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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
In the Court of Common Pleas for the First Judicial Circuit

The Honorable James E. Chellis, Master in Equity

Case No. 2019-CP-18-02217
Appellate Case No. 2024-000834

Virgie C. Simmons Family, LLC..... ….Plaintiff/ Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC……..Defendants/Respondents

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FINAL BRIEF OF RESPONDENTS

Mt. Pleasant, South Carolina

February 27, 2025

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STATEMENTS OF ISSUES ON APPEAL

I. THE TRIAL JUDGE CORRECTLY RULED THE PARTIES LACKED MUTUAL ASSENT TO THE REMEDIES CLAUSE OF THE LEASE AND THERFORE THE CONTRACT CANNOT BE ENFORCED WHERE THERE IS WAS NO MEETING OF THE MINDS WHERE THE ORIGINAL LEASE STATED THERE WAS A REQUEST TO RETURN FLOOR MODIFICATIONS TO FLOOR MODIFICATIONS PURSUANT TO PARAGRAPH 14 OF THE BUSINESS LEASE

II. THE TRIAL JUDGE CORRECTLY RULED APPELLANT FAILED TO PRESENT EVIDENCE OF THE PRE-LEASE CONDITIONS AND THE MODIFICATIONS MADE TO THE PREMISE BY THE DEFENDANTS' PREDECESSOR IN INTEREST

I. THE DEFENDANT LIMEHOUSE PRODUCE, INC., NAMED AS LIMEHOUSE PRODUCE, LLC, DID NOT REMAIN BOUND TO THE TERMS OF THE LEASE DUE ITS ASSIGNMENT OF THE LEASE TO THE DEFENDANT LIMETRADE

STATEMENT OF THE CASE

This matter is before this Court on the appeal of Virgie C. Simmons Family, LLC ("Simmons"), appealing the Final Order of the Honorable James E. Chellis dated April 5, 2024, entering judgment for defendant, Limetrade, LLC ("Limetrade), and dismissing the claims of Simmons following trial. (Final Ord., April 5, 2024).

This case commenced with the filing of a Summons and Complaint on December 3, 2019. (Summons and Complaint, Dec. 3, 2014). In their Complaint, Simmons asserted a cause of action for breach of contract. *Id.* Simmons sought actual and consequential damages and attorneys' fees pursuant to the contract. *Id.* Simmons withdrew its demand for a jury trial on March 10, 2024, with consent from Limetrade. (Pl.'s Notice of Withdrawal of its Demand for Jury Trial, Mar. 10, 2024). The case was then placed on the non-jury docket and then transferred to the Dorchester County Master in Equity. (Consent Ord. for Reference to the Master, Mar. 11, 2024).

This case came to trial before the Honorable James E. Chellis, Master in Equity, on October 9, 2023, and November 27, 2023. Following trial, Judge Chellis entered a final order of judgment for Limetrade and dismissing Simmons' claims on April 5, 2024. (Final Ord., April 5, 2024).

The Plaintiff filed a Motion, Alter, Amend or Reconsider on April 10, 2024. (Motion to Alter or Amend) Judge Chellis denied that motion by way of a Form 4 Order on April 22, 2024. (Order, April 22, 2024).

Simmons filed a Notice of Appeal on May 21, 2021, which is presently before this Court. (Plaintiff's Notice of Appeal, May 21, 2024).

STATEMENT OF FACTS

On April 22, 2004, Simmons entered into a Business Lease with Easy Tray, LLC ("Easy Tray") for premises being a warehouse 4791 Trade Street in North Charleston owned by Simmons (Business Lease, Tr. Ex. 1). Easy Tray was in the business of processing vegetable for sale, including tomatoes and onions (*Id.*; Transcript V. 1, p. 28)

