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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

Bentley D. Price, Circuit Court Judge

Case No. 2012-CP-10-00580

Thomas H. MorganRespondent,

v.

John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, Lauralis Management, Inc., A Texas Corporation, and 150 Bee Street, LLC, A South Carolina Limited Liability Company,Defendants,

Of which John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, A Texas General Partnership, Bomasada Group, Inc., A Texas Corporation, Bomasada Investment Group II, LLC, A Texas Limited Liability Company, and Lauralis Management, Inc., A Texas Corporation are the Appellants.

APPELLANTS' REPLY TO RESPONDENT'S MOTION TO LIFT STAY

WOMBLE BOND DICKINSON (US) LLP
/s/ Henry E. Grimball
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[Except 150 Bee Street, LLC]

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STATEMENT OF ISSUES

1. Has Respondent Morgan applied the proper standard of review to the lower court's stay order issued May 18, 2024 which he now seeks to lift?
2. Has Morgan shown "good cause" in his motion to lift the lower court's stay order?
3. Does Morgan's present motion to lift stay violate the mandates of Rules 241(d)(3) and (7), SCACR?
4. Is Morgan sufficiently qualified or an expert to provide reliable opinions on which his motion depends?

FACTUAL BACKGROUND

(TIMELINE)

The following is a timeline of the facts of this case related to the instant motion:

- 1) February 6, 2024 – Circuit Court Judge Bentley D. Price filed his Order denying Appellants' Motion to Vacate or Modify the Final Arbitration Award. (R. pp. 64-74).
- 2) March 4, 2024 – Appellants served and filed their Notice of Appeal of Judge Price's Order. (Exhibit 1 hereto).
- 3) March 25, 2024 – Respondent served Appellants with his Notice of Filing Foreign Judgment in Harris County, Texas, where Appellants have their primary office. (Exhibit 2 hereto).
- 4) March 30, 2024 – Morgan served Appellants with his Notice of Filing Foreign Judgment in Maricopa County, Arizona, where Appellant Stuart Fred has a residence. (Exhibit 3 hereto).
- 5) April 16, 2024 – Morgan filed Application for Turnover After Judgment and for Appointment of Receiver in Harris County, Texas (Exhibit 4 hereto).

- 6) April 17, 2024 – Appellants filed as a priority matter their Joint Motion for Stay of Execution of Judgment and to Require Plaintiff [Respondent] to Give a Bond. (Exhibit 5 hereto) with the Court of Common Pleas.
- 7) May 8, 2024 – After an extended hearing, Circuit Court Judge Jennifer B. McCoy issued her Order Staying Enforcement of Judgment. (Exhibit 6 hereto). Respondent did not file a motion to reconsider the Order and did not appeal this order as permitted by Rule 241(d)(7), SCACR.
- 8) May 2024 – By stipulation of Respondent’s counsel, Judge McCoy’s Order Staying Enforcement of Judgment was entered into the Courts of Harris County, Texas, and Maricopa County, Arizona. (See, e.g. Exhibit 7 hereto, the stipulation entered in Maricopa County, Arizona).
- 9) December 10, 2024 – Respondent filed his Motion to Lift Stay (Rule 241(d), SCACR) and Supporting Memorandum (Exhibit 8 hereto) with the Affidavit of Thomas Morgan (Exhibit 9 hereto). He followed this with his Second Affidavit of March 3, 2025. (Exhibit 10 hereto).
- 10) February 4, 2025 – Appellant John L. Gilbert, by counsel, filed and served his Affidavit in Opposition to Plaintiff’s Motion to Lift Stay. (Exhibit 11 hereto).
- 11) March 4, 2025 – Circuit Court Judge Jennifer B. McCoy heard oral argument and carefully considered arguments of counsel and submissions, as reflected in her Order of March 12, 2025.
- 12) March 12, 2025 – Judge McCoy issued her Order Denying Plaintiff’s Motion to Lift Stay. (Exhibit 12 hereto).

- 13) April 11, 2025 – Within the thirty day deadline to appeal as set forth in Rule 203(b)(1) and Rule 240(b), SCACR, Respondent filed and served his Motion to Lift Stay and Supporting Affidavit, under Rule 241(d)(2) and (d)(7), SCACR, asking this Court to review of Judge McCoy’s March 12, 2025 order.

GROUNDS TO DENY PETITION AND LEGAL ARGUMENT

ARGUMENTS

1. RESPONDENT MORGAN HAS PETITIONED THIS COURT FOR A REVIEW OF THE LOWER COURT ORDER OF MARCH 12, 2025, BUT HAS NEITHER SET FORTH NOR DISCUSSED THE PROPER STANDARD OF REVIEW NOR MADE ANY SHOWING OF AN ABUSE OF DISCRETION BY THE LOWER COURT.

STANDARD OF REVIEW

The Court of Appeals set forth the proper standard of review of a circuit court's grant of a stay in *Carolina Water Service, Inc. v. Lexington County Joint Municipal Water and Sewer Commission*, 367 S.C. 141, 148, 625 S.E.2d 227, 230-31 (Ct. App. 2006, rev'd on other grounds):

The circuit court has discretion whether to grant a stay of a matter pending before the court. *Tally v. John-Mansville Sales Corp.*, 285 S.C. 117, 119, 328 S.E.2d 621, 623 (1985); *City of Spartanburg v. Belk's Dep't Store of Clinton*, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942). Accordingly, the appropriate standard of review is abuse of discretion. "An abuse of discretion arises where the [circuit] court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support." *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 398, 530 S.E.2d 142, 155 (1999).

Respondent has neither alleged nor sought to show that the Circuit Court Judge abused her discretion or her authority in granting the stay order in May 2024 or in refusing to lift the stay in March 2025.

The South Carolina Supreme Court has provided guidance on when an abuse of discretion arises:

An abuse of discretion arises in cases in which the judge was controlled by some error of law or where the order, based upon factual, as distinguished from legal, conclusions is without evidentiary support.

Renney v. Dobbs House, Inc. 275 S.C. 562, 563, 274 S.E.2d 290, 291 (1981). *See, also, Steinke v. South Carolina Dept. of Labor, Licensing and Regulation*, 326 S.C. 373, 379, 520 S.E.2d 142, 155 (1999) and cases cited therein.

Having not timely filed a motion to reconsider Judge McCoy's initial May 2024 order granting the stay, Morgan cannot appeal that order directly. Instead, Morgan seeks to appeal Judge McCoy's March 2025 order refusing to lift the stay. In the instant Petition (Morgan's third bite at the same apple), Respondent does not argue or assert that the Circuit Court committed some error of law in the March 12, 2025 order denying Respondent's motion to lift her order of ten months earlier staying enforcement of the judgment.

Nor does the Respondent argue or assert that the circuit court judge based her March 12, 2025 order upon factual conclusion without evidentiary support.¹ Judge McCoy wrote in her order that she made her decision "[a]fter carefully considering the evidence presented by the parties." That evidence included the affidavit of John L. Gilbert (Exhibit 11 hereto) submitted in opposition to Respondent's motion. The evidence also included two affidavits submitted by Respondent, which she analyzed and found "unpersuasive."

Judge McCoy denied Respondent the relief which he now seeks, i.e., the lifting of the stay, post-judgment discovery and the posting of an appeal bond, though he has pared back the requests somewhat. For example, in the December 2024 motion, Respondent sought, among other things, an order requiring "any distributions or other payments to the Defendants, directly from the ongoing Alabama project (The Liam) be placed on deposit with this Court." Judge McCoy specifically denied Morgan's request that the Appellants be required to post a \$1,000,000 appeal

¹ It is noteworthy that Morgan's instant motion, which runs 19 pages in comparison to his brief on the appeal itself which runs 22 pages, rehashes most of Respondent's arguments in the appeal itself and does not contain a single reference to the record on appeal but rather relies solely on counsel's argumentative summary.

bond. There has simply been no showing that Judge McCoy abused her discretion in denying Respondent his requested relief.

Had Respondent even attempted to argue that Judge McCoy had abused her discretion, given the record, there is simply no ground for finding an abuse of discretion by the circuit court judge.

2. ON MARCH 4, 2025, RESPONDENT MORGAN ARGUED UNSUCCESSFULLY IN FAVOR OF HIS MOTION TO LIFT THE CIRCUIT COURT’S STAY ORDER OF MAY 18, 2024. ON MARCH 12, 2025 THE CIRCUIT COURT ISSUED ITS ORDER DENYING MORGAN’S MOTION. NO “NEW FACTS” HAVE DEVELOPED IN THE INTERVENING MONTH WHICH WOULD PROVIDE GOOD CAUSE FOR LIFTING THE STAY.

Lifting the stay requires that Morgan show “good cause,” i.e. the “grounds” to do so. Rule 241(d)(4)(B), SCACR, also requires legal authority, clearly missing in Respondent’s motion. *See, also, Molycorp, Inc. Shareholder Derivative Litigation*, No. CIV.A. 7282###VCN, 2014 WL 1891384 (Del. Ch. May 12, 2014).

As discussed below, Morgan is not qualified as an expert to issue opinions of real estate market conditions in Alabama, much less how these conditions might affect the Liam Project in Huntsville.

Assuming, *arguendo*, Morgan does somehow qualify as such an expert, a careful review of his current motion of April 11, 2025 and Exhibit 1 attached thereto reveals that the data on which he now relies in Exhibit 1 is essentially the very same data from the same “Market Report” he submitted to the Circuit Court on March 3, 2025, in support of his prior Motion to Lift Stay which he had filed on December 10, 2024. *See* Exhibit A attached to his prior affidavit filed on

March 3, 2025 (attached hereto as Exhibit 10). Again, it is the same market report as the one attached as Exhibit 1 to his new unverified motion of April 11, 2025.

A study of that market report itself shows it relied on data available even before the Stay Order of May 8, 2024. For example, on page 2 is the following statement, which is contrary to Morgan's position:

The multi-family vacancy rate in Huntsville rose steadily for four years, up from the trough of about 5% in 2020 to a peak of 19.6% in 24Q1 [Jan-March 2024]. Since then vacancies have declined modestly, and are likely to continue to fall in the medium term.

Another example in the article is on page 9:

The wave of new construction has likely peaked. As Huntsville's vacancy rate rose and interest rates have made it more difficult to finance new projects, construction starts have moderated. As a result, Huntsville's construction pipeline has declined as new properties have been delivered.

By the time of Respondent's argument in Circuit Court on March 4, 2025, the data which Morgan now asserts are "new facts" was in fact "old news." Morgan has failed to present good cause showing that Judge McCoy abused her discretion in denying his Motion to Lift Stay one month earlier on March 12, 2025.

Likewise, Exhibit 2 to Morgan's new affidavit of April 11, 2025, was a mortgage recorded on November 9, 2021, four years before, in the probate court of Huntsville, Alabama, even older news.

Morgan has also offered in his new affidavit dated April 11, 2025 Exhibit B, the only data he offers aside from his own research and unqualified opinions. It is so undecipherable on its face as to be of no probative value.

3. MORGAN'S PRESENT MOTION TO LIFT STAY VIOLATES THE MANDATES OF RULE 241(d)(3) AND (7), SCACR.

Rule 241(d)(7), SCACR states that a party aggrieved by a decision of the lower court may petition under Rule 241 for a review of that decision. Judge McCoy issued her original Order Staying Enforcement of Judgment (Exhibit 6 hereto) on May 8, 2024. Morgan did not petition for a review of that decision. To the contrary, Morgan filed stipulations to enter Judge McCoy's order in Harris County, Texas and Maricopa County, Arizona (See, e.g. Exhibit 7 hereto), where he had previously initiated proceedings to enforce his judgment. Morgan took no further action until he filed his Motion to Lift Stay on December 10, 2024. (Exhibit 8 hereto).

Because Morgan did not appeal Judge McCoy's May 8, 2024 order, it therefore became the "law of the case" and though questioned now, is *res judicata*. As stated in *Johnson v. Board of Com'rs of Police Insurance and Annuity Fund of State*, 221 S.C. 23, 32, 68 S.E.2d 629, 633 (1952): "An order not appealed from is binding on all parties before the Court, constitutes the law of the case, and when questioned, is *res judicata*. *Walker v. Hannon*, 191 S.C. 14, 3 S.E.2d 243."

That Respondent now understands the thirty-day deadline to file such a motion or petition as set forth in Rule 203(b)(1), SCACR is now apparent by his present Motion to Lift Stay filed on April 11, thirty days after Judge McCoy's order of March 12, 2025 denying Morgan's prior motion to lift stay.

Second, Rule 241(d)(3) requires that Respondent submit his motion of April 11, 2025 verified by him. Morgan did not comply, and his motion should be dismissed. *See, Vines v. Self Memorial Hospital*, 314 S.C. 305, 307, 443 S.E.2d 909, 910 (1994); *Fansler v. Honeycutt*, 221 N.C.App 226, 728 S.E.2d 6 (2012); *Buckley v. United States*, 494 F.Supp. 1000 (E.D. Ky. 1980).

In the instant motion, Morgan also attempts to assert innocently that he only wishes to enroll the South Carolina judgment in other jurisdictions. But, that is not what he did prior to Judge McCoy issuing her May, 2024 order. For example, in April 2024, Morgan sought "Turnover

after Judgment” and appointment of receiver in Harris County, Texas. *See* Exhibit 4. Morgan specifically sought the appointment of a receiver

with power and authority to take possession and sell all non-exempt assets of Respondents (and all documents related thereto) including but not limited to cash and contents in all accounts of all financial institutions, and to apply the proceeds to satisfy the judgment and all amounts due under the receivership.

Should the arbitration award not be confirmed, unwinding such actions would clearly be extraordinarily difficult.

4. MORGAN’S MOTION TO LIFT STAY DEPENDS ON OPINIONS IN HIS AFFIDAVIT, BUT HE IS NOT QUALIFIED AS AN EXPERT IN THE HUNTSVILLE, ALABAMA REAL ESTATE MARKET CONDITIONS AND FINANCE TO GIVE ANY SUCH OPINIONS.

To be able to testify as an expert witness, the qualification of the expert must be sufficient, and there must be a determination that the expert’s testimony will be reliable. *State v. Chavis*, 412 S.C. 101, 771 S.E.2d 336, 338-39 (2015). “Before admitting expert testimony, a trial court must qualify that expert and determine whether the subject matter of the expert’s proposed testimony is reliable, as required by Rule 702, SCRE.” *Matter of Ridley*, 433 S.C. 316, 858 S.E.2d 165, 169 (Ct. App. 2021). Rule 703, SCRE, states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by the experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

See Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010) for why two witnesses were disqualified as experts.

There is no evidence and no allegations in Morgan's motion and in particular in his affidavit, which (a) properly qualify him as an expert in the Huntsville real estate market and (b) show that Exhibit 1 to his motion, a real estate analysis of the Huntsville market, is reasonably relied upon by experts in that market in forming opinions or inferences upon that subject.

In that instant case, Morgan's deposition and trial testimony disclosed he has BS and MS degrees in petroleum engineering from Stanford University and since 1982 has operated as founder and president of Morgan Energy Corporation, an oil and gas exploration company. He is the managing member of Morgan Exploration, LLC, Morgan Marathon, LLC, and Morgan United, LLC. He does not assert in his affidavit any evidence of his real estate experiences. He does not claim any real estate experiences in Alabama, and in particular, in the Huntsville area where the Liam Project is located.

Morgan's affidavit therefore fails to present "good cause" to justify lifting the stay.

CONCLUSION

For all of these four arguments, this Court should deny Morgan's Motion to Lift Stay.

WOMBLE BOND DICKINSON (US) LLP

/s/ Henry E. Grimball _____
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Attorneys for Petitioners
[Except 150 Bee Street, LLC]

April 17, 2025

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Plea

Bentley D. Price, Circuit Court Judge

Case No, 2012-CP-10-00580

Thomas H. Morgan.....Respondent,

v.

JOHN L. GILBERT, STUART L. FRED,
BELLA VISTA PARTNERSHIP, A TEXAS
GENERAL PARTNERSHIP, BOMASADA
GROUP, INC., A TEXAS CORPORATION,
BOMASADA INVESTMENT GROUP II,
LLC, A TEXAS LIMITED LIABILITY
COMPANY, LAURALIS MANAGEMENT,
INC., A TEXAS CORPORATION AND 150
BEE STREET, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY,.....Appellants.

NOTICE OF APPEAL

John L. Gilbert, et. al. appeal the order of the Honorable Bentley D. Price dated February 6, 2024 (Exhibit A) and, by necessity, the arbitration panel's underlying final arbitration award dated June 19, 2023 (Exhibit B).

Appellants received written notice of entry of the order of Judge Price on February 6, 2024.

March 4, 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ Morris Ellison

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Plea

Bentley D. Price, Circuit Court Judge

Case No, 2012-CP-10-00580

Thomas H. Morgan.....Respondent,

v.

JOHN L. GILBERT, STUART L. FRED,
BELLA VISTA PARTNERSHIP, A TEXAS
GENERAL PARTNERSHIP, BOMASADA
GROUP, INC., A TEXAS CORPORATION,
BOMASADA INVESTMENT GROUP II,
LLC, A TEXAS LIMITED LIABILITY
COMPANY, LAURALIS MANAGEMENT,
INC., A TEXAS CORPORATION AND 150
BEE STREET, LLC, A SOUTH CAROLINA
LIMITED LIABILITY COMPANY,.....Appellants.

PROOF OF SERVICE

I do hereby certify that on March 4, 2024, a copy of the **Appellant's Notice of Appeal** was deposited with the U.S. Postal Service, as first class mail, in an envelope addressed to:

W. Andrew Gowder, Jr., Esq.
Austen & Gowder, LLC
1629 Meeting St.
Suite A
Charleston, SC 29405

Michael T. Rose, Esq.
Mike Rose Law Firm, PC
409 Central Avenue
Summerville, SC 29483

March 4, 2024.

WOMBLE BOND DICKINSON (US) LLP

/s/ Morris Ellison

Morris A. Ellison, S.C. Bar No. 1881

Henry E. Grimball, S.C. Bar No. 2313

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Attorneys for Appellants

[Except 150 Bee Street, LLC]

CAUSE NO. 202418993

THOMAS H. MORGAN

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§
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§
§

IN THE DISTRICT COURT OF

v.

JOHN L. GILBERT, STUART L.
FRED, BELLA VISTA
PARTNERSHIP, BOMASADA
GROUP, INC., BOMASADA
INVESTMENT GROUP II, LLC,
LAURALIS MANAGEMENT, INC.,
AND 150 BEE STREET, LLC

HARRIS COUNTY, TEXAS

269 JUDICIAL DISTRICT

NOTICE OF FILING OF FOREIGN JUDGMENT

- TO: John L. Gilbert, 166 Glynn Way Dr., Houston, TX 77056
- Stuart L. Fred, 5655 Inwood Dr., Houston, TX 77056
- Bella Vista Partnership, 2 Riverway, Suite 1610 Houston, TX 77056
- Bomasada Group, Inc., 2 Riverway, Suite 1610, Houston, TX 77056
- Bomasada Investment Group II, LLC, 2 Riverway, Suite 1610 Houston, TX 77056
- Lauralis Management, Inc., 2 Riverway, Suite 1610 Houston, TX 77056
- 150 Bee Street, LLC, 2 Riverway, Suite 1610 Houston, TX 77056

You are hereby notified that on March 25, 2024, Thomas H. Morgan filed with the Court, under the cause number shown above, an authenticated copy of a judgment for domestication under the Uniform Enforcement of Foreign Judgments Act.

The judgment was rendered on February 6, 2024, in a case styled THOMAS H. MORGAN V. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, BOMASADA GROUP, INC., BOMASADA INVESTMENT GROUP II, LLC, LAURALIS MANAGEMENT, INC., AND 150 BEE STREET, LLC, filed as Case No. 2012-CP-10-00580, in the Court of Common Pleas, County of Charleston, South Carolina, U.S.A. and awards the judgment creditor

EXHIBIT 2

named below recovery of \$3,672,743 against you. A true and correct copy of the Judgment is attached hereto.

The name and address of the judgment creditor is:

Thomas H. Morgan
c/o Michael C. Sanders
5850 San Felipe, Suite 500
Houston, TX 77057

The name, address and telephone number of the judgment creditor's attorney in Texas is:

Michael C. Sanders
Sanders PLLC
5850 San Felipe St. Suite 500
Houston, TX 77057
(713) 338-2677

Signed on March 25, 2024.

SUBMITTED BY:

SANDERS PLLC

/s/ Michael C. Sanders

Michael C. Sanders
State Bar No. 24007981
5850 San Felipe St. Suite 500
Houston, TX 77057
Telephone: (713) 493-7547
Facsimile: (713) 347-9569
Email: mcs@sandersfirm.law

ATTORNEY FOR JUDGMENT CREDITOR,
THOMAS H. MORGAN

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above Notice of Filing Foreign Judgment has this day been sent by certified mail, return receipt requested, and by regular first-class mail, to the following on March 25, 2024:

John L. Gilbert
166 Glynn Way Dr.
Houston, TX 77056

Stuart L. Fred
5655 Inwood Dr.
Houston, TX 77056

Bella Vista Partnership
2 Riverway, Suite 1610
Houston, TX 77056

Bomasada Group, Inc.
2 Riverway, Suite 1610
Houston, TX 77056

Bomasada Investment Group II, LLC
2 Riverway, Suite 1610
Houston, TX 77056

Lauralis Management, Inc.
2 Riverway, Suite 1610
Houston, TX 77056

150 Bee Street, LLC
2 Riverway, Suite 1610
Houston, TX 77056

/s/ Michael C. Sanders
Michael C. Sanders

STATE OF SOUTH CAROLINA
OFFICE OF THE CLERK OF COURT
NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY

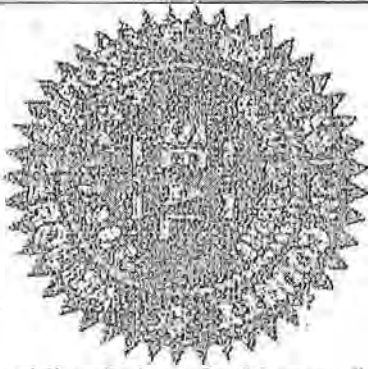
EXEMPLIFICATION

I, Julie J. Armstrong As Clerk of Court for Common Pleas and General Sessions in and for the County of Charleston, South Carolina, legal custodian of the records, documents, and papers, of, or appertaining to said Court, and on file or of record in the office of said Court, certify that the attached copies of the documents described below are true and accurate reproductions of the originals now on file in this office.

Docket or Judgment Roll Number 2012-CP-10-0580

Thomas H. Morgan vs. John L. Gilbert etal.

Order denying defendants motion to vacate or modify the final arbitration award and confirming arbitration award – filed 2/6/2024



Date:

3/11/24

Signature:

Julie J. Armstrong

Julie J. Armstrong

As a Presiding Judge of said court, I certify that the signature appearing above is that of the Clerk of Court for Charleston County, who is duly sworn. I further certify that the seal affixed to the certificate appearing above is the seal of this court and that it has been used here in good form by the proper officer.

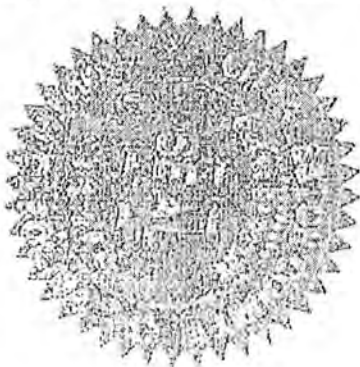
Date:

3/11/24

Signature of Judge:

J. Morgan

As Clerk of Court for Charleston, South Carolina, I certify that the signature appearing above is that of a duly sworn judge of said court, duly commissioned and qualified.



Date:

3/11/24

Signature:

Julie J. Armstrong

Julie J. Armstrong

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>IN ARBITRATION</p> <p>IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580</p> <p><u>ORDER</u></p> <p><u>DENYING DEFENDANTS'</u> <u>MOTION TO VACATE OR MODIFY</u> <u>THE FINAL ARBITRATION AWARD</u></p> <p><u>AND</u></p> <p><u>CONFIRMING ARBITRATION AWARD</u></p>
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This matter comes before the court on Defendants' Motion to Vacate or Modify the Final Arbitration Award (filed June 30, 2023), and Plaintiff's Opposition to Defendants' Motion and Motion to Confirm the Award (filed July 17, 2023).

The arbitration award (Arbitration Award, April 10, 2023, and Final Arbitration Award, June 19, 2023, together, the "Arbitration Award") that the Defendants seek to vacate or modify is the result of a 10-year arbitration proceeding pursuant to a valid arbitration agreement and an order of this court referring the matter to arbitration with the consent of the Defendants (Consent Order Referring Matter to Arbitration, July 9, 2012). All of the issues raised by the Defendants in this motion were briefed and argued many times before the Panel and ultimately the Panel ruled against the Defendants' arguments on each occasion. Now, the Defendants seek to reargue those issues

before this Court, in this motion to vacate. This the Defendants cannot do under the law of this state.

The Panel was a 3-arbitrator panel made up of experienced lawyers chosen by consent of the parties that changed somewhat over the course of the ten years but the Panel that decided the dispositive motions and tried the case over more than a week's time consisted of two experienced and accomplished members of the Charleston County Bar¹ and a retired Chief Justice of the South Carolina Supreme Court² (the "Panel" or "Arbitration Panel").

The Panel read and examined thousands of pages of briefs, memos, exhibits, statutes, and legal opinions, and heard days of testimony from live witnesses, as well as reading hundreds of pages of submitted deposition testimony. The Panel read memoranda on three separate dispositive motions (Plaintiff's Memo, Exhibits C and D) filed by the Defendants and briefed by the parties and heard arguments on the motions at a hearing after which the Panel issued an order denying the motions (Plaintiff's Memo, Exhibit E). Thereafter, the Panel heard testimony and argument at an arbitration hearing that began on October 31, 2022, and ended on Nov 8, 2022 (Plaintiff's Memo, Exhibit F). Thereafter, the Plaintiff and Defendants prepared and submitted hundreds of pages of final written argument in the form of proposed orders which the Panel considered and issued a written award on April 10, 2023 (Plaintiff's Memo Exhibit G). After considering the Defendants' motions and supporting memoranda on a Motion for Reconsideration, the Panel issued a final award on June 19, 2023, which also resolved the award of attorney's fees which had likewise been briefed and contested by the Defendants.

After reviewing the motions, memoranda, and exhibits submitted by the parties and after hearing arguments of counsel for both parties on November 13, 2023, this Court DENIES the

¹ H. Brewton Hagood, Chair; Paul A. Dominick, Member

² Costa M. Pleicones, Member

motions of the Defendants to vacate or modify the arbitration award and CONFIRMS the award of the arbitrators.

THE SCOPE OF REVIEW OF ARBITRATION AWARDS

(A) A motion to modify may only be made on certain grounds provided by the statute, which do not exist in this case.

S.C. Code Ann. Sec. 15-48-140 provides:

- (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where: (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.
- (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

S.C. Code Ann. § 15-48-140 (LexisNexis, Lexis Advance through 2023 Regular Session Act No. 7, not including changes and corrections made by the Code Commissioner) ("SC Arbitration Act")

There is no evident miscalculation, decision on a matter not submitted, or flaw in form not affecting the merits raised by the Defendants in their motion. There is, therefore, no basis in the law for modifying or correcting the Panel's award. The motion made under 15-48-140 is denied.

(B) Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only upon certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law.

Arbitration is not "litigation carried on by other means." Lauro v. Visnapint, 351 S.C. 507, 516, 570 S.E.2d 551, 555-56 (Ct. App. 2002), citing White v. Preferred Research, Inc., 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). Judicial review of an arbitration award is therefore limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor. Lauro, 570 S.E. 2d at 555-556.

Arbitration is a favored method of settling disputes in South Carolina. When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact. *Id.* Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Id.*, citing Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997) (citations omitted). Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only under certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law. *Id.*, citing Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

"Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award." Crouch Constr. Co. v. Causey, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013), citing C- Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). "An award will be vacated only under narrow, limited circumstances." *Id.* "The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality." *Id.*, quoting Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 151, 89 S. Ct. 337, 21 L. Ed. 2d 301 (1968) (White, J., concurring).

In reviewing arbitration awards, "the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it." *Id.*, quoting Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 681 (7th Cir. 1983). "The reasons for this are not hard to identify." *Id.*, citing In re Andros Compania Maritima, S.A., 579 F.2d 691, 700 (2d Cir. 1978).

A decision to vacate an arbitration award may only be made on the specific grounds found in S C Code Ann. Sec. 15-48-130 or on the non-statutory basis of "manifest disregard or perverse misconstruction" of the law.

The SC Arbitration Act provides:

(a) Upon application of a party, the court shall vacate an award where: (1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an

arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers; (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection. But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

S.C. Code Ann. § 15-48-130(a).

