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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., Circuit Court Judge

Case No. 2023-CP-10-01512
Appellate Case No. 2024-000723

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 APPEAL

Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC respectfully move to dismiss this appeal because it is an improper attempt to appeal issues that have already been appealed and dismissed by this Court, and issues that are moot. This motion is based upon the grounds set forth herein and supported by the attached exhibits.

FACTUAL BACKGROUND

This is the second interlocutory appeal taken by the Appellants from the underlying civil action pending in the Court of Common Pleas for Charleston County. The case concerns a commercial lease of two skilled nursing facilities entered into by the Respondents Charleston SC Property Holdings, LLC and Hannahan SC Property Holdings, LLC (collectively, "Plaintiffs"), as the lessors, and Appellants Rittenberg OP LLC ("Rittenberg") and Hannahan OP LLC ("Hanahan"), as lessees. The Plaintiffs filed a verified complaint in March 2023, asserting multiple causes of action, including breaches of contract stemming from the non-payment of rent, and seeking the appointment of a receiver. *See* Ex. 1.

Pursuant to a motion that the Plaintiffs filed contemporaneously with the verified complaint, the trial court entered an order appointing Michael Flanagan as Receiver (the "Order Appointing Receiver"). *See* Ex. 2. Almost immediately, the Appellants filed a motion titled "Defendants' Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond." ("Defendants' First Rule 59(e) Motion") *See* Ex. 3. The trial court denied the motion via an order entered April 27, 2023 ("Order Denying Defendants' First Rule 59(e) Motion"). *See* Ex. 4. The Order Denying Defendants' First Rule 59(e) Motion left the Order Appointing Receiver undisturbed. Thereafter, Appellants filed another motion, on May 5, 2023, titled "Defendants' Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond" ("Defendants' Second Rule 59(e) Motion"). *See* Ex. 5. Like Defendants' First Rule 59(e) Motion, Defendants' Second Rule 59(e) Motion sought reconsideration of the Order Appointing Receiver to the extent it denied their request for a stay and the offer of bond. But, unlike Defendants' First Rule 59(e) Motion, it did not seek reconsideration of the order to the extent it appointed the Receiver.

Upon filing Defendants' Second Rule 59(e) Motion, Appellants disregarded Rule 59(g) of the South Carolina Rules of Civil Procedure, which mandates that a party moving for reconsideration under Rule 59 "shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." Rule 59(g), SCRCP. Defendants' Second Rule 59(e) Motion was not forwarded to Judge McFaddin until November 17, 2023, more than six months later. The parties had filed several other motions by then.

On August 3, 2023, the Receiver filed a motion seeking the trial court's approval to enter into an operations transfer agreement and lease termination agreement (the "Lease Termination Motion"). *See* Ex. 6. A hearing on the Lease Termination Motion took place later that month. *See*

Hearing Tr., dated Aug. 23, 2023, attached as Ex. 7.[1] After the hearing, the trial court entered an Order Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement ("Lease Termination Order"). *See* Ex. 8.

On August 30, 2023, following the same pattern as before, the Appellants filed a motion titled "Defendants' Rule 59(e) Motion for Reconsideration of Order Granting Receiver's Motion to Enter Into OTA and LTA or in the Alternative for Stay Pursuant to Rule 62(a)" ("Defendants' Motion to Reconsider the Lease Termination Order"). *See* Ex. 9. One week later, the Receiver filed a report, dated September 6, 2023, with the trial court titled "Consummation of Operation Transfer Agreements and Lease Termination Agreement." *See* Ex. 10. After receiving the report, the trial court entered an Order Denying Defendants' Moton to Reconsider the Lease Termination Order ("Order Denying Defendants' Motion to Reconsider the Lease Termination Order") two days later. *See* Ex. 11. Thereafter, on September 19, 2023, the Appellants filed their first Notice of Appeal with this Court (the "First Notice of Appeal"), which challenged the following orders:

- Order Appointing Receiver, (Ex. 2);
- Order Denying Defendants' First Rule 59(e) Motion, (Ex. 4);
- Lease Termination Order, (Ex. 8); and
- Order Denying Motion to Reconsider Lease Termination Order, (Ex. 11).

See Ex. 12.

After Plaintiffs moved to dismiss part of the appeal due to Appellants' failure to timely serve the First Notice of Appeal, this Court entered an order on January 23, 2024 ("Partial Dismissal Order"), that granted the motion and dismissed the appeal as to the Order Appointing

[1] At the hearing, the issue of the bond was raised by the Defendants and again rejected by the trial court. *See* Ex. 7 at 9:5-12.

Receiver and the Order Denying Defendants' First Rule 59(e) Motion. *See* Ex. 13.[2]

Two months later, on March 28, 2024, the trial court entered an Order Denying Defendant's Second Rule 59(e) Motion ("Order Denying Defendants' Second Rule 59(e) Motion"). *See* Ex. 14. Appellants subsequently filed a second Notice of Appeal with this Court ("Second Notice of Appeal") on April 29, 2024. *See* Ex. 15. The second appeal is currently before this Court. The Second Notice of Appeal references the following orders:

- Order Appointing Receiver, (Ex. 2);
- Order Denying Defendants' First Rule 59(e) Motion, (Ex. 4); and
- Order Denying Defendants' Second Rule 59(e) Motion, (Ex. 14).

See Ex. 15.

This Court previously dismissed Appellants prior appeal of the first two orders via its Partial Dismissal Order, entered on January 23, 2024. *See* Ex. 13. As explained in detail below, those two orders are the law of the case, as a result, and the appointment of the receiver is a matter that the Appellants cannot appeal again.

The third order referenced in the Second Notice of Appeal is the Order Denying Defendants' Second Rule 59(e) Motion. However, in their Initial Brief, the Appellants do not appeal any issues that pertain to the denial of the stay or offer of bond. Instead, the Appellants' statement of issues on appeal reads as follows:

1. The Order of the trial judge appointing a receiver is void because it did not contain a clause fixing the value of the property placed in the hands of the receiver, in accordance with the requirements of S.C. Code Ann. § 15-65-60.

2. The trial judge err in granting a prejudgment receivership over the the (sic) Facilities and all of the Personal Property and Operations and all other property

[2] The first appeal (*i.e.*, Appellate Case No. 2023-001494) remains pending today, but only as to the Lease Termination Order and the Order Denying Motion to Reconsider the Lease Termination Order.

and assets of Lessees where the Respondent failed to establish an apparent right to the property and failed to demonstrate the property at issue was in danger of being lost or materially injured or impaired?

3. To the extent the trial judge's Order appointing a receiver found that S.C. Code Ann. § 15-65-10(4) provided grounds for the appointment of a receiver over a limited liability company, such was a clear error as subsection (4) of S.C. Code Ann. § 15-65-10 is not applicable to entities other than corporations.

4. The trial judge violated Appellants' right to due process by denying Appellants the opportunity to present all relevant and admissible evidence in opposition to Respondents' Motion to Appoint a Receiver because the court was drowning in motion and did not have time to hear Appellants' evidence.

Initial Br. of Appellants, filed May 29, 2024, at p. 1.

None of the above four issues has anything to do with the denial of the stay and offer of bond. Rather, all four issues deal squarely with the appointment of the Receiver. Respondents now move to dismiss the instant appeal based on the grounds set forth below, including the law of the case doctrine and mootness.

ARGUMENT

I. THE ORDER APPOINTING RECEIVER AND ORDER DENYING DEFEDANTS' FIRST RULE 59(e) MOTION ARE THE LAW OF THE CASE AND APPELLANTS ARE PRECLUDED FROM CHALLENGING THOSE ORDERS.

Pursuant to South Carolina law, when a party makes the same argument as it made in a former appeal, the decision in the former appeal is the law of the case. *See Judy v. Martin*. 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, *or raised on appeal, but expressly rejected by the appellate court*") (emphasis added); *see also Ackerman v. McMillan*, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996) ("Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.") (citing 5 C.J.S. *Appeal and Error* § 975(a) (1993)).

In this second appeal, Appellants seek, once again, to appeal the Order Appointing Receiver and the Order Denying Defendants' First Rule 59(e) Motion. Appellants appealed both orders in the first appeal, *i.e.*, Appellate Case No. 2023-001494. Via its Partial Dismissal Order, entered January 23, 2024, this Court dismissed the first appeal as to those orders, which addressed the appointment of the receiver, *see* Ex. 2, as well the request for a stay of the Order Appointing Receiver and the offer of bond. *See* Ex. 3 (Defendants' First Rule 59(e) Motion, at 1, 8) and Ex. 4 (Order Denying Defendants First Rule 59(e) Motion). Thus, the Order Appointing Receiver and the Order Denying Defendants First Rule 59(e) Motion are the law of the case. Yet, this second appeal again asks the Court to review those orders and the issues addressed therein, *i.e.*, the appointment of the receiver and the denial of the stay and offer of bond. The orders and issues were raised in the first appeal and expressly rejected by this Court via its Partial Dismissal Order. *See* Ex. 13.

II. APPELLANTS' APPEAL OF THE ORDER DENYING DEFENDANTS' SECOND RULE 59(e) MOTION SHOULD BE DISMISSED DUE TO THE LAW OF THE CASE DOCTRINE AND MOOTNESS.

The Second Notice of Appeal also seeks to appeal the trial court's Order Denying Defendants' Second Rule 59(e) Motion. *See* Ex. 14. The Defendants' Second Rule 59(e) Motion, sought reconsideration of the trial court's Order Denying Defendants' First Rule 59(e) Motion, attached as Exhibit 4, pertaining to the denial of the stay and offer of bond. *See* Ex. 5. As addressed below, to the extent it raises those issues, the instant appeal must be dismissed due to the law of the case and because the issues are moot.

a. Appellants' Request for a Stay and Offer of Bond Are Not Appealable Because the Order Denying the Defendants' First Rule 59(e) Motion is the Law of the Case.

The Defendants' First Rule 59(e) Motion sought, among other relief, ". . . a stay of the

Court's [Order Appointing Receiver] while [Defendants' First Rule 59(e) Motion] is under consideration and until appeal is taken . . . ." Ex. 3 at 1. Alternatively, Defendants' First Rule 59(e) Motion asked the Court to accept its offer of a $250,000 bond. *Id.* at 8. In response, the trial court entered the Order Denying Defendants' First Rule 59(e) Motion, which the Appellants then challenged in their first appeal, along with the Order Appointing Receiver. *See* First Notice of Appeal, attached as Ex. 12. As noted supra, this Court determined that Appellants had failed to appeal the Order Appointing Receiver and the Order Denying Defendants' First Rule 59(e) Motion in a timely manner and dismissed the prior appeal as to those orders, accordingly. *See* Ex. 13. They are now the law of the case.

The Defendants' Second Rule 59(e) Motion raised the issue of the stay and offer of bond for a second time. *See* Ex. 5. Those issues were resolved by the Order Denying Defendants' First Rule 59(e) Motion, which, again, is the law of the case. The issues of the stay and offer of bond cannot be appealed again. To the extent Appellants attempt to do just that in the instant appeal of the Order Denying Defendants' Second Rule 59(e) Motion, the appeal should be dismissed.

b. Appellants' Request for Reconsideration of The Denial of the Stay is Moot.

The Appellants' request for reconsideration of the denial of the stay is also a moot issue. Under South Carolina law, "a case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Sloan v. Greenville County*, 356 S.C. 531, 552, 590 S.E.2d 338, 349 (Ct. App. 2003).

Here, in the Defendants' First Rule 59(e) Motion, the Appellants asked the trial court to stay "the Court's [Order Appointing Receiver] while this Motion for Reconsideration is under consideration and until appeal is taken . . . ." Ex. 3 at 1. In the Defendants' Second Rule 59(e)

Motion, the Appellants asked the trial court to reconsider its denial of the stay and offer of bond made in Defendants' First Rule 59(e) Motion. *See* Ex. 5 at 1. Since the filing of the motion, the trial court has entered the Order Denying Defendants' Second Rule 59(e) Motion, and the Appellants have taken this appeal. Also, there is no longer an actual controversy concerning the appointment of the Receiver because the Order Appointing the Receiver and the Order Denying Defendants' First Rule 59(e) Motion are the law of the case. Thus, the events that have transpired have rendered moot the issue of whether the trial court erred by denying the request for a stay. Even setting aside the law of the case doctrine, it would be pointless for the Court to consider the issue now, after the fact. This second appeal should be denied, accordingly, to the extent the Appellants appeal the denial of the stay that they requested.

c. Appellants' Request for Reconsideration of the Denial of The Offer of Bond is Moot

The trial court's Order Denying Defendants' First Rule 59(e) Motion expressly rejected the Appellants' offer of bond. *See* Ex. 4 ("Defendants' Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond is respectfully denied."). After the trial court entered its Order Denying Defendants' First Rule 59(e) Motion on April 27, 2023, the Appellants took their first appeal. As discussed above, the Court dismissed the first appeal, *i.e.*, Appellate Case No. 2023-001494, as to both the Order Appointing Receiver and the Order Denying Defendants' First Rule 59(e) Motion. *See* Ex. 13. Those orders are the law of the case as a result.

