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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM CHESTER COUNTY
Court of Common Pleas**

Honorable Eugene C. Griffith, Circuit Court Judge

Case No. 2021-000973

Starbella, LLC.....Appellant

v.

Lillie Rovira and Roberto Rovira.....Respondents

RECORD ON APPEAL

McCOY LAW FIRM. LLC

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2021CP1200121

Starbella, Llc
PLAINTIFF(S)

Lillie Rovira et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendants' motion to dismiss is granted.

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 06/18/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Jun 18 11:23 AM - CHESTER - COMMON PLEAS - CASE#2021CP1200121

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 - 2021 Jun 18 11:23 AM - CHESTER - COMMON PLEAS - CASE#2021CP1200121



Chester Common Pleas

Case Caption: Starbella, Llc VS Lillie Royira , defendant, et al
Case Number: 2021CP1200121
Type: Order/Electronic Form 4

It is so ordered:

Eugene C. Griffith, Jr. 2154

Electronically signed on 2021-06-18 11:18:03 page 3 of 3

ELECTRONICALLY FILED - 2021 Jun 18 11:23 AM - CHESTER - COMMON PLEAS - CASE#2021CP1200121

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1200121

Starbella, Llc
PLAINTIFF(S)

Lillie Rovira et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Motion to Reconsider has been denied.

ORDER INFORMATION

This order ends does not end the case.

See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/18/2021 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2021 Aug 18 3:22 PM - CHESTER - COMMON PLEAS - CASE#2021CP1200121

Court Reporter:

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

ELECTRONICALLY FILED - 2021 Aug 18 3:22 PM - CHESTER - COMMON PLEAS - CASE#2021CP1200121



Chester Common Pleas

Case Caption: Starbella, Llc VS Lillie Rovira , defendant, et al
Case Number: 2021CP1200121
Type: Order/Electronic Form 4

It is so ordered

Eugene C. Griffith, Jr. 2154

Electronically signed on 2021-08-18 14:16:36 page 3 of 3

ELECTRONICALLY FILED - 2021 Aug 18 3:22 PM - CHESTER - COMMON PLEAS - CASE#2021CP1200121

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
Lillie Rovira and Roberto Rovira,)	
	)	C/A NO. 2020-CP-12-_____
Plaintiffs/Landlord)	
)	
-vs-	)	SUMMONS
)	
Misty Bell individually and as guarantor,)	
And STARBELLA, LLC,)	
)	
Defendants.)	

TO DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and REQUIRED to Answer the Complaint in this action, a copy of which is here served upon you with this Summons, within thirty days of service of these papers upon you, excluding the day of receipt.

TAKE NOTICE that if you fail to Answer or Plead within Thirty (30) Days of service that the Plaintiffs will by and through the offices of the undersigned Petition the court to render judgment against you, in your absence and by default, for all relief being demanded in the Complaint against you.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.
by: J. Cameron Halford
 J. CAMERON HALFORD
 4609 Charlotte Highway, Suite 1
 Lake Wylie, South Carolina 29710
 803-831-2738
 803-831-0180 fax
 e-mail: cam@hoblaw.com

August 25, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
Lillie Rovira and Roberto Rovira,)	
	)	C/A NO. 2020-CP-12- _____
Plaintiffs/Landlord)	
)	
-vs-	)	<u>COMPLAINT</u>
	)	(NON-JURY)
Misty Bell individually and as guarantor,)	
And STARBELLA, LLC,)	
)	
Defendants.)	

Plaintiff would respectfully show the court the following :

1. Plaintiffs are residents of Chester County and owners of that certain commercial property at 3019 Jeff Davis Page Drive, Richburg, South Carolina 29729 in Chester County.
2. Defendant Misty Bell is on information and belief managing member of Starbella, LLC, a resident of the state of Virginia, lease guarantor, and operator of adult and sexually oriented business ("SOB") at the above address under the trade name "Starbellas".
3. Defendant Starbella, LLC is South Carolina Limited Liability Company constituting a business operation for nightclub / restaurant / bar and "gentlemen's club" operating from 3019 Jeff Davis Page Drive, Richburg, South Carolina 29729. That defendants have operated from this address under written lease as between Plaintiffs and Defendants dated June 5, 2020. The lease is attached as Exhibit-A to this Complaint.
4. This court has proper jurisdiction over these matters as all issues complained of arise out of conduct, errors, and/or omission occurring pursuant to written lease contract between Plaintiffs and Defendants for the commercial address 3019 Jeff Davis Page Drive, Richburg, S.C. 29729 in Chester County.

FOURTH CAUSE OF ACTION
(Breach of Contract)

5. That a valid and binding Lease exists as entered into by Plaintiff and Defendant supported by valuable consideration.
6. That pursuant to the Lease, Defendants were to pay the monthly sum of \$6,200 in rent to Plaintiffs.

7. That defendants have ceased to pay rent feigning business closure under guise and unfounded legal justifications of Covid-19 impact to their business operations.
8. That the Defendants' conduct constitutes breach of their contract and lease with Plaintiffs.
9. That as a direct and proximate result of defendants' breach, Plaintiffs have and are sustaining financial damages through trial date of this matter.
10. Plaintiffs are informed and believe that they are entitled to judgment as against Defendants, jointly, severally, and individually and request an order and judgment of the court as against defendants for all amounts due and owing through trial.
11. That the Lease provisions provide, inter alia, for recovery of reasonable attorneys fees and costs in favor of the Plaintiffs. Plaintiffs seek award of attorneys fees in addition to amounts due and owing under the Lease Agreement, as may be awarded by the court.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract by Fraudulent Act)

12. The above allegations are re-stated and incorporated by reference as if set forth verbatim.
13. That a valid and binding Lease attached as Exhibit-A exists as between the Plaintiffs and Defendants in this action, supported by valuable consideration.
14. That Defendants have failed to pay proper and full rent to the Defendants, falsely citing COVID-19 as legal justification and feigned excuse under which Defendants allege they cannot operate their business enterprise properly.
15. That Defendants are and remain operational and capable of operating their business at 3019 Jeff Davis Page Drive, and are continuing to operate a sexual oriented business outside of the address, while not paying Plaintiffs rent that is due and owing under contract.
16. That Defendants have permitted employees and/or managers to occupy, dwell within, and reside in the commercial premises as a residence and private abode, and have locked out and prohibited Plaintiffs from entry into the commercial building.
17. That defendants have engaged in the removal, destruction and/or throwing away of Plaintiffs' furniture, lighting, fixtures and commercial property without authorization, damaging Plaintiffs' real and personal properties at the location.
18. That Defendants' conduct constitutes dishonesty in fact, breach of the parties' Lease, and breach of the duties of good faith and fair dealing under contract.

19. Plaintiffs are informed and believe that they are entitled to an award of all actual, consequential, special, compensatory and punitive damages as against Defendants, jointly and severally.

FOR A THIRD CAUSE OF ACTION

(Action on Personal Guaranty as to Defendant Misty Bell)

20. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
21. That Defendant Starbella's LLC is a sexually oriented business consisting of restaurant, bar and dance club at 3019 Jeff Davis Page Drive, Richburg, South Carolina.
22. That pursuant to written Lease attached as Exhibit-A defendant Misty Bell, as owner and managing member of Starbellas, LLC entered into that certain Personal Guaranty to better secure payment of rent obligations from Defendants to Plaintiffs under Lease.
23. That Defendants have failed and refused to pay rent to Plaintiffs without proper legal justification or excuse, including feigned Covid-19 justifications.
24. That Plaintiffs are informed and believe that they are entitled to judgment as against Defendants, including Misty Bell individually, pursuant to Personal Guaranty entered into by Misty Bell on behalf of Defendants.
25. Plaintiffs seek judgment as against Defendants, jointly, and severally, inclusive of individual defendant Misty Bell, for all actual, consequential, compensatory, restorative and punitive damages.
26. Plaintiffs are informed and believe that they are entitled to award of all attorney's fees and costs of this action pursuant to the parties' Lease.

FOR A FOURTH CAUSE OF ACTION

(COMMERCIAL EVICTION)

27. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
28. That Defendants have in breach of the parties' Lease failed to pay rent, are denying proper rent payment to Plaintiffs, have damaged and failed to maintain proper insurance upon the commercial facility being rented, pursuant to contract.
29. That Plaintiffs are informed and believe that they are entitled to Judgment of EVICTION as against the Defendants, jointly and severally.

30. Plaintiffs seek an Order of Eviction as against Defendants and all persons employed by or residing at the facility.
31. Plaintiffs seek an Order of the court directing the Sheriff or Constables of Chester County to EJECT and REMOVE the Defendants, placing Plaintiffs in peaceful and full possession of the commercial facility.

FOR A FIFTH CAUSE OF ACTION
(MOTION FOR ORDER OF COURT FOR
INSPECTION OF REAL PROPERTY)

32. The above allegations are re-stated here and incorporated by reference as if set forth verbatim.
33. That Plaintiffs are informed and believe that Defendants have permitted certain of its employees or agents to reside in the commercial facility as a dwelling place and their abode, in violation of the Lease.
34. That Plaintiffs are informed and believe that Defendants, their employees, agents, or assigns have removed furniture, furnishings, lighting fixtures, tables, chairs and business equipment from the commercial facility without authorization, allowing the same to become damaged, destroyed, stolen or removed from the premises.
35. Plaintiffs are informed and believe that the Defendants by and through their agents, employees, and/or assigns has blocked entry, locked the Plaintiffs out of the property, and are prohibiting entry and/or inspection by Plaintiffs.
36. Plaintiffs seek an ORDER permitting Defendants Entry for Inspection of the Premises to inspect and document damage created or permitted, on information and belief, by Defendants while operating a sexually oriented business at the commercial address owned by Plaintiffs 3019 Jeff Davis Page Drive, Richburg.

WHEREFORE, having set forth Plaintiffs' causes of action as against as against the Defendants the Plaintiffs would pray that the following relief issue under Order of this court :

1. That the court ascertain and determine the rights of the parties pursuant to the written lease.
2. That the court award Plaintiffs judgment as against Defendants for all unpaid rent due and owing through date of judgment .
3. That the court award judgment to Plaintiffs as against Misty Bell individually, as Guarantor under the Lease, for all amounts due and owing to the Plaintiffs through trial of this matter.

