the terms and conditions in this ADDENDUM;
- b) UCC will transfer ownership of 206 Frankie Lane, Ladson, SC to SMITH according to the terms and conditions in this ADDENDUM;
- c) SMITH will grant to UCC an unconditional firm and irrevocable option to repurchase 206 Frankie Lane in accordance with the terms and conditions set forth in this ADDENDUM; and
- d) SMITH will provide a lease to UCC on 206 Frankie Lane with terms substantially identical to the original lease that was entered into between the parties during the purchase of UCC.

2. Refinance of Total Debt. It has been agreed upon by all parties to this ADDENDUM that the refinancing provisions set forth in this ADDENDUM replace any and all debt structuring set forth in all previous contracts and agreements related to the purchase of UCC between SMITH, UCC, SAC and LINDER. It is also agreed between all parties that the following terms and conditions shall apply to the refinancing of the debt owed to SMITH:

2.1. Total Owed. The parties to this ADDENDUM have agreed, that once the transfer of 206 Frankie Lane to SMITH takes place, that a total amount of one million eight hundred fifty two thousand seven hundred four dollars (\$1,852,704.00) is owed to SMITH by SAC, UCC and LINDER, jointly and severably, as of August 1, 2008 which includes all sums from all Agreements executed on or about January 4, 2006 in relation to the purchase of UCC.

2.2. Refinance Terms. The total amount in paragraph 2.1 above shall be paid over a twenty (20) year amortization term at an annual interest rate of six (6%) percent. This schedule is attached as Exhibit A to this ADDENDUM. This amortization amounts to a monthly payment of thirteen thousand two hundred seventy three dollars and 35/100 (\$13,273.35). This payment shall be made in accordance with previous payments under the original agreement, except that a five hundred (\$500.00) penalty shall be owed if payment is not mailed by the fifth of each month. Also, UCC shall be entitled to an interest refund on the principal amount shown on the amortization schedule of \$183,410.03 if all payments are made in a timely manner for the 5 year payment period.

2.2.1. Balloon Payment. The principal amount owed at the end of the 5 year amortization schedule, attached as Exhibit A hereto, shall be due and owing at that time.

2.3 All Other Terms Same. All terms of the original agreements signed in relation to the purchase of UCC by all parties thereto shall remain in full force and effect. This ADDENDUM shall apply to the repayment terms only. The promissory note signed by LINDER shall continue to be in effect, as well as the release for David B. Crockett.

3. 206 Frankie Lane Transfer. As consideration for this ADDENDUM, UCC has agreed to transfer ownership in 206 Frankie Lane, Ladson, SC 29456 to SMITH and the total amount owed listed in paragraph 2.1 above includes the credited equity to UCC for said ownership and transfer. It is agreed between SMITH and UCC that UCC shall have the unconditional, irrevocable option to repurchase 206 Frankie Lane back from SMITH at five hundred thousand (\$500,000.00) dollars for as long as UCC, SAC or LINDER are indebted to SMITH. SMITH shall not sell, divide or diminish this property in any way prior to UCC exercising this option or waiving said option in writing. SMITH shall also make arrangements to provide for this option to purchase in his Last Will and Testament and shall provide appropriate documentation that this change or codicil has been made or created. It is intended that this offer should survive SMITH should he predecease the fulfillment of all Agreements or obligations between the parties. The transfer of interest documents for 206 Frankie Lane shall be prepared by Grover Seaton, III and shall be attached hereto as Exhibit B.

4. Lease for 206 Frankie Lane. SMITH shall prepare and provide, as Exhibit C to this ADDENDUM, a lease substantially similar to the original lease for 206 Frankie Lane and UCC and shall be executed in accordance with this ADDENDUM. This lease shall provide for the purchase option noted in paragraph 3 above, as well as the firm, irrevocable offer to repurchase the property previously noted.

5. Survival of Terms. It is understood by all parties that the terms of this ADDENDUM shall survive and endure beyond the date of execution, and that this ADDENDUM contains many terms and conditions that may require action of any party involved even after the execution of this ADDENDUM has taken place. All parties agree that they shall execute these duties or actions with due diligence and good faith with all of the parties involved.

6. Good Faith. All parties to this ADDENDUM will exercise good faith and fair dealing in compliance with all of the terms and conditions herein. Any disputes of the parties during the execution and compliance with this ADDENDUM shall be handled in a good faith manner and every attempt will be made to come to a reasonable and acceptable resolution.

7. Applicable Law. This ADDENDUM is executed under the contract laws of South Carolina and any and all disputes arising out of this ADDENDUM shall be subject to binding arbitration as stated at the top of this Agreement in compliance with South Carolina Statutes and Laws.

8. Plain Meaning. The headings of each paragraph are not a part of the ADDENDUM and are for title purposes only. All words and terms in this ADDENDUM shall be given their plain and ordinary meaning. All technical terms shall be afforded their plain and ordinary technical meaning.

9. Entire Addendum. This ADDENDUM and its attached Exhibits represent the entire ADDENDUM of the parties and any and all negotiations, discussions, understandings and terms not a part of this written ADDENDUM shall not be binding on any party hereto. It is understood that all terms and conditions of all the original contracts and agreements for the purchase of

UCC, not specifically altered or modified by this ADDENDUM, shall remain in full force and affect.

10. Subsequent Modifications. Any subsequent modifications to this ADDENDUMS must be in writing and signed by both parties to be enforceable.

11. Severability. If any paragraph, part or portion of this ADDENDUM shall be determined to be unenforceable, it shall not affect the remaining ADDENDUM and any and all remaining paragraphs, terms and conditions shall remain enforceable.

12. Execution. This ADDENDUM may be executed in separate parts by each party and may be transmitted by facsimile or other electronic means, but all parties shall secure an original copy for their records.

13. Exhibits and Addendums. All exhibits and addendums attached to this ADDENDUM are incorporated herein as if set forth in their entirety.

WHEREFORE, the parties to this ADDENDUM hereby assent and agree to be bound by all of the terms and conditions set forth above, as is evidenced by their signature below.

Brandon W Linder
UNITED CABLE CONSTRUCTION CO., INC. (UCC)
Brandon W. Linder, President and CEO
Authorized Agent

8-15-08
DATE

Stacie L. Cook
Witness

Brandon W Linder
SOUTH ATLANTIC COMMUNICATIONS, INC. (SAC)
Brandon W. Linder, President and CEO
Authorized Agent

8-15-08
DATE

Stacie L. Cook
Witness

Brandon W Linder
Brandon W. Linder (LINDER)
Individually

8-15-08
DATE

Stacie L. Cook
Witness

Gerald R. Smith
GERALD R. SMITH (SMITH)
Individually

8-15-08
DATE

Stacie L. Cook
Witness

EXHIBIT A

Principal borrowed: \$1852704.00

Annual Payments: 12

Total Payments: 240 (20.00 years for calculation purposes)

Annual interest rate: 6.00%

Regular Payment amount: \$13273.35

Final Balloon Payment: \$1,572,938.03

Total Repaid: \$796,401.00 (5 years)

Total Interest Paid: \$333,225.00 (5 years)

Total Interest Paid Per Day: \$182.59 (average)

UCC will be entitled to interest credit in the event of early pay-off at the rate of \$182.59 per day.

Pmt	Principal	Interest	Cum Prin	Cum Int	Prin Bal
1	4009.83	9263.52	4009.83	9263.52	1848694.17
2	4029.88	9243.47	8039.71	18506.99	1844664.29
3	4050.03	9223.32	12089.74	27730.31	1840614.26
4	4070.28	9203.07	16160.02	36933.38	1836543.98
5	4090.63	9182.72	20250.65	46116.10	1832453.35
6	4111.08	9162.27	24361.73	55278.37	1828342.27
7	4131.64	9141.71	28493.37	64420.08	1824210.63
8	4152.30	9121.05	32645.67	73541.13	1820058.33
9	4173.06	9100.29	36818.73	82641.42	1815885.27
10	4193.92	9079.43	41012.65	91720.85	1811691.35
11	4214.89	9058.46	45227.54	100779.31	1807476.46
12	4235.97	9037.38	49463.51	109816.69	1803240.49
13	4257.15	9016.20	53720.66	118832.89	1798983.34
14	4278.43	8994.92	57999.09	127827.81	1794704.91
15	4299.83	8973.52	62298.92	136801.33	1790405.08
16	4321.32	8952.03	66620.24	145753.36	1786083.76
17	4342.93	8930.42	70963.17	154683.78	1781740.83
18	4364.65	8908.70	75327.82	163592.48	1777376.18
19	4386.47	8886.88	79714.29	172479.36	1772989.71
20	4408.40	8864.95	84122.69	181344.31	1768581.31
21	4430.44	8842.91	88553.13	190187.22	1764150.87
22	4452.60	8820.75	93005.73	199007.97	1759698.27
23	4474.86	8798.49	97480.59	207806.46	1755223.41
24	4497.23	8776.12	101977.82	216582.58	1750726.18
25	4519.72	8753.63	106497.54	225336.21	1746206.46

Pmt	Principal	Interest	Cum Prin	Cum Int	Prin Bal
26	4542.32	8731.03	111039.86	234067.24	1741664.14
27	4565.03	8708.32	115604.89	242775.56	1737099.11
28	4587.85	8685.50	120192.74	251461.06	1732511.26
29	4610.79	8662.56	124803.53	260123.62	1727900.47
30	4633.85	8639.50	129437.38	268763.12	1723266.62
31	4657.02	8616.33	134094.40	277379.45	1718609.60
32	4680.30	8593.05	138774.70	285972.50	1713929.30
33	4703.70	8569.65	143478.40	294542.15	1709225.60
34	4727.22	8546.13	148205.62	303088.28	1704498.38
35	4750.86	8522.49	152956.48	311610.77	1699747.52
36	4774.61	8498.74	157731.09	320109.51	1694972.91
37	4798.49	8474.86	162529.58	328584.37	1690174.42
38	4822.48	8450.87	167352.06	337035.24	1685351.94
39	4846.59	8426.76	172198.65	345462.00	1680505.35
40	4870.82	8402.53	177069.47	353864.53	1675634.53
41	4895.18	8378.17	181964.65	362242.70	1670739.35
42	4919.65	8353.70	186884.30	370596.40	1665819.70
43	4944.25	8329.10	191828.55	378925.50	1660875.45
44	4968.97	8304.38	196797.52	387229.88	1655906.48
45	4993.82	8279.53	201791.34	395509.41	1650912.66
46	5018.79	8254.56	206810.13	403763.97	1645893.87
47	5043.88	8229.47	211854.01	411993.44	1640849.99
48	5069.10	8204.25	216923.11	420197.69	1635780.89
49	5094.45	8178.90	222017.56	428376.59	1630686.44
50	5119.92	8153.43	227137.48	436530.02	1625566.52
51	5145.52	8127.83	232283.00	444657.85	1620421.00
52	5171.24	8102.11	237454.24	452759.96	1615249.76
53	5197.10	8076.25	242651.34	460836.21	1610052.66
54	5223.09	8050.26	247874.43	468886.47	1604829.57
55	5249.20	8024.15	253123.63	476910.62	1599580.37
56	5275.45	7997.90	258399.08	484908.52	1594304.92
57	5301.83	7971.52	263700.91	492880.04	1589003.09
58	5328.33	7945.02	269029.24	500825.06	1583674.76
59	5354.98	7918.37	274384.22	508743.43	1578319.78
60	5381.75	7891.60	279765.97	516635.03	1572938.03

Berkeley County
Cynthia B. Forte
Register of Deeds 00007207 Vol:10021 Pg: 187
Moncks Corner 294616120

ELECTRONICALLY FILED - 2020 Jul 15 3:59 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0802241



53 2013 00007207

Instrument Number: 2013- 00007207

As
Agreement

Recorded On: March 22, 2013

Parties: UNITED CABLE CONSTRUCTION CO INC
To
SMITH GERALD R

Billable Pages: 1

Recorded By: JERRY SMITH

Num Of Pages: 6

Comment:

**** Examined and Charged as Follows: ****

Agreement	11.00
Recording Charge:	11.00

RECORD OF POOR QUALITY
DUE TO CONDITION
OF THE ORIGINAL DOCUMENT

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:

Document Number: 2013- 00007207
Receipt Number: 420520
Recorded Date/Time: March 22, 2013 11:52:58A
Book-Vol/Pg: Bk-R VI-10021 Pg-187
Cashier / Station: R McMakin / Cash Super Station 5

Record and Return To:

JERRY SMITH
1356 C.R. 600N
EUREKA IL 61530



26 *Cynthia B. Forte*
Cynthia B Forte - Register of Deeds

AGREEMENT FOR REPAYMENT OF ARREARS OWED FROM UNITED CABLE CONSTRUCTION CO. INC. TO GERALD R. SMITH

ALL PARTIES AGREE THAT ANY DISAGREEMENTS, DISPUTES OR CLAIMS UNDER THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ACCORDING TO THE RULES OF THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. BOTH PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO BRING CLAIMS UNDER THIS ADDENDUM TO ANY COURT OF PROPER JURISDICTION AND AGREE TO BE BOUND BY THE ARBITRATORS' DECISION.

WHEREAS, UNITED CABLE CONSTRUCTION CO, INC. (hereinafter "UCC") is a South Carolina corporation organized and operating in compliance with the laws of South Carolina, having a physical address of 206 Frankie Lane, Ladson, South Carolina and Brandon W. Linder is the registered agent at such address;

WHEREAS, UCC has its corporate headquarters located in South Carolina at 206 Frankie Lane, Ladson, South Carolina 29456;

WHEREAS, BRANDON W. LINDER (hereinafter "LINDER") is the only shareholder and operator of UCC and is authorized to enter into this Agreement;

WHEREAS, SOUTH ATLANTIC COMMUNICATIONS, INC. (hereinafter "SAC") a South Carolina corporation, UCC, LINDER and GERALD R. SMITH (hereinafter "SMITH") entered into binding contracts with each other on or about January 4, 2006, specifically; the Consultation Agreement for Gerald R. Smith with United Cable Construction Co., Inc. (hereinafter "CONSULTATION AGREEMENT") and the Agreement for the Purchase of Common Stock with United Cable Construction Co., Inc. (hereinafter "STOCK AGREEMENT");

WHEREAS, all parties to this Agreement have given legal and valuable consideration, more fully explained herein, for the covenants, conditions and promises herein, receipt and sufficiency of which is hereby acknowledged; and

NOW THEREFORE, UCC, LINDER and SMITH enter into this Agreement individually, or through their legally designated agents and representatives, and all parties, after careful consideration and the opportunity to review this Agreement with legal counsel, agree and assent to the following terms and conditions which make up the entirety of this Agreement:

1. Scope and Purpose. The purpose of this Agreement is to address arrears in payments that are owed by UCC to SMITH under the previous mentioned STOCK AGREEMENT and CONSULTING AGREEMENT.

2. Refinance of Total Debt. It has been agreed upon by all parties to this Agreement that the refinancing provisions set forth in this Agreement apply only to the amount in arrears as of the date of this Agreement and as agreed to by the Parties as set forth herein:

2.1. Total in Arrears. The parties to this Agreement have stipulated that a total amount of one hundred thirty seven thousand nine hundred thirteen dollars and 87/100 cents (\$137,913.87) is owed in arrears to SMITH by UCC as of the date of this Agreement.

2.1.1 Credits Applied. SMITH and LINDER, individually, entered into a lease to own on two properties known as 137 Sally Avenue, Ladson, South Carolina and 247 Treeland Drive, Ladson, South Carolina. LINDER will relinquish all claim to title of these properties and in exchange SMITH will credit LINDER for all equity in these properties paid to date which equals sixty seven thousand six hundred fifty one dollars and 71/100 cents (\$67,651.71). Said equity shall be credited towards the Total in Arrears set forth in Section 2.1 above. Upon execution of this Agreement, SMITH shall have full equity and title in fee simple for both 137 Sally Avenue and 247 Treeland Drive. SMITH will also apply a one-time credit of ten thousand two hundred sixty two dollars and 16/100 cents (\$10,262.16) as consideration for this agreement. Should UCC default on any terms or conditions contained within this Agreement, the onetime credit outlined herein shall be void, and that amount shall be due and owing as part of the balance of this Agreement.

2.1.2 Adjusted Total Balance. The Adjusted Total Balance for purposes of this Agreement shall be calculated as follows:

Total Arrears:	\$137,913.87
Aprils Contract Payment:	\$17,884.05
Equity Credit Sally and Treeland:	-\$67,651.71
One Time Credit:	-\$10,262.16
Adjusted Total Balance:	\$77,884.05

2.2. Refinance Terms. UCC shall make one initial installment payment of ten thousand dollars and 00/100 cents (\$10,000.00) on or before Friday, March 22, 2013 payable to SMITH towards the Adjusted Total Balance noted in Section 2.1.2 above. The remaining sixty seven thousand eight hundred eighty four dollars and 05/100 cents (\$67,884.05) shall be paid in ten (10) equal monthly installment payments of six thousand seven hundred eighty eight dollars and 41/100 cents (\$6,788.41) to be made on or before the tenth (10th) day of each month, with the first payment being due on May 1, 2013. The payments outlined in this Section shall be made in addition to the seventeen thousand eight hundred eighty four dollars and 05/100 cents (\$17,884.05) which is due and owing under the original terms and conditions of the Contracts and Agreements between the parties, including all subsequent Modifications and Addendums executed by all parties. All terms and conditions of previous Agreements, Modifications and Addendums (collectively "Previous Agreements") shall remain enforceable and nothing in this Agreement shall modify any Previous Agreements. The only modification to Previous Agreements shall be that payment of the \$17,884.05 shall be made by the tenth (10th) day of each month resuming on May 1, 2013 (to be made by the 10th day of each subsequent month).

2.2.1 No Interest on Refinance Terms. SMITH shall not charge any interest on payments made on the \$67,884.05 noted above in Section 2.2.

3. Lease Termination Notice and Modification. SMITH served a Notice to Terminate Lease upon UCC on the month-to-month Lease between SMITH and UCC for 206 Frankie Lane, Ladson, SC on or about February 18, 2013. That Notice of Termination is hereby null and void under the terms of this Agreement. Should a default of any terms or conditions contained herein occur, UCC agrees to vacate 206 Frankie Lane, Ladson, SC within five (5) days of written notice of termination by SMITH which outlines any said default with no right to cure unless agreed upon in writing by the parties. UCC waives any presentment and service of notice of Eviction that would be otherwise necessary for eviction to be affective and agrees to vacate the property within the time set forth in this Agreement.

4. Termination of This Agreement Upon Notice of Default. Upon Default of any terms and conditions of this Agreement by UCC, this Agreement shall be null and void and SMITH shall be entitled to take any action to collect upon this Agreement and Previous Agreements which is allowed by the laws of South Carolina.

5. Survival of Terms. It is understood by all parties that the terms of this Agreement shall survive and endure beyond the date of execution, and that this Agreement contains many terms and conditions that may require action of any party involved even after the execution of this Agreement has taken place. All parties agree that they shall execute these duties or actions with due diligence and good faith with all of the parties involved.

6. Good Faith. All parties to this Agreement will exercise good faith and fair dealing in compliance with all of the terms and conditions herein. Any disputes of the parties during the execution and compliance with this Agreement shall be handled in a good faith manner and every attempt will be made to come to a reasonable and acceptable resolution.

7. Applicable Law. This Agreement is executed under the contract laws of South Carolina and any and all disputes arising out of this Agreement shall be subject to binding arbitration as stated at the top of this Agreement in compliance with South Carolina Statutes and Laws.

8. Plain Meaning. The headings of each paragraph are not a part of the Agreement and are for title purposes only. All words and terms in this Agreement shall be given their plain and ordinary meaning. All technical terms shall be afforded their plain and ordinary technical meaning.

9. Entire Agreement. This Agreement represents the entire Agreement of the parties and any and all negotiations, discussions, understandings and terms not a part of this written Agreement shall not be binding on any party hereto, except as otherwise contained herein as to Previous Agreements. It is understood that all terms and conditions of all the original contracts and agreements for the purchase of UCC, not specifically altered or modified by this Agreement, shall remain in full force and affect.

10. Subsequent Modifications. Any subsequent modifications to this Agreement must be in writing and signed by both parties to be enforceable.

11. Severability. If any paragraph, part or portion of this Agreement shall be determined to be unenforceable, it shall not affect the remaining Agreement and any and all remaining paragraphs, terms and conditions shall remain enforceable.

12. Execution. This Agreement may be executed in separate parts by each party and may be transmitted by facsimile or other electronic means, but all parties shall secure an original copy for their records.

13. Exhibits and Addendums. All exhibits and addendums attached to this Agreement are incorporated herein as if set forth in their entirety.

WHEREFORE, the parties to this Agreement hereby assent and agree to be bound by all of the terms and conditions set forth above, as is evidenced by their signature below.


UNITED CABLE CONSTRUCTION CO., INC. (UCC)
Brandon W. Linder, President and CEO
Authorized Agent

3-18-13
DATE


Witness (witness 2)


Brandon W. Linder, Individually

3-18-13
DATE


Witness (witness 2)


GERALD R. SMITH (SMITH)
Individually

3-18-13
DATE


Witness

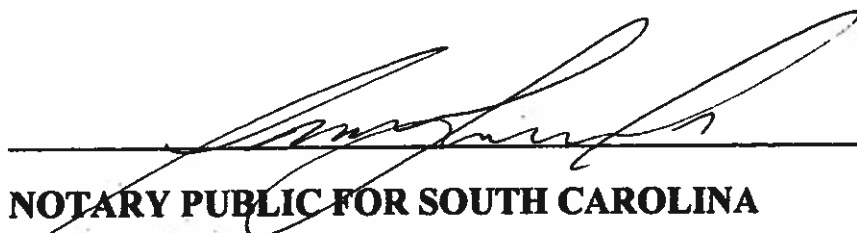
ACKNOWLEDGEMENT

THE STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

I, undersigned witness Notary Public for South Carolina, do hereby certify that the Grantors personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 18th day of March, 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA

My commission Expires: 7-20-2021

5-22-17

EXHIBIT "A" TO COMPLAINT

**MODIFICATION AND ADDENDUM OF THE AGREEMENT MADE BY
GERALD R. SMITH, SELLER AND BRANDON W. LINDER, PURCHASER**

WHEREAS, the parties hereinabove entered into an agreement for the purchase of assets of United Cable, Inc., on or about January 4, 2006. The parties desire to make the following modifications and addendum to the Sale Agreement.

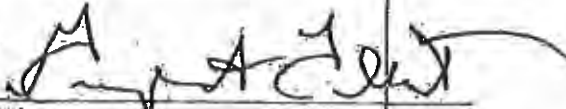
WHEREAS, the Purchaser, Brandon Linder, also now known as United Cable Construction, Inc., currently owes \$1,084,244.51; and

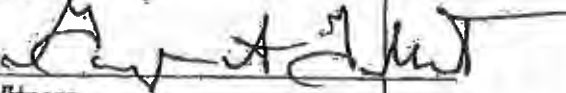
WHEREAS, the Seller, Gerald Smith, is agreeable to reduce the payoff to \$300,000.00 provided the following terms are met:

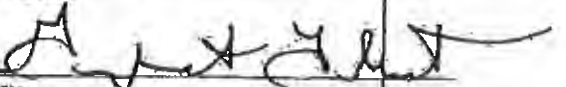
1. That the Purchaser, Brandon W. Linder, will immediately reinstate a life insurance policy on his life in the amount of \$1,000,000.00 and will be specifically designate Gerald R. Smith as beneficiary. This must be immediately accomplished.
2. The Purchaser, Brandon W. Linder, also now known as United Cable Construction, Inc., will make monthly payments of \$10,000.00 directly to Grover O. Seaton, III, Esquire, attorney for Gerald R. Smith through the month of December 2018 at an interest rate of 1% added thereon; the balance in December 2018 will be a balloon note which must be paid during the month of December 2018.
3. That the house on the real estate at Frankie Lane, Ladson, SC known as 144 Frankie Lane, Ladson, SC in the names of Brandon W. Linder and Karla Linder will be immediately deeded to Gerald R. Smith subject to all mortgages and liens. Brandon W. Linder shall be responsible for the monthly mortgage, taxes, insurance and upkeep on the property.
4. Should the Purchaser, Brandon W. Linder, not perform as to the conditions as set out hereinabove, he will immediately abandon the use of the property at 144 Frankie Lane, Ladson, SC.
5. Should the Purchaser, Brandon W. Linder, perform as set out hereinabove, the house as mentioned hereinabove shall be transferred back to Brandon W. Linder and Karla Linder.
6. Lastly, the parties agree to forgo and abandon any and all provisions of the sales contracts and addendums thereto as to any arbitration in the event of default.



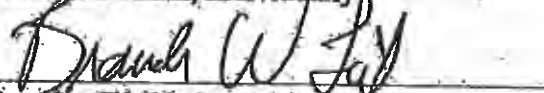
WHEREFORE, the parties to this Addendum and Modification hereby set and agree to be bound to all the terms and conditions as set forth as evidenced by their signatures below dated this 22 day of May 2017.


Witness


Witness


Witness


Gerald R. Smith, Individually


Brandon W. Linder, Individually


Karla Linder



THIS DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH A TRUE WATERMARK, AND VISIBLE AND FLUORESCENT FIBERS.

 **ENTERPRISE BANK**
of South Carolina
SINCE 1920 MEMBER FDIC

 No. 188200
67-287/532
BANK MONEY ORDER

REMITTER
BRANDON LINDER/UCC

09/18/17

PAY: **FIVE THOUSAND and 00/100**USDollars

DOLLARS \$ 5,000.00

TO THE ORDER OF
JERRY SMITH


AUTHORIZED SIGNATURE

⑈ 188200⑈ ⑆05320287⑆ 1511 1000⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposit to Eamon
acct. for Jerry Smith
in Green Section's

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
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Green Sect.



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JF

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**ENTERPRISE BANK**
of South Carolina
SINCE 1920 MEMBER FDIC

**BANK MONEY ORDER**
67-287/532

No. 188232

10/06/17

BRANDON LINDER
REMITTER

PAY: ***THREE THOUSAND and 00/100***USdollars

DOLLARS \$ 3,000.00

JERRY SMITH

Sandra Green
AUTHORIZED SIGNATURE

⑈ 188232⑈ ⑆ 05320287⑈ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposit in Escrow Acct for
Terry Smith in Grains
Senton's escrow acct.
DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE
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PAY TO THE ORDER OF
FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
078023885801



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TO
THE
ORDER
OF

JERRY SMITH

PAY: ***FIVE THOUSAND and 00/100***USDollars

REMITTER

BRANDON LINDER

DOLLARS \$ 5,000.00

10/27/17

AUTHORIZED SIGNATURE

Sordahl

⑈ 188249 ⑈ :053202871⑈ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.



of South Carolina
SINCE 1920 MEMBER FDIC



ENTERPRISE BANK

BANK MONEY ORDER

67-287/532

No. 188249

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ENTERPRISE BANK
of South Carolina
SINCE 1920 MEMBER FDIC



No. 188239

67-287/532

BANK MONEY ORDER

BRANDON LINDER

REMITTER

10/13/17

PAY: ***FIVE THOUSAND and 00/100***USDollars

DOLLARS \$ 5,000.00

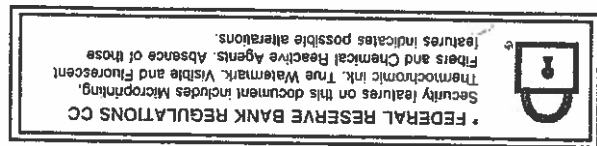
TO
THE
ORDER
OF

JERRY SMITH

Sandra L. Linder
AUTHORIZED SIGNATURE

⑈ 188239⑈ ⑆05320287⑆ ⑈1511 1000⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.



Deposit in Escrow Acct for
Terry Smith in favor
of Smith's Escrow Acct.

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X

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 **ENTERPRISE BANK**
of South Carolina
SINCE 1920 MEMBER FDIC

No. 188449
67-287/532

BANK MONEY ORDER

BRANDON LINDER

REMITTER

04/43/18

PAY: ***FIVE THOUSAND and 00/100***USDollars

DOLLARS \$ 5,000.00

TO THE ORDER OF JERRY SMITH

Sandra Youn
AUTHORIZED SIGNATURE

MP

⑈188449⑈ ⑆053202871⑆ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

TO THE ORDER OF

JERRY SMITH

PAY: *****FIVE THOUSAND and 00/100****USDollars

BRANDON LINDER

REMITTER

08/06/18

DOLLARS \$ 5,000.00

AUTHORIZED SIGNATURE

Sandra Linder

SINCE 1920 MEMBER FDIC

of South Carolina

ENTERPRISE BANK



BANK MONEY ORDER

67-287/532

No. 188610

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⑈188610⑈ ⑆05320287⑆ 1511 1000⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

TO THE ORDER OF

JERRY SMITH

PAY: *****FIVE THOUSAND and 00/100****USDollars

BRANDON LINDER

REMITTER

11/26/18

DOLLARS \$ 5,000.00

AUTHORIZED SIGNATURE

Sandra Linder

SINCE 1920 MEMBER FDIC

of South Carolina

ENTERPRISE BANK



BANK MONEY ORDER

67-287/532

No. 188764

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⑈188764⑈ ⑆05320287⑆ 1511 1000⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

PAY TO THE ORDER OF
FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
079023985601

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

ENDORSE HERE

PAY TO THE ORDER OF
FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
079023985601

DO NOT WRITE, STAMP OR SIGN BELOW THIS LINE

XD & PO is it in Escrow with to attorney Smith

Seaton Law Firm, LLC

Attorney at Law

Grover C. Seaton, III

- Founding Member - S.C. Association of Criminal Defense Lawyers
- Founding Member - National College for D.U.I. Defense

Writer's Direct E-Mail Address: seaton3@homesc.com

Post Office Box 38

105 Carolina Avenue

Moncks Corner, SC 29461

Telephone (843) 761-8365

Facsimile (843) 761-4458

July 12, 2018

Adam Mlynarczyk, Esquire
5100 Braddock Avenue
N. Charleston, SC 29405

RE: My Client: Jerry Smith
Your Client: Brandon W. Linder

Dear Adam:

Our clients signed a modification and addendum on May 22, 2017. Your client was to pay \$300,000.00, a reduction from 1,084,244.51, at the rate of \$10,000.00 per month with the balance being due December 2018.

Mr. Linder was to immediately reinstate a life insurance policy in the amount of \$1,000,000.00 designating Gerald R. Smith as beneficiary.

The house on Frankie Lane, known as 144 Frankie Lane, Ladson, SC, that is in the name of Brandon W. Linder and Karla Linder was to be immediately deeded to Gerald R. Smith.

Mr. Linder is behind considerably on the monthly payments, we have seen no life insurance policy, and we have seen no deed.

I need the deed immediately, the life insurance reinstated and if Mr. Linder cannot bring this modification current, I would like for you to discuss with him a confession of judgment, so we can proceed accordingly.

Should I fail to hear from you within a reasonable time, I have been instructed to bring a lawsuit and the other features of the modification.

Please advise at your earliest convenience. With kind regards, I remain

Sincerely,



Grover C. Seaton, III
Attorney at Law

GCS,III/mwc

cc: Mr. Gerald R. Smith



**KOONTZ | LLC
MLYNARCZYK**

1058 East Montague Avenue
North Charleston, SC 29405
T: 843.225.4252
F: 843.277.9120
adam@kmlawsc.com

Adam Mlynarczyk
ATTORNEY AT LAW

July 25, 2018

Via US mail and E-mail to: seaton3@homesc.com
Seaton Law Firm, LLC
Attn: Grover Seaton, III, Esq.
PO Box 38
105 Carolina Avenue
Moncks Corner, SC 29461

Re: Letter Dated July 12, 2018
Addendum Executed on or about May 22, 2017

Dear Mr. Seaton:

I am in receipt of your letter dated above. Please note for your records that my mailing address is now 1058 E. Montague Avenue, North Charleston, South Carolina 29405. Please update your records.

The Addendum referenced in your letter is not a legally enforceable document between the parties. As you are well aware I have represented Brandon W. Linder and United Cable Construction, Inc. ("UCC") since Mr. Linder's company purchased the UCC from your client in 2006. I do not believe there has ever been an instance where you have interacted directly with my client without providing me notice or being informed that I no longer represented Mr. Linder or United Cable Construction, Inc. I was truly shocked when I learned that you met directly with my client, advised my client as to the document and had him execute with no notice to me or my office. That alone would be sufficient to have this document declared void. I believe you and I had a conversation shortly after I discovered the existence of this Addendum where I relayed my grave concerns about how this Addendum was executed with my client without my notice and counsel.

The Addendum you unilaterally created also contains fatal inaccuracies, including but not limited to the following; 1) Brandon W. Linder was not the purchaser of UCC, the purchaser on the closing documents for the sale of UCC was South Atlantic Communications, Inc. ("SAC"); 2) the purchase of UCC was not an asset sale, it was a transaction that included an Asset Sale, a Stock Transfer, and a Consulting Agreement; 3) There was no independent validation of the "currently owed" amount listed in the Addendum at the time of the execution of the Addendum; 4) The paragraph in the Addendum attempting to waive the arbitration clauses in the sales contracts for the purchase of UCC is not effective; and 5) Karla Linder, individually, was included on this Addendum as a signor, who was not a party

to the purchase of UCC and was clearly not advised to seek counsel before giving up any very important rights she may have in the real property 144 Frankie Lane listed in the Addendum.

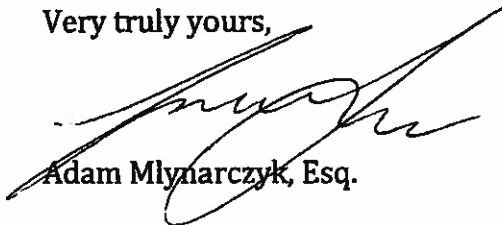
Despite the legal fatalities of the purported Addendum, Mr. Linder, SAC and UCC desire to reach an amicable resolution with Mr. Smith and would like to continue with this process. My client has secured life insurance for \$1,000,000.00 and I have instructed him to provide proof of same to my office. Once I receive this document, I will forward to your office for your file. My Linder is making every effort to repay Mr. Smith as quickly as possible, and he will continue to do so. He is hoping to be in a position by the end of this year to make a one-time buyout offer to Mr. Smith.

I am encouraging my client to make payments to Mr. Smith each month. He will continue to do so. I would encourage your client to accept any payments received as foreclosing on the original transactional documents for the purchase of UCC will be fruitless. UCC has substantial tax issues with associated liens, the assets are depleted and UCC, as well as Mr. Linder, do not have the financial status to pay any judgment even if one were achieved.

I will follow up with my client this week to see where he is and what we can do going forward. If you wish to discuss the execution of a legal addendum, I would be happy to discuss it with my client. Keep in mind that if legal action is taken to enforce the Addendum, I am obligated to my client to raise any and all defenses he may have in regard to same.

Please do not hesitate to contact me with any questions or concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Adam Mlynarczyk', is written over the typed name.

Adam Mlynarczyk, Esq.

Seaton Law Firm, LLC

Attorney at Law

Grover C. Seaton, III

- Founding Member - S.C. Association of Criminal Defense Lawyers
- Founding Member - National College for D.U.I. Defense

Writer's Direct E-Mail Address: seaton3@homesc.com

Post Office Box 38

105 Carolina Avenue

Moncks Corner, SC 29461

Telephone (843) 761-8365

Facsimile (843) 761-4458

August 15, 2018

Adam Mlynarczyk, Esquire
1058 East Montague Avenue
North Charleston, SC 29405

RE: My Client: Jerry Smith
Your Client: Brandon W. Linder

Dear Adam:

Yours of the 25th ultimo is acknowledged in the caption matter.

Mr. Linder appears in my office and asserted to me that he did not need an attorney for this matter even when I suggested that you be contacted. He refused my request.

If you feel that there has been some wrong doing, please take actions accordingly. I find it strange that you want to put aside the Addendum but on the same basis you want to follow the terms of the Addendum which would save your client over \$750,000.00 of a judgment. If you will check your email you requested an executed copy of the Addendum.

You and your client need to tell me how you want to proceed rather than avoiding the issue of satisfying the indebtedness that has long been breached. Please advise if you feel so inclined. Absent that, I will take the matter up with Mr. Smith, and we will proceed accordingly.

With kind regards, I remain

Sincerely,



Grover C. Seaton, III
Attorney at Law

GCS,III/mwc

cc: Mr. Gerald R. Smith

Myrna Chipman

From: Myrna Chipman <Chipman@Seatonlawfirm.com>
Sent: Wednesday, August 15, 2018 4:58 PM
To: 'Adam Mlynarczyk'
Cc: Grover C. Seaton III Esquire (Seaton3@homesc.com)
Subject: Gerald Smith - Brandon Linder
Attachments: 20180815171953976.pdf

Mr. Mlynarczyk:

Per Mr. Seaton, please find the attached letter dated this date in the subject matter.

Thank you!

Myrna W. Chipman
Paralegal to Grover C. Seaton, III

Seaton Law Firm, LLC
Attorney at Law
105 Carolina | P.O. Box 38 | Moncks Corner, SC 29461
Phone: 843-761-8365 | Fax: 843-761-4458

Email: chipman@seatonlawfirm.com

Confidentiality Notice:

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Monies Pd by Brandon

<u>YEAR</u>	<u>AMOUNT</u>
2006	\$300,000.00
2007	\$343,502.04
2008	\$204,242.94
2009	\$ 56,547.70
2010	\$ 81,141.65
2011	\$178,840.50
2012	\$143,456.45
2013	\$158,208.97
2014	\$ 81,500.00
2015	\$ 49,500.00
2016	<u>\$ 32,000.00</u>
TOTAL	\$1,547,440.25

CREDIT ALLOWED

2010	Real Estates Taxes Pd	\$ 6,324.56
	Utilities Pd	\$ 550.68
	Trailer	\$10,000.00
	Fiber Blower	\$ 5,000.00
	Back Hoe Hammer	\$ 5,000.00
	Exchange Park Job	\$16,440.00
	Transfer of 206 Frankie	<u>\$75,000.00</u>

GRAND TOTAL \$1,665,755.49



Monies Pd & Owed as of 4/2017

Purchase Price: U.C.C.	\$2,750,000.00
Monies Pd. & Credits Allowed	\$1,665,755.49
Balance Owed:	\$1,084,244.51

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of S.C.,)
Plaintiff,)
vs.)
United Cable Construction, Inc.;)
Brandon Linder a/k/a Brandon W. Linder)
a/k/a Brandon Wynn Linder; South Carolina)
Department of Revenue; and United States)
of America acting by and through the U.S.)
Department of Treasury and the Internal)
Revenue Service,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CIVIL CASE NO: 2016-CP-08-2352

LIS PENDENS
(Non-Jury Docket)
(Mortgage Foreclosure Action)
(Breach of Guaranty Agreement Action)
(Claim and Delivery of Mobile Home Action)
(Declaratory Judgment Actions)

(Deficiency Judgments Demanded)



FILED
2018 SEP 30 PM 4:01
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: ALL OF THE ABOVE-NAMED DEFENDANTS:

NOTICE IS HEREBY GIVEN that an action has been, or will be, within twenty (20) days of the filing date of this Lis Pendens, commenced by the within Plaintiff against the above-named Defendants for the foreclosure of a certain Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 from the Defendant, Brandon W. Linder, as the Mortgagor, unto the Plaintiff, Enterprise Bank of S.C., as the Mortgagee, and now securing seven (7) commercial loan debts as evidenced by the terms and conditions of the seven (7) Universal Notes related thereto and connected therewith as listed and set forth and identified, as follows:

(A.) Universal Note dated 7/21/2010 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$1,469,163.46**; (B.) Universal Note dated 11/6/2012 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$89,528.90**; (C.) Universal Note dated 12/6/2011 from the Defendant, United Cable Construction Company, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$50,160.00**; (D.) Universal Note dated 10/09/2012 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$22,000.00**; (E.) Universal Note dated 8/2/2011 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank

of S.C., as the Lender, in the principal amount of **\$28,255.00**; (F.) Universal Note dated 7/21/2011 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$19,483.00**; and (G.) Universal Note dated 8/31/2012 from the Defendant, United Cable Construction, Inc., as the Borrower, unto the Plaintiff, Enterprise Bank of S.C., as the Lender, in the principal amount of **\$18,160.00**; and the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 from the Defendant, Brandon W. Linder, as the Mortgagor, unto the Plaintiff, Enterprise Bank of S.C., as the Mortgagee, was thereafter recorded on 9/10/2007 with the Berkeley County Register of Deeds Office in Record Book R, in Volume 6843, at Page 78, and such aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 constitutes the first mortgage and the senior and paramount lien upon and encumbering all of the rights and titles and interests owned and held by the Defendant and Mortgagor herein, Brandon W. Linder, in and to the subject real estate and mortgaged property and premises being foreclosed hereunder by the Plaintiff herein and being more fully and particularly described, as follows:

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Delia dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

TMS NO: 233-09-02-037 (0.84+- acres)

PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.

E. W. Bennett Jr.

E. W. BENNETT, JR. (SC Bar #656)

Attorney for the Plaintiff

148 S. Jefferies Blvd.

Post Office Box 693

Walterboro, S.C. 29488

Telephone: (843) 549-9225

Facsimile: (843) 549-8566

E-Mail: bop@lowcountry.com

Dated: September 27, 2016.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of S.C.,)
Plaintiff,)
vs.)
United Cable Construction, Inc.;)
Brandon Linder a/k/a Brandon W. Linder)
a/k/a Brandon Wynn Linder; South Carolina)
Department of Revenue; and United States)
of America acting by and through the U.S.)
Department of Treasury and the Internal)
Revenue Service,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CIVIL CASE NO: 2016-CP-08-2352

SUMMONS AND NOTICE
(Non-Jury Docket)
(Mortgage Foreclosure Action)
(Breach of Guaranty Agreement Action)
(Claim and Delivery of Mobile Home Action)
(Declaratory Judgment Actions)

(Deficiency Judgments Demanded)

FILED
SEP 30 PM 4:01
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: ALL OF THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to file with the Berkeley County Common Pleas Clerk of Court located in the Berkeley County Courthouse at 300-B California Avenue, P.O. Box 219, Moncks Corner, S.C. 29461 a written Answer, Rule 12 Motion, or other responsive pleading(s) to the Plaintiff's Complaint filed in this action, a copy of which is herewith served upon you, and to serve a copy of your written Answer, Rule 12 Motion, or other responsive pleading(s) to such Complaint on the Plaintiff's undersigned attorney herein, E. W. Bennett, Jr., Esquire, at 148 S. Jefferies Blvd., P.O. Box 693, Walterboro, S.C. 29488, within thirty (30) days of the date of service hereof, exclusive of the day of such service, except that the United States of America, if named herein, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to answer or otherwise responsively plead to the Complaint within the aforesaid time, then in such event, the Plaintiff will apply to this Court for the entry of a default judgment against you for all of the relief and remedies as demanded and prayed for in its Complaint.

YOU WILL ALSO TAKE NOTICE that should you default herein by failing to file and serve your written Answer, or Rule 12 Motion, or other responsive pleading(s) to the Plaintiff's Complaint within the aforesaid thirty (30) day deadline, then the Plaintiff will also move for the entry of an Order of Reference pursuant to Rule 53 of the S.C. Rules of Civil Procedure, referring this matter to be heard and decided by the Master-in-Equity for Berkeley County, which Order shall

specifically provide that such Berkeley County Master-in-Equity shall be authorized and empowered to hear and consider all of the relevant testimony and evidence in this case and to enter a final judgment herein, with any appeals thereof to be made directly to the South Carolina Supreme Court or the South Carolina Court of Appeals, as appropriate under the S.C. Appellate Court Rules.

YOU WILL ALSO TAKE FURTHER NOTICE that under the provisions of Section 29-3-100 of the 1976 S.C. Code of Laws, any collateral assignment of rents contained in the Mortgage as referenced in the Plaintiff's Complaint attached hereto and served upon you herewith is perfected and the Plaintiff hereby gives notice to all above-named Defendants that all rents shall be payable directly to the Plaintiff by the delivery of any and all such rents to the Plaintiff's undersigned attorney and legal counsel herein from the date of your default hereunder. In the alternative, the Plaintiff will move before a Presiding Judge of the Ninth (9th) Judicial Circuit at a hearing to be held on the Tenth (10th) day after service hereof, or as soon thereafter as convenient for Court and Counsel herein to be heard, for the entry of an Order in favor of the Plaintiff enforcing the aforesaid assignment of rents, if any, and compelling the payment by the Defendant(s) and Mortgagor(s) herein of any and all rents covered by such assignments direct to the Plaintiff or the Plaintiff's undersigned legal counsel herein, with such Motion to be based upon the applicable provisions of the Note and Mortgage as referenced in the Plaintiff's Complaint attached hereto and served upon you herewith.

YOU WILL ALSO TAKE FURTHER NOTICE that you are also hereby being served with the "Notice Required by the Fair Debt Collection Practices Act" (See 15 USC Section 1601, as amended) which is attached hereto and incorporated herein by specific reference thereto.

THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION GAINED HEREIN WILL BE USED FOR THAT PURPOSE.


 E. W. BENNETT, JR. (SC Bar #656)
 Attorney for Plaintiff
 148 S. Jefferies Blvd.
 Post Office Box 693
 Walterboro, S.C. 29488
 Telephone: (843) 549-9225
 Facsimile: (843) 549-8566
 E-Mail: bop@lowcountry.com

Dated: September 27, 2016.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of S.C.,)
Plaintiff,)
- vs-)
United Cable Construction, Inc.;)
Brandon Linder a/k/a Brandon W. Linder)
a/k/a Brandon Wynn Linder; South Carolina)
Department of Revenue; and United States)
of America acting by and through the U.S.)
Department of Treasury and the Internal)
Revenue Service,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CIVIL CASE NO: 2016-CP-08-**2352**

COMPLAINT
(Non-Jury Docket)
(Mortgage Foreclosure Action)
(Breach of Guaranty Agreement Action)
(Claim and Delivery of Mobile Home Action)
(Declaratory Judgment Actions)
(Deficiency Judgments Damaged)

FILED
2018 SEP 30 PM 4:01
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff, Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C., complaining of the above-named Defendants, would show and allege unto this Honorable Court, as follows:

JURISDICTIONAL ALLEGATIONS AND BACKGROUND FACTS:

1. The Plaintiff's First Cause of Action as set forth herein below is for the foreclosure of its Real Estate Mortgage encumbering certain real estate situate in Berkeley County, South Carolina; and the Plaintiff's Second Cause of Action as set forth herein below is for the enforcement of the terms and conditions of certain Guaranty Agreements executed in favor of the Plaintiff in connection with certain notes and commercial loans; and the Plaintiff's Third Cause of Action as set forth herein below is for the Claim and Delivery of a *used 1996 Grand Manor 28.0' x 64.0' mobile home bearing VIN # GAGMTD1826A&B and Berkeley County Decal # 33459* situate upon the below-described subject real estate and mortgaged property and premises located at 145 Sally Avenue, Ladson, SC 29456 in Berkeley County, South Carolina; and the Plaintiff's Fourth Cause of Action as stated and set forth herein below is a Declaratory Judgment Action to Determine that the Mobile Home is Subject to the Lien of Plaintiff's Mortgage; and the Plaintiff's Fifth Cause of Action as set forth herein below is for the Reformation of the Mortgage and its Legal Description to Show, Reflect, and Include the Mobile Home as Part and Parcel of the Subject Real Estate and Mortgaged property and premises; and this Court is vested with subject matter jurisdiction over this mortgage foreclosure action and this Court also has personal jurisdiction over all of the above-named parties hereto and venue is proper in the Berkeley County Common Pleas Court.

2. That the Plaintiff, Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C., is the Lender and Mortgagee and Secured Party herein and is a banking institution and corporation organized and existing under and by virtue of the laws of the State of South Carolina; and such Plaintiff transacts business in and loans money on a regular basis in Berkeley County, South Carolina, with its principal corporate banking office being located in Bamberg County, South Carolina, in the Town of Ehrhardt.

3. That the Plaintiff is now the owner and/or holder of certain Notes, Guaranty Agreements, Security Agreements, Note Modification Agreements, Loan Modification Agreement(s), Cross-Collateralization Agreement(s), Mobile Home Title, and a Real Estate Mortgage securing such notes and commercial loan debts as more fully and particularly listed and described hereafter in regard to the within lawsuit and all of the causes of actions and claims as stated and set forth herein below.

4. That the Defendant, United Cable Construction, Inc., is the Borrower herein and it is a domestic corporation organized and existing under and by virtue of the laws and statutes of the State of South Carolina; and the Defendant and Borrower herein, United Cable Construction, Inc., now transacts or formerly transacted business on a regular basis in Berkeley County, South Carolina, where it now maintains or formerly maintained its principal corporate business office being located at 145 Salley Avenue, Ladson, S.C. 29456.

5. That the Defendant, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, is the Mortgagor and Debtor and Guarantor herein, and he is a citizen and resident and domicile of Berkeley County, South Carolina, where upon information and belief, he now lives and resides at 206 Frankie Lane, Ladson, S.C. 29456; and the Defendant, Brandon Wynn Linder, is not currently enlisted in or serving in the active military service of the United States of America.

6. That the Defendant, South Carolina Department of Revenue, is made a party hereto by virtue of such State Governmental Agency holding and heretofore entering four (4) South Carolina Tax Liens encumbering and attached to the below-described subject real estate and mortgaged premises, which four (4) South Carolina Tax Liens are junior and secondary and subordinate in priority to the paramount lien of the Plaintiff's Real Estate Mortgage being foreclosed herein and was previously obtained by and in favor of the Defendant, South Carolina Department of Revenue, as the Lien Holder, and against the Defendant, Brandon Linder, as the Taxpayer, and which four (4) South Carolina Tax Liens were previously recorded with the Berkeley County Register of Deeds Office against the Defendant, Brandon Linder, as the Taxpayer, in the respective amounts and on the respective dates as more fully stated and set forth hereafter, as follows:

(A.) South Carolina Tax Lien No. 3-51038356-0 was issued on 3/2/2009 in the total sum of \$3,538.36 for unpaid Taxes for the tax period from 03/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 137. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "1"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(B.) South Carolina Tax Lien No. 3-51038357-7 was issued on 3/2/2009 in the total sum of \$6,977.09 for unpaid Taxes for the tax period from 12/2007 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 139. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "2"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(C.) South Carolina Tax Lien No. 3-51038358-4 was issued on 3/2/2009 in the total sum of \$19,258.87 for unpaid Taxes for the tax period from 12/2006 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 141. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "3"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(D.) South Carolina Tax Lien No. 3-51038359-1 was issued on 3/2/2009 in the total sum of \$5,160.00 for unpaid Taxes for the tax period from 6/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 143. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "4"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

7. That the above-referenced four (4) South Carolina Tax Liens issued and entered and filed of public record in Berkeley County, South Carolina in favor of the Defendant, South Carolina Department of Revenue, as the Lien Holder, against the Defendant, Brandon W. Linder, as the Taxpayer, is thus according to and as a matter of law junior and subordinate in priority to the Plaintiff's first real estate mortgage and senior and paramount lien being foreclosed hereunder by the Plaintiff herein; and the Plaintiff now requests that such aforesaid four (4) South Carolina Tax Liens be foreclosed hereunder as required by law in regard thereto.

8. The Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, is made a party hereto by virtue of such Federal Governmental Agency holding and heretofore issuing and entering a Federal Tax Lien encumbering and attached to the below-described subject real estate and mortgaged property and premises, which Federal Tax Lien is junior and secondary and inferior and subordinate in priority to the Plaintiff's First Real

Estate Mortgage and Senior and Paramount Lien being foreclosed herein and the aforesaid Federal Tax Lien was previously obtained by and in favor of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, against the Defendant, Brandon W. Linder, as the Taxpayer, and this Federal Tax Lien was recorded with the Berkeley County Register of Deeds Office against the Defendant, Brandon W. Linder, as the Taxpayer, as more fully stated and set forth and listed and itemized, as follows:

(A.) Federal Tax Lien No. 781132911 was issued on 4/28/2011 in the total sum of \$156,466.78 for unpaid Small Business/Self Employed Taxes for the tax periods of 3/31/2008, 6/30/2008, 9/30/2008, 12/31/2008, 3/31/2009, 6/30/2009, 9/30/2009, 12/31/2009, 3/31/2010, and 6/30/2010, and was recorded on 5/6/2011 against Brandon W. Linder, as its Member, as the Taxpayer, with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254, at Page 19. A copy of such aforesaid Federal Tax Lien is attached hereto as Exhibit "5" and the contents thereof are incorporated hereunder and made part and parcel hereof by reference.

9. That the above-referenced Federal Tax Lien in the total amount of \$156,466.78 as previously issued and entered and filed of public record on 5/6/2011 with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254, at Page 19, in favor of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, as the Lien Holder, against the Defendant, Brandon W. Linder, as the Taxpayer, is thus according to and as a matter of law junior and subordinate in priority to the Plaintiff's first real estate mortgage and senior and paramount lien being foreclosed hereby; and the Plaintiff now requests that such aforesaid Federal Tax Lien as previously issued and entered against the Defendant, Brandon W. Linder, as the Taxpayer, be foreclosed hereunder as required by law in regard thereto.

10. That some lien on or upon or right, title or interest in or to the below-described real estate and mobile home, which are the subject matter of this mortgage foreclosure action, may be held, claimed, or possessed by some or all of the above-named Defendants and that any and all liens, rights, titles and interests held, possessed and/or claimed by such aforesaid Defendants in or to or upon the below-described subject real estate and mobile home are junior, subsequent, secondary, and subordinate to the liens, rights, titles and interests now owned and held therein and thereon by the Plaintiff, as the owner and holder of the first mortgage and the senior and paramount lien thereon, and/or do not attach to the below-described real estate or the below-described mobile home that are the subject matter of this mortgage foreclosure action, and/or such junior and secondary liens have been paid in full but not satisfied of public record in

Berkeley County, South Carolina; and thus all such junior and secondary and inferior and subordinate liens and rights and titles and interests held, claimed, or possessed in or to the below-described subject real estate and mortgaged property and premises and/or in or to the below-described subject mobile home by any or all of the above-named Defendants are subject to being foreclosed hereunder by the Plaintiff herein.

