

**RECEIVED**

**Aug 11 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000133

Donald Eaton, Kristy Drees, and Logan Drees.....Plaintiffs,

v.

DBC Anderson Cove LP.....Respondent,

Of Whom Donald Eaton is the Appellant.

**APPENDIX TO THE RECORD ON APPEAL**

Donald Eaton  
201 Miracle Mile Dr 13C  
Anderson, South Carolina 29621  
(864) 540-3035  
Appellant (*Pro Se*)

John H. Scully, S.C. Bar # 100744  
TONNSEN BACH, LLC  
1306 South Church Street  
Greenville, SC 29605  
Telephone: (864) 236-5013  
Facsimile: (864) 312-4191  
*jscully@tonnsenbach.com*

Attorney for Respondent

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### 30-Day Notice to Vacate

April 21, 2022

To: *Krissy Drees, Logan Drees, Donald Eaton & all Occupants*

Rental Address:

201 Miracle Mile Drive Apt# 13C, Anderson, SC 29621

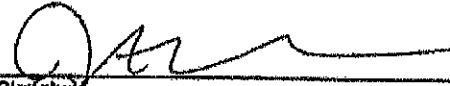
YOU ARE HEREBY NOTIFIED THAT, under the terms of: (Check one)

- Your tenancy (if no original agreement)
- The Lease Agreement dated \_\_\_\_\_, 20\_\_
- The Rental Agreement dated \_\_\_\_\_, 20\_\_
- The Residential Lease Agreement dated \_\_\_\_\_, 20\_\_
- Other: \_\_\_\_\_

(the "Lease") for the rent and use of the premises listed above now occupied by you:

YOUR MONTH-TO-MONTH TENANCY WILL BE TERMINATED IN 30 DAYS FROM THE DATE OF DELIVERY OF THIS NOTICE. You therefore must deliver possession of the premises to me on such date: May 21, 2022 no later than 5:30 p.m. closing. You are further notified that unless you vacate the premises by such date: May 21, 2022 no later than 5:30 p.m. legal action may be initiated against you.

THIS NOTICE IS PROVIDED TO YOU IN ACCORDANCE WITH THE LEASE AND SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT, SOUTH CAROLINA CODE OF LAWS SECTION 27-40-770. NOTHING IN THIS NOTICE IS INTENDED OR SHALL BE CONSTRUED AS A WAIVER BY THE LANDLORD OF ANY RIGHTS OR REMEDIES THE LANDLORD MAY HAVE UNDER THE LEASE OR UNDER STATE OR FEDERAL LAW.

  
\_\_\_\_\_  
Signature

4-21-2022  
\_\_\_\_\_  
Date

Landlord's Contact Information:

Name: Joseite Anderson  
Address: 200 Country Club Lane Anderson, 29607  
Phone Number: 864-225-3283

Eviction Notice (Rev. 1339F98)



ANDERSON  
19009 N MAIN ST  
ANDERSON, SC 29621-9998  
(803)275-8777

04/21/2022 11:22 AM

Product	Qty	Unit Price	Price
First-Class Mail® Letter	1		\$0.58
Anderson, SC 29621			
Weight: 0 lb 0.38 oz			
Estimated Delivery Date			
Sat 04/23/2022			
Certified Mail®			\$3.75
Tracking #:			
70201813COD125704195			
<b>Total</b>			<b>\$4.33</b>

Grand Total: \$4.33

Debit Card Remitted \$4.33  
 Card Name: VISA  
 Account #: XXXXXXXXXXXX0305  
 Approval #: 602328  
 Transaction #: 543  
 Receipt #: 041492  
 Debit Card Purchase: \$4.33  
 AID: A0000000983840 chip  
 AL: US DEBIT  
 PIN: Verified

\*\*\*\*\*  
 Every household in the U.S. is now eligible to receive a second set of 4 free test kits.  
 Go to [www.covidtests.gov](http://www.covidtests.gov)  
 \*\*\*\*\*

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data rates may apply. You may also visit [www.usps.com](http://www.usps.com) USPS Tracking or call 1-800-222-1811.

Preview your Mail  
 Track your Packages  
 Sign up for FREE @  
<https://informacdelivery.usps.com>

All sales final on stamps and postage. Refunds for guaranteed services only. Thank you for your business.

Tell us about your experience. Go to: <https://postalexperience.com/Pos> or scan this code with your mobile device.



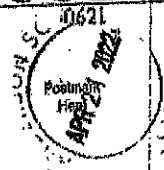
or call 1-800-410-7420.

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**  
 Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

Anderson, SC 29621

OFFICIAL USE	
Certified Mail Fee	\$3.75
Postage	\$0.58
<b>Total Postage and Fees</b>	<b>\$4.33</b>



04/21/2022

Send to: *David Logan Dress, Donald Taylor*  
 PO Box No. *130*  
 City, State, ZIP+4® *Anderson, SC 29621*

US Form 3800, April 2015 PSN 753026 0000017 See Reverse for Instructions

7020 1813 0001 2570 4195

**APARTMENT LEASE**

Date Lease Prepared: 07/30/2019

Type of Suite: Two Bedroom One Bath Property: Anderson Cove

Address: 201 Miracle Mills Drive, Anderson, SC 29621

Unit No.: 13C Security Deposit Amt.: \$337.50

Lease Commencement Date: July 30, 2019 Lease Expiration Date: 6/30/2020

Monthly Rent: \$675.00

Others: \_\_\_\_\_

This Lease, by and between the Owner of Anderson Cove, the Lessor, also designated as Landlord, and Tenant (whose name(s) appear below) herewith submits the following information and agrees that it shall constitute a part of this Agreement:

Resident Name: Kristy Dress Home Phone: 864-356-3837 Work Phone:

Spouse or Co-tenant: Logan Dress Home Phone: 864-302-2311 Work Phone:

Other Co-Tenant: Donald Eaton Home Phone: 864-346-4001 Work Phone:

Cosigner Name: Address:

Cosigner Home Phone: Other Phone:

Child(ren) Name(s):

In case of emergency contact: Emergency Contact Phone:

Automobile Year, Make & Model: License Number & State:

Garage/Parking Space No: Parking Tag No:

1. **LEASE TERM.** This Lease is for the term of 12 months. Tenant shall give not less than sixty (60) days written notice, prior to the expiration date of the Lease term, of their intention to vacate the Premises at the end of this term, which notice must be in writing and transmitted in person or by mail (notice must be received on or before the 1st of the month in which Tenant intends to vacate the Premises). Any holding over by the Tenant after the term of this Lease has expired shall not constitute a renewal of this Lease and such continued occupancy shall not defeat Landlord's right to possession of the Premises. Should the Tenant occupy the suite under a month-to-month tenancy, Tenant agrees to pay an additional monthly charge of Two Hundred Fifty and NO/100 Dollars (\$250.00) for the month-to-month residency. Landlord may give written notice to Tenant, not less than sixty (60) days prior to expiration date of the aforementioned Lease term, of its intention to renew this Lease. If Landlord fails to give said written notice, the Lease term will expire as per the terms of this Apartment Lease. If Tenant occupies the suite for any day in a month, Tenant shall be liable for the full month's rent. Tenant also understands that if, for any reason, Tenant vacates the Premises during the term of this Lease Agreement and returns possession of the Premises to Agent, Tenant agrees to pay to Agent a Lease Breakage Fee of two months rent. Payment of said sum shall, in no way, relieve Tenant from its obligations under this Lease Agreement, but shall be paid in addition to other amounts due under this Lease Agreement as outlined above.

2. **RENT AND OTHER CHARGES.** Tenant agrees to pay Landlord, its successors and assigns rent in the amount of \$675.00 per month as rent due and payable on the first day of each month of said term. In addition, Tenant agrees to pay a one time payment of \$60.58 to serve as rent for the period July 30, 2019 to July 31, 2019 due and payable on July 30, 2019. Rents must be paid by check or money order, **NO CASH ACCEPTED.**

Tenant shall be subject to a late charge in the amount of One Hundred and NO/100 Dollars (\$100.00) for any payment received by Landlord after the fifth (5th) day of the calendar month in which such payment is due, and will be deemed to be in default and subject to charge for those additional costs and expenses of Landlord set forth in paragraph (32). If any check tendered by tenant in payment of any rent or other charge due, under this lease is returned by tenant's bank for any reason, a returned check fee in the amount of Thirty Five Dollars (\$35.00) will then be due and payable to Landlord. If a check is returned by Tenant's bank and the check is not replaced by the fifth (5th) day of the month in which said check is presented, then such payment will also be considered late, and the applicable late fee, as well as Thirty Five Dollar (\$35.00) returned check fee will be due and payable to Landlord. If not sooner paid, such late fee and returned check fee shall be added to

**IS YOUR NOTICE.** Rent is due within five (5) days of the due date. After the due date, Landlord may begin eviction proceedings if amount is still unpaid. No other notice will be provided during your lease term. All rent payments shall be made payable to Anderson Cove.

**3. PERMITTED OCCUPANCY.** Tenant agrees that the premises are to be occupied by 3 persons consisting of 2 adult(s) and 0 child(ren) for residential purposes only, and no one else shall be permitted to occupy the premises. The premises or any garage may not be sublet or assigned. Permitting unauthorized persons to occupy the premises shall be a violation of this Lease and constitute a default of this Lease and grounds for immediate eviction. Said legal eviction shall not relieve tenant of the obligation to pay the balance of rent until the expiration of the Lease term or the commencement of paid rent from a new tenant.

**4. SECURITY DEPOSIT.** Tenant hereby deposits the sum of \$337.50, which sum Tenant agrees shall be held by Landlord as security during the term of this Lease, or any renewals thereof, for the following purposes: To pay the cost of restoring the suite to its identical condition when leased, including, but not limited to, repairing any holes in the walls, repairing burns, stains, or any other damage to the carpeting, appliances, etc. and painting or repairing any other damage caused by Tenant, or in the alternative, at Landlord's discretion, other amounts due Landlord including, but not limited to liquidated damages for any breach of any of the conditions or covenants of this Agreement including reasonably attorney fees in the enforcement of any provisions of this Lease. Security deposit must be updated in the event of a rent increase.

