THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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S.C. SUPREME COURT

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2019-001243

KATKAMS VENTURES, LLC
and SUPREMA, LLC,
as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC, d/b/a No Limit Financial, LLC
and Erich Simpson, Appellants.

APPENDIX

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The South Carolina Court of Appeals

KATKAMS VENTURES, LLC and SUPREMA, LLC,
as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC d/b/a No Limit Financial, LLC, and
Erich Simpson, Appellants.

Appellate Case No. 2019-001243

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

cc:
John Martin Foster, Esquire
Brian Wendell Tyson, Esquire
The Honorable Brian M. Gibbons

FILED
Aug 01 2022

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC d/b/a No Limit Financial, LLC, and Erich Simpson, Appellants.

Appellate Case No. 2019-001243

Appeal From Lancaster County
Brian M. Gibbons, Circuit Court Judge

Unpublished Opinion No. 2022-UP-205
Submitted April 1, 2022 – Filed May 18, 2022

AFFIRMED

John Martin Foster, of Rock Hill, for Appellants.

Brian Wendell Tyson, of Law Office of Paul H. Bass, LLC, of Charlotte, North Carolina, for Respondents.

PER CURIAM: No Limit, LLC d/b/a No Limit Financial, LLC and Erich Simpson (collectively, Tenant) appeal the circuit court's order granting summary judgment to Katkams Ventures, LLC and Suprema, LLC, successors in interest to 521, LLC (collectively, Landlord) and the damages award to Landlord. On appeal,

Tenant argues it is entitled to have the future rental damages reduced to their present value.

The lease provided the damages stemming from a default included "an amount equal to the amount of all rents reserved under [the lease]," minus the amount of rent collected by reletting the premises. Because the damages were calculated as provided for by the lease agreement, we find the circuit court did not err. Accordingly, we affirm pursuant to Rule 220(b), SCACR, and the following authorities: *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 562, 772 S.E.2d 882, 887 (Ct. App. 2015) ("A lease agreement is a contract, and an action to construe a contract is an action at law." (quoting *Middleton v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010))); *Fesmire v. Digh*, 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009) ("This Court reviews all questions of law de novo."); *Crenshaw v. Erskine Coll.*, 432 S.C. 1, 24, 850 S.E.2d 1, 13 (2020) ("Actions on a contract must be based on the terms of the contract.").

AFFIRMED.[1]

GEATHERS and HILL, JJ., and LOCKEMY, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

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KATKAMS VENTURES, LLC
and SUPREMA, LLC,
as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC, d/b/a No Limit Financial, LLC
and Erich Simpson, Appellants.

PETITION FOR REHEARING
OF REHEARING *EN BANC*

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STATEMENT OF THE CASE

In June, 2016, NO LIMIT, LLC, doing business as No Limit Financial, LLC leased commercial space from 521, LLC, the assignor of the Respondents KATKAMS VENTURES, LLC and SUPREMA, LLC. ERICH SIMPSON, now deceased, executed a guaranty for the lease

Under the lease, base monthly rent was set as follows:

the first two months:	No rent
3rd through the 12th months:	$ 2,296.00
12th through the 24th months:	$ 2,364.88
25th through the 36th months:	$ 2,435.67
37th through the 48th months:	$ 2,508.38
49th through the 60th months:	$ 2,583.96
Total:	$59,081.42

Under the lease, NO LIMIT, LLC was also to pay a proportion of other upkeep or "CAM" fees in the amount of $406.58 per month, as well as late charges and brokerage fees in the event of default.

In July, 2017, NO LIMIT, LLC vacated the premises and requested the lease be terminated. In December, 2017, the Respondents re-rented the premises for a term beginning in February, 2018 at a lesser rent. Under the term of the re-rental, base monthly rent was set as follows:

months 1-2:	rent free period
months 3-14:	$ 2,296.00
months 15-26:	$ 2,364.88
months 27-38:	$ 2,435.67

The new lease maintained the "CAM" fees in the same amount. ERICH SIMPSON, now deceased, became ill and the rental property was abandoned. [RECORD ON APPEAL, p. ___]

Suit was filed March 12th, 2018 against NO LIMIT and on his guaranty against SIMPSON. The Respondents moved for summary judgment; by Memorandum to that Motion, they sought:

a. Unpaid Rent from July 1, 2017 to January 30, 2018: 6,209.76
b. Lat*e Fees at five percent *(5%)* of the monthly rent

from July 1, 2017 to January 30, 2018:	$ 952.79
c. Past Due CAM fees:	$ 2,846.06
d. Calculated Loss from Difference in Rent:	$28,862.32
e. Broker Commission to re-let property:	$ 3,406.36
f. Attorney's fees and costs:	$11,584.24
Total:	$63,825.53[1]

By their Memorandum in support of summary judgment and in argument, the Respondents sought the full difference between the old lease amounts and the lesser, new rent payments. [RECORD ON APPEAL, p. ___] That is, the "Calculated Loss from Difference in Rent", or the "Total Rent Difference" referenced above; that amount is a calculation of the rental difference from breach by the Appellant through the end of the new lease, 38 months after November 1st, 2017, that is through December, 2020. In short, the item alleged by Respondent and awarded by the Circuit Court is for future damages.

At the Motion for summary judgment, counsel for Appellants argued for a reduction in the awarded amount based on present value, as calculated as of the date of judgment. However, by Order filed February 8, 2019, the Circuit Court awarded the full amount of $63,825.53 recited in the Respondents' Memorandum.

At hearing on the Motion to Reconsider, the Appellants submitted evidence of present value of the damages sought. The Motion to Reconsider was denied. This Appeal followed.

STANDARD OF REVIEW

The matter in question is an error of law.

ARGUMENT

The damages as awarded included the "Calculated Loss from Difference in Rent", or the "Total Rent Difference" referenced above; in other words, future damages were a) assumed to exist and b) were not reduced to the present value of that item as of the date of judgment.

1 The true total is $ 63,861.53; the amount recited above is the Respondent's stated total, which was adopted by the Circuit Court.

The general rule is that an allowance for future damages must be reduced to its present worth. 22 AM.JUR.2D *Damages* § 678 (09/2002). The commentators of AMERICAN JURISPRUDENCE 2D state:

> Therefore, the amount awarded for damage to be suffered in the future is such sum as, being put at interest, will amount (at the dates the damage will be suffered) to the sum the jury finds the plaintiff will lose in the future by reason of the alleged tort or breach of contract.
>
> [*Id.*, citing *Hollwedel* v. *Duffy-Mott Co.*, 263 N.Y. 95, 188 N.E. 266 (N.Y. 1933); *Gallaspy* v. *Warner*, 324 P.2d 848, *reh. denied* (Okla. 1958); and *Look* v. *Werlin*, 590 S.W.2d 526 (Tex.Civ.App. Houston (1st Dist) (1979); the last case cited dealing with future rent payments on a commercial lease.]

The same rule has been applied by other Courts dealing with damages under a lease. See *720 Lex Acquisition LLC* v. *Guess? Retail, Inc.* 09-cv-7199 (AJN) (S.D.N.Y. 08/17/2015); *IN RE United American Financial Corp.*, 55 B.R. 117 (Bankr. E.D.Tenn. 1985); *Consumers United Ins. Co.* v. *Smith*, 644 A.2d 1328 (D.C. 1994).

The rule reducing future damages to present value has been followed in many South Carolina cases. See, *e.g.*, *Hamilton* v. *Martin*, 270 S.C. 223, 241 S.E.2d 569 (1978); *E & S Investment Corp.* v. *Richland Bowl, Inc.*, 264 S.C. 582, 216 S.E.2d 522 (1975); *Frampton* v. *S.C. Dep't of Transp.*, 406 S.C. 377, 752 S.E.2d 269 (Ct.App. 2014). In these cases, the Supreme Court recognized the propriety of reducing future damages to a present value. All the above cited cases involved the present value of future rentals, as in this case.

The Respondents produced no evidence as to present value of the claimed future rent other than the rental amount under the new lease. [RECORD ON APPEAL, p. 55–86.] Even taking that as given, the Appellants are entitled to the difference between the two rental amounts, reduced to present value as of the date of judgment, as recognized by the cited precedent of our Supreme Court.

The Appellants cited, and supplied to the Circuit Court, the opinion of a Certified Public Accountant as to such value, which was calculated at $ 7,976.65, far beneath the $ 28,862.32 awarded as a por-

tion of the Order granting summary judgment. [RECORD ON APPEAL, p. 124-137.] That is the figure to which that item in the awarded damages should be reduced.

CONCLUSION

The Appellants are entitled to a judgment reducing that portion of the awarded damages to its present value, based upon the sole evidence presented. The present decision of this Court should be amended accordingly.

June 2, 2022

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2019-001243

Katkams Ventures, LLC
and Suprema, LLC,
as successors in interest to 521, LLC, Respondents,

v.

No Limit, LLC, d/b/a No Limit Financial, LLC
and Estate of Erich Simpson, Appellants.

CERTIFICATE OF SERVICE

The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Petition for Rehearing or Rehearing *En Banc*; and
this Certificate of Service,

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also 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. all pursuant to Rule 262, S.C.A.C.R.

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June 2, 2022

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2019-001243

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KATKAMS VENTURES, LLC
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as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC, d/b/a No Limit Financial, LLC
and Erich Simpson, Appellants.

BRIEF OF APPELLANTS

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STATEMENT OF THE ISSUES ON APPEAL

I. ARE THE APPELLANTS ENTITLED TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

STATEMENT OF THE CASE

In June, 2016, NO LIMIT, LLC, doing business as No Limit Financial, LLC leased commercial space in Indian Land, Lancaster County from 521, LLC, the assignor of the Respondents KATKAMS VENTURES, LLC and SUPREMA, LLC. ERICH SIMPSON, now deceased, executed a guaranty for the lease

Under the lease, base monthly rent was set as follows:

the first two months:	No rent
3rd through the 12th months:	$ 2,296.00
12th through the 24th months:	$ 2,364.88
25th through the 36th months:	$ 2,435.67
37th through the 48th months:	$ 2,508.38
49th through the 60th months:	$ 2,583.96
Total:	$59,081.42

Under the lease, NO LIMIT, LLC was also to pay a proportion of other upkeep or "CAM" fees in the amount of $406.58 per month, as well as late charges and brokerage fees in the event of default.

In July, 2017, NO LIMIT, LLC vacated the premises and requested the lease be terminated.

In December, 2017, the Respondents re-rented the premises for a term beginning in February, 2018 at a lesser rent. Under the term of the re-rental, base monthly rent was set as follows:

months 1-2:	rent free period
months 3-14:	$ 2,296.00
months 15-26:	$ 2,364.88
months 27-38:	$ 2,435.67

The new lease maintained the "CAM" fees in the same amount. ERICH SIMPSON, now deceased, became ill and the rental property was abandoned. [RECORD ON APPEAL, p.5; Para.14 of Complaint, p. 15.]

Suit was filed March 12th, 2018 for breach of the lease against NO LIMIT, breach of the guaranty against SIMPSON, and breach of good faith by both Appellants. The Respondents moved for summary judgment by Motion filed November 12th, 2018. By Memorandum to that Motion, they sought:

a.	Unpaid Rent from July 1, 2017 to January 30, 2018:	$16,209.76
b.	Late Fees at five percent *(5%)* of the monthly rent from July 1, 2017 to January 30, 2018:	$ 952.79
c.	Past Due CAM fees:	$ 2,846.06
d.	Calculated Loss from Difference in Rent:	$28,862.32
e.	Broker Commission to re-let property:	$ 3,406.36
f.	Attorney's fees and costs:	$11,584.24
Total:		$63,825.53[1]

By their Memorandum in support of summary judgment and in argument, the Respondents sought the full difference between the old lease amounts and the lesser, new rent payments. [RECORD ON APPEAL, p.55 – 86.]

The Motion for summary judgment was heard January 28, 2019. Counsel for the Appellants argued for a reduction based on present value. By Order filed February 8, 2019, the Circuit Court awarded the full amount of $ 63,825.53 recited in the Respondents' Memorandum.

Appellants' Rule 59 Motion was filed February 18, 2019 and heard on June 24, 2019. At hearing the Appellants submitted evidence of present value of the damages sought. The Motion to Reconsider was denied by Form 4 Order on June 25, 2019. Appeal was filed and served on July 25, 2019.

1 The true total is $ 63,861.53; the amount recited above is the Respondent's stated total, which was adopted by the Circuit Court.

STANDARD OF REVIEW

This Court has held, in *Hunt* v. *Forestry Comm*, 358 S.C. 564, 595 S.E.2d 846 (Ct.App. 2004) as follows:

> While a trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court. *See Rickborn* v. *Liberty Life Ins. Co.*, 321 S.C. 291, 296, 468 S.E.2d 292, 295 (1996); *Moriarty* v. *Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000); *see Okatie River, L.L.C.* v. *Southeastern Site Prep, L.L.C.*, 353 S.C. 327, 334, 577 S.E.2d 468, 479 (2003) ("In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law."); *State Farm Mut. Auto. Ins. Co.* v. *Moorer*, 330 S.C. 46, 51, 496 S.E.2d 875, 878 (Ct.App. 1998) ("In legal actions, our scope of review extends only to the correction of errors of law.").
> [*Hunt* v. *Forestry Comm*, 358 S.C. at 569, 595 S.E.2d at ___.]

The matter in question is an error of law.

ARGUMENT

The general rule is that an allowance for future damages must be reduced to its present worth. 22 AM.JUR.2D *Damages* § 678 (09/2002). The commentators of AMERICAN JURISPRUDENCE 2D state:

> Therefore, the amount awarded for damage to be suffered in the future is such sum as, being put at interest, will amount (at the dates the damage will be suffered) to the sum the jury finds the plaintiff will lose in the future by reason of the alleged tort or breach of contract.
> [*Id.*, citing *Hollwedel* v. *Duffy-Mott Co.*, 263 N.Y. 95, 188 N.E. 266 (N.Y. 1933); *Gallaspy* v. *Warner*, 324 P.2d 848, *reh. denied* (Okla. 1958); and *Look* v. *Werlin*, 590 S.W.2d 526 (Tex.Civ.App. Houston (1st Dist) (1979); *the last case cited dealing with future rent payments on a commercial lease*.]

The same rule has been applied by other Courts dealing with damages under a lease. See *720 Lex Acquisition LLC* v. *Guess? Retail, Inc*. 09-cv-7199 (AJN) (S.D.N.Y. 08/17/2015); *IN RE United American Financial Corp*., 55 B.R. 117 (Bankr. E.D.Tenn. 1985); *Consumers United Ins. Co*. v. *Smith*, 644 A.2d 1328 (D.C. 1994)

The rule reducing future rental damages to present value has been followed in many South Carolina cases. See, *e.g.*, *Hamilton* v. *Martin*, 270 S.C. 223, 241 S.E.2d 569 (1978); *E & S Investment Corp*. v. *Richland Bowl, Inc*., 264 S.C. 582, 216 S.E.2d 522 (1975); *Frampton* v. *S.C. Dep't of Transp*., 406 S.C. 377, 752 S.E.2d 269 (Ct.App. 2014).

The Respondents produced no evidence as to present value of the claimed future rent other than the new rental amount. [RECORD ON APPEAL, p.55 -86; p.90 – 121; p.139 – 145; Transcripts of Hearings, p.146 – 160.] Taking that as given, the Respondents are entitled to the difference between the two rental amounts, reduced to present value as of the date of judgment.

The Appellants cited, and supplied to the Circuit Court, within the period allowed by that Court, the opinion of a Certified Public Accountant as to such value, which value was calculated at $ 7,976.65, far beneath the $ 28,862.32 awarded as a portion of the Order granting summary judgment. [RECORD ON APPEAL, p.124 – 137.]

CONCLUSION

The Appellants are entitled to judgment reducing that portion of the awarded damages to its present value, based upon the sole evidence presented.

August 7, 2020

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Appellants complies with Rule 211(b), S.C.A.C.R.

May 11, 2018

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable Brian Gibbons, Circuit Court Judge

Appellant Case No. 2019-001243

KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC d/b/a No Limit Financial, LLC, and Erich Simpson, Appellants.

FINAL BRIEF OF THE RESPONDENTS

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SOUTH CAROLINA COURT OF APPEALS

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 772 S.E.2d 882 (2015) 2, 3

STATEMENT OF ISSUES ON APPEAL

1. ARE THE APPELLANTS ENTITLED TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

STATEMENT OF FACTS

On July 11, 2016, 521, LLC (the "Original Landlord") and the entity Appellant, No Limit, LLC, entered into a Commercial Lease Agreement ("Lease Agreement") for a lease term of sixty (60) months (R. p. 22). On July 11, 2016, Appellant Erich Simpson (hereinafter collectively referred to as "Appellants") executed a Guaranty of Lease (R. pp. 35-39). On or around June 2017, the Appellants vacated the premises in violation of the Lease Agreement. On July 1, 2017, the Appellants failed to make the monthly rental payment pursuant to the terms of the Lease Agreement, which constituted a default. From July 1, 2017 to January 31, 2018, the Appellants failed to make any monthly rental payments pursuant to the terms of the Lease Agreement and failed to cure the default pursuant to the Guaranty. As of February 1, 2018, the Appellants had a total remaining base rent balance of One Hundred Thirteen Thousand Nine Hundred Eighty-Four Dollars and Ninety-Two Cents ($113,984.92) (R. p. 112) which was the amount of base rent due pursuant to the Lease Agreement, less what the Appellants paid, and less the past due rent for July 2017 through January 2018. During the default period, Respondents made diligent efforts to mitigate their damages to re-lease the premises and were able to find a new tenant, whose rental payment obligations began on February 1, 2018, per the terms of the new lease agreement (R. pp. 74-86). The New Lease Agreement has a stipulated rent value of Eighty-Five Thousand One Hundred Fifty-Eight Dollars and Sixty Cents ($85,158.60) (R. p. 112).

ARGUMENT

1. THE APPELLANTS ARE NOT ENTITLED TO FUTURE RENTAL DAMAGES REDUCED TO PRESENT VALUE.

The Appellants are not entitled to future rental damages reduced to the present value, as the Appellants had a contractual liability under the lease to make rental payments as stipulated and established by the Lease Agreement. The South Carolina Court of Appeals has previously held that,

> Although the landlord-tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rest for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages.

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 568, 772 S.E.2d 882, 890 (2015).

The Appellants in this matter abandoned the property in or around June 2017 and defaulted on the monthly rental payment due on July 1, 2017. The Appellants' abandonment of the property constituted a termination of the Lease Agreement but did not discharge the Appellants from their duty to make rental payments pursuant to the rental agreement. Appellant admitted to the terms of the Lease Agreement and the breach of the Lease Agreement. Moreover, the Appellants' have failed to raise any issues in regard to the Respondents' mitigation efforts. The value of all rental periods under the Lease Agreement were calculated, communicated, and agreed to by the parties. The future rental damages cannot be reduced to the present value, as the value was specifically and contractually preestablished by the parties and is a stipulated amount calculated by parties as damages at the time the lease commenced.

Although the Respondents mitigated their damages through the establishment of a new lease agreement, this does not relieve the Appellants of their obligation under the Lease Agreement for the stipulated rental payments. The Supreme Court of South Carolina in Investment Corp. v. Richland Bowl, Inc. stated that "Damages are to be the difference between the rent under the old lease and the amount realized under the new lease. The crucial word is *realize*. We must place a construction upon it as is reasonable, considering the damage clause of the lease in its entirety." E & S Investment Corp. v. Richland Bowl, Inc., 264 S.C. 582, 591, 216 S.E.2d 522, 526 (1975) (emphasis added). The South Carolina Supreme Court has given further weight to the Respondent's entitlement to the full amount of future damages, albeit through factually distinguishable, but no less noteworthy, case law precedent. "The termination of a lease agreement does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, *unless the lease shall provide that*, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations." Simon v. Kirkpatrick, 141 S.C. 251, 262, 139 S.E. 614, 618 (1927) (emphasis added). The Court in Simon clearly stated that the tenant would be responsible at the termination of the lease for future rent as damages if the lease so provided. The Court in Bluffton, upon examining Simon, and later expanding on the opinion, stated: "[W]e hold that Simon remains valid law." Bluffton Towne Ctr., LLC v. Gilleland-Prince, 412 S.C 554, 565, 772 S.E.2d 882, 888 (2015). Bluffton establishes a bright-line rule of law for a tenant's obligation for future damages following a termination, and is factually similar to the present matter, as the Lease Agreement (R. pp. 22-34) between the two parties provides the Respondents the opportunity to pursue future damages.

The Supreme Court of South Carolina in U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956) which is often referenced in conjunction with Simon, and is factually

distinguishable from the present case, but nonetheless establishes **the importance of the contractual intentions between parties of a lease agreement**, and the rights of the landlord to pursue its contractual remedies for damages which have clearly survived said termination. In the present matter, Section 20 of the Lease Agreement states:

> Landlord may relet the premise or a portion of the premises for any reasonable use, and Landlord shall be entitled to recover from Tenant an amount equal to the amount of all rents reserved under this Lease, less the net rent, if any, collected by the Landlord on reletting the Demised Premises.

R. p. 28.

By examining the lease, the parties have contractually agreed to be bound by the stipulations of the Lease Agreement, the terms of the which were contemplated by the parties prior to execution and commencement. The Lease Agreement provides a clear and unambiguous calculation of rental payments due, and further allows for the Respondents to recover stipulated rental payments as a result of the Appellants' default, less the net rent collected upon reletting. Based on South Carolina law, the Respondents are entitled to the calculation of damages as set forth in Bluffton, and as properly applied by the court of common pleas.

The Appellants, while offering a persuasive argument for a reduction of the future rent damages value, have failed to offer any controlling authority that outweighs the contractual agreement between the parties. Their argument for a reduction to present value fails because it is attempting to unilaterally redefine fixed terms of the Lease Agreement and limits the Respondents' ability to recover as established by legal precedents. The Appellants, therefore, are not entitled to a reduction in the value of the future rental damages.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the court of common pleas and deny the Appellants' request to reduce the future damages awarded to the present value.

Respectfully submitted,

July 21, 2020

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, North Carolina 28277
Phone: (704) 644-1855 | Fax: (704) 644-1856
brian@paulbassllc.com

Attorney for Respondents

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

The Honorable Brian Gibbons, Circuit Court Judge

Appellant Case No. 2019-001243

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC, Respondents,

v.

NO LIMIT, LLC d/b/a No Limit Financial, LLC, and Erich Simpson, Appellants.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of the Respondents, dated July 21, 2020, on the following counsel or persons of record, by depositing the same with the United States mail, with sufficient first class postage attached, properly address to the Clerk of Court for the South Carolina Court of Appeals, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below, pursuant to Rule 262(b) of the South Carolina Appellate Court Rules:

John Martin Foster, Esq.
P.O. Box 106
Rock Hill, South Carolina 29731-6106
Attorney for Appellants

July 21, 2020

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
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Attorney for Respondents

RBCBIVJBD
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SC Court of Ap

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2019-001243

Katkams Ventures, LLC
and Suprema, LLC,
as successors in interest to 521, LLC, Respondents,

v.

No Limit, LLC, d/b/a No Limit Financial, LLC
andErich Simpson, Appellants.

RECORD ON APPEAL

John Martin Foster
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
Attorney for Appellants

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Attorney for Respondent

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ELECTRONICALLY FILED - 2019 Feb 08 9:11 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
	)	Civil Action No. 2018-CP-29-00271
KATAKMS VENTURES, LLC and SUPREMA, LLC., as successors in interest to 521, LLC,	)	
	)	
Plaintiffs,	)	
	)	**JUDGMENT**
vs.	)	
	)	
NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,	)	
	)	
Defendant.	)	

THIS CAUSE coming before and being heard by the undersigned Judge on January 28, 2019, on motion of Plaintiffs Katkams Ventures, LLC and Suprema, LLC (collectively "Plaintiffs"), successors in interest to 521, LLC, for the Motion for Summary Judgment, filed on November 12, 2018. Based upon the pleadings, the affidavits, and the discovery responses, it appears to the Court that Plaintiff' Motion for Summary Judgment should be GRANTED:

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That no genuine issue of material fact exists in regards to Plaintiffs' claim for Breach of Contract against Defendant No Limit, LLC, d/b/a No Limit Financial, LLC (hereinafter "Defendant No Limit");

2. That no genuine issue of material fact exists in regards to Plaintiffs' claim for Breach of Contract – Guaranty against Defendant Erich Simpson (hereinafter "Defendant Simpson");

3. That the Plaintiffs' Motion for Summary Judgment shall be **GRANTED** in favor of the Plaintiffs' favor based upon their claims of Breach of Contract against Defendant No Limit and Breach of Contract – Guaranty against Defendant Simpson; and

4. That Plaintiffs recover from Defendant No Limit, LLC and Defendant Simpson (collectively "Defendants") damages in the total Fifty-Two Thousand Two Hundred Forty-One Dollars and Twenty-Nine Cents ($52,241.29) in damages, plus Eleven Thousand Four Hundred Two Dollars and Fifty Cent ($11,402.50) in attorney's fees and One Hundred Eighty-One Dollars and Seventy-Four Cent ($181.74) in cost, totaling **$63,825.53**, and judgment is hereby entered against Defendants in the amount of **$63,825.53**.

This the _____ day of February, 2019.

_____

Honorable Brian M. Gibbons
Lancaster County, South Carolina Presiding Judge

ELECTRONICALLY FILED - 2019 Feb 08 9:11 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

ELECTRONICALLY FILED - 2019 Feb 08 9:11 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

Lancaster Common Pleas

Case Caption: Katkams Ventures, LLC., and Suprema, LLC as successors in in VS No Limit, LLC , defendant, et al

Case Number: 2018CP2900271

Type: Order/Summary Judgment

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

ELECTRONICALLY FILED - 2019 Jun 25 9:38 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271



Lancaster Common Pleas

Case Caption: Katkams Ventures, LLC., and Suprema, LLC as successors in in VS No Limit, LLC , defendant, et al

Case Number: 2018CP2900271

Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2019-06-24 21:28:50 page 3 of 3

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF LANCASTER	]	SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC,	]	
Plaintiffs,	]	STIPULATION
vs.	]	
NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LLC, and ERICH SIMPSON,	]	C.A. No. 2018-CP-29-00271
Defendants.	]	

Pursuant to Rule 25(a), S.C.R.C.P., the parties acknowledge:

1) that the Plaintiff ERICH SIMPSON died on September 18th, 2018;
2) that his Estate has been opened in Lancaster County Probate Court as Case No. 2018-ES-29-00554, and Erica Simpson has been appointed as Personal Representative of the said Estate on October 25th, 2018; and
3) that Rule 25(a) allows and mandates that the said Personal Representative and Estate be substituted for the deceased in the above action and so listed in the caption thereof.

The parties appearing have agreed to such substitution by the signatures of counsel below.

/s/ John Martin Foster
Attorney for the Defendants
SC Bar No. 20186

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 39730

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

/s/ Brian W. Tyson
Attorney for the Plaintiffs
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704 644-1856: Fax
brian@paulbassllc.com

November 14, 2018

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2019 Feb 08 9:14 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF LANCASTER	]	SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC,	]	
Plaintiffs,	]	ORDER
vs.	]	
NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LLC, and ERICH SIMPSON,	]	C.A. No. 2018-CP-29-00271
Defendants.	]	

Having read the Stipulation of Counsel, and good cause appearing therefor, it is ordered:

That pursuant to Rule 25(a), S.C.R.C.P., Erica Simpson, as Personal Representative of the Estate of Erich Simpson, be and hereby is substituted for the deceased ERICH SIMPSON as a proper party in the above-captioned and numbered civil action;

AND IT IS SO ORDERED.

Brian M. Gibbons
Judge of the Sixth Circuit

_____, South Carolina

_____, 2019

ELECTRONICALLY FILED - 2019 Feb 08 9:14 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

ELECTRONICALLY FILED - 2019 Feb 08 9:14 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

Lancaster Common Pleas

Case Caption: Katkams Ventures, LLC., and Suprema, LLC as successors in in VS No Limit, LLC , defendant, et al

Case Number: 2018CP2900271

Type: Order/Substitution of Parties

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2900271

Katkams Ventures, LLC., and Suprema, LLC as successors in in
PLAINTIFF(S)

No Limit, LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

Motion to Reconsider - 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 06/24/2019 .

dba No Limit Financial,. LLC
Erica Simpson

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jun 25 9:38 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

Court Reporter:

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

ELECTRONICALLY FILED - 2019 Jun 25 9:38 AM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTEENTH JUDICIAL CIRCUIT
KATAKMS VENTURES, LLC and SUPREMA, LLC., as successors in interest to 521, LLC,	)	Civil Action No.: 2018-CP-29-00171
Plaintiffs,	)	**SUMMONS COLLECTIONS ACTION NON-JURY**
vs.	)	
NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,	)	
Defendant.	)	

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OF COURT
2018 MAR 12 PM 12:42
CLERK OF COURT
LANCASTER, SC

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber to Law Office of Paul H. Bass, PLLC, located at 16928 Lancaster Hwy, Ste 109, Charlotte, NC 28277, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, a Default Judgment may be rendered against you for the relief demanded in the Complaint.

This the 12 day of March, 2018.

Respectfully Submitted,
LAW OFFICE OF PAUL H. BASS, PLLC
By Its Attorney,

Served
3/21/18

Brian W. Tyson, Esq.
S.C. Bar No. 102391
Law Office of Paul H. Bass
16928 Lancaster Hwy, Ste 109
Charlotte, NC 28277
Telephone: (704) 644-1855
Fax: (704) 644-1856
Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
KATKAMS VENTURES, LLC., and SUPREMA, LLC., as successors in interest to 521, LLC,)
Plaintiff(s))
)
vs.)
)
NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC, and ERICH SIMPSON,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2018-CP - 29- 00391

Submitted By: Brian W. Tyson
Address: 16928 Lancaster Hwy, Ste 109
Charlotte, NC 28277

SC Bar #: 102391
Telephone #: (704) 644-1855
Fax #: (704) 644-1856
Other:
E-mail: brian@paulbassllc.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

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OF COURT
2018 MAR 12 PM 12:42
CLERK OF COURT
LANCASTER, SC

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
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- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

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- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
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- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 3/12/18

SCCA / 234 (03/2016)

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON, Defendants.	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT Civil Action No.: 2018-CP-29-0271 **COMPLAINT** (Non-Jury Trial Demanded)

NOW COMES Plaintiffs Katkams Ventures, LLC and Suprema, LLC, successors in interest to 521, LLC (collectively the "Plaintiffs"), by and through the undersigned attorney and complaining of Defendant No Limit, LLC, d/b/a No Limit Financial, LLC and Defendant Erich Simpson, who show unto this Honorable Court as follows:

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2018 MAR 12 P 12:45
CLERK OF COURT
LANCASTER SC

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Katkams Ventures, LLC is a limited liability company organized and existing under the laws of the State of South Carolina with a principle place of business located in Lancaster County, South Carolina.