4. That the court GRANT EVICTION as against Defendants and Order Defendants compelled to vacate the premises, with judgment for rent payable through the date of Defendants vacating.
5. For such other and further relief in favor of the Plaintiffs as the court may deem just and proper under the circumstances.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.

/s/ J. Cameron Halford
J. CAMERON HALFORD
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4609 Charlotte Highway, Suite 1
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803-831-2738
803-831-0180
Email: cam@hoblaw.com

August 25, 2020
Lake Wylie, South Carolina



COMMERCIAL LEASE

In consideration of the covenants herein contained, Starbella LLC (Misty Bell Managing Member) hereinafter called "Tenant" and Roberto Rivera & Ulbia Rovira hereinafter called "Landlord", agree as follows:

For the period of time beginning on June 5, 2020, and ending at midnight on May 31, 2025, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 3019 Jeff Davis Page Dr.

Tax Map # 115-00-00-142-000 City Richburg Zip 29729

County of Chester, State of South Carolina.

THE LANDLORD TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. RENT. Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:
(a) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 1 day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be Six Thousand, Two Hundred Dollars (\$ 6,200.00).

(b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: 2% Yearly

(c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):

1. PROPERTY TAXES (choose one):
 TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees) over those assessed for the year of 2020 on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to 3% of gross sales, as herein defined, in excess of _____ Dollars, (\$ _____). In any lease year, Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-2). Tenant shall deliver to Landlord a certified copy of each

[Signature] TENANT, [Signature] TENANT, AND [Signature] LANDLORD HAVE READ THIS PAGE.



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ELECTRONICALLY FILED - 2020 Aug 25 1:44 PM - CHESTER - COMMON PLEAS - CASE#2020CP1200426

for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

7. LATE RENT. If rent is not paid within 5 days after due date, the Tenant is subject to a one-time late fee of Five Point Zero (5.000 %) percent of all rents due at that time.

2. SECURITY DEPOSIT. Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of (\$ 1.00) One

Dollars. Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT:

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for ~~Nightclub/Restaurant/Bar/Sandwich Club~~ and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity.

5. EXAMINATION OF PREMISES. Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. DELAY OF POSSESSION. If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by June 5, 2020, and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. TENANT'S PARKING. Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited as follows:

8. LIABILITY INSURANCE. Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance coverage of the Premises. Tenant agrees to pay upon demand as

 TENANT, [] TENANT, AND  LANDLORD HAVE READ THIS PAGE

additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:

Single Limit \$ 1,000,000.00 Aggregate \$ 3,000,000.00

A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease.

9. MAINTENANCE AND REPAIRS. Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment on the Premises to include the compressor, condensing unit, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning, and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. REGULATIONS AND SANITATION. Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers', invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow baiting on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. ALTERATIONS. Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc. which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.

 TENANT, [] TENANT, AND [] LANDLORD HAVE READ THIS PAGE.

12. **ASSIGNMENT OR SUBLEASE.** Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.



13. **SIGNS OR AWNINGS.** Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement.

14. **WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. **RULES AND REGULATIONS.** Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment that may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. **RIGHT OF ENTRY.** Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notices, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. **LIENS.** Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

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18. **DAMAGE OR DESTRUCTION OF PREMISES.** If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence. Insurance proceeds, if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.

19. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

20. **CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.

21. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Premises, or any equipment, or, such as may result from any accident in or about the Premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the Premises is a part.

22. **HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

23. **EFFECTIVE DATE OF LEASE.** This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.

24. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessionary distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: Misty Bell 1013 W. Leigh St, Richmond, Va. 23220

Landlord Address: Roberto R. Rovira and/or L. Rovira 494 Taylor Creek Rd., Rock Hill SC 29738

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25. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental. Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. **ESTOPPEL.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. **DEFAULT.** If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord, or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord; or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. **ASSIGNMENT OF CHATTELS.** Tenant hereby pledges and assigns to Landlord all the furniture, fixtures, goods, equipment and chattels of Tenant which shall or may be brought or put on said Premises as security for the payment of said rent, and tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises when Tenant vacates

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shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

32. **ATTORNEY'S FEE.** In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

33. **AGENT.** Tenant acknowledges that Roberto Rovira and/or Lilia Rovira is the leasing/management agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. **BROKER LIABILITY LIMITATION.** Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

35. **SUBORDINATION, ATTORMENT, AND NON-DISTURBANCE.** Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the Premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosing thereof, and to the lessor in the event of a termination of any such ground lease.

36. **DEFINITIONS.** "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or sublessees, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

37. **ENVIRONMENTAL MATTERS.** Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, sublessees, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities in and around the Premises.

38. **AMERICANS WITH DISABILITIES ACT.** Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, so such compliance may be required to operate the Premises. Tenant further agrees to indemnify, defend and hold Landlord harmless against any claims, which may arise out of Tenant's

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failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

39. **SPECIAL STIPULATIONS.** Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): (See Addendum)

40. **SOUTH CAROLINA LAW TO GOVERN.** Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

41. **ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. **TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.**

42. **FACSIMILE.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

43. **SEX OFFENDER/CRIMINAL INFORMATION.** Parties agree that Brokers/Property Managers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers/Property Managers for failure to obtain or disclose sex offender or criminal information. Tenant and Landlord agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Tenant may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

44. **NON-RELIANCE CLAUSE.** Both Tenant and Landlord hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

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IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Tenant Starbuck LLC (Misty Bell Managing Member) Date _____ Witness to Tenant
Tenant's Email Address: misty@starbuckclub.com
Phone: (702)294-7850 Fax: _____

Misty Bell 4/5/2020
Tenant's Name _____ Date _____ Witness to Tenant
Tenant's Email Address: _____
Phone: _____ Fax: _____

Landlord Roberto Rovira & Lilia Rovira Date _____ Witness to Landlord
Landlord's Email Address: buick20730@yahoo.com
Phone: (803)280-6511 Fax: _____

LANDLORD'S AGENT AND COMPANY Roger Baldwin/Rogers Real Estate
TENANT'S AGENT AND COMPANY Michael Brown/Comerwealth Real Estate, LLC

GUARANTEE

As an inducement and, thus, a further consideration for the Landlord entering into this Agreement with the Tenant, the undersigned (jointly and severally, if more than one) hereby guarantees full performance by the Tenant and its heirs, successors, or assigns of all of the terms and conditions of the Agreement. The Landlord is not required to provide the Guarantor(s) with any notice provided for in the Agreement. In addition, this Guarantee is not waived by any delay that the Landlord has permitted the Tenant in satisfying its obligations under the Agreement. This Guarantee runs to the Guarantor's heirs, successors, and assigns and ensures to the benefit of the Landlord and its successors, and assigns. The Landlord and Tenant may agree to a modification of the Agreement without the approval of the Guarantor(s) provided that the obligation of the Guarantor(s) is not increased beyond the financial conditions contained in the Lease. This is a guarantee of payment and performance and not merely of collection of any term or condition of the Agreement that requires the Tenant to pay the Landlord any sum of money.

Misty Bell 4/5/2020 *AR*
GUARANTOR _____ Date _____ Witness to GUARANTOR
Misty Bell

GUARANTOR _____ Date _____ Witness to GUARANTOR

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ADDENDUM

PROPERTY: 3010 Jeff Davis Page Dr., Richburg, 29720

1) Undersigned Parties

- Landlord agrees to advise the Tenant of such said date prior to offering the property for sale.
- 5) Landlord to assist Tenant as needed in obtaining all required licenses and/or permits to continue present business operation. Failure of Tenant to acquire such licenses/permits will result in the voiding of lease, with 75% of any and all paid rents or advance rents being forfeited by Tenant.
- 6) Tenant to pay Landlord a yearly renewal fee of \$600 for SCB license, and pay the appropriate pro-rated amount as applicable for current license.
- 7) Tenant shall have a "True rent" unit period beginning June 8, 2020, until July 1, 2020.
- 8) Tenant to maintain kitchen equipment and must repair or replace as needed, with ownership of such equipment remaining with Landlord upon expiration of lease.
- 9) Tenant to pay 1st month's rent within 3 days after the signing of the lease.
- 10) Tenant to maintain and pay security monitoring service of their choice.
- 11) The existing sound system speakers will be removed by Tenant and placed in storage area above office area, with Landlord taking possession of mixing board.
- 12) Tenant will transfer all utilities into their name within 5 business days of the signing of this lease to include electric, water, natural gas, internet, phone, garbage disposal (waste management) and TV services (cable).
- 13) Tenant to remove all 4 TVs currently installed in the building, and return to Landlord.
- 14) In the event federal/state health authorities deem that due to the Corona Pandemic that Tenant cannot operate the business, the landlord will adjust the monthly rent to \$600 per month for up to two months. In the future, should government rulings prevent the club from operating, rent payments will be pro-rated based upon the government closing and opening guidelines. Regardless of the government guidelines, there will be a minimum of \$600 rent per month due from Tenant even if Tenant is not allowed to operate. Any act by Tenant that results in the government closing the business operation due to illegal activities or code violations, will not affect the Tenant's responsibility for payment of rent.
- 15) Tenant to have an independent certified HVAC technician check all HVAC units within 7 days of the signing of the lease, and Landlord agrees if needed, to pay for expense needed to deliver such units in good operating condition. After this inspection, Tenant will bear responsibility for the maintenance and / or, repair and replacement. Landlord is a certified HVAC technician and must be present during this initial HVAC inspection.

Date: 6/5/2020
 Signature: *[Handwritten Signature]*

Date: _____
 Signature: _____

Date: 6/4/2020
 Signature: *[Handwritten Signature]*

Date: 6/4/2020
 Signature: *[Handwritten Signature]*

Addendum

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

SIXTEENTH JUDICIAL CIRCUIT
Civil Action No. 2020-CP-12-00426

LILLIE ROVIRA and ROBERTO
ROVIRA,

Plaintiffs/ landlord,

vs.

MOTION TO DISMISS,
ANSWER and COUNTERCLAIM

MISTY BELL INDIVIDUALLY AND AS
GUARANTOR, and STARBELLA, LLC,

Defendants.

