

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
In The Circuit Court

Teasa K. Weaver, Circuit Court Judge

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Appellate Case No. 2021-000480

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**RECEIVED**

**Apr 20 2022**

**SC Court of Appeals**

Robert H. Sarn,

Appellant,

v.

James C. Rhea, III;

City Electric Supply Company;

John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military person, who claim any right, title, or interest in, lien upon, the entity designated as "Taschner Textiles Industries, LLC"; and

Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in or lien upon, the entity designated as "Taschner Textile Industries, LLC," Defendants.

Of whom James C. Rhea, III and Taschner Textile Industries, LLC are the

Respondents.

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RECORD ON APPEAL: VOLUME 1

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STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

vs.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2019-CP46-01446

**ORDER GRANTING  
SUMMARY JUDGMENT**

This matter came before me for a hearing upon motion by Defendants Täschner Textiles Industries, LLC ("TTI") and James C. Rhea, III ("Rhea") for summary judgment and also upon a renewed motion by Defendant City Electric Supply Company ("CES") for summary judgment. Attending by Webex: J. Nathaniel Pierce, attorney for TTI; Daniel J. Ballou, attorney for Rhea; Michael K. Hatch, attorney for CES; and J. Martin Foster, attorney for Plaintiff.

CES previously filed a motion for summary judgment on August 28, 2019. The matter was considered by the circuit court, and taken under advisement by order filed on October 2, 2019. No further order has been issued. Until a final ruling has been filed, I defer ruling upon CES's renewed motion. Therefore, any further reference to Defendants in this order include only Rhea and TTI.

**STANDARD OF REVIEW**

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); Rule 56(c), SCRPC. In determining whether any triable issue of

fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54, 504 S.E.2d 117 (1998). In ruling on a summary judgment motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. *See Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct. App. 1994). Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).

### FACTUAL BACKGROUND

Plaintiff brings this action seeking reimbursement for the costs associated with repaving a private road, known as Rental Court. Rental Court is owned by the Plaintiff and is bounded by several commercial lots. (Def. Exhibit A). Each Defendant owns at least one commercial lot, and all have been granted an easement to use Rental Court as ingress and egress to their property.

TTI received title to Lot 3 in December 2017 from J.D. Properties of the Carolinas (“JDP”). (Def. Exhibit E). JDP received title to Lot 3 from the Plaintiff in November 2008. (Def. Exhibit D). A portion of the deed conveying Lot 3 from the Plaintiff to JDP reads as follows:

Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land... Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement. (emphasis added).

In addition to the above referenced deed, Plaintiff and JDP executed an agreement titled “Grant of Easement and Right of Way”, dated November 6, 2008, and recorded in January 2009. (Def. Exhibit H). Relevant portions of the agreement (“ROW Agreement”) are as follows:

Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sam, his heirs and or assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

This agreement shall bind and pass to the successors and/or assigns of J.D. Properties of the Carolinas, LLC. Furthermore, this agreement shall bind and pass to the successors and assigns of Robert H. Sarn.

**By signing this Agreement, Robert H. Sarn his heirs and/or assigns, hereby agrees to be fully responsible for the total cost for the upkeep and maintenance of said private road. (emphasis added).**

Rhea received title to Lot 1 from Plaintiff in October 2000. (Def. Exhibit C). This deed contains no agreement regarding the upkeep or repair of Rental Court.

In July 2018, Plaintiff conveyed two lots to GR Properties of Fort Mill, LLC (“GRP”). (Def. Exhibit I). Along with the deed, Plaintiff and GRP executed an agreement titled “Escrow Agreement for Repairs/Up-Fitting”. (Def. Exhibit G). This escrow agreement (“Repair Agreement”) included provisions regarding resurfacing Rental Court. According to the agreement, \$49,314.00 in sale proceeds would be held in escrow to pay the costs of repaving. Plaintiff agreed to this repair in order to convince GRP to move forward with the sale. (Pl. Dep. 30:25-31:9). At the time Plaintiff was negotiating the sale with GRP, Plaintiff did not discuss with the Defendants paying a pro rata share of the repair. (Pl. Dep. 35:20-24). The resurfacing was completed and the costs paid out of the proceeds of the sale of the property.

#### DISCUSSION

The main authority supplied by Plaintiff in support of his claim for contribution is based upon *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985). The Court in *Hayes* held that, “in the absence of an agreement”, the duty to maintain an easement falls upon the dominant tenant, and any costs associated with its upkeep could be apportioned between those tenants who use it (including the servient). This case differs from *Hayes* in that it involves several agreements regarding the upkeep and repair of the easement.

First, Plaintiff is not entitled to contribution from TTI because he agreed otherwise as shown by the JDP Deed and ROW Agreement. A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conversation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties’ intentions, as long as those intentions do not contravene the law or public policy. *See Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). The intention

of the grantor must be found within the four corners of the deed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) (citing *Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987)).

When read together, the JPD Deed and ROW Agreement, clearly and unequivocally show that it was the intent of the parties that Plaintiff maintain Rental Court until such time as the road was dedicated for public use. "The general rule is that, in the absence of anything indicating a contrary intention, where instruments are executed at the same time, by the same parties, for the same purpose, and in the course of the same transaction, the courts will consider and construe the instruments together." *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 232 S.E.2d 20 (1977).

Plaintiff argues it was his intention to rescind the ROW agreement. Nonetheless, without the agreement, the JPD Deed is clear and unambiguous on its own, and shows Plaintiff and JDP intended for the Plaintiff to be responsible for the easement's upkeep and repair as long as it was a private road. Plaintiff confirmed this in his deposition. (Pl. Dep. 50:23-51:1.).

Plaintiff also suggests that though he agreed to maintain the road, he did not release his right to contribution. I disagree. The Court in *Hayes* found that it was equitable to apportion costs between a servient and dominant tenant who had no agreement otherwise. Plaintiff agreed to keep the easement in repair, and this obligation carries with it all costs associated with such care.

Second, this case does not warrant equitable contribution from either TTI or Rhea based upon the Repair Agreement and sale of the property to GRP. As previously discussed, the Court in *Hayes* found, absent an agreement, it was equitable to apportion the costs of repair between the tenants that use the easement. Again, in this case, there is an agreement. Plaintiff, as servient tenant, agreed to repair the road, using sale proceeds as payment. Also, it is unclear what burden was taken on by the Plaintiff. See *Harris v. Ferguson*, 18 S.C.L. (2 Bail.) 397 (1831) (Contribution was founded upon equality of burden and benefit). Plaintiff used the repair as a means to convince GRP to purchase the property, and Plaintiff did so because it benefited him to sale the property.

Last, Plaintiff seeks to continue this motion for further discovery. Since Plaintiff has denied the existence of any other agreements regarding this easement, I see no reason to delay this motion for the parties to conduct further discovery. See *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). (The opposing party must show that continued discovery will uncover additional relevant evidence).

Based on the foregoing, Defendants TTI and Rhea are granted summary judgment. The renewed motion filed on behalf of CES is deferred until after a ruling has been issued by the circuit court on the previous motion summary judgment.

*Judge's Signature Page to Follow*

ELECTRONICALLY FILED - 2021 Mar 31 1:55 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2019-CP-46-01446**

Robert H. Sam

James C. Rhea, III, et. al,

PLAINTIFF(S)

DEFENDANT(S)

<b>Submitted by:</b>	<b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**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 INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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:		





York Common Pleas

**Case Caption:** Robert H Sarn VS James C Rhea III , defendant, et al  
**Case Number:** 2019CP4601446  
**Type:** Order/Summary Judgment

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-03-31 13:37:21 page 8 of 8

ELECTRONICALLY FILED - 2021 Mar 31 1:55 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

Robert H Sarn  
PLAINTIFF(S)

James C Rhea, III 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:

On August 18, 2021 a hearing was held before me upon Plaintiff's Motion to Alter or Amend Judgment entered on March 31, 2021. Present were: J. Martin Foster, attorney for Plaintiff; Daniel J. Ballou, attorney for John C. Rhea, III; J. Nathaniel Pierce, attorney for Tauschner Textile Industries, LLC; and Michael K. Hatch, attorney for City Electric Supply Co. After consideration of the memoranda and arguments of counsel, Plaintiff's motion is DENIED.

**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 08/25/2021 .

John Doe  
Richard Roe

**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), SCRCF.

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ELECTRONICALLY FILED - 2021 Aug 25 12:59 PM - YORK - COMMON PLEAS - CASE#2019CP4601446



York Common Pleas

**Case Caption:** Robert H Sarn VS James C Rhea III , defendant, et al

**Case Number:** 2019CP4601446

**Type:** Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-08-25 12:48:06 page 3 of 3

ELECTRONICALLY FILED - 2021 Aug 25 12:59 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4601446

Robert H Sarn  
PLAINTIFF(S)

James C Rhea, III 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:

After the Court's consideration, the Motion to Dismiss for insufficiency of service of process pursuant to Rule 12(b)(5) of the SCRPC, that was heard on November 14, 2019, is granted without prejudice with regard to Taschner Textile Industries LLC, it is so ordered.

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 12/03/2019 .

John Doe  
Richard Roe

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

ELECTRONICALLY FILED - 2019 Dec 03 11:23 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

**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), SCRPC.

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York Common Pleas

**Case Caption:** Robert H Sarn VS James C Rhea III , defendant, et al  
**Case Number:** 2019CP4601446  
**Type:** Order/Electronic Form 4

So Ordered

s/Daniel D. Hall 2753

Electronically signed on 2019-12-03 11:18:40 page 3 of 3

ELECTRONICALLY FILED - 2019 Dec 03 11:23 AM - YORK - COMMON PLEAS - CASE#2019CP4601446



complaint as indicated, and to amend the caption, also as indicated.

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May \_\_, 2020

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2020 Jun 01 10:55 AM - YORK - COMMON PLEAS - CASE#2019CP4601446





York Common Pleas

**Case Caption:** Robert H Sam VS James C Rhea III , defendant, et al  
**Case Number:** 2019CP4601446  
**Type:** Order/Amend

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2020-06-01 10:01:14 page 4 of 4

ELECTRONICALLY FILED - 2020 Jun 01 10:55 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA ]  
 ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

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SUMMONS

C.A. No. 2019-CP-46-\_\_\_\_

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ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,

CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,

JOHN DOE, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILES INDUSTRIES, LLC"; and

RICHARD ROE, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILE INDUSTRIES, LLC",

Defendants.

---

TO THE DEFENDANT(S) ABOVE-NAMED:

IF UPON AN INDIVIDUAL, OTHER THAN A MINOR, OR AN INCOMPETENT PERSON, CORPORATION, PARTNERSHIP, OR OTHER UNINCORPORATED ASSOCIATION WHICH IS SUBJECT TO SUIT UNDER A COMMON NAME:

YOU ARE REQUIRED to answer the Complaint in this action and to serve a copy of your Answer on the subscriber of this Summons at 223 East Main Street, Suite 520, Post Office Box 106, Rock Hill, South Carolina 29731, within thirty (30) days after service of this Summons, exclusive of the day of service.

YOU ARE NOTIFIED that in case of your failure to appear and defend within thirty (30) days after service of this Summons, judgment by default will be rendered against you for the relief demanded in the Complaint.

IF UPON A MINOR, A PERSON JUDICIALLY DECLARED INCAPABLE OF CONDUCTING HIS OWN AFFAIRS, OR AN INCOMPETENT PERSON:

YOU ARE NOTIFIED if you have a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may defend on your behalf.

If you are not otherwise represented in this civil action or the Court shall deem it proper, the Court shall appoint a Guardian *ad litem* for you.

If you are a minor party of the age of 14 years or over, you may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If you are a minor party under the age of 14 years, your parent, general or testamentary guardian, relative or friend may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If you are an imprisoned person, you, your relative or friend may apply for the appointment of a Guardian *ad Litem* to represent your interests in the above-entitled matter.

If no application for the appointment of a Guardian *ad litem* is made by or in your behalf within Thirty (30) days after service of this Summons upon you, then the undersigned as attorney for the Plaintiff will make application for the appointment of such Guardian *ad Litem*, after first giving notice of such application to the person or persons to whom such notice must be given under Rule 17(d)(3), (4), or (5), S.C.R.C.P.

IF UPON THE UNITED STATES OF AMERICA:

YOU ARE REQUIRED to answer the Complaint in this action and to serve a copy of your Answer on the subscriber of this Summons at 223 East Main Street, Suite 520, Post Office Box 106, Rock Hill, South Carolina 29731, within Sixty (60) days after service of this Summons, exclusive of the day of service.

YOU ARE NOTIFIED that in case of your failure to appear and defend within Sixty (60) days after service of this Summons, judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

223 East Main Street, Suite 520  
Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

April 25, 2019

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]  
] ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

ELECTRONICALLY FILED - 2019 Apr 25 9:19 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

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COMPLAINT

C.A. No. 2019-CP-46-\_\_\_\_\_

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,

CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,

JOHN DOE, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILES INDUSTRIES, LLC"; and

RICHARD ROE, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILE INDUSTRIES, LLC",

Defendants.

---

Comes now the Plaintiff and for his cause of action would allege as follows:

1. The Plaintiff, ROBERT SARN, now is, and at all times relevant to this action was, a resident of York County, South Carolina and the owner of that real estate known as Rental Court, a private road located within the City of Rock Hill in the County and State aforesaid.
2. The said Rental Court is the property remaining after the development of the original tract containing what is now seven (7) tracts, each accessed by the easement known as Rental Court. A copy of the 1999 plat and York County Tax Map showing that division are hereto and incorporated herein as Exhibit "A".

3. The Defendant, JAMES C. RHEA, III, now is, and at all times relevant to this action was, a resident of York County, South Carolina and the owner of that tract abutting Rental Court and designated as Tax Map No. 596-04-01-010. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit "B".
4. The said real property of JAMES C. RHEA, III was conveyed to him by Deed of ROBERT H. SARN dated October 17, 2000 and recorded October 20, 2000 in Record Book 3312 at Page 127. (All recording references herein being to the Office of the Clerk of Court for York County, South Carolina.)
5. The Defendant CITY ELECTRIC SUPPLY COMPANY (hereafter also "CITY ELECTRIC") now is, and at all times relevant to this action was, a Florida corporation authorized to do business in the State of South Carolina, and the owner of that tract abutting Rental Court and designated as Tax Map No. 596-04-01-005. CITY ELECTRIC has, as its agent for service of process, Neil Grey of 2589 Oscar Johnson Drive, North Charleston, S.C. 29405.
6. The said real property of CITY ELECTRIC was conveyed to it by Deed of Saxon Real Estate, Inc. dated January 29, 2015 and recorded February 9, 2015 in Record Book 14660 at Page 197; Saxon Real Estate, Inc. was deeded the said real property by ROBERT H. SARN dated December 4, 2006 and recorded December 11, 2006 in Record Book 8649 at Page 10. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit "B".
7. The Defendant calling itself TASCHNER TEXTILES INDUSTRIES, LLC (hereafter also "TASCHNER") is not formed as a limited liability company, nor authorized to do business, in either South Carolina nor Florida. On knowledge and information, it is subject to service through the South Carolina Secretary of State.
8. The said real property of TASCHNER was conveyed to it by Deed of J.D. Properties of the Carolinas, LLC dated December 29, 2017 and recorded January 3, 2018 in Record Book 16771 at Page 260; J.D. Properties was deeded the said real property by ROBERT H. SARN dated November 7, 2008 and recorded December 11, 2008 in Record Book 10451 at Page 295. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit "B".
9. The above-referenced deeds conveying the above-described real properties to the respective Defendants also conveyed the right to access and use of that easement for and known as Rental

- Court over that certain real property belonging to the Plaintiff, as a non-exclusive right to use the property as a private road to and from their respective real properties, to the other real properties located on Rental Court, and to and from Constitution Boulevard, the abutting public street.
10. During 2019, the Plaintiff caused Rental Court to be repaired, repaved and resurfaced at a total cost of \$49,314.00. Such action was necessary to preserve Rental Court and render it fit and usable by all persons having access to Rental Court.
  11. After advancing the total cost of the said repairs, repaving and resurfacing, the Plaintiff caused notices to be sent to all persons owning real property giving on to Rental Court, the same being all persons whose title derives ultimately from the Plaintiff as grantor. The said notice demanded payment of the various property owners after dividing the cost into sevenths (7ths) according to the number of lots along Rental Court; one-seventh of such cost, as demanded, was \$7,044.85 per each property owner. A copy of the notice sent is attached hereto and incorporated herein as Exhibit "C".
  12. Each of the named Defendants continually use Rental Court, as allowed and with the right to access their respective real properties, to travel over it and to permit and encourage the said Defendant's guests, business invitees, and others to do so.
  13. The use of Rental Court by each named Defendant is with the Plaintiff's permission as the owner of the land over which the said private roadway lies.
  14. On knowledge and information, under established South Carolina precedent, each named Defendant has the burden of his or its respective duty to maintain and repair the common easement known as Rental Court.
  15. The Plaintiff has made demand upon the named Defendants, and each of them, for their respective share of the cost for such maintenance and repair.
  16. The named Defendants have failed or refused to pay their respective share of the cost for such maintenance and repair to Rental Court.
  17. On knowledge and information, the Plaintiff has the right to pray this Court to determine the equitable share of each named Defendant for such maintenance and repair to Rental Court.
  18. The Plaintiff institutes this action for determination of the duty of the named Defendants, if any, to contribute to the cost of the maintenance and repair of the common easement known as Rental Court, as persons whose rights, status or other legal relations as to the Plaintiff and as to the said easement are affected by the said claims of ownership, or legal relations, and for a declaration of

the said respective rights, status and legal relations of the parties hereto, pursuant to S.C. Code § 15-53-20 and 15-53-30.

19. On knowledge and information, the Plaintiff has joined all persons as parties who have or claim any interest which would be affected by the declaration prayed for, and no such declaration shall prejudice the rights of persons not a party to this proceeding, as required by S.C. Code § 15-53-80.

Wherefore, the Plaintiff prays that this Court:

1. As required, issue its Order for Service By Publication, for appointment of Guardian *ad litem Nisi*, and any other temporary relief usual or necessary to similar civil actions;
2. Determine the rights, status and legal relations of the parties hereto as to their existence and status as separate and distinguishable legal entities;
3. Award the Plaintiff the equitable portion of cost expended on the maintenance and repair of the said easement, as set out and referenced herein, against the respective Defendants;
4. Awarded the Plaintiff his costs herein against the Defendants, and against each of them;
5. Include a prayer for any other relief to which the facts, either as plead or presented in evidence at trial, may allow to the Plaintiff; and
6. For such other and further relief as this Court may deem just and proper.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

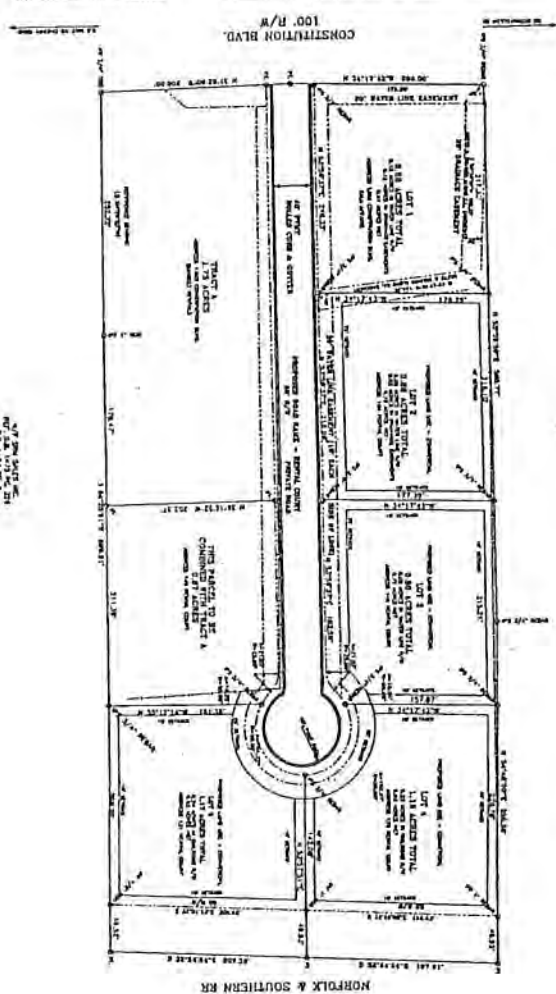
The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
[jmfoster@comporium.net](mailto:jmfoster@comporium.net)

April 24, 2019

Rock Hill, South Carolina



THIS INSTRUMENT IS NOT VALID UNLESS IT IS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF ROCK HILL, SOUTH CAROLINA.

**FINAL APPROVAL**

ROCK HILL, S.C. 29730

**CERTIFICATE OF APPROVAL OF RECORDING**

I, the undersigned, County Clerk of Rock Hill, South Carolina, do hereby certify that the foregoing instrument was duly recorded in the Public Records of this County on this 1st day of August, 2010, at 10:00 AM.

ROCK HILL, SOUTH CAROLINA

County Clerk

**CERTIFICATION OF COMPLIANCE WITH THE STANDARD HANDBOOK AND ECONOMIC CONTROL ACT OF 1981**

I, the undersigned, County Clerk of Rock Hill, South Carolina, do hereby certify that the foregoing instrument complies with the Standard Handbook and Economic Control Act of 1981.

ROCK HILL, SOUTH CAROLINA

County Clerk

**NOTICE TO BORROWERS**

NOTICE TO BORROWERS: THIS INSTRUMENT IS SUBJECT TO THE STANDARD HANDBOOK AND ECONOMIC CONTROL ACT OF 1981.

ROCK HILL, SOUTH CAROLINA

**ONLINE INFORMATION**

ONLINE INFORMATION: THIS INSTRUMENT IS SUBJECT TO THE STANDARD HANDBOOK AND ECONOMIC CONTROL ACT OF 1981.

ROCK HILL, SOUTH CAROLINA

**STATE OF SOUTH CAROLINA**

ROCK HILL, SOUTH CAROLINA

ROBERT H. STAIN

FRANK PLATT

CONSTITUTION BLVD.

ROCK HILL, SOUTH CAROLINA

2032

7/1

3

1	1.10 ACRES	1.10 ACRES
2	1.10 ACRES	1.10 ACRES
3	1.10 ACRES	1.10 ACRES
4	1.10 ACRES	1.10 ACRES
5	1.10 ACRES	1.10 ACRES



**KRISTLER ENGINEERING CO. INC.**

P.O. BOX 520

CHERRY CREEK STATION

CHERRY CREEK, SOUTH CAROLINA 29615

PHONE: 803.781.1111

FAX: 803.781.1112

WWW.KRISTLERENGINEERING.COM

Scale: 1" = 100'

North Arrow

STATE OF SOUTH CAROLINA

COUNTY OF

ROBERTSON

PLAINTIFF

vs.

ROCK HILLS

CITY

DEFENDANT

COMPLAINT

James C. Rhee

994 SUMMIT

ROCK HILLS

903-934-1111

1368 CONSTITUTION BLVD

ROCK HILLS

29734

I, the plaintiff in this civil action, hereby state the following claims:

1. I believe the defendant, of the County, and trades at which is within Judge's magisterial jurisdiction both Complaint is properly filed in County.

2. I make this complaint on the following: SEE ATTACHED SUPPLEMENT  
(Attach supplement if necessary)

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$ and/or other relief as follows:

\$7,044.85

including any costs resulting in this action.

I state under penalty of perjury that the above is correct and truthful, except those based on my information and belief.

*Robert Rhee*  
Dated: Signature of Plaintiff (or his attorney)

1/29/2019

RECEIVED  
JAN 28 P 1:22  
CANDACE BENEZER  
REGISTRAR CLERK

Supplement to Complaint

Robert Sarn, Plaintiff vs, James C, Rhea III, Defendant

Robert Sarn the majority property owner on Rental Court, a private drive and not a city street, contracted with Granite Contracting to repair and resurface Rental Court. The City of Rock Hill has no responsibility to maintain Rental Court, that is the obligation of the owners whose property is served by Rental Court. See the attached case of Hayes v. Tompkins, 337 S.E. 2d 888.

There are seven lots that enjoy the use of Rental Court. Thus, each lot owner is responsible for one seventh of the cost for the repair and resurfacing of Rental Court. The total cost of repairing and resurfacing Rental Court amounted to \$49,314.00.

Therefore each property owner's one seventh share of the repaving cost is \$7,044.85

James C. Rhea III was sent a letter on August 17, 2018 informing him of this obligation to pay his fair share in the resurfacing of Rental Court.

On January 15, 2019 James c. Rhea III was sent a demand letter to pay his fair share of the resurfacing of Rental Court and refuses to pay his share.

I believe, because of the above information, that I am entitled to and do request a judgement for \$7,044.85 and relief including any costs resulting in this action.


Robert Sarn

January 29, 2019

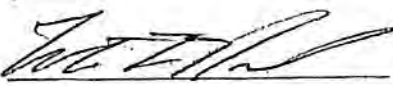



WITNESS the hands and seals of Grantors this 20<sup>th</sup> day of July, 2018.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF: )

  
WITNESS #1

  
Robert H. Sam

  
WITNESS #2

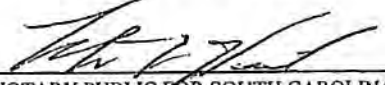
  
David C. Sam

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that the Grantors, Robert H. Sam and David C. Sam, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Executed this the 20<sup>th</sup> day of July, 2018.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 1-10-2023

## EXHIBIT A

ALL THOSE CERTAIN pieces, parcels or lots of land lying and being situated in the State of South Carolina, County of York, City of Rock Hill, at the intersection of Constitution Boulevard and Rental Court, designated as Tract A containing 1.75 acres and Tract B containing 0.87 acres, for a total of 2.62 acres, more or less, and being fully shown and described on a plat entitled, "Robert H. Sarn - Final Plat", prepared by James W. Keistler, Jr., S.C.R.L.S., dated March 11, 1999, recorded June 21, 2002, in Plat Book C-76 at page 8 in the Office of the Clerk of Court for York County, which plat is incorporated herein and made a part hereof by this reference and having such metes, bounds, courses and distances as will appear by referring to said plat.

TOGETHER with a non-exclusive, perpetual easement for ingress and egress between the above said real property and Constitution Boulevard along the private road known as "Rental Court", being approximately 50' in width, shown on the above described plat, which plat is incorporated herein and made a part hereof by this reference.

FURTHER PROVIDED, HOWEVER, that the real property conveyed hereby shall carry as a lien and charge thereon the responsibility for two-sevenths (2/7) of the cost of the maintenance, repair and upkeep of Rental Court and the easement area.

**DERIVATION:** These lots were created from the larger parcel conveyed to Robert H. Sarn by deed of Metromont Materials Corp., dated December 15, 1995, recorded February 28, 1996, in Record Book 1460 at page 100. Robert H. Sarn reconveyed title to the property to himself and David C. Sarn, as joint tenants with right of survivorship, by deed dated November 14, 2016, recorded December 15, 2015, in Record Book 16128 at page 149 in the Office of the Clerk of Court for York County.

**TAX MAP NOS:** 596-04-01-004 and 596-04-01-015

**PROPERTY ADDRESS:** 1382 Constitution Blvd. and 149 Rental Court, Rock Hill, SC 29732

**GRANTEE'S ADDRESS:** 1671 Saddlewood Drive, Fort Mill, SC 29715



3.



Granite Contracting, LLC  
 18606 Northline Drive  
 Cornelius, NC 28031  
 Office: (704) 892-0341  
 Fax: (704) 892-4794  
 www.granitecontracting.com

To: York Rental & Sales	Contact: Bob Sarn
Address: Rental Court Rock Hill, SC 29732 USA	Phone: 803-517-5153
Project Name: Rental Court Overlay	Bid Number: 7829
Project Location: Rental Court, Rock Hill, NC	Bid Date: 7/20/2018

Granite Contracting, LLC ("Granite") is pleased to provide a quotation to furnish all labor, materials, and equipment required to perform the items of work described below:

Line #	Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
	101	5" Deep Patching	300.00	SY	\$60.70	\$18,210.00
	102	Raise Manholes To Grade	2.00	EACH	\$192.00	\$384.00
	103	Raise Valve Boxes To Grade	2.00	EACH	\$45.00	\$90.00
	104	Pave 1.5" Of Type C Surface Overlay	3,200.00	SY	\$9.30	\$29,760.00
	105	Traffic Control	1.00	LS	\$870.00	\$870.00

Total Bid Price: \$49,314.00

x 112 100  
 54,245.40

**Notes:**

- THIS CONTRACT CONTAINS AN ARBITRATION CLAUSE
- Attached are the Contract Terms & Conditions for this Contract. To Execute this Contract, please sign & date where provided and initial at the bottom of the Contract Terms & Conditions page.
- South Carolina General Contractor's License #G112505
- Due to the volatility of liquid asphalt binder prices at this time, all paving prices on this project will be adjusted in accordance with the Monthly Terminal FOB Asphalt Binder Prices as determined by the North Carolina/South Carolina Department of Transportation. This proposal is based on a Base Price Index of \$536.42 for the month of July, 2018. For each \$10 change of the monthly selling price from the Base Price Index, all paving item prices will be adjusted by \$0.035/square yard per one inch depth, or by \$0.60/ton, for the month in which that item is placed.
- Performance and payment bonds not included. If required, add 1.5% of contract amount, to be paid upon receipt of bonds.
- Work excludes engineering and layout; testing; rock excavation; undercut; backfilling; herbicide treatment; prime coat; licenses, fees, and permits other than those required for the operation of this business.
- The concrete, stone and asphalt section thickness described above represent average thicknesses.
- This quote is based on satellite image measurements.
- This proposal expires if not accepted by subcontract within 30 days after the above date. This proposal can be accepted at a later date at Granite Contracting's option.
- This is a unit price contract. Payment to be based on actual quantities of work performed.

**Payment Terms:**

Unless otherwise agreed, payment is due within 30 days from the invoice date.

<p><b>ACCEPTED:</b>          The above prices, specifications and conditions are satisfactory and are hereby accepted.</p> <p>Buyer: _____</p> <p>Signature: _____</p> <p>Date of Acceptance: _____</p>	<p><b>CONFIRMED:</b>          Granite Contracting, LLC</p> <p>Authorized Signature: _____</p> <p>Estimator: Dave Yungfleisch          (704) 892-0341 x226          daveyungfleisch@granitecontracting.com</p>
---	---



# INVOICE

Customer: Bob Sarn  
 Rental Court  
 Rock Hill, SC 29732  
 Attn: Bob Sarn  
 Proj Name: Rental Court Overlay  
 Project #: 0

Invoice #: 6406 -1  
 Invoice Date: 8/30/2018  
 Granite Job #: 6486  
 Bill Period Ending: 8/31/2018  
 Customer #: 0  
 Fiscal Month Ending: 8/26/2018

Item #	Item Description	Contract Quantity	Unit	Unit Price	Current Period Quantity	Current Value Completed	Job-to-Date Quantity	Job-to-Date Value
101	5" Deep Patching	300.00	SY	60.700	300.000	18,210.00	300.000	18,210.00
102	Raise Manholes to Grade	2.00	EA	192.000	2.000	384.00	2.000	384.00
103	Raise Valve Boxes to Grade	2.00	EA	45.000	2.000	90.00	2.000	90.00
104	Pave 1.5" of Surface Type C	3,200.00	SY	9.300	3,200.000	29,760.00	3,200.000	29,760.00
105	Traffic Control	1.00	LS	870.000	1.000	870.00	1.000	870.00
<b>TOTAL VALUE OF WORK COMPLETED:</b>						49,314.00		49,314.00
Less: Retainage @ 0.00%						0.00		0.00
Subtotal						49,314.00		49,314.00
Less: Previous Billings								0.00
Other								
<b>CURRENT AMOUNT DUE :</b>						<u>\$ 49,314.00</u>		<u>49,314.00</u>

PLEASE REMIT TO:  
 Granite Contracting, LLC  
 18606 Northline Dr.  
 Cornelius, NC 28031  
*THANKS FOR YOUR BUSINESS!!!*  
 Due Date: 9/29/2018  
 Terms: Net 30

YORK COUNTY ASSESSOR

Tax Map:  
596-04-01-012  
Date: 01/03/2018



DEED  
RECORDING FEES \$10.00  
STATE TAX \$1768.00  
COUNTY TAX \$748.00  
PRESENTED & RECORDED:  
01-03-2018 01:20:25 PM  
BK: RB 16771  
PG: 260 - 262  
DAVID HAMILTON  
CLERK OF COURT  
YORK COUNTY, SC  
BY: HEATHER CHAPMAN CLERK

1768.00  
748.00

Prepared By:  
Brice Law Firm, LLC  
P. O. Drawer 300  
York, SC 29745

E H

STATE OF SOUTH CAROLINA )  
  ) TITLE TO REAL ESTATE  
COUNTY OF YORK )

KNOW ALL MEN BY THESE PRESENTS that, J.D. Properties of the Carolinas, LLC, hereinafter referred to as "Grantor", in the State and County aforesaid, for and in consideration of Six Hundred Eighty Thousand and 00/100 (\$680,000.00) DOLLARS paid by Taschner Textiles Industries, LLC 888 Brickell Key Dr. Apt 909.  
Miami, FL 33131  
hereinafter the "Grantees", has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the Grantee, its successors, heirs and assigns forever, the following described real property, to wit:

All that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of York, on the northern side of Rental Court (just off Constitution Boulevard), in the City of Rock Hill, designated as Lot 3, containing 0.80 acres, more or less, on Final Plat for Robert H. Sarn, drawn by James W. Kelstler, Jr., SCRLS, dated March 11, 1999, and recorded in Plat Book C-76 at page 8, in the Office of the Clerk of Court for York County, South Carolina, which plat is hereby incorporated herein as part of this description and made a part hereof for a more accurate depiction of metes, bounds, courses and distances.

See also new plat recorded herein in Plat Book 156, page 370.

Together with the Easement, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the property, the Grantee, its licensees, agents, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that is shall cause to be done no act or omission with the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that Grantor, until such time as the Easement

Ares is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor' development and so as to allow Grantee the full benefit and use of the Easement.

DERIVATION: This being the identical real property conveyed to J.D. Properties of the Carolinas, LLC by deed of Robert H. Sarn recorded December 11, 2008 in Book 10451, page 295, RMC Office for York County, SC.

The within property is conveyed subject to all existing easements and restrictions appearing in the chain of title, which said easements and restrictions are not intended to be reimposed hereby.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its Successors and Assigns forever.

And the Grantor does hereby bind its successors, heirs, Executors, Personal Representatives, and Administrators to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Successors and Assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of The Grantor(s) this the 29<sup>th</sup> day of December, 2017.

Signed, Sealed, and Delivered in the presence of:

J.D. Properties of the Carolinas, LLC

\* Nicole Summerville  
Witness #1

\* Robert N. Miller (Seal)  
By: Robert N. Miller, Member

\* [Signature]  
Witness #2

Exp March 2018



STATE OF <sup>\*</sup>Ohio )  
 )  
COUNTY OF <sup>\*</sup>Ashkabola )

ACKNOWLEDGMENT

I, the undersigned, Notary Public for the State of <sup>\*</sup>Ohio, do hereby certify that Robert N. Miller, Member of J.D. Properties of the Carolinas, LLC, personally appeared before me this day and acknowledge the due execution of this foregoing instrument.

Witness my hand and seal this <sup>\*</sup>29 day of <sup>\*</sup>December 2017.

<sup>\*</sup>Nicole Summerville (Seal)  
Notary Public  
My Commission Expires: <sup>\*</sup>March 2018



1482.00  
627.00

PREPARED BY:  
Hyatt Law Firm  
1401 Ebenezer Road  
Rock Hill, SC 29732

**RECORDED**  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

200900044719  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMMOND  
12-11-2008 at 11:55 PM  
DEED 10.00  
State Tax 1482.00  
County Tax 627.00  
DR Vol 10451 Page 295 - 296

DATE 12-11-08  
TAX MAP NO. 596-4-1-12  
INITIALS TS / d/n

State of South Carolina

TITLE TO REAL ESTATE

County of York

**KNOW ALL MEN BY THESE PRESENTS**, that Robert H. Sarn (hereinafter the "Grantor") in the State aforesaid, for and in consideration of the sum of Five Hundred Seventy Thousand and 00/100 Dollars (\$570,000.00) before the sealing of these presents by J.D. Properties of the Carolinas, LLC of 146 Rental Court, Rock Hill, SC 29732 (hereinafter the "Grantee") has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, his/her/their heirs, and assigns the following described real property:

B.A.S.

All that certain piece, parcel, or lot of land lying, being, and situate in the State of South Carolina, County of York, on the northern side of Rental Court (just off Constitution Boulevard), in the City of Rock Hill, designated as Lot 3, containing 0.80 acres, more or less, on Final Plat for Robert H. Sarn, drawn by James W. Keistler, Jr., SCRLS, dated March 11, 1999, and recorded in Plat Book C-76 at Page 8, in the Office of the Clerk of Court for York County, South Carolina, which plat is hereby incorporated herein as part of this description and made a part hereof for a more accurate depiction of metes, bounds, courses, and distances.

DERIVATION: This being a portion of the property conveyed to Robert H. Sarn by deed from Metromont Materials Corporation dated December 15, 1995, and recorded February 28, 1996, in Book 1460 at Page 100, in the Office of the Clerk of Court for York County, South Carolina.

TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that is shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.

TMS#596-04-01-012

This conveyance is made subject to all easements, restrictions, and rights of way, if and appearing of record in the chain of title of the subject property or visible upon an actual, physical inspection of the subject property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

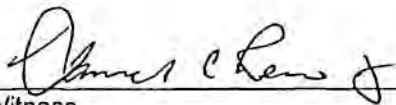
TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto said Grantee, his/her/their heirs and assigns forever.

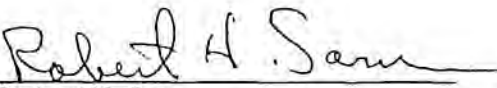
NOV 10 2008

And the Grantor does hereby bind her/him/their/self and his/her/their Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Grantee and the Grantee's Heirs and Assigns against the Grantors and Grantor's heirs and assigns and all other persons whomsoever lawfully claiming, or to claim, the same, or any part thereof.

WITNESS the HAND AND SEAL OF THE GRANTOR on November 7, 2008.

Signed, sealed and delivered

  
Witness

  
Robert H. Sarn

  
Witness

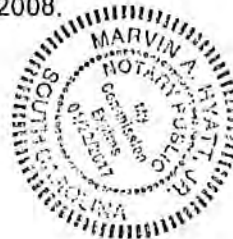
STATE OF SOUTH CAROLINA  
COUNTY OF YORK

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the above named **Robert H. Sarn** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal on November 7, 2008.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My commission expires: 01/22/2017



88-10451 000296

RETURN ORIGINAL TO:  
Hyatt Law Firm  
1401 Ebenezer Road  
Rock Hill, SC 29732

08-1039

200900049270  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
01-29-2009 At 08:10 am.  
EASEMENT 10.00  
State Tax .00  
County Tax .00  
OR Vol 10523 Page 242 - 243

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

GRANT OF EASEMENT  
AND RIGHT OF WAY

Whereas, Robert H. Sarn, is the owner of TRACT A and A PARCEL TO BE COMBINED WITH TRACT A (commonly known as 1362 Constitution Boulevard and 149 Rental Court) as shown on and plat as recorded in Book C-76 at Page 3 and is the original owner of a 4.228-acre tract as shown in Plat Book A-78 at Page 4, of which J.D. Properties of the Carolinas, LLC, is now purchasing a portion of (or has recently);

Whereas, J.D. Properties of the Carolinas, LLC is the owner of (or will be the owner of in the near future) Lot 3 as shown on plat as recorded in Book C-76 at Page 8, after purchasing said property from Robert H. Sarn, and which property is a portion of the original 4.228-acre tract as shown in Plat Book A-78 at Page 4;

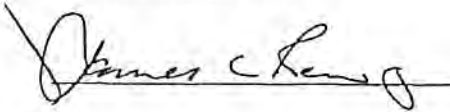
Now therefore, KNOWN ALL MEN BY THESE PRESENTS that Robert H. Sarn, owner in fee simple of TRACT A (now consisting of 1.75 acres and 0.87 acres) and possibly owner of said PRIVATE ROAD commonly known as Rental Court, hereby grants J.D. Properties of the Carolinas, LLC, its successors and assigns, a right of way or easement for the purpose of ingress and egress approximately (50') feet wide which is shown as Rental Court on Plat recorded in Plat Book C-76 at Page 8; running perpendicularly from the 100' right of way for Constitution Boulevard in York County in the City of Rock Hill, along or near the dividing lines between Lot 1 and Tract A, and between Lot 2 and Tract A, to run along the entire length of Lot 3 (owned by J.D. Properties of the Carolinas, LLC). Said road, all of which is hereby granted as a non-exclusive EASEMENT is more fully and accurately described on FINAL PLAT for Robert H. Sarn, drawn by James W. Keistler, Jr., SCRLS, dated March 11, 1999, and recorded in Plat Book C-76 at Page 8, which plat is hereby incorporated herein as part of this description and made a part hereof for a more accurate depiction of metes, bounds, courses, and distances of said easement.

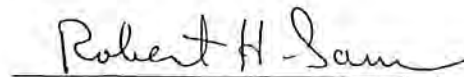
This agreement shall bind and pass to the successors and/or assigns of J.D. Properties of the Carolinas, LLC. Furthermore, this agreement shall bind and pass to the successors and assigns of Robert H. Sarn.

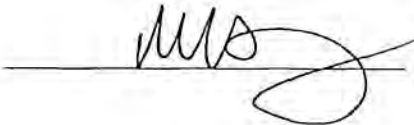
By signing this Agreement, Robert H. Sarn, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost for the upkeep and maintenance of said private road.


It is hereby agreed this 6<sup>th</sup> day of November in the year of our Lord, two thousand and eight.

WITNESSES as to all:

  
\_\_\_\_\_

  
Robert H. Sarn

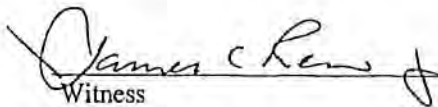
  
\_\_\_\_\_

J.D. Properties of the Carolinas, LLC  
  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

PROBATE

Personally appeared before me the undersigned witness made oath that she saw the within named Robert H. Sarn and Representative of J.D. Properties of the Carolinas, LLC sign, seal, and act as their deed, deliver the within written grant of easement and right of way; and that she with the other witness above named witnessed the execution thereof.

  
Witness

SWORN TO BEFORE ME this  
6<sup>th</sup> day of November, 2008.

  
Notary Public for South Carolina



182-03  
17-000

000378156 12/11/2006 12:01:58PM  
RECORDED  
BK:08649 PG:00010 Pages:3  
Fee:10.00 State:182.00  
County:77.00 Exempt:  
David Hamilton, Clerk of Court  
York County, SC

Prepared by and return to:

Joshua B. Vann, Esq.  
MORTON & GETTYS LLC  
334 Oakland Avenue  
Post Office Box 707  
Rock Hill, South Carolina 29731

RECORDED  
YORK COUNTY  
TAX ASSESSOR'S OFFICE  
DATE 12-12-06  
TAX MAP NO. 596-4-1-5  
INITIALS TS / d/n

**GENERAL WARRANTY DEED**

THIS GENERAL WARRANTY DEED is made as of the 4th day of December, 2006, by and between ROBERT H. SARN, an individual residing within the State of South Carolina, as party of the first part, hereinafter referred to as "Grantor," and SAXON REAL ESTATE, INC., a corporation organized and existing under the laws of the State of Florida and having a mailing address of 6827 N. Orange Blossom Trail, Suite 2, Orlando, Florida, 32810, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the successors and assigns of each of the parties hereto.

**WITNESSETH:**

WHEREAS, the parties are mutually obligated unto the other under that certain Agreement of Purchase and Sale (the "Agreement") executed between the parties, which provides for Grantor's conveyance to Grantee of the Property hereinafter described upon the terms and conditions stated therein; and,

WHEREAS, Grantor agrees that Grantee has complied with the terms of the Agreement, and that Grantor is now obligated to convey title to the Property to Grantee; and,

WHEREAS, the Property is comprised of that certain piece, parcel, or tract of land containing .88 acres, more or less, being York County, South Carolina Tax Map No. 596-04-01-005, and being described in further detail in Exhibit "A" hereto, which is incorporated herein by this reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, Grantor has and hereby does grant, bargain, sell and convey unto Grantee

1 of 4

\\Mg-server-01\UserData\jvann\2006 Files\Real Estate\0082-JBV-RE-2006, Saxon Real Estate, LLC\General Warranty Deed.DOC

BK08649PG0010

and the heirs, legal representatives, successors and assigns of Grantee, all of Grantor's right, title, and interest in and to the Property and all improvements affixed thereto and lying thereupon (with such improvements being considered as a part of the Property), together with the an perpetual, non-exclusive ingress and egress easement ("Easement"), as such is described and set forth in Exhibit "A," subject, however, to the terms and provisions of this General Warranty Deed.

The Property is hereby conveyed to the Grantee subject to the following easements, conditions, restrictions, or exceptions, these and all such matters as may arise out them being matters to which the warranty of Grantor as contained herein shall not apply:

1.0 All matters as shown on that certain Plat of Survey prepared by Keistler Engineering Co., Inc., for Robert H. Sarn, entitled "Robert H. Sarn Final Plat," as affecting Lot 2 shown thereon, such plat being recorded in the York County Clerk of Court's Office at Plat Book C-76, Page 8.

2.0 Rights of way conveyed to the City of Rock Hill by the instruments recorded in the aforesaid records in Book 2720, at Page 18, in Book 2692, at Page 94, in Book 6092, at Page 201, and in Book 4422, at Page 290, to the extent the foregoing encumber the Property, and not solely its parent tract.

3.0 Right of way conveyed to the Rock Hill Telephone Company by the instrument recorded in the aforesaid records in Book 2705, at Page 27, to the extent the foregoing encumbers the Property, and not solely its parent tract.

4.0 Pipeline right of way conveyed to York County Natural Gas by the instrument recorded in the aforesaid records in Book 2744, at Page 39, to the extent the foregoing encumbers the Property, and not solely its parent tract.