2. Plaintiff Suprema, LLC is a limited liability company organized and existing under the laws of the State of South Carolina with a principle place of business located in Lancaster County, South Carolina.

3. Plaintiffs are successors in interest to 521, LLC, a limited liability company organized and existing under the laws of the State of South Carolina (the "Original Landlord").

4. Upon information and belief, Defendant No Limit, LLC, d/b/a No Limit Financial, LLC (hereinafter, "Defendant No Limit") is a limited liability company organized and operating under the laws of the State of South Carolina with its headquarters and principle place of business located in Lancaster County, South Carolina. Defendant No Limit operates under the business name of No Limit Financial, LLC within the State of South Carolina and Lancaster County, South Carolina.

5. Upon information and belief, Defendant Erich Simpson (hereinafter, "Defendant Simpson") was, at all times mentioned in this Complaint, a resident and citizen of Lancaster County, South Carolina (hereinafter Defendant Simpson and Defendant No Limit are collectively the "Defendants").

6. All acts or omissions giving rise to the Plaintiffs' causes of action contained in this Complaint occurred in Lancaster County, South Carolina.

7. This Honorable Court has jurisdiction over the parties and subject matter of this action and venue is proper before this Honorable Court.

FACTUAL ALLEGATIONS

8. On July 11, 2016 the Original Landlord and Defendant No Limit entered into a Commercial Lease Agreement (hereinafter, the "Lease Agreement"), whereby Original Landlord leased space containing approximately 1,148 square feet, a portion of Suite 200 of the commercial complex known as the "Southern Shoppes", with the address of 10005 Charlotte Highway, Indian Land, SC 29707 (hereinafter, the "Premises") with a lease term of sixty (60) months. At the commencement of the Lease Agreement, Original Landlord was the sole owner of the Premises. A copy of the Lease Agreement and Guaranty is attached hereto as **Exhibit "A"** and is incorporated herein by reference.

9. The base rent set forth in the Lease Agreement is as follows: for months 1-2: no rent was due; for months 3-12: $2,296.00 per month; for months 12-24: $2,364.88 per month; for months 25-36: $2,435.67 per month; for months 37-48: $2,508.38 per month; and for months 49-60: $2,583.96 per month.

10. Pursuant to the terms of the Lease Agreement, Defendant No Limit was required to pay rent in the amount of Two Thousand Two Hundred Ninety-Six Dollars ($2,296.00) to the Original Landlord on the first day of each month until the end of the twelfth month as defined by the Lease Agreement. Defendant No Limit's base rent would then increase to Two Thousand Three Hundred and Sixty-Four Dollars and Eighty-Eight Cents ($2,364.88) per month until the end of the twenty-fourth month as defined by the Lease Agreement.

11. Pursuant to the terms of the Lease Agreement, Defendant No Limit was required to pay additional rent in the form of its proportionate share of all costs in maintaining, repairing, operating, and insuring the Premises ("CAM Fees"). The estimated CAM Fees pursuant to the Lease Agreement are Four Hundred and Six Dollars and Fifty-Eight Cents ($406.58), and was payable on first day of each month until the end of the Lease Agreement.

12. On July 11, 2016, in conjunction with the Lease Agreement, Defendant Simpson executed a Guaranty of Lease, in which he agreed to guarantee Defendant No Limit 's payment and performance pursuant to the Lease Agreement (the "Guaranty"). Defendant Simpson offered and executed the Guaranty as an inducement for the Original Landlord to enter into the Lease Agreement with Defendant No Limit. A copy of the is included in the Lease Agreement attached **Exhibit "A"**.

13. On or about July 29, 2016, the Original Landlord sold the property on which the Premises is located to Plaintiffs. As part of the transaction, the Original Landlord assigned the Lease

Agreement and Guaranty between itself and the Defendants to Plaintiffs as successors in interest. A copy of the Assignment of Lease is attached hereto as **Exhibit "B"** and is incorporated herein by reference.

14. In or about June, 2017, Plaintiffs discovered that the Premises was unoccupied.

15. On July 1, 2017, Defendant No Limit failed to make a timely rental payment pursuant to the terms of the Lease Agreement, which constituted an event of default there-under.

16. On or about July 11, 2017, pursuant to the terms of the Lease Agreement, the Plaintiffs requested payment of the rental amount owed for the month of July.

17. On or about July 12, 2017, Plaintiffs received notice from Defendant Simpson that Defendant No Limit had vacated the Premises without approval from or notice to the Plaintiffs. Defendant Simpson further requested that Plaintiffs terminate the Lease Agreement with Defendant No Limit early, which such request was denied by the Plaintiffs.

18. On August 1, 2017, Defendant No Limit again failed to make a timely rental payment pursuant to the terms of the Lease Agreement, which constituted an event of default there under.

19. On August 7, 2017, Plaintiffs' attorney sent a written Notice of Default to Defendant No Limit and Defendant Simpson. A copy of the Notice of Default is attached hereto as **Exhibit "C"** and is incorporated herein by reference.

20. Since the Notice of Default, Defendant No Limit has failed to make payments of all amounts due Plaintiffs pursuant to the Lease Agreement and Defendant Simpson has failed to cure the defaults of Defendant No Limit pursuant to the Guaranty.

21. In or about December, 2017, Plaintiffs re-rented the Premises in order to avoid further loss of rents owed and re-let the Premises with the new lease agreement beginning in February 2018.

22. Section 20 of the Lease Agreement provided that Defendant No Limit, upon the occurrence of a default pursuant to the Lease Agreement, would be responsible for all attorney's fees and cost incurred by the landlord in the enforcement of the landlord's rights under the Lease Agreement.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT
(Against Defendant No Limit)

23. The Plaintiffs re-allege all above paragraphs, to the extent not inconsistent herewith, as if fully stated verbatim herein.

24. On July 11, 2016, Defendant No Limit entered into a binding Lease Agreement with the Original Landlord for the Premises with an expiration date of June 11, 2021.

25. Plaintiffs, through the sale and execution of the Assignment of Lease, assumed the Original Landlord's rights and obligations under the Lease Agreement on July 29, 2016.

26. Defendant No Limit's abandonment of the Premises approximately in June, 2017, is in direct violation of the Lease Agreement.

27. Defendant No Limit breached the Lease Agreement by failing and refusing to make rental payments due Plaintiffs as required by the terms and conditions of the Lease Agreement.

28. Defendant No Limit's acts and omissions as described above constitute material breaches and violations of the terms of the Lease Agreement.

29. Plaintiffs were, at all times, ready, willing, and able to perform and did in fact perform all of Plaintiffs' duties and obligations under the Lease Agreement.

30. Plaintiffs have suffered and continue to suffer damages as a direct and proximate result of Defendant No Limit's breach of the Lease Agreement.

31. To date, the Plaintiffs have incurred the following damages as a direct and proximate result of Defendant No Limit's breach of the Lease Agreement:

a.	Unpaid Rent (July 1, 2017-January 1, 2018)	$16,209.76
b.	CAM Fees (July 2017-January 2018)	$2,846.06
c.	Late Fees (July 2017-January 2018)	$952.79
d.	Calculated Loss from Difference in Rent	$33,556.00
e.	Broker Commission for re-let	$3,406.36
f.	Attorneys' Fees up to Filing Date	$2,256.00
		Total: $59,226.97

32. Defendant No Limits failure and refusal to pay rent from July, 2017 to January, 2018 resulted in Late Fees equal to five percent of the amount required to be paid, in accordance with the terms of the Lease Agreement.

33. In February, 2018, Plaintiffs were able to re-let the Premises, minimizing the rent lost due to Defendant No Limits default. Plaintiffs total calculated loss from the difference in rent as of the date of this filing is Thirty-Three Thousand Five Hundred and Fifty-Six Dollars and Zero Cents ($33,556.00).

34. The Plaintiffs are entitled to a judgment against Defendant No Limit in the amount of Fifty-Nine Thousand Two Hundred Twenty-Six Dollars and Ninety-Seven Cents ($59,226.97) for the damages caused by Defendant No Limit's breach of the Lease Agreement.

FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT – GUARANTY
(Against Defendant Simpson)

35. The Plaintiffs re-allege all above paragraphs, to the extent not inconsistent herewith, as if fully stated verbatim herein

36. On July 11, 2016, Defendant Simpson entered into a binding Guaranty with the Original Landlord, guaranteeing Defendant No Limit's payment and performance pursuant to the Lease Agreement covering the Premises.

37. On or about July 29, 2016 Plaintiffs, through the sale and execution of the Assignment of Lease, assumed the Original Landlord's rights and obligations under the Guaranty.

38. Defendant Simpson has failed to bring Defendant No Limit's rental account current and provide the rental amounts due Plaintiffs from Defendant No Limit pursuant to the Lease Agreement and as required by the Guaranty.

39. Defendant Simpson breached the Guaranty by failing and refusing to make the required rental payments due Plaintiffs under the Lease Agreement on behalf of Defendant No Limit.

40. Since Defendant No Limits June, 2017 abandonment of the Premises, Defendant Simpson has further breached the Guaranty by failing to cure Defendant No Limit's defaults under the Lease Agreement.

41. The Plaintiffs have performed or there have occurred all conditions precedent to the Plaintiff's recovery hereunder.

42. The Plaintiffs have suffered and will continue to suffer substantial damage and loss as a direct and proximate result of Defendant Simpson's breach of the Guaranty in the amount of Fifty-Nine Thousand Two Hundred Twenty-Six Dollars and Ninety-Seven Cents ($59,226.97).

FOR A THIRD CAUSE OF ACTION
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(Against all Defendants)

43. The Plaintiffs re-allege all above paragraphs, to the extent not inconsistent herewith, as if fully stated verbatim herein.

44. A covenant of good faith and fair dealing is implied in the Lease Agreement and Guaranty.

45. The Defendants' conduct, as described herein, constitutes a breach of the covenant of good faith and fair dealing, for which the Plaintiffs are entitled to a judgment against the Defendants for actual, consequential, and lost expectation damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray this Honorable Court as follows:

a. A judgment against Defendant No Limit and Defendant Simpson, jointly and severally, in the amount of Fifty-Nine Thousand Two Hundred Twenty-Six Dollars and Ninety-Seven Cents ($59,226.97), said amount including full expectation damages for the Defendants' breach of the Lease Agreement and Guaranty, late fees, and attorney's fees;

b. Pre-judgment interest at the legal rate from the date of demand until the date of payment of the demanded amount;

c. Post-judgment interest at the legal rate from the date of judgment until such time as the entire balance due is paid in full;

d. Defendants to pay Plaintiffs' costs and attorney's fees incurred as a result of this action; and

e. Such and other further relief as this Honorable Court deems just and proper.

(Signature on Next Page)

Respectfully Submitted,

This the 12 day of March, 2018.

Lancaster County, South Carolina.

LAW OFFICE OF PAUL H. BASS, PLLC

Brian W. Tyson, Esq.
S.C. Bar No. 102391
16928 Lancaster Hwy, Ste 109
Charlotte, NC 28277
Telephone: (704) 644-1855
Fax: (704) 644-1856

Attorney for Plaintiffs

Exhibit A

Lease Agreement between 521, LLC and No Limit, LLC

and

Lease Guaranty between 521, LLC and Erich Simpson

FILED
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2018 MAR 12 PM 12:42
CLERK OF COURT
LANCASTER, SC

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LEASE AGREEMENT

THIS LEASE AGREEMENT made as of the 1st day of July, 2016, by and between 521, LLC, hereinafter called "Landlord", and No Limit Financial, LLC, hereinafter called "Tenant".

WITNESSETH:

The parties hereto agree for themselves, their successors and assigns, as follows:

1. PREMISES. Landlord hereby leases to Tenant, and Tenant hereby accepts and rents from Landlord, that certain space (hereinafter called "Demised Premises"), containing approximately 1148 square feet, and comprising a portion of Suite 200 of Southern Shoppes, located at 10005 Charlotte Highway, Indian Land, SC 29707, as more particularly described and recorded in Record Book _____ at Page_____ in the Office of the Clerk of Court for Lancaster County, South Carolina (the "Declaration"), which is hereby incorporated by. Tenant shall further have the non exclusive right to use all of the parking areas, driveways, entranceways, footwalks and other common facilities furnished from time to time in the shopping center by Landlord and all "Common Elements" serving the above-described Demised Premises as set forth in the Declaration, all subject to such reasonable and uniform rules and regulations as Landlord may prescribe from time to time, and all other applicable condominium documents and other matters of public record.

TO HAVE AND TO HOLD the said Demised Premises together with all privileges and appurtenances upon the terms and conditions hereinafter set forth:

2. TERM. The initial Term of this Lease shall begin following the date of execution of this lease by both parties and shall run for Sixty (60) Months from Date of Delivery to Tenant with a Certificate of Occupancy. Tenant shall be granted Two (2) months of Rent at no charge following such date.

3. OPTION TO RENEW. Tenant is hereby granted **one (1)** successive option to renew and extend the term of this Lease for **Five (5) year(s)** on each such option, each such extended term to begin of the immediately preceding extended term; and except for rental, all of the provisions of this Lease Agreement shall apply to each extended term, except Tenant shall not have any further option to renew and extend the term of this Lease following the exercise, if any, of the last option. Tenant may exercise any such option only (a) if it is not in default hereunder, and (b) by giving Landlord written notice of such exercise not later than six (6) months prior to the expiration of the term of this Lease or of this Lease as renewed and extended. Rent during option periods will increase at market rates to be determined at the signing of a new lease.

4. RENTAL. Tenant shall pay to Landlord for the use and occupancy of the Demised Premises and appurtenances thereto rental (collectively hereinafter referred to as "Rent") as hereinafter provided:

a) Guaranteed Minimum Rental. Guaranteed minimum rental at the following rates:

Months	Base Rent/Sq. Ft.	Annual Base Rent	Monthly Base Rent

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1-2	$0		
3-12	$24.00	$27,552	$2,296.00
13-24	$24.72	$28,379	$2,364.88
25-36	$25.46	$29,228	$2,435.67
37-48	$26.22	$30,101	$2,508.38
49-60	$27.01	$31,007	$2,583.96

b) Additional Rent. Tenant shall pay to Landlord as additional rent, Tenant's "proportionate share" of all costs (CAM Fees) in maintaining, repairing, operating and insuring the portions of the shopping center which are the responsibility of the Landlord resulting from Landlord's ownership of the Demised Premises.

For purposes herein, "CAM Fees" shall include, but not be limited to, the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring (including liability insurance for personal injury, wrongful arrest of detainer, death and property damage; insurance and extended coverage against fire, theft, floor or other casualty and rent loss insurance) the shopping center including all common amenities of whatsoever nature and paying all taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the shopping center and the rents therefrom, repairs, line painting, bumpering and resurfacing, lighting, electricity and other refuse, depreciation or rental on machinery or equipment used in such maintenance, the cost of personnel to implement such services and direct parking and to police the common areas, advertising costs and expenses of the shopping center and costs of heating and air conditioning service policies. Tenant's proportioning share of Operating Costs for the shopping center by a fraction, the numerator of which shall be the number of gross square feet of the Demised Premises and denominator of which shall be the number of square feet of gross leaseable area in the entire shopping center. Initial estimate to be $4.25/SF. To include taxes and insurance (section 6 and 7).

c) Tenant shall pay all Rent when due and payable, without any set off, deduction, objection or prior demand therefore whatsoever on or before the first day of each month. Landlord must receive rent within five (5) days of its due date (the first of each month) at the address set forth in Paragraph 4.d. below. If the Landlord does not receive all required Rent within five (5) days of the due date, Tenant shall be obligated to pay a late payment charge equal to five percent (5%) of the amount required to be paid. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

d) Payment of Rental. All rental payments provided herein shall be made to SCRE Properties LLC, 7761 Ballantyne Commons Parkway, Suite 102, Charlotte, NC 28277, until notice to the contrary is given by Landlord.

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e) Landlord shall provide Tenant with an annual accounting of all Operating Costs. If Tenant's proportionate share of Operating Costs is less than the amount than Tenant has paid as Additional rent for the Period covered by the annual accounting, then such excess additional rent shall, at Landlord's option, be paid to Tenant or credited toward Tenant's additional rent for the coming year.

5. IMPROVEMENTS AND DELIVERY OF DEMISED PREMISES. If at the time of the execution of this Lease Agreement by Tenant the shopping center and the Demised Premises have been completed, then Tenant acknowledges that it has examined and accepts the same in their present condition and the Demised Premises shall be deemed delivered to Tenant upon the execution of this Lease Agreement by Landlord. Tenant understands and agrees that delivery of the Demised Premises shall be as a "vanilla shell" as described in Exhibit A. Delivery date shall be the later of the execution of this agreement or the receipt of a Certificate of Occupancy by the Landlord.

Tenant shall with due diligence cause the Demised Premises to be improved by completing the work described on Exhibit C attached hereto (The Tenant's Improvement). Tenant shall be solely responsible for the cost to complete the Tenant's Improvement.

6. TAXES. Tenant covenants and agrees to pay Landlord, as additional rent, Tenant's proportionate share of all taxes and assessments of every kind and nature, including property taxes, which are now or may hereafter be imposed or assessed upon the shopping center. Tenant shall further pay all taxes and assessments imposed on any fixtures, equipment, merchandise or other property installed in the Demised Premises or brought thereon by Tenant or any other person. Tenant agrees that it will promptly pay all such taxes and assessments as the same becomes due.

7. INSURANCE. As set forth in Paragraph 4(b) hereof, Tenant covenants and agrees to pay Landlord, as additional rent, Tenant's proportionate share of the premiums charged to insure the shopping center with the equivalent of ISO Special Form Property full replacement value (but in any case not less than the outstanding balance of any indebtedness on a first mortgage loan on the shopping center). If during the term of this Lease the Tenant uses the Demised Premises for any purpose or in any manner that causes an increase in the rates of such insurance, the Tenant will pay the additional premium caused thereby. Tenant will provide and pay for the equivalent of ISO Special Form Property Insurance, covering the full replacement cost of contents and fixtures in the Demised Premises. The carrier for such insurance shall hold a current Best's rating of at least B+ 6, shall be licensed in the state in which the Demised Premises is located and shall waive its right of subrogation. Prior to the execution of this agreement annually thereafter, Tenant shall furnish Landlord with a certificate of such insurance. The certificate will confirm that in the event of cancellation or non-renewal, at least 45 days written notice will be provided to the Landlord's Risk Management department.

8.1 During the Lease Term, Tenant shall, at its own expense, carry the following insurance: (a) personal property insurance, insuring its stock, trade fixtures, improvements and betterments against all Direct Risk Physical Loss, in an amount of not less than 100% of insurable replacement cost; (b) public liability insurance, including contractual and auto liability for its own

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protection, covering the Premises and Tenant's use thereof, with minimum amounts of insurance of $1,000,000.00 for damage to property of others in any one occurrence, and if Tenant sells alcoholic beverages, Dram Shop Liability coverage of $1,000,000.00; and (c) such other forms, amounts and types of insurance as from time to time may be required by Landlord. All insurance to be maintained by Tenant hereunder shall: (i) be with companies approved by Landlord, (ii) name Landlord as an additional loss payee, and (iii) be endorsed to provide thirty (30) days advance notice to Landlord of cancellation or material change. Tenant shall deliver to Landlord certificates of all insurance required under this Section. Tenant shall give insurance, or the Landlord's insurance; and Tenant shall be responsible for all property damage or liability arising out of the operation of its business on the Premises, whether or not such damage or liability is covered by its insurance.

8. USE OF DEMISED PREMISES. Tenant shall use the Demised Premises only for the purposes of conducting a Loan Institution. Tenant shall comply with all laws, ordinances, orders or regulations of any lawful authority having jurisdiction over the Demised Premises or the adjacent public streets including without limitation making at its own expense all alterations to the Demised Premises required by any such authority; ;and Tenant shall not do any act or follow any practice in or about the Demised Premises which shall constitute a nuisance or detract from or impair the reputation of the shopping center. Without limiting the generality of the foregoing, Tenant shall make such arrangements for the storage and disposition of all garbage and refuse as may be reasonably required by Landlord from time to time and shall at all times keep the Demised Premises and all adjoining entry ways, sidewalks and delivery areas in a neat and orderly condition and clean and free from rubbish, dirt, snow and ice, and shall not cause any noxious, disturbing or offensive odors, fumes or gases, or any smoke, dust, steam or vapors, or any loud disturbing noise or vibrations to originate in or be emitted from the Demised Premises. Tenant shall comply with all rules and regulations relating to occupants of units in the shopping center as may be set forth in the Declaration, and all other documents of public record which may affect the Demised Premises.

Tenant shall continuously during the term of this Lease keep the entire Demised Premises occupied and open for business. Tenant shall in all respects conduct its business in the Demised Premises in a diligent and dignified manner and exert its best efforts to generate a maximum volume of gross sales. During the term of this Lease Tenant shall not, directly or indirectly, engage in any business within one (1) mile of Tenant's store space in competition with any business being conducted in said store space; provided, however, that this provision shall not prohibit Tenant from continuing to conduct any business being conducted by Tenant on the date of this Lease Agreement.

9. LANDLORD'S COVENANT TO MAINTAIN. Landlord will, at its own expense, keep and maintain in good order and repair during the full term of this Lease any exterior and principal structural portions of the buildings and other improvements constituting the shopping center,; provided, however, that Landlord will not be responsible for or required to make, and Tenant will make, any repairs which may have been occasioned or necessitated by the negligence of Tenant, its agents, employees, contractors or invitees. Landlord shall use its best efforts to carry out its duties and responsibilities for the maintenance and repair of the structural components of the building of which the Demised Premises is a part and which are specified in the Declaration (e.g.,

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the structural portions of the building including the roof, foundation, exterior and interior load-bearing walls, all systems servicing the building including all plumbing and sewer lines, electrical facilities and equipment servicing the building which are not a part of the Landlord's Work, gutters and down spouts, landscaping and lawn maintenance, parking areas and exterior lighting). Tenant understands and acknowledges that Landlord shall not be required to make any such repairs, which are normally expensed under the Common Area Maintenance charges.

10. TENANT'S COVENANT TO MAINTAIN. Tenant will, at its own expense, keep and maintain in good order and repair during the full term of this Lease all other parts of the Demised Premises, including without limitation the entire interior and all window glass, plate glass, plumbing, wiring, electrical systems and heating and air conditioning systems; and Tenant will, at the end of the term of this Lease, deliver the Demised Premises to the Landlord in as good condition as they were when received by it, excepting only normal wear and tear and repairs required to be made by Landlord. Tenant shall enter into a maintenance agreement with a reputable HVAC service company approved by Landlord providing for regular service and maintenance of the heating and air conditioning system serving the Demised Premises on at least a yearly basis. Annual contract documentation to be provided to Landlord upon Tenant opening for business.

11. COMMON FACILITIES. Landlord shall at all times during the term of this Lease maintain in good condition and repair adequate parking areas, driveways and footwalks in the shopping center. All common facilities in the shopping center shall at all times be subject to the exclusive control and management of Landlord; and Landlord shall have the right from time to time to change the area, level, location and arrangement of the common facilities, to restrict parking by tenants and their employees to employee parking areas, and to make all the rules and regulations and do such other things from time to time as in Landlord's discretion may be necessary regarding said facilities.

12. DAMAGE OR DESTRUCTION BY CASUALTY. If the Demised Premises are damaged or destroyed during the term of this Lease by fire or other casualty covered by an ordinary fire insurance policy with extended coverage, Tenant shall give immediate written notice thereof to Landlord; Landlord will reconstruct the Demised Premises or repair such damage as promptly as practicable as set forth in the Declaration, and Tenant shall meanwhile be entitled to an abatement of rental to the extent of the loss of use suffered by it; provided, however, that if the Demised Premises shall be damaged or destroyed by casualty to the extent of fifty percent (50%) or more of their replacement value, Landlord shall thereupon have an option to terminate this Lease, and must notify Tenant of its decision within sixty (60) days from the date of the occurrence.

13. UTILITIES. During the term of this Lease, Tenant shall provide and pay for all lights, heat, water, janitor service and other utilities required by it in the use of the Demised Premises.

14. SIGNS, ADVERTISING AND SELLING ACTIVITIES. Subject to compliance with all applicable zoning ordinances and any regulations set forth in the Declaration or any other documents of public record, Tenant may install such signs on the Demised Premises as may be approved by Landlord and as shall not damage or impair the attractiveness of the shopping center; provided, however, that the care and maintenance of such signs shall be the sole responsibility of the Tenant. Tenant shall not (a) paste or otherwise affix any banners, posters or other advertising

material to any outside display window or wall in the shopping center or in any other manner display any merchandise or advertising media closer than twelve (12) inches to the interior side of any such display window; (b) maintain or display any vending machines, show cases, coin-operated devices or other selling devices, or any merchandise or property or any nature whatsoever in the parking lot or other common facilities or on the outside of any store building in the shopping center; or (c) permit, allow or cause to be used in or about the shopping center any phonographs, radios, public address system, sound production or reproduction devices, mechanical or moving display devices, motion picture, television devices, excessively bright lights, changing, flashing, flickering or moving lights or lighting devices or any similar advertising media or devices, the effect of which shall be visible or audible from the exterior of any store space.

15. INDEMNITY. Tenant covenants and agrees that it will defend, indemnify, protect and save harmless the Landlord from the claims of all persons arising from or out of the use or occupancy of the Demised Premises by or under Tenant or Tenant's agent, employees or invitees. Tenant shall carry Commercial General Liability insurance with an insurance company holding a current Best's rating of B+ 6 or better, licensed in the state in having minimum limits of $1,000,000.00 each occurrence and $2,000,000.00 General Aggregate location, and prior to the execution of this agreement and annually thereafter, Tenant shall furnish Landlord with a certificate of such insurance. The certificate will confirm that in the event of cancellation or non-renewal, at least 45 days written notice will be provided to the Landlord's Risk Management department.

16. WAIVER OF CLAIMS. Landlord and landlord's agents, employees and contractors shall not be liable for, and Tenant hereby releases all claims for, damage to persons or property sustained by Tenant or any person claiming through Tenant resulting from any fire, accident, occurrence or condition in or upon the Demised Premises or building of which they shall be a part, including but not limited to such claims for damage resulting from:

a) Any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, water, pipes, stairs, railings or walks.

b) Any equipment or appurtenances becoming out of repair.

c) The bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or premises.

d) The backing up of any sewer pipe or downspout.

e) The escape of steam or hot water.

f) Water, snow, or ice being upon or coming through the roof or any other place upon or near such building or premises or otherwise.

g) The falling of any fixture, plaster or stucco.

h) Broken glass.

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i) Any act or omission of co-tenants or other occupants of said building or of adjoining or contiguous property or buildings.

17. ALTERATIONS, FIXTURES AND PERSONAL PROPERTY. Any trade fixtures, equipment and other personal property installed in or attached to the Demised Premises by or at the expense of Tenant shall remain the property of Tenant, and Tenant shall have the right at any time, provided it is not then in default hereunder, to remove any and all of such fixtures; provided, however, that in such event Tenant shall restore the Demised Premises to substantially the same condition in which they were at the time Tenant took possession, ordinary wear and tear and Landlord's covenant to maintain excepted. Tenant shall effect no structural or other alterations to the premises without the prior written consent of Landlord, and any alteration or improvement made within the premises which results in any damage to the floor, ceiling or outside walls of the premises shall be repaired by Tenant. Tenant shall further be required to comply with the Declaration in connection with any changes, improvements and alterations made to the Demised Premises. Tenant shall provide Landlord with copies of all plans and specifications for all changes, improvements and alterations Tenant desires to make to the Demised Premises and receive Landlord's prior written approval thereof prior to the commencement of any such work. Tenant shall not encumber or subject the interest of Landlord in the premises to any mechanics or material men's, or other liens whatsoever. Upon the filing of any such lien, the failure of Tenant to have the same canceled promptly shall constitute a default by Tenant.

18. LANDLORD'S ENTRY. The Landlord shall have the right to enter upon the Demised Premises at all reasonable times during the term of this Lease for the purposes of inspection, maintenance, repair and alteration and to show the same to prospective tenants or purchasers.

19. ASSIGNMENT AND SUBLEASE. Tenant may not assign this Lease or sublet the Demised Premises or any portion thereof without the prior written consent of Landlord; but such consent shall not be unreasonably withheld. It is specifically agreed that withholding of consent on the grounds that the assignment or subletting would violate any covenant or covenants in any lease covering any other premises in said shopping center shall not be considered unreasonable. It is expressly understood that the assignment or subleasing of the Demised Premises shall not relieve Tenant or guarantor of their primary liability for any obligation of this Lease Agreement.

20. DEFAULT. If Tenant shall continue in default in payment of any rental or other sum of money becoming due hereunder for a period of ten (10) days after its due date, or if Tenant shall default in the performance of any other covenant of this Lease and does not remedy such default within thirty (30) days after written notice thereof or does not within such thirty (30) days commence such act or acts it shall be necessary to remedy such default and shall complete such act or acts promptly, or if Tenant shall become insolvent or be adjudicated bankrupt, or file in any court a petition in bankruptcy or other debtor proceedings, or file or have filed against it a petition for the appointment of a receiver or trustee for all or substantially all of the assets of Tenant, or if Tenant makes an assignment for, petitions for or enters into, an arrangement for, the benefit of creditors, or if Tenant shall vacate or abandon the Demised premises or any substantial part thereof, or suffer the lease to be taken or encumbered under any legal process and such taking or encumbrance is not dissolved within twenty (20) days, then in any such event Landlord shall have the right and option to either (i) terminate this Lease, or (ii) not terminate the Lease but terminate

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Tenant's right to possession of the Demised Premises, and in either case Landlord shall have the immediate right of re-entry to remove all persons and property from the Demised Premises and dispose of or store such property as it sees fit, all without resort to legal process and without being deemed guilty of trespass.