Defendants Misty Bell and Starbella, LLC, (hereinafter "Defendant" or "Tenant"), answer the Complaint filed by Lillie Rovira and Roberto Rovira, (hereinafter "Plaintiffs" or "Landlords"), and allege as follows:

MOTION TO DISMISS -- FIRST DEFENSE

The complaint fails to state a claim on which relief may be granted and, accordingly, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Specifically, the case is premature. Pursuant to the parties' Commercial Lease dated June 5, 2020 (the "Lease"), which is attached as Exhibit A to the Complaint, as a prerequisite and condition precedent to a default, Landlord is required by paragraph 30 of the Lease to provide written notice to Tenant, and Tenant is allowed 5 days from the written notice to cure any non-payment of rent. Plaintiffs/Landlords failed to give the written notice and opportunity to cure, and therefore its Complaint must be dismissed.

SECOND DEFENSE

All allegations that are not expressly admitted to herein are denied. Defendants respond to the numbered paragraphs of the complaint below.

1. Admitted upon information and belief.
2. With respect to the allegations of paragraph 2, Defendants admit that Misty Bell is managing member of Starbella, LLC and that Ms. Bell is a resident of the State of Virginia. Except as expressly admitted herein, the remaining allegations of the paragraph are denied.
3. With respect to the allegations of paragraph 3, Defendants admit that Starbella, LLC is a South Carolina limited liability company, and that the parties executed a Commercial Lease for the referenced premises. Except as expressly admitted herein, the remaining allegations of the paragraph are denied.
4. With respect to the allegations of paragraph 4, the Defendants admit that this Court has jurisdiction over the matters. Except as expressly admitted herein, the remaining allegations of the paragraph are denied.
5. Admitted.
6. With respect to the allegations of paragraph 6, the terms of the Lease speak for themselves and Defendants deny any and all allegations inconsistent therewith.
7. Denied.
8. Denied.
9. Denied.
10. Denied.
11. Denied.

12. The above allegations/responses are re-stated and incorporated by reference as if set forth verbatim.
13. Admitted.
14. Denied.
15. Denied.
16. Denied.
17. Denied.
18. Denied.
19. Denied.
20. The above allegations/responses are re-stated and incorporated by reference as if set forth verbatim.
21. With respect to the allegations of paragraph 21, Defendants admit that their intent is to operate a business in the premises, but it has been prevented from doing so by the actions of the Plaintiffs, as set forth in the Counterclaims.
22. With respect to the allegations of paragraph 6, the terms of the Lease speak for themselves and Defendants deny any and all allegations inconsistent therewith.
23. Denied.
24. Denied.
25. Denied.
26. Denied.
27. The above allegations/responses are re-stated and incorporated by reference as if set forth verbatim.
28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. The above allegations/responses are re-stated and incorporated by reference as if set forth verbatim.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

AFFIRMATIVE DEFENSES

1. Plaintiffs have failed to state a claim for which relief can be granted.
2. Plaintiffs failed to provide to provide Defendants with notice and an opportunity to cure, as required by the Lease.
3. Plaintiffs have refused tenders of rent and attempts by Tenant to pay the rent, and accordingly any breach was procured by the conduct of Plaintiffs
4. Plaintiff's claims are barred by the statute of frauds.
5. Plaintiff's claims are barred by the doctrines of waiver, estoppel, laches, release and/or unclean hands.
6. Plaintiff's claims are barred by the Plaintiff's breaches of contract(s), as set forth herein.
7. Plaintiff's claims are barred by the doctrine of payment.
8. Plaintiff's claims are barred by the doctrine of accord and satisfaction.

9. Plaintiffs' claims against the guarantor fail because of no liability on behalf of the primary obligor, and guarantor asserts all such defenses.

COUNTERCLAIMS AND ADDITIONAL DEFENSES

The previous allegations of the Answer are incorporated herein by reference to the extent not inconsistent with the allegations of the counterclaims.

1. Defendant Starbella, LLC entered into a binding Commercial Lease with Plaintiffs to lease the premises located at 3019 Jeff Davis Page Drive in Richburg, South Carolina. The Lease was drafted by the Plaintiffs.
2. Defendant Starbella paid Plaintiffs the amount of \$12,400.00 at the time of the execution of the Lease, which was to be applied half to the end of the Lease term, and half to the beginning of the Lease term. Pursuant to the terms of the Lease, rent payments were to begin on July 1, 2020.
3. Pursuant to the Lease, Addendum paragraph 7, Defendant immediately began to upfit the premises and invested significant amounts of money into improving the flooring, walls, and otherwise making improvements in reliance upon the five-year Lease with an option to renew for an additional five-year term.
4. The Lease at Addendum paragraph 5 provides, "Landlord to assist Tenant as needed in obtaining all required licenses/permits to continue present business operation."
5. Pursuant to the Lease, Addendum paragraph 6, Plaintiffs were required to supply Defendant with a SOB license so that Defendant could operate the adult business

- expressly described in Paragraph 4 of the Lease. Defendant is required to pay a yearly fee of \$500 for Plaintiffs to supply this necessary SOB license.
6. The Lease at Addendum paragraph 14 provides for the contingent that due to the "Corona Pandemic" the Defendant cannot operate its business, then "the Landlord will adjust the monthly rent to \$500 per month for up to two months." In addition, Addendum 14 provides that "should government rulings prevent the club from operating" then rent will be prorated, but to a minimum of \$500 per month.
 7. The Lease at Addendum paragraph 4 gives Defendant a right of first refusal to purchase the premises if Plaintiff receives an offer to purchase the premises from a third party.
 8. After Defendant made significant improvements to the premises in June 2020, as expressly anticipated by the Lease, the Defendant was unable to operate its business in July of 2020, for two reasons, both of which were addressed by Addendum Paragraph 14 of the Lease. First, the Corona Pandemic prevented the business from operating at that time. Second, Plaintiff had failed to provide the required SOB license to Defendant as required by Addendum Paragraph 6 of the Lease.
 9. Accordingly, pursuant to Addendum Paragraph 14, rent of \$500 was due for July 2020. Instead, Defendant paid rent of \$6,200 for July, constituting an additional rent pre-payment of \$5,700. Because Defendant had already paid \$6,200 attributable to the beginning of the Lease, after \$500 was deducted from the pre-paid amount, at that time Tenant still had a pre-paid balance of \$11,900 attributable to the beginning of the Lease term.

10. Despite the requirement in the Lease that Plaintiffs provide Defendant with a SOB license, Plaintiffs failed to do so, and therefore breached the Lease. The parties determined that according to "government rulings," i.e., Chester County ordinances and rulings thereon, Plaintiffs could not provide Defendant with the SOB license that it was required to operate its business.
11. Despite the failure and breach by Plaintiffs, Defendant was willing to attempt to overcome the Plaintiffs' breach and mitigate its damages by attempting to get the SOB license in its own name. Defendant began the process to do so, which required the cooperation of Plaintiffs, which assistance was expressly required by Addendum Paragraph 5 of the Lease. Plaintiffs initially withdrew the SOB license that was in their name for the premises, which allowed Defendant to attempt to get the license in its name.
12. Defendant applied for the SOB license with Chester County, and was able to get a hearing scheduled for the September 2020 meeting of the applicable Chester County board. Because of the governmental requirements, Defendant could not operate its business until it obtained the SOB license, which Plaintiffs were required to provide under the Lease.
13. In August 2020 pursuant to the terms of the Lease, Defendant was required to pay rent of \$500. Defendant already had a pre-paid rent balance of \$11,900 at that time, as set forth above. Out of an abundance of caution, Defendant attempted to pay an additional \$500 for August rent. Inexplicably, Plaintiffs refused the tender of rent from Defendant.

14. Later in August 2020, Plaintiffs renewed the SOB license in their name, thereby preventing the Defendant from possibly getting the license in its name. This action was wrongful and in breach of the Lease because (i) it violated Plaintiff's duty under the Lease to assist the Defendant to obtain required licenses, and (ii) it continued the breach of Plaintiff's failure to provide the Defendant with an SOB license that it could use to operate.
15. In September 2020, pursuant to the terms of the Lease, Defendant was required to pay rent of \$500. Defendant already had a pre-paid rent balance of \$5,200 at that time, as set forth above (if the \$500 owed for August is deducted from the amount pre-paid). Out of an abundance of caution, Defendant attempted to pay an additional \$500 for September rent. Again, Plaintiffs refused the tender of rent from Defendant.
16. Because of Plaintiffs' wrongful conduct in renewing the SOB license in their name for the premises, the hearing that had been scheduled in September on Defendant's application for the SOB license was cancelled by Chester County officials.
17. Despite repeated demands by Defendant for Plaintiffs to comply with the Lease and cooperate with Defendant to obtain the SOB license that Plaintiff was contractually required to provide, Plaintiff has failed to do so, and in fact has wrongfully sought to evict the Defendant.
18. Upon information and belief, Plaintiffs are wrongfully attempting to evict Defendant without any basis to do so because Plaintiffs want to appropriate the

upfit and improvements that Defendant made to the premises, and to attempt to eliminate Defendant's right of first refusal to purchase the premises.

19. As a result of Plaintiffs' wrongful conduct, Defendant has suffered extensive damages, including up-fit expenses in excess of \$80,000 and lost profits in a amount to be proven, and expected to be in excess of \$162,300.00 per month, which amount continues to accrue.

FIRST COUNTERCLAIM
(Breach of Contract)

20. The above allegations are re-stated and incorporated herein by reference as if set forth verbatim.
21. Plaintiffs were required to provide Defendant with an SOB license to operate its business on the leased premises. Plaintiff breached the Lease by failing to provide Defendant with an SOB license.
22. Plaintiffs were required by the Lease to assist Defendant to obtain all licenses it required to operate its business on the premises. Plaintiff breached the Lease by failing to assist, and in fact by hindering Defendant's attempts to obtain required license(s).
23. Plaintiffs were required by the Lease to provide Defendant with Notice and an opportunity to cure any alleged breach of the Lease, including alleged non-payment of rent. Plaintiff breached the Lease by filing a complaint to evict without providing the required Notice.
24. As a direct and proximate result of the breaches by Plaintiffs, Defendant has suffered damages in an amount to be proven at trial, such amount to include costs

of improvements to the premises, lost profits, return of pre-paid rents, pre-judgment interest and post-judgment interest, and its attorneys' fees and costs.