TO HAVE AND TO HOLD the Property and the Easement, subject to the above easements, restrictions, and exceptions, together with any and all of the rights, members and appurtenances thereof, the same being, belonging or in anywise appertaining to, the only proper use, benefit and behoof of the Grantee forever IN FEE SIMPLE, on the terms and conditions contained herein.

GRANTOR SHALL WARRANT and forever defend the right and title to the Property unto the Grantee against the claims of all persons whomsoever claiming by, through or under Grantor, or Grantor's successors and assigns, and against all others, subject to the limitations contained herein.

IN WITNESS WHEREOF, Grantor has signed and sealed this deed as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

2 of 4

BK 08649 PG 0011



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF PROPERTY**

ALL that certain piece, parcel, or tract of land containing .88 acres, more or less, located at 164 Rental Court, in or near the City of Rock Hill, in the County of York, State of South Carolina, shown as Lot 2, containing .88 acres, more or less, on that certain Plat of Survey ("Plat") prepared by Keistler Engineering Co., Inc., for Robert H. Sam, entitled "Robert H. Sam Final Plat," such plat being dated March 11, 1999, last revised on July 31, 2000, and subsequently recorded in the York County Clerk of Court's Office at Plat Book C-76, Page 8, to which plat reference is made for the courses and distances of the within described property.

TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately fifty feet (50') in width, shown on the Plat as "Proposed Road Name- Rental Court, the area shown by the Plat as being Rental Court being hereinafter referred to as the "Easement Area." The Easement shall benefit the Property, the Grantee, its licensees, agents, invitees, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant which runs with the land. Grantor covenants that it shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.

DERIVATION: Being a portion of the property conveyed to the Grantor in the within instrument by that certain deed recorded in the York County Clerk of Court's Office in Book 1460, at Page 97.

4 of 4

BK08649PG0013

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF LANCASTER     )

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

Property known as .88 acres , more or less, located at 164 Rental Court, bearing York County Tax Map Number 596-04-01-005, was transferred by Robert H. Sarn, an individual residing within the State of South Carolina, on the 4th day of December, 2006.

The transaction was (check one):

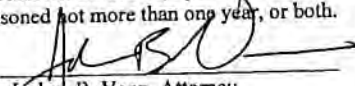
an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$70,000.00.

not an arms length real property transaction and the fair market value of the property is \$ \_\_\_\_\_.\*

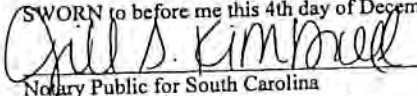
The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.* because the deed is:

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Attorney for the Seller.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

  
Joshua B. Vann, Attorney

SWORN to before me this 4th day of December, 2006

  
Notary Public for South Carolina

My commission expires: 11/17/2014

\* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

U:\jvann\FORMS\Real Estate\Deed Affidavit.doc

BK08649PG0014

COUNTY CONVENIENCE FEE

2000/261/RE/JPG FILED-RECEIVED  
BOOK \_\_\_\_\_ PREPARED BY THE LAW FIRM OF HARRISON, HAYES, GUYTON, AND GETTYS L.L.C. COUNTY FEE \$275.00  
STATE OF SOUTH CAROLINA Oct 20 10 16 AM '00  
Stamp # 2 \$250,000.00  
STATE FEE \$650.00 DAVID HAMILTON  
STATE OF SOUTH CAROLINA COUNTY OF YORK  
COUNTY OF YORK )  
TITLE TO REAL ESTATE  
GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That I, Robert B. Sarn, (hereinafter "Grantor", whether singular or plural), in the State aforesaid, for and in consideration of the sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars to the Grantor, paid by James C. Rhea, III (hereinafter "Grantee", whether singular or plural), in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, Grantee's Heirs and Assigns, all of my right, title, and interest in and to the following described property

RECORDED  
YORK COUNTY

SEE ATTACHED EXHIBIT A FOR DESCRIPTION OF PROPERTY REFERENCED HEREIN.

TAX ASSESSOR'S OFFICE  
DATE 10/20/00  
TAX MAP NO. 596-4-1-10  
INITIALS RCH

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, Grantee's Heirs and Assigns forever.

AND Grantor does hereby bind Grantor's Heirs, Personal Representatives and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, and

127

RECORDED  
RECORD  
VOL 3312 PG 127  
YORK COUNTY, S.C.

Grantee's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of Grantor this 17 day of October, in the year of our Lord two thousand (2000), and in the two hundred and twenty-fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF: )

[Signature]  
[Signature]

Robert H. Sarn (SEAL)  
Robert H. Sarn

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

PROBATE

PERSONALLY appeared before me the below signed witness and made oath that s/he saw the within named Grantor(s) sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

[Signature]

SWORN to before me this 17 day of October, 2000.

[Signature] (LS)  
Notary Public for South Carolina  
My Commission Expires: 7/1/02

Exhibit A

All that certain piece, parcel, or lot of land, lying, being and situate in the City of Rock Hill, County of York, State of South Carolina and being shown and designated as Lot 1, containing 0.88 acres upon plat entitled "Property of James C. Rhea III" prepared by Keistler Engineering Co., Inc. dated October 17, 2000 and recorded in the office of the Clerk of Court for York County, SC in Plat Book 6219 at Page 4, which plat is incorporated herein by reference, and having such metes, bounds, courses, and distances as by reference to said plat will more fully appear.

The within property is conveyed subject to all existing easements and restrictions appearing in the chain of title, which said easements and restrictions are not intended to be reimposed hereby

Derivation: This being a portion of the property deeded to Robert H. Sarn by deed of Metromont Materials Corp. dated December 15, 1995, recorded February 28, 1996 in Record Book 1460 at Page 100 in the Office of the Clerk of Court for York County, SC.

Grantee's Mailing Address: 894 Sumter Avenue  
Rock Hill, SC 29730

J.M. Foster Law Office

**Fax Cover** This is a confidential message, intended solely for the person to whom it is addressed. If you receive this message in error, please forward it to the correct person, or mail it back to us. Thank you.

**To** Marvin A. Hyatt, Esq.  
**Fax No.** 803 328-1356  
**From** John Martin Foster  
**Date/Time** 11/20/08 at 9:59AM  
**Subject** J.D. Properties of the Carolinas / Robert H. Sarn  
**Pages** 1, including this one

Alton:

Thank you again for the faxed docs on Monday and our talk. I have consulted with Bob Sarn: without taking back any commitment at the closing, I am trying to resolve this situation by getting the City to accept a dedication of Rental Court to it. I spoke with the Spencer associate yesterday and expect an answer this week.

In the hope of that resolution, I ask you that you not record the Grant of Easement and Right of Way until we know more. I expect we will talk before the end of the week.

-- Martin

cc: Robert H. Sarn

223 East Main St, Suite 520  
Post Office Box 105  
Rock Hill, South Carolina  
29731-6106  
803 324-8100  
803-324-8109 Fax  
jmfoster@comporium.net

**FW: City Electric Supply, Rock Hill Location**

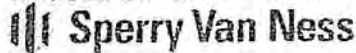
From: **Randy Graham** (randy.graham@svn.com)  
Sent: Mon 11/10/08 6:48 PM  
To: bob sam (bsam@hotmail.com)  
Attachments: image002.jpg (2.9 KB), image004.jpg (3.2 KB)



Bob,

FYI, attached is Mark's correspondence with City Electric.

**Randy Graham** | Managing Director  
Sperry Van Ness | Southern Commercial Real Estate  
1926 India Hook Road | Rock Hill, SC 29732  
803/325-1000 ext. 11 803/325-1214 (fax)  
randy.graham@svn.com | www.svn-scre.com



*This office is independently owned and operated.*

From: Mark Mayfield  
Sent: Monday, November 10, 2008 12:49 PM  
To: 'Doug Kennedy'  
Cc: Randy Graham  
Subject: City Electric Supply, Rock Hill Location

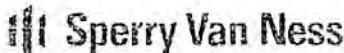
Doug,

I am the real estate broker that sold you your site on Rental Court in Rock Hill, several years ago. The Owner of the remaining property in Constitution Business Park, where you are located, asked that I contact you about sharing the costs on a pro-rata basis of the future maintenance costs of Rental Court, since it is a private road instead of a public road. We have just sold the adjacent building to an electrical contractor and he has agreed to share these costs, also. This issue just came up due to the sale of the building, adjacent to your site. In the future the Owner will require that all owners in the park agree to the same.

If you have any questions about this or the specifics of how this would be handled, you may contact the closing attorney who handled the sale of the building next door to you, Alton Hyatt 803/328-1851 or my business partner, Randy Graham 803/325-1000, who represented the Owner in the adjacent building sale.

Thanks and I hope you are doing well.

**Mark J. Mayfield** | Managing Director | BIC  
Sperry Van Ness | Southern Commercial Real Estate, LLC  
1926 India Hook Road | Rock Hill, SC 29732  
Phone 803.325.1000 x 2 | Fax 803.325.1214  
mark.mayfield@svn.com | www.svn-scre.com



*This office is independently owned and operated.*

<http://by140w.bay140.mail.live.com/mail/PrintShell.aspx?type=message&cpids=b5b5753...> 11/13/2008



Toy Rhea  
Gala Affairs  
1368 Constitution Blvd  
Rock Hill, SC 29732

Toy,

I recently sold 146 Rental Court to Robert Miller of Walker Electric Company. Mr. Miller has agreed to share on a pro-rata basis the future maintenance costs of Rental Court, since it is a private road instead of a public road. I have also contacted the principles involved in City Electric company and they have agreed to share the costs, also. On all future sales of my properties on Rental Court it will be a requirement that all new owners will share in the cost of road maintenance on a pro-rata basis.

There are seven properties that boarder Rental Court: Sunbelt occupies two properties, 131 Rental Court, 128 Rental Court, 146 Rental Court, 164 Rental Court and Gala Affairs. A pro-rata share would be one seventh ( 1/7 ) of any future road maintenance costs.

I am asking that you agree in sharing the costs on a pro-rata basis the future maintenance costs of Rental Court.

If you have any questions about this or the specifics of how this would be handled, you may contact the closing attorney who handled the sale of 146 Rental Court, Alton Hyatt 803-328-1851 or Randy Graham 803-325-1000, who represented me in this sale.

Thanks and I hope your business is doing well.

Bob Sam  
4367 Park Island Road  
Meggett, SC 29449  
803-517-5153

STATE OF SOUTH CAROLINA ]  
  ] ]  
COUNTY OF YORK                  ]

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

---

**AMENDED COMPLAINT**

**C.A. No. 2019-CP-46-01446**

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation, and  
TÄSCHNER TEXTILE INDUSTRIES, LLC”,

Defendants.

---

Comes now the Plaintiff and for his amended cause of action would allege as follows:

1. The Plaintiff, ROBERT SARN, now is, and at all times relevant to this action was, a resident of York County, South Carolina and the owner of that real estate known as Rental Court, a private road located within the City of Rock Hill in the County and State aforesaid.
2. The said Rental Court is the property remaining after the development of the original tract containing what is now seven (7) tracts, each accessed by the easement known as Rental Court. A copy of the 1999 plat and York County Tax Map showing that division are hereto and incorporated herein as Exhibit “A”.
3. The Defendant, JAMES C. RHEA, III, now is, and at all times relevant to this action was, a resident of York County, South Carolina and the owner of that tract abutting Rental Court and designated as Tax Map No. 596-04-01-010. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit “B”.

4. The said real property of JAMES C. RHEA, III was conveyed to him by Deed of ROBERT H. SARN dated October 17, 2000 and recorded October 20, 2000 in Record Book 3312 at Page 127. (All recording references herein being to the Office of the Clerk of Court for York County, South Carolina.)
5. The Defendant CITY ELECTRIC SUPPLY COMPANY (hereafter also "CITY ELECTRIC") now is, and at all times relevant to this action was, a Florida corporation authorized to do business in the State of South Carolina, and the owner of that tract abutting Rental Court and designated as Tax Map No. 596-04-01-005. CITY ELECTRIC has, as its agent for service of process, Neil Grey of 2589 Oscar Johnson Drive, North Charleston, S.C. 29405.
6. The said real property of CITY ELECTRIC was conveyed to it by Deed of Saxon Real Estate, Inc. dated January 29, 2015 and recorded February 9, 2015 in Record Book 14660 at Page 197; Saxon Real Estate, Inc. was deeded the said real property by ROBERT H. SARN dated December 4, 2006 and recorded December 11, 2006 in Record Book 8649 at Page 10. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit "B".
7. The Defendant TÄSCHNER TEXTILES INDUSTRIES, LLC (hereafter also "TASCHNER") now is, and at all times relevant to this action was, a North Carolina limited liability company authorized to do business in South Carolina. The real property of TÄSCHNER was conveyed to it by Deed of J.D. Properties of the Carolinas, LLC dated December 29, 2017 and recorded January 3, 2018 in Record Book 16771 at Page 260; J.D. Properties was deeded the said real property by ROBERT H. SARN dated November 7, 2008 and recorded December 11, 2008 in Record Book 10451 at Page 295. An annotated copy of the Google Street view showing that real property and its access to Rental Court is attached hereto and incorporated herein as Exhibit "B".
8. The above-referenced deeds conveying the above-described real properties to the respective Defendants also conveyed the right to access and use of that easement for and known as Rental Court over that certain real property belonging to the Plaintiff, as a non-exclusive right to use the property as a private road to and from their respective real properties, to the other real properties located on Rental Court, and to and from Constitution Boulevard, the abutting public street.
9. During 2019, the Plaintiff caused Rental Court to be repaired, repaved and resurfaced at a total cost of \$49,314.00. Such action was necessary to preserve Rental Court and render it fit and usable by all persons having access to Rental Court.

10. After advancing the total cost of the said repairs, repaving and resurfacing, the Plaintiff caused notices to be sent to all persons owning real property giving on to Rental Court, the same being all persons whose title derives ultimately from the Plaintiff as grantor. The said notice demanded payment of the various property owners after dividing the cost into sevenths (7ths) according to the number of lots along Rental Court; one-seventh of such cost, as demanded, was \$7,044.85 per each property owner. A copy of the notice sent is attached hereto and incorporated herein as Exhibit "C".
11. Each of the named Defendants continually use Rental Court, as allowed and with the right to access their respective real properties, to travel over it and to permit and encourage the said Defendant's guests, business invitees, and others to do so.
12. The use of Rental Court by each named Defendant is with the Plaintiff's permission as the owner of the land over which the said private roadway lies.
13. On knowledge and information, under established South Carolina precedent, each named Defendant has the burden of his or its respective duty to maintain and repair the common easement known as Rental Court.
14. The Plaintiff has made demand upon the named Defendants, and each of them, for their respective share of the cost for such maintenance and repair.
15. The named Defendants have failed or refused to pay their respective share of the cost for such maintenance and repair to Renal Court.
16. On knowledge and information, the Plaintiff has the right to pray this Court to determine the equitable share of each named Defendant for such maintenance and repair to Rental Court.
17. The Plaintiff institutes this action for determination of the duty of the named Defendants, if any, to contribute to the cost of the maintenance and repair of the common easement known as Rental Court, as persons whose rights, status or other legal relations as to the Plaintiff and as to the said easement are affected by the said claims of ownership, or legal relations, and for a declaration of the said respective rights, status and legal relations of the parties hereto, pursuant to S.C. Code § 15-53-20 and 15-53-30.
18. On knowledge and information, the Plaintiff has joined all persons as parties who have or claim any interest which would be affected by the declaration prayed for, and no such declaration shall prejudice the rights of persons not a party to this proceeding, as required by S.C. Code § 15-53-80.

Wherefore, the Plaintiff prays that this Court:

1. As required, issue its Order for Service By Publication, for appointment of Guardian *ad litem Nisi*, and any other temporary relief usual or necessary to similar civil actions;
2. Determine the rights, status and legal relations of the parties hereto as to their existence and status as separate and distinguishable legal entities;
3. Award the Plaintiff the equitable portion of cost expended on the maintenance and repair of the said easement, as set out and referenced herein, against the respective Defendants;
4. Awarded the Plaintiff his costs herein against the Defendants, and against each of them;
5. Include a prayer for any other relief to which the facts, either as plead or presented in evidence at trial, may allow to the Plaintiff; and
6. For such other and further relief as this Court may deem just and proper.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
[jmfoster@comporium.net](mailto:jmfoster@comporium.net)

May 12, 2020

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2019-CP-46-01446

**ANSWER**

The Defendant, Täschner Textiles Industries, LLC ("TTI"), through the undersigned counsel, responds to Plaintiff Robert H. Sarn's ("Sarn") Summons and Complaint as follows:

**MOTION TO DISMISS  
(South Carolina Rule of Civil Procedure 12(b)(6))**

1. Sarn has failed to state a claim upon which relief can be granted and, therefore, Sarn's claims must be dismissed.

**FOR A FIRST DEFENSE  
(General and Specific Denials)**

2. Any allegation in Sarn's Complaint not expressly admitted to herein is expressly denied.

3. TTI admits the allegations of paragraph 1.
4. Exhibit A speaks for itself. To the extent the allegations of paragraph 2 add to or alter the terms of Exhibit A, they are denied.
5. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 and therefore denies the same.
6. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 and therefore denies the same.
7. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 and therefore denies the same.
8. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 and therefore denies the same.
9. TTI denies the allegations of paragraph 7.
10. TTI admits it was conveyed real property by J.D. Properties of the Carolinas, LLC on December 29, 2017, that the real property was previously conveyed to J.D. Properties of the Carolinas, LLC by Sarn. Responding further, the Record Books and Exhibit B speak for themselves. To the extent the allegations of paragraph 8 add to or alter the terms of the Record Books or Exhibit B, they are denied.
11. The Deeds speak for themselves. To the extent the allegations of paragraph 9 add to or alter the terms of the Deeds, they are denied.
12. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10 and therefore denies the same.

13. TTI denies the allegations of paragraph 11 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 11 and therefore denies the same.

14. TTI admits it uses Rental Court. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 12 and therefore denies the same.

15. TTI denies the allegations of paragraph 13 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 13 and therefore denies the same.

16. TTI denies the allegations of paragraph 14.

17. TTI denies the allegations of paragraph 15 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 15 and therefore denies the same.

18. TTI denies the allegations of paragraph 16. Responding further, Sam is not entitled to reimbursement from TTI for any maintenance or repairs to Rental Court.

19. TTI denies the allegations of paragraph 17.

20. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18 and therefore denies the same.

21. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 19 and therefore denies the same. Responding further, TTI denies Sam is entitled to the relief requested in its prayer for relief.

**FOR A SECOND DEFENSE  
(Estoppel)**

22. Sam's claims are barred by the equitable doctrine of estoppel.

**FOR A THIRD DEFENSE  
(Waiver)**

23. Sam's claims are barred by the equitable doctrine of waiver.

**FOR A FOURTH DEFENSE  
(Unclean Hands)**

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

**FOR A FIFTH DEFENSE  
(Reservation and Non-Waiver)**

25. TTI reserves and does not waive any additional defenses and/or claims it may have which may become available throughout the course of discovery and this litigation.

**WHEREFORE**, TTI prays that the Court dismiss Sam's claim, grant TTI's motion to dismiss, grant TTI reasonable attorneys fees in responding to this matter, and for the Court to grant any other and further relief this Court finds just and appropriate.

Respectfully submitted,

*s/J. Nathaniel Pierce*

J. Nathaniel Pierce, SC Bar No. 102803

Morton & Gettys, LLC

Attorney for TTI

P.O. Box 707, Rock Hill, SC 29731

T: 803.366.3388

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nate.pierce@mortongettys.com

March 24, 2020  
Rock Hill, South Carolina

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing Answer to Plaintiff's Summons and Complaint was served upon the below counsel via the South Carolina Electronic Filing System March 24, 2020.

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sarn

Daniel Ballou for James C Rhea, III

s/ J Nathaniel Pierce  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2020 Mar 24 3:53 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

Robert H. Sarn,  
Plaintiff,

v.

James C. Rhea, III; City Electric Supply  
Company, a Florida corporation; and  
Taschner Textile Industries, LLC,  
Defendants.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
Case Number: 2019-CP-46-01446

**ANSWER TO AMENDED COMPLAINT**

The Defendant, Täschner Textiles Industries, LLC (“TTI”), through the undersigned counsel, responds to Plaintiff Robert H. Sarn’s (“Sarn”) Amended Summons and Complaint as follows:

**MOTION TO DISMISS  
(South Carolina Rule of Civil Procedure 12(b)(6))**

1. Sarn has failed to state a claim upon which relief can be granted and, therefore, Sarn’s claims must be dismissed.

**FOR A FIRST DEFENSE  
(General and Specific Denials)**

2. Any allegation in Sarn’s Complaint not expressly admitted to herein is expressly denied.

3. TTI admits the allegations of paragraph 1.

4. Exhibit A speaks for itself. To the extent the allegations of paragraph 2 add to or alter the terms of Exhibit A, they are denied.

5. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 3 and therefore denies the same.

6. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4 and therefore denies the same.

7. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5 and therefore denies the same.

8. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 and therefore denies the same.

9. TTI admits it was conveyed real property by J.D. Properties of the Carolinas, LLC on December 29, 2017, that the real property was previously conveyed to J.D. Properties of the Carolinas, LLC by Sarn. Responding further, the Record Books and Exhibit B speak for themselves. To the extent the allegations of paragraph 7 add to or alter the terms of the Record Books or Exhibit B, they are denied.

10. The Deeds speak for themselves. To the extent the allegations of paragraph 8 add to or alter the terms of the Deeds, they are denied.

11. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 and therefore denies the same.

12. TTI denies the allegations of paragraph 10 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 10 and therefore denies the same.

13. TTI admits it uses Rental Court. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 11 and therefore denies the same.

14. TTI denies the allegations of paragraph 12 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 13 and therefore denies the same.

15. TTI denies the allegations of paragraph 13.

16. TTI denies the allegations of paragraph 14 as to TTI. TTI is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 15 and therefore denies the same.

17. TTI denies the allegations of paragraph 15. Responding further, Sarn is not entitled to reimbursement from TTI for any maintenance or repairs to Rental Court.

18. TTI denies the allegations of paragraph 16.

19. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 17 and therefore denies the same.

20. TTI is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 18 and therefore denies the same. Responding further, TTI denies Sarn is entitled to the relief requested in its prayer for relief.

**FOR A SECOND DEFENSE  
(Estoppel)**

21. Sarn's claims are barred by the equitable doctrine of estoppel.

**FOR A THIRD DEFENSE  
(Waiver)**

22. Sarn's claims are barred by the equitable doctrine of waiver.

**FOR A FOURTH DEFENSE  
(Unclean Hands)**

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

**FOR A FIFTH DEFENSE  
(Reservation and Non-Waiver)**

24. TTI reserves and does not waive any additional defenses and/or claims it may have which may become available throughout the course of discovery and this litigation.

**WHEREFORE**, TTI prays that the Court dismiss Sarn's claim, grant TTI's motion to dismiss, grant TTI reasonable attorneys' fees in responding to this matter, and for the Court to grant any other and further relief this Court finds just and appropriate.

Respectfully submitted,

s/ J. Nathaniel Pierce

J. Nathaniel Pierce, SC Bar No. 102803

Morton & Gettys, LLC

Attorney for TTI

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nate.pierce@mortongettys.com

June 2, 2020  
Rock Hill, South Carolina

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing Answer to Plaintiff's Amended Summons and Complaint was served upon the below counsel via the South Carolina Electronic Filing System June 2, 2020

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sarn

Daniel Ballou for James C Rhea, III

s/ J Nathaniel Pierce  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2020 Jun 02 2:42 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2019-CP-46-01446
Robert H. Sarn,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
James C. Rhea, III; City Electric Supply	)	
Company; John Doe, a fictitious person	)	
representing the class of all unknown	)	
adult, mentally competent, unimprisoned,	)	<b>ANSWER OF DEFENDANT JAMES C.</b>
non-military persons, who claim any	)	<b>RHEA, III</b>
right, title, or interest in, or lien upon, the	)	
entity designated as "Taschner Textiles	)	
Industries, LLC"; Richard Roe, another	)	
fictitious person representing the class of	)	
all unknown persons who are either:	)	
under the age of eighteen (18) years,	)	
imprisoned, or in the Armed Forces, and	)	
who claim any right, title or interest in,	)	
or lien upon, the entity designated as	)	
"Taschner Textile Industries, LLC,"	)	
	)	
Defendants.	)	
	)	

The Defendant, James C. Rhea, III ("Rhea"), responding to Plaintiff's Complaint, would show the following:

MOTION TO DISMISS – SCRPC 12(b)(6)

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Rhea and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRPC").

FOR A FIRST DEFENSE  
(General and Specific Denials)

Any and all allegations contained in Plaintiff's Complaint not hereinafter expressly admitted are denied.

1. Rhea admits the allegations of paragraph 1, on information and belief.
2. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 2, and therefore denies them.
3. Rhea admits the allegations of paragraph 3.
4. Rhea admits the allegations of paragraph 4.
5. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 5 and therefore denies them.
6. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 6, and therefore denies them.
7. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 7, and therefore denies them.
8. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 8, and therefore denies them.
9. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 9, and therefore denies them.
10. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 10, and therefore denies them.
11. Rhea admits that he received a letter from Plaintiff seeking payment for 1/7 of the cost claimed by Plaintiff. The remaining allegations of paragraph 11 are denied.

ELECTRONICALLY FILED - 2019 Aug 29 3:49 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

12. Rhea admits that he uses the private driveway connecting his property with Constitution Boulevard to access his property. Rhea does not have sufficient information upon which to admit or deny the remaining allegations of paragraph 12, and therefore denies them.
13. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 13, and therefore denies them.
14. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 14, and therefore denies them.
15. Rhea admits that he received a letter from Plaintiff seeking payment for 1/7 of the cost claimed by Plaintiff. The remaining allegations of paragraph 15 are denied.
16. Rhea admits he has not paid Plaintiff. The remaining allegations of paragraph 16 are denied.
17. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 17, and therefore denies them.
18. To the extent that the allegations of paragraph 18 require a response, they are denied.
19. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 19, and therefore denies them.

FOR A SECOND DEFENSE  
(Estoppel and Waiver)

20. The Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and unclean hands.

RESERVATION AND NONWAIVER

21. Rhea reserves and does not waive any additional defenses and/or claims he may have which may become available throughout the course of the discovery and this litigation.

WHEREFORE, the Defendant Rhea, having fully replied to Plaintiff's Complaint, prays for an Order dismissing Plaintiff's claims, awarding of attorneys' fees incurred by him in responding to this claim, and for such other and further relief as the Court might deem just and proper.

Respectfully submitted,

/s Daniel J. Ballou

Daniel J. Ballou, SC Bar No. 5935  
Morton & Gettys, LLC  
Attorneys for Defendant James C. Rhea, III  
P.O. Box 707  
Rock Hill, SC 29731  
T: 803.366.3388  
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dan.ballou@mortongettys.com

August 29, 2019  
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT  
C/A No.: 2019-CP-46-01446

**AMENDED ANSWER OF DEFENDANT  
JAMES C. RHEA, III**

The Defendant, James C. Rhea, III ("Rhea"), amending his Answer previously filed herein and responding to Plaintiff's Complaint, would show the following:

**MOTION TO DISMISS – SCRPC 12(b)(6)**

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Rhea and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRPC").

FOR A FIRST DEFENSE  
(General and Specific Denials)

Any and all allegations contained in Plaintiff's Complaint not hereinafter expressly admitted are denied.

1. Rhea admits the allegations of paragraph 1, on information and belief.
2. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 2, and therefore denies them.
3. Rhea admits the allegations of paragraph 3.
4. Rhea admits the allegations of paragraph 4.
5. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 5 and therefore denies them.
6. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 6, and therefore denies them.
7. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 7, and therefore denies them.
8. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 8, and therefore denies them.
9. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 9, and therefore denies them.
10. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 10, and therefore denies them.
11. Rhea admits that he received a letter from Plaintiff seeking payment for 1/7 of the cost claimed by Plaintiff. The remaining allegations of paragraph 11 are denied.

12. Rhea admits that he uses the private driveway connecting his property with Constitution Boulevard to access his property. Rhea does not have sufficient information upon which to admit or deny the remaining allegations of paragraph 12, and therefore denies them.
13. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 13, and therefore denies them.
14. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 14, and therefore denies them.
15. Rhea admits that he received a letter from Plaintiff seeking payment for 1/7 of the cost claimed by Plaintiff. The remaining allegations of paragraph 15 are denied.
16. Rhea admits he has not paid Plaintiff. The remaining allegations of paragraph 16 are denied.
17. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 17, and therefore denies them.
18. To the extent that the allegations of paragraph 18 require a response, they are denied.
19. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 19, and therefore denies them.

FOR A SECOND DEFENSE  
(Estoppel and Waiver)

20. The Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and unclean hands.

FOR A THIRD DEFENSE  
(Failure to Join Necessary Parties)

21. The complaint fails to join the remaining property owners sharing the subject road as necessary parties pursuant to Rule 19 of the South Carolina Rules of Civil Procedure and, accordingly, should be dismissed.

RESERVATION AND NONWAIVER

22. Rhea reserves and does not waive any additional defenses and/or claims he may have which may become available throughout the course of the discovery and this litigation.

WHEREFORE, the Defendant Rhea, having fully replied to Plaintiff's Complaint, prays for an Order dismissing Plaintiff's claims, awarding of attorneys' fees incurred by him in responding to this claim, and for such other and further relief as the Court might deem just and proper.

Respectfully submitted,

/s Daniel J. Ballou  
Daniel J. Ballou, SC Bar No. 5935  
Morton & Gettys, LLC  
Attorney for Defendant James C. Rhea, III  
P.O. Box 707  
Rock Hill, SC 29731  
T: 803.366.3388  
F: 803.366.4044  
dan.ballou@mortongettys.com

September 18, 2019  
Rock Hill, South Carolina

CERTIFICATE OF SERVICE  
2019CP4601446

The undersigned certifies that the foregoing Amended Answer of Defendant James C. Rhea, III was served upon counselors of record on the 18<sup>th</sup> day of September 2019 via York County's E-Filing and E-Service System as follows:

James Pierce for Taschner Textile Industries Llc

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sarn

s/ Daniel J. Ballou  
Daniel J. Ballou  
Attorney for Defendant James C. Rhea, III

ELECTRONICALLY FILED - 2019 Sep 18 3:24 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III, City Electric Supply  
Company and Taschner Textile Industries,  
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

C/A No.: 2019-CP-46-01446

**ANSWER OF DEFENDANT JAMES C.  
RHEA, III TO AMENDED COMPLAINT**

The Defendant, James C. Rhea, III ("Rhea"), answering the Amended Complaint filed herein, would show the following:

**MOTION TO DISMISS – SCRPC 12(b)(6)**

Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Rhea and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRPC").

**FOR A FIRST DEFENSE  
(General and Specific Denials)**

Any and all allegations contained in Plaintiff's Complaint not hereinafter expressly admitted are denied.

1. Rhea admits the allegations of paragraph 1, on information and belief.
2. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 2, and therefore denies them.

3. Rhea admits the allegations of the first sentence of paragraph 3. Rhea does not have sufficient information upon which to admit or deny the allegations of the remainder of paragraph 3 and therefore denies them.

4. Rhea admits the allegations of paragraph 4.

5. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 5 and therefore denies them.

6. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 6, and therefore denies them.

7. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 7, and therefore denies them.

8. Rhea admits paragraph 8 as it pertains to his property.

9. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 9, and therefore denies them. Rhea specifically denies that any resurfacing of Rental Court was necessary. Further responding, Plaintiff unilaterally negotiated and agreed to resurface Rental Court in exchange for the purchase by GR Properties of Fort Mill, LLC of Tract A located at 1362 Constitution Blvd and 149 Rental Court, a combined lot consisting of  $\pm 2.62$  acres on Rental Court. A copy of the Escrow Agreement for Repairs/Up-fitting dated July 20, 2018 is attached hereto as Exhibit A and incorporated by reference. Accordingly, Plaintiff is not entitled to reimbursement for any costs associated with such work.

10. Rhea admits that Plaintiff demanded payment for a portion of the alleged costs of paving Rental Court. Rhea does not have sufficient information upon which to admit or deny the remaining allegations of paragraph 10, and therefore denies them.

11. Rhea admits that he uses the private driveway connecting his property with Constitution Boulevard to access his property. Rhea does not have sufficient information upon which to admit or deny the remaining allegations of paragraph 11, and therefore denies them.

12. Paragraph 12 is denied. Rhea's use of Rental Court is by right pursuant to the easement described by the Plaintiff in the Amended Complaint.

13. Paragraph 13 is denied.

14. Rhea admits that he received a letter from Plaintiff seeking payment for 1/7 of the cost claimed by Plaintiff. The remaining allegations of paragraph 14 are denied.

15. Rhea admits he has not paid Plaintiff as demanded. The remaining allegations of paragraph 15 are denied.

16. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 16, and therefore denies them.

17. To the extent that the allegations of paragraph 17 require a response, they are denied.

18. Rhea does not have sufficient information upon which to admit or deny the allegations of paragraph 18, and therefore denies them.

**FOR A SECOND DEFENSE  
(Estoppel and Waiver)**

19. The Plaintiff's claims are barred by the equitable doctrines of waiver, estoppel, and unclean hands.

**FOR A THIRD DEFENSE  
(Failure to Join Necessary Parties)**

20. The complaint fails to join the remaining property owners sharing the subject road as necessary parties pursuant to Rule 19 of the South Carolina Rules of Civil Procedure and, accordingly, should be dismissed.

**FOR A FOURTH DEFENSE  
(Payment)**

21. The Plaintiff's claims are barred by the affirmative defense of payment.

**RESERVATION AND NONWAIVER**

22. Rhea reserves and does not waive any additional defenses and/or claims he may have which may become available throughout the course of the discovery and this litigation.

WHEREFORE, the Defendant Rhea, having fully replied to Plaintiff's Amended Complaint, prays for an Order dismissing Plaintiff's claims, awarding of attorneys' fees incurred by him in responding to this claim, and for such other and further relief as the Court might deem just and proper.

Respectfully submitted,

/s Daniel J. Ballou  
Daniel J. Ballou, SC Bar No. 5935  
Morton & Gettys, LLC  
Attorney for Defendant James C. Rhea, III  
P.O. Box 707  
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dan.ballou@mortongettys.com

June 4, 2020  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2020 Jun 04 2:25 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

CERTIFICATE OF SERVICE  
2019CP4601446

The undersigned certifies that the foregoing Answer of Defendant James C. Rhea, III to Plaintiff's Amended Complaint was served upon counselors of record on the 4<sup>th</sup> day of June 2020 via York County's E-Filing and E-Service System as follows:

James Pierce for Taschner Textile Industries Llc

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sarn

s/ Daniel J. Ballou

Daniel J. Ballou

Attorney for Defendant James C. Rhea, III

ELECTRONICALLY FILED - 2020 Jun 04 2:25 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2019-CP-46-01446
 	)	
Robert H. Sam,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
James C. Rhea, III; City Electric Supply	)	
Company; John Doe, a fictitious person	)	
representing the class of all unknown	)	
adult, mentally competent, unimprisoned,	)	
non-military persons, who claim any	)	
right, title, or interest in, or lien upon, the	)	
entity designated as "Taschner Textiles	)	
Industries, LLC"; Richard Roe, another	)	
fictitious person representing the class of	)	
all unknown persons who are either:	)	
under the age of eighteen (18) years,	)	
imprisoned, or in the Armed Forces, and	)	
who claim any right, title or interest in,	)	
or lien upon, the entity designated as	)	
"Taschner Textile Industries, LLC,"	)	
	)	
Defendants.	)	
	)	

**MOTION TO DISMISS, MOTION IN  
OPPOSITION TO PLAINTIFF'S  
APPLICATION FOR JUDGMENT AND,  
IN THE ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME TO ANSWER  
PLAINTIFF'S COMPLAINT**

The Defendant, Täschner Textiles Industries, LLC ("TTI"), without conceding personal jurisdiction in this matter, moves the Court for an Order granting a motion dismissing Plaintiff's claims against TTI pursuant to South Carolina Rules of Civil Procedure 12(b)(2), 12(b)(4), and 12(b)(5). In the alternative, TTI moves the Court for an Order denying Plaintiff's Application for Judgment on the grounds that TTI is not named as a party to this case. Finally, in the event the Court will not grant the relief listed above, TTI moves for an extension of time to answer Plaintiff's Complaint, pursuant to Rules 6, South Carolina Rules of Civil Procedure, on the ground that TTI is, if named at all, named improperly in Plaintiff's Complaint.

In support of its motion, TTI would show as follows:

1. The four parties named as Defendants to this action are:
  - a. **James C. Rhea, III;**
  - b. **City Electric Supply Company;**
  - c. **John Doe**, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as “Taschner Textiles Industries, LLC”; and
  - d. **Richard Roe**, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as “Taschner Textile Industries, LLC,”
2. While tangentially mentioned as a qualifier for John Doe and Richard Roe, TTI is never individually named.
3. Because TTI is not a party to this action, it would be improper for this Court enter either Default or Judgment against it.
4. TTI is a limited liability company organized and existing in the state of North Carolina, which does business in York County, South Carolina.
5. TTI is holds a Certificate of Authority to Transact Business in the State of South Carolina, issued November 21, 2017.
6. TTI has authorized CT Corporation System as its registered agent. CT Corporation System has a mailing address of 2 Office Park Court, Suite 103, Columbia, South Carolina, 29223.
7. Plaintiff’s Affidavit of Default dated August 22, 2019, which is attached and incorporated as **Exhibit A**, asserts that “Taschner Textiles Industries, LLC” was served on May 3, 2019. Upon information and belief, service was made on the South Carolina Secretary of State’s Office (“SCSOS”) and, in turn, SCSOS forwarded the Summons and Complaint to 888 Brickell Key Drive, Apartment 909, Miami, Florida, 33131, the personal address of TTI’s owners.
8. TTI was not in Miami when the Summons and Complaint was delivered. In fact, TTI did not receive the Summons and Complaint until August 12, 2019.

9. Had Plaintiff properly served TTI through its registered agent, TTI would have been duly notified and would have been able to timely enter an answer and defense in this case.

10. Assuming TTI is a party Plaintiff purported to serve via John Doe and Richard Roe, Plaintiff could not accomplish proper service on John Doe or Richard Roe by service on the South Carolina Secretary of State. Service on John Doe and Richard Roe must be accomplished by publication.

**WHEREFORE**, TTI prays that the Court dismiss Plaintiff's claims against TTI and award it costs and fees, and for such other relief it deems just and proper. In the event the Court does not Grant TTI's motion to dismiss, TTI prays the court deny Plaintiff's Application for Judgment. Last, in the event the Court does not grant TTI's motion to dismiss or motion to deny Plaintiff's Application for Judgment, TTI prays the Court will grant it an extension to answer Plaintiff's Complaint.

Respectfully submitted,

*s/J. Nathaniel Pierce*  
J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
Attorney for TTI  
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nate.pierce@mortongettys.com

August 26, 2019  
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2019-CP-46-01446
Robert H. Sam,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
James C. Rhea, III; City Electric Supply	)	
Company; John Doe, a fictitious person	)	
representing the class of all unknown adult,	)	
mentally competent, unimprisoned, non-	)	
military persons, who claim any right, title,	)	
or interest in, or lien upon, the entity	)	
designated as "Taschner Textiles	)	
Industries, LLC"; Richard Roe, another	)	
fictitious person representing the class of	)	
all unknown persons who are either: under	)	
the age of eighteen (18) years, imprisoned,	)	
or in the Armed Forces, and who claim any	)	
right, title or interest in, or lien upon, the	)	
entity designated as "Taschner Textile	)	
Industries, LLC,"	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS, MOTION IN  
OPPOSITION TO PLAINTIFF'S  
APPLICATION FOR JUDGMENT AND, IN  
THE ALTERNATIVE, MOTION FOR  
EXTENSION OF TIME TO ANSWER  
PLAINTIFF'S COMPLAINT**

The Defendant, Täschner Textiles Industries, LLC ("TTI"), without conceding personal jurisdiction in this matter, moves the Court for an Order granting a motion dismissing Plaintiff's claims against TTI pursuant to South Carolina Rules of Civil Procedure 12(b)(2), 12(b)(4), and 12(b)(5). In the alternative, TTI moves the Court for an Order denying Plaintiff's Application for Judgment on the grounds that TTI is not named as a party to this case. Finally, in the event the Court will not grant the relief listed above, TTI moves for an extension of time to answer Plaintiff's Complaint, pursuant to Rules 6, South Carolina Rules of Civil Procedure, on the ground that TTI is, if named at all, named improperly in Plaintiff's Complaint. In support of its motion, TTI would show as follows:

### **PROCEDURAL BACKGROUND**

Plaintiff filed this Summons and Complaint April 25, 2019. On May 5, 2019, Plaintiff attempted to serve TTI through the South Carolina Secretary of State's Office ("SCSOS"). On or about August 15, 2019, TTI contacted the undersigned counsel to discuss the Summons and Complaint they received August 12, 2019 at Nadine Täschner Petry's mother's vacation condominium in Miami, Florida. The undersigned counsel reached out to Plaintiff's attorney for an update on the case and to request an extension to file. In response, Plaintiff's attorney filed an affidavit of default against TTI August 22, 2019. On August 26, 2019, TTI filed a motion to dismiss Plaintiff's claims based on Rules 12(b)(2), 12(b)(4), and 12(b)(5), and the fact TTI is not a named party to the suit. Plaintiff also moved, in the alternative, for an extension of time to answer the Summons and Complaint. On September 3, 2019, nearly two weeks after filing for default and before any motions were heard, Plaintiff served discovery requests on TTI. When the undersigned informed Plaintiff's counsel TTI would not respond to the discovery requests before the hearing on TTI's motion to dismiss.<sup>1</sup> Plaintiff served the subpoena that is the subject of this motion.

TTI filed this Motion to Quash September 13, 2019 on the grounds (1) the subpoena exceeds the authority granted Plaintiffs and their counsel by S.C. R. Civ. P. 45 (2) the subpoena is vague, overly broad, and subject Movant to undue burden and expense; and (3) the subpoena requests information subject to attorney-client privilege.

Plaintiff filed a Motion for Continuance September 20, 2019. At the hearing on September 24, 2019, the Honorable Cordell Mattox heard the parties, and granted Plaintiff's Motion for Continuance, allowing the time until the next motions roster for Plaintiff to retrieve information from the South Carolina Secretary of State regarding its service on TTI. Further, Judge Mattox held TTI was not required answer the subpoena or discovery requests ahead of a hearing on the motions themselves.

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<sup>1</sup> TTI's time for compliance with Plaintiff's discovery requests would not expire until after the scheduled hearing on TTI's motions.

### FACTUAL BACKGROUND

TTI is a textiles company with its headquarters in Rock Hill, South Carolina. TTI purchased real property located at 146 Rental Court in Rock Hill, South Carolina ("Property") in January 2018. From January 2018 through present, Nadine Täschner Petry ("Nadine"), a member of TTI, has been working to get the business up and running. When TTI purchased the Property, Nadine and her husband had not completed their relocation from Brazil, nor had they purchased a personal residence. Therefore, they used the address of Nadine's vacation condominium when completing the deed for the purchase of the Property.

Prior to purchasing the Property, TTI was established as a North Carolina limited liability company. Further, TTI acquired a Certificate of Authority to Transact Business in South Carolina from the South Carolina Secretary of State. At the time of its formation TTI appointed CT Corporation System, with an address of 2 Office Park Court, Suite 103, Columbia, SC, as its registered agent in South Carolina.

When Plaintiff filed its Summons and Complaint, he attempted a cursory search of the South Carolina Secretary of State's website. Upon information and belief, Plaintiff searched "Taschner Textiles Industries" rather than "Täschner Textiles Industries." The missing umlaut in the search term would not return results if Plaintiff did not attempt to change the search parameters available on the Secretary of State's website. Had Plaintiff located TTI on the Secretary of State's Website, they would have had access to TTI's registered agent. Further, Plaintiff could have attempted personal service at the Property, which was owned and operated by Plaintiff for a number of months prior to the lawsuit. Instead, Plaintiff submitted the Summons and Complaint to the Secretary of State for service. Upon information and belief, the Secretary of State's office mailed a copy of the summons and complaint, certified mail, to the address in Miami. However, there is no confirmation as to the date of delivery and, upon information and belief, no one signed for the letter.

The condominium building to which the Summons and Complaint were sent is a large building with a substantial number of individual condominiums. Each condominium has an assigned mailbox located in the lobby of the building. Each condominium owner has a key to their mailbox. If an owner's mailbox gets too full for the mail carrier to place additional mail in the box, all of the mail in the mailbox at that time will be packaged and returned to sender.

Nadine's mother has a vacation property in the same condominium building. Because of the policy of cleaning out mailboxes and returning the mail therein to sender, Nadine's mother has one of the lobby concierges empty her mailbox when it gets full. The concierge then bundles the mail and places it in the mailroom for safekeeping. When Nadine's mother visits her condominium, she collects the mail in her mailbox and in the mail room. Nadine has also asked a concierge to perform this service for her. However, Nadine has not authorized any employee at the condominium building to accept service of legal documents or sign for mail. The only authority the concierge has is to empty the mailbox when it is full to avoid the mail being returned to sender.

In August 2019, Nadine and her family went to Miami for a last vacation before the start of the school year. Nadine's mother was visiting her condominium at the same time. When Nadine arrived, on August 12, she visited her mother in her mother's condominium. At that time, Nadine's mother informed Nadine that the concierge had delivered both of their mail to Nadine's mother. At that time, Nadine received the Summons and Complaint from the Secretary of State's office. All of this is confirmed in Nadine's affidavit, attached as Exhibit "A."

## ARGUMENT

### Motion to Dismiss and Motion in Opposition to Plaintiff's Application for Judgment

- I. **TTI is not a named party to the case, and any pending claims, motions, or judgments against it should be dismissed.**

The four parties named as Defendants to this action are (1) James C. Rhea, III; (2) City Electric Supply Company; (3) John Doe, a fictitious person representing the class of all unknown adult,

mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; and (4) Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC." While tangentially mentioned as a qualifier for John Doe and Richard Roe, TTI is never individually named.