Landlord may relet the premise or a portion of the premises for any reasonable use, and Landlord shall be entitled to recover from Tenant an amount equal to the amount of all rents reserved under this Lease, less the net rent, if any, collected by the Landlord on reletting the Demised Premises. Net rent collected on reletting by the Landlord shall be computed by deducting from the gross rent collected all expenses incurred by the Landlord in connection with the reletting of the premises, including broker's commissions and the cost of repairing, renovating or remodeling said premises.

21. REMEDIES CUMULATIVE – NONWAIVER. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time as often as occasion may arise, or as may be deemed expedient. No delay or omission of Landlord or Tenant to exercise any right of power arising from any default or the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence thereto.

22. EMINENT DOMAIN. If more than ten percent (10%) of the Demised Premises or more than thirty percent (30%) of the total shopping center is taken under the power of eminent domain (including any conveyance made in lieu thereof), and such taking shall in the reasonable judgment of Tenant make the operation of Tenant's business on the Demised Premises impractical, then Tenant shall have the right to terminate this Lease by giving Landlord written notice of such termination within thirty (30) days after such taking. If Tenant does not so elect to terminate this Lease, Landlord and the Association, as applicable, at its own expense will repair and restore the Demised Premises to a tenantable condition, and the rental to be paid by Tenant hereunder shall be proportionately and equitable reduced. Tenant hereby expressly waives all rights to an award resulting from an eminent domain action affecting the shopping center, except the right to receive compensation or damages for its loss of business and its fixtures or personal property.

23. LANDLORD'S LIEN. Landlord shall have at all times a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares equipment, fixtures, furniture and other personal property of Tenant situated on the Demised Premises, and such other property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Demised Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, and other personal property of Tenant situated on the premises without liability for trespass or conversion, and sell the same with or without notice at a public or private sale, with or without having such property thereof, less any and all expenses connected with the taking of possession and sale of the property,

as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of chattel mortgages or in any other form provided by law. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto.

24. NOTICES. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to be given when sent by prepaid registered or certified mail to the parties as follows: to the Landlord at 7761 Ballantyne Commons Parkway, Ste 102, Charlotte, NC 28277 and to the Tenant at P.O. Box 1513, Lancaster, SC 29720. Either party may, from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

25. HOLDING OVER. If Tenant remains in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease with Landlord's acquiescence and without any written agreement of the parties, Tenant shall be only a monthly Tenant terminable at will by either party by written notice, and there shall be no renewal of this Lease or exercise of an option by operation of law. The monthly minimum guaranteed rental will be increased by fifty percent (50%) over the previous lease year preceding the hold over term.

26. SUBORDINATION. Tenant will, within ten (10) days after a request by Landlord, subject and subordinate all of any of its rights under this Lease Agreement to any and all mortgages and deeds of trust now existing or hereafter placed on the property of which the Demised Premises are a part; provided, however, that Tenant will not be disturbed in the use or enjoyment of the Demised Premises so long as it is not in default hereunder. Tenant agrees that this Lease Agreement shall remain in full force and effect notwithstanding any default or foreclosure under any such mortgage or deed of trust and that it will attorn to the mortgagee, trustee, or beneficiary of such mortgage or deed of trust, and their successors or assigns and to the purchaser or assignee under any such foreclosure. Tenant will, upon request by Landlord, execute and deliver to Landlord, or to any other person designated by Landlord, any instrument or instruments required to give effect to the provisions of this Article.

27. TRANSFER OF LANDLORD'S INTEREST. In the event of the sale, assignment or transfer by Landlord of its interest in the shopping center or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord hereunder, Landlord shall thereupon be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Any securities given by Tenant to Landlord to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor of receipt of such security and upon acknowledgment by such successor of receipt of such security and its express assumption of the obligation to account to Tenant for such security in accordance with the terms of this Lease, Landlord shall thereby be discharged of any further obligation relating thereto. Landlord's assignment of the Lease or of any or all of its rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest.

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28. WARRANTY. Landlord covenants that it has good and marketable title to the premises described in Exhibit B attached hereto in fee simple absolute, and that Tenant shall peacefully and quietly hold and enjoy the Demised Premises for the full term hereof so long as it does not default in the performance of any of its covenants hereunder.

29. SHORT FORM LEASE. Upon the commencement of the term of this Lease, the parties hereto shall execute a memorandum or short form lease agreement, in recordable form, specifying the commencement and termination dates of the term hereof and including any such other provisions hereof as either party may desire to incorporate therein.

30. ESTOPPEL CERTIFICATE. Within ten (10) days after request therefore by Landlord or any mortgagee or trustee under a mortgage or deed of trust covering the Demised Premises, or if, upon any sale, assignment or other transfer of the Demised Premises by Landlord, an estoppel certificate shall be required from Tennant, Tenant shall deliver in recordable form a statement to any proposed mortgagee or other transferee, or to Landlord, certifying any facts that are then true with respect to this Lease Agreement, including without limitation (if such be the case) that this Lease Agreement is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of rent, and that there are no defenses or offsets to the Lease Agreement claimed by Tenant.

31. WAIVER. The waiver by Landlord of any covenant or agreement set forth in this Lease shall not be deemed to be a waiver of any subsequent breach or any other covenant or agreement of this Lease. Acceptance of rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant (except Tenant's failure to pay the particular rent so accepted), regardless of Landlord's knowledge of such a preceding breach at the time the rent is accepted.

32. SECURITY DEPOSIT. Tenant shall deposit with Landlord the sum of $4,998.58, $2,296.00 to be held as Collateral Security for the payment of any rentals and other sums of money for which Tenant shall become liable to Landlord, and for the faithful performance by Tenant of all covenants and conditions herein contained. The Remainder to be applied to the first month's Base Rent. Said Collateral Security shall be returned to Tenant at the end of the term of this Lease Contract provided Tenant shall have made all such payments and performed all such covenants and agreements. Deposit shall be paid in full by execution of this lease.

33. NATURE AND EXTENT OF AGREEMENT. This instrument contains the complete agreement of the parties regarding the terms and conditions of the Lease of the Demised Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein.

34. BINDING EFFECT. This Lease Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns.

35. APPLICABLE LAW. This contract is executed pursuant to the law of South Carolina, and all interpretations shall be under and pursuant to the laws of South Carolina.

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36. HAZARDOUS WASTE PROVISION. Tenant shall keep and maintain the Demised premises in compliance with, and shall not cause or permit the Demised Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under, about, or affecting the Demised Premises. Tenant shall not use, generate, manufacture, store, or dispose of on, under or about the Demised Premises or transport to or from the Demised Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively, the Hazardous Materials). Tenant shall be solely responsible for, and shall indemnify and hold harmless the Landlord, its directors, officers, employees, agents, successors, and assigns from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Demised Premises, including, without limitation, the following: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Demised Premises, and the preparation and implementation of any closure, remedial, or other required plans; and (iii) all reasonable costs and expenses incurred by the Lender in connection with clauses (i) and (ii), including, but not limited to, reasonable attorneys' fees. Tenant shall, upon the request of the Landlord, provide the Landlord with a bond or letter of credit, in form and substance satisfactory to the Landlord, in an amount sufficient to cover the costs of any required cleanup. Tenant shall, at its expense, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Demised Premises.

37. LIMITATION OF LIABILITY. Tenant acknowledges and agrees that the liability of Landlord hereunder shall be limited to its interest in the Demised Premises and any judgment rendered against Landlord shall be satisfied solely out of the proceeds of the sale of its interest in the Demised Premises.

38. IDENTITY OF INTEREST. The execution of this Lease or the performance of any pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between the Landlord and the Tenant the relationship of principal and agent or of partnership or of joint venture and the relationship between them shall be only that of landlord and tenant. Without the express written permission of Landlord, Tenant shall have no authority to contract, on behalf of the Landlord, for repairs or alterations to the Demised Premises and Tenant shall indemnify and hold Tenant harmless for materialmen's or mechanic's liens which are attached to the Demised Premises during the term of the Lease arising out of the Tenant actions.

39. REMEDIES CUMULATIVE – NONWAIVER. Unless otherwise specified in this Lease, no remedy of Landlord or Tenant shall be considered exclusive of any other remedy, but each shall be distinct, separate and cumulative with other available remedies. Each remedy available under this Lease or at law or in equity may be exercised by Landlord or Tenant from time to time as often as the need may arise. No course of dealing between Landlord and Tenant, or any delay or omission of Landlord or Tenant in exercising any right arising from the other party's default, shall impair such right or be construed to be a waiver of a default.

40. ATTORNEYS' FEES. If any sum owing under this Lease is collected by or through an attorney at law, or an attorney is required to enforce the terms and conditions of this Lease, Tenant agrees to pay attorneys' fees incurred by Landlord by reason of default by Tenant.

41. TIME OF THE ESSENCE. Landlord and Tenant understand and acknowledge that time is of the essence with respect to all dates set forth herein.

42. BROKERAGE. Landlord and Tenant hereby represent and warrant to each other that they have dealt with no brokers or agents in connection with this Lease other than SCRE Properties, LLC, whom will be compensated by separate written agreement. Tenant acknowledges that SCRE Properties, LLC exclusively represents the Landlord in this transaction and Tenant hereby waives representation by another Agency. Landlord and Tenant hereby indemnify and hold harmless the other party from any loss, cost, liability or expense arising from a claim made by any broker or agent requesting a commission or other fee in connection with this Lease except for the brokers listed above.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement under seal as of the date and year first above written.

LANDLORD:

ATTEST: By: DocuSigned by: Herschel Fogleman 7/11/2016 | 10:22 AM EDT
E12A66F36EA0407...

DocuSigned by: John Smethurst 7/11/2016 | 10:27 AM EDT
C52EBCE43A4E49B...

(Seal)

TENANT:

NO LIMIT FINANCIAL , LLC

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ATTEST/WITNESS:

By: DocuSigned by: Erich Simpson 7/11/2016 | 10:17 PM EDT
BADD5AA1FD734E5...

(Seal)

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LEASE GUARANTY

FOR VALUE RECEIVED, and in consideration for and as an inducement to 521, LLC ("Landlord") to enter into that certain Lease Agreement (the "Lease") dated June 1st, 2016, with No Limit Financial, Inc ("Tenant"), the undersigned Eric Simpson. (collectively, the "Guarantors") jointly and severally unconditionally guarantee and promise to Landlord the full and punctual payment, performance and observance of all covenants, conditions and agreements contained in the Lease which are provided to be performed and observed by Tenant and its successors and assigns, including, but without limitation, the payment of all rental payments required thereunder.

Guarantors hereby waive notice of default in the punctual and full payment, performance and observance of the obligations of Tenant and all other suretyship defenses generally, and further covenant and agree that Guarantors shall not be released from the obligations be diminished or otherwise affected by:

a) Any extension of time or other indulgence granted to Tenant or by any waiver with respect to the payment, performance or observance of any Tenant obligations under the Lease;

b) Any assignment of the Lease, any subletting of all or any portion of the leased premises or any other transfer, voluntarily or by operation of law, of Tenant's interest under the Lease;

c) The acceptance by Landlord of any security for the punctual and full payment, performance and observance of said obligations of Tenant, or the release, surrender, substitution or modification of any security from time to time held by Landlord, or by any act or omission to act by Landlord with respect to any such security;

d) Landlord's receipt of rent with knowledge of any breach of any provision of the Lease;

e) Any amendment, modification or revision of the Lease;

f) Any other act or omission to act by Landlord or its agents;

g) Any voluntary or involuntary proceedings by or against Tenant in bankruptcy, the rejection or disaffirmance of the Lease in such proceedings, or for an arrangement or reorganization or for any other relief under any provisions of the Bankruptcy Act, or other moratorium or debtors' relief acts, as shall, from time to time, be in effect with respect to Tenant; or

h) Any other matter whatsoever whereby Guarantors would or might be released;

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it being the intent hereof that Guarantors shall, at all times, be and remain liable to Landlord to the same extent as if Guarantors were jointly and severally liable with Tenant to the Landlord for the payment, performance and observance of all the terms, conditions and provisions of the Lease.

Guarantors further waive any right which Guarantors would, or might, have at law, in equity or by statute to require that Landlord, before enforcing the obligations of Guarantors hereunder, pursue, or otherwise avail itself of, any rights or remedies which it would, or might, have against Tenant or against any security given to Landlord by reason of any failure punctually to pay, perform and observe all of Tenant's obligations under the Lease.

Guarantors further waive notice of acceptance of this Guaranty by Landlord and diligence on its part in the enforcement of the obligations of Guarantors hereunder.

Guarantors agree that this Guaranty shall be construed as an absolute, unconditional continuing and unlimited obligation of Guarantors without regard to the regularity, validity, or enforceability of any liability or obligation hereby guaranteed.

Guarantors further agree that if any of Guarantors' obligations hereunder shall be held to be unenforceable, the remainder of this Guaranty and its application to all obligations other than those with respect to which it so held unenforceable, shall not be affected thereby and shall remain in full force and effect.

Guarantors agree that any notice or demand upon Guarantors shall be deemed to be sufficiently given or served if in writing and mailed by certified or registered mail, with or without return receipt requested, addressed to Guarantors at the addresses set forth below.

Until all of the covenants and conditions in the Lease on Tenant's part to be performed and observed are fully performed and observed, Guarantors: (a) shall have no right of subrogation against Tenant by reason of any payments or acts of performance by Guarantors hereunder, (b) waive any right to enforce any remedy which Guarantors now or hereafter shall have against Tenant by reason of any one or more payments or acts of performance hereunder, and (c) subordinate any liability or indebtedness of Tenant now or hereafter held by Guarantors to the obligations of Tenant to Landlord under the Lease.

This Guaranty shall apply to the Lease, any extension or renewal thereof and to any holdover term following the term thereby granted or any extension or renewal thereof. To the extent that Tenant is required under the Lease to pay, in the event of default thereunder, fees for legal services, the Guarantors shall likewise be the Guarantors of such fees.

This instrument may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement, in writing, signed by Guarantors and Landlord.

It is further agreed that all of the terms and provision hereof shall inure to the benefit of the respective successors and assigns of Landlord and to any lender to which the Lease may be collaterally assigned and shall be binding upon the successors and assigns of Guarantors.

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This Guaranty may be executed in several counterparts with the same effect as if all the Guarantors had signed the same document.

IN WITNESS WHEREOF, Guarantors have executed this Guaranty under seal as of the day and year first above written.

GUARANTORS:

Erich Simpson [SEAL]
Erich Simpson

Address: P.O. Box 1513,
Lancaster, SC 29721

[SEAL]

Address:

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EXHIBIT "A"

Suite 200

10005 Charlotte Highway

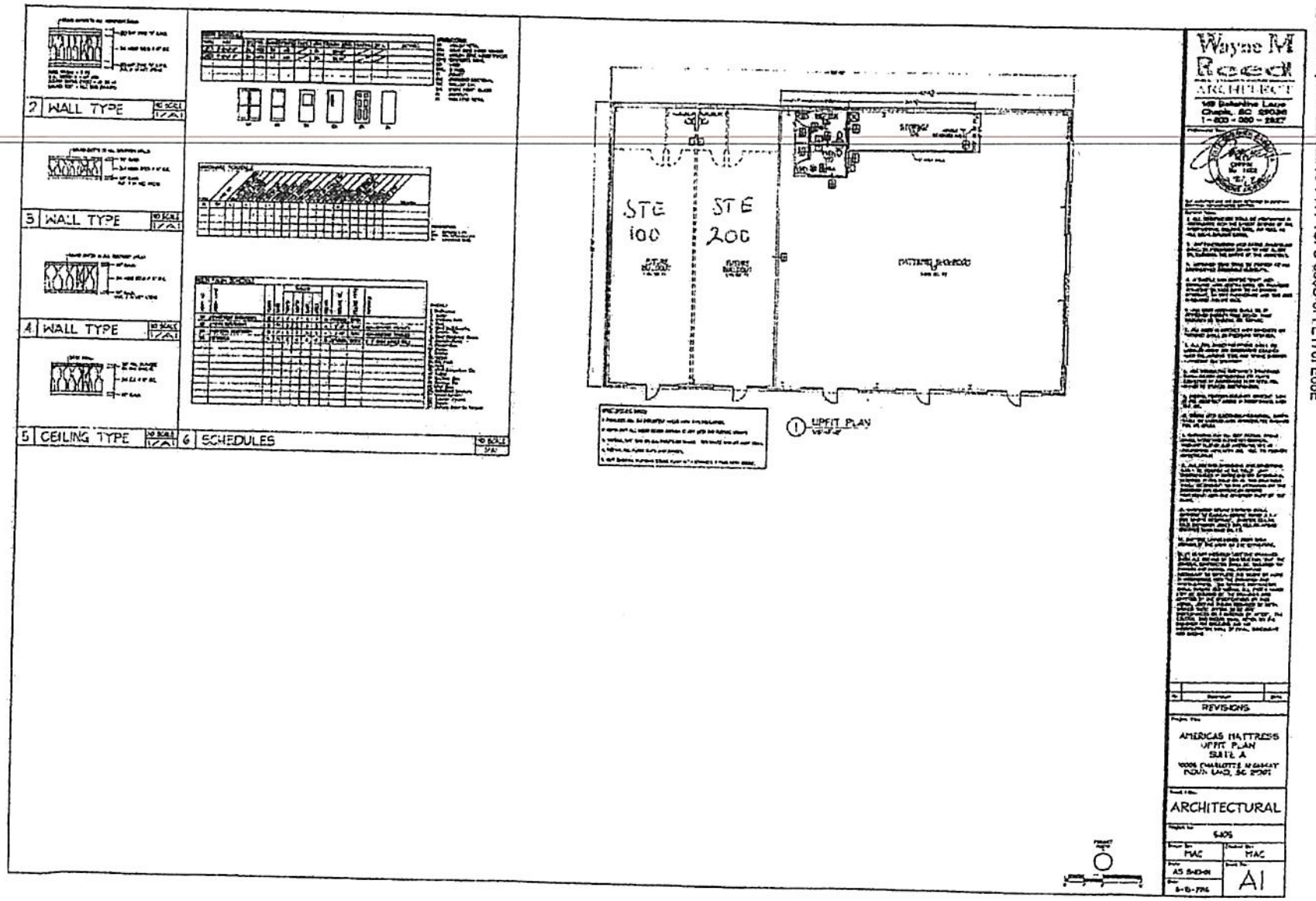
Indian Land, SC 29707

Landlord hereby agrees to deliver said Premises in a "Vanilla Shell" condition, with a Certificate of Occupancy, Landlord Work as described below:

(1) All Demising Walls as shown in Exhibit B
(2) Walls to be finished and primed white.
(3) Unit shall be fully insulated
(4) 1 Completed Bathroom with tile flooring
(5) I Private office roughly 10x11 feet with a window facing forward to the front of the space
(6) Dropped Ceiling at 9-10 feet, 2x4 ceiling tiles.
(7) Fluorescent light fixtures to code
(8) Commercial Grade carpeting in office and retail area
(9) Air Conditioning and heat unit installed per code
(10) Electrical outlets throughout space per code
(11) Wired Electrical Outlet for sign service over front door. Tenant is responsible for the sign and installation.
(12) Tenant shall have access to the unit to install all IT wiring prior to the sheet rock being installed. Tenant is responsible for the cost of all IT wiring and installation.
(13) Landlord to provide a lighted monument sign along the highway. A space will be available for this Tenant. Tenant is responsible for the cost of their personal signage.
(14) Landscaping will be in place prior to Certificate of Occupancy by Tenant.

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LANCASTER, SC

EXHIBIT B



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Exhibit B

Assignment and Assumption of Leases between

521, LLC and Katkams Ventures, LLC and Suprema, LLC

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LANCASTER, SC

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Jul 01 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

ASSIGNMENT AND ASSUMPTION OF LEASES
SERVICE CONTRACTS, AND WARRANTIES

THIS ASSIGNMENT AND ASSUMPTION OF LEASES, SERVICE CONTRACTS, AND WARRANTIES (this "Agreement") is made as of the ____ day of July, 2016 (the "Effective Date") by and between 521, LLC, a South Carolina Limited Liability Company ("Assignor") and Katkams Ventures, LLC, and Suprema, LLC, both South Carolina Limited Liability Companies ("Assignee").

RECITALS:

WHEREAS, Assignor is the current owner of the property located at 10005 Charlotte Highway in Indian Land, South Carolina and more particularly described on Exhibit "A" (the "Premises"); and

WHEREAS, Assignor desires to assign all of its right, title and interest under such leases, service contracts, and warranties in place for the Premises, and Assignee desires to accept such assignment and assume the obligations of the Assignor under such leases, service contracts, and warranties as of the Effective Date of this agreement.

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Leases, Service Contracts and Warranties. Assignor hereby transfers, assigns and conveys to Assignee, and its successors and assigns, all of Assignor's right, title and interest in, to and under: (a) all leases, licenses, concessions, use agreements, occupancy agreements, or tenancies, whether or not specifically listed in this Agreement and whether or not executed or in effect on the date hereof or subsequent hereto, and relating to or affecting the Property, including without limitation those more particularly described on Exhibit "B" (the "Leases"); (b) all credits, deposits (security, escrow, or otherwise), and advance payments made or given under the Leases, (c) any guarantees of the tenants', licensees', concessionaires', users', or occupants' obligations under the Leases; (d) all rents, issues, profits, fees, income, and revenues from the Leases, (e) all management, maintenance, service and other contracts and agreements, if any, with respect to the use, occupancy, possession and operation of the Premises, to the extent assignable, including without limitation, those listed on Exhibit C, (f) all assignable warranties for the Premises or the personalty conveyed to Assignor in the Assignor's possession, including without limitation, those listed on Exhibit D, and (g) any modifications, amendments, renewals, supplements, and extensions thereto (collectively, the "Assigned Contracts").

2. Assignee's Assumption. Assignee hereby assumes and accepts the foregoing assignments on the terms and conditions set forth herein and, effective upon the Effective Date,

1

Assignee assumes and agrees to keep, observe and perform all of the terms, covenants, agreements, conditions and obligations of the Assigned Contracts on the part of the Assignor to be kept, observed and performed which accrue after the date hereof (collectively, the "Assumed Obligations"), with the same force and effect as if the Assignee instead of Assignor had originally signed the Assigned Contracts, and agrees that it shall from and after the Effective Date be liable to Tenant and its respective successors and assigns, for any failure to keep, observe or perform the same.

3. Assignor's Indemnity. Assignor agrees to indemnify, defend and hold harmless Assignee and all its affiliates, subsidiaries, related corporations, related partnerships, officers, directors, employees and agents from and against any and all liabilities, claims, suits, actions, losses, damages, penalties, costs and expenses (including, without limitation, attorneys' fees and disbursements) due to or arising out of or related to Assignee's use, possession or occupancy of the Premises, the exercise of any rights with respect to the Assigned Contracts and/or the Premises and/or any failure to keep, observe and perform the terms, covenants, agreements, conditions and obligations of the Assigned Contracts on the part of the Assignor to be kept, observed and performed with respect to any period prior to the Effective Date.

4. Assignee's Indemnity. Assignee agrees to indemnify, defend and hold harmless Assignor and all its affiliates, subsidiaries, related corporations, related partnerships, officers, directors, employees and agents from and against any and all liabilities, claims, suits, actions, losses, damages, penalties, costs and expenses (including, without limitation, attorneys' fees and disbursements) due to or arising out of or related to Assignee's use, possession or occupancy of the Premises, the exercise of any rights with respect to the Assigned Contracts and/or the Premises and/or r any failure to keep, observe and perform the Assumed Obligations with respect to any period from and after the Effective Date.

5. Further Assurances. Assignor hereby covenants and agrees to sign, sell, execute and deliver, or cause to be signed, sold, executed or delivered, and to do or make, or cause to be done or made, upon request by Assignee, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be required by Assignee for the purpose of or in connection with acquiring or more effectively vesting in Assignee or evidencing the vesting in Assignee of the Premises, right, title and interest of Assignor granted, conveyed, bargained, sold, assigned, transferred, set over or delivered or intended to be granted, conveyed, bargained, sold, assigned, transferred, set over or delivered hereby or hereunder.

6 Governing Law. This Assignment Agreement and all other instruments referred to herein shall be governed by, and shall be construed in accordance with, the laws of the State of South Carolina.

7. Successors and Assigns. This Assignment Agreement and the terms and provisions herein shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of Assignor and Assignee.

8. Incorporation by Reference. All of the Exhibits attached hereto or referred to herein and all documents in the nature of such Exhibits are by reference incorporated herein and made a part

of this Assignment Agreement.

9. Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that tho signatures on behalf of all parties appear on each counterpart hereof. All counterparts hereof shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first written above.

ASSIGNOR:

521, LLC, a South Carolina
Limited Liability Company

By: _____
Name: _____
Title: _____
Date: _____

ASSIGNEE:

Katkams Ventures, LLC, a South Carolina
Limited Liability Company

By: K. Suresh
Name: SURESH KATUKAM
Title: Manager
Date: 02/09/16

ASSIGNEE:

Suprema, LLC, a South Carolina
Limited Liability Company

By: S. Ganesh
Name: Ganesh Sundaram
Title: Manager
Date: 02-09-16

Exhibit A

Legal Description of Premises

BEING all the piece, parcel or tract of land, lying in Indian Land Township, Lancaster County in the State of South Carolina and clearly designated as Tract B on Subdivision Plat for 521 Investment LLC which is accepted and recorded in the Lancaster County Register of Deeds at Plat 2015 page 631 being more particularly described as:

BEGINNING at a point on the western right of way line of US 521,and the northeast corner of Tract A and being, along said right of way line N 16°59'25"E a distance of 156.03 feet from the intersection of said right of way and the line of Lancaster County Tax map 0005-00-074.11 also known as the property of KCP Investments LLC; thence with the line of Tract A N 73°35'40"W a distance of 33.61 feet to a point; thence continuing with said line, S 16°24'42"W a distance of 25.02 feet to a point in the line of Tax map 0005-00-074.09; thence with said line N 73°35'18"W a distance of 188.59 feet to a point in the line of Tract C; thence with said line N 28°33'58"W a distance of 127.14 feet to a point in the line of Tax map 005-00-073.00, also know as the property of Dewey B Howey and Elizabeth P Howey; thence with said line N73°51'17"E a distance of 152.35 feet to a point and common corner with Tax map 0005-00-072.00 also known as the property of Larry L Ralston Jr & Mary Ralston JR.; thence with said line S73°35'37"E a distance of 184.98 feet; to a point in the western line of US 521; thence with said line S 16°55'36"W a distance of 146.92 feet which is the point of beginning,
having an area of 43603.83 square feet,1.00 acres, as per survey by Pittman Professional Land Surveying dated 07/22/2015.

Exhibit B

Lease Agreements in effect for the Premises

Lease Agreement between 521, LLC (Landlord) and Carolina Sleep Shoppe, LLC, d/b/a America's Mattress (Tenant) dated June 9, 2016, attached hereto as Exhibit B1.

Lease Agreement between 521, LLC (Landlord) and No Limit Financial, LLC (Tenant) dated June 1, 2016, attached hereto as Exhibit B2.

Exhibit C

Service Contracts in Effect for the Premises

5

Exhibit D

Warranties in Effect for the Premises and/or Personalty

6

Exhibit C

Notice of Default

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LANCASTER, SC

LAW OFFICE OF PAUL H. BASS, PLLC
8145 Ardrey Kell Road, Suite 202
Charlotte, North Carolina 28277
Phone: 704.644.1855 • Fax: 704.644.1856

August 7, 2017

Sent via U.S Mail and Certified Mail

NOTICE OF DEFAULT

No Limit Financial, LLC
P.O. Box 1513
Lancaster, SC 29720

Eric Simpson
P.O. Box 1513
Lancaster, SC 29720

RE: Lease Agreement dated July 11, 2016, by and between Katams Ventures, LLC and Suprema, LLC, successors in interest to 521, LLC ("Landlord") and No Limit Financial, LLC ("Tenant"); (Total Due: $144,534.53);

Dear Mr. Simpson:

This letter serves to inform you that our firm represents the Landlord regarding the above captioned matter. The Tenant and its guarantor(s) are in default pursuant to the terms of the above referenced Lease Agreement (hereinafter the "Lease") and the Guaranty of Lease (hereinafter the "Guaranty"). As a direct and proximate result of the Tenant's and its guarantor(s) breach of the above agreements, the Landlord is currently owed the sum of **One Hundred Forty Four Thousand Five Hundred Thirty Four Dollars and Fifty-Three Cents ($144,534.53)** (the "Past Due Amount").

The Landlord, therefore, demands the immediate payment of the Past Due Amount in **certified funds** made payable to **Katams Ventures, LLC and Suprema, LLC** and addressed to The Law Office of Paul H. Bass, PLLC, 8145 Ardrey Kell Road, Ste 202 Charlotte, NC 28277 no later than **August 20, 2017**. Notice is hereby given pursuant to South Carolina law that the Landlord intends to enforce the attorneys' fees provision contained in the Lease and Guaranty. Therefore, Landlord will seek to recover its attorneys' fees in addition to the outstanding indebtedness if the outstanding indebtedness is not paid in full within the time specified above.

Pursuant to South Carolina law, you may pay the Landlord the Past Due Amount without incurring attorneys' fees if payment in full is received in **certified funds by August 20, 2017.**

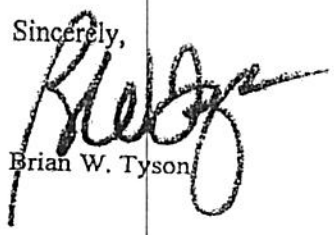
Please be aware that making the required payment will not limit your other and future responsibilities under the terms of the Lease and Guaranty.