SECOND COUNTERCLAIM

(Breach of Contract Accompanied by Fraudulent Act)

25. The above allegations are re-stated and incorporated herein by reference as if set forth verbatim.
26. The Lease is a binding agreement between the Parties. Plaintiffs have breached the Lease as set forth herein. Defendant has suffered damages as a direct and proximate cause of Plaintiffs' breach of contract.
27. Plaintiffs engaged in deceptive, wrongful, false and misleading conduct in an attempt to benefit from the improvements made by Defendant, the pre-payments made by Defendant, and the right of first refusal negotiated for by Defendant.
28. The fraudulent acts of Plaintiffs occurred at or near the time of the breach and constitute breach of contract accompanied by fraudulent act.
29. Defendant is entitled to all direct, proximate, and consequential damages caused by the breach of contract accompanied by fraudulent act including lost profits, costs of improvements and pre-paid rents, plus punitive damages, plus pre-judgment and post-judgment interest, attorneys' fees and costs, in an amount to be proven at trial.

THIRD COUNTERCLAIM

(Quantum Meruit/Unjust Enrichment)

30. The above allegations are re-stated and incorporated herein by reference as if set forth verbatim.

31. Defendant conferred a benefit upon the Plaintiffs by making improvements to the premises, pre-paying rent, and otherwise improving and enriching the Plaintiffs
32. Plaintiffs realized the benefit thereof, and it would be inequitable for Plaintiffs to retain the benefits without paying the value thereof.
33. Defendant is entitled to recover damages under the equitable doctrines of Quantum Meruit, Implied Contract and/or Unjust Enrichment in an amount to be proven, plus interest, costs and attorneys' fees that continue to accrue.
- FOURTH COUNTERCLAIM
(Unfair Trade Practices Act Violation)
34. The above allegations are re-stated and incorporated herein by reference as if set forth verbatim.
35. As set forth herein, Plaintiffs engaged in a pattern of deceptive and wrongful conduct designed to get Defendant to make extensive improvements to the premises and to pre-pay a significant amount of rent. The wrongful, unfair and deceptive conduct of the Plaintiffs induced the Defendant to expend significant amounts of money to improve the premises and to pre-pay rent to the Plaintiffs.
36. Plaintiffs' unfair and deceptive conduct was in the practice of trade or commerce, and was done in bad faith and with the intent to cause the Defendant harm.
37. Plaintiffs' wrongful conduct is capable of repetition and has an impact on the public interest. Defendant has suffered extensive damage as a direct and proximate cause of Plaintiffs' conduct.
38. Defendant is entitled to recovery of its actual damages as set forth herein, plus treble damages under the statute, plus attorneys' fees, plus pre-judgment and post-judgment interest.

WHEREFORE, the Defendants pray that this Court award it the following relief:

- (1) Dismiss the Plaintiffs' complaint with prejudice;
- (2) Award damages on Defendant's Counterclaims;
- (3) Award the Defendant punitive damages, and costs and attorneys' fees; and
- (4) Grant such other relief in favor of the Defendant as the Court may deem just and appropriate.

Respectfully submitted this 30th day of September, 2020.

s/Brian S. McCoy
Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
(803) 366-2280
ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
Lillie Rovira and Roberto Rovira,)	
	)	C/A NO. 2020-CP-12-00426
Plaintiffs/Landlord)	
)	
-vs-	)	<u>REPLY TO COUNTERCLAIMS</u>
)	
Misty Bell individually and as guarantor,)	
And STARBELLA, LLC,)	
)	
Defendants.)	

In Reply to the Answer and Counterclaims filed by Defendants September 30, 2020 the Plaintiffs would show as follows:

FOR A FIRST DEFENSE
(Qualified Responses)

1. All Counterclaim allegations not hereafter addressed or qualified are expressly denied with Plaintiffs demanding strict proof of the allegations.
2. Plaintiffs deny the allegations of the First Counterclaim (Breach of Contract) paragraphs (20) through (24), and demand strict proof.
3. Plaintiffs deny the allegations of the Second Counterclaim (Breach of Contract by Fraudulent Act) paragraphs (25) through (29), and demand strict proof.
4. Plaintiffs deny the allegations of the Third Counterclaim (Quantum Meruit and Unjust Enrichment) and demand strict proof of the allegations.
5. Plaintiffs deny the allegations of the Fourth Counterclaim (Unfair Trade Practices Act Violation) and demand strict proof. Plaintiffs incorporate by reference its Motion to Dismiss and/or Motion to Strike set forth below, second defense.

FOR A SECOND DEFENSE

First Affirmative Defense

[Motion to Dismiss – Rule 12(b)(6)]

[Motion to Strike Fourth Counterclaim – SCUTPA Claims]

6. Defendants' Counterclaims fail to state a cause of action for which relief can be granted and should be summarily dismissed, with attorneys fees and costs taxed against Defendants.
7. That Defendants' Fourth Counterclaim should be stricken and dismissed as the SCUTPA is not available to address conduct that affects only parties to the lease and not public interest, providing no basis for a SCUTPA claim. *Bessinger v. Food Lion, Inc.*, 305 F.Supp. 2d 574 (D.S.C. 2003), cert. den., 544 U.S. 1044, 125 S.Ct. 2270, 161 L. Ed. 2d 1080 (*conduct that affects only parties to a transaction and not public interest provides no basis for SCUTPA claim*).
8. That Defendant's Fourth Counterclaim should be stricken and dismissed as the SCUTPA is inapplicable to "[a]ctions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State..." including governmental boards of Chester County. *See*, S.C. Code Ann. §39-5-150, et. seq.

FOR A THIRD DEFENSE

Second Affirmative Defenses

(Equity – Estoppel / Waiver / Laches)

9. The above allegations are re-stated and incorporated by reference as if set forth verbatim.
10. The counterclaims of the Defendants are or may be barred, in whole or in part, by the legal doctrine of Equity, including, Estoppel, Waiver and the legal doctrine of Laches, here pleaded as first reply counterclaim.

FOR A FOURTH DEFENSE

SECOND COUNTERCLAIM AGAINST DEFENDANTS

(Breach of Contract Accompanied by Fraudulent Act)

11. Plaintiffs re-assert the above qualified responses and defenses and would respectfully show that Starbella's LLC and Defendant Misty Bell continued to operate a Sexually Oriented Business ("SOB") outside of the leased premises while refusing to pay Plaintiff's rent of \$6,200 as required by the lease.
12. That Defendants' conduct constitutes breach of the Lease and contract, accompanied by Fraudulent Act, to wit :

- a. Defendants continued to operate a sexually oriented business (“SOB”) for profit outside of the business premises, falsely utilizing Covid-19 and licensure failures of the Defendant as legal justification for nonpayment of rent.
 - b. Defendants have locked out Plaintiffs from the premises and Defendants have made material alterations to the premises without permission and in violation of the lease, without permission, and without a valid option to purchase. Plaintiffs incorporate by reference its Second Defense, supra.
 - c. That as a direct and proximate result of Defendants’ wrongful conduct, the Plaintiffs have sustained and are continuing to sustain financial damage and have suffered damage to the facility owned by Plaintiffs.
13. That Plaintiffs provided Defendants with Notice and Opportunity to Cure. That Defendants offered then refused to escrow the full amount of rent and continue with operations under the Lease under proper rent of \$6,200 per month.
14. Plaintiffs are informed and believe that they are entitled to an award of all actual, compensatory, consequential and *punitive* damages as against Defendants.

FOR A FIFTH DEFENSE

Second Legal Counterclaim – Violation of Frivolous Proceedings Act
S.C. Code Ann. §15-36-10, et. seq.

15. Plaintiffs assert that Defendant has asserted counterclaims which have no proper basis in law for fact and that said claims are designed for delay, harassment, oppression and are in bad faith where no reasonable objective party would advance the same.
16. That Plaintiffs are informed and believe that Defendants’ Counterclaims are frivolous in nature and brought for improper delay or bad faith purpose where Defendant continue non-payment of rent to Plaintiffs upon false legal justifications and/or excuse which have no legal merit.
17. That should Plaintiffs be the prevailing party as against Defendants’ counterclaims, including alleged SCUTPA violations, that Plaintiffs recover from Defendants all costs and attorneys fees of this action pursuant to S.C. Code Ann. 15-36-10, et. seq.

WHEREFORE, having set forth Plaintiffs' Answer and Reply to Counterclaims, the Plaintiffs pray for the following relief to issue under Order of the Court :

1. For trial of the aforementioned matters before the court non jury.
2. That this court ascertain and determine the rights of the parties and ORDER EVICTION of the Defendants from the premises.
3. For judgment as against Defendant Misty Bell under Plaintiffs' Reply Counterclaims listed above.
4. That Plaintiffs be awarded judgment as against Defendants, jointly and severally, for all damages sustained by Plaintiffs by and through Defendants' wrongful conduct, pursuant to Plaintiffs' Reply Counterclaims.
5. For an ORDER granting Plaintiffs immediate right to re-enter and inspect damages and alterations to the premises made by Defendants.
6. For such other and further relief in favor of the Plaintiffs as the court may deem just and proper under the circumstances.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.

/s/ J. Cameron Halford
J. CAMERON HALFORD
S.C. BAR ID. 17184
4609 Charlotte Highway, Suite 1
Lake Wylie, South Carolina 29710
803-831-2738
803-831-0180
Email: cam@hoblaw.com

August 25, 2020
Lake Wylie, South Carolina

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I am the attorney for the Plaintiffs in the above matter and that I did on October 20, 2020 electronically filed serve notice of the above Plaintiff Reply to Counterclaims upon counsel as listed below by e-mail:

Brian McCoy, Esq.
McCOY LAW FIRM, LLC
378 E. Main Street,
Rock Hill, South Carolina 29730

ATTORNEY FOR DEFENDANTS

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.

J. CAMERON HALFORD
/s/ J. Cameron Halford, Esq.
4609 Charlotte Highway, Suite 1
Lake Wylie, South Carolina 29710
(803) 831-
(803) 831-0180 fax
e-mail: cam@hoblaw.com

5.1 Immediately upon delivery of the final payment to Plaintiffs' counsel, the Parties shall
(a) Execute and file a Stipulation of Dismissal, with prejudice, of this action, including all claims and counterclaims
(b) The parties shall execute and deliver a Mutual Complete Release of All Claims that were filed or could have been filed in the pending lawsuit with provisions that are typical in a full mutual release.

