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Nov 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge
The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case No. 2023-CP-10-01512
Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael
Flanagan, Receiver.....Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two
OP Holdings, LLC, and Samuel Goldner.....Appellants.

MOTION TO DISMISS PART OF APPEAL

Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC (“Movants”) respectfully move to dismiss certain parts of this appeal due to Appellants’ failure to timely serve the Notice of Appeal as required by Rule 203(b)(1), SCACR, and for appealing certain issues which are premature and/or moot. This motion is based upon the grounds set forth herein and upon the Affidavit¹ and other Exhibits attached hereto.

INTRODUCTION

Appellants seek to appeal Judge George M. McFaddin’s Order Appointing Receiver entered on April 14, 2023 (“April 14 Order”) and his Form 4 Order entered on April 27, 2023 (“April 27 Order”) which denied Appellants’ Rule 59(e) motion for reconsideration of the April 14 Order. Pursuant to Rule 203(b)(1), SCACR, and applicable caselaw, any Notice of Appeal

¹ See Affidavit of Movants’ counsel attached hereto as Exhibit A.

of the April 14 Order and the April 27 Order denying reconsideration of the April 14 Order was required to be served by May 30, 2023 (May 29th was Memorial Day). Appellants, however, did not serve their Notice of Appeal until September 13, 2023 (*See* Appellants’ Proof of Service filed with this Court on October 13, 2023), which was one hundred and six (106) days too late. Therefore, Appellants’ appeal of the April 14 Order and the April 27 Order denying reconsideration of the April 14 Order is untimely and must be dismissed.

As described below, Appellants also seek to appeal certain issues that are subject to Appellants’ separate, still pending motion for reconsideration, which the Circuit Court has not ruled upon. Pursuant to South Carolina law, a party cannot appeal issues that have not yet been finally ruled on. Appellants’ appeal of such issues must be dismissed as premature.

Appellants also seek to appeal Judge Roger M. Young’s Order Approving Receiver’s Entry Into Operations Transfer Agreement and Lease Termination Agreement entered on August 23, 2023 (“August 23 Order”) and his Order entered on September 8, 2023 (“September 8 Order”) which denied Appellants’ motion to reconsider the August 23 Order. In this motion, Movants are not requesting dismissal of the appeal of the August 23 Order and the September 8 Order, but Movants reserve all rights regarding the appeal of those two Orders.

FACTS

This is a breach of lease case involving two skilled nursing facilities. Charleston SC Property Holdings, LLC (“Charleston Respondent”) owns the real property located at 1137 Sam Rittenberg Boulevard, Charleston, South Carolina, and Hanahan SC Property Holdings, LLC (“Hanahan Respondent”) owns the real property located at 1800 Eagle Landing Boulevard, Hanahan, South Carolina (collectively, the “Properties”). Rittenberg OP, LLC (“Rittenberg Appellant”) and Hanahan OP, LLC (“Hanahan Appellant”) leased the Properties

from Charleston Respondent and Hanahan Respondent and operated two skilled nursing facilities thereon, formerly known as Viviant Healthcare of Charleston and Viviant Healthcare of Hanahan (collectively, the “Facilities”). The leasehold was pursuant to a unified Master Lease Agreement for the Properties dated June 14, 2021 (the “Lease”).

Movants initiated the underlying lawsuit by filing their Complaint and Motion for Appointment of Receiver on March 28, 2023. This action was necessitated due to Appellants’ breaches of the Lease, and their endangering of the health and well-being of the residents of the Facilities due to Appellants’ operational mismanagement and insolvency. Pursuant to the April 14 Order, Judge McFaddin appointed Michael F. Flanagan (“Receiver”) as the Receiver for the Rittenberg Appellant, the Hanahan Appellant, the Properties, and the Facilities. A copy of the April 14 Order is attached hereto as Exhibit B.

Appellants filed a Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond on the same day, April 14, 2023 (the “April 14 Motion”). A copy of Appellants’ April 14 Motion is attached hereto as Exhibit C. Judge McFaddin’s April 27 Order denied the April 14 Motion. A copy of the April 27 Order is attached hereto as Exhibit D.

Appellants then filed a separate Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond on May 5, 2023 (the “May 5 Motion”). The May 5 Motion is still pending and has not been adjudicated by the Circuit Court. A copy of the May 5 Motion is attached hereto as Exhibit E.

ARGUMENT

I. APPELLANTS' APPEAL OF THE APRIL 14 ORDER AND THE APRIL 27 ORDER DENYING RECONSIDERATION OF THE APRIL 14 ORDER IS UNTIMELY.

For appeals from the Court of Common Pleas, a “notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment.” Rule 203(b)(1), SCACR. The timely service of the notice of appeal is an absolute jurisdictional requirement and, upon the failure of an appellant to timely serve the notice, an appellate court must dismiss the appeal. *Elam v. South Carolina Dep’t of Transp.*, 602 S.E.2d 772, 775 (S.C. 2004).

The April 27 Order was entered by the Circuit Court and Appellants received written notice of its entry the same day. (*See* Ex. D, April 27 Order.) It did not alter the April 14 Order in any way. Therefore, Appellants were required to serve their Notice of Appeal no later than May 30, 2023². The Appellants did not serve their Notice of Appeal until September 13, 2023, which was one hundred and six (106) days too late.

Consequently, the Court of Appeals lacks jurisdiction to consider the Appellants’ appeal of the April 14 Order and the April 27 Order denying reconsideration of the April 14 Order, and such appeal must be dismissed as untimely. Rule 203(b)(1), SCACR; *Elam*, 602 S.E.2d at 775, 778.

II. APPELLANTS' APPEAL OF THE APRIL 27 ORDER, TO THE EXTENT THE APPEAL INVOLVES THE TWO ISSUES IN THE PENDING MAY 5 MOTION, IS PREMATURE AND/OR MOOT.

²Appellants’ May 5 Motion did not toll the time for serving a Notice of Appeal from the April 14 Order or the April 27 Order denying reconsideration of the April 14 Order. The May 5 Motion does not request further reconsideration of the April 14 Order. Even if it had, South Carolina law is clear that “[a]n appeal may be barred due to untimely service of the notice of appeal when a party---instead of serving a notice of appeal---files a successive Rule 59(e) motion, where the trial judge’s ruling on the first Rule 59(e) motion does not result in the substantial alteration of the original judgment.” *Elam*, 602 S.E. 2d at 778.

In their April 14 Motion, Appellants requested three forms of relief: (1) reconsideration of the April 14 Order under Rule 59(e); (2) a stay of the April 14 Order under Rule 62(a); and (3) an offer of bond. The April 27 Order denied those three requests for relief. The May 5 Motion does not request further reconsideration of the April 14 Order. The May 5 Motion only requests Rule 59(e) reconsideration of the April 27 Order's denial of the Appellants' request for a Rule 62(a) stay and offer of bond. As addressed below, the appeal of the April 27 Order, to the extent the appeal involves those two issues contained in the unadjudicated May 5 Motion, must be dismissed as premature and/or moot.

South Carolina appellate courts have held that when a motion is pending before a lower court, any notice of appeal will be dismissed without prejudice as premature. *See Hudson v. Hudson*, 290 S.C. 215, 216 (1986); *see also Elam*, 602 S.E. 2d at 783 n.2 (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature). Accordingly, the appeal of the April 27 Order, to the extent the appeal involves the two issues contained in the May 5 Motion, is premature since the May 5 Motion has yet to be adjudicated, and must be dismissed. *See Hudson*, 290 S.C. at 216.

Furthermore, any appeal from the April 27 Order's denial of Appellants' request for a Rule 62(a) stay is moot. In their April 14 Motion, Appellants requested a Rule 62(a) stay of the April 14 Order "while this Motion for Reconsideration is under consideration and until appeal is taken...." (*See Ex. C, April 14 Motion, p.1*). As addressed above, the Circuit Court denied the April 14 Motion in the April 27 Order, and Appellants failed to file a timely appeal. Accordingly, there is no basis for a Rule 62(a) stay, and the appeal is moot to the extent it relates to Appellants' previous request for a Rule 62(a) stay.

CONCLUSION

For the reasons set forth above, Movants respectfully pray that parts of this appeal be dismissed as addressed herein. Specifically, Movants request that:

- (A) The appeal from the April 14 Order, and from the April 27 Order denying reconsideration of the April 14 Order, be dismissed as untimely; and
- (B) The appeal from the April 27 Order, to the extent the appeal involves the two issues which are the subject of the pending May 5 Motion (*e.g.*, denial of stay and denial of offer of bond), be dismissed as premature and/or moot.

Respectfully submitted,

/s/ Charles P. Summerall, IV_____

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-AND-

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Attorneys for Movants

November 17, 2023

Exhibit A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge
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Trial Court Case No. 2023-CP-10-01512
Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver.....Respondents,

v.