If the entire payment, in certified funds, is not received by **August 20, 2017**, the Landlord will commence a civil action against you to collect all amounts, including principal, late charges, interest, attorneys' fees, costs and expenses, due under the terms of the Lease, Guaranty, and all other applicable agreements between the parties.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ALL INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Your prompt attention to this very important matter is appreciated. Please do not hesitate to contact me with any questions or in order to further discuss this matter.

Sincerely,



Brian W. Tyson

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF LANCASTER	]	SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC,	]	
Plaintiffs,	]	
vs.	]	ANSWER
NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON,	]	C. A. No. 18-CP-29-00271
Defendants.	]	

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LANCASTER, SC

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Come now the Defendants NO LIMIT, LLC and ERICH SIMPSON (hereafter, unless other indicated, "the Defendants"), and for their Answer herein would allege as follows:

FOR A FIRST DEFENSE:

1. Each and every allegation of the Plaintiffs' Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.

2. Defendants admit so much of the allegations of Paragraphs 1-3 as to the business and ownership identity of the Plaintiffs as may be of public record.

3. Defendants admit the allegations of Paragraph 4. and 5. as to the identity and residence of the Defendants.

4. Defendants admit the allegations of Paragraph 5. alleging venue in Lancaster County.

5. Defendants admit the allegations of Paragraph 7. as to jurisdiction, insofar as the same is other than an allegation of law requiring no response.

6. Defendants admit so much of the allegations of Paragraphs 8. through 11., and Paragraph 22., as are evidenced by the Lease attached to the Complaint as a part of Exhibit "A", and craves reference thereto.

7. Defendants admit so much of the allegations of Paragraphs 12. as are evidenced by the Lease Guaranty attached to the Complaint as part of Exhibit "A", and craves reference thereto.

8. Defendants are without knowledge or information sufficient to allow a response to the allegations of Paragraph 13., and therefore admit so much of the same as may be of public record.

9. Defendants are without knowledge or information sufficient to allow a response to the allegations of Paragraph 14., and therefore deny the same.

10. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraphs 15. through 20.

11. Defendants are without information or belief sufficient to allow a response to the allegations of Paragraph 21., and therefore deny the same.

12. On knowledge and information, Paragraph 23. is directional only and requires no response by the Defendant.

13. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraphs 24. through 28.

14. Defendants are without information or belief sufficient to allow a response to the allegations of Paragraphs 29. through 31., and therefore deny the same.

15. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraph 32.

16. Defendants are without information or belief sufficient to allow a response to the allegations of Paragraph 33., and therefore deny the same.

17. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraph 34.

18. On knowledge and information, Paragraph 35. is directional only and requires no response by the Defendant.

19. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraphs 36. through 40.

20. Defendants are without information or belief sufficient to allow a response to the allegations of Paragraph 41., and therefore deny the same.

21. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraph 42.

22. On knowledge and information, Paragraph 43. is directional only and requires no response by the Defendant.

23. Insofar as the same are other than legal conclusions, the Defendants deny the allegations of Paragraphs 44. through 45.

24. Defendants admit that he is one of the owners of the real property which is the subject of this action and. the executing party on the Note and Mortgage attached as Exhibits to the Complaint herein.

FOR A SECOND, PARTIAL DEFENSE:

25. All allegations herein consistent with this response and defense are restated by this reference, as fully as if set out herein.

26. In mitigation of any damages to which the Plaintiffs may be, or may appear to be, entitled by reason or the acts or omissions of the Defendants, as referenced in the Plaintiffs' Complaint, the Defendants allege, on knowledge and information, that the Plaintiffs have failed to act timely, effectively or in good faith in re-renting the rental premises in question.

FOR A THIRD, PARTIAL DEFENSE:

27. All allegations herein consistent with this response and defense are restated by this reference, as fully as if set out herein.

28. On knowledge and information, the Plaintiffs are not legally entitled to damages resulting from any alleged "difference in rent", either on the basis of contract, statute or common law.

WHEREFORE the said Defendants pray:

A. That this Court inquire into and determine all matters set out in the Complaint herein, and

B. That the orders of the Court herein accord the said Defendants all protections normally accorded to persons in the position of the said Defendants.

C. Include a prayer for any other relief to the Defendants which may be authorized under other causes of action; and

D. Award or allow the Defendants such other and further relief as this Court may deem just and proper.

John Martin Foster
Attorney for Defendants

The Guardian Building
223 East Main Street, Suite 520
Ro0ck Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

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

April 24, 2018

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF LANCASTER	]	SIXTH JUDICIAL CIRCUIT
	]	
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC,	]	
	]	
Plaintiffs,	]	CERTIFICATE OF SERVICE
vs.	]	
	]	
NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON,	]	C. A. No. 18-CP-29-00271
	]	
Defendants.	]	

The undersigned certifies that he has served the Answer of Defendants dated April 24, 2018, on the following counsel or persons of record:

Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 28277

by causing one (1) copy of the same to be deposited in the United States mail, postage prepaid, on the date set out below, addressed to counsel or opposing party's respective last known address(es) as set out above, or, if no address in known, by leaving the same with the Clerk of Court, as indicated above, pursuant to Rule 5(b)(1), S.C.R.C.P.; or

by personally delivering one (1) copy of the same to the said attorney(s) of record at his, her or their office at the address(es) above, on the date set out above.

John Martin Foster
Attorney for Defendants
SC Bar No. 2086
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

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CLERK OF COURT
LANCASTER, SC

April 24, 2018

Rock Hill, S.C.

ELECTRONICALLY FILED - 2018 Nov 12 3:46 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE GENERAL COURT OF JUSTICE
SIXTH JUDICIAL CIRCUIT
2018-CP-29-00271

KATKAMS VENTURES, LLC and SUPREMA, LLC,
Plaintiffs,

v.

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,
Defendants.

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

NOW COME the Plaintiffs, Katkams Ventures, LLC, and Suprema, LLC, and hereby move this Court to enter an order awarding summary judgment to the Plaintiffs pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that no genuine issue as to any material fact exists with regard to any of the Plaintiffs' claims against Defendants and judgment should be granted in the Plaintiffs favor as a matter of law.

In support of the Motion for Summary Judgment, the Plaintiffs rely upon the pleadings, the affidavits, the discovery responses and documents, and the entire court file, all of which are incorporated herein by reference, as well as any supporting Verifications, Admissions (attached as Exhibit "A"), other Affidavits, and the Brief in Support of Plaintiff's Motion for Summary Judgment, to be filed with this Court.

WHEREFORE, the Plaintiffs respectfully pray the court as follows:

1. That the Court grant the Plaintiffs' Motion for Summary Judgment related to the Plaintiffs' claims and that judgment be entered in favor of the Plaintiffs;

3. For such other and further relief as the Court deems just and proper.

This the 12th day of November, 2018.

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, NC 28277
Telephone – 704-644-1855
Fax – 704-644-1856

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT has been served upon the attorney for the Plaintiff by depositing a copy of the same in the United State Mail, postage paid, and properly addressed to:

John Martin Foster
P.O. Box 106
Rock Hill, SC 29731-6106

Attorney for Defendants

This the 12th day of November, 2018.

By: s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No.102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, NC 28277
Telephone – 704-644-1855
Fax – 704-644-1856

Attorney for Plaintiffs

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Exhibit "A"

Admission of No Limit, LLC

ELECTRONICALLY FILED - 2018 Nov 12 3:46 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

ELECTRONICALLY FILED - 2018 Nov 12 3:46 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON, Defendants.	ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS C. A. No. 18-CP-29-00271

To: Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 28277

NO LIMIT, LLC, as a Defendant in the above-entitled action makes the following admissions and denials on the Request for Admissions served by mailing of June 1st, 2018 and received by the responding Defendant on June 4th, 2018. All references below to "the Defendant" are to the responding Defendant.

1 Defendant, in answer to Request No. 1, responds that the Guaranty in question was executed by the Defendant ERICH SIMPSON and the Request is properly directed to him.

2 Defendant, in answer to Request No. 2, admits that NO LIMIT, LLC it paid no rent on the subject premises after June, 2017.

John Martin Foster
Attorney for Defendant NO LIMIT, LLC
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

July 9, 2018

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	]]	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON, Defendants.	]]]]]]]]]]]]	CERTIFICATE OF SERVICE C. A. No. 18-CP-29-00271

The undersigned counsel herein certifies that, pursuant to Rule 5(b)(1), S.C.R.C.P, on July 9, 2018 he served copies of the following pleadings, documents or papers in the above-captioned and numbered civil action:

Answers to Plaintiff's Requests for Admissions to ERICH SIMPSON; 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, as follows:

Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 2827

John Martin Foster
Attorney for Defendant ERICH SIMPSON

223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6109

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

July 9, 2018

Rock Hill, South Carolina

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Exhibit "A"

Admission of Erich Simpson

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STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	]]	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON, Defendants.	]]]]]]]]]]]]	ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSIONS C. A. No. 18-CP-29-00271

To: Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 28277

ERICH SIMPSON, as a Defendant in the above-entitled action makes the following admissions and denials on the Request for Admissions served by mailing of June 1st, 2018 and received by the responding Defendant on June 4th, 2018. All references below to "the Defendant" are to the responding Defendant.

1 Defendant, in answer to Request No. 1, responds that the Lease in question was entered into by the Defendant NO LIMIT, LLC.

2 Defendant, in answer to Request No. 2, admits that NO LIMIT, LLC took possession of the premises on or about July 1, 2017.

3 Defendant, in answer to Request No. 3, admits to those terms of the lease by which NO LIMIT, LLC was required to pay rent for the subject premises.

4 Defendant, in answer to Request No. 4, admits to the payment of rent for the subject premises prior to July 1, 2017 by NO LIMIT, LLC.

5 Defendant, in answer to Request No. 5, admits that, owing to his illness, rental payments ceased, and that such cessation was around July 1, 2017.

6 Defendant, in answer to Request No. 6, admits receipt of a notice by NO LIMIT, LLC that the premises were vacant in or about July, 2017; Defendant is without knowledge or information as to the date such notice was sent.

7 Defendant, in answer to Request No. 7, admits that NO LIMIT, LLCt did not pay rent for

ELECTRONICALLY FILED - 2018 Nov 12 3:46 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

August, 2017.

8 Defendant, in answer to Request No. 8, admits that he received the notice attached to the Complaint herein and designated as Exhibit "C"; Defendant lacks a record of the date of receipt, but believes the same to have been in August, 2917.

9 Defendant, in answer to Request No. 9, admits that NO LIMIT, LLC did not pay rent for September, 2017.

10 Defendant, in answer to Request No. 10, admits that NO LIMIT, LLC did not pay rent for October, 2017.

11 Defendant, in answer to Request No. 11, admits that NO LIMIT, LLC did not pay rent for November, 2017.

12 Defendant, in answer to Request No. 12, admits that NO LIMIT, LLC did not pay rent for whatever portion of December, 2017 the subject premises were occupied by the succeeding tenant who took possession thereof.

13 Defendant, in answer to Request No. 13, admits that NO LIMIT, LLC did not pay rent after November, 2017.

14 Defendant, in answer to Request No. 14, admits that after his recovery from illness, his business was relocated within South Carolina.

John Martin Foster
Attorney for Defendant ERICH SIMPSON

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

July 9, 2018

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2018 Nov 12 3:46 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	]]	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON, Defendants.	]]]]]]]]]]]	CERTIFICATE OF SERVICE C. A. No. 18-CP-29-00271

The undersigned counsel herein certifies that, pursuant to Rule 5(b)(1), S.C.R.C.P, on July 9, 2018 he served copies of the following pleadings, documents or papers in the above-captioned and numbered civil action:

Answers to Plaintiff's Requests for Admissions to NO LIMIT, LLC; 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, as follows:

Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 2827

John Martin Foster
Attorney for Defendant NO LIMIT, LLC

223 East Main Street, Suite 520
Post Office Box 106
Rock Hill, SC 29731-6109

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

July 9, 2018

Rock Hill, South Carolina

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE GENERAL COURT OF JUSTICE
SIXTH JUDICIAL CIRCUIT
2018-CP-29-00271

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC,
Plaintiffs,

v.

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,
Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

PERSONALLY appearing before me, Suresh Katukams, Manager of Katkams Ventures, LLC, ("Affiant"), being first duly sworn, deposes and says that he has read the foregoing affidavit and know the contents thereof and that the statements contained therein are true of their own knowledge:

1. Katkams Ventures, LLC is a limited liability company organized and existing under the laws of the State of South Carolina with a principle place of business located in Lancaster, South Carolina.

2. Katkams Ventures, LLC is the successors in interest to 521, LLC, (the "Original Landlord"), through the sale and execution of the Assignment of Lease (hereinafter described as Exhibit "B" of Plaintiff's Complaint), assumed the Original Landlord's rights and obligations under the Lease Agreement on July 29, 2016 (hereinafter described as Exhibit "A" of Plaintiff's Complaint).

3. Katkams Ventures, LLC has not received any payments from Defendants No Limit from July1, 2017 to present.

4. To date, the Plaintiffs have incurred the following damages as a direct and proximate result of Defendants No Limit Financial's breach of the Lease Agreement:

a. Defendants' Unpaid Rent from July 1, 2017 to January 30, 2018 in the amount of Eighteen Thousand Nine Hundred Eighteen Dollars and Six Cents;

$18,918.06

b. Late Fees charge equal to five percent (5%) of the monthly rental payment from July 1, 2017 to January 30, 2018 in the amount of Nine Hundred Forty-Five Dollars and 00/100 Cents;

$945.00

c. Calculated Loss from Difference in Rent, totaling Thirty-Three Thousand Five Hundred Fifty Six Dollars and 00/100 Cents;

$33,556.00

d. Broker Commission for paid for re-let property to new tenant in the amount of Three Thousand Four Hundred and Six Dollars and Thirty-Six Cents;

$3,406.36

Total: $59,081.42

AFFIANT:

Katkams Ventures, LLC
a South Carolina Limited Liability Company

K. Suresh (SEAL) Date: 10/02/18

By: Suresh Katkams KATKAM
Title: Manager

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ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SANTA CLARA

On Oct 2, 2018 before me, RAJ MEHTA
(insert name and title of the officer)

personally appeared SURESH KATUKAM,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

RAJ MEHTA
Notary Public - California
Santa Clara County
Commission # 2215715
My Comm. Expires Sep 24, 2021

Signature _____ (Seal)

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Seal-Stamp

Use Black Ink

STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

I, RAJ MEHTA, Notary Public, certify that **Suresh Katkams**, personally appeared before me today and acknowledged that he is manager of Katkams Ventures, LLC, a South Carolina Limited Liability Company, and through his authorization as Manager, acknowledged the execution of the foregoing instrument on behalf of the Company.

Witness my hand and official stamp or seal,
this 2nd day of ~~September~~ October, 2018.

Notary Public
My Commission expires: Sept 24, 2021
Verified by: _____

RAJ MEHTA
Notary Public – California
Santa Clara County
Commission # 2215715
My Comm. Expires Sep 24, 2021

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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE GENERAL COURT OF JUSTICE
SIXTH JUDICIAL CIRCUIT
2018-CP-29-00271

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC,
Plaintiffs,

v.

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,
Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

PERSONALLY appearing before me, Ganesh Sundaram, Manager of Suprema, LLC, ("Affiant"), being first duly sworn, deposes and says that he has read the foregoing affidavit and know the contents thereof and that the statements contained therein are true of their own knowledge:

1. Suprema, LLC is a limited liability company organized and existing under the laws of the State of South Carolina with a principle place of business located in Lancaster, South Carolina.

2. Suprema, LLC is a successor in interest to 521, LLC, (the "Original Landlord"), through the sale and execution of the Assignment of Lease (hereinafter described as Exhibit "B" of Plaintiff's Complaint), assumed the Original Landlord's rights and obligations under the Lease Agreement on July 29, 2016 (hereinafter described as Exhibit "A" of Plaintiff's Complaint).

3. Suprema, LLC has not received any payments from Defendants No Limit from July 1, 2017 to present.

4. To date, the Plaintiffs have incurred the following damages as a direct and proximate result of Defendants No Limit Financial's breach of the Lease Agreement:

a. Defendants' Unpaid Rent from July 1, 2017 to January 30, 2018 in the amount of Eighteen Thousand Nine Hundred Eighteen Dollars and Six Cents;

$18,918.06

b. Late Fees charge equal to five percent (5%) of the monthly rental payment from July 1, 2017 to January 30, 2018 in the amount of Nine Hundred Forty-Five Dollars and 00/100 Cents;

$945.00

c. Calculated Loss from Difference in Rent, totaling Thirty-Three Thousand Five Hundred Fifty Six Dollars and 00/100 Cents;

$33,556.00

d. Broker Commission for paid for re-let property to new tenant in the amount of Three Thousand Four Hundred and Six Dollars and Thirty-Six Cents;

$3,406.36

Total: $59,081.42

AFFIANT:

Suprema, LLC
a South Carolina Limited Liability Company

S. Ganesh (SEAL) Date: 9/29/18

By: Ganesh Sundaram
Title: Manager

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

County of Santa Clara }

On September 29th 2018 (Date) before me, D. Parkhouse, Notary Public (Insert Name of Notary exactly as it appears on the official seal), Notary Public.

personally appeared Ganesh Sundaram (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature _____ (Signature of Notary Public)

D. PARKHOUSE
COMM. # 2256518
NOTARY PUBLIC • CALIFORNIA
SANTA CLARA COUNTY
MY COMM. EXP. AUGUST 30, 2022

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.

Description of Attached Document

Title or Type of Document: Affidavit in Support of Plaintiff's Motion for Summary Judgment (SC)

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE GENERAL COURT OF JUSTICE
SIXTH JUDICIAL CIRCUIT
2018-CP-29-00271

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC,
Plaintiffs,

v.

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,
Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COPY

PERSONALLY, appearing before me, John Smethurst, ("Affiant"), being first duly sworn, deposes and says that he has read the foregoing affidavit and knows the contents thereof and that the statements contained therein are true to his own knowledge:

1. I am a broker and licensed real estate agent for SCRE Properties, LLC, a North Carolina limited liability company, and have been working as a real estate agent within the State of South Carolina for twenty-five (25) years.

2. SCRE Properties, LLC acts as the property manager for the property located at 10005 Charlotte Hwy, Indian Land, South Carolina, 29707, containing approximately1,148 square feet, a portion of Unit 200 thereof (the "Premises").

3. Since July, 2016, SCRE Properties, LLC has served as the property management for the Premises.

4. In or about August, 2017, the Premises was marketed as available for rent following Defendant No Limit, LLC's unlawful vacancy of the Premises.

RECEIVED
JAN 22 2019
By

5. During the marketing of Premises, SCRE Properties, LLC advertised the Premises for rent by placing "For Rent" signs on the marquee sign of the property, removed Defendant's signage, submitted pertinent information about the Premises to listing services, advertised the Premises in non-Internet media and through other real estate firms, and displayed information about the Premises on the internet.

6. The Premises remained vacant for four (4) months. During that period, SCRE Properties, LLC received one (1) inquiry from a prospective tenant interested in leasing the Premises.

7. On November 1, 2017, a new Lease Agreement (the "New Lease Agreement") was signed for the Premises, a copy of which is attached to this Affidavit as Exhibit "A" and is incorporated herein by reference.

8. The base rent set forth in the New Lease Agreement is as follows: (i) months 1-2: rent free period; (ii) months 3-14: $2,296.00 per month; (iii) months 15-26: $2,364.88 per month; and (iv) months 27-38: $2,435.67 per month.

9. The estimated additional rent and fees (the "CAM Fees") pursuant to the New Lease Agreement are Four Hundred and Six Dollars and Fifty-Eight Cents ($406.58) for the first year of the New Lease Agreement.

Respectfully submitted this 18 day of January, 2019.

AFFIANT:

John Smethurst (SEAL) Date: 1/18/19

John Smethurst

Seal-Stamp

MARIA VICTORIA STEGALL
Notary Public, North Carolina
Union County
My Commission Expires
March 21, 2023

Use Black Ink

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Maria Victoria Stegall, Notary Public, certify that **John Smethurst**, personally appeared before me today and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal,
this 18th day of January, 2019.

Maria Victoria Stegall
Notary Public
My Commission expires: 03/21/23
Verified by: personal knowledge

LEASE AGREEMENT

THIS LEASE AGREEMENT made as of the 1st day of November 1st, 2017, by and between Katkams, LLC, hereinafter called "Landlord", and Jacob Howren, D.B.A. Outlaw Smoke Shop, hereinafter called "Tenant".

WITNESSETH:

The parties hereto agree for themselves, their successors and assigns, as follows:

1. PREMISES. Landlord hereby leases to Tenant, and Tenant hereby accepts and rents from Landlord, that certain space (hereinafter called "Demised Premises"), containing approximately 1148 square feet, and comprising a portion of Suite 200 of Southern Shoppes, located at 10005 Charlotte Highway, Indian Land, SC 29707, as more particularly described and recorded in Record Book _____ at Page_____ in the Office of the Clerk of Court for Lancaster County, South Carolina (the "Declaration"), which is hereby incorporated by. Tenant shall further have the non exclusive right to use all of the parking areas, driveways, entranceways, footwalks and other common facilities furnished from time to time in the shopping center by Landlord and all "Common Elements" serving the above-described Demised Premises as set forth in the Declaration, all subject to such reasonable and uniform rules and regulations as Landlord may prescribe from time to time, and all other applicable condominium documents and other matters of public record.

TO HAVE AND TO HOLD the said Demised Premises together with all privileges and appurtenances upon the terms and conditions hereinafter set forth:

2. TERM. The initial Term of this Lease shall begin following the date of execution of this lease by both parties and shall run for Thirty Eight (38) Months from Date of Delivery to Tenant. Tenant shall be granted Two (2) months of Rent and remaining days in October, 2017 at no charge following such date.

3. OPTION TO RENEW. Tenant is hereby granted **one (1)** successive option to renew and extend the term of this Lease for **Five (5) year(s)** on each such option, each such extended term to begin of the immediately preceding extended term; and except for rental, all of the provisions of this Lease Agreement shall apply to each extended term, except Tenant shall not have any further option to renew and extend the term of this Lease following the exercise, if any, of the last option. Tenant may exercise any such option only (a) if it is not in default hereunder, and (b) by giving Landlord written notice of such exercise not later than six (6) months prior to the expiration of the term of this Lease or of this Lease as renewed and extended. Rent during option periods will increase at market rates to be determined at the signing of a new lease.

4. RENTAL. Tenant shall pay to Landlord for the use and occupancy of the Demised Premises and appurtenances thereto rental (collectively hereinafter referred to as "Rent") as hereinafter provided:

a) Guaranteed Minimum Rental. Guaranteed minimum rental at the following rates:

JH

Months	Base Rent/Sq. Ft.	Annual Base Rent	Monthly Base Rent
1-2	$0		
3-14	$24.00	$27,552	$2,296.00
14-26	$24.72	$28,379	$2,364.88
27-38	$25.46	$29,228	$2,435.67

b) Additional Rent. Tenant shall pay to Landlord as additional rent, Tenant's "proportionate share" of all costs (CAM Fees) in maintaining, repairing, operating and insuring the portions of the shopping center which are the responsibility of the Landlord resulting from Landlord's ownership of the Demised Premises.

For purposes herein, "CAM Fees" shall include, but not be limited to, the total costs of operating, repairing, lighting, cleaning, maintaining, painting, securing, managing and insuring (including liability insurance for personal injury, wrongful arrest of detainer, death and property damage; insurance and extended coverage against fire, theft, floor or other casualty and rent loss insurance) the shopping center including all common amenities of whatsoever nature and paying all taxes, public charges and assessments of whatsoever nature directly or indirectly assessed or imposed upon the land, buildings, equipment and improvements constituting the shopping center and the rents therefrom, repairs, line painting, bumpering and resurfacing, lighting, electricity and other refuse, depreciation or rental on machinery or equipment used in such maintenance, the cost of personnel to implement such services and direct parking and to police the common areas, advertising costs and expenses of the shopping center and costs of heating and air conditioning service policies. Tenant's proportioning share of Operating Costs for the shopping center by a fraction, the numerator of which shall be the number of gross square feet of the Demised Premises and denominator of which shall be the number of square feet of gross leaseable area in the entire shopping center. Initial estimate to be $4.25/SF. To include taxes and insurance (section 6 and 7).

c) Tenant shall pay all Rent when due and payable, without any set off, deduction, objection or prior demand therefore whatsoever on or before the first day of each month. Landlord must receive rent within five (5) days of its due date (the first of each month) at the address set forth in Paragraph 4.d. below. If the Landlord does not receive all required Rent within five (5) days of the due date, Tenant shall be obligated to pay a late payment charge equal to five percent (5%) of the amount required to be paid. Any payment by Tenant or acceptance by Landlord of a lesser amount than shall be due from Tenant to Landlord shall be treated as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

d) Payment of Rental. All rental payments provided herein shall be made to SCRE Properties LLC, 7733 Ballantyne Commons Parkway, Suite 201H, Charlotte, NC 28277, until notice to the contrary is given by Landlord.

e) Landlord shall provide Tenant with an annual accounting of all Operating Costs. If Tenant's proportionate share of Operating Costs is less than the amount than Tenant has paid as Additional rent for the Period covered by the annual accounting, then such excess additional rent shall, at Landlord's option, be paid to Tenant or credited toward Tenant's additional rent for the coming year.

5. IMPROVEMENTS AND DELIVERY OF DEMISED PREMISES. If at the time of the execution of this Lease Agreement by Tenant the shopping center and the Demised Premises have been completed, then Tenant acknowledges that it has examined and accepts the same in their present condition and the Demised Premises shall be deemed delivered to Tenant upon the execution of this Lease Agreement by Landlord. Tenant understands and agrees that delivery of the Demised Premises shall be as a "vanilla shell" as described in Exhibit A Delivery date shall be the later of the execution of this agreement or the receipt of a Certificate of Occupancy by the Landlord.

Tenant shall with due diligence cause the Demised Premises to be improved by completing the work described on Exhibit C attached hereto (The Tenant's Improvement). Tenant shall be solely responsible for the cost to complete the Tenant's Improvement.

6. TAXES. Tenant covenants and agrees to pay Landlord, as additional rent, Tenant's proportionate share of all taxes and assessments of every kind and nature, including property taxes, which are now or may hereafter be imposed or assessed upon the shopping center. Tenant shall further pay all taxes and assessments imposed on any fixtures, equipment, merchandise or other property installed in the Demised Premises or brought thereon by Tenant or any other person. Tenant agrees that it will promptly pay all such taxes and assessments as the same becomes due.

7. INSURANCE. As set forth in Paragraph 4(b) hereof, Tenant covenants and agrees to pay Landlord, as additional rent, Tenant's proportionate share of the premiums charged to insure the shopping center with the equivalent of ISO Special Form Property full replacement value (but in any case not less than the outstanding balance of any indebtedness on a first mortgage loan on the shopping center). If during the term of this Lease the Tenant uses the Demised Premises for any purpose or in any manner that causes an increase in the rates of such insurance, the Tenant will pay the additional premium caused thereby. Tenant will provide and pay for the equivalent of ISO Special Form Property Insurance, covering the full replacement cost of contents and fixtures in the Demised Premises. The carrier for such insurance shall hold a current Best's rating of at least B+ 6, shall be licensed in the state in which the Demised Premises is located and shall waive its right of subrogation. Prior to the execution of this agreement annually thereafter, Tenant shall furnish Landlord with a certificate of such insurance. The certificate will confirm that in the event of cancellation or non-renewal, at least 45 days written notice will be provided to the Landlord's Risk Management department.

8.1 During the Lease Term, Tenant shall, at its own expense, carry the following insurance: (a) personal property insurance, insuring its stock, trade fixtures, improvements and betterments against all Direct Risk Physical Loss, in an amount of not less than 100% of insurable

replacement cost; (b) public liability insurance, including contractual and auto liability for its own protection, covering the Premises and Tenant's use thereof, with minimum amounts of insurance of $1,000,000.00 for damage to property of others in any one occurrence, and if Tenant sells alcoholic beverages, Dram Shop Liability coverage of $1,000,000.00; and (c) such other forms, amounts and types of insurance as from time to time may be required by Landlord. All insurance to be maintained by Tenant hereunder shall: (i) be with companies approved by Landlord, (ii) name Landlord as an additional loss payee, and (iii) be endorsed to provide thirty (30) days advance notice to Landlord of cancellation or material change. Tenant shall deliver to Landlord certificates of all insurance required under this Section. Tenant shall give insurance, or the Landlord's insurance; and Tenant shall be responsible for all property damage or liability arising out of the operation of its business on the Premises, whether or not such damage or liability is covered by its insurance.

8. USE OF DEMISED PREMISES. Tenant shall use the Demised Premises only for the purposes of conducting a Vape and Tobacco Shop. Tenant shall comply with all laws, ordinances, orders or regulations of any lawful authority having jurisdiction over the Demised Premises or the adjacent public streets including without limitation making at its own expense all alterations to the Demised Premises required by any such authority; and Tenant shall not do any act or follow any practice in or about the Demised Premises which shall constitute a nuisance or detract from or impair the reputation of the shopping center. Without limiting the generality of the foregoing, Tenant shall make such arrangements for the storage and disposition of all garbage and refuse as may be reasonably required by Landlord from time to time and shall at all times keep the Demised Premises and all adjoining entry ways, sidewalks and delivery areas in a neat and orderly condition and clean and free from rubbish, dirt, snow and ice, and shall not cause any noxious, disturbing or offensive odors, fumes or gases, or any smoke, dust, steam or vapors, or any loud disturbing noise or vibrations to originate in or be emitted from the Demised Premises. Tenant shall comply with all rules and regulations relating to occupants of units in the shopping center as may be set forth in the Declaration, and all other documents of public record which may affect the Demised Premises.