A party who is not named in a case caption does not have the rights of a named party. *See Ex Parte South Carolina Dept. of Motor Vehicles*, 390 S.C. 457, 702 S.E.2d 568 (2010) (holding the South Carolina Department of Motor Vehicles did not have standing to appeal because it was not a named party and failed to intervene, and further holding the South Carolina Department of Motor Vehicle's unilateral and unauthorized change of the case caption did not render it a party). South Carolina courts will look beyond the case caption in order to determine in what capacity a party is sued or is suing. *See Gissel v. Hart*, 373 S.C. 281, 644 S.E.2d 772 (Ct. App. 2007) (holding where two defendants were named in the case caption, but it was unclear whether they were named in an individual or representative capacity, the court will look to the caption of the case, the allegations of the complaint, and the prayer for relief).

Here, TTI is not named in the case caption. Rather, it is used, at most, as a qualifier for Defendants John Doe and Richard Roe. Unlike in *Gissel*, this is not a situation where TTI is named and the court must determine in which capacity it is sued. TTI is wholly unnamed and, therefore, pursuant to *Ex Parte SCDMV*, TTI does not have the rights of a party, absent authorized intervention. If TTI does not have the rights of a party, it stands to reason TTI does not have the responsibilities of a party. Because TTI is not a party to this action, it would be improper for this Court enter either Default or Judgment against it, as TTI had no responsibility to participate in the action.

**II. The process served upon TTI is insufficient and any pending claims, motions, or judgments against it should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(4).**

The process served on TTI failed to name TTI as a party. The summons and complaint name the following parties: (1) James C. Rhea, III; (2) City Electric Supply Company; (3) John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; and (4) Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC." While TTI is mentioned in the course of describing John Doe and Richard Roe, it is not delineated as a party. Because the process does not name TTI as a party, they are insufficient as to TTI, and any pending claims, motions, or judgments against TTI should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(4).

**III. The service of process upon TTI is insufficient and any pending claims, motions, or judgments against it should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(5).**

First, South Carolina Rule of Civil Procedure 4(d)(3) provides the acceptable method of service on LLC's like TTI. Rule 4 provides

Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Next, S.C. Code Ann. § 15-9-240 co-governs service on foreign corporations authorized to transact business in South Carolina, like TTI. Section 15-9-240 provides the registered agent of a foreign business authorized to transact business in South Carolina is the corporation's agent for service of process. S.C. Code Ann. § 15-9-240(a) (1994, as amended). Also, the foreign corporation can be

served via certified mail pursuant to South Carolina Rule of Civil Procedure 4(d)(8), and the certified mail must be sent to either (1) the office of the registered agent, or (2) the office of the secretary of the foreign corporation at its principle office, as identified in the corporation's latest annual report. No default can be entered against a defendant served under Rule 4(d)(8) without a return receipt demonstrating service in the record. Finally, if the foreign corporation can be served by certified mail to the office of the secretary of the corporation at its principle office under § 15-9-240 if the foreign corporation's certificate of authority has been revoked. S.C. Code Ann. § 15-9-240(c) (1994, as amended).

Further, the South Carolina Limited Liability Company Act ("Act") prescribes rules for service of process on Limited Liability Companies in South Carolina. S.C. Code Ann. § 33-44-111 (1996, as amended). First, the Act provides the agent of service of process appointed by the LLC is the agent for service of process to be served upon the company. Next, if the LLC fails to appoint or maintain an agent of process or the agent cannot be located with reasonable diligence, the Secretary of State can be considered an agent of service.

In the present case, TTI is a limited liability company organized and existing in the state of North Carolina, which does business in York County, South Carolina and holds a Certificate of Authority to Transact Business in the State of South Carolina, issued November 21, 2017. TTI's certificate of authority has not been revoked at any point relevant to this action. TTI has, at all times relevant to this action, authorized and maintained CT Corporation System as its registered agent. CT Corporation System has a mailing address of 2 Office Park Court, Suite 103, Columbia, South Carolina, 29223.

Plaintiff's Affidavit of Default dated August 22, 2019, which is attached and incorporated as Exhibit "A", asserts that "Taschner Textiles Industries, LLC" was served on May 3, 2019. Upon information and belief, service was made on the SCSOS and, in turn, SCSOS forwarded the Summons

and Complaint to 888 Brickell Key Drive, Apartment 909, Miami, Florida, 33131, the address of Nadine's vacation condominium.

TTI was not headquartered in Miami when the Summons and Complaint was delivered nor did any officer of TTI reside in Miami at the time. TTI did not designate the Miami address as its principle office in any documentation with the Secretary of State. TTI did not receive the Summons and Complaint until August 12, 2019. Had Plaintiff properly served TTI through its registered agent, TTI would have been duly notified and would have been able to timely enter an answer and defense in this case. Assuming TTI is a party Plaintiff purported to serve via John Doe and Richard Roe, Plaintiff could not accomplish proper service on John Doe or Richard Roe by service on the South Carolina Secretary of State. Service on John Doe and Richard Roe must be accomplished by publication.

In sum, TTI at all time relevant maintained a registered agent in South Carolina, and that registered agent should have been served rather than the Secretary of State. Had Plaintiff exercised reasonable diligence in locating TTI's registered agent, TTI would have received the summons and complaint timely and had the opportunity to respond. Instead, Plaintiff performed a cursory search, without availing itself of the additional search parameters available via the SCSOS website, and moved directly to substitute service via the SCSOS which did not yield a signature or return receipt.

**IV. The Court lacks personal jurisdiction over TTI and any pending claims, motions, or judgments against it should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(2).**

Ordinarily, a court obtains personal jurisdiction by service of a summons. *Ex Parte South Carolina Dept. of Revenue*, 350 S.C. 404, 566 S.E.2d 196 (2002). Where a summons fails to include an essential element, the court will lack personal jurisdiction over the defendant purportedly served. *See id.* Here, the summons served on TTI failed to name TTI as a defendant. Because the identification of the parties is an essential element of a summons, and Plaintiff failed to name TTI in the summons at issue in this case, the summons is defective, and this court lacks personal jurisdiction over TTI.

Therefore, any pending claims, motions, or judgments against TTI should be dismissed pursuant to South Carolina Rule of Civil Procedure 12(b)(2).

**Motion for Extension of Time to Answer Complaint**

Pursuant to South Carolina Rule of Civil Procedure 6(b), this court may grant a motion for extension of time to answer a summons and complaint for good cause shown. At all relevant times TTI held a certificate to transact authority in the State of South Carolina and appointed a registered agent in the State. Plaintiff failed to search with reasonable diligence to locate TTI's registered agent and, therefore, sought substitute service through the SCSOS which did not yield a signature or return receipt. Plaintiff has subsequently served TTI through its registered agent, and TTI was timely notified and able to timely respond. Further, TTI's undersigned counsel has, on multiple occasions, offered to consent to an amendment naming TTI as a party and accept service of the summons and complaint. For those reasons, but not those reasons alone, TTI has shown good cause for this court to grant its motion for extension of time to answer Plaintiff's summons and complaint, if this court should deny TTI's motion to dismiss.

**WHEREFORE**, TTI prays that the Court dismiss Plaintiff's claims against TTI and award it costs and fees, and for such other relief it deems just and proper. In the event the Court does not Grant TTI's motion to dismiss, TTI prays the court deny Plaintiff's Application for Judgment. Last, in the event the Court does not grant TTI's motion to dismiss or motion to deny Plaintiff's Application for Judgment, TTI prays the Court will grant it an extension to answer Plaintiff's Complaint.

Respectfully submitted,

*s/ J. Nathaniel Pierce*  
J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
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November 11, 2019  
Rock Hill, South Carolina



**PLACE:** York County Historic Courthouse  
1 South Congress Street  
York, South Carolina 29745,  
or at such other place as the Court may designate

Pursuant to Rule 59, S.C.R.C.P., the Plaintiff, by and through his attorney, moves this Court:

For an Order reopening the Order dated December 3, 2019 and received by the Plaintiff by electronic service that date, amending the findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper.

on the grounds that the Order of the Court is contrary to law and the evidence as proven at trial, on the following bases:

1. The Plaintiff, ROBERT SARN, owns Rental Court, a private road located in Rock Hill off Constitution Boulevard. Rental Court is the remaining property after development of the original tract containing what is now seven (7) tracts, each accessed by Rental Court. A copy of the 1999 plat and York County Tax Map showing that division are hereto and incorporated in the Reply to Motions to Dismiss and To Quash Subpoena and for Continuance herein (hereafter also "the Reply Motion") and in the Complaint as Exhibit "A".
2. The Defendant calling itself TASCHNER TEXTILES INDUSTRIES, LLC (hereafter also "TASCHNER") owns one of these tracts conveyed to that name by Deed of J.D. Properties of the Carolinas, LLC recorded in Record Book 16771 at Page 260; a copy of that Deed is attached hereto and incorporated in the Reply Motion as Exhibit "B". J.D. Properties was deeded the said real property by SARN in Record Book 10451 at Page 295.
3. "TASCHNER TEXTILES INDUSTRIES, LLC" is not formed as a limited liability company, nor authorized to do business, in either South Carolina nor Florida, according to the records of those respective Secretaries of State. Copies of Counsel's search of the databases for those Officers are attached and incorporated in the Reply Motion as Exhibit "C". Counsel for Plaintiff concluded that TASCHNER TEXTILES INDUSTRIES, LLC was subject to service through the South Carolina Secretary of State.

4. SARN served TASCHNER TEXTILES INDUSTRIES, LLC through the Secretary of State as shown on that Officer's Letter dated May 6, 2019, attached hereto and incorporated in the Reply Motion as Exhibit "D", directed to the address listed on its Deed.
5. On or about August 15<sup>th</sup>, 2019, counsel was contacted by J. Nathaniel Pierce of Morton & Gettys, who informed him that the proper name, though not present on the deed, is "TÄSCHNER TEXTILES INDUSTRIES, LLC". The Plaintiff acknowledges that an entity with that spelling, including the umlaut, is listed with the South Carolina Secretary of State; a copy of that listing is attached in the Reply Motion as Exhibit "E". E-mail correspondence relevant to counsel's conversations is attached and incorporated in the Reply Motion as Exhibit "F".
6. On August 22<sup>nd</sup>, 2019, SARN filed an Affidavit of Default with this Court as to TASCHNER TEXTILES INDUSTRIES, LLC.
7. On August 26<sup>th</sup>, 2019, TÄSCHNER TEXTILES INDUSTRIES, LLC, filed its Motion to Dismiss the suit against itself, to remove the default and to extend time to answer, its counsel above-named filing their Notice of Appearance the same date.
8. In response to the said Motion to Dismiss, counsel for SARN requested time to complete discovery as to the actual knowledge of TÄSCHNER TEXTILES INDUSTRIES, LLC as to this suit.
9. On September 3<sup>rd</sup>, 2019, SARN served Requests for Production to that end upon counsel for TÄSCHNER TEXTILES INDUSTRIES, LLC by hand, attached and incorporated as Exhibit "G".
10. On September 10<sup>th</sup>, 2019, SARN served his *Subpoena* for the same items upon TÄSCHNER TEXTILES INDUSTRIES, LLC by its counsel and its Agent for Process by Federal Express. A copy is attached and incorporated in the Reply Motion as Exhibit "H".
11. Certificates of Service as to the Requests for Production and as to the said *Subpoena* have been filed with this Court and are attached in the Reply Motion as Exhibit "I".
12. On September 13<sup>th</sup>, 2019 in response to SARN's *Subpoena*, TÄSCHNER filed its Motion to Quash the same. By its Motion to Quash the Subpoena, TÄSCHNER claims lack of authority, overbreadth and the attorney-client privilege.
13. The claim of lack of authority is based upon the claim of TÄSCHNER that it is not a party. Rule 34(c), S.C.R.C.P. states:

(c) Persons Not Parties. A person not a party may be compelled to produce documents or things or submit to an inspection only as provided in Rule 45. This rule does not preclude an

independent action against a person not a party for production of documents and things and permission to enter upon land.

14. SARN has complied with Rule 34(c), S.C.R.C.P. Even should the Court confirm its ruling that TÄSCHNER was not served and/or not a party, it has been served with a valid *Subpoena*.
15. SARN contends that TÄSCHNER TEXTILES INDUSTRIES, LLC has waived any objection based upon its exact name by acceptance of a Deed as TASCHNER TEXTILES INDUSTRIES, LLC, that it has rendered itself amenable to service at the address shown on that deed, and that it has rendered itself open to service by the South Carolina Secretary of State by the said Deed language.
16. In the alternative, if the officers or agents of TÄSCHNER TEXTILES INDUSTRIES, LLC had actual knowledge of this civil action after May 6<sup>th</sup>, 2019 and within a reasonable time to respond to the Summons and Complaint, it cannot now rely upon its non-use of the umlaut in its Deed.
17. In order to confirm or dismiss its argument as to the actual knowledge of TÄSCHNER, the Plaintiff SARN is entitled to full discovery on this issue, and has acted to that end. SARN is entitled to complete that discovery.
18. The *Subpoena* served upon TÄSCHNER TEXTILES INDUSTRIES, LLC seeks information to confirm or dismiss its argument as to that party's actual knowledge.
19. Opposing Counsel has moved to quash the *Subpoena* in question; the Plaintiff SARN has opposed this relief in his Reply Motion. This question was argued before the Court. The Order of December 3<sup>rd</sup> makes no clear ruling as to that issue.
20. To the extent the Order of December 3<sup>rd</sup> is intended to rule upon the motion to quash the *Subpoena* in question, it is unclear. To the extent such motion to quash has not been ruled on, such a ruling is necessary to resolve the issue of any actual knowledge attributable to TÄSCHNER TEXTILES INDUSTRIES, LLC and the proper disposition of that entity's dismissal. The question of dismissing TÄSCHNER TEXTILES INDUSTRIES, LLC cannot properly be ruled on without the completion of discovery.

Pursuant to Rule 11(a), S.C.R.C.P., counsel for the Movant hereby affirms that prior to filing this Motion, he has communicated, orally or in writing, with opposing Counsel and has attempted in good faith to resolve the matter contained in this Motion or that he believes such communication would be without effect.

This Motion is based on the records, pleadings, and files of this civil action, on the attachments hereto, and upon such Brief or Memorandum of Law as the Movant may submit, all of which are hereby incorporated herein.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

The Guardian Building  
223 East Main Street, Suite 520  
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Post Office Box 106  
Rock Hill, SC 29731-6101

803 324-8100  
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December 12, 2019

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2019 Dec 12 10:45 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) SIXTEENTH JUDICIAL CIRCUIT  
COUNTY OF YORK ) C/A No.: 2019-CP-46-01446

Robert H. Sarn, )  
 )  
Plaintiff, )

v. )

James C. Rhea, III; City Electric Supply )  
Company; John Doe, a fictitious person )  
representing the class of all unknown )  
adult, mentally competent, unimprisoned, )  
non-military persons, who claim any )  
right, title, or interest in, or lien upon, the )  
entity designated as "Taschner Textiles )  
Industries, LLC"; Richard Roe, another )  
fictitious person representing the class of )  
all unknown persons who are either: )  
under the age of eighteen (18) years, )  
imprisoned, or in the Armed Forces, and )  
who claim any right, title or interest in, )  
or lien upon, the entity designated as )  
"Taschner Textile Industries, LLC," )  
 )  
Defendants. )

**MOTION TO QUASH SUBPOENA**

TO: John Martin Foster, Attorney for Plaintiff

Täschner Textiles Industries, LLC ("Movant"), by and through the undersigned, hereby objects to the subpoena issued to Movant, and seeks an order quashing such subpoena and protecting the requested information from discovery. A true and correct copy of the subpoena is attached hereto as Exhibit A. The subpoena in question:

- a. Exceeds the authority granted Plaintiffs and their counsel by S.C. R. Civ. P. 45; and
- b. Are vague, overly broad, and subject Movant to undue burden and expense; and
- c. Requests information subject to attorney-client privilege.

The subpoena seeks “Any and all communications by, with, or to the person responding to this Subpoena and relating to the existence of this civil action.” The language of the subpoena is vague, ambiguous, overly broad, and would require the production of information protected by the attorney-client privilege.

Further, Plaintiff has filed for default against Movant. Plaintiff also served Movant with discovery on September 3, 2019, nearly two weeks after moving for default. Necessarily, to be held in default or participate in discovery, Movant must be a party to the action. While Movant does not concede that it is a party or properly named in the suit, Plaintiff actions clearly belie its classification of Movant as a party.

Rule 45 of the South Carolina Rules of Civil Procedure (S.C.R. Civ. P.) governs the production of documents by third parties, whereas Rules 26, 33, and 34 S.C.R. Civ. P. govern the production of documents between parties. Here, Plaintiff has issued discovery requests to Movant that are not due until October 2, 2019. A copy of the requests is attached as Exhibit B. In an effort to circumvent the 30-day response period prescribed by Rule 34 S.C.R. Civ. P., Plaintiff has issued this Subpoena to Movant as well, seeking documents clearly sought in Exhibit B. Plaintiff cannot have it both ways; it cannot hold Movant as a party when it sues with regards to Default and formal discovery but avail itself of Rule 45 when timelines are not convenient. Either Movant is a party, and is required to respond to Plaintiff’s discovery requests, and not the Subpoena, or Movant is not a party and is required to respond to the Subpoena, but cannot be held in default.

Movant seeks an award of costs and for reasonable attorney’s fees incurred in responding to the subpoena. This Motion is based on S.C.R. Civ. P. 11, 26 and 45 and applicable statutory and common law authority. Counsel certifies, pursuant to Rule 11 S.C.R. Civ. P., that he consulted with Plaintiff’s counsel before filing this motion.

**WHEREFORE**, Movant prays that the Court quash the Subpoena, award Movant costs and fees, including attorneys' fees, and for such other relief it deems just and proper.

Respectfully submitted,

s/ J. Nathaniel Pierce  
J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
Attorney for Täschner Textiles Industries, LLC  
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nate.pierce@mortongettys.com

September 13, 2019  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2019 Sep 13 3:51 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing motion to quash subpoena was served upon counselors of record on the 13th day of September 2019 via York County's E-Filing and E-Service System as follows:

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sam

Daniel Ballou for James C Rhea, III

s/ J Nathaniel Pierce  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2019 Sep 13 3:51 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2019-CP-46-01446
Robert H. Sarn,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
James C. Rhea, III; City Electric Supply	)	
Company; John Doe, a fictitious person	)	
representing the class of all unknown adult,	)	
mentally competent, unimprisoned, non-	)	<b>MEMORANDUM IN SUPPORT OF</b>
military persons, who claim any right, title,	)	<b>MOTION TO QUASH SUBPOENA</b>
or interest in, or lien upon, the entity	)	
designated as "Taschner Textiles	)	
Industries, LLC"; Richard Roe, another	)	
fictitious person representing the class of	)	
all unknown persons who are either: under	)	
the age of eighteen (18) years, imprisoned,	)	
or in the Armed Forces, and who claim any	)	
right, title or interest in, or lien upon, the	)	
entity designated as "Taschner Textile	)	
Industries, LLC,"	)	
	)	
Defendants.	)	
	)	

Täschner Textiles Industries, LLC ("TTI") objects to the subpoena issued to TTI, and seeks an order quashing such subpoena and protecting the requested information from discovery. In support of its motion, TTI would show the following court the following:

**PROCEDURAL BACKGROUND**

Plaintiff filed this Summons and Complaint April 25, 2109. On May 5, 2019, Plaintiff attempted to serve TTI through the South Carolina Secretary of State's Office. On or about August 15, 2019, TTI contacted the undersigned counsel to discuss the Summons and Complaint they received August 12, 2019 at a vacation condominium in Miami, Florida, owned by Nadine Täschner Petry's mother. The undersigned counsel reached out to Plaintiff's attorney for an update on the case and to request an extension to file. In response, Plaintiff's attorney filed an affidavit of default against TTI on

August 22, 2019. On August 26, 2019, TTI filed a motion to dismiss Plaintiff's claims based on Rules 12(b)(2), 12(b)(4), and 12(b)(5), and the fact TTI is not a named party to the suit. TTI also moved, in the alternative, for an extension of time to answer the Summons and Complaint. On September 3, 2019, nearly two weeks after filing for default and before any motions were heard, Plaintiff served discovery requests on TTI. The undersigned informed Plaintiff's counsel TTI would not respond to the discovery requests before the hearing on TTI's motion to dismiss.<sup>1</sup> Subsequently, Plaintiff served the subpoena that is the subject of this motion.

TTI filed this Motion to Quash September 13, 2019, on the grounds (1) the subpoena exceeds the authority granted Plaintiffs and their counsel by S.C. R. Civ. P. 45 (2) the subpoena is vague, overly broad, and subject Movant to undue burden and expense; and (3) the subpoena requests information subject to attorney-client privilege.

Plaintiff filed a Motion for Continuance September 20, 2019. At the hearing on September 24, 2019, the Honorable Cordell Mattox heard the parties, and granted Plaintiff's Motion for Continuance, allowing the time until the next motions roster for Plaintiff to retrieve information from the South Carolina Secretary of State regarding its service on TTI. Further, Judge Mattox held TTI was not required answer the subpoena or discovery requests ahead of a hearing on the motions themselves.

#### **FACTUAL BACKGROUND**

TTI is a textiles company with its headquarters in Rock Hill, South Carolina. TTI purchased real property located at 146 Rental Court in Rock Hill, South Carolina ("Property") in January 2018. From January 2018 through present, Nadine Täschner Petry ("Nadine"), a member of TTI, has been working to get the business up and running. When TTI purchased the Property, Nadine and her husband had not completed their relocation from Brazil, nor had they purchased a personal residence. Therefore,

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<sup>1</sup> TTI's time for compliance with Plaintiff's discovery requests would not expire until after the scheduled hearing on TTI's motions.

they used the address of Nadine's vacation condominium in Miami Florida when completing the deed for the purchase of the Property.

Prior to purchasing the Property, TTI was established as a North Carolina limited liability company. Further, TTI acquired a Certificate of Authority to Transact Business in South Carolina from the South Carolina Secretary of State. At the time of its formation TTI appointed CT Corporation System, with an address of 2 Office Park Court, Suite 103, Columbia, SC, as its registered agent in South Carolina.

When Plaintiff filed its Summons and Complaint, he attempted a cursory search of the South Carolina Secretary of State's website. Upon information and belief, Plaintiff searched "Taschner Textiles Industries" rather than "Täschner Textiles Industries." The missing umlaut in the search term would not return results if Plaintiff did not attempt to change the search parameters available on the Secretary of State's website. Had Plaintiff located TTI on the Secretary of State's Website, they would have had access to TTI's registered agent. Further, Plaintiff could have attempted personal service at the Property, which was owned and operated by TTI for a number of months prior to the lawsuit. Instead, Plaintiff submitted the Summons and Complaint to the Secretary of State for service. Upon information and belief, the Secretary of State's office mailed a copy of the summons and complaint, certified mail, to the address in Miami, which ostensibly was gleaned from the deed to the Property. However, there is no confirmation as to the date of delivery and, upon information and belief, no one signed for the letter.

The condominium building to which the Summons and Complaint were sent is a large building with a substantial number of individual condominiums. Each condominium has an assigned mailbox located in the lobby of the building. Each condominium owner has a key to their mailbox. If an owner's mailbox gets too full for the mail carrier to place additional mail in the box, all of the mail in the mailbox at that time will be packaged and returned to sender.

Because of the policy of cleaning out mailboxes and returning the mail therein to sender, Nadine has the lobby concierges empty her mailbox when it gets full. The concierge then bundles the mail and places it in the mailroom for safekeeping. However, Nadine has not authorized any employee at the condominium building to accept service of legal documents or sign for mail. The only authority the concierge has is to empty the mailbox when it is full to avoid the mail being returned to sender. When Nadine visits her condominium, she collects the mail in her mailbox and in the mail room. Nadine's mother owns a vacation condominium in the same building and has also asked the concierges to perform this service for her.

In August 2019, Nadine and her family went to Miami for a last vacation before the start of the school year. Nadine's mother was visiting her condominium at the same time. When Nadine arrived, on August 12, she visited her mother in her mother's condominium. At that time, Nadine's mother informed Nadine that the concierge had delivered both of their mail bundles to Nadine's mother's condominium. At that time, Nadine received the Summons and Complaint from the Secretary of State's office. All of this is confirmed in Nadine's affidavit, attached as Exhibit "A."

#### ARGUMENT

**I. The subpoena exceeds the authority granted Plaintiffs and their counsel by S.C. R. Civ. P. 45.**

The South Carolina Rules of Civil Procedure provide separate and distinct rules for obtaining discovery from parties and non-parties. Rules 33, 34, and 36, governing interrogatories, requests for production, and requests for admission, respectively, each begin with the phrase "*a party* may serve upon any other *party*...."

Further, Plaintiff has filed for default against Movant. Plaintiff also served Movant with discovery on September 3, 2019, nearly two weeks after moving for default. Necessarily, to be held in default or participate in discovery, Movant must be a party to the action. While Movant does not

concede that it is a party or properly named in the suit, Plaintiff's actions clearly belie its classification of Movant as a party.

Rule 45 of the South Carolina Rules of Civil Procedure (S.C.R. Civ. P.) governs the production of documents by third parties, whereas Rules 33, 34, and 36 S.C.R. Civ. P. govern the production of documents between parties. Rules 33, 34, and 36, governing interrogatories, requests for production, and requests for admission, respectively, each begin with the phrase "a *party* may serve upon any other *party*...." Rule 45, governing subpoenas, repeatedly refers to "*non-part[ies]*."

Here, Plaintiff issued discovery requests to Movant that were not due until October 2, 2019. A copy of the requests is attached as Exhibit "B." In an effort to circumvent the 30-day response period prescribed by Rule 34 S.C.R. Civ. P., Plaintiff has issued this Subpoena to Movant as well, seeking documents clearly sought in Exhibit "B." Plaintiff cannot have it both ways; it cannot classify Movant as a party when it sues with regards to default and formal discovery but avail itself of Rule 45 when the prescribed timelines are not convenient. Either Movant is a party, and is required to respond to Plaintiff's discovery requests, and not the Subpoena, or Movant is not a party and is required to respond to the Subpoena but cannot be held in default.

**II. The subpoena is vague, overly broad, and subjects Movant to undue burden and expense.**

For the reasons cited above, Plaintiff improperly served the Subpoena on TTI in an effort to circumvent the prescribed timeline requiring TTI to respond to Plaintiff's discovery requests within thirty days. Because the Plaintiff improperly served a subpoena when discovery requests were pending, any expense or burden by TTI would be undue. Further, the Subpoena is vague, seeking "[a]ny and all communications by, with, or to the person responding to this Subpoena and relating to the existence of this civil action." It is not clear who Plaintiff intends to reference "the person responding to this Subpoena," as the purported respondent is a limited liability company. To the extent Plaintiff's counsel

seeks communication “by, with, or to” the below-signed counsel, who would prepare the response to the subpoena, that information is protected by the attorney-client privilege.

**III. The subpoena requests information subject to attorney-client privilege.**

Notwithstanding the above argument as to vagueness, and regardless of who “the person responding to this Subpoena” is intended to mean, the overly broad scope of the Subpoena would include information protected by the attorney-client privilege. For that reason, the Subpoena should be quashed.

October 30, 2019  
Rock Hill, South Carolina

Respectfully submitted,  
s/ J. Nathaniel Pierce  
J. Nathaniel Pierce, SC Bar No. 102803  
Morton & Gettys, LLC  
Attorney for Täschner Textiles Industries, LLC  
P.O. Box 707  
Rock Hill, SC 29731  
T: 803.366.3388  
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nate.pierce@mortongettys.com

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing memorandum in support of Täschner Textiles Industries, LLC's motion to quash subpoena was served upon counselors of record on the 30<sup>th</sup> day of October 2019 via York County's E-Filing and E-Service System as follows:

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sarn

Daniel Ballou for James C Rhea, III

*s/ J Nathaniel Pierce*  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2019 Oct 30 10:37 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2019-CP-46-01446

**MOTION FOR SUMMARY JUDGMENT**

Defendants Täschner Textiles Industries, LLC ("Täschner") and James C. Rhea, III ("Rhea") (collectively, "Defendants"), move for summary judgment against the Plaintiff, Robert H. Sarn. Defendants have submitted a Memorandum in Support of their Motion for Summary Judgment contemporaneously with the filing of this motion.

**[Signature Block on Following Page]**

Respectfully submitted,

s/ J. Nathaniel Pierce

J. Nathaniel Pierce, SC Bar No. 102803

Morton & Gettys, LLC

Attorney for Defendant TTI

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October 6, 2020  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2020 Oct 06 4:37 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing Memorandum in Support of Motion for Summary Judgment was served upon the below counsel via the South Carolina Electronic Filing System October 6, 2020.

Michael K. Hatch  
1028 Tabard Lane  
Matthews, North Carolina 28104  
mhatch@mhatchlaw.com

John Martin Foster  
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Rock Hill, SC 29731-6106  
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s/ J Nathaniel Pierce  
J. Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2020 Oct 06 4:37 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sam,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2019-CP-46-01446

**MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Defendants Täschner Textiles Industries, LLC ("Täschner") and James C. Rhea, III ("Rhea") (collectively, "Defendants"), submit this memorandum in support of their Motion for Summary Judgment pursuant to South Carolina Rule of Civil Procedure ("SCRCP") 56, and would show unto this honorable court:

**STANDARD OF REVIEW**

Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Baird v. Charleston County*, 333 S.C. 519, 520, 511 S.E.2d 69, 74 (1999); Rule 56(c), S.C.R.C.P. Once the moving party shows a lack of evidentiary support for the nonmoving party's claims, the nonmoving party must come

forward with specific facts showing there is a genuine issue for trial in order to avoid summary judgment. See *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). In ruling on the motion, the Court should consider the pleadings, depositions, interrogatory answers, admissions, and affidavits in determining whether there is a genuine issue of fact for trial. See *Thomas v. Waters*, 315 S.C. 524, 526, 445 S.E.2d 659 (Ct. App. 1994). Where the nonmoving party has the burden of proof, it is that party's obligation to confront the motion for summary judgment with *specific facts* demonstrating all elements of the claim. *Id* (emphasis added). Where a nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party's case, the moving party is entitled to judgment as a matter of law. *Id*.

#### **BACKGROUND**

This case involves a claim seeking reimbursement for the cost of repaving a private road named Rental Court located in the City of Rock Hill, which is bounded by 7 commercial lots originally created by the Plaintiff Robert H. Sarn ("Sarn"). A plat depicting Rental Court and the adjacent parcels is attached as Exhibit A. In 1996, Sarn acquired 8.466 acres (constituting the parcels currently at issue) from Metromont Materials Corp. The deeds reflecting the purchase are attached as Exhibit B. Sarn subdivided the property and on or about October 20, 2000, sold Rhea the first such parcel, a 0.88-acre parcel located at 1368 Constitution Boulevard in Rock Hill and identified as "Lot 1" in Exhibit A ("Lot 1"). The deed memorializing this sale is attached as Exhibit C. In December 2008, Sarn sold a 0.80-acre tract located at 146 Rental Court identified as as Lot 3 in Exhibit A ("Lot 3") to J.D. Properties of the Carolinas, LLC ("JDPC"). A copy of the deed reflecting this sale is attached as Exhibit D. In January 2018, JDPC sold Lot 3 to Täschner. A copy of the deed from JDPC to Täschner is attached as Exhibit E.

In 2018, Sarn sold two other lots in the development to GR Properties of the Fort Mill, LLC (“GR Properties”), for the sum of \$989,000.00, and as a condition of the purchase agreement, Sarn agreed to repave Rental Court at a cost of \$49,314.00. The closing documents for the sale of Tract A show that Sarn’s agreement to repave Rental Court was an express condition of closing, pursuant to which he was paid the net amount of \$835,815.17. A true and correct copy of the closing statement and escrow agreement is attached hereto as Exhibits F and G, respectively. Having closed on the sale of the GR Properties lots and having received over \$853,815.00 in sales proceeds, Sarn turned around and brought this action to seek contribution from the other property owners on Rental Court for the cost of the repaving. For the reasons set forth below, summary judgment is appropriate and Sarn’s claim must be dismissed.

### **ARGUMENT**

**I. Defendants have no obligation to reimburse Sarn for the cost of resurfacing Rental Court.**

Rental Court is a private road providing access to all of the commercial lots depicted on Exhibit A. In conveying out parcels on Rental Court, Sarn affirmatively assumed the responsibility for the cost of maintaining Rental Court and concedes that no agreements to the contrary have ever existed with regard to the Defendants. (Sarn Dep. 35:2-7; 65:18-23; 74:22-75:1; 78:18-21; 90:22-24). Rather, Sarn relies only on some unspecified “moral obligation” he claims is owed by the Defendants that entitles him to recovery in this matter. (Sarn Dep. 78:23; 79:16-80:2).

**a. Sarn assumed the responsibility of maintaining Rental Court.**

Despite seeking reimbursement in this case for the cost of the repaving Rental Court, Sarn expressly undertook that obligation in multiple documents recorded with the York County Register

of Deeds. For example, the deed from Sarn to JDPC (Exhibit D) for Lot 3 (now owned by Taschner) conveys title including the following language in the granting clause:

TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that is [sic] shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that **Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.**

(emphasis added). Clearly, by the express terms of Exhibit D, Sarn granted an ingress and egress easement that obligates him to maintain Rental Court until such time Rental Court is designated as a public road. Sarn received \$570,000.00 in exchange for the sale of Lot 3 to JDPC, and the easement and obligations created in the deed run with the land. (Sarn Dep. 93:19-23). When JDPC sold Lot 3 to Taschner, the deed contained identical easement language. See Exhibit E.

Additionally, contemporaneously with the sale of Lot 3 to JDPC, Sarn executed a Grant of Easement and Right of Way, attached as Exhibit H ("Right of Way"). In pertinent part, the Right of Way provides:

Now therefore, KNOWN ALL MEN BY THESE PRESENTS that Robert H. Sarn, owner in fee simple of TRACT A (now consisting of 1.75 acres and 0.87 acres) and possibly owner of said PRIVATE ROAD commonly known as Rental Court, hereby grants J.D. Properties of the Carolinas, LLC, its successors and assigns, a right of way or easement for the purpose of ingress and egress approximately (50') feet wide which is shown as Rental Court on Plat Recorded in Plat Book C-76 at Page 8 . . . . **By signing this Agreement, Robert H. Sarn, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost of upkeep and maintenance of said private road.** (emphasis added).

A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conversation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties' intentions, as long as those intentions do not contravene the law or public policy. See *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). The intention of the grantor must be found within the four corners of the deed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) (citing *Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987)).

The court need look no further than the language of Exhibits D, E, and H to determine the intention of the parties. In Exhibit D, Sarn agrees to "keep the [Easement] in such a state of repair and condition as is commensurate with the first class nature of [the] development" until the Easement is dedicated as a public right of way. Exhibit E contains identical language. Sarn went a step further than the language in the deed to JDPC and in the Right of Way (Exhibit H), expressly undertook the obligation to pay "the total cost of upkeep and maintenance" of Rental Court. Under these facts, Sarn has no basis in law or equity to foist the responsibility he voluntarily assumed upon the Defendants.

**b. Sarn agreed to resurface Rental Court in connection with the sale of Tract A.**

Not only did Sarn commit to the cost of maintaining Rental Court when he sold Lot 3, but he privately negotiated the repaving of the road as a condition to the sale of Tract A to GR Properties in 2018. That agreement was made without any consultation or participation by the Defendants, and as a result of making that agreement, Sarn received \$853,815.17. (Sarn Dep. 29:11-19; 29:20-30:5; 31:6-9). See Exhibit I, (deed for the sale of Tract A); Exhibit F (closing statement); Exhibit G (escrow agreement).

Having negotiated the repaving as a term of the sale, Sarn has no legal or equitable basis to look to others to offset the expense. The sole authority Sarn offers to justify his claim is *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985). In *Hayes*, the owner of a subdivided lot claimed an ingress/egress easement over another parcel, both of which were originally part of a larger tract. Having found an easement by necessity, the Court imposed on the easement holder an equitable duty to contribute to the maintenance of the easement on the servient parcel. In so holding, however the Court stated that “[i]n the absence of an agreement, the ... owners of the servient tenement are under no duty to maintain and repair the easement ... for the benefit of the dominant tenement.” *Id.* at 891.

Here, Sarn as the owner of the servient tenement has in fact agreed to maintain the Easement, and made that agreement a covenant running with the land. So too, he agreed again to bear the cost of maintaining Rental Court by specifically factoring that cost into the sale of Tract A, for which he made almost a million dollars. Over and over again, Sarn has voluntarily agreed to undertake the responsibility to maintain Rental Court as a part of selling parcels, and no equitable principle exists that would allow him to renounce that obligation when it becomes inconvenient.

WHEREFORE, the Defendants respectfully request that the Court grant this Motion and dismiss the Plaintiff's claims with prejudice, for the costs of this action, for reasonable attorney's fees, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ J. Nathaniel Pierce

J. Nathaniel Pierce, SC Bar No. 102803

Morton & Gettys, LLC

Attorney for Defendant TTI

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October 6, 2020  
Rock Hill, South Carolina

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing Memorandum in Support of Motion for Summary Judgment was served upon the below counsel via the South Carolina Electronic Filing System October 6, 2020.

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*s/ J. Nathaniel Pierce* \_\_\_\_\_  
J. Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

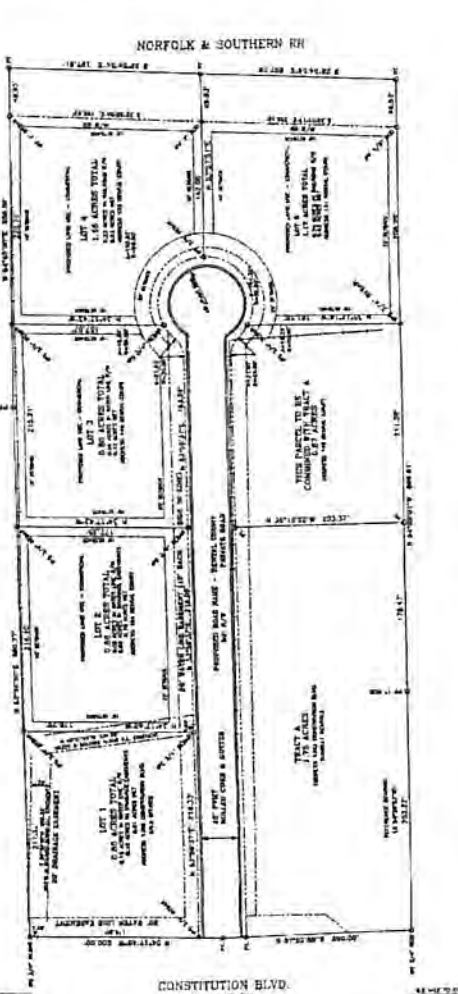
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Case No.	2020	Case Name	WINDING HILLS TRAIL HOME
Case Type	2020	Case Status	FILED
Case Date	10/06/20	Case Time	4:44 PM
Case Location	YORK	Case Judge	CHRISTOPHER J. WELLS
Case Attorney	JOHN J. HANCOCK	Case Opponent	JOHN J. HANCOCK
Case Description	WINDING HILLS TRAIL HOME		

ALL-STATE LEGAL  
EXHIBIT  
A

THIS PLAN IS THE PROPERTY OF THE ENGINEER AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ENGINEER. THE ENGINEER ASSUMES NO LIABILITY FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING FROM THE USE OF THIS PLAN.

DATE: 10/06/20  
BY: JOHN J. HANCOCK



FINAL APPROVAL  
FOR RECORD

*[Signature]*  
John J. Hancock

ELECTRONICALLY FILED - 2020 Oct 06 4:44 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

AFTER RECORDING, RETURN TO:  
Jane M. Randall, Attorney

FILED-RECEIVED  
PAGE

Address of Grantee  
1020 Riverview Road  
Rock Hill, South Carolina 29372

20 B 14 AM '95  
ROD BELL  
EX

COUNTY  
COMMON PLEAS

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that METROMONT MATERIALS CORP. ("grantor"), in consideration of Sixty Thousand and 00/100 (\$60,000.00) Dollars, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto ROBERT H. SARN ("grantee"), the grantee's heirs (or successors) and assigns forever:

All that certain lot or parcel of land, with improvements thereon, if any, situate, lying and being on the northeastern side of Constitution Avenue, in the City of Rock Hill, York County, South Carolina, shown and designated as LOT B, containing 4.238 acres, more or less, on a plat of boundary survey for Robert H. Sarn prepared by Charles A. Whitaker, PE, PLS, dated November 17, 1995, to be recorded herewith, and having such notes and bounds, courses and distances as is shown on said plat, reference to which is made in aid of description.

This conveyance is made subject to all easements and rights of way of record including but not limited to the right-of-way for Norfolk & Southern Railroad and other matters reflected on the survey to be recorded herewith.

This is a portion of property conveyed to Rock Hill Concrete Company by one or more of the following deeds: (a) American Investment Corporation of S.C. dated July 26, 1979, recorded July 31, 1979, in Deed book 599, Page 214, with a corrective deed of American Investment Corp. of S.C., dated August 8, 1979, recorded August 10, 1979 in Deed Book 599, Page 1013; (b) Deed of Fewell Estates dated December 4, 1962, recorded December 13, 1962, in Deed Book 306, Page 327; (c) Deed of Fewell Estates dated December 20, 1967, recorded December 21, 1967, in Deed Book 371, Page 345; (d) Deed of Wilkerson Fuel Co., Inc., dated November 18, 1982, recorded November 22, 1982, in Deed Book 681, Page 316; (e) Deed of Carolina Fly Ash, Inc., dated December 2, 1974, recorded December 23, 1974, in Deed Book 505, Page 11; (f) Deed of the City of Rock Hill, dated April 14, 1975, recorded May 19, 1975, in Deed Book 512, Page 287; (g) Deed of Edward Fewell, Jr., and A. F. Fewell, dated October 25, 1951, recorded November 1, 1951, in Deed Book 176, at Page 243; (h) Deed of Elizabeth Fewell Mackintosh and Nancy Fewell Herrin

RECORDED  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

DATE 2/28/95  
TAX MAP NO. 599-4-1-A  
INITIALS RHH

1460 PG. 97  
YORK COUNTY S.C.

97

ALL-STATE LEGAL  
EXHIBIT  
B

dated July 14, 1955 and recorded July 25, 1955, in Deed Book 216, page 258, with corrective deed of Elizabeth Fewell Mackintosh and Nancy Fewell Harrin dated October 28, 1955, recorded December 1, 1955, in Deed Book 221, Page 122; (i) Deed of Samuel Jefferson Breen dated January 20, 1948, recorded April 19, 1950, in Deed Book 157, Page 210, and (j) Deed of Citiea Service Oil Company, dated January 17, 1964, recorded February 1, 1964, in Deed Book 320, Page 579.

Rock Hill Concrete Company was merged into Metromont Materials Corp. by Articles of Merger filed on December 30, 1988, in the Office of the Secretary of State of South Carolina. See also Deed Book 1071, page 201, Clerk's Office for York County, South Carolina.

P/O York County TM #596-4-1-1.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the grantee, and the grantee's heirs (or successors) and assigns forever.

And the grantor does hereby bind the grantor and the grantor's heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee and the grantee's heirs (or successors) and assigns against the grantor and the grantor's heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the grantor's hand and seal this 15 day of December, 1995.

METROMONT MATERIALS CORP.  
By: *R. W. ...*

SIGNED, sealed and delivered in the presence of:  
*Margaret L. Simpson*  
*Diane J. ...*

ATTEST:  
*Douglas L. Blackness*  
[Corporate Seal]

\*\*\*\*\*

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG } PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

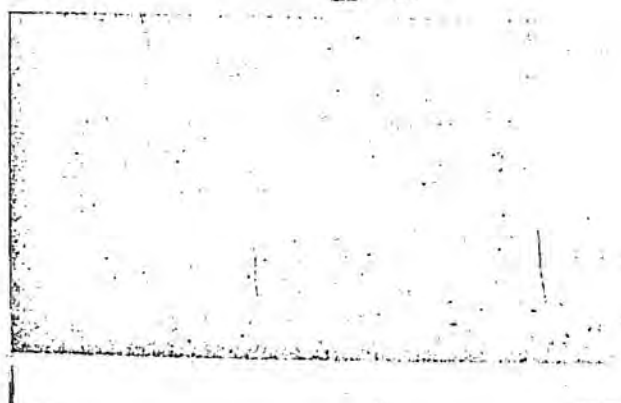
*Margaret A. Simpson*

SWORN to before me this 15  
day of December, 1995.

*Diane J. Lee* (SEAL)  
Notary Public For South Carolina  
My commission expires: 12-03-01

GRANTEE'S MAILING ADDRESS: 120 Riverview Road  
Rock Hill, SC 29732

J 99



ELECTRONICALLY FILED - 2020 Oct 06 4:44 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

AFTER RECORDING, RETURN TO:  
Jane H. Randall, Attorney

Address of Grantee:  
1020 Riverview Road  
Rock Hill, South Carolina

FILED-RECEIVED  
BOOK PAGE 150 96

STATE OF SOUTH CAROLINA  
COUNTY CONVEYANCE  
TAX \$ 8.95  
ROD BENFIELD  
CLERK OF COURTS  
YORK COUNTY TITLE TO REAL ESTATE

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

KNOW ALL MEN BY THESE PRESENTS, that METROMONT MATERIALS CORP. ("grantor"), in consideration of Sixty Thousand and 00/100 (\$60,000.00) Dollars, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto ROBERT H. SARN ("grantee"), the grantee's heirs (or successors) and assigns forever:

All that certain lot or parcel of land, with improvements thereon, if any, situate, lying and being on the northeastern side of Constitution Avenue, in the city of Rock Hill, York County, South Carolina, shown and designated as LOT A, containing 4.228 acres, more or less, on a plat of boundary survey for Robert H. Sarn prepared by Charles A. Whitaker, PE, PLS, dated November 17, 1995, to be recorded herewith, and having such metes and bounds, courses and distances as is shown on said plat, reference to which is made in aid of description.