5.2 Each party hereto shall bear all of its own attorney's fees, expenses and other costs arising from this lawsuit or dispute

6 This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina

7 This Agreement, including this provision, shall not be modified or amended in any respect unless in writing signed by the parties

8 This Agreement constitutes and contains the entire agreement between the parties hereto. The terms contained herein are contractual and are not mere recitals, and shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto

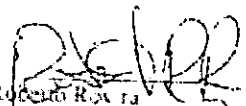
9 The parties acknowledge and agree that this Agreement was entered into in order to resolve disputed claims, that neither party has admitted liability, and that this Agreement shall not be construed as an admission of liability on the part of either party


10 The parties acknowledge and agree that they have read, know and understand the contents of this Agreement, that they have consulted with counsel with respect thereto, that they have voluntarily executed this Agreement and that the signatories thereto are authorized and competent to do so

11 This Agreement may be executed in one or more counterparts

This the 19th of November, 2020

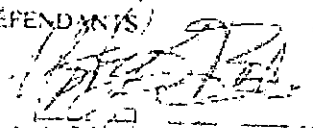
PLAINTIFFS



Roberto Rivera


Lillie Rivera

Cathy Jo Ventresca
Cathy Jo Ventresca, LLP
Notary Public for SC
Exp 05-05-2025

DEFENDANTS


Starbella, LLC (by Misty Bell, member)


Misty Bell, individually

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
 Lillie Rovira and Roberto Rovira,)	
Plaintiffs/Landlord	)	C/A NO. 2020-CP-12-00426
)	
-vs-	)	NOTICE OF MOTION AND MOTION
	)	TO COMPEL AND ENFORCE
Misty Bell individually and as guarantor,	)	SETTLEMENT
And STARBELLA, LLC.)	
)	
Defendants.)	
-----)	

Plaintiffs here move the court for an Order to Compel and Enforce Settlement entered into by and between Plaintiffs and Defendants and would respectfully show the court as follows:

FACTUAL BACKGROUND

This case arises out of a Commercial Lease dated May 20, 2020. Defendants agreed to lease 3019 Jeff Page Drive, Richburg, South Carolina 29729 for a gentlemen’s club, bar and restaurant business to be operated by defendants for the term of June 25, 2020 to May 31, 2025. Rent payments ceased in July, 2020 and Plaintiffs filed its Summons and Complaint on November 20, 2020. Defendants timely answered and filed counterclaims.

The parties mediated this dispute on November 19, 2020. Pursuant to mediated settlement, Plaintiff assisted defendant secure a sexually oriented business (“SOB”) licensure, and agreed to continue with defendants under the lease with the terms and conditions of the lease remaining in full force and effect.

PROCEDURAL BACKGROUND

1. That pursuant to the mediated settlement, Defendants agreed to the condition that Defendants would pay \$6,200 per month in rent for Six Thousand Two Hundred Dollars (\$6,200.00), beginning February 1, 2021 and continuing through the lease term May 31, 2025.
2. Defendants did not and have not paid full rent for the months of February 1, 2021 and March 1, 2021 having offset rent in violation of the lease and mediated settlement.
3. On information and belief, defendants have further damaged the premises, fixtures and equipment at the facility belonging to Plaintiffs.
4. Plaintiffs are informed and believe that Defendants are, again, in breach of the lease terms and have breached the settlement agreement reached at mediation.
5. Plaintiffs seek an Order compelling defendants' strict compliance with the mediated settlement and lease, or alternatively seek eviction and that defendants vacate pursuant to the causes of action as filed in the Complaint.

WHEREFORE, the Plaintiffs seek an Order of the court to compel and enforce defendant strict compliance with the settlement memorandum and lease, including attorneys fees and costs of bringing this matter before the court.

Respectfully submitted,

HALFORD & NIEMIEC, L.L.P.

s/ J. Cameron Halford
J. CAMERON HALFORD
S.C. BAR ID. 17184
4609 Charlotte Highway, Suite 1
Lake Wylie, South Carolina 29710
803-831-2738
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March 10, 2021
Lake Wylie, South Carolina

COPY

ELECTRONICALLY FILED - 2021 Mar 12 10:59 AM - CHESTER - COMMON PLEAS - CASE#2020CP1200426

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF CHESTER)	
Lillie Rovira and Roberto Rovira,)	
	)	C/A NO. 2020-CP-12-00426
Plaintiffs/Landlord)	
)	
-vs-	)	STIPULATION OF DISMISSAL
	)	WITH PREJUDICE
Misty Bell individually and as guarantor,)	
And STARBELLA, LLC,)	
)	
Defendants.)	

This matter having been resolved by mediated settlement between the parties, counsel for Plaintiff and Defendants here authorize the clerk of court for Chester County Common Pleas to Dismiss this case with prejudice.

J. Cameron Halford, Esq.
/s/ J. Cameron Halford
 HALFORD & NIEMIEC, L.L.P.
 4609 Charlotte Avenue, Suite 1
 Lake Wylie, South Carolina 29710
 803-831-2738
 March 12, 2021

Brian McCoy, Esq.
/s/ Brian McCoy
 McCOY LAW FIRM, LLC
 378 E. Main Street,
 Rock Hill, South Carolina 29730
 ATTORNEY FOR DEFENDANTS
 March 12, 2021

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
2021-CP-12- ____

Starbella, LLC,

Plaintiff,

vs.:

Lillie Rovira and Roberto Rovira,

Defendants.

COMPLAINT

The Plaintiff, Starbella, LLC, through its undersigned attorney, hereby submits its complaint against the defendants above named, and alleges:

1. The Plaintiff is a South Carolina limited liability Company.
2. The defendants are residents of Chester County, South Carolina.
3. The subject of the lawsuit is commercial property located at 3019 Jeff Davis Page Drive, Richburg, Chester County, South Carolina (the "Property" or the "Premises"). Defendants are the owners of the Property.
4. Prior to June 2020, Plaintiff and Defendants negotiated a Lease for the Premises for Plaintiff to operate a gentlemen's club on the Premises. Defendants had previously operated such a club on the Premises.
5. Before executing the Lease, Plaintiff inquired whether there were any problems with the condition of the Premises, particularly anything latent or not visible. Defendants informed Plaintiff that they were unsure of the operating conditions of the HVAC system and the kitchen appliances. Defendants specifically represented that

otherwise the condition of the Premises was in good working condition and that the club was "good to go."

6. Plaintiff was diligent and had a non-destructive inspection performed on the Premises. Nothing of significance was discovered in this typical commercial inspection.

7. Based upon the representations of Defendants, on or about June 5, 2020, the Parties executed a Commercial Lease for the Property. Plaintiff was entitled to occupy the Premises beginning June 5, 2020 in order to upfit the Premises.

8. Rent was to commence on July 1, 2020, subject to certain provisions relating to the Coronavirus pandemic and the ability of Plaintiff to obtain a Sexually Oriented Business ("SOB") license from Chester County in order to operate the business on the premises.

9. A dispute ensued between the parties regarding the Coronavirus provision and the requirement of Plaintiff to pay full rent pursuant to that provision, and regarding Defendants' obligations regarding withdrawal or transfer of the SOB license. The dispute resulted in a lawsuit filed by Defendants to evict Plaintiff and Plaintiff's counterclaims for damages in case number 2020-CP-12-00426. That lawsuit was resolved between the parties and resulted in a settlement agreement entered into between the parties on or about November 19, 2020. Plaintiff was unable to obtain a SOB license until the settlement was reached because Defendants retained the SOB license for the premises, and only one permit is allowed to be issued for a property.

10. Because of the lawsuit and Plaintiff's inability to obtain a SOB license until the settlement, Plaintiff was unable to open its business during this period.

11. On or about January 13, 2021, Plaintiff was issued a SOB license by Chester County. On or about January 15, 2021, Plaintiff was able to fully open for business. Almost immediately, the toilets experienced problems backing up and not flushing adequately. Plaintiff called a plumber assuming that it was normal blockage. However, they were informed that the plumbing was not the problem. Between the time that Plaintiff signed the Lease and the time that it was able to open for business, the toilet facilities had rarely been used. Therefore, Plaintiff was unaware that there was any problem relating to the sewage.

12. Sewage was backing up inside the Premises, and outside the premises sewage was accumulating on the ground near the building. Accordingly, Plaintiff promptly called multiple plumbing and sewage services. The companies indicated that the problem must be the grinder and lift pump that were not working and likely needed to be replaced.

13. Because of the sewage problems, the business was required to close on January 16, January 18 and January 19 while the sewage problem was investigated and diagnosed by plumbing/sewage entities. On January 26, January 27 and January 28 the business again was required to close while the extensive work was performed. The business lost at least \$20,000.00 due to the six days it was required to be closed because of the sewage problem.

14. The company retained to perform the work used a backhoe to dig deep into the ground in order to reach the pipes, grinder and pump. Those items were broken and needed to be replaced, but it also was discovered that the system leading to the grinder and tank, which connected to the County sewer system, had been unlawfully

diverted so that the sewage ran into a sort of unauthorized septic field. The diversion appeared to be intentional. Pursuant to SCDHEC and Chester County regulations and authorities, such a diversion into a septic field was illegal and had to be corrected immediately. The companies that provided quotes said that if the illegal diversion was not replaced and connected back to the County sewer system, they would be required to report it to appropriate authorities, and that the health department would shut the business down and perhaps issue fines or bring charges against the owners of the property.

15. Because of the emergency nature of the situation and the severe consequences of the violation, Plaintiff promptly obtained three quotes, and had the work performed by the lowest bidder.

16. The total cost of the repairs was \$14,837.13, which was paid by Plaintiff.

17. Plaintiff was informed by patrons of the business that when Defendants had operated the business before renting the Premises to Plaintiff, the establishment has toilet backup problems and sewage problems. Thus, Defendants were aware of the problem and specifically misrepresented the condition to Plaintiff.

18. Plaintiff demanded repayment of the sewage repair costs from Defendants, and even suggested that it could be repaid by a rent reduction of \$2,000 per month until the balance was repaid (without interest). Defendants initially acknowledged that they were responsible for the repairs, but ultimately Defendants failed and refused to pay the expenses incurred by Plaintiff to fix the illegal sewage system created by Defendants.

19. Prior to executing the Lease Plaintiff acted prudently in inspecting the premises, but it was not possible to discover the illegal underground diversion or

drainfield without extensive and deep digging utilizing a backhoe, which was not permitted by Defendants.