The warehouse was just that. A warehouse without climate control or other improvements. (Transcript V.1, p. 13) Mr. Simmons testified that he did not know when the building was constructed but that his company has owned the building since the early 1990's. (Transcript V. 1. pp. 13-14) It consisted of a grate-high facility on a concrete slab with tilt up plans a steel roof system with loading docks. (Transcript V. 1 p. 15) Easy Tray made modifications to the warehouse in its business including changes to the concrete slabs in operating its vegetable processing facility (Order, p. 2, Transcript V. 1, pp. 16-17) The installed a vegetable washing station and a refrigerator/freezer. (Transcript V. 1,p. 17) Easy Tray also cut holes in the floor to drain the cooling systems (Transcript V.1, p. 18) In fact, they cut through the concrete slab throughout the warehouse. *Id.* They also anchored panels to the slab floor using ThunderStuds or wedge anchors (Transcript V. 1, p. 21) Easy Tray also operated forklifts on the slab. *Id.* An

area where Easy Tray processed onions had eaten away part of the concrete slab prior to Limetrade taking possession. (Transcript V. 1, p. 28). That area had to be replaced prior to Limetrade taking possession. *Id.* Limetrade paid Mr. Simmons' construction company to make those repairs. *Id.*

Mr. Simmons knew that that Easy Tray would be making modifications to the warehouse and added the following Paragraph 14 to the Business Lease that that stated as follows:

> 14. IMPROVEMENTS
>
> ...
>
> Lessor request [sic] that floor modifications must be remedied at the termination of this Lease; normal wear and tear excepted.

(Lease; Transcript V. 1, p. 24)

The key sentence at issue in Paragraph 14 is the one stating "Lessor request that floor modifications must be remedied at the termination of the Lease; normal wear and tear excepted." At trail, Mr. Simmons acknowledge that the language in Paragraph 14 is "request" and not "shall" or "must". (Transcript V. 1, p. 84)

As set forth in Judge Chellis's Order, and as testified to at trial within a few months of occupancy of the warehouse located 4791 Trade Street. Easy Tray closed shop. (Order, fn. 1, Transcript V. 1, p. 23) Before the expiration of the term with Easy Tray, it assigned the Business Lease to the Defendant Limehouse Produce, Inc., on March 3, 2007 (Order, Tr. Ex. 2) No one has seen the original assignment to Limehouse Produce, Inc., since the beginning of this case, but all parties acknowledge its validity and one-time existence. (Transcript V. 1, pp. 25-26)

Limehouse Produce, Inc., moved from its former location in Charleston County due to there being food safety issues at their old location (Transcript, V. 2, p. 25). Easy Tray's

representatives approached Limehouse Produce, Inc., about taking on the space in 2007. (Transcript, V. 2., p. 37)

On May 24, 2007, Limehouse Produce, Inc., assigned the Business Lease to the Defendant Limetrade, LLC, as consented to by the Plaintiff. (Assignment.) In that Assignment, Limetrade took on all obligations under the Business Lease, including any obligations to the Landlord after May 24, 2007. (Assignment, Transcript Vol 2, p. 19) Any obligation under Paragraph 14 of the Lease was that of Limetrade's after May 24, 2007, as agreed to by Mr. Simmons at trial. (Assignment, Transcript Vol 2, p. 20) At trial, Andrea Limehouse testified that all of her company's real estate interest are in separate limited liability companies. (Transcript, V. 2., p. 39, p. 107)

Limetrade exercised an Option to Renew Business Lease in 2011 which amended the Business Lease giving Limetrade the option of extending the Business Lease for four (4) years three (3) times with one hundred twenty (120) days' notice to Simmons. (Option, Tr. Ex. 5) On March 22, 2014, Limetrade entered into a Lease Extension and Renewal (Renewal, Tr. Ex. 6) That extension took the term through June 30, 2016, with the possibility of three (3) one (1) year extensions. *Id.*

Limetrade, the entity party to the Lease, was a single-purpose limited liability company which allowed Limehouse Produce to use the warehouse for its fruit and vegetable wholesale business throughout the Lowcountry (Transcript V.1, p. 32, Transcript V.2, p. 52) Limehouse Produce supplies wholesale fruits and vegetables to schools, restaurants, institutions, and hospitals in the lower part of the State. (Transcript V.2, p. 52) They bring in truckloads of products for distribution on a 24 hours a day, seven days a week basis. *Id.* They are busiest from midnight to late in the morning. *Id.*