This conveyance is made subject to all easements and rights of way of record including but not limited to the right-of-way for Norfolk & Southern Railroad and other matters reflected on the survey to be recorded herewith.

This is a portion of property conveyed to Rock Hill Concrete Company by one or more of the following deeds: (a) American Investment Corporation of S.C. dated July 26, 1979, recorded July 31, 1979, in Deed book 599, Page 214, with a corrective deed of American Investment Corp. of S.C., dated August 8, 1979, recorded August 10, 1979 in Deed Book 599, Page 1013; (b) Deed of Fewell Estates dated December 4, 1962, recorded December 13, 1962, in Deed Book 306, Page 327; (c) Deed of Fewell Estates dated December 20, 1967, recorded December 21, 1967, in Deed Book 371, Page 345; (d) Deed of Wilkerson Fuel Co., Inc., dated November 18, 1982, recorded November 22, 1982, in Deed Book 681, Page 316; (e) Deed of Carolina Fly Ash, Inc., dated December 2, 1974, recorded December 23, 1974, in Deed Book 505, Page 11; (f) Deed of the City of Rock Hill, dated April 14, 1975, recorded May 19, 1975, in Deed Book 512, Page 287; (g) Deed of Edward Fewell, Jr., and A. P. Fewell, dated October 25, 1951, recorded November 1, 1951, in Deed Book 176, at Page 243; (h) Deed of Elizabeth Fewell Mackintosh and Nancy Fewell Herrin

RECORDED  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

DATE 2-28-96  
TIME 8:47 AM  
BY SC-4-198  
WHITAKER

100

FILED  
OCT 14 1996  
YORK COUNTY, SC

dated July 14, 1955 and recorded July 25, 1955, in Deed Book 216, page 258, with corrective deed of Elizabeth Fewell Mackintosh and Nancy Fewell Herrin dated October 28, 1955, recorded December 1, 1955, in Deed Book 221, Page 122; (i) Deed of Samuel Jefferson Breen dated January 20, 1948, recorded April 19, 1950, in Deed Book 157, Page 210, and (j) Deed of Cities Service Oil Company, dated January 17, 1964, recorded February 1, 1964, in Deed Book 320, Page 579.

Rock Hill Concrete Company was merged into Metromont Materials Corp. by Articles of Merger filed on December 30, 1988, in the Office of the Secretary of State of South Carolina. See also Deed Book 1071, page 201, Clerk's Office for York County, South Carolina.

P/O York County TM #596-4-1-1.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the grantee, and the grantee's heirs (or successors) and assigns forever.

And the grantor does hereby bind the grantor and the grantor's heirs (or successors), executors and administrators to warrant and forever defend all and singular said premises unto the grantee and the grantee's heirs (or successors) and assigns against the grantor and the grantor's heirs (or successors) and against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to restrictions and easements of record, if any.

WITNESS the grantor's hand and seal this 15 day of December, 1995.

METROMONT MATERIALS CORP.

By: Richard H. Powell

SIGNED, sealed and delivered in the presence of:

ATTEST: Douglas F. Blackwell

Margaret A. Simpson  
Diana F. See

[Corporate Seal]

\*\*\*\*\*

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor sign, seal and as the grantor's act and deed deliver the within deed and that (s)he with the other witness subscribed above witnessed the execution thereof.

*Margaret A. Simpson*

SWORN to before me this 15  
day of December, 1995.

*Diane J. Hill* (SEAL)  
Notary Public For South Carolina  
My commission expires: 12-02-01

GRANTEE'S MAILING ADDRESS: 120 Riverview Road  
Rock Hill, SC 29732

ELECTRONICALLY FILED - 2020 Oct 06 4:44 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

COUNTY COMMISSIONER FEE

2000/261/RE/JPG FILED-RECEIVED  
BOOK --- PREPARED BY THE LAW FIRM OF COUNTY FEE \$275.00  
HARRISON, HAYES, GUYTON, AND GETTYS L.L.C.  
OCT 20 10 16 AM '00  
STATE OF SOUTH CAROLINA  
STATE FEE \$650.00  
DAVID HAMILTON  
STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
TITLE TO REAL ESTATE  
GENERAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That I, Robert H. Sarn, (hereinafter "Grantor", whether singular or plural), in the State aforesaid, for and in consideration of the sum of Two Hundred Fifty Thousand and no/100 (\$250,000.00) Dollars to the Grantor, paid by James C. Rhea, III (hereinafter "Grantee", whether singular or plural), in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, Grantee's Heirs and Assigns, all of my right, title, and interest in and to the following described property

RECORDED  
YORK COUNTY

SEE ATTACHED EXHIBIT A FOR DESCRIPTION OF PROPERTY

TAX ASSESSOR'S OFFICE

DATE 10/20/20  
TAX MAP NO. 516-4-1-10

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, Grantee's Heirs and Assigns forever.

AND Grantor does hereby bind Grantor's Heirs, Personal Representatives and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, and

127

RECORDED  
RECORD  
VCL 3312 PG 67  
YORK COUNTY, S.C.

ALL-STATE LEGAL  
EXHIBIT  
C

Grantee's Heirs and against every person whosoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of Grantor this 17 day of October, = in the year of our Lord two thousand (2000), and in the two hundred and twenty-fifth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF: )

[Signature]  
[Signature]  
STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

Robert H. Sarn  
Robert H. Sarn (SEAL)

PROBATE

PERSONALLY appeared before me the below signed witness and made oath that s/he saw the within named Grantor(s) sign, seal and as their act and deed, deliver the within written Deed for the uses and purposes therein mentioned, and that s/he, with the other witness signing above, witnessed the execution thereof.

SWORN to before me this 17 day of October, 2000.

[Signature] (LS)  
Notary Public for South Carolina  
My Commission Expires: 7/27/07

[Signature]

Exhibit A

All that certain piece, parcel, or lot of land, lying, being and situate in the City of Rock Hill, County of York, State of South Carolina and being shown and designated as Lot 1, containing 0.88 acres upon plat entitled "Property of James C. Rhea III" prepared by Keistler Engineering Co., Inc. dated October 17, 2000 and recorded in the office of the Clerk of Court for York County, SC in Plat Book 6274 at Page 4, which plat is incorporated herein by reference, and having such metes, bounds, courses, and distances as by reference to said plat will more fully appear.

The within property is conveyed subject to all existing easements and restrictions appearing in the chain of title, which said easements and restrictions are not intended to be reimposed hereby

Derivation: This being a portion of the property deeded to Robert H. Sarn by deed of Metromont Materials Corp. dated December 15, 1995, recorded February 28, 1996 in Record Book 1460 at Page 100 in the Office of the Clerk of Court for York County, SC.

Grantee's Mailing Address: 894 Sumter Avenue  
Rock Hill, SC 29730

1482.00  
627.00

PREPARED BY:  
Hyatt Law Firm  
1401 Ebenezer Road  
Rock Hill, SC 29732

**RECORDED**  
YORK COUNTY  
TAX ASSESSOR'S OFFICE

200800044719  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
12-11-2008 12:09 PM  
DEED 10.00  
State Tax 1482.00  
County Tax 627.00  
OR Vol 10451 Page 295 - 296

DATE 12-11-08  
TAX MAP NO. 596-4-1-12  
INITIALS TS / d/n

State of South Carolina

TITLE TO REAL ESTATE

County of York

**KNOW ALL MEN BY THESE PRESENTS**, that Robert H. Sarn (hereinafter the "Grantor") in the State aforesaid, for and in consideration of the sum of Five Hundred Seventy Thousand and 00/100 Dollars (\$570,000.00) before the sealing of these presents by J.D. Properties of the Carolinas, LLC of 146 Rental Court, Rock Hill, SC 29732 (hereinafter the "Grantee") has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto the said Grantee, his/her/their heirs, and assigns the following described real property:

All that certain piece, parcel, or lot of land lying, being, and situate in the State of South Carolina, County of York, on the northern side of Rental Court (just off Constitution Boulevard), in the City of Rock Hill, designated as Lot 3, containing 0.80 acres, more or less, on Final Plat for Robert H. Sarn, drawn by James W. Keistler, Jr., SCRLS, dated March 11, 1999, and recorded in Plat Book C-76 at Page 8, in the Office of the Clerk of Court for York County, South Carolina, which plat is hereby incorporated herein as part of this description and made a part hereof for a more accurate depiction of metes, bounds, courses, and distances.

R.A.S.

DERIVATION: This being a portion of the property conveyed to Robert H. Sarn by deed from Metromont Materials Corporation dated December 15, 1995, and recorded February 28, 1996, in Book 1460 at Page 100, in the Office of the Clerk of Court for York County, South Carolina.

TOGETHER WITH THE EASEMENT, being a non-exclusive, perpetual easement for ingress and egress to the Property from Constitution Boulevard along the private road, being approximately 50' in width, shown on the above-referenced plat and referred to as Rental Court and Easement Area. Said easement shall benefit the Property, the Grantee, its licensees, agents, lessees, and successors, and/or assigns, and shall burden the property described herein as the Easement Area. The Easement shall be a covenant that runs with the land. Grantor covenants that it shall cause to be done no act or omission within the Easement Area which shall infringe upon Grantee's interest therein hereby conveyed, and that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor's development and so as to allow Grantee the full benefit and use of the Easement.

TMS#596-04-01-012

This conveyance is made subject to all easements, restrictions, and rights of way, if and appearing of record in the chain of title of the subject property or visible upon an actual, physical inspection of the subject property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto said Grantee, his/her/their heirs and assigns forever.

BK 10451 PG 295

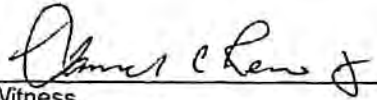


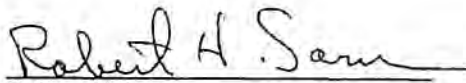
ELECTRONICALLY FILED - 2020 Oct 06 4:44 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

And the Grantor does hereby bind her/him/their/self and his/her/their Heirs, Executors and Administrators, to warrant and forever defend all and singular the said Premises unto the said Grantee and the Grantee's Heirs and Assigns against the Grantors and Grantor's heirs and assigns and all other persons whomsoever lawfully claiming, or to claim, the same, or any part thereof.

WITNESS the HAND AND SEAL OF THE GRANTOR on November 7, 2008.

Signed, sealed and delivered

  
Witness

  
Robert H. Sarn


  
Witness

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that the above named **Robert H. Sarn** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal on November 7, 2008.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My commission expires: 01/22/2017



BK10451 P00296



Ares is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of Grantor' development and so as to allow Grantee the full benefit and use of the Easement.

DERIVATION: This being the identical real property conveyed to J.D. Properties of the Carolinas, LLC by deed of Robert H. Sarn recorded December 11, 2008 in Book 10451, page 295, RMC Office for York County, SC.

The within property is conveyed subject to all existing easements and restrictions appearing in the chain of title, which said easements and restrictions are not intended to be reimposed hereby.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, its Successors and Assigns forever.

And the Grantor does hereby bind its successors, heirs, Executors, Personal Representatives, and Administrators to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Successors and Assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS the Hand and Seal of The Grantor(s) this the 29<sup>th</sup> day of December, 2017.

Signed, Sealed, and Delivered in the presence of:

J.D. Properties of the Carolinas, LLC  
\* Robert N. Miller (Seal)  
By: Robert N. Miller, Member

\* Nicole Summerville  
Witness #1

\* [Signature]  
Witness #2

Exp March 2018



STATE OF <sup>\*</sup>Ohio )  
 )  
COUNTY OF <sup>\*</sup>Ashtabula )

ACKNOWLEDGMENT

I, the undersigned, Notary Public for the State of <sup>\*</sup>Ohio, do hereby certify that Robert N. Miller, Member of J.D. Properties of the Carolinas, LLC, personally appeared before me this day and acknowledge the due execution of this foregoing instrument.

Witness my hand and seal this <sup>\*</sup>29 day of <sup>\*</sup>December 2017.

<sup>\*</sup>Nicole Summerville (Seal)  
Notary Public  
My Commission Expires: <sup>\*</sup>March 2018



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<b>A. U.S. DEPARTMENT OF HOUSING &amp; URBAN DEVELOPMENT SETTLEMENT STATEMENT</b>		<b>B. TYPE OF LOAN:</b>				
		1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> FmHA	3. <input checked="" type="checkbox"/> CONV. UNINS.	4. <input type="checkbox"/> VA	5. <input type="checkbox"/> CONV. INS.
		6. FILE NUMBER: GR-124A			7. LOAN NUMBER: 12461882	
8. MORTGAGE INS CASE NUMBER:						
<b>C. NOTE:</b> This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(PDC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.						
<b>D. NAME AND ADDRESS OF BORROWER:</b>  GR Properties of Fort Mill LLC 1671 Saddlewood Drive Fort Mill, SC 29715		<b>E. NAME AND ADDRESS OF SELLER:</b>  Robert H. Sam David C. Sam 3168 Devonshire Drive Rock Hill, SC 29732		<b>F. NAME AND ADDRESS OF LENDER:</b>  South State Bank 2440 Mall Drive Charleston, SC 29406		
<b>G. PROPERTY LOCATION:</b> 1362 Const. Blvd. 149 Rental Ct. Rock Hill, SC 29732 York County, South Carolina		<b>H. SETTLEMENT AGENT:</b> Walter L. Hainsohn, Attorney at Law, P.A.  <b>PLACE OF SETTLEMENT:</b> 1548 Ebenezer Road Rock Hill, SC 29732		<b>I. SETTLEMENT DATE:</b>  July 20, 2018		
<b>J. SUMMARY OF BORROWER'S TRANSACTION</b>			<b>K. SUMMARY OF SELLER'S TRANSACTION</b>			
<b>100. GROSS AMOUNT DUE FROM BORROWER:</b>			<b>400. GROSS AMOUNT DUE TO SELLER:</b>			
101. Contract Sales Price		989,000.00	401. Contract Sales Price		989,000.00	
102. Personal Property			402. Personal Property			
103. Settlement Charges to Borrower (Line 1400)		11,334.25	403.			
104.			404.			
105.			405.			
<i>Adjustments For Items Paid By Seller in advance</i>			<i>Adjustments For Items Paid By Seller in advance</i>			
106. City/Town Taxes	to		406. City/Town Taxes	to		
107. County Taxes	to		407. County Taxes	to		
108. Assessments	to		408. Assessments	to		
109.			409.			
110.			410.			
111.			411.			
112.			412.			
120. GROSS AMOUNT DUE FROM BORROWER		1,000,334.25	420. GROSS AMOUNT DUE TO SELLER		989,000.00	
<b>200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:</b>			<b>500. REDUCTIONS IN AMOUNT DUE TO SELLER:</b>			
201. Deposit or earnest money		10,000.00	501. Excess Deposit (See Instructions)			
202. Principal Amount of New Loan(s)		791,200.00	502. Settlement Charges to Seller (Line 1400)		113,223.35	
203. Existing loan(s) taken subject to			503. Existing loan(s) taken subject to			
204.			504. Payoff First Mortgage			
205.			505. Payoff Second Mortgage			
206.			508. Deposit retained by broker		10,000.00	
207.			507.			
208.			509.			
209.			<i>Adjustments For Items Unpaid By Seller</i>			
<i>Adjustments For Items Unpaid By Seller</i>			<i>Adjustments For Items Unpaid By Seller</i>			
210. City/Town Taxes	to		510. City/Town Taxes	to		
211. County Taxes	01/01/18 to 07/20/18	9,345.08	511. County Taxes	01/01/18 to 07/20/18	9,345.08	
212. Assessments	to		512. Assessments	to		
213. Pro-rata share of Rent 07/20/18 to 07/31/18		2,616.40	513. Pro-rata share of Rent 07/20/18 to 07/31/18		2,616.40	
214.			514.			
215.			515.			
216.			516.			
217.			517.			
218.			518.			
219.			519.			
220. TOTAL PAID BY/FOR BORROWER		813,161.48	520. TOTAL REDUCTION AMOUNT DUE SELLER		135,184.83	
<b>300. CASH AT SETTLEMENT FROM/TO BORROWER:</b>			<b>600. CASH AT SETTLEMENT TO/FROM SELLER:</b>			
301. Gross Amount Due From Borrower (Line 120)		1,000,334.25	601. Gross Amount Due To Seller (Line 420)		989,000.00	
302. Less Amount Paid By/For Borrower (Line 220)		( 813,161.48)	602. Less Reductions Due Seller (Line 520)		( 135,184.83)	
303. CASH ( X FROM ) ( TO ) BORROWER		187,172.77	603. CASH ( X TO ) ( FROM ) SELLER		853,815.17	



HUD-1 (2-05) RESPA, HB0305 2

**L. SETTLEMENT CHARGES**

<b>700. TOTAL COMMISSION Based on Price</b>	\$ 989,000.00 @ 6.0000 %	59,340.00		
<i>Division of Commission (line 700) as Follows:</i>				
701. \$ 29,670.00	to THE TUTTLE COMPANY	Less Deposit Retained	10,000.00	
702. \$ 29,670.00	to Spany Var/Ness/Southern Commercial RE, LLC			
703. Commission Paid at Settlement				49,340.00
704.	to			
<b>800. ITEMS PAYABLE IN CONNECTION WITH LOAN</b>				
801. Loan Origination Fee	0.4494 % to South State Bank			3,556.00
802. Loan Discount	% to			
803. Appraisal Fee	to TB Harts Jr. & Associates			2,885.00
804. Credit Report	to			
805. Flood Determination Fee	to CoreLogic			14.50
806. Processing Fee	to South State Bank			250.00
807. Lien Release Fee	to South State Bank			10.00
808. Appraisal Management Fee	to ExactBid			86.55
809. Delivery Fee	to South State Bank			25.00
810.				
811.				
<b>900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE</b>				
901. Interest From	07/20/18 to 08/01/18 @ \$ /day ( 12 days %)			
902. Mortgage Insurance Premium	for months to			
903. Hazard Insurance Premium	for years to			
904.				
905.				
<b>1000. RESERVES DEPOSITED WITH LENDER</b>				
1001. Hazard Insurance	months @ \$ per month			
1002. Mortgage Insurance	months @ \$ per month			
1003. City/Town Taxes	months @ \$ per month			
1004. County Taxes	months @ \$ per month			
1005. Assessments	months @ \$ per month			
1006.	months @ \$ per month			
1007.	months @ \$ per month			
1008.	months @ \$ per month			
<b>1100. TITLE CHARGES</b>				
1101. Settlement or Closing Fee	to			
1102. Abstract or Title Search	to			
1103. Title Examination	to Walter L. Heinsohn, Attorney at Law, P.A.			395.00
1104. Title Insurance Binder	to Clear Title, Inc.			200.00
1105. Attorney's Fees	to John Martin Foster, Attorney at Law			300.00
1106. Document Preparation	to Walter L. Heinsohn, Attorney at Law, P.A.			350.00
1107. Attorney's Fees	to Walter L. Heinsohn, Attorney at Law, P.A.			1,500.00
<i>(includes above item numbers: )</i>				
1108. Title Insurance	to Clear Title, Inc.			2,150.20
<i>(includes above item numbers: )</i>				
1109. Lender's Coverage	\$ 791,200.00		1,695.60	
1110. Owner's Coverage	\$ 989,000.00		454.60	
1111. Endorsements 8.2, 9-3, 17-06	to Clear Title, Inc.			200.00
1112. CPL FEE	to Investors Title Insurance Company			25.00
1113.				
<b>1200. GOVERNMENT RECORDING AND TRANSFER CHARGES</b>				
1201. Recording Fees: Deed \$ 10.00 ; Mortgage \$ 27.00 ; Releases \$				37.00
1202. City/County Tax/Stamps: Deed 3,659.30 ; Mortgage				3,659.30
1203. State Tax/Stamps: Deed ; Mortgage				
1204. Release of Lease	to York County Clerk of Court			10.00
1205.				
<b>1300. ADDITIONAL SETTLEMENT CHARGES</b>				
1301. Survey	to			
1302. Pest Inspection	to			
1303. Environmental Services	to Summit Engineering		POC:2000.00	
1304. Escrow Retained	to Walter L. Heinsohn, Trust Acct.			59,564.05
1305.				
<b>1400. TOTAL SETTLEMENT CHARGES</b> (Enter on Lines 103, Section J and 502, Section K)				11,334.25 113,223.35

ELECTRONICALLY FILED - 2020 Oct 06 4:44 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

**HUD-1, Page 3**

**Borrower (s):** GR Properties of Fort Mill LLC  
1671 Saddlewood Drive  
Fort Mill, SC 29715

**Seller(s):** Robert H. Sam and David C. Sam  
3168 Devonshire Drive  
Rock Hill, SC 29732

**Lender:** South State Bank

**Settlement Agent:** Walter L. Heinsohn, Attorney at Law, P.A.  
(803)366-5181

**Place of Settlement:** 1548 Ebenezer Road  
Rock Hill, SC 29732

**Settlement Date:** July 20, 2018

**Property Location:** 1362 Const. Blvd. 149 Rental Ct.  
Rock Hill, SC 29732  
York County, South Carolina

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**Adjustments For Items Unpaid By Seller (Seller Debit)**

Description	Amount	From/Through	Prorated Amount
Pro-rata share of Rent	7,373.50	07/20/18 through 07/31/18	2,616.40
		<b>Total Line 213/513</b>	<u>2,616.40</u>

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

GR Properties of Fort Mill, LLC

BY: \_\_\_\_\_

\_\_\_\_\_  
Robert H. Sam

\_\_\_\_\_  
David C. Sam

\_\_\_\_\_  
Walter L. Heinsohn, Attorney  
Settlement Agent

**WARNING:** It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(GR-0124A.PFD\GR-0124A\15)

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF YORK ) **ESCROW AGREEMENT FOR REPAIRS/UP-FITTING**

**Date:** July 20, 2018  
**Buyer:** GR Properties of Fort Mill, LLC  
**Sellers:** Robert H. Sam and David C. Sam  
**Escrow Agent:** Walter L. Heinsohn, Attorney at Law  
**Property:** 1362 Constitution Blvd. and 149 Rental Court, Rock Hill, SC 29732  
**Amount:** \$59,564.05

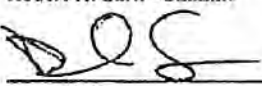
Repairs/Up-fitting to be performed:

- 1. Replace the existing unit heaters per the *BB&T Refrigeration, Inc.* estimate: \$5,250.00
- 2. Install handrails per the *SCS Home Remodeling* invoice: \$638.65
- 3. Resurface Rental Court per the *Granite Contracting, LLC* bid: \$49,314.00\*

The parties enter into this Escrow Agreement to provide for the completion of only the work described above and as shown on the attached invoices, which work is incapable of being performed prior to closing. Escrow Agent shall withhold from Sellers' sales proceeds the sum of \$59,564.05 which represents the quoted amounts for items 1 and 2 above and 110% of the amount for item 3 (to account for any price increase between the date of closing and the date such work can be performed). Upon completion of each item of work to the Buyer's reasonable satisfaction, the Escrow Agent shall pay the invoice. Any funds remaining in escrow after all items are completed shall be refunded to Sellers. The parties acknowledge that the fee of the Escrow Agent is \$250.00 and shall be deducted from the escrowed funds.

\*Sellers have the right to substitute this quote at any time prior to the work being done with a quote for comparable work at a lesser price. In the event the quote is substituted, Escrow agent shall immediately refund to Seller the difference between 110% of the Granite Contracting quote and 110% of the new quote.

  
Robert H. Sam - SELLER

  
David C. Sam - SELLER

GR Properties of Fort Mill, LLC

  
Walter L. Heinsohn - ESCROW AGENT

By:   
Glenn A. Grace - Managing Member - BUYER



RETURN ORIGINAL TO:  
Hyatt Law Firm  
1401 Ebenezer Road  
Rock Hill, SC 29732

08-1039

200900049270  
Filed for Record in  
YORK COUNTY, SC  
DAVID HAMILTON  
01-29-2009 At 08:10 am.  
EASEMENT 10.00  
State Tax .00  
County Tax .00  
OR Vol 10523 Page 242 - 243

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

**GRANT OF EASEMENT  
AND RIGHT OF WAY**

Whereas, Robert H. Sam, is the owner of TRACT A and A PARCEL TO BE COMBINED WITH TRACT A (commonly known as 1362 Constitution Boulevard and 149 Rental Court) as shown on and plat as recorded in Book C-76 at Page 3 and is the original owner of a 4.228-acre tract as shown in Plat Book A-78 at Page 4, of which J.D. Properties of the Carolinas, LLC, is now purchasing a portion of (or has recently);

Whereas, J.D. Properties of the Carolinas, LLC is the owner of (or will be the owner of in the near future) Lot 3 as shown on plat as recorded in Book C-76 at Page 8, after purchasing said property from Robert H. Sam, and which property is a portion of the original 4.228-acre tract as shown in Plat Book A-78 at Page 4;

Now therefore, KNOWN ALL MEN BY THESE PRESENTS that Robert H. Sam, owner in fee simple of TRACT A (now consisting of 1.75 acres and 0.87 acres) and possibly owner of said PRIVATE ROAD commonly known as Rental Court, hereby grants J.D. Properties of the Carolinas, LLC, its successors and assigns, a right of way or easement for the purpose of ingress and egress approximately (50') feet wide which is shown as Rental Court on Plat recorded in Plat Book C-76 at Page 8; running perpendicularly from the 100' right of way for Constitution Boulevard in York County in the City of Rock Hill, along or near the dividing lines between Lot 1 and Tract A, and between Lot 2 and Tract A, to run along the entire length of Lot 3 (owned by J.D. Properties of the Carolinas, LLC). Said road, all of which is hereby granted as a non-exclusive EASEMENT is more fully and accurately described on FINAL PLAT for Robert H. Sam, drawn by James W. Keistler, Jr., SCRLS, dated March 11, 1999, and recorded in Plat Book C-76 at Page 8, which plat is hereby incorporated herein as part of this description and made a part hereof for a more accurate depiction of metes, bounds, courses, and distances of said easement.

Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sam, his heirs and or assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

BK 10523 P0242



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This agreement shall bind and pass to the successors and/or assigns of J.D. Properties of the Carolinas, LLC. Furthermore, this agreement shall bind and pass to the successors and assigns of Robert H. Sarn.

By signing this Agreement, Robert H. Sarn, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost for the upkeep and maintenance of said private road.

It is hereby agreed this 6<sup>th</sup> day of November in the year of our Lord, two thousand and eight.

WITNESSES as to all:

James C. Lewis

Robert H. Sarn  
Robert H. Sarn

MMA

J.D. Properties of the Carolinas, LLC  
[Signature]

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

PROBATE

Personally appeared before me the undersigned witness made oath that she saw the within named Robert H. Sarn and Representative of J.D. Properties of the Carolinas, LLC sign, seal, and act as their deed, deliver the within written grant of easement and right of way; and that she with the other witness above named witnessed the execution thereof.

James C. Lewis  
Witness

SWORN TO BEFORE ME this  
6<sup>th</sup> day of November, 2008.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_





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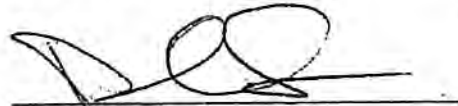
WITNESS the hands and seals of Grantors this 20<sup>th</sup> day of July, 2018.

SIGNED, SEALED AND DELIVERED )  
IN THE PRESENCE OF: )

  
WITNESS #1

  
Robert H. Sam

  
WITNESS #2

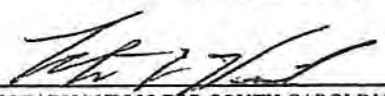
  
David C. Sam

STATE OF SOUTH CAROLINA )  
COUNTY OF YORK )

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that the Grantors, Robert H. Sam and David C. Sam, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Executed this the 20<sup>th</sup> day of July, 2018.

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 1-10-2023

## EXHIBIT A

ALL THOSE CERTAIN pieces, parcels or lots of land lying and being situate in the State of South Carolina, County of York, City of Rock Hill, at the intersection of Constitution Boulevard and Rental Court, designated as Tract A containing 1.75 acres and Tract B containing 0.87 acres, for a total of 2.62 acres, more or less, and being fully shown and described on a plat entitled, "Robert H. Sam - Final Plat", prepared by James W. Keistler, Jr., S.C.R.L.S., dated March 11, 1999, recorded June 21, 2002, in Plat Book C-76 at page 8 in the Office of the Clerk of Court for York County, which plat is incorporated herein and made a part hereof by this reference and having such metes, bounds, courses and distances as will appear by referring to said plat.

TOGETHER with a non-exclusive, perpetual easement for ingress and egress between the above said real property and Constitution Boulevard along the private road known as "Rental Court", being approximately 50' in width, shown on the above described plat, which plat is incorporated herein and made a part hereof by this reference.

FURTHER PROVIDED, HOWEVER, that the real property conveyed hereby shall carry as a lien and charge thereon the responsibility for two-sevenths (2/7) of the cost of the maintenance, repair and upkeep of Rental Court and the easement area.

DERIVATION: These lots were created from the larger parcel conveyed to Robert H. Sam by deed of Metromont Materials Corp., dated December 15, 1995, recorded February 28, 1996, in Record Book 1460 at page 100. Robert H. Sam reconveyed title to the property to himself and David C. Sam, as joint tenants with right of survivorship, by deed dated November 14, 2016, recorded December 15, 2015, in Record Book 16128 at page 149 in the Office of the Clerk of Court for York County.

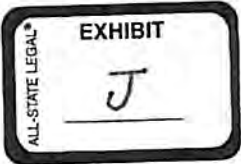
TAX MAP NOS: 596-04-01-004 and 596-04-01-015

PROPERTY ADDRESS: 1362 Constitution Blvd. and 149 Rental Court, Rock Hill, SC 29732

GRANTEE'S ADDRESS: 1671 Saddlewood Drive, Fort Mill, SC 29715

ROBERT H. SARN vs JAMES C. RHEA, III, ET AL.  
Robert H. Sarn on 09/11/2020

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF YORK ) IN THE COURT OF COMMON PLEAS  
3 ) SIXTEENTH JUDICIAL CIRCUIT  
4 ROBERT H. SARN, )  
5 PLAINTIFF, ) CA. NO: 2019-CP-46-01446  
6 VS- )  
7 JAMES C. RHEA, III; CITY )  
8 ELECTRIC SUPPLY COMPANY, )  
9 A FLORIDA CORPORATION; )  
10 AND TASCHNER TEXTILE )  
11 INDUSTRIES, LLC, )  
12 DEFENDANTS. )  
13  
14 DEPOSITION OF ROBERT H. SARN  
15 ROCK HILL, SOUTH CAROLINA  
16 SEPTEMBER 11, 2020  
17  
18  
19  
20  
21 REPORTER: SHIRLEY DALLAS-GERRALD, CVR-CM  
22 DALLAS REPORTING, A HUSEBY COMPANY  
23  
24  
25



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1	Appearances:	Representing the Plaintiff -	
2		John Martin Foster, Esquire	
3		John Martin Foster Law Offices	
4		223 East Main Street, #520	
5		Rock Hill, South Carolina 29730	
6		803-324-8100	
7		jmfoster@comporium.net	
8		Representing the Defendants, Rhea and	
9		Taschner	
10		J. Nathaniel Pierce, Esquire	
11		Morton and Gettys	
12		331 East Main Street	
13		Suite 300	
14		Rock Hill, South Carolina 29730	
15		803-366-3457	
16		nate.pierce@mortongettys.com	
17		Daniel J. Ballou, Esquire	
18		Morton and Gettys	
19		331 East Main Street	
20		Suite 300	
21		Rock Hill, South Carolina 29730	
22		803-366-3457	
23		dan.ballou@mortongettys.com	
24		For the Defendant, City Electric	
25		Michael K. Hatch, Esquire	
26		Michael Hatch Law	
27		514 Oakland Avenue, Suite 100	
28		Rock Hill, South Carolina 29730	
29		803-620-5098	
30		mhatch@hatchlaw.com	
31		INDEX	
32	Examination by Mr. Pierce		Page 5
33	Examination by Mr. Foster		Page 84
34	Further Examination by Mr. Pierce		Page 88
35	Examination by Mr. Ballou		Page 91
36			

1	EXHIBITS		
2	** Note: Exhibits 1-13 were pre-marked and referenced on		
3	the pages shown below		
4	Exhibit 1	Summons and Complaint	Page 17
5	Exhibit 2	Plat	Page 20
6	Exhibit 3	Magistrate's Court Complaint	Page 22
7	Exhibit 4	Title to Real Estate	Page 27
8	Exhibit 5	Escrow Agreement	Page 29
9	Exhibit 6	Granite Contracting Bid	Page 32
10	Exhibit 7	Granite Contracting Invoice	Page 32
11	Exhibit 8	Title to Real Estate	Page 45
12	Exhibit 9	Title to Real Estate	Page 49
13	Exhibit 10	Grant of Easement	Page 52
14	Exhibit 11	Fax Cover Sheet and Email	Page 61
15	Exhibit 12	General Warranty Deed - Not Referenced	
16	Exhibit 13	Title to Real Estate	Page 118
17	Exhibit 14	Settlement Statement	Page 41
18			
19			
20			
21			
22			
23			
24			
25			

1 Deposition Robert H. Sarn, taken before me, Shirley  
2 Dallas-Gerrald, CVR-CM, a Notary Public for the State of  
3 South Carolina, commencing at 10:00 a.m. at the law  
4 offices of Morton and Gettys, Rock Hill, South Carolina,  
5 on September 11, 2020, in accordance with the South  
6 Carolina Rules of Civil Procedure;

7 That the signing of the transcript of deposition by  
8 the witness is reserved.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 A Okay.

2 Q There was no written agreement between you, Toy  
3 Rhea, City Electric Supply or Taschner Textile Industries  
4 or Taschner Textile Industries predecessor, J.D.

5 Properties of the Carolinas, requiring them to pay you a  
6 pro rata share of the maintenance of Rental Court?

7 A That's correct.

8 Q Is there anything else we haven't discussed  
9 about the decision to repave Rental Court or the actual  
10 resurfacing of Rental Court?

11 Mr. Foster: I'm going to object to the  
12 form of the question. I think that's very  
13 broad, too broad to be allowed. I'll put it  
14 that way.

15 Q Let me take a step back. Did you ask the  
16 property owners of Rental Court during your negotiations  
17 with GR Properties of Fort Mill to agree to pay a pro  
18 rata share of the resurfacing of Rental Court?

19 A Repeat that please.

20 Q Sure. At the time you were negotiating the  
21 sale to GR Properties of Fort Mill, did you ask the other  
22 owners on Rental Court to pay a pro rata share at that  
23 time?

24 A No.

25 Q Is there any other fact regarding the decision

1 This is an email concerning City Electric Supply.

2 A Well, he's referring to Robert Miller in the  
3 first sentence there.

4 Q Where does he refer to Mr. Miller?

5 A Wait a second. We have just sold the adjacent  
6 building to an electrical contractor, and he has agreed to  
7 share these costs also.

8 Q Where is Mr. Miller's name?

9 A I don't see his name, but he sold it to an  
10 electrical contractor, and Robert Miller was an electrical  
11 contractor.

12 Q So what response does CES or City Electric  
13 Service give to this request?

14 A I have no idea.

15 Q Are you aware of any agreement in writing for  
16 CES to maintain a pro rata share of the -

17 A I'm sorry. Who?

18 Q For City Electric Service to pay a pro rata  
19 share of the maintenance of Rental Court?

20 A I know of no documents, no.

21 Q Do you know of any written agreement on the part  
22 of Taschner Textile Industries?

23 A No, I do not.

24 Whereupon: A brief recess was taken.

25 Mr. Pierce - Resuming

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1 Mr. Foster: It's what we sent over, if  
2 I may respond.

3 Mr. Pierce: I'm asking if it's a part of  
4 this packet that I handed him.

5 Q This is a part of Exhibit 11.

6 A Yes, it is.

7 Q Looking at the third page of Exhibit 11, this  
8 is a letter from yourself to Toy Rhea; is that right?

9 A That's correct.

10 Q Tell me about this letter.

11 A It's a letter stating what we've just been  
12 talking about, Robert Miller of Walker had agreed to share  
13 a pro rata basis for future maintenance costs of Rental  
14 Court.

15 Q So you sent this letter to Toy Rhea asking him  
16 to share the pro rata costs of maintaining Rental Court?

17 A Yes.

18 Q Before you sent this letter to Mr. Rhea, there  
19 was no agreement that he would maintain Rental Court?

20 A There was no agreement in the deed whatsoever  
21 with Toy Rhea about any maintenance of Rental Court.

22 Q So prior to you sending this letter, there was  
23 no written agreement between you and Mr. Rhea that he  
24 would contribute toward the maintenance of Rental Court?

25 A There was no mention of it in either the title

1 or the deed.

2 Q And you sent this letter asking him to start  
3 contributing to the maintenance of Rental Court?

4 A Yes.

5 Q When was this letter sent?

6 A It was sent -- I know it is not dated, but it  
7 was sent the same day that I received the letter from  
8 Mark -- or the fax from Mark Mayfield dated 11-10-08.

9 Q So there is no date, is there?

10 A No, there is no date on that.

11 Q And it's not signed?

12 A I'm not sure if I mailed that to him or if I  
13 faxed it. If I faxed it, I would have a dated faxed copy.  
14 I'd have to go through my records.

15 Q Do you have any proof that you can provide that  
16 this was ever actually sent to Toy Rhea?

17 A If, in fact, I mailed it.

18 Q If you mailed it, there would be a record of  
19 mailing?

20 A I would think so.

21 Q Do you have that that you can provide?

22 A I have no receipt from the post office. I  
23 didn't send it registered mail or anything like that.

24 Q But there is no record of when this was sent or  
25 how it was sent or if it was received?

1 Q And this agreement or transaction has not been  
2 formally rescinded?

3 A Not officially no, at this point.

4 Q And there is no written agreement that City  
5 Electric Service will maintain Rental Court?

6 A Not that I know of, no.

7 Q So you agreed in order to make almost a million  
8 dollars by selling property to GR Properties of Fort Mill,  
9 you agreed to resurface Rental Court?

10 A Yes. I agreed to resurface Rental Court.

11 Q And now, after the fact, you are attempting to  
12 sue three parties, City Electric Service, Taschner Textile  
13 Industries and Toy Rhea for reimbursement of the cost of  
14 resurfacing Rental Court?

15 A That's correct. There are four other properties  
16 that have already paid their portion of resurfacing Rental  
17 Court.

18 Q And neither City Electric Service, Taschner  
19 Textile Industries or Toy Rhea are parties to any written  
20 agreement in which they agree to maintain Rental Court?

21 A That's correct.

22 Q Why are you suing them?

23 A Because they have a moral responsibility to

24 --

25 Mr. Foster: Excuse me. I need to say

1           A     What exhibit is that?  
2           Q     This would be the second page of Exhibit 11.  
3           A     Here it is.  
4           Q     So the email dated Monday, November 10, 2008,  
5     12:49 p.m. You are not a party to that email, are you?  
6           A     No.  
7           Q     So you have no direct knowledge regarding this  
8     communication or any of the allegations made in it?  
9           A     Other than the copy that was sent to me, I  
10    believe, by Randy Graham.  
11          Q     You said that in your Magistrate Court Complaint  
12    you state that Toy Rhea has failed to pay his fair share  
13    or to honor his obligation regarding repaving Rental Court  
14    and that's why you're suing him?  
15          A     Yes.  
16          Q     Is that the moral obligation you were speaking  
17    of?  
18                    Mr. Foster: Same objection  
19          A     Not only moral but I was referring to a previous  
20    court precedent I believe that was set that I think I made  
21    reference to.  
22          Q     So there was no written agreement between you  
23    and Toy Rhea?  
24          A     No.  
25          Q     And there's no proof that he ever received the

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1 something. Counsel has the right to conduct  
2 this deposition as he pleases. What I'm hearing  
3 again is saying, give me a legal basis for what  
4 you're doing. He's already answered the  
5 question as to why what he's doing. This is  
6 either asking him to restate what he's doing or  
7 it's asking for a legal conclusion which he is  
8 not capable of giving. So I put that on the  
9 record.

10 Q So none of these parties -

11 A I agree with what Martin just said.

12 Q Well, you can agree with his objection, but you  
13 still have to answer the question.

14 Mr. Foster: If you want me to say it, that  
15 is true, and I have so advised him.

16 Q So if there is no contract by which any of  
17 these parties are required to contribute to the  
18 maintenance of Rental Court and, in fact, you have, in  
19 multiple documents, undertaken the responsibility to  
20 maintain Rental Court, why are you suing these three  
21 parties?

22 Mr. Foster: Same objection.

23 A I already mentioned that I feel it's a moral  
24 responsible that every party that participates in using  
25 the road should pay for the maintenance of the road.

1 Q You feel that they have a moral responsibility?

2 A Yes, I do.

3 Q And that is why you are suing them?

4 A To recoup my cost of repaving the road, yes.

5 Q The cost that you undertook in order to receive  
6 nearly a million dollars personally?

7 A What's wrong with that? I sold a piece of  
8 property and made a profit.

9 Q I think the issue would be is that you would  
10 agree to do something for your personal benefit and now  
11 you're seeking other people to finance your investment to  
12 reap that personal benefit.

13 Mr. Foster: Would counsel state what the  
14 question was.

15 Q Do you not think that's unfair?

16 A What is the question?

17 Q The question was, you agreed to lay out \$56,000  
18 and change in order to induce a sale by which you netted  
19 over \$900,000 in cash personally. Now, after the fact,  
20 after you signed documents undertaking the responsibility  
21 to maintain Rental Court, you come back and say, now, you  
22 folks have to finance my investment to consummate this  
23 sale.

24 Mr. Foster: Same objection.

25 A I think that from prior cases that were brought

1 that transaction?

2 A I don't recall.

3 Q Did you believe he was representing the buyer  
4 in that transaction?

5 A I don't know.

6 Q Did you believe he was representing you in that  
7 transaction?

8 A I don't know that either.

9 Q Is it fair to say that his representation to  
10 you was that that easement, Grant of Easement, was a  
11 necessary part for the closing of that sale?

12 A He didn't say that. It was already mentioned  
13 in the title.

14 Q How much were you getting paid for the sale of  
15 that property?

16 A What difference does that make?

17 Q How much were you getting paid for the sale of  
18 that property, sir?

19 A All it says here was \$570,000.

20 Q So in order to get \$570,000, you were going to  
21 have to sign all the documents at the closing table,  
22 weren't you, sir?

23 A That's normal process.

24 Q That's right. Including the Grant of Easement;  
25 isn't that right?

1 A Recorded or signed?  
2 Q Signed.  
3 A I guess the date on here is July 20, 2018; is  
4 that correct?  
5 Q That's what it appears to be to me.  
6 A Well, I guess that's when it was then.  
7 Q When was it recorded?  
8 A Where?  
9 Q When?  
10 A Recorded 7-23-2018.  
11 Q What did you and David receive in exchange for  
12 these two lots?  
13 A 989,000  
14 Q Dollars?  
15 A Dollars.  
16 Q So you received cash in exchange for the lots?  
17 A I'm sorry.  
18 Q You received cash in exchange for the lots?  
19 A Yes.  
20 Q I'm going to show you now what we've marked as  
21 Exhibit 5, an Escrow Agreement for Repairs and Upfitting.  
22 We move in Exhibit 5. Describe the document I've just  
23 handed you.  
24 A It was an Escrow Agreement for Repairs and  
25 Upfitting of Rental Court. That was drawn up by Walter

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1 Heinsohn. He was the attorney representing GR Properties  
2 in the sale. Basically, there were monies from the sale  
3 put into escrow basically to pay for the resurfacing,  
4 install handrails required by the city and to replace the  
5 refrigeration, heating and air conditioning system.

6 Q What is the date of this agreement?

7 A July 20th, 2018.

8 Q And that's the same date the deed was signed for  
9 these two properties, the two properties sold via the deed  
10 marked as Exhibit 4?

11 A When they were signed, yes.

12 Q Who signed the Escrow Agreement for Repairs and  
13 Upfitting marked as Exhibit 5?

14 A This exhibit?

15 Q Yes, Exhibit 5.

16 A I signed it, my son signed it, Walter Heinsohn  
17 and Glenn Grace, the owner of GR Properties.

18 Q You said there were going to be monies held in  
19 escrow. Whose funds were going to be held in escrow for  
20 the repair -- for these repairs?

21 A My funds.

22 Q So you paid for the resurfacing of Rental Court  
23 out of your proceeds from the sale?

24 A That's correct.

25 Q Resurfacing Rental Court was a condition for the

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2019-CP-46-01446

**SUPPLEMENT TO DEFENDANT  
TASCHNER TEXTILES INDUSTRIES,  
LLC'S MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT**

Per the request of the Honorable Judge Teasa Weaver, Defendant Taschner Textiles Industries, LLC ("Taschner") submits this supplement to its Memorandum in Support of its Motion for Summary Judgment, filed October 6, 2020.

During the hearing on Taschner's Motion for Summary Judgment, the below-signed counsel for Taschner referenced a number of portions of the deposition of Plaintiff Robert H. Sarn ("Sarn"). These citations to the referenced portion of Sarn's deposition are listed below:

1. Mr. Sarn agreed to be responsible for the maintenance of Rental Court on November 7, 2008. Sarn Dep. 59:10-12, Sept. 11, 2020.

2. Mr. Sarn agrees that Taschner is not responsible under any document to maintain Rental Court. Sarn Dep. 73:13-22.

3. Mr. Sarn admits that there is no agreement between himself and Rhea requiring Rhea to maintain Rental Court. Sarn Dep. 74:18-21.

4. Mr. Sarn cannot prove that he ever asked Rhea to contribute to the maintenance of Rental Court. Sarn Dep. 75:1 – 76:8.

5. There is no agreement between Taschner, Rhea, or City Electric Supply Company (“CES”) requiring them to pay a pro rata share of the maintenance of Rental Court. Sarn Dep. 35:2-7.

6. Sarn agreed to repave Rental Court as a condition of the sale to GR Properties of Fort Mill, LLC (“GR Properties”) for which Sarn received \$989,000.00. Sarn Dep. 26:21-25; 31:6-9; 29:11-15.