Upon the termination of this Lease, and after vacation of the premises by Tenant, Landlord will refund to Tenant the deposit less any deductions authorized above and without prejudice to any future claims of Landlord for actual damages and/or rent in excess of said deposit. Such deposit shall be refunded to Tenant within thirty (30) days as provided by law, to any forwarding address provided in writing by Tenant to Landlord. Should the damages caused by Tenant exceed the amount of the security deposit, Tenant shall be liable for the excess amount above and beyond said deposit. The security deposit shall not be utilized by Tenant as rent, however, Landlord may, in its sole discretion, apply security deposit to all amounts owed by Tenant under this Lease Agreement.

**5. DELIVERY OF POSSESSION.** In the event Landlord shall be unable to deliver possession of the Premises to Tenant on any specified date or on the date of the commencement of the term of this Lease, as a result of any cause whatsoever, the rent shall not commence until the date that possession of the Premises is available to Tenant. Tenant agrees to accept such allowance and abatement of rent as liquidated damages, in full and complete satisfaction for the failure of Landlord to so deliver possession, and to the exclusion of any rights or all claims for damage which Tenant otherwise may have by reason of delivery of possession of the Premises not being made on said date or any time thereafter, and no failure to so deliver possession shall in any event extend, or be deemed to extend, the term of this Lease.

**6. DAMAGE/INSURANCE.** Landlord shall not be liable for any theft, destruction, loss or damage to any property of Tenant, Tenant's agents, or Tenant's guests. Tenant must provide his own homeowner/renter's insurance coverage including, but not limited to, personal property insurance, fire, theft, liability, medical pay and personal insurance. Alternatively, Tenant may opt for property damage liability coverage for the Landlord thru the community's RLL Program (see Property Damage Liability Addendum attached). Landlord shall not be liable for damage resulting from water, snow, ice, odors, noise, failure or breakage of heating or plumbing, gas, water, steam or other pipes or fixtures, or sewage, nor for any damage arising from the acts or neglect of other tenants of the building or the elements or damage arising from acts over which Landlord has no control. If the suite herein is made untenable by virtue of any casualty, Landlord shall not be obligated to provide Tenant with alternative living quarters. Upon the occurrence of any casualty, Landlord, at its option, may elect to terminate this Lease. In the event such damage or casualty is not caused by Tenant, its guests or invitees, Tenant may terminate this Lease if Tenant cannot reoccupy the Premises within sixty (60) days from the date of such casualty. Tenant shall not be entitled to any damages other than abatement of rent in the event Tenant is denied access to the Premises after a casualty. Landlord reserves the right to restrict or prevent access to the Premises in the event of a casualty. Tenant hereby releases Landlord, to the extent of Landlord's insurance coverage, from any and all liability (to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise) for any loss or damage to property covered by the fire or extended coverage insurance policies carried by Tenant hereunder, even if such damage shall have been caused by the fault or negligence of Landlord, or anyone claiming through or under Tenant; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as such policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect nor impair such policies or prejudice the right to recover thereunder. Tenant agrees that its policies of insurance will include such a clause or endorsement so long as the same shall be obtainable.

**7. RIGHT TO ENTER.** Landlord, or its agents, shall have the right to enter the premises at all reasonable hours to inspect the premises, make necessary repairs or to exhibit the premises for sale or rent. In case of fire or other emergency, Landlord, its agents or employees may enter the premises, at any time without notice, for the repair or protection of the premises. In the event of a casualty, Landlord at its option may terminate this Lease. However, it is expressly understood and agreed that Landlord is under no duty to make any such inspection, and that nothing in this Paragraph shall be construed as relieving Tenant of the duty of paying the costs of repairs or of giving written notice of any defective condition.

**8. REPOSSESSION.** If the rent or other charges herein provided for, shall at any time be in arrears or unpaid, or if Tenant shall violate or fail to observe any of the terms, conditions, rules or regulations set forth and referred to herein, or if the premises are used in an illegal manner or a manner objectionable to Landlord, or if the occupants of the premises disturb or annoy other tenants in the premises, such action shall constitute a violation of this Lease, and subject Tenant to immediate eviction proceedings. Said legal eviction shall not relieve Tenant of the obligation to pay the balance of rent until the expiration of the lease term or the commencement of rent from a new Tenant.

Additionally, if Tenant fails to pay rent when due or is in default of the prompt or full performance of any other provision of this Lease, for failure to comply with the above, or if Tenant abandons the premises, then, and in any such event, Landlord may, if Landlord so elects, with or without notice of such election except as herein provided, with or without demand, forthwith terminate this lease and Tenant's right to possession of premises.

If Landlord has to pursue a legal eviction action in order to compel Tenant to pay the amounts due under this Lease Agreement or to retake possession of the Premises, then Landlord shall be entitled to collect an amount equal to \$250.00 (in addition to any other charges due and payable under this Agreement) as a reimbursement for Landlord's costs associated with said action. These costs include court filing fees, preparation of the proper notices to Tenant, employee time to attend court hearings, travel time, employee parking and mileage expenses. Said amount shall be due to Landlord even if Tenant pays amounts due under this Agreement and continues to occupy the Premises (eviction action is cancelled).

**9. PROPERTY LEFT BY TENANT.** Tenant agrees that so long as Landlord does not seize furnishings or possessions of Tenant for the purpose of rent payments, Landlord may remove any and all property from the premises in the event of breach by Tenant. These possessions may be handled, removed, stored, or otherwise disposed of by Landlord at the sole risk and expense of Tenant. Landlord shall in no event be responsible for the preservation or safekeeping hereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred with such removal and all storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. If any property shall remain in the premises or in the possession of Landlord and shall not be retaken by Tenant within ten (10) days, said property shall conclusively be deemed to have been forever abandoned by Tenant.

**10. VEHICLES.** It is agreed that there shall be no vehicles (including motorcycles, trucks, trailers or boats), other than automobiles, operated or kept on premises by Tenant, Tenant's agents, or guests, without the written consent of Landlord. Non-compliance with the terms of this provision may result in any of said vehicles being towed from the premises at owner's risk and expense.

No repairing of automobiles is permitted on the premises. The washing of automobiles is not permitted except in designated areas if authorized in writing by Landlord. Tenant's agents and guests may not park automobiles on Landlord's property for more than twenty-four (24) hours unless the automobile is first registered with Landlord. An unauthorized, abandoned, inoperable automobile, or an automobile not having current license plates may be towed from the premises at owner's risk and expense.

The use or storage of Tenant's or any other person's vehicle, whether or not parked or being driven in or about the building of the demised premises parking area or garages, shall at all times be at the sole risk of Tenant, and Landlord assumes no liability for said vehicle or damages caused by or to the vehicle. Should any employee of Landlord assist Tenant or take part in the parking, moving or handling of Tenant's or any other person's automobile or other property entrusted or placed in the hands or custody of any such employees for any reason whatsoever, such employee in doing any of the foregoing shall be the agent of Tenant and not of Landlord, and Landlord shall not be liable to Tenant or to any other person for the acts, negligence or omission of such employee in connection therewith.

If Tenant has leased a garage space, or uses parking spaces on the premises, then Tenant agrees that Landlord shall not be responsible for any damage to vehicles parked in said garage or spaces including, but not limited to, damage caused by other vehicles, water leaks, vandals or any other cause. Landlord shall further not be responsible for thefts of vehicles, or personal property located in said spaces.

**11. KEYS.** Tenant shall be given keys to the apartment, which keys shall be returned to Landlord upon vacation of the premises. If Tenant fails to return all of the keys to Landlord upon vacation of the premises, Landlord shall have the right to change all locks to said apartment and deduct from Tenant's security deposit all costs for parts and labor incurred in the replacement of locks and also the cost of the original locks and keys. ~~No additional locks, re-keying of existing locks or floor fasteners shall be permitted.~~

**12. SMOKE DETECTOR.** All suites are equipped with a smoke detector. Tenant agrees to test the smoke detector on a regular basis, and if it is a battery operated unit, Tenant, at Tenant's expense, shall replace any worn out batteries. If an electric unit malfunctions upon testing, or if a battery operated unit malfunctions upon testing, or if a battery operated unit does not operate after replacement of batteries, Tenant shall notify Landlord immediately. Landlord shall not be liable for the malfunctions of any smoke detector or damages caused thereby or consequences due to interruption of electric services.

**13. STORAGE LOCKER.** If a storage locker is assigned to the suite, Landlord shall not be responsible for safe-keeping of any personal property stored in or about the storage locker. Personal property is stored at the sole risk of Tenant.

**14. GUEST ACTIONS & DAMAGE.** Tenant hereby assumes responsibility for all actions by, or any damages caused by its guests or agents.

**15. JOINT AND SEVERAL LIABILITY.** Each and every Tenant signing this Lease shall be jointly and severally liable for all rental payments, damages and other obligations imposed hereunder. It is further agreed that in the event that one or more of Tenants signing this Lease vacate the premises before the expiration of the term then running, the vacating Tenant as well as the remaining Tenant or Tenants signing this Lease shall all be responsible for the balance of all rental payments, damages and other obligations imposed hereunder. Any security deposit made by any Tenant at the initiation of the original term of this Lease shall remain as security for the balance of the term currently running and any renewal terms in the future. No Tenant may be released from liability of this Lease without written permission by Landlord.

**16. TENANT IMPROVEMENTS.** Tenant shall not make any alterations or additions to the premises without the specific written consent of Landlord. All such specifically consented to additions to the premises shall become the property of Landlord at Landlord's option. Upon vacating the suite, Tenant agrees to restore the suite to its original state. Contact paper, sanitas or wall covering is not permitted without the consent of Landlord. In the event Landlord consents to an alteration or addition, Tenant agrees that upon vacating the premises, Tenant shall immediately remove the alteration or improvement at Tenant's expense. In the event that Tenant shall not remove the alteration or improvement immediately upon vacating the premises, it is agreed that Landlord shall retain the cost of removing same from the security deposit. Tenant agrees to accept the premises in its as is condition at the commencement of the Lease and agrees that Landlord shall not be obligated to do any painting or other redecorating of the demised suite during the original or any renewal term of this Lease, unless otherwise agreed to in writing.

**17. LEASE SUBORDINATION.** Landlord reserves the right to subject and subordinate this Lease at all times to the lien of any mortgage or mortgages now or hereafter placed upon Landlord's interest in the said premises and on the land and buildings of which the said premises are a part, or upon any buildings hereafter placed upon the land of which the demised premises form a part. Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments subordinating this Lease to the lien of any such mortgage or mortgages as shall be desired by Landlord as well as any proposed mortgagees. Tenant hereby appoints Landlord the attorney in fact for Tenant, irrevocably, to execute and deliver any instrument for and in the name of Tenant in furtherance of this provision.