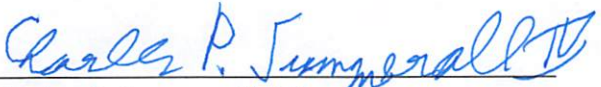
Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner.....Appellants.

AFFIDAVIT OF CHARLES P. SUMMERALL, IV

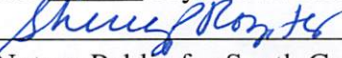
PERSONALLY APPEARED BEFORE ME, Charles P. Summerall, IV, who first being duly sworn, does depose and state as follows:

1. I am one of the attorneys for Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC ("Movants"). I am submitting this Affidavit in conjunction with Movants' Motion to Dismiss Part of Appeal ("Motion"). I have personal knowledge of the matters addressed in this Affidavit.
2. The Exhibits attached to the Motion are true and correct copies of those documents filed in the Charleston County Circuit Court in Case No. 2023-CP-10-01512. Attached hereto as Exhibit 1 is a true and correct copy of the Circuit Court Docket in Case No. 2023-CP-10-01512.

FURTHER AFFIANT SAYETH NOT.

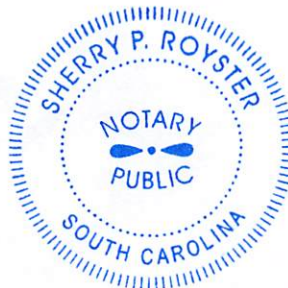

Charles P. Summerall, IV

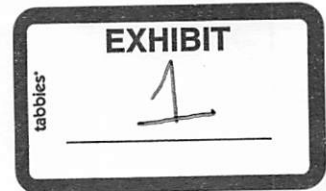
Sworn to and subscribed before me
this 16 day of November, 2023


Notary Public for South Carolina

Print Name: SHERRY P. ROYSTER

My commission expires: Aug. 11, 2026





Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
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Switch View

Charleston Sc Property Holdings Llc , plaintiff, et al VS Rittenberg Op Llc , defendant, et al

Case Number:	2023CP1001512	Court Agency:	Common Pleas	Filed Date:	03/28/2023
Case Type:	Common Pleas	Case Sub Type:	Breach of Cont 140	File Type:	Mediator - Non Jury
Status:	Pending/ADR	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Flanagan, Michael	NEF(10-25-2023 09:04:05 AM) Case Status Update	Filing		10/25/2023-09:09		
Flanagan, Michael	Receivers Seventh Report	Filing		10/25/2023-09:04		
Charleston Sc Property Holdings Llc	ADR/Alternative Dispute Resolution (Workflow)	Action		10/24/2023-14:24		
Flanagan, Michael	NEF(09-25-2023 12:48:16 PM) Case Status Update	Filing		09/25/2023-12:55		
Flanagan, Michael	Receiver's Sixth Report	Filing		09/25/2022-12:48		
Goldner, Samuel	Decline to Sign:Motion/Alter and/or Amend	Filing		09/19/2023-15:37		
Rittenberg Op Llc	NEF(09-13-2023 04:16:05 PM) Notice/Other	Filing		09/13/2023-16:34		
Rittenberg Op Llc	Notice/Appeal, Order Appoint/Approving Receiver, Deny/Motion	Filing		09/13/2023-16:16		
Rittenberg Op Llc	NEF(09-08-2023 10:47:43 AM) Order/Other	Filing		09/08/2023-10:47		
Rittenberg Op Llc	Order Denying Defnts Motion to Reconsider	Order		09/08/2023-10:47		
Flanagan, Michael	NEF(09-06-2023 10:03:50 AM) Case Status Update	Filing		09/06/2023-10:10		
Flanagan, Michael	Case Status Update	Filing		09/06/2023-10:03		
Rittenberg Op Llc	NEF(08-30-2023 05:20:49 PM) Motion/Alter and/or Amend	Filing		09/01/2023-08:18		
Goldner, Samuel	Motion/Reconsideration Order Grant Receiver's Motion/Enter	Motion		08/30/2023-17:20	08/30/2023-17:20	
Flanagan, Michael	NEF(08-24-2023 09:35:56 AM) Case Status Update	Filing		08/24/2023-09:58		
Flanagan, Michael	Receivers 5th Report	Filing		08/24/2023-09:35		
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Flanagan, Michael	Certificate Of Service	Filing		08/23/2023-15:57		
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Flanagan, Michael	Order Approving Receivers Entry/Operations Transfer & Lease	Order		08/23/2023-15:19		
Flanagan, Michael	NEF(08-22-2023 01:36:30 PM) Letter/Letter	Filing		08/22/2023-13:44		
Flanagan, Michael	Letter In RE: Exhibit 3 Attached to Witness Exhibit List	Filing		08/22/2023-13:36		
Flanagan, Michael	NEF(08-22-2023 09:35:28 AM) Notice/Notice of Hearing and...	Filing		08/22/2023-09:39		
Flanagan, Michael	Amended Notice of Hearing and Service on Counsel of Record	Filing		08/22/2023-09:35		
Flanagan, Michael	NEF(08-21-2023 02:11:33 PM) Filing/Other	Filing		08/21/2023-15:48		
Flanagan, Michael	Receivers Witness and Exhibit List for August 23 Hearing/Srv	Filing		08/21/2023-14:11		
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First Light Home Care	NEF(06-27-2023 11:29:46 AM) Notice/Notice of Appearance	Filing		06/27/2023-11:42		
First Light Home Care	Notice/Notice of Appearance	Filing		06/27/2023-11:29		
First Light Home Care	Motion/Intervene & Lift Stay Order	Motion		06/27/2023-11:29		
Flanagan, Michael	NEF(06-26-2023 03:35:21 PM) Filing/Other	Filing		06/26/2023-16:11		
Flanagan, Michael	Receivers Third Report	Filing		06/26/2023-15:35		
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Charleston Sc Property Holdings Llc	Memo in Opposition to Dfs Motion to Dismiss/Alternative	Filing		05/26/2023-09:13		
Flanagan, Michael	NEF(05-23-2023 11:33:33 AM) Filing/Other	Filing		05/23/2023-11:48		
Flanagan, Michael	Receivers 2nd Report	Filing		05/23/2023-11:33		
Associated Receivables Funding, Inc.	NEF(05-09-2023 03:34:29 PM) Motion/Intervene	Filing		05/09/2023-15:39		
Associated Receivables Funding, Inc.	Motion/Intervene & Lift Stay to Associated Receivables Fund	Motion		05/09/2023-15:34		
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Goldner Capital Management Llc	Motion/Support of Admission Pro Hac Vice of Ofer Reger	Motion		04/19/2023-13:43	04/19/2023-13:43	
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Charleston Sc Property Holdings Llc	Filing/Oath of Receiver	Filing		04/17/2023-08:42		
Goldner Capital Management Llc	Motion/Reconsideration Request/Stay & Offer of Bond	Motion		04/14/2023-19:39	04/14/2023-19:39	
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Goldner Capital Management Llc	Motion/Dismiss or Alternative to Stay & Compel Arbitration	Motion		04/10/2023-23:15		
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Rittenberg Op Llc	Notice/Notice of Appearance	Filing		04/05/2023-17:48		
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Charleston Sc Property Holdings Llc	Affidavit of Service on Rittenberg Op Llc	Filing		03/30/2023-13:55		
Charleston Sc Property Holdings Llc	Affidavit of Service on Sc Two Op Holdings Llc	Filing		03/30/2023-13:55		
Charleston Sc Property Holdings Llc	NEF(03-30-2023 09:57:06 AM) Notice/Notice of Hearing and...	Filing		03/30/2023-10:15		
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Summerall, Charles P. IV	4/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		03/29/2023-15:22		
Clement, James Whittington	4/6/2023_MOTION_Roster/Notice of Motions Roster Publication	Action		03/29/2023-15:22		
Charleston Sc Property Holdings Llc	NEF(03-29-2023 01:22:27 PM) Service/Affidavit Of Service	Filing		03/29/2023-13:43		
Charleston Sc Property Holdings Llc	Affidavit of Service on Goldner Capital Management Llc	Filing		03/29/2023-13:22		
Charleston Sc Property Holdings Llc	Affidavit of Service on Hanahan Op Llc	Filing		03/29/2023-13:22		
Charleston Sc Property Holdings Llc	Affidavit of Service on Rittenberg Op Llc	Filing		03/29/2023-13:22		
Charleston Sc Property Holdings Llc	Affidavit of Service on Sc Two Op Holdings Llc	Filing		03/29/2023-13:22		
Charleston Sc Property Holdings Llc	NEF(03-29-2023 11:59:29 AM) Motion/Admission Pro Hac Vic...	Filing		03/29/2023-13:19		
Charleston Sc Property Holdings Llc	NEF(03-29-2023 11:52:43 AM) Motion/Admission Pro Hac Vic...	Filing		03/29/2023-12:00		
Charleston Sc Property Holdings Llc	Motion/Admission Pro Hac Vice Admision of Noah D Siegel	Motion		03/29/2023-11:59	03/29/2023-11:59	
Charleston Sc Property Holdings Llc	Motion/Admission Pro Hac Vice Admission of Aharon S Kaye	Motion		03/29/2023-11:52	03/29/2023-11:52	
Charleston Sc Property Holdings Llc	NEF(03-29-2023 09:38:28 AM) Notice/Notice of Appearance	Filing		03/29/2023-09:41		
Charleston Sc Property Holdings Llc	Notice/Notice of Appearance	Filing		03/29/2023-09:38		
Charleston Sc Property Holdings Llc	NEF(03-28-2023 03:55:52 PM) Motion/Appointment of Receiv...	Filing		03/29/2023-08:35		
Charleston Sc Property Holdings Llc	Motion/Appointment of Receiver Expedited Hearing Requested	Motion		03/28/2023-15:55	04/14/2023-15:55	
Charleston Sc Property Holdings Llc	Summons & Complaint	Filing		03/28/2023-14:24		

