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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough
Master in Equity

Appellate Case No. 2025-001384

John Kachmarsky, individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as member of K&T Group, LLC, Appellant,

v.

David G. Taylor, individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as member of K&T Group, LLC; and K&T Group, LLC, and Foley Bullock, LLC, Respondents.

RECORD ON APPEAL
VOLUME I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1002589

John Kachmarsky et al
PLAINTIFF(S)

David G Taylor 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:

Case referred to Charleston County Master-in-Equity on July 18, 2023. Plaintiff directed to contact MIE Office to perfect referral by payment of applicable SC Code 14-11-310 reference fees with 15 days.

**** After 90 days from referral date, this matter will be administratively REMANDED back to Circuit Court for failure to comply****

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 08/23/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-08-23 16:18:09 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1002589

John Kachmarsky et al
PLAINTIFF(S)

David G Taylor 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:

Upon consideration, this Court respectfully DENIES the Plaintiff's Motion for Summary Judgment without prejudice.

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 01/04/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-01-04 11:17:01 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO: 2022-CP-10-02589
	)	
JOHN KACHMARSKY	)	
	)	SCHEDULING ORDER
Plaintiff(s),	)	
-vs-	)	
	)	
DAVID G. TAYLOR	)	
	)	
Defendant(s).	)	
	)	

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following schedule is established in this case based upon an in court and/or telephone conference.

1. All motions to amend the pleadings and to join additional parties shall be filed on or before **N/A**.
2. The Plaintiff(s) must identify any experts on or before _____.
3. The Defendant(s) must identify any experts on or before _____.
4. Discovery shall be completed on or before **April 5, 2024**. All discovery requests must be served in time for the response to be served within this deadline.
5. All dispositive motions shall be filed on or before **April 19, 2024**.
6. The parties shall mediate this case with **John Massalon, Esq. on or before April 25, 2024**. The mediator shall submit his written report to the court within 10 days of mediation.
7. This case is set for pre-trial hearing and all outstanding motions on **April 25, 2024 at 10:00 a.m.**
8. The party shall come to the pre-trial hearing with a pre-trial brief to be exchanged, a list of witnesses and a good faith estimate of time for trial and all other matters per Rule 16(a)(8).
9. Upon completion of all steps noted above, the matter shall be set for a day certain trial, unless otherwise agreed in writing, subject to all matters under Rule 16(b)(1-5).
10. This order may not be amended except by order of the Mikell R. Scarborough, Master-In-Equity for Charleston County.

IT IS SO ORDERED.

Charleston, South Carolina

Mikell R. Scarborough



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Order/Scheduling Order

So Ordered

s/Mikell R. Scarborough 3062

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**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-02589**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

ORDER

On September 17, 2024, this Court held a bench trial in the matter between Plaintiffs John Kachmarsky, Individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC (“Plaintiffs”) and Defendants David G. Taylor, Individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as Member of K&T Group, LLC; and K&T Group, LLC (“Defendants”). Having considered all matters of record and the evidence and arguments presented at trial, the Court finds that Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint and dismisses those claims with prejudice. The Court further finds that Defendants satisfied their burden of proof for their counterclaim and enters judgment in Defendants’ favor on that claim.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston.

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities (law firms) within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

Plaintiffs presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. One such disagreement led the parties to a common understanding to address significantly different expectations for use of the property. In 2014, Kachmarsky and Taylor addressed their respective law firms’ use of additional office space in Suite 330 and whether such use of unoccupied office space obligated that firm to make additional

rental payments to K&T. (Defs' Ex. 2.) The parties brought that issue to a trusted third party. (Defs' Ex. 4.) With the third party's guidance, the parties agreed that a law firm's sustained use of vacant office space would require that firm to make additional rent payments. The parties moved forward, however, allowing the firms to use additional space without payment when each firm used an equivalent amount of additional space. (Trial Tr. 102:16 – 104:3.) And K&T permitted temporary use of empty office space by a law firm without additional payment as long as the temporary use did not preclude rental of the space to interested third parties. (Trial Tr. 84:18 – 85:23; 155:2-13.) In light of Kachmarsky's resistance, K&T did not follow the third party's suggestion to enter lease agreements with the law firm occupants in Suite 330. (Trial Tr. 80:1–23; 110:3 - 111:16; 104:4–10; 154:9–23.)