Like the appointment of the receiver and the denial of the stay, the trial court's decision to reject the offer of bond cannot be relitigated, which renders the issue moot. Issues that have become moot or academic in nature are not a proper subject for review. *See Wallace v. City of York,* 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981) (finding that "the function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies

injuriously affecting the rights of some party to the litigation"). Accordingly, this Court should deny the instant appeal to the extent it challenges the trial court's decision not to accept the offer of bond.

Furthermore, like the issue of the stay, the issue of the bond has been rendered moot by the passage of time and intervening events. The trial court entered the Lease Termination Order and the Order Denying Defendants' Motion to Reconsider the Lease Termination Order more than a year ago. Pursuant to those orders, the Receiver terminated the Lease long ago and transferred operations of the skilled care nursing facilities to a new operator. The new operator has been in place since September 1, 2023. Moreover, in accordance with the two aforementioned orders, the Receiver has been liquidating the remaining assets of the Receivership Estate. He has substantially accomplished the task to date. The bell cannot be unrung.

d. The Appellants' Initial Brief Reveals That Appellants Do Not Actually Appeal the Trial Court's Denial of the Request for Stay or Offer of Bond.

As mentioned above, the Defendants' Second Rule 59(e) Motion asked the trial court to reconsider the denial of its request for a stay of the Order Appointing Receiver and its offer of a bond. *See* Ex. 5. The trial court rejected the requests via its Order Denying Defendants' Second Rule 59(e) Motion. *See* Exhibit 14. Following the entry of that order, Appellants filed their Second Notice of Appeal, which references the below three orders:

1. Order Appointing Receiver (Ex. 2)
2. Order Denying Defendants' First Rule 59(e) Motion (Ex. 4); and
3. Order Denying Defendants' Second Rule 59(e) Motion (Ex. 14).

The Appellants included the first two orders listed above in their prior appeal. *See* Ex. 12. This Court dismissed the prior appeal as to those orders, via its Partial Dismissal Order. *See* Ex. 13. Those two orders are clearly the law of the case and cannot be appealed again.

The Order Denying Defendants' Second Rule 59(e) Motion is the third order referenced in the Second Notice of Appeal. That order pertains only to the request for stay and offer of bond, which the trial court previously rejected in its Order Denying Defendants' First Rule 59(e) Motion. Even if the Order Denying Defendants' First Rule 59(e) Motion has not become the law of the case, this second appeal should be dismissed as to the Order Denying Defendants' Second Rule 59(e) Motion because the Appellants have not appealed any issues that relate to the request for stay or offer of bond. *See* Initial Br. of Appellants, filed May 29, 2024, at p. 1. The Appellants' Statement of Issues on Appeal includes four issues on appeal, none of which pertain to the stay or offer of bond. All four issues address the trial court's Order Appointing the Receiver. Whether the trial court erred in appointing the receiver is an issue that cannot be appealed again. The second appeal should be dismissed accordingly.

CONCLUSION

For the reasons set forth above, Respondents respectfully pray that this appeal be dismissed. Specifically, Respondents request:

a) The appeal from the Order Appointing Receiver and the Order Denying Defendants' First Rule 59(e) Motion be dismissed because the orders are the law of the case; and

b) The appeal from the Order denying Defendants' Second Rule 59(e) Motion be dismissed as moot.

Respectfully submitted,

_____

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ATTORNEYS FOR RESPONDENTS CHARLESTON SC PROPERTY HOLDINGS, LLC AND HANAHAN SC PROPERTY HOLDINGS, LLC

Charleston, South Carolina
September 12, 2024

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

TABLE OF EXHIBITS

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 1

Verified Complaint

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. _____
CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPITAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER, Defendants.	)	**VERIFIED COMPLAINT (NON-JURY)**

NOW COMES CHARLESTON SC PROPERTY HOLDINGS, LLC ("Charleston Lessor") and HANAHAN SC PROPERTY HOLDINGS, LLC ("Hanahan Lessor") (the "Lessors" and collectively, "Plaintiffs") and file this Verified Complaint against RITTENBERG OP LLC, ("Rittenberg Lessee"), HANAHAN OP LLC, ("Hanahan Lessee") (the "Lessees'), GOLDNER CAPITAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER ("Mr. Goldner") (collectively, "Defendants"), and in support thereof state:

JURISDICTION AND VENUE

1. Plaintiffs are each a South Carolina limited liability company. Charleston SC Property Holdings, LLC owns the real property located at 1137 Sam Rittenberg Boulevard,

Charleston, South Carolina 29407. Hanahan SC Property Holdings, LLC owns the real property located at 1800 Eagle Landing Boulevard, Hanahan, South Carolina 29410.

2. The Lessees are each a Delaware limited liability company and are qualified to do business in South Carolina and are doing business in South Carolina. Samuel Goldner ("Mr. Goldner") is a natural person and resident of New York. Goldner Capital Management LLC and SC Two OP Holdings LLC are each a Delaware limited liability company. All of the Defendants are doing business in South Carolina. The Defendants can be served at 525 Chestnut Street, Suite 207, Cedarhurst, New York 11516 or wherever Defendants may be found.

3. Plaintiffs seek more than $2 million in monetary damages, as well as the appointment of a receiver, and other equitable relief. A substantial part of the events that made the basis of this suit occurred in Charleston County, South Carolina, and part of the real and other property owned by Plaintiffs that is the subject of this suit is located in Charleston County, South Carolina. Plaintiffs are South Carolina entities doing business in South Carolina.

4. This Court therefore has jurisdiction over the claims and parties, and venue is proper in this Court.

GENERAL BACKGROUND

5. Plaintiffs are the owners of the real property located at 1137 Sam Rittenberg Boulevard, Charleston, South Carolina 29407 and 1800 Eagle Landing Boulevard, Hanahan, South Carolina 29410, the legal descriptions of which respectively appear in Exhibits A and B attached hereto and incorporated herein (collectively, the "Properties").

6. The Lessees lease these Properties from Plaintiffs and manage two skilled nursing facilities thereon known as Viviant Healthcare of Charleston (the "Charleston Facility") and Viviant Healthcare of Hanahan (the "Hanahan Facility" collectively, the "Facilities"). The

leasehold is pursuant to the unified Master Lease Agreement for the Properties dated June 14, 2021 (the "Lease"), attached hereto as Exhibit C. Plaintiffs and Defendants have a number of other agreements between them and among their affiliates. These include a Purchase Option Agreement dated March 18, 2021 (the "Purchase Option"), a Guaranty Agreement executed by Mr. Goldner in favor of the Plaintiffs (the "Individual Guaranty") and a Guaranty Agreement executed by Mr. Goldner's affiliate entities, Goldner Capital Management LLC and SC Two OP Holdings LLC (the "Corporate Guarantors"), in favor of the Plaintiffs, dated August 16, 2021 (the "Corporate Guaranty", and together with the Individual Guaranty, collectively, the "Guaranties"). These Agreements are attached hereto as Exhibits D, E, and F respectively.[1]

7. Plaintiffs also have a perfected security interest in the accounts receivable and personal property of the Lessees and other collateral as described in the properly filed UCC-1 Financing Statement attached hereto as Exhibit G.

CAUSES OF ACTION

I. For a First Cause of Action: Breach of Contracts

A. Failure to Make Rent Payments Under the Lease

8. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

9. Under the Lease, the Lessees are required to but have failed to make the following payments to Plaintiffs:

a. Pursuant to Section 4.1, Lessees are required to make set monthly payments to Plaintiffs as Base Rent pursuant to Schedule 4.1 therein.

b. Pursuant to Section 4.2, Lessees are also required to make monthly payments of

[1] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Lease and Guaranties.

Additional Rent to Plaintiffs, comprised of real estate tax deposits under Section 7.1, insurance premium deposits under Section 7.2, and replacement reserve deposits under Section 7.3.

10. Each such failure constitutes an Event of Default under Section 19.1(a) of the Lease.

11. Further, pursuant to Section 5.1 of the Lease, any failure by Lessees to make any of these Rent payments within the applicable five-day grace period results in a Late Charge of 2% of the amount outstanding, with all amounts outstanding compounding at 2% monthly thereafter.

12. Starting in October 2022, Lessees began failing to make timely payments of Rent under the Lease and have continued such failures for each required payment due on November 2022, December 2022, January 2023, February 2023, and March 2023. The total amount that is currently past due and owing under the Lease is a sum of at least $2,250,436.13 (the "Total Outstanding Amount"), and additional amounts continue to accrue.

B. Failure to Perform Covenants Under the Lease

13. Pursuant to Section 11.2 of the Lease, Lessees are required to complete specific repairs by certain deadlines as set forth in Schedule 11.2 therein. As of today's date, Lessees have failed to complete any of the required repairs, and the deadlines to complete the same have all passed.

14. Their failure to do so constitutes an Event of Default under Section 19.1(b) of the Lease.

15. Further, pursuant to Section 27.3, Lessees were required to fully comply with certain required covenants under Plaintiff's Loan Documents as described on Schedule 27.3 of

the Lease. As of today's date, Lessees have failed to do so. Specifically, Lessees failed to achieve the required Debt Yield Percentage, pursuant to Section 4.12(a)(xii), and a Minimum Fixed Charge Coverage Ratio, pursuant to Section 4.12(a)(xiii).

16. Their failure to do so is an Event of Defendant under Section 19.1(d) of the Lease.

17. On December 14, 2022, Lessees received notice that the Hanahan Facility had been placed on the Special Focus Facility program list. This is a list the Center for Medicare and Medicaid Services ("CMS") maintains to identify nursing homes that are not meeting the most basic health care requirements mandated by federal law and that are continuously cited for such failures.

18. Being so designated is an Event of Default under Section 19.1(n) of the Lease.

19. Pursuant Section 4 of Schedule 27.3 of the Lease, the Lessees were required to maintain certain insurance coverages with respect to the Facilities. Specifically, Section 4.5(b) of Schedule 27.3 requires the Lessees to maintain commercial general liability insurance. As of today's date, Lessees' commercial general liability insurance policy has expired, resulting in the Facilities not being adequately insured.

20. Their failure to do so is an Event of Defendant under Section 19.1(d) of the Lease.

21. Pursuant to Section 15.1 of the Lease, the Lessees are required to allow Plaintiffs access to the Facilities. A representative of the Plaintiffs' recently notified the Lessees that she wished to conduct such inspections of the Facilities. However, the Lessees have expressly refused to permit Plaintiffs' representative from conducting such inspections.

22. This is an Event of Defendant under Section 19.1(b) of the Lease.

C. Remedies for Events of Default

23. Pursuant to Section 21.1, upon any uncured Event of Default, Plaintiffs may elect to terminate both the Lease and the Lessees' right to possession of the Properties. If so, (i) Lessees must quietly and peaceably deliver possession of the Properties to Lessors, at which point Lessors will again have exclusive possession and enjoyment of the Properties, and (ii) the Purchase Option is of no force and effect and is terminated.

24. Additionally, under Section 21.6, Lessees executed and delivered an Operations Transfer Agreement (the "Exit OTA") to the Plaintiffs, which may be released upon any Event of Default. The Exit OTA effectuates the transfer of operations of the Facilities from Lessees to Plaintiffs or to Plaintiffs' designee. The Exit OTA is attached to the Lease as Exhibit C thereto.

D. The Guarantees

25. Pursuant to Section 1 of each of the respective Guaranties, the Individual Guarantor and the Corporate Guarantors jointly and severally unconditionally guaranteed Lessees' obligations under the Lease, subject to applicable limitations as described in the Guaranties.

E. Failure to Pay and Failure to Cure

26. Given the foregoing breaches and Events of Default, Plaintiffs sent Defendants a letter, along with a spreadsheet detailing the amounts past due, on March 6, 2023, notifying them of the same, and specifically demanding that Defendants pay the Total Outstanding Amount (the "Demand Letter"), subject to applicable limitations as described in the Guaranties. The Demand Letter is attached hereto as Exhibit H.