Exhibit B

“Defendants”) of the entry of this Order (the “Order”). Based on the record in this case, the Court finds and concludes:

1. This Court has jurisdiction over the parties and subject matter of this case, and that venue is proper.

2. Under South Carolina’s Receivership Act, the Court has the statutory power to order the appointment of a receiver to protect a party’s business and property interests in commercial real property and personal property related to or used to operate the business. South Carolina Code § 15-65-10.

3. The Court also has the equitable power to order the appointment of a receiver. *Midlands Util., Inc. v. S.C. DHEC*, 301 S.C. 224 (1989) (the appointment of a receiver is within the discretion of the circuit judge).

4. Plaintiffs have met their burden to appoint a receiver for the Lessees, the Facilities, and the Personal Property, which includes the assets and Operations described in the Motion.¹

5. Proper and adequate notice was given to Defendants.

6. Good cause exists for issuing this Order, appointing a receiver over the Lessees, the Facilities, and the Personal Property and Operations. Defendants have failed to meet their obligations under the Lease, and Plaintiffs are entitled to enforce their rights and remedies, including, without limitation, the right to have a receiver appointed. A receiver is necessary to protect both the residents of the Facilities and the rights of Plaintiffs because the Facilities and the Personal Property are being subjected to or are in danger of impairment, waste, loss, substantial diminution in value, misappropriation, and dissipation, and a further delay would

¹ For the sake of clarity, the powers of the Receiver shall specifically include the operation of the Facilities. Unless otherwise defined herein, defined terms shall have the meaning ascribed them in the Motion.

cause an injustice to the Plaintiffs and the residents. Moreover, the Lessees appear to be insolvent or in imminent danger of insolvency.

7. The Receivership Act authorizes the Court to appoint a receiver when a party has established “an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired,” and/or when “a corporation... is insolvent or in imminent danger of insolvency”. S.C. Code Section 15-65-10, subsections (1) and (4). Based on the record in this case, the Court finds and concludes that appointment of a receiver is justified and appropriate under both of these alternative subsections of Section 15-65-10.

8. The Defendants argued that subsection (4) of Section 15-65-10 applies only to corporations, and not to limited liability companies. The Court finds and concludes that the Receivership Act, including subsection (4) of Section 15-65-10, applies to limited liability companies such as the Lessees.

9. On April 10, 2023, the Defendants filed a Motion to Dismiss, or in the alternative to Stay, and Compel Arbitration (the “Defendants’ Motion”). The Defendants’ Motion has not been scheduled for hearing, and the Court expresses no opinion on the arbitration issues asserted therein. For purposes of this Order, the Court finds and concludes that the appointment of a receiver at this time is proper. *See Palmetto Wildlife Extractors, LLC v. Ludy*, 435 S.C. 690, 869 S.E.2d 859, 866 (Ct. App. 2022)(a motion to appoint a receiver can only be resolved by the circuit court, not by an arbitrator).

Based upon the foregoing, it is hereby,

ORDERED AND ADJUDGED:

1. The Motion is **GRANTED**.

2. Appointment. Michael F. Flanagan (“Receiver”) is qualified to act as Receiver in this action and is appointed Receiver over the Lessees, the Facilities and the Personal Property and Operations. The appointment of the Receiver is effective as of April 17, 2023 (the receivership “Effective Date”) and continues until further order of this Court. As previously ordered by the Court on April 6, and pending the April 17, 2023 Effective Date for the appointment of the Receiver, the parties shall not dispose of any property or do anything adverse with any property, real, financial, or otherwise, except such actions as would occur during the normal course and scope of business. The Receiver shall schedule weekly meetings with Plaintiffs to provide information on the status of the receivership.

3. Powers of Receiver. As of the Effective Date, and ending upon termination of such appointment by further Order of the Court, Receiver is authorized to take possession, custody and control of the Facilities and Lessees’ business operations, assets, and property, of whatever nature, including, without limitation, the Personal Property (collectively, the “Personal Property and Operations”), and is authorized, but not required, to perform all services and take all actions necessary or advisable to oversee, carry on, manage, care for, maintain, repair, insure, protect, and preserve the Personal Property and Operations, without further order of the Court, including, but not limited to, the following:

- a. To take immediate possession of, custody of, and control over the Facilities and all of the Personal Property and Operations and all other property and assets of Lessees. For the avoidance of doubt, the Personal Property and Operations shall include all business operations and all personal property of any kind owned by the Lessees used in connection with the Facilities, including all intellectual property, fixtures, equipment, inventory, books and records, bank accounts, keys, combinations for locks, passwords or other access to information, and intangibles.
- b. To engage Legacy Healthcare Financial Services, or such other management company as Receiver may select in consultation with Plaintiffs, to manage the Facilities on terms and condition acceptable to Plaintiffs and Receiver.

- c. To change any locks and, if appropriate, limit access to some or all of the Facilities.
- d. To direct Defendants and their officers, agents, employees or other representatives immediately to turn over and deliver or cause to be delivered to the Receiver or his designee all personalty which is owned by the Defendants and relates in any manner to the Facilities or the Personal Property and Operations including, without limitation, all keys, combinations for locks, passwords or other access codes, books, records, accounts, operating statements, reserve accounts and the like pertaining to the Personal Property and Operations.
- e. To negotiate all bills, drafts, loan documents (with Plaintiff or others), notes or other instruments in the name of the Lessees.
- f. To execute agreements, as necessary, with terms which are reasonable and customary for the type of use involved for the benefit of the Facilities and the Personal Property and Operations, and such agreements shall have the same effect as if executed by Lessees.
- g. To retain and pay professionals (e.g. counsel, accountants, etc.) ("Professionals") to advise and assist Receiver with the Facilities and the management and administration of the Personal Property and Operations, including independent legal counsel to furnish legal advice to the Receiver for such purposes as may be necessary during the period of receivership. With the prior approval of Plaintiffs, the Receiver is also empowered to employ, consultants and other professionals to furnish other advice and services to the Receiver, all for such purposes as may be reasonable and necessary during the term of the receivership.
- h. To collect and receive all earnings, rents, issues, income, profits, and other revenues (the "Revenues") of the Facilities and Lessees' Personal Property and Operations now due and unpaid or that may be earned after entry of this Order.
- i. To (a) continue to maintain and utilize Lessees' deposit accounts, which shall be used exclusively for deposits and disbursements of the Revenues and (b) direct payors to deposit funds due and owing to Defendants in the bank accounts related to the Facilities. Receiver shall be expressly authorized to operate the Facilities as a single business enterprise, including commingling the revenues generated from both Facilities and to use such revenues to pay the liabilities incurred by both Facilities during the course of the Receivership.
- j. To apply the Revenues as follows to pay: (a) the Receiver's reasonable fees and expenses and those of its Professionals including law firms representing the Receiver; (b) premiums for adequate property and liability insurance; (c) taxes and assessments; (d) utility bills and garbage and waste removal; (e) expenses

for minor, routine and ordinary items of maintenance and repair not involving capital improvements (the parties acknowledge the Receiver may specifically do all minor repairs and maintenance from time to time as may be required so as to avoid loss or damage to the Facilities and the Personal Property and Operations); (f) expenses to continue the day to day operations, which may include hiring such employees and third party vendors as the Receiver deems necessary and appropriate to assist him in managing the Personal Property and Operations in a business-like manner during the Receivership; and (g) to Plaintiffs toward the Total Outstanding Amount due under the Lease.