The disagreements raised by Plaintiffs occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) That one disagreement that occurred during the statutory period involves the Taylor Foley law firm's use of an otherwise vacant office in Suite 330 for the firm's summer intern in 2021.

During trial, Taylor testified that the summer intern used an available office on a part-time basis and only in the summer months of May, June, and July. (Trial Tr. 159:15–20; 160:14–164:9.) Defendants presented documents demonstrating that a summer intern began working for Taylor Foley in May and that the summer intern was paid by Taylor Foley only for the months of May, June and July 2021. (Defs' Exs. 22, 23, and 24; Trial Tr. 160:14– 162:21.) In fact, the evidence was clear that Kachmarsky knew that the firm's intern started in May. (Defs' Exs. 24, 25.) Taylor testified that no other person associated with Taylor Foley used vacant office space in Suite 330 during that time, that Taylor Foley had no records of any female that might have utilized that space

prior to May, and that Taylor's investigation into the matter confirmed that no Taylor Foley employee utilized vacant office space prior to May 2021. (Trial Tr. 163:22–164:9.)

There is no credible evidence of an additional Taylor Foley employee having been hired and placed in that (otherwise unoccupied) office before May 2021. Indeed, although an employee of Kachmarsky's law firm testified that he remembered a female using the subject vacant office in February 2021, he could recall little detail from that time years ago except that only one female had occupied the subject office in 2021, until the male associate took the office in August. (Trial Tr. 138:20 –139:3; 142:21 –143:12.)

In early 2022, rent payments due to the Company from Taylor Foley were delayed. Taylor Foley's longtime bookkeeper—who had historically handled rent payments to K&T—exited, and the firm had difficulty finding a replacement. (Trial Tr. 156:14–157:6.) When the matter of rental payments was brought to Taylor's attention, he sought information from Kachmarsky -- a more detailed statement as to what Kachmarsky said was owed. (*Id.* at 156:25–159:2.) In April of 2022, following email exchanges between Taylor and Kachmarsky and Kachmarsky's counsel threatening litigation as to K&T and its members, Taylor Foley paid rent for the use of the additional office starting in August of 2021 when its full-time associate attorney started work. (Defs' Ex. 9.) Kachmarsky contends that rent remains due for the months of January through July of 2021.

Plaintiffs filed this lawsuit in June 2022.

B. Procedural History

In this action, Plaintiffs assert three claims against Defendants: (1) breach of contract, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim

for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pre-trial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiffs' claims and Defendants' counterclaim on September 17, 2024.

C. Discussion

Having considered the evidence and arguments presented at trial and all matters of record, the Court addresses the parties' claims below.

1. Plaintiffs' Claim for Breach of Contract

As an initial matter, the Court declines to consider any alleged breach which occurred prior to the statutory period, that is, more than three years before the initiation of this action. *See Maher v. Tietex Corp.*, 331 S.C. 371, 376, 500 S.E.2d 204, 207 (Ct. App. 1998) ("An action for breach of contract must be brought within three years from the date the action accrues.") (citing S.C. Code Ann. § 15-3-530(1)). Although Kachmarsky presented evidence to demonstrate why he would prefer that his Trust be permitted to exit the term company K&T after twenty years, he concedes that the dispute over eight months of rent he says Taylor Foley should pay K&T "is the amount that is arguably in dispute at the moment." (Trial Tr. 83:4 – 11.) Plaintiffs are correct that what is in dispute is whether Taylor Foley must pay for alleged use of one office for seven months of 2021, prior to its full-time employee occupying that office in August of that year. Plaintiffs are incorrect, however, in pressing that claim for \$8,750.00 in rent against the Defendants.