Decisions of courts in this and other jurisdictions have vacated arbitration awards where there has been "a manifest disregard or perverse misconstruction of the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009), citing Technical College v. Lucas and Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985); S.C. Code Ann. § 15-48-130(a); Batten v. Howell, 300 S.C. 545, 548-49, 389 S.E.2d 170, 172 (Ct. App. 1990) (citations omitted). However, decisions recognizing this non-statutory ground for vacating arbitration awards have required "something beyond and different from a mere error of law or failure on the part of arbitrators to understand or apply the law." Batten, 389 S.E.2d at 172. "[A]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" Id. If a ground for the award can be inferred from the facts, the award should be confirmed. Id.

For a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable. Id. Case law presupposes something beyond a mere error in construing or applying the law. Even a "clearly erroneous interpretation of the contract" cannot be disturbed. Id. at 108, 333 S.E.2d 787. The focus is on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law. Id. at 108, 333 S.E.2d at 787. Accord, Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

An arbitrator's "manifest disregard of the law" as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel, 676 S.E. 2d at 324, citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005). Factual and legal errors by arbitrators do not constitute an abuse of power, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers. Id., Pittman, supra (emphasis added).

Here, the Defendants argue that the Arbitration Award should be vacated under the statute because "The arbitrators exceeded their powers" "and/or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law." Defendants' Motion to Vacate, at 1.

The Defendants' burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrators (1) knew that they had no authority to decide this case, (2) ignored the law, and (3) decided the arbitration proceeding in knowing and manifest disregard of that law.

DENIAL OF THE DEFENDANTS' MOTION TO VACATE OR MODIFY THE ARBITRATION AWARD

1. The issue of subject matter jurisdiction was thoroughly briefed and argued before the Panel at both the dispositive motion stage, at the trial and at the post-trial stage, and the Panel ultimately decided in favor of the arguments recognizing the court's and Panel's subject matter jurisdiction.

The consent order initiating the arbitration dated July 9, 2012, established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter. The consent order, to which the Defendants explicitly agreed, referred:

All claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and all of the parties submit themselves to the jurisdiction of this court and arbitration panel.

This is not a matter of a party raising subject matter jurisdiction later in the case. Rather, subject matter jurisdiction in this case was decided by court order and by consent submission of the

parties, including these Defendants pursuing this argument. This Court, and the arbitration Panel to which it referred this matter, have subject matter jurisdiction of this matter.

This matter was extensively argued throughout the course of the arbitration proceedings by the Defendants and, specifically, in the motions for summary judgment, at trial, post-trial, and in a motion for reconsideration. Likewise, at every stage, the Plaintiffs presented arguments establishing the Panel's subject matter jurisdiction and arguing against the Defendant's position. (Plaintiff's Memo, Exhibits C, D, E, F, and G).

The Panel ruled against the Defendants' motion at the summary judgment stage (Plaintiff's Memo Exhibit E), and after hearing the evidence and legal arguments of counsel at trial and considering their extensive arguments submitted post-trial, the Panel decided in favor of the Plaintiff's position and found that the Panel did have subject matter jurisdiction (see Exhibit A). The Defendants raised the argument yet again in the Motion for Reconsideration and the Panel once again, in its ruling on that motion, rejected Defendants arguments and found that the Defendants had raised no new issues or arguments, and the Panel did have subject matter jurisdiction to issue an award in the arbitration proceeding (see Defendants' Motion, Exhibit A).

Now, the Defendants make the same arguments here, again.

The Defendants cannot vacate the Arbitration Award, however, by arguing that the Panel did not fully consider their argument or even that the Panel wrongly decided the issue. Rather, they must show that there is a clear law supporting their position that the Panel recognized to be controlling and simply refused to follow it. There is no such clear controlling law, and there is no evidence that the Panel disregarded the law of South Carolina in any respect. Rather, the Panel disagreed with the Defendants' interpretation of the law and facts and instead adopted the argument made by the Plaintiff.

There is no clear legal principle that compels a decision for Defendants that the Panel knowingly failed to follow. The Panel disagreed with Defendants' argument and adopted Plaintiff's argument on this issue. The motion to vacate on this issue is denied.

2. The issue of the statute of limitations was exhaustively briefed and argued before the Panel at both the dispositive motion stage, the trial and at the post-trial stage, and the Panel ultimately decided against Defendants' arguments.

The same analysis applies to the Defendants' statute of limitations argument. The issue was briefed and argued at the dispositive motions, at trial, post-trial, and post-award. At each stage, the Plaintiff made arguments against applying the statute of limitations defense as a bar to recovery. In each instance, the Panel rejected the Defendants' arguments and decided that the statute of limitations defense did not bar recovery in this case.

As with the subject matter jurisdiction issue, the Defendants must prove not only that the Panel erred as a matter of law but did so knowing a clear and unassailable principle of law that controlled the outcome of the issue and knowingly disregarded it to render its decision. There is absolutely no support for this argument in the record or the award, and this Court denies the Defendants' motion to vacate on this issue.

3. The Panel invited and considered the arguments of the Defendants regarding the attorney's fees award and ultimately made an award to the Plaintiff that was less than Plaintiff requested.

Even more so, regarding the attorneys' fee issue, the Defendants do not even argue that the Panel knowingly disregarded the law. The Defendants simply disagree with the Panel's conclusion not to bar the Plaintiff's recovery for attorney's fees based on an unfounded theory of "unclean hands." The Defendants challenged this measured award by the Panel, set out in detail in its June 19, 2023, written ruling, which was less than the Plaintiff requested, and based on a reasoning detailed in the text.

The Defendants argue that the Panel was wrong in making the award and ask the Court to apply an equitable doctrine, unclean hands, to vacate or modify the Panel's award. The Defendants provide

no authority provided in 15-48-130 or -140 that would supply a basis for such an action. Nor have the Defendants shown any "manifest disregard of the law" with regard to this award of attorney's fees. The motion on this issue, too, must fail for want of any support in the law.

4. The Panel's award was detailed and specific, and complies with the SC Arbitration Act.

The Defendants raised this issue explicitly in the Motion to Reconsider filed with the Panel after the arbitration award of April 10, 2023. In their final award ruling of July 19, 2023, at pages 3-4, the Panel rejected this argument as follows:

The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent order stated that "This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that "The determination shall be issued in the form of an award on all claims and counterclaims." The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.

The Panel has considered the grounds and Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants Motions the Panel noted that the Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, and all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new arguments in the Motion for Reconsideration which had not previously been submitted to the Panel at the hearing held on June 16, 2022, after which the panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and for Summary Judgment.

S.C. Code Ann. Sec. 15-48-90 states that

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

There is no other requirement for the form of the award, which is consistent with the law of arbitration in SC that it is not "litigation by other means." Beyond the Arbitration Act provisions, the only other law governing the mode of trial and award for this arbitration was the Consent Order of Reference, July 9, 2012. As cited by the Panel, that Order required that the Panel "address each of the claims," which the Panel did. In addition, the Panel addressed each affirmative defense argued by the Defendants, in writing, numerous times.

There is no support for this argument in S.C. Code Ann. 15-28-130 or -140, and the Court denies the Defendants' motion on this argument, as well.

MOTION TO CONFIRM

Having heard and resolved the Motions to Vacate and Modify the arbitration award, the Court confirms the arbitration award under SC Code Ann. Sec. 15-48-130(d).

IT IS SO ORDERED.

Bentley D. Price, Presiding Judge,
Ninth Judicial Circuit



Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number: 2012CP1000580
Type: Order/Vacate Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-02-06 10:58:50 page 11 of 11

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SCL)
CLERK, C.P. G.S. & F.S.
By 
DEPUTY CLERK

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Sanders on behalf of Michael Sanders
Bar No. 24007981
mcs@sandersfirm.law
Envelope ID: 85925167
Filing Code Description: Petition
Filing Description: Notice of Filing of Foreign Judgment
Status as of 3/25/2024 2:55 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael C.Sanders		mcs@sandersfirm.law	3/25/2024 2:13:48 PM	SENT
Beth Bilyeu		bb@sandersfirm.law	3/25/2024 2:13:48 PM	SENT

CAUSE NO. _____

THOMAS H. MORGAN

v.

JOHN L. GILBERT, STUART L. FRED,
BELLA VISTA PARTNERSHIP,
BOMASADA GROUP, INC.,
BOMASADA INVESTMENT GROUP
II, LLC, LAURALIS MANAGEMENT,
INC., AND 150 BEE STREET, LLC

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

AFFIDAVIT OF NAMES AND ADDRESSES

STATE OF TEXAS

COUNTY OF FORT BEND

§
§
§

Before me, the undersigned authority, on this day personally appeared Michael C. Sanders, known to me to be a credible person competent in all respects to make this affidavit, and who, being by me sworn upon oath, stated:

1. I am the attorney for the judgment creditor in that certain judgment dated February 6, 2024, rendered by the Charleston County Common Pleas Court in Charleston County, South Carolina, under Cause No. 2012-CP-10-00580. An authenticated copy of the judgment will be filed with the clerk of the above-captioned court pursuant to Chapter 35 of the Texas Civil Practice and Remedies Code.

2. The name and last known post office address of the judgment debtors named in that judgment are:

John L. Gilbert
166 Glynn Way Dr.
Houston, TX 77056

Stuart L. Fred
5655 Inwood Dr.
Houston, TX 77056

Bella Vista Partnership
2 Riverway, Suite 1610
Houston, TX 77056

Bomasada Group, Inc.
2 Riverway, Suite 1610
Houston, TX 77056

Bomasada Investment Group II, LLC
2 Riverway, Suite 1610
Houston, TX 77056

Lauralis Management, Inc.
2 Riverway, Suite 1610
Houston, TX 77056

150 Bee Street, LLC
2 Riverway, Suite 1610
Houston, TX 77056

3. The name and post office address of the judgment creditor named in that judgment is:

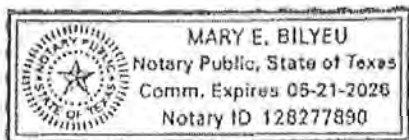
Thomas H. Morgan
c/o Michael C. Sanders
5850 San Felipe, Suite 500
Houston, TX 77057

FURTHER AFFIANT SAYETH NOT.

EXECUTED this 25th day of March 2024.


MICHAEL C. SANDERS

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by MICHAEL C. SANDERS, on this the 25th day of March 2024, to certify which witness my hand and seal.




NOTARY PUBLIC, STATE OF TEXAS

SUBMITTED BY:

SANDERS PLLC

/s/ Michael C. Sanders

Michael C. Sanders

State Bar No. 24007981

5850 San Felipe St. Suite 500

Houston, TX 77057

Telephone: (713) 493-7547

Facsimile: (713) 347-9569

Email: mcs@sandersfirm.law

ATTORNEY FOR JUDGMENT CREDITOR,
THOMAS H. MORGAN

In the Superior Court of the State of Arizona
In and for the County of Maricopa

Case Number _____

CIVIL COVER SHEET- NEW FILING ONLY
(Please Type or Print)

Plaintiff's Attorney Stanley M. Hammerman

Attorney Bar Number 4048

Is Interpreter Needed? Yes No

If yes, what language(s):

Plaintiff's Name(s): (List all) THOMAS H. MORGAN, Plaintiff's Address: _____ Phone #: _____ Email Address: _____

(List additional Plaintiffs on page two and/or attach a separate sheet).

Defendant's Name(s): (List All)

JOHN L. GILBERT; STUART L. FRED; BELLA VISTA PARTNERSHIP, a Texas general partnership; BONASADA GROUP, INC., a Texas corporation; BONASADA INVESTMENT GROUP II, LLC, a Texas limited liability company; LAURALIS MANAGEMENT INC., a Texas corporation,

(List additional Defendants on page two and/or attach a separate sheet)

RULE 26.2 DISCOVERY TIER OR MONETARY RELIEF CLAIMED:

IMPORTANT: Any case category that has an asterisk (*) MUST have a dollar amount claimed or Tier selected. State the monetary amount in controversy or place an "X" next to the discovery tier to which the pleadings allege the case would belong under Rule 26.2.

Amount Claimed \$ _____ Tier 1 Tier 2 Tier 3

NATURE OF ACTION

Place an "X" next to the one case category that most accurately describes your primary case. Any case category that has an asterisk (*) MUST have a dollar amount claimed or Tier selected as indicated above.

100 TORT MOTOR VEHICLE:

- 101 Non-Death/Personal Injury*
- 102 Property Damage*
- 103 Wrongful Death*

110 TORT NON-MOTOR VEHICLE:

- 111 Negligence*
- 112 Product Liability – Asbestos*
- 112 Product Liability – Tobacco*
- 112 Product Liability – Toxic/Other*
- 113 Intentional Tort*

- 172 Secure Attendance of Prisoner
- 173 Assurance of Discontinuance
- 174 In-State Deposition for Foreign Jurisdiction
- 176 Eminent Domain– Light Rail Only*
- 177 Interpleader– Automobile Only*
- 178 Delayed Birth Certificate (A.R.S. §36-333.03)
- 183 Employment Dispute – Discrimination*
- 185 Employment Dispute – Other*
- 198 Verified Rule 27(a) Petition*

- 196 Verified Rule 45.2 Petition
- 195(a) Amendment of Marriage License (Maricopa County Filings Only)
- 195(b) Amendment of Birth Certificate
- 200 Application/Motion Objecting to Foreign Subpoena
- 163 Other* _____
(Specify)

EMERGENCY ORDER SOUGHT

- Temporary Restraining Order
- Provisional Remedy
- OSC
- Election Challenge
- Employer Sanction
- Other (Specify) _____

COMMERCIAL COURT (Maricopa County Only)

This case is eligible for the Commercial Court under Rule 8.1, and Plaintiff requests assignment of this case to the Commercial Court. More information on the Commercial Court, including the most recent forms, are available on the Court’s website at:
<https://www.superiorcourt.maricopa.gov/commercial-court/>.

Additional Plaintiff(s):

Additional Defendant(s):

and 150 BEE STREET, LLC, a South Carolina limited liability company,

1 Stanley M. Hammerman, Esq., (#004048)
2 HAMMERMAN & HULTGREN, P.C.
3 10869 N. Scottsdale Rd
4 Ste 103-302
5 Scottsdale, Az 85254
6 Telephone: (602) 264-2566
7 stan@hammerman-hultgren.com

8 Attorneys for Plaintiff/Judgment Creditor

9
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11
12 IN AND FOR THE COUNTY OF MARICOPA

13 THOMAS H. MORGAN,
14
15 Plaintiff,

16 NO.

17 vs.

18 AFFIDAVIT FOR FOREIGN
19 JUDGMENT PURSUANT TO
20 A.R.S. § 12-1703

21 JOHN L. GILBERT; STUART L. FRED;
22 BELLA VISTA PARTNERSHIP, a
23 Texas general partnership; BONASADA
24 GROUP, INC., a Texas
25 corporation; BOMASADA
26 INVESTMENT GROUP II, LLC, a Texas
27 limited liability company; LAURALIS
28 MANAGEMENT, INC., a
Texas corporation; and 150 BEE
STREET, LLC, a South
Carolina limited liability company,

Defendants.

The Judgment Creditor, THOMAS H. MORGAN, by and through its attorney undersigned, upon its oath states the following:

1. The names and last known addresses of the Judgment Debtors are:

John L. Gilbert

Stuart L. Fred
10116 E. Cavedale Drive
Scottsdale AZ 85262

Belle Vista Partnership

2. The last known address of the Judgment Creditor is:

THOMAS H. MORGAN
c/o Hammerman & Hultgren
10869 N. Scottsdale Rd
Ste 103-302

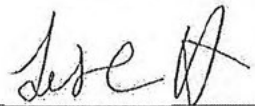
1 3. The mailing address of Judgment Creditor's attorney in the state of Arizona
2 is:

3 Hammerman & Hultgren, P.C.
4 10869 N. Scottsdale Rd
5 Ste 103-302
6 Scottsdale, Arizona 85254

HAMMERMAN & HULTGREN, P.C.

7
8 By 
9 Stanley M. Hammerman
10 10869 N. Scottsdale Rd
11 Ste 103-302
12 Scottsdale, Arizona 85254
13 Attorney for Plaintiff/Judgment Creditor

14 SUBSCRIBED and SWORN to before me this 30th day of ^{15th} ~~March~~ ^{APRIL}, 2024.

15 

16 Notary Public
17 Commission expires: DTM
18 12/31/2026

19 COPY of the foregoing
20 mailed this 30th day of
21 March, 2024, to:

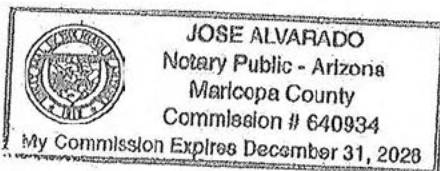
22 John L. Gilbert
23 155 Glynn Way Drive
24 Houston Tx 77056-1112

25 Stuart L. Fred
26 10116 E. Cavedale Drive
27 Scottsdale AZ 85262

28 Belle Vista Partnership
2 Riverway
Ste 1610
Houston Tx 77056

Bomasada Group, Inc.
2 Riverway Ste ste 1610
Houston, Tx 77056

Bomasada Investmant Group II LLC
2 Riverway
Ste 1610
Houston, Tx 77056



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7 stan@hammerman-hultgren.com

8 Attorneys for Plaintiff/Judgment Creditor

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
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12 IN AND FOR THE COUNTY OF MARICOPA

13 THOMAS H. MORGAN,

14 Plaintiff,

15 vs.

16 JOHN L. GILBERT; STUART L. FRED;
17 BELLA VISTA PARTNERSHIP, a
18 Texas general partnership; BONASADA
19 GROUP, INC., a Texas
20 corporation; BOMASADA
21 INVESTMENT GROUP II, LLC, a Texas
22 limited liability company; LAURALIS
23 MANAGEMENT, INC., a
24 Texas corporation; and 150 BEE
25 STREET, LLC, a South
26 Carolina limited liability company,

27 Defendants.

NO.

NOTICE OF FILING
FOREIGN JUDGMENT

28 NOTICE IS HEREBY GIVEN that an authenticated copy of a Judgment rendered on behalf of the Plaintiff and against the Defendants has been filed with the Maricopa Superior Court pursuant to the revised Uniform Enforcement of Foreign Judgments Act, A.R.S. § 12-1701, et seq.

DATED this 30th day of March, 2024.

HAMMERMAN & HULTGREN, P.C.

By _____



Stanley M. Hammerman
10869 N. Scottsdale Rd
Ste 103-302
Scottsdale, Arizona 85254

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COPY of the foregoing
mailed this 30th day of
March, 2024, to:

John L. Gilbert
166 Glynn Way Drive
Houston Tx 77056-1112

Stuart L. Fred
10116 E. Cavedale Drive
Scottsdale AZ 85262


Bella Vista Partnership
2 Riverway
Ste 1610
Houston Tx 77056

Bomasada Group, Inc.
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Houston Tx 77056

Bomasada Investment Group II LLC
2 Riverway Ste 1610
Houston, Tx 77056

Lauralis Managemant, Inc.
2 Riverway Ste 1610
Houston Tx 77056

150 Bee Street, LLC
2 Riverway
Ste 1610
Houston Tx 77056



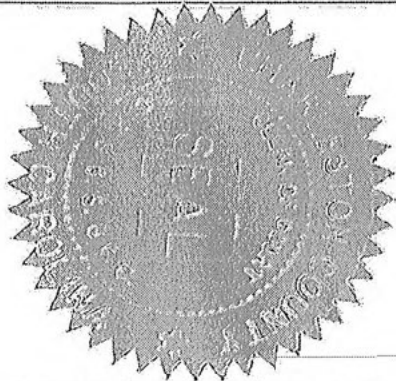
105433

<p>STATE OF SOUTH CAROLINA OFFICE OF THE CLERK OF COURT NINTH JUDICIAL CIRCUIT CHARLESTON COUNTY</p>	<p>EXEMPLIFICATION</p>
--	------------------------

I, Julie J. Armstrong As Clerk of Court for Common Pleas and General Sessions in and for the County of Charleston, South Carolina, legal custodian of the records, documents, and papers, of, or appertaining to said Court, and on file or of record in the office of said Court, certify that the attached copies of the documents described below are true and accurate reproductions of the originals now on file in this office.

Docket or Judgment Roll Number 2012-CP-10-0580

Thomas H. Morgan vs. John L. Gilbert etal.
Order denying defendants motion to vacate or modify the final arbitration award and confirming arbitration award – filed 2/6/2024



Date: March 13, 2024

Signature: Julie J. Armstrong

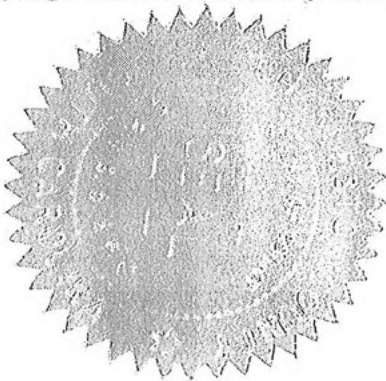
Julie J. Armstrong

As a Presiding Judge of said court, I certify that the signature appearing above is that of the Clerk of Court for Charleston County, who is duly sworn. I further certify that the seal affixed to the certificate appearing above is the seal of this court and that it has been used here in good form by the proper officer.

Date: March 13, 2024

Signature of Judge: [Signature]

As Clerk of Court for Charleston, South Carolina, I certify that the signature appearing above is that of a duly sworn judge of said court, duly commissioned and qualified.



Date: March 13, 2024

Signature: Julie J. Armstrong

Julie J. Armstrong

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION AND 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>IN ARBITRATION</p> <p>IN THE COURT OF COMMON PLEAS C.A. NO. 2012-CP-10-00580</p> <p><u>ORDER</u></p> <p><u>DENYING DEFENDANTS'</u> <u>MOTION TO VACATE OR MODIFY</u> <u>THE FINAL ARBITRATION AWARD</u></p> <p><u>AND</u></p> <p><u>CONFIRMING ARBITRATION AWARD</u></p>
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This matter comes before the court on Defendants' Motion to Vacate or Modify the Final Arbitration Award (filed June 30, 2023), and Plaintiff's Opposition to Defendants' Motion and Motion to Confirm the Award (filed July 17, 2023).

The arbitration award (Arbitration Award, April 10, 2023, and Final Arbitration Award, June 19, 2023, together, the "Arbitration Award") that the Defendants seek to vacate or modify is the result of a 10-year arbitration proceeding pursuant to a valid arbitration agreement and an order of this court referring the matter to arbitration with the consent of the Defendants (Consent Order Referring Matter to Arbitration, July 9, 2012). All of the issues raised by the Defendants in this motion were briefed and argued many times before the Panel and ultimately the Panel ruled against the Defendants' arguments on each occasion. Now, the Defendants seek to reargue those issues

before this Court, in this motion to vacate. This the Defendants cannot do under the law of this state.

The Panel was a 3-arbitrator panel made up of experienced lawyers chosen by consent of the parties that changed somewhat over the course of the ten years but the Panel that decided the dispositive motions and tried the case over more than a week's time consisted of two experienced and accomplished members of the Charleston County Bar¹ and a retired Chief Justice of the South Carolina Supreme Court² (the "Panel" or "Arbitration Panel").

The Panel read and examined thousands of pages of briefs, memos, exhibits, statutes, and legal opinions, and heard days of testimony from live witnesses, as well as reading hundreds of pages of submitted deposition testimony. The Panel read memoranda on three separate dispositive motions (Plaintiff's Memo, Exhibits C and D) filed by the Defendants and briefed by the parties and heard arguments on the motions at a hearing after which the Panel issued an order denying the motions (Plaintiff's Memo, Exhibit E). Thereafter, the Panel heard testimony and argument at an arbitration hearing that began on October 31, 2022, and ended on Nov 8, 2022 (Plaintiff's Memo, Exhibit F). Thereafter, the Plaintiff and Defendants prepared and submitted hundreds of pages of final written argument in the form of proposed orders which the Panel considered and issued a written award on April 10, 2023 (Plaintiff's Memo Exhibit G). After considering the Defendants' motions and supporting memoranda on a Motion for Reconsideration, the Panel issued a final award on June 19, 2023, which also resolved the award of attorney's fees which had likewise been briefed and contested by the Defendants.

After reviewing the motions, memoranda, and exhibits submitted by the parties and after hearing arguments of counsel for both parties on November 13, 2023, this Court DENIES the

¹ H. Brewton Hagood, Chair; Paul A. Dominick, Member

² Costa M. Pleicones, Member

motions of the Defendants to vacate or modify the arbitration award and CONFIRMS the award of the arbitrators.

THE SCOPE OF REVIEW OF ARBITRATION AWARDS

(A) A motion to modify may only be made on certain grounds provided by the statute, which do not exist in this case.

S.C. Code Ann. Sec. 15-48-140 provides:

- (a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where: (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.
- (b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

S.C. Code Ann. § 15-48-140 (LexisNexis, Lexis Advance through 2023 Regular Session Act No. 7, not including changes and corrections made by the Code Commissioner) (“SC Arbitration Act”)

There is no evident miscalculation, decision on a matter not submitted, or flaw in form not affecting the merits raised by the Defendants in their motion. There is, therefore, no basis in the law for modifying or correcting the Panel's award. The motion made under 15-48-140 is denied.

(B) Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only upon certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law.

Arbitration is not “litigation carried on by other means.” Lauro v. Visnapuu, 351 S.C. 507, 516, 570 S.E.2d 551, 555-56 (Ct. App. 2002), citing White v. Preferred Research, Inc., 315 S.C. 209, 212, 432 S.E.2d 506, 508 (Ct. App. 1993). Judicial review of an arbitration award is therefore limited in scope, and any attempt to convert arbitration into a trial-like judicial proceeding is looked upon with disfavor. Lauro, 570 S.E. 2d at 555-556.

Arbitration is a favored method of settling disputes in South Carolina. When a dispute is submitted to arbitration, the arbitrators determine questions of both law and fact. *Id.* Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award. *Id.*, citing Pittman Mortgage Co. v. Edwards, 327 S.C. 72, 75-76, 488 S.E.2d 335, 337 (1997) (citations omitted). Review of an arbitration award is limited, and the decision of the arbitrator will be vacated only under certain grounds as provided by statute, or upon the non-statutory ground of manifest disregard or perverse misconstruction of the law. *Id.*, citing Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

"Generally, an arbitration award is conclusive, and courts will refuse to review the merits of an award." Crouch Constr. Co. v. Causey, 405 S.C. 155, 163, 747 S.E.2d 482, 486 (2013), citing C-Sculptures, LLC v. Brown, 403 S.C. 53, 56, 742 S.E.2d 359, 360 (2013) (quoting Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009)). "An award will be vacated only under narrow, limited circumstances." *Id.* "The judiciary should minimize its role in arbitration as judge of the arbitrator's impartiality." *Id.*, quoting Commonwealth Coatings Corp. v. Cont'l Cas. Co., 393 U.S. 145, 151, 89 S. Ct. 337, 21 L. Ed. 2d 301 (1968) (White, J., concurring).

In reviewing arbitration awards, "the standards for judicial intervention are . . . narrowly drawn to assure the basic integrity of the arbitration process without meddling in it." *Id.*, quoting Merit Ins. Co. v. Leatherby Ins. Co., 714 F.2d 673, 681 (7th Cir. 1983). "The reasons for this are not hard to identify." *Id.*, citing In re Andros Compania Maritima, S.A., 579 F.2d 691, 700 (2d Cir. 1978).

A decision to vacate an arbitration award may only be made on the specific grounds found in S C Code Ann. Sec. 15-48-130 or on the non-statutory basis of "manifest disregard or perverse misconstruction" of the law.

The SC Arbitration Act provides:

(a) Upon application of a party, the court shall vacate an award where: (1) The award was procured by corruption, fraud or other undue means; (2) There was evident partiality by an

arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party; (3) The arbitrators exceeded their powers; (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of § 15-48-50, as to prejudice substantially the rights of a party; or (5) There was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection. But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

S.C. Code Ann. § 15-48-130(a).

Decisions of courts in this and other jurisdictions have vacated arbitration awards where there has been "a manifest disregard or perverse misconstruction of the law." Gissel v. Hart, 382 S.C. 235, 241, 676 S.E.2d 320, 323 (2009), citing Technical College v. Lucas and Stubbs, 286 S.C. 98, 333 S.E.2d 781 (1985); S.C. Code Ann. § 15-48-130(a); Batten v. Howell, 300 S.C. 545, 548-49, 389 S.E.2d 170, 172 (Ct. App. 1990) (citations omitted). However, decisions recognizing this non-statutory ground for vacating arbitration awards have required "something beyond and different from a mere error of law or failure on the part of arbitrators to understand or apply the law." Batten, 389 S.E.2d at 172. "[A]rbitrators need not specify their reasoning or the basis of the award so long as the factual inferences and legal conclusions supporting the award are 'barely colorable.'" Id. If a ground for the award can be inferred from the facts, the award should be confirmed. Id.