- k. To conduct discovery, provide notice, pursue claims, cooperate, negotiate, and otherwise take all steps necessary to recover or obtain coverage from any entity relating to: (a) the acts, conduct, property, liabilities, or financial condition of the Defendants, (b) the claim policies, or (c) any other matter or item that may affect the Receiver's administration of the Personal Property and Operations.
- l. To commence, prosecute and settle such actions at law or in equity that the Receiver deems necessary to fulfill its duties to preserve the Personal Property and Operations.
- m. To maintain existing or open new accounts with, or negotiate, compromise or otherwise resolve Lessees' existing obligations to utility companies or other service providers or suppliers of goods and services to Lessees or to otherwise enter into such agreements, contracts or understandings with such utility companies or other service providers or suppliers as are necessary to maintain, preserve and protect the Personal Property and Operations.
- n. To open new bank accounts with respect to the Receiver or his designee's management of the Personal Property and Operations, and with respect to any bank account in the name of the Lessees or otherwise maintained by the Lessees to: (a) require said bank to convert the account name to such name as requested by the Receiver; (b) modify the authorized signors on the account to those persons requested by the Receiver; (c) delete any signors to the account as requested by the Receiver; and (d) ensure compliance with other similar requests made by the Receiver, including, without limitation, using Lessees' EIN while naming the account as a receivership account.
- o. To utilize any and all of the existing sales, use, environmental or regulatory operating licenses or permits, or any other licenses or permits relating to the Lessees.
- p. To transfer and cause to be filed this Order and any judgment or order entered in connection with this case to any district in which the Personal Property and Operations may be located and applicable law to fulfill its duties under this Order.
- q. To take possession of or, if needed, to recover (and the US. Postal Service and

all courier or delivery services shall be directed to release to Receiver or its designees), all mail or packages addressed to Lessees at any of the Properties.

- r. To hire and terminate Lessees' personnel, and to adjust the salaries or compensation of any such personnel, in Receiver's discretion (and with Plaintiff's written approval, which approval shall not be unreasonably withheld).
- s. To take any action necessary to ensure that all licenses required under federal, state, or local law to operate the Facilities is maintained.
- t. To utilize the Police or Sheriff, if necessary, to assist the Receiver in enforcing this Order and to preserve the Personal Property and Operations.

4. Budget. Within thirty (30) days of this Order, the Receiver shall provide an estimated budget of receivership related expenses to the Plaintiffs for their approval.

5. Inventory. The Receiver shall prepare and file in the Court on or before thirty (30) days from the date the Receiver takes possession, a full and detailed inventory, under oath, of all the real and personal property, of every nature pertaining to the Facilities and the Personal Property and Operations.

6. Possession and Turnover of Facilities and the Personal Property and Operations. The Receiver shall immediately take full possession of the Facilities and the Personal Property and Operations and the operational management of the Facilities, Personal Property and Operations and shall retain custody of same until further order. All persons or entities now or hereafter in possession of the Personal Property, or any part thereof, shall forthwith surrender such possession to the Receiver. For taking possession of the Facilities and the Personal Property and Operations and managing same, the Receiver is hereby authorized to employ agents, servants and employees and to contract as reasonably necessary. The Receiver shall collect all revenues and rents generated from the Personal Property and Operations. The Receiver shall deposit rents and any other funds received into a receiver account at a FDIC insured financial institution (the

“Receiver Account”). The funds in the Receiver Account shall be segregated from all other funds and accounts of the Receiver.

7. Turnover of Records and Other Items. Defendants, their respective members, shareholders, employees, affiliates, agents and all persons and entities acting by, through or under Defendants, to turn over and surrender to the Receiver possession of the Facilities and the Personal Property and Operations, including without limitation, all books, records, documents, electronic data, computer hardware and software owned or licensed by Defendants (including all computer programs, databases, disks, and other media owned by Defendants or upon which information regarding any of the Personal Property and Operations are stored, recorded, or located), mail and correspondence addressed to or which may contain information regarding the affairs of the Defendants relating to the Facilities, and Personal Property and Operations of Lessees, ledgers, rent records, files, papers, contracts, leases, licenses, permits, land use entitlements, policies and certificates, plans, specifications and drawings, deposits, rents, profits, securities, accounts, keys, pass codes, and any other non-confidential information and data related to same. Directing Defendants, all persons or entities acting by, through or under Defendants, to turn over all rents and other monies due to the Plaintiffs or the Receiver and provide Receiver with immediate access to all properties, machinery, and equipment including the Personal Property and Operations, to abide by Receiver’s requests for information and documentation so that Receiver may perform its functions with all information and knowledge, and not to interfere with or hinder in any way whatsoever the operations of Receiver during the pendency of the Receivership.

8. Stay. On the Effective Date, all creditors, landlords, other persons, Defendants and where applicable Defendants’ officers, shareholders, members, directors, partners, assigns, agents,

servants, employees, accountants, and attorneys, and all other persons shall be enjoined, stayed, and prohibited from, other than in proceedings before this Court, commencing, prosecuting, continuing or enforcing any suit or proceeding in law, equity, bankruptcy, or otherwise against or affecting Lessees or any part of the Facilities or the Personal Property and Operations without first obtaining leave of this court except that such actions may be filed to toll any statutes of limitations; taking any action for or on behalf of Lessees, interfering in any way with the actions of the Receiver (or any agent or other designee of the Receiver authorized hereunder or by order of the Court) with regard to Lessees, disposing of, concealing, or hypothecating in any manner any property or assets of Lessees, and the directors, officers, and/or agents of Defendants no longer have the authority to convey, mortgage, or pledge any property and assets of Lessees or to bind Lessees to any obligations.

9. Receiver's Additional Duties. The Receiver shall manage, preserve, protect, and maintain the Facilities and the Personal Property and Operations in a reasonable, prudent, diligent and efficient manner. Without limitation of those general duties, the Receiver is empowered, directed and authorized by this Court to act on its behalf as Receiver of the Facilities and the Personal Property and Operations to do all things necessary for the preservation, maintenance, protection, conservation and administration of the Facilities and the Personal Property and Operations, including, but not limited to, the following:

- a. Legal Requirements. The Receiver shall ensure that all aspects of the Facilities, and its use, operation, management, and development, comply with all laws, regulations, order or requirements affecting the Facilities issued by any federal, state, county or municipal authority.
- b. Use and Maintenance of Premises. The Receiver shall not permit the use of the

premises for any purpose which will or might void any required policy of insurance or which might render any loss uncollectible, or which would violate any law or government restriction.

- c. Contracts. The Receiver shall not enter any service contracts affecting the Facilities or the Personal Property and Operations, having a term which cannot be canceled (without premium or penalty), upon the termination of the receivership or upon 30 days' notice, whichever is earlier, or for a total annual compensation of more than \$50,000.00, except with prior order of this Court or the written consent of Plaintiffs. In submitting all such service contracts to the Court for its approval or to Plaintiffs, the Receiver shall disclose any affiliate relationship, or pecuniary interest, that he may have with or in such contracting party. The Receiver is authorized to accept or reject any executory contract.
- d. Pre-Receivership Expenses. The Receiver shall pay all expenses incurred regarding the Personal Property and Operations incurred in the normal and ordinary course of business and which were incurred by the Receiver on or after the date of an order granting this Motion. The Receivership and Receiver shall not be liable for any expenses incurred prior to the Effective Date, nor shall the Receiver nor Plaintiffs be required to use any revenues collected after the Receiver takes possession of the Facilities for payment of any expenses incurred regarding the Facilities or the Personal Property and Operations prior to the Receiver having taken possession of the Facilities. Notwithstanding the foregoing, the Receiver may, in the Receiver's sole and absolute discretion, pay

those expenses incurred in the normal and ordinary course of business of the Personal Property and Operations in which it was incurred prior to the Receiver taking possession of same, if, and only if, the payment of any such pre-existing expenses is necessary and critical to the ongoing operation of the Facilities (*e.g.*, utilities) or approved by the Plaintiffs. It is within the Receiver's discretion to determine which expenses incurred prior to the Receiver taking possession of the Facilities and the Personal Property and Operations were incurred in the normal and ordinary course of business and the payment of which is necessary and critical to the ongoing operations.

- e. Studies, Surveys and Inspections. The Receiver may obtain appropriate studies, surveys and inspections of the Facilities.
- f. Communications with Governmental Entities. The Receiver may communicate and negotiate with any necessary governmental entities regarding the Facilities and the Personal Property and Operations.
- g. Leases; Tenancy Issues. The Receiver will have the full authority and discretion to handle all tenancy issues, including, without limitation, terminating leases and subleases as provided under South Carolina law, all accrual rights under leases and subleases, and seek writs of possession from the Court in this case to evict the occupants, tenants and subtenants and/or to collect rent. The Receiver may negotiate leases with tenants, subtenants and prospective tenants and subtenants. The Receiver shall not renew or enter into any new leases or subleases without the express written consent of Plaintiffs or order of the Court. The Receiver also has the authority to bring and maintain separate legal

proceedings, if necessary, related to leases and tenancy issues.

- h. Permits, Approvals, Entitlements. The Receiver has the authority to apply for and transfer to Receiver any permits, licenses, plats, tentative plats, registrations, approvals, permissions, extensions, renewals, concurrencies or entitlements for the Facilities for and on behalf of and in the name of Lessees.
- i. Plaintiffs Advances. In the event that the revenues generated by the operation of the Facilities or other revenues which come into the possession of Receiver are insufficient to pay the liabilities associated with the operation of the Facilities and the costs associated with the Receivership, Plaintiffs shall make such advances to Receiver, whether on an unsecured basis or secured by the Facilities, during the pendency of the receivership as may be required to enable Receiver to operate the Facilities in accordance with applicable law and to perform his duties hereunder, with such borrowed sums to be secured by the lien in favor of Plaintiffs if so requested.