27. Despite repeated attempts by Plaintiffs to resolve the issues stated in the Demand Letter with Defendants, Defendants have indicated that they are unwilling and unable to fully

resolve said issues. To date, all defaults remain uncured.

28. Therefore, as of today's date, Defendants have failed to cure their breaches of the Lease and the Guaranties, and indeed, given their deliberate silence, Defendants have repudiated any and all intentions and obligations to do so.

29. Given this repudiation of the cure obligations under the Lease and the refusal to fulfill the terms of the Guaranties, as well as other concerns about the Defendants described herein, Plaintiffs have been forced to file this lawsuit to protect both their interests and residents at the Facilities.

30. Defendants' conduct was the direct, proximate and producing cause of the breach and of damage to the Plaintiffs. All conditions precedent to Plaintiffs' recovery have been met.

31. Plaintiffs therefore are entitled to judgment against the Defendants, jointly and severally, for breach of the Lease and the Guarantees for the Total Outstanding Amount and all other amounts due and owing and accruing under the documents and applicable law, subject to applicable limitations as described in the Guaranties.

32. Further, Plaintiffs seek the additional specific remedies outlined below.

II. For a Second Cause of Action: Declaratory Judgment

33. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

34. Pursuant to Section 15-53-10 et seq. of the South Carolina Code of Laws, Plaintiffs seek a Declaratory Judgment from this Court, declaring the rights, status, obligations, duties, and other legal relations related to the Exit OTA, the Lease, the Guaranties, and the Purchase Option. Specifically, and without limitation, Plaintiffs request that this Court declare that:

a. the Lease, the Guaranties, and the Exit OTA are legally binding and enforceable contracts between Lessors and the Defendants, the terms of which must be followed

as stated therein;

b. the Lessees' right to possession of the Properties under the Lease and the Purchase Option are subject to termination, subject to all applicable regulations; and

c. Plaintiffs and their designee(s) are vested with the full and exclusive right to possession and management of the Properties, subject to all applicable regulations.

III. For a Third Case of Action: Injunctive Relief

35. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

36. The Defendants, by taking the wrongful actions described in the above paragraphs, have breached their contracts and other legal duties.

37. As a proximate and foreseeable result of these breaches, Plaintiffs have suffered and will continue to suffer immediate and irreparable injury.

38. Plaintiffs have no adequate remedy at law to protect Plaintiffs' interests or to prevent harm to patients and others.

39. The balance of hardships favors the entry of an injunction.

40. The public interest favors the entry of an injunction.

41. Plaintiffs request the entry of temporary, preliminary and permanent injunctions as the Court deems appropriate, to protect both Defendants' interests and the residents at the Facilities.

IV. For a Fourth Cause of Action: Appointment of a Receiver

42. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

43. Due to the Defendants' defaults, misconduct, and other acts and omissions as described above and in the accompanying Affidavit of Amanda Colwell, and given the immediate and ongoing threat of harm to Plaintiffs, patients, and others, Plaintiffs seek the appointment of a receiver to do all acts necessary and appropriate in connection with the administration and management of the Properties and Facilities, and as consistent with the motion for appointment of receiver filed contemporaneously with this Verified Complaint.

44. Appointment of a receiver is necessary and proper under South Carolina Code Sections 15-65-10 et seq., specifically subsections (1), (4), and (5) of Section 15-65-10 as stated below, and S.C.R.C.P. Rule 66:

> § 15-65-10. Appointment of receiver.
>
> A receiver may be appointed by a judge of the circuit court, either in or out of court:
>
> (1) Before judgment, on the application of either party, when he establishes 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, except in cases when judgment upon failure to answer may be had without application to the court;…
>
> (4) When a corporation has been dissolved, is insolvent or in imminent danger of insolvency or has forfeited its corporate rights, and, in like cases, of the property within this State of foreign corporations; and
>
> (5) In such other cases as are provided by law or may be in accordance with the existing practice, except as otherwise provided in this Code.

V. For a Fifth Cause of Action: Attorneys' Fees and Costs

45. Plaintiffs incorporate by reference the above paragraphs as if fully set forth herein.

46. Defendants' actions have made it necessary for Plaintiffs to engage attorneys. Pursuant to Section 37.5 of the Lease and Section 1 of the Guaranties, Defendants are responsible for paying Plaintiffs their costs and reasonable attorneys' fees in enforcing the rights articulated herein.

47. Plaintiffs therefore sue Defendants, jointly and severally, for reasonable and necessary costs and attorneys' fees pursuant to the Lease and the Guaranties and applicable law.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for judgment against Defendants, jointly and severally, for all damages and amounts described above; that the Court declare, among other things, that (a) the Lease, the Guaranties, and the Exit OTA are legally binding and enforceable contracts between Lessors and Defendants, the terms of which must be followed as stated therein; (b) the Lessees' right to possession of the Properties under the Lease and the Purchase Option are subject to termination; and (c) Plaintiffs and their designee(s) are vested with the full and exclusive right to possession of the Properties; for temporary, preliminary, and permanent injunctive relief; for the appointment of a receiver; for judgment against Defendants, jointly and severally, for Plaintiffs' reasonable and necessary legal costs and attorneys' fees Plaintiffs have incurred and will incur in enforcing the rights articulated herein; and for any and all such other and further relief, general or special, legal or equitable, to which Plaintiffs may be justly entitled.

(Signature Page to Follow)

WALKER GRESSETTE & LINTON, LLC

/s/ Charles P. Summerall, IV

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

Aharon S. Kaye (pro hac vice application pending)
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Attorneys for Plaintiffs

Charleston, South Carolina

March 28, 2023

INDEX OF EXHIBITS TO VERIFIED COMPLAINT

EXHIBIT	DOCUMENT
Exhibit A	Legal Property Description-Charleston SC Property Holdings, LLC
Exhibit B	Legal Property Description-Hanahan SC Property Holdings, LLC
Exhibit C	Master Lease
Exhibit D	Purchase Option Agreement
Exhibit E	Individual Guaranty Agreement
Exhibit F	Corporate Guarantors Agreement
Exhibit G	UCC-1 Financing Statement
Exhibit H	Demand letter

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPITAL MANAGEMENT, LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER Defendants.	C/A#: 2023-CP-_____ **VERIFICATION**

Personally appeared before me Amanda Colwell who, being duly sworn, deposes and says as follows:

1. I am employed as the Vice President of Asset Management of Cascade Capital Group, LLC, which is a healthcare management company headquartered in Skokie, Illinois, and am an authorized representative of Hanahan SC Property Holdings, LLC and Charleston SC Property Holdings, LLC (together, the "Plaintiffs"). By virtue of my employment, I am familiar with Plaintiffs' operations in and the business dealings it has with Hanahan OP LLC and Rittenberg OP LLC (together, the "Lessees"). I am also familiar with Plaintiffs' formation, purpose, and operations in South Carolina. I am authorized to make this Verification on behalf of the Plaintiffs, and I make this Verification based on my personal knowledge of the matters contained herein.

2. The Verified Complaint accurately sets forth certain amounts, but not all amounts, due and justly owing to Plaintiffs under the subject Master Lease. To date, no part of the indebtedness described in the Verified Complaint has been paid, and it is still due and owing to Plaintiffs.

3. Further, I have read the Verified Complaint, and the facts stated therein are true of my own knowledge, except as to any matters stated upon information and belief, and as to those matters I reasonably believe them to be true. The Exhibits to the Verified Complaint are true and correct copies of the referenced documents.

FURTHER AFFIDANT SAYETH NOT.

Amanda Colwell

SUBSCRIBED AND SWORN to before me on this 27 day of March, 2023, to certify which, witness my hand and seal of office.

Notary Public in and for The State of Illinois
Print Name: Anne Harvick Prikos

My Commission Expires:

Official Seal
Anne Harvick Prikos
Notary Public State of Illinois
My Commission Expires 11/22/2026

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 2

Order Appointing Receiver

STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO. 2023-CP-10-01512
CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC GOLDNER CAPITAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER, Defendants.	)	**ORDER APPOINTING RECEIVER**

THIS MATTER came before the Court for hearing on April 11, 2023 on Plaintiffs' Motion For Appointment of Receiver (the "Motion"). Plaintiffs, Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC ("Plaintiffs") have applied for the appointment of a receiver in this action pursuant to the provisions of South Carolina Code § 15-65-10, *et seq.* (the "Receivership Act") and S.C.R.C.P. Rule 66. The Plaintiffs were represented at the hearing by Charles P. Summerall, IV. The Defendants were represented at the hearing by Christopher Brumback.

The Court has reviewed the Motion, the Verified Complaint, the Court file, and other applicable submissions and has advised Defendants Rittenberg OP LLC, ("Rittenberg Lessee"), Hanahan OP LLC, ("Hanahan Lessee") (together, the "Lessees"), Goldner Capital Management LLC, SC Two OP Holdings LLC, and Samuel Goldner ("Goldner") (collectively, the

"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 looks, 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

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 3

Defendants' First Rule 59(e) Motion

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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Attorney for Defendants

Friday, April 14, 2023
Greenville, South Carolina

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 4

Order Denying Defendants' First Rule 59(e) Motion

FORM 4

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

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

☐ **STAYED DUE TO BANKRUPTCY**

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

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

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

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

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 5

Defendants' Second Rule 59(e) Motion

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,

---

[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

Christopher T. Brumback / S.C. Bar # 75410
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Attorney for Defendants

Friday, May 5, 2023
Greenville, South Carolina

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 6

Lease Termination Motion

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPTIAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2023-CP-10-01512 **RECEIVER'S MOTION TO APPROVE ENTRY INTO OPERATIONS TRANSFER AGREEMENT AND LEASE TERMINATION AGREEMENT** **EXPEDITED HEARING REQUESTED**

Michael F. Flanagan (the "Receiver"), as the court-appointed receiver in the above-captioned action, hereby files the *Receiver's Motion to Approve Entry Into Operations Transfer Agreement and Lease Termination Agreement* (the "Motion"). In support of the Motion, the Receiver states as follows:

I. BACKGROUND

A. The Order Appointing Receiver and the Facilities

1. On April 14, 2023, Circuit Court Judge George M. McFaddin, Jr. entered an Order Appointing Receiver for Rittenberg OP LLC and Hanahan OP LLC in the above-captioned action (the "Order Appointing Receiver").

2. The Order Appointing Receiver appointed Michael F. Flanagan as the Receiver for Defendant Rittenberg OP LLC ("Rittenberg") and Defendant Hanahan OP LLC ("Hanahan"), the Facilities (defined herein) and Rittenberg and Hanahan's business operations, assets, and property

of whatever nature (collectively, the "Receivership Estate") effective as of April 17, 2023 (the "Effective Date").

3. Plaintiff Charleston SC Property Holdings, LLC owns real property located at 1137 Sam Rittenberg Boulevard, Charleston, South Carolina 29407 (the "Charleston Facility").

4. The Charleston Facility is a skilled nursing facility with 125 licensed beds and approximately 130 employees. Eighty-three (83) beds are currently occupied by residents who receive varying levels of care depending on their needs.

5. Plaintiff Hanahan SC Property Holdings, LLC (who, together with Plaintiff Charleston SC Property Holdings, LLC, shall be referred to collectively as the "Plaintiffs") owns real property located at 1800 Eagle Landing Boulevard, Hanahan, South Carolina 29410 (the "Hanahan Facility"). The Charleston Facility and Hanahan Facility shall be referred to hereinafter collectively as the "Facilities".

6. The Hanahan Facility is a skilled nursing facility with 135 licensed beds and approximately 130 employees. Ninety (90) beds are currently occupied by residents who receive varying levels of care depending on their needs.

7. Prior to the Effective Date, Plaintiffs (as lessors) entered into that certain Master Lease Agreement dated June 14, 2021 with Rittenberg and Hanahan (as lessees) pursuant to which Rittenberg and Hanahan leased the Facilities as well as the furnishings, furniture, equipment and fixtures located at the Facilities (the "Master Lease") and purchase option agreement (the "Purchase Option"). The Master Lease provides that in the event Plaintiffs terminate the Master Lease or Rittenberg and Hanahan's possession of the Facilities, the Purchase Option shall also terminate.

8. Prior to the Effective Date, Rittenberg operated the Charleston Facility and Hanahan operated the Hanahan Facility.

B. Receiver's Efforts to Stabilize Operations Since the Effective Date

9. Following his appointment, the Receiver engaged Legacy Healthcare Financial Services to manage the day-to-day operations of the Facilities and retained Quality Healthcare Resources to assist with back office support services.