**18. RULES AND REGULATIONS.** Tenant agrees to abide by all the rules and regulations contained in this Lease or as presented to Tenant by Landlord or as posted in the entrance way or common hallways or rooms of the premises or the building of which the premises are a part. Tenant shall keep and observe such further reasonable rules and regulations as may later be required by Landlord which may be necessary for the proper and orderly care of the building of which the premises are a part. No music or noise shall be permitted in or about the premises which shall be objectionable to Landlord or other Tenants. Tenant shall not allow anything to be placed on the outside window ledges of the premises. No hibachi, grill, or other similar devices used for cooking, heating, or any other purpose shall be used or kindled on any balcony, under any overhanging portion, or within 10' of any structure; none of those items are permitted to be stored on any balcony. No objects shall be permitted on balcony railings. Absolutely no sales or auctions of any kind are to be conducted on the premises. Corridors shall be kept free and clear of any objects. Footwear must be placed in suites. No bicycles or other vehicles shall be brought into the premises, corridors or any part of the building by Tenant, or Tenant's agents, family, or employees without the written consent of Landlord. Tenant shall not erect any structures for storage, construct an aerial, or use the roof for any purposes without the written consent of Landlord. Tenant shall lock the entrance doors, apartment doors, and garage doors when leaving the building or apartment, shall keep all hall doors closed when cooking, and shall not throw sweepings, garbage, rubbish, etc., into hallways, stairwells or any common area of the demised premises, or into toilets, bathtubs or sinks, or any other place not provided for same. Blinds must be white and must be hung immediately upon occupancy. No waterbeds are allowed. Live Christmas trees are not permitted. Failure to keep and observe said rules will constitute a breach of the terms of the Lease and subject Tenant to eviction proceedings. Said legal eviction shall not relieve Tenant of the obligation to pay the balance of rent until the expiration of the Lease term or the commencement of rent from a new tenant.

Extermination services are provided on a regular basis. It is essential that all suites be treated periodically to insure a clean and habitable building. The exact time and date of each service will be provided along with written instructions prior to the scheduled treatment. It is imperative that these instructions are followed. Failure to prepare your suite for services when scheduled will result in an additional charge of \$35.00. If additional treatments are required, contact the Owner/Agent.

**19. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or in any manner transfer any interest or benefit hereunder, or sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by anyone other than an authorized occupant, without the prior written consent of Landlord, which consent may be withheld in the sole and absolute discretion of Landlord; and any such consent, if granted by Landlord, shall be limited to the instance stated therein, and shall not be deemed to constitute a release, waiver or consent to any other or further assignment, transfer of interest or subletting.

Landlord may collect from any authorized or unauthorized assignee, sublessee or occupant, any rent or charges due by Tenant to Landlord under the terms of this Lease, and Landlord may apply the same toward Tenant's obligations under this Lease; and such collection shall not be deemed a waiver of any provisions of this Lease, nor an acceptance of the assignee, sublessee or occupant as a Tenant, nor shall it release Tenant from performing any of the terms, covenants or conditions of this Lease.

**20. FIXTURES.** Tenant agrees not to damage or remove any fixtures or appurtenances or cause same to be removed from the premises.

**21. PEACEFUL POSSESSION.** Landlord shall warrant and defend Tenant's peaceable possession of the above described premises during this Lease, provided Tenant is not in default.

**22. USE OF PREMISES.** Tenant will use and occupy the premises and in a careful, safe and proper manner, and will, at its own expense, comply with the directions of the proper public officers as to the use, repair and maintenance thereof. Tenant shall not allow the premises to be used for any purpose or in any way that will increase the rate of insurance thereon. Tenant shall not permit the premises to be occupied in whole or in part by any other person and will not bring nor permit to be brought into the premises any substance that will increase the hazard of fire in the premises. Tenant shall not permit liquor, or drugs, to be sold on said premises; and will not permit said premises to be used for any improper or unlawful purpose or in any way that will disturb other Tenants of the building or the neighborhood; and will not permit any alteration of any part of the premises, except by written consent of Landlord. Any violation of this paragraph shall cause this Lease to be terminated immediately upon written notice to the Tenant at Landlord's election, after which Landlord shall have the right to re-enter and repossess the leased premises.

**23. ACCEPTANCE OF PREMISES.** Tenant agrees that it is familiar with the demised premises and all appurtenances thereto, buildings, driveways and sidewalks forming a part thereof, that no representations as to the present or future condition of the premises have been made by or on behalf of Landlord and that the premises, including all equipment and machinery and fixtures located therein or thereon are accepted by Tenant at the commencement date of this Lease in the same condition as they now are, except for natural wear, tear and usage between the present date and the commencement date of this Lease.

**24. PREMISES KEPT IN GOOD REPAIR.** Tenant shall keep the premises and appurtenances thereto in a clean, slighty and healthy condition, all according to the statutes and ordinances of the municipality in which the premises are located, all at Tenant's own expense, and shall return the same back to Landlord upon termination of this Lease, or for any reason whatsoever, in the same condition of cleanliness, repair and slightness as at the date of the execution hereof, reasonable wear and tear excepted. Tenant shall be responsible for the cost of repair, replacement or any damages to the Premises, including but not limited to, broken windows, door, screens, appliances and/or fixtures.

25. **EGRESS AND INGRESS.** The entrances, passages, halls, corridors, stairways, elevators, exits and fire escapes shall not be obstructed by Tenant, its agents or guests, nor used by them for any purposes other than ingress or egress to or from the premises hereby leased. No furniture or bulky articles shall be carried up or down the stairways or elevators of said buildings except at such times and under such regulations as may be prescribed by Landlord.

26. **WATER AND HEAT.** Landlord shall furnish to Tenant, only in the tubs, basins, pipes and faucets provided for such purpose, hot and cold water during the term of this Lease, and, if applicable, in the radiators a reasonable amount of hot water or steam at reasonable hours, as the weather and temperature require it, usually from the first day of October until the first day of May of the succeeding year, except when prevented by strike, accident or other causes beyond the control or prevention of Landlord, and except during the repairing of the apparatus provided in said building for the furnishing of said water and heat.

27. **BANKRUPTCY.** If any voluntary or involuntary petition or similar pleading brought under an Act of Congress relating to bankruptcy shall be brought by or against Tenant, or if any voluntary or involuntary proceedings in any court or tribunal shall be instituted by or against a Tenant to declare Tenant insolvent or unable to pay Tenant's debts, or if Tenant makes an assignment for the benefit of its creditors, or if a receiver is appointed, or if the leasehold interest of Tenant is levied upon, then, and in such event Landlord may, if Landlord so elects, forthwith terminate this Lease, notwithstanding any other provision of this Lease. Landlord shall, upon such termination, be entitled to recover damages in an amount equal to the then present value of the rent reserved in this Lease for the entire residue of the stated term hereof, less the fair rental value of the premises for the residue of the stated term.

28. **NOTICE ADDRESS.** Whenever, under this Lease or under any statute or ordinance, provision is made for notice to Tenant of any kind, it shall be deemed a sufficient notice and service thereof, when the notice is in writing, addressed to the last known post office address of Tenant or addressed to the demised premises, and deposited in the mail, attached to the door or slid under the door to the Premises. Notice to Landlord shall be deemed sufficient notice and service thereof if the notice is sent by certified mail to the address where the last rental payment was made. Notice need be sent to only one (1) tenant where Tenant consists of more than one (1) person.

29. **FACILITIES STATED IN LEASE.** It is further agreed that the amount of rent paid by Tenant is for the occupancy of the suite and is in no way to be construed as payment for the use of any other facilities owned or operated by Landlord except as may be expressly stated in this Lease. Landlord reserves the right to charge a reasonable use fee, regulate, restrict, terminate, eliminate or modify any recreational facility without abatement of the rent stated herein.

30. **TENANT MUST NOTIFY LANDLORD OF DEFECTS.** Tenant must notify Landlord of any defects in said suite within three (3) days after move in, or Tenant will be held responsible for any and all damages in said suite upon move out. In addition, Tenant must notify Landlord of any repair related issues within their apartment as soon as they are noticed by Tenant. Failure to do so may result in Tenant being liable for the cost of additional repairs necessary as a result of Tenant's failure to notify Landlord of the repair issue. Tenant also acknowledges that if a repair becomes necessary as a result of Tenant's actions, then Tenant may be held responsible for the cost of the repair (i.e. wash cloth clogging the garbage disposal).

31. **PETS.** No animals or pets shall be kept on the premises or brought into the premises, corridors or any part of the building except by written permission of Landlord. Landlord's consent to allow a pet of another Tenant shall not constitute a waiver of this provision. Landlord's consent to allow Tenant's pet does not constitute a waiver of this provision to permit additional pets or replacement pets. Landlord may withhold consent at its sole discretion.

32. **DEFAULT.** In the event an eviction is filed or if there is a default in this Lease, Tenant will be charged not less than Two Hundred Fifty Dollars (\$250), as more fully described in paragraph #8 above, as well as the Lease Breakage Fee of two months rent, as more fully described in paragraph #1 above. Additionally, Tenant agrees to be responsible for any other collection costs incurred by Landlord in collecting amounts due to Landlord or obtaining possession of the Premises. Tenant shall remain liable to Landlord for rent due under this Lease in the event of an eviction or move out prior to the expiration of the term of this Lease. Tenant shall also remain liable to Landlord for any other charges or damages incurred as a result of said breach including rental payments until such time as the apartment is re-rented or the term of the lease expires.

33. **CRIME FREE.** Tenant, any members of Tenant's household or a guest or other person under the Tenant's control shall not engage in criminal activity, including drug-related activity, on or near the said premises. "Drug-related criminal activity" means the illegal manufacture, sale, distribution, use, or possession of, or with intent to manufacture, sell, distribute, or use of a controlled substance (as defined in Chapters 2925 and 3719 of the Ohio Revised Code (O.R.C.) or the Controlled Substance Act.

Tenant, any members of the Tenant's household, or a guest or other person under the Tenant's control, shall not engage in any act intended to facilitate criminal activity, and will not permit the premises to be used for, or to facilitate criminal activity, including but not limited to drug-related criminal activity, on or near the said premises, regardless of whether the individual engaging in such activity is a member of the household, or a guest.