10. Compensation. The Receiver and all such approved consultants and other professionals shall be compensated from the receivership monthly to the extent funds are available and from any protective advances made by Plaintiffs. The Receiver shall be paid a monthly fee equal to \$10,000.00 per month per Facility for the first three (3) months, and \$5,000.00 per month per Facility thereafter, plus reimbursement of any out of pocket fees, costs or expenses incurred in the performance of Receiver's duties hereunder. All costs related to the receivership shall be added to the Total Outstanding Amount owed by Defendants to Plaintiffs. Neither the payment of or the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses under the procedures outlined above shall bind this Court with respect to the allowance of

compensation and reimbursement of the Receiver or any Professionals.

11. No Waste. Without the approval of this Court or Plaintiffs, the Receiver shall not suffer, cause or permit: (i) any removal of any real or personal property owned or leased by Lessees, over which this Court has jurisdiction and pertaining to the Facilities and the Personal Property and Operations; nor (ii) any waste of the Personal Property and Operations or any of the components thereof.

12. Occupants, Tenants and Subtenants to Pay Receiver Rents. Any party in possession of the Facilities or the Personal Property and Operations or such other persons as may be in possession thereof, be and they are directed, until further order of this Court, to pay to the Receiver or the Receiver's duly designated agent all rents of the Facilities now due and unpaid or hereafter to become due and Defendants and their agents and designees are enjoined and restrained from collecting the rents of the Facilities, and all occupants, tenants and subtenants of the Facilities and other persons liable for the rents be and they are enjoined and restrained from paying any monies or rents for the Facilities and the Personal Property and Operations to Defendants or its managing agent, members, officers, directors, employees, agents or attorneys.

13. Interference. Except as otherwise requested or authorized by the Receiver or until further order of this Court, Defendants are enjoined from interfering in any manner with the operation and management of the Facilities and the Personal Property and Operations and acting or purporting to act on behalf of the Facilities, the Personal Property and Operations and/or the Receiver.

14. No Liability; Bond. The Receiver shall have no personal liability for any environmental liabilities arising out of or relating to Defendants' possession of the Facilities or the Personal Property and Operations. The Receiver shall have no personal liability for any

liabilities or claims arising under the Worker Adjustment and Retraining Notification (WARN) Act. The Receiver shall serve without bond, and the Receiver shall be discharged, upon the Court's approval of the Receiver's final Report (as hereinafter defined).

15. Tax Returns and other Filings. The Receiver shall not be responsible for the preparation and filing of any tax returns for Defendants (including income, personal property, commercial activity, gross receipts, sales and use, or other tax returns), other than to provide Defendants with information in the Receiver's possession that may be necessary for Defendants to prepare and file their own returns. The Receiver shall not be required to make any SEC filings for Defendants unless required to do so by law.

16. Judicial Immunity. The Receiver and the Receiver's attorneys and agents: (i) may rely on all outstanding rules of law and court orders, judgments, decrees and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution, certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as Receiver, or as attorney or agent for Receiver; and (iv) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent. Except for matters in subsection (iv) of the preceding sentence, persons dealing with the Receiver shall only look to the receivership assets and any bond posted by the Receiver, if any, to satisfy any liability, and neither the Receiver nor the Receiver's attorneys or his agents shall have any personal liability to satisfy any such obligation.

17. Reports. No later than the 25th day of each month, the Receiver shall file a report

(the "Report") make an accounting of all rents and revenues collected and all expenses paid for the previous month and shall file said Report with the Court and shall serve upon Plaintiffs' counsel and Defendant's counsel, if any, a copy of said Report. The Receiver shall file a final Report within forty-five (45) days after the termination of the receivership unless otherwise ordered by the Court. As an administrative convenience to aid in e-filing any reports required herein, the Receiver may provide reports to Plaintiffs, after which counsel for Plaintiffs may file a notice with the court and attach the Receiver's Report.

18. Further Instructions. The Receiver may at any time upon notice to all parties, apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary to enable the Receiver to perform properly and legally the duties of the receivership and to maintain, protect and preserve the Facilities and the Personal Property and Operations.

19. Insurance for Receiver. The Receiver may obtain liability insurance to protect the Receiver, its officers, directors, employees, contractors, and agents in carrying out its duties.

20. Notice. All written notices called for under this Order shall be: (i) delivered in person; (ii) sent by email; or (iii) mailed, postage prepaid, by overnight express carrier, addressed in each case as follows:

To Plaintiffs:

c/o Cascade Capital Group, LLC
3450 Oakton Street
Skokie, IL 60076
Attn: Daniel Garden, Esq.
Mordy Kaplan, Esq.
Email: dgarden@cascadellc.com
mkaplan@cascadellc.com

with a copy to Plaintiffs' counsel:

Gutnicki LLP
4711 Golf Road, Suite 200
Skokie, IL 60076
Attn: Aharon Kaye
Email: akaye@gutnicki.com

To Receiver:

Michael Flanagan 7611 State Line Road, Suite 303
Kansas City, MO 64114

Email: MikeFlanagan@mffllc.com

with a copy to Receiver's counsel (if any to be designated at a later date)

To Defendants:

Christopher T. Brumback, Esq,
Brumback & Langley, LLC
531 South Main Street, Suite 307
Greenville, SC 29601
Email: chris@brumbacklangley.com

21. All notices shall be deemed received and effective: (i) if delivered in person, upon personal delivery; (ii) if sent by email, on the day sent if a business day and received during business hours, or if such day is not a business day or receipt is outside of business hours, then on the next business day; or (iii) if sent by overnight express carrier, on the next business day immediately following the day sent.

22. Miscellaneous.

a. The Receiver or Plaintiffs may record this Order in the Public Records of Charleston County and Berkeley County, South Carolina, and to serve this Order on any person the Receiver deems appropriate to further his responsibilities.

b. Plaintiffs' interest in the Properties and Plaintiffs' security interest in the Personal

Property shall not be impaired by the appointment of the Receiver.

23. Reservation of Rights. Nothing contained herein shall constitute a waiver of any legal argument by Plaintiffs with the respect to the possession of the Facilities or the Personal Property and Operations and correspondingly, the right to rents that may be collected by the Receiver. Receiver shall have and enjoy all of the powers, immunities, privileges, and prerogatives ordinarily provided to receivers under applicable law, unless otherwise prohibited by this Order.

24. Discharge of Receiver. The Receiver shall carry on the duties set forth herein until such further notice of this Court discharging the Receiver.

25. Jurisdiction. The Court remains jurisdiction of this matter to amend or modify this Order and enter such further orders as it deems necessary and proper.

26. No bond was offered by the Defendants prior to entry of this Order; however, the Court will entertain any future request for bond by the Defendants in an amount commensurate with the facts of this case and applicable law.

Electronic Signature Page to Follow



Charleston Common Pleas

Case Caption: Charleston Sc Property Holdings Llc , plaintiff, et al VS Rittenberg
Op Llc , defendant, et al
Case Number: 2023CP1001512
Type: Order/Appointment of Receiver

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2023-04-14 11:01:18 page 18 of 18

Exhibit C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

CHARLESTON SC PROPERTY
HOLDINGS,LLC, and HANAHAN SC
PROPERTY HOLDINGS, LLC,

Plaintiffs,

v.

RITTENBERG OP LLC, HANAHAN OP
LLC, GOLDNER CAPITAL
MANAGEMENT, LLC, SC TWO OP
HOLDINGS LLC, and SAMUEL
GOLDNER,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CA. No. 2023-CP-10-01512

**Defendants' Rule 59(e) Motion for
Reconsideration, Request for Stay Pursuant to
Rule 62(a), and Offer of Bond**

YOU WILL PLEASE TAKE NOTICE that Defendants hereby move pursuant to Rule 59(e), SCRPC, for reconsideration of the Court's Order granting Plaintiffs' Motion for Appointment of a Receiver ("Order") and pursuant to Rule 62(a) for a stay of the Court's April 14, 2023 Order while this Motion for Reconsideration is under consideration and until appeal is taken and a stay upon appeal can be requested in accordance with the Rules of Civil Procedure and the Appellate Court Rules. The Court's Order is based on multiple errors of law and fact and, accordingly, Defendants' Motion for Reconsideration should be granted based on the following grounds:

1. As an initial point, the Order entered by the Court is directly contrary to Your Honor's expressly stated findings stated in your April 14, 2023 email to counsel prior to entry of the Order in which you stated: "I find that thus far Plaintiff has established an apparent (prima facia [sic] if you will) need for the receivership. Further, subsections 2, 3, 4, and 5 under 15-65-10 are not applicable." Contrary to your statement that subsection 4 is "not applicable," Paragraphs 7 and 8 of the Court's April 14, 2023 Order state that "the Court

finds and concludes that appointment of a receiver is justified and appropriate under both of these alternative subsections[, subsections (1) and (4)], of Section 15-65-10” and that “[t]he Court finds and concludes that the Receivership Act, including subsection (4) of Section 15-65-10, applies to limited liability companies such as the Lessees.” Regardless of Defendants’ continued assertion that appointment of a receiver is not appropriate under either subsection (1) or (4) of S.C. Code Ann. § 15-65-10, given Your Honor’s stated finding as to the inapplicability of subsection (4), the April 14, 2023 Order should be amended to properly reflect Your Honor’s stated findings.