For a court to vacate an arbitration award based upon an arbitrator's manifest disregard of the law, the governing law ignored by the arbitrator must be well defined, explicit, and clearly applicable. Id. Case law presupposes something beyond a mere error in construing or applying the law. Even a "clearly erroneous interpretation of the contract" cannot be disturbed. Id. at 108, 333 S.E.2d 787. The focus is on the conduct of the arbitrator and presupposes something beyond a mere error in construing or applying the law. Id. at 108, 333 S.E.2d at 787. Accord, Harris v. Bennett, 332 S.C. 238, 503 S.E.2d 782 (Ct. App. 1998).

An arbitrator's "manifest disregard of the law" as a basis for vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it. Gissel, 676 S.E. 2d at 324, citing Weimer v. Jones, 364 S.C. 78, 610 S.E.2d 850 (Ct. App. 2005). Factual and legal errors by arbitrators do not constitute an abuse of power, and a court is not required to review the merits of a decision so long as the arbitrators do not exceed their powers. Id., Pittman, *supra* (emphasis added).

Here, the Defendants argue that the Arbitration Award should be vacated under the statute because "The arbitrators exceeded their powers" "and/or manifestly disregarded the law governing their jurisdiction in this matter in that the Panel lacked subject matter jurisdiction to hear the case and should have dismissed the case as a matter of law." Defendants' Motion to Vacate, at 1.

The Defendants' burden, therefore, in this motion to vacate, is to prove that as a matter of law the arbitrators (1) knew that they had no authority to decide this case, (2) ignored the law, and (3) decided the arbitration proceeding in knowing and manifest disregard of that law.

DENIAL OF THE DEFENDANTS' MOTION TO VACATE OR MODIFY THE ARBITRATION AWARD

1. The issue of subject matter jurisdiction was thoroughly briefed and argued before the Panel at both the dispositive motion stage, at the trial and at the post-trial stage, and the Panel ultimately decided in favor of the arguments recognizing the court's and Panel's subject matter jurisdiction.

The consent order initiating the arbitration dated July 9, 2012, established exclusive and binding subject matter jurisdiction in the panel for all matters raised by the pleadings in this matter. The consent order, to which the Defendants explicitly agreed, referred:

All claims, both compulsory and non-compulsory, specifically including all claims, counter-claims, and/or third-party claims, related to the underlying facts, transactions, and/or occurrences that are the subject matter of the pleadings and claims asserted in this case, shall be decided by binding arbitration that shall be conducted in accordance with the terms of this Order and otherwise pursuant to the Federal Arbitration Act and all of the parties submit themselves to the jurisdiction of this court and arbitration panel.

This is not a matter of a party raising subject matter jurisdiction later in the case. Rather, subject matter jurisdiction in this case was decided by court order and by consent submission of the

parties, including these Defendants pursuing this argument. This Court, and the arbitration Panel to which it referred this matter, have subject matter jurisdiction of this matter.

This matter was extensively argued throughout the course of the arbitration proceedings by the Defendants and, specifically, in the motions for summary judgment, at trial, post-trial, and in a motion for reconsideration. Likewise, at every stage, the Plaintiffs presented arguments establishing the Panel's subject matter jurisdiction and arguing against the Defendant's position. (Plaintiff's Memo, Exhibits C, D, E, F, and G).

The Panel ruled against the Defendants' motion at the summary judgment stage (Plaintiff's Memo Exhibit E), and after hearing the evidence and legal arguments of counsel at trial and considering their extensive arguments submitted post-trial, the Panel decided in favor of the Plaintiff's position and found that the Panel did have subject matter jurisdiction (see Exhibit A). The Defendants raised the argument yet again in the Motion for Reconsideration and the Panel once again, in its ruling on that motion, rejected Defendants arguments and found that the Defendants had raised no new issues or arguments, and the Panel did have subject matter jurisdiction to issue an award in the arbitration proceeding (see Defendants' Motion, Exhibit A).

Now, the Defendants make the same arguments here, again.

The Defendants cannot vacate the Arbitration Award, however, by arguing that the Panel did not fully consider their argument or even that the Panel wrongly decided the issue. Rather, they must show that there is a clear law supporting their position that the Panel recognized to be controlling and simply refused to follow it. There is no such clear controlling law, and there is no evidence that the Panel disregarded the law of South Carolina in any respect. Rather, the Panel disagreed with the Defendants' interpretation of the law and facts and instead adopted the argument made by the Plaintiff.

There is no clear legal principle that compels a decision for Defendants that the Panel knowingly failed to follow. The Panel disagreed with Defendants' argument and adopted Plaintiff's argument on this issue. The motion to vacate on this issue is denied.

2. The issue of the statute of limitations was exhaustively briefed and argued before the Panel at both the dispositive motion stage, the trial and at the post-trial stage, and the Panel ultimately decided against Defendants' arguments.

The same analysis applies to the Defendants' statute of limitations argument. The issue was briefed and argued at the dispositive motions, at trial, post-trial, and post-award. At each stage, the Plaintiff made arguments against applying the statute of limitations defense as a bar to recovery. In each instance, the Panel rejected the Defendants' arguments and decided that the statute of limitations defense did not bar recovery in this case.

As with the subject matter jurisdiction issue, the Defendants must prove not only that the Panel erred as a matter of law but did so knowing a clear and unassailable principle of law that controlled the outcome of the issue and knowingly disregarded it to render its decision. There is absolutely no support for this argument in the record or the award, and this Court denies the Defendants' motion to vacate on this issue.

3. The Panel invited and considered the arguments of the Defendants regarding the attorney's fees award and ultimately made an award to the Plaintiff that was less than Plaintiff requested.

Even more so, regarding the attorneys' fee issue, the Defendants do not even argue that the Panel knowingly disregarded the law. The Defendants simply disagree with the Panel's conclusion not to bar the Plaintiff's recovery for attorney's fees based on an unfounded theory of "unclean hands." The Defendants challenged this measured award by the Panel, set out in detail in its June 19, 2023, written ruling, which was less than the Plaintiff requested, and based on a reasoning detailed in the text.

The Defendants argue that the Panel was wrong in making the award and ask the Court to apply an equitable doctrine, unclean hands, to vacate or modify the Panel's award. The Defendants provide

no authority provided in 15-48-130 or -140 that would supply a basis for such an action. Nor have the Defendants shown any "manifest disregard of the law" with regard to this award of attorney's fees. The motion on this issue, too, must fail for want of any support in the law.

4. **The Panel's award was detailed and specific, and complies with the SC Arbitration Act.**

The Defendants raised this issue explicitly in the Motion to Reconsider filed with the Panel after the arbitration award of April 10, 2023. In their final award ruling of July 19, 2023, at pages 3-4, the Panel rejected this argument as follows:

The Panel notes that this dispute was referred to Arbitration by a Consent Order agreed to by counsel for the parties and signed by Judge Thomas L. Hughston dated July 9, 2012. Paragraph 8 of the Consent order stated that "This arbitration shall follow the South Carolina Rules of Civil Procedure where practical and to the extent not inconsistent herewith". The only provision in the Consent Order addressing the form of the Award is the requirement in paragraph 13 that "The determination shall be issued in the form of an award on all claims and counterclaims." The Panel issued a 25-page unanimous Arbitration Award addressing each of the claims asserted by the Plaintiff in his Second Amended Complaint, except those which the Plaintiff withdrew following the hearing. The Panel did not award any relief to the Defendants under the Counterclaims set forth in the Defendants' Answer to Second Amended Complaint and Counterclaims dated April 26, 2022.

The Panel has considered the grounds and Motion for Reconsideration of Arbitration Award dated April 18, 2023, and the arguments presented in Memorandum In Opposition To Defendants Motion For Reconsideration Of Arbitration Award dated May 3, 2023. The Panel finds that it is not required to issue separate findings of fact or conclusions of law when ruling on motions presented and ruled upon prior to the hearing which are renewed during the hearing. In ruling on Defendants Motions the Panel noted that the Defendants had submitted proposed Orders of Dismissal on the Statute of Limitations Issue and the Derivative Action Issue and that it had considered the testimony presented at the hearing, excerpts from the depositions of Jo Ved and Stuart Fred submitted by counsel, and all exhibits entered into evidence by the parties and the proposed Orders submitted by counsel. The Defendants presented no new arguments in the Motion for Reconsideration which had not previously been submitted to the Panel at the hearing held on June 16, 2022, after which the panel issued its July 11, 2022, Order Denying Defendants' Motions to Dismiss and for Summary Judgment.

S.C. Code Ann. Sec. 15-48-90 states that

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

There is no other requirement for the form of the award, which is consistent with the law of arbitration in SC that it is not "litigation by other means." Beyond the Arbitration Act provisions, the only other law governing the mode of trial and award for this arbitration was the Consent Order of Reference, July 9, 2012. As cited by the Panel, that Order required that the Panel "address each of the claims," which the Panel did. In addition, the Panel addressed each affirmative defense argued by the Defendants, in writing, numerous times.

There is no support for this argument in S.C. Code Ann.15-28-130 or -140, and the Court denies the Defendants' motion on this argument, as well.

MOTION TO CONFIRM

Having heard and resolved the Motions to Vacate and Modify the arbitration award, the Court confirms the arbitration award under SC Code Ann. Sec. 15-48-130(d).

IT IS SO ORDERED.

Bentley D. Price, Presiding Judge,

Ninth Judicial Circuit




Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number: 2012CP1000580
Type: Order/Vacate Judgment

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

Electronically signed on 2024-02-06 10:58:50 page 11 of 11

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
by 
DEPUTY CLERK

CAUSE NO. 202418993

THOMAS H. MORGAN	§	IN THE DISTRICT COURT OF
	§	
v.	§	
	§	
JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, BOMASADA GROUP, INC., BOMASADA INVESTMENT GROUP II, LLC, LAURALIS MANAGEMENT, INC., AND 150 BEE STREET, LLC	§ § § § § § §	HARRIS COUNTY, TEXAS
	§	269th JUDICIAL DISTRICT

**APPLICATION FOR TURNOVER AFTER JUDGMENT
AND FOR APPOINTMENT OF RECEIVER**

Pursuant to Chapter 31 of the Texas Civil Practice & Remedies Code, Plaintiff Thomas H. Morgan (“Applicant”) makes this Application for Turnover after Judgment and for Appointment of Receiver, as herein stated, with respect to the non-exempt property of Defendants-in-Judgment, John L. Gilbert, Stuart L. Fred, Bella Vista Partnership, Bomasada Group, Inc., Bomasada Investment Group II, LLC, and Lauralis Management, Inc. (collectively, “Respondents”). In support thereof, Applicant would show the Court the following:

1. Respondents have previously been served with Applicant’s Amended Notice of Filing of Foreign Judgment. By virtue of the filing of the foreign judgment, Applicant has a judgment against Respondents in this State pursuant to the Uniform Enforcement of Foreign Judgments Act.

2. On or about February 6, 2024, Applicant recovered judgment against Respondents in a case styled THOMAS H. MORGAN V. JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, BOMASADA GROUP, INC., BOMASADA INVESTMENT GROUP II, LLC, LAURALIS MANAGEMENT, INC., AND 150 BEE STREET, LLC, filed as Case No. 2012-CP-10-00580, in the Court of Common Pleas, County of Charleston, South Carolina, U.S.A.

All or part of such judgment remains unpaid at this time. Said judgment is in all respects, final, valid and subsisting. Applicant is the owner and holder of said judgment.

3. Applicant has made a good faith effort to collect the judgment but has been unsuccessful prior to filing this application in locating and attaching to non-exempt assets. Applicant has a good faith reason to believe that Respondents own property, including present or future rights to property, that cannot be located, attached, or levied on by ordinary legal process and which are not exempt from attachment, execution, or seizure for the satisfaction of liabilities.

4. Applicant requests the Court to appoint a receiver with power and authority to take possession and sell all non-exempt assets of Respondents (and all documents related thereto) including but not limited to cash and contents in all accounts of all financial institutions, and to apply the proceeds to satisfy the judgment and all amounts due under the receivership.

5. Pursuant to Section 31.002 of the Texas Civil Practice & Remedies Code, Applicant is entitled to recover his reasonable attorney's fees in connection with any efforts to collect a judgment through court proceeding. Applicant seeks \$1,000.00 for preparing and urging this Application pursuant to such Section.

Wherefore, premises considered, Applicant prays that the Court grant the relief requested in this Application and for all further relief, at law or in equity, to which the Applicant may be justly entitled.

Respectfully submitted,

SANDERS PLLC

/s/ Michael C. Sanders

Michael C. Sanders

State Bar No. 24007981

5850 San Felipe St. Suite 500

Houston, TX 77057

Telephone: (713) 493-7547

Facsimile: (713) 347-9569

Email: mcs@sandersfirm.law

ATTORNEY FOR APPLICANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing document was served on the following on April 16, 2024:

Chris Di Ferrante
1235 North Loop W., Suite 200
Houston, TX 77008
chris@cdfllaw.com

/s/ Michael C. Sanders
Michael C. Sanders

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Sanders on behalf of Michael Sanders

Bar No. 24007981

mcs@sandersfirm.law

Envelope ID: 86698173

Filing Code Description: No Fee Documents

Filing Description: Application for Turnover After Judgment and for Appointment of Receiver

Status as of 4/16/2024 3:10 PM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael C.Sanders		mcs@sandersfirm.law	4/16/2024 10:05:57 AM	SENT
Beth Bilyeu		bb@sandersfirm.law	4/16/2024 10:05:57 AM	SENT
Chris Di Ferrante		chris@cdfllaw.com	4/16/2024 10:05:57 AM	SENT
Sherea Cary		sherea@cdfllaw.com	4/16/2024 10:05:57 AM	SENT

against all Defendants other than 150 Bee Street, LLC damages of \$2,976,234.00 and attorneys' fees and costs in the amount of \$696,509.00. On February 6, 2024, this Court denied Defendants' Motion to Reconsider and affirmed the Panel's Award.

On March 4, 2024, Defendants served and filed their Notice of Appeal of the Order of this Court of February 6, 2024. A clocked copy of the Defendants' Notice of Appeal is attached to Defendants' Motion for Stay as Exhibit A. This appeal is still pending before the South Carolina Court of Appeals.

As shown in Exhibits B and C attached to Defendants' Motion to Stay, Plaintiff seeks to enforce the judgment based on this Court's February 6, 2024, Order in Harris County, Texas and in Maricopa County, Arizona during the pendency of the appeal to the South Carolina Court of Appeals.

Plaintiff has now made an Application for Turnover After Judgment and for Appointment of a Receiver in the District Court of Harris County, Texas (Exhibit 1 hereto) and has obtained a hearing date of his Application of May 10, 2024 (Exhibit 2 hereto). Therefore, Defendants request for a stay from this Court has become more exigent given the timing of Plaintiff's pursuit of enforcement remedies in other jurisdictions, which courts in those other jurisdictions may be hesitant to stay enforcement of the Award and this Court's February 6, 2024 judgment locally if this Court has not yet considered any security for its judgment and enforced its own stay of enforcement of that judgment.

Counsel for the Defendants has asked Counsel for Morgan if Morgan will consent to this request for an Emergency Hearing, and Morgan will not consent.

WHEREFORE, Defendants request that this Court hear Defendants' Motion to Stay all enforcement of its judgment on an emergency basis prior to May 10, 2024, as soon as the Court's

calendar permits.

WOMBLE BOND DICKINSON (US) LLP

s/Henry E. Grimball

Henry E. Grimball, S.C. Bar No. 2313

Morris A. Ellison, S.C. Bar No. 1881

5 Exchange Street (29401)

P.O. Box 999

Charleston, SC 29402

(843) 722-3400

Attorneys for Defendants

[Except 150 Bee Street, LLC]

April 17, 2024

Charleston, South Carolina

ELECTRONICALLY FILED - 2024 Apr 17 4:03 PM - CHARLESTON - COMMON PLEAS - CASE#2012CP1000580

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) COURT OF COMMON PLEAS
) C.A. NO. 2012-CP-10-00580

THOMAS H. MORGAN

Plaintiff,

v.

JOHN L. GILBERT, STUART L. FRED,
BELLA VISTA PARTNERSHIP, A TEXAS
GENERAL PARTNERSHIP, BOMASADA
GROUP, INC., A TEXAS CORPORATION,
BOMASADA INVESTMENT GROUP II,
LLC, A TEXAS LIMITED LIABILITY
COMPANY, LAURALIS MANAGEMENT,
INC., A TEXAS CORPORATION AND 150
BEE STREET, LLC, A SOUTH
CAROLINA LIMITED LIABILITY
COMPANY,

Defendants.

ORDER STAYING
ENFORCEMENT OF
JUDGMENT

Defendants John Gilbert, Stuart Fred, Bella Vista Partnership, Bomasada Group, Inc. Bomasada Investment Group, II and Lauralis Management, Inc. (hereinafter, collectively, the “**Judgment Debtors**”) have petitioned the Court to stay actions by the Plaintiff regarding this Court’s judgment dated February 6, 2024 (hereinafter the “**Judgment**”) pending appeal pursuant to S.C. Code Ann. § 18-9-130 and Rule 241, SCACR. The Judgment is currently on appeal in the South Carolina Court of Appeals, No. 2024-000322. The Judgment Debtors have petitioned that the Court grant a stay without requiring the posting of a supersedeas bond or any other form of security. The Court grants the Motion of the Judgment Debtors without requiring the posting of a bond or any form of security.

S.C. Code Ann. § 18-9-130 grants the Court the authority to grant a stay, thereby applying the general rule found in 241(a) SCACR with or without the posting of any type of bond.

The Court hereby grants the requested stay while the appeal of the Judgment Debtors is pending. The Court finds, pursuant to S.C. Code Ann. § 18-9-130, that no security for the Judgment or for enforcement against the Judgment Debtors' real or personal property shall be required of either Plaintiff or any Defendant during the pendency of the appeal of the Judgment.

Henceforth, all actions of the Plaintiff, pending or contemplated, in any jurisdiction, to enroll or enforce the Judgment, including creation of any liens based on the Judgment, are stayed until further order of this Court or the issuance of the remittitur from any appellate court having jurisdiction over the Judgment, whichever is earlier.

IT IS SO ORDERED.

Circuit Court Judge

_____, 2024
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number: 2012CP1000580
Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

1 Michael W. Zimmerman (#027442)
2 mz@berryriddell.com
3 **BERRY RIDDELL LLC**
4 6750 East Camelback Road, Suite 100
5 Scottsdale, Arizona 85251
6 (480) 385-2727 Phone
7 (480) 385-2757 Fax
8 *Attorneys for Stuart L. Fred*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

11 THOMAS H. MORGAN	)	Case No.: CV2024-008927
)	
12 Plaintiff,)	
13 v.)	
)	
14 JOHN L. GILBERT; STUART L. FRED;	)	STIPULATION TO ENTER
15 BELLA VISTA PARTNERSHIP, a Texas	)	ORDER STAYING
16 general partnership; BOMASADA GROUP,	)	ENFORCEMENT THE
17 INC., a Texas corporation; BOMASADA	)	FOREIGN JUDGMENT
18 INVESTMENT GROUP II, LLC, a Texas)	
19 limited liability company; LAURALIS	)	(Assigned to the Hon. Mary Cronin)
20 MANAGEMENT, INC., a Texas)	
21 corporation; and 150 BEE STREET, LLC, a)	
22 South Carolina limited liability company,)	
)	
23 Defendants.)	
)	

24 Plaintiff Thomas H. Morgan (“**Morgan**”) and Defendant Stuart Fred (“**Fred**”),
25 by and through undersigned counsel, hereby stipulate to entry of the proposed Stipulated
Order Staying Enforcement of the Foreign Judgment uploaded herewith.

On May 8, 2024, the South Carolina trial court entered the Order Staying
Enforcement of Judgment attached hereto as Exhibit 1 (the “**Order**”). The South
Carolina Order mandates that:

1 Henceforth, all actions of the Plaintiff, pending or
2 contemplated, in any jurisdiction, to enroll or enforce the
3 Judgment, including creation of any liens based on the
4 Judgment, are stayed until further order of this Court or the
5 issuance of the remitter from any appellate court having
6 jurisdiction over the Judgment, whichever is earlier.

7 *See Ex. 1.*

8 Therefore, pursuant to A.R.S. § 12-1704(A), counsel for Morgan and Fred hereby
9 stipulate to immediately stay any and all enforcement of the Final Arbitration Award
10 and Confirming Arbitration Award (the “**Judgment**”) in Arizona until the pending
11 appeal in the South Carolina Court of Appeals, No. 2024-000322, is concluded.

12 RESPECTUFLY SUBMITTED this 17th day of May, 2024.

13 **BERRY RIDDELL LLC**

14 **HAMMERMAN & HULTGREN, P.C.**

15 By /s/ Michael W. Zimmerman
16 Michael W. Zimmerman
17 6750 East Camelback Road, Suite 100
18 Scottsdale, Arizona 85251
19 *Attorneys for Plaintiffs*

20 By /s/ Stanley M. Hammerman (with
21 permission)
22 Stanley M. Hammerman
23 10869 N. Scottsdale Road
24 Suite 103-302
25 Scottsdale, AZ 85254

26 **ORIGINAL** of the foregoing was electronically
27 filed this 17th day of May, 2024, with the Clerk
28 of the Court and

29 **COPY** of the foregoing was electronically served
30 and emailed this 17th day of May, 2024 to:

31 Stanley M. Hammerman
32 Hammerman & Hultgren, P.C.
33 10869 N. Scottsdale Road
34 Suite 103-302
35 Scottsdale, AZ 85254

/s/ Lynda Kogutkiewicz

EXHIBIT 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) COURT OF COMMON PLEAS
) C.A. NO. 2012-CP-10-00580

THOMAS H. MORGAN

Plaintiff,

v.

JOHN L. GILBERT, STUART L. FRED,
BELLA VISTA PARTNERSHIP, A TEXAS
GENERAL PARTNERSHIP, BOMASADA
GROUP, INC., A TEXAS CORPORATION,
BOMASADA INVESTMENT GROUP II,
LLC, A TEXAS LIMITED LIABILITY
COMPANY, LAURALIS MANAGEMENT,
INC., A TEXAS CORPORATION AND 150
BEE STREET, LLC, A SOUTH
CAROLINA LIMITED LIABILITY
COMPANY,

Defendants.

ORDER STAYING
ENFORCEMENT OF
JUDGMENT

Defendants John Gilbert, Stuart Fred, Bella Vista Partnership, Bomasada Group, Inc. Bomasada Investment Group, II and Lauralis Management, Inc. (hereinafter, collectively, the “**Judgment Debtors**”) have petitioned the Court to stay actions by the Plaintiff regarding this Court’s judgment dated February 6, 2024 (hereinafter the “**Judgment**”) pending appeal pursuant to S.C. Code Ann. § 18-9-130 and Rule 241, SCACR. The Judgment is currently on appeal in the South Carolina Court of Appeals, No. 2024-000322. The Judgment Debtors have petitioned that the Court grant a stay without requiring the posting of a supersedeas bond or any other form of security. The Court grants the Motion of the Judgment Debtors without requiring the posting of a bond or any form of security.

S.C. Code Ann. § 18-9-130 grants the Court the authority to grant a stay, thereby applying the general rule found in 241(a) SCACR with or without the posting of any type of bond.

The Court hereby grants the requested stay while the appeal of the Judgment Debtors is pending. The Court finds, pursuant to S.C. Code Ann. § 18-9-130, that no security for the Judgment or for enforcement against the Judgment Debtors' real or personal property shall be required of either Plaintiff or any Defendant during the pendency of the appeal of the Judgment.

Henceforth, all actions of the Plaintiff, pending or contemplated, in any jurisdiction, to enroll or enforce the Judgment, including creation of any liens based on the Judgment, are stayed until further order of this Court or the issuance of the remittitur from any appellate court having jurisdiction over the Judgment, whichever is earlier.

IT IS SO ORDERED.

Circuit Court Judge

_____, 2024
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number: 2012CP1000580
Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, and 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT</p> <p>Civil Action No. 2012-CP-10-00580</p> <p style="text-align: center;">MOTION TO LIFT STAY (RULE 241(d), SCACR) AND SUPPORTING MEMORANDUM</p>
---	--

The Plaintiff, Thomas Morgan, moves this court according to Rule 241(d), SCACR, to lift the stay imposed by the court in its order of May 8, 2024, based on new facts and the findings of the arbitration panel that the defendant Stuart L. Fred has hidden assets and misapplied funds belonging to others.

FACTS

The Arbitration Award and Order Confirming It.

On January 26, 2012, the Plaintiff filed the initial Summons and Complaint in this matter and obtained a Temporary Restraining Order. On July 9, 2012, the parties consented to an order of the court submitting the entire case for binding arbitration. The panel convened, and the chair directed discovery and heard motions on pleading and discovery matters.

The panel was a three-arbitrator panel made up of experienced lawyers chosen by the consent of the parties that changed somewhat over the ten years, but the panel that decided the dispositive motions and tried the case over more than a week consisted of two experienced and accomplished members of the Charleston County Bar, H. Brewton Hagood, Chair and Paul A. Dominick, and retired Chief Justice of the South Carolina Supreme Court Costa M. Pleicones.

Per the Third Amended Scheduling Order issued by Panel Chair Hagood on April 29, 2022, the arbitration panel heard the Plaintiff's claims and the Defendants' defenses and counterclaims beginning on October 31, 2022. The parties presented live testimony at the offices of Womble Bond Dickinson in Charleston through November 8, 2022.

The panel issued a unanimous 25-page Arbitration Award on April 10, 2023, awarding judgment against the Defendants, except for 150 Bee Street, LLC, in the total amount of \$2,976,234.00, excluding attorneys' fees and costs.

After considering the Defendants' motions and supporting memoranda on a Motion for Reconsideration, the Panel issued a final award of \$3,672,743.00¹ on June 19, 2023, resolving the award of attorney's fees.

The Defendants then filed a Motion to Vacate the Arbitration Award, though the substance of its Motion and memoranda read like an appeal of the arbitration award.

The Plaintiffs filed memoranda opposing the Defendants' motion and filed a counter-motion to confirm the arbitration award.

¹ The amount of the judgment to date, including post-judgment interest, since confirmation of the award, is \$4,026,181.62 and increases daily.

The Circuit Court reviewed the motions, memoranda, and exhibits submitted by the parties. After hearing arguments of counsel for both parties on November 13, 2023, on February 6, 2024, the Circuit Court denied the motions of the Defendants to vacate or modify the arbitration award and confirmed the arbitrators' award.

This appeal followed.

The Findings of the Arbitration Panel as Confirmed by the Court.

The arbitrators made many findings that the Defendants hid records from the Plaintiff and misallocated and misspent assets of the Company.

The record is replete with **tactics employed by the Bomasada Defendants to inhibit Plaintiff's access to records** of BIG II (the project construction company with the same ownership as the Bomasada Defendants), which, if they were as represented by Defendants, could have obviated much of the difference in the party's calculations, but instead, **the Defendants effectively blocked access to these records."**

(Exhibit 1, Award, page 10) (emphasis added).

The Plaintiff met his burden of proving that the **Bomasada Defendants paid \$1,270,872.00 directly and improperly to themselves.** This finding was based not only on the contention of Plaintiff's witnesses that these charges lack sufficient documentation but also on Defendants' **history of resistance to Plaintiff's access to their internal records, which lasted through the hearing.** The panel found the overarching theme of Defendants' **resistance to scrutiny of its records** as support for the Plaintiff's position.

(Exhibit 1, Award, page 10) (emphasis added).

The Bomasada Defendants **paid themselves for unsupported and improper "business trips" from the company's funds.** Many of these travel expenses were **trips on private jets owned by Defendant Fred through Defendant Lauralis that were charged to the Company.** Though Defendants defended many charges as "employee bonus trips" or "business trips," any such use had to be reasonably related to the project, which these were not. **Golf trips and other vacations charged to the Company (African safaris and Mexican fishing trips) were not reasonably related to the Project.** The explanation of "bonus trips" is also unconvincing when the trips at issue were taken primarily by the Managing Members of a struggling project that was not completed with many unsold units.

(Exhibit 1, Award, page 17). (emphasis added).

Plaintiff proved that **Defendant Fred, as a Managing Member of the Company, and Defendants Fred and Gilbert, as General Partners of Defendant Bella Vista, were**

grossly negligent and breached their fiduciary duty, including their duty of loyalty and contractual duty of good faith and fair dealing. The Company was damaged as a result of these breaches. Plaintiff also carried the burden of proving that Defendants Bomasada and BIG II were conduits for the breaches by Defendants Fred and Gilbert and breached their contracts with the Company by **charging for unrelated Project expenses and were, thus, unjustly enriched.** Plaintiff carried the burden that **Defendant Lauralis was a wholly owned affiliate of Defendant Fred through which the Company was charged for flights unrelated to the Project, Lauralis and Fred were unjustly enriched, and the Company was damaged as a result of the wrongful charges.**

(Exhibit 1, Award, page 19) (emphasis added).