10. The Receiver quickly worked to ensure workers' compensation insurance as well as professional and general liability insurance policies were bound after learning that policies covering the Facilities had been cancelled prior to the Effective Date.

11. In addition, and as reflected in the Receiver's First Report filed on April 25, 2023, the Receiver learned that both Facilities were significantly in arrears with regard to the payment of unsecured creditors at the time of his appointment.

12. Significantly, the Receiver also learned that the Facilities faced a number of compliance and other issues noted and raised by the Centers for Medicare and Medicaid Services ("CMS") and/or the South Carolina Department of Health & Environmental Control ("DHEC"). Since the Effective Date, the Receiver has worked closely with his professionals, CMS and DHEC to address and remedy the CMS and DHEC issues flagged and detailed in the Receiver's First Report.

C. Funding Advances Provided by Plaintiffs

13. At the time of his appointment, the Receivership Estate lacked sufficient funds to meet the working capital requirements of the Facilities. Consequently, and pursuant to the terms of the Order Appointing Receiver, Plaintiffs initially advanced $375,000 on April 21, 2023 to fund

working capital requirements for the Facilities and to assist with funding the costs and expenses of the Receivership Estate.

D. Plaintiffs' Efforts to Find Replacement Management Company

14. As set forth in Plaintiffs' Complaint, as of March 28, 2023 the Master Lease was in default and Rittenberg, Hanahan and other defendants owed the Plaintiffs more than $2,250,000.

15. Upon information and belief, since the Complaint was filed, the Plaintiffs have not received any additional rent payments under the Master Lease (including from the Receiver due to the Facilities' financial performance since the Effective Date) and are now owed approximately $3,750,789.45 through July 2023 under the Master Lease which consists of the following amounts:

Unpaid Rent	$1,790,029.32
Replacement Reserve Escrow	$ 75,833.30
Real Estate Tax Escrow	$ 277,997.30
Property Insurance	$ 190,732.24
Charleston RETAX Escrow Shortage due to lender	$ 30,116.28
Hanahan RETAX Escrow Shortage due to Lender	$ 1,651.84
Security & Capex Deposits	$1,057,400.00
Late Fees	$ 327,029.17
Total	**$3,750,789.45**

16. The Receiver notes that the arrearage amounts identified above do not reflect the additional amounts the Plaintiffs have advanced to the Receivership Estate pursuant to the terms of the Order Appointing Receiver and which are owed to Plaintiffs.

17. The Facilities have operated at a loss both prior to and since the Effective Date and continue to operate at a loss.

18. Consequently, the Receiver is informed and believes that the Master Lease should be terminated and the operation of the Facilities should be transferred to a new tenant and operator qualified to operate skilled nursing facilities promptly to ensure the Facilities' residents continue to be cared for and to prevent the Receivership Estate from incurring additional operating losses.

19. Furthermore, the Receiver is informed and believes that termination of the Master Lease and transition of the operations of the Facilities to a new operator qualified to operate skilled nursing facilities will mitigate the Plaintiffs' claims for future rents and other damages owed by Defendants under the Master Lease and related documents and is consistent with the parties' existing agreements.

20. Upon information and belief, the Plaintiffs have worked since the Effective Date to find and identify a new tenant and operator for the Facilities that is qualified and has experience operating skilled nursing facilities.

II. Request for Relief

21. As set forth above, the Master Lease is currently in default, and as alleged by the Plaintiffs at the time the Complaint was filed, Rittenberg, Hanahan and other defendants owed the Plaintiffs in excess of $2,250,000.

22. Furthermore, the arrearage owed to Plaintiffs under the Master Lease has increased by more than $1.5 million (to $3,750,789.45) since the Complaint was filed because no monthly

rent payments or other amounts owed under the Master Lease have been paid by the Receiver since his appointment because the Facilities have not performed financially at a level permitting such payments. Plaintiffs have even had to make protective advances to the Receiver in the amount of $375,000 on April 21, 2023 to meet the Facilities' and Receiver's funding requirements. These additional advanced amounts also remain outstanding and unpaid as of the date this Motion.

23. In light of the continuing defaults under the Master Lease, costs of receivership, and desire to find a replacement tenant and operator for the Facilities, Plaintiffs recently negotiated the terms of a Master Lease Agreement (the "New Master Lease") to lease the Facilities and certain assets located at the Facilities as more fully described therein to Ensign Group, Inc., a Delaware corporation or its affiliate ("New Operator").

24. In conjunction therewith, the Plaintiffs and New Operator negotiated the terms of an Operations Transfer Agreement together with related ancillary documents to consummate the transaction (the "OTA"), the form of which is attached hereto as **Exhibit A** and incorporated herein by reference, to transfer operations of the Facilities to the New Operator. The OTA requires the Receiver's signature on behalf of the Facilities' current operator.

25. The OTA sets forth the terms upon which the transition of operations of the Facilities to New Operator will occur.

26. The Receiver is aware of and familiar with the New Operator and believes the New Operator is qualified and experienced with operating skilled nursing facilities. Furthermore, the Receiver is informed and believes that the New Operator is qualified to operate the Facilities.

27. Pursuant to the terms of the New Master Lease and OTA, the parties desire for the transaction to close by August 31, 2023, or as soon thereafter as practicable and agreed to by Plaintiffs, the New Operator, and the Receiver (the "Closing Date").

28. On the Closing Date, the New Operator will become the tenant and licensed operator of Facilities. The New Operator will take over responsibility for the operation of the Facilities, including being responsible for all liabilities generated on and after the Closing Date and will have the right to all revenues generated by the Facilities on and after the Closing Date. Conversely, all revenues and liabilities generated during the course of the receivership through the Closing Date will remain with the Receivership Estate, with any excluded assets (*e.g.*, accounts receivable, cash on deposit, any refunds) to be used to pay any outstanding liabilities incurred during the term of the receivership. Assets of the Receivership Estate remaining after the payment of all outstanding receivership expenses, if any, will be held by the Receiver and disbursed only pursuant to further order of this Court.

29. In connection with the transition of operations to the New Operator and the New Operator's execution of the New Master Lease, the Receiver will need to terminate the existing Master Lease by and through the execution of a Lease Termination Agreement (the "LTA"). A copy of the LTA is attached hereto as **Exhibit B** and incorporated herein by reference.

30. Based on the exercise of the Receiver's reasonable business judgment, terminating the existing Master Lease by and through the LTA and entering into the OTA to facilitate the transition of operations of the Facilities from the Receiver to the New Operator is in the best interests of the Receivership Estate.

31. Based on the Receiver's business judgment, the OTA contains commercially reasonable terms which are similar to those seen in typical agreements for transitions of skilled nursing facilities under the control of a receiver. Furthermore, the Receiver believes entry into the LTA to terminate the Master Lease is customary in transactions of this nature and is authorized by

the Order Appointing Receiver. *See* Order Appointing Receiver, ¶ 9(g) ("The Receiver will have full authority to handle all tenancy issues, including…terminating leases….).

32. The Receiver notes that time is of the essence and is requesting that the Motion be heard on an expedited basis due to the New Operator's requirement that the Closing Date occur by August 31, 2023.

33. Furthermore, the Receiver believes that prompt approval of the relief requested herein is in the Receivership Estate's best interest because it will prevent the Receivership Estate from incurring additional losses and will mitigate the Plaintiffs' claims for future rents and other damages against the Defendants.

34. The Receiver believes that timely transition of operations of the Facilities to the New Operator will (1) prevent the Receivership Estate from incurring additional, substantial operating losses which, notwithstanding the Receiver's best efforts, have continued since the Effective Date, (2) mitigate the Plaintiffs' claims for future rents and other damages against the Defendants, (3) enable the Facilities' existing residents to remain and continue to receive care at the Facilities, and (4) provide an opportunity for the employees at the Facilities who care for the residents to remain employed.

35. After the Closing Date, the Receiver will focus his efforts on liquidating the Receivership Estate's remaining assets, paying remaining Receivership Estate expenses and, if sufficient funds remain, proposing a procedure to make distributions to creditors on account of pre-receivership expenses pursuant to a claims process to be approved by the Court. However, the Receiver notes for the Court that, at this time, he does not believe the Receivership Estate will have sufficient assets remaining to pay pre-receivership claims and expenses.

III. CONCLUSION

36. The Receiver is informed and believes that Court approval of and authorization for him to sign, enter into and deliver the (1) OTA in a form substantially similar to Exhibit A and (2) LTA in a form substantially similar to Exhibit B is in the best interests of the Receivership Estate.

WHEREFORE, for all of the foregoing reasons, the Receiver respectfully moves and requests that the Court enter an order (1) authorizing the Receiver to sign, enter into and deliver the OTA in a form substantially similar to Exhibit A, (2) authorizing the Receiver to sign, enter into and deliver the LTA in a form substantially similar to Exhibit B, and (3) granting such other additional relief as the Court deems appropriate.

Dated: August 3, 2023

/s/ *Michael H. Weaver*

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Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 7

Lease Termination Motion Hearing Transcript

STATE OF SOUTH CAROLINA)IN THE SOUTH CAROLINA CIRCUIT COURT 9

COUNTY OF CHARLESTON) COURT C.A NO. 2023-CP-10-01512

Charleston SC Property Holdings, LLC,)

Plaintiff,)

Versus)

Rittenberg OP, LLC,)

Defendant.)

H E A R I N G

DATE: August 23, 2023

LOCATION: South Carolina Circuit Court 9

JUDGE: Roger M. Young, Sr.

TRANSCRIBED BY: ERIN REILLY

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APPEARANCES

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EXHIBITS

(Exhibit G)

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

[PROCEEDINGS]

THE COURT: Okay. Well, I've got a limited amount of time to deal with this, so whoever's moving. Take charge and move on.

MR. WEAVER: Okay. Well, I think that would be me, Your Honor. Good afternoon. My name is Michael Weaver. I'm a lawyer with Rogers Townsend, and I represent Mike Flanagan, who is the court appointed receiver for Hanahan OP, LLC and Rittenberg OP, LLC. Two of the defendants in the case. And I just want to at least introduce -- pause for a minute, introduce my client, Mr. Flanagan, who's appearing today via Webex in Arizona. So he's a few hours behind us. And then in addition, Amanda Colwell and that's last name spelled C-O-L-W-E-L-L. She's with Legacy Financial -- excuse me, Legacy Healthcare Financial Services, which is one of the professionals that the receiver retained. Your Honor, we're here today on the receiver's motion for approval of entry into an operations transfer agreement and lease termination agreement. That motion was filed on August 3rd. We sought to have it heard on an expedited basis. And I just want to stop and thank the Court for accommodating the receiver's request to have it heard and scheduled on an expedited basis and for your time today. And, Your Honor, I have -- on August 21st which would be Monday I filed an exhibit -- a witness, an exhibit list, and sent exhibit binders to all counsel of record, many

of whom I see on the call here this afternoon and sent three copies to the Court, which I wanted to make sure the Court received a copy of that exhibit binder.

THE COURT: Yes, we have it.

MR. WEAVER: Okay. Thank you, Your Honor. And I'm pleased to report that the receiver did not field any objections to his motion. So in addition to the motion, he filed an affidavit in support. Your Honor, we're happy to rely on that. If the court prefers, we're happy to proffer additional testimony. I'm happy to put Mr. Flanagan on the stand as well, if the court prefers.

THE COURT: It makes no difference to me how you want to proceed.

MR. WEAVER: Okay. Well, if I could, maybe I'll just proffer in addition to the affidavit that we'd be relying on. And we move -- the receiver moves for the admission of all those exhibits. And I'll just pause for a second to. Even though no one objected to the motion, I just want to make sure there's no objection to those exhibits coming into evidence.

THE COURT: Is there anybody object to anything on this before we go any further?

MR. BRUMBACK: Yes, Your honor. Defendant's object to the timing of this motion. I don't object to the admission of the exhibits, but we object to the timing of the motion and believe it's premature. At a later date we believe that it may

be appropriate, but at this time we do believe it's premature.

THE COURT: Do you want to respond to that?