2. In the event that Your Honor inadvertently indicated that subsection (4) of S.C. Code Ann. § 15-65-10 is not applicable for the appointment of a receiver in this case in Your Honor’s email to counsel prior to filing of the Order and the decision of the Court is as stated in Paragraphs 7 and 8 of the April 14, 2023 Order, Defendants maintain that subsection (4) is not applicable to entities other than corporations. See Cox v. Woodmen of World Ins. Co., 347 S.C. 460, 469, 556 S.E.2d 397 (Ct. App. 2001) (“The legislature did not expressly provide the statute applies to fraternal benefits associations...Accordingly, the arbitration exception is not applicable to fraternal benefits associations...”). Had the Legislature intended the statute to apply to LLCs, it would have specifically identified LLCs within the statutory framework. It did not. City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (“[W]hen determining the effect of statutory language, ‘the canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or the alternative.’”) (citation omitted).

3. Both the receivership statutes under which Plaintiffs have sought appointment of a receiver and controlling South Carolina Supreme Court precedent require that whenever a receiver is appointed prior to the entry of final judgment, “there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given, as prescribed in § 15-65-50.” S.C. Code Ann. § 15-65-60 (emphasis added); see also Truesdell v. Johnson, 144 S.C. 188, 142 S.E. 343, 348 (1928) (interpreting the provision under the previous receivership statute containing substantively identical language to Section 15-65-60 and holding that “[t]he provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.”) (emphasis added). The Supreme Court in Truesdell further made clear that fixing the value of the property is not a simple matter of summing inventory, but rather must actually reflect the value of the property. In this case, the relevant property is a leasehold interest necessarily involving the operation of a skilled nursing care facility. Establishing a value of this property is no simple matter and Defendants respectfully submit that a hearing is required for the court to fix any rational valuation (which again, must be included in the order appointing a receiver, and if no such clause is included, “the order is void”).

Defendants have an unequivocal right to have the receivership order fix the value of the property so that they may post a bond. Given that the South Carolina Supreme Court has

repeatedly stated that “[r]eceivership is a drastic course, allowed only under pressing circumstances and granted only with reluctance and caution,” Vasiliades v. Vasiliades, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) (citation omitted; emphasis added), it is of the utmost importance that all statutory requirements be followed to “protect[] the interests of the person claiming or in possession of the property for which a receiver is sought.” Truesdell, 144 S.C. at 203, 142 S.E. at 347-48. Indeed, our Supreme Court in Truesdell addressed nearly the precise argument raised by Plaintiffs regarding this bond issue, as respondent there contended that “it was a condition precedent to the insertion in the order of a clause fixing the value of the property that the person in possession should ‘offer’ the bond before the order appointing the receiver was granted, and that, as the appellant did not ‘offer’ the bond at the hearing on the application for appointment of a receiver, he cannot now complain of the omission of the clause fixing the value of the property.” 142 S.E. at 347. The Supreme Court directly rejected this argument, continuing: “We do not agree with the respondent’s position. The appointment of a receiver, as we have said, is a drastic measure, and the Legislature has made provision for protecting the interests of the person claiming or in possession of the property for which a receiver is sought.” Id. at 347-48.

Moreover, regardless of whether a bond was offered prior to appointment of a receiver, the Order appointing a receiver must include a clause fixing the value of the property for which the bond may be given. As the South Carolina Supreme Court stated while interpreting the precursor statute to S.C. Code Ann. § 15-65-60, the language of which is substantively identical to the current statute:

This subdivision provides that, upon the due execution and filing of such bond as described in subdivision 8 [15-65-50], before final judgment in the cause, the appointment of the receiver shall be vacated, etc. In the latter case, the penalty of the bond must likewise be double the value of the property, and if the value of the property is not fixed by the order appointing the receiver as required by this subdivision, then the person from whose possession the property has been taken cannot give the bond provided for and so obtain redelivery of the property, and subdivision 9 [15-65-60] becomes of no effect.

Truesdell 144 S.C. at 204, 142 S.E. at 348. In the absence of the required language fixing the value of the property so that a bond may be given, the Court’s Order appointing a receiver is void pursuant to the controlling precedent expressly stated in Truesdell. Id. (“The provision for inserting a clause fixing the value of the property in the order appointing a receiver is mandatory, and without such clause the order is void.”).

4. Indeed, South Carolina courts have repeatedly stated that “[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution.” Richland Cnty. v. S.C. Dep’t of Revenue, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (quoting Midlands Util., Inc. v. S.C. Dep’t of Health & Env’tl. Control, 301 S.C. 224, 228, 391 S.E.2d 535, 538 (1989)). “[A]s a rule, a receiver will not be appointed during the

progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” *Id.* (quoting *Pelzer v. Hughes*, 27 S.C. 408, 416, 3 S.E. 781, 785 (1887)). Despite the drastic nature of the appointment of a receiver and the Supreme Court’s recent admonition that only with reluctance and caution and after movant establishing the “strongest reasons to believe” that he is 1) entitled to the relief demanded in his complaint and 2) there is a danger the property will be materially injured before final resolution of the case, the Court granted Plaintiffs’ Motion to Appoint a Receiver (“MAR”) based on nothing more than speculation and conclusory allegations contained in Plaintiffs’ Verified Complaint and the Affidavit of Amanda Colwell. As pointed out by Defendants, Ms. Colwell’s Affidavit, outside of raising specific matters concerning a dispute between a landlord and tenant, fails to provide any specific evidence, facts, or material of record to establish the “strongest reasons to believe” that Plaintiffs have a current right to Defendants’ property or that the property will be materially injured “before the case can be determined.” *Id.* (emphasis added).

Turning first to the apparent right to the property element, Ms. Colwell’s specific assertions concerning the existence of a dispute between landlord and tenant are insufficient to justify the appointment of a receiver. The Court’s current Order fails to recognize the contested nature of the dispute between the parties, the fact that the parties have agreed to resolution of any disputes under the Master Lease through binding arbitration before the Chicago Rabbinical Council Beit Din, and ignores South Carolina law rejecting the appointment of a receiver in cases concerning contested rights. *See Greenwood Loan and Guarantee Ass’n v. Childs*, 67 S.C. 251, 45 S.E. 167, 168 (1903) (rejecting the plaintiff’s argument that a mortgage was sufficient to show any apparent right because a mortgage does not convey legal title); *see also, Hardin v. Hardin*, 34 S.C. 77, 80, 12 S.E. 936 (1890) (“Now, as we have seen, the mortgage gives to the mortgagee no real or even apparent right to the mortgaged premises, and certainly none whatever to the rents and profits thereof”). Indeed, South Carolina courts have been reluctant to appoint receivers when asked to protect only a contested right. *See Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964) (explaining that due to the contested nature of the case, the right to possession of the property at issue remained in the defendants until there had been a final determination of all issues at trial); *DeWalt v. Kinard*, 19 S.C. 286 (1883) (finding the appointment of a receiver unwarranted where there was no clear establishment of a right to the property at issue but only a disputed claim). In instances where the right to possession has not been established by unrefuted evidence, the court may not rely solely upon the allegations of the complaint but must also consider the facts as alleged in the answer or other filings in the case. *See Peoples v. Agricultural Loan Association*, 156 S.C. 429, 153 S.E. 283, 285 (1930) (providing that while “[t]he facts alleged in the complaint taken alone, perhaps, would have justified the appointment of a receiver, [it is proper also for the court] to consider, in connection, the matters alleged in the answer of the respondent.”).