11. That according to a title search and abstract of the public records and indices of Berkeley County, South Carolina, any and all persons and parties and business entities having any right, title, interest, lien or possible claim in or upon the below-described subject real estate and mortgaged property and premises and in or upon the below-described subject mobile home that junior and secondary and inferior and subordinate to the first mortgage and the senior and paramount lien now owned and held thereon by the Plaintiff as of the date and time of the filing of the Lis Pendens in this matter have been made and included as Defendants herein.

12. That the Defendants named and described herein above as judgment lien creditors, if any, have by filing such judgment liens, if any, designated their attorneys of record, if any, entering such judgment on their behalf as their agent for service of process pursuant to the provisions of §15-35-840 of the 1976 South Carolina Code of Laws.

FOR A FIRST CAUSE OF ACTION:
(Action to Foreclose Real Estate Mortgage)

13. That the allegations contained in Paragraph Nos. 1 through 12, inclusive, herein above, are incorporated herein by reference as fully and completely as if repeated and rewritten hereunder verbatim.

14. That on or about 8/31/2007, for good and valuable consideration, in connection with EBSC Loan No. 1264826, the Defendant herein, Brandon W. Linder, as Borrower, made, executed, and delivered to the Plaintiff, Enterprise Bank of South Carolina, as Lender, a Universal Note promising to pay the principal sum of \$80,550.00 to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 9/1/2012, with a copy of such aforesaid Universal Note dated 8/31/2007 being attached hereto as **Exhibit "6"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

15. That in order to better secure the payment unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, of the original loan debt owed to such Plaintiff by the Defendant, Brandon W. Linder, as the original Borrower herein, as evidenced by the aforesaid Universal Note

dated 8/31/2007 in the principal amount of \$80,550.00, and according to the terms and conditions thereof, a Real Estate Mortgage (With Future Advance Clause) in the maximum principal amount of \$80,550.00 was made and executed and delivered on 8/31/2007 by the Defendant, Brandon W. Linder, as the Mortgagor, unto and in favor of the Plaintiff, Enterprise Bank of S.C., as the Mortgagee, for the purpose of securing the aforesaid loan and Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, plus accrued interest and late charges and other costs and fees and expenses and charges accruing thereon as provided thereunder, and any and all substitutions and extensions and renewals and modifications and refinances thereof, from the Defendant, Brandon W. Linder, as the original Borrower herein, unto the Plaintiff, Enterprise Bank of S.C., as the Lender herein, with such Real Estate Mortgage (With Future Advance Clause) being dated 8/31/2007 and recorded on 8/31/2007 with the Berkeley County Register of Deeds Office in Record Book R, in Volume 6843, at Page 78; and with a copy of such aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 being attached hereto as **Exhibit "7"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made parcel hereof by specific reference thereto.

16. That in order to better secure the payment to the Plaintiff of such aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00 and according to the terms and conditions thereof, the Defendant, Brandon W. Linder, as the Debtor, on or about 8/31/2007 also made and executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party, a certain Consumer Security Agreement dated 8/31/2007 granting unto the Plaintiff a valid security interest in and to his used 1996 Grand Manor 28.0' x 64.0' Mobile Home as specified therein, and with a copy of such aforesaid Consumer Security Agreement dated 8/31/2007 being attached hereto as **Exhibit "8"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

17. That on or about 7/21/2010, for good and valuable consideration in connection with EBSC Loan No. 1442201, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of \$1,469,163.46 to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 9/1/2015, with a copy of such Universal Note dated 7/21/2010 being attached hereto as **Exhibit "9"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

18. That in order to better secure the payment to the Plaintiff of such aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 and according to the terms and conditions thereof, the Defendant, Brandon W. Linder, as the Debtor, on or about 7/21/2010 made and executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party, a Commercial Security Agreement dated 7/21/2010 granting unto the Plaintiff a valid security interest in and to his used 1996 Grand Manor 28.0' x 64.0' Mobile Home as specified therein, and with a copy of such aforesaid Commercial Security Agreement dated 7/21/2010 being attached hereto as **Exhibit "10"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by reference.

19. That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 7/21/2010 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 7/21/2010 in the principal sum of \$1,469,163.46 and any and all other loan documents related thereto, with a copy of such aforesaid Guaranty Agreement dated 7/21/2010 being attached hereto as **Exhibit "11"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

20. That thereafter, on or about 10/28/2013, for good and valuable consideration in connection therewith, certain terms and conditions of the aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 were modified as more fully appears and as more fully shown and reflected by the Note Modification Agreement that was made and concluded and entered into on 10/28/2013 by and between the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, and by the Defendant, United Cable Construction, Inc., as the Borrower herein, which aforesaid Note Modification Agreement dated 10/28/2013 provided therein and modified certain terms and conditions of the aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 and designated as EBSC Loan No. 1442201, as follows:

(A.) Acknowledged that the principal loan balance due and owing unto the Plaintiff under the terms and condition of the aforesaid Universal Note dated 7/21/2010 was as of 10/28/2013 the sum of \$1,230,145.25; and (B.) Modified and extended the loan maturity date from 11/1/2015 until 12/5/2013. A copy of the aforesaid Note Modification Agreement dated 10/28/2013 is attached hereto as **Exhibit "12"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

21. That on or about 7/21/2011, for good and valuable consideration in connection with EBSC Loan No. 1483609, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$19,483.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 1/21/2014, with a copy of such aforesaid Universal Note dated 7/21/2011 being attached hereto as **Exhibit "13"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

22. That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 7/21/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 7/21/2011 in the principal sum of \$19,483.00 and any and all other loan documents related thereto, with a copy of such aforesaid Guaranty Agreement dated 7/21/2011 being attached hereto as **Exhibit "14"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

23. That on or about 8/2/2011, for good and valuable consideration in connection with EBSC Loan No. 1486055, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$28,255.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 8/2/2014, with a copy of such aforesaid Universal Note dated 8/2/2011 being attached hereto as

Exhibit "15" and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

24. That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 8/2/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 8/2/2011 in the principal sum of \$28,255.00 and any and all other loan documents related thereto, with a copy of such aforesaid Guaranty Agreement dated 8/2/2011 being attached hereto as **Exhibit "16"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

25. That on or about 12/6/2011, for good and valuable consideration in connection with EBSC Loan No. 1500457, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$50,160.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 3/6/2012, with a copy of such Universal Note dated 12/6/2011 being attached hereto as **Exhibit "17"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

26. That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 12/6/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 12/6/2011 in the principal sum of \$50,160.00 and any and all other loan documents related thereto, with a copy of such aforesaid Guaranty Agreement dated 12/6/2011 being

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT:
(15 U.S.C. § 1601, As Amended)

TO: THE DEFENDANTS, UNITED CABLE CONSTRUCTION, INC & BRANDON LINDER:

1. The amount of the debt is as stated in the Plaintiff's Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the Creditor to whom the debt is owed.
3. If the original Creditor is different from the Current Creditor, the Creditor's law firm will provide the Debtor with the name and address of the original Creditor if requested by the Debtor, in writing, within thirty (30) days of the receipt of this notice.
4. The debt described in the Complaint attached hereto and as evidenced by the Notes and Mortgage described and referenced therein will be assumed to be valid by Creditor's law firm unless the Debtors, within thirty (30) days after the receipt of this written notice, dispute, in writing, the validity of the debt or some portion thereof.
5. If the Debtors notify the Creditor's law firm in writing within Thirty (30) days of the receipt of this notice that the debt or any portion thereon is disputed, the Creditor's law firm will obtain a verification of the debt, and copy of the verification will be mailed to the debtor by the Creditor's law firm.
6. Written requests in response to this Notice should be addressed to the Plaintiff's undersigned legal counsel herein, E. W. Bennett, Jr. Esquire, Attorney at Law, P.O. Box 693, Walterboro, S.C. 29488.
7. This notice should not be construed as a thirty (30) day grace period. The Creditor may pursue collection efforts immediately and need not wait thirty (30) days to do so.

**THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED HEREIN WILL BE USED FOR THAT PURPOSE.**


E. W. BENNETT, JR.
 Attorney for the Plaintiff
 148 S. Jefferies Boulevard
 Post Office Box 693
 Walterboro, SC 294888
 Telephone: (843) 549-9225
 Facsimile: (843) 549-8566
 E-Mail: bop@lowcountry.com

Dated: September 27, 2016.

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of SC)
Plaintiff,)
vs.)
United Cable Construction, Inc.; Brandon)
Linder a/k/a Brandon W. Linder a/k/a)
Brandon Wynn Linder)
Defendant.)

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

FILE NO.: 2016-CP-08- 2352

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

- A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

E.W. Bennett Jr.
Plaintiff/Attorney for Plaintiff

MARY P. BROWN
Defendant/Attorney for Defendant

E.W. Bennett, Jr.
Print Name

MARY P. BROWN
Print Name

843-549-9225/843-549-8566

Phone/Fax

Phone/Fax

Date: 9/28/2016

- B. 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 20____

SCADR 104A (11/2012)

4. As a result of ADR, this case should be considered (please check one);

() Fully Settled.

() by Consent Judgment, to be filed by _____

or () Voluntary Dismissal to be filed by _____

() Partially Settled.

() At an Impasse.

() In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☐ was present ☐ was not present
 Defendant ☐ was present ☐ was not present

6. Other participants were:

_____ Lawyer for Defendant _____
 _____ Lawyer for Plaintiff _____
 _____ Representative for Insurance Carrier _____
 _____ Guardian *ad Litem* _____
 _____ Experts _____
 _____ Others _____

7. Choice of the neutral was by:

_____ Stipulation
 _____ Court Order

8. The total number of hours spent in ADR was: _____ hours.

9. Further comments of the neutral:

 Neutral's Signature

Date:

SCADR 104B (11/2012)

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)
Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of S.C.,)
Plaintiff,)
vs.)
United Cable Construction, Inc.;)
Brandon Linder a/k/a Brandon W. Linder)
a/k/a Brandon Wynn Linder; South Carolina)
Department of Revenue; and United States)
of America acting by and through the U.S.)
Department of Treasury and the Internal)
Revenue Service,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CIVIL CASE NO: 2016-CP-08-2352

**MASTER IN EQUITY'S REPORT AND
JUDGMENT OF FORECLOSURE
AND SALE**

(Deficiency Judgment Demand)

BERKELEY COUNTY, S.C.

17 JUN -7 AM 9:06

[Handwritten signature]

In accordance with Rule 53 of the S.C. Rules of Civil Procedure, an Order of Reference was previously issued on 3/29/2017 and filed in this matter on 3/30/2017 referring the above-captioned mortgage foreclosure action to the undersigned Master in Equity, the Honorable Dale Edward Van Slambrook, with finality and with the authority to make appropriate findings of fact and conclusions of law and to enter and issue a final judgment and decree in this case. Pursuant to such Order of Reference a reference hearing on the merits and with finality was held by Master in Equity, Dale Edward Van Slambrook, on May 25, 2017 at 11:15 o'clock a.m. at the Berkeley County Master in Equity's Office located at 300 California Avenue, Moncks Corner, S.C. 29461. ~~The written reference hearing was transcribed and reported by Professional Verbatim Court Reporter, AWR.~~ The reference hearing in this matter was attended by Ray Molony, who is employed as a Credit Officer for and on behalf of the Plaintiff, Enterprise Bank of South Carolina, along with their legal counsel herein, E.W. Bennett, Jr., Esquire, of Walterboro, S.C. The Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder, nor their attorney herein, Adam Mlynarczyk, Esquire, did not appear at the reference hearing nor did they contest the entry of a Final Order and Decree of Foreclosure and Sale, however, such Defendants hereby expressly reserve any and all of their rights to contest or object to or assert and argue any and all defenses that such Defendants may have with respect to the Plaintiff seeking the entry of personal deficiency balance judgments against such named Defendants, jointly and severally, and any and all issues as to the Plaintiff's right to seek and enter personal deficiency balance judgments are hereby held in abeyance until a later date and time with a supplemental reference hearing to be held and

DEFENDANT'S
EXHIBIT

PENGAD 800-631-6889

conducted by the Berkeley County Master in Equity. A timely Answer and Counterclaim to the Plaintiff's Complaint and timely Answers to the Plaintiff's Complaint were filed herein by Adam Mlynarczyk, Esquire for and on behalf of the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder; and by George J. Conits, Esquire for and on behalf of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service; and by Sean G. Ryan, Esquire for and on behalf of the Defendant, South Carolina Department of Revenue. All of the above-named Defendants were properly notified in advance of this reference hearing. The testimony in this case was then taken from the Plaintiff's witness, Ray Molony, ~~and from Adam Mlynarczyk, Esquire, as the legal counsel herein for and on behalf of the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder,~~ under oath by the Master In Equity and based on such sworn testimony and the documents and exhibits introduced and admitted into evidence as received at such reference hearing and based upon the agreed stipulations made and entered into by the parties hereto and their respective legal counsel in this matter, and the pleadings, exhibits, and record herein, I find as a matter of salient fact, as follows:

FINDINGS OF FACT:

1. The Plaintiff's Civil Cover Sheet and Summons & Notice and Complaint and Fair Debt and Collection Practices Act Notice were filed on 9/30/2016.
2. The Plaintiff's Lis Pendens was filed herein on 9/30/2016.
3. That the following Defendants were duly and properly served with copies of the Plaintiff's Summons & Notice and Complaint and Lis Pendens and Fair Debt and Collection Practices Act Notice by Davidson County Deputy Sheriff, Sgt. M. Norman, by personally serving a copy of such pleadings on each Defendant as follows: (a) United Cable Construction, Inc. - on 11/8/2016 and (b) Brandon W. Linder - on 11/8/2016.
4. That the following Defendants were duly and properly served with copies of the Plaintiff's Summons & Notice and Complaint and Lis Pendens and Fair Debt and Collection Practices Act Notice by Certified Mail - Return Receipt Requested by serving a copy of such pleadings on the attorney or registered agent of record for each Defendant as follows: (a) United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service - on 11/11/2016 and (b) South Carolina Department of Revenue - on 11/11/2016.
5. The following Defendants filed timely Answers to the Plaintiff's Complaint and a timely Answer and Counterclaim to the Plaintiff's Complaint with the Clerk of this Court herein as follows: (a) United Cable Construction, Inc. - on 1/17/2017; (b) Brandon W. Linder - on 1/17/2017; (c) U.S.

Department of Treasury and the Internal Revenue Service - on 11/1/2016; and (d) South Carolina Department of Revenue - on 10/27/2016.

6. The Plaintiff herein filed a timely Reply to Counterclaim on 3/17/2017.

7. All of the above-named Defendants were properly notified of the time, date, and place of the holding of the reference hearing in this matter by service by mail of a Notice of Reference Hearing With Finality dated 4/7/2017 and filed herein on 4/11/2017; and thereafter of a Revised Notice of Reference Hearing With Finality dated 4/19/2017 and filed herein on 4/24/2017.

8. The Affidavit as the Home Affordable Modification Program (HMP) was executed on 3/15/2017 by the Jared A. Polk, as Vice President for and on behalf of the Plaintiff, Enterprise Bank of South Carolina, concerning the non-applicability of the Home Affordable Modification Program (HMP) to this mortgage foreclosure action which HMP Affidavit was filed in this matter on 3/20/2017 as required pursuant to South Carolina Supreme Court Administrative Order No. 2009-05-22-01 dated 5/22/2009, for the purpose of affirming that the mortgage loan being foreclosed by the Plaintiff hereunder is not eligible for the protection of or modification under and is not subject to any of the requirements or regulations of the federal **Home Affordable Modification Program** because the Home Affordable Modification Program requirements do not apply thereto because neither of the mortgage loans being foreclosed by the Plaintiff hereunder are Freddie Mac loans or Fannie Mae loans and also because the Plaintiff has never heretofore signed up or registered to participate in the Home Affordable Modification Program and thus is not a qualified Lender to participate in the Home Affordable Modification Program.

9. That nobody presently owner occupies or lives or resides upon any portion of the above-described subject real estate and mortgaged property and premises securing the within commercial loan debt and the used 1996 Grand Manor 28.0' x 64.0' Mobile Home situate upon and permanently affixed to the above-described subject commercial real estate and mortgaged property and premises being foreclosed hereunder by the Plaintiff herein is utilized as a business office and the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon W. Linder a/k/a Brandon Wynn Linder, is thus accordingly not eligible for any **foreclosure intervention rights** through any type of loan modification program or any other means of loss mitigation and as a result thereof the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon W. Linder a/k/a Brandon Wynn Linder, is not entitled to receive any type of notice of foreclosure intervention rights from the Plaintiff or its undersigned attorney herein pursuant to the provisions and requirements of South Carolina Supreme Court Administrative Order No. 2011-05-02-01 which only applies to foreclosures of residential real estate that is occupied by and as the

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1500457 and 1529455 and 1486055 and 1483609 and 1526286 as modified hereunder shall also be paid in full unto the within Lender by the undersigned Borrower. If any modified monthly installment payment due and payable hereunder is not received by the Lender on or before the Twenty Fourth (24th) day of the month in which it is due then a late fee charge in the amount of \$100.00 shall be assessed thereon and paid unto the within Lender by the undersigned Borrower. If at any time hereafter any portion of the modified principal balance due and owing hereunder or accrued interest due and owing hereunder shall become past due and unpaid for a period of time in excess of Thirty (30) days of its modified due date as provided herein above, then in such event, the entire and whole amount of the modified loan debt pursuant to the terms and conditions hereof shall, at the sole option of the Lender, be deemed and declared to be in default and the total balance due and owing pursuant to the modified terms and conditions as stated and set forth hereunder shall in such instance become immediately due and payable in full at once; and the Lender shall also in that event have the right to institute legal proceedings against the undersigned Borrower to collect any and all amounts due and owing hereunder pursuant to the modified loan terms and conditions hereof, including all reasonable attorney fees and collection costs incurred by the Lender in such regard, and to protect any security and any secured collateral connected herewith; and (E.) This Loan Modification Agreement constitutes a modification of all seven (7) of the aforesaid Notes and Loans designated as EBSC Loan Nos. **1442201 and 1534661 and 1500457 and 1529455 and 1486055 and 1483609 and 1526286**, with an aggregate unpaid principal balance due and owing thereon as of March 14, 2014 in the total amount of **\$1,353,161.26**, and any all prior modifications or extensions of the seven (7) aforesaid Notes and Loans, only with respect to all matters set forth herein. A copy of the aforesaid Loan Modification Agreement dated 3/31/2014 is attached hereto as **Exhibit "28"** and all of the terms and conditions and provisions thereof are hereby pleaded and incorporated hereunder and made part and parcel hereof by specific reference thereto.

34. That on or about 3/31/2014, for good and valuable consideration in connection therewith, a Cross Collateralization Agreement and Amendments to Related Security Instruments that was made and concluded and entered into on 3/31/2014 by and between the Plaintiff, Enterprise Bank of South Carolina, as the Lender and Mortgagee and Secured Party herein, and by the Defendant, United Cable Construction, Inc., as the Borrower herein, and by the Defendant, Brandon W. Linder, as the Mortgagor and Debtor and Guarantor herein.

35. That on or about 3/31/2014, for good and valuable consideration in connection with and as a requirement and as an inducement for the Plaintiff entering into the aforesaid Loan Modification Agreement dated 3/31/2014 and the aforesaid Cross Collateralization Agreement and Amendments to Related Security Instruments dated 3/31/2014, and for the purpose of better securing the payment unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender and Mortgagee and Secured Party herein, of the aforesaid Seven (7) notes and related and secured commercial loan debts previously designated as EBSC Loan Nos. **1442201, 1534661, 1500457, 1529455, 1486055, 1483609, and 1526286** as thereafter modified and cross-collateralized and rolled over and consolidated into a single commercial loan debt designated as **EBSC Loan No. 1442201** in the total aggregate consolidated principal amount of **\$1,370,614.66**, plus interest accruing thereon from 4/1/2014 until paid in full at the modified fixed annual rate of 3.25% per annum, together with late charges and other fees and costs and expenses and charges accruing thereon, all as provided by and pursuant to and in accordance with the terms and conditions and provisions of the aforesaid Loan Modification Agreement dated 3/31/2014 and the aforesaid Cross Collateralization Agreement and Amendments to Related Security Instruments dated 3/31/2014, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 3/31/2014 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff pursuant to and in accordance with the provisions of the aforesaid the aforesaid Loan Modification Agreement dated 3/31/2014 and the aforesaid Cross Collateralization Agreement and Amendments to Related Security Instruments dated 3/31/2014, and any and all other aforesaid loan documents related thereto, showing and reflecting an aggregate consolidated principal loan balance due and owing unto the Plaintiff in the total amount of **\$1,370,614.66** as of 3/31/2014, together with all interest and late charges and all other costs and fees and expenses and charges accruing thereon as provided thereunder, and also including any and all subsequent renewals and modifications and substitutions and extensions and refinances thereof.

36. That thereafter on or about April 27, 2015, for good and valuable consideration in connection therewith, certain terms and conditions of the aforesaid Loan Modification Agreement dated 3/31/2014 that was previously entered into with respect to the within consolidated commercial loan now designated as EBSC Loan No. 1442201 were subsequently modified as more fully appears and as more fully shown and reflected by the provisions as set forth and contained in the Note Modification Agreement that was made and concluded and executed and entered into on or about

April 27, 2015 by and between the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, and the Defendant, United Cable Construction, Inc., as the Borrower herein, which aforesaid Note Modification Agreement dated April 27, 2015 provides and specifies therein, as follows:

(A.) Acknowledged and confirmed that the current principal loan balance due and owing unto the Plaintiff pursuant to and in accordance with the terms and condition of the aforesaid Loan Modification Agreement dated 3/31/2014 relating to the associated consolidated commercial loan debt now designated as EBSC Loan No. 1442201 was as of 4/27/2015 the principal amount of \$1,250,096.49; and (B.) Modified and extended the loan maturity date for the aforesaid consolidated commercial loan debt now designated as EBSC Loan No. 1442201 from March 26, 2015 through and until May 15, 2017; and (C.) Acknowledged and confirmed that the current interest rate being charged by the Plaintiff and paid on such aforesaid consolidated commercial loan now designated as EBSC Loan No. 1442201 was the fixed annual rate of 3.25% per annum.

37. That the Plaintiff had to employ legal counsel to commence and prosecute this mortgage foreclosure action and under the provisions of the aforesaid Universal Notes and pursuant to the terms and conditions of the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 securing such aforesaid Universal Notes, the Plaintiff is entitled to recover an award of its reasonable attorney fees incurred in this matter; and the Plaintiff is informed and believes that ~~\$25,000.00~~ ^{\$1,0980.00} is a reasonable amount to be awarded to Plaintiff by this Court for its attorney fees incurred herein; and the Plaintiff has been in the past and may in the future be forced to pay or advance certain sums for property taxes and insurance premiums and other like expenses and for the costs of inspecting and securing the mortgaged premises, which sums, according to the terms and conditions of the aforesaid seven (7) Universal Notes, and in accordance with the provisions of the aforesaid Real Estate Mortgage dated 8/31/2007 in the principal amount of \$80,550.00 securing such aforesaid seven (7) Universal Notes, should be added to and as part of the total aggregate amount of the consolidated commercial loan debt amount as found and determined and ascertained to be justly due and owing unto the Plaintiff herein.

38. That the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff secures the repayment of money actually loaned and advanced by the Plaintiff, Enterprise Bank of South Carolina, as the Lender and Mortgagee herein, unto and on behalf and for the benefit of the Defendant, United Cable Construction, Inc., as the Borrower and Mortgagor herein, pursuant to the terms and conditions for such aforesaid seven (7) commercial loans as originally evidenced by the aforesaid seven (7) Universal Notes associated therewith; and the aforesaid Real Estate Mortgage

(With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff constitutes the First Mortgage and the Senior and Paramount Lien upon and encumbering the subject real estate and mortgaged property and premises as more fully described herein below.

39. The subject real property and mortgaged property and premises encumbered by the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff and being the first mortgage and the senior and paramount lien thereon, is more fully and particularly described, as follows:

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Delia dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

TMS NO: 233-09-02-037 (0.84+- acres)

PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.

40. That the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff secures the repayment of money actually loaned and advanced by the Plaintiff, Enterprise Bank of South Carolina, as the Lender and Mortgagee herein, unto and on behalf and for the benefit of the Defendant, United Cable Construction, Inc., as the Borrower and Mortgagor herein, pursuant to the terms and conditions for such aforesaid seven (7) commercial loans as originally evidenced by the aforesaid seven (7) Universal Notes associated therewith; and the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff constitutes the First Mortgage and the Senior and Paramount Lien upon and encumbering the subject real estate and mortgaged property and premises.

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41. That in order to better secure the payment to Plaintiff of such loan debt as evidenced by the aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, and according to the terms and conditions thereof, the Defendant, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, as the Debtor herein, on or about 8/31/2007 made and duly and properly executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party herein, a Consumer Security Agreement granting unto and in favor of the Plaintiff a valid security interest in and to his *used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B*; and the Defendant, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, as the Debtor herein, thereafter on or about 7/21/2010 also made and duly and properly executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party herein, a Commercial Security Agreement granting unto and in favor of the Plaintiff a valid security interest in and to his *used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B*.

42. That in order to provide additional collateral to better secure the payment of the aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, the Defendant, Brandon Wynn Linder, as the Borrower and the Debtor herein, previously delivered on 8/31/2007 unto the Plaintiff, Enterprise Bank of S.C., as the Lender and the Secured Party herein, the original South Carolina Certificate of Title to his *used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B*; and the Defendant, Brandon Wynn Linder, also previously executed and delivered to the Plaintiff on or about 8/31/2007 a SCDMV Form 400 authorizing the Plaintiff to enter and to record its first lien on the face of the original S.C. Certificate of Title to such above-described subject used mobile home, which the Plaintiff did as required under South Carolina Law in order to properly and validly perfect its secured first and senior and paramount lien upon such aforesaid used mobile home which also constitutes a purchase money lien thereon.

43. That the Plaintiff now holds in its possession the original South Carolina Certificate of Title bearing Title No. 770760187583611 issued on 2/20/2008 based on the Plaintiff's validly perfected first lien thereon dated 8/31/2007 in the principal amount of \$80,550.00 with respect to the aforesaid *used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B*, which aforesaid used mobile home is now titled in the name of the Defendant and Borrower and Debtor herein, Brandon Wynn Linder, with the Plaintiff's first lien thereon dated 3/31/2007 being properly entered and recorded on the face of the original Certificate of Title for such aforesaid used mobile home.

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44. That based upon the foregoing material breach and default and violation of the Defendant, Brandon W. Linder a/k/a Brandon Wynn Linder, as the Borrower and Debtor herein, of and upon the terms and conditions and requirements of above-referenced secured loan as evidenced by the modified provisions of the aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, the Plaintiff is now entitled to recover the sole and exclusive possession and control of the aforesaid additional collateral and security being described herein as a ***used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder***, upon which aforesaid mobile home the Plaintiff now holds a validly perfected first and senior and paramount and purchase money lien thereon.

45. That the Plaintiff is now lawfully entitled to the possession of the above-described mobile home, by virtue of a special property interest therein, which Plaintiff has as a result of holding the validly perfected first lien thereon; and based on the breach and default by the above-named Defendant upon the payment terms and conditions of the aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, which default such above-named Defendant have failed to cure after the Plaintiff forwarded to them in a timely manner and fashion all proper written notices of right to cure default as required by both South Carolina and Federal Law and under the provisions of the aforesaid Universal Note dated 8/31/2007.

46. The secured collateral and mobile home which the Plaintiff is now seeking to repossess under this Claim and Delivery Action from the above-named Defendant is more fully described, as follows: ***used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B***; and the aforesaid mobile home is and constitutes a permanent improvement to and is part and parcel of and is situate upon and permanently affixed to the above-described subject real estate and mortgaged property and premises and being located at 145 Sally Avenue, Ladson, S.C. 29456 and designated as Berkeley County TMS No. 233-09-02-037.

47. The Plaintiff previously requested the Defendant, Brandon W. Linder a/k/a Brandon Wynn Linder, to immediately relinquish and deliver to such Plaintiff the possession of the above-described used mobile home and such request has been steadfastly refused and ignored; and the Defendant, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, as the Borrower and the Debtor herein, is still wrongfully withholding the aforesaid used mobile home from the Plaintiff and continues to wrongfully hold and detain such aforesaid used mobile home for his own personal use and benefit.

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48. The above-described used mobile home, which is the secured collateral herein, has not been taken for any tax or fine pursuant to any statute, or seized under an execution or attachment against such aforesaid used mobile home.

49. That upon information and belief, the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, previously caused his above-described used mobile home to become permanently affixed to the subject real property described herein above by, among other things:

(A.) Constructing a permanent foundation for the mobile home and attaching the mobile home thereto; (B.) Removing the tongue, chassis, wheels and/or other vehicular lighting and reflectors from the mobile home; and (C.) Constructing a permanent porch/deck, steps and or roof on the property and attaching the mobile home thereto.

50. That as a result of the improvements listed above, the character of the aforesaid mobile home has been altered to such an extent that the entire structure has become a permanent fixture and improvement to the above-described subject real estate and mortgaged property and premises; and such mobile home has been converted and transmuted from personal property into real property and is thus subject to the senior and paramount lien and encumbrance of Plaintiff's aforesaid Mortgage.

51. That upon information and belief, when the Defendant and Debtor and Guarantor and Mortgagor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, as the original Borrower herein, initially applied for and obtained a mortgage loan from the Plaintiff in August of 2007, he represented that he owned or was purchasing all of the real property as more fully described herein above and being the subject of this lawsuit; and that the Defendant and Debtor and Guarantor and Mortgagor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, was willing to secure such loan debt by executing a mortgage encumbering the entire property and premises, which is and includes both the above-described subject real estate and the aforesaid used mobile home attached and affixed as a permanent improvement thereto.

52. That in reliance upon the aforesaid representations of the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, all of the subject real estate and mortgaged property and premises as more fully described herein above and located at 145 Sally Avenue, Ladson, S.C. 29456, in Berkeley County, South Carolina, in its entirety, including the aforesaid used mobile home, was appraised; and in reliance upon appraised value of the entire property, a mortgage loan was made and extended by the Plaintiff to the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, with the

intent that such loan debt would be secured by a First Mortgage and a Senior and Paramount Lien and a Purchase Money Lien encumbering all of the above-described subject real estate and mortgaged property and premises in its entirety along with and including the aforesaid used mobile home situate thereon and affixed as a permanent improvement thereto.

53. That the relationship between the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, and the Plaintiff, Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C., as the Lender and Mortgagee and Secured Party herein, is and was such that a reasonable person would expect the Plaintiff to require that its loan be secured by a first mortgage lien encumbering all of the subject real property as more fully described herein above, including the aforesaid used mobile home that is affixed as a permanent fixture and improvement to the above-described subject real estate and mortgaged property and premises; and that a reasonable person would expect the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, to mortgage and encumber all of his subject real estate and property as more fully described herein above in its entirety, including the aforesaid used mobile home affixed as a permanent improvement thereto, in exchange for receiving and in order to fully secure the total amount of the loan debt now justly due and owing unto the Plaintiff herein as originally evidenced by the terms and conditions and provisions of the aforesaid initial Universal Note dated 8/31/2007 in the principal amount of \$80,550.00.

54. That because the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, caused the aforesaid used mobile home to become permanently affixed to the above-described subject real estate and mortgaged property and premises in such a manner and fashion that it has now been converted and transmuted from personal property into real property; and because the Defendant and Debtor and Guarantor and Mortgagor and the original Borrower herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, and the Plaintiff and Lender and Mortgagee and Secured Party herein, Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C., in furtherance of their relationship with respect to the prior closing and consummation of the aforesaid mortgage loan in the original principal amount of \$80,550.00, each mutually and respectively intended that the aforesaid used mobile home should constitute additional collateral for the purpose of better securing the payment of such aforesaid mortgage loan as evidenced by the provisions of the aforesaid initial Universal Note dated 8/31/2007 in the principal amount of \$80,550.00 and by the provisions of the aforesaid Real Estate Mortgage (With Future Advance Clause) in the maximum principal amount

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of \$80,550.00 securing such aforesaid Universal Note; and the Plaintiff is thus now informed and believes that it is entitled, pursuant to §15-53-20, et. seq., of the 1976 S.C. Code of Law, to have a declaratory judgment issued and entered in its favor determining and adjudicating as a matter of law that the aforesaid used mobile home is a permanent fixture and improvement to and forms part and parcel of the above-described real estate and mortgaged property and premises that is the subject matter of the Plaintiff's First Cause of Action for a foreclosure of its Real Estate Mortgage as stated and set forth herein above and that such aforesaid used mobile home is accordingly therefore subject to the First Mortgage and the Senior and Paramount Lien and Purchase Money Lien of and as constituted by the Plaintiff's aforesaid Real Estate Mortgage dated 8/31/2007 in the principal amount of \$80,550.00.

55. That after a complete review of the original loan documents in this matter, the Plaintiff is hereby informed and believes that the legal description with respect to the subject real estate and mortgaged property and premises known as 145 Sally Avenue, Ladson, S.C. 29456 and designated as Berkeley County TMS No. 233-09-02-037 Lot C of Lot 19 Block B, Pine Vista Subdivision, as set forth and appearing in the Plaintiff's aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 and as set forth and shown and reflected herein above and in the Plaintiff's Lis Pendens filed on even date herewith is incorrect and incomplete in that it does not show or reflect the above-described used mobile home situate upon such real estate as being affixed thereto as a permanent fixture and improvement and constituting part and parcel thereof and is thus accordingly subject to the aforesaid First Mortgage of Real Estate and the Senior and Paramount Lien and Encumbrance of the Plaintiff's aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 being foreclosed hereunder by the Plaintiff as originally and mutually intended by both the Plaintiff and the Defendant and Borrower and Mortgagor herein, Brandon W. Linder a/k/a Brandon Wynn Linder.

56. That the Plaintiff is informed and believes that it is now entitled to a reformation of the aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 in order for the legal description therein and thereunder to correctly and fully and completely show and reflect the aforesaid used mobile home as being part and parcel of the below-described subject real estate and mortgaged property and premises as a permanent fixture and improvement thereto and thus accordingly subject to the senior and paramount lien of the Plaintiff's aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 and that the reformed legal description for such aforesaid

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Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 should thus accordingly show and reflect and appear in the Final Order and Decree and Judgment of Foreclosure and Sale subsequent issued herein and in the Notice of Master's Sale to be issued and entered and advertised in this case, as follows:

Reformed Legal Description Showing Mobile Home as Part and Parcel of Subject Real Estate:

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Della dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

TMS NO: 233-09-02-037 (0.84+- acres)

PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

ALSO situate upon and affixed to the above-described subject real estate as a permanent improvement and fixture thereto in such a manner so it has now become and forms part and parcel of such real property is a used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder.

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.

57. That the Defendant, South Carolina Department of Revenue, by virtue of such State Governmental Agency holding and heretofore entering four (4) South Carolina Tax Liens encumbering and attached to the below-described subject real estate and mortgaged premises, which four (4) South Carolina Tax Liens are junior and secondary and subordinate in priority to the paramount lien of the Plaintiff's Real Estate Mortgage being foreclosed herein and was previously obtained by and in favor of the Defendant, South Carolina Department of Revenue, as the Lien Holder, and against the Defendant, Brandon Linder, as the Taxpayer, and which four (4) South Carolina Tax Liens were previously recorded with the Berkeley County Register of Deeds Office against the Defendant, Brandon Linder, as the Taxpayer, in the respective amounts and on the respective dates as more fully stated and set forth hereafter, as follows:

(A.) South Carolina Tax Lien No. 3-51038356-0 was issued on 3/2/2009 in the total sum of \$3,538.36 for unpaid Taxes for the tax period from 03/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 137. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "1"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(B.) South Carolina Tax Lien No. 3-51038357-7 was issued on 3/2/2009 in the total sum of \$6,977.09 for unpaid Taxes for the tax period from 12/2007 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 139. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "2"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(C.) South Carolina Tax Lien No. 3-51038358-4 was issued on 3/2/2009 in the total sum of \$19,258.87 for unpaid Taxes for the tax period from 12/2006 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 141. A copy of such S.C. Tax Lien is attached hereto as **Exhibit "3"** and the contents thereof are incorporated herein and made part and parcel hereof by reference.

(D.) South Carolina Tax Lien No. 3-51038359-1 was issued on 3/2/2009 in the total sum of \$5,160.00 for unpaid Taxes for the tax period from 6/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 143.

58. The Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, by virtue of such Federal Governmental Agency holding and heretofore issuing and entering a Federal Tax Lien encumbering and attached to the below-described subject real estate and mortgaged property and premises, which Federal Tax Lien is junior and secondary and inferior and subordinate in priority to the Plaintiff's First Real Estate Mortgage and Senior and Paramount Lien being foreclosed herein and the aforesaid Federal Tax Lien was previously obtained by and in favor of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, against the Defendant, Brandon W. Linder, as the Taxpayer, and this Federal Tax Lien was recorded with the Berkeley County Register of Deeds Office against the Defendant, Brandon W. Linder, as the Taxpayer, as more fully stated and set forth and listed and itemized, as follows:

(A.) Federal Tax Lien No. 781132911 was issued on 4/28/2011 in the total sum of \$156,466.78 for unpaid Small Business/Self Employed Taxes for the tax periods of 3/31/2008,

6/30/2008, 9/30/2008, 12/31/2008, 3/31/2009, 6/30/2009, 9/30/2009, 12/31/2009, 3/31/2010, and 6/30/2010, and was recorded on 5/6/2011 against Brandon W. Linder, as its Member, as the Taxpayer, with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254. at Page 19.

59. That the Plaintiff is now the owner and/or holder of certain Notes, Guaranty Agreements, Security Agreements, Note Modification Agreements, Loan Modification Agreement(s), Cross-Collateralization Agreement(s), Mobile Home Title, and a Real Estate Mortgage securing such notes and commercial loan debts that the Plaintiff is seeking to foreclose in the above-styled action.

60. The title holder of public record of the above-described subject real estate and mortgaged premises as of the date of filing of the Plaintiff's Lis Pendens in this matter is the Defendant and Guarantor and Mortgagor herein, Brandon W. Linder.

61. The Plaintiff has been in the past and may in the future be forced to pay or advance certain sums for property taxes and insurance premiums and other like expenses and for the costs of inspecting and securing the mortgaged premises, which sums, according to the terms and conditions of the aforesaid seven (7) Universal Notes, and in accordance with the provisions of the aforesaid Real Estate Mortgage dated 8/31/2007 in the principal amount of \$80,550.00 securing such aforesaid seven (7) Universal Notes, should be added to and as part of the total aggregate amount of the consolidated commercial loan debt amount as found and determined and ascertained to be justly due and owing unto the Plaintiff herein.

62. That the monthly installment payments due and owing unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, by the Defendant, United Cable Construction, Inc., as the Borrower herein, pursuant to the terms and conditions and requirements of the aforesaid Loan Modification Agreement dated 3/31/2014 modifying certain provisions of the aforesaid seven (7) loans and the aforesaid seven (7) Universal Notes associated therewith and consolidating same into a single loan designated as EBSC Loan No. **1442201**, and as secured by the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00, are now seriously delinquent and in default and unpaid since **7/15/2016** and no payments whatsoever have been received by the Plaintiff in regard to such consolidated mortgage loan since 8/22/2016, and, thus, the terms and conditions and requirements of the aforesaid Loan Modification Agreement dated 3/31/2014, modifying certain provisions of the aforesaid seven (7) loans and the seven (7) Universal Notes associated therewith and consolidating same into a single loan designated as EBSC Loan No. **1442201**, and of the aforesaid Real Estate Mortgage dated 8/31/2007 in the

maximum principal amount of \$80,550.00 securing same, have accordingly been materially breached and broken and violated by the Defendant and Borrower and Mortgagor herein, United Cable Construction, Inc.; and as a result thereof, the Plaintiff now elects to and does so hereby declare the entire balance of the aforesaid consolidated commercial loan debt designated as EBSC Loan No. **1442201** accelerated and immediately due and payable in full in its entirety at once.

63. The entire amount of the loan debt designated as Loan Account No. Loan No. **1442201** now due and owing to the Plaintiff on the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, together with all accrued interest and late charges thereon at the rate as provided in such the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, and all other associated costs and expenses of this action as allowed under the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, including a reasonable attorney fee award unto the Plaintiff, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, and as secured by the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007, is stated and set forth and itemized, as follows:

(a)	Principal Loan Amount due and owing to Plaintiff as of 5/25/2017	\$1,104,567.52
(b)	Accrued Interest at the annual rate of 6.50%:	
	Accrued Interest from 7/15/2016 to 5/25/2017 (Per diem rate: \$99.72)	\$34,255.80
(c)	Advances for delinquent Real Property Taxes	\$0.00
(d)	Accrued Late charges as of 5/25/2017	\$25,122.66
(e)	Other Loan Charges	\$0.00
(f)	Collection Costs prior to hearing (filing/service/reference fees, etc.)	\$1,461.00
(g)	Attorneys Fees Awarded for Plaintiff's Attorney herein	\$10,980.00
Total Loan Debt secured by Note and Mortgage as of 5/25/2017		\$1,176,386.98

64. That the Total Loan Debt now due and owing unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender, is the Total Loan Debt of **\$1,176,386.98**, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification

Agreement dated 3/31/2014, shall hereafter accrue and bear post-judgment interest thereon from 5/26/2017 until fully paid and satisfied at the current Note rate of 3.25% per annum; and the aforesaid Total Loan Debt in the amount of \$1,176,386.98, together with such accrued post-judgment interest at the annual Note rate thereon, shall constitute the Total Judgment Debt due and owing in this matter unto the Plaintiff, Enterprise Bank of South Carolina, concerning and pertaining to the aforesaid Consumer loan.

65. That the Plaintiff has previously given the Defendant and Borrower and Mortgagor herein, United Cable Construction, Inc., in a timely manner and fashion, all written notices of right to cure default as required under the terms and conditions of the aforesaid seven (7) Universal Notes and in accordance with the provisions of the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum amount of \$80,550.00 securing same, and as required for commercial loans by both South Carolina Law and under Federal Law.

66. The Plaintiff has specifically requests and expressly demanded that deficiency balance judgments be granted in its favor in this matter against the Defendant and Borrower herein, United Cable Construction, Inc., and against the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, jointly and severally, however, such Defendants hereby expressly reserve any and all of their rights to contest or object to or assert and argue any and all defenses that such Defendants may have with respect to the Plaintiff seeking the entry of personal deficiency balance judgments against such named Defendants, jointly and severally, and any and all issues as to the Plaintiff's right to seek and enter personal deficiency balance judgments are hereby held in abeyance until a later date and time with a supplemental reference hearing to be held and conducted by the Berkeley County Master in Equity.

Based on the aforesaid Findings of Fact, I, hereby, conclude as a matter of law, follows:

CONCLUSIONS OF LAW:

1. The Plaintiff is entitled as a matter of law to have a final judgment and decree of foreclosure entered in its favor in regard to its aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 securing the payment of the loan debt as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014.

2. The subject real estate and mortgaged premises as more fully described herein should be ordered sold at public auction to the highest bidder after due advertisement thereof. The foreclosure sale shall be made subject to county property taxes and assessments that are due on the day of such

sale and after making the required deposit the successful bidder at the sale shall be required to pay interest on the total amount so bid from the date of such sale until the date of compliance at the current Note interest rate of 3.25% per annum.

3. The proceeds arising and resulting and realized from such mortgage foreclosure sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiff's aforesaid debts, with accrued interest thereon, or so much thereof as the foreclosure sale proceeds will pay, with all surplus foreclosure sale proceeds, if any, to be held pending further order of the Court; and if the proceeds realized from such foreclosure sale should be insufficient to pay the amounts as authorized herein above to be paid out of such foreclosure sale proceeds, with the aforesaid interest and costs and disbursements, then in such event, the Plaintiff, Enterprise Bank of South Carolina, as expressly demanded in all of its foreclosure pleadings filed in this case, shall accordingly be entitled as a matter of law to have appropriate deficiency balance judgments entered in its favor and against the Defendant and Borrower herein, United Cable Construction, Inc., and against the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, jointly and severally.

4. That all necessary persons and business entities having an interest in or lien upon or possible claim in or to the above-described subject mortgaged real property and premises, as of the date of the filing of the Plaintiff's Lis Pendens associated herewith, have been made parties hereto.

5. That this Court has valid personal jurisdiction over all of the above-captioned parties hereto and it also has valid subject matter jurisdiction of this mortgage foreclosure action; and venue in this case is proper in the Common Pleas Court of Berkeley County, South Carolina.

6. That the Total Loan Debt now due and owing unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender, is the Total Loan Debt of \$1,176,386.98, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, shall hereafter accrue and bear post-judgment interest thereon from 5/26/2011 until fully paid and satisfied at the current Note rate of 3.25% per annum, all as is more fully stated, itemized, and set forth herein above at Item No. 63 of the Findings of Fact.

7. The Plaintiff is now accordingly entitled, pursuant to §15-53-20, et. seq., of the 1976 S.C. Code of Law, to have a declaratory judgment issued and entered in its favor determining and adjudicating as a matter of law that the aforesaid used mobile home is a permanent fixture and improvement to and forms part and parcel of the above-described real estate and mortgaged property and premises that is the subject matter of the Plaintiff's First Cause of Action for a foreclosure of

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its Real Estate Mortgage as stated and set forth herein above and that such aforesaid used mobile home is accordingly therefore subject to the First Mortgage and the Senior and Paramount Lien and Purchase Money Lien of and as constituted by the Plaintiff's aforesaid Real Estate Mortgage dated 8/31/2007 in the principal amount of \$80,550.00.

8. The Plaintiff is now accordingly entitled to recover and be awarded the sole and exclusive and immediate possession of the aforesaid ***used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder*** for the purpose of conducting a public disposition sale thereof along with and at the same time and under the same terms and conditions as the foreclosure sale by public auction of the above-described subject real estate and mortgaged property and premises upon which the aforesaid mobile home is situate and affixed as a permanent improvement thereto.

9. The Plaintiff is now accordingly entitled to a public disposition sale of the above-described used mobile home to be held and conducted at the same time as the foreclosure sale of the above-described subject real estate and mortgaged property and premises that it is situate upon and that such aforesaid used mobile home be sold along with and as part and parcel of the above-described subject real estate and mortgaged property and premises that it is situate upon and affixed to at the same time and upon the same terms and conditions as the foreclosure sale of the above-described subject real estate and mortgaged property and premises by public auction to the highest bidder.

10. That the Plaintiff is now accordingly entitled to a reformation of the aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 in order for the legal description therein and thereunder to correctly and fully and completely show and reflect the aforesaid used mobile home as being part and parcel of the above-described subject real estate and mortgaged property and premises as a permanent fixture and improvement thereto and thus accordingly subject to the senior and paramount lien of the Plaintiff's aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00.

11. That the aforesaid seven (7) commercial loan as evidenced by the aforesaid seven (7) Universal Notes associated therewith, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, and as secured by the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 encumbering the above-described subject commercial real estate and mortgaged property and premises is not eligible for the protection of or modification

under and is not subject to any of the requirements of the **Home Affordable Modification Program** because it is a commercial loan that is secured by the above-described subject commercial real estate and mortgaged property and premises owned by the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon W. Linder a/k/a Brandon Wynn Linder, and the used 1996 Grand Manor 28.0' x 64.0' Mobile Home situate upon and permanently affixed to the above-described subject commercial real estate and mortgaged property and premises being foreclosed herein is utilized as a business office and nobody lives or resides in or occupies as their primary residence the aforesaid used mobile home.

12. The Defendants, South Carolina Department of Revenue and United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, both now have and claim junior and secondary and subordinate liens upon and encumbering the above-described subject real estate and mortgaged premises and in the event that there are surplus proceeds available from the foreclosure sale of the subject real property, the Defendants, South Carolina Department of Revenue and United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, may present its junior and secondary and subordinate liens and claims at a separate surplus proceeds disposition hearing to be conducted by the undersigned Master In Equity subsequent to the foreclosure sale, in accordance with Rule 71 of the S.C. Rules of Civil Procedure. The junior and secondary and subordinate liens now owned and held by the Defendants, South Carolina Department of Revenue and United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, are more fully stated and set forth, respectively, as follows:

(A.) Junior and secondary and subordinate tax lien now owned and held by the Defendant, South Carolina Department of Revenue, South Carolina Tax Lien No. 3-51038356-0 was issued on 3/2/2009 in the total sum of \$3,538.36 for unpaid Taxes for the tax period from 03/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 137.

(B.) Junior and secondary and subordinate tax lien now owned and held by the Defendant, South Carolina Department of Revenue, South Carolina Tax Lien No. 3-51038357-7 was issued on 3/2/2009 in the total sum of \$6,977.09 for unpaid Taxes for the tax period from 12/2007 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 139.

©.) Junior and secondary and subordinate tax lien now owned and held by the Defendant, South Carolina Department of Revenue. South Carolina Tax Lien No. 3-51038358-4 was issued on 3/2/2009 in the total sum of \$19,258.87 for unpaid Taxes for the tax period from 12/2006 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170. at Page 141.

(D.) Junior and secondary and subordinate tax lien now owned and held by the Defendant, South Carolina Department of Revenue, South Carolina Tax Lien No. 3-51038359-1 was issued on 3/2/2009 in the total sum of \$5,160.00 for unpaid Taxes for the tax period from 6/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170. at Page 143.

(E.) Junior and secondary and subordinate tax lien now owned and held by the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, Federal Tax Lien No. 781132911 was issued on 4/28/2011 in the total sum of \$156,466.78 for unpaid Small Business/Self Employed Taxes for the tax periods of 3/31/2008, 6/30/2008, 9/30/2008, 12/31/2008, 3/31/2009, 6/30/2009, 9/30/2009, 12/31/2009, 3/31/2010, and 6/30/2010, and was recorded on 5/6/2011 against Brandon W. Linder, as its Member, as the Taxpayer, with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254, at Page 19.

NOW, THEREFORE, based on the aforesaid Findings of Fact and Conclusions of Law:
IT IS ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

(1) All of the above-named Defendants, and all persons whomsoever claiming by, under, or through such Defendants, are forever barred and foreclosed of any and all rights, titles, interests, and equity of redemption, and/or lien in, to, or upon the within described subject mortgaged premises to be sold at the foreclosure sale herein, or any portion thereof.

(2) The Plaintiff is hereby granted and awarded, pursuant to §15-53-20, et. seq., of the 1976 S.C. Code of Law, a declaratory judgment in its favor determining and adjudicating as a matter of law that the aforesaid used mobile home is a permanent fixture and improvement to and forms part and parcel of the above-described real estate and mortgaged property and premises that is the subject matter of the Plaintiff's First Cause of Action for a foreclosure of its Real Estate Mortgage as stated and set forth herein above and that such aforesaid used mobile home is accordingly therefore subject

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to the First Mortgage and the Senior and Paramount Lien and Purchase Money Lien of and as constituted by the Plaintiff's aforesaid Real Estate Mortgage dated 8/31/2007 in the principal amount of \$80,550.00.

(3) The Plaintiff is hereby granted and awarded the sole and exclusive and immediate possession of the aforesaid ***used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder*** for the purpose of conducting a public disposition sale thereof along with and at the same time and under the same terms and conditions as the foreclosure sale by public auction of the above-described subject real estate and mortgaged property and premises upon which the aforesaid mobile home is situate and affixed as a permanent improvement thereto.

(4) The Plaintiff is hereby granted and awarded a public disposition sale of the above-described used mobile home to be held and conducted at the same time as the foreclosure sale of the above-described subject real estate and mortgaged property and premises that it is situate upon and that such aforesaid used mobile home be sold along with and as part and parcel of the above-described subject real estate and mortgaged property and premises that it is situate upon and affixed to at the same time and upon the same terms and conditions as the foreclosure sale of the above-described subject real estate and mortgaged property and premises by public auction to the highest bidder.

(5) The Plaintiff is hereby granted and awarded the equitable remedy of reformation hereunder by having this Court reform the legal description of the subject real estate and mortgaged property and premises now attached and referred to in its aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 to correctly and fully and completely show and reflect the aforesaid used mobile home as being part and parcel of the above-described subject real estate and mortgaged property and premises as a permanent fixture and improvement thereto and thus accordingly subject to the senior and paramount lien of the Plaintiff's aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00.

(6) That the Total Loan Debt now due and owing unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender, is the Total Loan Debt of **\$1,176,386.98**, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification

Agreement dated 3/31/2014, shall hereafter accrue and bear post-judgment interest thereon from 5/26/2017 until fully paid and satisfied at the current Note rate of 3.25% per annum, as more fully set forth and itemized at Item No. 63 under the Findings of Fact herein above, together with interest to accrue thereon at the current Note rate of 3.25% per annum from 5/26/2017 until such Total Loan Debt is fully paid and satisfied.

(7) The **Total Loan Debt** of \$1,176,386.98, being the balance due and owing on the aforesaid Commercial Loan as stated and set forth herein above, shall accrue and bear interest thereon at the current Note rate of 3.25% per annum from 5/26/2017 until fully paid and satisfied; and the **Total Loan Debt** together with such accrued interest thereon shall constitute the **Total Judgment Debt** due and owing unto the above-named Plaintiff.

(8) The amount of the **Total Loan Debt** and **Total Judgment Debt** due and owing unto the Plaintiff herein shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without a further hearing.