During the arbitration proceeding, the Defendants claimed important financial records were shredded in the ordinary course of business, but a key employee, Jo Ved, the Defendants' in-house CPA and Comptroller, testified the records were always there and she was instructed not to destroy any documents related to Bee Street. Defendant Gilbert was in charge of keeping the records and testified that they were kept in a storage room in the back of the Bomasada office. At a hearing before the Arbitration Panel to compel Defendants to provide accounting records and Fred's emails from his Bomasada email account, Defendants said they had provided everything. That turned out to be false.

Further, there is testimony from Jo Ved, an employee of Defendants, that the payments received by Bomasada were treated as "profit," an entitlement to which is not provided in any of the operative contractual documents. Moreover, **there are the representations by the Defendants that their records had been destroyed. That later proved incorrect, as records were available at least in digital format.** (Exhibit 1, Award, page 11)(emphasis added).

The Defendants intermingled assets between corporations and individuals and moved money back and forth between themselves and their wholly owned entities.

While there is ample other evidence of independent actions of Defendants in breaching their obligations to the Company, we find that in fact **the legal distinctions among the named Defendants is so blurred as to constitute a single enterprise** under Pertuis and Walbeck. **The melding of interests facilitated the wrongdoing here, regarding the payments to Bomasada, and simply add another overlay of liability for the Bomasada Defendants, including Fred and Gilbert.**

(Exhibit 1, Award, page 13) (emphasis added).

As just one example of the lengths to which Mr. Fred would go to steal money from his partners and spend it for his entertainment, Mr. Fred installed a home theater system in his home in Arizona with nearly \$50,000 of cash that belonged to his partners and was to be used for the construction of 150 Bee Street, the condominium project in Charleston. Further, Mr. Fred tried to cover up the entry from his partners by coding the expenditure as “Club House Furnishings” at 150 Bee Street when the installation was over 2,000 miles away in Scottsdale, Arizona. (See Exhibits 2, 3, and 4).

Mr. Fred has numerous companies and LLCs to move assets and money for his use. (Exhibit 5). Mr. Fred chose not to testify at his arbitration hearing, leaving others to do that for him. At his deposition, he was evasive and purported not to remember the most basic details of his business, including what his company does, even though he is the president. (See Exhibit 6, Fred Deposition, Page 21, lines 21-25; Page 23, lines 17-25; Page 24, lines 10-12, 21-24; Page 26, lines 2-12; Page 65, line 1-Page 67, line 5; Page 81, lines 16-20; Page 82, line 13- Page 83, line 19; Page 145, line 1-Page 145, line 8; Page 147, line 6 to Page 150, line 4; Page 152, line 8 to Page 153, line 14; Page 155, line 23 to Page 157, line 13; Page 160, line 1 to Page 163, line 20; Page 167, lines 3-16). When he was interviewed on a podcast shortly afterward, though, he seemed to have recovered his memory and expansively described his thorough knowledge of his company's workings. (See Exhibit 7).

The Defendants Apparent Current Financial Condition

The plaintiff has discovered that Mr. Fred, Mr. Gilbert, and Bomasada are engaged in a project called The Liam in Huntsville, Alabama. This project threatens to divert assets belonging to the Defendants that would otherwise be available to satisfy the Plaintiff's judgment.

Based on the research outlined in Mr. Morgan's affidavit, there is substantial apartment market deterioration in the Huntsville market, making the project undertaking by Bomasada hard to lease and,

therefore, difficult for the owners to refinance and pay their debt lenders and equity investors. (See Morgan Affidavit, paragraphs 6-12)

The details of Bomasada's apartment project, The Liam, to the extent they can be determined without post-judgment discovery, show that there is a high likelihood that the project is highly leveraged and that the owners, Mr. Fred and Mr. Gilbert, will be under pressure to liquidate and move their other assets to continue to service the debt and pay the expenses of the project. (See Morgan Affidavit, paragraph 4)

REQUEST FOR RELIEF

The arbitration panel's findings prove that the Defendants have hidden assets and financial records and, based on those findings, are likely to hide assets to avoid paying this judgment.

Fraudulent Conveyances.

The Statute of Elizabeth, S.C. Code Section 27-23-10(A) prohibits fraudulent conveyances by which debtors make property transfers to avoid debt collection by creditors. See *Dennis v. McKnight*, 161 S.C. 209, 211-12, 159 S.E. 555, 556 (1931) (finding complaint stated a cause of action for fraudulent conveyance when defendant conveyed all his property to wife with the intent of placing it out of the reach of the plaintiff should she recover in a wrongful death action filed two weeks after conveyance).

Creditors may have conveyances set aside when (1) the conveyance was 'voluntary,' that is, without consideration, and (2) it was made with a view to future indebtedness or with an actual fraudulent intent on the part of the grantor to defraud creditors. *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995). See *Windsor Props., Inc. v. Dolphin Head Constr. Co.*, 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) ("Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on

the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.")

Liquidation of Assets Related to Current Alabama Project.

Based on the information in Mr. Morgan's affidavit, the Bomasada Defendants' current project in Alabama (The Liam) has and will put significant pressure on them to liquidate assets to meet the financial obligations posed by that project. This pressure and any other inclination to avoid paying this judgment justifies this court's action to maintain the status quo and preserve the Defendants' current assets available to satisfy the judgment at the end of the appeal process.

Therefore, the Plaintiff respectfully requests this Court order the following:

1. Lift the stay imposed by its Order dated May 8, 2024;
2. Enjoining the Defendants from making any transfers that would constitute fraudulent transfers under South Carolina law or violate the Statute of Elizabeth.
3. Enjoining the Defendants from making any sales or transfers of any assets owned by them except in the ordinary course of business for valuable consideration without reporting them to this Court in advance and depositing the proceeds of those sales to the extent the Court allows them.
4. Requiring any distributions or other payments to the Defendants, directly or indirectly, from the ongoing Alabama project (The Liam) be placed on deposit with this Court.
5. Declaring that the Plaintiff can perfect his judgment lien in all states where the Defendants own property.
6. Requiring that the Defendants post a bond of \$1,000,000 with this Court under the provisions of S.C. Code Ann. § 18-9-130 (A)(1)(b).

Respectfully submitted,

s/ W. Andrew Gowder Jr.
W. Andrew Gowder Jr.
Austen & Gowder LLC
1629 Meeting Street, Suite A
Charleston, SC 29405
Telephone: (843) 727-2229
Fax: (843)-800-8533

Attorney for Plaintiff

December 10, 2024
Charleston, South Carolina

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, and 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p style="text-align: center;">Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT</p> <p>Civil Action No. 2012-CP-10-00580</p> <p>AFFIDAVIT OF THOMAS MORGAN</p>
---	---

Thomas Morgan, being sworn, states as follows:

1. I am familiar with the facts in this affidavit and make this statement based on my knowledge, belief and review of the most recent market information.
2. I am experienced in real estate development, having undertaken real estate development projects and managed real estate investments in several states in the United States.
3. I know that Bomasada, through Mr. Stuart L. Fred and Mr. John L. Gilbert, is developing an apartment project in Huntsville, Alabama.
4. I am concerned that this project is under financial stress and that, as a result, Mr. Fred and Mr. Gilbert will be under pressure to liquidate assets that might otherwise be available to satisfy my judgment against them to continue to service the debt on this current project.

EXHIBIT 9

5. Based on my experience and knowledge, I have researched their current project, The Liam, and the general Huntsville market. This is what I have found.

Huntsville Apartment Market Deterioration

6. The Huntsville apartment market has experienced substantial deterioration, particularly for newly constructed developments. The rapid pace of construction, driven by a surge in supply and rising vacancy rates, has compounded financial difficulties for developers, especially those trying to lease up newly built units. The following factors contribute to this decline.
7. **Overbuilding and Market Saturation.** Since 2022, Huntsville has been the fastest-growing apartment market in the United States, with annual inventory growth far outpacing demand. By the end of the first quarter of 2024, approximately 5,900 units were completed, representing an astounding 15.9% increase in inventory. An additional 6,900 units are expected to be completed by early 2025, further pushing inventory growth by 16.2%. This level of supply expansion has overshadowed demand, resulting in rising vacancies and making it exceedingly difficult for new developments to stabilize.
8. **Declining Occupancy Rates.** Due to the influx of new units, occupancy rates in Huntsville have struggled. In April 2024, the rate fell to 93.7%, 270 basis points below the five-year average. With the market working to absorb new deliveries, the supply is currently overwhelming the demand, creating a challenging environment for developers to attract tenants, especially for newly constructed properties that require high occupancy to meet financial expectations.
9. **Falling Rent Growth and Concessions.** Rent growth in Huntsville has stagnated as a direct result of the oversupply. Developers have had to reduce rents or offer concessions to fill vacant units. In April 2024, effective asking rents fell by 3.3% year-over-year, marking

the 11th consecutive month of rent declines. These rent reductions are especially problematic for newly built developments that need premium rents to cover high construction and financing costs.

10. **Impact on New Developments.** Due to the market's oversupply, new developments in Huntsville are facing extended lease-up periods, which is placing severe financial strain on them. Developers are forced to offer lower rents and concessions, which compromises their ability to meet loan obligations and achieve profitable operations. Rising interest rates have also increased borrowing costs, and many of these projects are now underwater and struggling to achieve positive cash flow.
11. **Additional Economic Pressure.** Huntsville's apartment market is expected to remain under pressure due to the substantial pipeline of projects still under construction. By early 2025, the market will face another significant wave of new units, further exacerbating the supply-demand imbalance. While job growth in Huntsville has been robust, it has not been enough to offset the dramatic increase in apartment inventory. This oversupply will likely result in a prolonged period of rent stagnation and below-average occupancy rates, particularly for newer developments.
12. The Huntsville apartment market is deteriorating rapidly, with the primary challenge being an overwhelming supply of new units that have far outpaced demand. Newly built developments, in particular, are bearing the brunt of this downturn, as occupancy rates have dropped, rents are being cut, and the lease-up periods are extending far beyond initial projections. Given the additional 6,900 units expected by early 2025, this oversupply will worsen, leaving developers in a precarious financial position. For developers of new projects, the Huntsville market presents significant economic risks, and many developments will likely face ongoing challenges in achieving profitability.

Updated Findings from CoStar Report:

13. The Huntsville multifamily vacancy rate remains elevated at **18.3%**, significantly above its 10-year average of 10%. (CoStar Report, Exhibit 1)
14. High levels of new supply, including **over 6,500 units delivered in the past year**, have outpaced absorption rates and contributed to rising vacancies.
15. Effective rents in Huntsville declined by **2.4% year-over-year**, with Class A (4 & 5 Star) properties experiencing a sharper decline of **4.2%**.
16. **Bomasada's Liam project remains under construction** and faces heightened financial risks due to the challenging market conditions, including extended lease-up times and negative rent growth.
17. The Liam is currently offering **8 weeks of free rent** as a leasing concession, an indication of the financial strain and oversupply in the market.
18. Sales activity in the Huntsville multifamily market has been exceptionally low, with just **\$36.3 million in sales volume over the past 12 months**, far below the historical annual average of \$224 million.

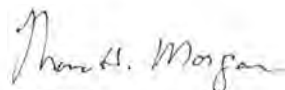
The Liam Project

19. Bomasada's 329-unit multifamily project, **The Liam**, was initially financed with a Construction Loan of \$46.9 million from Bryant Bank and Preferred Equity of \$12 million from Parse Capital. (<https://parsecap.com/asset/pref-equity-development-multifamily-27/>) (Mortgage, Assignment, and Security Agreement, Exhibit 2)
20. Based on a typical 65% loan-to-value ratio, the original total project cost is likely \$72,153,846.

21. The initial equity required for the project, calculated as the total estimated cost minus the construction loan from Bryant Bank and the Preferred Equity Piece from Parse Capital, would be approximately \$13,253,846.
22. According to John Gilbert's testimony during the arbitration hearing, equity funding for Bomasada's projects came from outside sources, including individual and corporate investors, family, and friends. Funds could also have come from Fred and Gilbert individually.
23. The combination of delays, rising interest rates, and a weakened market means the project is unlikely financially viable without significant additional equity. These findings highlight the project's severe financial risks and emphasize the need for protective measures or financial securities during the appeal process. Fred and Gilbert must raise more funds from investors or their own pockets before the construction loan period expires.
24. I next estimated Liam's current value based on comparison sales of other newly built properties in Huntsville and Bomasada's actual cost basis upon completion and lease-up of the project. I accounted for the overages caused by the construction delay, increased interest rates, and the increased time to lease up the project due to the market collapse and overbuilding in Huntsville.
25. Based on my review of the recent sales and refinancing data of higher-end apartment properties in Huntsville, AL, comparable to the Liam, I determined an average of \$222,000 per unit once 95% occupied and leased. Multiplying that by 329 units results in a total value of \$73,000,000.
26. Assuming a loan-to-value ratio of 70% on permanent financing, the maximum loan amount would be \$51,000,000. However, this would not produce enough proceeds for Bomasada,

- Fred, and Gilbert to pay off their preferred equity and construction loans, totaling approximately \$64,300,000.
27. The result is that Fred, Gilbert, and Bomasada would need to come up with a figure of \$13,200,000 to pay their construction loan and preferred equity.
 28. Assuming the property is completed in December 2024, the additional construction time above the 20-month typical construction period is 16 months. Adding the cost of a minimum of 12 months of extra time to lease the property because of the overbuilding and completion of the new building totals an additional 28 months over the initially anticipated time. (The Liam website currently has a “Eight weeks free rent” giveaway.)
 29. The additional project costs include the interest on the construction loan and the preferred equity piece due to the delay, property taxes, and other interim operating and management costs during the lease-up on the vacant units. They also include the additional interest due to the increased borrowing costs due to higher interest rates during this period.
 30. The borrower will owe **\$4,323,219** in additional interest costs due to the extended 36-month construction and lease-up period and the increase in interest rates from 2021 to 2024.
 31. This calculation assumes an even drawdown of the loan, with the loan fully utilized at the end of construction and no significant changes in the interest rate during this extended period.
 32. For the preferred equity piece, the additional interest is approximately **\$7,896,000**. Thus, the total additional interest between debt and preferred equity is **\$12,219,000**.
 33. In addition to interest, the additional operating costs due to vacant units during the lease-up period, estimated at 65% of gross rents for ½ of the additional lease-up periods, would be approximately \$2,400,000.

34. Thus, the total estimated project costs due to construction delays, leasing delays, and interest equals approximately \$14,000,000.
35. **This, combined with the equity shortfall that will have to be covered at permanent financing, shows that Fred, Gilbert, and Bomasada will need to find between \$20,000,000 and \$30,000,000 to cover the costs of The Liam.**
36. I am entitled to be protected as a judgment holder from assets being liquidated to pay these expenses when I should hold a superior position as a judgment creditor.
37. I respectfully request the Court's assistance in (1) entering an order preventing the Defendants from transferring assets to make them unavailable for execution, (2) allowing me to proceed to perfect my liens in the states where the Bomasada Defendants own property, and (3) requiring those defendants to post a bond to the maximum extent allowed by this state's law.



Thomas H. Morgan

SWORN before me this 10th day of December, 2024

s/ Bailey Laura Pope

Notary Public for the State of South Carolina

My Commission Expires: July 30, 2030

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>THOMAS H. MORGAN,</p> <p>Plaintiff,</p> <p>v.</p> <p>JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, A TEXAS GENERAL PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, LLC, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION, and 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,</p> <p>Defendants.</p>	<p>IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Civil Action No. 2012-CP-10-00580</p> <p><u>Second Affidavit of Thomas Morgan in Support of Plaintiff's Motion to Lift Stay</u></p>
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I, Thomas H. Morgan, being duly sworn, states as follows:

Qualifications and Expertise

1. I am familiar with the facts in this affidavit and make this statement based on my knowledge and belief.
2. I am qualified to give my opinion on the state of the apartment market. I have been the owner and managing member of numerous LLCs holding thousands of apartment units and other real estate assets across the country in various states, including Colorado, Texas, Oklahoma, California, Florida, and South Carolina. I am currently the owner, along with my sister, of a

- shopping center in Mt. Pleasant SC. I have long experience managing large apartment projects in cities all over the United States.
3. To further inform my assessment of the Huntsville market, I have consulted with an experienced and successful top apartment broker in Huntsville, David Wilson, on multiple occasions
 4. I have also received up-to-date apartment leasing and sales information for the Huntsville market through my existing banking relationship with JLL Capital Markets, a nationwide real estate and financial advisory service company (**Exhibit A**)
 5. David Wilson's qualifications as a market expert include:
 - a. 29+ years of experience in Alabama markets, including 17 years as an apartment broker and over 20 years as a commercial appraiser
 - b. 10 years of exclusive focus as an apartment market analyst and apartment appraisal specialist
 - c. Brokerage of over \$1 billion in apartment and/or apartment land transactions
 - d. Involvement in over 22 local transactions in Huntsville and appraisal of approximately 75% of Huntsville's conventional apartment properties over 60 units
 - e. Continuous tracking of new development, transactions, and market trends, maintaining more detailed data on Huntsville new construction than anyone else in the market
 6. Attached as **Exhibit B** is a copy of Mr. Wilson's resume, currently the Senior Director of Investment Sales at Berkadia. Attached as **Exhibit C** is my correspondence with Mr. Wilson in which he confirms that the Huntsville apartment market remains highly competitive, lease-ups are progressing slowly, and two months free rent is a common incentive used to attract

tenants. This further supports my contention that The Liam is struggling in the current market conditions.

EVIDENCE OF THE LIAM'S FINANCIAL INSTABILITY

7. Severe Leasing Challenges

- a. In his affidavit opposing this motion, Mr. John Gilbert states that "Although some units in Liam had already been rented, BLH held a grand opening on Friday, December 13, 2024." Documentation from September 17, 2024, shows that **the Liam was already preleasing units at that time**, confirming that lease-up has been exceedingly slow.
- b. Over the course of approximately **five months**, only **31 units have been leased** out of a total of 329 units, which equates to an average leasing rate of **approximately 6.2 units per month**.
- c. At this pace, it would take more than **four years** to fully lease the remaining **298 units**, making Gilbert's claim of reaching stabilization in 9-12 months entirely unrealistic.
- d. Documentation from The Liam's website (**Exhibit D**) confirms that as of September 17, 2024, the property had numerous units available across all floor plans, with many listed as "Available Now." Further evidence from the property's website (**Exhibit E**) shows that between January 31, 2025, and February 25, 2025, not a single additional unit was leased, with the total number of available units remaining unchanged despite the property increasing concessions to two months of free rent plus a \$500 gift card (**Exhibit F**). This reveals minimal demand despite aggressive marketing efforts and growing concessions over several months.

8. **Construction Delays and Cost Overruns**

- a. Gilbert stated that **construction of The Liam Project began in September 2021, and the grand opening was held on December 13, 2024.**
- b. This means the project took **over 39 months to complete**—more than twice the usual 16-month construction timeline for comparable projects.
- c. Gilbert does not provide any explanation for why construction was delayed for such a long period or why work stopped at various points during development.
- d. The extended timeline has resulted in **millions of dollars in cost overruns, additional interest, and increased financing costs due to rising interest rates.** My previous affidavit detailed the estimated amount of these cost overruns and interest carry overages. Gilbert's affidavit does not dispute my calculations or present any evidence that would contradict my estimates.

9. **Misleading Statements Regarding Financial Compliance**

- a. Gilbert states that **BLH's loan agreement with Bryant Bank contains various covenants, including a loan-to-value covenant requiring that the property's value exceed the loan amount by a certain amount and a debt service coverage ratio covenant requiring that The Liam Project generate a certain amount of revenue in excess of the amount needed to service BLH's debt to Bryant Bank.**
- b. This statement is **misleading** because with only **31 units leased**, it is mathematically impossible for BLH to be meeting its debt service coverage ratio requirement.
- c. The mortgage itself states that **Bryant Bank is not required to issue a default notice even if the borrower is in violation of loan covenants:** *"The Lender shall have the sole discretion to determine whether an Event of Default has occurred under this Agreement. The Lender is not required to provide written notice of default before exercising its rights under this*

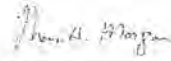
Agreement, and Borrower acknowledges that any failure to meet financial covenants, including but not limited to Loan-to-Value and Debt Service Coverage Ratios, shall constitute grounds for Lender's remedies, irrespective of formal notice."

- d. This means **BLH could already be in violation of its loan covenants, but Bryant Bank has simply chosen not to take action yet.**
- e. Gilbert's affidavit dated January 2025 further reveals that the Liam Project was in development for years before the arbitration panel issued its award. BLH closed on the property in September 2020, with construction beginning in September 2021—all prior to the arbitration panel's findings of financial misconduct, giving the Defendants ample time to structure this project in a way that could shield assets.

10. Inadequate Financial Disclosure

- a. Gilbert states that **BLH has never made any capital calls to any of its members.** However, this statement has no significance because:
 - i. **Fred and Gilbert could have personally contributed funds** or done so through one of their many LLCs
 - ii. **They also could have pledged other assets to satisfy lender requirements**
 - iii. The arbitration panel already determined that **Fred and Gilbert regularly moved money between entities to obscure financial transactions,** making it necessary to examine **all financial records, including the loan agreement and monthly compliance statements**
- b. Notably, Gilbert's affidavit:
 - i. Does not dispute any of the calculations or assumptions in my previous affidavit

- ii. Presents no new evidence to counter my findings on financial instability
 - iii. Does not dispute that Bomasada will need to come up with an additional **\$20-30 million** in capital to cover cost overruns and loan shortfalls
 - iv. Fails to address the fact that rising interest rates and extended construction delays have **severely impacted the financial health of The Liam Project**
 - v. Provides no financial documentation to demonstrate compliance with loan covenants
11. Defendants had indicated a willingness to provide a **\$1 million letter of credit**, as confirmed in the court transcript where their counsel stated, "we did offer to Mr. Gowder to post the million dollar Letter of Credit," yet it was not required in Judge McCoy's ruling.
12. The Defendants argue that I receive **11.5% interest on the judgment**, but this characterization is misleading. **This is a derivative lawsuit, and the funds from the judgment will go to the company to be distributed to the members of 150 Bee Street LLC, except for Fred and Gilbert. As of now, the members of 150 Bee Street LLC have received nothing.**
13. The current judgment amount, including post-judgment interest since confirmation of the award, is now **\$4,026,181.62 and increases daily.**
14. I respectfully request that this court lift the stay to allow judgment liens to be perfected everywhere these defendants may own property, to secure my ability to collect on the judgment on successful conclusion of the appeal. Additionally, or in the alternative, I request that the court allow discovery on the assets of the defendants and a bond to provide for further security, pending the appeal.



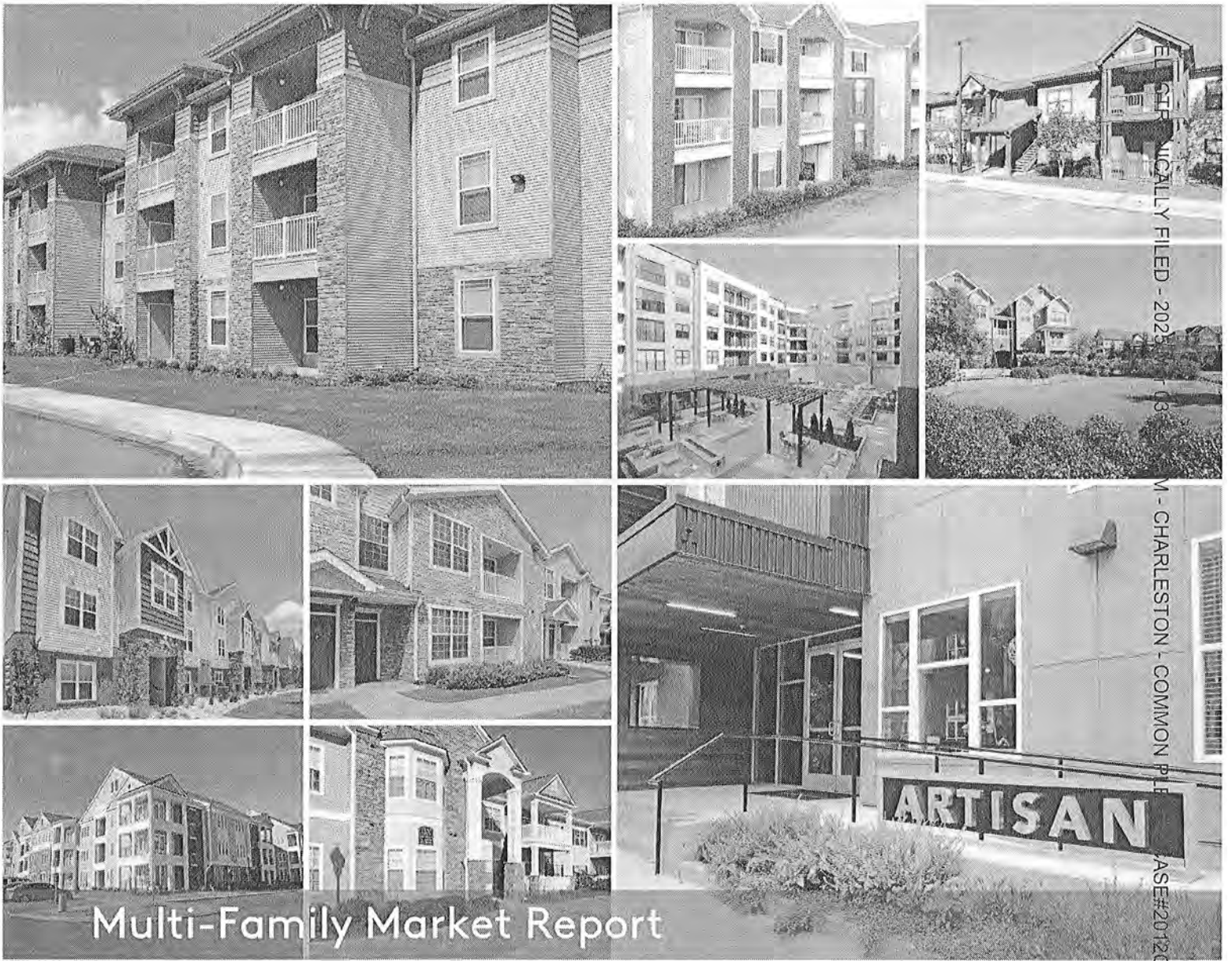
Thomas H. Morgan

SWORN before me this 28th day of February, 2025

s/ W. Andrew Gowder, Jr.

Notary Public for the State of South Carolina

My Commission Expires: 12/14/2027



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CASE#2012CP1000580

Multi-Family Market Report Huntsville - AL USA

PREPARED BY



EXHIBIT A



MULTI-FAMILY MARKET REPORT

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Overview

Huntsville Multi-Family

12 Mo Delivered Units	12 Mo Absorption Units	Vacancy Rate	12 Mo Asking Rent Growth
6,006	4,821	18.0%	-2.8%

Despite strong multifamily demand, a record amount of construction activity has saturated the market and spiked vacancy levels. The vacancy rate in the Huntsville multifamily market has ticked down slightly from a record high earlier this year, but at 18.0%, it remains far above the market's 10-year average of 10.2%. However, stabilized vacancy is a much lower 8.9%, showing just how saturated the market is.

The high vacancy levels isn't due to a lack of demand. Net absorption in Huntsville has totaled 4,800 units over the past year. That level is more than triple Huntsville's historical annual average as the market benefits from domestic migration and robust job growth.

Madison/Airport, Limestone County, and University/Research Park are the Huntsville submarkets with the highest demand over the past 12 months. Looking ahead, the market's demand-side outlook remains strong. The Huntsville population continues to grow, and strong economic growth is helping support demand across multifamily subclasses across the metro.

Although Huntsville has experienced high demand, the market has experienced even higher levels of new supply. Net deliveries in Huntsville have totaled 6,000

units over the past 12 months, more than three times the market's historical annual average. Madison/Airport, Limestone County, and University/Research Park received most of the new inventory.

The multifamily vacancy rate in Huntsville rose steadily for four years, up from a trough of about 5% in 2020 to a peak of 19.6% in 24Q1. Since then, vacancies have declined modestly and will likely continue to fall in the medium term. Construction starts have been moderate over the past year, and the market's construction pipeline has declined, signaling that deliveries will slow in the coming quarters. This should help ease vacancy levels and raise rent growth.

With its elevated multifamily vacancy rate, landlords have lost pricing power and annual rent growth in Huntsville has been negative, changing -2.8%% over the past 12 months.