Prior to moving into the space, Limetrade repurposed the refrigeration equipment and took out the large vegetable washing and processing equipment. (Transcript V.1, p. 33, p. 32.) Limetrade installed bollards in the space, too. (Transcript V. 1, p. 33) A 30 feet by 30 feet section slab had to be repaired prior to the Limehouse Produce operating out of the warehouse. (Transcript p. 29) No one can say what the original condition of that section of the slab looked like. Easy Tray's installation of ThunderStuds caused damage to the slab, too. (Transcript V. 1, p. 30)

Also prior to moving into the space, Limehouse Produce had a "huge amount of work to do". (Transcript, V. 2, p. 41) Taking down walls, putting in bathrooms, building hardwood counters, installing W-Fi, were just of the items Limehouse Produce had to do in order to operate at the warehouse. *Id.* All of Easy Tray's equipment had to be removed, too, including the processing equipment that did damage to the flooring. (Transcript, V. 2., p. 42) The concrete had degraded along with the aggregate, all of which had to be removed. *Id.* There were at least $55,000.00 in concrete repairs that had to be made prior to Limehouse Produce moving into the space. (Transcript V. 2, p. 44) There were closer to $100,000.00 in necessary expenses paid over all to make the property work for Limehouse Produce's needs. *Id.* At the end of the term of the Business Lease, all those repairs would be retained by the Landlord. (Transcript V. 2, p. 45)

Limetrade occupied the warehouse and allowed Limehouse Produce to operate its business there until 2017. (Transcript V. 1, p. 37) There were problems with the slab throughout Limetrade's tenancy (Transcript V. 1 p. 38) The slab actually crumbled in areas where Limehouse Produced operated its business. *Id.* In 2014, Andrea Limehouse emailed Mr. Simmons regarding the "many problems with the foundation in this building" (Tr. Ex. 9) She had to purchase steel plates to cover areas so that their business could continue with risking injury. *Id.* According to Mrs. Limehouse, they were "constating patching, putting down plates." (Transcript, V. 2, p. 77)

Throughout the tenancy of Limetrade, Mrs. Limehouse would contact Mr. Simmons or his superintendent Scott Milligan when problems arose with the flooring and slab. (Transcript V. 1, p. 32) At one point, Mr. Simmons said that flooring issues were on Limetrade, even with water coming up through cracks in the slab. (Transcript, V. 1, pp. 44-45) Easy Tray's work putting in drains was a "really terrible job" according to Mrs. Limehouse. (Transcript, V.2, p. 45) As years went on, the subsidence of the concrete became apparent. (Transcript, V.2, p. 49). During Hurricane Joaquin, Hurricane Matthew, and other named storms there was what Mrs. Limehouse described as "radical flooding". *Id* At one point, the Tenant had to employ Southeastern Construction to do work on the property as the Landlord's fixes no longer worked for the subsidence of the concrete. (Transcript, V. 2, pp. 50-51) Water ended up coming up through the flooring through joints and seams. (Transcript, V. 2, p. 51) Drains and water are Limehouse Produce's biggest enemy due to water born illnesses that could contaminate the produce, such as listeria. (Transcript, V.2, p. 54, p. 119) Mrs. Limehouse testified that she was concerned that the State United States Department of Agriculture could have shut down their operations were they to fail a food-safety inspection if there were mud seeping through the floors, saw patches, saw subsidence. (Transcript V. 2, p. 74)