Tenant, any members of the Tenant's household or a guest or other person under the Tenant's control shall not engage in any illegal activity, including but not limited to prostitution, as defined in O.R.C. 2907, threatening or intimidation or coercion as prohibited in O.R.C. 2905, assault as prohibited in O.R.C. 2903, unlawful discharge of firearms, on or near the premises as prohibited in O.R.C. 3773, or any breach of the Lease Agreement that otherwise jeopardizes the health, safety, and welfare of the landlord, his agent, or other Tenant or involving imminent or actual serious property damage, as defined in O.R.C. 5321.05.

Violation of any of the above provisions shall be material and irreparable violation of the Lease and good cause for the immediate

Termination of Tenancy. A single violation of any of the provisions contained herein shall be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for termination of the Lease under O.R.C. 5321. Unless otherwise provided by law, proof of violation shall not require criminal conviction, but shall be by a preponderance of the evidence.

34. LEAD WARNING STATEMENT. HOUSING BUILT BEFORE 1978 MAY CONTAIN LEAD-BASED PAINT. LEAD FROM PAINT, PAINT CHIPS, AND DUST CAN POSE HEALTH HAZARDS IF NOT MANAGED PROPERLY. LEAD EXPOSURE IS ESPECIALLY HARMFUL TO YOUNG CHILDREN AND PREGNANT WOMEN. BEFORE RENTING PRE-1978 HOUSING, LANDLORD MUST DISCLOSE THE PRESENCE OF KNOWN LEAD-BASED PAINT AND/OR LEAD BASED PAINT HAZARDS IN THE DWELLING. RESIDENT MUST ALSO RECEIVE A FEDERALLY APPROVED PAMPHLET ON LEAD POISONING PREVENTION.

35. ENTIRE AGREEMENT. Unenforceability of any provision of this Lease shall not affect the validity of any other provision of this Lease. Waiver of any of the rights accorded herein by Landlord shall not be deemed to be continuing and Landlord reserves the right to enforce all of the terms of this Lease. This Lease contains the entire agreement between the parties. No oral statement or representation of either party, their agents, or employees, shall form a part of said Lease or be binding upon the parties hereto. This Lease may be changed or modified only by written instrument, signed by both parties hereto. The terms, conditions, covenants and agreement made and entered into by the parties hereto shall be binding upon their respective heirs, successors, representatives and assigns.

Tenant has read the foregoing Lease and is familiar with and understands the contents herein. IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

LANDLORD:

By: K. Burrows

Date: 7-30-19

Kristy Drees  
Tenant Signature

Kristy Drees  
Tenant Print Name

[Signature]  
Tenant Signature

Donald Eaton  
Tenant Print Name

[Signature]  
Tenant Signature

Logan Drees  
Tenant Print Name

[Signature]  
Tenant Signature

Date

**CO-SIGNER(S) GUARANTY**

Each Co-signer does hereby absolutely, unconditionally and jointly and severally guaranty to Landlord, its successors and assigns, the full and prompt payment of any sum due to Landlord from Tenant pursuant to this Lease. This guaranty shall remain in full force and effect until all indebtedness owed to Landlord by Tenant is paid in full and Landlord releases Co-Signer from its obligations IN WRITING. The extension, modification of this Lease or the happening of any event with or without notice to the Co-signer shall not affect the enforceability of this Guaranty. Co-signer(s) shall not have the right to occupancy of the leased premises.

Co-signer Signature

Date:

Co-signer Print Name

Date:

Co-signer

Date:

Co-signer Print Name

Date:

**UTILITY SERVICES ADDENDUM**

This Addendum is to become attached and made part of the lease executed, or to be executed, effective 7/31/2019 and is between Anderson Cove Apartments and Kristy Drees of Apartment 3C and is in addition to all terms and conditions in the Lease. To the extent that the terms of this Utility Addendum conflict with those of the Lease, this Utility Addendum shall control.

Responsibility for payment of utilities, and the method of metering or otherwise measuring the cost of the utility, will be as indicated below.

a) Electric service to your dwelling will be paid by you either:

- directly to the utility service provider; or
- electric bills will be billed by the service provider to us and then allocated to you based on the following formula:
- 3rd party billing company \_\_\_\_\_

b) Gas service to your dwelling will be paid by you either:

- directly to the utility service provider; or
- gas bills will be billed by the service provider to us and then allocated to you based on the following formula:
- 3rd party billing company \_\_\_\_\_

c) Water service to your dwelling will be paid by you either:

- water bills will be billed by the service provider to us and then allocated to you based on the following formula:  
"2"
- 3rd party billing company \_\_\_\_\_ PayLease

d) Sewer service to your dwelling will be paid by you either:

- sewer bills will be billed by the service provider to us and then allocated to you based on the following formula:  
"2"
- 3rd party billing company \_\_\_\_\_ PayLease

e) Trash service to your dwelling will be paid by you either:

- Trash bills will be billed by the service provider to us and then allocated to you based on the following formula:  
"1"
- If flat rate is selected, the current flat rate is \$ 25.00 per month.
- 3rd party billing company \_\_\_\_\_

f) Extermination service to your dwelling will be paid by you either:

- Extermination bills will be billed by the service provider to us and then allocated to you based on the following formula:  
"1"
- If flat rate is selected, the current flat rate is \$ 3.00 per month.
- 3rd party billing company \_\_\_\_\_

g) Cable TV service to your dwelling will be paid by you either:

- directly to the utility service provider.

h) Internet service to your dwelling will be paid by you either:

- directly to the utility service provider

**FORMULA/ALLOCATION PROCESS KEY**

"1" - Flat rate per month.

"2" - Allocation based on a combination of square footage of your dwelling unit and the number of persons residing in your dwelling unit.

"3" - Sub-metering of all of your water/gas/electric use.

1. Allocation formulas are used when the apartment has no sub-meter. The formula may be based on factors such as, the interior square footage of the apartment, number of bedrooms, number of occupants, number of bathrooms, presence of washing machine, and average water usage for that floor plan. The allocation is an estimate of usage by the resident. If an allocation method is used, we or our billing company will calculate your allocated share of the utilities and services provided and all costs in accordance with state and local statutes. Under any allocation method, Resident may be paying for part of the utility usage in common areas or in other residential units as well as administrative fees. Both Resident and Owner agree that using a calculation or allocation formula as a basis for estimating total utility consumption is fair and reasonable, while recognizing that the allocation method may or may not accurately reflect actual total utility consumption for Resident. Where lawful, we may change the above methods of determining your allocated share of utilities and services and all other billing methods, in our sole discretion, and after providing written notice to you. More detailed descriptions of billing methods, calculations and allocation formulas will be provided upon request. If a flat fee method for trash or other utility service is used, Resident and Owner agree that the charges indicated in this Agreement (as may be amended with written notice as specified above) represent a fair and reasonable amount for the service(s) provided and that the amount billed is not based on a monthly per unit cost.

2. When billed by us directly or through our billing company, you must pay utility bills within 23 days of the date when the utility bill is issued at the place indicated on your bill, or the payment will be late. If a payment is late, you will be responsible for a late fee as indicated below. The late payment of a bill or failure to pay any utility bill is a material and substantial breach of the Lease and we will exercise all remedies available under the Lease, up to and including eviction for nonpayment. To the extent there are any new account, monthly administrative, late or final bill fees, you shall pay such fees as indicated below.

New Account Fee: \$ 10.00 (not to exceed \$ 25.00 )  
Monthly Administrative Billing Fee: \$ 3.75 (not to exceed \$ 10.00 )  
Late Fee: \$ 10.00 (not to exceed \$ 50.00 )

If allowed by state law, we at our sole discretion may amend these fees, with written notice to you.

3. You will be charged for the full period of time that you were living in, occupying, or responsible for payment of rent or utility charges on the dwelling. If you breach the Lease, you will be responsible for utility charges for the time period you were obliged to pay the charges under the Lease, subject to our mitigation of damages. In the event you fail to timely establish utility services, we may charge you for any utility service billed to us for your dwelling and may charge a reasonable administration fee for billing for the utility service in the amount of \$ 15.00.
4. When you move out, you will receive a final bill which may be estimated based on your prior utility usage. This bill must be paid at the time you move out or it will be deducted from the security deposit.
5. We are not liable for any losses or damages you incur as a result of outages, interruptions, or fluctuations in utility services provided to the dwelling unless such loss or damage was the direct result of negligence by us or our employees. You release us from any and all such claims and waive any claims for offset or reduction of rent or diminished rental value of the dwelling due to such outages, interruptions, or fluctuations.
6. You agree not to tamper with, adjust, or disconnect any utility sub-metering system or device. Violation of this provision is a material breach of your Lease and may subject you to eviction or other remedies available to us under your Lease, this Utility Addendum and at law.
7. Where lawful, all utilities, charges and fees of any kind under this lease shall be considered additional rent, and if partial payments are accepted by the Owner, they will be allocated first to non-rent charges and to rent last.
8. You represent that all occupants that will be residing in the Unit are accurately identified in the Lease. You agree to promptly notify Owner of any change in such number of occupants.

9. You agree that you may, upon thirty (30) days prior written notice from Owner to you, begin receiving a bill for additional utilities and services, at which time such additional utilities and services shall for all purposes be included in the term Utilities.

10. This Addendum is designed for use in multiple jurisdictions, and no billing method, charge, or fee mentioned herein will be used in any jurisdiction where such use would be unlawful. If any provision of this addendum or the Lease is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this addendum or the Lease. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control.

Kristy Drees                      ✓ 7-30-19  
Kristy Drees                      Date

K. B.                                      7-30-19  
Anderson Cove                      Date

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ANDERSON )  
 )  
DBC ANDERSON COVE LP, )  
Plaintiff )  
 )  
-vs- )  
 )  
KRISTY DRESS, LOGAN DREES, )  
AND DONALD EATON, )  
Defendants )

IN THE MAGISTRATE'S COURT  
CIVIL ACTION NO. 2022CV0410101574

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGEMENT**

SUMMARY COURT

JUL 25 2022

FILED

Defendants Kristy Drees, Logan Drees, and Donald Eaton (collectively "Defendants") come now before the Court moving for its Order granting Summary Judgement in the matter of Plaintiff DBC Anderson Cove LP's claim and Defendants' second Cause of Action in the action listed above. Defendants assert that there exist no genuine dispute of substantive fact and that the Defendants are entitled to summary judgement as a matter of law. Further, Defendants request relief in the form of specific performance by the Plaintiff for its obligations under the verbal contract established on March 9, 2022, as discussed in their second Cause of Action in their pled counterclaim.