Tenant shall continuously during the term of this Lease keep the entire Demised Premises occupied and open for business. Tenant shall in all respects conduct its business in the Demised Premises in a diligent and dignified manner and exert its best efforts to generate a maximum volume of gross sales. During the term of this Lease Tenant shall not, directly or indirectly, engage in any business within one (1) mile of Tenant's store space in competition with any business being conducted in said store space; provided, however, that this provision shall not prohibit Tenant from continuing to conduct any business being conducted by Tenant on the date of this Lease Agreement.

9. LANDLORD'S COVENANT TO MAINTAIN. Landlord will, at its own expense, keep and maintain in good order and repair during the full term of this Lease any exterior and principal structural portions of the buildings and other improvements constituting the shopping center,; provided, however, that Landlord will not be responsible for or required to make, and Tenant will make, any repairs which may have been occasioned or necessitated by the negligence of Tenant, its agents, employees, contractors or invitees. Landlord shall use its best efforts to carry out its duties and responsibilities for the maintenance and repair of the structural components of the

building of which the Demised Premises is a part and which are specified in the Declaration (e.g., the structural portions of the building including the roof, foundation, exterior and interior load-bearing walls, all systems servicing the building including all plumbing and sewer lines, electrical facilities and equipment servicing the building which are not a part of the Landlord's Work, gutters and down spouts, landscaping and lawn maintenance, parking areas and exterior lighting). Tenant understands and acknowledges that Landlord shall not be required to make any such repairs, which are normally expensed under the Common Area Maintenance charges.

10. TENANT'S COVENANT TO MAINTAIN. Tenant will, at its own expense, keep and maintain in good order and repair during the full term of this Lease all other parts of the Demised Premises, including without limitation the entire interior and all window glass, plate glass, plumbing, wiring, electrical systems and heating and air conditioning systems; and Tenant will, at the end of the term of this Lease, deliver the Demised Premises to the Landlord in as good condition as they were when received by it, excepting only normal wear and tear and repairs required to be made by Landlord. Tenant shall enter into a maintenance agreement with a reputable HVAC service company approved by Landlord providing for regular service and maintenance of the heating and air conditioning system serving the Demised Premises on at least a yearly basis. Annual contract documentation to be provided to Landlord upon Tenant opening for business.

11. COMMON FACILITIES. Landlord shall at all times during the term of this Lease maintain in good condition and repair adequate parking areas, driveways and footwalks in the shopping center. All common facilities in the shopping center shall at all times be subject to the exclusive control and management of Landlord; and Landlord shall have the right from time to time to change the area, level, location and arrangement of the common facilities, to restrict parking by tenants and their employees to employee parking areas, and to make all the rules and regulations and do such other things from time to time as in Landlord's discretion may be necessary regarding said facilities.

12. DAMAGE OR DESTRUCTION BY CASUALTY. If the Demised Premises are damaged or destroyed during the term of this Lease by fire or other casualty covered by an ordinary fire insurance policy with extended coverage, Tenant shall give immediate written notice thereof to Landlord; Landlord will reconstruct the Demised Premises or repair such damage as promptly as practicable as set forth in the Declaration, and Tenant shall meanwhile be entitled to an abatement of rental to the extent of the loss of use suffered by it; provided, however, that if the Demised Premises shall be damaged or destroyed by casualty to the extent of fifty percent (50%) or more of their replacement value, Landlord shall thereupon have an option to terminate this Lease, and must notify Tenant of its decision within sixty (60) days from the date of the occurrence.

13. UTILITIES. During the term of this Lease, Tenant shall provide and pay for all lights, heat, water, janitor service and other utilities required by it in the use of the Demised Premises.

14. SIGNS, ADVERTISING AND SELLING ACTIVITIES. Subject to compliance with all applicable zoning ordinances and any regulations set forth in the Declaration or any other documents of public record, Tenant may install such signs on the Demised Premises as may be approved by Landlord and as shall not damage or impair the attractiveness of the shopping center; provided, however, that the care and maintenance of such signs shall be the sole responsibility of

the Tenant. Tenant shall not (a) paste or otherwise affix any banners, posters or other advertising material to any outside display window or wall in the shopping center or in any other manner display any merchandise or advertising media closer than twelve (12) inches to the interior side of any such display window; (b) maintain or display any vending machines, show cases, coin-operated devices or other selling devices, or any merchandise or property or any nature whatsoever in the parking lot or other common facilities or on the outside of any store building in the shopping center; or (c) permit, allow or cause to be used in or about the shopping center any phonographs, radios, public address system, sound production or reproduction devices, mechanical or moving display devices, motion picture, television devices, excessively bright lights, changing, flashing, flickering or moving lights or lighting devices or any similar advertising media or devices, the effect of which shall be visible or audible from the exterior of any store space.

15. INDEMNITY. Tenant covenants and agrees that it will defend, indemnify, protect and save harmless the Landlord from the claims of all persons arising from or out of the use or occupancy of the Demised Premises by or under Tenant or Tenant's agent, employees or invitees. Tenant shall carry Commercial General Liability insurance with an insurance company holding a current Best's rating of B+ 6 or better, licensed in the state in having minimum limits of $1,000,000.00 each occurrence and $2,000,000.00 General Aggregate location, and prior to the execution of this agreement and annually thereafter, Tenant shall furnish Landlord with a certificate of such insurance. The certificate will confirm that in the event of cancellation or non-renewal, at least 45 days written notice will be provided to the Landlord's Risk Management department.

16. WAIVER OF CLAIMS. Landlord and landlord's agents, employees and contractors shall not be liable for, and Tenant hereby releases all claims for, damage to persons or property sustained by Tenant or any person claiming through Tenant resulting from any fire, accident, occurrence or condition in or upon the Demised Premises or building of which they shall be a part, including but not limited to such claims for damage resulting from:

a) Any defect in or failure of plumbing, heating or air conditioning equipment, electric wiring or installation thereof, water, pipes, stairs, railings or walks.

b) Any equipment or appurtenances becoming out of repair.

c) The bursting, leaking or running of any tank, washstand, water closet, waste pipe, drain or any other pipe or tank in, upon or about such building or premises.

d) The backing up of any sewer pipe or downspout.

e) The escape of steam or hot water.

f) Water, snow, or ice being upon or coming through the roof or any other place upon or near such building or premises or otherwise.

g) The falling of any fixture, plaster or stucco.

h) Broken glass.

i) Any act or omission of co-tenants or other occupants of said building or of adjoining or contiguous property or buildings.

17. ALTERATIONS, FIXTURES AND PERSONAL PROPERTY. Any trade fixtures, equipment and other personal property installed in or attached to the Demised Premises by or at the expense of Tenant shall remain the property of Tenant, and Tenant shall have the right at any time, provided it is not then in default hereunder, to remove any and all of such fixtures; provided, however, that in such event Tenant shall restore the Demised Premises to substantially the same condition in which they were at the time Tenant took possession, ordinary wear and tear and Landlord's covenant to maintain excepted. Tenant shall effect no structural or other alterations to the premises without the prior written consent of Landlord, and any alteration or improvement made within the premises which results in any damage to the floor, ceiling or outside walls of the premises shall be repaired by Tenant. Tenant shall further be required to comply with the Declaration in connection with any changes, improvements and alterations made to the Demised Premises. Tenant shall provide Landlord with copies of all plans and specifications for all changes, improvements and alterations Tenant desires to make to the Demised Premises and receive Landlord's prior written approval thereof prior to the commencement of any such work. Tenant shall not encumber or subject the interest of Landlord in the premises to any mechanics or material men's, or other liens whatsoever. Upon the filing of any such lien, the failure of Tenant to have the same canceled promptly shall constitute a default by Tenant.

18. LANDLORD'S ENTRY. The Landlord shall have the right to enter upon the Demised Premises at all reasonable times during the term of this Lease for the purposes of inspection, maintenance, repair and alteration and to show the same to prospective tenants or purchasers.

19. ASSIGNMENT AND SUBLEASE. Tenant may not assign this Lease or sublet the Demised Premises or any portion thereof without the prior written consent of Landlord; but such consent shall not be unreasonably withheld. It is specifically agreed that withholding of consent on the grounds that the assignment or subletting would violate any covenant or covenants in any lease covering any other premises in said shopping center shall not be considered unreasonable. It is expressly understood that the assignment or subleasing of the Demised Premises shall not relieve Tenant or guarantor of their primary liability for any obligation of this Lease Agreement.

20. DEFAULT. If Tenant shall continue in default in payment of any rental or other sum of money becoming due hereunder for a period of ten (10) days after its due date, or if Tenant shall default in the performance of any other covenant of this Lease and does not remedy such default within thirty (30) days after written notice thereof or does not within such thirty (30) days commence such act or acts it shall be necessary to remedy such default and shall complete such act or acts promptly, or if Tenant shall become insolvent or be adjudicated bankrupt, or file in any court a petition in bankruptcy or other debtor proceedings, or file or have filed against it a petition for the appointment of a receiver or trustee for all or substantially all of the assets of Tenant, or if Tenant makes an assignment for, petitions for or enters into, an arrangement for, the benefit of creditors, or if Tenant shall vacate or abandon the Demised premises or any substantial part thereof, or suffer the lease to be taken or encumbered under any legal process and such taking or encumbrance is not dissolved within twenty (20) days, then in any such event Landlord shall have

the right and option to either (i) terminate this Lease, or (ii) not terminate the Lease but terminate Tenant's right to possession of the Demised Premises, and in either case Landlord shall have the immediate right of re-entry to remove all persons and property from the Demised Premises and dispose of or store such property as it sees fit, all without resort to legal process and without being deemed guilty of trespass.

Landlord may relet the premise or a portion of the premises for any reasonable use, and Landlord shall be entitled to recover from Tenant an amount equal to the amount of all rents reserved under this Lease, less the net rent, if any, collected by the Landlord on reletting the Demised Premises. Net rent collected on reletting by the Landlord shall be computed by deducting from the gross rent collected all expenses incurred by the Landlord in connection with the reletting of the premises, including broker's commissions and the cost of repairing, renovating or remodeling said premises.

21. REMEDIES CUMULATIVE – NONWAIVER. No remedy herein or otherwise conferred upon or reserved to Landlord or Tenant shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute; and every power and remedy given by this Lease to Landlord or Tenant may be exercised from time to time as often as occasion may arise, or as may be deemed expedient. No delay or omission of Landlord or Tenant to exercise any right of power arising from any default or the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence thereto.

22. EMINENT DOMAIN. If more than ten percent (10%) of the Demised Premises or more than thirty percent (30%) of the total shopping center is taken under the power of eminent domain (including any conveyance made in lieu thereof), and such taking shall in the reasonable judgment of Tenant make the operation of Tenant's business on the Demised Premises impractical, then Tenant shall have the right to terminate this Lease by giving Landlord written notice of such termination within thirty (30) days after such taking. If Tenant does not so elect to terminate this Lease, Landlord and the Association, as applicable, at its own expense will repair and restore the Demised Premises to a tenantable condition, and the rental to be paid by Tenant hereunder shall be proportionately and equitable reduced. Tenant hereby expressly waives all rights to an award resulting from an eminent domain action affecting the shopping center, except the right to receive compensation or damages for its loss of business and its fixtures or personal property.

23. LANDLORD'S LIEN. Landlord shall have at all times a valid lien for all rentals and other sums of money becoming due hereunder from Tenant, upon all goods, wares equipment, fixtures, furniture and other personal property of Tenant situated on the Demised Premises, and such other property shall not be removed therefrom without the consent of Landlord until all arrearages in rent as well as any and all other sums of money then due to Landlord hereunder shall first have been paid and discharged. Upon the occurrence of an event of default by Tenant, Landlord may, in addition to any other remedies provided herein or by law, enter upon the Demised Premises and take possession of any and all goods, wares, equipment, fixtures, furniture, and other personal property of Tenant situated on the premises without liability for trespass or conversion, and sell the same with or without notice at a public or private sale, with or without having such property

thereof, less any and all expenses connected with the taking of possession and sale of the property, as a credit against any sums due by Tenant to Landlord. Any surplus shall be paid to Tenant, and Tenant agrees to pay any deficiency forthwith. Alternatively, the lien hereby granted may be foreclosed in the manner and form provided by law for foreclosure of chattel mortgages or in any other form provided by law. Any statutory lien for rent is not hereby waived, the express contractual lien herein granted being in addition and supplementary thereto.

24. NOTICES. All notices provided for in this Lease Agreement shall be in writing and shall be deemed to be given when sent by prepaid registered or certified mail to the parties as follows: to the Landlord at 7733 Ballantyne Commons Parkway, Ste 201H, Charlotte, NC 28277 and to the Tenant at 1875 Oakbriar Circle, Fort Mill, SC 29715. Either party may, from time to time, by notice as herein provided, designate a different address to which notices to it shall be sent.

25. HOLDING OVER. If Tenant remains in possession of the Demised Premises or any part thereof after the expiration of the term of this Lease with Landlord's acquiescence and without any written agreement of the parties, Tenant shall be only a monthly Tenant terminable at will by either party by written notice, and there shall be no renewal of this Lease or exercise of an option by operation of law. The monthly minimum guaranteed rental will be increased by fifty percent (50%) over the previous lease year preceding the hold over term.

26. SUBORDINATION. Tenant will, within ten (10) days after a request by Landlord, subject and subordinate all of any of its rights under this Lease Agreement to any and all mortgages and deeds of trust now existing or hereafter placed on the property of which the Demised Premises are a part; provided, however, that Tenant will not be disturbed in the use or enjoyment of the Demised Premises so long as it is not in default hereunder. Tenant agrees that this Lease Agreement shall remain in full force and effect notwithstanding any default or foreclosure under any such mortgage or deed of trust and that it will attorn to the mortgagee, trustee, or beneficiary of such mortgage or deed of trust, and their successors or assigns and to the purchaser or assignee under any such foreclosure. Tenant will, upon request by Landlord, execute and deliver to Landlord, or to any other person designated by Landlord, any instrument or instruments required to give effect to the provisions of this Article.

27. TRANSFER OF LANDLORD'S INTEREST. In the event of the sale, assignment or transfer by Landlord of its interest in the shopping center or in this Lease (other than a collateral assignment to secure a debt of Landlord) to a successor in interest who expressly assumes the obligations of Landlord hereunder, Landlord shall thereupon be released or discharged from all of its covenants and obligations hereunder, except such obligations as shall have accrued prior to any such sale, assignment or transfer; and Tenant agrees to look solely to such successor in interest of Landlord for performance of such obligations. Any securities given by Tenant to Landlord to secure performance of Tenant's obligations hereunder may be assigned and transferred by Landlord to such successor of receipt of such security and upon acknowledgment by such successor of receipt of such security and its express assumption of the obligation to account to Tenant for such security in accordance with the terms of this Lease, Landlord shall thereby be discharged of any further obligation relating thereto. Landlord's assignment of the Lease or of any or all of its rights herein shall in no manner affect Tenant's obligations hereunder. Tenant shall thereafter attorn and look

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SC Court of Appeals

to such assignee, as Landlord, provided Tenant has first received written notice of such assignment of Landlord's interest.

28. WARRANTY. Landlord covenants that it has good and marketable title to the premises described in Exhibit B attached hereto in fee simple absolute, and that Tenant shall peacefully and quietly hold and enjoy the Demised Premises for the full term hereof so long as it does not default in the performance of any of its covenants hereunder.

29. SHORT FORM LEASE. Upon the commencement of the term of this Lease, the parties hereto shall execute a memorandum or short form lease agreement, in recordable form, specifying the commencement and termination dates of the term hereof and including any such other provisions hereof as either party may desire to incorporate therein.

30. ESTOPPEL CERTIFICATE. Within ten (10) days after request therefore by Landlord or any mortgagee or trustee under a mortgage or deed of trust covering the Demised Premises, or if, upon any sale, assignment or other transfer of the Demised Premises by Landlord, an estoppel certificate shall be required from Tennant, Tenant shall deliver in recordable form a statement to any proposed mortgagee or other transferee, or to Landlord, certifying any facts that are then true with respect to this Lease Agreement, including without limitation (if such be the case) that this Lease Agreement is in full force and effect, that Tenant is in possession, that Tenant has commenced the payment of rent, and that there are no defenses or offsets to the Lease Agreement claimed by Tenant.

31. WAIVER. The waiver by Landlord of any covenant or agreement set forth in this Lease shall not be deemed to be a waiver of any subsequent breach or any other covenant or agreement of this Lease. Acceptance of rent by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant (except Tenant's failure to pay the particular rent so accepted), regardless of Landlord's knowledge of such a preceding breach at the time the rent is accepted.

32. SECURITY DEPOSIT. Tenant shall deposit with Landlord the sum of $4,998.58, $2,296.00 to be held as Collateral Security for the payment of any rentals and other sums of money for which Tenant shall become liable to Landlord, and for the faithful performance by Tenant of all covenants and conditions herein contained. The Remainder to be applied to the first month's Base Rent and TICAM expenses (December Rent). Said Collateral Security shall be returned to Tenant at the end of the term of this Lease Contract provided Tenant shall have made all such payments and performed all such covenants and agreements. Deposit shall be paid in full by execution of this lease.

33. NATURE AND EXTENT OF AGREEMENT. This instrument contains the complete agreement of the parties regarding the terms and conditions of the Lease of the Demised Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein.

34. BINDING EFFECT. This Lease Agreement shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assigns.

35. APPLICABLE LAW. This contract is executed pursuant to the law of South Carolina, and all interpretations shall be under and pursuant to the laws of South Carolina.

36. HAZARDOUS WASTE PROVISION. Tenant shall keep and maintain the Demised premises in compliance with, and shall not cause or permit the Demised Premises to be in violation of, any federal, state, or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions on, under, about, or affecting the Demised Premises. Tenant shall not use, generate, manufacture, store, or dispose of on, under or about the Demised Premises or transport to or from the Demised Premises any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively, the Hazardous Materials). Tenant shall be solely responsible for, and shall indemnify and hold harmless the Landlord, its directors, officers, employees, agents, successors, and assigns from and against, any loss, damage, cost, expense, or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under or about the Demised Premises, including, without limitation, the following: (i) all foreseeable consequential damages; (ii) the costs of any required or necessary repair, cleanup, or detoxification of the Demised Premises, and the preparation and implementation of any closure, remedial, or other required plans; and (iii) all reasonable costs and expenses incurred by the Lender in connection with clauses (i) and (ii), including, but not limited to, reasonable attorneys' fees. Tenant shall, upon the request of the Landlord, provide the Landlord with a bond or letter of credit, in form and substance satisfactory to the Landlord, in an amount sufficient to cover the costs of any required cleanup. Tenant shall, at its expense, take all necessary remedial action(s) in response to the presence of any Hazardous Materials on, under, or about the Demised Premises.

37. LIMITATION OF LIABILITY. Tenant acknowledges and agrees that the liability of Landlord hereunder shall be limited to its interest in the Demised Premises and any judgment rendered against Landlord shall be satisfied solely out of the proceeds of the sale of its interest in the Demised Premises.

38. IDENTITY OF INTEREST. The execution of this Lease or the performance of any pursuant to the provisions hereof shall not be deemed or construed to have the effect of creating between the Landlord and the Tenant the relationship of principal and agent or of partnership or of joint venture and the relationship between them shall be only that of landlord and tenant. Without the express written permission of Landlord, Tenant shall have no authority to contract, on behalf of the Landlord, for repairs or alterations to the Demised Premises and Tenant shall indemnify and hold Tenant harmless for materialmen's or mechanic's liens which are attached to the Demised Premises during the term of the Lease arising out of the Tenant actions.

39. REMEDIES CUMULATIVE – NONWAIVER. Unless otherwise specified in this Lease, no remedy of Landlord or Tenant shall be considered exclusive of any other remedy, but each shall be distinct, separate and cumulative with other available remedies. Each remedy available under this Lease or at law or in equity may be exercised by Landlord or Tenant from time to time as often as the need may arise. No course of dealing between Landlord and Tenant, or any delay or

2/11

omission of Landlord or Tenant in exercising any right arising from the other party's default, shall impair such right or be construed to be a waiver of a default.

40. ATTORNEYS' FEES. If any sum owing under this Lease is collected by or through an attorney at law, or an attorney is required to enforce the terms and conditions of this Lease, Tenant agrees to pay attorneys' fees incurred by Landlord by reason of default by Tenant.

41. TIME OF THE ESSENCE. Landlord and Tenant understand and acknowledge that time is of the essence with respect to all dates set forth herein.

42. BROKERAGE. Landlord and Tenant hereby represent and warrant to each other that they have dealt with no brokers or agents in connection with this Lease other than SCRE Properties, LLC, whom will be compensated by separate written agreement. Tenant acknowledges that SCRE Properties, LLC exclusively represents the Landlord in this transaction and Tenant hereby waives representation by another Agency. Landlord and Tenant hereby indemnify and hold harmless the other party from any loss, cost, liability or expense arising from a claim made by any broker or agent requesting a commission or other fee in connection with this Lease except for the brokers listed above.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement under seal as of the date and year first above written.

LANDLORD:

John Smethurst 166299 inc.

ATTEST:

By: John Smethurst Agent for Owners

(Seal)

TENANT:

ATTEST/WITNESS:

By: Jay Howren
JSA H Retail LLC.
DBA: Outlaw Smoke Shop

(Seal)

Oct 7, 2017

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LLC, and ERICH SIMPSON, Defendants.	MEMORANDUM IN OPPOSITION TO MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT C. A. No. 18-CP-29-00271

The Plaintiffs have moved for Summary Judgment and supplied Affidavits to that end. The Defendants oppose on legal grounds, as set out herein.

Although discovery is not complete, the Defendants have no facts to oppose the Plaintiffs' recitation of rent due from July, 2017 through January, 2018 (as alleged in the Complaint), for the additional rent and fees ("the CAM fees") for that period, nor for the claimed brokerage commission incurred in re-renting the premises.

The Plaintiffs also claim what they describe as a "Calculated loss from Difference in rent" in the amount of $33,556.00. This figure represents a claim for the difference between the amounts due under the Defendants' Lease and Guaranty and that to be obtained from the new tenant. This is, in short, a claim for future rent.

The commentators of AMERICAN JURISPRUDENCE 2D state the rule:

> Under the common form of lease, the obligation to pay rent is a contingent one, to be made absolute by the use and enjoyment of the property or the opportunity for such use and enjoyment, and a covenant to pay rent periodically during the term creates no debt until the time for payment arrives.[Ftn.65, citing *Calechman* v. *Great Atlantic & Pacific Tea Co.*, 120 Conn. 265, 180 A. 450, 100 A.L.R. 302 1935).]

Thus, unaccrued rent is not a debt or present obligation, [Ftn.66, citing *Ambrozich* v. *City of Eveleth*, 200 Minn. 473, 274 N.W. 635, 112 A.L.R. 269 (1937); *Lindsay Park Houses*

v. *Greer*, 128 Misc.2d 775, 490 N.Y.S.2d 953 (1985) (criticized on other grounds by *Davern Realty Corp.* v. *Vaughn* (Sup.App.T.) 161 Misc.2d 550, 616 N.Y.S.2d 683 (1994)). as the obligation to pay rent is not certain to become due. [Ftn.67, citing *Lindsay Park Houses, supra.*]

As a general rule, rent will not be accelerated and future rent is demandable only in the amounts and at the time specified in the lease.[Ftn.68, citing *National Advertising Co.* v *Main Street Shopping Center,* 539 So.2d 594, 14 F.L.W. 661 (Fla.App. D2 1989). [1]
[49 AM.JUR.2D *Landlord and Tenant* § 677 (2002); paragraphing added.]

The rule as stated above has been followed by South Carolina Courts. The Supreme Court dealt with this rule as it related to an acceleration clause and distraint for rent in *Gentry* v. *Recreation, Inc.*, 192 S.C. 743, 7 S.E.2d 63, 128 A.L.R. 743 (1940). That decision stated:

There is, however, quite an obvious difference between the acceleration of an ordinary debt and the acceleration of rent. In the case of an ordinary debt the debtor has already received the entire consideration, either in money or in property, while in the case of rent an acceleration would require him to pay for that which he has not yet received.
[*Id.*, 192 S.C. at ___, 7 S.E.2d at 65.]

Even if the above reasoning is, for some reason, inapplicable, the Court is still bound by the general rule that an allowance for future damages must be reduced to its present worth. 22 AM.JUR.2D *Damages* § 678 2002). Those commentators state:

Therefore, the amount awarded for damage to be suffered in the future is such sum as, being put at interest, will amount (at the dates the damage will be suffered) to the sum the jury finds the plaintiff will lose in the future by reason of the alleged tort or breach of contract.
[*Id.*, citing, *inter alia*, *Look* v. *Werlin*, 590 S.W.2d 526 (Tex.Civ.App. Houston (1st Dist) (1979), dealing with future rent payments on a commercial lease.]

The Plaintiffs have produced no evidence as to present value of the claimed future rent.

1. There is no acceleration language in the parties' Lease.

On the bases above, the Plaintiffs' Motion should be denied.

/s/ John Martin Foster
Attorney for Defendants
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

January 26, 2019

Rock Hill, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	
	)	
	)	Civil Action No. 2018-CP-29-00271
KATAKMS VENTURES, LLC and SUPREMA, LLC., as successors in interest to 521, LLC,	)	
	)	
Plaintiffs,	)	**PLAINTIFFS' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**
vs.	)	
NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,	)	
Defendant.	)	

NOW COME the Plaintiffs Katkams Ventures, LLC and Suprema, LLC (collectively "Plaintiffs"), successors in interest to 521, LLC, in the support of their Motion for Summary Judgment, filed on November 12, 2018, and heard before this Court on January 28, 2019, respectfully submit to this Court and say the following:

STATEMENT OF FACTS

1. On July 11, 2016, Defendant No Limit, LLC d/b/a No Limit Financial, LLC (hereinafter "Defendant No Limit") entered into a Commercial Lease Agreement (hereinafter "Lease Agreement") with 521, LLC (hereinafter "Original Landlord"). A copy of the Lease Agreement has been filed with this Court as Exhibit "A" of the Plaintiffs' Complaint.

2. On July 11, 2016, Defendant Erich Simpson (hereinafter "Defendant Simpson") executed a Guaranty of Lease (hereinafter "Guaranty") in which he agreed to guarantee Defendant No Limit's payment and performance pursuant to the Lease Agreement. A copy of the Guaranty has been filed with this Court as Exhibit "A" of the Plaintiffs' Complaint.

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By

3. On or about July 29, 2016, the Original Landlord sold the subject property of this litigation to Plaintiffs, being a space containing approximately 1,148 square feet, and known as a portion of Suite 200 of the commercial complex known as the "Southern Shoppes", located at 10005 Charlotte Highway, Indian Land, SC 29707 (hereinafter, the "Premises").

4. Pursuant to the terms of the Lease Agreement, the base rent to be paid is as follows: for months 1-2: no rent was due; for months 3-12: $2,296.00 per month; for months 12-24: $2,364.88 per month; for months 25-36: $2,435.67 per month; for months 37-48: $2,508.38 per month; and for months 49-60: $2,583.96 per month. The base rent was due on the first day of each month until the end of the Lease Agreement.

5. Pursuant to the terms of the Lease Agreement, Defendant No Limit was required to pay additional rent in the form of its proportionate share of all costs in maintaining, repairing, operating, and insuring the Premises ("CAM Fees"). The estimated CAM Fees pursuant to the Lease Agreement are Four Hundred and Six Dollars and Fifty-Eight Cents ($406.58), and was payable on first day of each month until the end of the Lease Agreement.

6. On July 1, 2017, Defendant No Limit failed to make a timely rental payment pursuant to the terms of the Lease Agreement, which constituted an event of default there-under.

7. On or about July 11, 2017, pursuant to the terms of the Lease Agreement, the Plaintiffs requested payment of the rental amount owed for the month of July.

8. Between July 1, 2017 to January 30, 2018, Defendant No Limit failed to make any rental payments pursuant to the terms of the Lease Agreement, which constituted an event of default there under.

9. On August 7, 2017, Plaintiffs' attorney sent a written Notice of Default to Defendant No Limit and Defendant Simpson. A copy of the Notice of Default has been filed with this Court as Exhibit "C" of Plaintiffs' Complaint.

10. Defendant No Limit's abandonment of the Premises is in direct violation of the Lease Agreement.

11. Defendant No Limit breached the Lease Agreement by failing and refusing to make rental payments due to Plaintiffs pursuant to the terms of the Lease Agreement.

12. Defendant Simpson has breached the Guaranty by failing to cure the default of Defendant No Limit pursuant to the Guaranty and make rental payment on behalf of Defendant No Limit pursuant to the Lease Agreement.

13. On November 1, 2017, a new Lease Agreement (hereinafter "New Lease Agreement") was signed for the Premises, a copy of which has been filed with this Court as Exhibit "A" of Plaintiffs' Affidavit of John Smethurst in Support of Plaintiffs' Motion for Summary Judgment.

14. The base rent set forth in the New Lease Agreement is as follows: for months 1-2: no rent was due; for months 3-14: $2,296.00 per month; for months 15-26: $2,364.88 per month; and for months 27-38: $2,435.67 per month.

DAMAGES

15. As a direct result of Defendant No Limit's abandonment of the Premises and failure and refusal to pay rent under the Lease Agreement, Plaintiffs' have incurred the following damages:

a. Defendant No Limit failed to pay rent in the amount of Two Thousand Two Hundred Ninety-Six Dollars and 00/100 Cents ($2,296.00) for the months of July 2017, August

2017, September 2017, October 2017, November 2017, and failed to pay rent in the amount of Two Thousand Three Hundred Sixty-Four Dollars and 88/100 Cents ($2,365.88) for the months of December 2017 and January 2018 resulting in damages in the amount of Sixteen Thousand Two Hundred Nine Dollars and Seventy-Six Cents **($16,209.76) (" Past Due Rent");**

b. In addition to Defendant No Limit's failure to pay rent, it also failed to pay CAM Fees for the months of July 2017 to January 2018, resulting in damages in the amount of Two Thousand Eight Hundred Forty-Six Dollars and Six Cents **($2,846.06) ("Past Due CAM Fees");**

c. Pursuant to the Lease Agreement, Defendant No Limit's failure to pay rent for the months of July 2017 to January 2018 resulted in a late fee charge of five percent (5%) of the monthly amount due, which totals to damages in the amount of Nine Hundred and Fifty-Two Dollars and Seventy-Nine Cents **($952.79) ("Late Fee Charge");**

d. As a direct result of Defendant No Limit's abandonment of the Premises and breach of the Lease Agreement, Plaintiffs had to re-lease the Premises and incurred costs for the Broker's Commission, resulting in a cost of Three Thousand Four Hundred and Six Dollars and Thirty-Six Cents **($3,406.36) ("Broker- Re-let Fee");**

16. The damages incurred by Plaintiffs based on Defendant No Limit's failure to pay rent, CAM fees, and late fees from July 2017 to January 2018, and the incurred cost of re-leasing the Premises is a total of Twenty-Three Thousand Four Hundred Fourteen Dollars and Ninety-Seven Cents ($23,414.97).