The party that rents space from the Company, and which temporarily used and ultimately rented the specific office at issue, is the law firm Taylor Foley. (Trial Tr. 102:16 – 23; 78:20 – 79:10.) Kachmarsky communicated with Taylor Foley employees about office space and rent

generally and specifically owed in this instance. (Defs' Exs. 24, 9, 7.) Kachmarsky acknowledged that his law firm, not the Plaintiff Trust, rents other space in Suite 330. In fact, Kachmarsky acknowledged that the payments K&T receives for the respective law firms' rentals come from the law firms. (Trial Tr. 125:2 - 9.) To the extent there was any remaining rental obligation at issue, that obligation belonged to Taylor Foley, LLC. (Trial Tr. 116:19 – 117:4; 108:2 – 7; 119:3 - 5.)

Taylor Foley is not a party to the Operating Agreement. At Kachmarsky's insistence, there is no written lease agreement between K&T and Taylor Foley. (Trial Tr. 80:1 – 23; 154:18 - 23.) And, of course, Taylor Foley is not a party to this suit; no plaintiff here brought a claim against Taylor Foley, LLC.

Moreover, to the extent that Plaintiffs complain about actions of K&T Manager David Taylor, those actions all relate to whether rent was being paid on time or in the correct amount by the law firm—not by K&T member Defendant Taylor Capital LLC and not by K&T manager Taylor. Those complaints are not complaints of David Taylor acting as a manager of K&T. In fact, Taylor testified that Taylor Foley employees have handled rental duties for years. (Trial Tr. 156:14 – 158:2; 191:13 - 18.) Not surprisingly, no Plaintiff sent notice of any default of obligations or duties to Taylor Capital per section 12.2 of the K&T Operating Agreement. (Defs' Ex. 8; Trial Tr. 107:1–11.) Kachmarsky's Trust did not call a member meeting per section 4.2 of the Operating Agreement. Kachmarsky as manager did not call a Management Committee meeting per section 5.5, or seek to make a capital call per section 3.8. (Trial Tr. 107:12–108:16.)

Accordingly, Plaintiffs have failed to demonstrate that Defendants breached any contract. *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015) (“The elements for a breach of contract are the existence of a contract, its breach, and damages caused by such breach.”).

2. Plaintiffs' Claim for Judicial Expulsion

The Court finds that Plaintiffs have failed to justify expelling Taylor Capital, LLC from the Company. A Court may judicially expel a member from a limited liability company if the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company's business;
- (ii) wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; or
- (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member[.]

S.C. Code Ann. § 33-44-601(6). The South Carolina Court of Appeals has recently recognized that:

[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar" and a court may not order disassociation "merely because there is a conflict." "[D]isagreements and disputes among [limited liability company] members that bear no nexus to the [limited liability company's] business" do not justify a member's expulsion, and "it must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it.

Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

At trial, Plaintiffs failed to clear this "high bar" for three reasons. As an initial matter, just as the Court cannot consider stale alleged breaches, it cannot consider allegedly wrongful conduct that occurred more than three years prior to the filing of this action in determining whether expulsion is warranted. *See Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011) (finding that claims asserted under the

South Carolina Limited Liability Act are subject to a three-year limitations period) (citing S.C. Code Ann. § 33-44-410)). Accordingly, the Court considers only circumstances that occurred within the statutory period, that is, from June 2019 to June 2022.¹

Plaintiffs' request for expulsion relies upon the same conduct as their breach of contract claim—the non-payment of rent based on Taylor Foley's alleged use of vacant office space in 2021. (Trial Tr. 73:20 - 25.) That conduct does not justify Talyor Capital's expulsion from K&T. For one, for the same reasons explained above, the Court cannot expel Taylor Capital from the Company based on the alleged misconduct of Taylor Foley. If any obligation to pay rent was in fact owed, it was owed by Taylor Foley, and not by Taylor Capital.