The slab was never in good condition. There was no evidence of the condition of the floor at the time Easy Tray took possession despite Mr. Simmons' statement the "slab was in good condition" (Transcript V. 1, p. 105) There were no pictures or evidence of the condition of the slab at the time the Virgie C. Simmons Family Trust took possession of the property, either. (Transcript V. 1, p. 84) Mr. Simmons was not even sure when the building was constructed. *Id.* There was no inspection of the slab at the time Easy Tray did its work on the floor. (Transcript, V. 1, p. 101) There were no pictures taken of the slab at the time Limetrade received its assignment of the Lease. (Transcript V. 1, p. 88) Mr. Simmons acknowledged that he floor had to be repaired

prior to Limehouse Produce operating in the space. (Transcript V. 1, p. 89) Jordan Behringer, the Plaintiff's expert witness, could not testify as to the condition of the slab in 2004. (Transcript V. 1, p. 131). During its tenancy, Limetrade had to install at thirteen (13) steel plates in order for Limehouse Produce to operate at the location. (Transcript, V. 2, p. 71) They also had to install temporary epoxy products to act as filler and patch during the tenancy. (Transcript, V. 2, p. 77) The Landlord and its employees did not know what to do about the slab, and, ultimately, chose to replace the slab due to the issues not be fixable. (Transcript, V. 2, p. 79)

At the time Limetrade vacated, there were ongoing disputes between it and Simmons as to what needed to be done in order to comply with Paragraph 14's "request", from removal of the refrigerator, grinding of the ThunderStud, filling in the trenches, and returning the floor to the condition at the time of Easy Tray's occupation, normal wear and tear excepted. (Trans. V. 2, p. 53, p.58, p. 77, p. 85, p. 83, p. 77)

There were letters and email communications back and forth between Simmons and Limetrade as to what needed to be done and what work had been done. (Ex. 9, Transcript V.1, p. 56) After vacating, Mr. Simmons and Mrs. Limehouse had a walkthrough of the space. (Transcript, V. 1, p. 52) There was a meeting at the warehouse with Mr. Simmons, Mr. Willis, and Mrs. Limehouse. (Transcript, V.2, p. 58) Mrs. Limehouse thought they had agreed on the scope of work and what they were going to do with the floors. *Id.*

Soon after the time it vacated the premises, Limetrade hired Southeastern Construction Corporation to fill in the drains in the slab. (Transcript V.2, p. 98) At trial, Andrea Limehouse, one of the members of Limetrade who also operates Limehouse Produce, testified that David Willis, with Southeastern Construction Corporation's instructions were to put the floors in as good a condition as he could, filling in areas of subsidence. *Id.*

After vacating the premises, Mr. Simmons removed and replaced some 18,000 square feet of the slab. (Transcript, V. 1, p. 65) By doing so, he acknowledged that the slab was beyond repair. In fact, he testified that the decision was made to remove and replace rather than to patch in place due to a cost benefit analysis. (Transcript, V. 2, p. 15)

At trial, Michael Allen of Coastal Engineering & Testing Company testified as an unobjected to expert witness in engineering for the Defendants. (Transcript, V. 1, p. 133) Mr. Allen concluded that the slab was not constructed according to standards and that there were issues with water, including drainage, at the property. (Transcript V. 1, p. 158) In other words, the slab had construction defects and there were issues with placing such a slab on the type of soil upon which it was built. *Id.*

David Willis, the contractor with Southeastern Construction Corporation also testified at trial. (Transcript, V. 1, p. 181) Mr. Willis made repairs to the Trade Street building on behalf of Limetrade. (Transcript, V. 1, p. 182) Mr. Willis observed a slab that was "not in good condition" and where it had failed and previously been covered. *Id.* Areas of the slab had failed and there was water present, too. (Transcript, V. 1, p. 183)

Limetrade ceased to exist as an entity in 2017. (Transcript, V. 2, p. 72) There was no reason for it to exist as a single-purpose limited liability company once the lease ended. *Id.* Limetrade served no purpose once the lease terminated. (Transcript, V.2, p. 73)

STANDARD OF REVIEW

"In an action at law, tried without a jury, our scope of review extends merely to the correction of errors of law." *Barnacle Broad., v. Baker Broad.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence that

reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81. 86, 221 S.E.2d 773, 775 (1976).