(9) If the **Total Loan Debt** in the total amount of \$1,176,386.98 as of 5/25/2017, together with interest accruing thereon at the current Note rate of 3.25% per annum from 5/26/2017 through and until the full payment and satisfaction of same is not fully paid unto the Plaintiff, Enterprise Bank of South Carolina, on or before August 1, 2017 by 5:00 p.m., a foreclosure sale of the subject property and mortgaged premises will be held and conducted by the Berkeley County Master in Equity as provided hereunder.

(10) On any default of the payment in full of the entire amount of such aforesaid **Total Loan Debt** unto the Plaintiff herein as required hereunder at or before the within indicated time, the subject real estate and mortgaged premises, as more fully described herein, shall be sold by the undersigned Master In Equity, Dale Edward Van Slambrook, or if necessary, by such appropriate special sales agent in his place and stead as he may hereafter duly designate and authorize, at public auction to the highest bidder, at the **Berkeley County Courthouse, located at 300 California**

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Avenue, Moncks Corner, S.C. 29461, on Wednesday, August 2, 2017, at 11:00 a.m., or on some other convenient sales date as hereafter scheduled and advertised, pursuant to the following terms and conditions for such foreclosure sale:

(A.) For cash: The Master In Equity will require, at the time of the bid, a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to make the required deposit at time of bid or comply with the other terms of the bid within thirty (30) days, then the property may be re-sold on the same terms and conditions on some subsequent Sales Day, but at the risk of the defaulting bidder(s).

(B.) Interest on the balance of the bid shall be paid through the day of compliance at the rate Note of 3.25% per annum.

(C.) The foreclosure sale shall be subject to Berkeley County Property Taxes and Assessments due on the date of such sale and any and all existing easements, right-of-ways, and restrictions of public record.

(D.) Purchaser shall pay for any statutory commissions on sale from the proceeds of sale, deed preparation fees, costs of recording the deed, and deed stamps.

(E.) Since personal or deficiency judgments are being expressly demanded herein by the Plaintiff, the bidding will thus remain open for a period of thirty (30) days after the date of the foreclosure sale as required by law pursuant to Section 15-39-720 of the 1976 S.C. Code of Laws.

(F.) The undersigned Master In Equity will, by advertisement according to law, give notice of the date, time, and place of such sale and the terms thereof and will execute to the purchaser(s) a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within thirty (30) days after the conclusion of the bidding on the date of such sale, then the Master In Equity may advertise the same premises for sale on the next or some other subsequent sales date at the risk of the highest bidder and so forth from time to time

thereafter until a full compliance shall be secured. If Plaintiff is the successful bidder at the foreclosure sale, then at its option, or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the subject real estate sold under this Master In Equity's Report and Judgment of Foreclosure and Sale.

(G.) In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales day upon the terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms and conditions as may be set forth in a supplemental order.

(H.) If Plaintiff is the successful bidder at the foreclosure sale, for a sum not exceeding the amount of the costs, expenses, and the indebtedness of Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity herein only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness herein.

(11) The Master In Equity will apply the proceeds of the foreclosure sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale, including any and all attorney fees and costs as awarded by Order of this Court.

NEXT: To the payment of the Plaintiff or Plaintiff's attorney fee of the amount of Plaintiff's debt and interest (including attorney fees) or so much thereof as the proceeds will pay on the same;

NEXT: Any surplus proceeds generated from the Foreclosure Sale shall be held by the undersigned Master In Equity pending further Order of this Court and a supplemental hearing pursuant to Rule 71 of the S.C. Rules of Civil Procedure.

(12) If the proceeds realized from such mortgage foreclosure sale should be insufficient to pay the amounts as authorized herein above to be paid out of said sale proceeds, with the aforesaid interest, taxes, expenses, costs, and disbursements, then in such event, the Plaintiff, Enterprise Bank of South Carolina, as expressly demanded in this matter, shall accordingly be entitled to have and request a supplemental hearing be held and conducted to determine and adjudicate and to decide any and all issues as to the Plaintiff's right to seek and enter personal deficiency balance judgments against the Defendant and Borrower herein, United Cable Construction, Inc., and against the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, jointly and severally, and Defendants shall have the right at such

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supplemental hearing to assert any and all defenses as to the applicability and balance of said deficiency judgment should it be sought.

(13) In the event that the successful bidder is other than the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, the Sheriff of Berkeley County is ordered and directed to immediately eject and remove from the mortgaged premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his agents in full, quiet, and peaceable possession of said premises without delay, and to keep said successful bidder or his or its assigns in such peaceable possession.

(14) The deed of conveyance made pursuant to the foreclosure sale shall in accordance with and as required by the provisions of Section 30-9-31 of the 1976 S.C. Code of Laws contain the names of only the Plaintiff, Enterprise Bank of South Carolina, and the Defendant, Brandon W. Linder, who was the sole fee-simple owner of public record of the subject real estate and mortgaged property and premises more fully described herein and being foreclosed by the Plaintiff in this matter at the time of the filing of Plaintiff's Lis Pendens, and the name of the Grantee under such Deed; and the Berkeley County Register of Deeds is hereby directed and authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

(15) The undersigned Master In Equity will retain jurisdiction to do all necessary acts incident to this foreclosure action and sale, including, but not limited to, the issuance of a Writ of Assistance and/or any other Writs as required by law and/or any such Supplemental Orders and Decrees as may hereafter be necessary and appropriate in this matter.

(16) The subject real estate and mortgaged premises herein ordered to be sold is more fully and particularly described, as follows:

Reformed Legal Description Showing Mobile Home as Part and Parcel of Subject Real Estate:

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC

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Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Delia dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

TMS NO: 233-09-02-037 (0.84+- acres)

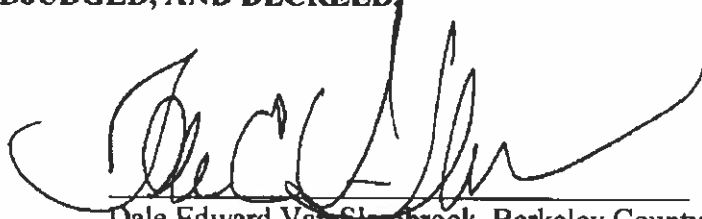
PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

ALSO situate upon and affixed to the above-described subject real estate as a permanent improvement and fixture thereto in such a manner so it has now become and forms part and parcel of such real property is a used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder.

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.



AND IT IS SO ORDERED, ADJUDGED, AND DECREED,



Dale Edward Van Stanbrook, Berkeley County
Master In Equity

Dated: 25th Day of MAY, 2017.

At: Moncks Corner, South Carolina.



STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

Enterprise Bank of South Carolina a/k/a)
Enterprise Bank of S.C.,)

Plaintiff,)

vs.)

United Cable Construction, Inc.;)
Brandon Linder a/k/a Brandon W. Linder)
a/k/a Brandon Wynn Linder; South Carolina)
Department of Revenue; and United States)
of America acting by and through the U.S.)
Department of Treasury and the Internal)
Revenue Service,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CIVIL CASE NO: 2016-CP-08-2352**TRANSCRIPT OF TESTIMONY AND
RECORD OF HEARING**

(Deficiency Judgment Demanded)

17 JUN 7 07
FILED
CLERK OF COURT
BERKELEY COUNTY, S.C.

Pursuant to the Order of Reference With Finality issued and filed in this case on 3/30/2017 pursuant to Rule 53 of the S.C. Rule of Civil Procedure, a reference hearing with finality was held before The Honorable Dale Edward Van Slambrook, as Berkeley County Master-in-Equity, on Thursday, May 25, 2017 at 11:15 a.m. at 300 California Avenue, Moncks Corner, South Carolina 29461, which reference hearing was attended by certain parties hereto and their respective legal counsel herein as set forth, as follows:

APPEARANCES AT REFERENCE HEARING: Present at such reference hearing was Ray Molony, who is employed as a Credit Officer for and on behalf of the Plaintiff, Enterprise Bank of South Carolina, along with their legal counsel herein, E. W. Bennett, Jr., Esquire, of Walterboro, S.C. The Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder, nor their attorney herein, Adam Mlynarczyk, Esquire, did not appear at the reference hearing nor did they contest the entry of a Final Order and Decree of Foreclosure and Sale, however, such Defendants hereby expressly reserve any and all of their rights to contest or object to or assert and argue any and all defenses that such Defendants may have with respect to the Plaintiff seeking the entry of personal deficiency balance judgments against such named Defendants, jointly and severally, and any and all issues as to the Plaintiff's right to seek and

enter personal deficiency balance judgments are hereby held in abeyance until a later date and time with a supplemental reference hearing to be held and conducted by the Berkeley County Master in Equity. A timely Answer and Counterclaim to the Plaintiff's Complaint and timely Answers to the Plaintiff's Complaint were filed herein by Adam Mlynarczyk, Esquire for and on behalf of the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder; and by George J. Conits, Esquire for and on behalf of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service; and by Sean G. Ryan, Esquire for and on behalf of the Defendant, South Carolina Department of Revenue. All of the above-named Defendants were properly notified in advance of this reference hearing. The sworn testimony was then taken under oath by Master-in-Equity in this case as appears and reported herein below.

COURT REPORTER FOR REFERENCE HEARING: The within reference hearing was transcribed and reported by Professional Verbatim Court Reporter, AWR.

THE MASTER-IN-EQUITY: Mr. Bennett, attorney for Plaintiff, calls attention to the filing of the Plaintiff's Civil Cover Sheet and Summons & Notice and Complaint and Lis Pendens and Fair Debt Collection Practices and Procedures Act Notice in the above-captioned matter with the Berkeley County Clerk of Court's Office on 9/30/2016.

Attorney Bennett also calls attention to the Affidavits of Service previously filed with the Clerk of this Court showing and reflecting personal service of clocked copies of the Plaintiff's Civil Cover Sheet and Summons & Notice and Complaint and Lis Pendens and Fair Debt Collection Practices and Procedures Act Notice on all of the above-named Defendants on various dates as follows: W (a) United Cable Construction, Inc. - on 11/8/2016; (b) Brandon W. Linder - on 11/8/2016; (c) United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service - on 11/11/2016; and (d) South Carolina Department of Revenue - on 11/11/2016.

Attorney Bennett also calls attention to the filing with the Clerk of this Court the timely Answer and Counterclaim by Adam Mlynarczyk, Esquire for and on behalf of the Defendant and Borrower herein, United Cable Construction, Inc., and the Defendant and Guarantor herein, Brandon W. Linder on 1/17/2017 to the Plaintiff's Complaint; and the timely Answer by George J. Conits, Esquire for and on behalf of the Defendant, United States of America acting through the U.S.

Department of Treasury and the Internal Revenue Service on 11/1/2016 to the Plaintiff's Complaint; and the timely Answer by Sean G. Ryan, Esquire for and on behalf of the Defendant, South Carolina Department of Revenue on 10/27/2016 to the Plaintiff's Complaint.

Attorney Bennett also calls attention to the filing with the Clerk of this Court the timely Reply to Counterclaim of the Defendants, United Cable Construction, Inc. and Brandon W. Linder, filed on 3/17/2017 by E.W. Bennett, Jr., Esquire, for and on behalf of the Plaintiff herein.

Attorney Bennett also calls attention to the Order of Reference With Finality filed herein on 3/30/2017, whereby this foreclosure action was referred with finality to The Honorable Dale Edward Van Slambrook, as Berkeley County Master-in-Equity, pursuant to Rule 53, SCRPC, for the purpose of holding a reference hearing and to take the testimony and receive all other evidence offered therein, with the authority to enter a final judgment in this case, with any appeals therefrom to be filed direct with the S.C. Court of Appeals or the S.C. Supreme Court as appropriate, pursuant to Rule 53(c) SCRPC and Rule 203(d)(1) of the SC Appellate Court Rules.

The signing of the testimony was waived by all parties.

WHEREUPON, THE REFERENCE HEARING IN THIS MATTER WAS CONVENED AND COMMENCED BY THE HONORABLE DALE EDWARD VAN SLAMBROOK, BERKELEY MASTER IN EQUITY, AT 11:15 A.M. ON 5/25/2017 AND CONCLUDED ON SUCH DATE AND THE SWORN TESTIMONY UNDER OATH WAS THEN TAKEN IN THIS CASE BY THE UNDERSIGNED MASTER IN EQUITY AND DURING SUCH REFERENCE HEARING CERTAIN LEGAL ARGUMENTS WERE MADE TO THE COURT BY LEGAL COUNSEL HEREIN, ADAM MLYNARCZYK, ESQUIRE, AS THE LEGAL COUNSEL HEREIN FOR AND ON BEHALF OF THE DEFENDANT AND BORROWER HEREIN, UNITED CABLE CONSTRUCTION, INC., AND THE DEFENDANT AND GUARANTOR HEREIN, BRANDON W. LINDER, ALL AS STATED AND RECITED ON THE RECORD IN THIS MATTER AND CERTAIN RELEVANT DOCUMENTS AND EXHIBITS WERE ALSO INTRODUCED INTO EVIDENCE BY LEGAL COUNSEL HEREIN, E.W. BENNETT, JR., ESQUIRE, FOR AND ON BEHALF OF THE PLAINTIFF, ENTERPRISE BANK OF SOUTH CAROLINA, ALL OF WHICH TESTIMONY AND EVIDENCE AND ARGUMENTS AS PRESENTED TO THIS COURT DURING SUCH REFERENCE HEARING ARE HERewith DULY REPORTED

VERBATIM IN THE _____ PAGE TRANSCRIPT OF REFERENCE HEARING PREPARED ON MAY _____, 2017 BY AWR, COURT REPORTING, AND ATTACHED HERETO AND INCORPORATED HEREUNDER AND AS PART AND PARCEL OF THIS TRANSCRIPT OF TESTIMONY AND NOTES AT REFERENCE BY SPECIFIC REFERENCE THERETO.

WHEREUPON, E. W. BENNETT, JR., ESQUIRE, BEING FIRST DULY SWORN UNDER OATH, DID STATE AND TESTIFY, AS FOLLOWS:

I am the attorney for the Plaintiff, Enterprise Bank of South Carolina, in regard to the above-captioned mortgage foreclosure action.

From the original records in my possession, from the Plaintiff's Complaint and the Exhibits attached thereto and the other pleadings filed herein, and from an examination of the records in the offices of the Berkeley County Clerk of Court and Register of Deeds for Berkeley County, I find that the Defendant, South Carolina Department of Revenue, by virtue of such State Governmental Agency holding and heretofore entering four (4) South Carolina Tax Liens encumbering and attached to the below-described subject real estate and mortgaged premises, which four (4) South Carolina Tax Liens are junior and secondary and subordinate in priority to the paramount lien of the Plaintiff's Real Estate Mortgage being foreclosed herein and was previously obtained by and in favor of the Defendant, South Carolina Department of Revenue, as the Lien Holder, and against the Defendant, Brandon Linder, as the Taxpayer, and which four (4) South Carolina Tax Liens were previously recorded with the Berkeley County Register of Deeds Office against the Defendant, Brandon Linder, as the Taxpayer, in the respective amounts and on the respective dates as more fully stated and set forth hereafter, as follows:

(A.) South Carolina Tax Lien No. 3-51038356-0 was issued on 3/2/2009 in the total sum of \$3,538.36 for unpaid Taxes for the tax period from 03/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 137.

(B.) South Carolina Tax Lien No. 3-51038357-7 was issued on 3/2/2009 in the total sum of \$6,977.09 for unpaid Taxes for the tax period from 12/2007 and was recorded on 6/15/2009 against

Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 139.

©.) South Carolina Tax Lien No. 3-51038358-4 was issued on 3/2/2009 in the total sum of \$19,258.87 for unpaid Taxes for the tax period from 12/2006 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 141.

(D.) South Carolina Tax Lien No. 3-51038359-1 was issued on 3/2/2009 in the total sum of \$5,160.00 for unpaid Taxes for the tax period from 6/2008 and was recorded on 6/15/2009 against Brandon Linder with the Berkeley County Register of Deeds Office in Berkeley County Tax Lien Book L, in Volume 170, at Page 143.

I offer a copy of the original aforesaid four (4) South Carolina Tax Liens into evidence.

Such Tax Liens was identified, offered and received into evidence as Plaintiff's **Exhibit "1", Exhibit "2", Exhibit "3", and Exhibit "4"**.

That the above-referenced four (4) South Carolina Tax Liens issued and entered and filed of public record in Berkeley County, South Carolina in favor of the Defendant, South Carolina Department of Revenue, as the Lien Holder, against the Defendant, Brandon W. Linder, as the taxpayer, is thus according to and as a matter of law junior and subordinate in priority to the Plaintiff's first real estate mortgage and senior and paramount lien being foreclosed hereunder by the Plaintiff herein; and the Plaintiff now requests that such aforesaid four (4) South Carolina Tax Liens be foreclosed hereunder as required by law in regard thereto.

The Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, is made a party hereto by virtue of such Federal Governmental Agency holding and heretofore issuing and entering a Federal Tax Lien encumbering and attached to the below-described subject real estate and mortgaged property and premises, which Federal Tax Lien is junior and secondary and inferior and subordinate in priority to the Plaintiff's First Real Estate Mortgage and Senior and Paramount Lien being foreclosed herein and the aforesaid Federal Tax Lien was previously obtained by and in favor of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, against the Defendant, Brandon W. Linder, as the Taxpayer, and this Federal Tax Lien was recorded with the Berkeley

County Register of Deeds Office against the Defendant, Brandon W. Linder, as the Taxpayer, as more fully stated and set forth and listed and itemized, as follows:

(A.) Federal Tax Lien No. 781132911 was issued on 4/28/2011 in the total sum of \$156,466.78 for unpaid Small Business/Self Employed Taxes for the tax periods of 3/31/2008, 6/30/2008, 9/30/2008, 12/31/2008, 3/31/2009, 6/30/2009, 9/30/2009, 12/31/2009, 3/31/2010, and 6/30/2010, and was recorded on 5/6/2011 against Brandon W. Linder, as its Member, as the Taxpayer, with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254, at Page 19.

I offer a copy of the original aforesaid Federal Tax Lien into evidence.

Such Tax Lien was identified, offered and received into evidence as Plaintiff's **Exhibit "5"**.

That the above-referenced Federal Tax Lien in the total amount of \$156,466.78 as previously issued and entered and filed of public record on 5/6/2011 with the Berkeley County Register of Deeds Office in Tax Lien Book L, in Volume 254, at Page 19, in favor of the Defendant, United States of America acting through the U.S. Department of Treasury and the Internal Revenue Service, as the Lien Holder, against the Defendant, Brandon W. Linder, as the Taxpayer, is thus according to and as a matter of law junior and subordinate in priority to the Plaintiff's first real estate mortgage and senior and paramount lien being foreclosed hereby; and the Plaintiff now requests that such aforesaid Federal Tax Lien as previously issued and entered against the Defendant, Brandon W. Linder, as the Taxpayer, be foreclosed hereunder as required by law in regard thereto.

That on or about 8/31/2007, for good and valuable consideration, in connection with EBSC Loan No. 1264826, the Defendant herein, Brandon W. Linder, as Borrower, made, executed, and delivered to the Plaintiff, Enterprise Bank of South Carolina, as Lender, a Universal Note promising to pay the principal sum of **\$80,550.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 9/1/2012.

I offer a copy of the original aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00 into evidence.

Such Note was identified, offered and received into evidence as Plaintiff's **Exhibit "6"**.

That in order to better secure the payment unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, of the original loan debt owed to such Plaintiff by the Defendant, Brandon W. Linder, as the original Borrower herein, as evidenced by the aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, and according to the terms and conditions thereof, a Real Estate Mortgage (With Future Advance Clause) in the maximum principal amount of \$80,550.00 was made and executed and delivered on 8/31/2007 by the Defendant, Brandon W. Linder, as the Mortgagor, unto and in favor of the Plaintiff, Enterprise Bank of S.C., as the Mortgagee, for the purpose of securing the aforesaid loan and Universal Note dated 8/31/2007 in the principal amount of \$80,550.00, plus accrued interest and late charges and other costs and fees and expenses and charges accruing thereon as provided thereunder, and any and all substitutions and extensions and renewals and modifications and refinances thereof, from the Defendant, Brandon W. Linder, as the original Borrower herein, unto the Plaintiff, Enterprise Bank of S.C., as the Lender herein, with such Real Estate Mortgage (With Future Advance Clause) being dated 8/31/2007 and recorded on 8/31/2007 with the Berkeley County Register of Deeds Office in Record Book R, in Volume 6843, at Page 78.

I offer a copy of the original aforesaid Real Estate Mortgage (With Future Advance Clause) being dated 8/31/2007 in the principal amount of \$80,550.00 into evidence.

Such Mortgage was identified, offered and received into evidence as Plaintiff's **Exhibit "7"**.

That in order to better secure the payment to the Plaintiff of such aforesaid Universal Note dated 8/31/2007 in the principal amount of \$80,550.00 and according to the terms and conditions thereof, the Defendant, Brandon W. Linder, as the Debtor, on or about 8/31/2007 also made and executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party, a certain Consumer Security Agreement dated 8/31/2007 granting unto the Plaintiff a valid security interest in and to his used 1996 Grand Manor 28.0' x 64.0' Mobile Home as specified therein.

I offer a copy of the original aforesaid Consumer Security Agreement dated 8/31/2007 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "8"**.

That the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff secures the repayment of money actually loaned and advanced by the Plaintiff, Enterprise Bank of South Carolina, as the Lender and Mortgagee herein, unto and on behalf and for the benefit of the Defendant, United Cable Construction, Inc., as the Borrower and Mortgagor herein, pursuant to the terms and conditions for such aforesaid seven (7) commercial loans as originally evidenced by the aforesaid seven (7) Universal Notes associated therewith; and the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007 in the maximum principal amount of \$80,550.00 now owned and held by the Plaintiff constitutes the First Mortgage and the Senior and Paramount Lien upon and encumbering the subject real estate and mortgaged property and premises.

That on or about 7/21/2010, for good and valuable consideration in connection with EBSC Loan No. 1442201, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$1,469,163.46** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 9/1/2015.

I offer a copy of the Universal Note dated 7/21/2010 into evidence.

Such Note was then identified, offered and received into evidence as Plaintiff's **Exhibit "9"**.

That in order to better secure the payment to the Plaintiff of such aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 and according to the terms and conditions thereof, the Defendant, Brandon W. Linder, as the Debtor, on or about 7/21/2010 made and executed and delivered unto the Plaintiff, Enterprise Bank of S.C., as the Secured Party, a Commercial Security Agreement dated 7/21/2010 granting unto the Plaintiff a valid security interest in and to his used 1996 Grand Manor 28.0' x 64.0' Mobile Home as specified therein.

I offer a copy of the Commercial Security Agreement dated 7/21/2010 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "10"**.

That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 7/21/2010 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 7/21/2010 in the principal sum of \$1,469,163.46 and any and all other loan documents related thereto.

I offer a copy of the Guaranty Agreement dated 7/21/2010 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "11"**.

That thereafter, on or about 10/28/2013, for good and valuable consideration in connection therewith, certain terms and conditions of the aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 were modified as more fully appears and as more fully shown and reflected by the Note Modification Agreement that was made and concluded and entered into on 10/28/2013 by and between the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, and by the Defendant, United Cable Construction, Inc., as the Borrower herein, which aforesaid Note Modification Agreement dated 10/28/2013 provided therein and modified certain terms and conditions of the aforesaid Universal Note dated 7/21/2010 in the principal amount of \$1,469,163.46 and designated as EBSC Loan No. 1442201, as follows:

(A.) Acknowledged that the principal loan balance due and owing unto the Plaintiff under the terms and condition of the aforesaid Universal Note dated 7/21/2010 was as of 10/28/2013 the sum of \$1,230,145.25; and (B.) Modified and extended the loan maturity date from 11/1/2015 until **12/5/2013**.

I offer a copy of the Note Modification Agreement dated 10/28/2013 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "12"**.

That on or about 7/21/2011, for good and valuable consideration in connection with EBSC Loan No. 1483609, the Defendant, United Cable Construction, Inc., as the Borrower, made and

executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$19,483.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 1/21/2014.

I offer a copy of the Universal Note dated 7/21/2011 into evidence.

Such Note was then identified, offered and received into evidence as Plaintiff's **Exhibit "13"**.

That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 7/21/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 7/21/2011 in the principal sum of \$19,483.00 and any and all other loan documents related thereto.

I offer a copy of the Guaranty Agreement dated 7/21/2011 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "14"**.

That on or about 8/2/2011, for good and valuable consideration in connection with EBSC Loan No. 1486055, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$28,255.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 8/2/2014.

I offer a copy of the Universal Note dated 8/2/2011 into evidence.

Such Note was then identified, offered and received into evidence as Plaintiff's **Exhibit "15"**.

That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 8/2/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note dated 8/2/2011 in the principal sum of \$28,255.00 and any and all other loan documents related thereto.

I offer a copy of the Guaranty Agreement dated 8/2/2011 into evidence.

Such Agreement was then identified, offered and received into evidence as Plaintiff's **Exhibit "16"**.

That on or about 12/6/2011, for good and valuable consideration in connection with EBSC Loan No. 1500457, the Defendant, United Cable Construction, Inc., as the Borrower, made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender, a Universal Note promising to pay the principal sum of **\$50,160.00** to the Plaintiff, plus interest and all other charges to accrue thereon, with a final payment and maturity date thereunder of 3/6/2012.

I offer a copy of the Universal Note dated 12/6/2011 into evidence.

Such Note was then identified, offered and received into evidence as Plaintiff's **Exhibit "17"**.

That in order to induce the Plaintiff to make the within commercial loan unto the Defendant, United Cable Construction, Inc., as the Borrower herein, and for the purpose of better securing the payment of such commercial loan unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, the Defendant, Brandon W. Linder, as the Guarantor herein, on or about 12/6/2011 made and executed and delivered unto and in favor of the Plaintiff, Enterprise Bank of South Carolina, as the Lender herein, a Guaranty Agreement personally and unconditionally guaranteeing the full and complete and prompt payment when due of all sums of money and charges due and owing unto the Plaintiff under and in accordance with the provisions of the aforesaid Universal Note

reasonable attorney fee award unto the Plaintiff, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, and as secured by the aforesaid Real Estate Mortgage (With Future Advance Clause) dated 8/31/2007, is stated and set forth and itemized, as follows:

(a)	Principal Loan Amount due and owing to Plaintiff as of 5/25/2017	\$1,104,567.52
(b)	Accrued Interest at the annual rate of 6.50%:	
	Accrued Interest from 7/15/2016 to 5/25/2017 (Per diem rate: \$99.72)	\$34,255.80
(c)	Advances for delinquent Real Property Taxes	\$0.00
(d)	Accrued Late charges as of 5/25/2017	\$25,122.66
(e)	Other Loan Charges	\$0.00
(f)	Collection Costs prior to hearing (filing/service/reference fees, etc.)	\$1,461.00
(g)	Attorneys Fees Awarded for Plaintiff's Attorney herein	\$10,980.00
Total Loan Debt secured by Note and Mortgage as of 5/25/2017		\$1,176,386.98

That the Total Loan Debt now due and owing unto the Plaintiff, Enterprise Bank of South Carolina, as the Lender, is the Total Loan Debt of **\$1,176,386.98**, as evidenced by the aforesaid seven (7) Universal Notes now owned and held by the Plaintiff, as subsequently modified and consolidated and rolled over into a single loan debt by the aforesaid Loan Modification Agreement dated 3/31/2014, shall hereafter accrue and bear post-judgment interest thereon from 5/26/2017 until fully paid and satisfied at the current Note rate of 3.25% per annum; and the aforesaid Total Loan Debt in the amount of **\$1,176,386.98**, together with such accrued post-judgment interest at the annual Note rate thereon, shall constitute the Total Judgment Debt due and owing in this matter unto the Plaintiff, Enterprise Bank of South Carolina, concerning and pertaining to the aforesaid Consumer loan.

I offer copies of all of the Plaintiff's Statements of Loan Account Balances into evidence.

Plaintiff's Statements of Loan Account Balances were then identified, offered and received into evidence, respectively, as Plaintiff's Exhibit "36".

Attorney E.W. Bennett, Jr., Esquire, was hired and retained by the Plaintiff to foreclose the Plaintiff's First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running of interest. Upon receipt of the case

file, the title was examined to identify all parties having or claiming any interest in the subject real estate.

The following list of pleadings and/or other documents have been prepared or reviewed by Attorney Bennett in this foreclosure action on behalf of the Plaintiff:

1. Lis Pendens and Civil Cover Sheet and any amendment thereto
2. Summons & Notice & Complaint and Amended Summons & Complaint
3. Affidavit(s) of Default
4. Consent to Order of Reference
5. Order of Reference
6. Notice of Reference Hearing
7. Transcript of Testimony and Record of Hearing
8. Master-in-Equity's Report and Judgment of Foreclosure and Sale
9. Notice of Master-in-Equity's Sale
10. Authorization of Attorney to Testify
11. Verification of Transcript of Testimony
12. Affidavit of Attorney Fees and Affidavit of Loan Account Balance
13. Affidavit of Non-Eligibility Under Home Affordable Modification Program
14. Attorney Affidavit and Certification of Exemption from S.C. Administrative Order No. 2011-05-02-01 as to Foreclosure Intervention Rights

Additionally, the pleadings were drafted and served upon the defendant personally or by statutory or substitute service; reinstatement and payoff figures and payment histories were provided as requested or required. We scheduled and attended the reference hearing in this matter. Future duties include forwarding copies of the Judgment to appearing Defendants, obtaining bidding instructions from Plaintiff or its designee, representing Plaintiff at the foreclosure sale, preparing an Order of Sale or Report on Sale and Disbursements and Order Confirming Sale, if needed, and preparing the Master-in-Equity's Court Deed and any other necessary documents in this matter.

In addition to the time expended to date in prosecution of this foreclosure action, we anticipate a minimum of ten (10.0) additional hours after the reference hearing.

In regard to the professional standing of counsel, Attorney Bennett has extensive experience in foreclosure practice and bankruptcy law and has handled hundreds of foreclosures lawsuits and bankruptcy cases in both the Common Pleas Courts of South Carolina and in the U.S. Bankruptcy Courts of South Carolina. Furthermore, the attorney fee award as requested by Plaintiff's legal counsel in this matter in the total amount of \$10,980.00 with respect to handling this action to foreclose the aforesaid commercial mortgage loan is in line with the attorney fees customarily charged by other legal counsel in this locale with similar experience.

The Plaintiff has specifically requests and expressly demanded that deficiency balance judgments be granted in its favor in this matter against the Defendant and Borrower herein, United Cable Construction, Inc., and against the Defendant and Mortgagor and Debtor and Guarantor herein, Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder, jointly and severally, however, such Defendants hereby expressly reserve any and all of their rights to contest or object to or assert and argue any and all defenses that such Defendants may have with respect to the Plaintiff seeking the entry of personal deficiency balance judgments against such named Defendants, jointly and severally, and any and all issues as to the Plaintiff's right to seek and enter personal deficiency balance judgments are hereby held in abeyance until a later date and time with a supplemental reference hearing to be held and conducted by the Berkeley County Master in Equity.

There are no other special assessments against the subject real property.

The Berkeley County Property Taxes and Assessments have now been paid in full by the Plaintiff through and for and including the 2016 real property taxes and the 2017 real property taxes due and owing upon the subject real estate being foreclosed by the Plaintiff herein and designated as Berkeley County TMS Numbers as listed on the property chart and table below.

We would ask that the aforesaid First Mortgage of Real Estate (With Future Advance Clause) dated 8/31/2007 in the principal amount of \$80,550.00 be foreclosed, that the below-described subject property be sold at foreclosure by public auction to the highest bidder in accordance with law, and that the foreclosure sale be made subject to any liens for any Berkeley County Property Taxes and Assessment of record against such property to be sold; also, subject to payment by the purchaser of interest at the current Note rate of 3.25% per annum on the balance of the bid from the date of foreclosure sale to date of compliance with the bid; also, subject to any existing easements or restrictions of public record in Berkeley County; and also subject to payment by the purchaser for preparation of the deed and deed stamps.

If there are surplus proceeds generated and available from the foreclosure sale of the subject real estate, then in such event, the disposition and distribution of any such surplus foreclosure sale proceeds will be determined at a separate surplus disposition hearing to be held after the foreclosure sale in accordance with Rule 71 of the S.C. Rules of Civil Procedure.

I offer the original Plaintiff's Authorization of Attorney to Testify and the Verification of Transcript of Testimony and Notes at Reference and the Affidavit of Loan Account Balances and the Affidavit of Attorney's Fees into evidence.

Plaintiff's Authorization of Attorney to Testify and the Verification of Transcript of Testimony and Notes at Reference and the Affidavit of Loan Account Balances and the Affidavit of Attorney's Fees were identified, offered and received into evidence herein, respectively, as Plaintiff's Exhibit "37" and Exhibit "38" and Exhibit "39" and Exhibit "40".

The subject real estate and mortgaged premises to be sold at the foreclosure sale to be held and conducted by Berkeley County Master-in-Equity is more fully described, as follows:

Reformed Legal Description Showing Mobile Home as Part and Parcel of Subject Real Estate:

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Delia dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

TMS NO: 233-09-02-037 (0.84+- acres)

PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

ALSO situate upon and affixed to the above-described subject real estate as a permanent improvement and fixture thereto in such a manner so it has now become and forms part and parcel of such real property is a used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder.

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.



E. W. BENNETT, JR., ESQUIRE

S.C. Bar No. 656

Attorney for the Plaintiff

148 S. Jefferies Boulevard

Post Office Box 693

Walterboro, SC 294888

Telephone: (843) 549-9225

Facsimile: (843) 549-8566

E-mail address: bop@lowcountry.com

Dated: May 25, 2017.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2016-CP-08-2352

Enterprise Bank of South Carolina a/k/a
Enterprise Bank of S.C.,

United Cable Construction, Inc.; et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: E. W. Bennett, Jr.

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : As required by statute, a foreclosure sale has been scheduled.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C.	United Cable Construction, Inc.	N/A
Enterprise Bank of South Carolina a/k/a Enterprise Bank of S.C.	Brandon Linder a/k/a Brandon W. Linder a/k/a Brandon Wynn Linder	N/A

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

All that certain piece, parcel, tract, or lot of land, with any improvements thereon, situate, lying and being in Pine Vista Subdivision in Berkeley County, South Carolina, being shown on a Plat entitled "PLAT SHOWING LOT C OF LOT 19 BLOCK B, PINE VISTA SUBDIVISION OWNED BY BONNELL MEESE (AS TRUSTEE) LOCATED IN BERKELEY COUNTY, SOUTH CAROLINA" dated April 2, 2004 by Paul C. Lawson, Jr., S.C.R.L.S. No. 14191, which Plat is recorded in Plat Cabinet Q, at Page 339-F in the RMC Office for Berkeley County. Said lot having such size, shape, dimensions, buttings and boundings as shown on said Plat.

This being the same property conveyed to Brandon W. Linder by Deed of Ellen R. Delia dated August 31, 2007 and recorded on September 10, 2007 with the Berkeley County Register of Deeds Office in Record Book 6843, at Page 73.

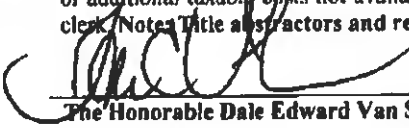
TMS NO: 233-09-02-037 (0.84+- acres)

PROPERTY ADDRESS: 145 Sally Avenue, Ladson, S.C. 29456

ALSO situate upon and affixed to the above-described subject real estate as a permanent improvement and fixture thereto in such a manner so it has now become and forms part and parcel of such real property is a used 1996 Grand Manor 28.0' x 64.0' Mobile Home bearing Serial No. GAGMTD1826A&B and now titled in the name of Brandon Wynn Linder.

SUBJECT to restrictive covenants, or modifications thereto, easements and/or rights-of-way heretofore granted affecting the above-described real property and filed of public record with the Berkeley County R.M.C. Office.

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


The Honorable Dale Edward Van Slambrook

3079
Judge Code

5/25/17
Date

For Clerk of Court Office Use Only

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

E. W. Bennett, Jr.

P. O. Box 693

Walterboro, SC 29488

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: AWR Court Reporting

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0802445

Gerald R Smith
PLAINTIFF(S)

United Cable Construction Co Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion for Summary Judgment is hereby granted. The court notes that the only remaining cause of action is a counterclaim for "breach of covenant of good faith & fair dealing". Pursuant to Rotec Services v. Encompass Services, 359 S.C. 467, 597 S.E.2d 881 (S.C. App. 2004), there is no such recognized independent cause of action. Accordingly, that claim is dismissed. Plaintiff's counsel is asked to submit a formal proposed order, including the calculated judgment, within the next 10 days.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/05/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2019CP0802445
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-08-05 12:11:35 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-08-02445

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
DISMISSING DEFENDANTS' COUNTER-
CLAIM WITH PREJUDICE**

Plaintiff's Motion for Summary Judgment came before the Court for hearing at the Berkeley County Courthouse on August 4, 2021.

Present at hearing were Plaintiff's attorney John S. West, Esq. of the West Law Firm, PA of Moncks Corner and Defendants' attorney Joshua D. Giancola, Esq. of Koontz Mlynarczyk, LLC of North Charleston.

In support of his motion, properly filed and served, Plaintiff submitted his Memorandum in Support of Motion for Summary Judgment, along with five (5) exhibits, Exhibits A-E, including Plaintiff's affidavit, Exhibit "E".

Defendants submitted their Memorandum in Opposition to Plaintiff's Motion For Summary Judgment and no affidavits.

From the pleadings, filings and the proceedings before me and based upon arguments by counsel in open court, I find and conclude as follows:

FINDINGS OF SALIENT FACTS

1. The salient facts which I find herein are uncontroverted.
2. The parties in Case No. 2018-CP-08-2241, a declaratory judgment action, and the parties to this case are the same.

3. The Findings of Salient Facts contained in the Declaratory Order of Judge Dale E. Van Slambrook in Case No. 2018-CP-08-2241 are merged and incorporated herein *verbatim*.
4. The parties entered into a contract dated May 22, 2017, ("Contract").
5. The Contract terms reduced and discounted a prior mutually acknowledged contract amount due from the Defendants to the Plaintiff by \$784,244.51.
6. The Contract specifies a new total contract amount of \$300,000.00 to be paid by the Defendants to the Plaintiff in monthly installments of \$10,000.00 each and a balloon payment of the balance upon the December 22, 2018 payment.
7. During the period May, 2017 through November, 2018 Plaintiff did not receive monthly payments as required by the Contract.
8. Plaintiff did not receive the balloon payment on December 22, 2018.
9. Plaintiff did receive sporadic partial payments from Defendants for a total of \$33,000.00, the last payment being made to Plaintiff on November 26, 2018 in the amount of \$5,000.00.
10. Defendants attribute their failure to pay the balance of the money owed the Plaintiff solely because of a lack of funds.
11. Defendants acknowledge that if they had the money to satisfy their full obligation on the fixed sum, they would have paid the Plaintiff.
12. Plaintiff is owed a balance of \$267,000.00 by the Defendants on the Contract, which sum is specific, fixed and certain.
13. The Contract requires Defendants to procure a life insurance policy on the life of Brandon W. Linder with a death benefit payable to the Plaintiff as the named beneficiary in the amount of \$1,000,000.00.
14. Defendants admit that the life insurance policy has not been procured as provided and required in the Contract.
15. Defendants are in default under the Contract as to payment of monies due and owing the Plaintiff.
16. Defendants are in default as to the procurement of a life insurance policy on the life of Brandon W. Linder with a death benefit payable to the Plaintiff as the named beneficiary in the amount of \$1,000,000.00.

17. After default, demand was made by Plaintiff for performance under the Contract and Defendants were given an opportunity to cure the default. The default was not cured.
18. Plaintiff alleges in ¶17 of his Complaint and in his prayer for relief, *inter alia*, that he is entitled to pre-judgment interest on the \$267,000.00 balance due.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

Under *Rule 56, SCRCP*, summary judgment is proper when both:

- (a) No genuine issue as to any material fact exists, and
- (b) The moving party is entitled to judgment as a matter of law.

In making the determination of whether or not any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn must be viewed in the light most favorable to the nonmoving party. Summary judgment should not be granted if further inquiry into the facts is desirable to clarify the application of the law.

To prevail on a summary judgment motion, the moving party has to show that there is no genuine issue as to any material fact. To determine whether any trial issues of fact exist for summary judgment purposes, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Carolina Convenience Stores, Inc. v. City of Spartanburg*, 398 S.C. 27, 727 S.E.2d 28 (Ct. App. 2012).

Summary judgment has been held to be appropriate only when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. *Bessinger v. Bi-Lo*, 329 S.C. 617, 496 S.E.2d 33,34 (Ct.App.1998).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt.*, 381 S.C. 326, 673 S.E. 2d 801, 803 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.

In *Gibson v. Epting*, 426 S.C. 346, 827 S.E. 2d 178 (Ct. App. 2019), in discussing the scintilla rule, the Court observed, “the summary judgment standard governing Gibson’s claims requires her to produce only a “scintilla” of evidence to avoid judgment as a matter of law, but a

scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows. Bethea v. Floyd, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935) (“‘Scintilla’ means, according to 56 C. J. 863, ‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’ ”); Crosby v. Seaboard Air Line Ry., 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908) (“[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.”); Scintilla, The Oxford English Dictionary (2nd ed. 2018) (“A spark ... a minute particle, an atom.”); see Russell v. Wachovia Bank, N.A., 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (“When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’ ” (citations omitted)); Grimsley v. S.C. Law Enf’t Div., 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015) (affirming trial court’s grant of summary judgment and noting court of appeals improperly “cherry-picked” an isolated portion of the record, placed it out of context, and “elevated what is, at best, a metaphysical doubt into a genuine issue of material fact”); Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984) (“The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.”); Beale v. Hardy, 769 F.2d 213, 214 (4th Cir.1985) (explaining that party opposing summary judgment “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another”). A non-moving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine. Town of Hollywood v. Floyd, 403 S.C. 466, 744 S. E, 2d 161, 166 (2013). When a motion for summary judgment is supported by affidavit(s), the nonmoving party cannot rest on the general denials of its answer, but must show that there is a genuine issue of material fact, through its own affidavits. Rule 56(e), SCRCP.

Applying the summary judgment standard to the fully developed record before me on Plaintiff’s breach of contract cause of action for a sum certain due, there is no genuine issue as to any material fact as to the existence of a contract and the breach thereof by the Defendants.

Plaintiff is entitled to judgment as a matter of law that Defendants have breached the Contract for monies owed the Plaintiff.

Specifically, due to the breach of contract by Defendants, Plaintiff is entitled to judgment against all Defendants in the fixed sum certain of \$267,000.00 in actual damages.

II. Pre-Judgment Interest

The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty. *Southern Welding Works, Inc. v. K & S Construction Co.*, 286 S.C. 158, 332 S.E.2d 102 (Ct.App.1985).

The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose. 47 C.J.S. *Interest & Usury* § 49 at 124–25 (1982). *Babb v. Rothrock*, 310 S.C. 350, 426 S.E. 2d 789 (1993).

Applying the summary judgment standard to the fully developed record before me on Plaintiff's prayer for an award of pre-judgment interest upon the monies I have adjudged to be due the Plaintiff, there is no genuine issue as to any material fact and Plaintiff is entitled to judgment as a matter of law.

Specifically, due to the breach of contract by Defendants, Plaintiff is entitled to pre-judgment interest on my award of judgment of actual damages from December 23, 2018 through August 5, 2021.

Interest shall be calculated according to the applicable annual orders of the South Carolina Supreme Court regarding the legal rate of interest for judgments and money decrees.¹

The award of pre-judgment interest due the Plaintiff is set and established as follows:

1. For the period December 23, 2018 through January 14, 2019, 23 days @ 8.5%, applying a per diem rate of \$62.178 for a sub-total of \$1,430.09;
2. For the period January 15, 2019 through January 14, 2020, 365 days @ 9.50%, for a subtotal of \$25,500.85;
3. For the period January 15, 2020 through January 14, 2021, 365 days @ 8.75%, for a subtotal of \$25,718.96;
4. For the period January 15, 2021 through August 5, 2021, 202 days @ 7.25%, applying a per diem of \$63.492, for a subtotal of \$12,825.40;

The total award of pre-judgment interest due Plaintiff is \$65,475.30.

¹ By Order #2018-01-04-02, the legal rate of interest for the period January 15, 2018 through January 14, 2019 was set at 8.5% compounded annually. By Order # 2019-01-04-01, the legal rate of interest for the period January 15, 2019 through January 14, 2020 was set at 9.5% compounded annually. By Order # 2020-01-06-01 the legal rate of interest for the period January 15, 2020 through January 14, 2021 was set at 8.75% compounded annually. By Order # 2021-01-04-01 the legal rate of interest for the period January 15, 2021 through January 14, 2022 was set at 7.25% compounded annually.

III. Specific Performance

Plaintiff alleges in his Second Cause of Action in his Complaint that he is entitled to specific performance. He has alleged with particularity the elements of specific performance regarding the procurement of a life insurance policy as required by the Contract.

Specific performance may be awarded in the sound discretion of the court. *Guignard v. Atkins*, 282 S.C. 61, 317 S.E. 2d 137 (Ct. App 1984). The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case. *Holly Hill Lumber Co., Inc. v. McCoy*, 201 S.C. 427, 23 S.E.2d 372 (1942).

Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984) (citing *Monteith v. Harby*, 190 S.C. 453, 3 S.E.2d 250 (1939)).

In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Gibson v. Hrysikos*, 293 S.C. 8, 358 S.E.2d 173 (Ct.App.1987) (citing *Thomson v. Scott*, 6 S.C. Eq. (1 McCord Eq.) 32 (1825)).

Applying the summary judgment standard to the fully developed record before me on Plaintiff's prayer for specific performance of the procurement of a life insurance policy on the life of Brandon W. Linder, given the specialized and unique nature of a policy of life insurance, Plaintiff has established to my satisfaction that the requisite elements of specific performance have been met with respect to the life insurance required to be procured, and because there is no genuine issue as to any material fact regarding the same, Plaintiff is entitled to judgment as a matter of law.

Exercising my discretion and in the adjustment of equities herein, specific performance by Defendants as to the procurement of a life insurance policy on the life of Brandon W. Linder with a death benefit of \$1,000,000.00 naming Plaintiff as beneficiary is appropriate, proper and warranted.

In further exercising my discretion given the facts and circumstances of this case and the

course of dealing between and among the parties, I deem it equitable and necessary that Defendants shall procure the life insurance policy on the life of Brandon W. Linder with a death benefit of \$1,000,000.00 naming Plaintiff as beneficiary within thirty (30) days of the entry of this order, with a certificate of insurance being concurrently provided in writing to Plaintiff's counsel. The policy shall remain in full force and effect for the lifetime of the Plaintiff.

IV. Defendants' Counter-Claim For Breach of Covenant of Good Faith and Fair Dealing

In their Answer and Counter-claim, Defendants allege a Breach of Covenant of Good Faith and Fair Dealing.

There is no evidence before the court to support that claim.

Moreover, there is no independent cause of action for breach of covenant of good faith and fair dealing in South Carolina.

The Court of Appeals in *RoTec Services, Inc. v. Encompass Services, Inc.* 359 S.C. 467, 597 S.E. 2d 881 (Ct. App. 2004) held "[al]though South Carolina courts have not directly addressed this exact question, we do have precedent strongly suggesting there is no separate cause of action for the implied covenant of good faith and fair dealing. This court, in *Boddie-Noell Props., Inc. v. 42 Magnolia P'ship*, 344 S.C. 474, 485, 544 S.E.2d 279, 285 (Ct. App. 2000), affirmed the trial court's decision to send the breach of contract claim to the jury, in part, for breaching the implied covenant of good faith and fair dealing. When appealed to the supreme court, the supreme court also treated the implied covenant of good faith as merely another term of the contract at issue, concluding that "[the defendant] breached the express provisions of the purchase agreement as well as the implied covenant of good faith and fair dealing." *Boddie-Noell Props., Inc. v. 42 Magnolia P'ship*, 352 S.C. 437, 444, 574 S.E.2d 726, 730 (2002). Similarly, in *Parker v. Byrd*, 309 S.C. 189, 194, 420 S.E.2d 850, 853 (1992), the supreme court found that the parties' express agreement to act in good faith was merely a restatement of the covenant of good faith implied in every contract. Therefore, we conclude that the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract. Accordingly, we find no error in the trial court's dismissal of this claim.

Defendants' counter-claim for breach of covenant of good faith and fair dealing should and must be dismissed as a matter of law.

ORDER

Based upon the findings of salient facts hereinabove set forth and the conclusions of law, it is ordered, adjudged and decreed that Plaintiff's motion for summary judgment be and hereby is **GRANTED** in the following particulars:

1. Plaintiff is entitled to judgment as a matter of law against all Defendants for breach of contract for default on payment of monies due the Plaintiff;
2. Plaintiff is awarded actual damages for breach of contract for monies due the Plaintiff in the amount of \$267,000.00;
3. Pre-judgment interest is due and owing the Plaintiff by the Defendants on the judgment amount in the amount of \$65,475.30;
4. Plaintiff be and hereby is awarded a total judgment against all Defendants in the amount of \$332,475.30; and
5. Plaintiff be and hereby is granted specific performance commanding and compelling Defendants to procure a life insurance policy on the life of Brandon W. Linder with a death benefit of \$1,000,000.00 naming Plaintiff as beneficiary; said action to be accomplished within thirty (30) days of the entry of this order, with a certificate of insurance being concurrently provided in writing to Plaintiff's counsel. The policy shall remain in full force and effect for the lifetime of the Plaintiff.

Based upon the findings of salient facts hereinabove set forth and the conclusions of law, it is further ordered, adjudged and decreed that Defendant's counter-claim for breach of covenant of good faith and fair dealing, be and hereby is **DISMISSED** with prejudice.

JUDGE'S SIGNATURE AFFIXED HERETO ELECTRONICALLY



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2019CP0802445
Type: Order/Summary Judgment

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-08-23 15:44:12 page 9 of 9

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 CP-08-02445

GERALD R. SMITH

UNITED CABLE CONSTRUCTION CO., INC., SOUTH
ATLANTIC COMMUNICATIONS, INC. BRANDON W.
LINDER AND KARLA LINDER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: JOHN S. WEST, ESQ.

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING DEFENDANT'S COUNTER-CLAIM WITH PREJUDICE ENTERED ON AUGUST 24, 2021.**

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
GERALD R. SMITH	UNITED CABLE CONSTRUCTION CO., INC.	\$332,475.30
	SOUTH ATLANTIC CIOMMUNICATIONS, INC.	\$332,475.30
	BRANDON W. LINDER, KARLA LINDER	\$332,475.30
If applicable, describe the property, including tax map information and address, referenced in the order:		

Date

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

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCp.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Page 2 of 4

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2019CP0802445
Type: Order/Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-08-25 16:32:35 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP0802445

Gerald R Smith
PLAINTIFF(S)

United Cable Construction Co Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendants filed a Motion to Alter or Amend and Motion for Relief from Judgment or Order with this Court on September 3, 2021. "The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). This Court hereby DENIES Defendants' Motion to Alter or Amend and Motion for Relief from Judgment or Order without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994).

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☒ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/01/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

Defendants also filed a "Motion to Conform the Evidence" on September 3, 2021. Upon careful consideration of the submissions to the Court, this Court respectfully DENIES Defendants' "Motion to Conform the Evidence."



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2019CP0802445
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-10-01 12:37:12 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

CIVIL ACTION NO. 2019-CP-08-_____

SUMMONS

(Breach of Contract/Specific Performance)

Non-Jury

TO THE DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the undersigned attorney, at 207 Carolina Avenue, Moncks Corner, South Carolina 29461, within (30) days after service hereof, exclusive of the day of such service. If you fail to Answer the Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or Special Referee for this County, which order shall, pursuant to Rule 53(c) of the South Carolina Rules of Civil Procedure specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with any appeal directly to the South Carolina Court of Appeals.

**** signature page follows****

Respectfully submitted,

s/ John S. West
S.C. Bar No. 6035
West Law Firm, PA
Attorneys for Plaintiff
207 Carolina Avenue
P.O. Box 1869
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com

October 7, 2019
Moncks Corner, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

CIVIL ACTION NO. 2019-CP-08-_____

COMPLAINT

(Breach of Contract, Specific Performance)

Non-Jury

Plaintiff herein would respectfully allege and show unto this Honorable Court as follows,
to wit:

PARTIES

1. Plaintiff Gerald R. Smith is a citizen and resident of Eureka, Illinois.
2. Defendant United Cable Construction Co., Inc., ("UCC") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina doing business in Berkeley County, South Carolina, which according to the records of the South Carolina Secretary of State is currently in a forfeiture status.
3. Defendant South Atlantic Communications, Inc., ("SAC") is a corporation organized and existing under and by virtue of the laws of the State of South Carolina doing business in Berkeley County, South Carolina, which according to the records of the South Carolina Secretary of State is currently in a forfeiture status.
4. On information and belief, Defendant Brandon W. Linder ("Linder") is a citizen and resident of Berkeley County, South Carolina.
5. On information and belief, Linder is the sole shareholder, owner and operator of UCC.
6. Defendant Karla Linder is Linder's wife. On information and belief, she is a citizen and resident of Berkeley County, South Carolina.