Second, as a factual matter, the Court has determined that no additional rent payments were owed. As explained in greater depth above, the evidence demonstrates that the subject office was not in use from January through April. And the Court finds that the temporary use of the office by Taylor Foley's intern from May through July did not give rise to any rental obligations. (*See, e.g.*, Trial Tr. 84:18 – 85:23; 87:14 – 88:12.)

Third, even if additional rent payments had been owed for three months of temporary use, an outstanding receivable of \$3750 in no way makes it “unfeasible, despite reasonable efforts, to keep the [limited liability company] operating[.]” *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. In fact, Plaintiffs agreed that no Defendant is frustrating the operation of K&T. (Trial Tr. 101:22 – 102:15.) Indeed, the evidence demonstrates that Taylor Foley pays rent for the office space it utilizes, and K&T continues to fulfill its purpose “to hold and manage Company Property.”

¹ Moreover, even if the Court were to consider the full record of complaints lodged by Plaintiffs, these few disagreements over a twenty-year lifespan are not sufficiently material or injurious to the continued operation of the company for its intended purpose. Nearly all were resolved without incident.

While Kachmarsky testified that this lawsuit arises from “[n]ot paying rent for space being used,” (Trial Tr. 112:17–113:12), he acknowledged that the rent he sought from Taylor Foley would change depending on his law firm’s use of space; there was no set lease amount. (Trial Tr. 102:16 – 104:3.) Nevertheless, aside from the months of 2021 at issue, there is no dispute that Taylor Foley has paid any rent Plaintiffs consider to have been due. The core of the dispute here is whether temporary use of a vacant office for three months by a summer intern triggers obligations for Taylor Foley to pay rent for that space. As the Plaintiffs have known and resisted for years, one solution to any guesswork about what is due from each firm and when, and how to enforce that obligation, is **to have the Company enter written leases with the law firms**. That is one reasonable and practicable way for the members to carry on the Company’s business.

The issues presented by Plaintiffs are more aptly categorized as “disagreements and disputes among members” that do not justify judicial intervention. *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. Even viewing the evidence in the light most favorable to Kachmarsky, the total amount in dispute at the time that this lawsuit was filed was \$8,750. (*Id.* at 113:13 – 114:17.) That amount-in-controversy pales in comparison to the value of the Suite 330, the Company’s primary asset, which Kachmarsky testified is worth well over \$1.5 million. (*Id.* at 113:13–115:6.) An \$8,750-dollar rent dispute does not clear the “high bar” required to justify expulsion, and there is no evidence in the record indicating that the continued operation of K&T would be “unfeasible” if Taylor Capital were not expelled. *Boathouse at Breach Inlet*, 442 S.C. at 652, 900 S.E.2d at 493.

Accordingly, the Court finds that the circumstances do not warrant judicial expulsion under S.C. Code Ann. § 33-44-601.

3. Plaintiff's Claim for Judicial Dissolution

Plaintiffs seek judicial dissolution of K&T pursuant to subsections (a), (b), and (e) of S.C. Code Ann. § 33-44-801(4), which permit a Court to dissolve a limited liability company if its finds that: (a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner. For the same reasons discussed above with respect to Plaintiffs' claim for judicial expulsion, the Court finds that Plaintiffs have failed to demonstrate that judicial dissolution is appropriate here.

In addition, as to the claim under subsection (e), the Plaintiff has failed to demonstrate that Taylor Capital or manager Taylor is in control of the Company. In fact, the evidence demonstrates that, if any member or manager is in control of the Company, it is Kachmarsky as Trustee or as Manager. For nearly twenty years and for all times relevant here, Kachmarsky has managed the operations and the money. He handles advertising, rentals, and banking. (Trial Tr. 48:10 – 49:5; 80:24 – 82:2.) In fact, he acknowledges that Taylor has no more control than he has. (Trial Tr. 111:17 – 20.)

