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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., and Roger M. Young, Sr. Circuit Court Judges

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Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC,…..Respondents,

v.

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

REPLY TO PARTIAL MOTION TO DISMISS

On November 17, 2023, Respondents' counsel filed a Motion to Dismiss Part of Appeal. Appellants file this Return responding to Respondents' Motion. Contrary to Respondents' argument in favor of dismissal, the appeal should be permitted to proceed, or, in the alternative, the appellate review of all Orders creating and modifying the receivership should be held in abeyance until the lower court issues any ruling that is deemed necessary and this appeal can thereafter proceed.

Respondents' Motion to dismiss part of the appeal without prejudice is an effort to obstruct the "efficient and wholesale" review of Judge McFaddin and Judge Young's receivership Orders, which involve the same legal issues, in favor of a "piecemeal" review that is supported by neither the law nor the procedural posture of this case. Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483, 496 (2014).

As noted in Appellants' Notice of Appeal, the Orders from which this appeal was taken are the respective Orders of Judges McFaddin and Young Appointing Receiver and Approving

Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement, and the corresponding Orders Denying Appellants' Rule 59(e) Motions for Reconsideration and Request for Stay Pursuant to Rule 62(a). Each of the Orders in question involve the same legal issues concerning whether the trial court abused its discretion by appointing a receiver and/or disturbing the status quo by modifying the receivership and receivership estate prior to a determination of the merits of the case. Moreover, the August 23, 2023 Order Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement is predicated and dependent upon the April 14, 2023 Oder Appointing Receiver such that for the Court to properly and meaningfully review the trial court's actions with regard to the receivership, it must necessarily review both Orders at the same time.

Although it is true that Appellants filed a Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond on May 5, 2023 that is still pending before Judge McFaddin, the May 5, 2023 Motion, as evidenced by its title, was not a successive request for reconsideration of arguments already raised in opposition to the appointment of a receiver, but was instead a request for Judge McFaddin to reconsider his denial of the alternative motion/relief Appellants requested in conjunction with Appellants' original April 14, 2023 request for reconsideration of the Order Appointing Receiver.[1] Specifically, Appellants' May 5, 2023 Motion sought reconsideration of the denial of a stay pending an appeal and the rejection of Appellants' offer of a bond to vacate the appointment of the receiver, both of which were requested in the alternative in the event the trial court did not reverse or modify its Order Appointing Receiver.

[1] Copies of Appellants' April 14, 2023 Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond and May 5, 2023 Motion for Reconsideration of Denial of Request for Stay and Offer of Bond are attached hereto for the Court's reference.

See S.C. Code Ann. § 15-65-60 ("And upon the due execution and filing of such bond thereafter before final judgment in the cause the court or judge shall vacate the appointment of such receiver and direct the redelivery of the property to the party from whose possession it was taken…"); Rule 62(a), SCRCP ("Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal."). Given the nature of the relief requested by the May 5, 2023 Motion, which is simply a request for stay upon appeal, it is Appellants' position that the pendency of the May 5, 2023 Motion does not render the appellate review of the merits of the Orders creating and thereafter modifying the receivership premature.[2] It is clear from review of Rule 62, SCRCP, and Rules 205 and 241, SCACR, that a request for a stay during an appeal does not render an appeal premature and that, in fact, any request for a stay during an appeal must first be directed to the lower court. See Rule 205, SCACR (stating that the "lower court…shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241," and that "[n]othing in these Rules shall prohibit the lower court…from proceeding with matters not affected by the appeal"); Rule 241(c)(1), (d)(1) ("After service of notice of appeal, any party may

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[2] Nonetheless, undersigned counsel wrote to Judge McFaddin on November 20, 2023 requesting that, pursuant to Hudson v. Hudson, he issue a ruling on the May 5, 2023 Motion to Reconsider that is still pending to avoid the case being unnecessarily remanded to obtain a decision on the May 5, 2023 Motion to Reconsider. 290 S.C. 215, 349 S.E.2d 341 (1986) (holding that the filing of a notice of appeal "does not deprive the lower court of jurisdiction to consider...timely post trial motions under Rule 59" and that "[r]emand in this case is unnecessary since the trial court properly found he had jurisdiction and has already ruled on the post-trial motions."); see also Holmes v. E. Cooper Cmty. Hosp., Inc., 408 S.C. 138, 758 S.E.2d 483, 496 (2014) ("[T]his Court has held that the filing of a notice of appeal does not deprive the circuit court of jurisdiction to consider a timely post-trial motion."). As of the time of filing of this Reply, Judge McFaddin has not yet responded to undersigned counsel's request.

move for an order...imposing a supersedeas of matters decided in the order...an application for...supersedeas must first be made to the lower court...which entered the order or decision on appeal"). To adopt Respondents' position and dismiss the appeal as premature based on the May 5, 2023 Motion's pendency would thus require Appellants to obtain an order again denying a stay only to refile the Notice of Appeal with this Court and then turn around and petition the lower court for a stay upon appeal.

Accordingly, Appellants respectfully request that the Court deny Respondents' Motion to Dismiss in Part and allow the appeal to proceed. Nonetheless, to the extent the Court deems it necessary for Judge McFaddin to rule on the request for reconsideration of the denial of the Request for Stay and Offer of Bond prior to proceeding with a review of the merits of the Order appointing the receiver, Appellants, due to the similarity and interconnectedness of the issues in the August 23, 2023 Order Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement and the April 14, 2023 Oder Appointing Receiver, Appellants request that, instead of granting a partial dismissal, the Court hold in abeyance the appellate review of the August 23, 2023 Order Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement and the denial of the associated Motion for Reconsideration until Judge McFaddin rules on the May 5, 2023 Motion for Reconsideration of Denial of Request for Stay and Offer of Bond, at which time all Orders creating and modifying the receivership can be properly and efficiently reviewed.

Respectfully submitted,

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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), SCRCP, 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 & Envtl. 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 Peeples 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 unrung. 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

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Friday, April 14, 2023
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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 of Denial of Request for Stay and Offer of Bond**

YOU WILL PLEASE TAKE NOTICE that Defendants hereby move pursuant to Rule 59(e), SCRCP, 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,

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[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]henever 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
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Friday, May 5, 2023
Greenville, South Carolina

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Nov 27 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., and Roger M. Young, Sr. Circuit Court Judges

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Appellate Case No. 2023-001494

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC,…..Respondents,

v.

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

PROOF OF SERVICE

I certify that I have filed with the Court of Appeals and served Appellants' Reply to Respondents' Motion to Dismiss in Part on Respondents' attorney, Charles Summerall, by email, summerall@wglfirm.com, and Counsel for the Receiver, Michael Weaver, by email, Michael.Weaver@rogerstownsend.com, on November 27, 2023.

Respectfully submitted,

BRUMBACK & LANGLEY, LLC

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