SUBJECT MATTER

7. By Declaratory Order in Case No. 2018-CP-08-224, dated, filed and served on July 30, 2019, (“Order”), the Honorable Dale E. Van Slambrook, Master-in-Equity for Berkeley County, found, concluded and declared that a valid and binding contract exists between and among the parties. A copy of said Order is attached hereto and made a part hereof by reference as Exhibit “A”.
8. *Plaintiff’s Exhibit 6* to the proceedings in Case No. 2018-CP-08-224 is the relevant contract and the subject of the instant case, (“Contract”). It was incorporated into the Order by expressed reference and is attached separately hereto and made a part hereof as Exhibit “B”.
9. Following entry and service of the Order demand was made by the Plaintiff to all parties Defendant in Case No. 2018-CP-08-224 for performance under the Contract.
10. Defendants have neglected, refused and failed to satisfy the demands of the Plaintiff regarding performance under the expressed terms of Contract and as a result they are in default and breach thereof.

JURISDICTION AND VENUE

11. This Honorable Court is possessed of jurisdiction over the parties and the subject matter.
12. Venue is proper.

FOR A FIRST CAUSE OF ACTION (Breach of Contract)

13. Plaintiff repeats and realleges each and every allegation contained in ¶¶1-12, inclusive as if fully set forth herein *verbatim*.
14. The Contract obligates and requires the Defendants, *inter alia*, to pay the Plaintiff a specific sum of money according to specific terms; to take certain actions and to do certain things as reference to the Contract will more fully and at large appear, which obligations and requirements include by category as follows:
 - a. Life Insurance; and
 - b. Monthly payments of \$10,000 each with a balloon payment in December, 2018.

15. Defendants have not performed and have all defaulted upon all aspects of the Contract. They have been and are in breach thereof.
16. As a direct and proximate result of the foregoing, Plaintiff has suffered damages.
17. Plaintiff is informed and believes that he is entitled to judgment against the Defendants, jointly and severally, for actual damages, along with an assessment of appropriate pre-judgment interest as provided by law.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

18. Plaintiff repeats and realleges each and every allegation contained in ¶¶1-17, inclusive, as if fully set forth herein *verbatim*.
19. The Contract has been judicially determined to be a valid contract.
20. Defendants are in breach of the Contract.
21. With respect to the life insurance requirements of the Contract, there is an absence of an adequate remedy at law to the Plaintiff for the breach of the Contract.
22. Specific performance is equitable and appropriate as between and among the parties.
23. The Contract is not infected by fraud, accident or mistake.
24. In the adjustment of the equities, Plaintiff is entitled to specific performance and a directive relative to the life insurance obligations of the Defendants and the issuance of an order requiring that Defendants satisfy that Contract deliverable.

WHEREFORE, having fully set forth his Complaint herein, Plaintiff would pray judgment as follows:

- a. For actual damages, jointly and severally against all Defendants, to include pre-judgment interest;
- b. For specific performance of the life insurance deliverable under the Contract;
- c. For an assessment of costs; and

- d. For such other and further relief as is just and proper in the premises.

Respectfully submitted,

s/ John S. West
SC Bar No. 6035
West Law Firm, PA
Attorneys for the Plaintiff
207 Carolina Avenue
P.O. Box 1869
Moncks Corner, SC 29461
843-761-5626 (Telephone)
jwestlaw@homesc.com

October 7, 2019
Moncks Corner, South Carolina

EXHIBIT "A"
to
Smith v Linder et al
Summons and
Complaint BOC

October 2019

EXHIBIT "A"
 to
 Smith v Linder et al
 Summons and Complaint BOC
 October 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2018-CP-08-2241
	)	
GERALD R. SMITH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DECLARATORY ORDER
	)	
UNITED CABLE CONSTRUCTION CO.,	)	
INC., SOUTH ATLANTIC	)	
COMMUNICATIONS, INC., BRANDON	)	
W. LINDER and KARLA LINDER,	)	
	)	
Defendants.	)	
_____	)	

PROCEDURAL BACKGROUND AND PARTIES

This declaratory judgment proceeding came before me for a hearing on the merits at the Berkeley County Courthouse on May 15, 2019 at 11:30 A.M. pursuant to Order of Reference With Finality. Notice of hearing was properly made and served.

Present at hearing were the Plaintiff, Gerald R. Smith and his attorney John S. West, Esq. of the West Law Firm, PA of Moncks Corner, along with two witnesses for the Plaintiff, namely Grover C. Seaton, III, Esq. and George Talbert. Also present was Brandon W. Linder, appearing individually and as agent and authorized representative of all other Defendants and his attorney Adam Mlynarczyk, Esq. of the law firm of Koontz/Mlynarczyk, LLC of North Charleston.

The record reflects that the Defendants were electronically served with the Amended Summons and Amended Complaint and related pleadings through their attorney of record as established in the record. The record further reflects that no answer or other responsive pleadings were filed by the Defendants in response to the Amended Summons and Amended Complaint.

All Defendants were adjudged to be in default by Order of Default. Service of the Order of Default was affected electronically.

At the call of the case, notwithstanding the default status of the Defendants, Plaintiff consented to the full participation of the Defendants in the hearing given the declaratory nature of the proceedings.

FINDINGS OF SALIENT FACTS

From the record before me, from arguments by counsel, from the exhibits and testimony elicited in open Court and under oath, I find by a clear preponderance of the evidence the following salient facts:

1. The parties acknowledged in open court that there has been a long and largely cordial course of dealings among and between them going back to an original transaction which took place in 2006, when the corporate defendants purchased the assets of United Cable Construction Co., Inc., a company founded by the Plaintiff many years ago and which was owned solely by him at the time of sale.
2. Multiple agreements associated with and incidental to the original transaction were stipulated to and were admitted into evidence without objection which memorialized the understandings of the involved parties. Additionally, various subsequent agreements modifications and amendments thereto were admitted into evidence without objection, collectively, *Plaintiff's Ex. 1, 2, 3, 4 and 5*.
3. About the status and relations of the parties as to the agreements and understandings, as modified, contained in *Plaintiff's Ex. 1, 2, 3, 4 and 5*, there is no dispute or controversy before this Court.

4. What is before this Court however, is a real and considerable dispute and controversy concerning the validity of a single instrument dated May 22, 2017, which was admitted in evidence as *Plaintiff's Ex. 6*, without objection¹.
5. The disagreement about *Plaintiff's Ex. 6* is stark. Plaintiff contends that *Plaintiff's Ex. 6* reduces to writing and memorializes the clear and unambiguous expression of a binding contract. Plaintiff contends further that *Plaintiff's Ex. 6* embodies the product of a meeting of the minds of the parties and the same now controls their mutual promises and undertakings going forward.
6. Defendants assert just the opposite. They contend that *Plaintiff's Ex. 6* and the intentions of the parties expressed therein are aspirational only and not a valid contract.
7. Plaintiff unequivocally represented to the Court that the relief he seeks is not presently related to the enforcement of *Plaintiff's Ex. 6*.
8. Rather, Plaintiff contends that he has been compelled to seek an order of this Court determining the status and relations of the parties relative to *Plaintiff's Ex. 6*, after which Plaintiff may better determine which instrument(s) form the lawful basis for enforcement of any alleged breach by the Defendants and the remedies he may seek to pursue, if any.
9. Plaintiff specifically contends that he is required to seek the declaratory relief set forth in his Amended Complaint because of Defendants' position disavowing² any obligation or imperative by any and all Defendants to perform as set forth in *Plaintiff's Ex. 6*.
10. Defendants forcefully argued that while there are features to *Plaintiff's Ex. 6* which are very attractive to the Defendants; specifically a huge discount in the total payoff amount³,

¹ For purposes of this Order, I am attaching *Plaintiff's Ex. 6* hereto and incorporating the same into the Order by reference in its entirety.

² *Plaintiff's Ex. 8* includes a letter from Attorney Mlynarczyk to Attorney Seaton declaring that *Plaintiff's Ex. 6* is not a valid contract. The position of Defendants at the hearing did not change.

³ The precise dollar figure of the agreed upon discount is \$784,244.51.

there is an element of *Plaintiff's Ex. 6*, that is to say the required conveyance to the Plaintiff by the record owners of certain real properties located at 144 Frankie Lane, Ladson, South Carolina, that according to Defendants cannot be done without creating collateral issues for the Defendants vis-a-vis other lienholders and creditors.

11. In support of their position regarding the 144 Frankie Lane properties, Defendants introduced *Defendants' Ex. 1, 2 and 3*, which are excerpts from the record in a mortgage foreclosure case bearing Case No. 2016-CP-08-2352.
12. Over the period from 2006 through April, 2017 periodic payments of varying amounts were paid to the Plaintiff by the named obligors. It is undisputed that as of the end of April, 2017, Gerald R. Smith was owed \$1,084,244.51.
13. During mid-May, 2017, Gerald R. Smith and Brandon Linder, acting individually and for the corporate defendants agreed that it was mutually beneficial that the then balance due be greatly reduced. Doing so would produce a direct benefit to Gerald R. Smith in that he would see his money during his lifetime and simplify his estate planning efforts.⁴ The payoff reduction would obviously assist the obligors by reducing the total debt service costs going forward substantially.
14. Gerald R. Smith and Brandon Linder then mutually decided to meet at the law offices of Gerald R. Smith's longtime attorney Grover C. Seaton, III of Moncks Corner for the purpose of communicating to Mr. Seaton the terms of their "deal" and to mutually ask Mr. Seaton to prepare an instrument in writing memorializing their latest agreement.⁵
15. Mr. Seaton met with Gerald R. Smith and Brandon Linder on May 21, 2017 at his office in Moncks Corner. Mr. Seaton made it clear to Brandon Linder that he represented

⁴ Gerald Smith was 81 years old in 2017. On the date of hearing he was 83 years old.

⁵ The only outstanding question when Gerald R. Smith and Brandon Linder appeared in Mr. Seaton's office was the balance due. Gerald R. Smith originally insisted on \$400,000. Brandon Linder proposed \$300,000. The parties agreed to \$300,000. All other terms were agreed upon in advance of arrival at Mr. Seaton's office.

Gerald R. Smith only in the matter. Mr. Seaton inquired of Brandon Linder whether he and/or his entities were represented by counsel and if so who was his/its lawyer.

16. Brandon Linder declared to Mr. Seaton that he did not need or want a lawyer to represent him; the agreement with Gerald R. Smith was simple, plain, straightforward and specific and that he wanted to proceed with reducing the latest agreement with Gerald Smith to writing.
17. Mr. Seaton then immediately drafted the agreement which was presented to Mr. Smith, Brandon Linder and his wife Karla Linder⁶ the following day by Mr. Seaton's employee George Talbert and the same was executed and witnessed in Mr. Talbert's presence.
18. From September, 2017 until November, 2018, Brandon Linder, individually and as agent for the other Defendants made payments to Mr. Seaton per ¶ 2 of *Plaintiff's Ex. 6* on account of the agreed upon balance due of \$300,000 in varying amounts for a total undisputed amount of \$33,000. *Plaintiff's Ex. 7*.

CONCLUSIONS OF LAW

I. Elements of a contract

The necessary elements of a contract are offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable. *Gaskins v. Firemen's Ins. Co. of Newark, N. J.*, 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral).

⁶ Karla Linder is a signatory to *Plaintiff's Ex. 6* because she was the owner of an undivided interest in the 144 Frankie Lane properties.

Each and all of the elements of a contract are met and satisfied by *Plaintiff's Ex. 6*. With respect to valuable consideration, it is manifestly clear to this Court that *Plaintiff's Ex. 6* embodies rights, interests, profits or benefits accruing to all parties together with mutual forbearances, detriments, losses and responsibilities given, suffered or undertaken.

In simpler terms, both sides got what they wanted and everybody gave up some things to get it. Thereafter, Defendants partially performed under *Plaintiff's Ex. 6* by paying money to the Plaintiff and Plaintiff accepted the payments. The total payments represented significant dollars and totaled more than ten (10%) of the balance due.

II. Meeting of the Minds

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (emphasis in original); *see also Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct.App.1987) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.”). “*The necessary elements of a contract are an offer, acceptance, and valuable consideration.*” *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). In *Player v. Chandler*, the South Carolina Supreme Court asserted:

The “meeting of minds” required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

Here, there is a clear and obvious meeting of the minds. There were no secrets. There was no confusion. There was no equivocation. Plaintiff openly wanted to wrap up his deal with Defendants with a reasonable measure of security and Defendants openly wanted to capture the windfall that would be the product of the significant reduction of the payoff.

III. South Carolina Uniform Declaratory Judgment Act (S.C. Code Ann. § 15–53–10)

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree. *S.C. Code Ann. § 15–53–20*.

To state a cause of action under South Carolina’s Uniform Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). “*A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.*” *Id.* Thus, “[a]ny person interested under a ... written contract... may have determined any question of construction or validity arising under the ... contract... and obtain a declaration of rights, status or other legal relations thereunder.” *S.C. Code Ann. § 15–53–30 (2005)*.

A justiciable controversy is plainly before this Court regarding *Plaintiff’s Ex. 6*. This is not a vague or academic disagreement. A clear and concrete issue exists between and among the parties.

Moreover, the fact that Plaintiff is not seeking an enforcement for an alleged breach in this case is of no consequence. *S.C. Code Ann. § 15–53–40* specifically contemplates the very situation before this Court and empowers this Court to determine the outcome independent of the enforcement aspects of this dispute... “*a contract may be interpreted before and after a breach.*”

Plaintiff has properly invoked the provisions of the South Carolina Declaratory Judgment Act. He is entitled to a determination of this Court regarding *Plaintiff’s Ex. 6*.

ORDER

Based upon the findings of fact and conclusions of law, I find, conclude and declare that *Plaintiff's Ex. 6* is a valid and binding contract between and among the parties to this case.

AND IT IS SO ORDERED.

SIGNED ELECTRONICALLY BY DALE E. VAN SLAMBROOK,
MASTER IN EQUITY FOR BERKELEY COUNTY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-08-2241

GERALD R. SMITH,

UNITED CABLE CONSTRUCTION CO., INC,
SOUTH ATLANTIC COMMUNICATIONS,
INC, BRANDON W. LINDER and KARLA
LINDER,

PLAINTIFF(S)

DEFENDANT(S)

John S. West
PO Box 1869
Moncks Corner, SC 29461

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

(Signature Page to Follow)

For Clerk of Court Office Use Only

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

John S. West
PO Box 1869
Moncks Corner, SC 29461
ATTORNEY(S) FOR THE PLAINTIFF(S)

Adam Mlynarczyk
1058 E. Montague Ave
N. Charleston, SC 29405
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2018CP0802241
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2019-07-30 08:06:15 page 11 of 11

EXHIBIT "B"
to
Smith v Linder et al
Summons and
Complaint BOC

October 2019

EXHIBIT "B"

to
Smith v Linder et al
Summons and Complaint BOC
October 2019

5-22-17

EXHIBIT "A" TO COMPLAINT

**MODIFICATION AND ADDENDUM OF THE AGREEMENT MADE BY
GERALD R. SMITH, SELLER AND BRANDON W. LINDER, PURCHASER**

WHEREAS, the parties hereinabove entered into an agreement for the purchase of assets of United Cable, Inc., on or about January 4, 2006. The parties desire to make the following modifications and addendum to the Sale Agreement:

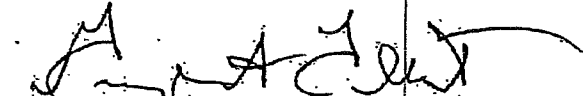
WHEREAS, the Purchaser, Brandon Linder, also now known as United Cable Construction, Inc., currently owes \$1,084,244.51; and

WHEREAS, the Seller, Gerald Smith, is agreeable to reduce the payoff to \$300,000.00 provided the following terms are met:

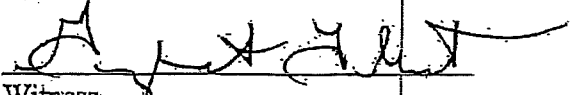
1. That the Purchaser, Brandon W. Linder, will immediately reinstate a life insurance policy on his life in the amount of \$1,000,000.00 and will be specifically designate Gerald R. Smith as beneficiary. This must be immediately accomplished.
2. The Purchaser, Brandon W. Linder, also now known as United Cable Construction, Inc., will make monthly payments of \$10,000.00 directly to Grover C. Seaton, III, Esquire, attorney for Gerald R. Smith through the month of December 2018 at an interest rate of 1% added thereon; the balance in December 2018 will be a balloon note which must be paid during the month of December 2018.
3. That the house on the real estate at Frankie Lane, Ladson, SC known as 144 Frankie Lane, Ladson, SC in the names of Brandon W. Linder and Karla Linder will be immediately deeded to Gerald R. Smith subject to all mortgages and liens. Brandon W. Linder shall be responsible for the monthly mortgage, taxes, insurance and upkeep on the property.
4. Should the Purchaser, Brandon W. Linder, not perform as to the conditions as set out hereinabove, he will immediately abandon the use of the property at 144 Frankie Lane, Ladson, SC.
5. Should the Purchaser, Brandon W. Linder, perform as set out hereinabove, the house as mentioned hereinabove shall be transferred back to Brandon W. Linder and Karla Linder.
6. Lastly, the parties agree to forgo and abandon any and all provisions of the sales contracts and addendums thereto as to any arbitration in the event of default.

Plaintiff's Ex. 6

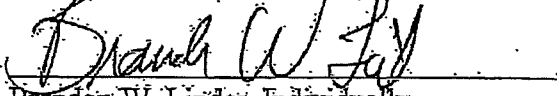
WHEREFORE, the parties to this Addendum and Modification hereby set and agree to be bound to all the terms and conditions as set forth as evidenced by their signatures below dated this 22 day of May 2017.

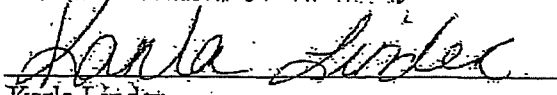

Witness


Witness


Witness


Gerald R. Smith, Individually


Brandon W. Linder, Individually


Karla Linder

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2019-CP-08-02445

Gerald R. Smith,

Plaintiff,

vs.

**ACCEPTANCE OF SERVICE
FOR ALL DEFENDANTS**

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

I, the undersigned counsel for all named Defendants herein accept service of process of Plaintiff's Summons and Complaint dated and filed of record on October 7, 2019 this 22nd day of November, 2019.

KOONTZ MLYNARCZYK, LLC



Adam Mlynarczyk, Esq.
Scott Winograd, Esq.
1058 East Montague Avenue
North Charleston SC 29405
843-225-4252
843-277-9120 fax
adam@kmlawsc.com
scott@kmlawsc.com
Attorneys for Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	CIVIL ACTION NO. 2019-CP-08-02445
Gerald R. Smith,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER AND COUNTERCLAIM
	)	OF DEFENDANTS
United Cable Construction Co., Inc.	)	
South Atlantic Communications, Inc.,	)	(JURY TRIAL DEMANDED)
Brandon W. Linder and Karla Linder,	)	
	)	
Defendants.	)	

COMES NOW the Defendants United Cable Construction Co., Inc., South Atlantic Communications, Inc., Brandon W. Linder, and Karla Linder, by and through his attorneys, Koontz Mlynarczyk LLC and file the present Answer and state and aver as follows. Any allegation contained in the Answer which is not specifically admitted herein is denied in its entirety and strict proof is demanded thereof.

For a First Defense and to Answer Numbered Paragraphs of the Complaint

1. The Defendants are without sufficient information to admit or deny the allegations in paragraph 1 of the Complaint, therefore it is denied and strict proof is demanded thereof.
2. Defendants deny paragraph 2 of the Complaint and strict proof is demanded thereof.
3. Defendants admit that South Atlantic Communications, Inc. is currently in forfeiture status according to the records of the South Carolina Secretary of State and Defendants deny any remaining allegations of fact in paragraph 3, and demand strict proof thereof.
4. Defendants admit the allegations in paragraph 4 of the Complaint.

5. Defendants admit the allegations in paragraph 5 of the Complaint.

6. Defendants admit the allegations in paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint refers to a specific document or set of documents which stand on their own and the contents of which are important to the facts in this matter. To the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

8. Paragraph 8 of the Complaint refers to a specific document or set of documents which stand on their own and the contents of which are important to the facts in this matter. To the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

9. Paragraph 9 of the Complaint refers to a specific document or set of documents which stand on their own and the contents of which are important to the facts in this matter. To the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

10. Paragraph 10 of the Complaint refers to a specific document or set of documents which stand on their own and the contents of which are important to the facts in this matter. To the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

11. Paragraph 11 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

12. Paragraph 12 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

13. Paragraph 13 of the Complaint contains inclusive paragraphs to which no response is required, but to the extent this paragraph contain any allegations of fact, they are denied and strict proof is demanded thereof.

14. Paragraph 14 of the Complaint refers to a specific document or set of documents which stand on their own and the contents of which are important to the facts in this matter. To the extent these paragraphs contain any allegations of fact, they are denied and strict proof is demanded thereof.

15. Defendants deny paragraph 15 of the Complaint and strict proof is demanded thereof.

16. Defendants deny paragraph 16 of the Complaint and strict proof is demanded thereof.

17. Defendants deny paragraph 17 of the Complaint and strict proof is demanded thereof.

18. Paragraph 18 of the Complaint contains inclusive paragraphs to which no response is required, but to the extent this paragraph contain any allegations of fact, they are denied and strict proof is demanded thereof.

19. Paragraph 19 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contains any allegations of fact, they are denied and strict proof is demanded thereof.

20. Paragraph 20 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contains any allegations of fact, they are denied and strict proof is demanded thereof.

21. Paragraph 21 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contains any allegations of fact, they are denied and strict proof is demanded thereof.

22. Paragraph 22 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contains any allegations of fact, they are denied and strict proof is demanded thereof.

23. Paragraph 23 of the Complaint is a conclusion of law to which no response is required, but to the extent these paragraphs contains any allegations of fact, they are denied and strict proof is demanded thereof.

24. Defendants deny paragraph 24 of the Complaint and strict proof is demanded thereof.

For Second Defense and First Affirmative Defense
(Lack of Jurisdiction)

25. This court lacks jurisdiction over the parties to this action.

For a Third Defense and Second Affirmative Defense
(Improper Venue)

26. Venue is improper in this court.

For Fourth Defense and Third Affirmative Defense
(Insufficient facts)

27. The Plaintiff's complaint fails to allege facts sufficient to constitute a cause of action against Defendants and should be dismissed with prejudice under South Carolina Rule of Civil Procedure 12(b)(6).

For Fifth Defense and Fourth Affirmative Defense
(No Standing)

28. The Plaintiff lacks standing to bring this action against Defendant.

For Sixth Defense and Fifth Affirmative Defense
(Unclean Hands)

29. Defendants hereby restate each and every reply contained in the preceding paragraphs as if fully set forth herein.

30. Upon information and belief, Plaintiff's claims are barred by the doctrine of unclean hands.

For Seventh Defense and Sixth Affirmative Defense
(Laches)

31. Defendants hereby restate each and every reply contained in the preceding paragraphs as if fully set forth herein.

32. Upon information and belief, Plaintiff's claims are barred by the doctrine of laches.

**FURTHER ANSWERING THE COMPLAINT,
AND BY WAY OF COUNTERCLAIM AGAINST GERALD R. SMITH.
DEFENDANTS ALLEGE AND STATE AS FOLLOWS:**

33. Defendant Brandon W. Linder is a citizen and resident of Berkeley County, South Carolina.

34. Upon information provided by Plaintiff in paragraph 1 of its Complaint, Plaintiff Gerald R. Smith is a citizen and resident of Eureka, Illinois.

35. Brandon W. Linder and Gerald R. Smith have entered into agreements relating to the purchase of assets of United Cable, Inc, which are directly at issue in this case.

36. Through its actions, Plaintiff Gerald R. Smith has impeded Defendant's ability to abide by the contracts.

37. This Honorable Court has jurisdiction over the parties hereto and subject matter hereof, and venue is proper in this forum.

For a First Counterclaim
(Breach of Covenant of Good Faith & Fair Dealing)

38. Defendants incorporate the allegations of the foregoing paragraphs as if fully restated herein.

39. There is implied in every contract in South Carolina, a covenant of good faith and fair dealing.

40. Plaintiff has breached said covenant by not dealing fairly with Defendants and refusing to act in good faith thereby depriving Defendants of the benefits of their bargain.

41. As a result of Plaintiff's breach, Defendants have been damaged and are entitled to judgement in their favor.

WHEREFORE, having fully answered the Complaint of Gerald R. Smith, Defendants United Cable Construction Co., Inc., South Atlantic Communications, Inc., Brandon W. Linder, and Karla Linder pray that the Complaint be dismissed with prejudice and demand judgment in their favor against Plaintiff, an award for actual damages, compensatory damages, punitive damages, attorney's fees and costs, and all other relief this Honorable Court deems just and proper.

SIGNATURE ON THE NEXT PAGE

Respectfully Submitted,

KOONTZ MLYNARCZYK, LLC

/s/ Scott Winograd

Adam Mlynarczyk # 069878
C. Brandon Belger #100020
Scott H. Winograd # 103483
1058 East Montague Avenue
North Charleston, South Carolina 29405
T: (843) 225-4252
F: (843) 277-9120
E: adam@kmlawsc.com
brandon@kmlawsc.com
scott@kmlawsc.com
Attorneys for Plaintiff

December 20, 2019

North Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2019-CP-08-02445

Gerald R. Smith,

Plaintiff,

vs.

**REPLY TO ANSWER
AND COUNTERCLAIM**

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

**TO: ADAM MLYNARCZYK, ESQ. AND SCOTT H. WINOGRAD, ESQ. ATTORNEYS
FOR THE DEFENDANTS**

Plaintiff herein, by way of Reply to the Answer and Counterclaim of the Defendants, would reply and answer thereto as follows:

1. Plaintiff repeats, reaffirms and reiterates all of the allegations in his Complaint as if fully set forth herein *verbatim* and denies each and every claim and averment of the Answer and Counterclaim which are inconsistent therewith.

WHEREFORE, having fully replied to the Answer and Counterclaim, Plaintiff prays that the counterclaim be dismissed with prejudice, with costs assessed; and for such other and further relief as is just and proper in the premises.

***** signature block to follow*****

s/ John S. West
S.C. Bar No. 6035
Attorneys for Plaintiff
West Law Firm, PA
207 Carolina Avenue
Moncks Corner, SC 29461
843-761-5626
jwestlaw@homesc.com

January 6, 2020
Moncks Corner, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2019-CP-08-02445

**NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT**

**TO: ADAM MLYNARCZYK, ESQUIRE and JOSH GIANCOLA, ATTORNEYS FOR
THE DEFENDANTS**

Plaintiff moves before this Honorable Court pursuant to **SCRCP 56** for summary judgment in his favor.

In support of his motion Plaintiff would respectfully show unto this Honorable Court as follows:

1. There is no genuine issue of material fact that a contract exists as between the Plaintiff and all Defendants.
2. There is no genuine issue of material fact about the sum certain of monies due Plaintiff under the contract and other deliverables.
3. There is no genuine issue of material fact that demand has been made for payment and delivery of contract deliverables.
4. There is no genuine issue of material fact that all Defendants are in breach of contract.
5. Plaintiff shall present and rely on the pleadings and exhibits, pertinent parts of a prior trial transcript, deposition testimony of the Defendant, discovery responses and such affidavits and memoranda as may be presented at hearing to establish that he is entitled to summary judgment as a matter of law.

s/ John S. West
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Attorneys for Plaintiff

June 1, 2021
Moncks Corner, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2019-CP-08-02445

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Plaintiff, by and through his undersigned counsel, submits this Memorandum in Support of his Motion For Summary Judgment.

BACKGROUND

In May of 2017, the Parties entered into a contract in writing, ("Contract"), **Exhibit "A"**. Even though the Defendants partially performed under the Contract, Defendants later denied and disputed the validity and enforceability of the Contract.

As a result, Plaintiff initiated a Declaratory Judgment action seeking a determination by the Court regarding the viability of the Contract. The parties to the Declaratory Judgment action are the same parties to this case.

DECLARATORY JUDGMENT ACTION
(Case No. 2018-CP-08-2241)

The Declaratory Judgment action was referred to the Master-in-Equity for Berkeley County by Order of Reference With Finality.

Following a full evidentiary hearing before the Master on May 15, 2019, Judge Dale E. Van Slambrook entered his Declaratory Order on July 30, 2019. **Exhibit “B”**, which incorporated Plaintiff’s Exhibit 6, (**Exhibit “A”**) by reference.

In his order, Judge Van Slambrook made the following specific and detailed findings of salient facts:

1. The parties acknowledged in open court that there has been a long and largely cordial course of dealings among and between them going back to an original transaction which took place in 2006, when the corporate defendants purchased the assets of United Cable Construction Co., Inc., a company founded by the Plaintiff many years ago and which was owned solely by him at the time of sale.
2. Multiple agreements associated with and incidental to the original transaction were stipulated to and were admitted into evidence without objection which memorialized the understandings of the involved parties. Additionally, various subsequent agreements modifications and amendments thereto were admitted into evidence without objection, collectively, *Plaintiff’s Ex. 1, 2, 3, 4 and 5*.
3. About the status and relations of the parties as to the agreements and understandings, as modified, contained in *Plaintiff’s Ex. 1, 2, 3, 4 and 5*, there is no dispute or controversy before this Court.
4. What is before this Court, however, is a real and considerable dispute and controversy concerning the validity of a single instrument dated May 22, 2017, which was admitted in evidence as *Plaintiff’s Ex. 6*, without objection.
5. The disagreement about *Plaintiff’s Ex. 6* is stark. Plaintiff contends that *Plaintiff’s Ex. 6* reduces to writing and memorializes the clear and unambiguous expression of a binding contract. Plaintiff contends further that *Plaintiff’s Ex. 6* embodies the product of a meeting of the minds of the parties and the same now controls their mutual promises and undertakings going forward.
6. Defendants assert just the opposite. They contend that *Plaintiff’s Ex. 6* and the intentions of the parties expressed therein are aspirational only and not a valid contract.
7. Plaintiff unequivocally represented to the Court that the relief he seeks is not presently related to the enforcement of *Plaintiff’s Ex. 6*.
8. Rather, Plaintiff contends that he has been compelled to seek an order of this Court determining the status and relations of the parties relative to *Plaintiff’s Ex. 6*, after which Plaintiff may better determine which instrument(s) form the lawful basis for enforcement of any alleged breach by the Defendants and the remedies he may seek to pursue, if any.

9. Plaintiff specifically contends that he is required to seek the declaratory relief set forth in his Amended Complaint because of Defendants' position disavowing any obligation or imperative by any and all Defendants to perform as set forth in *Plaintiff's Ex. 6*.
10. Defendants forcefully argued that while there are features to *Plaintiff's Ex. 6* which are very attractive to the Defendants; specifically a huge discount in the total payoff amount, there is an element of *Plaintiff's Ex. 6*, that is to say the required conveyance to the Plaintiff by the record owners of certain real properties located at 144 Frankie Lane, Ladson, South Carolina, that according to Defendants cannot be done without creating collateral issues for the Defendants vis-a-vis other lienholders and creditors.
11. In support of their position regarding the 144 Frankie Lane properties, Defendants introduced *Defendants' Ex. 1, 2 and 3*, which are excerpts from the record in a mortgage foreclosure case bearing Case No. 2016-CP-08-2352.
12. Over the period from 2006 through April, 2017 periodic payments of varying amounts were paid to the Plaintiff by the named obligors. It is undisputed that as of the end of April, 2017, Gerald R. Smith was owed \$1,084,244.51.
13. During mid-May, 2017, Gerald R. Smith and Brandon Linder, acting individually and for the corporate defendants agreed that it was mutually beneficial that the then balance due be greatly reduced. Doing so would produce a direct benefit to Gerald R. Smith in that he would see his money during his lifetime and simplify his estate planning efforts. The payoff reduction would obviously assist the obligors by reducing the total debt service costs going forward substantially.
14. Gerald R. Smith and Brandon Linder then mutually decided to meet at the law offices of Gerald R. Smith's longtime attorney Grover C. Seaton, III of Moncks Corner for the purpose of communicating to Mr. Seaton the terms of their "deal" and to mutually ask Mr. Seaton to prepare an instrument in writing memorializing their latest agreement.
15. Mr. Seaton met with Gerald R. Smith and Brandon Linder on May 21, 2017 at his office in Moncks Corner. Mr. Seaton made it clear to Brandon Linder that he represented Gerald R. Smith only in the matter. Mr. Seaton inquired of Brandon Linder whether he and/or his entities were represented by counsel and if so, who was his/its lawyer.
16. Brandon Linder declared to Mr. Seaton that he did not need or want a lawyer to represent him; the agreement with Gerald R. Smith was simple, plain, straightforward and specific and that he wanted to proceed with reducing the latest agreement with Gerald Smith to writing.
17. Mr. Seaton then immediately drafted the agreement which was presented to Mr. Smith, Brandon Linder and his wife Karla Linder the following day by Mr. Seaton's employee George Talbert and the same was executed and witnessed in Mr. Talbert's presence.

18. From September, 2017 until November, 2018, Brandon Linder, individually and as agent for the other Defendants made payments to Mr. Seaton per ¶ 2 of *Plaintiff's Ex. 6* on account of the agreed upon balance due of \$300,000 in varying amounts for a total undisputed amount of \$33,000. *Plaintiff's Ex. 7*.

In his order, Judge Van Slambrook further articulated with specificity his conclusions of law, including a full summary of the elements of a contract, the meeting of the minds standard and the South Carolina Uniform Declaratory Judgements Act, *S.C. Code Ann. § 15-53-20 et seq. Exhibit "B"*, pp. 5-7.

At the conclusion of his Declaratory Order, Judge Van Slambrook ordered:

"Based upon the findings of facts and conclusions of law, I find, conclude and declare that Plaintiff's Ex. 6 is a valid and binding contract between and among the parties to this case." Exhibit "B", p.8 of 10, (emphasis added).

No appeal was taken to the Declaratory Order.

Demand was thereafter made to the Defendants for performance and compliance with the Contract. **Exhibit "C"**, (also Exhibit 5 to Brandon W. Linder's deposition). It is undisputed that Defendants did not perform and comply with the Contract.

BREACH OF CONTRACT ACTION
(Case No. 2019-CP-08-02445)

The instant case was then initiated by the Plaintiff by the filing of a Summons and Complaint and related papers in this Court on October 7, 2019.

Plaintiff alleges breach of the Contract by the Defendants because of a default in payment and he seeks specific performance.

Defendants filed their timely responsive pleadings made a part of the record.

DEPOSITION OF BRANDON W. LINDER
(May 12, 2021)

On May 12, 2021, pursuant to notice and a subpoena for records, Defendant Brandon W. Linder appeared for a deposition with his attorney at the offices of Plaintiff's counsel.

Relevant excerpts from Mr. Linder's deposition testimony are contained and highlighted for the Court's ease of reference in **Exhibit "D"**, which references Exhibit 3 to the Linder deposition.

The highlighted excerpts are found at:

1. Page 9, lines 13-25;
2. Page 11, lines 5-25;
3. Page 12, lines 1-4;
4. Page 23, lines 2-11;
5. Page 26, lines 12-25;
6. Page 27, lines 1-21;
7. Page 28, lines 19-25;
8. Page 29, lines 1- 4;
9. Page 32, lines 1-25;
10. Page 33, lines 1-2;
11. Page 34, lines 21-25;
12. Page 35, lines 1-15;
13. Page 35, lines 19-25;
14. Page 36, lines 1-25;
15. Page 38, lines 14-25;
16. Page 39, lines 1-2.

SUMMARY JUDGMENT STANDARD

In reviewing a motion for summary judgment, a trial court's task is well-known and well-settled. Under *Rule 56, SCRCP*, summary judgment is proper when both:

- (a) No genuine issue as to any material fact exists, and
- (b) The moving party is entitled to judgment as a matter of law.

In making the determination of whether or not any triable issue of fact exists, it is settled South Carolina law that the evidence and all inferences that can reasonably be drawn must be viewed in the light most favorable to the nonmoving party. Our courts have consistently ruled that summary judgment should not be granted if further inquiry into the facts is desirable to clarify the application of the law.

To prevail on a summary judgment motion, the moving party has to show that there is no genuine issue as to any material fact. To determine whether any trial issues of fact exist for summary judgment purposes, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Carolina Convenience Stores, Inc. v. City of Spartanburg*, 398 S.C. 27, 727 S.E.2d 28 (Ct. App. 2012).

Summary judgment has been held to be appropriate only when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. *Bessinger v. Bi-Lo*, 329 S.C. 617, 496 S.E.2d 33,34 (Ct.App.1998).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt.*, 381 S.C. 326, 673 S.E. 2d 801, 803 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.

In the recent case of *Gibson v. Epting*, 426 S.C. 346, 827 S.E. 2d 178 (Ct. App. 2019), in discussing the scintilla rule, the Court observed, “the summary judgment standard governing Gibson’s claims requires her to produce only a “scintilla” of evidence to avoid judgment as a matter of law, but a scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows. *Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935) (“‘Scintilla’ means, according to 56 C. J. 863, ‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’ ”); *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908) (“[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.”); *Scintilla*, The Oxford English Dictionary (2nd ed. 2018) (“A spark ... a minute particle, an atom.”); see *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (“When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’ ” (citations omitted)); *Grimsley v. S.C. Law Enf’t Div.*, 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015) (affirming trial court’s grant of summary judgment and noting court of appeals improperly “cherry-picked” an isolated portion of the record, placed it out of context, and “elevated what is, at best, a metaphysical doubt into a genuine issue of material fact”); *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984) (“The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.”); *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir.1985) (explaining that party opposing summary judgment “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another”).

A non-moving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S. E, 2d 161, 166 (2013).

ARGUMENT

I. Judge Van Slambrook’s Declaratory Order is the law of the case under South Carolina Law.

In a long line of cases our courts have affirmed the doctrine of law of the case.

In *Mason v. Mason*, 412 S.C. 28, 770 S.E. 2d 405, (Ct. App. 2015), the Court of Appeals summarized the well-settled law in South Carolina on the law of the case doctrine:

“An unappealed ruling, right or wrong, is the law of the case.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (emphasis added). See also *South Carolina Dept. of Labor, Licensing and Regulation v. Chastain*, 392 S.C. 259, 708 S.E. 2d 818 (Ct. App. 2011), citing *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282 n. 5, 701 S.E.2d 742, 745 n.5, (2010), **“An unappealed ruling is the law of the case.”** (emphasis added). *Fickling v. City of Charleston*, 643 S.E. 2d 110. In *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 776 S.E. 2d 397 (Ct. App. 2015), our Court of Appeals affirmed that the policy behind the law of the case doctrine is to **“promote the finality and efficiency of the judicial process by protecting against the agitation of settled issues.”** (emphasis added). *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) (quotation marks omitted). **“The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter.”** (emphasis added). *United States v. U.S. Smelting Ref. & Mining Co.*, 339 U.S. 186, 198, 70 S. Ct. 537, 94 L. Ed. 750 (1950)

In his un-appealed Declaratory Order, which is now undeniably the law of the case, Judge Van Slambrook declared *inter alia* that:

1. **Exhibit “A”** is a valid and binding contract between Plaintiff and all Defendants.
2. The contract sum is \$300,000.00, **Exhibit “A”**, p. 1 and **Exhibit “B”**, ¶18, p. 5 of 10; and
3. As of the date of his order, Defendants paid only \$33,000.00 to the Plaintiff on the contract sum. **Exhibit “B”**, ¶18, p. 5 of 10.

II. There is no genuine issue of material fact that Defendants have breached the Contract with the Plaintiff and he is entitled to judgment as a matter of law.

A. Plaintiff averred in his Affidavit dated July 23, 2021 as follows:

1. No payment on the Contract has been made since November 26, 2018. **Exhibit “E”, ¶ 7.**
2. Due and owing on the Contract sum is \$267,000.00. **Exhibit “E”, ¶10.**
3. Defendants were required to procure a life insurance policy on the life of Brandon W. Linder with a \$1,000,000 death benefit with Plaintiff as beneficiary. **Exhibit “E”, ¶¶ 11,12.**
4. Mr. Linder testified in his deposition that a life insurance policy is in force and effect, but Mr. Smith is named as a beneficiary of \$300,000.00 only. **Exhibit “E”, ¶10.**

B. Defendant Brandon W. Linder admitted in his deposition *inter alia* that:

1. Plaintiff demanded payment of the \$267,000.00 due. **Linder Depo. Page 28, lines 19-25, referencing Exhibit “C”.**
2. He said that the reason that Plaintiff has not been paid is because Defendants do not have the money. **Linder Depo. Page 32, lines 19-25.**
3. He said that if the Defendants had the money they would pay the Plaintiff. **Linder Depo. Page 35, lines 6-9.**

CONCLUSION

Pursuant to SCRCP 56, the case law in this State and the record herein, and because no genuine issue of material fact exists, Plaintiff is entitled to judgment as a matter of law.

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 jwestlaw@homesc.com
 Attorneys for Plaintiff

July 30, 2021
 Moncks Corner, SC

EXHIBIT “A”

TO

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

2019-CP-08-02445

ELECTRONICALLY FILED - 2020 JAN 10 12:21 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0802241
ELECTRONICALLY FILED - 2019 JAN 11 3:00 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0802241

5-22-17

EXHIBIT "A" TO COMPLAINT

**MODIFICATION AND ADDENDUM OF THE AGREEMENT MADE BY
GERALD R. SMITH, SELLER AND BRANDON W. LINDER, PURCHASER**

WHEREAS, the parties hereinabove entered into an agreement for the purchase of assets of United Cable, Inc., on or about January 4, 2006. The parties desire to make the following modifications and addendum to the Sale Agreement.

WHEREAS, the Purchaser, Brandon Linder, also now known as United Cable Construction, Inc., currently owes \$1,084,244.51; and

WHEREAS, the Seller, Gerald Smith, is agreeable to reduce the payoff to \$300,000.00 provided the following terms are met:

1. That the Purchaser, Brandon W. Linder, will immediately reinstate a life insurance policy on his life in the amount of \$1,000,000.00 and will be specifically designate Gerald R. Smith as beneficiary. This must be immediately accomplished.
2. The Purchaser, Brandon W. Linder, also now known as United Cable Construction, Inc., will make monthly payments of \$10,000.00 directly to Grover O. Seaton, III, Esquire, attorney for Gerald R. Smith through the month of December 2018 at an interest rate of 1% added thereon; the balance in December 2018 will be a balloon note which must be paid during the month of December 2018.
3. That the house on the real estate at Frankie Lane, Ladson, SC known as 144 Frankie Lane, Ladson, SC in the names of Brandon W. Linder and Karla Linder will be immediately deeded to Gerald R. Smith subject to all mortgages and liens. Brandon W. Linder shall be responsible for the monthly mortgage, taxes, insurance and upkeep on the property.
4. Should the Purchaser, Brandon W. Linder, not perform as to the conditions as set out hereinabove, he will immediately abandon the use of the property at 144 Frankie Lane, Ladson, SC.
5. Should the Purchaser, Brandon W. Linder, perform as set out hereinabove, the house as mentioned hereinabove shall be transferred back to Brandon W. Linder and Karla Linder.
6. Lastly, the parties agree to forgo and abandon any and all provisions of the sales contracts and addendums thereto as to any arbitration in the event of default.

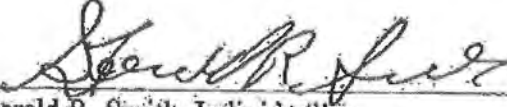


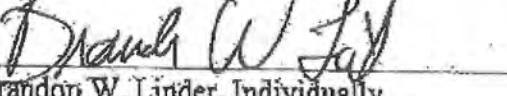
WHEREFORE, the parties to this Addendum and Modification hereby set and agree to be bound to all the terms and conditions as set forth as evidenced by their signatures below dated this 22 day of May 2017.


Witness


Witness


Witness


Gerald R. Smith, Individually


Brandon W. Linder, Individually


Karla Linder

EXHIBIT “B”

TO

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

2019-CP-08-02445

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2018-CP-08-2241
	)	
GERALD R. SMITH,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DECLARATORY ORDER
	)	
UNITED CABLE CONSTRUCTION CO.,	)	
INC., SOUTH ATLANTIC	)	
COMMUNICATIONS, INC., BRANDON	)	
W. LINDER and KARLA LINDER,	)	
	)	
Defendants.	)	
	)	

PROCEDURAL BACKGROUND AND PARTIES

This declaratory judgment proceeding came before me for a hearing on the merits at the Berkeley County Courthouse on May 15, 2019 at 11:30 A.M. pursuant to Order of Reference With Finality. Notice of hearing was properly made and served.

Present at hearing were the Plaintiff, Gerald R. Smith and his attorney John S. West, Esq. of the West Law Firm, PA of Moncks Corner, along with two witnesses for the Plaintiff, namely Grover C. Seaton, III, Esq. and George Talbert. Also present was Brandon W. Linder, appearing individually and as agent and authorized representative of all other Defendants and his attorney Adam Mlynarczyk, Esq. of the law firm of Koontz/Mlynarczyk, LLC of North Charleston.

The record reflects that the Defendants were electronically served with the Amended Summons and Amended Complaint and related pleadings through their attorney of record as established in the record. The record further reflects that no answer or other responsive pleadings were filed by the Defendants in response to the Amended Summons and Amended Complaint.

All Defendants were adjudged to be in default by Order of Default. Service of the Order of Default was affected electronically.

At the call of the case, notwithstanding the default status of the Defendants, Plaintiff consented to the full participation of the Defendants in the hearing given the declaratory nature of the proceedings.

FINDINGS OF SALIENT FACTS

From the record before me, from arguments by counsel, from the exhibits and testimony elicited in open Court and under oath, I find by a clear preponderance of the evidence the following salient facts:

1. The parties acknowledged in open court that there has been a long and largely cordial course of dealings among and between them going back to an original transaction which took place in 2006, when the corporate defendants purchased the assets of United Cable Construction Co., Inc., a company founded by the Plaintiff many years ago and which was owned solely by him at the time of sale.
2. Multiple agreements associated with and incidental to the original transaction were stipulated to and were admitted into evidence without objection which memorialized the understandings of the involved parties. Additionally, various subsequent agreements modifications and amendments thereto were admitted into evidence without objection, collectively, *Plaintiff's Ex. 1, 2, 3, 4 and 5*.
3. About the status and relations of the parties as to the agreements and understandings, as modified, contained in *Plaintiff's Ex. 1, 2, 3, 4 and 5*, there is no dispute or controversy before this Court.

4. What is before this Court however, is a real and considerable dispute and controversy concerning the validity of a single instrument dated May 22, 2017, which was admitted in evidence as *Plaintiff's Ex. 6*, without objection¹.
5. The disagreement about *Plaintiff's Ex. 6* is stark. Plaintiff contends that *Plaintiff's Ex. 6* reduces to writing and memorializes the clear and unambiguous expression of a binding contract. Plaintiff contends further that *Plaintiff's Ex. 6* embodies the product of a meeting of the minds of the parties and the same now controls their mutual promises and undertakings going forward.
6. Defendants assert just the opposite. They contend that *Plaintiff's Ex. 6* and the intentions of the parties expressed therein are aspirational only and not a valid contract.
7. Plaintiff unequivocally represented to the Court that the relief he seeks is not presently related to the enforcement of *Plaintiff's Ex. 6*.
8. Rather, Plaintiff contends that he has been compelled to seek an order of this Court determining the status and relations of the parties relative to *Plaintiff's Ex. 6*, after which Plaintiff may better determine which instrument(s) form the lawful basis for enforcement of any alleged breach by the Defendants and the remedies he may seek to pursue, if any.
9. Plaintiff specifically contends that he is required to seek the declaratory relief set forth in his Amended Complaint because of Defendants' position disavowing² any obligation or imperative by any and all Defendants to perform as set forth in *Plaintiff's Ex. 6*.
10. Defendants forcefully argued that while there are features to *Plaintiff's Ex. 6* which are very attractive to the Defendants; specifically a huge discount in the total payoff amount³,

¹ For purposes of this Order, I am attaching *Plaintiff's Ex. 6* hereto and incorporating the same into the Order by reference in its entirety.

² *Plaintiff's Ex. 8* includes a letter from Attorney Mlynarczyk to Attorney Seaton declaring that *Plaintiff's Ex. 6* is not a valid contract. The position of Defendants at the hearing did not change.

³ The precise dollar figure of the agreed upon discount is \$784,244.51.

there is an element of *Plaintiff's Ex. 6*, that is to say the required conveyance to the Plaintiff by the record owners of certain real properties located at 144 Frankie Lane, Ladson, South Carolina, that according to Defendants cannot be done without creating collateral issues for the Defendants vis-a-vis other lienholders and creditors.

11. In support of their position regarding the 144 Frankie Lane properties, Defendants introduced *Defendants' Ex. 1, 2 and 3*, which are excerpts from the record in a mortgage foreclosure case bearing Case No. 2016-CP-08-2352.
12. Over the period from 2006 through April, 2017 periodic payments of varying amounts were paid to the Plaintiff by the named obligors. It is undisputed that as of the end of April, 2017, Gerald R. Smith was owed \$1,084,244.51.
13. During mid-May, 2017, Gerald R. Smith and Brandon Linder, acting individually and for the corporate defendants agreed that it was mutually beneficial that the then balance due be greatly reduced. Doing so would produce a direct benefit to Gerald R. Smith in that he would see his money during his lifetime and simplify his estate planning efforts.⁴ The payoff reduction would obviously assist the obligors by reducing the total debt service costs going forward substantially.
14. Gerald R. Smith and Brandon Linder then mutually decided to meet at the law offices of Gerald R. Smith's longtime attorney Grover C. Seaton, III of Moncks Corner for the purpose of communicating to Mr. Seaton the terms of their "deal" and to mutually ask Mr. Seaton to prepare an instrument in writing memorializing their latest agreement.⁵
15. Mr. Seaton met with Gerald R. Smith and Brandon Linder on May 21, 2017 at his office in Moncks Corner. Mr. Seaton made it clear to Brandon Linder that he represented

⁴ Gerald Smith was 81 years old in 2017. On the date of hearing he was 83 years old.

⁵ The only outstanding question when Gerald R. Smith and Brandon Linder appeared in Mr. Seaton's office was the balance due. Gerald R. Smith originally insisted on \$400,000. Brandon Linder proposed \$300,000. The parties agreed to \$300,000. All other terms were agreed upon in advance of arrival at Mr. Seaton's office.

Gerald R. Smith only in the matter. Mr. Seaton inquired of Brandon Linder whether he and/or his entities were represented by counsel and if so who was his/its lawyer.

16. Brandon Linder declared to Mr. Seaton that he did not need or want a lawyer to represent him; the agreement with Gerald R. Smith was simple, plain, straightforward and specific and that he wanted to proceed with reducing the latest agreement with Gerald Smith to writing.
17. Mr. Seaton then immediately drafted the agreement which was presented to Mr. Smith, Brandon Linder and his wife Karla Linder⁶ the following day by Mr. Seaton's employee George Talbert and the same was executed and witnessed in Mr. Talbert's presence.
18. From September, 2017 until November, 2018, Brandon Linder, individually and as agent for the other Defendants made payments to Mr. Seaton per ¶ 2 of *Plaintiff's Ex. 6* on account of the agreed upon balance due of \$300,000 in varying amounts for a total undisputed amount of \$33,000. *Plaintiff's Ex. 7*.

CONCLUSIONS OF LAW

I. Elements of a contract

The necessary elements of a contract are offer, acceptance, and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other." *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable. *Gaskins v. Firemen's Ins. Co. of Newark, N. J.*, 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral).

⁶ Karla Linder is a signatory to *Plaintiff's Ex. 6* because she was the owner of an undivided interest in the 144 Frankie Lane properties.

Each and all of the elements of a contract are met and satisfied by *Plaintiff's Ex. 6*. With respect to valuable consideration, it is manifestly clear to this Court that *Plaintiff's Ex. 6* embodies rights, interests, profits or benefits accruing to all parties together with mutual forbearances, detriments, losses and responsibilities given, suffered or undertaken.

In simpler terms, both sides got what they wanted and everybody gave up some things to get it. Thereafter, Defendants partially performed under *Plaintiff's Ex. 6* by paying money to the Plaintiff and Plaintiff accepted the payments. The total payments represented significant dollars and totaled more than ten (10%) of the balance due.

II. Meeting of the Minds

South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement.” *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893 (1989) (emphasis in original); *see also Potomac Leasing Co. v. Otts Mkt., Inc.*, 292 S.C. 603, 606, 358 S.E.2d 154, 156 (Ct.App.1987) (“It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms.”). “*The necessary elements of a contract are an offer, acceptance, and valuable consideration.*” *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). In *Player v. Chandler*, the South Carolina Supreme Court asserted:

The “meeting of minds” required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

Here, there is a clear and obvious meeting of the minds. There were no secrets. There was no confusion. There was no equivocation. Plaintiff openly wanted to wrap up his deal with Defendants with a reasonable measure of security and Defendants openly wanted to capture the windfall that would be the product of the significant reduction of the payoff.

III. South Carolina Uniform Declaratory Judgment Act (S.C. Code Ann. § 15–53–10)

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect. Such declarations shall have the force and effect of a final judgment or decree. *S.C. Code Ann. § 15–53–20*.

To state a cause of action under South Carolina’s Uniform Declaratory Judgment Act, a party must demonstrate a justiciable controversy. *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” *Id.* Thus, “[a]ny person interested under a ... written contract... may have determined any question of construction or validity arising under the ... contract... and obtain a declaration of rights, status or other legal relations thereunder.” *S.C. Code Ann. § 15–53–30* (2005).

A justiciable controversy is plainly before this Court regarding *Plaintiff’s Ex. 6*. This is not a vague or academic disagreement. A clear and concrete issue exists between and among the parties.

Moreover, the fact that Plaintiff is not seeking an enforcement for an alleged breach in this case is of no consequence. *S.C. Code Ann. § 15–53–40* specifically contemplates the very situation before this Court and empowers this Court to determine the outcome independent of the enforcement aspects of this dispute... “a contract may be interpreted before and after a breach.”