REMAINING TERM DAMAGES

17. In additional to damages set forth above, the Court of Appeal of South Carolina held in *Bluffton Towne Ctr., LLC v. Gilleland-Prince* 412 S.C 554, 772 S.E.2d 882 (Ct. App. 2015),

> "It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and prospective, which were the necessary and direct result of the breach; and the measure of the damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may have resulted from the breach;" and "While the tenant no longer had an obligation for future rents, the court stated the tenant was still liable for damages resulting from its breach of contract. *Id.* The court explained that the measure for such damages was "the amount [the landlord] would have received as rent for the remainder of the term, had there been no default, less such amount as [it] may receive from the new tenant" because it was the landlord's duty to minimize any damages" *Id.*

A copy of *Bluffton Towne Ctr., LLC v. Gilleland-Prince* is attached hereto as Exhibit "A" and incorporated herein by reference.

18. As a direct result of the Defendants' breach of the Lease Agreement and Guaranty, Plaintiffs' have incurred damages from the difference in rental payments received pursuant to the New Lease Agreement, as compared to what payments should have been expected to be received from Defendant No Limit's Lease Agreement.

19. Pursuant to the New Lease Agreement, the new tenant's (hereinafter "New Tenant") obligation to pay rent began on February 1, 2018.

20. As of February 1, 2018, Defendant No Limit's Lease Agreement had a total remaining base rent balance of One Hundred Thirteen Thousand Nine Hundred Eighty-Four Dollars and Ninety-Two Cents ($113,984.92) ("No Limit Remaining Rent Balance").

21. Pursuant to the terms of the New Lease Agreement, the total base rent of the New Lease Agreement is Eighty-Five Thousand One Hundred Fifty-Eight Dollars and Sixty-Cents ($85,158.60) ("New Lease Rent").

22. The New Lease Rent in the amount of Eighty-Five Thousand One Hundred Fifty-Eight Dollars and Sixty-Cents ($85,158.60) subtracted from Defendant No Limit's Remaining Rent Balance of One Hundred Thirteen Thousand Nine Hundred Eighty-Four Dollars and Ninety-Two Cents ($113,984.92), is a difference of Twenty-Eight Thousand Eight Hundred Twenty-Six Dollars and Thirty-Two Cents **($28,826.32) ("Total Rent Difference")**. An account of the Total Rent Difference is attached hereto as Exhibit "B" and incorporated herein by reference.

23. Plaintiffs total damages as a result of Defendant No Limit's default, which includes unpaid rent, unpaid CAM fees, and late fees from July 2017 to January 2018, the cost of re-leasing the Premises, and the Total Rent Difference, is a total of Fifty-Two Thousand Two Hundred Forty-One Dollars and Twenty-Nine Cents ($52,241.29)

ATTORNEYS' FEES

24. This case came before the Honorable Brian M. Gibbons on Plaintiffs' Motion for Summary Judgment during the January 28, 2019 session of the Lancaster County, South Carolina Court of Common Pleas.

25. At the conclusion of the attorneys' arguments, the Honorable Brian M. Gibbons granted Plaintiffs' Motion for Summary Judgment on each of Plaintiffs' claims.

26. Because summary judgment was granted against Defendants on each of Plaintiffs' claims, Plaintiffs are entitled to attorney's fees and costs.

27. Pursuant to Section Forty (40) of the Lease Agreement, Defendant No Limit agrees to pay attorneys' fees incurred as a result of a default.

28. Plaintiffs have incurred attorney's fees and costs in the amounts of Eleven Thousand Four Hundred Two Dollars and Fifty Cent ($11,402.50) in attorney's fees and One Hundred Eighty-One Dollars and Seventy-Four Cent ($181.74) in cost, totaling Eleven Thousand Five Hundred Eighty-Four Dollars and Twenty-four Cent **($11,584.24) ("Attorney's Fee and Court Cost").**

29. An Affidavit of Brian W. Tyson, Attorney for Plaintiffs, including exhibits, detailing costs and attorneys' fees incurred by Plaintiff to enforce the terms and condition of Lease Agreement is attached hereto as Exhibit "C" and incorporated herein by reference.

CONCLUSION

In conclusion, Plaintiffs are entitled to a judgment for full damages, present and prospective, which were the necessary and a direct result of the Defendants' breach. The damages were as follows: **$16,209.76** for Past Due Rent; **$2,846.06** for Past Due CAM Fees; **$952.79** for Late Fee Charges; **$3,406.36** for Broker Re-Let Fee; **$28,826.32** for the Total Rent Difference, and **$11,584.24** for Attorneys' Fee and Court Cost**, totaling $63,825.53.**

This the 6th day of February, 2019.

s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, NC 28277
Telephone – 704-644-1855
Fax – 704-644-1856
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing PLAINTIFFS' MEMORANDUM IN SUPPORT FOR SUMMARY JUDGMENT has been served upon the attorney for the Plaintiff by depositing a copy of the same in the United State Mail, postage paid, and properly addressed to:

John Martin Foster
P.O. Box 106
Rock Hill, SC 29731-6106

Attorney for Defendants

This the 6TH day of February, 2019.

By: s/ Brian W. Tyson, Esq.
Brian W. Tyson, SC Bar No.102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Highway, Suite 109
Charlotte, NC 28277
Telephone – 704-644-1855
Fax – 704-644-1856

Attorney for Plaintiffs

Bluffton Towne Ctr., LLC v. Gilleland-Prince

Court of Appeals of South Carolina

November 4, 2014, Heard; June 3, 2015, Refiled

Opinion No. 5309

Reporter

412 S.C. 554 *; 772 S.E.2d 882 **; 2015 S.C. App. LEXIS 108 ***

Bluffton Towne Center, LLC, Respondent, v. Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Ann Gilleland, LLC, Appellant.

Subsequent History: [***1] Withdrawn, Substituted and Refiled June 3, 2015.

Writ of certiorari denied *Bluffton Towne Ctr. v. Gilleland-Prince, 2015 S.C. LEXIS 397 (S.C., Nov. 4, 2015)*

Prior History: Filed April 1, 2015. Appeal From Beaufort County. Marvin H. Dukes, III, Master-in-Equity. Appellate Case No. 2013-000305.

Bluffton Towne Ctr., LLC v. Gilleland-Prince, 2015 S.C. App. LEXIS 53 (S.C. Ct. App., Apr. 1, 2015)

Disposition: AFFIRMED AS MODIFIED.

Case Summary

Overview

HOLDINGS: [1]-Because a tenant returned her keys and admitted to voluntarily vacating the leased premises prior to the notice to pay or quit the premises, the landlord did not evict her or terminate the lease via the notice; [2]-The landlord terminated the lease upon the tenant's abandonment by reentering and reletting the premises; [3]-The landlord was entitled to recover future rents under the damages term in the lease under Simon; [4]-The landlord was entitled to recover damages due to the tenant's breach of contract under U.S. Rubber; [5]-The termination of the lease did not affect the tenant's contractual liability to the landlord under the lease; [6]-The landlord was entitled to damages of the rent for the remainder of the tenant's term less the rent the landlord received from the two subsequent the tenants in mitigation; [7]-The lease provided a specific damages formula.

Outcome

Judgment affirmed as modified.

LexisNexis® Headnotes

Civil Procedure > Judicial Officers > Masters > General Overview

Real Property Law > Landlord & Tenant > Lease Agreements > General Overview

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Breach > Breach of Contract Actions > General Overview

***HN1*[↓] Judicial Officers, Masters**

A lease agreement is a contract, and an action to construe a contract is an action at law. An action for breach of contract seeking money damages is an action at law. When reviewing a master-in-equity's judgment made in an action at law, the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them. Nevertheless, the reviewing court is free to decide questions of

law with no particular deference to the master.

Real Property Law > ... > Landlord's Remedies & Rights > Eviction Actions > General Overview

***HN2*[] Landlord's Remedies & Rights, Eviction Actions**

Any act that involves the direct deprivation of possession or so affects the tenant's enjoyment of the premises that the tenant relinquishes possession is an eviction. The act, however, must provide the tenant with a legal justification for relinquishing possession. Conversely, a tenant's abandonment--or voluntary surrender of possession--of leased premises does not constitute an eviction.

Real Property Law > Landlord & Tenant > Landlord's Remedies & Rights > Power to Reenter & Terminate

***HN3*[] Landlord's Remedies & Rights, Power to Reenter & Terminate**

The relationship of landlord and tenant is terminated where the lessor, for his own purposes, re-enters and relets the demised premises upon the lessee's abandonment of the property and default in the payment of the rent. Nevertheless, when a tenant delivers the keys of the leased premises to the landlord, and he receives them so as to be able to rent the premises for the account of the lessee, such is insufficient to terminate the lease or release the tenant from further liability for rent.

Real Property Law > ... > Lease Agreements > Damages > Measurement of Damages

***HN4*[] Damages, Measurement of Damages**

A review of the relevant case law reveals that Simon has not been overruled and, in fact, courts have cited its propositions with approval.

Real Property Law > ... > Damages > Measurement of Damages > Limitations on Damages

***HN5*[] Measurement of Damages, Limitations on Damages**

The termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding this termination for cause by the lessor, the lessee shall not be relieved of such future obligations.

Real Property Law > ... > Damages > Measurement of Damages > Limitations on Damages

Real Property Law > ... > Damages > Measurement of Damages > Mitigation

***HN6*[] Measurement of Damages, Limitations on Damages**

Where the landlord-tenant relationship comes to an end upon termination of the lease, the tenant has no further obligation to the landlord for future rent thereafter. While the tenant no longer has an obligation for future rents, the tenant is still liable for damages resulting from its breach of contract. The measure for such damages is the amount the landlord would have received as rent for the remainder of the term, had there been no default, less such amount as it may receive from the new tenant because it is the landlord's duty to minimize any damages.

Real Property

Law > ... > Damages > Measurement of Damages > Limitations on Damages

Real Property
Law > ... > Damages > Measurement of Damages > Mitigation

HN7[] **Measurement of Damages, Limitations on Damages**

In concluding the landlord was entitled to recover damages due to the tenant's breach of contract, the state's highest court in U.S. Rubber merely expands upon the Simon ruling and explains a theory that has been adopted in South Carolina as well as other jurisdictions. It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and prospective, which were the necessary and direct result of the breach; and the measure of the damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may have resulted from the breach. Simon and U.S. Rubber are not mutually exclusive of one another and may be read together.

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > Intent

HN8[] **Contracts Law, Contract Interpretation**

Courts should construe contracts liberally to give them effect and carry out the intention of the parties. When construing terms in a contract, a court must first look at the language of the contract to determine the intentions of the parties. Furthermore, a court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein. If practical, a court should interpret the agreement so as to give effect to all of its provisions. It is fundamental that, in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning. Generally, a contract is interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense.

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

Contracts Law > Contract Interpretation > Intent

HN9[] **Contract Interpretation, Parol Evidence**

In construing or interpreting a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties. If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect. Moreover, if a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms.

Contracts Law > Contract Interpretation > Parol Evidence > General Overview

Contracts Law > Contract Interpretation > Intent

HN10[] **Contract Interpretation, Parol Evidence**

The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a

written instrument when the extrinsic evidence is to be used to contradict, vary, or explain the written instrument. Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties. Under the parol evidence rule, the terms of the writing are controlling, even if extrinsic evidence is admitted without objection or admitted over appropriate objection.

Civil Procedure > Judicial Officers > Masters > General Overview

HN11[↓] **Judicial Officers, Masters**

In construing a master's order, an appellate court must do so in light of the master's intent as discerned from the order as a whole. Adhering to this principle, the appellate court has refused to hold parties bound by language in a lower court order that the appellate court found was not necessary to the decision of the issues presented.

Civil Procedure > Appeals > Standards of Review > General Overview

HN12[↓] **Appeals, Standards of Review**

In construing a judge's order, an appellate court must do so in light of the judge's intent as discerned from the order as a whole.

Civil Procedure > Appeals > Appellate Briefs

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN13[↓] **Appeals, Appellate Briefs**

An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.

Contracts Law > Contract Interpretation > General Overview

Contracts Law > Contract Interpretation > Intent

HN14[↓] **Contracts Law, Contract Interpretation**

In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties. A court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein. The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully.

Counsel: Beth Ann Prince, Pro se, for Appellant.

Russell Pierce Patterson, of Russell P. Patterson, P.A., of Hilton Head Island, for Respondent.

Judges: WILLIAMS, J. GEATHERS and McDONALD, JJ., concur.

Opinion by: WILLIAMS

Opinion

[*559] [885] WILLIAMS, J.:** In this civil matter, Beth Ann Prince (Tenant) appeals the master-in-equity's order awarding Bluffton Towne Center, LLC (BTC) $35,784 in rent and late fees for Tenant's breach of a commercial lease. Tenant argues the master erred in (1) finding the lease was terminated by abandonment; (2) finding Tenant was liable for future rents under the lease; (3) considering extrinsic evidence after finding the lease unambiguous; (4) not allowing Tenant to cross-examine Paul Watson, the managing member of BTC, about specific language in the subject lease and language in two subsequent leases BTC entered into with different parties; and (5) failing to recognize the lease was ambiguous. We affirm as

modified.

FACTS/PROCEDURAL HISTORY

On January 1, 2009, BTC entered into a commercial lease agreement with Tenant for [***2] office space in Bluffton, South Carolina. Under the three-year term lease, Tenant was required to make monthly rental payments of $1,825 from January 1, 2009, to December 31, 2011. At issue in this case is the default provision of the lease:

> **DEFAULTS**. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 [*560] days) after written notice of such default is provided by [BTC] to Tenant, [BTC] may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing [its] rights to damages. In the alternative, [BTC] may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by [BTC] by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated [***3] as "additional rent."

On December 18, 2009, Tenant emailed Watson to inform him she was closing her law practice. In the email, Tenant noted she would need to stay in the space through the end of January and "possibly some of February." She further stated, "I hope that you and I will be able to work something out amicably[] because I realize that the lease will not expire for another year. . . . I will also keep my eyes and ears open for anyone who may want the space." Watson responded to the email on the same day, stating he was not willing to forgive the remaining balance and assumed Tenant would honor her obligation under the lease.

[**886] On February 26, 2010, after Tenant defaulted on her rent payment for that month, Watson sent Tenant a written ten-day notice to pay or quit the premises. The notice stated, "You are hereby notified that you have ten (10) days to pay to the undersigned office rent now due from you in the amount of $1,875.00 as set forth below, or your right to possession of the . . . premises will cease and you must quit same." The notice further contained the following language:

> In the event you do not satisfy all the requirements of this ten (10) day notice by paying . [***4] . . [$1,875] and do either voluntarily or by court leave the premises, you will still be obligated and responsible for payment of monies set forth below, together with any additional costs, legal fees, expenses[,] and rents that continue to accrue under the terms of the lease because of non-payment.

Tenant did not respond, and on March 28, 2010, BTC's counsel emailed Tenant requesting that she (1) remove all of her [*561] possessions from the space, (2) pay the rent due for February and March 2010, (3) continue to make monthly payments until the space was relet, and (4) pass along the names of any potential tenants to BTC's rental agent. His email further stated if they could not reach an agreement along those lines, BTC would be forced to file an ejectment action and suit for back rent. In Tenant's email response, she explained that filing an ejectment action was unnecessary because she vacated the unit at the beginning of February 2010. Tenant further stated, "I am happy to assist in getting the place rerented, however, I am simply unable to pay the back rent, or else I would pay it."

BTC subsequently retrieved the keys from Tenant in April 2010. For the remainder of the lease term, BTC rented [***5] the unit to two separate tenants

at reduced rates. In a March 9, 2012 letter, BTC's counsel informed Tenant she owed $34,850, but said he wanted to give her "an opportunity to try to work out a resolution of this matter" prior to filing an action for damages pursuant to the lease.

After the lease term expired, BTC filed suit for damages on April 16, 2012. The matter was tried before the master-in-equity for Beaufort County, South Carolina, on October 26, 2012.

At trial, Watson testified on behalf of BTC, and on cross-examination, Tenant questioned Watson regarding the sequence of events as well as the correspondence between the parties after Tenant defaulted under the lease. Tenant attempted to elicit testimony from Watson regarding specific language in the subject lease.

BTC objected to the line of questioning, arguing Tenant was improperly seeking Watson's legal interpretation of the lease, and the master sustained the objection. Tenant further tried to elicit testimony from Watson regarding language in two subsequent leases BTC entered into with different parties. BTC, however, objected on relevance grounds, and the master sustained the objection.

On December 26, 2012, the master issued **[***6]** an order granting judgment to BTC in the amount of $39,627.55. In his order, the master concluded the holding in *Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927)*—that a lessor's termination of **[*562]** the lease absolves a lessee from future obligations unless the lease provides the lessee is not relieved of such obligations—"does not state the modern law of damages for the breach of a lease in South Carolina today." Instead, the master found *U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956)*, states the modern rule for damages a landlord may recover for a tenant's breach of the lease, holding Tenant was liable for future rents as damages under this rule. The master concluded in the alternative that, even if *Simon* remains valid law, BTC was still entitled to recover future rents because it reserved the right to all damages in the default provision of the subject lease. This appeal followed.

ISSUES ON APPEAL

I. Did the master err in finding Tenant terminated the subject lease by abandonment?

II. Did the master err in finding that *Simon* is no longer valid law and, pursuant to the ruling in *U.S. Rubber*, Tenant was responsible for future **[**887]** rents as damages to BTC under the default provision in the subject lease?

III. Did the master err in considering extrinsic evidence after finding the subject lease **[***7]** was unambiguous?

IV. Did the master err in not allowing Tenant to cross-examine Watson regarding language in the subject lease as well as language in two subsequent leases BTC entered into with different parties?

V. Did the master err in failing to recognize the lease was ambiguous?

STANDARD OF REVIEW

HN1[↑] "A lease agreement is a contract, and an action to construe a contract is an action at law." *Middleton v. Eubank, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010)* (citations omitted). "An action for breach of contract seeking money damages is an action at law." *Sapp v. Wheeler, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013)* (citing *Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008)*). When reviewing a master-in-equity's judgment made in an action at law, "the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them." **[*563]** *Silver, 376 S.C. at 590, 658 S.E.2d at 542*. Nevertheless, the "reviewing court is free to decide questions of law with no particular deference to the [master]." *Id.* (quoting *Hunt v. S.C. Forestry*

Comm'n, 358 S.C. 564, 569, 595 S.E.2d 846, 848-49 (Ct. App. 2004)) (internal quotation marks omitted).

LAW/ANALYSIS

I. Termination by Abandonment

Tenant first argues the master erred in finding the subject lease was terminated by abandonment. According to Tenant, Watson's ten-day notice to pay or quit the premises was the equivalent of a termination by eviction. We disagree.

HN2[↑] Any act that involves the "direct deprivation **[***8]** of possession" or "so affects the tenant's enjoyment of the premises" that the tenant relinquishes possession is an eviction. *Thomas v. Hancock, 271 S.C. 273, 275, 246 S.E.2d 604, 605 (1978)* (citation omitted). The act, however, must provide the tenant with a legal justification for relinquishing possession. *Id.* (citation omitted). Conversely, a tenant's abandonment—or voluntary surrender of possession—of leased premises does not constitute an eviction. *See id. at 275, 246 S.E.2d at 606* (citation omitted).

Our supreme court has held *HN3*[↑] "the relationship of landlord and tenant is terminated where the lessor, for his own purposes, re-enters and relets the demised premises upon the lessee's abandonment of the property and default in the payment of the rent." *Sur. Realty Corp. v. Asmer, 249 S.C. 114, 119, 153 S.E.2d 125, 128 (1967)* (citing *U.S. Rubber, 231 S.C. at 95, 97 S.E.2d at 409*). Nevertheless, "[w]hen a tenant delivers the keys of the leased premises to the landlord[,] and he receives them so as to be able to rent the premises for the account of the lessee, such is insufficient to terminate the lease or release the tenant from further liability for rent." *Id.* (citations omitted).

In the instant case, we find Tenant abandoned the leased premises. In a March 28, 2010 email, Tenant stated she had "vacated the unit at the beginning of February." She further explained that "[f]iling an ejectment action [was] **[***9]** simply unnecessary" because she had "been out of the unit for nearly **[*564]** two months, as Mr. Watson requested." Moreover, Tenant voluntarily surrendered possession of the premises by turning over the keys to BTC in April 2010. Because Tenant returned her keys and admitted to voluntarily vacating the leased premises prior to the February 26, 2010 notice to pay or quit the premises, the record simply does not support her argument that BTC evicted her and terminated the lease via the notice.

Based on the foregoing, we find the master properly concluded that BTC terminated the subject lease upon Tenant's abandonment by reentering and reletting the premises.

II. Damages Recoverable for Breach of a Commercial Lease

Next, Tenant argues the master erred in concluding *Simon* is no longer valid law and **[**888]** holding *U.S. Rubber* states the modern rule for damages recoverable for breach of a lease. While we agree the master erred in concluding *Simon* was overruled by *U.S. Rubber*, we find the master properly held BTC was entitled to recover future rents as damages under the theories of both *Simon* and *U.S. Rubber*.

A. *Simon* Remains Valid Law

As a preliminary matter, we find the master erred in concluding the rule **[***10]** set forth in *Simon* is no longer a valid statement of the law.

In his order, the master concluded—without further explanation—that *Simon* is no longer valid and does not set forth "the modern law of damages for the breach of a lease in South Carolina today." The master, however, failed to cite any case in which a court overruled *Simon* or gave its ruling negative treatment. Indeed, *HN4*[↑] a review of the relevant case law reveals that *Simon* has not been overruled

and, in fact, courts have cited its propositions with approval. *See, e.g., U.S. Rubber, 231 S.C. at 95, 97 S.E.2d at 409* (citing *Simon* for the proposition that, upon the lessor's reentry and reletting of the premises following the lessee's abandonment of the property, the lessor—lessee or landlord—tenant relationship came to an end); *Camden Inv. Co. v. Gibson, 204 S.C. 513, 518-19, 30 [*565] S.E.2d 305, 307 (1944)* (citing *Simon* as outlining the proper elements of damages available for breach of a lease contract).

Therefore, contrary to the master's findings, we hold that *Simon* remains valid law.

B. Liability Under *Simon* and *U.S. Rubber*

Although the master erred in concluding *Simon* is no longer valid law, we find he correctly concluded—in the alternative—that BTC was entitled to recover future rents under the damages term in the lease pursuant to *Simon*. Accordingly, **[***11]** we affirm as modified the portion of the master's order in which he analyzed the validity and applicability of *Simon*'s holdings to the facts of this case.

In *Simon*, the lessor entered into a three-year written contract under which he leased a vacant lot to the lessee. *141 S.C. at 253, 139 S.E. at 615*. The lease contained the following default provision:

> It is agreed that if there is default in the payment of rent above stipulated for as much as 60 days after same is due, . . . [the lessor] shall have the right to re-enter and repossess said premises, at his option[,] and to expel and remove therefrom . . . [the lessee] or any other person occupying the same.

Id. at 254, 139 S.E. at 615. After the lessee refused to take possession of the leased premises and defaulted on the payment of two months' rent, the lessor gave notice that he was terminating the lessee's rights under the lease and reentered the premises. *Id. at 261, 139 S.E. at 618*. The lessor's notice stated the following: "You are due me two (2) months' rent at one hundred and fifty dollars ($150) each as of September 1, 1924, you having failed to make payment as per terms of lease, are thereby precluded from any further right or benefit thereunder." *Id. at 254-55, 139 S.E. at 615-16*. When the lessee refused to pay the three years of rent due **[***12]** under the lease, the lessor filed an action against him for breach of contract. *Id. at 253-54, 139 S.E. at 615*.

Because the lessee in *Simon* never took possession of the premises and notified the lessor he did not intend to do so, our supreme court concluded the landlord—tenant relationship was never consummated and the parties' relationship, instead, was **[*566]** that of lessor and lessee under a written lease contract. *Id. at 256, 139 S.E. at 616*. The court further found it was clear that, when the lessee refused to fulfill his obligation under the lease by taking possession of the lot, he breached the contract and became liable to the lessor for damages resulting from the breach. *Id. at 258, 139 S.E. at 617*.

Moreover, the court stated "[t]he measure of damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term, at the time of the breach, together with such special damages as [the lessor] may prove to have resulted from the breach." *Id. at 259, 139 [**889] S.E. at 617*. In addition to this option, the court stated the lessor could have waited until the term expired and, "upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed rental less rental which he had in the meantime received or with proper effort **[***13]** should have received." *Id.*

The lessor in *Simon*, however, was not required to adopt any of the above-mentioned remedies because the default provision of the lease provided for one. *Id.* In fact, as the court noted, the lessor chose to adopt the remedy provided for in the lease by sending the notice, precluding the lessee from any further rights or benefits under the lease. *Id. at*

259-60, 139 S.E. at 617. Because the lessor chose this method, the court found it was illogical and unfair to preclude the lessee from all rights and benefits under the lease, while simultaneously holding him liable for future obligations under it. *Id. at 260, 139 S.E. at 617*. According to the court, the applicable rule provides as follows:

> *HN5*[↑] [T]he termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding this termination for cause by the lessor, the lessee shall not be relieved of such future obligations. The lease in the case at bar does not carry a provision to the effect mentioned.

Id. at 262, 139 S.E. at 618 (citation omitted).

Unlike the provision at issue in *Simon*, the default provision in the subject lease expressly reserved BTC's right to recover **[***14]** all damages resulting from Tenant's breach after reentering **[*567]** the premises. The default provision in this case provides, in relevant part, that BTC "may take possession of the Premises . . . without prejudicing [its] rights to damages. . . . Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by [BTC] by reason of Tenant's default."

More importantly, unlike Tenant in this case, the lessee in *Simon* never actually took possession of the premises prior to the lessor sending a notice terminating his rights under the lease. The court in *Simon* was notably concerned with precluding the lessee from enjoying any rights and benefits under the lease, while also holding him responsible for the future obligations under it. In the instant case, however, Tenant occupied the leased premises for several years and renewed the subject lease prior to defaulting on rent payment and breaching the lease. Further, Tenant voluntarily abandoned the premises prior to Watson's notice to pay or quit, the effect of which was not to preclude her from entering the premises or exercising any rights or benefits under the lease.

The court in *Simon* found it would be **[***15]** unfair to hold the lessee "to a liability against which he could not have protected himself" when the lessor withdrew any consideration for the lessee's promise to pay rent and was enjoying the premises for his own benefit. *Id. at 260-61, 139 S.E. at 617-18*. The same cannot be said for the instant case. In fact, we believe it would be unfair to allow Tenant to simply abandon the leased premises and terminate rent payments at her own leisure—thereby breaching a written lease contract—without any consequence for such actions. In any event, we find that, under the rule in *Simon*, the default provision in the subject lease adequately provided for BTC's right to recover all damages upon Tenant's default in rent payments and breach of the lease.

Likewise, in *U.S. Rubber*, our supreme court faced a situation in which the lessor terminated the lease by reentering and reletting the property after the lessee abandoned the premises and defaulted in the payment of rent. *231 S.C. at 95, 97 S.E.2d at 409*. Citing *Simon*, the court first noted that *HN6*[↑] the landlord—tenant relationship came to an end upon termination of the lease and the tenant had no further obligation to **[*568]** the landlord for future rent thereafter. *Id.* (citing *Simon, 141 S.C. at 261, 139 S.E. at 618*). While the tenant no longer had an obligation **[***16]** for future rents, the court stated the tenant was still liable for damages resulting from its breach of contract. *Id.* The court explained that the measure for such damages was "the amount [the landlord] would have received as rent for the remainder of the term, had there been no default, less such amount as [it] may **[**890]** receive from the new tenant" because it was the landlord's duty to minimize any damages. *Id.* (citation omitted).

After a thorough review of the case law, we agree with BTC's contention that the above statement in *U.S. Rubber* is more reflective of the modern rule for damages recoverable upon the breach of a lease. *HN7*[↑] In concluding the landlord was entitled to

recover damages due to the tenant's breach of contract, we find our supreme court in U.S. Rubber was merely expanding upon the *Simon* ruling and explaining a theory that has been adopted in this state as well as other jurisdictions. *See, e.g.,* Richman v. Joray Corp., 183 F.2d 667, 671 (4th Cir. 1950) ("It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and prospective, which were the necessary and direct result of the breach; and the measure of the damages is **[***17]** the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may have resulted from the breach."). Therefore, we hold that Simon and *U.S. Rubber* are not mutually exclusive of one another and may be read together.

Although the landlord—tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rent for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages. *See* U.S. Rubber, 231 S.C. at 95, 97 S.E.2d at 409.

[*569] Because we find BTC was entitled to recover under the theories of both Simon and U.S. Rubber, we affirm the master's ruling as modified.

III. "Damages" Term in the Subject Lease

Additionally, Tenant argues the master erred in construing the "damages" term in the subject lease to entitle BTC to recover future **[***18]** rents. We disagree.