7. The funds to repave Rental Court did not come out of Sarn’s pocket, they were escrowed from the proceeds from the sale to GR Properties. Sarn Dep. 30:18-24.

8. Sarn did not ask Taschner, Rhea or CES to contribute to the resurfacing at the time he was negotiating with GR Properties. Sarn Dep. 35:20-24.

9. The only evidence Mr. Sarn puts forward that anyone besides himself agreed to maintain Rental Court is an email from a third party to a fourth party in a conversation to which Sarn was not a party, and there is no evidence of any response or agreement. Sarn Dep. 71:15-18.

10. The only grounds Sarn can conjure is an alleged “moral responsibility” owed by the Defendants in this case. Sarn Dep. 78:22-23; 79:16-25.

[Signature block on following page]

Respectfully submitted,

*s/ J. Nathaniel Pierce*

J. Nathaniel Pierce, SC Bar No. 102803

Morton & Gettys, LLC

Attorney for Defendants Taschner

P.O. Box 707

Rock Hill, SC 29731

T: 803.366.3388

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nate.pierce@mortongettys.com

February 4, 2021  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2021 Feb 04 3:43 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing supplement to Defendant Täschner Textiles Industries, LLC's memorandum in support of motion for summary judgment was served upon counselors of record on the 4th day of February 2021 via York County's E-Filing and E-Service System as follows:

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sam

Daniel Ballou for James C Rhea, III

s/ J Nathaniel Pierce  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2021 Feb 04 3:43 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	C/A No.: 2019-CP-46-01446
Robert H. Sarn,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>NOTICE OF HEARING</b>
	)	
James C. Rhea, III; City Electric Supply	)	
Company, a Florida corporation; and	)	
Taschner Textile Industries, LLC,	)	
	)	
<u>Defendants.</u>	)	

**PLEASE TAKE NOTICE** that a hearing in the above-captioned action has been scheduled. At the hearing Defendant Taschner Textile Industries, LLC will move for Summary Judgement. You are encouraged to attend.

You have the option to appear at the hearing using remote communication technology such as video conferencing or teleconferencing. Please contact the office of the Master in Equity at 803-628-3930 prior to the time of the hearing for further details.

PROCEEDING: Motion for Summary Judgement  
DATE: January 12, 2021  
TIME: 9:00 a.m.  
LOCATION: Historic York County Courthouse, 2 South Congress Street, York, South Carolina 29745.

December 1, 2020  
Rock Hill, South Carolina

s/ J. Nathaniel Pierce  
Morton & Gettys, LLC  
J. Nathaniel Pierce, SC Bar No. 102803  
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CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing Notice of Hearing was served upon counsel of record listed below on the 1<sup>st</sup> day of December 2020, via York County's E-Filing and E-Service system as follows:

John Martin Foster  
Attorney for Plaintiff Robert H. Sarn

Michael K. Hatch  
Attorney for Defendant City Electric Supply Company

s/ J Nathaniel Pierce  
J. Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

December 1, 2020  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2020 Dec 01 3:32 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA }  
  }  
COUNTY OF YORK                  }

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

ELECTRONICALLY FILED - 2021 Jan 21 9:28 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

---

MEMORANDUM IN OPPOSITION  
TO MOTIONS FOR SUMMARY JUDGMENT

C.A. No. 2019-CP-46-01446

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,  
and TÄSCHNER TEXTILE INDUSTRIES, LLC,

Defendants.

---

AVAILABILITY OF SUMMARY JUDGMENT

This action was filed April 25, 2019. After considerable litigation over the propriety of service on TÄSCHNER TEXTILE INDUSTRIES, LLC, that Defendant's Answer was filed June 4, 2020. TÄSCHNER's Motion for Summary Judgment was filed October 6, 2020.

The Plaintiff served Requests for Production on TÄSCHNER dated September 3, 2019. (Copy attached and incorporated.) By Stipulation filed June 1, 2020, counsel for TÄSCHNER and the Plaintiff stipulated as follows:

1. Plaintiff filed the original complaint in this Court against the Defendant(s) designated as JOHN DOE and RICHARD ROE, to which the Defendant TÄSCHNER TEXTILES INDUSTRIES, LLC has excepted on the ground that it is the intended and actual Defendant.
2. To cure the defect of parties excepted to, the Plaintiff proposes to amend the Complaint as shown on the attached and incorporated Amended Complaint.
3. If the amendment requested is allowed, the caption in this action shall be

changed to the following: “ROBERT H. SARN, Plaintiff, vs. JAMES C. RHEA, III, CITY ELECTRIC SUPPLY COMPANY, a Florida corporation, and TÄSCHNER TEXTILES INDUSTRIES, LLC, Defendants.”

The Plaintiff’s Requests for Production remain unanswered.

The Plaintiff’s Deposition was taken September 11, 2020. At that Deposition, documents were produced and discussed for the first time herein. (Copy of Deposition is filed separately due to size; referenced documents attached and incorporated.)

On October 6, 2020 and in response to the documents produced at deposition, the Plaintiff subpoenaed documents from Southern Commercial Real Estate and attorney Alton Hyatt. The documents received in response shed only a partial light on the documents produced at deposition.

By Response filed January 4, 2021, the Defendant CITY ELECTRIC SUPPLY COMPANY concurred in the Motion for Summary Judgment filed by TÄSCHNER and moved for that relief on its own.

On January 11, 2021, the Plaintiff served new Request for Production on all Defendants. Our Supreme Court has held:

“In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party.” *David v. McLeod Reg’l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Because summary judgment is a drastic remedy, it must not be granted until the opposing party has had a “full and fair opportunity to complete discovery.” *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham [v. Blue Cross & Blue Shield of S.C., Inc.]*, 349 S.C. at 362, 563 S.E.2d at 333 [2002].

[*Evening Post Publ’g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (S.C. 2011)]

Our Court of Appeals has held:

The purpose of summary judgment is to expedite the disposition of a case that does not require the services of a factfinder. *Dawkins v. Fields*, 354 S.C. 58, 69,

580 S.E.2d 433, 438 (2003). "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.* at 69, 580 S.E.2d at 439. "Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the application of the law." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000).

[*Gary v. Askew*, 417 S.C. 232, 239, 789 S.E.2d 94, 98 (Ct.App. 2016), *reh'g denied* (Aug 17, 2016)]

Discovery in this matter is not complete, as recited above. Documents were produced at SARN's deposition which were not in the Plaintiff's possession. There is thus every indication that the Defendants may be in possession of other documents relevant to this case.

#### BASIS OF SUIT

In the alternative to the argument above, the Plaintiff sets out the matter below:

The Plaintiff understands that both TÄSCHNER and CITY ELECTRIC SUPPLY COMPANY move for summary judgment on legal grounds. Counsel for Plaintiff further understands that any Motion by CITY ELECTRIC SUPPLY COMPANY not been set for argument. The Plaintiff opposes on the grounds stated below:

1. The Plaintiff, ROBERT SARN, owns Rental Court, a private road located in Rock Hill off Constitution Boulevard. Rental Court is the remaining property after development of the original tract containing what is now seven (7) tracts, each accessed by Rental Court. A copy of the 1999 plat and York County Tax Map showing that division are hereto and incorporated in the Complaint and in TÄSCHNER's Motion as Exhibit "A".
2. The Defendant CITY ELECTRIC SUPPLY COMPANY (hereafter also "CITY ELECTRIC") now is, and at all times relevant to this action was, a the owner of that tract abutting Rental Court and designated as Tax Map No. 596-04-01-005.
3. The said real property of CITY ELECTRIC was conveyed to it by Deed of Saxon Real Estate, Inc. recorded February 9, 2015 in Record Book 14660 at Page 197; Saxon Real Estate, Inc. was deeded the said real property by ROBERT H. SARN recorded December 11, 2006 in Record Book 8649 at Page 10.

4. The said real property of TÄSCHNER was conveyed to it by Deed of J.D. Properties of the Carolinas, LLC dated December 29, 2017 and recorded January 3, 2018 in Record Book 16771 at Page 260; J.D. Properties was deeded the said real property by ROBERT H. SARN dated November 7, 2008 and recorded December 11, 2008 in Record Book 10451 at Page 295.
5. In the said Deed from SARN the following words occur in the Legal description of the real property conveyed:

Grantor covenants . . . that Grantor, until such time as the Easement Area is dedicated for use as a public right of way, shall keep the same in such a state of repair and condition as is commensurate with the first class nature of the Grantor's development and as so as to allow the Grantee the full benefit and use of the Easement.

6. The Plaintiff as Grantor in the Deed quoted from above does not dispute his responsibility under the words so quoted.
7. It is, however, long recognized law in this State that the owner of the easement or dominant estate, has a duty to keep the easement in repair.

In the absence of an agreement, the . . . owners of the servient tenement, are under no duty to maintain and repair the easement represented by the gravel road for the benefit of the dominant tenement owned by [the Appellant]. *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821 (1922); *Carson v. Jackson Land & Mining Co.*, 90 W.Va. 781, 111 S.E. 846 (1922). Ordinarily, the owner of an easement has the duty to keep it in repair. *Capers v. Fri*37 S.E.2d 888, 891 (Ct.App. 1985).]

8. The same principle is stated in the older case of *Capers v. Fripp*, Rice 224, 24 S.C.L. 224 (1839), the Court approving the charge of the Circuit Judge as follows:

He who used the way must repair it, or bear the inconvenience; . . .  
[*Id.*, 24 S.C.L. at 226.]

9. The redrafted section of AMERICAN JURISPRUDENCE 2D on point states the rule as follows:

It is not only the right but the duty of the owner of an easement to keep it in repair; the owner of the servient tenement is under no duty to maintain or repair it, in the absence of an agreement therefor. Thus, the duty to maintain an easement in a safe condition to prevent injuries to third parties generally rests on the owner of the dominant estate, unless:

(1) there is an agreement requiring the servient owner either solely or concurrently to maintain and control the easement; or

(2) the evidence indicates that the servient owner affirmatively and voluntarily assumes responsibility for maintaining the easement in a safe condition as to third parties.

[25 AM.JUR.2D *Easements and Licenses* § 94 (09/2002); formatting and underling added; footnotes omitted.]

10. By his action, SARN seeks contribution for repairs and maintenance performed. He has, without question, undertaken the duty. He has not released the Defendant from that duty.
11. The same commentators of AMERICAN JURISPRUDENCE 2D state, in their summation of the law on contracts that:

It is a general rule that contracting parties are presumed to contract in reference to the existing law; indeed they are presumed to have in mind all the existing law relating to the contract, or to the subject matter thereof. Thus it is commonly said that all . . . settled law of the land at the time a contract is made become a part of it and must be read into it just as if an express provision to that effect were inserted therein, except where the contract discloses a contrary intention.

[17A AM.JUR.2D *Contracts* § 381 (09/2002); footnotes omitted but citing *McCreery v. Davis*, 44 S.C. 195, 22 S.E. 178 (18\_\_).]

12. The rules for the construction of deeds are essentially those applicable to other written instruments and to contracts generally. 23 AM.JUR.2D *Deeds* § 195 (09/2002);
13. The Defendant's responsibility for his equitable contribution to repairs or maintenance of the easement known as Rental Way has never been waived – either expressly or by implication.

CLAIM FOR SUMMARY JUDGMENT

ELECTRONICALLY FILED - 2021 Jan 21 9:28 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

14. Against the above conclusion, the Movant(s) urge the language in that “Grant of Easement and Right of Way” dated on its face November 6, 2008 and recorded January 29, 2009 (Exhibit H to TÄSCHNER’s Motion). That document states, in relevant part:

By signing this Agreement, Robert H. Sarn, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost and maintenance of said private road.

15. The same document also states, in relevant part:

Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sarn, his heirs and assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

16. The Plaintiff contends that the language quoted above effectively negates the first quoted language on which the Movant relies.
17. In his deposition, SARN testified to his attempt to revoke this document after signing and the closing attorney’s refusal to honor that revocation. [Deposition of 09/11/20, p.55,l. 18 – p.56, l. 4; p.57,l. 18 – 24]
18. This narration is confirmed by the language of Foster’s fax letter of 11/20/08, and by Mark Mayfield’s e-mail of 11/10/08 to Doug Kennedy of CITY ELECTRIC on the same date, copies of which are attached and incorporated. The burden of the e-mail is that [the electrical contractor referenced therein had agreed to share the cost of road improvement.
19. In addition to the above, the Plaintiff notes that there is no recited consideration for the said “Grant of Easement and Right of Way”. [Deposition of 09/11/20, p.93,l.9 – 13]
20. The Plaintiff notes that there is no evidence of SARN’s agreement, or that of his counsel, to the recordation of this “Grant of Easement and Right of Way”. [Deposition of 09/11/20, p.87, l. 3 – p.10.]
21. In the same regard, the Plaintiff notes that there is no evidence of intent that the said “Grant of Easement and Right of Way”, if valid, was intended to benefit any persons other than the

other party thereto, J.D. Properties of the Carolinas, LLC, and its successors. [Deposition of 09/11/20, p.93, l.9 – 13]

22. The Plaintiff notes that there is no evidence of SARN's knowledge of the recordation of the "Grant of Easement and Right of Way" prior to his Deposition of September 11, 2020. [Deposition of 09/11/20, p.85, l. 4 – 7]
23. With this Memorandum, the Plaintiff submits a copy of the Owner's Title Insurance Policy issued by Mr. Hyatt, the closing attorney [SAdd 43 – 50, attached hereto and incorporated herein.] In Schedule B- Part 1 of that Title Policy, mention is made only of the standard language contained in the deed into J.D. Properties of the Carolinas, LLC; no mention is made and no coverage is stated as to the language of the purported "Grant of Easement and Right of Way". Thus, the certifying attorney did not offer J.D. Properties any coverage for the language of the said "Grant of Easement and Right of Way". This lack is in confirmation of SARN's revocation of that document.
24. Our Supreme Court has stated the rule as to a grant of summary judgment:

Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law. *Id.*; Rule 56(c), SCRPC. "When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Fleming*, 350 S.C. at 493–94, 567 S.E.2d at 860 (citation omitted). In order to withstand a motion for summary judgment 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. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In cases requiring a heightened burden of proof, the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment. *Id.* at 330–31, 673 S.E.2d at 803. [Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).]

25. By any standard, the Plaintiff has met the required burden to defeat a grant of summary judgment in this action. The Plaintiff requests judgment accordingly.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

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Rock Hill, SC 29731-6106

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January 21, 2021

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2021 Jan 21 9:28 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA ]  
 ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

ELECTRONICALLY FILED - 2021 Jan 21 9:28 AM - YORK - COMMON PLEAS - CASE#2019CP4601446

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CERTIFICATE OF SERVICE

C.A. No. 2019-CP-46-01446

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation, and  
TÄSCHNER TEXTILE INDUSTRIES, LLC”,

Defendants.

---

The undersigned counsel herein certifies that, pursuant to Rule 5(b)(1), S.C.R.C.P, on January 21, 2021 of the served copies of the following pleadings, documents or papers in the above-captioned and numbered civil action:

Memorandum in Opposition to Motions for Summary Judgment; and  
This Certificate of Service.

the original of which Certificate was sent on the same date to be filed with the Clerk of the Court for the Court named above,

by e-mail service through the South Carolina Statewide E-Filing system; or

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no

office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

Michael K. Hatch.  
Costner Law Office, PLLC  
1028 Tabard Lane  
Matthews, NC 28104

J. Nathaniel Pierce  
Morton & Gettys  
Attorneys for Respondent  
Post Office Box 707  
Rock Hill, S.C. 29731

Daniel J. Ballou  
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Attorneys for Respondent RHEA  
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/s/ John Martin Foster  
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SC Bar No. 2086

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January 21, 2021

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2021 Jan 21 9:28 AM - YORK - COMMON PLEAS - CASE#2019CP4601446



DATE AND TIME: To be set by the Clerk of the Court,  
or as soon thereafter as counsel may be heard.

DATE AND TIME: To be set by the Clerk of the Court,  
or as soon thereafter as counsel may be heard.

PLACE: York County Historical Courthouse  
Equity Court  
2 South Congress Street  
York, South Carolina 29745,  
or at such other place as the Court or Clerk may designate

Pursuant to Rule 59, S.C.R.C.P., the Plaintiff, by and through his attorney, moves this Court:

For an Order reopening the Order for Summary Judgment issued by this Court and filed April 1<sup>st</sup>, 2021, amending the relevant findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper.

on the grounds that the Order of the Court is contrary to law and the evidence as shown at the hearing, on the following bases:

1. In his Memorandum opposing the grant of summary judgment, the Plaintiff raised the issue of incomplete discovery in this action. His Memo stated:

Discovery in this matter is not complete, as recited above. Documents were produced at SARN's deposition which were not in the Plaintiff's possession. There is thus every indication that the Defendants may be in possession of other documents relevant to this case.

2. In its Order of April 1<sup>st</sup>, the Court states:

Last, Plaintiff seeks to continue this motion for further discovery. Since Plaintiff has denied the existence of any other agreements regarding this easement, I see no reason to delay this motion for the parties discovery to conduct further discovery. *See Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). (The opposing party

must show that continued discovery will uncover additional relevant evidence).

3. The Court accurately states some language of *Baughman, supra*; that case also states, as its general principal as follows:

Since it is a drastic remedy, summary judgment "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975); *see also Holloman v. McAllister*, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked"). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. 10A Wright & Miller, FEDERAL PRACTICE AND PROCEDURE § 2741, p. 543 (1983); 6 MOORE'S FEDERAL PRACTICE p 56.02, p. 56-39 (2d ed. 1990); *see, e.g., First Chicago Int'l v. United Exchange Co.*, 836 F.2d 1375 (D.C.Cir.1988); *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir.1985); *Tyler v. City of Enterprise*, 521 So.2d 951 (Ala.1988); *Gangadean v. Leumi Fin. Corp.*, 13 Ariz.App. 534, 478 P.2d 532 (1970); *Commercial Bank of Kendall v. Heiman*, 322 So.2d 564 (Fla.Dist.Ct.App.1975); *Board of Education v. Van Buren & Firestone, Architects, Inc.*, 165 W.Va. 140, 267 S.E.2d 440 (1980); *cf. Rule 56(f), S.C.R.C.P. [Id., 306 S.C. 112, 410 S.E.2d \_\_\_; underlining added.]*

4. More basically, the party opposing summary judgment cannot fairly be required to opine as to the nature of discovery that would be produced by the responses to discovery.
5. The Court has construed the cited deed language to preclude the Plaintiff's claim for contribution. The rule for construction of a contract is well settled in our law:

In construing and determining the effect of a written contract, the intention of the parties and the meaning are gathered primarily from the contents of the writing itself, or, as otherwise stated, from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed.

6. The Court reads the language it cites to not only state an intention to pay for the road

paving, but to preclude the possibility for the Plaintiff to seek contribution. Contribution, as has been argued, lies on all owners of the has construed the cited deed language to preclude the Plaintiff's claim for contribution. This conclusion is not present in the documents construed.

7. Thus, the language in that "Grant of Easement and Right of Way" dated on its face November 6, 2008 and recorded January 29, 2009 (Exhibit H to TÄSCHNER's Motion). That document states, in relevant part:

By signing this Agreement, Robert H. Sam, his heirs and/or assigns, hereby agrees to be fully responsible for the total cost and maintenance of said private road.

8. The same document also states, in relevant part:

Any damage that may occur to the use of this easement or right of way which runs across the land of J.D. Properties of the Carolinas, LLC, shall not be the responsibility of Robert H. Sam, his heirs and assigns, including, but not limited to trees, natural occurrences, debris, or any other damage that may occur that is not the direct result of J.D. Properties of the Carolinas, LLC, its successors or assigns.

9. The only mechanism to conform the two sets of language above is to assume a clear split between present repair and future.

10. This conclusion is in line with the clear precedent of this State. Thus:

In the absence of an agreement, the Tompkinses, as owners of the servient tenement, are under no duty to maintain and repair the easement represented by the gravel road for the benefit of the dominant tenement owned by Hayes. *Richardson v. Jennings*, 184 N.C. 559, 114 S.E. 821 (1922); *Carson v. Jackson Land & Mining Co.*, 90 W.Va. 781, 111 S.E. 846 (1922). Ordinarily, the owner of an easement has the duty to keep it in repair. *Capers v. Fripp*, S.C.L. (Rice) 224 (1839); 25 Am.Jur.2d Easements and Licenses § 85 at 491 (1966).

[*Hayes v. Tompkins*, 287 S.C. 289, \_\_\_, 337 S.E.2d 888, 891 (Ct.App. 1985)]

11. The Plaintiff requests relief accordingly.

Counsel for the Movant is not required to attempt in good faith to resolve the matter contained in this Motion by reason of the dispositive nature thereof.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rules and Statutes, the records of these civil actions, and any Supporting Memorandum which the Movant may submit herein.

Respectfully submitted,

/s/ John Martin Foster  
Attorney for Plaintiff  
S.C. Bar No. 2086

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April 12, 2021

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Robert H. Sarn,

Plaintiff,

v.

James C. Rhea, III; City Electric Supply Company; John Doe, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title, or interest in, or lien upon, the entity designated as "Taschner Textiles Industries, LLC"; Richard Roe, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "Taschner Textile Industries, LLC,"

Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Case Number: 2019-CP-46-01446

**MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S MOTION TO ALTER OR  
AMEND**

The Defendants, Täschner Textiles Industries, LLC ("TTI") and James C. Rhea, III ("Rhea") (collectively "Defendants"), through the undersigned counsel, responds to Plaintiff Robert H. Sarn's ("Plaintiff") Motion to Alter or Amend Judgment and would show unto this Honorable Court:

**STANDARD OF REVIEW**

Grant or denial of motions under Rule 59 rest within the discretion of the trial court. *See Brinkley v. South Carolina Department of Corrections*, 386 S.C. 182, 687 S.E.2d 54 (Ct. App. 2009).

## ARGUMENT

Plaintiff moves this Court for an Order amending its grant of summary judgment to TTI and Rhea. In his Motion to Alter or Amend Judgment, Plaintiff alleges two grounds for relief: (1) incomplete discovery bars summary judgment and (2) the language of the operative documents allows Plaintiff the ability to demand contribution. For the reasons set forth below, Plaintiff is not entitled to the relief requested in his motion.

**1. Plaintiff cannot demonstrate that discovery will uncover additional relevant evidence, and Plaintiff did not pursue discovery diligently.**

Plaintiff cites *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1990) in support of his argument on incomplete discovery. The South Carolina Supreme Court did, in *Baughman*, state that summary judgment is a drastic remedy and should not be granted until the nonmoving party has had a full and fair opportunity to complete discovery. *See id.* However, the *Baughman* Court goes on to hold that if incomplete discovery is to bar summary judgment, the nonmoving party must (1) demonstrate a likelihood that further discovery will uncover additional evidence relevant to the issue and (2) demonstrate that he or she was not dilatory in seeking discovery on the issue. *Id.* The Plaintiff cannot demonstrate either prong.

Throughout the litigation of this case, Defendants relied solely on documents produced by Plaintiff, documents produced by third parties in response to subpoenas of which Plaintiff was provided copies, and documents available to the general public via the York County, South Carolina Register of Deeds Office. The same is true for the documents presented to the Plaintiff at his deposition as well as for the documents attached to Defendants' Motion for Summary Judgment. The operative documents are largely public records the Plaintiff himself signed in the course of real estate transactions.

Plaintiff admitted both at his deposition and through counsel at the summary judgment hearing that no other agreements regarding the maintenance of the road in question exist outside those presented to the Court. Rather than direct the Court to any specific discovery request or category of evidence that remains unresolved, Plaintiff speculates that “Defendants may be in possession” of other relevant documents. Plaintiff has utterly failed to demonstrate that additional discovery helps his cause or would alter the disposition of the matter and, therefore, summary judgment is appropriate.

Further, Plaintiff’s argument that documents his client testified to at a deposition somehow bars summary judgment does not stand to reason, especially when coupled with the fact Plaintiff did not serve *any* discovery requests on TTI until January 2021, days before the summary judgment hearing. Plaintiff’s own failure to conduct discovery does not entitle him to avoid summary judgment based on incomplete discovery.

Based on the above, Plaintiff’s motion should be denied.

**2. Plaintiff clearly assumed the responsibility of maintaining Rental Court.**

Plaintiff next argues the language in the Grant of Easement and Right of Way (“Easement”) does not preclude his demand for equitable contribution. A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments. *Binkley v. Rabon Creek Watershed Conversation Dist. of Fountain Inn*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001). When interpreting a deed, the primary rule of constructing the deed is to ascertain and effectuate the parties’ intentions, as long as those intentions do not contravene the law or public policy. *See Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 143 S.E.2d 803 (1965). The intention of the grantor must be found within the four corners of the deed. *Windham v. Riddle*, 381 S.C. 192, 672 S.E.2d 578 (2009) (citing *Gardner v. Mozingo*, 293 S.C. 23, 358 S.E.2d 390 (1987)).

Plaintiff then argues that the Easement is ambiguous and should be construed to allow Plaintiff to circumvent his promise to maintain Rental Court. Plaintiff quotes a provision of the Easement that provides “[a]ny damage that may occur to the use of this easement or right of way . . . shall not be the responsibility of Robert H. Sarn, his heirs and assigns, including, but not limited to trees, natural, natural occurrence, debris . . . .” While this language may indicate Plaintiff is not responsible for “damage that may occur” to Rental Court, it does not contradict Plaintiff’s responsibility to *maintain* Rental Court, which are precisely the expenses he seeks to recover in this lawsuit.

Nor does Plaintiff’s claim improve through the lens of *Tompkins*. In *Tompkins*, the South Carolina Supreme Court held that the owner of a servient tenement is not obligated to maintain and repair an easement benefitting the dominant tenement, *absent an agreement to the contrary*. See *Hayes v. Tompkins*, 287 S.C. 289, 337 S.E.2d 888 (Ct. App. 1985). Here, there is an agreement to the contrary – an agreement Plaintiff signed as an inducement to close a \$570,000.00 real estate transaction. *Tompkins* is not only unpersuasive, but also wholly inapplicable.

The court need look no further than the language contained in the recorded deeds and grants of easements and rights of way to determine the intention of the parties. In the deed from himself to JDPC, Plaintiff agrees to “keep the [Easement] in such a state of repair and condition as is commensurate with the first class nature of [the] development” until the Easement is dedicated as a public right of way. The deed from JDPC to TTI contains identical language. Plaintiff went a step further than the language in the deed to JDPC, and in the Grant of Easement and Right of Way he expressly undertook the obligation to pay “the total cost of upkeep and maintenance” of Rental Court. Plaintiff has no basis in law or equity to foist the responsibility he voluntarily assumed upon the Defendants.

**WHEREFORE**, TTI prays that the Court deny Plaintiff's Motion to Alter or Amend, grant TTI reasonable attorneys' fees in responding to this matter, and for any other and further relief this Court finds just and appropriate.

Respectfully submitted,

*s/ J. Nathaniel Pierce*  
Morton & Gettys, LLC  
Daniel J. Ballou, SC Bar No. 5935  
J. Nathaniel Pierce, SC Bar No. 102803  
Attorneys for Rhea and TTI  
P.O. Box 707, Rock Hill, SC 29731  
T: 803.366.3388  
F: 803.366.4044  
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April 23, 2020  
Rock Hill, South Carolina

ELECTRONICALLY FILED - 2021 Apr 23 2:03 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

CERTIFICATE OF SERVICE  
2019-CP-46-01446

The undersigned certifies that the foregoing memorandum in opposition of Plaintiff's motion to alter or amend was served upon counselors of record on the 23<sup>rd</sup> day of April, 2021 via the York County, South Carolina e-filing system as follows:

Michael Hatch for City Electric Supply Company

John Foster for Robert H Sam

Daniel Ballou for James C Rhea, III

s/ J. Nathaniel Pierce  
J Nathaniel Pierce  
Attorney for Täschner Textiles Industries, LLC

ELECTRONICALLY FILED - 2021 Apr 23 2:03 PM - YORK - COMMON PLEAS - CASE#2019CP4601446

STATE OF SOUTH CAROLINA ]  
  ]  
COUNTY OF YORK                  ]

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

---

FIRST SET OF REQUESTS FOR PRODUCTION  
PROPOUNDED BY PLAINTIFF

C.A. No. 2019-CP-46-01446

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,

CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,

JOHN DOE, a fictitious person representing the class of all unknown adult, mentally competent, unimprisoned, non-military persons, who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILES INDUSTRIES, LLC"; and

RICHARD ROE, another fictitious person representing the class of all unknown persons who are either: under the age of eighteen (18) years, imprisoned, or in the Armed Forces, and who claim any right, title or interest in, or lien upon, the entity designated as "TASCHNER TEXTILE INDUSTRIES, LLC",

Defendants.

---

To: The Defendant TASCHNER TEXTILE INDUSTRIES, LLC  
a/k/a TÄSCHNER TEXTILE INDUSTRIES, LLC

J. Nathaniel Pierce  
SC Bar No. 102803  
Morton & Gettys  
Attorneys for Respondent  
Post Office Box 707  
Rock Hill, S.C. 29731  
803 366-3388  
803 366-4044  
[Nate.Pierce@mortongettys.com](mailto:Nate.Pierce@mortongettys.com)

YOU ARE HEREBY REQUESTED, pursuant to Rule 34, S.C.R.C.P.:

To produce and permit the party making this Request, or someone acting on that party's behalf, to inspect and copy the following designated documents, or electronically stored information (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the

respondent through detection devices into reasonably usable form),

OR

To inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b), S.C.R.C.P., and which are in the possession, custody or control of the party or parties upon whom the request is served,

OR

To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), S.C.R.C.P.

#### DIRECTIONS

A. Place for Production. The said documents and/or things shall be made available to the above-named Requesting Party, at the office and address of attorney for the Requesting Party, undersigned.

B. Identification of respondent. Identify each person responding to each request, including the length of time the respondent has held his/her position with the respondent, his, her or its agent, servant or employee, and the duties performed for the said respondent, his, her or its agent, servant or employee. If more than one person responds or participates in the preparation of the response to a request, each person responding or participating in preparation of the answers to each shall be similarly identified. The person under whose control or supervision these responses are prepared, shall be similarly identified.

C. Accompanying information. For each such request the following further information shall be given:

- i. The type of document (*e.g.*, installment contract, letter, etc.);
- ii. The date the document bears;
- iii. The date on which the document was prepared;
- iv. The identity of the person(s) who prepared the document;
- v. The identity of each signatory to the document;
- vi. The person(s) for whom the document was prepared, and each recipient;
- vii. The title of the document, or some other means of identifying it;
- viii. The present location of the document and its present custodian;
- ix. If the original document has been destroyed, the date and reason for or circumstances under which it was destroyed;
- x. The administrative unit of the respondent, his, her or its agent, servant or employee, which maintains the documents provided;
- xi. The date on which the response was prepared;
- xii. A designation of which documents are provided in answer to that request. You may wish to number each document so that you can refer to it by number;
- xiii. Where an individual request calls for a response which involves more than one part, a document provided in answer to each part of the request should be clearly designated so that it is clear to which part of the request it is provided.

D. Legibility and clarity of documents requested. In order to minimize duplication

of time and effort in the discovery process, it is specifically requested that each and every document in response to the requests be proofread by a reasonable employee of the Responding Party or Parties to ensure that all text, figures, etc. on copies are clearly legible and that all abbreviations and any symbols are intelligible to any person who may have occasion to read the responding documents.

E. Sources of information for response. You shall respond to each request from all sources and all information in the respondent's possession or otherwise available from the respondent's information from his, her or its officers, employees, servants, agents, representatives, attorneys, investigators, or consultants and information which is known by each of them.

F. Inability to provide document(s). If you cannot provide any or all of the documents requested, after exercising due diligence to do so, provide any documents available and state your inability to provide the documents or the remainder of them (including a list of sources which were consulted for a response), and state whatever information or knowledge you have concerning the present location of the document(s) and the identity of its present custodian.

G. Continuing status of request. Each document request is considered continuing, and if respondent obtains further or different information, directly or indirectly, from the time the answers are served until the time of trial, which renders its response to one of them incomplete or inaccurate, respondent is obligated to serve amended responses on the undersigned.

H. Clarification of requests. If the Responding Party or Parties feels or feel that any of the document requests is unclear or ambiguous in any way, that party or parties should notify the attorney for the Requesting Party so that the item(s) may be properly clarified prior to production of the documents.

I. Claim of privilege, work-product or confidentiality. If any document which is required to be produced is claimed to be privileged or to constitute work-product or to be otherwise confidential, state the grounds upon which such privilege, work-product or confidentiality is being asserted, and include a brief description of the document, identifying its author and persons receiving copies thereof.

J. Protection of Documents or Things to be Inspected. If the original document(s) are produced and delivered to the Requesting Party, the said document(s) to be inspected and photographed (or xeroxed) will be duly safeguarded and returned to you with reasonable dispatch on completion of the duplication process, and without harm to the originals.

K. Time for Production. Service of a written response to this Request is due from you, in accordance with the provisions of the above-referenced Rule, within thirty (30) days of the date of service of this request.

### DEFINITIONS

For the purposes of these requests, the following definitions apply:

A. The terms "document" or "documents" shall refer to all writings and recorded materials, of any kind, that are or have been in the possession, control or custody of the

respondent of which the respondent has knowledge, whether originals or copies. Such writings or recordings include but are not limited to:

advertisements, agreements, applications, appraisals, bank statements, bills of sale, books, bulletins, charts, circulars, computer print-outs or discs or tapes, computer programs, confirmations, contracts, correspondence, desk calendars, diagrams, diaries, documents, drawings or other visual materials, e-mails, envelopes, file memoranda, files, forecasts, forms, graphs, intra- or inter-office memoranda, journals or other books of account, ledgers, letters, lists, logs, manuals, minutes, note-books, notes, opinions or reports of consultants, orders, packaging, pamphlets, papers, periodicals, photographs or microfilm, plans, promissory notes, records, reports and/or summaries of interviews or conversations, reports and/or summaries of investigations, reports, research material, rough drafts, statements or expressions of policy, statistical computations, studies, tax invoices, telegrams, transcripts, voice or phono-records, working papers,

and other data compilations from which information may be obtained, of all natures and kinds whether handwritten, typed, printed, mimeographed, xeroxed, photocopied or other matter are written, printed or recorded. If any document(s) asked to be produced, identified, attached or described is not in your possession or subject to your control, give the reason therefor and its present location and the identity of the present custodian of the document and of any copy of summary thereof.

B. "Person" shall mean any natural person, group of natural persons acting in a collegial capacity (*e.g.*, a committee or board of directors), corporation, partnership, association, joint venture, labor union, and any other incorporated or unincorporated business, governmental, public or social entity.

C. "Communication" shall mean any or all transmittals of information, whether oral or reduced to writing, whether hand-written, type-written, tape-recorded, or produced by electronic data processing, irrespective of how conveyed (*e.g.*, telephone, telegraph, United States mail, foreign mail, private mail or courier service, facsimile or "fax" transmittal, face-to-face contact), including but not limited to: inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of verbal intercourse, whether oral or written.

D. "Relating to" or "regarding" shall mean relating to, regarding, consisting of, referring to, reflecting, manifesting, prepared in connection with, describing, containing, attesting to, or being in any way legally, logically, or factually connected with the matter discussed, whether directly or indirectly.

E. When requested to "identify" or provide information as to the "identity" of a person, state his/her full name, occupation, position, business relationship to respondent, currently or at the relevant period, and current or last known home and work addresses and telephone numbers, current or last known employment address, and social security number.

F. The "relevant period" shall mean the period from January 1, 2017 to date.

G. When used without qualification, "the transaction" or "the subject transaction" means the relation or relations, dealings, or communications, whether business or personal, between the Responding Party or Parties on the one hand and the Plaintiff and/or any of the Defendants, or any agents, servants or employees thereof, on the other hand.

DOCUMENTS REQUESTED

1. Any and all documents regarding the subject transaction and/or regarding any subsequent actions or events regarding the subject matter of the transaction.
2. Any and all documents regarding correspondence and communications between the parties, or any of them.
3. Any and all documents of any kind whatsoever relating to this civil action.
4. Any and all documents obtained pursuant to any *Subpoena* in this civil action.
5. Any and all communications by, with, or to the Responding Party relating to the existence of this civil action.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6106

803 324-8100  
803 324-8109: Fax  
*jmfoster@comporium.net*

September 3, 2019

Rock Hill, South Carolina



dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

J. Nathaniel Pierce  
Morton & Gettys  
Attorneys for Respondent  
Post Office Box 707  
Rock Hill, S.C. 29731

Michael K. Hatch.  
Hatch Law, LLC  
P.O. Box 2442  
Rock Hill, SC 29732-4442

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

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Rock Hill, SC 29730

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Rock Hill, SC 29731-6101

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September 3, 2019

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]  
  ]  
COUNTY OF YORK                  ]

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

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FIRST SET OF REQUESTS FOR PRODUCTION  
PROPOUNDED BY PLAINTIFF

C.A. No. 2019-CP-46-01446

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ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,  
TÄSCHNER TEXTILE INDUSTRIES, LLC”,

Defendants.

---

To: The Defendant JAMES C. RHEA and  
Daniel J. Ballou  
SC Bar No. 5935  
Morton & Gettys  
Attorneys for Respondent  
Post Office Box 707  
Rock Hill, S.C. 29731  
803 366-3388  
803 366-4044  
Dan.Ballou@mortongettys.com

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- vi. The person(s) for whom the document was prepared, and each recipient;
- vii. The title of the document, or some other means of identifying it;
- viii. The present location of the document and its present custodian;
- ix. If the original document has been destroyed, the date and reason for or circumstances under which it was destroyed;
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F. Inability to provide document(s). If you cannot provide any or all of the documents requested, after exercising due diligence to do so, provide any documents available and state your inability to provide the documents or the remainder of them (including a list of sources which were consulted for a response), and state whatever information or knowledge you have concerning the present location of the document(s) and the identity of its present custodian.

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pamphlets, papers, periodicals, photographs or microfilm, plans, promissory notes, records, reports and/or summaries of interviews or conversations, reports and/or summaries of investigations, reports, research material, rough drafts, statements or expressions of policy, statistical computations, studies, tax invoices, telegrams, transcripts, voice or phono-records, working papers,

and other data compilations from which information may be obtained, of all natures and kinds whether handwritten, typed, printed, mimeographed, xerographed, photocopied or other matter are written, printed or recorded. If any document(s) asked to be produced, identified, attached or described is not in your possession or subject to your control, give the reason therefor and its present location and the identity of the present custodian of the document and of any copy of summary thereof.

B. "Person" shall mean any natural person, group of natural persons acting in a collegial capacity (*e.g.*, a committee or board of directors), corporation, partnership, association, joint venture, labor union, and any other incorporated or unincorporated business, governmental, public or social entity.

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F. The "relevant period" shall mean the period from January 1, 2017 to date.

G. When used without qualification, "the transaction" or "the subject transaction" means the relation or relations, dealings, or communications, whether business or personal, between the Responding Party or Parties on the one hand and the Plaintiff and/or any of the Defendants, or any agents, servants or employees thereof, on the other hand.

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or any of them.

3. Any and all documents of any kind whatsoever relating to this civil action.
4. Any and all documents obtained pursuant to any *Subpoena* in this civil action.
5. Any and all communications by, with, or to the Responding Party relating to the existence of this civil action.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

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January 7, 2021

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA }  
  }  
COUNTY OF YORK              }

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

C.A. No. 2019-CP-46-01446

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ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,  
TÄSCHNER TEXTILE INDUSTRIES, LLC,

Defendants.

---

The undersigned counsel herein certifies that, pursuant to Rule 5(b)(1), S.C.R.C.P, on January 7, 2021 of the served copies of the following pleadings, documents or papers in the above-captioned and numbered civil action:

First Set of Requests for Production of Documents by Plaintiff; and  
This Certificate of Service.

the original of which Certificate was sent on the same date to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no

office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

Daniel J. Ballou  
Morton & Gettys  
Attorneys for Respondent RHEA  
Post Office Box 707  
Rock Hill, S.C. 29731

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

The Guardian Building  
223 East Main Street, Suite 520  
Rock Hill, SC 29730

Post Office Box 106  
Rock Hill, SC 29731-6101

803 324-8100  
803 324-8109: Fax  
jmfoster@comporium.net

January 7, 2021

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]  
  ]  
COUNTY OF YORK                  ]

IN THE COURT OF COMMON PLEAS  
  
SIXTEENTH JUDICIAL CIRCUIT

---

REQUESTS FOR PRODUCTION  
PROPOUNDED BY PLAINTIFF

C.A. No. 2019-CP-46-01446

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ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,  
TÄSCHNER TEXTILE INDUSTRIES, LLC”,

Defendants.

---

To: The Defendant TÄSCHNER TEXTILE INDUSTRIES, LLC  
J. Nathaniel Pierce  
SC Bar No. 102803  
Morton & Gettys  
Attorneys for Respondent  
Post Office Box 707  
Rock Hill, S.C. 29731  
803 366-3388  
803 366-4044  
[Nate.Pierce@mortongettys.com](mailto:Nate.Pierce@mortongettys.com)

YOU ARE HEREBY REQUESTED, pursuant to Rule 34, S.C.R.C.P.:

To produce and permit the party making this Request, or someone acting on that party's behalf, to inspect and copy the following designated documents, or electronically stored information (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form),

OR

To inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b), S.C.R.C.P., and which are in the possession, custody or control of the party or parties upon whom the request is served,

OR

To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying,

photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b), S.C.R.C.P.

### DIRECTIONS

A. Place for Production. The said documents and/or things shall be made available to the above-named Requesting Party, at the office and address of attorney for the Requesting Party, undersigned.

B. Identification of respondent. Identify each person responding to each request, including the length of time the respondent has held his/her position with the respondent, his, her or its agent, servant or employee, and the duties performed for the said respondent, his, her or its agent, servant or employee. If more than one person responds or participates in the preparation of the response to a request, each person responding or participating in preparation of the answers to each shall be similarly identified. The person under whose control or supervision these responses are prepared, shall be similarly identified.

C. Accompanying information. For each such request the following further information shall be given:

- i. The type of document (*e.g.*, installment contract, letter, etc.);
- ii. The date the document bears;
- iii. The date on which the document was prepared;
- iv. The identity of the person(s) who prepared the document;
- v. The identity of each signatory to the document;
- vi. The person(s) for whom the document was prepared, and each recipient;
- vii. The title of the document, or some other means of identifying it;
- viii. The present location of the document and its present custodian;
- ix. If the original document has been destroyed, the date and reason for or circumstances under which it was destroyed;
- x. The administrative unit of the respondent, his, her or its agent, servant or employee, which maintains the documents provided;
- xi. The date on which the response was prepared;
- xii. A designation of which documents are provided in answer to that request. You may wish to number each document so that you can refer to it by number;
- xiii. Where an individual request calls for a response which involves more than one part, a document provided in answer to each part of the request should be clearly designated so that it is clear to which part of the request it is provided.

D. Legibility and clarity of documents requested. In order to minimize duplication of time and effort in the discovery process, it is specifically requested that each and every document in response to the requests be proofread by a reasonable employee of the Responding Party or Parties to ensure that all text, figures, etc. on copies are clearly legible and that all abbreviations and any symbols are intelligible to any person who may have occasion to read the responding documents.

E. Sources of information for response. You shall respond to each request from all sources and all information in the respondent's possession or otherwise available from the

respondent's information from his, her or its officers, employees, servants, agents, representatives, attorneys, investigators, or consultants and information which is known by each of them.

F. Inability to provide document(s). If you cannot provide any or all of the documents requested, after exercising due diligence to do so, provide any documents available and state your inability to provide the documents or the remainder of them (including a list of sources which were consulted for a response), and state whatever information or knowledge you have concerning the present location of the document(s) and the identity of its present custodian.

G. Continuing status of request. Each document request is considered continuing, and if respondent obtains further or different information, directly or indirectly, from the time the answers are served until the time of trial, which renders its response to one of them incomplete or inaccurate, respondent is obligated to serve amended responses on the undersigned.

H. Clarification of requests. If the Responding Party or Parties feels or feel that any of the document requests is unclear or ambiguous in any way, that party or parties should notify the attorney for the Requesting Party so that the item(s) may be properly clarified prior to production of the documents.

I. Claim of privilege, work-product or confidentiality. If any document which is required to be produced is claimed to be privileged or to constitute work-product or to be otherwise confidential, state the grounds upon which such privilege, work-product or confidentiality is being asserted, and include a brief description of the document, identifying its author and persons receiving copies thereof.

J. Protection of Documents or Things to be Inspected. If the original document(s) are produced and delivered to the Requesting Party, the said document(s) to be inspected and photographed (or xeroxed) will be duly safeguarded and returned to you with reasonable dispatch on completion of the duplication process, and without harm to the originals.

K. Time for Production. Service of a written response to this Request is due from you, in accordance with the provisions of the above-referenced Rule, within thirty (30) days of the date of service of this request.

#### DEFINITIONS

For the purposes of these requests, the following definitions apply:

A. The terms "document" or "documents" shall refer to all writings and recorded materials, of any kind, that are or have been in the possession, control or custody of the respondent of which the respondent has knowledge, whether originals or copies. Such writings or recordings include but are not limited to:

advertisements, agreements, applications, appraisals, bank statements, bills of sale, books, bulletins, charts, circulars, computer print-outs or discs or tapes, computer programs, confirmations, contracts, correspondence, desk calendars, diagrams, diaries, documents, drawings or other visual materials, e-mails, envelopes, file memoranda, files, forecasts, forms, graphs, intra- or inter-office memoranda, journals or other books of account, ledgers, letters, lists, logs, manuals, minutes, note-books, notes, opinions or reports of consultants, orders, packaging,

pamphlets, papers, periodicals, photographs or microfilm, plans, promissory notes, records, reports and/or summaries of interviews or conversations, reports and/or summaries of investigations, reports, research material, rough drafts, statements or expressions of policy, statistical computations, studies, tax invoices, telegrams, transcripts, voice or phono-records, working papers,

and other data compilations from which information may be obtained, of all natures and kinds whether handwritten, typed, printed, mimeographed, xeroographed, photocopied or other matter are written, printed or recorded. If any document(s) asked to be produced, identified, attached or described is not in your possession or subject to your control, give the reason therefor and its present location and the identity of the present custodian of the document and of any copy of summary thereof.