Accordingly, the Court dismisses Plaintiffs' claim for judicial dissolution.

4. Defendants' Counterclaim for Breach of Contract

Defendants assert a counterclaim for breach of the Operating Agreement. Defendants contend that Plaintiffs' actions in pursuing claims against them for payments owed, if at all, by another party constitute breaches of the Operating Agreement's duties of care and of good faith and fair dealing. Moreover, Defendants contend, Plaintiffs' effort to dissolve the Company in this

misguided lawsuit violates these duties as well as the duty of loyalty. And Defendants contend that seeking the result of, or leverage from, a claim to expel Taylor Capital and impose the penalties of wrongful dissociation further violates these duties.

The K&T Operating Agreement establishes duties that the managers owe to the Company and to the Members. Specifically, section 6.2(a) of the Company's Operating Agreement imposes upon the Managers a duty of loyalty: "[t]o refrain from dealing with the Company in the conduct or winding up of the business as or on behalf of a party having an interest adverse to the Company." Section 6.3 imposes upon the Managers a duty of care "to refrain[] from engaging in grossly negligent or reckless conduct" And section 6.4 of the Operating Agreement demands that "[e]ach Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members."

Kachmarsky, in his capacity as Manager of the Company,² breached the Operating Agreement's duties of loyalty, care, and good faith and fair dealing owed to Taylor Capital by seeking to dissolve the company over \$8,750 in rental payments allegedly owed, and when any such obligation clearly belonged to a third party. Moreover, any reasonable inquiry into the matter by Manager Kachmarsky would have demonstrated that the most money even arguably at issue was \$3750 for three months of use. To the extent Kachmarsky wished to address issues within K&T, he could have availed himself of any of several other less drastic alternatives, such as (a) sending notice of any alleged default of obligations to Taylor Capital per section 12.2 of the Operating Agreement, (b) calling a member meeting per section 4.2, (c) calling a Management Committee meeting per section 5.5, or (d) pursuing a capital call per section 3.8.

² The applicable duties of the Company's Operating Agreement apply to Managers and generally not to Members. Accordingly, the Court analyzes this claim as to the acts of Kachmarsky as Manager and not as to the Kachmarsky Trust.

The fact that Kachmarsky sought to expel Taylor Capital under these circumstances and thereby impose drastic financial penalties through the Operating Agreement's provisions for wrongful dissociation violates his duty of good faith and fair dealing to Taylor Capital. (*See, e.g.*, Trial Tr. 116:2 – 117:4.)

The Court agrees that the conduct outlined above constitutes a breach of duties owed under the Operating Agreement and awards judgment in favor of Defendants against Kachmarsky. “The general rule is that for a breach of contract the [breaching party] is liable for whatever damages follow as a natural consequence and a proximate result of such breach.” *Hotel & Motel Holdings*, 414 S.C. at 650, 780 S.E.2d at 272 (quoting *Kemper*, 399 S.C. at 492, 732 S.E.2d at 209). Here, the natural consequence of any one or all of Kachmarsky's breaches of duties is Defendants' obligation to defend this lawsuit. Therefore, the proper measure of damages are the reasonable costs and attorneys' fees that Defendants have expended defending this matter.

For these reasons, the Court enters judgment for Defendants on their counterclaim and awards Defendants their reasonable costs and attorneys' fees for the defense of claims in this matter to be determined in a subsequent hearing after submission of affidavits in support thereof.

D. Conclusion

THEREFORE, it is hereby ordered that:

- (1) Plaintiffs' claims be dismissed with prejudice, and
- (2) Judgment be entered on Defendants' counterclaim in favor of Defendants against Kachmarsky only.