This motion is made under Rule 56, SCRPC and is based on the common and statutory law of South Carolina, the pleadings of all parties, exhibits included with the motion, and the admissions of the Plaintiff in their Answer to the Counterclaim. Defendants offer the following in support of this Motion.

## I. INTRODUCTION

Under South Carolina common law, a parol contract may be removed from the Statute of Frauds if clear evidence of the agreement and part performance as to that contract exist. Plaintiff's defense that the Statute simply exists and subsequently invalidates the contract does not withstand scrutiny. As a result of the part performance by both parties and the Plaintiff's admission to the existence of that contract, the contract is removed from the operation of the Statute of Frauds and is enforceable.

## II. FACTUAL BACKGROUND

As discussed in the Defendants' originally pled Counterclaim, on March 8, 2022, Defendant Kristy Drees was encountered in the parking area near Building 13 of Hartwell Cove Apartments by Josette Anderson ("Property Manager") in her capacity as the property manager for Plaintiff DBC Anderson Cove LP ("Plaintiff"). Defendant Drees was unwilling to immediately discuss the issue of an agreement without consulting with Defendants Logan Drees and Donald Eaton and, as such, agreed to meet with Property Manager at her office the following day. On March 9, 2022, Defendants Kristy Drees and Donald Eaton, with the authorization of Logan Drees to reach an accord on his behalf, made their way to the office for Hartwell Cove Apartments, located on the premises of Hartwell Pointe Apartments. Over the course of that discussion, Defendants and Property Manager made an agreement that Defendants would begin the process of applying to obtain rental assistance from a charitable organization. It was made clear to Property Manager at that time that Defendants did not agree to the

validity of the debt but would be willing to make the effort to apply for assistance payable to Plaintiff, aiming to reach an amicable outcome. In return for setting forth this effort, Property Manager agreed that following the application process, a new lease agreement would be signed for Defendants' continued residence at their home without further attempts at eviction by Plaintiff. Additionally, owing to Plaintiff's litigious nature, Defendants were adamant that as they applied for funding, neither Plaintiff nor Defendants in this matter would begin any further legal proceedings. Property Manager agreed to these terms.

In making good on their portion of the agreement, Defendants completed an application for rental assistance through the Sunbelt Human Advancement Resources organization on April 5, 2022. On this same day, Defendants made their first rental payment following the contract, which was accepted by Plaintiff.

At roughly 4 P.M. on April 15, 2022, Property Manager knocked on Defendants' door accompanied by three other individuals. Defendant Kristy Drees answered the knock. After a brief exchange to clarify that this visit was about the contract in question, Defendant Drees re-entered her home to request that Defendant Donald Eaton be present for the discussion. At this time, Property Manager stated that the property's owner was unwilling to sign a new lease agreement and demanded information as to when Defendants intended to remove themselves from the dwelling. Over the course of the discussion, Defendants agreed that they would examine any information that Property Manager sent regarding other residential vacancies that would be willing to accept Defendants' Housing Choice Voucher (colloquially referred to "Section 8"). Property Manager also informed

Defendants that she was knowledgeable about the voucher, and that in the event Defendants were unwilling or unable to vacate, she would take steps to have the Defendants' standing with the Anderson Housing Authority damaged to invalidate the voucher.

### III. STANDARD OF REVIEW

Under South Carolina law, Summary Judgment is appropriate in matters where there is no dispute as to material fact, and the moving party is entitled to judgment as a matter of law. Additionally, when reviewing a Motion for Summary Judgment, the Court must view submitted evidence in the light most favorable to the non-moving party. With that standard in mind, we review the statutory law and rulings regarding its interpretation as have been established by the South Carolina Supreme Court and South Carolina Court of Appeals.

On March 9, 2022, Plaintiff and Defendants entered into an oral, or parol, contract, the terms of which were that Defendants would make reasonable efforts to secure rental assistance and the Plaintiff would sign a new lease agreement. While not a lease itself, the contract did include that a new lease would be signed. As Plaintiff has referred to in their Answer to the Defendants' Counterclaim, under S.C. Code Ann. § 32-3-10, otherwise known as the Statute of Frauds, subsection (4) does indicate that contracts regarding tenements ordinarily are not enforceable unless they are in writing. Plaintiff has failed to acknowledge, however, that the South Carolina Supreme Court has held numerous times that clear evidence of an agreement and part performance of that oral agreement are enough to not only remove such parol contracts from operation of the Statute of

Frauds, even in matters of land or tenements, but also to compel specific performance of the terms of such contracts. "The general rule is well settled that sufficient part performance of a parol contract for the conveyance of real estate will, in equity, remove the contract from the operation of the statute." *Scurry v. Edwards*, 232 S.C. 53, 60–61, 100 S.E.2d 812, 816 (1957).

The application of this rule regarding leased property is also established, namely in *Gibson v. Hryskos*, 293 S.C. 8, 358 S.E.2d 173 (Ct. App. 1987). *Gibson* saw the owner of a property create a verbal agreement with a lessee for a term of five years. When a third-party plaintiff made claim that the verbal agreement was invalid under the Statute of Frauds, a trial court found clear evidence of the verbal agreement and that part performance by both the lessee and lessor existed and subsequently ordered the specific performance of a written lease agreement. While there is no third-party plaintiff in this case, the application of removal from the Statute remains pertinent. Cureton, J., even gave explicit note that the ability of a contract for the sale of real property to be rescuable from the Statute means that a contract for the lease of property must be as well, as the greater of the acts must include the lesser. *Id.* at 15, 358 S.E.2d at 177.

The holdings above combined with the standard for a successful Motion for Summary Judgment leave us to determine whether those criteria of clear evidence and part performance exist in this matter.

#### IV. CLEAR EVIDENCE

The first element required to compel specific performance of a contract ordinarily unenforceable under the Statute of Frauds is that of clear evidence. Looking to *Gibson*, as it is substantially like this matter, clear evidence was established by the admission of both lessor and lessee that a parol agreement was made between them. In this matter, Defendants have made clear their knowledge of the agreement from the moment of their initial pleadings.

For admission of the agreement from the Plaintiff, we need look no further than their Answer to the Counterclaim. Specifically, Defendants call attention to paragraphs responsive to the Second and Third Causes of Action.

In Paragraph 30, Plaintiff denies the allegation that a parol contract exists, citing the Statute of Frauds as the basis for that denial. Plaintiff notably states "therefore, no contract was formed." Plaintiff does not deny that such an agreement was made and only contests its validity. This practice continues into Paragraph 31 where Plaintiff states that Defendants failed to fulfill their obligations, though does not offer an alternative as to why such an obligation would exist except for parol agreement that they previously alleged is invalid. Finally, in Paragraph 35, Plaintiff again cites the Statute of Frauds and states "No signed writing was made . . . so no contract was formed as a matter of law." Plaintiff's denial is once again based on the Statute's existence, overlooking the material fact of the contract's existence. *Scurry*, and the body of cases used to render that decision, would refer to Plaintiff's attempt to leverage the Statute of Frauds in this way as "unconscionable."

**V. PART PERFORMANCE (DEFENDANTS)**

The second well established element of removing a verbal contract from the Statute of Frauds is part performance. The Defendants' performance under the contract is established in three parts.

First, Defendants are residents of the dwelling in question in this matter. This is an undisputed fact evidenced by Plaintiff's admission in both their pleadings and their Answer. Defendants continue to conduct themselves as though they are under the terms of the previously signed lease with the full intent to sign a new lease agreement when made available by Plaintiff. While it is certainly agreed that possession itself is not solely capable of establishing part performance, *Scurry* states that "we have repeatedly held, with regard to oral agreements for partition, that actual possession is the most satisfactory evidence of part performance." (*Scurry* at 61, 100 S.E.2d at 816).

Secondly, we again need to look no further than Plaintiff's Answer to see that they admit to accepting payments in the amounts totaling tenant's portions of rent as well as utilities and other amenities. Tenant's portion of rent is determined by the Anderson Housing Authority ("AHA") for tenants that are assisted under the Housing Choice Voucher program. The difference between tenant's portion and the actual rental amount of the property in question is paid by the AHA and will be discussed more specifically later in this document. As an added point of clarity, receipts for payments made by the Defendants themselves have been included as Exhibit "Defendant #1" and include the months of April through July.

In many of the cases cited above, there was the inclusion of improvements being made upon the property in question. Being as the agreement between the parties of this case is a lease agreement that includes disallowing improvements without expressed consent from the Plaintiff, making substantial improvements would be in violation of that agreement. Instead, a third effort of performance by the Defendants is in their application for funding to Sunbelt Human Advancement Resources ("SHARE"), as discussed in the Counterclaim. While this application was ultimately unsuccessful as a result of Plaintiff being uncooperative, the obligation to apply as prescribed in the parol contract of March 9, 2022, was met. The application as it was submitted to SHARE is included as Exhibit "Defendant #3" for the Court's reference. While admittedly not as tangible as improvements to the property would be, it does represent a concerted effort by the Defendants to make good on their part of the contract.

#### VI. PART PERFORMANCE (PLAINTIFF)

Of note in this matter is that part performance to the parol contract is not limited to the Defendants seeking removal of the contract from the Statute, but exists from the Plaintiff seeking to invoke it, as well.

First, as discussed previously, Plaintiff accepted payment from Defendants as tenants and admitted as such in their response. Plaintiff or agents thereof had ample awareness of the Defendants' residence; if they had believed that such payment was under a contract that did not exist, they could have returned it as easily as they were able to deliver the documents to begin this action.

Plaintiff not only received payment from Defendants directly, but also received another source of payment on the Defendants' behalf from the AHA. As with any payments they may have believed to be in error, Plaintiff had the ability to return or void payments made by the AHA. Instead, Plaintiff opted to accept and deposit those payments. Exhibit "Defendant #2" shows the recent history of payments made on behalf of the Defendants by the AHA.

As discussed previously, payment from the purchaser or lessee itself is not sufficient to remove a contract from the Statute of Frauds. For this reason, it is prudent to discuss, once again, that this is Plaintiff's third action in this same matter. The directly preceding action was one that was dismissed of their own volition. Following that voluntary dismissal, a parol contract was created. Plaintiff has continued to accept payment under the terms of that agreement through the months between their previous action and this one.