Like in many multifamily markets around the country, sales activity in Huntsville has been far below normal. The market has seen a total of just \$104 million trade over the past 12 months. Private investors, many of them from out of state, have been the main purchasers.

KEY INDICATORS

Current Quarter	Units	Vacancy Rate	Asking Rent	Effective Rent	Absorption Units	Delivered Units	Under Constr Units
4 & 5 Star	21,630	22.5%	\$1,434	\$1,393	355	198	2,563
3 Star	20,762	16.0%	\$1,154	\$1,126	60	234	447
1 & 2 Star	4,998	7.1%	\$874	\$864	(2)	0	0
Market	47,390	18.0%	\$1,259	\$1,226	413	432	3,010

Annual Trends	12 Month	Historical Average	Forecast Average	Peak	When	Trough	When
Vacancy	0.3% (YOY)	9.3%	12.8%	19.6%	2024 Q1	5.1%	2020 Q2
Absorption Units	4,821	822	2,607	4,612	2024 Q4	(335)	2007 Q2
Delivered Units	6,006	1,121	2,050	6,721	2024 Q3	0	2012 Q3
Demolished Units	0	2	15	42	2015 Q4	0	2024 Q4
Asking Rent Growth	-2.8%	1.6%	2.4%	7.9%	2022 Q1	-3.3%	2009 Q4
Effective Rent Growth	-2.6%	1.5%	2.5%	7.9%	2022 Q1	-4.1%	2024 Q1
Sales Volume	\$109M	\$147.7M	N/A	\$717.2M	2022 Q3	\$130K	2010 Q3

Vacancy

Huntsville Multi-Family

Huntsville's multifamily vacancy rate reached an all-time high earlier this year and has since declined modestly to 18.0%. Even with the recent decline, the market's vacancies are still far above the national vacancy rate of 8.0% and more than triple Huntsville's recent trough of about 5% in 2020. The heavy new supply is the main reason for the high vacancy as the spread between the overall rate and stabilized vacancy rate has widened since the pandemic. The stabilized vacancy is 9.2%, about half of the overall rate.

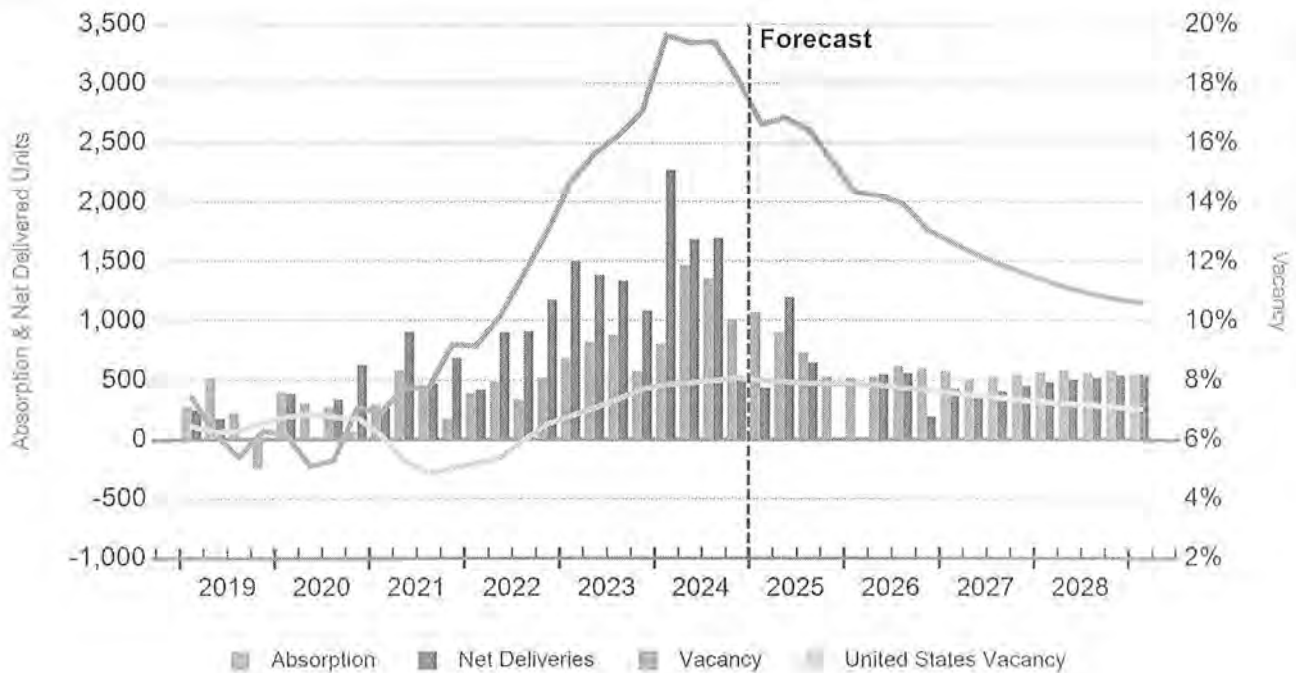
Vacancies are particularly high in Huntsville properties rated 4 & 5 Star, at 22.5%. Limestone County and Outlying Madison are the Huntsville markets with the highest vacancy rates, while vacancies are lowest in South Madison County.

Huntsville's elevated vacancy rate has come despite high

demand. Net absorption in Huntsville has totaled 4,800 units over the past 12 months, triple the market's historical annual average. Huntsville's multifamily market benefits from high population growth and above-average incomes. Median household income in Huntsville is \$90,000, which is above the national average of \$79,000 and is significantly higher than nearby Birmingham's median income of \$69,000 per household.

While demand in Huntsville has been high over the past year, it has not kept pace with the abundance of new inventory that has been delivered. Developers have built 6,000 units in the market over the past year, three times the market's historical average. The new supply has been spread around the market, with the submarkets of Madison/Airport, Limestone County, and University/Research Park all receiving significant amounts of new supply.

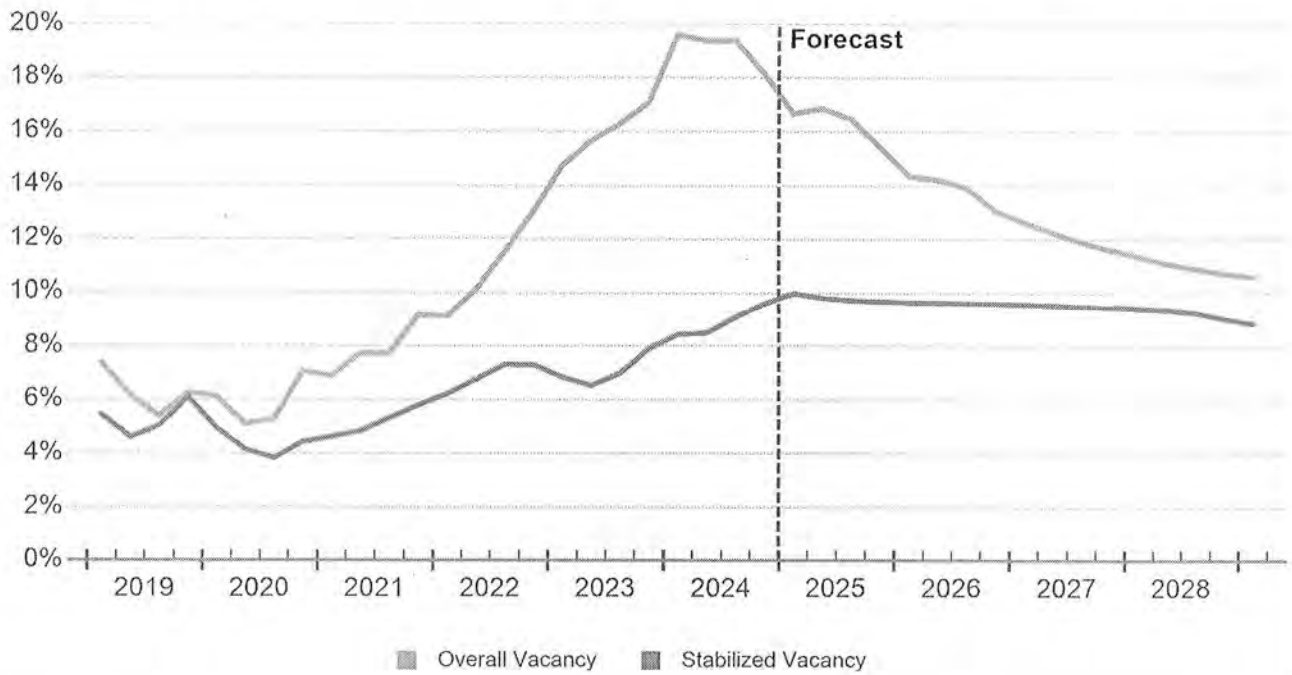
ABSORPTION, NET DELIVERIES & VACANCY



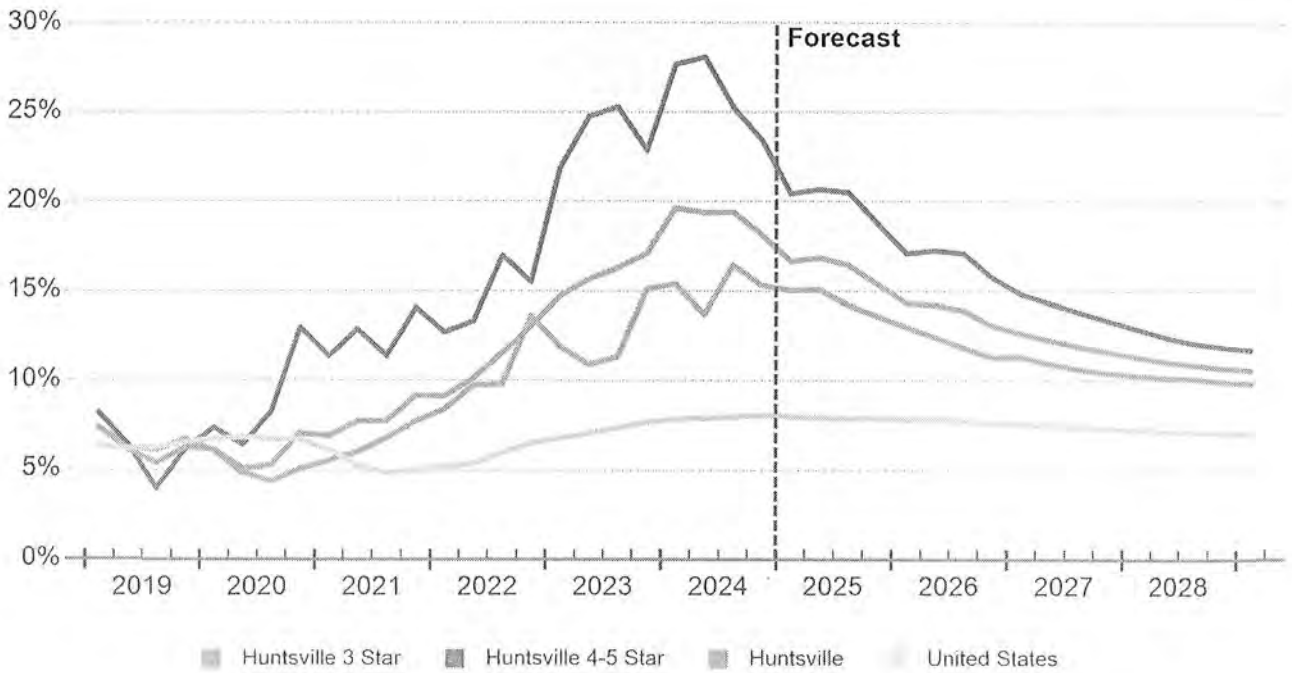
Vacancy

Huntsville Multi-Family

OVERALL & STABILIZED VACANCY



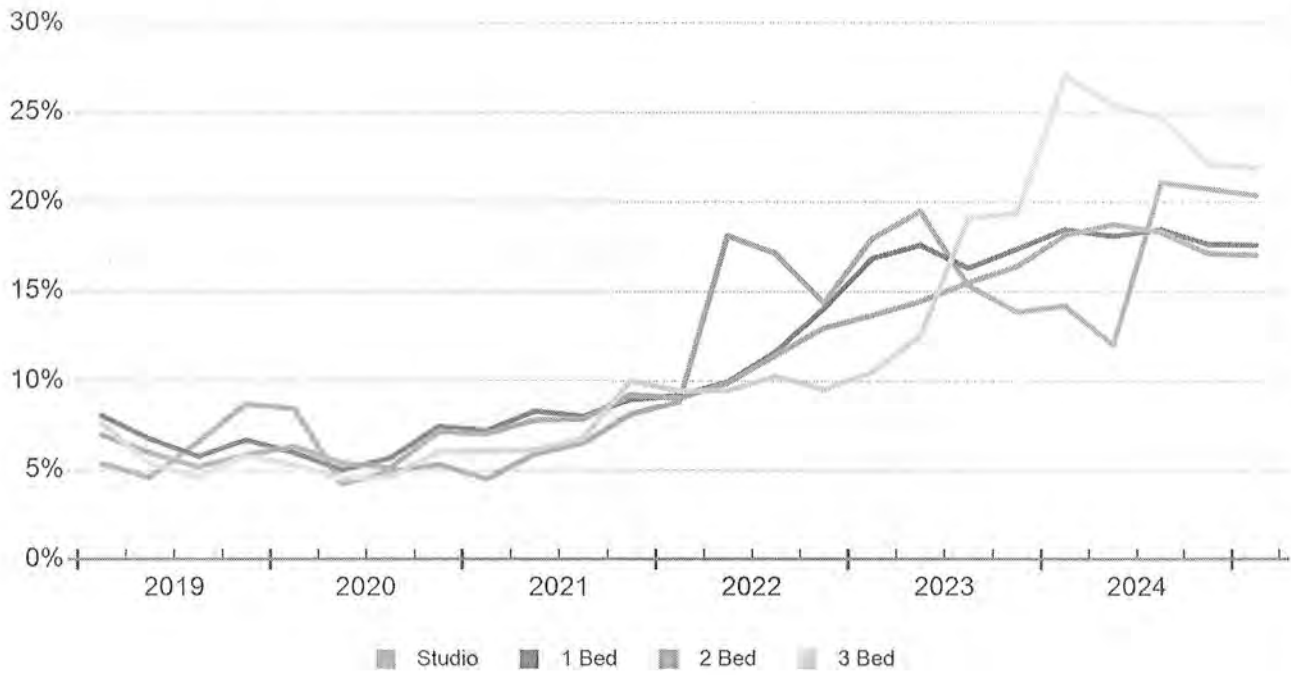
VACANCY RATE



Vacancy

Huntsville Multi-Family

VACANCY BY BEDROOM



Rent

Huntsville Multi-Family

With vacancies rising and construction outpacing demand, owners and landlords in Huntsville have lost pricing power. As a result, average asking rents in the market have changed -2.8% over the past 12 months. This is in contrast to the national market, which has experienced annual rent growth of 1.0%.

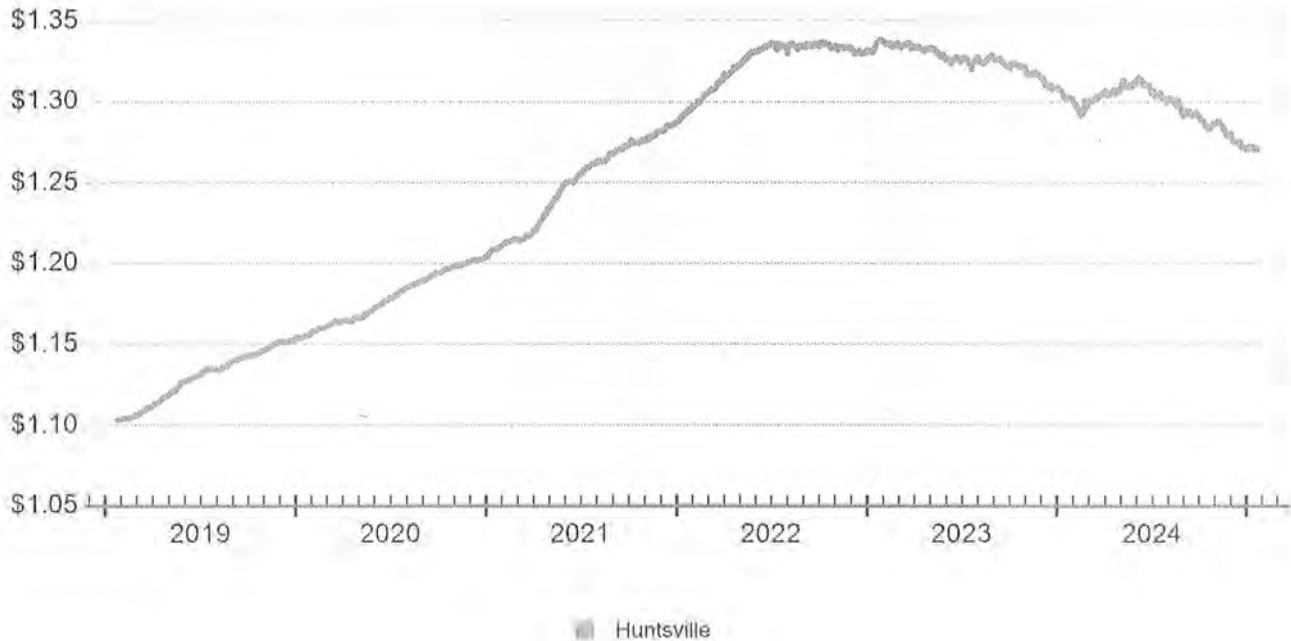
As a result of the saturated supply, the 4 & 5 Star properties have experienced the steepest rent declines, with rents changing -4.1% over the past 12 months. Rents at 3 Star properties have also declined, while 1 & 2 Star properties have seen modest increases.

Huntsville is a relatively affordable multifamily market, with average asking rents of \$1,260/month. That level is significantly below the U.S. average of \$1,740/month and is also lower than rents in Southeastern markets such as Atlanta and Nashville. However, rents in Huntsville are

among the most expensive in Alabama. Huntsville's asking rents are slightly above those in nearby Birmingham and are well above those in Mobile and Montgomery.

With competition high due to an increased supply, concessions are also predominant within the market. The average concession within the market drops asking rent another 3.2%, much higher than the national average of 1%. Top-of-the-line apartments in Huntsville can be rented at a particular discount compared to high-end assets nationally. Properties rated 4 & 5 Star in Huntsville have average asking rents of only \$1,430/month, compared to the national benchmark of \$2,120/month. Considering that median household incomes in Huntsville are above the national average, Huntsville holds a significant affordability advantage compared to most markets nationwide.

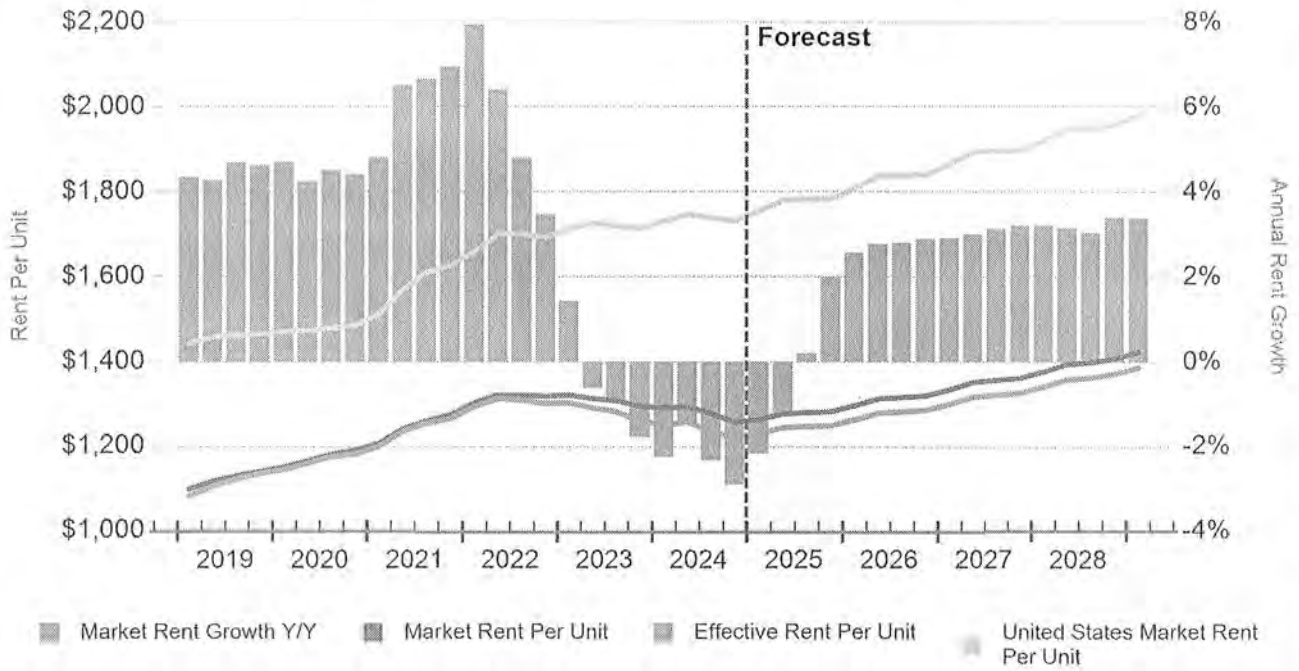
DAILY ASKING RENT PER SF



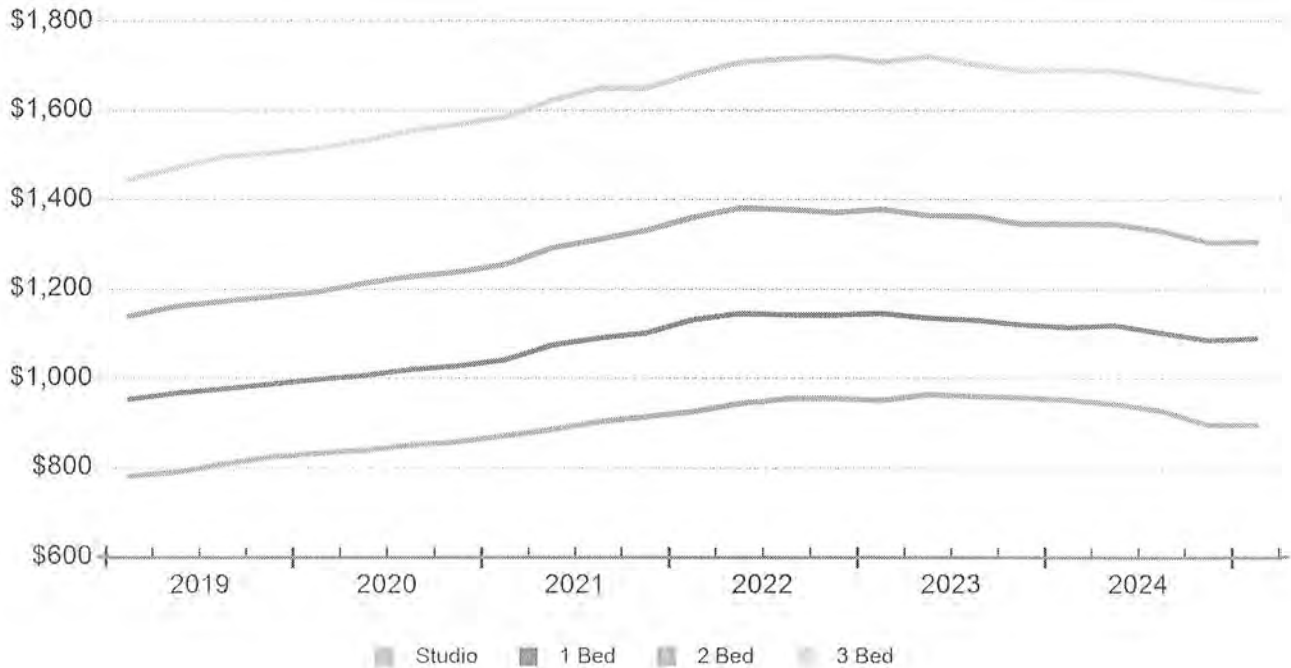
Rent

Huntsville Multi-Family

MARKET RENT PER UNIT & RENT GROWTH



MARKET RENT PER UNIT BY BEDROOM



Rent

Huntsville Multi-Family

4 & 5 STAR EXPENSES PER SF (ANNUAL)

Market / Cluster	Operating Expenses								Capital Expenditures			Total
	Mgmt.	Admin.	Payroll	Water	Utilities	Maint.	Insurance	Taxes	Appliance	Structural	Other	
Huntsville	\$0.41	\$0.90	\$0.64	\$0.32	\$0.52	\$0.64	\$0.33	\$0.54	\$0.06	\$0.19	\$0.38	\$4.93
Central	\$0.42	\$0.94	\$0.66	\$0.34	\$0.55	\$0.67	\$0.34	\$0.56	\$0.07	\$0.21	\$0.39	\$5.15
Limestone County	\$0.42	\$0.94	\$0.66	\$0.34	\$0.55	\$0.67	\$0.34	\$0.56	\$0.07	\$0.21	\$0.39	\$5.15
Madison/Airport	\$0.40	\$0.83	\$0.60	\$0.28	\$0.49	\$0.60	\$0.32	\$0.51	\$0.06	\$0.16	\$0.36	\$4.61
South Madison Cou...	\$0.42	\$0.94	\$0.66	\$0.34	\$0.55	\$0.67	\$0.34	\$0.56	\$0.07	\$0.21	\$0.39	\$5.15
University/Research...	\$0.42	\$0.94	\$0.66	\$0.34	\$0.55	\$0.67	\$0.34	\$0.56	\$0.07	\$0.21	\$0.39	\$5.15

Expenses are estimated using NCREIF, IREM, and CoStar data using the narrowest possible geographical definition from Zip Code to region.

3 STAR EXPENSES PER SF (ANNUAL)

Market / Cluster	Operating Expenses								Capital Expenditures			Total
	Mgmt.	Admin.	Payroll	Water	Utilities	Maint.	Insurance	Taxes	Appliance	Structural	Other	
Huntsville	\$0.34	\$0.52	\$0.42	\$0.12	\$0.31	\$0.41	\$0.26	\$0.37	\$0.04	\$0.05	\$0.30	\$3.14
Central	\$0.33	\$0.49	\$0.40	\$0.11	\$0.29	\$0.39	\$0.25	\$0.32	\$0.04	\$0.03	\$0.29	\$2.94
Limestone County	\$0.34	\$0.50	\$0.41	\$0.11	\$0.30	\$0.39	\$0.25	\$0.38	\$0.04	\$0.03	\$0.29	\$3.04
Madison/Airport	\$0.36	\$0.59	\$0.46	\$0.16	\$0.35	\$0.45	\$0.27	\$0.41	\$0.04	\$0.07	\$0.31	\$3.47
Outlying Madison C...	\$0.33	\$0.49	\$0.40	\$0.11	\$0.29	\$0.39	\$0.25	\$0.34	\$0.04	\$0.03	\$0.29	\$2.96
South Madison Cou...	\$0.34	\$0.50	\$0.41	\$0.11	\$0.30	\$0.39	\$0.25	\$0.38	\$0.04	\$0.03	\$0.29	\$3.04
Southwest	\$0.33	\$0.49	\$0.41	\$0.11	\$0.29	\$0.39	\$0.25	\$0.35	\$0.04	\$0.03	\$0.29	\$2.98
University/Research...	\$0.34	\$0.56	\$0.44	\$0.14	\$0.33	\$0.43	\$0.26	\$0.37	\$0.04	\$0.06	\$0.30	\$3.27

Expenses are estimated using NCREIF, IREM, and CoStar data using the narrowest possible geographical definition from Zip Code to region.

1 & 2 STAR EXPENSES PER SF (ANNUAL)

Market / Cluster	Operating Expenses								Capital Expenditures			Total
	Mgmt.	Admin.	Payroll	Water	Utilities	Maint.	Insurance	Taxes	Appliance	Structural	Other	
Huntsville	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.38	\$0.23	\$0.23	\$0.03	\$0.03	\$0.28	\$2.72
Central	\$0.31	\$0.48	\$0.40	\$0.11	\$0.29	\$0.38	\$0.24	\$0.27	\$0.03	\$0.03	\$0.28	\$2.82
Limestone County	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.37	\$0.23	\$0.21	\$0.03	\$0.03	\$0.28	\$2.69
Madison/Airport	\$0.31	\$0.48	\$0.39	\$0.11	\$0.29	\$0.38	\$0.24	\$0.26	\$0.03	\$0.03	\$0.28	\$2.80
Outlying Madison C...	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.38	\$0.23	\$0.23	\$0.03	\$0.03	\$0.28	\$2.72
South Madison Cou...	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.37	\$0.23	\$0.21	\$0.03	\$0.03	\$0.28	\$2.69
Southwest	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.37	\$0.23	\$0.21	\$0.03	\$0.03	\$0.28	\$2.69
University/Research...	\$0.30	\$0.47	\$0.39	\$0.10	\$0.28	\$0.37	\$0.23	\$0.21	\$0.03	\$0.03	\$0.28	\$2.69

Expenses are estimated using NCREIF, IREM, and CoStar data using the narrowest possible geographical definition from Zip Code to region.