B. "Person" shall mean any natural person, group of natural persons acting in a collegial capacity (*e.g.*, a committee or board of directors), corporation, partnership, association, joint venture, labor union, and any other incorporated or unincorporated business, governmental, public or social entity.

C. "Communication" shall mean any or all transmittals of information, whether oral or reduced to writing, whether hand-written, type-written, tape-recorded, or produced by electronic data processing, irrespective of how conveyed (*e.g.*, telephone, telegraph, United States mail, foreign mail, private mail or courier service, facsimile or "fax" transmittal, face-to-face contact), including but not limited to: inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegrams, advertisements, or other forms of verbal intercourse, whether oral or written.

D. "Relating to" or "regarding" shall mean relating to, regarding, consisting of, referring to, reflecting, manifesting, prepared in connection with, describing, containing, attesting to, or being in any way legally, logically, or factually connected with the matter discussed, whether directly or indirectly.

E. When requested to "identify" or provide information as to the "identity" of a person, state his/her full name, occupation, position, business relationship to respondent, currently or at the relevant period, and current or last known home and work addresses and telephone numbers, current or last known employment address, and social security number.

F. The "relevant period" shall mean the period from January 1, 2017 to date.

G. When used without qualification, "the transaction" or "the subject transaction" means the relation or relations, dealings, or communications, whether business or personal, between the Responding Party or Parties on the one hand and the Plaintiff and/or any of the Defendants, or any agents, servants or employees thereof, on the other hand.

#### DOCUMENTS REQUESTED

1. Any and all documents regarding the subject transaction and/or regarding any subsequent actions or events regarding the subject matter of the transaction.
2. Any and all documents regarding correspondence and communications between the parties,

or any of them.

3. Any and all documents of any kind whatsoever relating to this civil action.
4. Any and all documents obtained pursuant to any *Subpoena* in this civil action.
5. Any and all communications by, with, or to the Responding Party relating to the existence of this civil action.

/s/ John Martin Foster  
Attorney for Plaintiff  
SC Bar No. 2086

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January 7, 2021

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA ]  
 ]  
COUNTY OF YORK ]

IN THE COURT OF COMMON PLEAS  
SIXTEENTH JUDICIAL CIRCUIT

---

CERTIFICATE OF SERVICE

C.A. No. 2019-CP-46-01446

---

ROBERT H. SARN,

Plaintiff,

vs.

JAMES C. RHEA, III,  
CITY ELECTRIC SUPPLY COMPANY, a Florida corporation,  
TÄSCHNER TEXTILE INDUSTRIES, LLC,

Defendants.

---

The undersigned counsel herein certifies that, pursuant to Rule 5(b)(1), S.C.R.C.P, on January 7, 2021 of the served copies of the following pleadings, documents or papers in the above-captioned and numbered civil action:

Requests for Production of Documents by Plaintiff; and  
This Certificate of Service.

the original of which Certificate was sent on the same date to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and directed to the respective last known address(es) of those attorney(s) and/or persons set out below, or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's

dwelling place or usual place of abode with some person of suitable age and discretion then residing therein:

J. Nathaniel Pierce  
Morton & Gettys  
Attorneys for Respondent  
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January 7, 2021

Rock Hill, South Carolina

1 Robert H. Sarn, first being duly sworn, deposes and says  
2 as follows:  
3 Examination: (By Mr. Pierce)  
4 Q Good morning, Mr. Sarn. We were speaking a  
5 little bit before we went on the record. My name is Nate  
6 Pierce. This is Dan Ballou. We're both attorneys here at  
7 Morton and Gettys, and we represent Taschner Textile  
8 Industries, LLC, and Toy Rhea in this matter.  
9 Here with you is your attorney, Martin Foster, and  
10 the attorney for City Electric Service, Michael Hatch, is  
11 on the phone with us. Could you please state your full  
12 name and your current address?  
13 A Robert Sarn, Robert H. Sarn, 749 Knighton Hill  
14 Road, Rock Hill, South Carolina.  
15 Q Thank you. Have you ever had your deposition  
16 taken before, Mr. Sarn?  
17 A Once many years ago, maybe 20.  
18 Q As you know, it's an opportunity for attorneys  
19 to question fact witnesses or any witness about the facts  
20 of the case. Although this is a more informal setting  
21 than being in court, your testimony is just as important  
22 - important to be truthful in your testimony today, as  
23 your testimony today is subject to the penalties of  
24 perjury, if you were to not testify truthfully. Do you  
25 understand that your testimony today is subject to the

1 penalties of perjury?  
2 A Yes.  
3 Q Do you agree to be truthful in your testimony  
4 today?  
5 A Yes.  
6 Q Once we start the deposition today, you're not  
7 permitted to talk about the questions that have been asked  
8 or the answers that you've given with anybody. That  
9 includes your attorney. This extends to any breaks that  
10 we take.  
11 If we were to take a break and you were to confer  
12 with your attorney about the questions you've been asked  
13 or the answers that you've given, I would be authorized to  
14 ask you about those conversations that you've had with  
15 your attorney. Do you understand the rule that I've just  
16 explained to you?  
17 A Yes.  
18 Mr. Foster: May we place on the record  
19 that's during the deposition.  
20 Mr. Pierce: That is correct.  
21 Q Do you agree to abide by that rule?  
22 A Yes.  
23 Q We're going to be asking a lot of questions  
24 today. If you do not understand my question either  
25 because you can't hear me because of my mask or I'm not

1 speaking loud enough or you simply don't understand the  
2 way that I've phrased the question, do not direct your  
3 question for clarification to your attorney. Direct your  
4 clarification request to me. I'll rephrase the question  
5 as many times as I need to, to make sure that you  
6 understand what I'm asking. Do you understand that you  
7 can ask me to clarify a question that you do not  
8 understand?  
9 A Yes.  
10 Q Do you agree to let me know if you don't  
11 understand my question?  
12 A Yes.  
13 Q This is one I probably should have started with  
14 Shirley is taking down everything that we say. She'll be  
15 producing a transcript of every word that is spoken here  
16 today on the record. So all of our responses today need  
17 to be verbal. It's easy to slip in to shaking your head  
18 yes or nodding your head or saying uh-huh or un-huh. What  
19 we need are clear yes or no answers and any explanation  
20 that you would like to give so that Shirley can make a  
21 clean record.  
22 Along with that, we need to make sure that only one  
23 person is speaking at a time. So if you would allow me to  
24 finish my question, then I'll allow you to finish your  
25 answer. That way we're not speaking over each other for

1 the record. Do you understand that we need verbal answer  
2 today?  
3 A Yes.  
4 Q Do you understand that only one person needs to  
5 speak at a time today?  
6 A Yes.  
7 Q Do you agree to do your best to adhere to those  
8 rules?  
9 A Yes.  
10 Q If at any point today you need a break, as long  
11 as we're not in the middle of a question or the middle of  
12 an answer, we'll be happy to take a break if you need to  
13 use the restroom or get a glass of water. Again, the  
14 rules that we discussed earlier regarding the  
15 conversations about the questions and answers would apply  
16 to any breaks. Do you understand that you can ask me for  
17 a break if you need one?  
18 A Yes.  
19 Q Do you agree to ask me for a break if you need  
20 one?  
21 A Yes.  
22 Q Mr. Sarn, are you taking any prescription or  
23 other drugs that would impair your ability to understand  
24 my questions or to fully and truthfully answer my  
25 questions?

1 A No.  
2 Q Do you have any medical conditions that would  
3 interfere with you understanding my questions or fully an  
4 truthfully answering my questions?  
5 A No.  
6 Q Is there any other reason that you can think of  
7 that you could not understand my questions and fully and  
8 truthfully answer my questions?  
9 A No.  
10 Q How did you prepare for your deposition today?  
11 A I just went over my past records just to  
12 familiarize myself with everything that went on.  
13 Q Who did you discuss your deposition preparation  
14 with?  
15 A My attorney.  
16 Q And that's Martin Foster?  
17 A Yes.  
18 Q You said that you reviewed your past records.  
19 What records did you review?  
20 A Everything that pertained to this action.  
21 Q Mr. Sarn, we're going to talk a little about  
22 your background. Some of these questions might seem a  
23 little invasive, but we ask them of everybody. Could you  
24 please give us your age and your date of birth?  
25 A I'm 75 years old, December 29, 1944.

1 Q Would you state your current address again  
2 please?  
3 A 749 Knighton Hill Road, Rock Hill.  
4 Q How long have you lived there?  
5 A Approximately one year and two months.  
6 Q What were your addresses stretching back ten  
7 years from today's date? So prior to moving to your  
8 current address, where did you live?  
9 A I lived in Hollywood, South Carolina, on Park  
10 Island Road. Previous to that I lived in an apartment in  
11 West Ashley. Previous to that, I lived in Rock Hill in  
12 Hidden Forest.  
13 Q Can you give me an address? What was the  
14 address in Hollywood, South Carolina?  
15 A I can't remember the exact number, but it was  
16 Park Island Road.  
17 Q What was your address in West Ashley?  
18 A That I can't remember either.  
19 Q Do you remember the name of the apartment  
20 complex you lived in?  
21 A Offhand, no.  
22 Q Would you agree to find that information and  
23 provide it to your attorney?  
24 A Of course.  
25 Q When you lived in Rock Hill previously, what wa

1 your address?  
2 A I can't remember that either, but I can get tha  
3 to you.  
4 Q Thank you so much. So just for the record,  
5 would you agree to locate that information and provide it  
6 to your attorney?  
7 A Yes.  
8 Q Are you married?  
9 A No.  
10 Q Have you ever been married?  
11 A Yes.  
12 Q How many times?  
13 A Once.  
14 Q What is your ex-spouse's name?  
15 A Carol Sarn.  
16 Q How long were you two married?  
17 A Twenty-four years.  
18 Q Do you have any children?  
19 A Yes.  
20 Q How many?  
21 A Three.  
22 Q What are their names and ages?  
23 A Steven Sarn, 49; David Sarn, 46; Laura Sarn, 43  
24 Q Do your children live in Rock Hill or in York  
25 County?

1 A Yes.  
2 Q Can you tell me where each of them live, just  
3 the city?  
4 A They all live in Rock Hill. I can give you the  
5 street names.  
6 Q Please do.  
7 A My son lives on -- My son, David, lives on  
8 Ottawa Court or Ottawa Road. My son, Steve, lives on  
9 Deer Track Road. My daughter, Laura, lives on Knighton  
10 Hill Road.  
11 Q Outside of your children, do you have any other  
12 relatives that are related to you by blood or marriage in  
13 York County, South Carolina?  
14 A No.  
15 Q Are you a member of any civic organizations or  
16 clubs?  
17 A Not at the present time.  
18 Q Have you been a member of any civic  
19 organizations or clubs in the past?  
20 A Yes.  
21 Q Which ones?  
22 A Rotary Club, the Moose Club, Elks Club,  
23 National Rental Association. That's probably it.  
24 Q Do you attend church, Mr. Sarn?  
25 A Not at the present time.

1 Q Have you attended church in the past?  
2 A Yes.  
3 Q Where did you attend church?  
4 A St. Anne's.  
5 Q St. Anne's here in Rock Hill?  
6 A In Rock Hill, yes.  
7 Q Did you graduate from high school, Mr. Sarn?  
8 A Yes.  
9 Q Where did you graduate high school? Which high  
10 school did you graduate from?  
11 A East Brunswick High School in New Jersey.  
12 Q What city in New Jersey?  
13 A East Brunswick and also Fork Union Military  
14 Academy in Fork Union, Virginia.  
15 Q Did you attend college?  
16 A Yes.  
17 Q Where did you attend college?  
18 A Tennessee Technological University in  
19 Cookeville, Tennessee.  
20 Q When did you graduate from college?  
21 A 1967.  
22 Q Do you have any licenses or certifications?  
23 A As in like driver's license?  
24 Q Outside of your driver's license, any other  
25 license issued by a state or national -

1 A I have a pilot's license. I have a fishing  
2 license. I have a scuba diving license.  
3 Q Are all those current?  
4 A No.  
5 Q Some of them have lapsed?  
6 A Yes. Well, lapsed but are renewable.  
7 Q So none of them have been revoked?  
8 A No.  
9 Q Tell me about your employment history for the  
10 last ten years?  
11 A I haven't been employed for the past ten years.  
12 I retired in 2000.  
13 Q Where were you last employed in 2000?  
14 A I was self-employed at Interstate Rentals on  
15 Constitution Boulevard.  
16 Q What was your job title when you retired?  
17 A I was the owner and president of the company.  
18 Q And you left because you retired?  
19 A Yes.  
20 Q Are you an owner, member, manager or shareholde  
21 in any currently existing company?  
22 A Other than a stockholder, no.  
23 Q Are you a stockholder in a privately held  
24 company or a publicly traded company?  
25 A Publicly traded.

1 Q Have you been involved in any previous lawsuits  
2 A During the period while I was in business, yes.  
3 I sued a number of people for past due debts.  
4 Q When was the last time you sued someone for a  
5 past due debt?  
6 A I can only assume it was 1999.  
7 Q And these were all civil actions for collection  
8 for amounts of money that you claim were due?  
9 A Yes.  
10 Q This is a question we ask everybody. Tell me  
11 about your criminal history. Let me rephrase that. Your  
12 criminal history outside of traffic tickets, parking  
13 tickets, etcetera.  
14 A At one time, I was charged with assault in Rock  
15 Hill.  
16 Q When was that?  
17 A I'm not exactly sure of the year. It might hav  
18 been 1996 or '97.  
19 Q Who was the arresting authority?  
20 A City of Rock Hill.  
21 Q So the Rock Hill Police Department?  
22 A Yes.  
23 Q Were you ultimately charged or convicted?  
24 A No. The charges were dropped.  
25 Q Who were you alleged to have assaulted?

1 A I can't remember his name.  
2 Q Can you describe the situation?  
3 Mr. Foster: Do you wish me to interrupt  
4 and tell you who it was?  
5 Mr. Pierce: Sure.  
6 Mr. Foster: Jim Bazemore.  
7 A That's correct.  
8 Q Could you describe the situation that led to  
9 the allegation?  
10 A At the time, I was setting up tents on one of  
11 the city streets that was adjacent to his place of  
12 business. This was for the City of Rock Hill for Come Se  
13 Me. My materials were laying on the ground in the street  
14 This gentleman, whatever his name was, got in his car and  
15 proceeded to run over my equipment. I approached his car  
16 and he opened the door with his window down. I said,  
17 please don't get out of the car, and I closed the door.  
18 That was his -- His charge was that I assaulted him.  
19 Q There were charges brought, but they were  
20 dropped?  
21 A Yes.  
22 Q So you were not convicted, and you did not serv  
23 any time or have any -  
24 A No.  
25 Q Are there are any more elements to your crimins

1 history we haven't discussed?  
2 A No.  
3 Q I'm going to hand you what we've pre-marked as  
4 Exhibit 1. It's a copy of your original Summons and  
5 Complaint in this matter. I want to start by talking  
6 through this. If you would, Mr. Sarn, tell me about your  
7 claims in this Summons and Complaint.  
8 Mr. Foster: I think at this point I have  
9 to make the usual objection insofar as the  
10 question expects my client to give legal  
11 opinions, since he's not a lawyer. I assume,  
12 however, that the question is directed at his  
13 knowledge as a layperson.  
14 Mr. Pierce: This question is directed to  
15 his intent with filing this suit.  
16 Q What were you seeking in filing this suit?  
17 A My intent was to recover one-seventh of the cost  
18 of repaving Rental Court.  
19 Q Who were you seeking to recover from?  
20 A Sir?  
21 Q Who were you seeking to recover these amounts  
22 from?  
23 A Toy Rhea.  
24 Q Anyone else?  
25 A At that particular time, no.

1 Q Here on the Summons it's James C. Rhea, III,  
2 City Electric Supply Company and John Doe.  
3 A Well, when I filed the Summons and Complaint, it  
4 was on James Rhea only at the time, at least that's my  
5 knowledge. I don't believe any of the other people were  
6 mentioned on the Summons and Complaint.  
7 Q If you would, take a moment to review the  
8 document that I've handed you because it would appear tha  
9 you're seeking to recover these amounts. Your testimony  
10 today is that you don't believe City Electric Supply  
11 Company, which ultimately became Taschner Textile  
12 Industries, LLC, owed you for amounts due for resurfacing  
13 Rental Court. Please let me know if that's the case.  
14 A No. I believe they all owed the one-seventh of  
15 repaving the road.  
16 Q And that's why you brought this Complaint?  
17 A Yes.  
18 Q If you'll look on the right hand side of the  
19 first page, can you tell me when this original Complaint  
20 was filed?  
21 A It says April 25th, 2019; is that correct?  
22 Q That's what I see. You claim that you want to  
23 recover amounts for resurfacing Rental Court. Walk me  
24 through specifically why you believe you're entitled to  
25 that amount?

1 Mr. Foster: Of course, my objection is  
2 continuing.  
3 Mr. Pierce: If you have any objection to  
4 make, Martin, go ahead and put it on the record  
5 Mr. Foster: That's my intent.  
6 Mr. Pierce: You can answer the question.  
7 A Repeat that please.  
8 Q Could you explain to me specifically why you  
9 believe these parties are required to pay you for a  
10 portion of the cost of resurfacing Rental Court?  
11 A Everyone that is listed, all the people who own  
12 property on Rental Court, I believe are responsible for  
13 maintenance of Rental Court. There are seven lots, and I  
14 divided seven into the amount of money that was charged  
15 for replacing -- or repaving, and I'm seeking to recover  
16 that from each land holder, each property holder.  
17 Q Is there anything else that you'd like to tell  
18 me about your claims in the Summons and Complaint?  
19 A No.  
20 Q So to restate, on April 25, 2019, you institute  
21 this action against City Electric Supply Company, Toy Rhea  
22 and Taschner Textile Industries, LLC, demanding that you  
23 be reimbursed for amounts owed for resurfacing Rental  
24 Court?  
25 A That's correct. Although, I believe I went to

1 Magistrate's Court against Toy Rhea originally.  
2 Q We'll talk about that for a moment. Was my  
3 restatement, is that a fair restatement that on April  
4 25th, 2019, you instituted this action -  
5 A Yes. That was instituted by my attorney. It  
6 doesn't reflect on the original Summons and Complaint that  
7 I served on James Rhea in Magistrate's Court, which was,  
8 believe, denied without prejudice. I think that's what  
9 the term was.  
10 Q I'm going to take Exhibit 1 back. We'll  
11 keep it over here in case we need it again. I'm going  
12 to hand you what we've pre-marked as Exhibit 2.  
13 Mr. Foster: For the record, no objection.  
14 Mr. Pierce: To the entry of the exhibit.  
15 Q I've handed you a plat of Rental Court and the  
16 surrounding lots. We would move this in as Exhibit 2.  
17 A Okay.  
18 Q Walk me through this plat?  
19 A In what direction?  
20 Q In any direction you would like.  
21 A Starting with Tract A, Tract A, which is 1362  
22 Constitution Boulevard, that was my place of business.  
23 That is one lot.  
24 Q Who current owns Tract A?  
25 A A conveyor company. I may have gotten their

1 name wrong, G.M. Conveyors, Glenn Grace. The next lot  
2 which would be Tract A -- Let's see, to be combined with  
3 Tract A, which is actually 149 Rental Court, that is also  
4 owned by Glenn Grace.  
5 The next one is -- It's designated here as Lot 5,  
6 which is 131 Rental Court. That is owned by me. Lot 4,  
7 which is 128 Rental Court. That is owned by Charles  
8 McKissick. Lot 3 is 146 Rental Court. That's owned by  
9 -- Now it's owned by Taschner. It was originally owned by  
10 Robert Miller, I believe it is.  
11 Then Lot 2 is 164 Rental Court. That's owned by Cit  
12 Electric, originally by Saxon Real Estate. Lot 1, which  
13 is 1368 Constitution Boulevard, is owned by Toy Rhea.  
14 Q Tell me about the development of the lots  
15 around Rental Court.  
16 A In 1996 -- I believe it was '96. I purchased  
17 the land from Metromont Materials. At that point, I hire  
18 Jim Kleistler to subdivide the properties. Then I  
19 proceeded to develop the properties.  
20 Q And you only own one lot on Rental Court  
21 currently, and that's 131 Rental Court?  
22 A Currently, yes, just one, one property.  
23 Q Are you a member of any other entity that owns  
24 property on Rental Court?  
25 A I don't understand that.

1 Q Are you a member or manager of any company or  
2 LLC or corporation that owns property on Rental Court?  
3 A No.  
4 Q So the only lot that you currently hold an  
5 interest in is 131 Rental Court?  
6 A Correct.  
7 Q Who owns Rental Court itself?  
8 Mr. Foster: Same objection.  
9 A I feel it's part of the development, which  
10 everybody that has property on Rental Court has rights to  
11 it.  
12 Q They have rights to use it, is that -  
13 A And maintain it.  
14 Q Who actually owns Rental Court?  
15 Mr. Foster: My objection is continuing.  
16 A Honestly, I don't know.  
17 Q Who is responsible for maintaining Rental Court  
18 Mr. Foster: Same objection.  
19 A Everyone that owns property on Rental Court.  
20 Q I want to show you what we've pre-marked as  
21 Exhibit 3. It's a Magistrate Complaint that you filed  
22 against Toy Rhea. Let me know when you've had a chance to  
23 review that.  
24 A Okay. That's not a very legible copy. I can  
25 give you -- In my possession, I have the original letter

1 that I sent to him.  
2 Q We've been provided a copy of the letter, and  
3 we'll talk about that later. This is the best copy we  
4 have of the Complaint provided to us by your attorney.  
5 Mr. Foster: Do you wish for me to get out  
6 the better copy?  
7 Mr. Pierce: If that would help your client  
8 to read it better.  
9 Q I believe my questions are going to be directed  
10 to the Supplement on the second page which is pretty clear  
11 as far as I'm concerned. Who drafted this Complaint.  
12 Let me step back and move this in as Exhibit 3.  
13 A You're confusing me now. Do what now?  
14 Q I've moved this in as Exhibit 3 for the purpose  
15 of the deposition. I'm going to ask you who drafted this  
16 Complaint?  
17 A My attorney along with myself.  
18 Q Who was your attorney at that time?  
19 A Martin Foster.  
20 Q Who signed the Complaint as the plaintiff?  
21 A You're talking about my original Complaint with  
22 the Magistrate's Court?  
23 Q Right. That's what we're looking at here.  
24 A Yeah, I signed that.  
25 Q Is that your signature here at the bottom?

1 A Yes.  
2 Q And there's the date, 1-29-2019.  
3 A That's correct.  
4 Q I'd like to discuss the Supplement that you  
5 filed, which is the second page of Exhibit 3.  
6 A Okay.  
7 Q You say in the first paragraph on the  
8 Supplement, Robert Sarn is the majority property owner on  
9 Rental Court, a private drive and not a city street. Did  
10 I read that correctly?  
11 A Yes.  
12 Q If you'll go to the second sentence in the first  
13 paragraph it reads, the City of Rock Hill has no  
14 responsibility to maintain Rental Court. Did I read that  
15 correctly?  
16 A That's correct.  
17 Q As we sit here today on September 11, 2020, is  
18 Rental Court still a private drive?  
19 A Yes. I need to back up just a second. I also  
20 had some direction from Walter Heinsohn, attorney, from  
21 the standpoint of a previous action - I'm not sure what  
22 you call it - that was very similar to the action that I'  
23 taking here against these defendants.  
24 Q We'll talk about that in a moment.  
25 A Okay.

1 Q As to the Complaint that we've handed you marke  
2 as Exhibit 3, is there anything else that you can think o  
3 that we haven't discussed that we need to discuss about  
4 this Complaint?  
5 A I can't think of any.  
6 Q Going back to the plat, marked as Exhibit 2, at  
7 one point you owned all the property surrounding Rental  
8 Court, and it's been sold piece by piece until you  
9 currently own only one lot at 131 Rental Court; is that  
10 right?  
11 A That's correct.  
12 Q You sold lots, and the other lots are currently  
13 held by a conveyer company, Toy Rhea, Taschner Textile  
14 Industries, Mr. McKissick and City Electric Service.  
15 A That's correct.  
16 Q Going to the Complaint that we've marked as  
17 Exhibit 3, is there a reason that you only sue Mr. Rhea  
18 initially?  
19 A He was the first on my list to request payment.  
20 Q So on January 29, 2019, you only attempted to  
21 sue Toy Rhea?  
22 A At that particular time that was my objective  
23 was to collect from Toy Rhea and then proceed down the  
24 line, City Electric and then Taschner. I was doing this  
25 basically to see -- I filed the Complaint myself. I was

1 going to try to do the same thing on each one in  
2 Magistrate's Court.  
3 Q So you filed this Complaint yourself?  
4 A I signed it, yes.  
5 Q Previously you said that Mr. Foster had drafted  
6 this.  
7 A He and I discussed it, and with his input I put  
8 this together myself along with, as I mentioned, some  
9 suggestions from Walter Heinsohn.  
10 Q And your plan was to sue the other owners of  
11 Rental Court properties one at a time?  
12 A Yes.  
13 Q Tell me about the decision to resurface Rental  
14 Court.  
15 A In the negotiations on selling 1362 Constitutio  
16 Boulevard and 149 Rental Court, in the process of  
17 negotiating the sale with -- I'm trying to recall his nam  
18 again, the owner of the conveyer company. His name  
19 escapes me right now. During the negotiations, there was  
20 a question about who was going to maintain the road.  
21 In the middle of negotiations, I said rather than ge  
22 hogged down in to all the discussions and negotiations  
23 about that, I will just go ahead and repave Rental Court.  
24 Then we agreed on all the other terms and signed a sale  
25 and purchase agreement.

1 Q When was Rental Court resurfaced?  
2 A Let's see, I can't recall the exact date. I  
3 can probably give that to you if I look through my  
4 records.  
5 Q Okay. You can give me an approximate time fram  
6 as well.  
7 A Well, I'd rather not do that because, you know,  
8 we have to be truthful to give you an exact date rather  
9 than out of memory, which my memory isn't quite as good a  
10 it used to be.  
11 Q Let me ask the question this way. At the time  
12 Rental Court was resurfaced, was Rental Court a private  
13 drive?  
14 Mr. Foster: Same objection.  
15 A Yes, it was.  
16 Q Did the City of Rock Hill have any obligation  
17 to maintain Rental Court at the time it was resurfaced?  
18 Mr. Foster: Same objection.  
19 A No.  
20 Q I want to talk to you about this sale of the  
21 property to GR Properties of Fort Mill, LLC, in July of  
22 2018. We've marked this as Exhibit 4. We would enter it  
23 as such. Mr. Sarn, can you tell me again which propertie  
24 were transferred by this deed or in the course of this  
25 sale to GR Properties of Fort Mill?

1 A 1362 Constitution Boulevard and 149 Rental  
2 Court, which is tract -- I guess at the time it was Tract  
3 B, but it was going to be combined with Tract A.  
4 Q So in reference to the plat we have entered as  
5 Exhibit 2, the properties sold by the deed marked as  
6 Exhibit 4, is Tract A and the tract to be added to Tract  
7 A?  
8 A Right.  
9 Q Who was the property sold to?  
10 A GR Properties, LLC.  
11 Q Who is or what is GR Properties of Fort Mill,  
12 LLC.  
13 A It's a conveyer company.  
14 Q Do you have any ownership interest in GR  
15 Properties Fort Mill, LLC?  
16 A No, I do not.  
17 Q And you are one of the sellers listed in this  
18 deed, correct?  
19 A That's correct.  
20 Q Who is David C. Sarn?  
21 A That is my son.  
22 Q So you two sold this property jointly?  
23 A Yes, his name was on the deed also as a  
24 signer.  
25 Q When was this deed signed?

1 A Recorded or signed?  
2 Q Signed.  
3 A I guess the date on here is July 20, 2018; is  
4 that correct?  
5 Q That's what it appears to be to me.  
6 A Well, I guess that's when it was then.  
7 Q When was it recorded?  
8 A Where?  
9 Q When?  
10 A Recorded 7-23-2018.  
11 Q What did you and David receive in exchange for  
12 these two lots?  
13 A \$989,000  
14 Q Dollars?  
15 A Dollars.  
16 Q So you received cash in exchange for the lots?  
17 A I'm sorry.  
18 Q You received cash in exchange for the lots?  
19 A Yes.  
20 Q I'm going to show you now what we've marked as  
21 Exhibit 5, an Escrow Agreement for Repairs and Upfitting.  
22 We move in Exhibit 5. Describe the document I've just  
23 handed you.  
24 A It was an Escrow Agreement for Repairs and  
25 Upfitting of Rental Court. That was drawn up by Walter

1 Heinsohn. He was the attorney representing GR Properties  
2 in the sale. Basically, there were monies from the sale  
3 put into escrow basically to pay for the resurfacing,  
4 install handrails required by the city and to replace the  
5 refrigeration, heating and air conditioning system.  
6 Q What is the date of this agreement?  
7 A July 20th, 2018.  
8 Q And that's the same date the deed was signed fo  
9 these two properties, the two properties sold via the dee  
10 marked as Exhibit 4?  
11 A When they were signed, yes.  
12 Q Who signed the Escrow Agreement for Repairs and  
13 Upfitting marked as Exhibit 5?  
14 A This exhibit?  
15 Q Yes, Exhibit 5.  
16 A I signed it, my son signed it, Walter Heinsohn  
17 and Glenn Grace, the owner of GR Properties.  
18 Q You said there were going to be monies held in  
19 escrow. Whose funds were going to be held in escrow for  
20 the repair -- for these repairs?  
21 A My funds.  
22 Q So you paid for the resurfacing of Rental Court  
23 out of your proceeds from the sale?  
24 A That's correct.  
25 Q Resurfacing Rental Court was a condition for th

1 sale of the property to GR Properties of Fort Mill?  
2 A Not necessarily a condition. It's something  
3 that I said I would do in order to I guess convince Glenn  
4 Grace that he would not have any problems going forward  
5 with the road.  
6 Q So in order to entice Mr. Grace, who's the owne  
7 of GR Properties, to entice him to consummate the sale,  
8 you agreed to resurface Rental Court?  
9 A Yes.  
10 Q By selling these parcels to GR Properties, you  
11 and your son made \$989,000?  
12 A Not my son, I did.  
13 Q So you personally?  
14 A Yes.  
15 Q I'd like to look at a couple of excerpts from  
16 this agreement, the Escrow Agreement marked as Exhibit 5.  
17 If you'll look directly under the amount, it says repairs  
18 upfitting to be performed. Do you see where I'm reading?  
19 A Yes.  
20 Q Number 3 says, resurface Rental Court per the  
21 Granite Contracting, LLC, bid, \$49,314. Did I read that  
22 correctly?  
23 A Yes, that's correct.  
24 Q If you'll look down to the second sentence of  
25 the first full paragraph where it starts Escrow Agent

1 shall withhold. This reads, Escrow Agent shall withhold  
2 from seller's sales proceeds the sum of \$59,564.05 which  
3 represents the quoted amounts for items 1 and 2 above and  
4 110 percent of the amount for item 3.  
5 A Yes.  
6 Q And item 3, again, is the resurfacing of Rental  
7 Court per the Granite Contracting, LLC, bid.  
8 A Yes.  
9 Q Let me hand you what we pre-marked as Exhibit 6  
10 We would move it in as Exhibit 6. Describe the document  
11 that I've just handed you.  
12 A (No response)  
13 Q Would you describe the document I've just hande  
14 you please?  
15 A This is the bill for resurfacing Rental Court.  
16 Q Is that a bill or a bid?  
17 A It's a quotation.  
18 Q And this is the quotation that is referenced in  
19 the Escrow and Upfitting Agreement marked as Exhibit 5,  
20 correct?  
21 A Yes.  
22 Q I'm going to hand you what we pre-marked as  
23 Exhibit 7. Take a look at that and let me know when  
24 you've had a chance to do so.  
25 A It's the invoice from Granite Contracting.

1 Q What's the amount of that invoice?  
2 A \$49,314.00.  
3 Q And that's the same amount referenced in Exhibi  
4 5, the Escrow Agreement and Exhibit 6?  
5 A That's correct.  
6 Q You mentioned earlier, with regard to the sale  
7 to GR Properties, there were questions about who was goin  
8 to maintain the road. What do you mean by there were  
9 questions about who was going to maintain the road?  
10 A I'm sorry.  
11 Q We were discussing the sale of 1362 Constitutio  
12 and -  
13 A 149.  
14 Q 149 Rental Court to GR Properties of Fort Mill.  
15 You said that there were questions that arose about who  
16 was going to maintain Rental Court, and you didn't want t  
17 get bogged down in answering those questions. That's wha  
18 you stated, correct?  
19 A Yes.  
20 Q So what do you mean there were questions about  
21 who was going to maintain Rental Court?  
22 A Well, the question was who is going to maintain  
23 it.  
24 Q So it was not clear who was going to maintain  
25 it?

1 A Not at the moment, no.  
2 Q So at that point, there was no agreement that  
3 each lot owner was going to pay a pro rata share?  
4 A That wasn't on my mind at the moment.  
5 Q Well, that wasn't my question. As of the time  
6 these two lots were sold to GR Properties of Fort Mill,  
7 was there a written agreement that the owners of lots on  
8 Rental Court that they each pay a pro rata share of the  
9 maintenance of Rental Court?  
10 A To my recollection, there was one lot at the  
11 time that had that written into the deed. It was 128  
12 Rental Court, Charles McKissick. The other lots were  
13 still owned by me at the time, 131 Rental Court, 149  
14 Rental Court and 1362 Constitution Boulevard were still  
15 owned by me at the time.  
16 Q But none of the other lots that weren't owned b  
17 you outside of Charles McKissick's lot had an agreement  
18 with you to -  
19 A No. You're right. Yes.  
20 Q Just to make sure I get my question out, there  
21 was no written agreement from these other lot owners,  
22 including City Electric Supply, Taschner Textile  
23 Industries -  
24 A That's true. Yes.  
25 Q Let me finish my question please.

1 A Okay.  
2 Q There was no written agreement between you, Toy  
3 Rhea, City Electric Supply or Taschner Textile Industries  
4 or Taschner Textile Industries predecessor, J.D.  
5 Properties of the Carolinas, requiring them to pay you a  
6 pro rata share of the maintenance of Rental Court?  
7 A That's correct.  
8 Q Is there anything else we haven't discussed  
9 about the decision to repave Rental Court or the actual  
10 resurfacing of Rental Court?  
11 Mr. Foster: I'm going to object to the  
12 form of the question. I think that's very  
13 broad, too broad to be allowed. I'll put it  
14 that way.  
15 Q Let me take a step back. Did you ask the  
16 property owners of Rental Court during your negotiations  
17 with GR Properties of Fort Mill to agree to pay a pro  
18 rata share of the resurfacing of Rental Court?  
19 A Repeat that please.  
20 Q Sure. At the time you were negotiating the  
21 sale to GR Properties of Fort Mill, did you ask the other  
22 owners on Rental Court to pay a pro rata share at that  
23 time?  
24 A No.  
25 Q Is there any other fact regarding the decision

1 to resurface Rental Court or the actual resurfacing of  
2 Rental Court that we haven't discussed that you believe i  
3 important -  
4 Mr. Foster: Same objection. I think that'  
5 asking what may or may not be relevant.  
6 Q Mr. Sarn, is there any additional information  
7 that we have not discussed -  
8 Mr. Foster: I'm objecting to the form of  
9 the question.  
10 Mr. Pierce: Your objection is noted.  
11 Q Mr. Sarn, you can answer the question.  
12 A And that is?  
13 Q Is there anything that we haven't discussed  
14 about resurfacing Rental Court?  
15 A Other than it needed it.  
16 Q So as part of the sale of 1362 Constitution  
17 Boulevard and 149 Rental Court, you agreed to resurface  
18 Rental Court?  
19 A Say that again please.  
20 Q As part of your sale -- I'm trying to recap wha  
21 we've discussed with regard to resurfacing Rental Court.  
22 As an inducement for the sale of 1362 Constitution  
23 Boulevard and 149 Rental Court to GR Properties of Fort  
24 Mill, you personally agreed to resurface Rental Court?  
25 A Yes.

1 Q And you agreed to pay for the resurfacing of  
2 Rental Court via an escrow of the sales proceeds that you  
3 received from GR Properties of Fort Mill?  
4 A Yes.  
5 Q And in exchange for the sale of 1362  
6 Constitution Boulevard and 149 Rental court, you received  
7 \$989,000 less the escrow amount?  
8 A That's correct.  
9 Q So you agreed personally to resurface Rental  
10 Court to make almost a million dollars, and now you're  
11 seeking to essentially double recover?  
12 Mr. Foster: Objection to the form.  
13 Mr. Pierce: You can answer the question.  
14 A Would you mind repeating that?  
15 Q Sure. So you agreed to resurface Rental Court  
16 for your personal benefit, right?  
17 A I guess you can say in one way that's true.  
18 Q Well, you received nearly a million dollars and  
19 the sale would not have gone through if Rental Court had  
20 not been resurfaced?  
21 A Not necessarily.  
22 Q But you promised to resurface Rental Court in  
23 order for the sale to go through?  
24 A Yes.  
25 Q And now you are seeking to recover from the

1 other owners of Rental Court amounts that you promised to  
2 pay so that you could receive nearly a million dollars?  
3 Mr. Foster: Objection to the form.  
4 A I'm seeking to recover what I feel everybody  
5 that owns property on Rental Court is liable for.  
6 Q We'll get into what they're liable for now.  
7 Have you requested a pro rata share from GR Properties?  
8 A That was already done.  
9 Q What do you mean it was already done?  
10 A Their portion of that was included in the amount  
11 of the sale.  
12 Q Well, if that's the case, then why were you  
13 required here in Exhibit 5 to escrow the full -- actually  
14 110 percent of the amount for the resurfacing of Rental  
15 Court, if they were bearing a pro rata share, wouldn't it  
16 be less that you were required to escrow?  
17 A I don't quite follow your question there.  
18 Q Okay. So you're saying that as part of the  
19 sales proceeds GR Properties agreed to pay a pro rata  
20 share of resurfacing Rental Court. That's what you just  
21 testified to; is that right?  
22 A That's correct.  
23 Q So my question is, if GR Properties was paying  
24 pro rata share of the resurfacing of Rental Court, why  
25 would Exhibit 5, the Escrow Agreement, require that you

1 personally escrow 110 percent of the full bid to resurface  
2 Rental Court? Wouldn't it be less if GR Properties was  
3 paying some portion of that?  
4 A Well, the portion -- Like I said, part of the  
5 proceeds was his payment towards the one-seventh.  
6 Q I'm going to direct you to the Escrow Agreement  
7 Exhibit 5, and the deed, Exhibit 4, and I want you to show  
8 me where that is written, where that is agreed to?  
9 A Well, I guess you'd have to look at the deed  
10 where it states that in the future, going forward they're  
11 responsible for two-sevenths of the repair and maintenanc  
12 of Rental Court.  
13 Q That would be in the future going forward you  
14 said?  
15 A That's correct.  
16 Q That deed was signed on July 20, 2018, right?  
17 A That was included in there.  
18 Q And the Escrow Agreement was signed on July  
19 20, 2018, right?  
20 A July 20.  
21 Q So that's not in the future. That was  
22 simultaneous.  
23 A I'm a little confused here. I'm just confused.  
24 I don't understand what you're saying.  
25 Q Let's just walk it back one question. I'm

1 asking you to show me in either the deed or the Escrow  
2 Agreement where GR Properties agreed to pay a portion of  
3 the resurfacing cost for Rental Court at the time they  
4 were resurfaced.  
5 A Well, that was all part of the sales agreement.  
6 They also agreed at the time to go forward in time to pay  
7 two-sevenths of the maintenance.  
8 Q So you're saying there is another written  
9 agreement --  
10 A No. There's not a written agreement. It was  
11 just assumed that's how it would be.  
12 Q So that's what you assumed would happen?  
13 A Well, between Glenn Grace and myself, yes.  
14 Q Did you receive a check from GR Properties for  
15 their pro rata share of the resurfacing of Rental Court?  
16 A No. It was part of the proceeds from the sale.  
17 Q Where is that delineated?  
18 A I guess it doesn't show specifics on that, no.  
19 Q Is there any other written agreement that's not  
20 been provided to us by your attorney that would bear out  
21 your claim that GR Properties has paid a pro rata share of  
22 the repaving of Rental Court?  
23 A No.  
24 Mr. Pierce: Let's go off the record.  
25 Whereupon: A recess is taken.

1 Mr. Pierce: Back on the record.  
2 Mr. Pierce - Resuming  
3 Q Mr. Sarn, I'm going to hand you a document we  
4 received in the subpoena from Walt Heinsohn. It's the  
5 Settlement Statement for the sale from you and David to  
6 GR Properties of Fort Mill, LLC. We're going to mark  
7 this as Exhibit 14.  
8 Whereupon: Document marked as Exhibit 14.  
9 Mr. Foster: Is this part of what's been  
10 turned over.  
11 Mr. Pierce: I believe it was issued to  
12 everybody as far as Mr. Heinsohn's subpoena  
13 response. I do not believe it was in the package  
14 that was provided yesterday. If you would like  
15 a moment to review it with your client, that is  
16 your right.  
17 Mr. Foster: May I do so because I don't  
18 believe it was turned over to me.  
19 Q Mr. Sarn, I would like for you to look at the  
20 second page of the document that I've handed you. At the  
21 bottom of that page, there's a line that says Escrow  
22 Retained.  
23 A I see that.  
24 Q Can you read the amount that was retained?  
25 A \$59,564.05.

1 Q And that was retained from your proceeds based  
2 on this document, correct?  
3 A Yes.  
4 Q Now, I'm going to refer you to Exhibit 5, which  
5 is the Escrow Agreement for Repairs and Upfitting  
6 which reads -- Exhibit 5 reads, escrow agent shall  
7 withhold from seller's proceeds the sum of \$59,564.05  
8 which represents the quoted amounts for items 1 and 2  
9 above and 110 percent of the amount for item 3.  
10 A Correct.  
11 Q And that is the same number that is withheld per  
12 the Settlement Statement, correct?  
13 A That's correct.  
14 Q Now, I'd like for you to review that Settlement  
15 Statement and show me where GR Properties of Fort Mill has  
16 any amount withheld to pay a pro rata share of resurfacing  
17 Rental Court.  
18 A It's not on here.  
19 Q They didn't agree to do that in writing?  
20 A No, the agreement we had between us, like a  
21 gentlemen's agreement.  
22 Q A gentlemen's agreement?  
23 A Yes, sir.  
24 Q There is no bill, there is no contract, there is  
25 no check showing that GR Properties paid you?

1 Mr. Foster: I think this is the point  
2 where I say something like asked and answered.  
3 Q Were you in fact paid?  
4 A I agree with that. Asked and answered.  
5 Q He can make the objection, and you can answer  
6 the question.  
7 A I'm sorry. What is the question again?  
8 Q You were never actually paid separately and  
9 apart for a pro rata -  
10 A Yes, I was. I had the proceeds of the sale.  
11 Q But you were never -- Aside from the proceeds of  
12 the sale, there is no specific payment that you received  
13 from GR Properties of Fort Mill?  
14 A Yes. That was specific from my standpoint.  
15 Q Show me on the settlement where that is  
16 separately paid for.  
17 Mr. Foster: Once again, asked and answered  
18 I truly don't see what other form his answer -  
19 Mr. Ballou: Martin, that's a proper  
20 objection, and you know that.  
21 Mr. Foster: I do not know that, sir.  
22 Mr. Ballou: It's a speaking objection.  
23 He's entitled to ask the question and is  
24 entitled to an answer.  
25 Mr. Foster: And it has asked and has been

1  
2 answered about five different ways.  
3 Mr. Ballou: Martin, should we call the  
4 judge right now?  
5 Mr. Foster: Excuse me, sir?  
6 Mr. Ballou: Do you want to call the judge  
7 right now?  
8 Mr. Foster: Go right ahead.  
9 Mr. Ballou: Are you going to instruct him  
10 not to answer?  
11 Mr. Foster: No. I'm not instructing him  
12 not to answer. I'm attempting to make a  
13 reasonable point. I think he has answered the  
14 question as well as he can. We seem to be going  
15 through the same thing again, again and again.  
16 Mr. Pierce - Resuming  
17 Q Mr. Sarn, I'll ask you the question one more  
18 time. There is nowhere in writing or any other document  
19 where GR Properties specifically agrees to pay a pro rata  
20 share of resurfacing Rental Court, is there?  
21 A There is nothing in writing. As I mentioned  
22 before, it was a gentlemen's agreement between Mr. Grace  
23 and myself.  
24 Q I want to talk about the lot that was sold --  
25 that is currently owned by Taschner Textile Industries,

1 LLC.  
2 A Okay.  
3 Q Tell me about the lot that is currently owned  
4 by Taschner Textile Industries, LLC.  
5 Mr. Foster: Objection to form.  
6 Q Please answer the question.  
7 A What do you want me to tell you about it?  
8 Q Anything you know about it.  
9 Mr. Foster: Same objection.  
10 A Well, I know that it is 146 Rental Court, which  
11 I developed, leased out for a period of time and then sol  
12 to actually Robert Miller, and I'm not sure what company  
13 he represented. It was Robert Miller who purchased it  
14 originally from me.  
15 Q Which lot on this plat marked as Exhibit 2 does  
16 Taschner Textile Industries own, which lot number?  
17 A Lot number 3.  
18 Q You said you sold the property to Robert Miller  
19 A Yes.  
20 Q And Robert Miller sold it to Taschner.  
21 A Yes.  
22 Q I'm going to show you what we've pre-marked as  
23 Exhibit 8. We would enter Exhibit 8. This is a deed for  
24 J.D. Properties of the Carolinas, LLC, to Taschner Textil  
25 Industries. Is J.D. Properties of the Carolinas the

1 company that Robert Miller represented in your sale to  
2 him?  
3 A Yes.  
4 Q Do you have any ownership interest in J.D.  
5 Properties of the Carolinas, LLC?  
6 A No.  
7 Q Who is Robert Miller? We've mentioned him a  
8 couple of times?  
9 A From what I understand, he is a son-in-law, I  
10 believe, of Mr. Walker who used to own an electric compan  
11 in Rock Hill who is now retired. That's all I know about  
12 Mr. Miller.  
13 Q If you will take a look at the second page of  
14 Exhibit 8. What date was this deed signed?  
15 A Looks like December 29th, 2017.  
16 Q Based on the sticker on the first page, when  
17 was this filed?  
18 A January 3, 2018.  
19 Q As of January 3, 2018, was Rental Court a  
20 private drive?  
21 A Yes.  
22 Q Did the City of Rock Hill have any duty to  
23 maintain Rental Court on that date?  
24 Mr. Foster: Objection on the basis of  
25 the form.