FIRST CLAIM FOR RELIEF
(Fraud)

20. The allegations above are incorporated herein by reference verbatim as if fully set forth herein.

21. As set forth herein, prior to the execution of the Lease, Plaintiffs asked about the condition of the Premises and Defendants expressly represented to Plaintiff that other than the HVAC system and kitchen appliances, that everything was in good working condition and that the club was "good to go."

22. The representation was false because the latent broken and unlawfully diverted sewage system was not in working order, and in fact was illegal and buried underground.

23. The truth was material to the Plaintiff.

24. Defendants knew of the condition that they failed to disclose, as demonstrated by information provided by prior patrons and the intentional nature of the unlawful diversion of the sewage lines.

25. Defendants intended that the representation be acted upon and they benefitted by procuring Plaintiff to sign the Lease with particular terms and particular amount of rent.

26. Plaintiff was not aware of the falsity.

27. Plaintiff relied on its truth because the reasonable inspection performed by Plaintiff could not possibly have revealed the latent problems with the sewer system

28. Plaintiff had a right to rely thereon.

29. The representations, material omissions and conduct of the Defendants constitutes fraud and fraud in the inducement.

30. As a direct and proximate result of the fraud committed by Defendants, Plaintiff has suffered actual damages in the amount of \$14,837.13, plus over \$20,000.00 in lost revenues, plus an award of punitive damages in an amount to be awarded by the jury and not to exceed an additional \$60,000.00.

SECOND CLAIM FOR RELIEF
(Unfair Trade Practices Act)

31. The allegations above are incorporated herein by reference verbatim as if fully set forth herein.

32. As set forth herein, Defendants engaged in deceptive and wrongful conduct designed to get Plaintiff to execute the Lease, and to do so on terms favorable to the Defendants.

33. Defendants' unfair and deceptive conduct was in the practice of trade or commerce, and was done in bad faith and with the intent to cause the Plaintiff harm.

34. Defendants' wrongful conduct is capable of repetition and has an impact on the public interest. Defendants are owners of commercial real estate and advertised it to the public for lease. Defendants' have engaged in the conduct in the past, and as they are still owners of the commercial property, they could again engage in the unfair trade practices after the termination of the Lease with Plaintiff.

35. Plaintiff has suffered extensive damage as a direct and proximate cause of Plaintiffs' conduct.

36. Plaintiff is entitled to recovery of its actual damages of \$14,837.13, plus over \$20,000.00 in lost revenues, as set forth herein, plus treble damages under the

statute, which would total over \$104,511.00, plus attorneys' fees and costs, plus pre-judgment and post-judgment interest.

Respectfully submitted this the 19th day of March, 2021.

McCOY LAW FIRM, LLC
Attorney for Plaintiff

By: /s Brian McCoy
Brian S. McCoy, Esq.
378 E. Main Street
Rock Hill, South Carolina 29730
Telephone: (803) 366-2280
bmccoy@mccoylawfirm.com

ELECTRONICALLY FILED - 2021 Mar 19 4:06 PM - CHESTER - COMMON PLEAS - CASE#2021CP1200121

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER	)	SIXTH JUDICIAL CIRCUIT
STARBELLA, LLC,)	
Plaintiff,	)	CASE NO. 2021-CP-12-00121
-vs-	)	<u>MOTION TO DISMISS</u>
Lillie Rovira and Roberto Rivera,	)	RULE 12(A)
Defendants.	)	RULE 12(B)(6) – SCRPC

Defendants Lillie Rovira and Roberto Rivera, expressly reserving any and all affirmative defenses, defenses and/or counterclaims available pursuant to Rule 12(a) SCRPC, here moves the court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for an ORDER dismissing this action on the grounds that the issues raised in this action were resolved November 19, 2020 by mediated settlement agreement in case no. 2020-CP-12-00426 *Lillie Rovira and Roberto Rivera vs Misty Bell, and Starbella's LLC*.¹

This action was dismissed by consent of the parties after mediation, dismissal entered of record March 12, 2021. This action is subsequently been filed seven (7) days after the dismissal was agreed to by and through the parties' legal counsel.

Counsel here certifies that this motion being dispositive in nature no consultation is or was required pursuant to Rule 11 SCRPC. Defendants further seek to tax attorneys fees and costs of this action as against the Plaintiff for necessity of defending this action post settlement.

¹ Plaintiff's Complaint in this action §(9) accurately cites the 11/19/2020 mediated settlement agreement reached as to counterclaims of Starbella's in Case No. 2020-CP-12-00426. Viewed as true and admitted in favor of Plaintiff in this action any and all claims for damages that could or should have existed were resolved by agreement of the parties in case no. 2020-CP-12-00426 where these matters arise pursuant to lease and ratification of lease terms under mediated settlement.

Respectfully submitted.

HALFORD & NIEMIEC, L.L.P.

s/ J. Cameron Halford, Esq.

S.C. Bar Id. #17184

J. Cameron Halford

4609 Charlotte Highway, Suite 1

Lake Wylie, South Carolina 29710

803-831-2738

803-831-0180 (fax)

e-mail: cam@fortmilllaw.com

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
2021-CP-12- 00121

Starbella, LLC,

Plaintiff,

vs.

Lillie Rovira and Roberto Rovira,

Defendants.

**OPPOSITION TO MOTION TO
DISMISS**

The Plaintiff, Starbella, LLC, through its undersigned attorney, hereby submits its Opposition to Motion to Dismiss, and alleges:

SUMMARY

Defendants' Motion to Dismiss apparently is based upon the settlement of a previous case between the parties wherein the Defendants sued the Plaintiff for failure to pay rent. However, the dismissal of the previous case cannot possibly be a basis to dismiss this case because the facts giving rise to the present case occurred after the settlement of the previous case. Therefore the allegations of this case could not possibly have been asserted in the previous case. The Motion to Dismiss should be denied.

FACTS/ARGUMENT

1. Plaintiff is a tenant and the Defendants are landlords for a property operated by Plaintiff as a Gentlemen's Club.
2. In a previous case, Defendants filed an eviction case against plaintiff in case number 2020-CP-12-00426 filed on August 25, 2020. The Complaint asserted

claims for eviction for the breach of lease. Plaintiff answered and asserted counterclaims for breach of the lease by the landlords.

3. On November 19, 2020, the parties engaged in a mediation of the previous case and reached a settlement thereof.

4. Therefore, the first case was settled on November 19, 2020.

5. After the first case was settled, the tenant paid some back rent and was able to obtain a license to operate the Gentlemen's club. This allowed the club to open to the public on January 15, 2021.

6. Soon after opening for business on January 15, 2021, Plaintiff was operating the club and a severe septic and plumbing problem occurred. Plaintiff spent considerable sums of money to make repairs to the septic system on an emergency basis. The septic and plumbing issues that occurred on January 15, 2021 -- almost two months after the settlement of the first lawsuit -- is the subject of the pending lawsuit. See Complaint.

7. Thus, settlement of the first lawsuit two months before the septic and plumbing problems occurred cannot be a basis for dismissal of this lawsuit concerning the septic and plumbing. The Motion to Dismiss should be denied.

Respectfully submitted this the 26th day of May, 2021.

McCOY LAW FIRM, LLC

By: /s/ Brian McCoy
Brian S. McCoy, Esq.
378 E. Main Street
Rock Hill, South Carolina 29730
Telephone: (803) 366-2280
bmccoy@mccoylawfirm.com
Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
2021-CP-12- 00121

Starbella, LLC,

Plaintiff,

vs.

Lillie Rovira and Roberto Rovira,

Defendants.

**MOTION TO RECONSIDER,
ALTER OR AMEND ORDER
GRANTING DISMISSAL**

Plaintiff Starbella, LLC ("Plaintiff") hereby MOVES under South Carolina Rule of Civil Procedure 59, and other applicable law and court rules, for reconsideration, and to alter or amend the Form 4 Order filed June 18, 2021 granting the Defendants' Motion to Dismiss (the "Order"), and seeks rulings on the issues raised, on the following grounds:

1. Plaintiff filed a Complaint in this matter asserting valid claims against its landlords, Defendants, for faulty septic and plumbing conditions on the rented premises that could not have been discovered until after the Plaintiff was able to open its business.
2. Defendants filed a Motion to Dismiss that fails to assert a legal basis for dismissal, and fails to state with particularity the grounds therefor. In fact, the Motion merely states that the same parties were involved in a previous lawsuit concerning rent. While correct, the previous lawsuit has no bearing on this subsequent case with completely different facts and legal issues. The septic and plumbing problems were never mentioned in any way in the previous lawsuit, nor could they have been because they could not have been discovered until after the settlement of the first case was

complete. One of the terms of the settlement of the first case was for Plaintiff to obtain a license to operate its business. Until Plaintiff was able to operate its business, it was not aware of the septic and plumbing problems in the rented facility.

3. For the previous case to be a basis for dismissal of the present case, res judicata (and all elements thereof) would have to be proven by Defendants. It was not even argued, nor could the elements have been satisfied. Further, the Defendants did not produce evidence of a release. And indeed they could not have done so because there was no release executed by the parties.

4. The Defendants produced a settlement agreement between the parties relating to the previous rent case, but that document provides no basis for dismissal of the subsequent lawsuit. It is undisputed that all terms of the settlement were fulfilled, and the previous case was dismissed. It is also undisputed that the septic and plumbing problems that were discovered by Plaintiff *after* the terms of the settlement were fully completed were not known or referenced in any manner in the previous lawsuit. Plaintiff filed and submitted at the hearing a memorandum in "Opposition to Motion to Dismiss," which is incorporated herein by reference. The facts set forth in that Memorandum are not disputed and reveal that no legal basis exists for dismissal of this case.

5. Plaintiff Starbella, LLC requests the Court to withdraw the Form 4 Order granting Motion to Dismiss.

WHEREFORE, Plaintiff respectfully requests the Court to reconsider, alter, amend and withdraw the Order, rule on the issues raised herein and in the motion and memorandum in Opposition, and to deny the motion so that the Plaintiff may have the

process to which it is due under applicable law and constitutions, and for such other and further relief as the Court deems just and appropriate.

RESPECTFULLY SUBMITTED, this the 21st day of June, 2021.