Plaintiff has properly invoked the provisions of the South Carolina Declaratory Judgment Act. He is entitled to a determination of this Court regarding *Plaintiff’s Ex. 6*.

ORDER

Based upon the findings of fact and conclusions of law, I find, conclude and declare that *Plaintiff's Ex. 6* is a valid and binding contract between and among the parties to this case.

AND IT IS SO ORDERED.

SIGNED ELECTRONICALLY BY DALE E. VAN SLAMBROOK,
MASTER IN EQUITY FOR BERKELEY COUNTY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-08-2241

GERALD R. SMITH,

UNITED CABLE CONSTRUCTION CO., INC,
SOUTH ATLANTIC COMMUNICATIONS,
INC, BRANDON W. LINDER and KARLA
LINDER,

PLAINTIFF(S)

DEFENDANT(S)

John S. West
PO Box 1869
Moncks Corner, SC 29461

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

(Signature Page to Follow)

For Clerk of Court Office Use Only

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

John S. West
PO Box 1869
Moncks Corner, SC 29461
 ATTORNEY(S) FOR THE PLAINTIFF(S)

Adam Mlynarczyk
1058 E. Montague Ave
N. Charleston, SC 29405
 ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:



Berkeley Common Pleas

Case Caption: Gerald R Smith VS United Cable Construction Co Inc , defendant, et al
Case Number: 2018CP0802241
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

Electronically signed on 2019-07-30 08:06:15 page 11 of 11

5-22-17

EXHIBIT "A" TO COMPLAINT

**MODIFICATION AND ADDENDUM OF THE AGREEMENT MADE BY
GERALD R. SMITH, SELLER AND BRANDON W. LINDER, PURCHASER**

WHEREAS, the parties hereinabove entered into an agreement for the purchase of assets of United Cable, Inc., on or about January 4, 2006. The parties desire to make the following modifications and addendum to the Sale Agreement.

WHEREAS, the Purchaser, Brandon Linder, also now known as United Cable Construction, Inc., currently owes \$1,084,244.51; and

WHEREAS, the Seller, Gerald Smith, is agreeable to reduce the payoff to \$300,000.00 provided the following terms are met:

1. That the Purchaser, Brandon W. Linder, will immediately reinstate a life insurance policy on his life in the amount of \$1,000,000.00 and will be specifically designate Gerald R. Smith as beneficiary. This must be immediately accomplished.
2. The Purchaser, Brandon W. Linder, also now known as United Cable Construction, Inc., will make monthly payments of \$10,000.00 directly to Grover C. Seaton, III, Esquire, attorney for Gerald R. Smith through the month of December 2018 at an interest rate of 1% added thereon; the balance in December 2018 will be a balloon note which must be paid during the month of December 2018.
3. That the house on the real estate at Frankie Lane, Ladson, SC known as 144 Frankie Lane, Ladson, SC in the names of Brandon W. Linder and Karla Linder will be immediately deeded to Gerald R. Smith subject to all mortgages and liens. Brandon W. Linder shall be responsible for the monthly mortgage, taxes, insurance and upkeep on the property.
4. Should the Purchaser, Brandon W. Linder, not perform as to the conditions as set out hereinabove, he will immediately abandon the use of the property at 144 Frankie Lane, Ladson, SC.
5. Should the Purchaser, Brandon W. Linder, perform as set out hereinabove, the house as mentioned hereinabove shall be transferred back to Brandon W. Linder and Karla Linder.
6. Lastly, the parties agree to forgo and abandon any and all provisions of the sales contracts and addendums thereto as to any arbitration in the event of default.

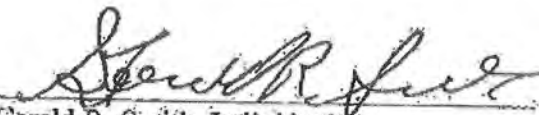


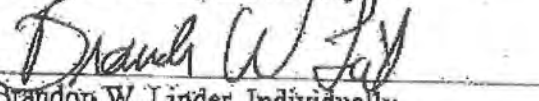
WHEREFORE, the parties to this Addendum and Modification hereby set and agree to be bound to all the terms and conditions as set forth as evidenced by their signatures below dated this 22 day of May 2017.


Witness


Witness


Witness


Gerald R. Smith, Individually


Brandon W. Linder, Individually


Karla Linder

EXHIBIT “C”

TO

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

2019-CP-08-02445



JOHN S. WEST
J. CAMDEN WEST
E. MASON WEST
H. N. WEST (1920-2014)

WEST LAW FIRM, P.A.

207 CAROLINA AVENUE
PO BOX 1869
MONCKS CORNER, SC 29461

PHONE: 843.761.5626

FAX: 843.761.5627

WEBSITE: WESTLAWFIRMSC.COM

JWESTLAW@HOMESC.COM

CAM@WESTLAWFIRMSC.COM

MASON@WESTLAWFIRMSC.COM

FOR SETTLEMENT DISCUSSION PURPOSES ONLY

September 18, 2019

Adam Mlynarczyk, Esq.
1058 East Montague Avenue
North Charleston, SC 29485
BY US MAIL AND E-MAIL: adam@kmlawsc.com

Re: Smith v. United Cable Construction Co., Inc. et al
Case No. 2018-CP-08-2241

Dear Adam:

As you know Judge Van Slambrook entered his Declaratory Order on July 30, 2019 which was served on you electronically.

Unless this matter can be resolved by full and final settlement immediately, I have been authorized by Mr. Smith to institute proceedings on the Contract. Attached is a proposed Summons and Complaint.

This writing is to demand payment in full of the sum of \$267,000.00, plus pre-judgment interest and the delivery of proof of the existence of the life insurance policy referenced in Item 1 of the Contract naming Mr. Smith as beneficiary.

I will defer filing for a period of fifteen (15) days from the date of this letter to give you and your client an opportunity to consider this demand.

Sincerely yours,

John S. West

Cc: Gerald R. Smith



EXHIBIT “D”

TO

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

2019-CP-08-02445



Deposition of:
Brandon W Linder

May 12, 2021

In the Matter of:
**Smith, Gerald R Vs. United Cable
Construction Co., Inc., Et Al**

Veritext Legal Solutions
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www.veritext.com

1 STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY
3 GERALD R. SMITH,
4 Plaintiff,
5 vs. CASE NO. 2019-CP-08-02445
6 UNITED CABLE CONSTRUCTION CO., INC.,
SOUTH ATLANTIC COMMUNICATIONS, INC.,
7 BRANDON W. LINDER AND KARLA LINDER,
8 Defendants.
9

10 DEPOSITION OF: BRANDON W. LINDER
11 DATE: May 12, 2021
12 TIME: 10:40 a.m.
13 LOCATION: West Law Firm, P.A.
207 Carolina Avenue
14 Moncks Corner, SC
15 TAKEN BY: Counsel for the Plaintiff
16 REPORTED BY: KAREN NELLIUS, RPR

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR PLAINTIFF

3 GERALD R. SMITH:

4 WEST LAW FIRM, P.A.

5 BY: JOHN S. WEST

6 207 Carolina Avenue

7 Moncks Corner, SC 29461

8 843-761-5626

9 Jwestlaw@homesc.com

10 ATTORNEYS FOR DEFENDANTS

11 UNITED CABLE CONSTRUCTION CO., INC.,

12 SOUTH ATLANTIC COMMUNICATIONS, INC.,

13 BRANDON W. LINDER AND KARLA LINDER:

14 KOONTZ, MLYNARCZYK, LLC

15 BY: JOSHUA D. GIANCOLA

16 1058 East Montague Avenue

17 North Charleston, SC 29405

18 843-225-4252

19 Josh@kmlawsc.com

20 ALSO PRESENT:

21 Grover Seaton

22 (INDEX AT REAR OF TRANSCRIPT)

1 Q. Let me see them. That was my question.
2 After May 22nd, 2017.

3 A. Yes, sir.

4 Q. That's inconsistent with your testimony
5 earlier.

6 A. Well, I brought the whole document from
7 the proceedings that were held before that were
8 provided for me.

9 Q. All right.

10 A. I don't recollect every item that was
11 in that whole package. There is a couple hundred
12 pages there.

13 Q. Okay. All right. If you'll look over
14 the material that your lawyer just handed you and
15 see if those records are consistent with your
16 obligation to produce documents today.

17 A. Yes, sir.

18 Q. Okay. Have you reviewed them?

19 A. Yes, sir.

20 Q. All right.

21 MR. WEST: Now, let's go ahead and mark
22 these, please, ma'am. This would be number 3.

23 (PLAINTIFF EXHIBIT 3, PAYMENT RECORDS,
24 was marked for identification.)

25 BY MR. WEST:

1 Q. -- 2017?

2 A. No, sir.

3 Q. That was before?

4 A. Yes, sir.

5 Q. I'm talking about -- let's get this
6 clear in our head. May 22nd, 2017 is the beginning
7 point of my conversation with you.

8 A. Okay. I apologize. Yes, sir.

9 Q. May 22nd, 2017, you've indicated that
10 you have made payments based on what's reflected in
11 Plaintiff's Exhibit 3.

12 A. Yes, sir.

13 Q. All right. Now, my question to you is:
14 Do you have any records of any other payment --

15 A. No, sir.

16 Q. Let me finish my question.

17 A. I apologize.

18 Q. -- any other payment to Mr. Smith other
19 than what is reflected on Plaintiff's Exhibit 3
20 after May 22nd, 2017?

21 A. No, sir.

22 Q. No, sir, you don't have the record or
23 no, sir, they don't exist?

24 A. No, sir.

25 Q. Which is it?

1 A. What I have I have provided.

2 Q. All right. There are no other records
3 after May 22nd, 2017?

4 A. No, sir.

5 Q. All right. Now, we got off to a little
6 rocky start. I want to sort of calm things down a
7 little bit. Okay? Because this is a discovery
8 deposition. I'm going to explain to you just so
9 you'll understand. I'm sure your lawyer has talked
10 to you about this.

11 This is a question-and-answer format
12 where I ask questions to try to discover what you
13 know that we need to know in order to evaluate the
14 case and try the case. That's what a discovery
15 deposition is.

16 A. Yes.

17 Q. So I will ask question, and if you will
18 permit me to finish my question, then I will permit
19 you to finish your answer so that the court
20 reporter doesn't have trouble figuring out who is
21 saying what. Okay?

22 A. Yes, sir.

23 Q. So let's sort of pledge to one another
24 that we will allow each other to finish what we are
25 saying before the other one begins to speak.

1 that into the record. It's a couple of lines.

2 A. Based upon the findings of fact and
3 conclusions of law, I find, conclude and declare
4 that Plaintiff's Ex. 6 is a valid and binding
5 contract between and among the parties in this
6 case.

7 Q. Okay. So now that you've read that,
8 does that refresh your memory or cause you to
9 understand what Judge Van Slambrook ruled in that
10 case?

11 A. Yes, sir.

12 Q. All right. I'm going to ask you, if
13 you will, just so we're clear for the record, to
14 take a look at the attachment to that order, which
15 is designated as Plaintiff's Exhibit 6. So when
16 Judge Van Slambrook said that Plaintiff's Exhibit 6
17 is determined to be a contract, he referred to
18 Plaintiff's Exhibit 6, which is attached to the
19 document there, which we have had marked as
20 Plaintiff's Exhibit 4. Of course you are familiar
21 with this document, Plaintiff's Exhibit 6?

22 A. Yes, sir. I've seen it before.

23 Q. Yeah. And this is the document that
24 the judge said is the contract between the parties
25 that are in this case; is that right?

1 turn over to page 5. Specifically I call your
2 attention to paragraph 18, paragraph 18, page 5 of
3 the declaratory order: From September, 2017 until
4 November, 2018, Brandon Linder, individually and as
5 agent for the other defendants, made payments to
6 Mr. Seaton per paragraph 2 of Plaintiff's Exhibit 6
7 on account of the agreed upon balance due of
8 \$300,000 in varying amounts for a total undisputed
9 amount of \$33,000. Plaintiff's Exhibit 7. Do you
10 see that?

11 A. Yes, sir, I do see that.

12 Q. Now, I want to connect it to what you
13 have showed me in Plaintiff's Exhibit 3, which is
14 also noted as Plaintiff's Exhibit 8 in the first
15 proceeding, that if you'll look through all of that
16 again and make sure that that package of checks
17 total \$33,000.

18 A. Yes, sir, it does.

19 Q. Okay. So another way of asking that
20 question: There is no disagreement that what
21 you've paid on the 300,000 that you owe Mr. Smith
22 is \$33,000. That's what you paid on the agreement
23 of 300,000; is that correct?

24 A. Since when?

25 Q. Since --

1 A. This agreement?

2 Q. Since that agreement.

3 A. Yes, sir, that is correct.

4 Q. You haven't paid anything since?

5 A. No, sir.

6 Q. All right. Now, I do want to go back
7 again -- just bear with me -- to the exhibit,
8 Plaintiff's Exhibit 6, which is at the very back of
9 that document, and I'm going to refer you to --
10 specifically to paragraph 2 of Plaintiff's Exhibit
11 6.

12 A. Okay.

13 Q. I'm not going to read the whole thing,
14 but I'll go down to the very last two lines: The
15 balance in December 2018 will be a balloon note
16 which must be paid during the month of December
17 2018. Do you see that language?

18 A. Yes, sir, I see that language.

19 Q. And of course by your prior testimony
20 that has not been done?

21 A. No, sir.

22 Q. Okay. All right. Thank you.

23 MR. WEST: Madam Court Reporter, I'm
24 going to ask you if we can staple these together.

25 BY MR. WEST:

1 Q. Mr. Linder, I'm going to now ask you if
2 you are aware that after Judge Van Slambrook issued
3 his order, the one that we were just talking about,
4 that a demand was made to your lawyer for payment
5 in full on the amount that you do not dispute is
6 owed of \$267,000. You would agree with me that
7 that's what you owe Mr. Smith, right?

8 A. No, sir.

9 Q. You don't agree with that?

10 A. No, sir.

11 Q. All right. Well, I'm going to get to
12 that in a minute, then.

13 MR. WEST: I'll ask if you'll mark that
14 next document as Plaintiff's Exhibit 5.

15 (PLAINTIFF EXHIBIT 5, DEMAND LETTER,
16 DATED 9/18/19, FROM JOHN S. WEST TO ADAM
17 MLYNARCZYK, was marked for identification.)

18 BY MR. WEST:

19 Q. I'm going to hand you a document that's
20 been marked Plaintiff's Exhibit 5 to your
21 deposition and ask you if you are aware of the
22 September 18, 2019, demand letter to your lawyer
23 for payment in full. Do you know anything about
24 this?

25 A. Yes, sir.

1 Q. All right. And have you done anything
2 in regard to making payment to Mr. Smith on the
3 amount demanded in the letter?

4 A. I have not made any payments, no, sir.

5 Q. All right. As a result of that, you
6 now understand that a breach of contract case has
7 been brought against you, the case that brings us
8 here today. Do you know that that has happened?

9 You know you are being sued under the
10 contract, don't you, that brings us here today? Do
11 you know there is a second lawsuit that's been
12 brought on the breach of contract?

13 A. I'm not aware of that, no.

14 Q. You are not aware of that? Then what
15 case are you here on?

16 A. I'm here on the case that you brought
17 me here on.

18 Q. Well --

19 A. The one this affidavit said. I didn't
20 read it. It says procedural background. I don't
21 see where it says breach of contract.

22 Q. All right. Let me help you --

23 A. I apologize.

24 Q. Let me help you with that. Okay?

25 A. Yes, sir.

1 Q. I'm not talking about any settlement
2 negotiations, now. I can't get into all that. I'm
3 talking about the actual payment.

4 A. I have not made a payment, no, sir.

5 Q. All right. And no one on your behalf
6 has made a payment to Mr. Smith?

7 A. Not to my recollection, no, sir.

8 Q. All right. Do you remember when we
9 tried the case before Judge Van Slambrook, we spent
10 a good bit of time, Mr. Linder, talking about why
11 you had not been making payments to Mr. Smith? We
12 talked about that, do you remember? Do you
13 remember that?

14 A. Briefly, yes, sir.

15 Q. Do you remember that your answer was,
16 as to why you hadn't been making the payments, that
17 you didn't have the money?

18 A. Yes, sir.

19 Q. Okay. Is that still the case today as
20 to why you are not making payments or have paid
21 Mr. Smith what you owe him, that you didn't have
22 the money then and you don't have the money now?

23 A. Well, I do not have the money now, no,
24 sir.

25 Q. Is that the reason why you hadn't paid

1 him?

2 A. Yes, sir.

3 Q. When I asked you earlier about the
4 \$267,000 payment that was due Mr. Smith, that was
5 based on the judge's determination that there was a
6 contract, \$300,000, right, minus what you paid him?

7 A. I can't answer for the judge, sir, what
8 he figured. I mean, that's not my job.

9 Q. I'm not asking you to speak for the
10 judge. That's what the judge ruled. There is a
11 contract for \$300,000. He made a finding that you
12 had paid \$33,000. You can check my math behind me,
13 but that comes up to a total of \$267,000 is due on
14 the contract; is that right?

15 A. I cannot interpret that contract for
16 the judge and why he said what he said. I
17 apologize, but I'm not going to do that.

18 Q. Well, you would agree --

19 A. His interpretation of that piece of
20 paper and my interpretation is two different
21 things.

22 Q. Yeah, but he is a judge.

23 A. That's true.

24 Q. And he determined that there was
25 \$267,000 due on the contract, right? That's what

1 the judge said?

2 A. That's what the judge said on this
3 paper, yes, sir.

4 Q. That's what he said. And other than
5 the fact that you don't have the money, you are
6 telling me today you don't have the money to pay
7 Mr. Smith what the judge says you owe him, what
8 other reason would you have other than you don't
9 have the money as to why you hadn't paid Mr. Smith?

10 A. Well, I'm being in the middle of a
11 lawsuit, and the judge, in my opinion, did not --
12 he didn't articulate the contract and to say what
13 it means. All he said it was a contract. He
14 didn't give any definition on what it meant or
15 whether it was enforceable, or anything of that
16 nature. All he did was said it was a contract.

17 Q. He said some other things in that
18 order, too, didn't he? It's a pretty thorough
19 declaratory order, wouldn't you agree?

20 A. No, sir.

21 Q. Okay. Well, let's get back to my
22 question.

23 Okay. You said you were unable to pay
24 Mr. Smith the money you owe him, right? You don't
25 have the money?

1 A. I do not have \$267,000, no, sir.

2 Q. Other than the fact that you do not
3 have the money, my question to you is: Why would
4 you not pay him what you owe him?

5 A. Why would I -- please repeat that.

6 Q. Why would you not pay him what you owe
7 him other than the fact that you don't have it?

8 A. I wouldn't. If I had the money, I
9 would pay him.

10 Q. All right. Now, I want to touch on a
11 couple things and we'll take a short break. Over
12 the course of the period from 2006 until today, as
13 we sit here, you would agree with me that Mr. Smith
14 has been fair with you?

15 A. I would say he has been reasonable.

16 MR. WEST: Let's take a short break.

17 (A recess transpired.)

18 BY MR. WEST:

19 Q. Just a couple more questions and we can
20 wrap things up, Mr. Linder. You handed me -- when
21 I asked you what you brought with you in response
22 to the subpoena, you handed me a document which has
23 been marked as Plaintiff's Exhibit 2 to your
24 deposition. Would you explain to me what that
25 document is and what it means?

1 A. This is a \$1 million life insurance
2 policy for Brandon W. Linder from Grange Life
3 Insurance Company.

4 Q. And is that policy in force and effect
5 today?

6 A. Yes, sir, it is.

7 Q. Are the premiums current?

8 A. Yes, sir, it is.

9 Q. Who is the beneficiary or who are the
10 beneficiaries under that policy?

11 A. There are three of them: Enterprise
12 Bank, Gerald R. Smith, and Karla Linder.

13 Q. And the death benefit of that policy is
14 what?

15 A. \$1 million.

16 Q. Are the beneficiaries listed on that
17 policy equal beneficiaries in terms of the
18 percentage of the death benefit that each will take
19 at your death if that policy is in force and
20 effect? Are they equal?

21 A. I think Mr. Smith, to my recollection,
22 is outlined for 300,000 and the bank and my wife
23 I'm pretty sure would be even on the rest.

24 Q. If it was even on the rest, that would
25 mean that Mr. Smith is at three hundred and the

1 A. Yes, sir.

2 Q. Is there anything else about that
3 Grange Life Insurance policy by way of
4 documentation that you have in your possession
5 other than Plaintiff's Exhibit 2?

6 A. No, sir. Not in my possession today.

7 Q. All right. I'm going to get you to
8 circle back, if you will, to --

9 Let me find the exhibit.

10 -- Plaintiff's Exhibit 4, and I would
11 ask you to take a look at -- have you got
12 Plaintiff's 4 there?

13 A. Yes, sir.

14 Q. If you'll take a look at page 1 of
15 Plaintiff's Exhibit 6, paragraph one. What does
16 that say?

17 A. That the purchaser, Brandon W. Linder,
18 will immediately reinstate a life insurance policy
19 on his life in the amount of \$1 million and will
20 specifically designate Gerald R. Smith as
21 beneficiary. This must be immediately
22 accomplished.

23 Q. So do you have a policy of insurance in
24 force and effect that designates Mr. Smith, Gerald
25 R. Smith, as a beneficiary of a death benefit of \$1

1 million?

2 A. No, sir, I don't.

3 Q. All right. That's all I have. Thank
4 you so much for coming.

5 A. Okay. Thank you very much, sir.

6 MR. WEST: No questions?

7 MR. GIANCOLA: I don't have any
8 questions.

9 (The witness, after having been advised
10 of his right to read and sign this transcript,
11 waives that right.)

12 (The deposition concluded at 11:30
13 a.m.)

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBIT “E”

TO

**MEMORANDUM IN SUPPORT
OF PLAINTIFF’S MOTION FOR
SUMMARY JUDGMENT**

2019-CP-08-02445

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2019-CP-08-02445

Gerald R. Smith,

Plaintiff,

vs.

AFFIDAVIT OF GERALD R. SMITH

United Cable Construction Co., Inc,
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

Personally appeared before me **GERALD R. SMITH**, who being duly sworn deposes and says:

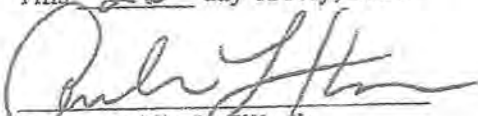
1. I am a citizen and resident of Eureka, Illinois.
2. I am an adult and competent to make this Affidavit.
3. I am the Plaintiff in the above captioned matter.
4. Pursuant to a contract in writing dated May 22, 2017, the Defendants promised to pay me a fixed sum of \$300,000.00 by way of monthly payments of \$10,000.00 each and a final balloon payment in December, 2018, ("Contract").
5. During the period from May, 2017 through November, 2018, I did not receive monthly payments as called for under the Contract. I did receive from Defendants sporadic partial payments of varying amounts on account of the Contract sum of \$300,000.00.
6. The total amount of the payments I have received from the Defendants on account of the Contract sum is \$33,000.00, as evidenced by copies of checks attached hereto, the same being made part of a hearing record before the Honorable Dale E. Van Slambrook, Master in Equity for Berkeley County in Case No. 2018-CP-08-2241 and as an exhibit to Brandon Linder's deposition in Case No. 2019-CP-08-02445.
7. The last payment I received on the Contract sum was a check dated 11/26/2018 in the amount of \$5,000.00.
8. After the due date on the balloon payment, by and through my attorney, I made demand in writing to Defendants for payment in full.

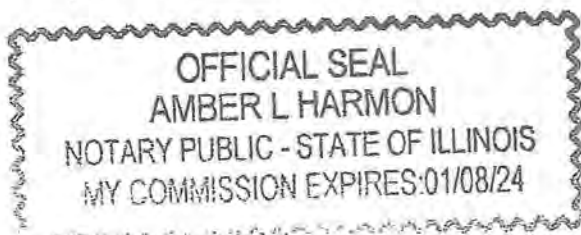
9. Defendants have not paid the balance due on the Contract sum or any portion thereof.
10. Due and owing on the Contract sum is \$267,000.00, plus pre-judgment interest as provided by law.
11. Defendants were also required by the Contract to procure a life insurance policy on the life of Brandon W. Linder in the amount of \$1,000,000 naming me as beneficiary.
12. I learned at the deposition of Brandon W. Linder for the first time on May 12, 2021 that there appears to be a life insurance policy in force and effect with a \$1,000,000 death benefit on the life of Brandon W. Linder with Grange Life Insurance Company.
13. According to Mr. Linder, I am listed as a beneficiary of \$300,000.00 which is contrary to the terms of the Contract.

FURTHER AFFIANT SAYETH NOT.


GERALD R. SMITH

Sworn to and subscribed before me
This 23 day of July, 2021.


Notary Public for Illinois
My Commission expires: _____





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ENTERPRISE BANK
of South Carolina
SINCE 1920 MEMBER FDIC

No. 188200
67-2871532

BANK MONEY ORDER

DATE: 09/18/17

PAY TO THE ORDER OF: **BRANDON LINDER/UCC**

JERRY SMITH

REMITTER

PAY: FIVE THOUSAND and 00/100 USDollars

DOLLARS \$ 5,000.00

TO THE ORDER OF: **JERRY SMITH**

Sandra Linder
AUTHORIZED SIGNATURE

188200 0532028715 1511 10004

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposit to Eamon
acct. for Jerry Smith
in Grace Seaton's

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Grace Seaton



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ENTERPRISE BANK

of South Carolina
SINCE 1920 MEMBER FDIC



No. 188232

67-287/532

BANK MONEY ORDER

BRANDON LINDER

REMITTER

10/06/17

PAY: ***THREE THOUSAND and 00/100***USDollars

DOLLARS \$ 3,000.00

TO
HE
DER
OF

JERRY SMITH

Sandra Upchurch
AUTHORIZED SIGNATURE

⑈ 188232⑈ ⑆ 053202871⑆ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposit in Escrow Acct for
Terry Smith in Grims
Seaton's Escrow Acct.

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FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
078023985801



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ENTERPRISE BANK

of South Carolina

SINCE 1920 MEMBER FDIC



No. 188249

67-287/532

BANK MONEY ORDER

BRANDON LINDER

REMITTER

10/27/17

PAY: ***FIVE THOUSAND and 00/100***USDollars

DOLLARS \$ 5,000.00

TO
THE
ORDER
OF

JERRY SMITH

Sondha Upcum
AUTHORIZED SIGNATURE

⑈ 188249⑈ ⑆053202871⑆ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposits in Escrow Acct. for
Terry Smith in Grover
Seaton's Escrow Acct.

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SEATON LAW FIRM-ESCROW

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 **ENTERPRISE BANK**
of South Carolina
SINCE 1920 MEMBER FDIC

 **BANK MONEY ORDER**
67-287/532

No. 188239

10/13/17

BRANDON LINDER

PAY: ****FIVE THOUSAND and 00/100**USDollars

TO THE ORDER OF JERRY SMITH

DOLLARS \$ 5,000.00

Sandra Linder
AUTHORIZED SIGNATURE

⑈ 188239⑈ ⑆053202871⑆ 2511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X

Deposit in Escrow Acct for
Jerry Smith in Grover
Shaw's Escrow Acct.

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ENTERPRISE BANK
of South Carolina
SINCE 1920 MEMBER FDIC

No. 188449
67-287/532
BANK MONEY ORDER

BRANDON LINDER

PAY: ***** FIVE THOUSAND and 00/100 ***** US Dollars

TO THE ORDER OF JERRY SMITH

04/13/18

DOLLARS \$ 5,000.00

Sandra Young
AUTHORIZED SIGNATURE

188449 60532028711 511 10001

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

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ENTERPRISE BANK
of South Carolina
SINCE 1920 MEMBER FDIC

No. 188610
67-287/532
BANK MONEY ORDER

BRANDON LINDER
REMITTER

08/06/18

PAY: ***FIVE THOUSAND and 00/100***USDollars

DOLLARS \$ 5,000.00

TO THE ORDER OF JERRY SMITH

Sandra Freeman
AUTHORIZED SIGNATURE

⑈ 188610⑈ ⑆ 053202871⑆ 1511 10004⑈

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ENTERPRISE BANK
of South Carolina
SINCE 1920 MEMBER FDIC

No. 188764
67-287/532
BANK MONEY ORDER

BRANDON LINDER
REMITTER

11/26/18

PAY: ***FIVE THOUSAND and 00/100***USDollars

DOLLARS \$ 5,000.00

TO THE ORDER OF JERRY SMITH

Sandra Freeman
AUTHORIZED SIGNATURE

⑈ 188764⑈ ⑆ 053202871⑆ 1511 10004⑈

WHEN RUBBED OR BREATHED ON, THE PINK PATCH IN THE DOLLAR AMOUNT AREA WILL FADE, THEN GRADUALLY RETURN TO NORMAL.

ENDORSE HERE

X Deposit in Escrow Acct. for Jerry Smith

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FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
079023995801

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X Deposit in Escrow Acct. for Jerry Smith

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FIRST CITIZENS BANK
FOR DEPOSIT ONLY
SEATON LAW FIRM-ESCROW
079023995801

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FEDERAL RESERVE BANK REGULATIONS GOVERN THE DEPOSIT OF FUNDS IN THIS ACCOUNT. THE DEPOSIT OF FUNDS IN THIS ACCOUNT IS SUBJECT TO THE FEDERAL RESERVE BANK REGULATIONS GOVERNING THE DEPOSIT OF FUNDS IN THIS ACCOUNT.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	CIVIL ACTION NO. 2019-CP-08-02445
Gerald R. Smith,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANTS' MEMORANDUM IN
	)	OPPOSITION TO PLAINTIFF'S MOTION
	)	FOR SUMMARY JUDGEMENT
United Cable Construction Co., Inc.	)	
South Atlantic Communications, Inc.,	)	
Brandon W. Linder and Karla Linder,	)	
	)	
Defendants.	)	
_____	)	

COMES NOW the Defendants, United Cable Construction Co., Inc. ("UCC") South Atlantic Communications, Inc. ("SAC"), Brandon Linder and Karla Linder, by and through their undersigned attorney, and hereby submit this Memorandum of Law in opposition to Plaintiff, Gerald R. Smith's ("Smith"), Motion for Summary Judgment. For the reasons set forth below and upon the authority stated herein, Defendants respectfully request that the Motion for Summary Judgment be denied.

BACKGROUND

Originally, Smith was the owner of United Cable Construction, Inc. ("UCC") and Brandon Linder was the owner of South Atlantic Communications, Inc. ("SAC"). On or about January 4, 2006, SAC entered into a series of agreements with UCC to purchase the assets and all of the stock of UCC, and also to retain Smith under a consulting agreement for approximately \$3,000,000.00 ("hereinafter The Primary Agreements"). UCC fell behind on its payments to Smith under the Primary Agreements.

On April 22, 2017, Smith had his attorney prepare a "Modification and Addendum of the Agreement Made by Gerald R. Smith, Seller and Brandon W. Linder, Purchaser" (hereinafter

“The Modification Agreement”). The purpose of which was to settle the remaining debt owed on the Prior Agreements. The Modification Agreement commences by asserting that Brandon Linder, now known as UCC, owes the sum of \$1,084,244.51 to Smith under the Primary Agreements. The Modification Agreement then states that, under certain conditions, Smith is willing to reduce the debt to \$300,000. It is the Modification Agreement that Plaintiff herein wishes this Court to enforce.

PROCEDURAL HISTORY

In November of 2018, Plaintiff filed a declaratory judgment action requesting the Court to declare whether the Modification Agreement was a valid contract under case No. 2018-CP-08-02241. Defendants responded by disputing the validity of the Modification Agreement. On May 15, 2019, a hearing was held before Judge Dale E. Van Slambrook, Master in Equity for Berkeley County to determine whether the Modification Agreement was a valid contract. After the hearing was held, Judge Van Slambrook entered the Declaratory Order on July 30, 2019, wherein he ordered that the Modification Agreement was a valid and binding contract. Subsequently, on October 7, 2019, Plaintiff filed this action for breach of contract of the Modification Agreement and requesting specific performance of some, but not all, of the terms therein. Defendants have answered and filed counterclaims and discovery is on-going.

STANDARD OF REVIEW

Pursuant to Rule 56(c), summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in

the light most favorable to the nonmoving party." *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009).

“Summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument.” *Wallace v. Day*, 390 S.C. 69, 700 S.E.2d 446 (S.C. App. 2010) (citing *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 240, 672 S.E.2d 799, 802 (Ct.App.2009). “The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent unexpressed when the contract was executed.” *Id.* “Construction of an ambiguous contract is a question of fact to be decided by the trier of fact.” *Id.* (citing *Soil Remediation Co. v. Nu-Way Envtl., Inc.*, 325 S.C. 231, 234, 482 S.E.2d 554, 555 (1997)).

I. The Declaratory Order Does Not Interpret the Modification Agreement nor Does the Order Address the Enforceability, Leaving This Court Free to Rule on Those Issues.

Plaintiff has argued that the Declaratory Order is the ‘law of the case’ and it entitles Plaintiff to pursue the beach and request this Court to grant specific performance of some of the terms therein. However, the Declaratory Order is very limited in its scope. The Declaratory Order, specifically addresses one limited issue: whether the Modification Agreement is a contract. The Declaratory Order does not address the construction of the terms, how to interpret the terms, and how to enforce the terms. The Declaratory Order did not determine, nor was the issue before the Court in that hearing, on whether the Modification Agreement is ambiguous.

The law-of-the-case doctrine is typically raised in the context of a single continuing action dealing with issues on appeal. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have

been, or raised on appeal, but expressly rejected by the appellate court.” *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). However, even if the doctrine applies, issues that were neither before the Court, not specifically ruled on, nor required to be raised are not precluded under the law-of-the-case doctrine. See *Shirley's Iron Works, Inc. v. City of Union, S.C., Gilbert Grp. LLC*, 403 S.C. 560, 743 S.E.2d 778 (S.C. 2013).

Plaintiff relies on the Declaratory Order to argue that it is now entitled to enforce the Modification Agreement due to the breach of the terms. However, in the Declaratory Order, Judge Dale E. Van Slambrook did not interpret the terms of the Contract, but merely determined that it met the required elements of a contract between the parties. Defendants were not required to raise the issue of construction and enforceability to the Judge in that proceeding. In fact, the issue of contract interpretation and enforceability were specifically left out of the Courts consideration. Therefore, we are not asking this Court to overrule a prior unappealed order, we are asking this Court to consider issues that were neither rule upon nor required to be ruled upon in the previous declaratory judgment action.

II. The Contract Is Ambiguous and Requires a Finder of Fact to Determine How the Contract Should Be Interpreted and Enforced.

When interpreting a contract, a court must ascertain and give effect to the intention of the parties. *Chan v. Thompson*, 302 S.C. 285, 289, 395 S.E.2d 731, 734 (Ct.App.1990). To determine the intention of the parties, the court “must first look at the language of the contract....” *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court. *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App.1997). Whether an ambiguity exists in

the language of a contract is also a question of law. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001).

“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.” *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302. “The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe.” *Pee Dee*, 381 S.C. at 242, 672 S.E.2d at 803. “Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties.” *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 303. “The determination of the parties' intent is then *a question of fact*.” *Id.* (emphasis added). Where the contract's language is ambiguous, however, the Court should construe the language liberally and most strongly in favor of the party who did not write or prepare it. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 500, 649 S.E.2d 494, 403 (Ct. App. 2007) (citing *Myrtle Beach Lumber Co., Inc. v. Willoughby*, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981)).

The Modification Agreement that Plaintiff seeks to enforce is an attempted modification of the Primary Agreements between the parties to this case, with the exclusion of Karla Linder. It is clear that the purpose of the Modification Agreement was to alter the debt, but it is not clear as to what the rights of the parties are in the case that the terms of the Modification Agreement are not met. Smith is of the belief that he should be able to enforce the terms of the Modification Agreement and be entitled to the remedy of specific performance; however, Linder's position is that due to his inability to comply with the terms of the Modification Agreement, then the rights of the parties should revert back to the Primary Agreements.

The basis for this position is that the Modification Agreement language, in the logical interpretation of the words, is an ‘if/then’ scenario, or a conditional. In other words, if Linder

complies with the terms, then Smith will reduce the debt owed. However, what is not clear is the inverse: if Brandon Linder does not do these things, then what is to happen? Again, Brandon Linder's position is that he is not entitled to the benefit of the debt reduction and the rights of the parties revert back to the Primary Agreements. His relevant testimony from the previous hearing under oath is as follows from transcript of the previous declaratory judgement hearing:

6 Q So let's talk about intent for a minute.
 7 Look at the third paragraph down that starts
 8 with whereas. It says whereas the sale of the seller
 9 Gerald Smith is agreeable to reduce the payoff to
 10 300,000 provided the following terms are met. What did
 11 that mean to you?
 12 A Just what it says, it means that if I can do
 13 these things that he will do this for me -- he will
 14 reduce the debt for me if I can make these things
 15 happen. I tried to make these things happen. There
 16 was two hurricanes in a 30-day period a couple of
 17 months after this that just wiped my whole -- all the
 18 money I had and everything out so there was no way I
 19 could make these things happen.
 20 Q So at this point, I mean obviously if you had
 21 \$300,000 sitting in the bank you would have cut the
 22 check?
 23 A I would pay him immediately.
 24 Q You admit this is a fantastic deal?
 25 A Yes, sir.

1 Q And you tried everything in your power to
 2 accomplish these things on this list?
 3 A Yes, sir.
 4 Q Okay. And what was your understanding based
 5 on that preamble to it, what was your understanding if
 6 you could not do these things on the list?
 7 A That he was going to -- that I would owe him
 8 a million dollars.

See Declaratory Judgement Hearing Transcript, 84: 6-25; 85: 1-8 ("Defense Exhibit A").

Smith's position, is that he is entitled to force Brandon Linder to comply with the terms of the Modification Agreement. Therefore, the Modification Agreement is reasonably susceptible to more than one interpretation. As it is clear that the Modification Agreement was drafted by Smith and his attorney, the issues of ambiguities should be construed in the Defendants favor. Therefore, summary judgment should be denied, and a finder of fact should be required to

determine what the intention of the parties was pursuant to the Modification Agreement and how the Modification Agreement should be enforced.

III. The Remedy of Specific Performance Is Not Proper as the Plaintiff has an adequate remedy at law.

"An action for specific performance is one in equity. *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 170 n. 2, 568 S.E.2d 361, 362 n. 2 (2002); *Wright v. Trask*, 329 S.C. 170, 176, 495 S.E.2d 222, 225 (Ct. App. 1997)." "Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000).

"The discretion to grant or refuse specific performance is a judicial discretion to be exercised in accordance with special rules of equity and with regard to the facts and circumstances of each case." *Guignard v. Atkins*, 282 S.C. 61, 64, 317 S.E.2d 137, 140 (Ct.App.1984). "Specific performance will not be ordered unless the contract expresses the true intent of the parties and is fair, just and equitable." *Amick v. Hagler*, 286 S.C. 481, 484, 334 S.E.2d 525, 527 (Ct.App.1985).

Smith has an adequate remedy at law for the breach of the Modification Agreement: Smith can enforce the Primary Agreements of the parties and is not required to give a reduction of the debt as contemplated in the Modification Agreement. Additionally, the intent of the parties is not clear as outlined above.

Therefore, based on the forgoing, Defendants request this Court deny Plaintiff's motion for summary judgment as issues of material fact exist as to the interpretation of the Modification Agreement and that Plaintiff is not entitled to judgment as a matter of law.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

KOONTZ MLYNARCZYK, LLC

/s/ Joshua D. Giancola

Adam Mlynarczyk, Esq. (SC Bar #069878)

Joshua D. Giancola, Esq. (SC Bar #104310)

1058 East Montague Avenue

North Charleston South Carolina 29405

T: (843) 225-4252

F: (843) 277-9120

adam@kmlawsc.com

josh@kmlawsc.com

Attorneys for Defendants

August 3, 2021

North Charleston, South Carolina

Page 82 1 objection, I think we agreed. These are Exhibits 1, 2 which is the action by Enterprise Bank in this Court. 3 Exhibit 2, which is the judgment in that action, and 3, 4 the transcript of the testimony. I'd like to move 5 those into the record for your review. 6 THE COURT: Any objections? 7 MR. WEST: I do not have any objection to 8 those documents. I do object to any -- listening 9 to any testimony that goes outside the scope of 10 this proceeding which gets to the question of 11 enforcement and what is going to happen next that 12 has already been established to be not the purpose 13 of this hearing. So if we are heading down a path 14 I'm just sort of in anticipation of where we're 15 heading that we're going to start talking about 16 enforceability and that's outside the scope of this 17 proceeding. 18 MR. MLYNARCZYK: I'm not getting into 19 enforceability, Your Honor. It's not that type of 20 questioning. 21 THE COURT: All right. So we'll proceed as it 22 is, of course, if there is any veering into that 23 then I guess I expect another objection. 24 MR. MLYNARCZYK: Yes, Judge. 25 THE COURT: Okay.	Page 84 1 intentions. If you'll just show me that you intend on 2 paying because I hadn't made a payment in a few months. 3 My grandmother had just passed away, I wasn't talking 4 to anyone and I hadn't made a payment in a few months 5 at that time when I did meet with him that day. 6 Q So let's talk about intent for a minute. 7 Look at the third paragraph down that starts 8 with whereas. It says whereas the sale of the seller 9 Gerald Smith is agreeable to reduce the payoff to 10 300,000 provided the following terms are met. What did 11 that mean to you? 12 A Just what it says, it means that if I can do 13 these things that he will do this for me -- he will 14 reduce the debt for me if I can make these things 15 happen. I tried to make these things happen. There 16 was two hurricanes in a 30-day period a couple of 17 months after this that just wiped my whole -- all the 18 money I had and everything out so there was no way I 19 could make these things happen. 20 Q So at this point, I mean obviously if you had 21 \$300,000 sitting in the bank you would have cut the 22 check? 23 A I would pay him immediately. 24 Q You admit this is a fantastic deal? 25 A Yes, sir.
Page 83 1 BY MR. MLYNARCZYK: 2 Q So explain to the Judge what took place when 3 you were talking about 144 Frankie Lane? 4 A Well, initially Gerry wanted to see what we 5 could come to for a settlement and he wanted 400,000 as 6 he said and I tried -- I told him I would like to go 7 with three because my mother got sick in 2014 when we 8 initially started talking about this settlement and 9 then she passed away and then my grandmother got sick 10 -- well, we had discussed 300,000 then so I stuck to 11 the 300,000. Well, he wanted to know -- he basically 12 wanted to somehow collateralize or get something else 13 out of me given what he already had and I told him 14 there is nothing I can do. My bank had already 15 notified me they filed foreclosure on me, I 16 specifically told him that multiple times I could not 17 transfer this property, it's got a tax lien, 18 Ms. Pamela Snow with the IRS who he's met himself told 19 me that I could not do anything with this property with 20 her specific permission and I made that very clear that 21 day. 22 Q And what was Mr. Smith's response to you in 23 regard to signing this agreement in that issue? 24 A He wanted to know my intentions. His word 25 was I just want you to sign something showing me your	Page 85 1 Q And you tried everything in your power to 2 accomplish these things on this list? 3 A Yes, sir. 4 Q Okay. And what was your understanding based 5 on that preamble to it, what was your understanding if 6 you could not do these things on the list? 7 A That he was going to -- that I would owe him 8 a million dollars. 9 Q Okay. And just to reiterate what we said 10 before, in all of the documents we've addressed so far 11 your wife was not involved in that purchase at all, was 12 she? 13 A No, sir. 14 Q Okay. Do you know why she was required to 15 sign this document? 16 A I assume because her name was on the loan at 17 the bank. I told them I had a loan at the bank. I 18 told them I had a foreclosure, I told them that the IRS 19 had liens on it. 20 Q Okay. So she's on the property at 144 21 Frankie? 22 A Yes, sir. 23 Q Okay. 24 MR. MLYNARCZYK: I don't have any more 25 questions.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL DISTRICT
COUNTY OF BERKELEY	)	CIVIL ACTION NO.: 2019-CP-08-2445
Gerald R. Smith,	)	
	)	
Plaintiff,	)	
	)	Motion to Conform to the Evidence
vs.	)	
	)	
United Cable Construction Co., Inc.,	)	
South Atlantic Communications, Inc.,	)	
Brandon W. Linder, and Karla Linder,	)	
	)	
Defendants.	)	
	)	

Defendants United Cable Construction Co., Inc., South Atlantic Communications, Inc., Brandon W. Linder, and Karla Linder respectfully move this Court to amend their pleadings to conform to the evidence. In support of their motion, Defendants show the following unto the Court:

Pursuant to Rule 15(b), SCRPC, Defendants respectfully move to amend their Answer and Counterclaim to conform to the evidence presented. “When a party wishes to amend a pleading after final judgment from a full trial on the merits, South Carolina Rule of Civil Procedure 15(b) applies. Amendments under South Carolina Rule of Civil Procedure 15(b) are allowed not to assert new claims, but rather to conform the pleadings to the evidence presented at trial.” *Arnold v. State*, 309 S.C. 157, 420 SE 2d 834 (1992).

Although the Court correctly found that South Carolina does not recognize a cause of action for breach of the covenant of good faith and fair dealing, the true nature, and effect of Defendants’ counterclaim operate as affirmative defenses to the breach of contract and contract formation. There is at least a scintilla of evidence to support affirmative defenses of unconscionability, waiver, impossibility, mutual breach of contract, ambiguity, failure of consideration, effective contract modification, and estoppel. The contract at issue required Plaintiff

and Defendants to perform certain acts. In particular, Defendants Brandon and Karla Linder were obligated to convey certain real property to Plaintiff. This did not occur, and Plaintiff has acknowledged as much. Plaintiff has relinquished his rights under the contract by failing to abide by its terms and now cannot enforce the terms thereof. Defendants respectfully request that its Answer and Counterclaim be amended to conform to the evidence presented.

WHEREFORE, Defendant respectfully prays that this Court to amend Defendants' pleadings to conform to the evidence, and for any other relief that this Court may deem just and proper.

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September 3, 2021
North Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL DISTRICT
COUNTY OF BERKELEY	)	CIVIL ACTION NO.: 2019-CP-08-2445
Gerald R. Smith,	)	
	)	
Plaintiff,	)	
	)	Motion to Alter or Amend and Motion
vs.	)	for Relief from Judgment or Order
	)	
United Cable Construction Co., Inc.,	)	
South Atlantic Communications, Inc.,	)	
Brandon W. Linder, and Karla Linder,	)	
	)	
Defendants.	)	
	)	

Defendants United Cable Construction Co., Inc., South Atlantic Communications, Inc., Brandon W. Linder, and Karla Linder respectfully move this Court 1) to alter or amend its August 24, 2021 Order; 2) and for relief from this Court's August 24, 2021 Order. In support of their motion, Defendants show the following unto the Court:

I. Specific performance is not an available remedy because Plaintiff has an adequate remedy at law.

"Specific performance should be granted only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000). A plaintiff must show more than the mere existence of a valid contract to be entitled to specific performance. The court should grant specific performance only if there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *Monteith v. Harby*, 190 S.C. 453, 3 S.E. (2d) 250 (1939); *Holley v. Anness*, 41 S.C. 349, 19 S.E. 646 (1894). In a breach of contract action, the measure of damages is the loss actually suffered by the Plaintiff as a result of the breach. *Collins Holding Corp. v. Landrum*, 360 S.C. 346, 350, 601 S.E.2d 332, 333 (2004); *Minter v. GOCT, Inc.*, 322 S.C. 525,

528, 473 S.E.2d 67, 70 (Ct. App. 1996). The purpose of an award of damages for breach of contract is to put the Plaintiff in as good a position as he would have been in if the contract had been performed.” *Minter*, 322 S.C. at 528, 473 S.E.2d at 70. The idea of compelling a close personal association over a protracted period of time after disputes have arisen and loyalty and confidence dissipated has been repugnant to courts facing the situation. *Pingley v. Brunson*, 252 S.E.2d 560, 272 S.C. 421 (S.C. 1979) (citing 11 S. Williston, Contracts § 1423 (3d ed. W. Jaegar 1968)). See also *Poultry Producers v. Barlow*, 189 Cal. 278, 208 P. 93 (1922).

Here, Plaintiff has an adequate remedy at law – monetary damages. Plaintiff can be made whole without compelling Defendant Brandon Lindon to maintain life insurance for himself for Plaintiff’s benefit for eternity. This is especially so in the context of one party securing a life insurance policy for the benefit of another. Typically, a party is ordered to maintain life insurance on themselves for the benefit of another in order to secure alimony payments. *Wooten v. Wooten*, 364 S.C. 532, 615 SE 2d 98 (2005). However, before a party can be ordered to maintain life insurance in perpetuity, a court must conduct a comprehensive review to determine whether a special circumstance¹ exists which would require life insurance to secure monetary damages. *Id.* There are no special circumstances that warrant the compelled purchase of a life insurance policy in the present case. Likewise, there are insufficient facts to support a finding of special

¹ “In making such a determination, the analysis should begin with the supported spouse’s need for such security, i.e., consideration of the supported spouse’s probable economic condition in the event of the payor spouse’s death. The family court should consider the supported spouse’s age, health, income earning ability, and accumulated assets. If a need for security is found, the family court should next consider the payor spouse’s ability to secure the award with life insurance, i.e., the payor spouse’s age, health, income earning ability, accumulated assets, insurability, cost of premiums, and insurance plans carried by the parties during the marriage.” *Wooten*, 364 S.C. at 532, 615 SE 2d at 98.

circumstances. Unlike a parent-child relationship or spousal relationship, there are no special circumstances in the present matter.

II. The terms of the contract are vague, and said vague terms must be interpreted against Plaintiff as the contract's drafter.

A contract is read as a whole document to avoid ambiguity by pointing out a single sentence or clause. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). It is a question of law for the court whether the language of a contract is ambiguous. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001). Contract ambiguities are construed in favor of the non-drafting party. *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 571 (2009). If a contract contains a condition precedent, that condition must either occur or be excused before a party's duty to perform arises. *Id.* Here, the Parties' contract is silent as to enforcement mechanisms and damages in the context of a breach. However, the contract at issue modified the parties' contract dated January 4, 2006, as amended. Plaintiff agreed to accept less than he claims that he is owed under the parties' contract provided that Defendant Brandon W. Linder complied with the contract at issue in this action. Unquestionably, Defendant Brandon W. Linder did not comply with the contract at issue. Therefore, the condition precedent to Plaintiff's performance was not satisfied, and the contract at issue is void and unenforceable. Defendants request that this Court make specific findings of fact and conclusions of law as to the contract's ambiguities, the duties and obligations of the parties following the breach, and whether the conditions precedent to Plaintiff's performance were satisfied.

III. Plaintiff failed to plead for res judicata and/or collateral estoppel and is now barred from asserting it.

Plaintiff relies heavily on *Mason v. Mason*, 412 S.C. 28, 770 SE 2d 405 (Ct. App. 2015) to support his proposition that the July 30, 2019 Declaratory Order is the "law of the case". However,

Mason is inapplicable to the present case. *Mason* dealt strictly with the ‘two-issue rule’ and whether a decision can be affirmed on appeal if said decision is based on more than one ground. *Id.* “[A]s a general rule, a former adjudication must be pled in order to make the doctrine of collateral estoppel operative in a particular case.” *Beall v. Doe*, 281 S.C. 363, 315 SE 2d 186 (Ct. App. 1984) (emphasis added). See also *S.C. Department of Social Services v. Thompson*, 273 S.C. 569, 257 S.E. (2d) 747 (1979); *Connell v. Connell*, 249 S.C. 162, 153 S.E. (2d) 396 (1967); *Clifton v. Darlington Finance Co.*, 231 S.C. 672, 100 S.E. (2d) 404 (1957). Although Plaintiff craved reference to the former adjudication, he failed to plead for collateral estoppel and/or res judicata. Plaintiff’s failure to plead for collateral estoppel and/or res judicata is fatal to his claim, barring his use of those doctrines offensively.

IV. The Defendants cannot be jointly and several liable for Plaintiff’s damages.

“Whether contract rights or duties are joint, several, or joint and several depends upon the meaning of the contract as ascertained by a proper interpretation thereof.” *Dean v. Dean*, 229 S.C. 430, 93 S.E.2d 206 (1956). One of the rules for determining whether a contract is joint is whether the interest of the parties in the subject matter are joint. *Id.* “As a general rule, a contract is entire when, by its terms, nature, and purpose, it contemplates that each and all of its parts are interdependent and common to one another and to the consideration, and is severable when, in its nature and purpose, it is susceptible of division and apportionment.” *Id.*

As discussed above, the contract at issue is ambiguous as to the rights and obligations of the parties. The parties’ contract places no obligations or conditions upon Defendants United Cable Construction Co., South Atlantic Communications, Inc., and Karla Linder. Yet, judgment was entered against each Defendant in the same amount, with no indication of joint and/or several liability. Conceivably, Plaintiff can recover \$332,475.30 (the judgment amount) from each

Defendant. If so, Plaintiff would receive a windfall, and the Defendants that have no obligations placed upon them will be at the mercy of Defendant United Cable Construction Co. and Defendant Brandon W. Linder's performance, or lack thereof. Defendants respectfully request this Court to issue findings of fact and conclusions of law as to Defendants United Cable Construction Co., South Atlantic Communications, Inc., and Karla Linder's breach of the contract, an apportionment of fault among the Defendants, and clarification as to whether the Defendants' liability is joint and/or several.