1 Q You can answer the question.  
2 A No.  
3 Q I'd like to direct your attention to an excerpt  
4 from this deed. It's a long one, but it's the last full  
5 paragraph. It begins on the first page and goes on to the  
6 second page. I'm going to ask you to read along with me.  
7 Together with the easement, being a non-exclusive,  
8 perpetual easement for ingress and egress to the property  
9 from Constitution Boulevard along the private road, being  
10 approximately 50 feet in width, shown on the above-  
11 referenced plat and referred to as Rental Court and  
12 easement area. Said easement shall benefit the property,  
13 the grantee, its licensees, agents, lessees, and  
14 successors, and/or assigns, and shall burden the property  
15 described herein as the easement area. The easement shal  
16 be a covenant that runs with the land. Grantor covenants  
17 that it - there's a misspelling there I believe - it shal  
18 cause to be done no act or omission within the easement  
19 area which shall infringe upon grantees interest therein  
20 hereby conveyed, and that grantor, until such time as the  
21 easement area is dedicated for use as a public right of  
22 way, shall keep the same in such a state of repair and  
23 condition as is commensurate with the first class nature  
24 of grantor's development and so as to allow grantee full  
25 benefit and use of the easement. Did I read that

1 correctly?  
2 A Yes.  
3 Q So in this deed from J.D. Properties of the  
4 Carolinas to Taschner Textile Industries, LLC, the grantor  
5 agrees to maintain Rental Court, correct?  
6 A That's correct.  
7 Q Is Taschner Textile Industries, LLC, the  
8 grantor under this deed?  
9 A That's what it says.  
10 Q It says Taschner Textile Industries is the  
11 grantor under this deed?  
12 A Wait a second. J. D. Properties of the  
13 Carolinas is the grantor.  
14 Q Under this deed by which Taschner Textile  
15 Industries received lot 3 or 146 Rental Court, somebody  
16 else had agreed to maintain Rental Court?  
17 Mr. Foster: I'm going to object again on  
18 the same basis, asking a legal opinion.  
19 A Well, I don't know. I don't know the legality  
20 of this, but it seems like -  
21 Q Mr. Sarn -  
22 A It seems like J.D. Properties of the Carolinas  
23 is the grantor of this easement.  
24 Q I'm not asking you for a legal opinion. I'm  
25 just asking you to read the document and see what it

1 says.  
2 A I've read this document, and that's what it  
3 says.  
4 Q So the person who was required under this deed  
5 to maintain Rental Court is not Taschner Textile  
6 Industries, LLC.  
7 A I guess it's J.D. Properties.  
8 Q Now, you mentioned earlier that you sold the  
9 property to J.D. Properties.  
10 A That's correct, yes.  
11 Q I'm going to hand you what we've pre-marked as  
12 Exhibit 9. It's a deed from yourself to J.D. Properties  
13 of the Carolinas. Review this deed please and tell me  
14 which lot on Rental Court was sold via this deed.  
15 A 146 Rental Court.  
16 Q And lot 3 on the plat that we discussed?  
17 A Yes.  
18 Q And that's the same property that J.D.  
19 Properties of the Carolinas sold to Taschner Textile  
20 Industries, right?  
21 A That's correct.  
22 Q I'm going to read an excerpt from this deed as  
23 well. Before I do, who is the grantor under this deed?  
24 A Myself.  
25 Q Who is the grantee under this deed?

1 A J.D. Properties.  
2 Q Read along with me. It's the underlined  
3 language in the deed. Together with the easement, being  
4 non-exclusive perpetual easement for ingress and egress to  
5 the property from Constitution Boulevard along the private  
6 road, being approximately 50 feet in width, shown on the  
7 above-referenced plat and referred to as Rental Court and  
8 easement area. Said easement shall benefit the property,  
9 the grantee, its licensees, agents, lessees and successor  
10 and/or assigns, and shall burden the property described  
11 herein as the easement area. The easement shall be a  
12 covenant that runs with the land. Grantor covenants that  
13 it shall cause to be done no act or omission within the  
14 easement area which shall infringe upon grantee's interest  
15 therein, hereby conveyed, and that grantor, until such  
16 time as the easement area is dedicated for use as a public  
17 right of way, shall keep the same in such a state of  
18 repair and condition as is commensurate with the first  
19 class nature of grantor's development and so as to allow  
20 grantee the full benefit and use of the easement. Did I  
21 read that correctly?  
22 A Yes.  
23 Q So under this deed whereby you sold lot 3 or  
24 146 Rental Court to J. D. Properties of the Carolinas, you  
25 personally agreed to maintain Rental Court.

1 A That's correct.  
2 Q So you agreed to maintain it when you sold it  
3 to J.D. Properties of the Carolinas. Then identical  
4 language is included in the deed for J.D. Properties of  
5 the Carolinas to Taschner Textile Industries, right?  
6 A That's correct on the basis that until it's  
7 turned over to the city for -- dedicated to the city.  
8 Q And as we sit here today, your testimony is  
9 that Rental Court is a private drive?  
10 A That's correct.  
11 Q And the city has no duty to maintain Rental  
12 Court as we sit here today.  
13 A That's correct.  
14 Q So based on the language in these two deeds,  
15 Taschner Textile Industries has no duty to pay a pro rata  
16 share of the maintenance of Rental Court.  
17 Mr. Foster: Objection to form. Object to  
18 the fact that it states a legal conclusion which  
19 my client is not capable of answering.  
20 Q You can answer the question.  
21 A You've asked it.  
22 Q I'll restate the question. Under these two  
23 deeds that have identical language, they say the grantor  
24 will maintain Rental Court until Rental Court is no longer  
25 a private drive, you undertook that duty when you sold th

1 property to J.D. Properties of the Carolinas, and either  
2 you or J.D. Properties of the Carolinas undertook that  
3 duty when you sold it to Taschner Textile Industries. I  
4 not asking you for a legal opinion. I'm asking you what  
5 the documents we've walked through said.  
6 A Yes, that's what it says. I believe each  
7 property has a responsibility to maintain that because  
8 they use it on a daily basis.  
9 Q But that's not in any of the legal documents?  
10 A No, it isn't.  
11 Q In connection with your sale of lot 3, which is  
12 also 146 Rental Court, to J.D. Properties of the  
13 Carolinas, did you execute any other agreements?  
14 A There were a number of agreements that I signed  
15 during the closing.  
16 Q I'm going to hand you what we've pre-marked as  
17 Exhibit 10. It's a Grant of Easement and Right of Way.  
18 Take a moment to review that please.  
19 A I'm familiar with this.  
20 Q I want to walk through some of the language of  
21 this. Before we do, what is the date that this agreement  
22 was signed?  
23 A It was signed actually on November 7, 2008.  
24 Q Is that November 6, 2008, the date that is on  
25 the second page.

1 A I'm sorry. That's not when it was signed.  
2 Q So the document is incorrect?  
3 A That's correct.  
4 Q It was signed November 7, 2008?  
5 A That's correct.  
6 Q And it was filed on January 29, 2009.  
7 A That's correct.  
8 Q I want to direct your attention to the second  
9 paragraph which reads, whereas, J.D. Properties of the  
10 Carolinas, LLLC, is the owner of or will be the owner of  
11 in the near future, lot 3 as shown on plat as recorded in  
12 Book C-76 at Page 8, after purchasing said property from  
13 Robert H. Sarn, and which property is a portion of the  
14 original 4.228 acre tract as shown in Plat Book A-78 at  
15 Page 4. Did I read that correctly?  
16 A Yes.  
17 Q So this was in conjunction with your sale of  
18 146 Rental Court to J.D. Properties of the Carolinas?  
19 A That's correct.  
20 Q Move down to the third paragraph which begins  
21 Now therefore, known all men by these presents that Rober  
22 H. Sarn, owner in fee simple of Tract A, now consisting o  
23 1.75 acres and .87 acres, and possibly owner of said  
24 private road commonly known as Rental Court, hereby grant  
25 J.D. Properties of the Carolinas, LLC, its successors and

1 assigns, a right of way or easement for the purpose of  
2 ingress and egress approximately 50 feet wide, which is  
3 shown as Rental Court on plat recorded in Plat Book C-76  
4 at Page 8. Did I read that correctly?  
5 A Yes.  
6 Q So we've talked about the two deeds for 146  
7 Rental Court, Exhibit 9 in which you sold 146 Rental  
8 Court to J.D. Properties of the Carolinas, and Exhibit 8  
9 in which J.D. Properties of the Carolinas sold 146 Rental  
10 Court to Taschner Textile Industries, right?  
11 A Yes.  
12 Q So Taschner Textile Industries is the successor  
13 or assign of J.D. Properties of the Carolinas, correct?  
14 A Yes.  
15 Q So under the terms of this Grant of Easement  
16 and Right of Way, Taschner Textile Industries would have  
17 all the rights that you initially granted to J.D.  
18 Properties of the Carolinas?  
19 Mr. Foster: Same objection. It's a legal  
20 opinion.  
21 A I believe that's correct.  
22 Q If you'll turn to the second page and look at  
23 the last paragraph above the date it says, by signing thi  
24 agreement Robert H. Sarn, his heirs and/or assigns hereby  
25 agrees to be fully responsible for the total cost for the

1 upkeep and maintenance of said private road. Did I read  
2 that correctly?  
3 A Yes, you did.  
4 Q And per the language on the first page of the  
5 Grant of Easement and Right of Way said private road is  
6 Rental Court, right?  
7 A That's correct.  
8 Q So by this document you agreed for J. D.  
9 Properties and the successors or assigns of J. D.  
10 Properties, at the very least, to be fully responsible fo  
11 the total cost for the upkeep and maintenance of Rental  
12 Court?  
13 Mr. Foster: Objection on the basis that  
14 the document says what it says. Other than  
15 that, I believe it is asking for a legal  
16 opinion.  
17 Q You can answer the question, Mr. Sarn.  
18 A I inadvertently signed this agreement as part  
19 of the paper shuffle during the closing.  
20 Q But you did sign the agreement?  
21 A Yes, I did sign it. I withheld giving the  
22 document back after closing. Walter Heinsohn, the  
23 attorney that was representing them, J.D. Properties,  
24 brought it to my attention, and I had to give it to them  
25 at the end of the signing. One hour after the closing, I

1 went to Walter Heinsohn's office, and I told him I wanted  
2 to rescind the entire sale because of this document right  
3 here. He told me that it's too late, I cannot do that,  
4 which I don't believe is legally right.  
5 Q Have you rescinded the sale?  
6 A He told me I couldn't.  
7 Q So you have not sought to rescind the sale?  
8 A Well, if you look at some other documents here  
9 that was given to you yesterday -  
10 Q I'm not looking at other documents right now.  
11 We'll get to those in a moment.  
12 Mr. Foster: I believe he has the right to  
13 refer to those documents in answering your  
14 question.  
15 Mr. Pierce: I don't believe he has the  
16 right to enter exhibits. We're going to talk  
17 about the document that we're talking about  
18 right now, Grant of Easement and Right of Way  
19 Agreement.  
20 A I won't enter this exhibit, but I'm going to  
21 tell you, right after that meeting, I called my attorney,  
22 Martin Foster, and explained the situation. I told him  
23 that Mr. Heinsohn said I could not rescind the sale, whic  
24 I don't believe is legal. It was done in a deceiving  
25 manner, I think -

1 Q Now, you've never -  
2 A Excuse me. I'm not done.  
3 Q Please finish.  
4 A He pointed out this thing you said was signed  
5 on November 6th. It was actually signed on November 7th.  
6 Q Mr. Sarn, I don't say that, that document says  
7 that. It says November 6th on the document.  
8 A Well, that's what I'm saying. It's deceiving:  
9 I did not sign that the day before the closing. It was  
10 signed the same day of the closing.  
11 Q Okay. And you've not taken any action to  
12 rescind that agreement?  
13 A Yes, I have. I talked with my attorney, Martin  
14 Foster, and left it in his hands at that point.  
15 Q Was any action filed by Mr. Foster to rescind  
16 the agreement?  
17 A I'm not sure what Mr. Foster did beyond that  
18 point. Like I said, I'll reiterate that Mr. Hyatt said  
19 it's too late.  
20 Q Mr. Hyatt -  
21 A One hour after the closing he said it's too  
22 late. I can't rescind it.  
23 Q Mr. Hyatt or Mr. Heinsohn?  
24 A Mr. Hyatt.  
25 Q So as far as you're aware, this document is

1 still operative?  
2 Mr. Foster: I'm sorry. I'm a bit deaf,  
3 This document is what, sir?  
4 Q Still operative. You have not formally  
5 rescinded this document?  
6 Mr. Foster: Once again, that is asking him  
7 a legal opinion, and I object.  
8 Q You have not formally rescinded this document,  
9 have you?  
10 Mr. Foster: Same objection.  
11 Q Same question. Mr. Sarn, you can answer the  
12 question.  
13 A At this point, I'm not sure. My opinion is,  
14 it is kind of a -- I don't know if I'm using the right  
15 term but maybe a forgery. I mean he said I signed it on  
16 the 6th, but it was signed on the 7th. He was a little  
17 deceiving the way he presented this anyway.  
18 Q So your position now, 12 years later -  
19 A It was never my intention to say I would upkeep  
20 the maintenance of this road, fully responsible, whatever  
21 it says here, by signing this agreement, Robert Sarn and  
22 his heirs and assigns, hereby agree to fully be  
23 responsible for the total cost of upkeep and maintenance  
24 of said private road. That was never my intention.  
25 Q Similar language is contained in this deed.

1 A That was my intention.  
2 Q So you intended to do it, but you didn't intend  
3 to do it there?  
4 A Exactly.  
5 Mr. Foster: Object to the use of the term  
6 similar. I believe that is a legal conclusion  
7 that asks him to make the assumption -  
8 Mr. Pierce: Martin, you are free to clear  
9 that up on redirect.  
10 Q So you agree on November 7th, 2008, to be  
11 responsible for the maintenance of Rental Court?  
12 A That's correct.  
13 Q But this document, which you also say was  
14 executed on November 7th, 2008, you didn't intend to be  
15 responsible for the maintenance of Rental Court?  
16 Mr. Foster: The same objection as to legal  
17 basis.  
18 Q So at least one of those documents, you agree  
19 to be responsible of maintenance of Rental Court?  
20 A The actual deed or whatever the title, deed,  
21 whatever that -- is written there, yes, but that document  
22 you showed me, this Grant of Easement and Right of Way,  
23 supposedly he notarized on the 6th, which is actually done  
24 -- I signed it on the 7th inadvertently.  
25 Q But you signed it?

1 A Why would a man, an attorney, falsely notarize  
2 something on a day that it wasn't signed.  
3 Q I think that's a question for Mr. Heinsohn,  
4 what the issue is.  
5 A You mean Mr. Hyatt.  
6 Q This is 9. It is the deed from yourself to  
7 J.D. Properties. Excuse me. It's number 10, the Grant  
8 of Easement and Right of Way. So you don't dispute that  
9 this is your signature?  
10 A I did not say that. It is my signature.  
11 Q And you do not dispute that Mr. Miller's  
12 signature is false or forged?  
13 A I don't believe that.  
14 Q And you don't argue that the signature of the  
15 notary is forged?  
16 A No, but I believe it was done in kind of a  
17 deceiving way.  
18 Q The only issue that you take with this document  
19 is that it says November 6th instead of November 7th?  
20 A No, that's not my only issue. My issue is I  
21 inadvertently signed this. It was never my intention.  
22 Q And in 12 years you have not taken any formal  
23 action to rescind this document?  
24 A Yes, I have.  
25 Q We've asked your attorney for everything

1 involving the sale or easements regarding this property,  
2 and we have not been given any -  
3 A You were given yesterday two documents, three  
4 documents.  
5 Q Okay. Well, let's walk through that.  
6 A That's supporting my feelings here.  
7 Q Let's walk through those. I'm going to hand  
8 you what we've pre-marked as Exhibit 11. This is a fax  
9 cover sheet and email. Let me know when you've had a  
10 moment to review that.  
11 A I'm familiar with this.  
12 Q Tell me about this fax cover sheet and email.  
13 A The fax cover sheet was just, I believe, a fax  
14 from Martin Foster to Marvin Hyatt concerning the J.D.  
15 Properties Sale.  
16 Q What is the date on this fax?  
17 A November 20th of '08.  
18 Q So this is nearly a year or over a year after  
19 the closing with J.D. Properties of the Carolinas? I  
20 apologize. It is November of the year following the  
21 closing of the J.D. Properties of the Carolinas?  
22 A I don't think that's correct. It's the same  
23 year and actually -- November 7th was the closing date,  
24 and November 20th is just a, what, a week or so after the  
25 closing. I believe you've got your dates wrong.

1 Q This was sent after the closing in 2008?  
2 A Yes.  
3 Q And it was approximately two months before the  
4 deed -- The Grant of Easement and Right of Way was filed?  
5 A Yes, that's correct.  
6 Q So on November 7th, 2008, there's the closing  
7 on the sale to J.D. Properties of the Carolinas?  
8 A Correct.  
9 Q And this fax and email followed the closing?  
10 A That's correct.  
11 Q Tell me about that fax and email. Why was it  
12 sent? What were you seeking to do?  
13 A As I mentioned before, after I left Walter  
14 Heinsahn's -- I'm sorry, Alton Hyatt's office, when he  
15 told me it was too late to rescind the sale, I called  
16 Martin Foster, my attorney, and gave him the specifics,  
17 and he was to proceed from there.  
18 Q And this is what was done?  
19 A Obviously.  
20 Q Was this all that was done?  
21 A I don't know. I don't know what Martin did  
22 beyond this point.  
23 Q Look at the email that was attached to this  
24 fax provided yesterday, the email from Mark Mayfield to  
25 Doug Kennedy. Tell me about that email.

1 A Prompted by Mr. Hyatt telling me that it was  
2 too late, in order to protect myself, I asked Randy Grahs  
3 and Mark Mayfield, who are the realtors involved in the  
4 sale, to try to intervene and get J.D. Properties and Cit  
5 Electric to agree to pay for one-seventh of the cost to  
6 resurface Rental Court.  
7 Verbally Mark Mayfield got in touch with Robert  
8 Miller with J.D. Properties, and Robert Miller agreed to  
9 pay the one-seventh of the resurfacing cost.  
10 Mr. Pierce: You can't direct him what to  
11 say Martin.  
12 Mr. Foster: How was I doing that?  
13 Mr. Pierce: You just whispered to him.  
14 Mr. Foster: I did nothing of the kind.  
15 Mr. Sarn: He did not.  
16 Mr. Foster: I might have been mumbling to  
17 myself doing this cross -- That's all I was  
18 doing.  
19 Mr. Sarn: He did not.  
20 Mr. Pierce: Please restart your answer.  
21 Mr. Sarn: I'm offended by that.  
22 Mr. Pierce: Well, I'm hearing people talk  
23 while -  
24 Mr. Sarn: I didn't hear him. I was  
25 concentrating on what to say.

1 Mr. Pierce: Tell me what you're saying  
2 then. Start your answer over.  
3 A. You can read the document and see what it  
4 says.  
5 Q I'm asking you why it was sent.  
6 A. Where did I leave off? You interrupted what  
7 I was saying.  
8 Q Mr. Mayfield asked somebody to pay one-seventh.  
9 A Mr. Mayfield spoke with or conspired --  
10 conversed -- I don't know if it was in writing or just his  
11 conversation, asked Robert Miller of J.D. Properties if he  
12 would be willing to pay one-seventh of the maintenance for  
13 the repaving of Rental Court. In the same email, he's  
14 asking that City Electric would do the same.  
15 Q So in this email between Randy Graham, yourself  
16 Mark Mayfield, Doug Kennedy, where is J.D. Properties of  
17 the Carolinas mentioned?  
18 A Well, to Doug Kennedy. I am the real estate  
19 broker that sold you the site on Rental Court in Rock Hill  
20 several years ago. The owner of the remaining property in  
21 Constitution Business Park, where you are located, asked  
22 that I contact you about sharing the cost on a pro rate  
23 basis of the future maintenance cost of Rental Court.  
24 Q This email from Mark Mayfield to Doug Kennedy  
25 has nothing to do with J.D. Properties of the Carolinas.

1 This is an email concerning City Electric Supply.  
2 A Well, he's referring to Robert Miller in the  
3 first sentence there.  
4 Q Where does he refer to Mr. Miller?  
5 A Wait a second. We have just sold the adjacent  
6 building to an electrical contractor, and he has agreed to  
7 share these costs also.  
8 Q Where is Mr. Miller's name?  
9 A I don't see his name, but he sold it to an  
10 electrical contractor, and Robert Miller was an electrical  
11 contractor.  
12 Q So what response does CES or City Electric  
13 Service give to this request?  
14 A I have no idea.  
15 Q Are you aware of any agreement in writing for  
16 CES to maintain a pro rata share of the -  
17 A I'm sorry. Who?  
18 Q For City Electric Service to pay a pro rata  
19 share of the maintenance of Rental Court?  
20 A I know of no documents, no.  
21 Q Do you know of any written agreement on the part  
22 of Taschner Textile Industries?  
23 A No, I do not.  
24 Whereupon: A brief recess was taken.  
25 Mr. Pierce - Resuming

1 Q Mr. Sarn, I want to go back to this fax cover  
2 sheet and these emails. Starting with the fax cover  
3 sheet from your attorney to Alton Hyatt. The date on this  
4 cover sheet is November 20th, 2008, right?  
5 A Correct.  
6 Q And the subject is J.D. Properties of the  
7 Carolinas and Robert H. Sarn, right?  
8 A Correct.  
9 Q In this Mr. Foster is talking to Alton Hyatt,  
10 correct?  
11 A Correct.  
12 Q And in the second sentence he says, I've  
13 consulted with Bob Sarn. Without taking back any  
14 commitment at the closing, I'm trying to resolve this  
15 situation by getting the city to accept a dedication of  
16 Rental Court to it. Did I read that correctly?  
17 A Yes.  
18 Q So in this fax, your attorney says that you are  
19 not seeking to take back any commitment at the closing,  
20 correct?  
21 A Well, what you're saying is one thing. I  
22 requested Alton Hyatt, the same day of the closing, that  
23 wanted to rescind the sale. He said it was too late.  
24 So going forward from there, Mr. Foster is doing what he  
25 can to resolve the situation.

1 Q And as part of attempting to resolve the  
2 situation, he says that he is not seeking or - Excuse me  
3 without taking back any commitment at the closing. He is  
4 seeking to have the city take over the maintenance of  
5 Rental Court.  
6 A That's what it says.  
7 Q And that is on November 20th, 2008?  
8 A Right.  
9 Q If you will look at this email from Mark  
10 Mayfield to Doug Kennedy and Randy Graham, what is the  
11 date of that email?  
12 A November 10th, 2008.  
13 Q And on November 10th, 2008, Mark Mayfield says,  
14 we have just sold the adjacent building to an electrical  
15 contractor, and he has agreed to share these costs also.  
16 A Correct.  
17 Q Who told Mark Mayfield that?  
18 A I assume it was Robert Miller.  
19 Q But you don't know?  
20 A No, I don't know.  
21 Q So on November 10th you say that J.D. Properties  
22 of the Carolinas, via Robert Miller, has agreed to pay a  
23 pro rata share of the maintenance of Rental Court. That's  
24 what this email says?  
25 A That's correct. Although it doesn't mention

1 Robert Miller's name, he is the adjacent building and  
2 electrical contractor, City Electrical.  
3 Q So as of November 10th, 2008, you or someone  
4 on your behalf was representing that Robert Miller had  
5 agreed to pay a pro rata share of the cost of maintaining  
6 Rental Court?  
7 A I was going by what is in this email.  
8 Q But then 10 days later on November 20th, 2008,  
9 your attorney says that you are not seeking to take back  
10 any commitment from the closing, including the Grant of  
11 Easement and Right of Way, and that you are attempting to  
12 resolve the situation by getting the city to accept a  
13 dedication to Rental Court?  
14 A What's your point?  
15 Q Well, if the situation had been resolved as of  
16 November 10th, 2008, why would it be necessary for your  
17 attorney to be seeking a dedication of Rental Court on  
18 November 20th, 2008?  
19 A I don't know what Martin Foster's case load or  
20 what have you was at the time. I spoke with him the same  
21 day of the closing which was 11-7-2008. And Martin, due  
22 to his workload, finally got around to doing this. In the  
23 meantime, I took it upon myself, to protect my own  
24 interest, to proceed and talk with Randy Graham and Mark  
25 Mayfield to see if they could help me resolve, one way or

1 another, this situation.  
2 Q So you don't know whether or not Robert Miller  
3 agreed on behalf of J.D. Properties?  
4 A Who else would say that to Mark Mayfield. He's  
5 the owner of the property. Who would he be talking to,  
6 the janitor?  
7 Q But you were not a party to that conversation?  
8 A NO, I was not.  
9 Q And there's nothing in writing?  
10 A Other than what Mark Mayfield put down on this  
11 email.  
12 Q So your contention is that on November 10th,  
13 2008, J.D. Properties of the Carolinas had agreed to pay  
14 pro rata share? I just want to be very clear. That is  
15 your position?  
16 A That's my assumption from reading this email.  
17 What would you assume if you read that?  
18 Q I don't assume. I base my opinion on documents  
19 On January 29, 2009, which was two and half months after  
20 November 10, 2008, the Grant of Easement and Right of Way  
21 was recorded. In this agreement, you agree to be fully  
22 responsible for the maintenance of Rental Court. If J.D.  
23 Properties of the Carolinas had agreed to pay a one-  
24 seventh share on November 10, 2008, why they file this in  
25 January of 2009?

1 A That's a good question. I don't know. When  
2 did he file the deed?  
3 Q The deed was filed December 11th, 2008. So  
4 what you're saying is that on November 10, 2008, J. D.  
5 Properties had agreed to maintain Rental Court. And then  
6 after that, a month after that, they filed this deed in  
7 which you agree to maintain Rental Court. Six weeks after  
8 that, they file this Grant of Easement and Right of Way  
9 stating that you agree to maintain Rental Court.  
10 Mr. Foster: I suppose I should say  
11 something here about the fact that that question  
12 assumes that the undertaking and the deed is the  
13 same as the undertaking and the Grant of  
14 Easement that we're talking about.  
15 Mr. Ballou: Come on, Martin. It's an  
16 improper objection. You can object to the form.  
17 You can object to privilege.  
18 Mr. Foster: The question is worded, assume  
19 something that is not fact. I believe I have  
20 the right to state that as an objection, which  
21 I do.  
22 Mr. Ballou: Precisely.  
23 Q So if they agreed in November of 2008 to be  
24 responsible for those costs, why would these two documents  
25 have been recorded after that agreement in which you are

1 responsible for the maintenance of Rental Court?  
2 A I don't know.  
3 Q It's because that agreement never occurred.  
4 Mr. Foster: Is that a question because I  
5 will certainly object to that comment.  
6 Mr. Pierce: Feel free to object.  
7 Mr. Foster: Is it a question?  
8 Q The reason that these documents were filed in  
9 December and January following the closing in November of  
10 this email regarding the pro rata share in November of  
11 2008 is because there was no actual agreement between  
12 J. D. Properties of the Carolinas and yourself, right?  
13 A Not in the follow up to this email. This is the  
14 only reference I have to that.  
15 Q This email from a third party to a fourth party  
16 is the only evidence you have that J. D. Properties of the  
17 Carolinas is responsible for maintenance of Rental Court?  
18 A That's all I have to go by.  
19 Q And regardless of whether J.D. Properties  
20 agreed to that, and we're not conceding that that's the  
21 case, the deed, which we've walked through, between J.D.  
22 Properties and Taschner Textile Industries, provides that  
23 the grantor is responsible for the maintenance of Rental  
24 Court, doesn't it?  
25 A Yes. That's true.

1 Q And Taschner Textile Industries is not the  
2 grantor, right?  
3 A Correct. I'm the grantor.  
4 Q So it does not matter -- In the grand scheme of  
5 things, it does not matter what J.D. Properties agreed to  
6 because Taschner Textile Industries is not under any  
7 circumstances responsible, right?  
8 Mr. Foster: Unless I mishear, that is  
9 saying is this legal fact. Now, I presume my  
10 client can say what he thinks is a legal fact,  
11 but that's what I'm hearing as the question, and  
12 my objection remains the same.  
13 Mr. Pierce: In response to these  
14 objections, I'm asking questions about legal  
15 documents. He can read a document and tell me  
16 what the documents says.  
17 Mr. Foster: You're not asking him what the  
18 document says. You're asking him doesn't this  
19 follow.  
20 Mr. Pierce: You're welcome to clear that  
21 up on redirect.  
22 Q I'll ask the question again. Taschner Textile  
23 Industries is not the grantor under the deed in which it  
24 received 1/6 Rental Court, right?  
25 A Repeat that.

1 Q Taschner Textile Industries is not the grantor  
2 under the deed in which it received 146 Rental Court,  
3 right?  
4 A J. D. Properties is the grantor to Taschner.  
5 Q And this document provides that the grantor is  
6 responsible for the maintenance of Rental Court.  
7 A Which document is that?  
8 Q This is the deed which I believe is marked as  
9 Exhibit 9. It's the deed from J. D. Properties to  
10 Taschner Textile Industries.  
11 A He's the grantor. J. D. Properties is the  
12 grantor.  
13 Q So even assuming what you're saying is true,  
14 this agreement that you have no written documentation of,  
15 where J. D. Properties agrees to pay a pro rata share,  
16 even if that's the case, Taschner Textile Industries is  
17 not responsible for maintenance of Rental Court?  
18 Mr. Foster: Same objection.  
19 Q Because they're not the grantor. Under the  
20 deed the grantor is responsible for maintenance of Rental  
21 Court?  
22 A That's correct.  
23 Q I'm going to ask -- I think we're going to have  
24 to mark this as Exhibit 15. Is this letter to Toy Rhea  
25 a part of your Exhibit 11.

1 Mr. Foster: It's what we sent over, if  
2 I may respond.  
3 Mr. Pierce: I'm asking if it's a part of  
4 this packet that I handed him.  
5 Q This is a part of Exhibit 11.  
6 A Yes, it is.  
7 Q Looking at the third page of Exhibit 11, this  
8 is a letter from yourself to Toy Rhea; is that right?  
9 A That's correct.  
10 Q Tell me about this letter.  
11 A It's a letter stating what we've just been  
12 talking about, Robert Miller of Walker had agreed to shar  
13 a pro rata basis for future maintenance costs of Rental  
14 Court.  
15 Q So you sent this letter to Toy Rhea asking him  
16 to share the pro rata costs of maintaining Rental Court?  
17 A Yes.  
18 Q Before you sent this letter to Mr. Rhea, there  
19 was no agreement that he would maintain Rental Court?  
20 A There was no agreement in the deed whatsoever  
21 with Toy Rhea about any maintenance of Rental Court.  
22 Q So prior to you sending this letter, there was  
23 no written agreement between you and Mr. Rhea that he  
24 would contribute toward the maintenance of Rental Court?  
25 A There was no mention of it in either the title

1 or the deed.  
2 Q And you sent this letter asking him to start  
3 contributing to the maintenance of Rental Court?  
4 A Yes.  
5 Q When was this letter sent?  
6 A It was sent -- I know it is not dated, but it  
7 was sent the same day that I received the letter from  
8 Mark -- or the fax from Mark Mayfield dated 11-10-08.  
9 Q So there is no date, is there?  
10 A No, there is no date on that.  
11 Q And it's not signed?  
12 A I'm not sure if I mailed that to him or if I  
13 faxed it. If I faxed it, I would have a dated faxed copy  
14 I'd have to go through my records.  
15 Q Do you have any proof that you can provide that  
16 this was ever actually sent to Toy Rhea?  
17 A If, in fact, I mailed it.  
18 Q If you mailed it, there would be a record of  
19 mailing?  
20 A I would think so.  
21 Q Do you have that that you can provide?  
22 A I have no receipt from the post office. I  
23 didn't send it registered mail or anything like that.  
24 Q But there is no record of when this was sent or  
25 how it was sent or if it was received?

1 A I don't have a record of it. Toy Rhea might.  
2 You might want to ask him, sir.  
3 Q Well, we have. His representation to us is tha  
4 he never received this.  
5 A Of course not.  
6 Q And you have no record to show that he ever  
7 received it?  
8 A No, I don't have a record.  
9 Q What response did you get from Mr. Rhea?  
10 A None.  
11 Q So there is no agreement either from before or  
12 after this alleged letter in which Toy Rhea agrees to  
13 contribute to the maintenance of Rental Court?  
14 A No. There's no agreement that he would  
15 contribute to the maintenance, and it makes no reference  
16 to it in the deed.  
17 Q So in the deed from yourself to Mr. Rhea, he  
18 does not agree to maintain Rental Court?  
19 A That's correct.  
20 Q There is no subsequent agreement where Mr. Rhea  
21 agrees to maintain Rental Court?  
22 A That's correct.  
23 Q In the deed from yourself to J. D. Properties o  
24 the Carolinas, it is stated that grantor, you, will be  
25 responsible for maintenance of Rental Court?

1 A That's what the deed says, yes.  
2 Q And then in the deed from J.D. Properties of  
3 the Carolinas to Taschner Textile Industries, it states  
4 that the grantor, J. D. Properties of the Carolinas, will  
5 be responsible for the maintenance of Rental Court, right?  
6 A I lost you there somewhere.  
7 Q Okay. So we've said that the deed from you to  
8 J. D. Properties of the Carolinas you are the grantor,  
9 correct?  
10 A Yes.  
11 Q And the grantor agrees to maintain Rental  
12 Court?  
13 A Yes.  
14 Q And in the deed from J. D. Properties of the  
15 Carolinas to Taschner Textile Industries, J. D. Propertie  
16 in the grantor.  
17 A That's correct.  
18 Q And in that deed, the grantor also agrees to  
19 maintain Rental Court.  
20 A That's correct.  
21 Q And in this Grant of Easement and Right of  
22 Way, which you have disputed now, it says that you will b  
23 responsible for the full cost and maintenance of  
24 maintaining Rental Court.  
25 A That's what it says.

1 Q And this agreement or transaction has not been  
2 formally rescinded?  
3 A Not officially no, at this point.  
4 Q And there is no written agreement that City  
5 Electric Service will maintain Rental Court?  
6 A Not that I know of, no.  
7 Q So you agreed in order to make almost a million  
8 dollars by selling property to GR Properties of Fort Mill  
9 you agreed to resurface Rental Court?  
10 A Yes. I agreed to resurface Rental Court.  
11 Q And now, after the fact, you are attempting to  
12 sue three parties, City Electric Service, Taschner Textil  
13 Industries and Toy Rhea for reimbursement of the cost of  
14 resurfacing Rental Court?  
15 A That's correct. There are four other propertie  
16 that have already paid their portion of resurfacing Renta  
17 Court.  
18 Q And neither City Electric Service, Taschner  
19 Textile Industries or Toy Rhea are parties to any written  
20 agreement in which they agree to maintain Rental Court?  
21 A That's correct.  
22 Q Why are you suing them?  
23 A Because they have a moral responsibility to  
24 ..  
25 Mr. Foster: Excuse me. I need to say

1 something. Counsel has the right to conduct  
2 this deposition as he pleases. What I'm hearin  
3 again is saying, give me a legal basis for what  
4 you're doing. He's already answered the  
5 question as to why what he's doing. This is  
6 either asking him to restate what he's doing or  
7 it's asking for a legal conclusion which he is  
8 not capable of giving. So I put that on the  
9 record.  
10 Q So none of these parties -  
11 A I agree with what Martin just said.  
12 Q Well, you can agree with his objection, but you  
13 still have to answer the question.  
14 Mr. Foster: If you want me to say it, that  
15 is true, and I have so advised him.  
16 Q So if there is no contract by which any of  
17 these parties are required to contribute to the  
18 maintenance of Rental Court and, in fact, you have, in  
19 multiple documents, undertaken the responsibility to  
20 maintain Rental Court, why are you suing these three  
21 parties?  
22 Mr. Foster: Same objection.  
23 A I already mentioned that I feel it's a moral  
24 responsible that every party that participates in using  
25 the road should pay for the maintenance of the road.

1 Q You feel that they have a moral responsibility?  
2 A Yes, I do.  
3 Q And that is why you are suing them?  
4 A To recoup my cost of repaving the road, yes.  
5 Q The cost that you undertook in order to receive  
6 nearly a million dollars personally?  
7 A What's wrong with that? I sold a piece of  
8 property and made a profit.  
9 Q I think the issue would be is that you would  
10 agree to do something for your personal benefit and now  
11 you're seeking other people to finance your investment to  
12 reap that personal benefit.  
13 Mr. Foster: Would counsel state what the  
14 question was.  
15 Q Do you not think that's unfair?  
16 A What is the question?  
17 Q The question was, you agreed to lay out \$56,000  
18 and change in order to induce a sale by which you netted  
19 over \$900,000 in cash personally. Now, after the fact,  
20 after you signed documents undertaking the responsibility  
21 to maintain Rental Court, you come back and say, now, you  
22 folks have to finance my investment to consummate this  
23 sale.  
24 Mr. Foster: Same objection.  
25 A I think that from prior cases that were brought

1 to my attention by Walter Heinsahn, they're legally bound  
2 to participate in the cost of maintaining Rental Court.  
3 Q Is that a legal conclusion you're making?  
4 A I'm not a lawyer. I can't make that legal  
5 decision. That's just what I think.  
6 Mr. Pierce: Let's go off the record for  
7 a moment.  
8 Whereupon: A brief recess was taken.  
9 Mr. Pierce: Back on the record.  
10 Mr. Pierce - Resuming  
11 Q Just a few things more to clear up, Mr. Sarn.  
12 So you would agree with me that to your knowledge no  
13 formal, legal action has been filed to rescind the Grant  
14 of Easement and Right of Way from 2008?  
15 A Not to my knowledge.  
16 Q You would agree with me that there is no written  
17 agreement from Robert Miller regarding his alleged  
18 agreement to undertake maintenance of Rental Court?  
19 A Not to my knowledge.  
20 Q You have not sought to rescind the deed or  
21 reform the deed from yourself to J. D. Properties of the  
22 Carolinas, with formal legal action?  
23 A That was my intention the day of the closing.  
24 I requested to rescind the sale of the property, and I was  
25 told it's too late, one hour after the closing, which I

1 don't know if that's the legalities of it or not. I  
2 thought I had a right to rescind within a certain period  
3 of time.  
4 Q I understand what your intention was. The  
5 question was, to your knowledge, has any formal, legal  
6 action been brought to rescind the deed from yourself to  
7 J. D. Properties of the Carolinas?  
8 A Not to my knowledge.  
9 Q And there's nothing in writing or in my client  
10 Taschner Textile Industries chain of title regarding an  
11 agreement for Robert Miller to undertake maintenance of  
12 Rental Court?  
13 A I lost you on that one. Say that again.  
14 Q There is no written agreement between yourself  
15 and Robert Miller or J. D. Properties of the Carolinas  
16 regarding their agreement to maintain Rental Court?  
17 A Not to my knowledge. Right.  
18 Q And nowhere in the deed from J. D. Properties of  
19 the Carolinas to my client, Taschner Textile Industries,  
20 is it indicated that Taschner Textile Industries will be  
21 required to maintain Rental Court?  
22 A Not to my knowledge.  
23 Q But you have, in fact, when you thought to do  
24 it, asked other people to agree to that in writing?  
25 A Say that again please.

1 Q When you thought to do it, you have asked other  
2 purchasers on Rental Court to put in writing that they  
3 would maintain Rental Court?  
4 A That's correct, yes.  
5 Q But you did not do that with City Electric  
6 Service, Taschner Textile Industries or Toy Rhea?  
7 A That's kind of confusing because I thought  
8 that's what these emails concerned.  
9 Q Those emails are not filed anywhere of record,  
10 are they?  
11 A No. It's in writing there.  
12 Q You cannot expect a purchaser of property to  
13 know about every email that you have in your possession.  
14 Mr. Foster: That is asking him, I presume,  
15 for his legal conclusion or -  
16 Mr. Pierce: This is a case about a legal  
17 matter. It does not make every question ask  
18 for a legal conclusion.  
19 Mr. Foster: My objection is the same.  
20 Q There is nothing in your chain of title  
21 regarding this email. That email has not been filed with  
22 the county?  
23 A No.  
24 Mr. Pierce: I think that's all the  
25 questions I have for you, Mr. Sarn.

1 Mr. Foster: I should be quick. Of course,  
2 we have Mr. Ballou and presumably Michael, if  
3 they have anything.  
4 Mr. Pierce: Michael, do you have any  
5 questions?  
6 Mr. Foster: I presume he's still on mute.  
7 Mr. Hatch: I don't have any questions.  
8 Examination: (By Mr. Foster)  
9 Q Did you have any intent, by contacting me and  
10 my contacting Mr. Hyatt -- Let me get the exhibit so I  
11 don't mess anything up. Exhibit 11, sir. Was it your  
12 intent by that to have something done or not done with  
13 regard to the Grant of Easement?  
14 A Yes.  
15 Q What was your intent?  
16 A My intent was to really rescind the sale or  
17 that particular document, the Grant of Easement, that was  
18 inadvertently, you know, sworn before me on the 6th day,  
19 notarized when it was done the 7th. That's not the only  
20 point. The point is I inadvertently signed it in the  
21 shuffle work process during the closing.  
22 Q Sir, as counsel has referenced, this Grant of  
23 Easement was filed in the court approximately a month and  
24 a half or two months and a half after the deed.  
25 A That's right.

1 Q Were you supplied with a copy of Exhibit 10,  
2 the Grant of Easement, once it was recorded?  
3 A Yes.  
4 Q When were you supplied with it?  
5 A It was after the fact.  
6 Q Do you remember when after the fact?  
7 A That's hard to say.  
8 Q Going to the other documents and Number 11, the  
9 email copy to you from Randy Graham which is dated, by the  
10 copy, 11-10-08, does the content of this document  
11 represent your understanding of what was going on as of  
12 that date?  
13 A Yes.  
14 Q Did you understand as of that date there was an  
15 agreement by which the owner of the remaining property --  
16 Was your understanding, as of that date, that Mr. Randy  
17 Graham had agreed to pay a portion of this paving?  
18 A Not Randy Graham but Robert Miller.  
19 Q Thank you. Correction. Who is Robert Miller  
20 connected with?  
21 A He is J.D. Properties.  
22 Q And that was your understanding?  
23 A That was my understanding.  
24 Q Did you talk to Mr. -- The gentleman -  
25 A Miller.

1 Q Or was that done by Mr. Graham or Mr. Mayfield?  
2 A Either Graham or Mayfield.  
3 Q Did you at any point direct or -- Let me say  
4 this correctly. Did you at any point communicate with Mr.  
5 Alton Hyatt, the attorney doing the closing with J. D.  
6 Properties, that he might go ahead and file Exhibit 10?  
7 A No.  
8 Q To your knowledge, sir, did he communicate with  
9 you and say I'm going to file Exhibit 10?  
10 A No.  
11 Q Again, as part of Exhibit 11, which is the  
12 undated letter from yourself to Mr. Toy Rhea, at the time  
13 of writing letter, sir, did that represent your  
14 understanding of the situation on the undedicated road?  
15 A Yes, sir.  
16 Q Sir, we've heard a great many questions in  
17 which you were asked did you undertake to be in charge of  
18 or be responsible for the pavement of the unpaved road.  
19 Other than the language in the Grant of Easement, assumin  
20 that is at the moment an enforceable document, have you a  
21 any place, to your knowledge, waived the responsibility o  
22 the other owners around this court to chip in and  
23 contribute to that paving?  
24 A No.  
25 Q To your knowledge, has anyone alleged such a

1 waiver outside of the language of the Grant of Easement  
2 here?  
3 A No.  
4 Q To your understanding, sir, does any other  
5 entity in this case, other than Taschner, claim to you  
6 that they are relieved from their responsibility as a  
7 result of this Grant of Easement that was given supposed  
8 to J.D. Properties?  
9 A No.  
10 Q The letter here that is part of 11, you were  
11 asked about the date. Was this sent, to the best of your  
12 knowledge, prior to the action in Magistrate's Court?  
13 A Yes.  
14 Q Exhibit 3 or the part thereof that we have was  
15 filed in Magistrate's Court, according to its date stamp,  
16 January 28, 2019. This document states on its second  
17 page, on January 15, 2019, James C. Rhea, III, was sent a  
18 letter to pay his fair share of the resurfacing of Rental  
19 Court and refuses to pay his share. If you remember, is  
20 that reference, which is included as a part of your  
21 Magistrate's Court filing, a reference to this undated  
22 letter?  
23 A Yes.  
24 Mr. Ballou: By undated letter, is that  
25 the undated letter that was attached to Exhibit

1 11.  
2 Mr. Foster: If I did not make it clear,  
3 yes, I'm referring to the undated letter that's  
4 attached to Exhibit 11. I don't think I have  
5 any more.  
6 Mr. Ballou: I may have something. Do you?  
7 Mr. Pierce: Yes.  
8 Further Examination: (By Mr. Pierce)  
9 Q Do to be clear --  
10 Mr. Foster: I'm sorry. Just to be sure.  
11 I don't have any other questions. You're now  
12 --  
13 Mr. Pierce: Yes, redirect.  
14 Q Mr. Sarn, you stated that it was your intent  
15 to rescind the Grant of Easement and Right of Way in  
16 2008.  
17 A It was my intent to rescind the entire sale.  
18 Q In 2008?  
19 A Yes.  
20 Q Twelve years ago?  
21 A Yes.  
22 Q And in those 12 years, there has not been a  
23 lawsuit filed, to your knowledge, to undertake the  
24 rescission of that sale?  
25 A Not to my knowledge. Perhaps -- Just my thought

1 on this. Perhaps I was misled by Alton Hyatt that it was  
2 too late, but I pursued the same thing throughout the  
3 years trying to cover my costs of recuperating the expens  
4 of repaving Rental Court one way or the other. At the  
5 moment, I would have rescinded the sale of the property  
6 because of this document that I felt was deviously  
7 presented during the closing and also it was dated a day  
8 before I actually signed it. Is that what attorneys do?  
9 Is that legal? They can notarize something before it  
10 happens?