McCOY LAW FIRM, LLC

By: s/Brian S. McCoy
Brian S. McCoy
Attorneys for Plaintiff
378 East Main Street
Rock Hill, SC 29730
Tel: (803) 366-2800

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STATE OF SOUTH CAROLINA - COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT - COUNTY OF CHESTER

STARBELLA, LLC)
) Case No.
 PLAINTIFF,) 2021-CP-12-00121
)
)
 V.)
)
)
) MOTIONS
 LILLIE ROVIRA)
)
)
 DEFENDANT)

May 26, 2021
Chester, South Carolina

B-E-F-O-R-E:

HONORABLE EUGENE C. GRIFFITH

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

BRIAN MC COY, ESQ.
Attorney for the Plaintiff

CAM HALFORD, ESQ.
Attorney for the Defendant

Maria DiScioscia, RPR
Official Court Reporter

1 (Hearing commenced May 26, 2021.)

2 THE COURT: This is a motion to dismiss.
3 Perhaps the issues were resolved in a prior case; is
4 that correct? Is that what this motion is about.

5 MR. HALFORD: May it please the Court, Cam
6 Harlford for the defendant, 2021-CP-12-00121.
7 Starbella, LLC, versus my clients, Mr. and Mrs. Lillie
8 Rovira.

9 Your Honor, you're correct, we did make the
10 motion premised on the fact that there was prior
11 litigation between these parties, that was case
12 2020-CP-46-00426, your Honor. There was a mediation.
13 There was a settlement reached in that mediation and the
14 case was dismissed. And I want to point out, in the
15 Court's record, "dismissed with prejudice" at that time.
16 The premise of our motion here, today, your Honor, is
17 this:

18 The plaintiff's are seeking to relitigate the
19 same matters they settled in the first case, and
20 Mr. McCoy may disagree with me there, but if you compare
21 the two complaints and answers in both cases, they both
22 raise similar claims, unfair trade practices, breach of
23 contract as to the lease.

24 Judge, this is commercial properties owned --
25 or a commercial property in Richburg owned by my client.

1 It is occupied by Starbella, which is a gentlemen's
2 club, if you will. And there is a lease between the
3 parties. I want to point out that that was ratified and
4 reaffirmed as part of the settlement.

5 Judge, I wouldn't be making a -- I've known
6 Mr. McCoy a very long time. We've got a great working
7 relationship. I wouldn't be making the motion if they
8 hadn't requested the fact that we dismiss the case with
9 prejudice. Prepared a dismissal, asked me to enter it.
10 In fact, I didn't enter these records because I wanted
11 to be respectful of opposing counsel's relationship with
12 his client as he has been with me and my client.

13 But they threatened to bring motions against
14 us had we not dismissed the case subsequent to the
15 mediation which was finalized and I have a copy, your
16 Honor.

17 Again, I didn't seek to admit of record in the
18 case as an exhibit but I've got a copy of a signed and
19 sealed mediation and settlement here. These matter's
20 were fully and firmly resolved back in the prior case
21 and we don't believe it should be on the roster.

22 The defendant's are asking for dismissal of
23 this matter. They are asking for attorney's fees,
24 Judge. There's a lease between the parties, which was
25 reaffirmed. My client's depend on this property for

1 their livelihood and they don't have the resources to be
2 fighting this over and over again.

3 THE COURT: This action was filed shortly
4 after the mediation and settlement agreement?

5 MR. HALFORD: Yes, sir. I believe the
6 mediated settlement agreement was signed off on. I
7 believe we filed dismissal in March. The case was
8 settled November 19, 2020, before the 1st of the year.

9 And again, I'm happy to pass these forward if
10 the Court would look at them. I don't want to admit
11 them in the record. They're emails between me and
12 Mr. McCoy where they're saying:

13 "Enter a dismissal in this case."

14 "May I file this with your signature?"

15 "We need to dismiss this with prejudice."

16 I said, "Sure."

17 Now, there was a mediated settlement. It
18 wasn't perfect but the parties did arrive at an
19 agreement and these matters have been resolved. This
20 case shouldn't be on the roster. My client should not
21 be having to defend the same issue that's arose
22 previously where these matters were resolved. So that's
23 the basis of the motion we're asking the Court to
24 dismiss.

25 THE COURT: All right. Mr. McCoy?

1 MR. MCCOY: May it please the Court, Your
2 Honor. Brian McCoy, I represent Starbella, LLC.

3 Your Honor, there was a previous lawsuit and
4 that lawsuit was brought by the landlords against my
5 client for unpaid rent. It was a breach of lease
6 contract. It was back when COVID hit and there were
7 some real issues in that case although we could have
8 opened state laws at that time. And that case was
9 resolved by a mediated settlement in November of 2019,
10 as Mr. Hartford testify.

11 Your Honor, there was no mention in that case
12 whatsoever with anything to do with the septic system
13 and the plumping. Okay? So after the case was settled,
14 my client's were then able to get the license in order
15 to open up for business. They did that in January of
16 2021. So well after the settlement, they opened their
17 business; and once they opened their business and people
18 started using the restrooms, they find major septic
19 problems, major plumping issues.

20 My clients then made emergency repairs,
21 incurred expenses for that and that's the basis of the
22 second lawsuit. Had nothing to do with the first
23 lawsuit. Was impossible to bring those claims in the
24 first lawsuit because it didn't occur until the first
25 lawsuit was fully settled.

1 Sure, we asked for that first case to be
2 dismissed with prejudice and both sides agreed to that.
3 This arose after that. It could not have been brought
4 in that first case. The time -- and your Honor, I'll
5 hand up, if I may, opposition that essentially is
6 setting forth the timelines just so you'll see, your
7 Honor.

8 THE COURT: How did they not know this was
9 going on?

10 MR. MCCOY: Pardon me?

11 THE COURT: Y'all were going through a
12 lawsuit, landlord/tenant, commercial property, there was
13 rent problems, how did they not know it was some septic
14 problem? How did this all of a sudden occur to your
15 client?

16 MR. MCCOY: Because they couldn't open for
17 business until that first lawsuit was settled. And if
18 you read through those pleadings, part of the dispute
19 also was getting an SOB, a sexual-oriented business
20 license for them to be able to open. They couldn't open
21 until after that lawsuit was settled. Part of the terms
22 of the settlement that Mr. Hartford mentioned in the
23 mediated settlement agreement have to do with the
24 landlords cooperating so that my client's could get the
25 business license. So they couldn't open until then and

1 they didn't open until two months after that settlement
2 agreement because they had to go to county council to
3 get approval for that license. They couldn't have
4 discovered those problem because they weren't open for
5 business.

6 Once they were open for business in January,
7 two months after the settlement agreement, that's when
8 they learned about the septic problems and had to have
9 it fixed on an emergency basis. So if you look at the
10 allegations --

11 THE COURT: I guess what I'm missing is or I
12 guess my question is this: If there's an ongoing lease
13 of unpaid rent and the business was trying to get up and
14 going -- it was not already going?

15 MR. MCCOY: It was not. It couldn't be. You
16 have to have this SOB license in order to operate and we
17 couldn't get it without their cooperation.

18 The first case, when it was settled, part of
19 the terms of the settlement was for them cooperate with
20 us to get the license and they did and we did. We went
21 before county council in December after the settlement.
22 They had to withdraw their license so we could get our
23 license. And we did go through that process in December
24 with their cooperation. They complied with the
25 agreement. Then we got the license in January and

1 opened for business, that's when the problems with the
2 septic occurred.

3 So it was impossible for them to have been
4 alleged in the first lawsuit. In the first lawsuit, you
5 won't see a mention of anything with a septic; it just
6 wasn't an issue. Once we got the license and could
7 open, that's when the issue occurred, once the business
8 opened.

9 So the allegations in the second lawsuit, the
10 pending lawsuit subject to this motion, could not have
11 been alleged in the first lawsuit and were not.

12 THE COURT: Okay.

13 MR. HALFORD: May it please the Court?

14 THE COURT: Certainly.

15 MR. HALFORD: There's no CDC order in this
16 state or anywhere else that says they can't operate a
17 gentleman's club at that location.

18 Second, they've been in possession since June
19 of last year, paying rent. The problem is they stopped
20 paying rent. Again, my client depends on the rent for
21 their livelihood.

22 Thirdly, Your Honor, if they didn't or were
23 not in there operating, as Mr. McCoy states, which we
24 believe to be incorrect, they would have noticed had
25 there been a problem. And you've hit on it: There was

1 is lease. There was a lease to begin with. The lease
2 was reaffirmed by mediated settlement. That places it
3 on the tenant, maintenance issues fall to the tenant in
4 this situation. So again, it's got no basis being
5 alleged here. Should've, would've or could've in the
6 prior lawsuit, I would have said fine, we haven't reach
7 settlement. Let's back off the mediated settlement.
8 Again, they asked for the case to be dismissed. They
9 could have raised these issues a long time ago.

10 Here, we're getting into issues over rent
11 again, where there is a contract between these people
12 which has been reaffirmed by his client. This just
13 needs to go away. My clients don't need to be expending
14 resources to litigate what they've got, which was a
15 settlement.

16 And by the way, as he states, the
17 sexually-oriented business license, my client's fully
18 complied. I personally had it sent to Chester. We did
19 everything they asked for in January of this year. Then
20 they asked us to dismiss. And by the way, these sewer
21 problems were raised in January, before, in February,
22 March, they asked us to dismiss this case. Should've,
23 would've, could've brought it. Didn't.

24 Your Honor, it has no place here. This case
25 needs to be dismissed.

1 MR. MCCOY: Your Honor, if I may just respond
2 to that?

3 Rent is not an issue in this case. Rent is
4 fully paid. My client expended funds after that first
5 case was fully settled. I don't understand. If you
6 look at the timing, the case was settled on November of
7 2020. These problems occurred after we got our license
8 -- and Mr. Hartford knows, you can't operate this
9 business without that license that we got in January.
10 So rent is not an issue --

11 THE COURT: But these folks had a license of
12 some type?

13 MR. MCCOY: They did. That's why we couldn't
14 operate because they had the license. This was all in
15 the first lawsuit that was settled. But yeah. They had
16 that license and part of the settlement was that they
17 had to cooperate and they did. And we got the license.