V. The Parties' agreement is subject to arbitration, and therefore, this Court lacks subject matter jurisdiction.

Lack of subject matter jurisdiction can be raised at any time. *Lake v. Reeder Const. Co.*, 330 SC 242, 498 S.E.2d 650 (Ct. App. 1998). Parties may waive their right to enforce an arbitration clause. *Dean v. Heritage Healthcare of Ridgeway*, 408 S.C. 371, 759 SE 2d 727 (2014). However, "any doubts concerning the scope of arbitrable issues... in favor of arbitration, whether the problem at hand is the construction of the contract language itself or *an allegation of waiver, delay*, or a like defense to arbitrability." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983) (emphasis in original). Thus, there is a presumption against finding a party has waived its right to compel arbitration, and a party seeking to prove a waiver of a right to arbitrate carries a heavy burden." *Dean*, 408 S.C. at 371, 759 S.E.2d at 727. The South Carolina Uniform Arbitration Act states that agreements to arbitrate are "valid, enforceable, and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." S.C. Code Ann. § 15-48-10(a). Here, the Parties are subject to a valid and

enforceable arbitration agreement, divesting the Court of subject matter jurisdiction.² Although the contract at issue purports to waive the Parties' obligation to arbitrate, such waiver is ineffective.

VI. Compelling specific performance violates the Defendants' rights under the 13th and 14th Amendments to the United States Constitution and South Carolina public policy.

"The thirteenth amendment prohibits involuntary servitude, except as a punishment for crime." *Shaw v. Fisher*, 113 S.C. 287, 102 S.E. 325 (1920). "A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt." *Id.* A Defendant's performance is considered voluntary for purposes of the Thirteenth and Fourteenth Amendments only if the Defendant can elect to breach his contract and "[s]ubject only to his liability for damages." *Id.*

Compelling Defendant to procure life insurance on himself for the benefit of another in perpetuity would violate his Thirteenth and Fourteenth Amendment rights and the public policy. Plaintiff has an adequate remedy at law – monetary damages. Should Defendant fail to obtain a life insurance policy as ordered, there is no adequate remedy. Presumably, the Defendant could be held in contempt of court for failure to obtain life insurance. Incarceration for failure to obtain life insurance would be akin to debtors' prison. Furthermore, an order requiring specific performance in this regard would require indefinite monitoring to enforce the order. Unlike other cases in which the Defendant is ordered to perform a discrete and single act, the Defendant in this case will be required to 'perform' for the remainder of his life. Defendant respectfully requests that the Court amend its order to remove any requirement for specific performance and instead issue only monetary damages.

² As applicable to the Declaratory Judgment Order, the order is void for lack of subject matter jurisdiction.

VII. Defendants respectfully request rulings on the affirmative defenses raised.

The Defendants' Answer and Counterclaim contained affirmative defenses of lack of subject matter jurisdiction, failure to state a claim for which relief can be granted, that the Plaintiff lacks standing to bring this action, that Plaintiff's claims are barred by the doctrine of laches and unclean hands, waiver, and breach of contract. Defendants require rulings on their affirmative defenses so that they may be preserved for appeal.

VIII. Defendants' Motion for Relief from Judgment or Order.

In order to preserve the issue for review, Defendants move for relief from judgment on the grounds that the contract at issue is void and unenforceable and that Defendants Karla Linder, Brandon Linder, and South Atlantic Communications, Inc. were not in privity of contract with Plaintiff. In addition, the contract at issue is a modification of an existing agreement. Either the modification must fail as it was not supported with additional consideration, or no party to the contract modification is bound to its terms as their performance was not completed. Therefore, the modification must fail, and the parties' original agreement must control. Alternatively, if the contract at issue is considered a novation, it will likewise fail. "The circumstances attending the transaction alleged to be a novation must show the intention to substitute a new obligation in place of the existing one." *Scott v. Stone*, 149 S.C. 386, 147 S.E. 449. Here, the parties did not intend for the contract at issue to substitute their existing obligations. Although it appears as if the parties substituted their obligations for new ones, quite the opposite is true. At the time that the contract at issue was entered into, Plaintiff claimed he was owed \$1,084,244.51. The amount of Plaintiff's damages remained unchanged; only the source of the funds have changed. Regardless of whether the contract at issue is enforceable, the parties did not complete their performance. As a result, the underlying contract is no longer enforceable, and the parties' original contract controls.

WHEREFORE, Defendant respectfully request that this Court alter or amend its Order so that the parties may try the facts in dispute, grant relief to the Defendants under Rule 60(b), and for any other relief that this Court may deem just and proper.

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September 3, 2021
North Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL DISTRICT
COUNTY OF BERKELEY	)	CIVIL ACTION NO.: 2019-CP-08-2445
Gerald R. Smith,	)	
	)	
Plaintiff,	)	
	)	Certificate of Service
vs.	)	
	)	
United Cable Construction Co., Inc.,	)	
South Atlantic Communications, Inc.,	)	
Brandon W. Linder, and Karla Linder,	)	
	)	
Defendants.	)	
	)	

The undersigned certifies that the persons set forth below were served with Defendants' Motion to Alter or Amend, Motion for Relief from Judgment or Order, and Motion to Conform to the Evidence, by placing them in the U.S. Mail, first class, postage-prepaid, on the date below to the following address(es):

The Honorable Jennifer B. McCoy
 100 Broad Street, Suite 348
 Charleston, SC 29401

September 3, 2021

s/Ryan A. Love
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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS

Case No. 2019-CP-08-02445

Gerald R. Smith,

Plaintiff,

vs.

United Cable Construction Co., Inc.
South Atlantic Communications, Inc.,
Brandon W. Linder and Karla Linder,

Defendants.

**PLAINTIFF’S MEMORANDUM IN
OPPOSITION TO MOTION TO ALTER
OR AMEND AND MOTION FOR RELIEF
FROM JUDGMENT OR ORDER**

Defendants filed their motions styled Motion to Alter or Amend and Motion For Relief From Judgment or Order following the entry of this Court’s Order Granting Plaintiff’s Motion For Summary Judgment and Dismissing Defendants’ Counterclaim With Prejudice entered August 24, 2021, (“Order”).

Defendants cite a variety of reasons in support of their motions, some of which were raised and argued at the hearing on Plaintiff’s Motion For Summary Judgment and were unpersuasive and unsuccessful and some of which are improperly being raised in their motions for the first time.

As explained below, this Court should deny both motions as lacking any merit.

These most recent efforts of the Defendants are nothing more than an attempt to give voice to their dissatisfaction and disagreement with an outcome that is not satisfactory to them and to relitigate that which has already been decided.

STANDARD OF REVIEW
RULE 59

Although nowhere in Defendants’ motions do they invoke by reference SCRCP 59, by description Defendants appear to be seeking relief under that rule, specifically Rule 59(e).

SCRCP 59 provides:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the

reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which re-hearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. The motion for a new trial shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter. In non-jury actions the motion shall be made not later than 10 days after the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment, the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.

(f) Time for Appeal; End of Term. The time for appeal for all parties shall be stayed by a timely motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions. The time within which to make the motions under this Rule shall not be affected by the ending of a term of court or departure of the judge from the circuit, and the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term. Except by consent of the parties, argument on the motion shall be heard in the circuit where the trial was held. The motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.

(g) Judge to be Provided with Copy. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

Rule 59 of the South Carolina Rules of Civil Procedure gives this Court broad discretion in considering the same. The idea behind the rule is for the Court to correct its own errors.

The rule is substantially the same as the Federal Rule which is instructive here. See Note 1 to the rule (stating that "Rule 59 is substantially the Federal Rule").

In a United States Court of Appeals Fourth Circuit case, *Pacific Insurance Company v. American National Fire Insurance Company*, 148 F. 3d 396, 41 Fed. R. Serv. 3d 729, (1998), the Court observed, “Although Rule 59 (e) does not itself provide a standard under which a district court may grant a motion to alter or amend a judgment, we have previously recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. See Lockheed Martin Corp., 116 F.3d at 112; Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir.1993). Thus, the rule permits a district court to correct its own errors, “sparing the parties and the appellate courts the burden of unnecessary appellate proceedings.” Russell v. Delco Remy Div. of Gen. Motors Corp., 51 F.3d 746, 749 (7th Cir.1995). Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance. See Russell, 51 F.3d at 749; Concordia College Corp. v. W.R. Grace & Co., 999 F.2d 326, 330 (8th Cir.1993); FDIC v. World Univ., Inc., 978 F.2d 10, 16 (1st Cir.1992); Simon v. United States, 891 F.2d 1154, 1159 (5th Cir.1990); see also In re: Reese, 91 F.3d 37, 39 (7th Cir.1996) (“A motion under Rule 59 (e) is not authorized ‘to enable a party to complete presenting his case after the court has ruled against him.’”) (quoting Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir.1995)); 11 Wright et al., *Federal Practice and Procedure* § 2810.1, at 127–28 (2d ed. 1995) (“The motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.”). Similarly, if a party relies on newly discovered evidence in its motion, the party “must produce a ‘legitimate justification for not presenting’ the evidence during the earlier proceeding.” Small v. Hunt, 98 F.3d 789, 798 (4th Cir.1996) (quoting RGI, Inc. v. Unified Indus., Inc., 963 F.2d 658, 662 (4th Cir.1992)). In general, “reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” Wright et al., *supra*, § 2810.1, at 124.

Rule 59(f) permits the Court in its discretion to rule on a motion to alter or amend a judgment on the briefs of the parties without a hearing, which Plaintiff respectfully requests this Court to do.

ARGUMENT

I. There Is No Justification under Rule 59 for the Court to Reconsider, Alter, or Amend the Order.

As noted above, a Rule 59(e) motion to alter or amend an order should be applied in instances which fall into one or a combination of three scenarios: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

None of those requirements exist here or even come close. The law as applied by this Court in its Order is unchanged. That test is not met.

There is no new evidence to account for that was not available at hearing. That test is not met.

There is no error of law or manifest injustice to be prevented. That test is not met.

In fact, Defendants do not even allege that any of those applications exist. Rather Defendants are simply attempting a “Hail Mary” by calling on this Court to give them another chance to relitigate the matter. That is improper.

Defendants’ Rule 59(e) motion is fatally flawed in form and substance and this Court should summarily deny the motion.

II. The Order Is Supported by the Evidence, South Carolina Law and Equity

This Court made eighteen (18) separate detailed findings of salient facts in its Order. One of the findings of salient facts¹ incorporated by reference eighteen (18) separate additional findings of fact contained in Judge Dale Van Slambrook’s Declaratory Order dated July 30, 2019 in Case No. 2018-CP-08-2241, which order was not appealed.

For reasons known only to the Defendants, they neglected to file any affidavits in support of their Motion in Opposition to Plaintiff’s Motion For Summary Judgment and they have filed none here. They had their opportunity to factually rebut the averments of the Plaintiff in his pleadings, in his affidavit and in the record and they opted not to. They cannot now attempt to manufacture a factual dispute.

¹ Findings of Salient Facts No. 3, Page 2 of 8.

In other words, at all times relevant to this matter all evidence before this Court was undisputed factually and uncontroverted and those facts amply support this Court's Order. Thus, Defendants' motion cannot be about the evidence.

It also cannot be about the law.

Plaintiff responds below to the arguments of the Defendants in their motions *seriatim*.

(a) Defendants say that specific performance is not proper in the case. Defendants appeared at the summary judgment hearing and argued that specific performance is not an available remedy because Plaintiff has an adequate remedy at law.

This Court exercised its discretion, made specific findings of fact and determined that specific performance regarding the life insurance policy was appropriate in equity. This Court said why in its Order².

(b) Defendants say the contract is vague. They also argued at the summary judgment hearing that the terms of the contract are vague and subject to interpretation. Judge Van Slambrook did not think so or he would have declared that the purported contract was not valid due to its vagueness. He said the contract is valid and enforceable.

This Court did not believe the contract was vague. Upon the underpinning of a valid and enforceable contract this Court concluded that summary judgment in favor of the Plaintiff upon the contract was proper.

The Order provides in pertinent part:

"A non-moving party cannot evade summary judgment by creating and relying on an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S. E. 2d 161, 166 (2013). When a motion for summary judgment is supported by affidavit(s), the nonmoving party cannot rest on the general denials of its answer, but must show that there is a genuine issue of material fact, through

² "Applying the summary judgment standard to the fully developed record before me on Plaintiff's prayer for specific performance of the procurement of a life insurance policy on the life of Brandon W. Linder, given the specialized and unique nature of a policy of life insurance, Plaintiff has established to my satisfaction that the requisite elements of specific performance have been met with respect to the life insurance required to be procured, and because there is no genuine issue as to any material fact regarding the same, Plaintiff is entitled to judgment as a matter of law.

Exercising my discretion and in the adjustment of equities herein, specific performance by Defendants as to the procurement of a life insurance policy on the life of Brandon W. Linder with a death benefit of \$1,000,000.00 naming Plaintiff as beneficiary is appropriate, proper and warranted.

In further exercising my discretion given the facts and circumstances of this case and the course of dealing between and among the parties, I deem it equitable and necessary that Defendants shall procure the life insurance policy on the life of Brandon W. Linder with a death benefit of \$1,000,000.00 naming Plaintiff as beneficiary within thirty (30) days of the entry of this order, with a certificate of insurance being concurrently provided in writing to Plaintiff's counsel. The policy shall remain in full force and effect for the lifetime of the Plaintiff". Order pp. 6,7.

its own affidavits. *Rule 56(e), SCRCP*.

Applying the summary judgment standard to the fully developed record before me on Plaintiff's breach of contract cause of action for a sum certain due, there is no genuine issue as to any material fact as to the existence of a contract and the breach thereof by the Defendants.

Plaintiff is entitled to judgment as a matter of law that Defendants have breached the Contract for monies owed the Plaintiff.

Specifically, due to the breach of contract by Defendants, Plaintiff is entitled to judgment against all Defendants in the fixed sum certain of \$267,000.00 in actual damages". Order, p. 4.

(c) Defendants argue that Plaintiff was supposed to plead res judicata and/or collateral estoppel. They contend that Plaintiff failed to plead res judicata and/or collateral estoppel and that he is barred from asserting it.

This is a new and previously unmade argument. This argument is not only new and was not raised at any time before now, it is extraordinary by how much it entirely misses the point. The reason Plaintiff didn't raise those defenses is because he did not need to. Plaintiff is not being sued here, Plaintiff sued the Defendants. Plaintiff would not raise defenses to a case that he initiated.

The time for Defendants to have defeated the existence of a contract due to its alleged flaws was at the hearing before Master-in-Equity Dale Van Slambrook in the Declaratory Judgment case. After a full evidentiary hearing before the Master they lost that argument then and they did not appeal.

Moreover, this Court made its own independent findings of fact and conclusions of law on the record before it and granted summary judgment. The Order was based on the clarity and adequacy of the whole record before it. In the record, which was not challenged nor could it be, was Judge Van Slambrook's Declaratory Order which says what it says.

(d) Defendants argue that the Defendants cannot be jointly and severally liable for Plaintiff's damages. This too is a new argument not raised at the summary judgment hearing. Defendants are jointly and severally liable.

Plaintiff relies again on the plain and unambiguous words of the Order, which provides in pertinent part:

- “1. Plaintiff is entitled to judgment as a matter of law against all Defendants for breach of contract for default on payment of monies due the Plaintiff;
2. Plaintiff is awarded actual damages for breach of contract for monies due the Plaintiff in the amount of \$267,000.00;
3. Pre-judgment interest is due and owing the Plaintiff by the Defendants on the judgment amount in the amount of \$65,475.30;
4. Plaintiff be and hereby is awarded a total judgment against all Defendants in the amount of \$332,475.30”. Order, p.8.

Plaintiff has never contended and does not contend that he should receive any kind of windfall from any Defendant. He wants no windfall. He only wants what is due him under the contract as promised by all Defendants and as directed by this Court.

It should be noted that if there is a windfall anywhere in the course of dealings of the parties, the Defendants are the obvious recipients thereof to the tune of a \$784,244.51 discount of the amount due the Plaintiff under the prior agreements. Nevertheless, that was the “deal” as expressed in the contract.

(e) Defendants argue that the parties’ agreement is subject to arbitration. This argument is likewise being raised for the first time and was not argued at the summary judgment hearing.

This argument misses the fact that the prior agreements were replaced by the contract, the plain wording of which provides:

“ Lastly, the parties agree to forgo (sic) and abandon any and all provisions of the sales contracts and addendums thereto as to arbitration in the event of default”. Paragraph 6, p.1.

(f) Defendants ask the Court for rulings on affirmative defenses. The Court did rule on all of Defendants’ conclusory positions and arguments, which were not supported by affidavits and regarding which she determined that there is no genuine issue of material fact. The Court citing well-settled law in South Carolina, concluded in its Order that:

“A non-moving party cannot evade summary judgment by creating and relying on an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 744 S. E, 2d 161, 166 (2013). When a motion for summary judgment is supported by affidavit(s), the nonmoving party cannot rest on the general denials of its answer, but must show that there is a genuine issue of material fact, through its own affidavits. *Rule 56(e), SCRPC.*” Order, p. 4.

The Court was not obligated to create out of whole cloth a genuine issue of material fact from the naked assertions of the Defendants unsupported by affidavits.

(g) Defendants raise for the first time constitutional arguments. They describe the Court's Order as exacting punishment on them. This argument is spurious and Plaintiff disagrees with it. When a party or parties breach a contract there are consequences. The obvious cure for their breach is to satisfy the judgment imposed on them.

STANDARD OF REVIEW
RULE 60

Defendants also invoke the provisions of Rule 60 of the South Carolina Rules of Civil Procedure seeking relief from the Court's Order. The rule provides:

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, leave to correct the mistake must be obtained from the appellate court. The ending of a term of court or departure from the circuit shall not operate to deprive the trial judge of jurisdiction to correct such mistakes. A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the

court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

No element of Rule 60 applies here.

There is no clerical mistake. There is no mistake, inadvertence, excusable neglect, newly discovered evidence or fraud. None of the sub-parts apply here.

Again, the time for Defendants to prevail on the contract arguments and challenges has passed.

Defendants specifically say in their motion for relief from the Order,...“Therefore, the modification (the contract) must fail, and the parties original Agreement must control.” p. 7

This argument was also made at the summary judgment hearing.

It can only be described as falling into the category of *reductio ad absurdum*. Defendants argue that they prefer to be liable to the Plaintiff in the amount of \$1,084,244.51 versus a discounted contract amount of \$300,000.00. This argument colors the Defendants’ entire attitude about all proceedings.

CONCLUSION

In a continuing effort to avoid any consequences of their failures, defiance and breaches and to be held accountable for them, the Defendants have moved the Court to alter, amend, and be relieved of responsibility to Plaintiff under this Court’s Order.

However, they offer or provide no justification or grounds to do so. The Order comports with the evidence, the law, and equity and it should stand and not be changed.

As a result, Plaintiff respectfully submits that the Court should deny the Defendants’ motions, with or without a hearing.

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September 20, 2021
Moncks Corner, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Ninth Judicial Circuit

Jennifer B. McCoy, Circuit Court Judge

Case No. 2019-CP-08-2445

United Cable Construction Co., Inc.,
South Atlantic Communications, Inc.,
Brandon W. Linder, and
Karla Linder Appellants,

v.

Gerald R. Smith Respondent.

NOTICE OF APPEAL

Appellants, United Cable Construction Co., Inc., South Atlantic Communications, Inc., Brandon W. Linder, and Karla Linder, by and through undersigned counsel, hereby appeal the orders of the Honorable Jennifer B. McCoy dated August 5, 2021, August 24, 2021, August 26, 2021, and October 1, 2021. Appellants received written notice of the entry of the last order on October 1, 2021.

(SIGNATURE ON NEXT PAGE)

KOONTZ MLYNARCZYK, LLC

s/Ryan A. Love

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Deposition of:
Master In Equity Hearing

May 15, 2019

In the Matter of:
**Smith, Gerald R. Vs. United Cable
Construction Co., Et Al**

[A. William Roberts, Jr & Assoc.](#)

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BERKELEY

GERALD R. SMITH,

Plaintiff,

vs. CASE NO. 2018-CP-08-02241

UNITED CABLE CONSTRUCTION CO.,

INC., SOUTH ATLANTIC

COMMUNICATIONS, INC., BRANDON

W. LINDER and KARLA LINDER,

Defendant.

HEARING

BEFORE: HONORABLE DALE EDWARD VAN SLAMBROOK

DATE: May 15th, 2019

TIME: 11:30 a.m.

LOCATION: BERKELEY COUNTY COURTHOUSE
300-B California Avenue

Moncks Corner, SC

REPORTED BY: JASON W. TOURO, Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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21 (INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: We are now on the record. And
2 this is Gerald R. Smith versus United Cable
3 Construction Company Inc. et al 2018-CP-08-02241.

4 Why don't we have everybody identify
5 themselves, who they are with, who they are
6 representing and then I will hear from you as to
7 what we are doing today.

8 MR. WEST: Please the Court, Your Honor, John
9 West of West Law Firm here in Moncks Corner
10 representing the Plaintiff Gerald Smith and
11 Mr. Smith is here to my right and also present of
12 course is someone that needs no introduction to you
13 Grover Seaton and also George Talbert.

14 THE COURT: Thank you, sir.

15 MR. MLYNARCZYK: May it please the Court, Your
16 Honor, Adam Mlynarczyk, I'm with Koontz and
17 Mlynarczyk from North Charleston, South Carolina
18 and I'll be representing the Defendants in this
19 action.

20 THE COURT: And who do you have with you?

21 MR. MLYNARCZYK: This is Brandon Linder.

22 THE COURT: Linder?

23 MR. MLYNARCZYK: Yes, sir, he is a party to
24 the action.

25 THE COURT: Okay. All right.

1 Gentlemen, tell me what the status on this
2 thing is. I think I may understand where we're at
3 on this, y'all can have a seat if you wish, but
4 y'all tell me what y'all's perspectives are? Just
5 kind of outline what we are supposed to be doing
6 before we start arguing about what the results
7 might should be?

8 MR. WEST: May it please the Court, Your
9 Honor, this is an action that I commenced on behalf
10 of the Plaintiff back before the turn of the year.
11 It is a declaratory judgment action where we are
12 asking the Court to determine the right status and
13 relations of the parties as it relates to certain
14 contractual documents and that is all this case is
15 Judge. This is -- let me just describe what it is
16 by telling you what it is not, it is not an
17 enforcement action. It is not an action where we
18 are asking for this court to order anyone to do
19 anything. And I think that is extremely important
20 for the Court to be aware that that is not what we
21 are seeking.

22 We just need to understand and are asking the
23 Court's help in understanding what the current deal
24 is between the Plaintiff and Mr. Linder and his
25 companies and other parties and that's all.

1 And so the testimony today will be directed to
2 certain documents that are going to give the Court
3 some background, going to also provide the Court
4 what we believe to be the present and binding
5 agreement of the parties and the current status quo
6 and that's what we're going to be focusing on today
7 and Mr. Smith will testify as to matters within his
8 knowledge and experience and of course, Mr. Seaton
9 and Mr. Talbert will as well.

10 THE COURT: All right. Okay.

11 Yes, sir?

12 MR. MLYNARCZYK: Thank you, Judge. May it
13 please the Court, the position of Mr. Linder is
14 that the agreement that's before the Court signed
15 in 2017 is not a valid agreement and part of a
16 pre-issue and notify your Judge of is we premarked
17 judgments against Mr. Linder and United Cable and
18 the Defendants in this action signed by this Court
19 stating that Enterprise Bank, the South Carolina
20 Department of Revenue, the Internal Revenue Service
21 all have rights as creditors as one, two, and three
22 against Mr. Linder.

23 My position first as a preliminary matter is
24 that they would be -- this contract that, one, we
25 were alleging is void but, two, even if it is

1 enforceable it is outlining rights to assets or
2 debts or cash that Mr. Linder has and at no time in
3 this proceeding have any of those parties been
4 notified to be able to address the Court as to
5 their rights if the document is enforceable. And I
6 know Mr. West has put to the Court that this is not
7 an enforcement action but it does deal with rights
8 under a contract as to assets held by my client.

9 And I have a copy of the order premarked by
10 Your Honor stating that even though it is an
11 abeyance Enterprise Bank has a judgment, they have
12 a deficiency judgment and that South Carolina
13 Department of Revenue's two and the IRS is three.

14 So as a preliminary matter I don't think
15 anything in this contract addressing rights to
16 assets to Mr. Linder can be addressed without those
17 parties present for the hearing purposes, and I
18 will address that in the hearing, but for other
19 hearing purposes, we believe that the document
20 falls on its face and testimony will bring that
21 out.

22 THE COURT: All right. So part of I guess in
23 looking at this thing, I looked back at the
24 pleadings, the actions initially filed, there's an
25 amended or there is allegations or a motion that

1 the case either wasn't right or there was no
2 controversy that can be resolved by the Court. Has
3 that position been abandoned, I mean is there a
4 true controversy for me to deal with or am I
5 dealing with some sort of future interests that I
6 shouldn't be dealing with until something actually
7 comes up? Tell me where we're at on that.

8 MR. MLYNARCZYK: My position has always been
9 that. But what originally happened was when I was
10 in dialog with Mr. West when this case started we
11 filed a motion to dismiss. There was a filing
12 error when we filed the original action that we
13 have two teams in our office and because I was out
14 of the office a member of the other team in our
15 office filed it and all the notices started going
16 to Mr. Belger [SIC] even though he was not involved
17 in the case assuming that the rest of our office
18 was getting those as well which we didn't get.

19 So when I talked to Mr. West about that we had
20 contemplated filing motion to set aside the default
21 but actually we're where we need to be because the
22 only thing we are asking the Court to do is
23 interpret this agreement or whether it's a valid
24 agreement. I don't believe it's right because
25 there is no action that can -- there is nothing

1 that can be done on this contract without these
2 other parties present. If we're just here to say
3 what does this contract say, it makes no -- it's
4 not relative at all to any action in the future.

5 The only thing that would be relative is if
6 Mr. Smith chooses to foreclose on the money that he
7 is owed or to seek the monies that's owed and at
8 that time this agreement can come in and every
9 other agreement can come in and every person that
10 is asserting rights including the filed Enterprise
11 Bank, the South Carolina Department of Revenue, and
12 the IRS can all come.

13 But this hearing is -- whichever way it is
14 decided -- whichever way say this contract says
15 will have absolutely no bearing on any requirements
16 of Mr. Linder pending any further action from
17 Mr. West. So this hearing regardless of what
18 happens there will need to be another hearing if
19 Mr. Smith chooses to try to get any money or cash
20 or assets out of Mr. Linder.

21 So I don't feel the purpose of the hearing
22 will move the judicial purpose in any matter.

23 MR. WEST: Your Honor, I think you just need
24 to hear some testimony rather than me tell you what
25 somebody's going to say. If you would bear with us

1 and let us put up our case I think it will become
2 clearer.

3 THE COURT: All right. So let's go ahead and
4 do that, I want to hear the testimony and I'm going
5 to reserve the Court's judgment relative to whether
6 it's properly before me as a proper controversy and
7 so forth. Certainly, I think I get the general
8 understanding of what's going on but I absolutely
9 wouldn't feel comfortable making any ruling in that
10 regard -- definitive ruling in that regard without
11 hearing some testimony.

12 So as to the format, it's a default hearing.
13 What limitations if any would y'all anticipate,
14 y'all, I said meaning you as the Plaintiff in this
15 current status as a default hearing, would you
16 anticipate or expect relative to either
17 presentation, cross-examination, lack of
18 cross-examination from the Defendant in this case?

19 MR. WEST: Judge because of the unique nature
20 of this case and the unique and special nature of a
21 declaratory judgment action, I think it needs to be
22 wide open. I think you need to know everything
23 there is to know to make a ruling and while they
24 are in default I don't want to put any limitations
25 on them any more than what the Court would put on

1 them.

2 THE COURT: Okay. Well, yeah, I wanted to
3 know if there was going to be arguments, not
4 arguments, but the positions that somehow that they
5 would exceed that if they are in default or
6 whatever. But you're saying, no, whether they are
7 in default or not, you know at least at this point
8 expect any kind of objection on those lines that
9 they are exceeding the boundaries of what they are
10 allowed to do in the default scenario?

11 MR. WEST: That's correct, Your Honor.

12 Of course subject to normal evidentiary rules
13 but other than that we don't want to tie their
14 hands in any way, put up whatever they want to put
15 up.

16 THE COURT: Okay. All right.

17 Okay. I will be happy to hear from you,
18 Mr. West.

19 MR. WEST: May it please the Court, Your
20 Honor. At this time I call Gerald Smith to the
21 stand.

22 THE COURT: Mr. Smith, come on up.

23 Mr. Smith, if you would please raise your
24 right hand.

25 THE WITNESS: (Witness complies.)

1 THE COURT: Do you swear or affirm you'll tell
2 the truth, the whole truth and nothing but the
3 truth?

4 THE WITNESS: Yes, I do.

5 THE COURT: Thank you, sir.

6 Have a seat right there. Give your name and
7 spell your last name and give your address for the
8 Court Reporter, okay?

9 THE WITNESS: All right, sir.

10 My name is Gerald Smith, S-m-i-t-h. My
11 address is 1356 County Road 600, North Eureka,
12 Illinois 61530.

13 THE COURT: Thank you, sir.

14 Mr. West?

15 DIRECT EXAMINATION

16 BY MR. WEST:

17 Q May it please the Court, Your Honor.

18 Mr. Smith, how old are you, sir?

19 A In six weeks I'll be 83.

20 Q And Mr. Smith, you don't sound like you need
21 a microphone but I'm going to go ahead and put this
22 right here so that the Court Reporter will have that in
23 his record.

24 How far did you go in school?

25 A Distance or education?

1 I have two years of college.

2 Q All right. So where did you go to high
3 school?

4 A In Bloomington, Illinois, Normal, Illinois
5 University High School.

6 Q What college did you attend?

7 A Eureka College.

8 Q What did you study at Eureka College?

9 A It was general business as beginners.

10 Q Have you ever served in any branch of the
11 military?

12 A Yes, sir.

13 Q Tell us a little bit about that and help the
14 Judge understand your history with the military?

15 A I was in the Marine Corps for five years one
16 month and three days.

17 Q What did you do in the Marine Corps and what
18 was your rank?

19 A I made Sergeant E4. My job was equipment
20 operations and management.

21 Q Did you serve in combat?

22 A At the very end of the Korean War.

23 Q And your rank at the time you left the
24 military was Sergeant?

25 A Yes, sir.

1 Q And were you honorably discharged?

2 A Yes, sir.

3 Q Have you had any continuing affiliation with
4 the military after your discharge?

5 A No, sir.

6 Q What year were you discharged?

7 A 1960.

8 Q Tell us a little bit about your work history?

9 A After I got out of the Marine Corps I went to
10 college for two years and then I was an equipment
11 specialist for a large manufacturing firm and then I
12 went into business for myself developing building
13 subdivisions and homes. And then I started in the
14 cable business in 1984, cable business as such. And I
15 traveled the United States. I worked mainly east of
16 the Mississippi. Had an 18-year contract, master
17 contract with Comcast right here in Charleston, South
18 Carolina where I built, constructed, maintained, and
19 operated for Comcast their cable company.

20 Q Mr. Smith, when you talk about cable I know
21 you know what you're talking about but what are you
22 talking about as far as cable? What kind of cable are
23 you talking about?

24 A Talking about the cable system that runs in
25 front of people's homes where they hook up to and get

1 cable TV. Today it's also internet and other things.

2 Q Is it fiber optics?

3 A It wasn't then but I am now in fiber optics
4 very deeply.

5 Q All right. So when you referred to cable
6 earlier that was pre-fiber optics?

7 A Yes, sir, called coax.

8 Q Okay. And you described the installation in
9 subdivisions. Were you operating under any kind of
10 corporate name?

11 A Yes, sir, United Cable, Inc.

12 Q Was United Cable a company that you formed?

13 A Yes, sir.

14 Q Did you own all of the stock in United Cable?

15 A Yes, sir.

16 Q And when was United Cable first formed to do
17 business?

18 A I think it was in 1989, sir.

19 Q All right. And so when you were doing the
20 cable installation, operation, and maintenance and all
21 of the things you described you were operating under
22 United Cable?

23 A Yes, sir.

24 Q Did you have employees?

25 A Yes, sir.

1 Q Did you have staff, an administrative staff?

2 A Yes, sir.

3 Q Where was your base of operations?

4 A It was in Ladson, South Carolina, 206 Frankie
5 Lane.

6 Q All right, sir.

7 Now at any point in time did you sell or
8 agree to sell any of the assets of United Cable?

9 A Yes, sir.

10 Q When was that?

11 A I'm pretty sure it was 2006.

12 Q All right. So I'm going to hand you a copy
13 of a document and, Your Honor, for purposes of the
14 record it's my understanding that Plaintiff's Exhibits
15 1, 2, 3, 4, 5, and 6 have all been stipulated as in
16 evidence and authentic.

17 MR. MLYNARCZYK: That's true, Judge.

18 THE COURT: That's 1 through 6?

19 MR. WEST: 1 through 6, all Plaintiff's, Your
20 Honor.

21 BY MR. WEST:

22 Q Sir, I'm going to hand you, Mr. Smith, a
23 document which has been marked as Plaintiff's Exhibit 1
24 and is now in evidence.

25 (PLF. EXH. 1, PROPOSED AGREEMENT, was marked

1 for identification.)

2 BY MR. WEST:

3 Q And it is a fairly thick document so I'm not
4 going to ask you to read it of course but if you will
5 tell us after refreshing your memory about Plaintiff's
6 Number 1 what the deal was and with whom did you have a
7 deal?

8 A This was a proposed contract put together by
9 Mr. Linder's attorney, Mr. Mlynarczyk and it was a
10 proposal to purchase our assets and inventory of United
11 Cable.

12 Q When you say it was a proposed agreement was
13 it an executed signed document?

14 Take a look at that and make sure?

15 A I'm pretty sure we did sign it, yeah.

16 Yes, sir, it was a -- this ended up being the
17 final proposed deal.

18 Q Okay.

19 A And it was signed.

20 Q Can you summarize for the Court what the deal
21 was embodied in Plaintiff's Exhibit 1?

22 A The proposal was I was to sell -- the deal
23 was I sold to Mr. Linder the entire company, United
24 Cable Construction, Inc. and all the assets.

25 Q Do you remember how much the purchase price

1 was?

2 A No, sir, I don't.

3 Q All right. Is it in the document?

4 A I'm sure it is.

5 Q All right. And did Mr. Linder and his
6 companies undertake to perform under that contract?

7 A Yes, sir.

8 Q Did he pay you some money?

9 A Yes, sir.

10 Q Did he take possession of the equipment and
11 all of the inventory that is listed as Exhibit A to the
12 document which has been marked Plaintiff's Exhibit 1?

13 A Yes, sir, including the property.

14 Q All right, sir.

15 Now as part of that 2006 contract, did you
16 also have any kind of related agreement such as a
17 consultation agreement?

18 A Yes, sir, we did.

19 Q And, Your Honor, I'm going to hand the
20 witness Plaintiff's Exhibit 2 which is also in
21 evidence.

22 (PLF. EXH. 2, CONSULTATION AGREEMENT, was
23 marked for identification.)

24 BY MR. WEST:

25 Q And I ask you if you will please, sir, look

1 at that and make sure that is what I represented to you
2 that it is as far as the consultation agreement?

3 A Yes, sir, it is to the best of my knowledge.

4 Q All right, sir.

5 Now, Mr. Smith, have you consulted with
6 Mr. Linder and his companies since January of 2006,
7 perform services for consultation since that time?

8 A I'm sure that during the course of the
9 contract I was asked and answered questions, yes, sir.

10 Q And what specifically if you would, please,
11 sir, the kind of services or consulting would you do?

12 A The contract that went with the sale of the
13 assets and the property was a master contract with
14 Comcast which from time to time involved consultation
15 with certain people. So I would help and direct them,
16 answer questions he might have relative to procedures
17 with Comcast.

18 Q And you were to be paid for those consulting
19 services?

20 A Yes, sir.

21 Q All right, sir.

22 Now I'm going to hand you what's been marked
23 as Plaintiff's Exhibit 3 which is in evidence and the
24 caption of the document is Personal Guarantee to
25 Consultation Agreement.

1 (PLF. EXH. 3, PERSONAL GUARANTEE TO
2 CONSULTATION AGREEMENT, was marked for
3 identification.)

4 BY MR. WEST:

5 Q Are you familiar with that?

6 A Yes, sir.

7 Q All right. What do you understand
8 Plaintiff's Exhibit 3 to be?

9 A What the contract consisted of was to answer
10 questions, help him devise the business going forward,
11 advice, consult, et cetera.

12 Q All right, sir.

13 And this particular document Plaintiff's 3
14 appears to be a document where, and I'll refer you to
15 Page 2 of the document, where Brandon Linder and
16 David Crockett personally guaranteed the performance
17 under the consultation agreement; is that right?

18 A That is correct, sir.

19 Q All right. Now, who is David Crockett?

20 A To the best of my knowledge he was the person
21 that was working with Mr. Linder and I understood was
22 going to financially have an interest in the company.

23 Q All right. Did you ever release to your
24 recollection Mr. Crockett from his obligation to
25 personally guarantee the consultation agreement?

1 A Yes, sir, I did.

2 Q And did you ever release Brandon Linder from
3 the personal guarantee as to the consultation
4 agreement?

5 A No, sir.

6 Q All right. Now Mr. Smith, fast forward just
7 a little bit to the year 2008, August of 2008,
8 Plaintiff's Exhibit 4 which is in evidence is captioned
9 Modification and Addendum to Consultation Agreement for
10 Gerald R. Smith with United Cable Construction, Inc.
11 and agreement for the Purchase of Common Stock with
12 United Cable Construction.

13 (PLF. EXH. 4, MODIFICATION AND ADDENDUM TO
14 CONSULTATION AGREEMENT FOR GERALD R. SMITH WITH
15 UNITED CABLE CONSTRUCTION, INC. and AGREEMENT FOR
16 THE PURCHASE OF COMMON STOCK WITH UNITED CABLE
17 CONSTRUCTION, was marked for identification.)

18 BY MR. WEST:

19 Q Do you remember the 2008 modification of the
20 original primary agreement?

21 A I remember the agreement and some of the
22 conditions.

23 Q All right, sir.

24 Does that document reflect your understanding
25 of the agreement in August of 2018 and that document is

1 Plaintiff's Exhibit 4?

2 A Yes, sir, because the specified terms
3 et cetera of the new agreement.

4 Q All right, sir.

5 Now Mr. Smith, again, fast-forwarding to the
6 year 2013. In 2013 according to Plaintiff's Exhibit 5,
7 it appears that you and Mr. Linder and his companies
8 agreed to a document -- agreed to certain
9 understandings founded in a document, Plaintiff's
10 Exhibit 5, that addresses the issue of the repayment of
11 arrears that were payments that were unpaid and due.
12 Do you remember that document?

13 A Yes, sir.

14 Q I'm going to hand you Plaintiff's Number 5
15 and see if that refreshes your memory.

16 (PLF. EXH. 5, RECORDED DOCUMENT OF
17 CONSULTATIONS, was marked for identification.)
18 BY MR. WEST:

19 Q And then if you would while you're looking at
20 that tell us a little bit generally about Mr. Linder
21 and his company's performance as it relates to paying
22 you the monies that were due under the asset purchase
23 agreement as amended and also the consultation
24 agreement. Did he make payments on a regular basis?

25 A No, sir, he did not after a very short period

1 of time.

2 Q Well, what did you do about that?

3 A I counseled with him numerous times, we
4 talked, I tried to be as lenient as I could. One time
5 as a matter of fact, I allowed him to consecutively
6 skip 17 payments, that's 17 months, and we always
7 talked, we had an understanding and we discussed
8 possible answers and this is the result of some of
9 those consultations we had.

10 Q This being Plaintiff's Exhibit 5?

11 A Yes, sir.

12 Q And is that a recorded document to your
13 understanding?

14 A I believe it is, sir, yes.

15 Q Okay. So that's 2013, his performance was a
16 little sketchy, y'all had this agreement that addressed
17 the issue of the arrearage and then we fast forward to
18 May of 2017. And I'm going to hand you what's been
19 marked and in evidence as Plaintiff's Exhibit 6.

20 (PLF. EXH. 6, CONTRACT AGREEMENT, was marked
21 for identification.)

22 BY MR. WEST:

23 Q And ask you if you recognize that document?

24 A Yes, sir, I recognize the document.

25 Q All right. I want to put a little bit of

1 context around this document because this is the
2 document that is central and before the Court to
3 determine whether it is a valid agreement between you
4 and those who signed the agreement.

5 How did this document come about, what
6 happened?

7 A Well, again, in our continuing conversation
8 between Mr. Linder and myself and we talked regularly.
9 I say regularly, I would call him, so once and a while
10 he would call me and we were always talking about the
11 status of the company. So at that time I'm going to
12 be -- I was 82 years old and I have an estate situation
13 that I certainly didn't want to leave to my children to
14 try to solve. So I talked to Mr. Linder and we agreed
15 to meet in --

16 Q Mr. Seaton?

17 A Mr. Seaton's office, yes. I smiled to that
18 because of -- anyhow, we had put together a basic
19 agreement and we had openly discussed, as a matter of
20 fact in front of Mr. Seaton what we might do to settle
21 this and I felt that it had been long enough, the
22 company wasn't where I would like to have seen it been
23 the best I could judge financially so I said, well, how
24 about a settlement. How about all the money you owe me
25 which amounts to at 1.84,000, if we just have a cash

1 settlement and I'll give you about a year to pay it
2 off, and he said fine. I said I want \$400,000 and he
3 said what about three. I gave it some consideration
4 with all the other factors in my life and by now I have
5 moved on and done other things in cable that were
6 reasonably successful so I agreed to it. And as an
7 agreement to that this document was put together by
8 Mr. Seaton at his office and Mr. Brandon -- Mr. Linder
9 was present and the next day I went to the property
10 that Mr. Linder owns and I had a person with me to
11 witness the signatures and Mr. Linder and his wife
12 agreed to the \$300,000 figure that would settle the
13 full indebtedness and we'd be done and he was going to
14 pay me within a year so much a month.

15 Q Now let me ask you this, you described,
16 Mr. Smith, you know you're reaching a certain point in
17 life and you want to kind of get your affairs in order.
18 Did you understand that you were making a 700-plus
19 thousand dollar discount from the dollar figure that
20 you were owed; did you understand that?

21 A Yes, sir, I understood it and the rationale
22 that I used myself to make it make sense was the fact
23 that in my opinion, I did not deem the company was
24 worth nearly what it was when I sold it to him. He had
25 sold off quite a few of the assets and he had lost the

1 contract with Comcast. So I thought he's going on his
2 own, he's in a new business, he's doing it, I'm going
3 to get out of his life. So I said \$700,000 which I
4 checked with my accountant, I cannot write that money
5 off, it is a loss to me, so I agreed to take the loss.
6 I agreed with me to take the loss.

7 Q All right. Did you feel like that was a fair
8 and reasonable agreement?

9 A I felt like I was being more of a person that
10 he had ever run into in his life.

11 Q What else was in that agreement? Just some
12 of the highpoints in that agreement?

13 A Well, one of the things that's in the
14 agreement is the fact of the total indebtedness that he
15 agreed to that we're running down.

16 Q And what was that?

17 A That's \$1,084,244.51.

18 Q So those numbers are the 700,000 and some
19 change, those are consistent with what's reflected in
20 the agreement?

21 A Yes, sir.

22 Q All right. What are some of the other
23 highpoints in that agreement?

24 A It was the time period in which he agreed to
25 pay it on a monthly basis and because of my distance

1 that I lived away from here and because he knew
2 Mr. Seaton and had visited with him on numerous
3 occasions, I said it would be more convenient to you
4 just take the money to my lawyer's office and he'll
5 record it accordingly. So he agreed to do that.

6 Q All right. What else is in that agreement as
7 far as some of the highpoints of your understanding
8 with Mr. Linder?

9 A That it was recognized by Mr. Linder and his
10 wife that the indebtedness was owed to me and that
11 there was terms in here, conditions, whereby if he
12 didn't comply with this agreement there was results.

13 Q All right. Now let's break that down a
14 little bit more. There is reference in that agreement
15 and if you will just to refresh your memory to the
16 document itself to a property real estate, and tell the
17 Court what that's all about. Why is real estate
18 referred to in that document to your understanding?

19 A For two reasons; first off, I deemed it as
20 something he had attained that was worth some money and
21 he owed me quite a bit. Secondly, this property is
22 adjacent to my existing property at 206 Frankie Lane.

23 Q All right. So is it a fair way to describe
24 it as that the real estate was collateral for the
25 payment of the \$300,000?

1 A Yes, sir.

2 Q All right. And if the \$300,000 was paid in
3 full was it your understanding that you were to release
4 the property back over to Mr. and Ms. Linder?

5 A Yes, sir, immediately.

6 Q All right. And did the agreement require
7 them to transfer title to the Frankie Lane property to
8 you until it was paid?

9 A Yes, sir.

10 Q All right.

11 A It also, excuse me, made him obligated to put
12 a life insurance policy on himself with myself being
13 the beneficiary of a million dollars which he did not
14 do.

15 Q All right. Well, we'll get to that in just a
16 minute.

17 What was the million dollar life insurance
18 policy, was that also by way of security or collateral
19 for the reaping of the \$300,000?

20 A Yes, sir.

21 Q All right. So you touched on this but I want
22 to clarify it for the Court. Did Mr. Linder and his
23 wife who is a party to that agreement, did they sign a
24 deed over to you?

25 A No, sir.

1 Q Did they provide you the million dollar life
2 insurance policy that's required by that contract?

3 A No, sir.

4 Q All right. Did they make any payments on the
5 indebtedness of the \$300,000 from May of 2017 to some
6 later point, did they make any payments to Mr. Seaton
7 as required under the agreement?

8 A Yes, sir.

9 Q All right. And we'll get to that in a little
10 while.

11 Do you have any idea what amount was paid to
12 Mr. Seaton on the contract?

13 A I think it was around \$37,000.

14 Q All right.

15 A I don't know for sure.

16 Q All right, sir.

17 Well, the record will speak for itself, we'll
18 get to that in just a little bit.

19 Now, Mr. Smith, what do you want the Judge to
20 do here today?

21 A I would like for him to say that this
22 contract is a good contract because we both agreed to
23 it when we put it together.

24 Q All right. I want to talk to you a little
25 bit more about the context in which this agreement was

1 reached. There had been some discussion in the
2 writings between the lawyers that there was some
3 concern or question about Mr. Linder being in
4 Mr. Seaton's office without representation. Do you
5 remember any of that?

6 A Yes, sir.

7 Q What's that all about and what do you know
8 about that?

9 A Well, to start with, Mr. Linder and myself
10 agreed just to meet at Mr. Seaton's office so we could
11 put together a proposed contract.

12 Q Right.

13 A And that's why we met there. And we met
14 there and Mr. Seaton merely took notes and listened and
15 then Mr. Seaton also asked him a number of times are
16 you sure you don't want representation because I said,
17 all I want you to do Mr. Seaton is to put us a contract
18 together that we both agree on which we did.

19 Q What did Mr. Linder say when that came up?

20 A He said, no, sir, he felt that he could
21 handle it, he knew what he wanted and he would be okay
22 with it.

23 Q All right. And you heard Mr. Seaton ask him
24 questions about that very subject?

25 A Yes, sir, I did repeatedly.

1 Q All right. Now in terms of this agreement,
2 help me understand where the actual agreement between
3 you and Mr. Linder took place physically, where were
4 you when you reached the deal? Not when the document
5 was prepared or signed or any of that, but y'all had a
6 deal before you met with Mr. Seaton, right?

7 A A deal on the number?

8 Q A deal as between the two of you, you and
9 Mr. Linder had a deal, right?

10 A Yes.

11 Q And you took that deal to Mr. Seaton so that
12 he could put it in proper form; is that right?

13 A Yes, sir.

14 Q Where did you reach the deal with Mr. Linder?

15 A The final number was reached in Mr. Seaton's
16 office.

17 Q All right. Before that you had some
18 understandings and conversations with Mr. Linder, where
19 was that conversation; where did that take place?

20 A I had talked to him a number of times on the
21 phone.

22 Q All right. So how did y'all end up in
23 Mr. Seaton's office?

24 A It was a mutual place to meet and I was down
25 here on some other business at the time and Mr. Seaton

1 was my legal representative. So periodically I would
2 go to him and I knew that we had to have a legal
3 binding contract put together for the protection of
4 both of us.

5 Q All right. And so you and Mr. Linder
6 appeared at Mr. Seaton's office together?

7 A Yes, sir.

8 Q All right. Did you ride together?

9 A No, sir.

10 Q All right. But you appeared at the same
11 time?

12 A Yes, sir.

13 Q Did Mr. Seaton know you were coming?

14 A Yes, sir.

15 Q All right. And was anybody else in the room
16 when y'all had the meeting?

17 A No, sir.

18 Q Mr. Seaton, Mr. Smith, and Mr. Linder were
19 the people present in Mr. Seaton's office?

20 A That is correct, sir.

21 Q And what did you instruct Mr. Seaton to do as
22 a result of that conversation?

23 A As a result of that conversation I asked him
24 to please put it in writing what we had agreed to and
25 to give me a contract that he felt was fair and

1 equitable.

2 Q And that's what happened?

3 A Yes, sir.

4 Q And that's what produced Plaintiff's
5 Exhibit 6, the May 17 agreement?

6 MR. WEST: Judge, if I may.

7 BY MR. WEST:

8 Q You instructed Mr. Seaton to put this
9 document together and he did?

10 A Yes, sir.

11 Q All right. And then how was it signed, do
12 you know anything about that?

13 A Yes, sir, I do. I discussed with -- the best
14 I remember this was in the afternoon and I discussed it
15 with Mr. Linder and prearranged a meeting with him and
16 his wife on his property in Ladson the next day which I
17 did.

18 Q And who went with you?

19 A Myself and George.

20 Q Who is George?

21 A His last name is -- I forgot.

22 Q That's all right.

23 A I only just called him George.

24 Q Is this the same George that's in the back of
25 the room?

1 A Standing right back there (indicating).

2 Q All right. He went with you to Frankie Lane
3 with that paper in hand; is that correct?

4 A Yes, sir.

5 Q And what happened when you got there?

6 A Well, we waited then Mr. Linder showed up, I
7 laid the tailgate down on the truck and we all walked
8 around to the back of the truck and signed it
9 accordingly with George witnessing it.

10 Q And then what did you do with the document?

11 A Took it back to Mr. Seaton.

12 Q All right.

13 A Excuse me, I think I gave Mr. Linder a copy
14 or he already had a copy, I don't know, I don't
15 remember.

16 Q Mr. Smith, I think your answer was clear but
17 just for purposes of the record and for clarity to the
18 Court's understanding, you're not asking the Court to
19 require any specific action on Mr. Linder's behalf,
20 you're not trying to enforce any particular rights that
21 you have under the agreement if I understand your
22 testimony correctly, you're simply wanting the Judge to
23 determine whether the May 2017 document is a valid
24 binding agreement between you and Mr. Linder?

25 A That is correct, sir.

1 Q All right.

2 MR. WEST: Judge, I don't have anything
3 further at this time of this witness.

4 THE COURT: All right. Mr. Mlynarczyk?

5 CROSS-EXAMINATION

6 BY MR. MLYNARCZYK:

7 Q May it please the Court, Your Honor?

8 All right, Mr. Smith. So I want to
9 go -- let's just kind of go over a couple of things you
10 said in your testimony regarding this May agreement,
11 Exhibit Number 6. You just told the Court that
12 Mr. Seaton was your attorney, correct?

13 A Yes, sir.

14 Q Okay. And Mr. Seaton created this document
15 at your request?

16 A Yes, sir.

17 Q Okay. So when he created this document for
18 you he created this document to present to Mr. Linder
19 and to Brandon and Karla to have them sign it?

20 A I don't understand.

21 Q So he created that document as your lawyer
22 based on what you told him you all agreed to and then
23 you brought it to Brandon and Karla to sign?

24 A He was witnessing the conversation, he
25 basically knew what we agreed to.

1 Q Okay. So let's clear that up.

2 Was Mr. Seaton Brandon's attorney?

3 A No, sir.

4 Q Okay. So at all times that Brandon was in
5 that office, Mr. Seaton represented you and not
6 Mr. Linder?

7 A Represented me, he was there, yes.

8 Q We can agree that he is not Brandon's lawyer?

9 A Well, that's true.

10 Q Okay. So let's talk about that agreement for
11 a second.

12 MR. MLYNARCZYK: We still have the exhibits
13 down here?

14 May I approach, Judge?

15 THE COURT: Sure. What are you showing him?

16 MR. MLYNARCZYK: The Exhibit 6.

17 THE COURT: All right.

18 BY MR. MLYNARCZYK:

19 Q I'm going to hand this to you, sir, and I'm
20 going to ask you some questions about it.

21 So Mr. West just asked you the only thing you
22 wanted the Judge to do is determine whether this is a
23 valid contract, correct?

24 A Yes, sir.

25 Q And if the Court determines that this is a

1 valid contract what would you do with it?

2 MR. WEST: Object, Your Honor. That goes to
3 attorney-client privilege, it's outside the scope of
4 this proceeding. What he does with it will be a matter
5 to he will be consulting with counsel about and that
6 will be highly inappropriate at this point because that
7 goes to the matter entirely separate from these
8 proceedings.

9 THE COURT: All right. Sir?

10 MR. MLYNARCZYK: Your Honor, I'm just asking
11 what his intentions are at the proceeding today. I'm
12 simply asking him the question that if he were to get
13 money once from Your Honor what's his intention.

14 It goes back to my point in the beginning,
15 Your Honor, that this hearing is going to resolve
16 nothing between these parties, that's what this is
17 going towards. Either way, you decide on this matter
18 something else has to be done to address this document.
19 I'm simply asking --

20 THE COURT: Are you sure you want him to
21 answer?

22 MR. MLYNARCZYK: We can move on, Your Honor.
23 So let's move on --

24 THE COURT: Wait, wait, I want to make sure
25 that we're clear.

1 MR. MLYNARCZYK: Sure.

2 THE COURT: Their position is if they just
3 want to determine whether it is an agreement on and
4 you're asking what he's going to do with it and part of
5 your argument is that since there is nothing
6 contemplative to begin with that maybe it's premature
7 at this point in time?