Turning next to the element of material injury, Ms. Colwell relies solely on vagaries,

generalities, and hypotheticals to raise the specter of imminent injury to the property:

- “Permitting Defendants to take any action that impedes their care could have devastating consequences for them.” See Colwell Affidavit, ¶ 10 (emphasis added).
- “Any such conduct by Defendants will almost necessarily result in harm...Any action by Defendants to impede use of the Personal Property by Plaintiffs or their designee to care for the residents will result in irreparable harm to them. ” See Colwell Affidavit, ¶ 13 (emphasis added).
- “If [property is] transferred to third parties or access to and use of them is otherwise impeded, the residents’ health may be adversely affected which, will likely lead to injury or even death...Even solely as to Plaintiffs, this kind of harm to Plaintiffs’ business may prevent them from caring for other vulnerable persons. If Defendants are permitted to interfere with use of the Personal Property by Plaintiffs, that will effectively be the bell that, once rung, cannot be unring. Although Plaintiffs can sue Defendants for monetary damages, Defendants may be judgment proof. By the time Plaintiffs secure a final judgment and are able to recover monetary damages, they may well be out of business. ” See Colwell Affidavit, ¶ 14 (emphasis added).
- “Defendants...currently are improperly managing the Personal Property and Operations.” See Colwell Affidavit, ¶ 16.
- “The nature of the Personal Property and Operations requires immediate and constant protection....” See Colwell Affidavit, ¶ 17.
- “It is necessary to appoint a receiver to prevent immediate and irreparable harm and to provide protection and to prevent the Defendants from exercising any control over the Personal Property and Operations or impede use of them by Plaintiffs and the receiver.” See Colwell Affidavit, ¶ 18.

Ms. Colwell’s Affidavit interestingly does not identify what actions of Defendants might cause injury to the property, how these undefined hypothetical actions, “if” they were taken by Defendants, “could” or “may” cause harm to the property in question, or how Defendants are “improperly managing” the property. Also of note is that Ms. Colwell’s Affidavit repeatedly references possible harm to facility residents, however the residents are neither the “property” of Plaintiffs or Defendants, nor do Plaintiffs have standing to raise these alleged injuries to facility residents. Moreover, Ms. Colwell’s Affidavit also provides neither assertion nor evidence regarding the scope or value of the property at issue so that the Court may properly assess whether there is a likelihood of material harm thereto. Resort to Plaintiffs’ Verified Complaint is equally unavailing given that it is essentially a recitation of the conclusory allegations contained in Ms. Colwell’s Affidavit. Consequently, Plaintiffs failed to establish the strongest reasons to believe that Plaintiffs have a current right to

Defendants' property or that the property will be materially injured before the case can be determined, and, as such, the granting of a receivership by the Court constitutes an abuse of discretion as it is neither supported by law or sufficiently established facts. Ex parte Hampton & B.R. & Lumber Co., 45 S.C. 122, 22 S.E. 804, 805 (1895) ("The testimony, derived wholly from affidavits submitted by the parties, is very conflicting upon many of the issues involved; so much so that we cannot say that the petitioner has made such a case as entitles it to the injunction asked for. The burden of proof is upon the petitioner to show that it is a proper case for injunction, and we do not think that the showing made is sufficient to warrant this court in interposing its aid by enjoining the said Goethe & Ulmer from proceeding with their operations, whereby great, and probably irreparable, loss and injury would be incurred by them.").

5. In reversing the trial court's appointment of a receiver in Pelzer v. Hughes, 27 S.C. 408, 3 S.E. 781, 785 (1887), the Court explained that the appointment of a receiver "is a stronger measure than that of injunction...[I]t is not allowable in every case, but is confined to those of a particular class or classes. It is universally conceded 'that the power of appointment is a delicate one, and is to be exercised with great circumspection.'" Id.; see also Richland Cty. v. S.C. Dep't of Revenue, 422 S.C. 292, 313, 811 S.E.2d 758, 769 (2018) (affirming the trial court's refusal to appoint a receiver, citing Pelzer as controlling precedent). Given "[t]he appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution," Defendants were entitled, regardless of the Court's caseload and limited judicial resources, to present any and all evidence, whether through affidavit or live testimony, in opposition to Plaintiffs' MAR. Richland Cnty., 422 S.C. at 313, 811 S.E.2d at 769 (quoting Midlands Util., Inc., 301 S.C. at 228, 391 S.E.2d at 538). Though Defendants appreciate the Court has limited judicial resources, "[t]he law, however, does not permit a court to issue judgment against a party before giving that party an opportunity to present evidence in support of her position." Halsey v. Simmons, 432 S.C. 54, 58, 849 S.E.2d 578, 580 (2020). Moreover, regardless of whether a party is in a hearing before a master in equity or the Circuit Court, where fundamental rights, such as a party's property rights, hang in the balance, the party must be given the opportunity to present all relevant and admissible evidence in support of its position, lest the party be denied its right to due process. See Kurschner v. City of Camden Planning Comm'n, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008) ("The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review."); South Carolina Dept. of Social Services on Behalf of State of Tex. v. Holden, 319 S.C. 72, 78 459 S.E.2d 846, 849 (1995) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form of procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur."). Defendants respectfully maintain that each of the affiants who provided Affidavits in opposition to the MAR were present and ready to testify at the MAR hearing and that Undersigned Counsel, at the conclusion of his initial argument to the Court concluded by requesting to call Mr. Kyle

Whimpey to the stand to provide additional testimony expounding upon the information contained in his Affidavit and which directly called into question the speculative and conclusory Affidavit of Ms. Colwell and the Verified Complaint. Mr. Whimpey's testimony was of particular import as he has intimate and firsthand knowledge of the operation of the Facilities in question and the continuing improvements that have been made to the Facilities since Mr. Whimpey became CEO of Vivant Healthcare. Furthermore, it bears noting that the Order entered by the Court (identical to the proposed order submitted by Plaintiffs yesterday) purports to make a finding that "[a] receiver is necessary to protect both the residents of the Facilities and the rights of Plaintiffs because the Facilities and the Personal Property are being subjected to or are in danger of impairment, waste, loss, substantial diminution in value, misappropriation, and dissipation, and a further delay would cause an injustice to the Plaintiffs and the residents." There simply is not sufficient evidence in the record to make the multiple findings of fact that are contained in this sentence. Defendants' submitted affidavits effectively rebutted the hearsay statements and conjecture offered by Ms. Colwell's Affidavit regarding any purported possible harm to the residents of the Facilities, and there was nothing offered by the Plaintiffs that could even possibly establish "waste" or "misappropriation" of assets. These erroneous factual findings alone are sufficient reason to reconsider and reverse the Order of the Court.

6. Defendants maintain that in light of Section 37.18 of the Master Lease Agreement and the fact that Defendants have begun the process of submitting the disputes between Plaintiffs and Defendants "to final and binding arbitration before the Chicago Rabbinical Council (the 'Beit Din')," that Defendants Motion to Stay and to Compel Arbitration, which was filed prior to the hearing on Plaintiffs' MAR and requested expedited hearing along with the MAR given the interrelation between the two matters, was entitled to and should have been heard and decided at the same time as the MAR. The parties' arbitration agreement is clearly a binding term of the parties Master Lease, which involves interstate commerce, and, as such, is enforceable pursuant to the Federal Arbitration Act ("FAA"). Given that the substantive disputes between the parties concerning the Master Lease will be adjudicated and determined in accordance with the Beit Din, whether Plaintiffs' are entitled to the appointment of a receiver is dependent on the resolution of the parties' substantive claims. Accordingly, the MAR and Defendants' Motion to Stay and Compel Arbitration should have been considered at the same time and, upon the Court's finding that the Defendants were entitled to compel arbitration, Plaintiffs' MAR should have been stayed pending resolution of binding arbitration.

7. While Defendants contend that a hearing is necessary to establish the appropriate value of the property for purposes of complying with the receivership statutes (including Sections 15-65-50 and 15-65-60), even if the Court disagrees and finds that the language included in Paragraph 26 of the Order is sufficient to address possible issues regarding a bond, the plain language of the Paragraph states that the Court will entertain any future request for bond by the Defendants in an amount commensurate with the facts of this case and applicable law. Defendants contend that the appropriate and applicable value of the

property in this case (the Defendants' leasehold interest which includes the right to operate the skilled nursing Facilities on the physical land) is a function of the reasonably foreseeable profits to be earned from operation of the Facilities after deducting normal operating costs and the rents and additional rents to be paid under the terms of the Master Lease in effect for the properties. Given the fact that these subject properties were leased as distressed assets from Plaintiffs less than two years ago, and the challenges that would be faced by any operator in running these Facilities, Defendants contend that the applicable valuation of the property is effectively negative because the reasonable income from the operation of the Facilities has not yet come close to covering the cost of operating and improving the Facilities. However, given certain assumptions regarding the improved conditions at the properties created by Defendants within the last two years, the re-basing of reimbursement rates to be realized in the near future and the improved composition of full-time staff at the Facilities implemented by Defendants, Defendants submit that a reasonable approximation of the value of the relevant property assuming a positive but reasonable reimbursement rate is approximately \$125,000.00 over the remainder of the life of the Master Lease. Accordingly, Defendants submit that an appropriate bond amount to secure the property and vacate (or stay) the appointment of a receiver in this case should be set by the Court at \$250,000.00 pursuant to S.C. Code Ann. § 15-65-50.