MR. WEAVER: Yeah. Your honor, I'm happy to go first and I thank Mr. Brumback for his response here. It's the first time I've heard from Mr. Brumback since late May, when he asked for a continuance on another hearing. We do -- there are a number of urgencies in this case, including the care of approximately 173 residents who are spread across both facilities. These facilities are not operating profitably, rent continues to accrue. There's currently more than $4 million of past due rent, which is detailed in Exhibit. A. And in addition to that, the plaintiffs, pursuant to the terms of the receiver order, have had to advance make some protective advances which greatly exceed even the amount that was in the receivers affidavit that was filed on August 3rd. That affidavit noted that there had been $375,000 in advances. There's now been just over $1.5 million of advances, Your Honor. Those are set forth in Exhibit C, and, you know, the reality of it is every day that goes by, the facilities get further in the hole. The receivership estate gets further in the hole. So it's my client's position that there is no additional time for delay. And here the plaintiffs have found an operator and sign group, which the receiver would tell you is an entity he's familiar with. It's one of the -- if not the largest -- certainly one of the largest skilled care nursing

facility operators in the country. They are well capitalized, they are prepared to take in -- take over the operations enter into a new lease, ensure that the residents are continued to be cared for at the locations where they are and also keep more than 260 employees employed. But the inside coming to the table also, Your Honor, enables the receiver really mitigate the damages claim the receiver would otherwise have against these defendants. So for all of those reasons. Well, I appreciate Mr. Brumback's comment we disagree with him.

THE COURT: Anybody else?

MR. SUMMERALL: Your Honor, this is Charles Summerall on behalf of the plaintiffs, I would just reiterate and support what Mr. Weaver told you. The receiver, Mr. Flanagan is, of course, the objective officer of the Court. And I think South Carolina case law clearly says that the receiver's opinion as to the manner, time and place of disposing of property of the receivership estate is entitled to great respect and weight. That's the Hananan v. Mechanics Building in loan case. And I can tell you from the plaintiff's standpoint, we believe it's in the best interest of the receivership estate and really appreciate the court scheduling this motion for today.

MR. BRUMBACK: Your Honor, I would just like to briefly respond. I was really giving a 30,000 foot view there. My position is that this is premature. This receivership has only been in place for about four months at this point, which with

regard to receivership, is in a -- in its infancy at best. That said, the point of the receivership is to maintain and preserve the property until the rights of the parties are ultimately determined. What this is, is essentially an effort to do an end run around a decision on the merits. This case and as was noted earlier, there was a continuance on a motion I made previously regarding compelling arbitration, which is a clause contained in a number of the controlling documents in this case, that any disputes were to be referred to arbitration due to out -- due to national -- what we would call National council. Changing firms, I was left in a situation where as local counsel, did not have the authority to move forward at that time as opposed to retaining new counsel. What my clients have done is hired a general counsel in-house. And subsequent to that, which happened recently. They have -- we have agreed for me to move forward on their behalf. And to that effect, I would say that we're ready on an expedited basis at this point to move forward with hearing that motion on compelling arbitration. And then thereafter, once arbitration and the rights of the parties are determined and during that time the property is preserved by the receiver. Then, as I said, this motion may be timely at that point. But prior to the rights of the parties being determined, the merits of this case being heard, I don't see how the court can grant the requested relief without possibly inflicting irreparable harm on the defendants.

If the defendants and we do believe that there are legitimate defenses and counterclaims to the claims that have been asserted against my clients. Such that if my clients prevail at arbitration, they would be irreparably harmed and that they can never receive the property back. Moreover, Your Honor, I would like to point the Court to the fact that when the receivership was granted a bond -- an amount of bond was not set by the prior judge who heard this. And I think that is in direct conflict with the statutory requirements, because had a bond been set, my client was ready to actually post said bond to receive the property back from the hands of the receiver and continue operating the property. So, Your honor, to that point, I would say our position is that the merits of this case have not been determined yet. We have a pending motion for compelling arbitration and I believe that both of those need to be resolved prior to the Court being able to move forward with approving this. As I said, at some point this may be appropriate but I do not believe this is that day, Your Honor.

MR. SUMMERALL: Your Honor, if I may respond, Charles Summerall again on behalf of the plaintiffs. Mr. Brumback back in May, had asked the Circuit Court to set a hearing on his motion to dismiss my complaint and to compel arbitration. That hearing was scheduled in front of Judge Price on May the 31st. And the afternoon before that. Mr. Brumback, and I'm looking at his email to Judge Price, informed Judge Price in

asking for a continuance of that May 31st hearing that the defendants were in the process of retaining new national counsel. And I'll read one sentence, Your Honor. "I, meaning Mr. Brumback, have spoken with Defendant Sam Goldner and he is already working on selecting and retaining new counsel. And as such, I believe he should be able to complete that task in a timely manner." Your Honor, that was three months ago. And as Mr. Weaver, the receiver's counsel said, we have heard nothing at all from Mr. Brumback since May the 30th, three months ago. Your Honor also, as Judge McFadden cited in his order granting the motion and appointing the receiver the Palmetto Wildlife Case, which is a South Carolina Court of Appeals case from last year, 869-SC second 859 says that even if other claims in the case get referred to arbitration, and I don't believe they will be, Your Honor. But even if they were, Palmetto Wildlife says that receivership matters are governed by South Carolina statute and are not the proper subject of an arbitration anyway. So point being, Your Honor, I do not think Mr. Brumback, with a straight face can ask you today, after going silent for three months to postpone this hearing or deny this very well grounded motion by the receiver. And that's why I cited that Hananan v. Mechanics Building and loan case 180 southeast 873, where the South Carolina Supreme Court says that the advice of receivers and their opinions as to the manner, time and place of disposing of property of the receivership

estate are entitled to great respect and weight. And last thing I'll say, Your Honor, these tenants that Mr. Brumback represents have not paid rent going back to last fall, Your Honor, Mr. Weaver quoted the numbers to you. My clients are owed hundreds of thousands of dollars of month -- of rent per month. We're now owed over $4 million that Mr. Brumback's clients have made no effort to pay. And this motion does, in fact, mitigate and thus benefit the defendants by getting a rent paying tenant in there as the new operator of these assisted living facilities. So the exigencies and the equity's favor my clients, not the defendants, who have been silent for three months now.

THE COURT: Anyone else?

MR. JOHNSON: Yes, sir. Counselor Johnson on behalf of -- I'm not even a party to this action yet. We have a pending motion to intervene. But associated receivables funding -- Your Honor as a background. My client is a factoring company. The company they factored for provided independent contractors to these two facilities, and they're owed wages thereon. We had a -- we have a judgment already entered against both of the operators. And it's been my position since the beginning that this receivership is just a complete frustration of other creditors rights. The only interest they're looking at is the interest of the plaintiffs and it's to the detriment of all of these other creditors by not letting us pursue our judgment

rights. And I think if this motion is granted, it completely forecloses every other creditor from receiving anything and it's only going to benefit the plaintiffs. While we've been foreclosed, my motion was filed in May, and I'm sitting here on the sidelines trying to recover people's wages, Your Honor. It's just -- it's not equitable at all.

MR. SUMMERALL: Your Honor, Charles Summerall, on behalf of the plaintiffs and Michael Weaver, may want to address that on behalf of the receiver. Granting this motion actually benefits these creditors that are seeking to intervene because to the extent their separate actions against Mr. Brumback's clients have been stayed by Judge McFadden's receivership order, granting this motion and getting a new operator in there is going to move this receivership towards conclusion one way or the other and the stay will be lifted. And in other words and Mr. Weaver addressed this in the receiver's motion before you today. If there are assets left in the receivership for distribution to creditors, then the receiver is going to ask the court to approve a claims process, as is going on now in the Murdoch receivership case. But if there are no assets, the receiver will report that to the court with notice to Mr. Johnson, and he can review the receivers report and take whatever position he wants at that time. But I think for creditors, any creditor, to try to come in from the side when they're not actually parties to this matter and try to

interfere with the transition of operations. They're looking at damaging my client and my client will take that very seriously, Your Honor.

MR. WEAVER: And, Your honor, this is Mr. Michael Weaver. I just want to note as well, I mean, in response to Mr. Johnson's concern that that stay really put everyone in similarly situated creditors, just like Mr. Johnson. Even though he had a judgment, he wasn't a secured creditor, he was just as unsecured as all the other unsecured creditors. And when Mr. Flanagan filed his initial receiver's report on April 25th, he listed more than $6 million of pre-receivership expenses that were owed. And that receivership order basically froze all that in place so that no one of those creditors was preferred over any other creditor and that's something he can at least share with his client. And then as Mr. Summerall alluded to, if the motion that's before the Court today is approved. Then the operations of the facilities goes to Insigne and Insigne enters into a new lease. Then at that point, the receiver is going to be able to, you know, work on collecting the remaining accounts receivable that are not going over as part of this transaction. And whatever cash that's available, collect that, pay any post receivership expenses that are left owing, in which case, to the extent they're not. Then Mr. Summerall's client is going to have to come out of additional out of pocket funds to pay those post receivership

expenses. But to the extent there's anything left, at the end of the day, we would come back to the court, Your Honor, with a proposed claims allowance process which Mr. Johnson and others similarly situated pre-receivership creditors can follow.

MR. JOHNSON: You know briefly this is not a bankruptcy. South Carolina has the diligent creditor rule. I have a judgment, I'm entitled to pursue my judgment. And this receivership has frustrated my efforts to do that and it's completely in favor of the plaintiff. It's not equitable at all, and it does not follow South Carolina law.

THE COURT: Well, I think in as outlined on his memos and exhibits, I think it's. It's one of those instances in which a receiver, I believe is appropriate, and I think somebody needs to be managing the assets so that the money can be kept without being squandered. And that's about where -- but it looks to me like it's going to happen because nobody's making any kind of payments as it is right now. So that's what we're going to do. The order that you attached at the end as Exhibit G that's the proposed order?

MR. WEAVER: It is, Your Honor. Yes, it is, Your Honor. If you need it submitted any other way, I'd be happy to do it.

THE COURT: Just electronically upload it to my law clerk and he will get it posted online for me to sign.

MR. WEAVER: I will do. Thank you, Your Honor.

MR. SUMMERALL: Thank you, Your Honor. Just one

housekeeping matter. I believe Mr. Weaver had offered all of the exhibits into evidence without objection?

THE COURT: I believe he did too. All right. Anything else?

MR. SUMMERALL: If you would just -- I just wanted to make sure they were accepted into evidence as part of the record of this proceeding, Your Honor.

THE COURT: They have been.

[Documents Marked as Exhibit G.]

MR. SUMMERALL: Thank you sir.

THE COURT: All right. Anything else?

MR. WEAVER: No, Your Honor

MR. JOHNSON: No, Your Honor

THE COURT: All right. Thank you.

MR. WEAVER: Thank you, Your Honor.

[End of Hearing]

CERTIFICATE OF TRANSCRIBER

I, ERIN REILY, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 9, Charleston County, South Carolina, on the 23rd day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 18th, 2023

ERIN REILLY

TRANSCRIBER

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 8

Lease Termination Order

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPTIAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2023-CP-10-01512

ORDER APPROVING RECEIVER'S ENTRY INTO OPERATIONS TRANSFER AGREEMENT AND LEASE TERMINATION AGREEMENT

This matter comes before the Court on the Receiver's Motion to Approve Entry Into Operations Transfer Agreement and Lease Termination Agreement (the "Motion") filed by Michael F. Flanagan (the "Receiver"), the court-appointed receiver in the above-captioned action.

The Court having reviewed and considered the Motion and the evidence presented in support of the Motion and finding that it has been sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The terms of the Operations Transition Agreement ("OTA") as described and defined in the Motion are appropriate and the Receiver is authorized to sign, enter into, and deliver the OTA, in a form substantially similar to Exhibit A to the Motion, to Ensign Group, Inc., a Delaware corporation or its affiliate ("New Operator") to transition operations of that certain 125 bed skilled nursing facility located at 1137 Sam Rittenberg Boulevard, Charleston, South Carolina 29407 (the "Charleston Facility") and that certain 135 bed skilled nursing facility located at 1800

Eagle Landing Boulevard, Hanahan, South Carolina 29410 (the "Hanahan Facility" and, together with the Charleston Facility, the "Facilities") to New Operator on or before August 31, 2023 (the "Closing Date") or as soon thereafter as is practicable and agreed to by the parties. The Receiver is authorized to perform all obligations of the Receivership Estate under the OTA.

2. The terms of the Lease Termination Agreement ("LTA") as described and defined in the Motion are appropriate and the Receiver is authorized to sign, enter into, and deliver the LTA, in a form substantially similar to Exhibit B to the Motion, to Hanahan SC Property Holdings, LLC and Charleston SC Property Holdings, LLC (collectively, the "Plaintiffs") to terminate that certain Master Lease Agreement (the "Master Lease") dated June 14, 2021 by and among Plaintiffs (as lessors) and Defendant Hanahan OP LLC and Defendant Rittenberg OP LLC (as lessees) and to perform all obligations of the Receivership Estate under the LTA.