8 MR. MLYNARCZYK: Yes, Judge.

9 THE COURT: Is there anything you wanted to
10 add?

11 MR. MLYNARCZYK: No, we can move on. That is
12 correct, Judge.

13 THE COURT: Okay.

14 MR. WEST: So, Your Honor, are you sustaining
15 the objection or is he withdrawing his question?

16 THE COURT: Sustaining the objection.

17 MR. WEST: Thank you.

18 BY MR. MLYNARCZYK:

19 Q So look down at the third paragraph where it
20 says whereas; do you see that?

21 Well, let's start from the beginning, it says
22 whereas the parties here and above entered into an
23 agreement for the purchase of assets in United Cable on
24 or about January 4th, 2006. The parties' desire to
25 make the following modifications addendum to that

1 agreement.

2 MR. MLYNARCZYK: So, Your Honor, if I can
3 just have all the exhibits that are up there just to
4 show him because I want to -- I'm going to need to
5 address each one.

6 BY MR. MLYNARCZYK:

7 Q So there were previous modifications that
8 have entered to the Court of these agreements, correct?

9 A I don't understand what you're saying.

10 Q So there have been other changes to these
11 contracts that you guys have written down and signed,
12 correct? To the original contract in 2006.

13 A Changes to what contract?

14 Q Well, your attorney just handed you two
15 modifications in 2008 and 2013 that were drawn up and
16 you signed, correct, your exhibits that you put to the
17 Court?

18 MR. MLYNARCZYK: We can go through each
19 exhibit, Your Honor, once I have the copies of them.

20 BY MR. MLYNARCZYK:

21 Q So the second whereas says the purchaser
22 Brandon Linder also known as United Cable Construction,
23 Inc. was the purchaser of the original assets of UCC;
24 is that what that document says?

25 MR. MLYNARCZYK: May I approach, Your Honor?

1 THE COURT: Certainly.

2 BY MR. MLYNARCZYK:

3 Q Isn't that what that paragraph says?

4 A Please ask that again, I don't understand
5 what you're asking me?

6 Q Sure. Who bought the assets of United Cable
7 Construction back in 2006?

8 A Brandon Linder.

9 Q Okay.

10 MR. MLYNARCZYK: Can I approach, Your Honor?

11 THE COURT: Yes.

12 BY MR. MLYNARCZYK:

13 Q I'm showing you what's been marked as
14 Exhibit 1, okay? This is what your attorney marked as
15 Exhibit 1. And it states who the parties are, right?
16 At the end, you guys all signed this document, correct?

17 Do you see anywhere on that document where
18 Brandon Linder individually is a party to that
19 contract?

20 A I see his name on there, is that what you
21 mean?

22 Q Does that -- and what is written under his
23 name?

24 A South Atlantic Communications.

25 Q Okay. So the only signatures on this

1 document, the parties to the contracts that you
2 admitted as evidence are United Cable Construction
3 Company who you signed on behalf of, South Atlantic
4 Communications, Inc., and Gerald Smith, correct?

5 A Yes, sir.

6 Q Okay. Brandon Linder's name doesn't appear
7 personally anywhere on here, correct? Isn't that
8 correct?

9 A His name doesn't appear personally?

10 Q Personally, in his individual capacity.

11 A Well, his name is there, is that personally?

12 Q But as you just testified under South
13 Atlantic Communications, Inc. --

14 A Well, that's not what you asked me.

15 Q Okay. So Mr. Brandon's signature on this
16 document was as South Atlantic Communications, Inc.,
17 correct?

18 A That's what's typed underneath of his
19 signature.

20 Q Thank you.

21 So now Exhibit 2, this is the consultation
22 agreement. Can you tell me who the signing parties are
23 on the consultation agreement?

24 A Where is the consultation agreement?

25 Q This is Exhibit Number 2 that your attorney

1 exhibited to put in evidence. And that's the signature
2 page to Number two.

3 Can you tell me who signed this document?

4 A I signed it.

5 Q As United Cable Construction Company, Inc.?

6 A Right. And I signed it as an individual.

7 Q Who was -- you were the seller?

8 A Yes, sir.

9 Q Okay. The personal guarantee, this is
10 Exhibit Number 3.

11 Who signed the personal guarantee?

12 A Brandon Linder and David Crockett.

13 Q Okay. Karla Linder sign this document?

14 A I don't see her name on there.

15 Q So that would be a no.

16 Now Exhibit 4, which is a modification.

17 I just want to be clear about something else
18 for you too. On Exhibit 2, the consultation agreement
19 we were just talking about is Exhibit 2, what does
20 Paragraph 12 say? Can you read Paragraph 12 for the
21 Court?

22 A Modifications, any modifications in the
23 agreement must be written and signed by both parties to
24 be enclosed.

25 Q Okay. So that would be the parties that are

1 the parties to that agreement? The ones we just
2 discussed with the Court.

3 Okay. Here is Exhibit 1 which is the
4 contract. Can you read Paragraph 13 in that contract?

5 A Modifications, any modifications or
6 agreements shall be written and signed by both parties.

7 Q Okay. And we've already established who the
8 parties are for that agreement, correct?

9 A Yes, you put it together.

10 Q The modification agreement that was entered
11 as Exhibit 4, and this is an agreement for Gerald Smith
12 of United Cable Construction, it's an addendum to the
13 original contracts, correct?

14 A I'm not sure.

15 Q You want to take a minute to look at it?

16 A I'm not sure what you're --

17 Q I'm just asking you if that agreement is what
18 it's titled?

19 A What year was this, '08.

20 Okay, what about it?

21 Q So in this modification will you read
22 Number 9 to the Court, Paragraph Number 9?

23 A Entire amendment, the amendment as is
24 attached the entire amendment of these parties and any
25 negotiations discussed and understanding in terms of

1 the party, this written amendment shall not be binding
2 on any party here and to.

3 Q Did you read -- this is Number 9, did you
4 read the last sentence as well?

5 A It's understood that all terms and conditions
6 of all the original contracts and agreements with the
7 purchaser of.

8 Q Okay. So that would be all of the contracts
9 we just discussed, correct? The original
10 contracts --

11 A I don't remember the number.

12 Q Okay. And your Exhibit 5, I want to make
13 sure that you point out and go to the same paragraph,
14 the last sentence in Paragraph 9?

15 A You want me to read it?

16 Q Yes, sir. Where it starts to say as it is
17 understood.

18 A This agreement represents the entire
19 agreement of the parties of any and all negotiation
20 discussion understanding in terms in part of the
21 written agreement should not be binding on any party
22 except the otherwise contained area and as the
23 division's agreement is understood that all terms
24 condition of the reasonable contract agreement of
25 purchase of UCC and that specified altered or modified

1 agreement of this remains in full force.

2 Q Okay. And then it also has the language
3 where it says subsequent modifications, right, to this
4 agreement must be signed by both parties to be
5 enforceable, correct?

6 A Yes, sir.

7 Q All right. So now let's go back after that
8 information, let's go back to the original contract,
9 the contract that we are here about today which I think
10 you have sitting in front of you.

11 Okay. So after reviewing those documents,
12 Brandon Linder was not the purchaser of the assets of
13 United Cable, correct?

14 A Literally or physically?

15 Q I'm talking legally.

16 A I'm talking literally.

17 MR. WEST: Objection, Your Honor --

18 MR. MLYNARCZYK: Your Honor, I'm asking him
19 who's on the copy?

20 MR. WEST: -- no, he's asking for a legal
21 conclusion which I object to.

22 THE COURT: All right. Yeah, asking the
23 question is not asking for a legal conclusion.

24 BY MR. MLYNARCZYK:

25 Q So if you pick up the exhibit that's in front

1 of you there, I believe it's Exhibit 6. Exhibit 6, is
2 South Atlantic Communication's signature on that
3 document anywhere?

4 A I don't see it.

5 Q Is United Cable Construction Company, Inc. on
6 that document anywhere?

7 A I do not see it.

8 Q Okay. The meeting you were talking about
9 where you were in Grover's office talking about the
10 terms of this agreement was Karla present for that?

11 A No, sir.

12 Q Okay. Did you see in all the signatures we
13 just went over did Karla sign any of these documents or
14 any personal guarantees with you?

15 A No, sir.

16 Q Why did you have her sign a modification to a
17 document if she was not a party to the original
18 contracts?

19 A I don't know, I didn't put it together.

20 Q So that same contract let's look at the third
21 paragraph down, the document created by your lawyer.
22 It says whereas the seller Gerald Smith is
23 agreeable to pay off the \$300,000 provided the
24 following terms are met. That's what it says, right?

25 A What number are you talking about?

1 Q The third paragraph on Exhibit A where it
2 says whereas, the third whereas.

3 It says whereas --

4 A Okay.

5 Q -- the seller Gerald Smith is agreeable to
6 reduce the payoff to \$300,000 provided the following
7 terms are met; is that what it says?

8 A Yes, sir.

9 Q So by reading that couldn't you have
10 interpreted that to mean that if he doesn't do these
11 things you can sue him for the million; isn't that what
12 that means?

13 A I'm not sure.

14 Q Well, you directed your attorney to create
15 it?

16 A My attorney created it based on the
17 implementation of Mr. Linder and myself discussing the
18 terms of what we wanted to settle.

19 Q Okay. We've already established that
20 Mr. Seaton was not Brandon's attorney he was your
21 attorney. So my question for you is I'm asking you
22 what this paragraph means? It says the seller
23 Gerald Smith is agreeable to reduce the payoff to
24 300,000 provided the following terms are met.

25 MR. WEST: Objection, Your Honor, that

1 question has been asked and answered.

2 MR. MLYNARCZYK: It has not been answered,
3 Your Honor.

4 THE COURT: Go ahead and ask it again.

5 BY MR. MLYNARCZYK:

6 Q So my question to you is doesn't that
7 sentence say that you will reduce your debt to \$300,000
8 if Brandon does 1, 2, 3, 4, 5, 6. If he does those
9 things you will reduce and accept \$300,000 as opposed
10 to a million-plus, correct?

11 A That's what it says.

12 Q So if he doesn't do those things you can sue
13 Brandon for the million dollars? You are not obligated
14 to reduce your debt, correct?

15 A I don't see it or else.

16 MR. MLYNARCZYK: One moment, please, Your
17 Honor.

18 BY MR. MLYNARCZYK:

19 Q So let me ask you this, so in this document
20 you have determined here, you testified to the Court
21 that Mr. Linder was to deed over 144 Frankie Lane to
22 you, correct, that was part of this agreement?

23 A Is that what it says?

24 Q You can review it.

25 A It says immediately.

1 Q Right. So one of the things that he is
2 required to do in exchange for you reducing your debt
3 was to deed over the property to you, correct?

4 A Immediately.

5 Q Right. So that's a yes?

6 A Yes.

7 Q Okay. And you were aware at the time didn't
8 Mr. Linder tell you at that time and at previous
9 occasions that there were tax liens on that property?

10 A He did say there were tax liens.

11 Q Okay. And he also told you there was a
12 mortgage on the property?

13 A I knew there was a mortgage on the property.

14 Q Did he tell you at that meeting that he
15 couldn't transfer that property over to you because the
16 IRS says he cannot transfer any assets out of his name?

17 A He didn't tell me that.

18 Q He has never told you that?

19 A No.

20 Q Okay. Isn't it true that you knew United
21 Cable Construction was having tax issues, payment of
22 taxes?

23 A When he owned it?

24 Q Yes.

25 A Oh, okay. Well, we didn't have any when I

1 owned it.

2 Q I'm asking about when Mr. Linder owned it?

3 A Well, I don't know that.

4 Q Okay. Isn't it true that you were in the
5 office, you were participating in the meeting with a
6 woman named Pamela Snow who was a representative of the
7 IRS when it came to discussing the terms by which
8 Mr. Linder would repay you those loans because you were
9 a creditor; do you remember being a part of that
10 meeting?

11 A No, sir, I do not.

12 Q Okay. Is there anything in -- is there a
13 paragraph in Exhibit 1 that's in front of you that
14 says, and you can take your time looking at the
15 documents, that says that if any piece of this document
16 is not valid then the rest of it is valid? Do you see
17 a paragraph saying that?

18 A What is your question?

19 Q My question is do you see a paragraph in that
20 contract that says if a part of this agreement is found
21 invalid the rest of the agreement is valid; do you see
22 that in there anywhere?

23 A No, sir, I do not.

24 Q Do you see anything in there in that contract
25 that says that this contract will not be interpreted

1 against the person that created it?

2 A I don't understand your question.

3 Q Okay. My question is do you see anything in
4 the document that says that any ambiguities in this
5 document will not be assessed against you or your
6 attorney; do you see that language in that document?
7 You can look at the document.

8 A Well, I am looking at it but I don't
9 understand what you're saying being assessed against
10 me. What do you mean?

11 Q I'm just asking if you see that language in
12 the document. You have it in front of you, you can
13 look to see if it's in there.

14 A Yes, sir.

15 Q Sure. Can you look in it and see if you see
16 that language?

17 A Sure. What do you want me to look for?

18 Q Language that says any ambiguities in this
19 contract will not be assessed against you as --

20 A What do you mean by ambiguity.

21 MR. MLYNARCZYK: All right. Your Honor --

22 BY MR. MLYNARCZYK:

23 Q Can you look for the word ambiguity in that
24 contract and tell me if it's there?

25 A I don't see it. I'm not sure how to even

1 spell it.

2 MR. MLYNARCZYK: All right. I don't have any
3 more questions, Judge.

4 THE COURT: All right. Thank you.
5 Any redirect?

6 MR. WEST: Nothing by way of redirect, Your
7 Honor.

8 THE COURT: All right. You can step down,
9 sir, thank you.

10 THE WITNESS: Thank you.

11 MR. WEST: Your Honor, schedule-wise I think
12 we can get Mr. Seaton and Mr. Talbert in here in short
13 order.

14 THE COURT: All right. Let's go ahead and do
15 that.

16 MR. WEST: At this time we call Grover Seaton
17 to the stand.

18 THE COURT: All right. Come on up,
19 Mr. Seaton.

20 Mr. Seaton, please raise your right hand.

21 THE WITNESS: (Witness complies.)

22 THE COURT: Do you swear or affirm to tell
23 the truth, the whole truth and nothing but the truth?

24 THE WITNESS: I most certainly do, sir.

25 THE COURT: Thank you, sir. Have a seat.

1 Give your name and spell your last name for
2 the Court Reporter, please.

3 THE WITNESS: Grover C. Seaton, S-e-a-t-o-n
4 the III. 1506 Snipe Road, Moncks Corner, South
5 Carolina 29461.

6 MR. MLYNARCZYK: And Your Honor, just for
7 expeditious sake if this is going to be in regarding to
8 a claim that he wasn't represented by counsel we're not
9 raising that issue here today.

10 MR. WEST: Well you already reasoned to allow
11 30 minutes.

12 THE WITNESS: Of course it's an issue.

13 THE COURT: It's his case we'll let
14 him --

15 MR. MLYNARCZYK: Yes, Judge.

16 THE WEST: I appreciate that.

17 DIRECT EXAMINATION

18 BY MR. WEST:

19 Q Mr. Seaton, you're not used to being on that
20 side of the box are you?

21 A I've been there Mr. West.

22 Q All right. But more times than not --

23 A No, sir.

24 Q How long have you been a licensed attorney in
25 South Carolina?

1 A In four months 48 years.

2 Q Are you practicing now?

3 A I am still a member in good standing with all
4 courts including the U.S. Supreme Court, Appellate
5 Court, District Courts, and State Courts. I'm
6 attempting to finish up the files that I have as a
7 matter of honor and obligation, sir.

8 Q During the course of your legal career where
9 was your office located?

10 A Oh, my goodness, I initially started out with
11 Santee Cooper as a staff attorney. I went to the
12 Solicitor's Office and worked under Robert Wallace who
13 was the Solicitor of the 9th Circuit and most
14 immediately George Bishop Senior. I then practiced law
15 with Senator Goodstein and David Jennings. I then
16 practiced in Goose Creek.

17 Q Let me help you with this, the majority of
18 your career were you not located -- your office located
19 in Moncks Corner?

20 A Yes, sir.

21 Q All right. And do you remember about when
22 you set up your practice in Moncks Corner?

23 A 1964, excuse me, 1984 thereabout.

24 Q All right, sir.

25 And --

1 A That's thereabout, I can't -- I don't have
2 precisely.

3 Q We're not trying to hold you to that exact
4 date. But are you maintaining an office in Moncks
5 Corner now?

6 A No, well, I am at my home.

7 Q Okay.

8 A Which I reported to the Bar and all clients,
9 sir.

10 Q All right, sir.

11 Do you know Gerald Smith?

12 A Very comfortably, sir.

13 Q How do you know Gerald Smith?

14 A He came to me I'm not quite sure of the date
15 but there was some real estate problem and we
16 immediately got it resolved and had a very close
17 friendship.

18 Q Over a period of many years?

19 A Yes, sir.

20 Q All right. Would that have been sort of
21 consistent with his earlier testimony that he set up
22 United Cable Construction in the early '80s?

23 A I think it was more towards the end of the
24 '80s or early '90s on an independent recollection.

25 Q Okay. And you've maintained a relationship

1 with him personally and professionally since?

2 A Well, professionally and personally.

3 Q Yes, sir. Well, what do y'all do together?

4 A Well, we are both diamond members Front Sight
5 which is the leading combat school in the world and he
6 and I go there a couple of weeks out of the year.
7 Gerry is an excellent marksman, particularly with a
8 40 Glock.

9 Q And professionally have you represented Gerry
10 from time to time over the years?

11 A Yes, sir.

12 Q Now are you familiar with the transaction
13 between Mr. Smith and the purchasers of the assets of
14 United Cable Construction, Inc.?

15 A Sir, my understanding was that Mr. Linder
16 purchased initially the assets of United Cable. I did
17 not participate in those negotiations. I knew that
18 there was a subsequent investor in Mr. Crockett. I
19 didn't participate in any of that, any consultation
20 agreement. All I knew is that Mr. Linder acknowledged
21 that he owed Mr. Smith money for the purchase of that
22 asset in business.

23 Q All right. Did your office maintain copies
24 of the documents?

25 A Yes, sir, Mr. Smith along with other

1 documents and the various businesses that he was in
2 asked me and I maintained kind of a librarian-type
3 application so he would have documents with all these
4 businesses in my office, they were quite substantial.
5 Did I review all of them, no. Did I create those, no.

6 Q But you held them in --

7 A Yes, sir, and Mr. Smith is a friend and a
8 client, so he'd have the accessibility of those
9 documents when he was in the area, sir.

10 MR. WEST: Where are the original exhibits,
11 Judge, did you get them back?

12 THE COURT: I've got them.

13 BY MR. WEST:

14 Q Now Mr. Seaton, tell us -- tell the Judge a
15 little bit about the May 2017 interaction that
16 you -- it's been testified that you had with Mr. Smith
17 and Mr. Linder.

18 A Well, first off, let's make one thing
19 abundantly clear, I never represented Mr. Linder, I
20 never gave him any advice and they presented themselves
21 at my office and both instructed me or requested of me
22 that I prepare a document, an addendum to the major
23 contract of the indebtedness and what they wanted to do
24 to secure that indebtedness.

25 Before I ever entertained any conversation

1 with Mr. Linder I spent a substantial period of time
2 asking him questions about did he want to contact any
3 attorney. He was very adamant that he didn't need an
4 attorney, he knew what he was doing and to be quite
5 frank with you I was quite astonished with Mr. Smith
6 reducing a million-plus indebtedness to \$300,000 but as
7 lawyers are instructed to do by the professional code
8 you follow your client's instructions as long as you
9 know that they are mentally competent which Mr. Smith
10 is extremely competent, very knowledgeable, and
11 Mr. Linder insisted that he neither desired nor wanted
12 attorney input and he knew what he was doing and
13 I -- what Mr. Smith -- anything Mr. Linder said had to
14 go through Mr. Smith and Mr. Smith told me the document
15 or the addendum that the parties had agreed to, sir.

16 Q And based on those conversations which I
17 assume took place in your office; is that correct?

18 A Well, it was presented to me that Mr. Smith
19 and Mr. Linder had a series of conversations and had
20 tried to wrap up this indebtedness owed by Mr. Linder
21 to Mr. Smith in a very simple agreement.

22 Q Did you negotiate?

23 A No, sir.

24 Q All right. Well, tell me what you did do.

25 A I followed Mr. Linder's comments to Mr. Smith

1 and Mr. Smith's instructions to me to prepare an
2 addendum that I thought was inclusive of everything
3 about United Cable, the sale of it and what Mr. Linder
4 owed Mr. Smith and what Mr. Smith was agreeable to
5 reduce it with certain other provisions that are laid
6 out in there, a million dollars life insurance policy,
7 the deeding of the house, and monthly installments on a
8 deadline for whatever was left on the indebtedness of
9 the 300,000, sir.

10 Q And I'm going to hand you what's been
11 admitted into evidence and been discussed at length and
12 that's Plaintiff's Exhibit 6.

13 Are you the author of that document?

14 A I prepared it, yes, sir.

15 Q All right.

16 A Or my paralegal did.

17 Q You dictated it to your paralegal and she
18 reduced it to writing?

19 A Yes, sir.

20 Q And then what happened with the document;
21 what happened next?

22 A After it was prepared and Mr. Smith approved
23 it because it is a simple agreement, I gave Mr. Smith I
24 think two copies or it might have been three and I
25 instructed my law clerk Gorge Talbert, T-a-l-b-e-r-t to

1 carry it to Mr. Linder and his wife for execution which
2 was done according to my information at Frankie Lane
3 over in Ladson, sir.

4 Q Did the document, was it returned to your
5 office executed and witnessed?

6 A Yes, it was, sir.

7 Q All right. And what did you do with the
8 document?

9 A My recollection I gave -- I don't know
10 whether I kept the original or gave it to Mr. Smith but
11 I made sure everybody got copies of it.

12 Q Do you believe that there was a meeting of
13 the minds and the parties?

14 A No question about it, sir.

15 Q Did they have a meeting of the minds before
16 they got to your office?

17 A No question. The only thing I can say is I
18 do by listening to Mr. Smith's comment -- I do think
19 they were bickering between 400 and \$300,000 as being
20 the payoff and Mr. Smith acquiesced to Mr. Linder's
21 additional \$100,000 reduction. That was the only
22 comment that I heard that was changed in my office.

23 Q But you didn't attempt to negotiate for them?

24 A No, sir, I can't -- I wasn't in any position
25 to negotiate representing Mr. Smith. I made it

1 abundantly clear to Mr. Linder I couldn't give him any
2 advice nor was I representing him.

3 Q Now Mr. Seaton, after the document, Plaintiff
4 Exhibit 6 was executed, did you receive as the contract
5 requires, did you receive cashier's checks from
6 Mr. Linder after that?

7 A Sporadically, yes, sir.

8 MR. WEST: Let's go ahead and mark this.

9 THE WITNESS: I made copies -- photocopies
10 and would immediately transfer them to Mr. Smith and
11 run them through my escrow account for distribution.

12 BY MR. WEST:

13 Q I'm going to hand you what has been premarked
14 for purposes of identification as Plaintiff's
15 Exhibit 7.

16 (PLF. EXH. 7, ENTERPRISE BANK MONEY ORDERS,
17 was marked for identification.)

18 BY MR. WEST:

19 Q And ask you if you will take a look at
20 Plaintiff's Exhibit 7 and tell the Court what that
21 package represents.

22 A These are bank money orders through
23 Enterprise Bank. The remitter was Brandon Linder/UCC
24 and the payee was Gerry Smith and they were in sums of
25 5,000, 3,000 --

1 Q Let me just stop you right there, Mr. Seaton,
2 I hate to interrupt you.

3 A Okay.

4 Q It's just for clarity. Let's take the first
5 check that appears. What is the date of that check?

6 A The one on the top, sir?

7 Q Yes, sir.

8 A September the 18th, 2017.

9 Q And where was that check deposited?

10 A In my escrow account.

11 Q Was that the understanding between Mr. Linder
12 and Mr. Smith that the money was going to come to you?

13 A Yes, sir. I was to act as the receiving
14 agent under Mr. Smith's instructions and the acquiesced
15 of Mr. Linder to Mr. Smith. I had nothing to do with
16 Mr. Linder who would sporadically appear at my office
17 and hand those to the lady at the glass.

18 Q Okay. So is that true with respect to all of
19 these checks that Brandon brought them to your office?

20 A Yes, sir.

21 Q All right.

22 A Now, that's my recollection.

23 Q Sure.

24 A I don't recall opening any transmittal letter
25 or nothing of that nature, sir.

1 Q All right. Well, let's look at the next
2 check in the package and what the date of that check
3 is?

4 A October the 6th, 2017 in the amount of
5 \$3,000. This remittor is from Brandon Linder
6 individually to Gerry Smith.

7 Q Okay. And this, of course, would be after
8 the May 2,017 agreement; is that right?

9 A Yes, sir.

10 Q And with respect to each of these checks so
11 that we can move this along, all of the checks were
12 deposited into your escrow account?

13 A That's correct, sir.

14 Q All right. Let's take the next one. The
15 next check in terms of the date?

16 A October the 27th, 2017 in the amount of
17 \$5,000. Brandon Linder was the remittor to Gerry Smith
18 deposited in my escrow account.

19 Q Okay. Let's look at the next one and
20 see --

21 A Yes, sir, I'm getting there, I'm turning to
22 it. October the 13th, 2017, \$5,000, Brandon Linder
23 individually is the remittor to Gerry Smith deposited
24 in my escrow account.

25 Q Let's look at the next one and the date of

1 the next check in sequence?

2 A I think I have it here as April the
3 13th, 2018, \$5,000.

4 Q Who is the remittor?

5 A Brandon Linder individually to Gerry Smith
6 deposited in my escrow account.

7 Q All right. We've got two more, let's move
8 this along.

9 A Yes, sir. There was one made on August the
10 6th, 2018 for \$5,000 and Brandon Linder individually
11 the remittor to Gerry Smith in the amount of \$5,000
12 deposited into my escrow account. And the next one was
13 done on November the 26th, 2018, Brandon Linder
14 individually to Gerry Smith for \$5,000 which was
15 deposited in my escrow account.

16 Q Does that November 18 check, is that the last
17 check you received from Mr. Linder?

18 A That's the last check I received, sir.

19 MR. WEST: Your Honor, at this time we would
20 offer Plaintiff's Exhibit 7 into evidence.

21 MR. MLYNARCZYK: No objection.

22 THE COURT: All right. Without objection.

23 THE WITNESS: There were no individual checks
24 or any cash taken from Mr. Linder.

25 BY MR. WEST:

1 Q All right, Mr. Seaton, I'm going to now hand
2 you three letters, correspondence that will allow you
3 to identify, if I can get you to take a look at that
4 but before we do, excuse me, I'm going to take it back.

5 MR. WEST: Let's mark that in sequence,
6 please?

7 BY MR. WEST:

8 Q Now I'm going to hand you what's been
9 premarked as Plaintiff's Exhibit 8.

10 (PLF. EXH. 8, LETTERS, was marked for
11 identification.)

12 BY MR. WEST:

13 Q If you just take a minute and look at those
14 three letters.

15 A Yes, sir. I briefly reviewed those.

16 Q All right. So let's not go through word for
17 word of your --

18 A No, sir because I don't understand this
19 dichotomy.

20 Q Okay. Well, let me just ask you what the
21 point of your July 12, 2018 letter to Mr. Mlynarczyk
22 was; why did you write him in July of 2018?

23 A Mr. Smith instructed me since we were having
24 difficulty with payments to perhaps contact the
25 attorney that had previously represented Mr. Linder and

1 I did so and I informed him of the addendum of some of
2 the terms therein and the reason that I think Mr. Smith
3 and I agreed to write his counsel to tell him one of
4 two things that if he couldn't bring it current we
5 would like for him to discuss a confession of judgment
6 so we could proceed accordingly, if not I was
7 instructed to bring a lawsuit, that was the July 12th's
8 kind of summary of that brief letter.

9 Q All right. And in response to your July
10 25th, 2018 letter, you received a response from
11 Mr. Mlynarczyk?

12 A Yes, sir, which I found both a professional
13 insult and a legal curiosity, a conundrum because as I
14 told his counsel that if he thought there was
15 impropriety on my part that he owed a duty of the
16 professional rules of responsibility of reporting me
17 and that he might be in greater trouble with the Bar
18 than I am by not reporting it and after the diatribe of
19 what briefly the cross-examination of Mr. Smith was
20 about he counter concludes -- doesn't kind of conclude,
21 he wants the addendum, go back to it, bring it current
22 that he has a life insurance policy, he'll have it
23 delivered to me in the sum of a million dollars, going
24 to repay Mr. Smith as quickly as possible and will
25 continue to do so in the terms of the agreement and

1 hoping to get it done by the end of the year which is
2 the deadline under the agreement and wants to execute
3 the legal addendum.

4 Q Okay.

5 A Which I found a very confusing letter, to say
6 the least.

7 Q Well, let's talk about what can't be
8 confusing. And I'd ask you if you would look at the
9 first sentence of the second paragraph --

10 MR. MLYNARCZYK: Your Honor, what was the
11 relevance? I'm going to object to the relevance.

12 THE COURT: Relevance, what's the relevance?

13 MR. WEST: The relevance is that you raised
14 the question, Your Honor, in your preamble whether
15 there was a judicial justiciable controversy and I'm
16 getting ready to highlight the language that answers
17 your question.

18 THE COURT: All right. Go ahead.

19 BY MR. WEST:

20 Q Look at the --

21 A Second Page --

22 Q -- second paragraph --

23 A -- second paragraph --

24 Q -- of the first page --

25 A Yes, sir, quote --

1 Q -- and the first sentence?

2 A -- quote, despite the legal frailties of the
3 proposed addendum --

4 Q No, sir, let me interrupt you. I want you to
5 go to the first page.

6 A Excuse me, sir.

7 Q The first page, second paragraph, the first
8 sentence?

9 A Second paragraph, first sentence.

10 Q What does it say?

11 A The addendum reference in your letter is not
12 a legally enforceable document between the parties.

13 Q Thank you. Now after you got that letter
14 from Mr. Mlynarczyk did you respond and is your
15 response in that package?

16 A We had a great telephone conversation and I
17 responded with a letter from a -- if my memory's
18 correct about a telephone conversation --

19 Q Well, look at your letter.

20 A I did, August the 15th, 2018.

21 Q And what was the point of your letter and
22 what did you say?

23 A I addressed the issue of Mr. Linder appearing
24 in my office and that he asserted he did not need an
25 attorney for the matter when I suggested that you be

1 contacted he refused my request. And I told him if he
2 felt there was some wrongdoing, please take action
3 accordingly. Then I found it strange that you want to
4 sign the addendum but on the same basis, you want to
5 follow the terms of the addendum which would save your
6 client over \$750,000 of the endowment. If you would
7 have checked your email you request an executed copy of
8 the addendum. Tell me how you want to proceed rather
9 than avoiding the issue of satisfying the addendums
10 that have long been breached.

11 Q Thank you, sir.

12 MR. WEST: Your Honor, at this time we would
13 offer Plaintiff's Exhibit 8 --

14 MR. MLYNARCZYK: I'm going to object, Your
15 Honor, as to relevance. They are not a part of the
16 action that is to interpret the agreement to the
17 parties. I don't find them relevant at all.

18 THE COURT: I want to make sure I understand
19 what you're offering. This is the packet including the
20 three different notes; is that right?

21 MR. WEST: Yes, sir. And the relevance of
22 it, Your Honor, is back to my earlier point, we're in a
23 default situation, there is no document that has been
24 filed responsively to this case and but there has been
25 innuendo and references to the Court that there is no

1 justiciable controversy and we are offering these to
2 establish that there is, in fact, a justiciable
3 controversy under the uniformed declaratory judgments
4 act. That's the purpose.

5 MR. MLYNARCZYK: Again, my objection, Your
6 Honor, the letters between the lawyers have no bearing
7 on the document itself. And the justiciable
8 controversy of this hearing is what's in his pleadings,
9 my colleague's pleadings, and that interprets this
10 document.

11 MR. WEST: Well, if Your Honor --

12 MR. MLYNARCZYK: These letters have
13 absolutely -- I repeat my objection.

14 MR. WEST: Final point, Judge, if he's
15 willing to stipulate that there is a judiciable
16 controversy then I'll withdraw the exhibit.

17 MR. MLYNARCZYK: Your Honor, I don't see how
18 anything in these letters between attorneys establishes
19 a judiciable controversy between our clients.

20 THE COURT: That's not where we're at.

21 His offer is as to the stipulation may be
22 withdrawn so it's a response on that.

23 MR. MLYNARCZYK: I'm sorry, what is the
24 stipulation we're asking for that if there is a
25 judiciable controversy as to what, other than what's in

1 the pleadings for this hearing?

2 THE COURT: Between the parties.

3 MR. MLYNARCZYK: I'm not objecting to that
4 anything has been raised in the pleadings and the
5 demand of the relief and that's all I'm here to address
6 and that's all that I'm stipulating to.

7 THE COURT: Okay. I'll take that as a, no, I
8 understand that and I'll go ahead and allow the
9 documents in and it's subject and of course I'll be
10 hearing the arguments as to the meaning and as to the
11 entire picture.

12 MR. WEST: Your Honor, I don't have any other
13 questions for this witness.

14 THE COURT: All right.

15 MR. MLYNARCZYK: So, Your Honor, this is a
16 point of reference the only establishment earlier as
17 opposed to the representation of Mr. Seaton to the
18 Plaintiff was to identify that he was his attorney in
19 fact for the creation of the document but I now feel
20 compelled to ask Mr. Seaton a couple of questions about
21 the exhibit that he just put in.

22 CROSS-EXAMINATION

23 BY MR. MLYNARCZYK:

24 Q So Mr. Seaton, prior to that meeting of May
25 when Mr. Smith instructed you to sign that agreement

1 had we worked on this issue previously?

2 A Who is we?

3 Q You and I.

4 A I've never worked with you.

5 Q You and I did not negotiate the previous
6 addendums or have emails or conversations about --

7 A I don't know what previous addendum you're
8 talking about because I've never been a part of
9 anything except the addendum that I created.

10 Q Had you and I had conversations about
11 Mr. Smith and Mr. Brandon Linder in the past?

12 A To my knowledge never.

13 Q I'm sorry, Mr. Seaton, I just want to tell
14 you that you're under oath and that we have emails and
15 telephone records of you and I having conversations
16 about these two people in the past.

17 A You asked me about the addendums and I told
18 you.

19 Q I'm just asking you if we have ever had
20 conversations about these two claims --

21 A Your question is so convoluted. Have we ever
22 generally talked about these parties and wherever they
23 stood, most probably, I have no independent
24 recollection and I don't have anything recorded, sir,
25 to tell you affirmatively, yes, but this is not the

1 first time you've threatened me with legal consequences
2 as an attorney and I resent that very strongly.

3 Q So let's talk about that for a second, you
4 stated that you were in a meeting in May that you asked
5 Mr. Linder if he needed an attorney present and he said
6 no, correct?

7 A That's what I said, sir, in my testimony.

8 Q Okay. So then to put in front of the Court
9 what brought on my letter why did you send me this
10 letter in July to try to enforce the agreement?

11 A It's very simple, sir, I told you that I have
12 received all of the documents from Mr. Smith. I looked
13 at the signatures, your signature was on all of those
14 documents and Mr. Smith told me that you had
15 represented everyone in the preparation of these
16 documents and since you were the creator of them that
17 in my mind and Mr. Smith that it would be logical since
18 we weren't getting Mr. Linder's attention to send you a
19 copy of that addendum but you authored the knowledge of
20 your presence, not I.

21 Q And in the letter here you didn't ask me if I
22 represented Mr. Linder in this letter, right, you
23 already knew that I represented Mr. Linder?

24 A Whatever the letter says states it, sir, I
25 don't think it's necessary to query about

1 representation since you created everything in the past
2 and I had your signature on everything I thought
3 perhaps and I also was informed that at one time you
4 wanted to be an owner and investor in this business and
5 I thought it appropriate and Mr. Smith directed since
6 we weren't getting any fruition to the addendum to
7 contact you, sir.

8 Q Okay. So I'm going to move on but prior to
9 that I just got to be clear, I asked you if we had had
10 previous negotiations --

11 A Why don't you get up here and testify because
12 I told you, I already answered that.

13 MR. MLYNARCZYK: Your Honor, can you instruct
14 the witness to answer the question, please, Your Honor?

15 THE COURT: All right. Ask the question and
16 let him answer it.

17 BY MR. MLYNARCZYK:

18 Q Just for purposes of what the exhibit they
19 submitted, I'm asking you if you and I as
20 representatives of these two parties had exchanged
21 letters, emails, and phone calls in the past over years
22 regarding the issues between these clients; is that
23 true or not true?

24 A I can't independently tell you without you
25 showing some document to refresh my memory. The only

1 thing I can recall in the past is I never could get you
2 to return phone calls so I dispute that we discussed
3 anything of any depth and I don't recall reviewing any
4 letters from you. I don't recall, if you got something
5 it may refresh my memory, I don't recall ever writing
6 and I don't know what issues that you and I would have
7 discussed other than the fact that your client wasn't
8 performing. I just -- that's my recollection.

9 Q So your recollection is that we had
10 conversations about my client not performing, that's
11 your recollection?

12 A No, I said if we had conversation. You know
13 you take words and you attempt to make them something
14 other than the clear intent of plain conversation. If
15 we had it would have been limited to your client not
16 performing, if.

17 Q Let's look in my response to the letter that
18 was just entered as an exhibit. Do you still have that
19 exhibit in front of you?

20 A No.

21 MR. MLYNARCZYK: May I approach, Judge?

22 THE WITNESS: Don't get near me, please.

23 BY MR. MLYNARCZYK:

24 Q The third paragraph on the first page can you
25 read that for the Court, please?

1 A The addendum you allegedly created also
2 contains fatal inaccuracies including but not limited
3 to the following; one, Brandon W. Linder was not the
4 purchaser of UCC. The purchaser on the closing
5 documents for the sale of UCC was South Atlantic
6 Communications, Inc. ("SAC") to the purchase of UCC was
7 not an asset sale it was a transaction that included
8 assets, sales, and a stop-transfer on a consulting
9 agreement. Three, there was no independent validation
10 of the currently owned quote, currently owned amount
11 listed in the addendum at the time of the execution of
12 the addendum for the paragraph the addendum attempting
13 to waive the arbitration clause in the sales contracts
14 for the purchase of UCC is not effective -- Karla Kerry
15 Linder individually was included on this addendum as a
16 sight signal who was not a party.

17 Q Okay. And are those not the issues that I'm
18 raising? You've been sitting in the courtroom today,
19 are those not the exact issues --

20 A I'll leave that for the Court, sir.

21 Q Can I finish my question, please?

22 A Yes, sir.

23 Q Are those not the exact same issues that I am
24 raising to the Court today?

25 A I'll leave that for the Court's

1 interpretation, sir. My opinion is that two people, a
2 debtor and a person that's owed that money, if they
3 come to an agreement to conclude their monetary
4 transactions regardless of what entities they have
5 utilized and one party is willing to give up over
6 \$700,000 to conclude that agreement then that was what
7 was presented to me and that's what I undertook in the
8 agreement, the addendum to be.

9 Q But your letter, the first page of that
10 letter on July 12th did you say I need the deed
11 immediately? So really what you're asking for me in
12 that paragraph, you're telling me my client needs to
13 sign that property over to you, we're not just talking
14 about a debt of reducing from a million to 300, your
15 letter is demanding that Mr. Linder turn over a piece
16 of property --

17 A That was the term of the agreement in order
18 to get the \$700,000 reduction was my understanding of
19 it and Mr. Smith was trying to obtain as much security
20 for performance as any simple minds, simplistic minds
21 can ascertain to such an indebtedness over such a
22 period of time that your client was ignoring.

23 MR. MLYNARCZYK: I have no further questions,
24 Judge.

25 MR. WEST: Nothing on redirect.

1 THE COURT: All right. Thank you, Mr.
2 Seaton, you may step down.

3 THE WITNESS: Yes, sir.

4 MR. WEST: At this time the Plaintiff calls
5 George Talbert to the stand.

6 THE COURT: All right. Mr. Talbert.
7 Raise your right hand.

8 THE WITNESS: (Witness complies.)

9 THE COURT: Do you swear or affirm to tell the
10 truth, the whole truth and nothing but the truth?

11 THE WITNESS: I do.

12 THE COURT: Thank you, sir, have a seat.

13 Give your name and spell your last name for
14 the Court Reporter and your address?

15 THE WITNESS: George Talbert, T-a-l-b-e-r-t.
16 633 Levee Drive, Moncks Corner, South Carolina
17 29461.

18 THE COURT: Thank you, sir. Mr. West?

19 DIRECT EXAMINATION

20 BY MR. WEST:

21 Q May it please the Court?

22 Mr. Talbert, have you ever worked for the
23 Seaton Law Firm?

24 A As a courier.

25 Q All right. Were you asked to deliver or

1 participate in the delivery of a document to Frankie
2 Lane and present the document to Brandon W. Linder and
3 Karla Linder --

4 A I was.

5 Q -- in May of 2017?

6 A Yes, sir.

7 Q Is this the document? I'm going to hand you
8 Plaintiff's Exhibit 6. Is this the document that you
9 carried to Frankie Lane?

10 A Yes, sir, it was.

11 Q And did you witness the signature of the
12 signatories to this document?

13 A I did.

14 Q And the signatories are Gerald R. Smith?

15 A Yes, sir.

16 Q And Brandon Linder and Karla Linder?

17 A Yes, sir.

18 Q And is that your signature as a witness to
19 those signatures?

20 A Yes, it is.

21 Q Okay. Were you a party to any conversation
22 about this document?

23 A No, I wasn't.

24 Q So when you showed up there at Frankie Lane
25 what did you say to the parties about why you were

1 there?

2 A To witness their signature on the contract
3 there.

4 Q All right.

5 MR. WEST: I don't have any other questions.

6 MR. MLYNARCZYK: No questions, Judge.

7 THE COURT: All right. Thank you, sir, you
8 may step down.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right. Anything further,
11 Mr. West?

12 MR. WEST: That's the Plaintiff's case,
13 Your Honor.

14 THE COURT: Okay. Mr. Mlynarczyk?

15 MR. MLYNARCZYK: Yes, may it please the
16 Court, Your Honor, I have Mr. Linder. I call
17 Brandon Linder to the stand.

18 THE COURT: Mr. Linder, come on up.

19 Mr. Linder, do you swear or affirm to tell
20 the truth, the whole truth and nothing but the truth?

21 THE WITNESS: Yes, sir.

22 THE COURT: Thank you, sir. Have a seat.

23 Say your name and spell your last name and
24 address for the Court Reporter.

25 THE WITNESS: My name is Brandon Linder,

1 L-i-n-d-e-r. 219 Sagebrush Road, Smoaks, South
2 Carolina 29481.

3 THE COURT: Thank you, sir.

4 DIRECT EXAMINATION

5 BY MR. MLYNARCZYK:

6 Q Mr. Linder, I'm going to direct your
7 attention immediately to the last exhibit or Exhibit 6
8 which is the modification.

9 MR. MLYNARCZYK: May I approach, Your Honor?

10 THE COURT: Certainly.

11 BY MR. MLYNARCZYK:

12 Q Do you recognize that document?

13 A Yes, sir.

14 Q And that's the document that's at issue in
15 this case relative to the modification to the original
16 contracts, correct?

17 A Yes, sir.

18 Q Okay. So you will admit that you owe
19 Mr. Smith a lot of money, correct?

20 A Yes, sir.

21 Q You will admit that you did not make payments
22 on timely fashion in any contract that you entered into
23 with Mr. Smith; would you not?

24 A Initially when we first started in 2006 for
25 the first two years we did, since then, no, sir, we had

1 not.

2 Q And you will admit that Mr. Smith has been
3 overly generous with you relative to terms of
4 repayment, dealing with arrears, making up secondary
5 and third and fourth agreements --

6 A Yes, sir.

7 Q -- and you would agree that he has been as
8 accommodating as he could be to you, correct?

9 A Yes, sir.

10 Q So we're not arguing the fact -- we're not
11 trying to present to the Court that you do not owe
12 Mr. Smith money, correct?

13 A No, sir, not at all.

14 Q So but I want to direct your attention to the
15 meeting that led up to signing this document and the
16 issue of the deed being transferred to 144 Frankie
17 Lane. What did you tell Mr. Seaton and Mr. Smith about
18 that property at that time?

19 A I told them I could not transfer any property
20 or anything I owned. That there was a tax lien on us
21 from the Federal IRS, the State, as well as my bank had
22 just filed foreclosure on me.

23 Q Okay.

24 MR. MLYNARCZYK: And, Your Honor, I'd like at
25 this time to move the premarked exhibits without

1 objection, I think we agreed. These are Exhibits 1,
2 which is the action by Enterprise Bank in this Court.
3 Exhibit 2, which is the judgment in that action, and 3,
4 the transcript of the testimony. I'd like to move
5 those into the record for your review.

6 THE COURT: Any objections?

7 MR. WEST: I do not have any objection to
8 those documents. I do object to any -- listening
9 to any testimony that goes outside the scope of
10 this proceeding which gets to the question of
11 enforcement and what is going to happen next that
12 has already been established to be not the purpose
13 of this hearing. So if we are heading down a path
14 I'm just sort of in anticipation of where we're
15 heading that we're going to start talking about
16 enforceability and that's outside the scope of this
17 proceeding.

18 MR. MLYNARCZYK: I'm not getting into
19 enforceability, Your Honor. It's not that type of
20 questioning.

21 THE COURT: All right. So we'll proceed as it
22 is, of course, if there is any veering into that
23 then I guess I expect another objection.

24 MR. MLYNARCZYK: Yes, Judge.

25 THE COURT: Okay.

1 BY MR. MLYNARCZYK:

2 Q So explain to the Judge what took place when
3 you were talking about 144 Frankie Lane?

4 A Well, initially Gerry wanted to see what we
5 could come to for a settlement and he wanted 400,000 as
6 he said and I tried -- I told him I would like to go
7 with three because my mother got sick in 2014 when we
8 initially started talking about this settlement and
9 then she passed away and then my grandmother got sick
10 -- well, we had discussed 300,000 then so I stuck to
11 the 300,000. Well, he wanted to know -- he basically
12 wanted to somehow collateralize or get something else
13 out of me given what he already had and I told him
14 there is nothing I can do. My bank had already
15 notified me they filed foreclosure on me, I
16 specifically told him that multiple times I could not
17 transfer this property, it's got a tax lien,
18 Ms. Pamela Snow with the IRS who he's met himself told
19 me that I could not do anything with this property with
20 her specific permission and I made that very clear that
21 day.

22 Q And what was Mr. Smith's response to you in
23 regard to signing this agreement in that issue?

24 A He wanted to know my intentions. His word
25 was I just want you to sign something showing me your

1 intentions. If you'll just show me that you intend on
2 paying because I hadn't made a payment in a few months.
3 My grandmother had just passed away, I wasn't talking
4 to anyone and I hadn't made a payment in a few months
5 at that time when I did meet with him that day.

6 Q So let's talk about intent for a minute.

7 Look at the third paragraph down that starts
8 with whereas. It says whereas the sale of the seller
9 Gerald Smith is agreeable to reduce the payoff to
10 300,000 provided the following terms are met. What did
11 that mean to you?

12 A Just what it says, it means that if I can do
13 these things that he will do this for me -- he will
14 reduce the debt for me if I can make these things
15 happen. I tried to make these things happen. There
16 was two hurricanes in a 30-day period a couple of
17 months after this that just wiped my whole -- all the
18 money I had and everything out so there was no way I
19 could make these things happen.

20 Q So at this point, I mean obviously if you had
21 \$300,000 sitting in the bank you would have cut the
22 check?

23 A I would pay him immediately.

24 Q You admit this is a fantastic deal?

25 A Yes, sir.

1 Q And you tried everything in your power to
2 accomplish these things on this list?

3 A Yes, sir.

4 Q Okay. And what was your understanding based
5 on that preamble to it, what was your understanding if
6 you could not do these things on the list?

7 A That he was going to -- that I would owe him
8 a million dollars.

9 Q Okay. And just to reiterate what we said
10 before, in all of the documents we've addressed so far
11 your wife was not involved in that purchase at all, was
12 she?

13 A No, sir.

14 Q Okay. Do you know why she was required to
15 sign this document?

16 A I assume because her name was on the loan at
17 the bank. I told them I had a loan at the bank. I
18 told them I had a foreclosure, I told them that the IRS
19 had liens on it.

20 Q Okay. So she's on the property at 144
21 Frankie?

22 A Yes, sir.

23 Q Okay.

24 MR. MLYNARCZYK: I don't have any more
25 questions.

1 THE COURT: Mr. West?

2 MR. WEST: Briefly on the cross.

3 CROSS-EXAMINATION

4 BY MR. WEST:

5 Q Mr. Linder?

6 A Yes, sir.

7 Q Look at that Plaintiff's 6 for just a minute?

8 A Yes, sir.

9 Q There is no question you signed the document,
10 is there?

11 A No, sir.

12 Q And no question that your wife signed the
13 document?

14 A No, sir.

15 Q And you heard the testimony of Mr. Talbert
16 that he witnessed the execution of the document?

17 A Yes, sir, I remember him.

18 Q So you don't have any dispute about how this
19 document was signed?

20 A No, sir.

21 Q And the fact that those signatures are true
22 and accurate signatures of all the people that signed
23 it including the witness; is that right?

24 A Yes, sir.

25 Q All right. And you received a copy of this?

1 A Yes, sir.

2 Q All right. Now you've talked a lot in
3 response to questions about your lawyer about you know
4 the tax liens and the mortgage, well, why did you sign
5 this document if you knew if it's your position that
6 you couldn't do what Paragraph 3 says that you must do,
7 why did you sign it?

8 A At that time I didn't know I couldn't do it.

9 Q Well, wait a minute now, you said in your
10 earlier testimony today sitting in that chair that you
11 talked to them at Mr. Seaton's office and there had
12 been all kind of conversations about the IRS and all of
13 those things that --

14 A Yes, sir.

15 Q All right. So let me get that clear. You
16 said sitting in that chair just a few minutes ago that
17 there was discussions about the fact that you couldn't
18 sell the property --

19 A Yes, sir.

20 Q -- without the consent of the IRS and your
21 bank, you said that?

22 A Yes, sir.

23 Q All right. So if you knew that --

24 A Uh-huh.

25 Q -- before you signed this document --

1 A Yes, sir.

2 Q -- then why did you sign the document?

3 A Well --

4 Q It doesn't say anything about any of that.

5 A Because of the conversation that me and
6 Mr. Smith had and he specifically told me that I want
7 this document signed so I know your intentions Brandon,
8 that was it.

9 Q Okay.

10 A This was not -- we made many dealings before
11 it wasn't even -- that's why we went and put this one
12 on paper.

13 Q And you hadn't honored a single one of them?

14 A I tried to -- I honored the first one, yes,
15 sir.

16 Q All right. And you're not surprised that
17 Mr. Smith would want to try to get something in writing
18 because your word obviously was no good?

19 A Yes, sir.

20 Q You understand why he got this document?

21 A Yes, sir.

22 Q All right. Now I want to focus because this
23 is real important, you're saying you know that you
24 can't do it?

25 A Yes, sir.

1 Q You're always making a big deal about the
2 fact that you can't do it but that's not what you say
3 in Paragraph 3. You said and you signed this
4 document --

5 A Uh-huh.

6 Q -- the house on real estate at Frankie Lane
7 known as 144 Frankie Lane will be immediately deeded,
8 right?

9 A Yes, sir.

10 Q You said that and you signed that?

11 A I didn't say it.

12 Q You signed it.

13 A I told them I couldn't do it.

14 Q Did you read it?

15 A Yes, sir, I read it.

16 Q All right. And your wife read it --

17 A No, my wife didn't read it.

18 Q She signed the document without reading it?

19 A Yes, sir, she did. She showed up there and
20 all they did was flip it to the signature page and she
21 signed it, nobody ever read that document to her,
22 nobody discussed that document with her any way, shape
23 or form.

24 Q So you stood there and let your wife sign a
25 document that she didn't read?

1 A Yes, sir.

2 Q That's your testimony?

3 A Yes, sir.

4 Q All right. So I want to get back to this
5 deed, immediate deed, did you think that was just words
6 on paper that didn't matter and it was not significant?

7 A I thought that they thought it was words on
8 paper and it was insignificant because the many times
9 that I repeated that I could not make that happen,
10 legally I could not do that. I told Mr. Seaton that
11 and Mr. Smith that more than once that day.

12 Q And because the real deal for you was this,
13 Brandon, you were getting a \$700,000 break and you
14 would have signed anything that confirmed that you were
15 getting a \$700,000 discount because that was all that
16 mattered to you was to get that signature --

17 A No, sir.

18 Q -- that was it --

19 A No, sir.

20 Q -- it was all about the \$700,000?

21 A No, it was not.

22 Q Well, then why did you sign the document?

23 A In good faith to Mr. Smith and trying to do
24 what he asked me to do. In 2008 when the economy
25 crashed I went to Mr. Smith along with my attorney and

1 I said, Mr. Smith, I just went and met with a
2 bankruptcy attorney at West Ashley Antonopoulos, I said
3 he told me exactly what I need to do to file
4 bankruptcy, this is your options, I can file bankruptcy
5 and you may get this, you may get that or you can work
6 with me and we'll do the best we can do to get you
7 paid. He agreed in 2008 to continue moving forward
8 that's why he waited 17 months not to get a payment.
9 That's why my bank waited 17 months not to get a
10 payment. My attorney and I both went to him and
11 offered that do you want us to file bankruptcy or do
12 you want to work with us through it and he agreed at
13 that time to work with me through it.