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Construction

Huntsville Multi-Family

There has been a high level of construction activity in the Huntsville multifamily market over the past year, but that is changing. Encouraged by Huntsville's strong demographic growth and favorable long-term economic outlook, net deliveries in the market have totaled 6,000 units over the past 12 months. That level is triple the market's 10-year annual average of 2,100.

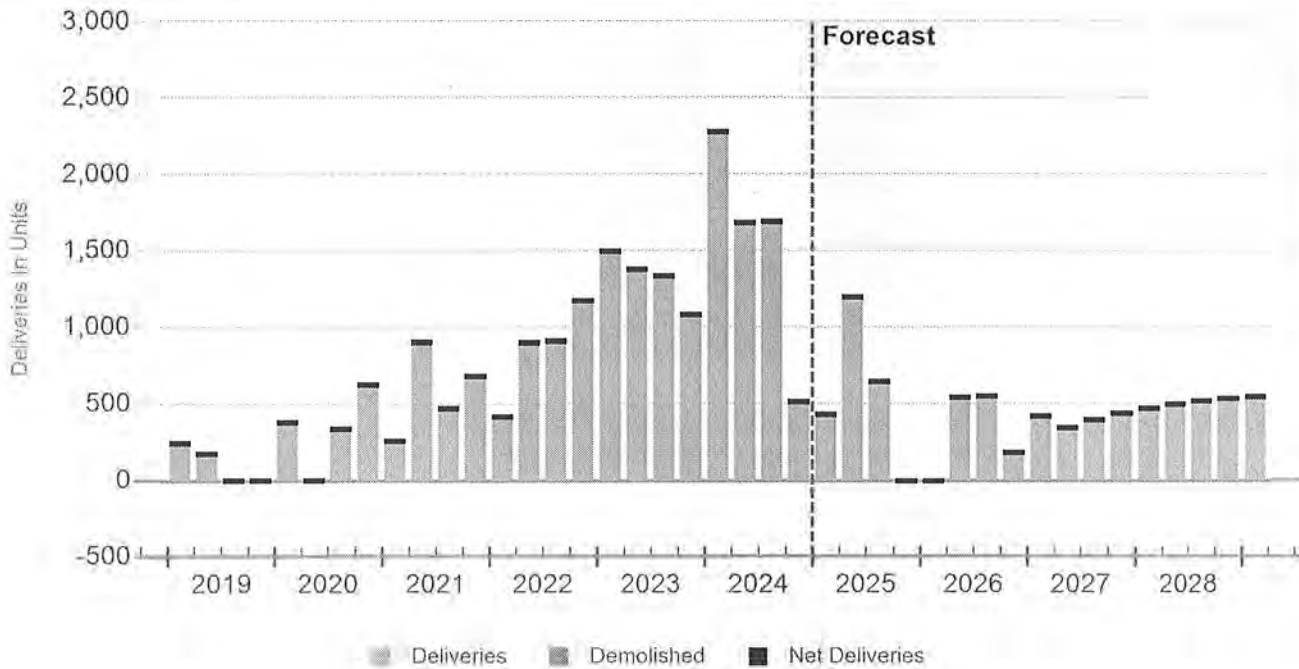
Activity has been spread out geographically, with the submarkets of Madison/Airport, Limestone County, and University/Research Park all receiving over 1,000 units. Notable recent deliveries include The Bradford mid-rise apartments, a 250-unit property delivered during Q3. The average asking rent at Stella at Five Points is about \$1,600/month.

Some possible good news for owners, as the wave of new construction has likely peaked. As Huntsville's vacancy rate rose and interest rates have made it more difficult to finance new projects, construction starts have

moderated. As a result, Huntsville's construction pipeline has been declining as construction starts have also slowed. There are currently 3,000 units under construction here, which has been steadily declining since the start of 2023.

Developers in Huntsville often seek to attract renters working in the market's well-paying technology-related, government, and R&D sectors. Large mixed-use developments such as MidCity and Town Madison are designed to appeal to higher-income residents who are willing to pay premiums for a live/work/play environment. MidCity, which replaced the vacant Madison Square Mall, is a \$350 million project in the University/Research Park Submarket that will include multifamily, retail, office, and hotel components once it's completed. Two apartment properties have been constructed within the development last year: the 296-unit Metronome at MidCity and the 244-unit Encore at MidCity.

DELIVERIES & DEMOLITIONS



Under Construction Properties

Huntsville Multi-Family

Properties

Units

Percent of Inventory

Avg. No. Units

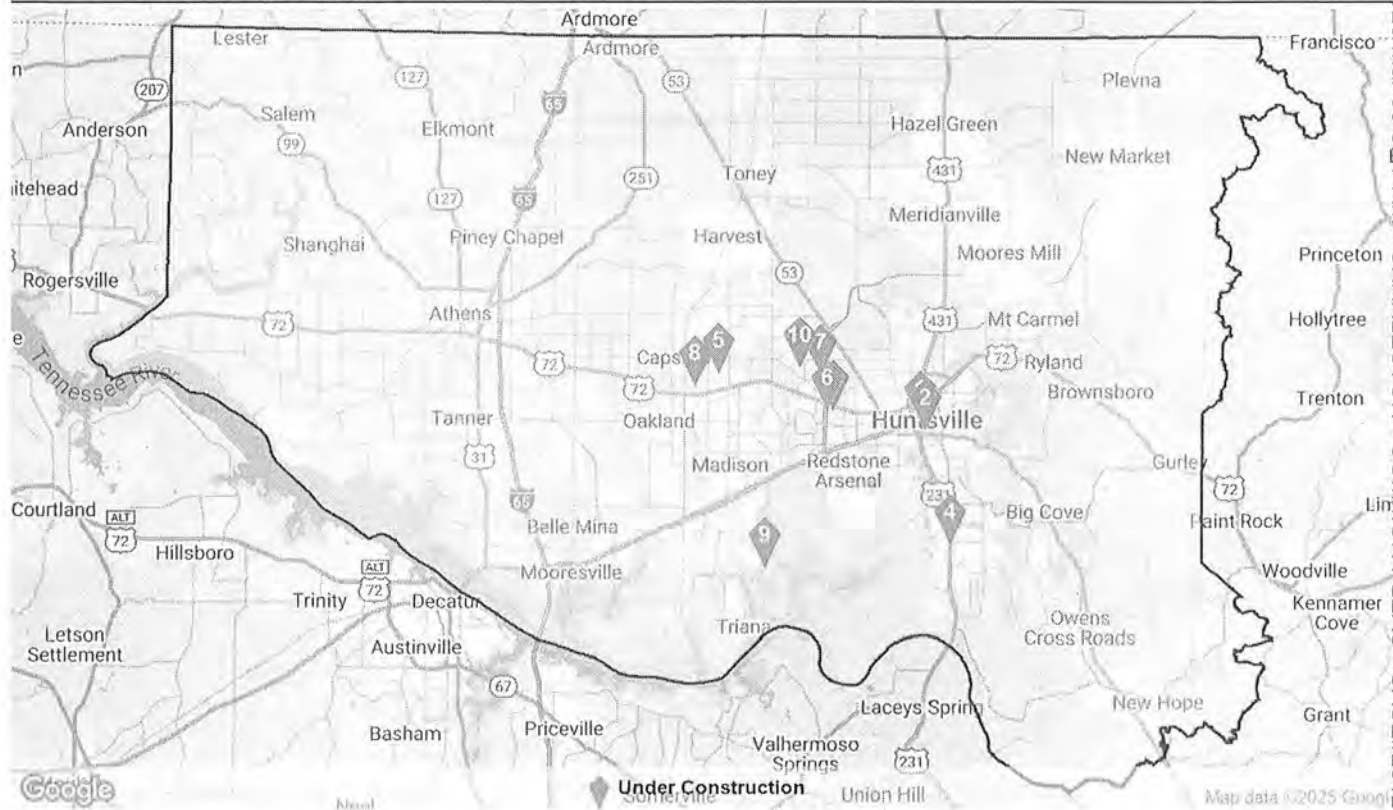
10

3,010

6.4%

301

UNDER CONSTRUCTION PROPERTIES



UNDER CONSTRUCTION

Property Name/Address	Rating	Units	Stories	Start	Complete	Developer/Owner
1 Front Row 512 Clinton Ave W	★★★★★	545	6	Apr 2024	May 2026	Rocket Development Partners Essex Capital Partners, Ltd.
2 Vista at Councill Square 600 Saint Clair Ave SW	★★★★★	332	6	Oct 2023	May 2025	Rockefeller Group Rockefeller Group
3 The Wellory 5905 University Dr NW	★★★★★	328	6	Jan 2023	Aug 2025	RCP Companies -
4 The Jessam at Hays Farm 850 Haysland Rd SW	★★★★★	318	3	Oct 2023	Jun 2025	Camden Securities Company -
5 The Collier at Clift Farm 560 Jack Clift Blvd	★★★★★	316	2	Jun 2023	Sep 2025	- -
6 Anthem House Apartments 5909 University Dr NW	★★★★★	304	3	Jun 2024	Jun 2025	- Opportunity Alabama, Inc
7 Boardwalk at Research... 5736 Oakwood Rd NW	★★★★★	287	4	May 2022	Feb 2025	- Zimmer Development Company

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Under Construction Properties

Huntsville Multi-Family

UNDER CONSTRUCTION

	Property Name/Address	Rating	Units	Stories	Start	Complete	Developer/Owner
8	Solstice 5541 Promenade Point Pky	★★★★☆	238	3	Oct 2023	Apr 2025	SCorUSA - Solstice SCorUSA, LLC
9	Nestledown Farms 114 Lowville Lane	★★★★☆	199	2	Mar 2023	Mar 2025	- Jim Chapman Communities
10	Lakeside Residences 100 Stanwich Rd	★★★★☆	143	2	Feb 2023	Feb 2025	- Elmington Capital Group

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Sales

Huntsville Multi-Family

Like in many markets around the country, multifamily sales volume has been unusually low over the past year as investors grapple with high interest rates, a wide bid-ask spread, and elevated vacancy rates. Transaction volume in the Huntsville multifamily market has totaled just \$104 million over the past 12 months. That level is a fraction of the market's 10-year annual average of \$228 million.

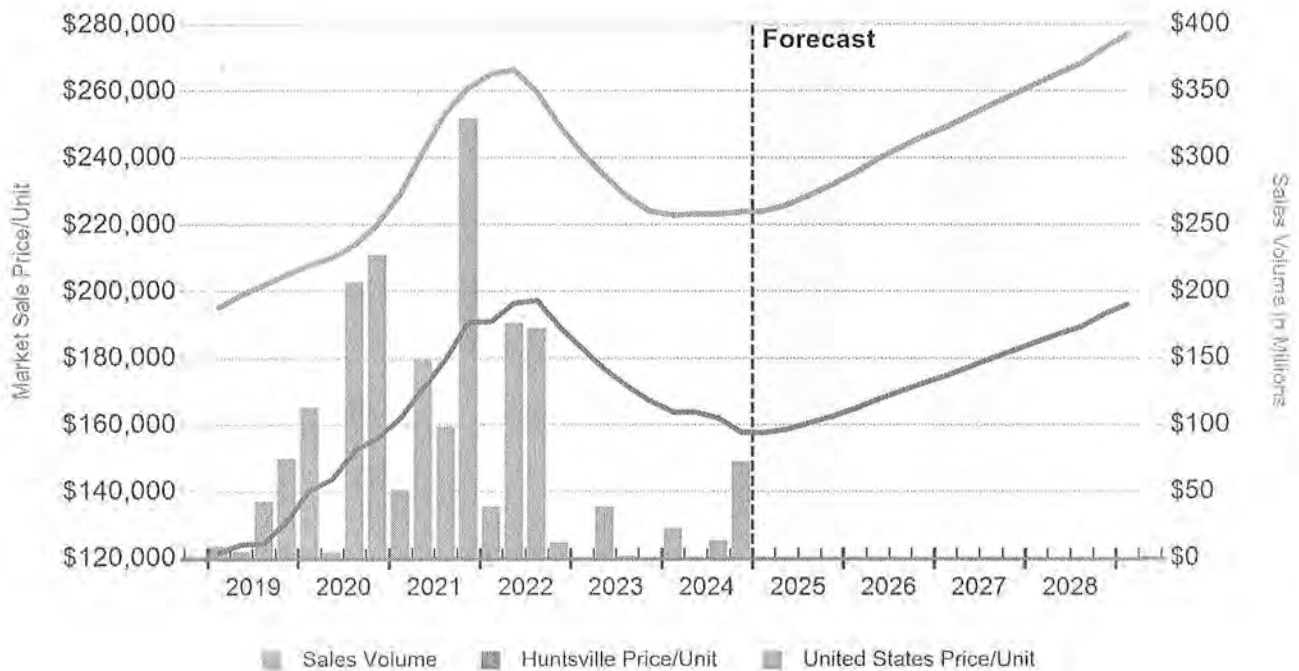
In addition to below-average dollar volume over the past year, the number of units sold in Huntsville has also declined. The sales that do take place often involve out-of-state players who are drawn to Huntsville because of its strong population growth and relatively high income levels, as well as its steady absorption and comparatively

lower acquisition costs.

Most multifamily sales in Huntsville are relatively small. Over the past year, the average transaction size in the Huntsville market was \$4.1 million, with an average price of \$140,000/unit.

Over the past decade, the suburban Madison/Airport Submarket has accounted for about half of all multifamily investment in Huntsville because of its large concentration of recently built or newly renovated apartment buildings. Madison/Airport is on the west side of the market, and more recently, Limestone County, which is further west, has joined Madison/Airport as one of Huntsville's most heavily traded submarkets.

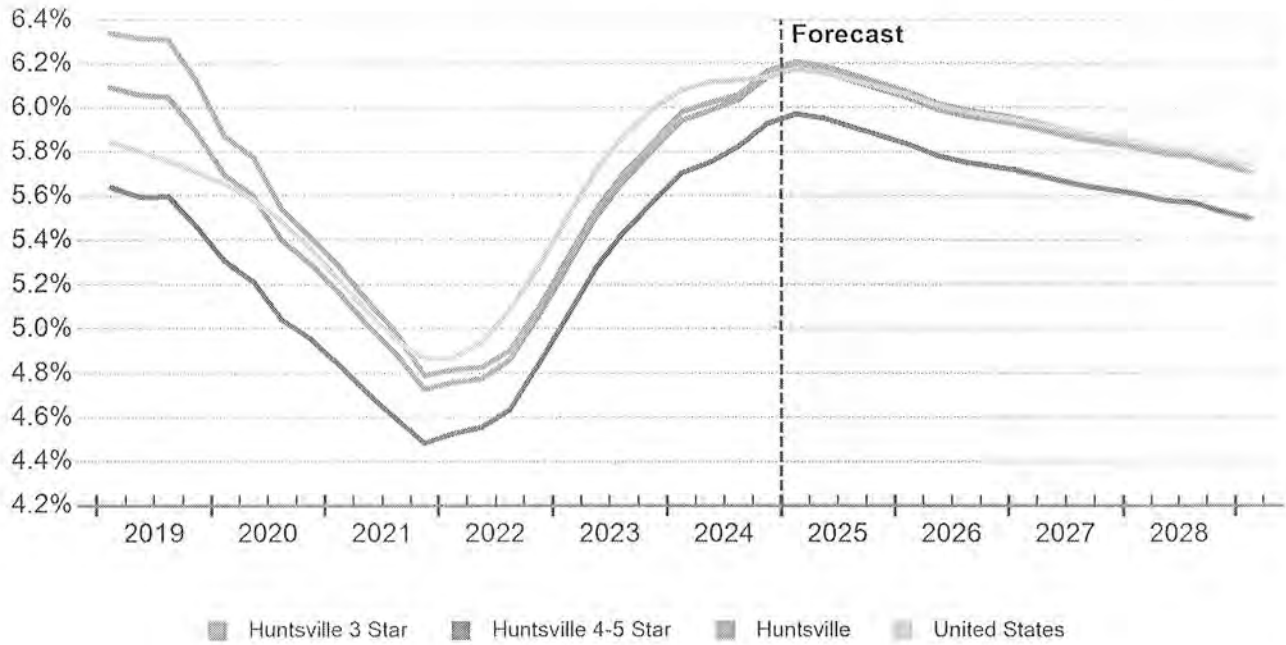
SALES VOLUME & MARKET SALE PRICE PER UNIT



Sales

Huntsville Multi-Family

MARKET CAP RATE



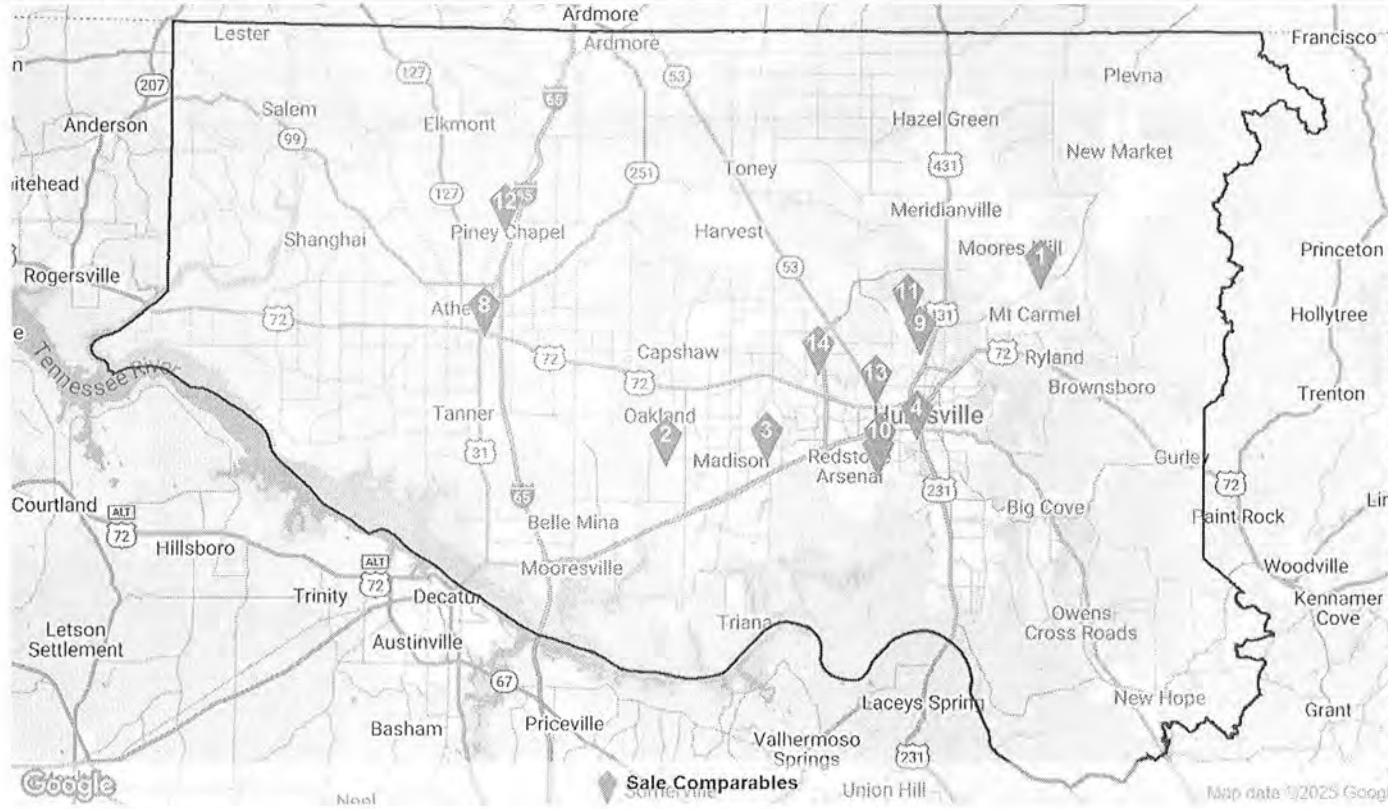
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Sales Past 12 Months

Huntsville Multi-Family

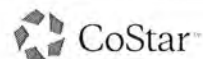
Sale Comparables	Avg. Price/Unit (thous.)	Average Price (mil.)	Average Vacancy at Sale
14	\$138	\$8.5	28.6%

SALE COMPARABLE LOCATIONS



SALE COMPARABLES SUMMARY STATISTICS

Sales Attributes	Low	Average	Median	High
Sale Price	\$405,000	\$8,452,371	\$1,207,742	\$60,920,000
Price/Unit	\$33,480	\$138,214	\$85,714	\$230,757
Cap Rate	3.0%	6.5%	6.8%	8.4%
Vacancy Rate At Sale	0%	28.6%	10.4%	51.2%
Time Since Sale in Months	3.4	6.3	6.2	12.0
Property Attributes	Low	Average	Median	High
Property Size in Units	5	79	15	316
Number of Floors	1	1	2	3
Average Unit SF	342	801	694	1,700
Year Built	1960	1983	1976	2024
Star Rating	★★★★★	★★★☆☆ 2.7	★★★★★	★★★★★



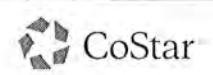
Sales Past 12 Months

Huntsville Multi-Family

RECENT SIGNIFICANT SALES

Property Name/Address	Property Information				Sale Information				
	Rating	Yr Built	Units	Vacancy	Sale Date	Price	Price/Unit	Price/SF	
1 The Winchester 4450 Friends Crossing	★★★★★	2024	264	38.3%	10/2/2024	\$60,920,000	\$230,757	\$305	
2 St. Andrews Villas 29789 Hardiman Rd	★★★★★	2021	96	22.9%	1/25/2024	\$21,650,000	\$225,520	\$86	
3 Shelton Park Apartments 194 Shelton Rd	★★★★★	1984	100	6.1%	9/11/2024	\$10,500,000	\$105,000	\$72	
4 Mirabeau Apartments 2610 Mirabeau Dr	★★★★★	1965	227	51.2%	10/11/2024	\$7,600,000	\$33,480	\$45	
5 4311 & 4113 Patton Rd SW	★★★★★	1965	31	6.5%	10/10/2024	\$2,880,000	\$92,903	\$161	
6 3915 McVay St	★★★★★	1975	16	6.3%	7/10/2024	\$1,295,000	\$80,937	\$180	
7 4313 Patton Rd SW	★★★★★	1977	12	8.3%	10/7/2024	\$1,207,742	\$100,645	\$294	
8 Cloverleaf Apartments 206-208 Cloverleaf Dr	★★★★★	1960	14	14.3%	2/29/2024	\$1,200,000	\$85,714	\$46	
9 3410 Elizabeth St NW	★★★★★	1960	8	12.5%	7/24/2024	\$675,000	\$84,375	\$141	
10 McVay Manor 3815 McVay St	★★★★★	1960	8	12.5%	7/15/2024	\$620,000	\$77,500	\$179	
11 5003 Chancellor Sq NW	★★★★★	2006	8	0%	3/20/2024	\$493,077	\$61,634	\$36	
12 Elkton Apartments 20609 Elkton Rd	★★★★★	1977	5	0%	9/27/2024	\$435,000	\$87,000	\$127	
13 4009 Marie Ave NW	★★★★★	1974	6	0%	5/31/2024	\$405,000	\$67,500	\$145	
14 Ariza Research 5771 Oakwood Rd NW	★★★★★	2023	316	24.1%	6/27/2024	-	-	-	

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Economy

Huntsville Multi-Family

Huntsville has experienced strong housing growth over the last several years, including almost 20,000 new single-family housing starts and over 15,000 multifamily units constructed in the previous 5 years. During that same period, the overall MSA population has increased by over 60,000 people, a 14% increase. This growth has helped create a tight real estate market. Thanks to robust demand, the retail market's availability rate sits well below the national average.

The market benefits greatly from the presence of the U.S. Army/Redstone Arsenal base. The base employs about 50,000 people, including active-duty soldiers, civilians, and contract employees. The presence of the military base has attracted major government defense contractors in the tech and advanced manufacturing sectors to Huntsville, including Boeing, Polaris, NASA, Lockheed Martin, GE Aviation, and Northrop Grumman.

The largest economic driver in the metro area is the Toyota-Mazda manufacturing facility, the company's largest engine producer in North America. It employs over 2,000 workers who help supply engines to seven Toyota vehicle plants in North America. Earlier this year,

Toyota announced a \$282 million plant expansion, which is expected to add more than 350 jobs to the area.

The Toyota-Mazda plant has already created spin-off demand for industrial space. Multiple automotive suppliers and manufacturers have announced plans to move to Huntsville to help service increased demand from the plant. These moves should continue supporting manufacturing and trade/transportation/warehousing employment growth in the coming years.

Huntsville's economy also benefits from the 7,000-acre Port of Huntsville, which includes the Huntsville International Airport and International Intermodal Center. The intermodal center in the Global Logistics Park contains the Norfolk Southern Railway and has a stacking capacity of over 800 loads. Norfolk Southern recently announced a \$200 million investment to grow capacity on a key rail line in Alabama, the 3B Corridor, which connects northern and central Alabama markets to the Port of Mobile. Additionally, I-65 runs through Huntsville, connecting the metro to larger markets such as Nashville and Birmingham.