ARGUMENT

II. THE TRIAL JUDGE CORRECTLY RULED THE PARTIES LACKED MUTUAL ASSENT TO THE REMEDIES CLAUSE OF THE LEASE AND THERFORE THE CONTRACT CANNOT BE ENFORCED WHERE THERE IS WAS NO MEETING OF THE MINDS WHERE THE ORIGINAL LEASE STATED THERE WAS A REQUEST TO RETURN FLOOR MODIFICATIONS TO FLOOR MODIFICATIONS PURSUANT TO PARAGRAPH 14 OF THE BUSINESS LEASE

Judge Chellis correctly determined that there was no mutual assent where there was no meeting of the minds as to the request to return the floor to a pre-lease condition. The language of Paragraph 14 of the Lease at issue is a request, not a requirement, that floor modifications must be remedied at the end of the Lease. Having viewed all of the evidence and testimony, Judge Chellis correctly determined that there was a disagreement as to the remedy in Paragraph 14 (Order, p. 2) "It is well settled in South Carolina that in order for there to be a binding contract between parties, there must be a mutual manifestation of assent to the terms." *Edens v Laurel Hill,* 271 S.C. 360, 247 S.E2.d 434 (1978); *Kitchens v. Lee*, 221 S.C. 59, 69 S.E.2d 67 (1952) "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement." *Player v. Chandler*, 299, S.C. 101, 382 S.E.2d 891(1989) As testified to by Mrs. Limehouse and by Mr. Simmons, there remains to this day a disagreement about the concrete flooring. Despite the request in Paragraph 14 of the Business Lease, there was no "shall" or "must" or "will" language that the Plaintiff is relying on in its causes of action. The Plaintiff's take on the remedy is one result and the Defendants is quite another. (Order, p. 2) With such a difference, there is no mutual assent or meeting of the minds.

Judge Chellis properly considered the lack of mutual assent and meeting of the minds. As testified to by Mrs. Limehouse, Limetrade made the repairs to the floor as it saw fit as there was no proof of the condition of the flooring prior to Easy Tray's modifications.

III. THE TRIAL JUDGE CORRECTLY RULED APPELLANT FAILED TO PRESENT EVIDENCE OF THE PRE-LEASE CONDITIONS AND THE MODIFICATIONS MADE TO THE PREMISE BY EASY TRAY.

There was no documentary or pictural evidence presented of the condition of the concrete flooring prior to Easy Tray's tenancy. The changes made by the Defendants' predecessor, Easy Tray, were not documented. Repairs had to be made to the slab prior to Limetrade moving into the space. (Transcript, V. 1, p. 28) Easy Tray's actions and vegetable processing ate away the concrete to such a degree, there had to be repairs made in 2007 so that Limehouse Produce could operate. *Id.* Mr. Simmons' unsubstantiated statements that the slab was "pristine" and in "great shape" are just those: unsubstantiated statements (Transcript, V. 1, p. 15, p. 17) Easy Tray's work degraded the flooring , putting in drainage systems, which would end up being the bane of Limehouse Produce during its tenancy. (Transcript, V. 1, p. 17)(Transcript, V.2, p. 54, p. 119) The burden of proof is upon the party seeking to enforce a contract which must be shown by a preponderance of evidence. *Gecy v. S.C. Bank & Trust*, 422 S.C. 509, 812 S.E.2d 750 (Ct. App. 2018) Judge Chellis found that the burden was not met. This was a finding of fact that should be disturbed on appeal as there was no documentary or objective evidence of the modifications or the repairs required. (Order, pp. 4-5) Judge Chellis quoted Mr. Simmons in his Order as to the slab being in good condition. *Id.* (Transcript, V. 1, p. 105) That was all the evidence of the condition of the slab, which is not a preponderance of evidence, as required.