HN8[↑] Courts should construe contracts liberally "to give them effect and carry out the intention of the parties." Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007) (citation omitted). When construing terms in a contract, a court "must first look at the language of the contract to determine the intentions of the parties." C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted). Furthermore, a court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein. Ecclesiastes Prod. Ministries, 374 S.C. at 498, 649 S.E.2d at 502 (citation omitted). If practical, a court should interpret the agreement so as to give effect to all of its provisions. *See id.* (citation omitted). "It is fundamental that[,] in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." Id. at 498-99, 649 S.E.2d at 502 (quoting Brady v. Brady, 222 S.C. 242, 246, 72 S.E.2d 193, 195 (1952)). Generally, a contract is "interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense." Stanley v. Atlantic Title Ins. Co., 377 S.C. 405, 414, 661 S.E.2d 62, 67 (2008) (citing Ingram v. Kasey's Assocs., 340 S.C. 98, 110, 531 S.E.2d 287, 293 (2000)).

We find the master properly concluded the parties clearly and unambiguously intended for BTC to reserve all rights against Tenant for rents due during **[***19]** the full term of the lease. Unlike the lease at issue in *Simon*, the subject lease stated BTC could reenter and repossess the property without prejudicing its right to damages. Because the term "damages" was **[*570]** not specifically defined in the lease, the master had to first look to the four **[**891]** corners of the subject lease to determine the meaning and effect the parties intended to give the term. Not only did the lease reserve BTC's right to recover damages upon termination, but it also provided a specific damages

formula in the default provision stating Tenant must pay all costs, damages, and expenses BTC suffers by reason of Tenant's default. The default provision further made clear that, upon termination of the lease, Tenant was not relieved of future obligations for damages resulting from her breach of the lease.

Reading the lease as a whole, we find the parties clearly and unambiguously intended that, upon default, Tenant would be liable to BTC for the rents due during the full term as damages. The "costs, *damages*, and expenses . . . suffered by [BTC] by reason of Tenant's defaults" undoubtedly includes the rent BTC was unable to recover during the remainder of the subject lease term due **[***20]** to Tenant's default. We find no other construction would provide full meaning to all of the terms in the lease.

Accordingly, we affirm the master's finding that BTC was entitled to recover future rents as damages from Tenant under the default provision of the lease.

IV. Extrinsic Evidence

Tenant also argues the master erroneously considered extrinsic evidence regarding the parties' intent after finding the subject lease was unambiguous. While we agree the master erred in admitting extrinsic evidence, we believe such error was harmless.

HN9[↑] In construing or interpreting a contract, "it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." *Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013)* (quoting *D.A. Davis Constr. Co. v. Palmetto Props., Inc., 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984))* (internal quotation marks omitted). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." *Id.* **[*571]** (citation omitted). Moreover, "[i]f a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." *Watson v. Underwood, 407 S.C. 443, 455, 756 S.E.2d 155, 161 (Ct. App. 2014)* (quoting *Bates v. Lewis, 311 S.C. 158, 161 n.1, 427 S.E.2d 907, 909 n.1 (Ct. App. 1993))* (internal quotation marks omitted); *see also Gordon Farms, Inc. v. Carolina Cinema Corp., 294 S.C. 158, 160, 363 S.E.2d 235, 237 (Ct. App. 1987)* ("No authority is needed **[***21]** for the proposition that extraneous evidence is not admissible to alter or vary the terms of an unambiguous written contract.").

HN10[↑] "The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary[,] or explain the written instrument." *McGill v. Moore, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009)* (citing *In re Estate of Holden, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000))*. "Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties." *Id.* (citing *Holden, 343 S.C. at 275-76, 539 S.E.2d at 708*). Under the parol evidence rule, the terms of the writing are controlling, even if extrinsic evidence is admitted without objection or admitted over appropriate objection. *Adams v. Marchbanks, 253 S.C. 280, 282, 170 S.E.2d 214, 215 (1969)* (citations omitted).

HN11[↑] In construing a master's order, an appellate court must do so in light of the master's intent "as discerned from the order as a whole." *White's Mill Colony, Inc. v. Williams, 363 S.C. 117, 123 n.1, 609 S.E.2d 811, 814 n.1 (Ct. App. 2005)*. "Adhering to this principle, this court has refused to hold parties bound by language in a lower court order that we found was not necessary to the decision of the issues presented." *Id.* (citing *Weil v. Weil, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989))*.

In this case, the master interpreted the default provision of the lease in paragraph 17 of his order and specifically **[***22]** reached the following conclusions:

> **[**892]** A more clear, unambiguous intention to reserve all rights against [Tenant] for the rents due during the full term is **[*572]** more difficult to imagine. Not only did [BTC] specifically reserve its right to damages (i.e., the recovery of future rents in the event of termination), but the lease provided a specific damage formula by providing [Tenant] must pay all costs, damages[,] and expenses as a result of default. It is clear the most critical, common[,] and obvious "damages" suffered by a [landlord] under a commercial lease is the payment of rent, which is the primary monetary obligation of the [tenant]. No other construction would provide full meaning to all of the terms of the Lease.

In paragraphs 18(a)-(c) and 19, however, the master discussed the correspondence between the parties, noting it was further evidence that BTC and Tenant construed the subject lease as an obligation for Tenant to pay future rents. Tenant argues that, by referencing certain testimony and exhibits to support his interpretation of the lease, the master erred in considering extrinsic evidence outside the four corners of the contract. We agree, but we find the master's error was harmless. **[***23]**

Based upon our review of the order as a whole, we find any error in considering extrinsic evidence was harmless because it is reasonable to infer the master was simply setting forth alternative grounds for his interpretation of the contract. *See* Williams, 363 S.C. at 123 n.1, 609 S.E.2d at 814 n.1 (noting that, ***HN12***[↑] in construing a judge's order, an appellate court must do so in light of the judge's intent "as discerned from the order as a whole"); Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009) (stating it was "reasonable to infer that the circuit court was setting forth alternative grounds for its interpretation of the contract" by referencing certain testimony and exhibits in its order). Furthermore, the master's interpretation—based on the extrinsic evidence presented at trial—was consistent with the contract's language. *See* Laser Supply, 382 S.C. at 336, 676 S.E.2d at 145; *see also* Jensen v. Conrad, 292 S.C. 169, 172, 355 S.E.2d 291, 293 (Ct. App. 1987) (holding a judgment will not be reversed for insubstantial errors that do not affect the result).

Accordingly, while the master erred in referencing extrinsic evidence in his order, we find the master was merely setting forth alternative grounds for his interpretation that the damages term in the lease unambiguously entitled BTC to future **[*573]** rents. Thus, we affirm the master's conclusion on this point because any error in referencing the extrinsic evidence **[***24]** was harmless, particularly when the master's interpretation was consistent with the contract's language.

V. Tenant's Cross-Examination of Landlord

Tenant further argues the master abused his discretion by not allowing her to cross-examine Watson about language in the subject lease as well as language in two subsequent leases BTC entered into with different parties. We disagree.

A. Language in the Subject Lease

Tenant contends the master erred in sustaining BTC's objection to the line of questioning during her cross-examination of Watson regarding BTC's intent behind specific language in the subject lease. Tenant argues that, because the master considered extrinsic evidence in reaching his decision, he abused his discretion by not allowing her to introduce evidence regarding intent. We find this issue is not properly preserved for appellate review.

HN13[↑] "An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." Potter v. Spartanburg Sch.

Dist. 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *see also* *S.C. Dep't of Soc. Servs. v. Mother, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct. App. 2007)* (finding an issue abandoned because the appellant made "a conclusory argument without citation of any authority to support her claim"); *Hunt v. S.C. Forestry Comm'n, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004)* ("Issues raised in a brief but not supported by authority are deemed abandoned and **[***25]** will not be considered on appeal.").

[893]** In her brief, Tenant merely provided a recitation of the trial transcript and made a conclusory argument, while citing no legal authority to support her claim. Therefore, we find this issue is abandoned and not preserved for appellate review. *See Hunt, 358 S.C. at 573, 595 S.E.2d at 851*.

B. Language in Two Subsequent Leases

Tenant next contends the master erred in sustaining BTC's objection to the line of questioning during her cross-examination **[*574]** of Watson regarding language in two subsequent leases BTC entered into with two different tenants. Specifically, Tenant claims the master improperly sustained BTC's objection "on the grounds of inadmissibility as a subsequent remedial measure" pursuant to *Rule 407, SCRE*.[1] We find this issue is not properly preserved for appellate review.

Because the master clearly sustained BTC's objection on relevance grounds, Tenant's argument that he committed legal error by sustaining the objection pursuant **[***26]** to *Rule 407, SCRE*, is without merit. Aside from Rule 407, Tenant failed to cite any authority in support of her conclusory argument that the master erred in sustaining BTC's objection. Therefore, we find this issue is abandoned and not preserved for appellate review. *See Hunt, 358 S.C. at 573, 595 S.E.2d at 851*.

VI. Ambiguity

Finally, Tenant argues the master erred by failing to recognize the lease terms were ambiguous. We disagree.

In light of our holding in Part III, *supra*, we find the master properly concluded the subject lease was unambiguous.[2] After reading the subject lease as a whole, we find the parties clearly and unambiguously intended that—upon Tenant's default and breach of the lease—Tenant would be liable to BTC for the rents due during the full term as damages. *See Cullen v. McNeal, 390 S.C. 470, 483, 702 S.E.2d 378, 385 (Ct. App. 2010)* ***HN14***[↑] ("In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." (citation and internal quotation marks omitted)); *Ecclesiastes Prod. Ministries, 374 S.C. at 497, 649 S.E.2d at 501* (stating a court must gather the parties' intention from the contents of **[*575]** the entire agreement, not from any particular clause therein (citation omitted)); *id. at 500, 649 S.E.2d at 503* ("The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure **[***27]** to guard their rights carefully." (citations omitted)).

CONCLUSION

Based on the foregoing analysis, the master's decision is

---

[1] Under *Rule 407, SCRE*, "When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event."

[2] Tenant also argues the master erred in not construing ambiguous terms against the drafter of the lease. In light of our finding that the contract was unambiguous, we need not reach the second prong of Tenant's argument. *See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)* (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

AFFIRMED AS MODIFIED.

GEATHERS and McDONALD, JJ., concur.

End of Document

Exhibit "B"

No Limit Remaining Rent Balance			
Months	Total Months in Period	Base Rent Due	Total Due in Period
15-24	10	$2,364.88	$23,648.80
25-36	12	$2,435.67	$29,228.04
37-48	12	$2,508.38	$30,100.56
49-60	12	$2,583.96	$31,007.52
No Limit Remaing Rent Balance:			$113,984.92

New Lease Potential Rent			
Months	Total Months in Period	Base Rent Due	Total Due in Period
1-2	2	$0.00	$0.00
3-14	12	$2,296.00	$27,552.00
15-26	12	$2,364.88	$28,378.56
27-38	12	$2,435.67	$29,228.04
New Lease Potential Rent:			$85,158.60

Difference in Base Rent	
No Limit Remaining Rent Balance	$113,984.92
Nerw Lease Potential Rent	$85,158.60
Total Rent Difference	$28,826.32

Exhibit "C"

Affidavit in Support of Plaintiff's Attorneys Fees

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

IN THE COURT OF COMMONS PLEAS
SIXTH JUDICIAL CIRCUIT
2018-CP-29-00271

KATKAMS VENTURES, LLC and SUPREMA, LLC, as successors in interest to 521, LLC,
Plaintiffs,

v.

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON,
Defendants.

AFFIDAVIT IN SUPPORT OF PLAINTIFFS' ATTORNEY'S FEES

BRIAN W. TYSON, being of age and duly sworn, deposes and states:

1. I am an attorney at law, duly licensed, admitted, and have engaged in the general practice of law in the State of South Carolina.
2. I represent Plaintiff Katkams Ventures, LLC, a South Carolina limited liability company, and Plaintiff Suprema, LLC, a South Carolina limited liability company (collectively, "Plaintiffs").
3. Plaintiffs have incurred attorney's fees and costs in the amounts of Eleven Thousand Four Hundred Two Dollars and Fifty Cent ($11,402.50) in attorney's fees and One Hundred Eighty-One Dollars and Seventy-Four Cent ($181.74) in cost, totaling Eleven Thousand Five Hundred Eighty-Four Dollars and Twenty-four Cent ($11,584.24).
    a. The amounts of these fees are calculated as follows:

Attorney time spent on this matter:	35.80 hours
Legal Assistant time spent on this matter:	32.50 hours

4. The amount of the requested attorney's fees was arrived at after consideration of the customary fees in the community for similar services, the time spent on this matters, the attorney's experience in these matters, the skill displayed by the attorney, and the amount of responsibility assumed by the attorney in connection with this matter.

5. Attached hereto as Exhibit "A" is a detailed schedule of the amount of time that my firm has spent on this matter. The billing rate indicated is based on my firm's current billing rate. This description was prepared from contemporaneous time records regularly prepared and maintained by my firm.

6. Attached hereto as Exhibit "B" is a detailed schedule of the unreimbursed costs incurred by my firm in connection with this matter.

Respectfully submitted this 5 day of February, 2019.

Brian W. Tyson, SC Bar # 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Hwy, Suite 109
Charlotte, NC 28277
Telephone – 704-644-1855
Fax – 704-644-1856

Attorney for Plaintiffs

Acknowledgement

Seal-Stamp

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Maria Victoria Stegall, a Notary Public of Union County and State aforesaid, certify that Brian W. Tyson, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 5th day of February, 2019.

MARIA VICTORIA STEGALL
Notary Public, North Carolina
Union County
My Commission Expires
March 21, 2023

Use Black Ink

Maria Victoria Stegall
Notary Public
My Commission expires: 03/21/23
Verified by: NCDC

3

Exhibit "A"

Date	Hours	ctivity categor	Description	Rate	Amount
7/12/2017	0.1	Partner	Email Hershel	$ 300.00	$ 30.00
8/7/2017	1.4	Associate	Notice of Default Letter	$ 225.00	$ 315.00
8/7/2017	0.7	Associate:Leg	Notice of default letter	$ 175.00	$ 122.50
8/31/2017	0.5	Associate	Email to John	$ 225.00	$ 112.50
8/31/2017	0.1	Associate:Tele	Phone with John	$ 225.00	$ 22.50
10/2/2017	0.3	Associate	Review letter from Counsel-- Phone attorney	$ 225.00	$ 67.50
10/16/2017	0.4	Partner	Drafting Complaint	$ 300.00	$ 120.00
10/24/2017	0.3	Associate:Tele	Opposing Counsel- Phone- Follow up	$ 225.00	$ 67.50
10/25/2017	0.2	Associate	Email to client--	$ 225.00	$ 45.00
11/3/2017	0.2	Partner	Review leases	$ 300.00	$ 60.00
11/3/2017	0.7	Associate	Review File and email Opposing Counsel regarding settlement.	$ 225.00	$ 157.50
11/13/2017	0.1	Partner	Emails	$ 300.00	$ 30.00
10/23/2017	0.4	Associate	Review Timeline for Complaint	$ 225.00	$ 90.00
11/20/2017	0.3	Associate	Email	$ 225.00	$ 67.50
12/14/2017	2	Law Clerk	Drafted Complaint, Summons, and Cover Sheet.	$ 85.00	$ 170.00
12/28/2017	1.3	Associate	Revision to Complaint..	$ 250.00	$ 325.00
1/3/2018	0.5	Associate	Review Complaint	$ 250.00	$ 125.00
1/13/2018	0.3	Associate	Review of Complaint	$ 250.00	$ 75.00
1/17/2018	1.9	Associate	Revision to complaint.	$ 250.00	$ 475.00
1/17/2018	0.9	Associate	Revised complaint	$ 150.00	$ 135.00
1/18/2018	0.9	Associate:Leg	review of complaint	$ 175.00	$ 157.50
1/19/2018	1.1	Associate:Leg	complaint edits	$ 175.00	$ 192.50
1/22/2018	0.3	Law Clerk	Update balance information	$ 85.00	$ 25.50
1/23/2018	0.5	Associate	Revision to complaint.	$ 250.00	$ 125.00
1/24/2018	0.5	Associate	Prepare summons	$ 250.00	$ 125.00
1/25/2018	0.6	Law Clerk:Leg	Revision to Complaint	$ 85.00	$ 51.00
1/26/2018	0.2	Law Clerk	Revision	$ 85.00	$ 17.00
1/31/2018	1.2	Law Clerk	Preparing final version of complaint and other documents.	$ 85.00	$ 102.00

2/1/2018	0.5	Associate	Timelime regarding default	$ 85.00	$ 42.50
2/2/2018	1.2	Associate	Meeting with client and John	$ 250.00	$ 300.00
2/13/2018	0.3	Law Clerk	Reviewing complaint, final version printed.	$ 85.00	$ 25.50
2/27/2018	0.3	Law Clerk	Revising and printing complaint draft.	$ 85.00	$ 25.50
3/6/2018	1.1	Law Clerk	Editing Complaint	$ 85.00	$ 93.50
3/7/2018	0.4	Associate	Review Complaint	$ 250.00	$ 100.00
3/7/2018	0.8	Associate:Leg	proofing complait	$ 175.00	$ 140.00
3/7/2018	0.5	Law Clerk	Drafting Complaint	$ 85.00	$ 42.50
3/9/2018	0.5	Law Clerk	Drafting Complaint	$ 85.00	$ 42.50
3/12/2018	0.5	Law Clerk	Drafting Complaint and preparing for filing	$ 85.00	$ 42.50
3/15/2018	0.3	Law Clerk	Edit to Complaint	$ 85.00	$ 25.50
3/16/2018	0.8	Law Clerk	Mailing out complaint to defendants	$ 85.00	$ 68.00
3/23/2018	0.3	Law Clerk	Mailing out aff of service	$ 85.00	$ 25.50
4/17/2018	1.1	Law Clerk	Drafting Motion/Order for Default. Checking service.	$ 85.00	$ 93.50
5/1/2018	1.5	Law Clerk	Drafting 30B Deposition for No Limit	$ 85.00	$ 127.50
5/7/2018	0.2	Law Clerk	Contacting Defendants att for deposition dates	$ 85.00	$ 17.00
5/30/2018	1.3	Associate	Review File- Phone with Defendant Attorney, email to Broker, Drafted Request for Admission	$ 250.00	$ 325.00
5/31/2018	0.8	Law Clerk	Drafting req for adm and notice of deposition	$ 85.00	$ 68.00
6/1/2018	0.7	Law Clerk	Finishing drafting notice of 30B6 deposition.	$ 85.00	$ 59.50
6/1/2018	0.2	Associate	Review Admission	$ 250.00	$ 50.00
5/22/2018	0.1	Law Clerk	Follow up w D att about scheduling deposition	$ 85.00	$ 8.50
7/23/2018	1.8	Associate	Review admission, email to client. notes to file.	$ 250.00	$ 450.00
7/24/2018	0.9	Law Clerk	Research Summary Judgment - Outline Admission and affidavits	$ 85.00	$ 76.50
8/1/2018	0.2	Law Clerk	Updating SJ docs	$ 85.00	$ 17.00
8/16/2018	1.6	Associate	Review Summary Judgment	$ 250.00	$ 400.00
8/29/2018	0.8	Law Clerk	Editing SJ docs and affidavits	$ 85.00	$ 68.00
9/27/2018	1.4	Associate	Motion for SJ	$ 250.00	$ 350.00

10/11/2018	0.3	Associate	Email to client	$ 250.00	$ 75.00
10/25/2018	0.5	Associate	Revision to Summary Judgment - Prepare for filing	$ 250.00	$ 125.00
10/30/2018	1.6	Associate	Motion for Summary Judgment- Filing	$ 250.00	$ 400.00
10/31/2018	0.5	Law Clerk	Review Filing	$ 85.00	$ 42.50
11/15/2018	0.4	Law Clerk	Call w clerk for scheduling and w probate court for copy of estate file	$ 85.00	$ 34.00
11/19/2018	0.3	Law Clerk	Reviewing estate file. Drafting notice of hearing for Jan	$ 85.00	$ 25.50
11/30/2018	0.3	Associate	Phone with Opposing Counsel	$ 250.00	$ 75.00
12/12/2018	0.7	Associate	Email to client, review ADR report, email to Defendant's counsel, email to Court.	$ 250.00	$ 175.00
12/12/2018	1.2	Associate	Notice of Legal Proceeding with Estate.	$ 250.00	$ 300.00
12/13/2018	0.5	Law Clerk	Mailing out notice to probate court for filing and sending copies to Administrator and attorney	$ 85.00	$ 42.50
1/7/2019	0.4	Law Clerk	Review Email from Property Manager	$ 85.00	$ 38.00
1/14/2019	1.4	Law Clerk	Drafting and editing affidavit for PM and for attorneys fees	$ 85.00	$ 119.00
1/17/2019	0.4	Law Clerk	Editing affidavit for PM	$ 85.00	$ 34.00
1/18/2019	1.2	Law Clerk	Meeting with John Smethurst and making edits to draft of his affidavit	$ 85.00	$ 102.00
1/18/2019	0.9	Associate	Afft for Summary Judgment	$ 250.00	$ 225.00
1/18/2019	0.3	Associate:Leg	proofing SJ affidavit	$ 210.00	$ 63.00
1/18/2019	0.5	Law Clerk	Filing online/faxing/and mailing affidavit of PM	$ 85.00	$ 42.50
1/21/2019	0.1	Law Clerk	Reviewing cost affifavit	$ 85.00	$ 8.50
1/24/2019	2.3	Law Clerk	Making copies for hearing. Drafting summary and outline. Researching case law for elements and causes of action.	$ 85.00	$ 195.50
1/24/2019	0.5	Law Clerk	Drafting orders for SJ	$ 85.00	$ 42.50
1/25/2019	2.4	Law Clerk	Prepping for SJ hearing	$ 85.00	$ 204.00
1/28/2019	0.8	Law Clerk	Reviewing accounts	$ 85.00	$ 68.00
1/27/2019	2.3	Associate:Leg	Prepare for SJ Hearing	$ 250.00	$ 575.00

1/28/2019	1.7	Associate:Tele	Travel to SJ Hearing	$ 250.00	$ 425.00
1/28/2019	1.9	Associate:Cou	SJ Hearing	$ 250.00	$ 475.00
1/31/2019	0.7	Law Clerk	Drafting excel sheet for loss in rent calculations	$ 85.00	$ 59.50
2/4/2019	0.7	Law Clerk	Recalculating excel sheet for SJ support and drafting memo	$ 85.00	$ 59.50
2/5/2019	3	Law Clerk	Drafting memo in support of SJ and Prepare for filing	$ 85.00	$ 255.00
2/5/2019	2.5	Associate	Revised Memo for Summary Judgment-	$ 250.00	$ 625.00
Law Clerk	32.5	Hours			$ 2,832.00
Associate	35.8	Hours			$ 8,570.50
			Total		$ 11,402.50

Exhibit "B"		
Date	Description	Amount
10/30/2018	Filing fee For Summary Judgment	$ 31.74
3/12/2018	Complaint	$ 150.00
	Total	$ 181.74

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
KATKAMS VENTURES, LLC, and SUPREMA, LLC, as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, d/b/a NO LIMIT FINANCIAL, LCC, and ERICH SIMPSON, Defendants.	NOTICE and MOTION: TO ALTER OR AMEND JUDGMENT Pursuant to: RULE 59(a), S.C.R.C.P. C. A. No. 18-CP-29-00271

To: Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 28277

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of the Court, or as soon thereafter as counsel may be heard.

PLACE: Lancaster County Courthouse
104 North Main Street
Lancaster, South Carolina 29720,
or at such other place as the Court or Clerk may designate

Pursuant to Rule 59, S.C.R.C.P., the Defendants, by and through their attorney, move this Court:

For an Order reopening the Order dated February 8th, 2018, 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:

. The general rule is that an allowance for future damages must be reduced to its present worth. 22 AM.JUR.2D *Damages* § 678 2002). The commentators of AM.JUR.2D state:

> Therefore, the amount awarded for damage to be suffered in the future is such sum as, being put at interest, will amount (at the dates the damage will be suffered) to the sum the jury finds the plaintiff will lose in the future by reason of the alleged tort or breach of contract.
>
> [*Id.*, citing, *inter alia*, *Look* v. *Werlin*, 590 S.W.2d 526 (Tex.Civ.App. Houston (1st Dist) (1979), dealing with future rent payments on a commercial lease.]

. The Plaintiffs have produced no evidence as to present value of the claimed future rent.

. The Defendants have cited, and have supplied to the Court, within the period allowed, the opinion of a Certified Public Accountant as to such value, which value as calculated is far beneath that awarded by the last Order of the Court. A copy of that opinion is attached hereto and incorporated herein.

Counsel for the Movants 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 Movants may submit herein.

Respectfully submitted,

/s/ John Martin Foster
Attorney for Defendants

The Guardian Building
223 East Main Street, Suite 520
Ro0ck Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

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

February 18, 2019

Rock Hill, South Carolina

RECEIVED
Jul 01 2020
SC Court of Appeals

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON, Defendants. Agreed Upon Procedures

Charles A. Ross and Associates, LLC

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON, Defendants. Civil Action No. 2018-CP-29-00271

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Supporting documents reflecting the calculation of Net Present Value 5

Charles A. Ross and Associates, LLC

Charles A. Ross & Associates
Certified Public Accountants and Consultants
3847 Page Blvd* St Louis, Mo 63113 202) 607 - 4424

INDEPENDENT ACCOUNTANTS' REPORT ON APPLYING AGREED-UPON PROCEDURES

No Limit, LLC, D/B/A No Limit Financial, LLC
and Erich Simpson
Lancaster, SC

Dear Ms. Erica Simpson:

Independent Accountant's Report on Applying Agreed-Upon Procedures for No Limit, LLC, D/B/A No Limit Financial, LLC and Erich Simpson. I have performed the procedures enumerated below, which were agreed to by No Limit, LLC, D/B/A No Limit Financial, LLC and Erich Simpson, solely to assist in evaluating the accompanying schedule of future rent payments, provided by the Plaintiffs for the remaining 48 months of the 60-month lease agreement.

This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report.

Consequently, I make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Requirement Number 1

Review the calculation of "Total Rent Difference" as outlined on Exhibit "B" No Limit Remaining Rent Balance as submitted in State Of South Carolina County of Lancaster C.A. No. 2018-CP-29-00271.

Procedure Number 1 and Related Results

I obtained a copy of the Exhibit "B" No Limit Remaining Rent Balance and recalculated the information presented and found the schedule free of mathematical error. I further vouched the base rent information to the lease agreement and found the information correct.

Requirement Number 2

Utilize Exhibit "B" to recalculate the "No Limit Remaining Rent Balance" at present value and propose an adjustment to the Plaintiffs damage request.

Procedure Number 2 and Related Results

I created a schedule to outline the relevant months and associated "Unpaid Rent" for No Limit, LLC, D/B/A No Limit Financial, LLC; and Erich Simpson. Utilizing the aforementioned information, I determined the payments made for the period February 1, 2018 through January 1, 2019 are representative of periods passed and not subject to present value (PV) adjustment. I further noted that the monthly rental amount changed four times over the period February 2018 through November 2021, as agreed per lease agreement signed July 1, 2016 by No Limit, LLC, D/B/A No Limit Financial, LLC; and Erich Simpson.

During my review, I obtained a copy of the actual lease agreement and verified that the amounts per Exhibit "B" Unpaid Rent agreed to the lease agreement without exception.

Utilizing the future unpaid rent amount (monthly), I then calculated the present value of each (monthly) range of unpaid rent. The amount of rent requested, by KatKams Ventures, LLC and Suprema, LLC, as successors in interest to 521, LLC but unpaid, by No Limit, LLC changed approximately every 12 months; Thus, the calculation of three present value amounts is required, and utilized to revise the Plaintiffs Exhibit "B". The summary of this analysis is attached at Exhibit 1 and Exhibit 2.

Time Value of Money (TVM) is the concept that the value of money itself changes over time. Having a dollar today is worth more than a dollar tomorrow. Solving for present value, future value, interest rate and term are some standard calculations. Supporting information for my calculation(s) is attached at Exhibit 3.

Based on my review, adjusting the certain rent payments to present value "PV" would result in a damage adjustment of approximately $7,9776.65.

I was not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the accompanying rental revenue schedule.

Accordingly, I do not express such an opinion. Had I performed additional procedures, other matter might have come to my attention that would have been reported to you. This report is intended solely for the information and use of No Limit, LLC, D/B/A No Limit Financial, LLC; and Erich Simpson and agents thereof in the matter 2018-CP-29-00271 and is not intended to be and should not be used by anyone other than these specified parties.



Charles A. Ross and Associates, LLC

February 7, 2019

Glossary

Calculating Net Present Value (NPV) For Rental Property

Net Present Value of future net cash flows for real estate is simply calculated by using a time value of money calculation to discount net cash flows to a present value number or "Net Present Value." This is not a back of the napkin calculation and should be done using an investment property calculator.

Interest rate

The interest rate, or rate of interest, is the amount of interest due per period, as a proportion of the amount lent, deposited or borrowed (called the principal sum). The interest rate is a percentage of the principal sum. The total interest on an amount lent or borrowed depends on the principal sum, the interest rate and the length of time over which it is lent, deposited or borrowed.

Prime rate

A prime rate or prime lending rate is an interest rate used by banks, usually the interest rate at which banks lend to favored customers—i.e., those with good credit. Some variable interest rates may be expressed as a percentage above or below prime rate.

United States Prime Rate

The Current U.S. (Fed) Prime Rate is: 5.50% effective (December 20, 2018.). Conservatively I utilized a rate of 7.50%, Prime plus 2%.