HUNTSVILLE EMPLOYMENT BY INDUSTRY IN THOUSANDS

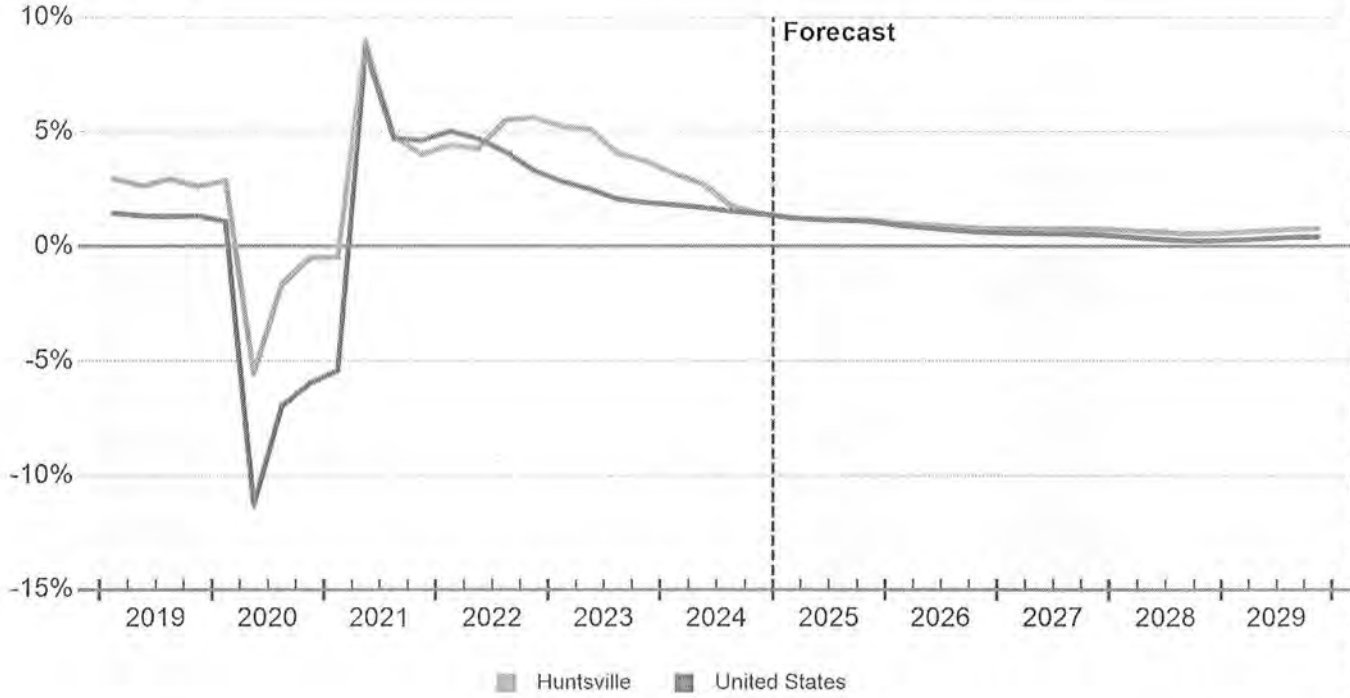
Industry	CURRENT JOBS		CURRENT GROWTH		10 YR HISTORICAL		5 YR FORECAST	
	Jobs	LQ	Market	US	Market	US	Market	US
Manufacturing	36	1.6	0.56%	-0.41%	4.34%	0.49%	0.79%	0.31%
Trade, Transportation and Utilities	40	0.8	1.85%	0.63%	2.19%	0.92%	0.72%	0.30%
Retail Trade	27	1.0	1.17%	0.23%	1.45%	0.13%	0.75%	0.21%
Financial Activities	9	0.5	0.35%	0.62%	3.72%	1.45%	0.77%	0.47%
Government	58	1.4	2.07%	1.94%	1.71%	0.69%	0.55%	0.42%
Natural Resources, Mining and Construction	11	0.7	3.00%	2.30%	3.17%	2.24%	0.89%	0.82%
Education and Health Services	25	0.5	3.94%	3.60%	2.62%	2.12%	1.62%	0.76%
Professional and Business Services	69	1.7	-0.29%	0.36%	3.21%	1.69%	0.76%	0.50%
Information	3	0.5	2.69%	-0.52%	0.68%	0.89%	0.31%	0.41%
Leisure and Hospitality	24	0.8	2.72%	1.66%	2.26%	1.39%	0.86%	0.99%
Other Services	9	0.9	-0.42%	1.13%	1.32%	0.59%	0.35%	0.35%
Total Employment	285	1.0	1.38%	1.38%	2.66%	1.29%	0.79%	0.56%

Source: Oxford Economics
LQ = Location Quotient

Economy

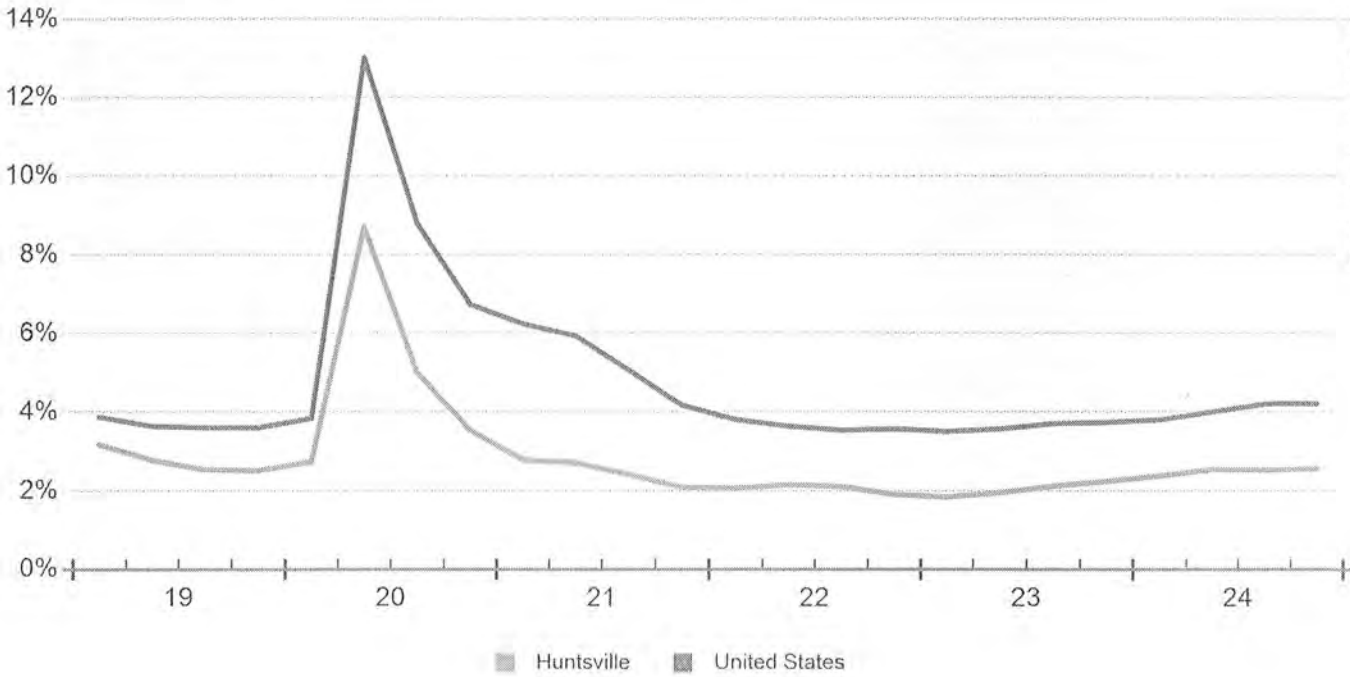
Huntsville Multi-Family

JOB GROWTH (YOY)



Source: Oxford Economics

UNEMPLOYMENT RATE (%)

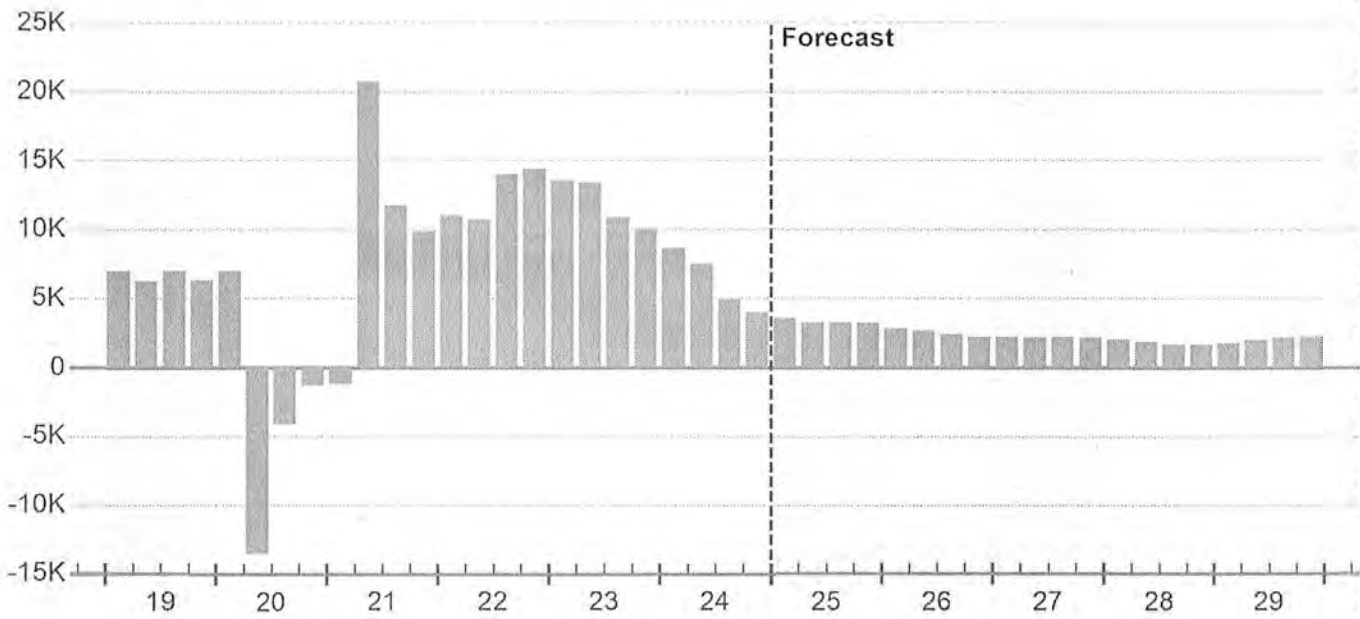


Economy

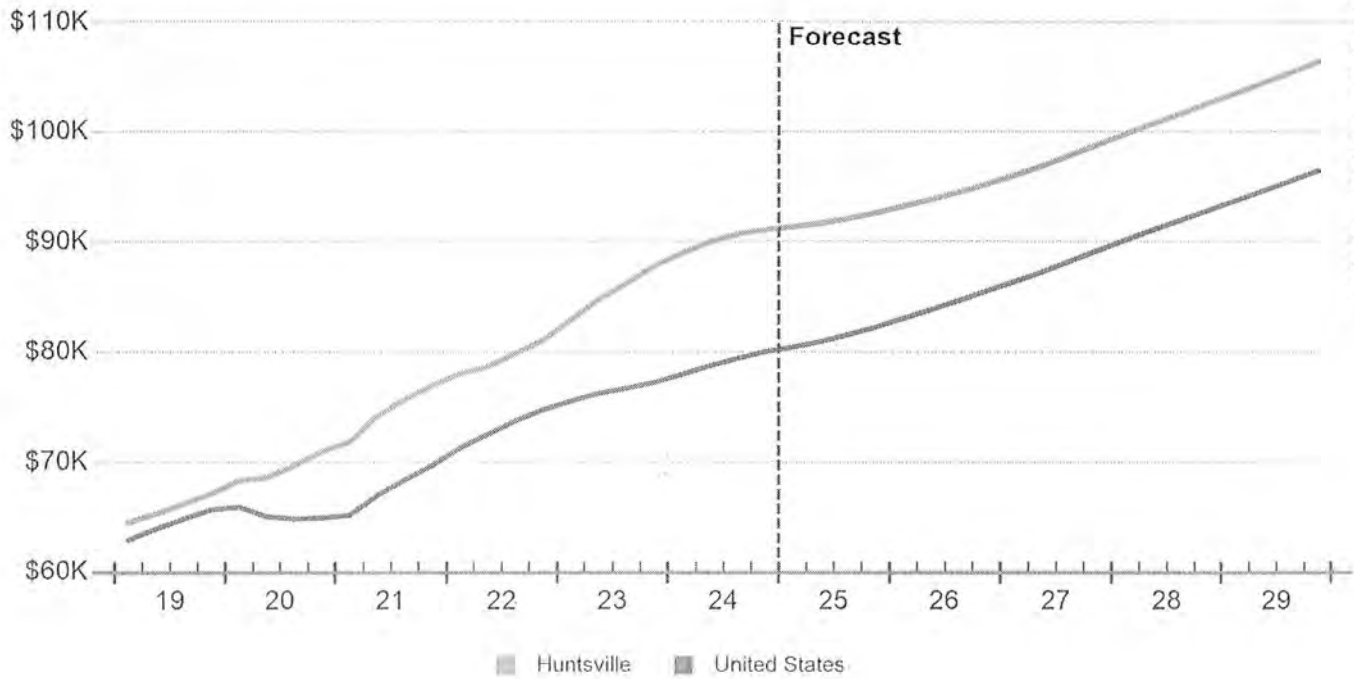
Huntsville Multi-Family

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NET EMPLOYMENT CHANGE (YOY)



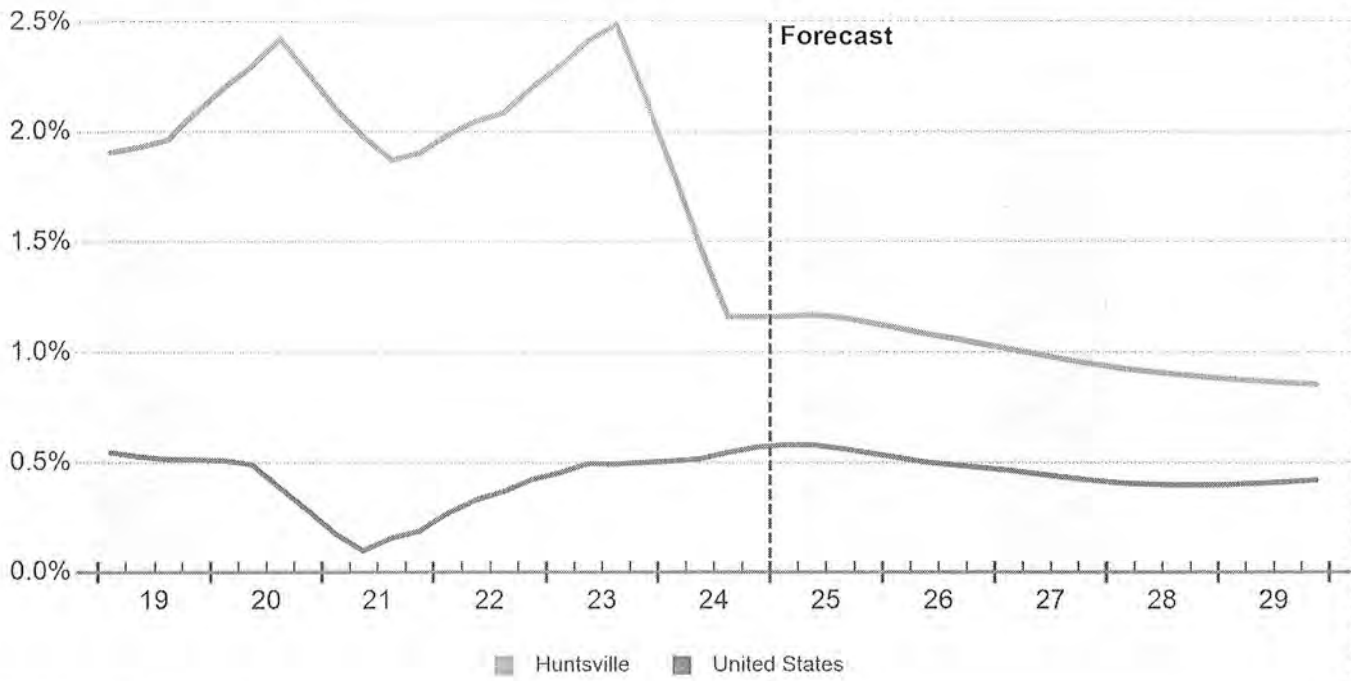
MEDIAN HOUSEHOLD INCOME



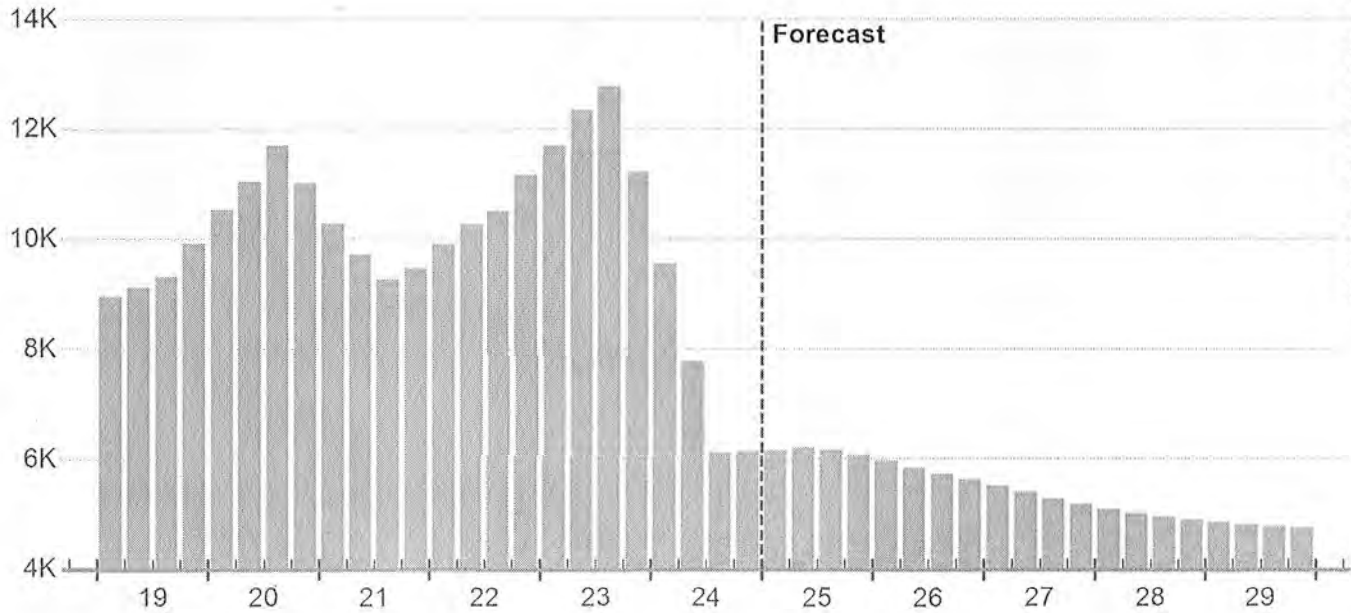
Economy

Huntsville Multi-Family

POPULATION GROWTH (YOY %)



NET POPULATION CHANGE (YOY)



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Economy

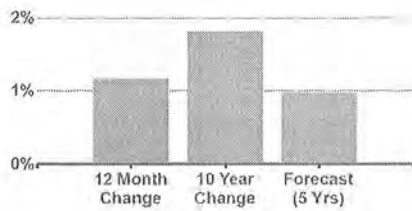
Huntsville Multi-Family

DEMOGRAPHIC TRENDS

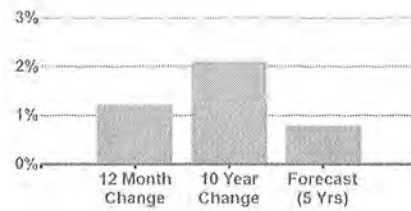
Demographic Category	Current Level		12 Month Change		10 Year Change		5 Year Forecast	
	Metro	US	Metro	US	Metro	US	Metro	US
Population	535,343	337,362,719	1.2%	0.6%	1.8%	0.5%	1.0%	0.5%
Households	216,167	132,542,141	1.3%	0.7%	1.9%	0.9%	1.1%	0.5%
Median Household Income	\$91,149	\$80,113	3.5%	3.5%	4.9%	4.1%	3.2%	3.8%
Labor Force	262,660	168,564,641	1.2%	0.5%	2.1%	0.7%	0.8%	0.4%
Unemployment	2.6%	4.2%	0.3%	0.5%	-0.3%	-0.1%	-	-

Source: Oxford Economics

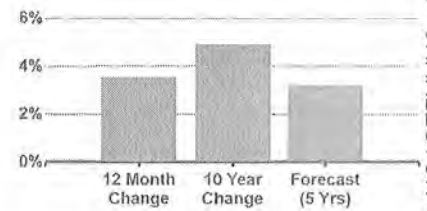
POPULATION GROWTH



LABOR FORCE GROWTH



INCOME GROWTH



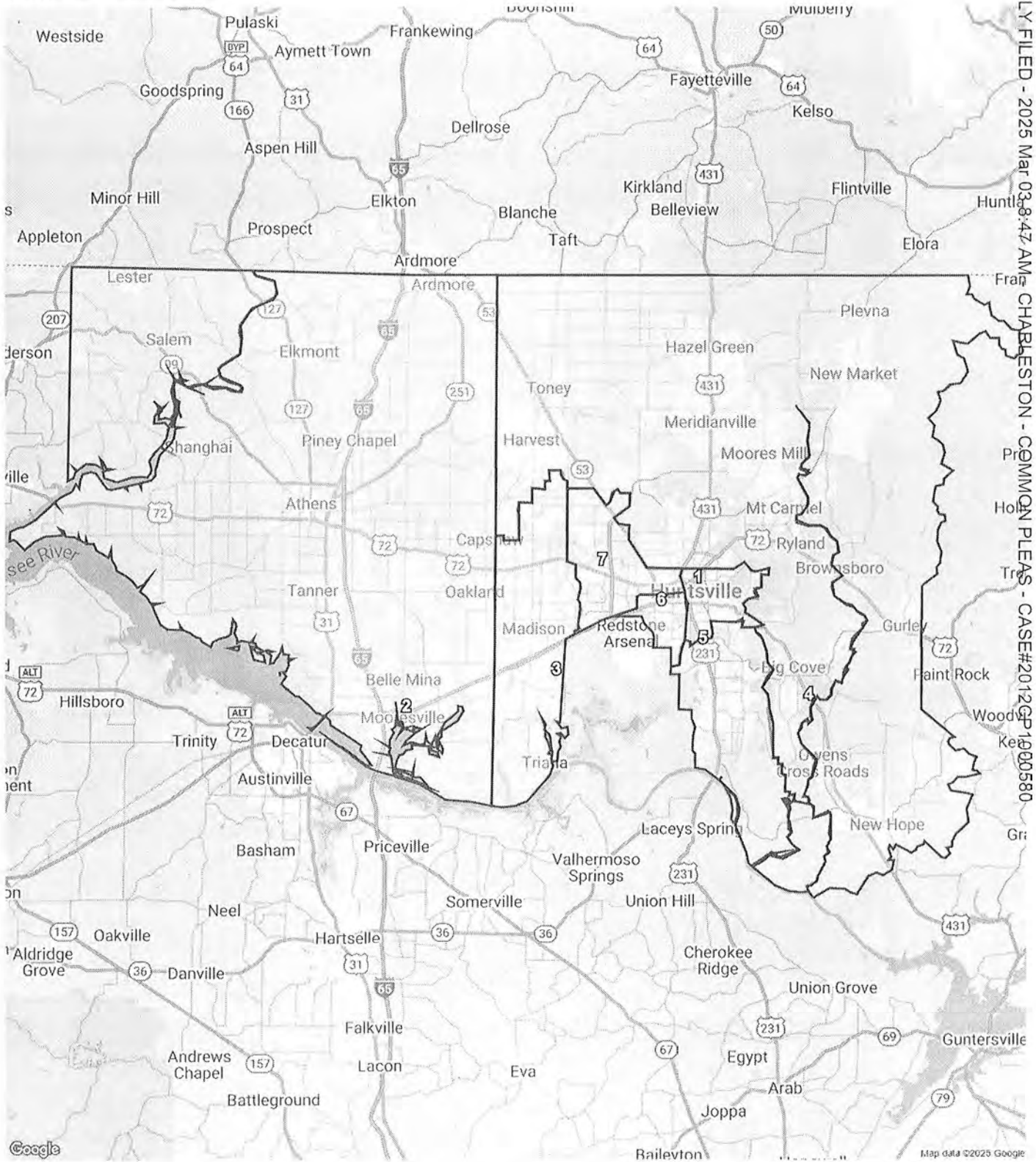
Source: Oxford Economics

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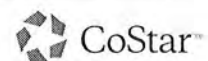
Submarkets

Huntsville Multi-Family

HUNTSVILLE SUBMARKETS



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Submarkets

Huntsville Multi-Family

SUBMARKET INVENTORY

No.	Submarket	Inventory				12 Month Deliveries				Under Construction			
		Bldgs	Units	% Market	Rank	Bldgs	Units	Percent	Rank	Bldgs	Units	Percent	Rank
1	Central	24	2,427	5.1%	7	1	352	14.5%	5	2	877	36.1%	2
2	Limestone County	38	4,901	10.3%	4	6	1,458	29.7%	2	0	0	0%	-
3	Madison/Airport	62	13,672	28.8%	1	7	1,812	13.3%	1	3	753	5.5%	3
4	Outlying Madison County	33	3,481	7.3%	6	3	572	16.4%	4	0	0	0%	-
5	South Madison County	28	5,432	11.5%	3	1	329	6.1%	6	1	318	5.9%	4
6	Southwest	72	3,967	8.4%	5	1	80	2.0%	7	0	0	0%	-
7	University/Research Park	72	13,510	28.5%	2	8	1,405	10.4%	3	4	1,062	7.9%	1

SUBMARKET RENT

No.	Market	Asking Rents				Effective Rents					
		Per Unit	Per SF	Rank	Yr. Growth	Per Unit	Per SF	Rank	Yr. Growth	Concession	Rank
1	Central	\$1,357	\$1.52	1	-3.9%	\$1,314	\$1.47	1	-5.1%	3.2%	3
2	Limestone County	\$1,357	\$1.22	5	-2.3%	\$1,298	\$1.17	6	-4.7%	4.3%	1
3	Madison/Airport	\$1,324	\$1.24	4	-4.1%	\$1,293	\$1.21	5	-3.6%	2.4%	5
4	Outlying Madison County	\$1,283	\$1.30	3	-1.2%	\$1,243	\$1.25	3	0.3%	3.2%	2
5	South Madison County	\$1,160	\$1.20	7	-0.2%	\$1,127	\$1.16	7	-1.1%	2.8%	4
6	Southwest	\$918	\$1.22	6	-3.2%	\$911	\$1.21	4	-2.4%	0.9%	7
7	University/Research Park	\$1,264	\$1.31	2	-2.6%	\$1,237	\$1.28	2	-1.6%	2.1%	6

SUBMARKET VACANCY & ABSORPTION

No.	Submarket	Vacancy			12 Month Absorption			
		Units	Percent	Rank	Units	% of Inv	Rank	Construc. Ratio
1	Central	463	19.1%	5	53	2.2%	7	6.7
2	Limestone County	1,530	31.2%	7	1,304	26.6%	2	0.8
3	Madison/Airport	2,363	17.3%	3	1,379	10.1%	1	0.9
4	Outlying Madison County	712	20.5%	6	775	22.3%	4	0.5
5	South Madison County	1,017	18.7%	4	60	1.1%	6	5.5
6	Southwest	408	10.3%	1	250	6.3%	5	-
7	University/Research Park	2,047	15.2%	2	998	7.4%	3	0.9

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Appendix

Huntsville Multi-Family

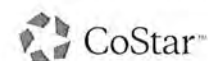
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OVERALL SUPPLY & DEMAND

Year	Inventory			Absorption		
	Units	Growth	% Growth	Units	% of Inv	Construction Ratio
2029	56,322	2,224	4.1%	2,199	3.9%	1.0
2028	54,098	2,017	3.9%	2,274	4.2%	0.9
2027	52,081	1,595	3.2%	2,141	4.1%	0.7
2026	50,486	1,266	2.6%	2,250	4.5%	0.6
2025	49,220	2,262	4.8%	3,211	6.5%	0.7
YTD	47,390	432	0.9%	413	0.9%	1.0
2024	46,958	6,155	15.1%	4,612	9.8%	1.3
2023	40,803	5,282	14.9%	2,936	7.2%	1.8
2022	35,521	3,387	10.5%	1,708	4.8%	2.0
2021	32,134	2,307	7.7%	1,466	4.6%	1.6
2020	29,827	1,338	4.7%	1,020	3.4%	1.3
2019	28,489	416	1.5%	758	2.7%	0.5
2018	28,073	510	1.9%	670	2.4%	0.8
2017	27,563	300	1.1%	469	1.7%	0.6
2016	27,263	737	2.8%	754	2.8%	1.0
2015	26,526	257	1.0%	860	3.2%	0.3
2014	26,269	1,160	4.6%	698	2.7%	1.7
2013	25,109	796	3.3%	174	0.7%	4.6

4 & 5 STAR SUPPLY & DEMAND

Year	Inventory			Absorption		
	Units	Growth	% Growth	Units	% of Inv	Construction Ratio
2029	30,198	2,243	8.0%	2,103	7.0%	1.1
2028	27,955	2,036	7.9%	2,181	7.8%	0.9
2027	25,919	1,471	6.0%	1,853	7.1%	0.8
2026	24,448	1,286	5.6%	1,789	7.3%	0.7
2025	23,162	1,730	8.1%	2,406	10.4%	0.7
YTD	21,630	198	0.9%	355	1.6%	0.6
2024	21,432	4,814	29.0%	3,587	16.7%	1.3
2023	16,618	4,043	32.2%	2,197	13.2%	1.8
2022	12,575	2,130	20.4%	1,657	13.2%	1.3
2021	10,445	2,161	26.1%	1,764	16.9%	1.2
2020	8,284	1,338	19.3%	694	8.4%	1.9
2019	6,946	416	6.4%	400	5.8%	1.0
2018	6,530	178	2.8%	307	4.7%	0.6
2017	6,352	300	5.0%	261	4.1%	1.1
2016	6,052	725	13.6%	855	14.1%	0.8
2015	5,327	273	5.4%	680	12.8%	0.4
2014	5,054	943	22.9%	558	11.0%	1.7
2013	4,111	480	13.2%	33	0.8%	14.5



Appendix

Huntsville Multi-Family

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3 STAR SUPPLY & DEMAND

Year	Inventory			Absorption		
	Units	Growth	% Growth	Units	% of Inv	Construction Ratio
2029	21,209	0	0%	93	0.4%	0
2028	21,209	0	0%	105	0.5%	0
2027	21,209	143	0.7%	311	1.5%	0.5
2026	21,066	0	0%	485	2.3%	0
2025	21,066	538	2.6%	816	3.9%	0.7
YTD	20,762	234	1.1%	60	0.3%	3.9
2024	20,528	1,341	7.0%	1,094	5.3%	1.2
2023	19,187	1,239	6.9%	790	4.1%	1.6
2022	17,948	1,257	7.5%	101	0.6%	12.4
2021	16,691	146	0.9%	(305)	-1.8%	-
2020	16,545	0	0%	277	1.7%	0
2019	16,545	0	0%	242	1.5%	0
2018	16,545	332	2.0%	300	1.8%	1.1
2017	16,213	0	0%	157	1.0%	0
2016	16,213	12	0.1%	(109)	-0.7%	-
2015	16,201	26	0.2%	138	0.9%	0.2
2014	16,175	217	1.4%	150	0.9%	1.4
2013	15,958	316	2.0%	157	1.0%	2.0