WHEREFORE, based on the multiple errors of law and fact, undersigned counsel respectfully requests that the Court stay enforcement of the April 14, 2023 Order pending reconsideration of Plaintiffs' MAR, that the Court reconsider its Order granting the appointment of a receiver, and enter an Order denying Plaintiffs' application for a receiver. In the alternative, Defendants request that the Court approve Defendants' Offer of Bond so that Defendants may pursue a bond and the execution and filing thereof to vacate the appointment of the receiver and direct the redelivery of the property to Defendants in accordance with S.C. Code Ann. § 15-65-60.

Respectfully submitted,

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar # 75410
Brumback & Langley, LLC.
531 South Main Street, Suite 307
Greenville, South Carolina 29601
Attorney for Defendants

Friday, April 14, 2023
Greenville, South Carolina

Exhibit D

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP1001512

Charleston Sc Property Holdings Llc et al
PLAINTIFF(S)

Rittenberg Op Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendants' Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond is respectfully denied.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/27/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Charleston Sc Property Holdings Llc , plaintiff, et al VS Rittenberg
Op Llc , defendant, et al
Case Number: 2023CP1001512
Type: Order/Electronic Form 4

So Ordered

S/George M. McFaddin, Jr., #2759

Electronically signed on 2023-04-27 11:02:40 page 3 of 3

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CA. No. 2023-CP-10-01512

CHARLESTON SC PROPERTY HOLDINGS,LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC,

Plaintiffs,

Defendants’ Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond

v.

RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPITAL MANAGEMENT, LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER,

Defendants.

YOU WILL PLEASE TAKE NOTICE that Defendants hereby move pursuant to Rule 59(e), SCRPC, for reconsideration of the Court’s April 27, 2023 Form 4 Order denying Defendants’ request for stay of the Court’s April 14, 2023 Order and Defendants’ Offer of Bond without explanation. The bald denial of Defendants’ request for stay and offer of bond without any explanation is both arbitrary and an abuse of discretion and clearly runs afoul of the Supreme Court’s recent decision in Morris v. BB&T Corp., Op. No. 28131 (S.C. Sup. Ct. filed Jan. 25, 2023) (Howard Adv. Sh. No. 4 at 13–15), a copy of which is attached hereto for the Court’s convenience. In fact, the Supreme Court specifically “publish[ed] th[e] [Morris] decision to clarify that no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law” by following a “thought process that begins with the trial court’s clear

understanding of the applicable law, continues with the court's sound analysis of the situation before it in light of the law, and ends with the trial court's ruling that follows the law and is supported by the facts and circumstances." Id. at 13-14. The Court's April 27, 2023 Form 4 Order provides nothing more than that Defendants' "Request for Stay Pursuant to Rule 62(a), and Offer of Bond is respectfully denied."¹ This bald denial of Defendants' request for stay and offer of bond without any explanation is a clear abuse of discretion. Morris, at 15 (holding that "[b]ecause the commission offered no explanation for its decision, we find the commission did not act within its discretion in refusing to [grant appellant's discretionary motion]"). With specific regard to the offer of bond, the Court's failure to provide any explanation of its denial of Defendants' offer of bond is even more prejudicial and detrimental to Defendants because 1) it again fails to identify the relevant property and to fix the value of the property for which the bond may be given pursuant to S.C. Code Ann. § 15-65-60, and 2) it provides Defendants with no guidance as to why the offer of bond was objectionable to the Court or how Defendants can amend their offer of bond to secure the judge's vacation of the appointment of a receiver and the redelivery of the property to Defendants.

WHEREFORE, based on the Court's abuse of discretion resulting from the Court's failure to provide any explanation as to Defendants' request for stay and offer of bond,

¹ Both Defendants' request for stay pursuant to Rule 62 and the offer of bond pursuant to S.C. Code Ann. § 15-65-60 required the Court's exercise of its discretion. See Rule 62(a)-(b), SCACR ("Unless otherwise ordered by the court, ...[i]n its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings..."); S.C. Code Ann. § 15-65-60 (requiring that "[w]henver the court or judge before whom such application is made shall appoint a receiver before final judgment in the cause there shall be inserted in the order of appointment a clause fixing the value of the property for which the bond may be given...").

Defendants respectfully request that the Court reconsider, alter, and amend its April 27, 2023 Form 4 Order summarily denying Defendants' Motion for Stay and Offer of Bond without explanation. In reconsidering its April 27, 2023 Form 4 Order, Defendants respectfully request that based on Defendants' previously stated arguments that the Court grant the requested stay and either approve Defendants' Offer of Bond or provide an explanation of the Court's denial thereof both identifying the relevant property and fixing the value of the property for which the bond may be given pursuant to S.C. Code Ann. § 15-65-60.

Respectfully submitted,

s/Christopher T. Brumback
Christopher T. Brumback / S.C. Bar # 75410
Brumback & Langley, LLC.
531 South Main Street, Suite 307
Greenville, South Carolina 29601
Attorney for Defendants

Friday, May 5, 2023
Greenville, South Carolina

RECEIVED

Nov 17 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable George M. McFaddin, Jr., Circuit Court Judge
The Honorable Roger M. Young, Sr., Circuit Court Judge

Trial Court Case No. 2023-CP-10-01512
Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael
Flanagan, Receiver.....Respondents,

v.

Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Capital Management, LLC, SC Two
OP Holdings, LLC, and Samuel Goldner.....Appellants.

PROOF OF SERVICE

I certify that I served a Motion to Dismiss Part of Appeal on behalf of Charleston
SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC, and addressed to
the Clerk of Court for the Court of Appeals by email addressed to counsel of record for the
above-references parties using the following email addresses on November 17, 2023:

Christopher Todd Brumback, Esq.
Brumback & Langley, LLC
chris@brumbacklangley.com

Michael Weaver, Esq.
Rogers Townsend LLC
michael.weaver@rogerstownsend.com

Ross Conrad DuRant, Esq.
Law Offices of N. David DuRant
rossdurant@lawofficesofdurant.com

A copy of the email sent to the above-referenced counsel is attached.

WALKER GRESSETTE & LINTON LLC

s/Charles P. Summerall

Charles P. Summerall, IV (SC Bar #5433)

P.O. Drawer 22167

Charleston, SC 29412

Direct: (843) 727-2205

Email: summerall@wglfirm.com

*Attorney for Charleston SC Property Holdings, LLC, and
Hanahan SC Property Holdings, LLC*

Elisha Wetmore

From: Charles Summerall
Sent: Friday, November 17, 2023 9:09 AM
To: Michael H. Weaver; Chris Brumback; Ross Durant
Cc: James W. Clement; Aharon Kaye; Noah Siegel; Elisha Wetmore
Subject: RE: Charleston SC Property Holdings, LLC et al v. Rittenberg OP, LLC et al; Appellate Case No. 2023-001494
Attachments: Motion to Dismiss Part of Appeal with Exhibits.pdf

Counsel,

Attached please find and hereby served on you is a Motion to Dismiss Part of Appeal that I am filing with the Clerk of Court for the Court of Appeals today in connection with the above-referenced matter. The Motion, proof of service, and a copy of the cover letter sending the filing fee to the Court will be filed shortly.

Charles Summerall



CHARLES SUMMERALL
O: 843.727.2200 | D: 843.727.2205
E: summerall@wglfirm.com

PO Box 22167, Charleston, SC 29413
66 Hasell Street, Charleston, SC 29401

The information contained in this message, including attachments, is confidential and may contain information protected by the attorney-client privilege or work product doctrine. If you are not the addressee, any disclosure, copying, distribution, or use of the contents of this message are prohibited. If you have received this communication in error, please destroy it and notify me immediately by calling 843-727-2200.



G. Trenholm Walker
Thomas P. Gressette, Jr.
John P. Linton, Jr.
Charles P. Summerall, IV
Jennifer S. Ivey
James W. Clement

CHARLES P. SUMMERALL, IV
Direct: 843.727.2200
Email: Summerall@WGLFirm.com

RECEIVED

Nov 17 2023

SC Court of Appeals

November 17, 2023

Via U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Charleston SC Property Holdings, LLC, et al., *Respondents* v. Rittenberg OP, LLC, et. al., *Appellants*
Appellate Case No. 2023-001494

Dear Ms. Kitchings:

I am writing you on behalf of the Movants in the above-referenced appeal regarding their Motion to Dismiss Part of Appeal that was filed on November 17, 2023. Enclosed is a check for the \$50.00 Motion filing fee.

Thank you.

Sincerely,

Charles P. Summerall, IV

Enclosure

cc: Michael Henry Weaver, Esq. (via e-mail) (michael.weaver@rogerstownsends.com)
Christopher Todd Brumback, Esq. (via e-mail) (chris@brumbacklangley.com)
Ross Conrad DuRant, Esq. (via e-mail) (rossdurant@lawofficesofdurant.com)
Aharon S. Kaye, Esq. (via e-mail) (akaye@gutnicki.com)
Noah Siegel, Esq. (via e-mail) (nsiegel@gutnicki.com)
James Whittington Clement, Esq. (via e-mail) (clement@wglfirm.com)