Exhibit 1

NO LIMIT, LLC, DBA NO LIMIT FINANCIAL, LLC
CALCULATION OF NET PRESENT ON
FUTURE RENT PAYMENTS RECEIVED IN ADVANCE

Months	Total Months in Period	Base Rent Due	Total Due in Period Ext "b"	No Limit PV Amount Due	Difference
15 - 24	10	$2,364.88	$23,648.80	$23,648.80	$0.00
25 - 36	12	$2,435.67	$29,228.04	$28,558.42	$669.62
37 - 48	12	$2,508.38	$30,100.56	$27,506.77	$2,593.79
49 - 60	12	$2,583.96	$31,007.52	$26,294.28	$4,713.24
			$113,984.92	$106,008.27	$7,976.65

Exhibit 2

NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON

Schedule of Unpaid rent (Reduced to Present Value PV)

	Month	Exhibit "B" Unpaid Rent (LMT)	PV/ Actual		PV Calculation	
18-Feb	15	2364.88	2,364.88	a		
18-Mar	16	2364.88	2,364.88	a		
18-Apr	17	2364.88	2,364.88	a		
18-May	18	2364.88	2,364.88	a		
18-Jun	19	2364.88	2,364.88	a		
18-Jul	20	2364.88	2,364.88	a		
18-Aug	21	2364.88	2,364.88	a		
18-Sep	22	2364.88	2,364.88	a		
18-Oct	23	2364.88	2,364.88	a		
18-Nov	24	2364.88	2,364.88	a		
18-Dec	25	2435.67	2,435.67	a		
19-Jan	26	2435.67	2,435.67	a		
19-Feb	27	2435.67	2,435.67	a		
19-Mar	28	2435.67			2435.67	1
19-Apr	29	2435.67			2435.67	2
19-May	30	2435.67			2435.67	3
19-Jun	31	2435.67			2435.67	4
19-Jul	32	2435.67			2435.67	5
19-Aug	33	2435.67			2435.67	6
19-Sep	34	2435.67			2435.67	7
19-Oct	35	2435.67			2435.67	8
19-Nov	36	2435.67	21,251.41	b	2435.67	9
19-Dec	37	2508.38			2508.38	1
20-Jan	38	2508.38			2508.38	2
20-Feb	39	2508.38			2508.38	3
20-Mar	40	2508.38			2508.38	4
20-Apr	41	2508.38			2508.38	5
20-May	42	2508.38			2508.38	6
20-Jun	43	2508.38			2508.38	7
20-Jul	44	2508.38			2508.38	8
20-Aug	45	2508.38			2508.38	9
20-Sep	46	2508.38			2508.38	10
20-Oct	47	2508.38			2508.38	11
20-Nov	48	2508.38	27,506.77	c	2508.38	12
20-Dec	49	2583.96			2583.96	1
21-Jan	50	2583.96			2583.96	2
21-Feb	51	2583.96			2583.96	3
21-Mar	52	2583.96			2583.96	4
21-Apr	53	2583.96			2583.96	5
21-May	54	2583.96			2583.96	6
21-Jun	55	2583.96			2583.96	7
21-Jul	56	2583.96			2583.96	8
21-Aug	57	2583.96			2583.96	9
21-Sep	58	2583.96			2583.96	10
21-Oct	59	2583.96			2583.96	11
21-Nov	60	2583.96	26,294.28	d	2583.96	12
		$ 113,984.92	106,008.27		Difference	$ 7,976.65

a - Period February 2018 through Feb 2019 has passed and thus becomes an actual liability;
b - For the period March 1, 2019 through Nov. 30 2019 the present value of nine months was calculated at the agreed rate;
c - Present value information for the period Dec 2019 through Nov. 2020 was calculated at the agreed rate of monthly rent;
d - Present value information for the 12 month Dec 2020 through Nov 2021 was calculated at the agreed rate of monthly rent;

Exhibit 3

Regular Cash Flow Amo...		$2,435.67
Number of Cash Flows?...		9
Annual Discount Rate?:		7.5000%
Today's Date?:	02/01/2019	
First Cash Flow Date?:	03/01/2019	
Cash Flow Frequency?:	Monthly	
Compounding Frequency?:	Monthly	
Present Value:		$21,251.41
Cash Flows Total:		$21,921.03
Last Cash Flow Date:		11/01/2019

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Regular Cash Flow Amo...	$2,508.38
Number of Cash Flows?...	12
Annual Discount Rate?:	7.5000%
Today's Date?:	02/01/2019
First Cash Flow Date?:	11/01/2019
Cash Flow Frequency?:	Monthly
Compounding Frequency?:	Monthly
Present Value:	$27,506.77
Cash Flows Total:	$30,100.56
Last Cash Flow Date:	10/01/2020

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Regular Cash Flow Amo...		$2,583.96
Number of Cash Flows?...		12
Annual Discount Rate?:		7.5000%
Today's Date?:	02/01/2019	
First Cash Flow Date?:	11/01/2020	
Cash Flow Frequency?:	Monthly	
Compounding Frequency?:	Monthly	
Present Value:		$26,294.28
Cash Flows Total:		$31,007.52
Last Cash Flow Date:		10/01/2021

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STATE OF SOUTH CAROLINA	]	IN THE COURT OF COMMON PLEAS
	]	
COUNTY OF LANCASTER	]	SIXTH JUDICIAL CIRCUIT
	]	
KATKAMS VENTURES, LLC, and	]	
SUPREMA, LLC,	]	
as successors in interest to 521, LLC,	]	
	]	
Plaintiffs,	]	CERTIFICATE OF SERVICE
vs.	]	
	]	
NO LIMIT, LLC,	]	
d/b/a NO LIMIT FINANCIAL, LCC, and	]	C. A. No. 18-CP-29-00271
ERICH SIMPSON,	]	
	]	
Defendants.	]	

The undersigned certifies that he has served the Notice and Motion pursuant to Rule 59, S.C.R.C.P dated February 18, 2019, on the following counsel or persons of record:

Brian W. Tyson
Law Office of Paul H. Bass, LLC
16928 Lancaster Hwy, Suit 109
Charlotte, NC 28277

by causing one (1) copy of the same to be deposited in the United States mail, postage prepaid, on the date set out below, addressed to counsel or opposing party's respective last known address(es) as set out above, or, if no address in known, by leaving the same with the Clerk of Court, as indicated above, pursuant to Rule 5(b)(1), S.C.R.C.P.; or

by personally delivering one (1) copy of the same to the said attorney(s) of record at his, her or their office at the address(es) above, on the date set out above.

/s/ John Martin Foster
Attorney for Defendants
SC Bar No. 2086
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
803 324-8109: Fax
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February 18, 2019

Rock Hill, S.C.

ELECTRONICALLY FILED - 2019 Apr 04 3:13 PM - LANCASTER - COMMON PLEAS - CASE#2018CP2900271

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER KATKAMS VENTURES, LLC and SUPREMA, LLC., as successors in interest to 521, LLC, Plaintiffs, vs. NO LIMIT, LLC, D/B/A NO LIMIT FINANCIAL, LLC; and ERICH SIMPSON, Defendant.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT Civil Action No. 2018-CP-29-00271 **BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND OR ALTER JUDGMENT**

NOW COMES the Plaintiffs Katkams Ventures, LLC and Suprema, LLC (collectively "Plaintiffs"), successors in interest to 521, LLC, in opposition to Defendants' Motion to Amend or Alter Judgment, filed on February 18, 2019, respectfully submit to this Court and say the following.

PROCEDURAL HISTORY

On March 12, 2018, Plaintiffs filed a Summons and Complaint for Breach of Contract with the Court of Common Pleas in Lancaster County, South Carolina. Plaintiffs filed an Affidavit of Service by Certified Mail on March 26, 2018. On April 26, 2018, Defendant No Limit, LLC, d/b/a No Limit Financial, LLC ("Defendant No Limit") and Defendant Erich Simpson ("Defendant Simpson") (collectively "Defendants") filed their Answer. On September 18, 2018, Defendant Simpson passed away. An estate has been opened in Lancaster County, South Carolina for Defendant Simpson, under Lancaster County File Number 2018-ES-29-00554. On November 12, 2018 Plaintiffs filed their Motion for Summary Judgment, and Affidavits in Support of Summary

Judgment, and filed an additional Affidavit in Support of Summary Judgment on January 18, 2019. Plaintiffs' Motion for Summary Judgment was heard before this Court on January 18, 2019, at which time the Court took the Motion for Summary Judgment under advisement. A Judgment in favor of Plaintiffs was granted on February 8, 2019, finding the following: (1) that there was no genuine issue of material fact in regards to Plaintiffs' claim for Breach of Contract against Defendant No Limit; (2) that there was no genuine issue of material fact in regards to Plaintiffs' claim for Breach of Contract - Guaranty against Defendant Simpson; (3) that Plaintiffs' Motion for Summary Judgment be granted in favor of Plaintiffs' claims for Breach of Contract against Defendant No Limit and Breach of Contract - Guaranty against Defendant Simpson; and (4) that Plaintiffs recover damages, costs, and attorney's fees in the total amount of Sixty-Three Thousand Eight Hundred Twenty-Five Dollars and Fifty-Three Cents ($63,825.53). On February 18, 2019, Defendants filed their Notice and Motion to Amend or Alter Judgment.

STATEMENT OF FACTS

Plaintiff Katkams Ventures, LLC is a limited liability company organized and existing in the state of South Carolina. Plaintiff Suprema, LLC is a limited liability company organized and existing in the state of South Carolina. Plaintiffs are successors in interest to 521, LLC, ("Original Landlord"), a limited liability company organized and existing in the state of South Carolina. Defendant No Limit, LLC, d/b/a No Limit Financial, LLC is a limited liability company organized and existing in the state of South Carolina, with a principal place of business in Lancaster County, South Carolina. Defendant No Limit operates under the business name No Limit Financial, LLC within the state of South Carolina and Lancaster County, South Carolina. Defendant Erich Simpson, at the start of this action, was a citizen and resident of Lancaster County, South Carolina. On July 11, 2016, the Original Landlord and Defendant No Limit entered into a Commercial Lease

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Agreement ("Lease Agreement") for a lease term of sixty (60) months, for the property known as a portion of Suite 200 of the commercial complex "Southern Shoppes," located at 10005 Charlotte Highway, Indian Land, South Carolina 29707 (the "Premises"). On July 11, 2016, Defendant Simpson executed a Guaranty of Lease ("Guaranty") in which he agreed to guarantee Defendant No Limit's payment and performance pursuant to the Lease Agreement. On or about July 29, 2016, the Original Landlord sold the property on which the Premises is located to the Plaintiffs, and as part of that transaction, the Original Landlord assigned the Lease Agreement and Guaranty to Plaintiffs as successors in interest. In or around June 2017, Defendant No Limit vacated the Premises in violation of the Lease Agreement. On July 1, 2017, Defendant No Limit failed to make its monthly rental payment pursuant to the terms of the Lease Agreement, which constituted a default. From July 1, 2017 to January 31, 2018, Defendant No Limit failed to make any monthly rental payments pursuant to the terms of the Lease Agreement, and Defendant Simpson failed to cure the default pursuant to the Guaranty. As of February 1, 2018, Defendant No Limit had a total remaining base rent balance of One Hundred Thirteen Thousand Nine Hundred Eighty-Four Dollars and Ninety-Two Cents ($113,984.92) ("No Limit Remaining Rent Balance"), which was the amount of base rent due pursuant to the Lease Agreement, less what Defendant No Limit paid, and less the past due rent for July 2017 through January 2018. During the default period, Plaintiffs made diligent efforts to mitigate their damages and to re-lease the Premises and were able to find a new tenant, whose rental payment obligations began on February 1, 2018, per the terms of the New Lease Agreement ("New Lease Agreement"). The New Lease Agreement has a potential rent of Eighty-Five Thousand One Hundred Fifty-Eight Dollars and Sixty Cents ($85,158.60) ("New Lease Rent").

ARGUMENT

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I. THIS COURT SHOULD DENY DEFENDANTS' MOTION TO AMEND OR ALTER THE JUDGMENT.

A. Standard of Review.

Rule 59(e) of the South Carolina Rules of Civil Procedure states "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." *Anderson Mem'l Hosp. v. Hagen*, 313 S.C. 497, 443 S.E.2d 399 (Ct. App. 1994), citing *C.A.H. v. L.H.*, 315 S.C. 389, 434 S.E.2d 268 (S.C. 1993).

B. Plaintiffs are entitled to Total Rent Difference.

Plaintiffs are entitled to the difference between No Limit's Remaining Rent Balance and the New Lease Rent. The South Carolina Court of Appeals held that, "Although the landlord-tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rest for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C 554, 772 S.E.2d 882 (Ct. App. 2015) ("Bluffton"). In *Bluffton*, the South Carolina Court of Appeals further held that a tenant's abandonment of the premises did not discharge the tenant from her payments under the lease agreement, and that the tenant was responsible for damages as a direct result of her breach of the lease agreement. The landlord in *Bluffton* was able to mitigate its damages, and the previous tenant was found to still be responsible for her rental obligations under the lease agreement, minus the new lease rent potential. Similar to *Bluffton*, in our case, Defendant No Limit abandoned the Premises in or around June 2017, and

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defaulted on its monthly rental payment for July 1, 2017. Defendant No Limit then defaulted on its rental payments pursuant to the Lease Agreement from July 1, 2017 until January 31, 2018, and Defendant Simpson failed to cure this default pursuant to the Guaranty. As a direct result of Defendant No Limit's default under the terms of the Lease Agreement, Plaintiffs' suffered damages calculated as the No Limit Potential Rent Balance. Through Plaintiffs' mitigation efforts, a new tenant began payments on February 1, 2018, with a rent potential calculated as the New Lease Rent. Based upon *Bluffton*, as decided by the South Carolina Court of Appeals, Plaintiffs are entitled to the damages of the No Limit Remaining Rent Balance, less the New Lease Rent, totaling to Twenty-Eight Thousand Eight Hundred Twenty-Six Dollars and Thirty-Six Cents ($28,826.32) ("Total Rent Difference").

Defendants have offered evidence as to the present value of the Lease Agreement, and the alleged future value of the Lease Agreement. At the time the Lease Agreement was executed by Defendant No Limit, the value of each lease period had already been established, and Defendant No Limit was bound by the terms of the Lease Agreement to make the monthly rental payments as stated within the Lease Agreement. Defendants' argument as to the present or alleged future value of the Lease Agreement is irrelevant as the total rent damages can be calculated at the time the Lease Agreement was entered into by the parties. Additionally, Defendants have not offered any authority that would be binding upon this Court. Defendant has cited *Look v. Welin*, 590 S.W.2d 526 (Tex. Civ. App. 1979) and 22 Am. Jur. 2D. *Damages* § 678 (2002), which this Court may find persuasive, but is not binding case law as compared to the case law established by *Bluffton*.

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CONCLUSION

Plaintiffs request that this court denies Defendants' Motion to Amend or Alter the Judgment. Plaintiffs are entitled to damages measured as the amount of rental payments they would have received had Defendant No Limit not defaulted under the Lease Agreement, minus the amount of rent received from the new tenant that Plaintiffs acquired in order to mitigate their damages, defined as the Total Rent Difference. Defendant has failed to offer any relevant argument or binding authority to support its Motion to Amend or Alter Judgment, and as such, Plaintiffs' request that the Defendant's Motion be denied.

Respectfully submitted, this the 4th day of April, 2019.

s/ Brian W. Tyson
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
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Charlotte, NC 28277
Phone: (704) 644-1855
Fax: (704) 644-1856

Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND OR ALTER JUDGMENT has been served upon the Respondent by depositing a copy of the same in the United State Mail, postage paid, and properly addressed to:

John Martin Foster
P.O. Box 106
Rock Hill, SC 29731-6106

Attorney for Defendants

This 4th day of April, 2019.

s/ Brian W. Tyson
Brian W. Tyson, SC Bar No. 102391
Law Office of Paul H. Bass, PLLC
16928 Lancaster Hwy, Ste 109
Charlotte, NC 28277
Phone: (704) 644-1855
Fax: (704) 644-1856

Attorney for Plaintiffs

THE COURT: Katkams Ventures, L.L.C., and Suprema, L.L.C. vs. No Limit, L.L.C. All right. This a motion for summary judgment. And whose motion is it?

MR. TYSON: It's my motion, Your Honor.

THE COURT: Yes, sir.

MR. TYSON: May it please the Court? Brian Tyson on behalf of Katkams and Suprema, LLC. We're here, Your Honor, on a motion 56 for summary judgment. There is no genuine issue of material fact in this matter. Just to give you kind of a breakdown of the timeline, my client purchased this property July of 2017, which was a lease that was already in place July of 2016. We assigned the lease rights from the lease from a previous owner. A year into the lease July or -- late June and July -- June of 2017 rent came in late. July 1st owners noticed that the building was unoccupied. We then sent notice asking where was the July 1st rent of 2017. No reply. Probably July 17th, or July 12th tenant sent the letter saying, "Hey, you took our sign down. Hey, what's going on?" We then August 7th sent a notice of default, which is Exhibit C of our complaint. Fast forward to December 1st, we had the property re-rent to a lesser amount of rent, it was a shorter period, same rent rate, shorter period for the new tenant for us to mitigate our damages, and then they started paying rent on February the 1st. Before you, Your Honor, in a series of

documents, the answer as well as on record there's a request for admission. In regards to our matter for breach of contract, they're showing that there is a valid contract, there is a breach, the elements of breach of contract, valid contract, there's a breach of that contract and then the damages. Defendants have admitted that the contract that was attached to the complaint is a valid contract and enforceable contract that they had presented, so there's no issues as to the validity of that contract in itself. As well as in the admissions as well they have admitted that they breached, failed to pay rent starting July of 2017 up until today, they still haven't paid anything on it. The question now is -- and this is kind of the contentions that has been going back and forth kind of from a damages point of view, we allege from the case law that we have proven that the calculation of debt and the damages is the amount based on the Bluffton case, it's a series of cases that have evolved over the time. The courts have from Simon vs. Kirkpatrick to U.S. Rubber have both compared that this damage of complaint is based on the acceleration provision that's found in the lease. In our lease there was an acceleration default provision that said on the time of the default, or when the time that the landlord triggered the default the entire balances of the lease was remained open. Until then we have a duty under the law as well as under

good faith to mitigate. Our mitigating damages as we provided was to relet the property. We found a tenant that came from the same rate but from a lesser term. So to the extent there has been no objection, and on the rules, I received Saturday a memorandum of opposition to this summary judgment. It looks like there is no facts that dispute the brokerage of the amount of arrears rent. There's no factual dispute as to the brokerage or the CAM charges, which the defendant has alleged that those are valid and they have put on any affidavit that supports if there's an issue in there under the rules, and to the extent we would ask this Court to grant summary judgment in favor of the plaintiff in the amount of $63,858. And if you want me to go through that after you hear his argument as we get into damages, because I know there might be a conversation as who how we collect that I would respectfully ask to be heard after him.

THE COURT: What I'm going to do is after I hear from both of you gentleman I'm -- I've got the pleadings pulled up here with all of the exhibits as well as memorandum in opposition, I want to read through all that but I wanted to give y'all an opportunity to address the Court now. All right, Mr. Foster.?

MR. FOSTER: Your Honor, if I could hand up a paper copy of our brief and authority.

THE COURT: Okay.

MR. FOSTER: Your Honor, if the Court will allow first of all a matter of procedure, which I think would be allowable, Mr. Erich Simpson is deceased so technically his estate should be substituted as the defendant, I do represent that estate. I apologize for not getting a document to that effect to that Court, I can only claim the holidays and a recent illness that I had. Let me clarify where we're at on this brief. When I prepared this I thought I had a good argument, number one. Both Mr. Tyson and myself then found the case of Bluffton, which effectively says if you have a lease that allows for future damages in the way of future rent, you get it in South Carolina. I'm not arguing that point, and most of the brief is taken up with that point. However, my second point is this, what is being asked for is future damages. In other words, not the rent due today, the rent that will be due for the remaining portion of what would have been Mr. Simpson's lease, which continues on for, I believe, another two to three years. As I read the rules, and we have supplied this to the Court, there is no dispute that when you look at future damages of that kind. And if I could pause here for a moment, we're not talking about medical damages, we're not talking about a condition of the limbs of the body that are going to continue, and no one expects it to change. When you're talking about an amount that's going to be paid at

intervals in the future you have to reduce the claim to the amount that's due that that would be worth today. And if Your Honor will have the time to look at the cases we handed up, there is a Texas case directly on point in which the court in Texas basically said on a commercial case, yes, that's correct, future rent if you're going to go for it has to be reduced to the amount that's due today.

THE COURT: So you're saying present day value then.

MR. FOSTER: Precisely. Look versus Werlin, which we've handed up a copy of. I cannot in good conscience make an argument on the other matter because of the Bluffton case. We have no documents to argue with the facts of the past rent, the brokerage fee or what I believe Mr. Tyson has designated as the CAM fees, or the basic stuff due for the upkeep of the premises. It is my understanding, Your Honor, the responsibility of the moving party in a summary judgment motion is to come forward with all facts necessary to establish summary judgment. To my knowledge, and counsel can correct me, there is nothing here to state to the Court what that future -- what that present value of the re-lease is going to be. To that extent, Your Honor, we oppose.

THE COURT: All right. Coming back to you, Mr. Tyson?

MR. TYSON: Yes, Your Honor. I would like to offer up the Bluffton case, if I may.

THE COURT: Yeah.

MR. TYSON: Your Honor, this is a 2014 case, and I think that this case is directly on cite from the precedent that has been set in the State of South Carolina in regards to damages in a lease. This case, if I may read just for the Court. Looking at the holding that this was a case where there was a three year lease. The tenant paid and moved out and abandoned after I think it was six months. At that time there was a matter, the circuit court entered into a judgment, it was appealed and came up to the court of appeals. And I think it goes back to address -- there is two other cases that have been on the books, one from 1927, one being from 1956, this court case here did not overturn any of those, but definitely cleared up the kind of rule that we are seeking here. And in that court case if you look at page eight, which is the point that really is on point here, it talked about the damages. And it says that it is a rule in South Carolina that the lessee declines to perform a contract actions immediately arise in the favor of a lease for the full damages present in perspective which was necessary or direct from the breach. The measure of damages is the difference of the rent fixed in the lease, the rental value of the premises for the entire term time of the breach and any special damages. Therefore if you read together Simon and U.S. Rules (phonetically), they are not mutually exclusive from one another but must read together.

Based on this case, Your Honor, and this case talked about the same thing that we're here today in regards to a calculation of damages, there's not a present value. This case clearly says that we're not asking for future rent, we're asking for damages. Damages at the time of the breach, at the time that there was a breach were the amount that my client when they entered into the lease believed that they were going to contractually receive for the term of that lease. Not that if the defendant decided to vacate the property unauthorized that he would be less reduced to his judgment based on the fact that that's the present value. And basically, laymen's terms is that we get loans on the documents because of the amount of those damages, and those damages are clear and those damages are determined. So I would believe that Texas law has no -- it may be persuasive in this Court, but here we have a 2015 case that is directly on point in regards to those damages, and I think that those damages at the time of the breach became due, and my clients, as their ability to mitigate their damages as required by law, have done so, came out to the market, found another tenant. Because then to the extent we could have been asking for $140,000 versus asking for the $68,000, which we are entitled to.

THE COURT: All right. Well, I want to make sure we're all on the same page. Going back to the first part of your

argument, no question there's no genuine issue of material fact that there was a contract, correct, Mr. Foster?

MR. FOSTER: Yes, sir.

THE COURT: No question of material fact that there was a breach of the contract, correct?

MR. FOSTER: Correct.

THE COURT: So the only issue then is damages, right?

MR. TYSON: Yes, Your Honor.

THE COURT: So your motion for summary judgment is granted, okay, as to the liability aspect. So now we get to where the rubber meets the road, how much is your client entitled to, all right? So, having said that, you say it's 68,000 and change, what do you say?

MR. FOSTER: I say only that it is up to him to prove the figure, and I have nothing from his documents to show that figure or to show how the $33,000 that they attribute to future rent is calculated.

THE COURT: All right, got you. Do your documents, do you believe, show that?

MR. TYSON: Yes, Your Honor.

THE COURT: All right. Then I'll take the issue of damages then under advisement. Both lawyers will have an additional ten days to submit additional documentation to me if you think I need any as to the measure of damages, and then that will be contained in my order of judgment that's

issued. But, you know, the first two parts of your summary judgment are obviously clear, the main part is as to the issue of the amount of damages. I can't -- I'm not going to look at it right now, I'll take it under advisement along with the case law that's handed up, both the Texas case and Bluffton case and I'll fix the amount that I believe is due, okay?

MR. TYSON: So I guess to the extent we're looking at just the lost damages, because all of the other damages are clear. Are we just calculating what --

THE COURT: What's the total amount of damages you think you're entitled to?

MR. TYSON: 63,853. But there is no objection to the arrears rent, there's no objection to the commission, there's no objection to the CAM fees.

THE COURT: That's what I understood him to say.

MR. FOSTER: Correct.

MR. TYSON: So we're only dealing with --

THE COURT: What I would like y'all to submit is what's not in dispute, which is what Mr. Foster said, the past rent due, you're entitled to that, the broker fees, you're entitled to that, the upkeep costs, you're entitled to that, the past due rent -- and then any future rent, that's the issue. So kind of separate that from the other stuff that you're legally entitled to by way of my ruling today.

MR. TYSON: Let me ask you one more question, Your Honor. Would it be convenient for the Court if we also -- we've got a motion for costs that's got to be found and I don't know if we want to go ahead and address all of this, because basically the lease gives us attorney fees. I don't know if you want to address those.

THE COURT: Do you have those ready for today?

MR. TYSON: I don't have them ready for today.

THE COURT: Well, put that in your submissions within the next ten days. If the contract calls for attorney's fees and costs, the contract calls for attorney's fees and costs, and since it's a valid contract and a valid breach you get it. I've already made that determination.

(End of the hearing.)

THE COURT: I believe it's -- Mr. Foster, is it your motion?

MR. FOSTER: Yes, sir.

THE COURT: Okay. Yes, sir?

MR. FOSTER: Thank you. First of all, my apologies to Mr. Tyson, I misunderstood and thought we were agreeing on a continuance, but my fault.

THE COURT: That's fine.

MR. FOSTER: Your Honor, this case involved the late Mr. Erich Simpson and his company. They rented some rental space in Indian Land, he defaulted on it, suit was brought. These folks obviously have the right and got a judgment for past rent. They also sought and have the right under their lease to get the lost damages for the re-rental of the place, they re-rented it at a lesser rate.

THE COURT: Oh yeah, I remember this. Go ahead.

MR. FOSTER: Now, what they have got -- argued for and what they have said in their complaint is that the difference flatly stated between what they hoped to get from Mr. Simpson and what they're going to get from the new tenant is roughly some $33,000. It is unquestionably the fact that the Bluffton case, which I believe we both mentioned, says that the measure of damages is a difference between X and Y, this rent and that rent. My argument is simply this, that may be the measure of the damages but it

is not the calculation. They're seeking a judgment today, metaphorically speaking, that says here is our future damage. My understanding of the law in every area is that when you get a judgment for present damage you reduce what you would have gotten over time to its present value. That is what we've attempted to argue to the Court. We have submitted to the Court a calculation of that future rent reduced to present value to the tune of some $7,700, that is what we understand we owe. We do not understand we owe dollar for dollar the full amount were it to occur between now and the time the late Mr. Simpson's lease would end. That is our argument, sir, that is our basis for motion. To repeat, we're not arguing with past rent, we're not arguing with rent up to the date of re-rental, we're not arguing with the principle that we owe the difference between what they contracted for with Mr. Simpson and his company, and what they're going to get from their present tenant. What we are talking about is the calculation of that rent. That's my argument, sir.

THE COURT: All right. Yes, sir?

MR. TYSON: Your Honor, I'll be brief. May it please the Court? Brian Tyson on behalf of Katkams Ventures. We've heard this matter, and I think that -- and I pulled today just to see if there had been adverse -- first of all, did you receive our brief that was filed?

THE COURT: Yes, sir, we got it.

MR. TYSON: The reason I pulled this case, since date I haven't seen or there has been any -- some persuasive authority that has been submitted to the Court in regards to some cases out in Texas or in some other jurisdictions. But I think that the question still goes from in Bluffton, which was decided in 2015, establishes that -- and the question -- when we executed the lease -- and just going back into our original argument, when we executed the lease that takes place back when this lease took place, the value of the rent is already calculated for the entire term of the lease. So at the time that that lease is executed, the value or the contract of that rent value is taken into consideration and/or calculated. Because we can calculate the total base rent, which is on point with the Bluffton case that says, "Hey, the measure of damages is basically" -- and I have that case if you would like for me to present it to you, Your Honor -- but the measure of damages is from the point of the contract to the time of the termination of the lease if the lease provides that that is the measure of damages. Here in this case, and it's clear from our brief from the facts that we've done, we went out to the market, found a replacement tenant, which would offset or which we have a duty to mitigate from the standpoint of that rent, we offset that amount from the amount that was calculated from the

beginning. So at the beginning here is the dollar amount that rent was due minus the rent that's there, and that amount would have been the same amount at the time the lease was entered as it would be from a present value. I have seen no cases that take into consideration or any courts in South Carolina that have established a rule. I think that Bluffton went over and beyond from two other cases, which establishes a clear cut rule in regards to saying that in the event that that lease states that that damage -- that should be calculated, that is the calculation of damage. So I would ask that this Court deny this motion for reconsideration because to the extent there is no new authority that has been presented to this Court, and the courts that made this decision on the last judgment is still binding as well and is still good law.

THE COURT: All right, thank you. Anything in brief reply, Mr. Foster?

MR. FOSTER: I believe we've stated our position, Your Honor. I'm not aware of any South Carolina precedent that disagrees with it. And I again state, we are stating a matter of how one awards damages for future -- how one calculates damages for future losses. I believe that is clear all through the law and has well been established.

THE COURT: All right. Well, based upon the record before the Court as well as arguments submitted by counsel,

I respectfully deny your motion to reconsider, alter or amend. Will a Form 4 suffice, gentleman?

MR. TYSON: Yes, sir.

THE COURT: All right. Motion denied, thank you.

MR. FOSTER: Thank you, Your Honor.

(End of the hearing.)

CERTIFICATE OF COUNSEL

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

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July 1, 2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
In The Circuit Court

Brian Gibbons, Circuit Court Judge

Appellate Case No. 2019-001243

Katkams Ventures, LLC
and Suprema, LLC,
as successors in interest to 521, LLC, Respondents,

v.

No Limit, LLC, d/b/a No Limit Financial, LLC
and Estate of Erich Simpson, Appellants.

CERTIFICATE OF SERVICE

The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Petition for Writ of *Certiorari*;
Appendix; and
this Certificate of Service,

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section d(1) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022.

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August 31, 2022

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