As a final point, outside of any payment being made by or on behalf of the Defendants, Plaintiff and its agents have continued to communicate with Defendants just as they would with any tenant whose residence is not in contention. Exhibit "Defendant #4" shows a sampling of those communications from Property Manager Josette Anderson as well as Whitney Guyton, the leasing agent for the two properties. These emails range in subject matter from notifying residents across the properties about air conditioning outages and the status of the pool opening at Hartwell Pointe to offers of free rent for the month of August. While this alone does not demonstrate part performance of the agreement, it does contribute to the sum of pieces and demonstrates that beyond accepting

rent, the staff at the property, including Plaintiff's representative in this matter, continue to treat the Defendants as residents.

**VII. CONCLUSION**

Given the admission of the existence of the contract with only the validity called into question by the Plaintiff and the admissions to and evidence of part performance, common law dictates that the parol contract of March 9 would be removed from the Statute of Frauds and is enforceable. As Plaintiff's only defense is that no such contract exists under that Statute but otherwise admits to the substance for the second Cause of Action, the only equitable outcome is judgment in favor of the Defendants on their second cause of action and against the Plaintiff in their claim for possession along with an Order from this Court compelling Plaintiff to complete their portion of that contract and sign a written lease agreement.

Respectfully Submitted,



Kristy Drees  
Logan Drees  
Donald Eaton  
Defendants  
(864) 540-3035

DATED: July 26, 2022

LOAD THIS DIRECTION, THIS SIDE UP →

MONEY ORDER RECEIPT - NON NEGOTIABLE

Hartwell Cove GPs.

You can now use cash to pay for millions of Amazon.com products  
Western Union Agent Locations. Simply come to one of our Agents  
cash to your Amazon balance with Amazon Cash. Find out more at  
AMZ\_CASH LOC 000239 BY 040522 \$124.13 THIRTYFOUR DOLLARS AND  
THIRTEENTHS

AMZ 347644 LOC 001109 BY 070522 \$124.00 THIRTYFOUR DOLLARS AND  
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MONEY ORDER RECEIPT - NON NEGOTIABLE

AMZ 347644 LOC 001109 BY 070522 \$124.00 THIRTYFOUR DOLLARS AND  
THIRTEENTHS

\* 19243350844 \*

Defendant  
# 2

SUMMARY COURT

JUL 26, 2022

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MONEY ORDER RECEIPT - NON NEGOTIABLE

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AMZ 347644 LOC 001109 BY 070522 \$124.00 THIRTYFOUR DOLLARS AND  
THIRTEENTHS

\* 19242934678 \*

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MONEY ORDER RECEIPT - NON NEGOTIABLE

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7/18/2022  
1:57:37PM

# ANDERSON HOUSING AUTHORITY

Defendant  
# 2

Authority 3  
Page 1 of 1

Tenant HAP Activity  
01/01/2022 to 07/31/2022

Tenant Name	Drees, Kristy C	Voucher #	3933
Address 1	201 Miracle Mile Drive Apt. 13C	HAP Contract	
Address 2		Contract Rent	700.00
City	Anderson	Owner Payment	509.00
State	SC	Tenant Payment	191.00
Zip Code	29621	UHAP Payment	0.00
		Room Size	2

Check Number	Date	Payee	Amount
126183	01/01/2022	Drees, Kristy C	67.00
126413	02/01/2022	Drees, Kristy C	67.00
126516	03/01/2022	Anderson Cove LP	700.00
126616	03/01/2022	Anderson Cove LP	3,330.00
126651	03/01/2022	Drees, Kristy C	67.00
126757	04/01/2022	Anderson Cove LP	700.00
126891	04/01/2022	Drees, Kristy C	67.00
126984	05/01/2022	Anderson Cove LP	700.00
127120	05/01/2022	Drees, Kristy C	67.00
127244	06/01/2022	Anderson Cove LP	700.00
127382	06/01/2022	Drees, Kristy C	67.00
127614	07/01/2022	Drees, Kristy C	67.00

SUMMARY COURT

JUL 26, 2022

PM3:18:38

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF ANDERSON</p> <p>DBC Anderson Cove LP</p> <p>Plaintiff</p> <p>v.</p> <p>Kristy Drees, Donald Eaton, and Logan Drees</p> <p>Defendants</p>	<p>Magistrate Court</p> <p>Case No: 2022CV0410101570 SUMMARY COURT</p> <p><b>MOTION FOR DISMISSAL</b></p> <p>JUN 8, 2022</p> <p>2:11:59</p>
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Defendants Kristy Drees, Donald Eaton, and Logan Drees, come now before the Court requesting its Order to dismiss, with prejudice, the claim in this matter. Under S.C. Code § 15-36-10, the Plaintiff's pleading in this matter is improper and is the latest in a series of actions that shows an abject disregard for the authority of this Court, makes a mockery of the time and energy of the judges and staff present therein, and demonstrates an inclination to ignore the laws of our state. A summation of those actions are as follows:

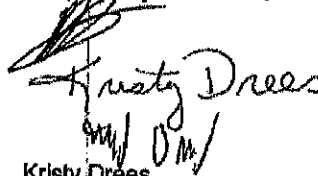
1. The Plaintiff's first action against the Defendants, case number 2020CV0410103307, was filed on December 4, 2020.
2. Plaintiff's first action was dismissed as a matter of law by this Court as a result of the Plaintiff's failure to comply with S.C. Code § 33-40-1670, which requires foreign limited partnerships to register with the Secretary of State in order to conduct business in South Carolina. Plaintiff further attempted to justify this violation by claiming it to be an oversight despite having their registration rejected multiple times.
3. The Plaintiff's second action in this matter was filed on September 24, 2021 as case number 2021CV0410102376.
4. During the proceedings of their second action, the Plaintiff and an agent thereof intentionally and maliciously attempted to conceal a portion of the lease agreement between the two parties in an attempt to rob this Court of its ability to properly adjudicate the matter.
5. During the proceedings of their second action, Plaintiff's agent, Josette Anderson, submitted a sworn affidavit to this Court in support of a Motion for Summary Judgment. This affidavit offered hearsay and statements in direct contradiction to the Plaintiff's own priorly submitted evidence. At that time, the Plaintiff's counsel and agent were informed that deception of the court would not be tolerated.
6. During the proceedings of their second action, during the Plaintiff's Motion Hearing for Summary Judgment on February 10, 2022, both parties were instructed to provide specific documentation relevant to the matter from the Anderson Housing Authority ("AHA"). At that time, Plaintiff made concerted effort to gather that documentation and received it that same day. Despite clear instructions to provide those documents to this Court, the Plaintiff failed to do so. Upon Defendants' acquisition and submission of that same documentation, it was found that the documentation from the AHA was in direct contradiction of statements made in Josette Anderson's affidavit.
7. On March 2, 2022, Plaintiff's counsel filed to voluntarily dismiss their second action as well as an amended affidavit from Josette Anderson, alleging that her blatant misrepresentation of

material facts was simply "typographical errors." Plaintiff was subsequently granted voluntary dismissal on March 4, 2022.

8. On March 8, 2022, Defendant Kristy Drees was approached by Plaintiff's agent Josette Anderson in the parking lot of Hartwell Cove. During the brief interaction, Defendant Drees agreed to meet Anderson at the office for Hartwell Cove.
9. On March 9, 2022, Defendants Donald Eaton and Kristy Drees went to the office and spoke with Plaintiff's agent Josette Anderson. Over the course of the discussion, Anderson informed Defendants of the Plaintiff's intent to enter into a new lease agreement with Defendants and stated that no further legal action would be taken on the Plaintiff's behalf.
10. On April 15, 2022, Plaintiff's agent Josette Anderson, accompanied by three other individuals, visited the Defendants' residence to inform them that the "property owner" was unwilling to sign a new lease.
11. On May 19, 2022, Defendants were notified by Duke Energy, the electric utility company for their home, that the company had received a request to terminate service at the Defendants' home. This request was not made by any of the Defendants.
12. On May 23, 2022, the Plaintiff filed this action, case number 2022CV0410101574, once again requesting an eviction.
13. Plaintiff has willfully and maliciously filed incomplete documentation with their pleading in an attempt to deprive this Court of its ability to properly adjudicate on this matter. This incomplete filing would represent a violation of S.C. Code § 16-9-10(A)(2); while criminal acts are not actionable by a civil party, this violation speaks to the motives and methods of the Plaintiff in matters of law.

Given that the Plaintiff has chosen not to retain counsel in this matter, despite clearly believing that such was warranted in their previous action, combined with the Plaintiff and their agents' choice to further attempt to complicate the matter at hand, and finally their decision to further attempt to rob this court of the ability to properly adjudicate on this matter by once again submitting intentionally incomplete documents, it is only fair to conclude that the claim they state in this matter is not within the realm of filings that a reasonable attorney would make. Specifically, this action by the Plaintiff is in violation of S.C. Code §§ 0 and 15-36-10(A)(3)(d). At this time, the Defendants pray that this Court will not only dismiss this action for its clearly bad faith attempt to use this Court as an enforcer for its reprehensible business practices, but exercise, in full, its ability to sanction parties who violate the South Carolina Frivolous Civil Proceedings Sanctions Act to discourage the Plaintiff from further wasting this Court's time and resources.

Respectfully Submitted,



Kristy Drees  
Donald Eaton  
Logan Drees  
Defendants  
(864) 540-3035

DATED: June 3, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

DBC Anderson Cove LP,  
Plaintiff,

v.

Kristy Drees, Logan Drees,  
and Donald Eaton,  
Defendants.

ANDERSON SUMMARY COURT

C.A. No. 2022-CV-04-10101574

SUMMARY COURT  
PLAINTIFF'S MOTION FOR  
JUDGMENT ON THE PLEADINGS SEP 1, 2022  
REGARDING  
DEFENDANTS' COUNTERCLAIMS SEP 24, 2022

Plaintiff DBC Anderson Cove LP ("Plaintiff"), by and through its undersigned counsel, moves for judgment in favor of Plaintiff with respect to the "Amended Counterclaim" filed by Defendants pursuant to Rule 12(e) of the *South Carolina Rules of Civil Procedure* ("SCRCP") and other applicable law. Plaintiff further moves for damages and reasonable attorneys' fees pursuant to S.C. Code § 27-40-640(a). In support thereof, Plaintiff would show unto this Court as follows:

#### Introduction

This is an eviction action wherein Plaintiff is the landlord and Defendants are the tenants of certain real property located in Anderson County, South Carolina. Plaintiff is seeking to evict the Defendants because the lease term has expired and the Defendants have failed to pay rent and other amounts owed under the parties' lease. On August 1, 2022, Defendants filed an Amended Counterclaim which asserted three causes of action: (i) civil conspiracy; (ii) breach of contract; and (iii) fraud. For the reasons stated below, Defendants' counterclaims are without merit and Plaintiff is entitled to judgment as a matter of law and an award of attorneys' fees.