18 THE COURT: All that being said, if there was
19 a business operating in there and your client's had
20 possession and control of the building and use, even
21 though the license was an issue, was there not some
22 carryover during the licensing and re-licensing
23 period --

24 MR. MCCOY: The factual misstatement --

25 THE COURT: I'm certain some people were in

1 there using the plumbing --

2 MR. MCCOY: No. No.

3 THE COURT: It was a possession.

4 MR. MCCOY: No, no. It couldn't open. We had
5 possession. That's true. We could not open for
6 business without that SOB license. That's county rules.
7 We weren't going to operate it illegally. You can't
8 operate this business without that license. That
9 license was issued after the settlement as part of the
10 settlement. So we were not in there operating a
11 business.

12 You'll see that --

13 You keep throwing the license at me. The
14 building is there and they're in there using the
15 building, using the plumbing, whether it's a gentlemen's
16 club or a fishing club --

17 MR. MCCOY: It's not open for business, I'll
18 tell you that.

19 THE COURT: That's what I'm losing. I thought
20 they were running some type of business --

21 MR. MCCOY: No, your Honor.

22 THE COURT: -- and they had a business and they
23 had to surrender theirs so you can get a substitute
24 replacement license to run a new business?

25 MR. MCCOY: No. Well, so -- just so -- no

1 business ran in there in 2020. Okay? Unless there's
2 close -- so, like, in the first quarter of 2020, this
3 lease was entered into. We couldn't open because of
4 COVID and because we didn't have the license. They had
5 the license. We couldn't operate. I want to make sure
6 you're clear. No business was operating in there once
7 my client got possession until they got that license in
8 January 2021. So they frankly had possession but it
9 wasn't being used and they couldn't -- this problem
10 didn't even occur -- didn't occur until it opened for
11 business and people started using in it in 2021. So
12 well after this cases -- the prior case was settled.

13 THE COURT: All right.

14 MR. HALFORD: May it please the Court?

15 I'd like to pass forward both the mediated
16 settlement agreement and communications between their
17 counsel and me. And as of late March of this year,
18 Mr. McCoy states: "I've been instructed by my client to
19 file a motion to dismissed. Seek costs, fee, and
20 sanctions for your client's failure to dismiss as
21 required. Will you agree to dismiss this case with
22 prejudice?"

23 I would like to pass these forward, your
24 Honor.

25 THE COURT: How much money are you talking

1 about in repair?

2 MR. HALFORD: Again, I would not have an issue
3 with this, your Honor, and I know Mr. McCoy very well,
4 but the issue is, they've had possession of the premises
5 since June of last year; and secondly, they're the ones
6 asking for the dismissal after a mediated settlement
7 agreement.

8 And if you look at the mediated settlement
9 agreement, it bears the signatures of his clients and
10 mine. Judge, this case needs to be dismissed.

11 Thank you.

12 MR. MCCOY: I don't even understand that
13 argument, your Honor. The first case had a settlement
14 agreement that was complied with. And it says it will
15 be dismissed once it's complied with. So of course, I
16 said, we've got to follow the settlement and dismiss the
17 first case. I guess, really, is his argument that I
18 should have reopened that first case and made all new
19 allegations, I don't think so. It was fully settled.
20 These things -- these allegations in this pending case
21 could not have been brought in that first case. I just
22 don't understand the argument honestly.

23 THE COURT: I think the difference that I'm
24 having trouble with is what you seem to be saying is the
25 new issues with the plumbing were not discovered until

1 after they opened. Not because you brought -- had you
2 known about it, you would've dealt with it. Is that
3 fair?

4 MR. MCCOY: Had we known about them, we would
5 have brought them in the first lawsuit as a
6 counterclaim, probably.

7 THE COURT: Yeah.

8 MR. MCCOY: I don't know if it was a discover
9 or if it occurred. It didn't happen until we opened in
10 January of 2021. Whether something happened then or if
11 it was in existence, I don't really know. But in any
12 event, I think were getting to the same thing. It
13 wasn't brought -- it wasn't alleged in the first lawsuit
14 or could it have been because it wasn't discovered. It
15 would have required seeing to the future.

16 THE COURT: What was the building used for
17 prior to your clients leasing it?

18 MR. MCCOY: They ran a similar business, a
19 gentleman's club. But it was closed for some period of
20 time and I don't know that period of time.

21 THE COURT: Okay.

22 MR. HALFORD: Just briefly in replay, your
23 Honor, again, this case mediated and settled in November
24 2020. Mr. McCoy did in fact raise the issues with the
25 sewer again defaulting back to the lease to be a tenant

1 issues.

2 In January, sent me photographs. Sent me
3 invoices. Here's what my clients have had to pay to
4 remedy this on a emergency basis and in March, they're
5 asking us to dismiss.

6 I understand we mediated, money changed hands,
7 the case settled. It's not like I would have objected
8 if we frankly wanted to go forward and raise those
9 issues. The point is, they did not raise those issues.
10 Now this is the second bite of the apple and we believe
11 it should be dismissed.

12 THE COURT: Okay. Let me look over this. Who
13 mediated this the first time?

14 MR. MCCOY: Jim Tucker in Rock Hill.

15 THE COURT: Okay. Let me look at the
16 pleadings. I'm going to look at both the new pleadings
17 and the old pleadings and the settlement agreement and
18 figure out what to do.

19 Good luck.

20 (Hearing was concluded May 26, 2021.)

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C E R T I F I C A T E

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I, the undersigned Maria DiScioscia, Official Court Reporter for the 6th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings in the captioned case, in the Circuit Court for Chester, South Carolina, on the 26th day of May, 2021.

I do further certify that I am not related, either by blood or marriage, to any of the parties in this action; and that I am in no way interested in the outcome of this matter.



Maria DiScioscia
Official Court Reporter

RE: STARBELLAS

Cam Halford <cam@hoblaw.com>

Fri 3/12/2021 10:59 AM

To: Brian S. McCoy <bmcocoy@mccoylawfirm.com>

Stipulation of Dismissal filed with Doug at Chester CP, which eliminates the motion. Email copy to follow.
JCH

J. Cameron Halford
HALFORD & NIEMIEC, L.L.P.
Attorneys and Counselors at Law
4609 Charlotte Highway, Suite 100
Lake Wylie, South Carolina 29710
Tel: 803-831-2738
Fax: 803-831-0180

WWW.LAKEWYLIELAW.COM

From: Brian S. McCoy <bmcocoy@mccoylawfirm.com>
Sent: Friday, March 12, 2021 7:44 AM
To: Cam Halford <cam@hoblaw.com>
Subject: Re: STARBELLAS

After you file the withdraw of your motion, can I file the stipulation of dismissal with your e-signature?

I am trying to schedule my vaccination but no place around here is scheduling now.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

If you are a debtor, this is an attempt to collect a debt. Any information obtained will be used for that purpose.
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From: Cam Halford <cam@hoblaw.com>
Sent: Thursday, March 11, 2021 9:00 PM
To: Brian S. McCoy <bmcocoy@mccoylawfirm.com>
Subject: Re: STARBELLAS

Friday it will file . Covid shot today, man. I got the extra strength Just in case I have to inspect the premises

Sent from my iPhone please excuse any typographical errors

Cam Halford

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Sent from my iPhone please excuse any typographical errors

On Mar 11, 2021, at 3:21 PM, Brian S. McCoy <bmccoy@mccoylelawfirm.com> wrote:

Hey. Did you cancel the motion yet? My client is asking me.
Then we can file the Stipulation of Dismissal.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

Cam Halford

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Subject: Re: STARBELLAS

Hey. Did you cancel the motion yet? My client is asking me.
Then we can file the Stipulation of Dismissal.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

If you are a debtor, this is an attempt to collect a debt. Any information obtained will be used for that purpose.
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From: Cam Halford <cam@hoblaw.com>
Sent: Wednesday, March 10, 2021 1:18 PM
To: Brian S. McCoy <bmccoy@mccoylelawfirm.com>
Subject: STARBELLAS

Confirming we will cancel the motion tomorrow. Your client correct. Check has not cleared, but deposit amount was accurate per our client. You get free pass to the VIP Star room .

J. Cameron Halford
HALFORD & NIEMTEC, L.L.P.
Attorneys and Counselors at Law
4609 Charlotte Highway, Suite 100
Lake Wylie, South Carolina 29710
Tel: 803-831-2738
Fax: 803-831-0180

WWW.LAKEWYLIELAW.COM

Cam Halford

From: Brian S. McCoy <bmccoy@mccoylawfirm.com>
Sent: Tuesday, March 9, 2021 4:28 PM
To: Cam Halford
Subject: Re: Rovina - Starbella Stipulation of Dismissal

I have been instructed to file a Motion to Dismiss and seek costs, fees and sanctions for your clients' failure to dismiss as required by the settlement agreement.
Please advise whether that will be necessary or if you consent to filing the attached Stipulation. Motion will be filed Wednesday March 10 at 2:00 p.m. unless I hear from you.
Thanks.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

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From: Brian S. McCoy
Sent: Friday, March 5, 2021 2:44 PM
To: Cam Halford <cam@hoblaw.com>
Subject: Rovina - Starbella Stipulation of Dismissal

Hey Cam.

See the attached. Do I have your permission to file this with your electronic signature?
Thanks.

Brian S. McCoy
McCOY LAW FIRM, LLC
378 E. Main St.
Rock Hill, SC 29730
TEL (803) 366-2280
FAX (803) 366-0643

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Cam Halford

From: Brian S. McCoy <bmcocoy@mccoylawfirm.com>
Sent: Friday, March 5, 2021 2:44 PM
To: Cam Halford
Subject: Rovina - Starbella Stipulation of Dismissal
Attachments: Starbella - Stipulation of Dismissal with Prejudice.pdf

Hey Cam.

See the attached. Do I have your permission to file this with your electronic signature?
Thanks.

Brian S. McCoy
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378 E. Main St.
Rock Hill, SC 29730
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Handwritten notes and stamps, including a date stamp "MAY 18 2021" and a signature.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Honorable Eugene C. Griffith, Circuit Court Judge

Appellate Case Number 2021-000973

Starbella, LLC.....Appellant,

v.

Lillie Rovira and Roberto Rovira.....Respondents,

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned counsel for Appellants hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties, and not any other material.

This 25th day of February, 2022.

McCOY LAW FIRM. LLC

s/ Brian S. McCoy

Brian S. McCoy, Esq. (SC Bar #2155)
378 E. Main Street
Rock Hill, SC 29730
(803) 366-2280 Phone
Attorneys for Appellant

RECEIVED

MAR 21 2022

SC Court of Appeals