14 Q And that's what he did in this document?

15 A That's what he did from 2008 till now, sir.

16 Q Yeah, but the last document is this document
17 and this document gave you a 700,000-plus break and the
18 only requirement of you was that you provide him this
19 life insurance policy; did you do that?

20 A Not at that time.

21 Q Have you ever done it?

22 A Yes, sir.

23 Q You've given him this million dollar life
24 insurance policy?

25 A It is a -- it's a \$1,000,000 life insurance

1 policy in total that's all they ever give me and his
2 name is on it, yes, sir.

3 Q Did you give it to him?

4 A It's been sent to his office.

5 Q Is that right?

6 A Yes, sir.

7 Q All right. When was that sent?

8 A I'm not positive.

9 Q Who sent it?

10 A I thought that my attorney sent it because I
11 believe I had sent it to him.

12 Q Oh, is that right?

13 A But I'm not exactly sure how it was sent or
14 if it was dropped off with the check because there was
15 a check that we dropped off at the same time.

16 Q I want to know what you know.

17 Did you --

18 A I did not personally go to his office and
19 drop the letter off.

20 Q All right. Did you provide your attorney
21 proof of the existence of a million dollar life
22 insurance policy as Gerald R. Smith as beneficiary, yes
23 or no?

24 A Yes, sir.

25 Q Do you know whether your attorney has

1 transmitted that to Mr. Smith or Mr. Smith's attorney
2 Mr. Seaton?

3 A No, sir.

4 Q You don't know that?

5 A No, sir.

6 Q Okay. Now on the issue of the deed to
7 Frankie Lane, you would agree that you and your wife
8 have not executed that deed?

9 A No, sir.

10 Q Okay. Hadn't done that?

11 A No, sir.

12 Q Even though you promised to do it?

13 A I did not promise to do that.

14 Q You didn't?

15 A No, sir.

16 Q Okay. Do we have to go back through that
17 document again?

18 A If you'd like.

19 Q You know it says that you're supposed to
20 deliver a deed, right?

21 A It says a lot of things that's interpreted by
22 different people.

23 Q What?

24 A My interpretation they knew point-blank there
25 was no question I could not deed that property over. I

1 had multiple conversations on the phone with Mr. Smith
2 after this document was signed.

3 Q I'm going to get you to look at Paragraph 4,
4 we didn't talk about Paragraph 4 on Plaintiff's
5 Exhibit 6.

6 A Yes, sir.

7 Q Read Paragraph 4, it's short.

8 A Should the purchaser Brandon W. Linder not
9 perform the conditions as set out here above, he will
10 immediately abandon the use of the property 144 Frankie
11 Lane, Ladson, South Carolina.

12 Q Did you do that?

13 A No, sir.

14 Q Why didn't you do that?

15 A Because I didn't do any of this and it was my
16 interpretation that if I did do those things that he
17 would reduce the debt to 300,000 if I didn't then he
18 wouldn't. It's like Mr. Seaton said, it was a pretty
19 simple contract between two people who had been
20 negotiating for years together.

21 Q Well, why would you sign a document that you
22 knew that you weren't going to perform?

23 A Well, I didn't know I wasn't going to pay the
24 money. I knew as long as I paid the money just like
25 Mr. Smith said, Brandon, don't worry about it as long

1 as you pay me the money everything will be fine. And
2 unfortunately, I was not able to pay the money.

3 Q You did pay a little bit of money to
4 Mr. Seaton?

5 A I paid what we had when we had it, yes, sir.

6 Q All right.

7 MR. WEST: Your Honor, I'm sorry to be back
8 and forth but you have the exhibit that relates to the
9 checks?

10 THE COURT: I don't know the number.

11 BY MR. WEST:

12 Q You were present in the courtroom where I
13 asked Mr. Seaton about these checks that were delivered
14 to his office in Plaintiff's Exhibit 7, I'm going to
15 get you to look at that real quick and refresh your
16 memory about that.

17 You recognize those checks?

18 A Yes, sir.

19 Q Did you hand-deliver those to Mr. Seaton's
20 office?

21 A No, sir.

22 Q You didn't?

23 A No, sir.

24 Q How did they get to Mr. Seton's office?

25 A I delivered some, some of them somebody in my

1 office delivered.

2 Q Okay. But those are checks that you
3 authorized to be delivered or you delivered yourself?

4 A Yes, sir.

5 Q Now let's talk about the reason you were
6 delivering those checks to Mr. Seaton.

7 A Okay.

8 Q Was that part of the agreement that you
9 signed in May of '17?

10 A Yes, sir.

11 Q Okay. And those checks were by bank money
12 order or a cashier's check; is that right?

13 A Yes, sir, that's what he requested.

14 Q All right. So if you didn't think that was a
15 good agreement why were you paying money under the
16 agreement?

17 A I was trying to pay him the money that he
18 wanted me to pay. I tried to do the agreement we
19 agreed on, unfortunately I couldn't.

20 Q Well, you couldn't and you wouldn't and let's
21 talk about the wouldn't part. And the wouldn't part is
22 is that you stopped paying according to that stack in
23 November of 2018; is that right?

24 A Yes, sir.

25 Q Why did you stop paying?

1 A Well, for one we didn't have the money.

2 Q All right. Why else?

3 A Well, at that point that was about it.

4 Q Okay. You don't remember saying earlier that
5 you stopped paying because of this lawsuit?

6 A Yeah.

7 Q Okay.

8 A But you asked me why I stopped paying then.

9 Q All right. And I am asking you --

10 A So I answered it.

11 Q All right. Well, I'm asking you why have you
12 stopped paying at all?

13 A Why have I stopped paying at all? I stopped
14 paying because we didn't have the money.

15 Q All right. And so the institution of this
16 lawsuit has nothing to do with it?

17 A Has nothing to do with it?

18 Q With the fact that you're not paying.

19 A Well, I haven't paid anything since then
20 because I'm being sued, yes, sir.

21 Q All right. So you're answering this two
22 ways, first answer is you didn't pay because you didn't
23 have the money. Now you're saying you didn't pay
24 because you didn't have the money and because you got
25 sued?

1 A No.

2 Q All right. So which is it?

3 A We quit paying because we didn't have the
4 money.

5 Q All right. And you still don't have the
6 money?

7 A I don't have 300,000, no, sir.

8 Q Well, why aren't you paying?

9 A I'm not paying now?

10 Q Yeah.

11 A Because I'm being sued, I've got to figure
12 out that.

13 Q Well, the worst that happens is this
14 agreement is honored, right? Worse that happens is
15 that this is an agreement that's honored and the Judge
16 says it's a valid agreement. Why wouldn't you keep
17 paying? It's reducing your debt.

18 A Well, I didn't pay by the deadline so they're
19 suing me -- in my opinion, I don't know if they're
20 suing me for the million, I don't know what you're
21 suing me for, so...

22 Q You don't know what this case is about?

23 A Yeah, it's about a document.

24 Q Okay. Well, we can agree on without a lot of
25 difficulty is that you just haven't been paying?

1 A Yes, sir.

2 Q I want to hand you -- I'm going to hand
3 you --

4 MR. WEST: Mark this.

5 MR. WEST:

6 Q I'm going to hand you a two-page document
7 which is premarked for identification as Plaintiff's
8 Exhibit 9.

9 (PLF. EXH. 9, MONIES PAID DOCUMENT, was marked
10 for identification.)

11 BY MR. WEST:

12 Q And ask you if you know anything about that
13 document?

14 A I've seen this document before, yes, sir.

15 Q Do you know who produced this document?

16 A It was presented to me by Mr. Smith.

17 Q Okay. Do you remember when it was presented
18 about?

19 A I don't remember the exact date.

20 Q Well, I'm not asking for an exact day.

21 If you look on the second page, on the top of
22 that page, it says monies paid and owed as of 4, 2017?

23 A Okay.

24 Q Does that refresh your memory about when you
25 would have received this document?

1 A No, sir.

2 Q Well, did this document have anything to do
3 with the preparation of Exhibit 6, the document that is
4 the subject to so much discussion? Did you see it
5 about the time this document was signed?

6 A I'm sorry, please, could you --

7 Q Did you see the document in your hand about
8 the same time that you signed the document which is
9 Plaintiff's Exhibit 6?

10 A Can I see the 6?

11 Q Uh-huh.

12 A I mean, I know I received this document and
13 then Gerry and I had several phone conversations back
14 and forth over a couple of months and then finally he
15 made it down here and we met at Mr. Grover's office to
16 discuss this document.

17 Q Well, let me see --

18 A I'm not sure of an exact date but, yes, sir.

19 Q Fair enough. Let's do this, we'll start to
20 zero in on this?

21 A Yes, sir.

22 Q If I can get you to look at the second
23 whereas recital on Plaintiff's Exhibit 6 and tell the
24 Court what you say you owe Mr. Smith, what's that
25 total?

1 A \$1,084,244.51.

2 Q So as of May 22, 2017, that's what you owed
3 him; is that correct?

4 A We both agreed that that was close but it
5 wasn't exact on either part but it was close enough for
6 both of us, yes, sir.

7 Q Well, you got it to 51 cents, that's pretty
8 close, right?

9 A Yes, sir.

10 Q All right. So look at the documents you've
11 got in your hand.

12 A Uh-huh.

13 Q What does it say on Page 2 of, excuse me,
14 Plaintiff's Exhibit 9? What does it say the balance is
15 due in '08 to be?

16 A Don't say nothing on this page, sir.

17 Q I'm talking about the second page now.

18 A I'm sorry.

19 Q Second page.

20 A Yes, sir.

21 Q What is the last number on Page 2 of the
22 document?

23 A \$1,084,244.51.

24 Q Now I'm going to get you to look at
25 Plaintiff's 6 again and see if that's the same number

1 that's in Plaintiff's Exhibit --

2 A Yes, sir.

3 Q -- same number?

4 A Yes, sir.

5 Q All right. Are you saying to the Court today
6 that you agree that as of May 22nd, 2017 that you owed
7 Mr. Smith \$1,084,244.51 or do you dispute that number?

8 A No, sir, it's somewhere thereabout, yes, sir.

9 Q And other than the payments that you made to
10 Mr. Seaton you hadn't paid anything else?

11 A I'm not sure what I paid in '17 but what
12 Mr. Seaton has is, yes, sir, that's all I know that I
13 paid, yes, sir.

14 MR. WEST: Your Honor --

15 THE WITNESS: If there is anything else in
16 '17 I'm not sure of it.

17 MR. WEST: All right, sir.

18 Your Honor, at this time I would offer
19 Plaintiff's Exhibit 9.

20 MR. MLYNARCZYK: No objection.

21 THE COURT: All right. Number 9 without
22 objection.

23 MR. WEST: No further questions, Your Honor.

24 THE COURT: All right. Any follow up?

25 MR. MLYNARCZYK: Just a couple.

REDIRECT EXAMINATION

BY MR. MLYNARCZYK:

Q The last exhibit that was entered, Brandon.

A Uh-huh.

Q Did you go through and verify that all these checks were paid?

A No, no, sir.

Q But you didn't have any reason to believe that any information Gerry provided you was inaccurate?

A No, sir.

Q He's usually pretty good with numbers, right?

A Yes, sir.

Q Okay. And really in the bigger scope of the document you don't really care what that number was up at the top if you were going to be getting over 300,000, right?

A Yes, sir.

Q Okay. So you tried everything in your power to get this debt reduced from a million to 300,000?

A Yes, sir.

Q Okay.

A Mr. Smith also shared with me how important it was for him to get this done for his trust and what he was trying to do for his family. So I really didn't want to -- all he's done for me I did really want to do

1 whatever he needed done.

2 Q Your companies owe a lot of people money,
3 correct?

4 A Yes, sir.

5 Q Okay. Who is the person that you always try
6 to pay first?

7 A Mr. Smith.

8 Q And has he always been the person that you
9 try to pay?

10 A Yes, sir.

11 Q Okay.

12 MR. MLYNARCZYK: I have no further questions,
13 Judge.

14 THE COURT: All right. You can step down.
15 Thank you, sir.

16 THE WITNESS: Thank you, sir.

17 THE COURT: All right. Anything further?

18 MR. MLYNARCZYK: Nothing Judge.

19 THE COURT: All right, gentlemen.

20 MR. MLYNARCZYK: If we could summarize
21 for --

22 THE COURT: Yeah, I'm going to let you
23 summarize and maybe I can get some thoughts on it and
24 how to proceed from here.

25 Mr. West?

1 MR. WEST: Your Honor, we don't have a
2 closing. We'll let the record stand for itself.

3 THE COURT: All right. Sir?

4 MR. MLYNARCZYK: Very briefly, Your Honor.

5 If we're just looking at the face of the
6 document itself, just the face of it, it is called
7 modification and addendum to the agreements made by
8 Gerald Smith, Seller, and Brandon Linder, Purchaser
9 which goes back to the original documents which I went
10 through in painstaking detail who the parties were on
11 every single document and every single modification.
12 It says that all those parties need to be included,
13 they are not. This cannot be a valid -- and this is
14 just -- and I understand whether Mr. Linder paid money
15 or not, whether he's paying 300,000 or a million he
16 owed a bunch of money to Mr. Smith, he's going to keep
17 paying. Doesn't matter whose name those checks are in.
18 The question is whether this document is valid and the
19 fact of the matter is it is titled as a document that
20 relates back to the original documents. The original
21 documents say that that needs to be signed by all those
22 parties and this is not.

23 As a legal matter, the document is not
24 binding and I believe also it is ambiguous even if we
25 get past that point it is ambiguous. Mr. Smith

1 testified himself as to the first whereas clause the
2 interpretation of if the seller, Gerald Smith is
3 agreeable to reduce the payoff to 300,000 provided the
4 following are met. And when I asked him the question I
5 said well doesn't that mean that if he doesn't do these
6 things you can go after him for the million, he's like
7 I don't know. And if he doesn't know and he's the one
8 the law of contracts dictates that any ambiguities in a
9 contract go against the party that created them. We've
10 heard testimony my client did not create these
11 documents, my office did not create this document.
12 Mr. Seaton created this document for Gerry Smith and
13 was presented to my client for signature. It doesn't
14 matter what the discussions were up to that.

15 Any ambiguities in this document clearly are
16 assessed against the person that created it and there
17 are multiple ambiguities in the contact. If you look
18 at the first one that I just said is huge, that is the
19 biggest issue. But if you look at Number 3 that
20 Mr. West was questioning Mr. Linder about. The
21 beginning of Paragraph 3 says that Brandon and Karla
22 have to do something and the last sentence of it says
23 Brandon W. Linder shall be responsible for the monthly
24 mortgage, taxes, and upkeep. The second one says if
25 Brandon doesn't do that which is pay the mortgage, the

1 monthly taxes, the insurance upkeep then he'll abandon
2 the use. I was like so that is confusing. Does that
3 mean the immediate turnover of the deed? Does that
4 mean the upkeep on the debt? And all of these have to
5 be in favor of my client.

6 The next legal argument in regard to this and
7 it being a contract is there is nothing in this
8 document that says that if any of the pieces that are
9 part of this document are thrown out the rest of it is
10 still valid, therefore, under contracts well
11 established in South Carolina if you determine that any
12 part of this contract is no good down to the people
13 that signed it, down to the paragraphs, down to the
14 ambiguity, down to what it demands whether that's valid
15 or not or whether there was authority, Mr. Linder can't
16 promise to do something he has no authority to do that
17 would make this an unenforceable contract or a voidable
18 contract. If any one of those things is decided by
19 Your Honor then the whole addendum is out.

20 Now is it the desire of Mr. Linder at that
21 point that we don't want to repay you \$300,000 for a
22 million dollar debt, no, he just can't be forced to
23 turn over the deed to a property that he can't turn
24 over. Everything else in that document is amazing, it
25 is great, and he would love to do it, if he could cut

1 him a check he would do it right now but he can't
2 transfer that property over. And that's what all this
3 is about, the demand for that deed, it can't be done.
4 Even in light of the orders of this Court.

5 THE COURT: The exhibit regarding Enterprise,
6 is that the foreclosure?

7 MR. MLYNARCZYK: It is the --

8 THE WITNESS: Yes, sir.

9 THE COURT: You let him talk.

10 THE WITNESS: I'm sorry.

11 MR. MLYNARCZYK: It is a foreclosure action
12 that was brought before Your Honor back at the end of
13 last year.

14 THE COURT: And has the property been sold?

15 MR. MLYNARCZYK: The property has not been
16 sold. What has happened in that action is it's
17 not -- the specific property is not listed in the
18 foreclosure but there is a deficiency amount demanded
19 against Mr. Linder personally and, Your Honor, granted
20 the judgment, I think the judgment was granted two days
21 after this on the deficiency judgment and the order of
22 the creditors. So I think it really remains we are
23 trying to work out something with Enterprise Bank as
24 far as the forbearance right now because if any one of
25 these pieces fall --

1 THE COURT: Well, where's the documents
2 'cause I'm not quite sure I'm following what you're
3 saying as far as the status.

4 MR. MLYNARCZYK: So here is the status and
5 right now is that there has been a default -- a
6 judgment filed but Mr. Linder in negotiations with
7 Mr. Bennett we -- your order granted we've retained the
8 right to dispute the amount owed in a subsequent
9 hearing. If there was a deficiency amount which there
10 clearly was. The assets -- the judgment's 1.1 million,
11 the assets are considerably less than that. But
12 instead of holding up Enterprise because they are kind
13 of a partner with Brandon at this point and UCC, we
14 agree to allow them to grant the -- you know to not
15 oppose it, let them get the judgment while they work
16 out a forbearance but if there is a supplemental
17 proceeding hearing as to the deficiency amount which
18 was granted I would have the right to dispute the
19 amount that they put in that document.

20 THE COURT: There has been no sale?

21 MR. MLYNARCZYK: There has been no sale of
22 any of Mr. Linder's property relative to that or any of
23 the liens.

24 THE COURT: All right. I just wanted to make
25 sure I understood that, okay.

1 The no sale of the establishment of the
2 judgment of foreclosure and an amount?

3 MR. MLYNARCZYK: Yes, Judge, and the granting
4 of the deficiency finding as well.

5 So in base, Your Honor, I think there's -- it
6 keeps coming back to the fact that my colleague and
7 Mr. Smith and everybody is like why are you trying to
8 get this document -- it is good for you, it's great for
9 you, of course, it's great for him. But matter of law
10 he can't transfer that property. And as he testified
11 in the past, there have been times where he has gone to
12 the bank, he has gone to the IRS, he has done all of
13 those things and gotten permission to do so.

14 THE COURT: The net effect that you're asking
15 for is eliminate the reported modification and
16 addendum, all the terms, let it stand as it existed
17 before and then presumably any monies paid thereafter
18 would be applied toward the original debt of a million
19 dollars?

20 MR. MLYNARCZYK: Absolutely, whatever that
21 debt may be.

22 THE COURT: And matter of fact eliminating it
23 as to the monies amount is an extra \$700,000.

24 MR. MLYNARCZYK: Absolutely, Judge, we
25 don't -- there is no option. The option is the only

1 reason why this thing is being brought here today is
2 because he cannot based on the -- and the liens for the
3 taxes and I'm sure that -- I know that Mr. Smith was
4 present during that meeting but it's for 940s and 941s,
5 it's not income taxes, it's withholding taxes. The IRS
6 deals with that in a whole different way than they deal
7 with employment taxes and they have him locked on every
8 piece of property. Every time he wants to sell
9 something he has to go get permission, a piece of
10 equipment, a piece of land, whatever it may be.

11 So he is not legally able to do what this
12 document says even though he has gone and tried and
13 said, hey, can I do this, work with them, they work
14 with Enterprise Bank to take a second.

15 THE COURT: But he agreed to do it?

16 MR. MLYNARCZYK: He did, I mean based on his
17 testimony that he would try to get that done and the
18 way he read that contract says if you do all these
19 things we'll take 300, he just couldn't do those
20 things. So, therefore, he can come after him for the
21 full amount.

22 But anything else in that document I think
23 the conditions were if you can do these things it's
24 clear on the contract that that's a reasonable
25 interpretation. If you do these things we'll take 300,

1 he couldn't do those things they can come after him for
2 the full amount.

3 THE COURT: I know you -- anything you want
4 to add?

5 MR. WEST: I do want to just make one closing
6 point if Your Honor will allow it.

7 All of that discussion is directed to the
8 enforcement of the contract which we are not here to
9 discuss. We are here asking the Court to determine the
10 validity of the document as written not what will
11 happen with the order once it is put in place. We may,
12 for example, choose not to pursue enforcement as it
13 relates to the house, we may choose that. I didn't
14 want to go here but he's made me go here. We may
15 choose after deliberation that we're not going to
16 pursue it for all the reasons he's arguing but that
17 should be our choice how to enforce the document that
18 was the memorialization of the agreement of the
19 parties.

20 So I think it's disingenuous, I think it's
21 improper to talk about what they can and can't do
22 because we hadn't asked them to do anything at this
23 point.

24 THE COURT: And that leads right back into
25 the -- it circles back around to the judiciable

1 controversy. If you're not asking for enforcement if
2 you're not asking for anything for them to do but
3 you're asking me -- or are you asking me to give an
4 advisory opinion as to the enforceability of the
5 contract?

6 MR. WEST: Let me give you the answer if
7 you'll bear with me?

8 THE COURT: Please.

9 MR. WEST: I have your answer. I ask the
10 Court -- I've got a copy here but I know you've got
11 your computer right there. If you would look up and
12 I'll hand it to you as well, 15-53-40 South Carolina
13 Code of Laws, it's a single sentence under the law.

14 My only copy (indicating).

15 MR. MLYNARCZYK: Sir, I don't see this in the
16 pleadings. Can I also see a copy of that?

17 I see 15-53-10 and 15-53-30, did you say 30
18 or 40?

19 MR. WEST: Which means the whole statute, you
20 know, you know.

21 MR. MLYNARCZYK: I understand. I just want
22 to see what we're --

23 THE COURT: 15-53-40 that you handed me
24 indicates a contract may be construed either before or
25 after there has been a breach thereof. Okay.

1 MR. WEST: There is your answer, Your Honor.

2 THE COURT: So your contention is what you're
3 asking me to do is to construe the contract and even
4 though there has not been an alleged breach -- there
5 has not been an alleged breach but you're asking for a
6 remedy for according to that?

7 MR. WEST: Can I clarify that for the record?

8 THE COURT: Please.

9 MR. WEST: We're not conceding that it's not
10 a breach.

11 THE COURT: No, I understand. That's why I
12 was trying to couch it that way.

13 MR. WEST: All right.

14 THE COURT: There has been discussion that's
15 whether there has been one or has not been one but
16 that's not before me. You're only asking me to
17 construe --

18 MR. WEST: Your Honor, I really will close on
19 this. If it were otherwise then we would have to bring
20 an enforcement action before we know whether or not
21 this agreement is valid, that's the whole point of that
22 statute that I just handed to you. And that's the
23 whole point that you see so many times in insurance
24 context where the insurance carrier brings a
25 declaratory judgment action to determine whether there

1 is coverage. This is the same thing. We need to know
2 whether there is coverage and whether or not this
3 document is valid and whether or not it is the
4 agreement of the parties.

5 If it is not and Your Honor determines that
6 it is not then we are right back to the original
7 documents and we'll proceed however we determine we
8 need to proceed under those documents. If the May 2017
9 document is the correct document then we'll evaluate
10 what we need to do to enforce that. That's the simple
11 matter before the Court, which is it?

12 THE COURT: All right.

13 MR. MLYNARCZYK: And, again, I'm not talking
14 anything about enforcement. Part of the term of this
15 agreement that we're interpreting is a direction that
16 he turn over a piece of property and all of his
17 property is subject to collection.

18 THE COURT: You're asking me to interpret
19 whether it's enforceable?

20 MR. MLYNARCZYK: Exactly, Judge.

21 I believe that this contract is -- it didn't
22 adhere to the rest of the contracts, it's not valid on
23 its face for legal reasons. If we void this contract
24 nothing changes he can sue for every penny he's owed
25 plus interest, plus judgment. There are other

1 creditors out there as well.

2 THE COURT: And obviously things change but
3 you're saying he's not liable without a remedy?

4 MR. MLYNARCZYK: Exactly, Judge.

5 There is no halter to his remedy.

6 THE COURT: Under the earlier agreement or
7 agreements?

8 MR. MLYNARCZYK: They're actually more
9 powerful than this agreement.

10 THE COURT: Is there any contention that
11 those agreements are invalid?

12 MR. MLYNARCZYK: No, Judge.

13 THE COURT: Okay. All right.

14 Thank y'all for presenting this quite
15 sophisticated case on such short notice, I appreciate
16 that.

17 I'm going to burden both of y'all with
18 preparing orders for me to submit by email copying to
19 each other in that regard. I'm not saying don't do it
20 by way of the electronic filing because that blurs up
21 the clerk's office and so forth. And it gives me the
22 opportunity to then review it, see y'all's arguments
23 and positions that might be you know laid out a little
24 differently or whatever then what you presented today.
25 I give you that additional opportunity. It gives me

1 the opportunity to read all of this including the case
2 law that goes along with the statutes to look at the
3 documents. I want to review the earlier foreclosure
4 action, to look at that to see if there is anything
5 else in there and to carefully read all of the
6 documents and consider the testimony.

7 So do y'all anticipate needing to get the
8 transcript in order to prepare the order? How long do
9 I need to ask for a timeline that's the only reason I
10 ask that question.

11 MR. WEST: Judge, I don't need a copy of the
12 transcript, of course, I'll defer to counsel.

13 As to your question about a timeline, I've
14 got a medical procedure coming up in the first week in
15 June and it's going to have me out of pocket for a
16 while. So if we could have not less than 30 days even
17 possibly longer than that.

18 THE COURT: 30 days is certainly appropriate
19 given the situation. Okay. 30 days.

20 Do you anticipate needing the transcript for
21 the purposes --

22 MR. MLYNARCZYK: I do not, Judge.

23 THE COURT: Okay.

24 MR. WEST: Can we just go ahead and say 45
25 because I'm probably going to come back and ask you for

1 an additional 15.

2 THE COURT: When you negotiate you're
3 supposed to start high and then move down.

4 MR. WEST: Well, you got me.

5 So you got me, Judge.

6 THE COURT: We'll give you the 45 days.

7 MR. WEST: Thank you, Judge.

8 THE COURT: And if y'all order the transcript
9 provide me a copy as well so I can rely on that.

10 MR. WEST: I certainly will.

11 THE COURT: Otherwise I'll be looking at what
12 y'all put in there, okay?

13 MR. MLYNARCZYK: Yes, Judge.

14 THE COURT: All right, thank y'all.

15 MR. WEST: Thank you.

16 MR. MLYNARCZYK: Thank you.

17 (The hearing was concluded at 1:52 p.m.)

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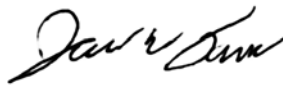
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CERTIFICATE OF REPORTER

I, Jason W. Touro, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of May, 2020 at Charleston, Charleston County, South Carolina.



Jason W. Touro,
Court Reporter
My Commission expires
April 20, 2028

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
FOR THE 9th JUDICIAL
CIRCUIT
Case no. 2019CP0802445

GERALD R. SMITH,

Plaintiff,

-against-

UNITED CABLE CONSTRUCTION, LLC.,
et al.,

Defendants.

MOTION

SUMMARY JUDGMENT

DATE: August 4, 2021

TIME: 11:03 a.m.

HON.: JENNIFER MCCOY

Natalie A. Williams
Court Reporter II-Circuit Court
South Carolina Judicial Branch
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1 THE COURT: Gerald Smith versus
2 United Cable Construction. Good morning.
3 Plaintiff's motion for summary judgment, is
4 that right?

5 MR. WEST: It is, Your Honor.

6 THE COURT: Okay. Mr. West,
7 welcome. I'll allow the attorneys to state
8 their names and who they represent for the
9 court reporter and we can get started.

10 MR. WEST: If it please the Court,
11 Your Honor. John West, West Law Firm here
12 in Moncks Corner for the plaintiff, Gerald
13 R. Smith.

14 THE COURT: All right.

15 MR. GIANCOLA: May it please the
16 Court, Your Honor. My name is Josh
17 Giancola, I'm here on behalf of the
18 defendants, United Cable Construction,
19 Inc., South Atlantic Communications Inc.
20 Brandon W. Linder and Carla Linder.

21 THE COURT: Okay. Mr. West, happy
22 to hear from you.

23 MR. WEST: If it please the Court,
24 Your Honor. As I indicated to you
25 initially, I represent the plaintiff

1 Mr. Gerald R. Smith. Mr. Smith is an
2 85-year-old gentleman who lives in Eureka,
3 Illinois. He is a decorated Marine who
4 served our country with distinction and by
5 all accounts is a model citizen. He would
6 have been with us here this morning but he
7 had eye surgery scheduled and was on the
8 docket for surgery in Illinois and unable
9 to be here for that reason only. But he
10 wanted me to make sure that we reported to
11 the Court that his absence was a medical
12 issue and no other.

13 In support of Mr. Smith's motion
14 for summary judgment, Your Honor, we would
15 call the Court's attention to our
16 memorandum in support of the motion and
17 five exhibits, A through E, which are
18 accompanying the memorandum and were filed
19 at the end of last week. Included in that
20 list of exhibits is the only affidavit
21 before the Court today and that is the
22 affidavit of my client, and that is found
23 at Exhibit E.

24 By way of brief background, Your
25 Honor, we go into some of the background in

our memorandum, but just by way of summary, after Mr. Smith's military career for many years he owned and operated a very successful communications infrastructure business. That was a business that installed fiberoptic cables and other cables, thus the name United Cable Construction Company. He built that business from the ground up. And after many years of running a very successful business, in 2006 Mr. Smith sold United Cable and it's assets to the defendant, South Atlantic, one of the named defendants in this case, by formal agreement. And South Atlantic was then and now owned by the defendant Brandon Linder. There were -- over a period of time there were other formal related agreements and some modifications and changes in the original structure of the sale of the assets and the related documents, and none of those documents, Your Honor, are in dispute. We don't have any dispute among the parties about those historical documents.

So, what we're dealing with is a

1 single document, and as of April 2017 it is
2 undisputed that Mr. Linder and his
3 companies were owed \$1,084,000 and some
4 change. That is an undisputed fact. And
5 about that time as Mr. Smith was getting up
6 in age he concluded that it was important
7 tho him to button up and finish up this
8 United Cable transaction that had been
9 going on for years and years. There've
10 been changes and modifications.

11 So, Mr. Smith and Mr. Linder came
12 together and they did a deal, they did a
13 restructuring deal. And Judge, one of the
14 most substantial discounts that I've seen
15 in my career, Mr. Smith discounted the
16 amount was that due him in the May 2017
17 agreement, which by the way is Exhibit A to
18 my memo that 2017 agreement, he discounted
19 the \$1 million and change to a flat
20 \$300,000 figure, agreed on the terms of the
21 deal going forward. \$10,000 a month and
22 then at the end of 2018 there would be a
23 balloon payment for whatever was then
24 balanced.

25 Some of those payments were made,

1 Your Honor, it is undisputed what the
2 amounts of those were. It's a total of
3 \$33,000 that were paid by the defendants on
4 account of the \$300,000 restructured
5 contract. In July of 2018 because the
6 defendants were very delinquent in their
7 payments, Mr. Seaton, who is here with me
8 today, who was Mr. Smith's attorney at the
9 time, wrote counsel for the defendants and
10 said, y'all are delinquent you need to do
11 something about this, we need to get paid
12 in full, you're in default, you've got an
13 opportunity to cure. You can imagine what
14 that letter said as a standard demand and
15 opportunity to cure letter.

16 Surprisingly to everybody on our
17 side of the equation, Mr. Linder and UCC's
18 counsel, who is a partner to counsel who is
19 present here today, surprisingly responded
20 back that the agreement in May of 2017 was
21 an invalid agreement. Now, there was
22 July of 2018. The agreement was entered
23 into in May of 2017, partial payments of
24 \$33,000 or thereabouts had been made by
25 that point, and counsel for the defendant

1 says, wait a minute, the agreement is no
2 good. It's a bad agreement. And that
3 shocked the world on our side of the table,
4 so at that point Mr. Seaton was going to
5 become a witness, and Mr. Smith hired me.

6 When I looked at the situation I
7 said, well, the best thing to do is, my
8 advice to Mr. Smith, was to file a
9 declaratory judgment action. If they're
10 disputing the validity of the contract,
11 let's get a judge to decide whether or not
12 it's a valid contract or not. So we filed
13 a declaratory judgment action, Judge, and
14 that is case number 20182241.

15 The declaratory judgment action was
16 filed, defendants were in default. But
17 because it was a declaratory judgment
18 action, I consented to their participation
19 in a full evidentiary hearing before the
20 Master in Equity Judge Van Slambook, who
21 was referred this DJ action with finality.

22 So, we had a full evidentiary
23 hearing. That produced an order, which is
24 Exhibit B to my memorandum, it's an
25 eleven-page order, very detailed findings

1 of salient facts and conclusions of all.
2 And at the end of the DJ order Judge Van
3 Slambrook declared that the May 2017
4 agreement, Exhibit A, was a valid and
5 binding contract between and among the
6 parties. That was his declaratory order.

7 So, after that, that was
8 un-appealed there was no appeal taken to
9 that order. That order was entered and
10 after some time I wrote counsel for the
11 defendants in September of 2019, and this
12 is Exhibit C to my memorandum, and said,
13 you know, we got \$267,000 due on the
14 \$300,000 contract. We've got pre-judgment
15 interest and there is another feature that
16 I'm going to come to in just a minute
17 regarding life insurance, but we demanded
18 payment and we were ignored.

19 On October the 7th of 2019 the
20 current action, the action that is before
21 the Court today, was initiate by Mr. Smith
22 breach of contract. And in that action he
23 alleges he was not paid and that certain
24 features of the Exhibit A agreement were
25 not complied with.

Defendants filed a general answer and raised various defenses. One of which, very surprisingly, was breach of covenant and good faith and fair dealing. Now, this is an allegation against a man who had discounted his sum due, undisputed amount due of \$1 million plus dollars, that he is acting in bad faith in regard to his course of dealing with the defendants because he discounted what he was due by almost \$800,000. Mr. Smith filed his reply standing on the allegations.

Then we entered into, what I know you hear all the time, we entered into the Covid standstill. So, we had a big gap in there because of Covid, but we eventually got back on track and I took Mr. Linder's deposition, excerpts of which are found in Exhibit D in my memo. And Judge, I'm not going to read all of the highlighted portions of that Exhibit D memo, but there are key pieces of that testimony that I think are pertinent to the motion today. Specifically, I call the Court's attention to line twenty -- page 26 lines 19 through

25 of Exhibit D. And I'll read that on the question of what has been paid. Line 19 page 26, okay, this my question to Mr. Linder. "So, another way of asking that question. There is no disagreement that what you paid on the \$300,000 that you owe Mr. Smith is \$33,000? That is what you paid on the agreement of \$300,000, is that correct?" "Since when? Since this agreement?" "Yes, since this agreement." Line 3 on page 27. "Yes, sir, that is correct." "You haven't paid anything since? This is of course May of 202." Answer, line 5 of page 27, "no, sir." So there's no question about what has been paid, that is not in dispute. I think counsel has conceded that point and even in his reply. But even if he hasn't, his client has conceded that only \$33,000 has been paid.

So then we get to the question of what is the explanation for nonpayment. That always is the logical next question. And I invite the Court to look at page 32. Let's look at lines 8 through 25 of

Mr. Linder's deposition. "All right, do you remember when we tried the case before Judge Van Slambrook? We spent a good bit of time, Mr. Linger, talking about why you had not been making payments to Mr. Smith. We talked about that, do you remember? Do you remember that?" Answer, "briefly, yes, sir." Line 15, "do you remember that your answer was as to why you hadn't been making the payments that you didn't have the money?" Answer line 18, "yes, sir." Question on line 19 page 32. "Okay. Is that still the case today as to why you are not making payments or have paid Mr. Smith what you owe him? That you didn't have the money then and you don't have the money now" Answer, line 23 page 32, "well, I do not have the money now, no, sir." Question, "is that the reason why you hadn't paid him?" Answer on line 2 top of page 33, "yes, sir."

Now, Judge, I think it's very important also that we touch on this issue about good faith and fair dealing beyond the obvious. And I'd ask the Court to look

over on page 35, this again is the testimony of Mr. Linder, page 35 line 10. The question, "now, I want to touch on a couple of things and we'll take a short break. Over the course of the period from 2006 until today, as we sit here, you would agree with me that Mr. Smith has been fair with you?" Answer, "I would say that he has been reasonable."

Judge, I'm going to turn now to page 36 of Exhibit D then I'll be done with the testimony. And I'd invite the Court to look at line 24, page 36. Excuse me, line 1 page 36. We were talking about a life insurance policy that was also due under the May 2017 agreement and he was referring to a declaration page, which is part of the record. Line 1, this is a \$1 million life insurance policy for Brandon W. Linder from Grange Life Insurance Company. Question, "and is that policy in force and effect today?" Answer, "yes, sir, it is." Line 7, "are the premiums current?" "Yes, sir, it is." "Who is the beneficiary or who are the beneficiaries under that policy?"

1 Answer, line 11, "there are three of them.
2 Enterprise Bank, Gerald R. Smith and Carla
3 Linder." Question, "and the death benefit
4 of that policy is what?" "\$1 million."
5 "Are the beneficiaries listed on that
6 policy equal beneficiaries in terms of
7 percentage of the death benefit, that each
8 will take at your death, if that policy is
9 in force and effect are they equal?"

10 Answer, "I think Mr. Smith, to my
11 recollection, is outlined for \$300,000 and
12 the bank and my wife I'm pretty sure would
13 be even on the rest." Of course, Judge,
14 that goes directly to the obligation under
15 the terms of Exhibit A, the contract which
16 Judge Van Slambrook has declared to be in
17 full force and effect. Of course by his
18 own admission he did not -- he, Mr. Linder
19 and his company, did not comply with that.

20 Judge, just in summary, I know you
21 know the standard I'm not going to go
22 through all of that with you, you hear
23 these motions every day all day long. One
24 of my mentors, we've all been fortunate
25 enough to have mentors, said that you can

1 boil it all down to a simple question.
2 What is it that a jury would have to decide
3 if it was presented to the jury? That's
4 the scintilla rule, that's all of the rules
5 that are all blended in to that very basic
6 and simple question. What is it that is
7 left for the jury to decide? Judge, we
8 would submit that there is nothing left for
9 the jury to decide. Judge has declared as
10 a contract, it was un-appealed, that is the
11 law of the case. That is a contract that
12 is valid and binding according to Judge Van
13 Slambrook.

14 It is undisputed that only \$33,000
15 has been paid over the life of that
16 agreement, the balloon payment was not
17 made, it is undisputed that Mr. Linder and
18 his companies are in breach. It is
19 undisputed that the \$1 million life
20 insurance policy, which was required under
21 the agreement to be in full force and
22 effect and Mr. Smith to be the beneficiary,
23 that was not complied with.

24 So, there is no question that a
25 breach has occurred and that there is no

1 justification. It is not a justification
2 to say I don't have the money. That may be
3 a fact that he doesn't have the money, but
4 that's not a justification or excuse.

5 A couple of questions on the issue
6 of defendant's memorandum that I would pose
7 to the Court and to all of us that is
8 probative here. Is there any
9 interpretation where the defendants would
10 reasonably prefer to owe \$1 million versus
11 \$300,000? That just defies all logic and
12 all common sense. Is there any scenario
13 where they would prefer to owe \$1 million
14 versus the \$300,000?

15 Second question, and I think
16 equally probative is, if the defendants
17 disagreed with the obligation to pay
18 Mr. Smith, why did Mr. Linder say under
19 oath that if he had the money he would pay
20 it? If we had the money we would pay it.
21 He didn't say, I don't have the money and I
22 don't owe it. He said, if I did have the
23 money I would pay it. That is about as
24 compelling an admission as I recall having
25 heard from a defendant. I don't have the

1 money, if I did, I would pay it.

2 Judge, again, I've summarized the
3 standard applicable to Rule 56, I will not
4 go back through that again. I would just
5 say in closing that this is a textbook case
6 for summary judgment. I know you hear that
7 from lawyers all the time, but, Judge, this
8 clearly is one of those textbook cases for
9 summary judgment. There is nothing for a
10 finder of fact to determine outside of this
11 very ample record.

12 Judge, on the question of
13 prejudgment interest, which I would submit
14 is premature at this point, I don't want to
15 presume that the Court is going to rule, I
16 believe you should, but I'm not going the
17 presume that. But we do believe because it
18 was a fixed sum, a liquidated sum, that
19 there would be prejudgment interest due.
20 We would respectfully request if the Court
21 does rule with us on summary judgment that
22 we be permitted to supplement our filing
23 with a proposed calculation of prejudgment
24 interest. I'd be happy to answer any
25 questions.

1 THE COURT: Okay, all right. Let
2 me hear from the defendant.

3 MR. GIANCOLA: May it please the
4 Court, Your Honor. I had actually
5 submitted a reply memorandum yesterday and
6 I don't believe that Your Honor had
7 received that. I have a copy.

8 THE COURT: I have not. Do you
9 have an extra copy?

10 MR. GIANCOLA: If I may approach?
11 Now, Your Honor, I don't necessarily
12 disagree with everything my colleague has
13 said here. The background of the case is
14 pretty much what he said it is. There were
15 these two companies, United Cable
16 Construction, I call it UCC. And South
17 Atlantic Communications, Mr. Smith was the
18 previous owner of UCC. My client as South
19 Atlantic Communications or SAC, as I noted
20 in my memorandum. They did enter into
21 extensive negotiations and had lots of
22 agreements about an asset purchase, a stock
23 purchase, a consultation agreement, it was
24 a very extensive agreement. It was about
25 \$3 million, which was the total purchase

1 price, which I don't think anybody agrees,
2 my client has paid almost \$2 million if not
3 more than that. And those agreements are
4 what I refer to as the primary agreements.
5 Those are the original agreements to the
6 parties. Yes, they've been modified at
7 various points throughout the years of
8 these two gentlemen and companies dealing
9 with one another.

10 Where we are now is this proposed,
11 well, I would say an attempted modification
12 again of those primary agreements. That's
13 the one that's at issue today. That's the
14 one that plaintiff's counsel is trying to
15 ask the Court to enforce here today. I
16 refer to that as the modification
17 agreement. What it's doing is trying to
18 modify these primary agreements wherein UCC
19 owes Mr. Smith basically, at this point,
20 \$1 million left on the \$3 million total
21 purchase price.

22 Yes, UCC fell behind on it's
23 payments. And as part of the deal,
24 Mr. Smith wanted to give Mr. Linder and UCC
25 a break, right? He wanted to say, hey, if

1 you do these things, I will reduce the
2 debt. That's the most important part of
3 what we're arguing today, is this
4 modification agreement. Yes, Judge Van
5 Slambrook, we had a declaratory judgment
6 action, he did determine it's a contract.
7 But that's all he determined. He didn't
8 interpret the contract. He didn't rule on
9 how this contract should be enforced in
10 relation to these primary agreements. He
11 didn't actually look at these terms and
12 construe this contract. What does this
13 actually mean? He just said in his order,
14 it has the elements of a contract, it's
15 binding in the parties.

16 So, we believe that the issue --
17 our issue before the Court is interpreting
18 this contract, what should actually happen
19 under this modification agreement due to a
20 breach? That's not something that's been
21 determined by a court. Our argument is
22 that this contract, the modification
23 agreement, is ambiguous as to what should
24 actually happen. And the main argument is
25 that you read this contract, and I'll point

1 out the pertinent parts, is the purchaser,
2 Brandon Linder also known as United Cable
3 Construction, currently owes \$1,084,244.51.

4 This is the important part. Gerald
5 Smith is agreeable to reduce the payoff to
6 \$300,000, provided the following terms are
7 met; and there's six terms listed in this
8 agreement, provided those terms are met.
9 Well, we're not arguing that our client,
10 Mr. Linder, didn't comply with these terms.
11 We're saying what happens when he doesn't
12 comply with these terms?

13 This contract is essentially an
14 if-then scenario. It's a condition,
15 logically by the language of the contract
16 under our interpretation. If he does this,
17 then Mr. Smith will do this. Well, what
18 happens when Brandon or Mr. Linder doesn't
19 do this? Our interpretation is that this
20 agreement is invalidated and it falls back
21 under the primary agreements. Yes, it
22 seems illogical, why would my client want
23 to owe \$1 million instead of \$300,000?
24 That's not really the issue before this
25 Court. There are reasons why that's what

1 my client wants to do. And it's also what
2 we believe the correct interpretation of
3 this contract. How can it be enforced if
4 he does this, then Mr. Smith will do this.
5 Well, then the breach is Mr. Smith doesn't
6 have to give him the promised reduction of
7 debt. That's his remedy here. That's how
8 we would interpretate the contract. That's
9 how my client has interpreted the
10 contract. Yes, he wanted to get the
11 benefit of the bargain, be he couldn't. He
12 couldn't comply with the terms.

13 So, what happens? We don't believe
14 that they're entitled to force this
15 contract. We believe that it should fall
16 back under the primary agreements and their
17 entitled to enforce those agreements and
18 all of the terms that are in those primary
19 agreements.

20 There's a good example of my
21 client's understanding from the prior
22 declaratory judgment hearing transcript
23 wherein he actually is asked, what was his
24 interpretation of this contract. My
25 colleague, Mr. Mlynarczyk conducted this

1 hearing. I asked, let's look at the third
2 paragraph down, with whereas. It says,
3 "whereas the sale of the seller Gerald
4 Smith is agreeable to reduce the payoff to
5 \$300,000, provided the terms are met. What
6 did that mean to you?" "It means what it
7 says. It means that if I can do these
8 things then he will do this for me. He
9 will reduce the debt for me if I can make
10 these things happen. I tried to make these
11 things happen. There were two hurricanes
12 in a 30-day period a couple of months after
13 this, wiped out my whole -- all the money I
14 had and everything out there. There was no
15 way I could make these things happen." "So
16 at this point, I mean obviously if you had
17 \$300,000 sitting in the bank would you have
18 cut the check?" "I would have paid him
19 immediately." "You admit it's a fantastic
20 deal?" "Yes, sir." "And you tried
21 everything in your power to accomplish
22 these things?" "Yes, sir." "Okay. What
23 was your understanding if you could not do
24 these things?" "Then I was going to owe
25 him the \$1 million, right "

1 So, that's what our client's
2 understanding was. There's these primary
3 agreements, they tried to modify the
4 agreement to do a reduced payoff. My
5 client couldn't comply with the terms so
6 then the primary agreements take effect and
7 that's the contract they're dealing with.
8 I don't see how this contract could be
9 interpreted in any other way than a
10 condition. And I don't believe that that
11 entitles plaintiff's counsel to enforce
12 these terms and actually request the Court
13 to grant specific performance on this
14 contract.

15 And that's the other point I wanted
16 to address here is, specific performance,
17 as Your Honor knows, is a pretty drastic
18 remedy. It's an equitable remedy.
19 Specific performance isn't appropriate
20 unless there is an adequate remedy at law.
21 They have an adequate remedy at law. It's
22 built right into the language of the
23 contract under our interpretation. He
24 doesn't have to reduce the payoff of the
25 debt. He can sue him under the primary

1 agreements for the \$1 million. That's his
2 remedy at law.

3 There is no reason why this life
4 insurance policy is a remedy for him that
5 can't be obtained in any other way
6 possible. It's a \$1 million life insurance
7 policy. We're not dealing with unique
8 piece of property that could not be
9 obtained in any other way under any other
10 deal. This is contractual damages, money
11 damages. There is an adequate remedy at
12 law here.

13 The other thing I'd like to point
14 out is how this contract is confusing, is
15 plaintiff's counsel isn't even trying to
16 enforce all of the terms of the contract.
17 They're specifically, in their pleadings
18 and in their motion, if Your Honor reviews,
19 they're not even asking for all these terms
20 to be met. Specifically, the transfer of
21 the real estate for Frankie Lane in Ladson,
22 South Carolina. Because they know that
23 it's impossible for my client to do that.
24 Because he has loans from the IRS, the
25 Department of Revenue and Enterprise Bank,

1 that don't allow him to transfer that
2 property. So, they want to pick and choose
3 which terms of this deal--

4 THE COURT: Well, why would
5 they seek to-- by your own statement, he
6 can't do that. So, why are you faulting
7 them for not seeking what you just stated
8 your client can't possibly perform?

9 MR. GIANCOLA: Well, they're asking
10 for specific performance under this
11 contract and enforcing the terms, but one
12 of the terms they don't even try to enforce
13 and they know it can't be.

14 THE COURT: But you just said it
15 can't be. So, why would they try? They
16 probably know the same thing, those are
17 matters of public record. Why would they
18 even bother?

19 MR. GIANCOLA: Right. So, that is
20 one term built into this entire contract.
21 How can it be separated from the rest of
22 these terms?

23 THE COURT: I know. I mean, you
24 said in the beginning it's ridiculous that
25 you're arguing to me that your client owes

1 \$1 million versus \$300,000, right? That's
2 what you're arguing, isn't it?

3 MR. GIANCOLA: Well--

4 THE COURT: You're not denying that
5 if I -- this doesn't apply then it reverts,
6 your whole argument is that it reverts back
7 to the original contract where he still
8 owes \$1 million?

9 MR. GIANCOLA: Yes, Your Honor,
10 essentially.

11 THE COURT: I mean, you have
12 authority from your client to make that
13 argument today in court?

14 MR. GIANCOLA: Yes, Your Honor, I
15 do.

16 THE COURT: Okay, all right.

17 MR. GIANCOLA: I understand that
18 the primary agreements aren't before Your
19 Honor so it may be confusing as to why
20 exactly he is thinking that way and what
21 exactly --

22 THE COURT: It's not confusing at
23 all. I mean it would start the clock all
24 over again and this thing would drag out
25 for years without him owing, you know,

1 anything. I mean, I understand why people
2 make business decisions, I understand. I'm
3 just remarking the ridiculousness of the
4 argument. I don't fault you for making it.

5 MR. GIANCOLA: And particularly,
6 there was a provision built in here to try
7 to get out of certain provisions of the
8 primary agreement, specifically the
9 arbitrations clauses and some of the other
10 clauses in the primary agreements that
11 plaintiff's counsel doesn't find favorable
12 to his client, and they wanted to get out
13 of that.

14 THE COURT: Right.

15 MR. GIANCOLA: And the argument is
16 simple. It's an if-then scenario. He
17 didn't comply, what is supposed to happen?
18 And it's within Your Honor's purview to
19 determine whether the contract is ambiguous
20 and if the contract is ambiguous in it's
21 application, then it's within the finder of
22 facts purview to decide what the intent of
23 the parties was. Whether or not this
24 contract should -- how it should be
25 enforced in the case of a breach. That's

1 an issue of fact for the jury to decision.
2 That is the question that my colleague
3 presented to the Court. What is the issue
4 here for the jury to decide? That is the
5 issue. How does this contract, should it
6 be enforced and interpreted, in relation to
7 these primary agreements and what happens
8 in a breach?

9 THE COURT: Okay. So, your
10 position on Judge Van Slambrook's ruling is
11 the contract is just basically that he
12 doesn't make any further comments as to
13 whether or not it's ambiguous or not?

14 MR. GIANCOLA: Yes, Your Honor.
15 The word specifically -- all in sum what it
16 states is, I find and declare the contracts
17 valid and binding between the parties of
18 the case.

19 Well, the way I would interpretate
20 that is, yeah, if Mr. Linder did comply
21 with these things then I think Mr. Smith
22 would have a contractual duty to reduce the
23 payoff accordingly. But what happens when
24 he doesn't? That's what's unclear.

25 THE COURT: Okay.

1 MR. GIANCOLA: And that's not
2 something the Judge Van Slambrook ruled
3 one.

4 Then, Your Honor, just lastly to
5 follow up, that is our counterclaim of the
6 breach of good faith and fair dealing.
7 There is still discovery going on with that
8 cause of action. Plaintiff's counsel
9 hasn't asked for that claim to be ruled on
10 and dismissed. So, even if Your Honor
11 gave -- granted summary judgment on this
12 contract, I think the case would still go
13 forward. And I still think the issue of
14 specific performance is an issue. What is
15 actually the remedy here for the breach?
16 And those two things are still unclear.

17 THE COURT: Okay. All right.

18 MR. GIANCOLA: Thank you.

19 THE COURT: Sure. Anything else?

20 MR. WEST: Real quick.

21 THE COURT: Okay.

22 MR. WEST: I need to make one final
23 declaration or observation. Mr. Smith is
24 85 years old, and what is clearly and
25 obviously going on here is a strategy that

anticipates and hopes that he dies before
this is resolved. Thank you.

THE COURT: Thank you, very much.
I'll take a closer look at the briefs you
filed as well as all the exhibits and I'll
issue an order sometime next week.

MR. WEST: Thank you, Judge.

MR. GIANCOLA: Thank you.

(Time noted: 11:39 a.m.)

C E R T I F I C A T I O N

Certified to be a true and accurate
transcript of the aforesaid proceeding.

Natalie A. Williams

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Apr 14 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Ninth Judicial Circuit

Jennifer B. McCoy, Circuit Court Judge

Case No. 2021-001227

Gerald R. Smith Respondent

v.

United Cable Construction Co., Inc.,
South Atlantic Communications, Inc.,
Brandon W. Linder, and
Karla Linder Appellants.

CERTIFICATE OF COUNSEL

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.

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North Charleston, South Carolina