#### Argument

A motion for judgment on the pleadings is properly granted at a pretrial conference when, even if the facts alleged by the non-moving party were true as pleaded, "the moving party would

be entitled to judgment on the merits[.]" *Brown v. United Ins. Co. of America*, 268 S.C. 254, 233 S.E.2d 298, 300 (1977) (citations omitted).

In this case, Defendants have asserted three counterclaims: (i) civil conspiracy; (ii) breach of contract; and (iii) fraud. *See* Defs.' Am. Countercl., ¶¶ 27-44. As discussed below, even if the Defendants' factual allegations in their pleading were true, which is denied, Plaintiff "would be entitled to judgment on the merits" with respect to each counterclaim. *Brown*, 233 S.E.2d at 300.

**I. Defendants' civil conspiracy claim fails due a lack of "two or more persons."**

**a. Civil conspiracy requires two or more conspirators.**

In South Carolina, a party "asserting a civil conspiracy claim must establish (1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting" from the conspiracy. *Paradis v. Charleston Cty. Sch. Dist.*, Appellate Case No. 2018-002025, slip op. at 11 (S.C. Sup. Ct., Aug. 18, 2021).

While *Paradis* overturned earlier precedent regarding "special damages" in civil conspiracy claims, the Supreme Court did not alter the other "traditional elements" of civil conspiracy. *Id.* Among other conspiracy elements which survived the *Paradis* decision, it is still necessary for "two or more persons" to conspire together. *Id.* (emphasis added).

**b. A corporate entity cannot conspire with itself.**

It is well settled law "that a corporation cannot conspire with itself." *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 599, 626 S.E.2d 884, 887 (2006). Since the Defendants' civil conspiracy claim is only directed at one party (Plaintiff), which is a corporate entity, Defendants have failed to allege a "combination or agreement of two or more" legal persons and the Defendants' counterclaim fails as a matter of law. *Paradis*, slip op. at 11.

c. The allegations regarding Josette Anderson do not establish a conspiracy.

Defendants' civil conspiracy claim is based on various allegations concerning Josette Anderson, such as posting eviction notices and communicating with Defendants in the context of a lease dispute. *See* Defs.' Am. Countercl., ¶¶ 15–23. As noted by Defendants, "Josette Anderson is an employee of DBC, or one of its partners, and is the primary property manager" for the subject property. *Id.* at ¶ 4 (emphasis added); *see also id.* at ¶ 15 ("Plaintiff DBC, by way of agent Josette Anderson, filed another action for a Rule to Vacate.") (emphasis added).

Defendants clearly acknowledge the existence of an agent-principal relationship between Anderson and Plaintiff. Notwithstanding the same, Defendants' counterclaim includes the following inconsistent legal conclusion in support of their civil conspiracy claim: "Plaintiff DBC and Josette Anderson are two separate entities." *Id.* at ¶ 28.

Defendants' factual allegations regarding Anderson's job title and her purported behavior are presumed to be true for the purposes of a motion for judgment on the pleadings. *See Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338, 339 (1990) ("All properly pleaded factual allegations are deemed admitted for purposes of the consideration of a demurrer.") However, Defendants' legal conclusion that Plaintiff and Anderson are "two separate entities" is not entitled to a presumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–679 (2009) (reasoning that, in a Rule 12 challenge, mere conclusory allegations "are not entitled to the assumption of truth.")

Posting eviction notices, communicating with tenants, and filing "an action for eviction" are common duties of a property manager. S.C. Code § 27-40-710. Even if Josette Anderson committed any tortious conduct in the management of the subject property, which is denied, it is without question that Anderson's alleged conduct was committed in the scope of her agency with Plaintiff and not in Anderson's individual capacity. *See McMillan*, 626 S.C.2d at 887 ("A civil

conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation.”)

To the extent Defendants cling to the assertion that there are two separate entities because “Anderson is not a partner within DBC[,]” (Defs.’ Am. Counterol., ¶ 28), which is directly contradicted by Defendants’ allegations in Paragraph 4 of the Counterclaim, this argument is without merit because an agent or employee need not be an equity owner of the principal to assert civil conspiracy immunity. *See McMillan*, 626 S.E.2d at 884 (reasoning that civil conspiracy cannot exist amongst a corporate entity based on the conduct of an employee “acting within the scope of his employment”). Further, Defendants have not alleged that Anderson had any personal interest in evicting Defendants and the fact that Josette Anderson is not a named party to this litigation precludes Defendants from utilizing the “intracorporate conspiracy” theory. *Cricketer Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 325–326, 701 S.E.2d 39, 46 (S.C. App. 2019).

**II. Defendants’ breach of contract claim fails due to a lack of consideration.**

“The required elements of a contract are an offer, acceptance, and valuable consideration.” *Armstrong v. Collins*, 366 S.C. 204, 621 S.E.2d 368, 377 (2005) (citations omitted). When there is an existing contract between the parties, any subsequent modification of the parties’ existing rights and obligations “must be supported by” separate consideration. *Mathis v. Brown & Brown of South Carolina, Inc.*, 389 S.C. 299, 698 S.E.2d 773, 778 (2010) (citations omitted).

In this case, Defendants entered into a lease agreement with Plaintiff on July 30, 2019. *See* Defs.’ Am. Counterol., ¶ 8. According to Defendants, “Plaintiff, by way of Josette Anderson, and Defendants established a verbal contract during their discussion on March 9, 2022, that Defendants would make a reasonable attempt to secure rental payment” in exchange for Plaintiff’s covenant not to initiate “any further legal proceedings in the matter of eviction.” *Id.* at ¶ 36. The basis of

Defendants' breach of contract claim is the allegation that Defendants attempted to secure rental assistance and the Plaintiff nevertheless filed a rule to vacate. *See id.* at ¶¶ 37–38.

Since Defendants were already obligated to pay rent to Plaintiff pursuant to the 2019 lease, there was no additional consideration to support the purported 2022 verbal contract. *See Seven Lakes Inv. Group, Inc. v. Crowe*, 297 S.C. 534, 536, 377 S.E.2d 576, 577 (1988) (“In this case, Ms. Crowe’s \$10,000 payment did not constitute new consideration since she was already legally bound to pay the note.”)  *citing Rabon v. State Finance Corp.*, 203 S.C. 183, 26 S.E.2d 501, 502 (1943) (reasoning that there is no consideration when the debtor only “agreed to do something that he was legally bound to do”). Because Defendants did not provide new consideration, the purported 2022 verbal contract is unenforceable, and Plaintiff is entitled to judgment as a matter of law with respect to Defendants’ counterclaim for breach of contract.

**III. Defendants’ fraud claim falls because due to a lack of material representation.**

In order to establish fraud, Defendants must prove, by clear and convincing evidence, that Plaintiff made a representation of material fact that was false at the time it was made. *See John v. Millman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011) (discussing the elements of fraud). “Ordinarily, to be actionable, a statement must relate to a present or preexisting fact, and cannot be predicated on unfulfilled promises or statements as to future events.” *Id.* at 123.

Defendants’ fraud claim is based on the allegation that, “Plaintiff, by way of Josette Anderson,” breached a verbal contract “that a new lease agreement would be signed, and that no further legal action would be taken” by Plaintiff. Defs.’ Am. Countercl. ¶ 41. Even if the Defendants’ allegations were true, which is denied, a broken promise is not actionable fraud. *See Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 271, 847 S.E.2d 793, 801 (S.C. App. 2020)

("[N]either a broken promise nor making a statement to do something in the future, that is not done, can qualify as a fraudulent or negligent representation[.]") (citations omitted).

"A mere breach of contract does not constitute fraud" unless a future promise was part of a general scheme, existing at the time of the representation, to induce the aggrieved party to do something that he would not have otherwise done, which proximately caused damages. *Bishop Logging Co. v. John Deere Indus. Equipment Co.*, 317 S.C. 520, 455 S.E.2d 183, 187 (S.C. App. 1994) (citations omitted). According to the Defendants, they tried to pay their rent because Plaintiff promised to sign a new lease agreement. See Defs.' Am. Countercl., ¶ 41-43. However, since Defendants were already obligated to pay rent, the Plaintiff's alleged conduct to encourage Defendants to pay rent cannot be said to have tortiously induced Defendants to act as they "otherwise would not have acted," to their injury. *Bishop Logging Co.*, 455 S.E.2d at 187.

For these reasons and, considering "the heightened standard of review applied to fraud claims," the Defendants' factual allegations about a promise to do something in the future in exchange for Defendants' covenant to perform their existing obligations does not constitute fraud and the Plaintiff is entitled to judgment as a matter of law. *John*, 708 S.E. at 770.

#### IV. Plaintiff is entitled to an award of attorneys' fees.

Because Defendants' counterclaims are "without merit and [ ] not raised in good faith, the landlord may recover, in addition to actual damages, reasonable attorney's fees." S.C. Code § 27-40-640(a).


#### Conclusion

For the reasons stated above, Plaintiff is entitled to judgment on the pleadings with respect to Defendants' counterclaims and an award of reasonable attorneys' fees and actual damages in an amount to be determined in subsequent proceedings. See generally S.C. Code § 27-40-640(a).

WHEREFORE, Plaintiff respectfully moves for the following relief:

- i. Judgment in favor of Plaintiff with respect to Defendants' counterclaims;
- ii. For an order to compel Defendants to pay Plaintiff's attorneys' fees; and
- iii. For such other and further relief as this Court deems fair and equitable.

Respectfully submitted,

  
\_\_\_\_\_  
Daniel B. Eller, S.C. Bar # 73275  
John H. Scully, S.C. Bar # 100744  
ELLER TONNSEN BACH, LLC  
1306 South Church Street  
Greenville, SC 29605  
Telephone: (864) 236-5013  
Facsimile: (864) 312-4191  
*deller@etblawfirm.com*  
*jscully@etblawfirm.com*  
Attorneys for Plaintiff

August 31, 2022  
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DBC Anderson Cove LP,

Plaintiff,

v.

Kristy Drees, Logan Drees,  
and Donald Eaton,

Defendants.