3. Following the termination of the Master Lease and transition of operations of the Facilities to the New Operator, the Receiver is authorized and directed to focus his efforts on collecting and liquidating the remaining assets of the Receivership Estate and paying any remaining debts incurred during the course of the receivership without further order of this Court.

4. If any funds remain after the Receiver's payment of all receivership costs and expenses, the Receiver shall propose a claims allowance process and procedure to make distributions to creditors on account of any pre-receivership expenses for the Court's review and approval.

AND IT IS SO ORDERED.

[*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/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 9

Defendants' Motion to Reconsider the Lease Termination Order

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 Order granting Receiver's Motion to Enter Into OTA and LTA or in the Alternative for Stay Pursuant to Rule 62(a)**

YOU WILL PLEASE TAKE NOTICE that Defendants hereby move pursuant to Rule 59(e), SCRCP, for reconsideration of the Court's August 23, 2023 Order ("Order") granting Receiver's Motion to Approve Entry into Operations Transition Agreement ("OTA") and Lease Termination Agreement ("LTA") and in the alternative pursuant to Rule 62(a) for a stay of the Court's April 23, 2023 Order 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.[1] 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] Pursuant to Se. Hous. Found. v. Smith, the filing of this "Rule 59(e) motion removes the finality of the challenged judgment" such that until and unless the Court denies this Motion the Receiver does not have the required authorization of the Court to proceed with entry into the OTA and LTA. 380 S.C. 621, 640, 670 S.E.2d 680, 690 (Ct. App. 2008)

1. The purpose of appointing a receiver is merely "to preserve the property pending the litigation so that relief awarded by the judgment, if any, may be effective." Porter v. Brown, 149 S.C. 151, 162 n.1, 146 S.E. 810, 814 n.1 (1929) (Cothran, J., concurring in result) (emphasis added); see Vasiliades v. Vasiliades, 231 S.C. 366, 376, 98 S.E.2d 810, 815 (1957) ("The appointment of a receiver pendente lite by the court was purely a provisional remedy —to preserve the assets of the estate."). The appointment of a receiver, "a drastic remedy, [that] should be granted only with reluctance and caution," is not intended to provide an end-run around a plaintiff's burden of proving his case on the merits. 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)). However, an end-run is precisely what the Court's Order sanctions for Plaintiffs, securing the termination of Defendants' leasehold rights without requiring Plaintiffs to first satisfy their burden of proof at a trial on the merits of Plaintiffs' breach of contract claims, all at great prejudice to Defendants and in violation of their due process rights. In stark contrast to the shortcut permitted to Plaintiffs by the Court's Order, the Supreme Court has made clear as far back as 1883 that where a plaintiff pursues an action to recover possession of real property upon an allegation of breach of contract, "unless this allegation was admitted an issue [i]s presented which the defendant ha[s] the right to have tried by a jury." DeWalt v. Kinard, 19 S.C. 286, 290 (1883).

Thus, where, as in this case, the rights of a landlord against a tenant are not established by unrefuted evidence, the tenant's right to possession of the property remains and cannot be revoked until there has been a final determination of all issues at trial. Id. at 293 ("A person

in possession of real property is presumed to have title until the contrary appears, and we do not see by what authority he can be deprived of such possession until the question of title has been tried, even though it should be made to appear, prima facie, that he was insolvent.") (emphasis added); see also 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). Accordingly, where a case has not even progressed beyond the initial pleading stage, discovery has not yet even commenced, and Defendants have never been "given the opportunity to present all relevant and admissible evidence in support of its position," Halsey v. Simmons, 432 S.C. 54, 58, 849 S.E.2d 578, 580 (2020), it is wildly premature and an abuse of discretion for the Court to impose remedies that irrevocably destroy the status quo and that would erect a permanent bar to Defendants regaining possession of and recommencing business operations in the properties, thereby causing great and irreparable loss and injury to Defendants, even if they ultimately prevail on the merits of this action at

trial.[2] [3] Brookshire v. Farmers' Alliance Exch., 71 S.C. 451, 456, 51 S.E. 442, 443 (1905) (explaining the distinction between a hearing on "a preliminary motion for a receiver," which is neither a trial of nor "judgment on the merits," and "a final hearing to determine the solvency or insolvency of defendant corporation, the necessity for the appointment of a receiver after a hearing on the merits, and to make final disposition of the assets of the defendant corporation in the event the court should finally determine to take control of and administer the same") (emphasis added); Turner v. Byars, 226 S.C. 289, 294-96, 85 S.E.2d

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[2] As of the date of this Motion to Reconsider, Defendants, pursuant to the Master Lease and the attendant agreements thereto and in response to Plaintiffs' Complaint served on March 29, 2023, filed a Motion to Compel Arbitration on April 10, 2023. Defendants' Motion to Compel Arbitration is still pending and has yet to be heard by the Court.

[3] See, e.g., Bohn v. Black, 2019 NCBC 34, ¶ 55 (N.C. Super. Ct. 2019) ("It would also be premature to address the Bohns' requests for a constructive trust and permanent injunction. In the Order granting the Bohns' motion for a preliminary injunction, the Court concluded that they had shown a likelihood of success on the merits of the claim for unjust enrichment and that a constructive trust is an available remedy for that claim….Defendants have not moved to dissolve the preliminary injunction, which remains in force, and the claim for unjust enrichment will proceed to trial. The Court believes it would be more appropriate to resolve the disputed facts underlying the claim for unjust enrichment before imposing or denying remedies based on that claim.) (emphasis added); 65 Am. Jur. 2d Receivers § 6 (2011) ("[A] receiver's primary purpose is to preserve the property's value for those to whom it is ultimately determined that the property belongs so to accommodate all claims possible.") (emphasis added); U.S. Sec. & Exch. Comm'n v. Quan, Civil No. 11-723 ADM/JSM, *15-16 (D. Minn. Apr. 30, 2012) ("Additionally, a distribution plan is premature at this stage [for the receivership estate], because the merits of the SEC's case have not been resolved. A determination has not yet been made as to whether the frozen funds will be disgorged….Accordingly, because the potential for disgorgement exists, the funds will not be distributed at this time.") (emphasis added); Southern Connecticut Gas Co. v. Housing Authority, 191 Conn. 514, 527 (Conn. 1983) ("It is clear from the record that, in this case, there were a number of disputed issues with regard to payments for "current service" and entitlement to attorney's fees. Apart from our conclusion that termination of the receivership was premature until these issues were resolved, we express no opinion on their merits. We have made no determination concerning either the procedural or the substantive soundness of the petitioner's claims that there are still sums due and owing to it. Only a new trial can properly adjudicate these claims and the respondent's defenses thereto.") (emphasis added).

100, 101-03 (1954) (holding that, in an action "contest[ing] the [defendant's] right of possession under his claim of a contract to purchase the property," the trial court wrongfully ejected the defendant from the real property during the pendency of the litigation and prior to a trial of the case on the merits).

Moreover, the Court's Order, in deciding that the terms of the OTA and LTA "as described and defined in the [Receiver's] Motion are appropriate and the Receiver is "authorized…to transition operations [of the properties]…to [a] New Operator" and to "to terminate that certain Master Lease Agreement (the "Master Lease") dated June 14, 2021 by and among Plaintiffs (as lessors) and Defendant Hanahan OP LLC and Defendant Rittenberg OP LLC (as lessees)" necessarily assumes and finally decides the contested facts and merits of the case in favor of Plaintiffs and against Defendants without ever giving Defendants a meaningful opportunity to be heard. This assumption of facts is clearly contrary to the Supreme Court's opinion in DeWalt and is also a violation of Defendants' due process rights. DeWalt, 19 S.C. at 293 (overturning trial court's appointment of a receiver where the trial court improperly "assumed that the defendant admitted the plaintiff's title" and, based on the facts alleged by the plaintiff and contested by the defendant, an issue was presented which the defendant had a right to have tried by a jury" prior to being deprived of his interest in the property); Halsey, 432 S.C. at 58, 849 S.E.2d at 580 ("The 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."). The inappropriateness of the Court's assumption of contested facts in Plaintiffs' favor, which is tantamount to a decision on the merits of the underlying claims, is further highlighted by the parties' written arbitration agreement that

explicitly divests this Court of jurisdiction to determine the merits of the present dispute between the parties. Palmetto Wildlife Extractors, LLC v. Ludy, 435 S.C. 690, 699, 869 S.E.2d 859, 864 (Ct. App. 2022) ("[P]arties to a contract may agree that an arbitrator rather than a court will resolve disputes arising out of the contract.") (quoting Henry Schein, Inc. v. Archer & White Sales, Inc., __ U.S. __, 139 S. Ct. 524, 527, 202 L.Ed.2d 480 (2019)) (change in original). Given that preliminary motions concerning a receivership are neither a trial on or determinative of the merits of underlying claims, and that this Court lacks jurisdiction over the merits of the parties' dispute, the Court must properly deny, or hold in abeyance, the Receiver's Motion, thereby allowing for resolution of the disputed facts underlying the claim for breach of lease before imposing or denying remedies based on that claim. See Ludy 435 S.C. at 699, 869 S.E.2d at 864 (affirming in part a circuit court's decision that plaintiff's request for the appointment of a receiver, an accounting, and judicial dissolution were not subject to arbitration, but overturning circuit court's decision to the extent it failed to compel plaintiff's remaining causes of action to arbitration for determination of their arbitrability and, if arbitrable, their merits).

2. Where a receiver has been appointed, courts throughout the county have typically considered several factors in passing on motions to disturb the status quo prior to a trial and determination of the merits of a case. Specifically courts generally 1) compare the interests of the parties and whether the requested action will preserve the status quo or cause substantial injury, 2) examine the merits of the underlying claims, and 3) assess the time in the receivership's life at which the motion is being made. See generally US v. ESIC Capital, Inc., 675 F. Supp. 1462-63 (D. Md. 1987).

Despite defense counsel directing the Court's attention to these factors, the Court's failed to give any consideration to these factors in rendering its decision. As such, the Court's failure to properly assess and weigh these factors led the Court to erroneously grant the Receiver's Motion. Even assuming arguendo that the merits of Plaintiffs' claims are colorable, both the first and third factors decisively weigh in favor of denying the Receiver's Motion and preserving the status quo of the receivership estate.

First, with regard to the interests of the parties, allowing the Receiver to enter into the OTA and LTA will cause irreparable harm to Defendants since it will irrevocably change the status quo by terminating Defendants' Master Lease and transferring possession of the properties to a new operator, such that even if Defendants prevail on the merits of the case they will never be able to regain possession of the properties or to recommence their business operations. In contrast to the specter of irreparable harm facing Defendants as a result of the granting of the Receiver's Motion, the only "harm" to which the Plaintiff and the Receiver could point was continuing costs to operate the receivership, for which Plaintiffs asked, and the non-mitigation of alleged damages for which Defendants may be responsible if Plaintiffs were to ultimately prevail on the merits of their underlying claims. The non-mitigation of damages for which Defendants may be responsible cannot be considered a harm to either the Receiver or the Plaintiffs. As to the additional costs of the receivership if the Receiver's Motion is denied, Plaintiffs should not now be allowed to claim as "harm" the costs of the receivership for which they petitioned the Court to justify irrevocably altering the status quo to the Defendants' detriment. The Plaintiffs knew the costs associated with the receivership and the Receiver when they asked the Court to appoint the

Receiver, such that to now allow Plaintiffs to point to those costs as justification for termination of Defendants' leasehold rights and entry into the OTA with a new operator without an adjudication on the merits—and, in fact, before this Court has even decided the threshold issue of Defendants' pending Motion to Compel Arbitration—is to let the Plaintiffs have their cake and eat it too. If the Plaintiffs did not want to incur the costs associated with the receivership then they should not have moved for the appointment of the Receiver or so vociferously objected to Defendants' numerous requests for the Court to establish the appropriate value of the properties for purposes of complying with the receivership statutes (including Sections 15-65-50 and 15-65-60) and allowing Defendants to post a bond and regain possession of the properties pending this litigation. 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).