IV. THE DEFENDANT LIMEHOUSE PRODUCE, INC., NAMED AS LIMEHOUSE PRODUCE, LLC, DID NOT REMAIN BOUND TO THE TERMS OF THE LEASE DUE ITS ASSIGNMENT OF THE LEASE TO THE DEFENDANT LIMETRADE

Limehouse Produce, Inc., assigned all of its interest in the Business Lease to Limetrade and was no longer bound to the terms of the Business Lease. An assignee stands in the shoes of its assignor. *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 481 (Ct. App. 2013); *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp*, 335 S.C. 635, 518 S.E2.d 44 (Ct. App. 1999) Three elements constitute an assignment: 1) and assignor, 2) an assignee; and 3) transfer or control of the thing assigned from the assignor to the assignee. *Donahue v. Multimedia, Inc.,* 362 S.C. 331, 608 S.E.2d 165 (Ct. App. 2005) The May 24, 2007 Assignment from Limehouse Produce, Inc., as the assignor and Limetrade, LLC, as the assignee transferred all interest in the Business Lease from Limehouse Produce, LLC, to Limetrade. (Assignment, Ex. 2) No one contests the validity of the Assignment, and Mr. Simmons even signed off on the Assignment itself in the Consent to Assignment on behalf of the Plaintiff. *Id.*

As the Assignment states:

> 3. Assignee here by assumes all obligations of Assignor arising or accursing on or after the date hereof under the Business Lease, and shall make all payments and keep and perform all conditions and covenants of the Business Lease in the same manner as if Assignee were the original lessee thereunder.

(Assignment, Ex. 2)

The obligations under Paragraph 14 of the Business Lease were solely those of Limetrade from March 24, 2007, until the termination of the Lease by virtue of this language agreed to by all parties. Limehouse Produce, Inc., named as Limehouse Produce, LLC, had no more obligations under the Business Lease excepting those obligations that arose prior to the closing date of March

24, 2007. The request to make any repairs to the concrete did not arise until the end of the Business Lease term, some ten years after the Assignment.

The Appellant, instead of looking at the clear language, argues that there was no novation in the exercise of the Lease options. That is a red herring. The clear language of the agreed upon Assignment has Limetrade, LLC, as the only party to the Business Lease, including the request stated in Paragraph 14 of the Business Lease.

CONCLUSION

Judge Chellis correctly ruled there was no mutual assent between the parties as to the Remedies Provision of the lease agreement, and the Plaintiff did not introduce evidence of the pre-lease conditions or the modifications made by the intermediate tenant, and, accordingly, he should be affirmed in these decisions.

Respectfully submitted:

Mt. Pleasant, South Carolina
February 24, 2025

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APPEAL FROM DORCHESTER COUNTY
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The Honorable James E. Chellis, Master in Equity

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Virgie C. Simmons Family, LLC..... ….Plaintiff/ Appellant

vs.

Limetrade, LLC and Limehouse Produce, LLC……..Defendants/Respondents

---

CERTIFICATE OF COUNSEL
PURSUANT TO RULE 211 (b) SCACR

I certify the Respondents' Final Brief and that it is in compliance with Rule 211 (b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

Mt. Pleasant, South Carolina

March 19, 2025

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PROOF OF SERVICE

I certify that I have served the Respondents' Final Brief by depositing a copy of same in Via Email jfletcher@barnwell-whaley.com and mbarfield@barnwell-whaley.com and Via US Mail, addressed to John W. Fletcher and K. Michael Barfield, Barnwell Whaley Patterson & Helms, LLC, 211 King Street, PO Drawer H, Charleston, SC 29402.

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March 19, 2025

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March 19, 2025

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AND US MAIL
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Virgie C. Simmons Family, LLC v Limetrade, LLC et al.,
C/A No.: 2019-CP-18-02217
Appellate Case No. 2024-000834
Client File No.: 1374.0004

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the following items in the above-referenced matter:

1. Respondents' Final Brief;
2. Certificate of Counsel; and
3. Proof of Service.

By copy of this letter, I am serving all counsel of record. Should you have any questions, please feel free to contact me.

With kindest regards, I remain

Yours very truly,

G. Hamlin O'Kelley, III

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