11 Q I don't know what happened there.

12 A Well, I'm telling you what happened right there

13 Q I imagine it was probably more of a typo than a  
14 conspiracy, but -

15 A I don't know about a typo. There's a notary  
16 signature and stamp to me.

17 Mr. Pierce: Please refrain from throwing  
18 exhibits at me.

19 Mr. Sarn: I didn't throw that at you.

20 Mr. Foster: If I may, I don't believe it's  
21 proper for Mr. Sarn to ask questions, and I  
22 don't think it's proper for counsel to answer  
23 them.

24 Q Let's move on to the email between Mark Mayfield  
25 and Doug Kennedy. You're not a party to that email?

1 A What exhibit is that?

2 Q This would be the second page of Exhibit 11.

3 A Here it is.

4 Q So the email dated Monday, November 10, 2008,  
5 12:49 p.m. You are not a party to that email, are you?

6 A No.

7 Q So you have no direct knowledge regarding this  
8 communication or any of the allegations made in it?

9 A Other than the copy that was sent to me, I  
10 believe, by Randy Graham.

11 Q You said that in your Magistrate Court Complain  
12 you state that Toy Rhea has failed to pay his fair share  
13 or to honor his obligation regarding repaving Rental Cour  
14 and that's why you're suing him?

15 A Yes.

16 Q Is that the moral obligation you were speaking  
17 of?

18 Mr. Foster: Same objection

19 A Not only moral but I was referring to a previou  
20 court precedent I believe that was set that I think I had  
21 reference to.

22 Q So there was no written agreement between you  
23 and Toy Rhea?

24 A No.

25 Q And there's no proof that he ever received the

1 letter that you sent him, the undated letter that's a par  
2 of Exhibit 11?

3 A No, other than my word that I sent it to him.

4 Q And you never received a response?

5 A No. I never received responses from Toy Rhea o  
6 any of my correspondence with him.

7 Q There was no contractual obligation between you  
8 and Toy Rhea?

9 A No, but there was no mention of any maintenance  
10 to the road in the deed.

11 Q That's correct. It was never mentioned in the  
12 deed that he was required to maintenance Rental Court.

13 Mr. Foster: I'm going to object unless

14 there's a question involved in that statement.

15 Mr. Pierce: I have nothing further.

16 Examination: (By Mr. Ballou)

17 Q Mr. Sarn, in November of 2008, were you  
18 represented by counsel?

19 A That was the closing. No, I wasn't.

20 Q So you were selling a piece of property to  
21 J. D. Properties of the Carolinas. Alton Hyatt was the  
22 closing attorney, correct?

23 A Yes.

24 Q Did J.D. Properties have an attorney?

25 A I'm not sure. I don't know.

1 Q But your testimony is, you, as the seller, did  
2 not have an attorney.

3 A That is correct.

4 Q Even though you had Mr. Foster as your attorney  
5 for other matters.

6 A That is correct.

7 Q Had you consulted with Mr. Foster about this  
8 transaction prior to the closing date?

9 A No, I didn't. I wasn't given any documents  
10 prior to the closing that I could take to Martin Foster  
11 and discuss.

12 Q So you were just told there was a closing date  
13 and you showed up and you signed the documents, right?

14 A That's correct.

15 Q When did you discover that you had signed a  
16 document that you did not intend to sign?

17 A Well, immediately when it was presented to me.  
18 There were so many documents that I went ahead and signed  
19 it. Because I signed it, I looked at it, and it didn't  
20 look right to me so I held it aside, turned all the rest  
21 of the documents in. Alton Hyatt was aware that I was  
22 holding that paper aside, and he said, I want that paper,  
23 and I gave it to him.

24 Q Did Alton Hyatt represent to you that he was  
25 representing -- He was legally representing the buyer in

1 that transaction?  
2 A I don't recall.  
3 Q Did you believe he was representing the buyer  
4 in that transaction?  
5 A I don't know.  
6 Q Did you believe he was representing you in that  
7 transaction?  
8 A I don't know that either.  
9 Q Is it fair to say that his representation to  
10 you was that that easement, Grant of Easement, was a  
11 necessary part for the closing of that sale?  
12 A He didn't say that. It was already mentioned  
13 in the title.  
14 Q How much were you getting paid for the sale of  
15 that property?  
16 A What difference does that make?  
17 Q How much were you getting paid for the sale of  
18 that property, sir?  
19 A All it says here was \$570,000.  
20 Q So in order to get \$570,000, you were going to  
21 have to sign all the documents at the closing table,  
22 weren't you, sir?  
23 A That's normal process.  
24 Q That's right. Including the Grant of Easement;  
25 isn't that right?

1 A When it's tucked between all the papers -  
2 There were so many papers that come through -  
3 Q Yes, sir. Closing documents -  
4 A Those were presented to me. I signed that  
5 particular one. I never said I didn't agree with that,  
6 and I set it aside. When they collected the documents,  
7 he said, I want that document also. I gave it to him and  
8 then one hour after the closing I went back in and said I  
9 want to rescind the sale because I don't agree with  
10 signing that document.  
11 Q And that's after you signed all the documents,  
12 correct?  
13 A Yes, sir.  
14 Q In fact, Alton Hyatt told you that if you didn't  
15 give him that document that you held back, you weren't  
16 going to get money on that property?  
17 A No, he didn't say.  
18 Q But you knew that was going to be the case. You  
19 were not going to get \$500,000 if you did not hand him an  
20 sign the document that had been presented at closing?  
21 A Well, I went to his office -  
22 Q Yes or no. Excuse me. It's yes or no and you  
23 can explain, but the question is, you knew at the time of  
24 the closing that you were not going to get the money for  
25 the sale of that property unless you signed all the

1 documents at closing; isn't that true?  
2 A Signed all the documents, yes.  
3 Q So you knew, as you walked out the door, that  
4 the only way you were going to get the money that you had  
5 sold that property for was to have agreed to all the  
6 documents that were presented to you that you had signed  
7 voluntarily and willingly. Yes or no?  
8 A As I walked out his door -  
9 Q Yes or no?  
10 A As I walked out the door, I was thinking about  
11 how can I stop this.  
12 Q So you may have had seller's remorse but at the  
13 point you knew that you had conveyed a Grant of Easement  
14 that provided that you had the obligation to maintain  
15 Rental Court, correct?  
16 A At that moment, yes.  
17 Q But yet since 2008, you have never filed a  
18 lawsuit of any kind to try to change that fact.  
19 A No, but I've done so many other things to try  
20 to get it rescinded after I was told it was too late.  
21 Q So what other things besides the documents  
22 we've seen today have you done to try to rescind that  
23 agreement?  
24 A To rescind that particular agreement?  
25 Q Yes, sir.

1 A Or the sale?  
2 Q Either one.  
3 A I would have at the moment -  
4 Q I'm not talking about would have. What have  
5 you done -  
6 A Sitting in his office, I would have done it  
7 right then.  
8 Q Right. Would have, could have, should have,  
9 but what did you do since November of 2008 to seek to  
10 officially rescind that transaction?  
11 A I called my attorney and asked him to intervene  
12 for me seeing as -- I thought he told me a non-truth, that  
13 it could not be done.  
14 Q And that attorney was Mr. Foster, who is with  
15 you today?  
16 A Yes.  
17 Q And what he did was the document we looked at  
18 earlier, the letter from Mr. Foster to Mr. Hyatt, right?  
19 A That's correct, yes.  
20 Q That letter does not say anything about  
21 rescinding the transaction, does it? Yes or no?  
22 A I think he makes a mention to it there, without  
23 taking back any commitment at the closing.  
24 Q In fact, he reaffirms the promises in the  
25 agreement you made at closing, doesn't he?

1 A I don't know that is exactly what he said.  
2 Q Sir, read with me. Without taking back any  
3 commitment at the closing. That's a reaffirmation of what  
4 you had previously agreed to, isn't it?  
5 Mr. Foster: Same objection.  
6 Mr. Ballou: What objection is that,  
7 Martin?  
8 Mr. Foster: It's an objection to him givin'  
9 a legal opinion as to what that document means.  
10 Mr. Ballou: No, sir, it's not.  
11 Q Sir, I ask you this question.  
12 Mr. Foster: He's answered the question.  
13 You need to let me answer your question.  
14 Mr. Ballou: You can object to the form,  
15 Martin, but you're not going to make a speaking  
16 objection.  
17 Q Mr. Sarn, when you read, without taking back  
18 any commitment at the closing, doesn't that tell you that  
19 the promises and commitments you made at closing stand?  
20 Mr. Foster: Same objection.  
21 A (No response)  
22 Q Yes or no.  
23 A I'll have to ask you to ask me that question  
24 again.  
25 Q Doesn't the language that your attorney wrote

1 on your behalf to Mr. Hyatt that says, without taking bac  
2 any commitment at the closing -- Doesn't that mean that  
3 you are standing by your commitments made at the closing?  
4 A I guess indirectly it does.  
5 Q Okay.  
6 A Working toward -  
7 Q Okay. You can finish.  
8 A I'm not finished. Working towards resolving  
9 this situation.  
10 Q Sure. Resolving this situation in anyway that  
11 your capable counsel could come up with, right?  
12 A That was my assumption, yes.  
13 Q That's right. And the method that your capable  
14 counsel was taking in this letter had nothing to do with  
15 rescision of that deed or that Grant of Easement, did it?  
16 Mr. Foster: Same objection.  
17 A Say that again.  
18 Q Your attorney, in this letter -- There is  
19 nothing in this letter written by your attorney that  
20 there's anything to suggest that you are rescinding the  
21 transaction or the Grant of Easement, is there?  
22 A Well, it doesn't state that.  
23 Q Okay.  
24 A But I've already said I tried to rescind the  
25 entire sale on hour after the closing.

1 Q Yes, sir. Continuing with this document, I'm  
2 trying -- This is from Mr. Foster to Mr. Hyatt -  
3 A Which -- Excuse me.  
4 Q Yes, sir.  
5 A Which I would give up the \$570,000 at that  
6 moment.  
7 Q We'll get back to that.  
8 A No. You made a big point about that. You  
9 know, that I was going to be greedy and get \$570,000 -  
10 Q This has nothing to do with greed, sir.  
11 A -- signing all these documents -  
12 Q This has nothing to do with greed, sir. This  
13 is about commitments made and obligations made and  
14 attempts to force those obligations on other people who  
15 didn't make those obligations. That's what this case is  
16 about.  
17 So let's go back to this document. I'm trying to  
18 resolve this situation by getting the city to accept a  
19 dedication. That is one option, and all of the documents  
20 we've talked about with this easement, you're talking  
21 about who's responsible for this until such time as the  
22 city takes it in as a public road, right?  
23 A It's one option. There were other options  
24 that I pursued.  
25 Q That's right. So when the city takes it on as

1 a public road, then it's a public obligation to maintain  
2 the road, right?  
3 A That's correct.  
4 Q That's what we pay our taxes for and that's no  
5 longer an issue for any of the property owners on Rental  
6 Court?  
7 A That's correct.  
8 Q And that's what Mr. Foster was exploring with  
9 Mr. Hyatt -  
10 Mr. Foster: Same objection.  
11 Q -- on November 20, 2008?  
12 A That was probably one of the options.  
13 Q Well, he doesn't say anything at all in this  
14 document about rescision, does he?  
15 A No.  
16 Q No. Let me ask you this. Between November of  
17 2008 and the time that Rental Court was repaved after the  
18 sale that generated this lawsuit, when you sold the  
19 property for \$900,000, was there any other maintenance  
20 performed on Rental Court?  
21 A Other than what I paid to originally install  
22 the road, no.  
23 Q That was before 2008?  
24 A Yes.  
25 Q My question is, between 2008 and 2018 was there

1 Any maintenance performed on Rental Court?  
2 A Well, each person who had property did their  
3 own maintenance from the standpoint of cutting grass and  
4 taking debris from in front of their buildings.  
5 Q This case is not about cutting grass or removing  
6 debris from their buildings. This case is about  
7 maintenance for the repaving and the maintenance of the  
8 road itself of Rental Court.  
9 A There was no maintenance needed on the road  
10 itself.  
11 Q So the answer is no?  
12 A Yes, the answer is no.  
13 Q There was no maintenance of any kind performed  
14 between 2008 and 2018?  
15 A But there was maintenance on the road removing  
16 trash on the road in front of their property. Each  
17 property owner did that themselves.  
18 Q Did you or any of your companies incur any  
19 expenses in maintenance of Rental Court between 2008 and  
20 2018?  
21 A Not that I recall.  
22 Q In 2008 -- Your attorney produced an email, I  
23 guess this is all part of Exhibit 11, this email dated  
24 November 10th of 2008. This is from Randy Graham to you  
25 and then from Mark to Doug Kennedy. What Randy reported

1 to you is an email from Mark to Doug Kennedy that copied  
2 Randy Graham; is that correct?  
3 A Say that again please.  
4 Q This document on the bottom two-thirds is an  
5 email from Mark Mayfield to Doug Kennedy with a copy to  
6 Randy Graham dated November 10, 2008 at 12:49. Then what  
7 the top of it is, is just Randy forwarding that to you  
8 later that day?  
9 A Yes. That's correct.  
10 Q I just want to make sure I understand on the  
11 time on it. Were you represented by Sperry Van Ness?  
12 A Yes, I was.  
13 Q So they were your broker?  
14 A Yes.  
15 Q They were speaking on your behalf?  
16 A Yes.  
17 Q They're not speaking on behalf of the other  
18 property owners on Rental Court?  
19 A I'm not sure of that. A lot of times realtors  
20 will act for both the buyer and the seller. I don't know  
21 if it was strictly my capacity or -  
22 Q Who is Doug Kennedy?  
23 A Doug Kennedy was, I believe, listed as someone  
24 involved in Saxon Real Estate who actually purchased the  
25 property.

1 Q Was he a property owner or was he a broker?  
2 A Saxon Real Estate is who purchased the property  
3 for City Electric. Then I believe they merged afterwards.  
4 Q Let's read this email real quick. It says,  
5 Doug -- This is from Mark Mayfield. Doug, I am the real  
6 estate broker that sold you your site on Rental Court in  
7 Rock Hill several years ago. Do you know which site that  
8 was?  
9 A That was -- That City Electric's site.  
10 Q That was City Electric?  
11 A Yes.  
12 Q He says, the owner of the remaining property in  
13 Constitution Business Park, where you are located. That  
14 you, right?  
15 A Yes.  
16 Q The owner of the remaining property asked that  
17 I contact you about sharing the cost on a pro rata basis  
18 of the future maintenance costs of Rental Court, right?  
19 A Correct.  
20 Q So you called Mark, and you said, Mark I need  
21 you to go contact these other property owners to get an  
22 agreement for the maintenance cost, right?  
23 A Actually, I spoke with Randy Graham. Randy  
24 Graham was partners with Mark Mayfield. Mark Mayfield was  
25 the actual person who was in contact with Saxon Real

1 Estate.  
2 Q And Mark and Randy are partners?  
3 A Yes.  
4 Q You told Randy I need you to go contact these  
5 other property owners and get an agreement to help pay for  
6 the maintenance costs?  
7 A I asked him if he would do that.  
8 Q That's because you didn't have it in place  
9 already, right?  
10 A No.  
11 Q Why would you ask for it if you already had it?  
12 A I didn't already have it.  
13 Q Right. You didn't already have an agreement for  
14 property owners to maintain a proportional share of the  
15 maintenance costs of Rental Court, right?  
16 A I had an agreement prior to that with four of  
17 the properties of the seven in the development.  
18 Q And you specifically put that obligation in  
19 their deeds?  
20 A Yes, I did.  
21 Q Right. But you didn't in the defendants in this  
22 case?  
23 A No, I didn't.  
24 Q So your task to Randy was, I need to get them  
25 to voluntarily agree to what the other people are already

1 bound to?  
2 A I didn't say I need. I would like to ask them.  
3 Q And this is two days after you say that you had  
4 walked out of a closing where you felt that it was unfair  
5 for you to have agreed to maintain the full cost of  
6 maintenance, right?  
7 A No. I thought that it was unfair that he  
8 deceptively -  
9 Q This is two days later, three days later, right?  
10 A Yes.  
11 Q This is on your mind?  
12 A What's wrong with that?  
13 Q There's nothing wrong with that. I'm just  
14 trying to get the facts out, sir.  
15 A Well, that's a fact. It says right there.  
16 Q So you have this situation at Alton Hyatt's  
17 office and then three days later or a couple of days later  
18 you talk to Randy Graham, and you're trying to figure out  
19 a way that you can get the rest of the other property  
20 owners to agree to share the costs of maintenance, right?  
21 A I don't see anything wrong with that.  
22 Q I didn't say there was anything wrong with  
23 that. My question is, is that true?  
24 A Yes.  
25 Q Okay. Mark continues. We have just sold the

1 adjacent building to an electrical contractor. That's  
2 what we just talked about. J.D. Contracting, right?  
3 A (Indicating)  
4 Q And he has agreed to share these costs also.  
5 J.D. Contracting of the Carolinas agreed to share these  
6 costs. Is that what you told Randy?  
7 A That's what Mark Mayfield just told me in this  
8 correspondence.  
9 Q No. No, sir. This is what Mark Mayfield is  
10 telling Doug Kennedy. My question is if Mark Mayfield and  
11 Randy Graham are partners, and you talked to Randy Graham  
12 weren't you the source of that information?  
13 A I don't follow that.  
14 Q So you talked to Randy Graham about this  
15 situation?  
16 A Yes, and Randy Graham talked to Mark and asked  
17 Mark to contact Doug Kennedy.  
18 Q And then you told Randy Graham that J.D.  
19 Properties had agreed to share costs?  
20 A I didn't tell Randy Graham that.  
21 Q You didn't tell Randy Graham that J.D.  
22 Properties of the Carolinas had agreed to share the costs  
23 of the maintenance of Rental Court?  
24 A No. Randy Graham is sending me this saying tha  
25 Mark said that they had agreed to do that.

1 Q That's what I'm trying to get at. How did Mark  
2 Mayfield find out that J.D. Properties had agreed to share  
3 the costs if you didn't tell him?  
4 A I guess because Mark spoke with them.  
5 Q Do you know that?  
6 A That's what he says here, isn't it?  
7 Q He doesn't say he spoke with him. It says that  
8 he agreed. Do you know for a fact that Mark Mayfield  
9 communicated directly with J.D. Properties and obtained a  
10 agreement to maintain Rental Court?  
11 A Why would he say that in his email if he didn't  
12 do that?  
13 Q My question is, do you know for a fact that  
14 happened?  
15 A I'm not a magician, no. I can't read minds.  
16 Q When do you contend J.D. Properties of the  
17 Carolinas agreed to share the costs of maintenance?  
18 A Some time prior to when this email was sent to  
19 me.  
20 Q Did they make that statement to you?  
21 A No. They made it to Mark Mayfield.  
22 Q Did J.D. Properties of the Carolinas ever  
23 communicate to you that they would agree to share the  
24 costs of maintenance for Rental Court?  
25 A I've never had a personal conversation with

1 Robert, no.  
2 Q Nothing in writing?  
3 A Other than this, this email.  
4 Q So this is the only evidence that you are aware  
5 of, of any agreement by J.D. Properties of the Carolinas  
6 to contradict the documents that you signed at closing?  
7 A At the moment, that's all I had to go on.  
8 Q And you never went back to J. D. Properties  
9 and said is this true?  
10 A No. I guess I took Mark's word on it that  
11 that's what happened.  
12 Q Well, Mark didn't actually tell you this.  
13 Randy told you this, forwarded this email to you, right?  
14 A Yes, that's correct.  
15 Q Did Mark Mayfield or Randy Graham ever tell you  
16 personally that J.D. Properties of the Carolinas has  
17 agreed to share the pro rata cost of maintenance of Renta  
18 Court?  
19 A They never told me. They wrote to me though an  
20 put it in writing.  
21 Q Other than this email, do you have any document  
22 that either of them wrote to you and said J.D. Properties  
23 of the Carolinas agreed to this -  
24 A Verbal conversation only.  
25 Q Verbal conversation. Tell me about that verbal

1 conversation.  
2 A Randy followed up, and I spoke with him about  
3 it. He said Mark talked to these people, and they were i  
4 the process of trying to get the other people to agree.  
5 Q That's not saying they've agreed, is it?  
6 A No, but Mark said in here -- right here in this  
7 email that he did agree.  
8 Q But you just testified, sir, that the  
9 conversation was a follow up to this, and the conversatic  
10 was they are trying to work out a deal, that they were  
11 trying to get them to agree. My question to you, sir -  
12 A Excuse me. This actually says that -- if I may  
13 read it real quickly here. We have just sold the adjacen  
14 building to an electrical contractor, which is J. D.  
15 Properties, Robert Miller. He has agreed to share these  
16 costs also.  
17 Q I understand that. That's what this document  
18 says.  
19 A Yes.  
20 Q You testified that there were verbal  
21 conversations after this document where Randy Graham or  
22 Mark Mayfield - I think you testified it was Randy Graham  
23 - told you that they are working on getting that  
24 commitment.  
25 A No. That commitment was already made. They

1 were working getting the other commitment, Toy Rhea -  
2 Q Let me go back to my question.  
3 A -- in the process of contacting City Electric.  
4 Q Let's go back to my original question. Has  
5 Randy Graham or Mark Mayfield ever told you that J. D.  
6 Properties, J.D. Contracting, ever agreed to bear a  
7 proportional share of the cost of maintenance?  
8 A Randy Graham, in a verbal conversation, said  
9 that's what's going on, Bob. Then Mark Mayfield confirms  
10 that in this email.  
11 Q So that conversation with Randy Graham occurred  
12 before this email or after this email?  
13 A After.  
14 Q But if Mark is saying that they have already  
15 agreed, why doesn't Randy say they've already agreed?  
16 A I can't talk for Randy.  
17 Q Doesn't that suggest to you that they're -  
18 A Excuse me. Randy and I spoke after this email,  
19 and I said to him, what's your progress. He said, well,  
20 Robert Miller agreed. We're trying to get these other  
21 two people to agree.  
22 Q And it's true, sir, that you never saw anything  
23 in writing from Robert Miller or from J. D. Properties or  
24 anybody else that said, yes, I agree, we'll bear that  
25 cost?

1 A No, I haven't seen anything in writing about  
2 that other than what Mark Mayfield states in this email.  
3 Q Did you ever follow up with Randy or Mark to  
4 say, hey, where is their agreement?  
5 A What do you want me to answer?  
6 Q Yes or no.  
7 A What was the question again?  
8 Q Did you ever follow up with Randy or Mark -  
9 A No, about a written.  
10 Q So a handshake?  
11 A Followed up on verbal conversation with Randy  
12 Graham stating that Robert Miller had agreed to do this.  
13 Q I think you testified earlier that that  
14 agreement was a gentlemen's agreement. Is that what you  
15 said?  
16 A No, my gentlemen's agreement was with the  
17 purchase -- Glenn Grace, the purchase of 1362 Constitutic  
18 Boulevard.  
19 Q There's nothing in writing on that one either?  
20 A That was a gentlemen's agreement, word of  
21 mouth or a handshake.  
22 Q So a gentlemen's agreement in your mind is just  
23 a handshake -  
24 A People use to have honor, yes. I honor my  
25 handshakes and my gentlemen's agreement.

1 Q You never shook hands with anybody at J. D.  
2 Contracting to agree to waive the easement language that  
3 you had signed previously, did you?  
4 A No. I never had an opportunity to. I was  
5 waiting for Mark Mayfield or Randy to proceed and do what  
6 they said they were going to do.  
7 Q Is your office on Rental Court?  
8 A At times, yes.  
9 Q At that time in 2008, did you have an office on  
10 Rental Court?  
11 A No.  
12 Q How often did you go by J.D. Properties, J.D.  
13 Contracting, in 2008 when you could have gone in to say  
14 can we get a document to confirm that you're not going to  
15 agree to what we agreed to at closing?  
16 A I had no occasion to.  
17 Q You had no occasion to?  
18 A No. I had no -- At that time, I had no office  
19 on Rental Court so I wasn't there on a daily basis.  
20 Q How much contact on a weekly basis or a monthly  
21 basis would you have had with that property owner?  
22 A Which property owner?  
23 Q J. D. Contracting?  
24 A I wouldn't have any contact. I don't know why  
25 I would.

1 Q Not at all?  
2 A No.  
3 Q When did you first have an office on Rental  
4 Court?  
5 A Originally in 1962 Constitution Boulevard and  
6 then 1368 Constitution Boulevard. Then for a period of  
7 time, a short period of time, at 131 Rental Court.  
8 Q When did you have an office at those locations?  
9 A From when I built the building until I think  
10 it was 1997 or '98 that I built the Gale Affairs building  
11 which Toy Rhea purchased from me. I was in that building  
12 until 2001 maybe. After 2001, I was 131 Rental Court on  
13 and off between tenants. I don't know, three or four  
14 times maybe.  
15 Q Did you ever have a presence, an office on  
16 Rental Court after 2008?  
17 A After 2008? If I recall, a brief time -- I'm  
18 trying to think what year that was. It was beyond that.  
19 It was probably into 2012 or something like that. I live  
20 out of town at that point in time. When I would come  
21 back, my tenant would allow me to utilize some space in  
22 his office. I went there, conducted a little business,  
23 but that was it.  
24 Q Is it fair to say, sir, from November 10, 2008,  
25 until today, you have never had a conversation with J.D.

1 Contracting about the Grant of Easement for the  
2 maintenance, the cost of the maintenance of Rental Court?  
3 A No. I never had a personal conversation with  
4 him about that, no.  
5 Q So your entire argument that there was an  
6 agreement is based on this document that we're looking at  
7 today?  
8 Mr. Foster: Objection on the same grounds,  
9 asking for a legal conclusion.  
10 Q You have no other evidence of any agreement  
11 with J.D. Properties or J.D. Contracting inconsistent  
12 with the Grant of Easement other than this email to which  
13 you were not a party?  
14 Mr. Foster: Same objection.  
15 A Well, that's true. This is in writing. That's  
16 what I was basically going on.  
17 Q And your testimony was, I believe, that you  
18 sent this letter -- You believe you sent this letter to  
19 Toy Rhea. It's undated, but you think it was around the  
20 same time as these emails in Exhibit 11?  
21 A I know I sent it to him.  
22 Q It even says I recently sold 146 Rental Court  
23 to Robert Miller of Walker Electric Company. Does that  
24 suggest it was around the same time?  
25 A Yes.

1 Q You don't have a signed copy of this?  
2 A No.  
3 Q Is it your practice to make copies of letters  
4 that go out to your tenants?  
5 A Yes. I try to keep as much correspondence as  
6 I can, yes.  
7 Q There is no date on this letter either, and  
8 there's no fax information on this. There's no indicatio  
9 that really shows that it was sent at all, is there? Not  
10 a document? I understand your testimony but on the  
11 document itself, there is no indication that it was  
12 actually ever sent at all?  
13 A That little block on the bottom is possibly an  
14 email -- Whatever they do on emails. It didn't print out  
15 Q Is it possible that you emailed this document  
16 to Toy Rhea?  
17 A It's possible.  
18 Q Have you produced all of your emails to your  
19 attorney in this case, relative to this case?  
20 A Everything that I had in my file.  
21 Q I'm going to ask formally, sir, if you would  
22 agree to go back into your emails and see whether or not  
23 you actually sent this letter to Toy Rhea, and if so  
24 produce that and any other emails that might relate to th  
25 claims you're making in this case. Is that fair?

1 A Yes. It was either email or fax or actual mail  
2 I may have followed up with actual mail.  
3 Q All I'm asking as far as this document is  
4 concerned is that you try to determine whether or not it  
5 actually ever was sent because you can't tell from this  
6 document.  
7 Mr. Foster: For the record, all of his  
8 records on the email would include emails to  
9 myself which are, of course, protected by  
10 lawyer/client privilege. Presumably your  
11 request does not include those.  
12 Mr. Ballou: Absolutely not. I am not  
13 asking for any attorney/client content. I woul  
14 not do that.  
15 Q Real quickly going back to the email with Sperr  
16 Van Ness, I would ask you to produce the original format  
17 of this document as well because the email that Randy sen  
18 to you appears to have two attachments. Do you happen to  
19 know what those attachments are?  
20 A Well, one is Mark's correspondence with City  
21 Electric. That's what it looks like.  
22 Q Are you saying this information below? What  
23 I'm referring to is at the address line at the top it  
24 says attachments. It has two different files. One 2.9  
25 kilobytes and one at 3.2 kilobytes is the size. I don't

1 know whether those are just images or maybe those go  
2 along with -- Sometimes those are just artifacts of the  
3 email that Randy sent. Sometimes they're actual  
4 documents. My question is, would you look at and if there  
5 are documents that are attached I would like to see those  
6 A Yes. I will do that for you. I do have the  
7 original which is printed out in colors.  
8 Q Maybe this is something if you could go into  
9 the original email itself on the computer and see whether  
10 or not there's an attachment there. Sometimes the  
11 signature block will be there with some kind of --  
12 A I'll do my best, but that was done how many  
13 years ago?  
14 Q Do you have your email from 2008 still?  
15 A I don't know if it's in my computer or not.  
16 Q I would ask you to look.  
17 A I have a different computer from what I had  
18 at that time, but I'll do my best.  
19 Mr. Foster: For the record, we will do  
20 that.  
21 Mr. Ballou: Also, it looks like this is a  
22 Hotmail account so maybe it doesn't matter if  
23 it's on the computer. It may be still in the  
24 cloud if you have that. I would just ask that  
25 you take a look.

1 A That was before I was in the cloud.  
2 Q Well, the Hotmail.com, isn't that -- Well,  
3 whatever. You all --  
4 A Like I said, I will do my best.  
5 Mr. Ballou: We made the request and Martin  
6 knows what to do with it so I'm fine with that.  
7 A I'll do my best.  
8 Q I'll show you what's been marked as Exhibit 13.  
9 Can you identify that, sir?  
10 A This is the deed where Toy Rhea purchased the  
11 property from me.  
12 Q And you would agree with me, sir -- Go to the  
13 second page of that. That's your signature on that?  
14 A Yes, sir.  
15 Q You would agree with me, sir, that that deed  
16 contains no language at all regarding the obligation to  
17 maintain Rental Court?  
18 A That's correct.  
19 Q I think you testified earlier that the  
20 Supplement to the Complaint you filed in Magistrate's  
21 Court; that the letter that you sent to James C. Rhea  
22 was the letter that we were talking about earlier that was  
23 undated? Is that your testimony? I may have  
24 misunderstood.  
25 A What are you referring to?

1 Q I recall you testifying to the Magistrate's  
2 Court Complaint in the exhibit, and I think you testified  
3 that the letter that you were describing in the supplement  
4 was the letter we were discussing today that was undated  
5 that appears to be around 2008.  
6 A I sent him a letter. I also believe Walter  
7 Heinsohn sent him something, some kind of a letter saying  
8 that also.  
9 Q I'll stipulate that he did get letters from  
10 Walt Heinsohn later on. I was just unclear whether or no  
11 you were referring to that letter in your Complaint where  
12 you're relying upon the 2008 letter when you sued him in  
13 Magistrate's Court in 2019?  
14 A Yes. I believe I am referring to the letter  
15 that is in Exhibit 11.  
16 Q Where in the 2019 filing are you referring to  
17 the 2008 letter?  
18 A I don't understand.  
19 Q I'm confused, too. My question is, in the 2019  
20 Magistrate's Court Complaint, the Supplement references  
21 numerous letters, several letters. I think your testimony  
22 was earlier that you were relying also on the letter that  
23 was sent -- you contend was sent in 2008 that was undated  
24 that we were just speaking about. My question is, is  
25 there anything in this Magistrate's Court Complaint that

1 references the letter that you contend was sent in 2008?  
2 A Well, from looking at this, I believe what is  
3 referenced in the Supplement Complaint was the letter on  
4 August 17th that is the letter in Exhibit 11. I believe  
5 that's what it is.  
6 Q You believe that the Exhibit 11 letter was sent  
7 in 2018 not 2008?  
8 A It was sent in 2018. I didn't send anything to  
9 him in 2008 I don't believe.  
10 Q We just talked about the fact that that letter  
11 was referencing I recently sold 146 Rental Court to Robert  
12 Miller of Walker Electric.  
13 A Oh, okay. I see what you're saying there. Yes  
14 this was after I got the email from Randy Graham.  
15 Q Around 2008 --  
16 A Yes.  
17 Q Not 2018 or '19, not those letters?  
18 A No.  
19 Q If you could pull the Grant of Easement itself  
20 that we have been discussing recorded in January of 2009.  
21 Which exhibit is that?  
22 Mr. Foster: Exhibit 10.  
23 Q You've had an opportunity to review Exhibit 10?  
24 A Excuse me.  
25 Q You've had an opportunity to review that today?

1 A Yes.  
2 Q This is the document that you testified that you  
3 set aside after you signed it, but that Alton Hyatt said  
4 need to have that document so you gave it to him?  
5 A That's correct.  
6 Q Who was present at closing?  
7 A Randy Graham, myself, obviously Robert Miller,  
8 Alton Hyatt. I think there was a young lady involved who  
9 shuffled papers. I can't remember anybody else.  
10 Q Was Jim Reno there?  
11 A Who?  
12 Q Jim Reno.  
13 A I don't recall that name.  
14 Q Do you know who Jim Reno is?  
15 A I don't recall that name.  
16 Q Look at Page 2 of this document. Who witnessed  
17 your signature?  
18 A I have no idea. I can't read it.  
19 Q Does that not say James C. Reno?  
20 A I don't know if it does or not.  
21 Q You don't even know who Jim Reno is, do you?  
22 A I don't.  
23 Q Do you know if there was a loan involved in the  
24 purchase of this property?  
25 A I don't know.

1 Q It didn't matter to you?  
2 A I wasn't privy to that.  
3 Q You were getting paid, however you were getting  
4 paid?  
5 A Is there anything wrong with that?  
6 Q And then below that, there's a signature I  
7 can't make out. Do you know who that is, under James C.  
8 Reno?  
9 A I have no idea.  
10 Q Do you know who the notary public was who  
11 notarized your signature?  
12 A This looks like the same one that was the  
13 witness.  
14 Q If you look at the bottom, it says Marvin A.  
15 Hyatt on a stamp. Do you see that?  
16 A Okay, yes.  
17 Q Do you recall that Alton Hyatt notarized your  
18 signature?  
19 A Yes, he did. I almost would call that a forger  
20 or what because he notarized it on the 6th, which I never  
21 signed anything on the 6th. It was signed on the 7th.  
22 Q Sir, do you understand the term forgery?  
23 A Forgery -- Maybe I'm using the wrong term.  
24 Q Okay. I want to make sure --  
25 A Why would an attorney who knows better say he

1 swore he saw me sign this on the 6th when I signed it  
2 on the 7th.  
3 Q Okay.  
4 A Do you get what I'm saying?  
5 Q My question is, do you understand the term  
6 forgery?  
7 A Maybe I used the wrong term. I don't know what  
8 you would call that.  
9 Q What do you call it?  
10 A Let's see. What term would be used for that?  
11 I'm trying to think here. Why an attorney, who knows  
12 better, would do that? What are they trying to do? Is it  
13 misrepresentation or -- What would you call it?  
14 Q Do you understand that forgery is --  
15 Mr. Foster: That is improper. You don't  
16 ask questions of Mr. Ballou. Mr. Ballou doesn't  
17 respond to your questions. Go ahead.  
18 Q Do you understand forgery to involve a false  
19 signature?  
20 A Or a -- This is a false notary.  
21 Q So the date -- Other than the date, is there  
22 anything false about this document?  
23 A No. That's my signature. I already admitted  
24 that's my signature.  
25 Q That's your signature. There's no forgery.

1 Nobody else -- You're not saying anybody else signed your  
2 name.  
3 A No, you're right. I signed my name, but I  
4 didn't sign it on the 6th day of November.  
5 Q I understand that.  
6 A Why would an attorney do that?  
7 Q Well, sir, you're throwing around the term  
8 called forgery that has legal implications. That's why  
9 I'm trying to ask the questions about what your  
10 contentions are about that.  
11 A Excuse me. He did not forge my name. That's  
12 my name.  
13 Q The only objection you have to this document is  
14 that it has the 6th of November, not the 7th, and your  
15 testimony is you signed on the 7th.  
16 A Right. I also object that this is not my  
17 intention.  
18 Q But it is a document you, in fact, signed?  
19 A That's correct.  
20 Q In connection with the closing of the sale of  
21 the subject property to J.D. Properties of the Carolinas,  
22 right?  
23 A That's correct.  
24 Q That expresses the intention that Robert H.  
25 Sarn, his heirs and/or assigns, hereby agrees to be fully

1 responsible for the total cost for the upkeep and  
2 maintenance of said private road. That's what the  
3 document says, isn't it?

4 Mr. Foster: I believe I at least need to  
5 put in here that insofar as he's been asked his  
6 intent, what was done and he's answered the  
7 question. Insofar as he's being asked to give  
8 a legal opinion, my objection stands.

9 Q And your answer is yes, right?

10 A To what?

11 Q This is the document you signed?

12 A Yes, it is the document I signed.

13 Q And this is a document that was recorded in the  
14 public records of York County?

15 A Yes. It was, yes.

16 Q After you contend that there was an Agreement b  
17 J. D. Properties of the Carolinas contrary to this  
18 document?

19 A According to the email, yes.

20 Q And this document is recorded after that email?

21 A Yes.

22 Q Wouldn't the last act be the final word on what  
23 the position of J.D. Properties -

24 Mr. Foster: Same objection. That is -

25 Mr. Ballou: You can wait for me to ask

1 the question, Martin. You can object according  
2 to the rules.

3 Q Doesn't it stand to reason that if there was a  
4 second hand report of an agreement to cover -- to pay for  
5 a proportional share of the costs followed by the  
6 recording of a written document signed by you, isn't that  
7 an indication that that's the final word on that issue?

8 A If it was filed, what you're saying, yes, but  
9 there were other circumstances involved.

10 Mr. Ballou: It's been a long day. I  
11 appreciate your testimony today. I'm sorry we  
12 meet under these circumstances.

13 Mr. Sarn: You're doing your job.

14 Mr. Ballou: I have no further questions at  
15 this time.

16 Mr. Foster: I assume we're done.

17 Whereupon: Deposition concluded at 1:33  
18 p.m.

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SUBSCRIPTION OF DEPONENT

State of SOUTH CAROLINA )  
County of York )

I, Robert H. Sarn, do hereby certify that I have this day read the foregoing deposition and do hereby declare that the same is a true and accurate transcript of the proceedings had at the time and place herein designated (except for the notations as indicated on the attached errata sheet, if any).

Dated: 10/9/2020  
Robert H. Sarn  
Robert H. Sarn

Sworn to and subscribed before me this 9 day of October, 2020.

[Signature]  
Notary Public  
My Commission Expires: \_\_\_\_\_

JOHN MARTIN FOSTER  
NOTARY PUBLIC  
SOUTH CAROLINA  
MY COMMISSION EXPIRES ~~07-18-29~~

1	ERRATA SHEET		
2	Page	Line	Reason for Change
3			
4			See: attached ERRATA SHEET
5			
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19	The above changes were noted by me on this Errata Page		
20	before signing of the attached Subscription of Deponent.		
21	I have retained a copy of this Errata Page for my records.		
22	A copy of this page and Subscription of Deponent is to be		
23	attached to the original transcript.		
24	Dated:	10/21/2020	
25	Deponent:	Robert H. Sarn	

Sarn.....Subscription of Deponent

Page 22 Lines 9,10,11: As to the ownership of Rental Court, I see it as being owned jointly by all the individual property owners.

Page 22 Line 16: As to the ownership of Rental Court I see it as being owned jointly by all the individual property owners.

Page 29 line 13: Actual money received was \$853,815.17.

Page 31 line 12: Actual money received was \$853,815.17.

Page 36 line 25: And going forward the new owners would be responsible for 2/7 th's of the cost to maintain Rental Court.

Page 37 line 8: Actual money received was \$853,815.17.

Page 44 line 23: And the result of our verbal agreement was that Mr. Grace would pay 2/7 th's of the road maintenance costs out of and as part of my proceeds from the sale and agree to pay 2/7 th's of the road maintenance of Rental court going forward as written in the Deed.

Page 58 line 15: I used the wrong term "Forgery"; throughout the rest of my testimony I would like to substitute fraudulent whenever forgery was used.

Page 80 line 19: Actual money received was \$853,815.17.

Page 81 line 2: I would like to add that getting Toy Rhea, City Electric and Taschner Textiles to participate in the maintenance of Rental Court had no relevance or bearing on the outcome of my sale of property to Glen Grace/GR Properties.

Page 98 line 25: Correct on hour to one hour .

Page 122 line 19: I used the wrong term "Forgery"; throughout the rest of my testimony I would like to substitute fraudulent whenever forgery was used.

Page 122 line 23: I used the wrong term "Forgery"; throughout the rest of my testimony I would like to substitute fraudulent whenever forgery was used.


Page 123 line 7: : I used the wrong term "Forgery"; throughout the rest of my testimony I would like to substitute fraudulent whenever forgery was used.

Page 123 line 13: add fraudulent to the "misrepresentation or" -- fraudulent . What would you call it?

Page 123 line 20: Change the word "false" to fraudulent.

Page 125 line 15: add at the end of the sentence....And fraudulently notarized.

Page 126 line 9: Add to the last sentence..."The circumstances being a document that was fraudulently notarized and that then was recorded in the public records of York County.

  
10/9/2020

1 PROCEEDINGS

2 THE COURT: Okay, this is case number 2019-CP-46-1446,  
3 Robert Sarn versus James Rhea, City Electric Supply, and  
4 Taschner Textile Industries.

5 This is in regards to Defendants -- I'm going to call  
6 them TTI for Taschner and Mr. Rhea -- Motion for Summary  
7 Judgment.

8 Representing Taschner Textile and Mr. Rhea? Mr. Pierce,  
9 is that --

10 MR. PIERCE: That's correct, Your Honor.

11 THE COURT: And, Mr. Ballou, are you just observing  
12 today?

13 MR. BALLOU: I'm just carrying the proverbial suitcase.

14 THE COURT: Representing City Electric Supply is Mr.  
15 Michael Hatch. And present on behalf of Plaintiff is Mr.  
16 John Martin Foster.

17 And, Mr. Pierce, whenever you're ready.

18 MR. PIERCE: Sure. Good afternoon, Your Honor.

19 We are here today on the motion for summary judgment  
20 brought on behalf of Defendants Taschner Textile Industries -  
21 - and we'll call them either TTI or Taschner as we move  
22 forward today -- and also Defendant James C. Rhea, III, who  
23 we'll refer to as Rhea or Toy Rhea moving forward.

24 Your Honor, I do intend to share my screen, if that  
25 would be okay?

1 THE COURT: Yes.

2 MR. PIERCE: I've got a PowerPoint presentation that I  
3 hope will be helpful. And if stops being helpful, please  
4 tell me and I'll quit sharing.

5 Okay, can everybody see that?

6 ATTORNEYS: Yes.

7 MR. PIERCE: Gotcha. Okay.

8 Your Honor, before we dive in, I will state that we have  
9 submitted our memorandum in support of our motion for summary  
10 judgment and we've attached numbered exhibits. We would  
11 refer you to that for certainly a more eloquent version of  
12 our arguments and as well as the full exhibits. We will be  
13 referencing portions of the exhibits as we move through this  
14 PowerPoint presentation, but for the full exhibit, including  
15 the full deposition of Mr. Sarn, that has been attached as an  
16 exhibit and filed along with our original motion.

17 As you are aware, Your Honor, a summary judgment is  
18 appropriate where the moving party is entitled to judgment as  
19 a matter of law, and there is no genuine issue of material  
20 fact present in the case that would require a trial by a find  
21 or a fact. And once the moving party shows that there's a  
22 lack of evidentiary support or a lack of genuine issues of  
23 material fact, the non-moving party is required to come  
24 forward with specific evidence showing that there is a  
25 genuine issue of material fact for trial. We believe that

1 once we have walked through the exhibits to our motion, it  
2 will be very clear that there is no genuine issue of material  
3 fact in this case and summary judgment is appropriate.

4 As a brief factual background, Your Honor, this case  
5 involves a claim for reimbursement by Mr. Sarn for the cost  
6 of repaving a private road known as Rental Court. Rental  
7 Court is located off Constitution Boulevard in the city  
8 limits of Rock Hill. Rental Court is bounded by seven  
9 commercial lots.

10 You should see on your screen a plat depicting Rental  
11 Court and the adjacent parcels. This has been attached as an  
12 exhibit to our motion for summary judgment, and it has been  
13 discussed extensively throughout the course of Mr. Sarn's  
14 deposition in September of last year.

15 Now, there are three parcels that we'll be discussing  
16 primarily today. The first is Lot 1, and Lot 1 is owned by  
17 Defendant Rhea. It is currently the Gala Affairs building.  
18 I'm sure we've all driven by it a number of times.

19 Lot 3 is owned by Defendant Taschner, and it is  
20 currently their Rock Hill headquarters for Taschner Textile  
21 Industries, LLC.

22 And, third, we'll be discussing Tract A and these  
23 adjacent parcel noted as ~~0~~This parcel to be combined with  
24 Tract A. ~~0~~ That was sold by Mr. Sarn to GR Properties of Fort  
25 Mill, LLC, in the summer of 2018.