In addition to the relative rights of and damage to the parties weighing in favor of maintaining the status quo and denying the Receiver's Motion, an assessment of the time in the receivership's life at which the Receiver's Motion is being made also weighs in favor of denial of the Motion. This receivership is extremely young, having been in place for only a few short months. See S.E.C. v. Wencke, 742 F.2d 1230 (9th Cir.1984) (seven-year receivership); S.E.C. v. Wencke, 622 F.2d 1363 (9th Cir.1980) (four-year receivership); ESIC Capital, Inc., 675 F. Supp. at 1464 (noting that a two-year old receivership was "relatively young"). If the arbitration or litigation of this case drags on for many years, it is possible

under different circumstances that this factor may at a later date weigh in favor of granting a motion to dispose of the receivership estate, however, to do so now is simply to assist the Plaintiffs in making an end-run to obtain the ouster of Defendants from their leasehold rights without Plaintiffs having to prove the merits of their underlying claims. Consequently, at this time the factors illuminated in ESIC Capital, Inc. and other similar cases clearly weigh in favor of the denial of the Receiver's Motion.

WHEREFORE, Defendants respectfully request that based on Defendants' previously stated arguments that the Court reconsider its August 23, 2023 Order and deny the Receiver's Motion to approve entry into the OTA and LTA until such time as the merits of this case can be determined after all parties have had the opportunity to present all relevant and admissible evidence in support of their positions on the merits either at arbitration or before this Court. In the alternative, if the Court denies Defendants' Motion to Reconsider, Defendants respectfully request that the Court, pursuant to Rule 62(a), SCRCP, grant a stay of the Court's April 23, 2023 Order until a timely appeal is taken and a stay upon appeal can be requested in accordance with the Rules of Civil Procedure and the Appellate Court Rules.

Respectfully submitted,

s/Christopher T. Brumback

Christopher T. Brumback / S.C. Bar # 75410
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Attorney for Defendants

Wednesday, August 30, 2023
Greenville, South Carolina

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 10

Receiver's September 6, 2023 Report on Consummation of OTA

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPTIAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, and SAMUEL GOLDNER, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2023-CP-10-01512 **REPORT OF CONSUMMATION OF OPERATIONS TRANSFER AGREEMENTS AND LEASE TERMINATION AGREEMENT**

Michael F. Flanagan (the "Receiver"), as the court-appointed receiver in the above-captioned action, by and through his undersigned counsel, hereby files his *Report of Consummation of Operations Transfer Agreements and Lease Termination Agreement* and states as follows:

REPORT

1. On April 14, 2023, the Honorable George M. McFaddin, Jr. entered an Order Appointing Receiver for Rittenberg OP LLC and Hanahan OP LLC in the above-captioned action (the "Order Appointing Receiver").

2. The Order Appointing Receiver appointed Michael F. Flanagan as the Receiver for Defendant Rittenberg OP LLC ("Rittenberg") and Defendant Hanahan OP LLC ("Hanahan"), the Facilities (defined herein) and Rittenberg and Hanahan's business operations, assets, and property of whatever nature (collectively, the "Receivership Estate") effective as of April 17, 2023.

3. Plaintiff Charleston SC Property Holdings, LLC owns real property located at 1137 Sam Rittenberg Boulevard, Charleston, South Carolina 29407 (the "Charleston Facility").

4. Plaintiff Hanahan SC Property Holdings, LLC (who, together with Plaintiff Charleston SC Property Holdings, LLC, shall be referred to collectively as the "Plaintiffs") owns real property located at 1800 Eagle Landing Boulevard, Hanahan, South Carolina 29410 (the "Hanahan Facility"). The Charleston Facility and Hanahan Facility shall be referred to hereinafter collectively as the "Facilities".

5. On August 3, 2023, the Receiver filed his Motion to Approve Entry into Operations Transfer Agreement and Lease Termination Agreement (the "Motion") which he sought to have heard on an expedited basis.

6. By and through the Motion, the Receiver sought Court approval to sign, enter into, and deliver an Operations Transfer Agreement with Ensign Group, Inc. or its affiliates ("New Operators") in a form substantially similar to that which was attached to the Motion (the "OTAs") to transfer operations of the Facilities to the New Operators. In addition, the Receiver also sought Court approval and authorization to sign, enter into, and deliver a Lease Termination Agreement with the Plaintiffs in a form substantially similar to that which was attached to the Motion (the "LTA").

7. A hearing on the Motion was held on August 23, 2023 via WebEx before the Honorable Roger M. Young, Sr. (the "Hearing").

8. At the conclusion of the Hearing, Judge Young indicated he would grant the Motion, and an order granting the Motion was entered on August 23, 2023 (the "Order").

9. Following entry of the Order, the Receiver signed, entered into and delivered the OTAs to Plaintiffs which went effective at 12:01 a.m. on September 1, 2023. Furthermore, the

Receiver signed, entered into and delivered to Plaintiffs an LTA which went effective September 1, 2023.

10. As a result of the consummation of the OTAs and LTA,

a. the Receiver surrendered the licenses issued by the State of South Carolina to operate both Facilities on September 1, 2023, and new licenses were issued to the New Operators;

b. the residents at the Facilities were notified of the transition to the New Operators and have been receiving care and services from the New Operators since September 1, 2023;

c. the employees at the Facilities were terminated effective at midnight on August 31, 2023 and re-hired by the New Operators on September 1, 2023; and

d. vendors were notified that the Facilities' leases were terminated and transfer to the New Operators went effective as of September 1, 2023.

11. Pursuant to the terms of the OTAs, Orange Grove Healthcare, Inc. (an affiliate of Ensign Group, Inc.) is the new operator for the Charleston Facility and Railroad Crossing Healthcare, Inc. (an affiliate of Ensign Group, Inc.) is the new operator for the Hanahan Facility.

Dated: September 6, 2023

ROGERS TOWNSEND LLC

/s/ *Michael H. Weaver*

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Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 11

Order Denying Defendants' Motion to Reconsider the Lease Termination Order

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT**
COUNTY OF CHARLESTON	)	
CHARLESTON SC PROPERTY HOLDINGS, LLC, AND HANAHAN SC PROPERTY HOLDINGS, LLC,	)	Civil Action No. 2023-CP-10-01512
Plaintiffs,	)	**ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER OR IN THE ALTERNATIVE STAY**
vs.	)	
RITTENBERG OP LLC, HANAHAN OP LLC, GOLDNER CAPITAL MANAGEMENT LLC, SC TWO OP HOLDINGS LLC, AND SAMUEL GOLDNER,	)	
Defendants.	)	

This matter came before the Court on the Receiver's motion to approve entry into Operations Transfer Agreement and Lease Termination Agreement. Despite several requests prior to the hearing as to whether the matter was contested, no party stated opposition to the motion nor did anyone other than the moving party submit any briefs or memo before or during the hearing. At the hearing the Defendants for the first-time voiced opposition. After granting Plaintiff's motion, Defendants filed a motion to reconsider pursuant to Rule 59(e), SCRCP or in the alternative for stay pursuant to Rule 62(a), SCRCP. For the reasons set forth below, the motion to reconsider is DENIED.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the court's ruling will not support Rule 59(e) relief).[1] Courts have

1 Rule 59 is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

recognized three circumstances in which a court should grant a Rule 59(e) motion: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Hutchinston v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C., Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Nor does "[a] party's mere disagreement with the court's ruling . . . warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F.Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Title Ins. Co., 415 S.C. 115, 135, 781 S.E.2d 126, 137 (Ct. App. 2015).

After considering the issues raised in Defendant's motion, this Court hereby **DENIES** Defendant's motion to reconsider or in the alternative for stay.

AND IT IS SO ORDERED.

[*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/Other

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 12

First Notice of Appeal

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

C.A. No. 2023-CP-10-01512

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

v.

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

NOTICE OF APPEAL

Appellants Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner ("Appellants") appeal the respective Orders of the Honorable George M. McFaddin, Jr., and Roger M. Young, Sr., Circuit Court Judges, Appointing Receiver and Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement, and the court's corresponding Orders Denying Appellants' Rule 59(e) Motions for Reconsideration and Request for Stay Pursuant to Rule 62(a). The Order Appointing Receiver was dated and filed on April 14, 2023. Appellants timely filed a Motion for Reconsideration on April 14, 2023, which was denied on April 27, 2023. Thereafter, the court upon Motion of the Receiver filed an Order Approving Receiver's Entry into Operations Transfer Agreement and Lease Termination Agreement on August 23, 2023. Appellants timely filed a Motion for Reconsideration on August 30, 2023, which was denied on September 8, 2023. Copies of the Orders being appealed from are attached hereto.

September 11, 2023

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback

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Attorney for Respondent Michael Flanagan,
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Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 13

Partial Dismissal Order

The South Carolina Court of Appeals

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

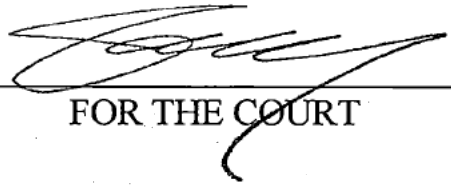
v.

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

Appellate Case No. 2023-001494

ORDER

Respondents have moved to partially dismiss this appeal, asserting the circuit court's April 14, 2023 order appointing the receiver, and April 27, 2023 Form 4 order denying reconsideration are not properly before this court. Appellants advised this court they received notice of entry of the aforementioned orders the day of filing. Appellants' proof of service of the notice of appeal indicates they served Respondents on September 13, 2023. Accordingly, the motion is granted, and the appeal is dismissed as to the April 14 and April 27, 2023 orders. *See* Rule 203(b)(1), SCACR (providing the notice of appeal must be served on all respondents within thirty days after receipt of written notice of entry of the order); *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.").



FOR THE COURT

Columbia, South Carolina

FILED
Jan 23 2024

cc:
Michael Henry Weaver, Esquire
Charles P. Summerall, IV, Esquire
Ross Conard DuRant, Esquire
James Whittington Clement, Esquire
Christopher Todd Brumback, Esquire
Noah D. Siegel, Esquire
Aharon S. Kaye, Esquire

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 14

Order Denying Defendants' Second Rule 59(e) Motion

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CHARLESTON SC PROPERTY HOLDINGS, LLC, and HANAHAN SC PROPERTY HOLDINGS, LLC, Plaintiffs, vs. 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 C/A#: 2023-CP-10-01512 **ORDER DENYING DEFENDANTS' RULE 59(e) MOTION FOR RECONSIDERATION OF DENIAL OF REQUEST FOR STAY AND OFFER OF BOND**

This matter came before the Court on the Defendants' Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond, filed on May 5, 2023 ("May 5 Motion for Reconsideration"). For the reasons set forth below, the May 5 Motion for Reconsideration is DENIED.

STANDARD OF REVIEW

Motions for reconsideration will not be granted absent "highly unusual circumstances." U.S. ex rel. Becker v. Washington Savanah River Co., 305 F. 3d 284, 290 (4th Cir. 2002) (stating that simple disagreements with the Court's ruling will not support Rule 59(e) relief.[1] Courts have recognized three circumstances in which a court should grant a Rule 59(e) motion: "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law to prevent manifest injustice." Hutchinson v.

[1] Rule 59, SCRCP, is substantially the same as the Federal Rule. *See* Elam v. S.C. Dep't of Transp., 361 S.C. 9, 21, 602 S.E. 2d 772, 779 (2004) ("Rule 59(e) in the South Carolina and federal rules of civil procedure is practically identical.").

Staton, 994 F. 2d 1076, 1081 (4th Cir. 1993). Importantly, a motion for reconsideration is not a vehicle to re-litigate previously raised issues or "to raise argument or present evidence that could have been presented prior to the entry of judgment." Dash v. Mayweather, C/A No. 3:10-1036-JFA, 2010 U.S. Dist. LEXIS 95277, *2 (D.S.C. Sept. 13, 2010) (quoting Exxon Shipping Co. v. Baker, 554 U.S. 471, n.5 (2008)). In other words, "[a] party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." Stevens & Wilkinson of S.C. Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E 2d 693, 695 (2014); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E. 2d 436, 437 (Ct. App 1995). Nor does "[a] party's mere disagreement with the court's ruling… warrant a Rule 59(e) motion." In re Pella Corp. Architect & Designer Series Windows Mktg., Sales Practices & Prods. Liab. Litig., 269 F. Supp. 3d 685, 691 (D.S.C. 2017); *see also* Lyons v. Fid. Nat'l Trust Ins. Co., 415 S.C. 115, 135, 781 S.E. 2d 126, 137 (Ct. App. 2015).