1 & 2 STAR SUPPLY & DEMAND

Year	Inventory			Absorption		
	Units	Growth	% Growth	Units	% of Inv	Construction Ratio
2029	4,915	(19)	-0.4%	3	0.1%	-
2028	4,934	(19)	-0.4%	(12)	-0.2%	1.6
2027	4,953	(19)	-0.4%	(23)	-0.5%	0.8
2026	4,972	(20)	-0.4%	(24)	-0.5%	0.8
2025	4,992	(6)	-0.1%	(11)	-0.2%	0.5
YTD	4,998	0	0%	(2)	0%	0
2024	4,998	0	0%	(69)	-1.4%	0
2023	4,998	0	0%	(51)	-1.0%	0
2022	4,998	0	0%	(50)	-1.0%	0
2021	4,998	0	0%	7	0.1%	0
2020	4,998	0	0%	49	1.0%	0
2019	4,998	0	0%	116	2.3%	0
2018	4,998	0	0%	63	1.3%	0
2017	4,998	0	0%	51	1.0%	0
2016	4,998	0	0%	8	0.2%	0
2015	4,998	(42)	-0.8%	42	0.8%	-
2014	5,040	0	0%	(10)	-0.2%	0
2013	5,040	0	0%	(16)	-0.3%	0

Appendix

Huntsville Multi-Family

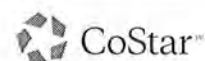
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OVERALL VACANCY & RENT

Year	Vacancy			Market Rent				Effective Rents	
	Units	Percent	Ppts Chg	Per Unit	Per SF	% Growth	Ppts Chg	Units	Per SF
2029	5,816	10.3%	(0.4)	\$1,449	\$1.46	2.9%	(0.5)	\$1,412	\$1.42
2028	5,792	10.7%	(0.9)	\$1,408	\$1.42	3.4%	0.2	\$1,372	\$1.38
2027	6,046	11.6%	(1.4)	\$1,362	\$1.37	3.2%	0.3	\$1,327	\$1.34
2026	6,591	13.1%	(2.3)	\$1,320	\$1.33	2.9%	0.9	\$1,286	\$1.30
2025	7,571	15.4%	(2.8)	\$1,283	\$1.29	2.0%	4.9	\$1,250	\$1.26
YTD	8,540	18.0%	(0.1)	\$1,259	\$1.27	-2.8%	0.1	\$1,226	\$1.24
2024	8,520	18.1%	1.0	\$1,258	\$1.27	-2.9%	(1.1)	\$1,222	\$1.23
2023	6,977	17.1%	4.1	\$1,296	\$1.31	-1.8%	(5.2)	\$1,261	\$1.27
2022	4,631	13.0%	3.9	\$1,319	\$1.33	3.5%	(3.5)	\$1,302	\$1.31
2021	2,948	9.2%	2.1	\$1,275	\$1.29	6.9%	2.5	\$1,266	\$1.28
2020	2,106	7.1%	0.8	\$1,192	\$1.20	4.4%	(0.2)	\$1,182	\$1.19
2019	1,789	6.3%	(1.3)	\$1,142	\$1.15	4.6%	0.1	\$1,137	\$1.15
2018	2,130	7.6%	(0.7)	\$1,092	\$1.10	4.5%	1.8	\$1,075	\$1.09
2017	2,287	8.3%	(0.7)	\$1,045	\$1.05	2.7%	0.3	\$1,022	\$1.03
2016	2,454	9.0%	(0.3)	\$1,018	\$1.03	2.4%	0.7	\$982	\$0.99
2015	2,472	9.3%	(2.4)	\$995	\$1	1.7%	0.3	\$959	\$0.97
2014	3,077	11.7%	1.3	\$978	\$0.99	1.4%	(0.3)	\$941	\$0.95
2013	2,615	10.4%	2.2	\$965	\$0.97	1.6%	-	\$945	\$0.95

4 & 5 STAR VACANCY & RENT

Year	Vacancy			Market Rent				Effective Rents	
	Units	Percent	Ppts Chg	Per Unit	Per SF	% Growth	Ppts Chg	Units	Per SF
2029	3,460	11.5%	(0.4)	\$1,642	\$1.58	2.8%	(0.5)	\$1,595	\$1.53
2028	3,322	11.9%	(1.5)	\$1,598	\$1.53	3.2%	0.2	\$1,552	\$1.49
2027	3,465	13.4%	(2.4)	\$1,549	\$1.49	3.0%	0.3	\$1,504	\$1.44
2026	3,846	15.7%	(3.0)	\$1,504	\$1.44	2.7%	0.3	\$1,460	\$1.40
2025	4,347	18.8%	(4.7)	\$1,463	\$1.40	2.4%	7.2	\$1,421	\$1.36
YTD	4,866	22.5%	(0.9)	\$1,434	\$1.38	-4.1%	0.6	\$1,393	\$1.34
2024	5,023	23.4%	0.6	\$1,428	\$1.37	-4.7%	(1.1)	\$1,380	\$1.32
2023	3,796	22.8%	7.3	\$1,499	\$1.44	-3.6%	(6.0)	\$1,446	\$1.39
2022	1,949	15.5%	1.4	\$1,555	\$1.49	2.3%	(3.7)	\$1,534	\$1.47
2021	1,472	14.1%	1.1	\$1,520	\$1.46	6.1%	3.1	\$1,506	\$1.44
2020	1,074	13.0%	6.8	\$1,433	\$1.37	3.0%	(1.1)	\$1,415	\$1.36
2019	430	6.2%	(0.2)	\$1,391	\$1.33	4.1%	0.1	\$1,389	\$1.33
2018	415	6.3%	(2.2)	\$1,336	\$1.28	4.0%	2.0	\$1,321	\$1.27
2017	543	8.5%	0.2	\$1,285	\$1.23	2.1%	0.2	\$1,258	\$1.21
2016	503	8.3%	(3.6)	\$1,259	\$1.21	1.8%	0.3	\$1,214	\$1.16
2015	634	11.9%	(8.7)	\$1,236	\$1.19	1.5%	0.5	\$1,191	\$1.14
2014	1,041	20.6%	4.6	\$1,217	\$1.17	1.0%	(0.5)	\$1,162	\$1.11
2013	656	16.0%	10.2	\$1,205	\$1.16	1.5%	-	\$1,170	\$1.12



Appendix

Huntsville Multi-Family

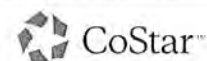
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3 STAR VACANCY & RENT

Year	Vacancy			Market Rent				Effective Rents	
	Units	Percent	Ppts Chg	Per Unit	Per SF	% Growth	Ppts Chg	Units	Per SF
2029	2,016	9.5%	(0.4)	\$1,333	\$1.37	3.0%	(0.6)	\$1,300	\$1.33
2028	2,109	9.9%	(0.5)	\$1,294	\$1.33	3.5%	0.2	\$1,263	\$1.29
2027	2,213	10.4%	(0.9)	\$1,250	\$1.28	3.4%	0.4	\$1,219	\$1.25
2026	2,381	11.3%	(2.3)	\$1,209	\$1.24	3.0%	1.7	\$1,180	\$1.21
2025	2,866	13.6%	(1.7)	\$1,174	\$1.20	1.3%	2.5	\$1,145	\$1.17
YTD	3,317	16.0%	0.7	\$1,154	\$1.18	-1.7%	(0.6)	\$1,126	\$1.15
2024	3,144	15.3%	0.2	\$1,158	\$1.19	-1.1%	(1.0)	\$1,129	\$1.16
2023	2,897	15.1%	1.5	\$1,172	\$1.20	-0.1%	(4.8)	\$1,152	\$1.18
2022	2,448	13.6%	5.9	\$1,173	\$1.20	4.6%	(3.1)	\$1,158	\$1.19
2021	1,292	7.7%	2.7	\$1,121	\$1.15	7.7%	1.2	\$1,117	\$1.14
2020	841	5.1%	(1.7)	\$1,041	\$1.07	6.5%	1.1	\$1,037	\$1.06
2019	1,119	6.8%	(1.5)	\$978	\$1	5.3%	0.2	\$970	\$0.99
2018	1,360	8.2%	0	\$928	\$0.95	5.1%	1.8	\$909	\$0.93
2017	1,327	8.2%	(1.0)	\$883	\$0.91	3.3%	0	\$861	\$0.88
2016	1,483	9.1%	0.7	\$855	\$0.88	3.2%	1.5	\$823	\$0.84
2015	1,364	8.4%	(0.7)	\$828	\$0.85	1.8%	(0.3)	\$799	\$0.82
2014	1,477	9.1%	0.3	\$814	\$0.83	2.0%	0.1	\$791	\$0.81
2013	1,410	8.8%	0.8	\$798	\$0.82	1.9%	-	\$789	\$0.81

1 & 2 STAR VACANCY & RENT

Year	Vacancy			Market Rent				Effective Rents	
	Units	Percent	Ppts Chg	Per Unit	Per SF	% Growth	Ppts Chg	Units	Per SF
2029	339	6.9%	(0.4)	\$1,029	\$1.27	3.3%	(0.6)	\$1,017	\$1.26
2028	361	7.3%	(0.1)	\$996	\$1.23	3.8%	0.1	\$985	\$1.22
2027	368	7.4%	0.1	\$959	\$1.19	3.7%	0.3	\$948	\$1.17
2026	364	7.3%	0.1	\$925	\$1.14	3.4%	1.2	\$914	\$1.13
2025	358	7.2%	0.1	\$895	\$1.11	2.2%	0.1	\$884	\$1.09
YTD	356	7.1%	0	\$874	\$1.08	1.7%	(0.4)	\$864	\$1.07
2024	354	7.1%	1.4	\$875	\$1.08	2.1%	(2.3)	\$865	\$1.07
2023	284	5.7%	1.0	\$857	\$1.06	4.4%	(1.9)	\$851	\$1.05
2022	233	4.7%	1.0	\$821	\$1.01	6.3%	(4.0)	\$818	\$1.01
2021	184	3.7%	(0.1)	\$772	\$0.95	10.2%	5.3	\$770	\$0.95
2020	191	3.8%	(1.0)	\$701	\$0.86	4.9%	0.1	\$698	\$0.86
2019	239	4.8%	(2.3)	\$668	\$0.82	4.8%	(0.2)	\$663	\$0.82
2018	356	7.1%	(1.2)	\$637	\$0.78	5.0%	0.2	\$628	\$0.77
2017	417	8.3%	(1.0)	\$607	\$0.75	4.8%	2.3	\$595	\$0.73
2016	467	9.3%	(0.2)	\$579	\$0.71	2.5%	(0.1)	\$567	\$0.70
2015	475	9.5%	(1.6)	\$565	\$0.69	2.7%	2.7	\$552	\$0.68
2014	559	11.1%	0.2	\$550	\$0.68	0%	(1.3)	\$537	\$0.66
2013	549	10.9%	0.3	\$550	\$0.68	1.3%	-	\$546	\$0.67



Appendix

Huntsville Multi-Family

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OVERALL SALES

Year	Completed Transactions (1)						Market Pricing Trends (2)		
	Deals	Volume	Turnover	Avg Price	Avg Price/Unit	Avg Cap Rate	Price/Unit	Price Index	Cap Rate
2029	-	-	-	-	-	-	\$204,175	297	5.6%
2028	-	-	-	-	-	-	\$193,342	281	5.7%
2027	-	-	-	-	-	-	\$182,428	266	5.8%
2026	-	-	-	-	-	-	\$172,462	251	5.9%
2025	-	-	-	-	-	-	\$162,556	237	6.1%
YTD	-	-	-	-	-	-	\$158,124	230	6.1%
2024	13	\$109.4M	2.3%	\$9,115,645	\$138,993	6.5%	\$157,856	230	6.1%
2023	9	\$41.2M	0.6%	\$5,882,224	\$190,628	6.1%	\$167,246	243	5.8%
2022	19	\$400.3M	7.0%	\$25,018,028	\$210,567	5.2%	\$189,452	276	5.1%
2021	43	\$628.2M	15.1%	\$15,321,726	\$137,400	5.4%	\$190,780	278	4.7%
2020	31	\$551.7M	13.9%	\$18,390,831	\$133,590	5.8%	\$156,131	227	5.3%
2019	23	\$132.5M	7.1%	\$5,760,239	\$65,296	6.9%	\$131,314	191	5.9%
2018	27	\$92M	8.6%	\$4,380,370	\$58,036	7.7%	\$119,108	173	6.2%
2017	26	\$180.5M	10.0%	\$7,220,696	\$65,979	6.6%	\$111,939	163	6.2%
2016	27	\$168.4M	15.5%	\$6,734,754	\$46,860	6.9%	\$103,585	151	6.4%
2015	24	\$65.1M	8.8%	\$3,101,467	\$33,281	10.1%	\$97,803	142	6.4%
2014	9	\$8.8M	1.8%	\$1,254,100	\$20,952	10.5%	\$91,299	133	6.6%

(1) Completed transaction data is based on actual arms-length sales transactions and levels are dependent on the mix of what happened to sell in the period.

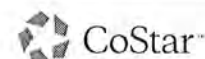
(2) Market price trends data is based on the estimated price movement of all properties in the market, informed by actual transactions that have occurred. The price index is not smoothed.

4 & 5 STAR SALES

Year	Completed Transactions (1)						Market Pricing Trends (2)		
	Deals	Volume	Turnover	Avg Price	Avg Price/Unit	Avg Cap Rate	Price/Unit	Price Index	Cap Rate
2029	-	-	-	-	-	-	\$258,438	297	5.4%
2028	-	-	-	-	-	-	\$244,765	281	5.5%
2027	-	-	-	-	-	-	\$231,058	265	5.6%
2026	-	-	-	-	-	-	\$218,550	251	5.7%
2025	-	-	-	-	-	-	\$206,016	237	5.9%
YTD	-	-	-	-	-	-	\$200,046	230	5.9%
2024	2	\$21.7M	1.9%	\$21,650,000	\$225,521	5.7%	\$199,775	229	5.9%
2023	1	\$13.6M	0.3%	\$13,630,000	\$243,393	-	\$212,720	244	5.6%
2022	8	\$295.5M	13.9%	\$49,243,075	\$245,806	4.5%	\$241,549	277	4.8%
2021	7	\$420.1M	18.4%	\$70,014,448	\$254,290	4.2%	\$246,652	283	4.5%
2020	5	\$264.3M	14.8%	\$52,852,000	\$215,899	5.6%	\$205,074	236	5.0%
2019	1	\$42.3M	3.8%	\$42,300,000	\$158,427	5.0%	\$175,232	201	5.5%
2018	2	\$54M	5.8%	\$27,000,000	\$142,105	5.3%	\$159,777	183	5.7%
2017	4	\$110M	15.6%	\$27,488,125	\$111,175	5.6%	\$149,913	172	5.8%
2016	1	\$15.8M	4.0%	\$15,800,000	\$65,833	4.0%	\$137,447	158	5.9%
2015	1	\$8.4M	3.4%	\$8,400,000	\$46,667	-	\$128,660	148	6.0%
2014	-	-	-	-	-	-	\$119,565	137	6.2%

(1) Completed transaction data is based on actual arms-length sales transactions and levels are dependent on the mix of what happened to sell in the period.

(2) Market price trends data is based on the estimated price movement of all properties in the market, informed by actual transactions that have occurred. The price index is not smoothed.



Appendix

Huntsville Multi-Family

3 STAR SALES

Year	Completed Transactions (1)						Market Pricing Trends (2)		
	Deals	Volume	Turnover	Avg Price	Avg Price/Unit	Avg Cap Rate	Price/Unit	Price Index	Cap Rate
2029	-	-	-	-	-	-	\$166,464	297	5.6%
2028	-	-	-	-	-	-	\$157,604	282	5.8%
2027	-	-	-	-	-	-	\$148,617	266	5.9%
2026	-	-	-	-	-	-	\$140,410	251	6.0%
2025	-	-	-	-	-	-	\$132,351	237	6.1%
YTD	-	-	-	-	-	-	\$129,166	231	6.2%
2024	5	\$73.9M	2.7%	\$14,780,548	\$134,369	7.6%	\$128,895	230	6.2%
2023	2	\$22.5M	0.5%	\$11,260,000	\$220,784	-	\$136,121	243	5.8%
2022	7	\$97.8M	3.7%	\$16,298,333	\$159,527	5.2%	\$153,806	275	5.1%
2021	19	\$128.7M	11.0%	\$6,775,299	\$70,038	4.5%	\$151,457	271	4.8%
2020	11	\$260.9M	13.6%	\$23,718,364	\$115,956	6.2%	\$121,016	216	5.4%
2019	11	\$81.1M	9.2%	\$7,371,818	\$53,384	5.8%	\$98,049	175	6.1%
2018	12	\$31.4M	10.3%	\$3,925,820	\$33,164	7.6%	\$88,219	158	6.4%
2017	10	\$58.7M	8.0%	\$6,522,778	\$45,367	7.1%	\$82,981	148	6.5%
2016	18	\$148.9M	23.4%	\$9,303,194	\$47,075	6.7%	\$77,989	139	6.6%
2015	11	\$45.4M	9.4%	\$4,543,863	\$33,809	9.2%	\$74,797	134	6.6%
2014	3	\$1.9M	0.7%	\$620,900	\$16,484	14.5%	\$70,401	126	6.7%

(1) Completed transaction data is based on actual arms-length sales transactions and levels are dependent on the mix of what happened to sell in the period.

(2) Market price trends data is based on the estimated price movement of all properties in the market, informed by actual transactions that have occurred. The price index is not smoothed.

1 & 2 STAR SALES

Year	Completed Transactions (1)						Market Pricing Trends (2)		
	Deals	Volume	Turnover	Avg Price	Avg Price/Unit	Avg Cap Rate	Price/Unit	Price Index	Cap Rate
2029	-	-	-	-	-	-	\$101,536	301	6.5%
2028	-	-	-	-	-	-	\$96,077	285	6.6%
2027	-	-	-	-	-	-	\$90,509	268	6.7%
2026	-	-	-	-	-	-	\$85,384	253	6.8%
2025	-	-	-	-	-	-	\$80,361	238	7.0%
YTD	-	-	-	-	-	-	\$78,080	231	7.1%
2024	6	\$13.8M	2.8%	\$2,305,833	\$98,121	6.2%	\$77,844	231	7.0%
2023	6	\$5M	1.4%	\$1,256,393	\$86,648	6.1%	\$79,206	235	6.8%
2022	4	\$7M	1.7%	\$1,760,000	\$81,860	5.9%	\$88,536	262	6.0%
2021	17	\$79.4M	21.7%	\$4,960,838	\$73,358	6.8%	\$87,197	258	5.6%
2020	15	\$26.6M	13.5%	\$1,897,352	\$40,492	5.7%	\$68,231	202	6.4%
2019	11	\$9.1M	4.9%	\$826,864	\$37,430	8.8%	\$59,891	177	7.0%
2018	13	\$6.6M	6.5%	\$598,291	\$25,509	8.7%	\$53,327	158	7.3%
2017	12	\$11.9M	9.1%	\$988,325	\$26,181	8.0%	\$51,007	151	7.3%
2016	8	\$3.7M	3.8%	\$464,719	\$19,465	8.9%	\$48,294	143	7.5%
2015	12	\$11.3M	12.6%	\$1,129,219	\$26,079	11.3%	\$46,061	136	7.5%
2014	6	\$6.9M	7.2%	\$1,729,000	\$22,601	8.5%	\$43,158	128	7.6%

(1) Completed transaction data is based on actual arms-length sales transactions and levels are dependent on the mix of what happened to sell in the period.

(2) Market price trends data is based on the estimated price movement of all properties in the market, informed by actual transactions that have occurred. The price index is not smoothed.



Appendix

Huntsville Multi-Family

DELIVERIES & UNDER CONSTRUCTION

Year	Inventory			Deliveries		Net Deliveries		Under Construction	
	Bldgs	Units	Vacancy	Bldgs	Units	Bldgs	Units	Bldgs	Units
2029	-	56,323	10.3%	-	2,243	-	2,223	-	-
2028	-	54,100	10.7%	-	2,036	-	2,018	-	-
2027	-	52,082	11.6%	-	1,614	-	1,595	-	-
2026	-	50,487	13.1%	-	1,287	-	1,267	-	-
2025	-	49,220	15.4%	-	2,268	-	2,262	-	-
YTD	329	47,390	18.0%	2	432	2	432	10	3,010
2024	327	46,958	18.1%	26	6,155	26	6,155	12	3,442
2023	301	40,803	17.1%	24	5,282	24	5,282	36	8,748
2022	277	35,521	13.0%	15	3,387	15	3,387	45	10,784
2021	262	32,134	9.2%	11	2,307	11	2,307	28	7,060
2020	251	29,827	7.1%	5	1,338	5	1,338	19	4,357
2019	246	28,489	6.3%	2	416	2	416	9	2,391
2018	244	28,073	7.6%	3	510	3	510	5	1,149
2017	241	27,563	8.3%	1	300	1	300	4	754
2016	240	27,263	9.0%	3	737	3	737	2	522
2015	237	26,526	9.3%	3	299	2	257	3	737
2014	235	26,269	11.7%	6	1,160	6	1,160	4	827
2013	229	25,109	10.4%	2	796	2	796	5	968

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	C.A. NO. 2012-CP-10-00580
)	
THOMAS H. MORGAN)	
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT OF JOHN L. GILBERT
	)	IN OPPOSITION TO
JOHN L. GILBERT, STUART L. FRED, BELLA	)	PLAINTIFF'S MOTION
VISTA PARTNERSHIP, A TEXAS GENERAL	)	TO
PARTNERSHIP, BOMASADA GROUP, INC., A	)	LIFT STAY
TEXAS CORPORATION, BOMASADA)	
INVESTMENT GROUP II, LLC, A TEXAS)	
LIMITED LIABILITY COMPANY, LAURALIS)	
MANAGEMENT, INC., A TEXAS)	
CORPORATION AND 150 BEE STREET, LLC,)	
A SOUTH CAROLINA LIMITED LIABILITY)	
COMPANY,)	
)	
Defendants.)	
)	

PERSONALLY APPEARED BEFORE ME JOHN L. GILBERT, who, being duly sworn, deposes and states as follows:

1. I am over the age of 21 and am competent to give this affidavit.
2. After graduating from the University of Texas in 1979, I began a career in real estate that has now extended over 45 years.
3. From 1980 to 1990, I was involved in real estate brokerage, specializing in the multifamily sector. In 1990, Stuart Fred and I formed Bomasada Group, Inc. ("**Bomasada**") to concentrate on developing Class "A" multifamily projects in secondary and tertiary markets throughout the southwestern and southeastern United States.
4. Bomasada began as, and remains, a "hands on" firm handling all aspects of developing, including detailed due diligence studies, site selection and acquisition, zoning,

EXHIBIT 11

corporate governance, financing, marketing, operations, and ultimately, disposition of each project.

5. Over the past 35 years, through various affiliates, Bomasada has developed multifamily projects ranging in size from 108 units to 488 units in the following markets:

- 1) Albuquerque, NM
- 2) Franklin, TN
- 3) Charleston, SC [2 projects]
- 4) Pearland, TX
- 5) O'Fallon (St. Louis), MO
- 6) Jacksonville, FL
- 7) Nashville, TN
- 8) North Little Rock, AR
- 9) Tulsa, OK [2 projects]
- 10) Oklahoma City, TX
- 11) Birmingham, AL
- 12) Huntsville, AL

6. As noted, Bomasada has developed projects in Alabama, and thus I am extremely familiar with the local dynamics of the Huntsville multifamily market and overall economics of the city.

7. Bomasada Liam Huntsville, LLC, an affiliate of Bomasada, ("BLH") is currently developing a "Class A" multifamily project known as the Liam Project.

8. Bryant Bank is BLH's lender for the Liam Project in Huntsville. I found the site for this project in September, 2019. BLH closed on the purchase of the property in September, 2020. Construction Of the Liam Project began in September 2021, a year before the trial of the instant case and two years before the arbitration panel issued its award in the instant case.

9. BLH's loan agreement with Bryant Bank contains various covenants including a loan to value covenant requiring that the property's value exceed the loan amount by a certain amount and a debt service coverage ratio covenant requiring that the Liam Project generate a

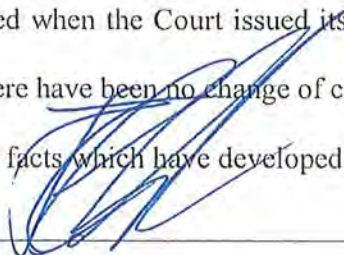
certain amount of revenue in excess of the amount needed to service BLH's debt to Bryant Bank. Bryant Bank has never issued a notice of any default of these covenants or any other default notice.

10. The loan on the Liam Project from Bryant Bank is current and Bryant Bank has never issued any notice of default.

11. BLH has never made any capital calls to any of the members in BLH.

12. Although some units in Liam had already been rented, BLH held a grand opening on Friday, December 13, 2024. Members of the Huntsville Chamber of Commerce and representatives of Bryant Bank attended. As more units are rented out, we expect the Liam Project to reach "stabilization" i.e., a level of occupancy and income considered sustainable and expected to be maintained over time in another nine (9) to twelve (12) months.

13. The circumstances existing today with respect to the Liam Project and the financial status of BLH are essentially the same as existed when the Court issued its order of stay in the instant case on May 18, 2024. In the interim, there have been no change of circumstances for any of the Defendants in the instant case and no new facts which have developed relevant to the stay.



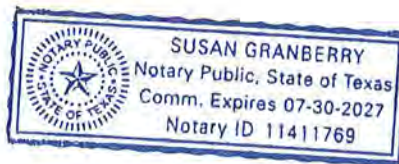
John L. Gilbert

SWORN before me this

6th day of January, 2025.

Susan Granberry
Notary Public for The State of Texas

My Commission expires: 7-30-27



The Judgment is currently on appeal to the South Carolina Court of Appeals, No. 2024-000322. Counsel for both Plaintiff and the Judgment Debtors have noted that the appeal has been fully briefed to the Court of Appeals. On or about November 26, 2024, prior to the Plaintiff's filing of the instant Motion, the Judgment Debtors filed a motion with the Court of Appeals seeking to expedite that Court's consideration of the appeal. The Court of Appeals denied this motion on or about January 9, 2025. However, this Court notes that the Court of Appeals has notified counsel that the appeal will be submitted to the Court of Appeals without oral argument during the March 2025 term.

In support of the instant Motion, Plaintiff submits that circumstances have changed since the Court issued its Stay Order on May 8, 2024, particularly in the Huntsville, Alabama multifamily real estate market, and suggests that the Judgment Debtors have taken action to hide assets. In support of this claim, Plaintiff has submitted two affidavits of Thomas Morgan. Prior to the Court's issuance of the Stay Order, Plaintiff had taken steps to attempt to enforce the Judgment in Harris County, Texas and in Maricopa County, Arizona. In Texas, Plaintiff had applied for a "Turnover after Judgment and for the Appointment of a Receiver."

The Court finds these affidavits unpersuasive. In essence, Plaintiff contends that an alleged change of market conditions affecting property in the Huntsville, Alabama, on which Plaintiff holds himself out as an "expert," have deteriorated thereby justifying a lifting of the Stay Order. Plaintiff has presented no evidence regarding the other locations in which he has sought to enforce the Judgment. Moreover, Plaintiff has offered no evidence indicating that the Judgment Defendants have taken any action to hide assets since the issuance of the Stay Order in May 2024.

The Court notes that market conditions are often subject to change. As counsel for the Judgment Debtors noted, general interest rates are down 100 basis points from the Court's issuance

of the Stay Order and capitalization rates, which impact the value of income producing properties, often decrease with a decrease in interest rates thereby increasing the property's underlying value. The Standard & Poor's 500 index is up approximately 20% since the issuance of the Stay Order.

After carefully considering the evidence presented by the parties, arguments of counsel and the notification from the Court of Appeals, the Court **DENIES** Plaintiff's Motion to lift or modify the Stay Order.

IT IS SO ORDERED.

-ELECTRONIC SIGNATURE PAGE TO FOLLOW-



Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al

Case Number: 2012CP1000580

Type: Order/Stay

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-03-12 13:40:20 page 4 of 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP1000580

Thomas H Morgan
PLAINTIFF(S)

John L Gilbert et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion to Lift Stay, filed 12/10/2024, was heard by this court on 3/4/2025. Present at the hearing was Plaintiff Thomas Morgan, W. Andrew Gowder, Jr. on behalf of Plaintiff and Morris Arthur Ellison on behalf of Defendants. The court heard testimony from both parties and upon careful consideration of both the arguments and submissions from counsel, this court hereby DENIES Plaintiff's motion. The court requests Defendants' counsel submit a formal proposed order in a word document to the court within ten (10) days of this order. The court will then review and edit as deemed appropriate.

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 03/05/2025 .

150 Bee Street LLC
Case Party Info Protected
Laura Simons Greaver for Thomas H Morgan

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), SCRPC.



Charleston Common Pleas

Case Caption: Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number: 2012CP1000580
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764