ANDERSON SUMMARY COURT

C.A. No. 2022-CV-04-10101574

**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

SUMMARY COURT

SEP 16 2022

**TO THE ABOVE-NAMED DEFENDANTS:**

YOU WILL PLEASE TAKE NOTICE that Plaintiff DBC Anderson Cove LP ("Plaintiff"), by and through its undersigned attorneys, will appear before the presiding judge of the Anderson Summary Court on the tenth day following service hereof, or at such other time and place as may be directed by the Court, and then and there move for an Order granting summary judgment as to Plaintiff's eviction claim against the above-named Defendants pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* and other applicable law.

The grounds for this motion are that there is no genuine issue of material fact and Plaintiff is entitled to judgment as a matter of law because: (1) the term of tenancy has expired; (2) Plaintiff has provided proper notices to the Defendants that the tenancy has expired and that the lease is terminated; and (3) Defendants have no lawful right to continue to reside at the premises at issue.

This motion shall be based on the pleadings, affidavits, exhibits, and a memorandum of law that may be filed prior to a hearing concerning this motion.

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SEP/16/2022/FRI 02:28 PM

FAX No.

P. 004

Respectfully submitted,



Daniel B. Eller, S.C. Bar # 73275  
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1306 South Church Street  
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deller@etblawfirm.com  
jscully@etblawfirm.com  
Attorneys for Plaintiff

September 16, 2022  
Greenville, South Carolina

SEP/16/2022/FRI 02:28 PM

FAX No.

P. 005

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DBC Anderson Cove LP,

Plaintiff,

vs.

Kristy Drees, Logan Drees,  
and Donald Eaton

Defendants.

MAGISTRATE COURT

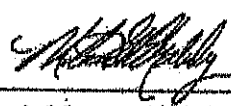
C. A. No. 2022-CV-04-10101574

CERTIFICATE OF SERVICE

This is to certify that I, Melanie Mausser-Shaluly, an employee of the law firm of Eller  
Tonnsen Bach, LLC have this day served a true and correct copy of the within and foregoing  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT upon the *pro se* defendants in the  
above-entitled action on September 16, 2022 by depositing same in the United States Mail,  
sufficient postage affixed thereon, and addressed as follows:

Kristy Drees, Logan Drees and Donald Eaton  
201 Miracle Mile  
Apt 13 C  
Anderson, SC 29621

By:

  
Melanie Mausser-Shaluly, Paralegal  
1306 S. Church Street  
Greenville, SC 29605

SUMMARY COURT  
SEP 27 2022

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

ANDERSON SUMMARY COURT

11:13:43

DBC Anderson Cove LP,

C.A. No. 2022-CV-04-10101574

Plaintiff,

**PLAINTIFF'S AFFIDAVIT  
REGARDING  
PLAINTIFF AND DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT**

v.

Kristy Drees, Logan Drees,  
and Donald Eaton,

Defendants.

My name is Josette Anderson. I am over 18 years of age, I am fully competent to make this affidavit, and I have personal knowledge of the facts stated herein.

I am a property manager for DBC Anderson Cove LP ("DBC"). One of my job duties was to manage the premises at issue in this eviction proceeding. I have personal knowledge regarding the above-named Defendants, who are the tenants of the residence at issue in this action.

The Defendants' lease term expired prior to the initiation of this action (May 23, 2022). DBC has provided written notice to Defendants that the tenancy has expired and that the lease is terminated. Notwithstanding the same, the Defendants have refused to vacate the premises, which is why DBC filed this eviction proceeding.

FURTHER AFFIANT SAYETH NOT

SWORN to and subscribed before me this  
20<sup>th</sup> day of September, 2022  
*[Signature]*  
Notary Public for South Carolina  
My Commission Expires: 01/07/2029

DBC Anderson Cove LP

By: *[Signature]*  
Josette Anderson, Property Manager

SUMMARY COURT  
SEP 27 2022

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DBC Anderson Cove LP,

Plaintiff,

v.

Kristy Drees, Logan Drees,  
and Donald Eaton,

Defendants.

ANDERSON SUMMARY COURT

ANDERSON

C.A. No. 2022-CV-04-10101574

**PLAINTIFF'S MEMORANDUM OF LAW  
IN OPPOSITION TO  
DEFENDANTS' MOTION FOR DISMISSAL  
AND DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

Plaintiff DBC Anderson Cove LP ("Plaintiff"), by and through its undersigned counsel, respectfully submits this Memorandum of Law in Opposition to the "Defendants' Motion for Dismissal" and the "Defendants' Motion for Summary Judgement."

**Introduction**

This is an eviction action wherein Plaintiff is the landlord and Defendants are tenants of certain real property located in Anderson County, South Carolina. Plaintiff is seeking to evict Defendants because the lease term has expired and Defendants have refused to vacate the premises.

Defendants have filed a "Motion for Dismissal" and a "Motion for Summary Judgement" which seeks judgment in favor of Defendants with respect to Plaintiff's eviction claim and Defendants' counterclaim for breach of contract. For the reasons stated below, both of the Defendants' motions should be denied in their entirety.

**Argument**

A motion to dismiss "tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019) (citations omitted). When considering a motion to dismiss, the trial court's only duty is to determine whether

the facts alleged in the pleading, if true, would state a viable cause of action. *See id.* (“At the Rule 12 stage, [...] any plaintiff is [...] entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim.”) (emphasis added). When “the facts alleged in the complaint and the inferences drawn therefrom would entitle the plaintiff to relief under any theory[.]” the motion for dismissal must be denied. *Charleston County Sch. Dist. v. Harrell*, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011) (citations omitted).

With respect to a motion for summary judgment, the moving party must “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. “In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.” *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 802 (2009) (citations omitted). For a “preponderance of the evidence” claim, “the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment.” *Id.* at 803 (emphasis added).

**I. Plaintiff has plead sufficient facts to defeat Defendants’ “Motion for Dismissal.”**

A magistrate court complaint is sufficient if it contains “a short and plain written statement of the facts showing what the plaintiff claims and why the claim is made.” Rule 5(a), SCRMC. Plaintiff’s rule to vacate requests that Defendants be evicted because the term of tenancy or occupancy has ended. Looking “solely upon the allegations set forth on the face of” Plaintiff’s pleading, Defendants’ refusal to vacate the premises after the expiration of the term of tenancy would entitle Plaintiff to evict Defendants. *Charleston County Sch. Dist.*, 393 S.C. at 557.

In the context of a motion to dismiss, Plaintiff is not required to “convince the trial court of the merits of its underlying claim.” *Skydive Myrtle Beach, Inc.*, 426 S.C. at 180. Because

Plaintiff's rule to vacate states sufficient facts to support an eviction claim, Defendants' motion must be denied.

**II. Defendants are not entitled to summary judgment.**

Defendants' "Motion for Summary Judgment" seeks judgment in favor of Defendants with respect to Plaintiff's eviction claim and Defendants' counterclaim for breach of contract. *See* Defs.' MSJ, page 1. Defendants are not "entitled to a judgment as a matter of law" on either of these claims and the Defendants' motion should be denied in its entirety. Rule 56(c), SCRPC.

**a. There is more than a "scintilla of evidence" to support an eviction claim.**

Plaintiff's rule to vacate included a notarized statement that the term of tenancy or occupancy has ended. *See* Rule 56(c), SCRPC (directing the court to consider the pleadings, affidavits, and admissions on file to determine whether there is a "genuine issue as to any material fact"). That alone should raise enough of a factual issue to survive an adverse motion for summary judgment, but, out of an abundance of caution, the Plaintiff has submitted an affidavit regarding the grounds to evict Defendants, a copy of which is attached hereto as "Exhibit A."

Plaintiff's affidavit and the rule to vacate, when "viewed in light most favorable to" Plaintiff, clearly establishes grounds for an eviction. *Hancock*, 673 S.E.2d at 802. Since Plaintiff has raised a "scintilla of evidence" in support of their eviction claim, Defendants' motion for summary judgment must be denied. *Id.*

**b. Plaintiff contests the existence and enforceability of the alleged contract.**

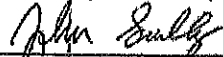
Defendants have moved for summary judgment on their counterclaim for breach of contract. *See generally* Defs.' MSJ. Plaintiff has contested the Defendants' factual allegations regarding the existence, terms, and enforceability of the purported verbal contract that Defendants are relying upon. *See generally* Pl.'s Reply to Countercl. Even if the Defendants' factual

allegations concerning the alleged contract were true, which is denied, the verbal contract at issue is unenforceable as a matter of law. *See generally* Pl.'s MJOP. Since there are genuinely disputed factual matters regarding the alleged contract and legal defenses available to Plaintiff, summary judgment in favor of the Defendants would be inappropriate. *See Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 694 S.E.2d 1, 4 (2010) ("Summary judgment is a drastic remedy and should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues.")

**Conclusion**

For the reasons stated above, the Defendants' "Motion for Dismissal" and the Defendants' "Motion for Summary Judgment" should be denied in their entirety.

Respectfully submitted,



---

Daniel B. Eller, S.C. Bar # 73275  
John H. Scully, S.C. Bar # 100744  
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[jscully@etlawfirm.com](mailto:jscully@etlawfirm.com)  
Attorneys for Plaintiff

September 20, 2022  
Greenville, South Carolina

**EXHIBIT A**

**RECEIVED**

**Aug 11 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000133

Donald Eaton, Kristy Drees, and Logan Drees.....Plaintiffs,

v.

DBC Anderson Cove LP.....Respondent,

Of Whom Donald Eaton is the Appellant.

**CERTIFICATE OF COUNSEL**

I certify that this Appendix to the Record on Appeal contains materials that were previously designated by the Respondent and I certify that this Appendix to the Record on Appeal does not contain any other materials.

/s/ John H. Scully

John H. Scully, S.C. Bar # 100744  
TONNSEN BACH, LLC  
1306 South Church Street  
Greenville, SC 29605  
Telephone: (864) 236-5013  
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*jscully@tonnsenbach.com*  
Attorney for Respondent

August 11, 2023

**RECEIVED**

**Aug 11 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2023-000133

Donald Eaton, Kristy Drees, and Logan Drees.....Plaintiffs,

v.

DBC Anderson Cove LP.....Respondent,

Of Whom Donald Eaton is the Appellant.

**PROOF OF SERVICE**

I certify that I have served the Respondent's Appendix to the Record on Appeal by causing a copy of the same to be mailed to the Appellant's address of record (below) via U.S. Mail on August 11, 2023.

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August 11, 2023