PROCEDURAL HISTORY[2]

1. This is a breach of lease case involving two skilled nursing facilities. By Order Appointing Receiver filed on April 14, 2023 ("April 14 Order"), this Court granted the Plaintiffs' Motion for Appointment of Receiver and appointed Michael F. Flanagan ("Receiver") Receiver over the Defendant Lessees, the Facilities, the Personal Property, and the Operations as defined in the April 14 Order.
2. The Defendants 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").

[2] The Court takes judicial notice of relevant filings in this case both in the Circuit Court and the Court of Appeals. Unless otherwise defined herein, defined terms in this Order have the same meaning as in the Order Appointing Receiver filed on April 14, 2023.

3. This Court entered a Form 4 Order/Judgment on April 27, 2023 ("April 27 Order") denying Defendants' April 14 Motion.
4. The Defendants 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 Defendants did not comply with Rule 59(g), which required the Defendants to provide a copy of the May 5 Motion for Reconsideration to the undersigned within 10 days after the filing of the Motion. As described further below, the Defendants did not contact the undersigned or provide a copy of the May 5 Motion for Reconsideration until November 20, 2023, which was five and a half months after the filing of the Motion.
5. In the meantime, by his Order Approving Receiver's Entry Into Operations Transfer Agreement and Lease Termination Agreement entered on August 23, 2023 ("August 23 Order"), Judge Roger M. Young, Sr. authorized the Receiver to terminate the Defendant Lessees' leases of the two nursing home Facilities which are the subject of the Receivership, and to transfer operations of the Facilities to New Operators.
6. On August 30, 2023, the Defendants filed a Rule 59(e) Motion for Reconsideration of Order Granting Receiver's Motion to enter into OTA and LTA or in the Alternative for Stay Pursuant to Rule 62(a).
7. On September 6, 2023, the Receiver filed a Report of Consummation of Operations Transfer Agreements and Lease Termination Agreement. In the Report, the Receiver confirmed, among other things, the termination of the Defendant Lessees' leases and the transfer of operations of the Facilities to the New Operators effective on September 1, 2023.
8. On September 8, 2023, Judge Young entered his Order Denying Defendants' Motion to Reconsider or in the Alternative Stay ("September 8 Order").

9. On September 13, 2023, the Defendants served a Notice of Appeal of the undersigned's April 14 Order and April 27 Order, as well as Judge Young's August 23 Order and September 8 Order.

10. On November 17, 2023, the Plaintiffs (as Respondents in the appeal) filed a Motion to Dismiss Part of Appeal with the Court of Appeals, which requested dismissal of the appeal as to the undersigned's April 14 Order and April 27 Order.

11. By email on November 20, 2023, the Defendants' counsel provided a copy of the May 5 Motion for Reconsideration to the undersigned for the first time, and requested a ruling on the Motion.

12. After considering further emails from counsel for the Plaintiffs and the Defendants, the undersigned notified counsel by email on December 5, 2023 that, in light of the Court of Appeals' exclusive jurisdiction over the appeal, it was not the time for this Court to address the May 5 Motion for Reconsideration.

13. By Order filed on January 23, 2024 ("January 23 Order"), the Court of Appeals dismissed the appeal as to the April 14 Order and the April 27 Order.

14. By email on February 20, 2024, the Defendants' counsel notified the undersigned of the Court of Appeals' dismissal of the appeal as to the April 14 Order and the April 27 Order, and requested a ruling on the May 5 Motion for Reconsideration.

15. By email on February 23, 2024, the Plaintiffs' counsel provided the undersigned with the Court of Appeals' Partial Remittitur filed with the Circuit Court on February 15, 2024, and stated reasons why the May 5 Motion for Reconsideration should be denied as moot due to intervening circumstances.

16. On March 6, 2024, this Court informed the parties of its ruling that the Court agreed with the Plaintiffs' arguments and positions, and was therefore denying the Defendants' May 5 Motion for Reconsideration as moot.

17. By Order filed on March 18, 2024 ("March 18 Order") the Court of Appeals dismissed the remaining appeal as to Judge Young's August 23 Order and September 8 Order.

CONCLUSIONS OF LAW

In the May 5 Motion for Reconsideration, the Defendants requested reconsideration of this Court's denial of their request in the April 14 Motion for a Rule 62(a) stay of the April 14 Order "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." In light of the Court of Appeals' January 23 Order, the April 14 Order is the law of the case. There can be no further challenge to the April 14 Order, and the Defendants' request for reconsideration of the denial of their previous request for a Rule 62(a) stay is moot.

In the May 5 Motion for Reconsideration, the Defendants also requested reconsideration of this Court's denial of Defendants' offer of bond. Pursuant to Judge Young's August 23 Order and September 8 Order, the Receiver terminated the Defendants' leases of the two nursing home Facilities which are the subject of the Receivership, and transferred operations of the Facilities to New Operators who have been operating the nursing homes since September 1, 2023. Judge Young's Orders further authorized the Receiver to liquidate the remaining assets of the Receivership Estate and pay any remaining debts incurred during the course of the Receivership. In the February 23, 2024 email, Plaintiffs' counsel informed the undersigned that the Receiver has largely done so and that, but for the pendency of the remaining appeal of Judge Young's Orders in which the Receiver is a Respondent, the Receivership is close to conclusion. Subsequently, by

its March 18, 2024 Order, the Court of Appeals dismissed the remaining appeal of Judge Young's Orders. Under the circumstances, the Defendants' request for reconsideration of the denial of their offer of bond is moot.

After considering the issues raised in Defendants' Motion and the record in this case, this Court hereby **DENIES** Defendants' May 5 Motion for Reconsideration.

AND IT IS SO ORDERED.

[*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/Other

So Ordered

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

Appellate Case No. 2024-000723
Motion to Dismiss Appeal

EXHIBIT 15

Second Notice of Appeal

RECEIVED
Apr 29 2024
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

C.A. No. 2023-CP-10-01512

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

v.

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

NOTICE OF APPEAL

Appellants Rittenberg OP, LLC, Hanahan OP, LLC, Goldner Management, LLC, SC Two OP Holdings, LLC, and Samuel Goldner ("Appellants") appeal the Orders of the Honorable George M. McFaddin, Jr., Circuit Court Judge, Appointing Receiver, Denying Appellants' Rule 59(e) Motion for Reconsideration, Request for Stay Pursuant to Rule 62(a), and Offer of Bond, and Motion, and Denying Appellants' Rule 59(e) Motion for Reconsideration of Denial of Request for Stay and Offer of Bond. The Order Appointing Receiver was dated and filed on April 14, 2023. Appellants timely filed on April 14, 2023 a Motion for reconsideration of the appointment of the receiver and further requesting a stay of the April 14, 2023 Order Appointing Receiver pursuant to Rule 62(a) and offering a bond pursuant to Paragraph 26 of the Court's April 14, 2023 Order. The Court issued a Form 4 Order on April 27, 2023 denying Appellants' motion to reconsider and denying, without any explanation or justification, Appellants' request for stay and offer of bond to obtain redelivery of the property in question. Due to the Court's bald denial of Appellants' request for stay and offer of bond in its April 27, 2023 Form 4 Order, which constitutes a clear abuse of discretion according to the Supreme Court's recent decision in Morris v. BB & T Corp., 438 S.C. 582, 885 S.E.2d 394 (2023), Appellants timely filed on May 5, 2023 a Motion requesting the Court to reconsider the its April 27, 2023 Form 4 Order denying the requested stay and offer of bond and to "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." Despite timely filing the May 5, 2023 Motion requesting reconsideration of the April 27, 2023 Form 4 Order, a copy of the May 5, 2023 Motion was inadvertently not transmitted to Judge McFaddin via email or hardcopy as directed by Rule 59(g). Once the oversight concerning transmission of a copy of the timely filed May 5, 2023 Motion pursuant to Rule 59(g) was brought to the attention of Appellants' Counsel on November 17, 2023, a copy of the May 5,

2023 Motion was emailed to Judge McFaddin on November 20, 2023. Judge McFaddin ultimately issued an Order on March 28, 2024 denying Appellants' May 5, 2023 Motion. Gallagher v. Evert, 353 S.C. 59, 63, 577 S.E.2d 217, 219 (Ct. App. 2002) ("There is no indication that the failure to transmit a copy of the [Rule 59(e), SCRCP,] motion to the circuit court affects the tolling provision of Rule 203(b)(1), SCACR. Therefore, the time for filing the notice of appeal did not begin to run until after the circuit court denied the motion…."); see also Farmer v. CAGC Ins. Co., 424 S.C. 579, 585, 819 S.E.2d 142, 145 (Ct. App. 2018) (citing Gallagher and rejecting that an appeal was untimely due to a delay resulting from appellant's failure to transmit a copy of a motion to reconsider to the trial judge pursuant to Rule 59(g), SCRCP). Copies of the Orders being appealed from are attached hereto.

April 29, 2024

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback

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Michael H. Weaver
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1221 Main Street 14th Floor
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Attorney for Respondent Michael Flanagan, Receiver

RECEIVED
Apr 29 2024
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

C.A. No. 2023-CP-10-01512

Charleston SC Property Holdings, LLC, Hanahan SC Property Holdings, LLC, and Michael Flanagan, Receiver……..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 on April 29, 2024 I served Appellant's Notice of Appeal on Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC by electronic filing and emailing a copy of the Notice of Appeal to their attorneys of record Charles P. Summerall, IV at summerall@wglfirm.com. Also served with the Notice of Appeal via electronic filing and email is counsel of record for the Receiver, Michael H. Weaver, at Michael.Weaver@rogerstownsend.com.

April 29, 2024

BRUMBACK & LANGLEY, LLC

s/Christopher T. Brumback

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Property Holdings, LLC

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Attorney for Respondent Michael Flanagan,
Receiver

BRUMBACK & LANGLEY, LLC

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GENERAL & COMPLEX LITIGATION
BUSINESS & CORPORATE LAW
APPELLATE PRACTICE
CRIMINAL DEFENSE
PERSONAL INJURY

April 29, 2024

VIA FIRST CLASS U.S. MAIL &
ELECTRONIC MAIL—ctappfilings@sccourts.org
South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
P.O. Box 11629
Columbia, SC 29211

Re: *Charleston SC Property Holdings, LLC et al. v. Rittenberg OP, LLC et al.*
C.A. No. 2023-CP-10-01512

Dear Ms. Kitchings:

Attached hereto, please find the Notice of Appeal that was filed today, April 29, 2024, with the Clerk of Court for Charleston County in the above-referenced case. A hardcopy of this letter containing a check for the Two Hundred Fifty Dollar ($250.00) filing fee is also being sent via First Class U.S. Mail. Also attached hereto is the Proof of Service for the Notice of Appeal. If you require anything further from my office, please do not hesitate to contact me at (864) 414-9097. Counsel for Respondents, Charles Summerall, IV, and counsel for the Receiver, Michael H. Weaver, are being served with a copy of this filing via electronic mail at the following email addresses:

Charles Summerall, IV — summerall@wglfirm.com; and
Michael H. Weaver — Michael.Weaver@rogerstownsend.com.

With kindest regards, I am

Truly yours,

s/Christopher T. Brumback

Christopher T. Brumback, Esq.
Brumback & Langley, LLC

CTB/
cc: Charles Summerall, IV (via email)
Michael H. Weaver (via email)

RECEIVED
Sep 12 2024
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

Case No. 2023-CP-10-01512
Appellate Case No. 2024-000723

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 on September 12, 2024, I caused the foregoing MOTION TO DISMISS APPEAL to be served upon counsel of record using the following email addresses:

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/s/ Thomas P. Gressette, Jr.

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James W. Clement

THOMAS P. GRESSETTE, JR.
Direct: 843.727.2249
Email: Gressette@WGLFirm.com

September 12, 2024

VIA ELECTRONIC FILING (One Drive) and
FEDERAL EXPRESS (Tracking #818210580159)
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Charleston SC Property Holdings, LLC, et al. v. Rittenberg OP, LLC, et al. (2)*
Appellate Case No. 2024-000723

Dear Ms. Kitchings:

On behalf of Respondents Charleston SC Property Holdings, LLC and Hanahan SC Property Holdings, LLC, enclosed please find:

- Respondents' Motion to Dismiss Appeal with Exhibits 1 through 15;
- Proof of Service; and
- Check in the amount of $50.00 for the required filing fee.

With kind regards, I am

Sincerely yours,

/s/ *Thomas P. Gressette, Jr.*
Thomas P. Gressette, Jr.

Enclosures (as stated)

cc: Michael Henry Weaver, Esq. (via e-mail) (michael.weaver@rogerstownsend.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)