Within fifteen days of entry of this Order, Defendants shall file an affidavit of the reasonable costs and attorneys' fees that they have incurred in defending the claims in this action and a hearing thereon.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master In Equity, Charleston County

_____, 2024
Charleston, South Carolina



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-11-26 10:24:32 page 14 of 14

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1002589

John Kachmarsky et al
PLAINTIFF(S)

David G Taylor 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:

This matter came before the Court on a Zoom hearing on Plaintiff's Motion pursuant to Rule 60(b)(2) & (3), SCRPC for a new trial and for relief from the Court's judgment entered November 26, 2024. Based upon the totality of the circumstances presented by the Plaintiff, the Court GRANTS the Motion as it finds evidence of extrinsic fraud in the underlying case which could not have been discovered during the course of the trial, and which could change the outcome. In addition, the Court GRANTS the Intervenor Foley Bullock LLC's Motion to Intervene as the Court finds, pursuant to Rule 24(b)(2), SCRPC that there is a common question of law or fact sufficient to grant intervention. The Court also enters a separate order detailing the terms of the intervention. The Court requests the parties submit a Scheduling Order which provides for a period of discovery and sets a trial date into the fall of 2025.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/24/2025 .

Brian C Duffy for David G Taylor, Taylor Capital Llc, K&T Group Llc
Robert Lewis Wehrman for David G Taylor, Taylor Capital Llc, K&T Group Llc
Jamie A. Khan for Foley Bullock Llc
Jesse Sanchez for John Kachmarsky, John Kachmarsky Revocable Trust, John Kachmarsky Trustee, K&T Group Llc
Daniel Scott Slotchiver for John Kachmarsky, John Kachmarsky Revocable Trust, John Kachmarsky Trustee, K&T Group Llc
Charles Wilson Daniel for David G Taylor, Taylor Capital Llc, K&T Group Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-04-24 15:01:17 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOHN KACHMARSKY,
 INDIVIDUALLY, AS MANAGER OF
 K&T GROUP, LLC, AND AS TRUSTEE
 OF THE REVOCABLE TRUST OF JOHN
 KACHMARSKY DATED NOVEMBER
 30, 2007, AS MEMBER OF K&T GROUP,
 LLC,

Plaintiffs,

v.

DAVID G. TAYLOR, INDIVIDUALLY
 AND AS MANAGER OF K&T GROUP,
 LLC; TAYLOR CAPITAL, LLC, AS
 MEMBER OF K&T GROUP, LLC; AND
 K&T GROUP, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2022-CP-10-02589

ORDER GRANTING INTERVENTION

THIS MATTER came before me on January 22, 2025, on Petitioners' Verified Petition and Application for Invention. Having received these pleadings, and received arguments of counsel, the Court grants intervention pursuant to Rule 26(b) SCRCP.

Petitioners may file their pleadings upon entry of this Order.

IT IS SO ORDERED.

 Mikell R. Scarborough
 Master-in-Equity
 Charleston County



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-05-02 11:30:26 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
JOHN KACHMARSKY, INDIVIDUALLY, AS	)	
MANAGER OF K&T GROUP, LLC, AND AS	)	
TRUSTEE OF THE REVOCABLE TRUST OF	)	
JOHN KACHMARSKY DATED NOVEMBER	)	
30, 2007, AS MEMBER OF K&T GROUP,	)	
LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	ORDER GRANTING MOTION TO
	)	RECONSIDER
DAVID G. TAYLOR, INDIVIDUALLY AND	)	
AS MANAGER OF K&T GROUP, LLC;	)	
TAYLOR CAPITAL, LLC, AS MEMBER OF	)	
K&T GROUP, LLC; AND K&T GROUP, LLC,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

This matter came before the Court on Defendant's Rule 59(e), SCRCF Motion to Reconsider this Court's Form 4 Order, entered April 24, 2025. For the reasons stated below, the Court hereby grants the Motion and reinstates the Court's original Order of November 26, 2024.

First, I am bothered by this case. It involves tax lawyers and a LLC and rent payments. In a typical business relationship, each member of the LLC would owe to the entity the fair market value of rent. For whatever reason, apparently due to the desires of John Kachmarsky the managing member of K&T Group LLC, the fair market value of rent was not the basis upon which rent was

paid for the office condominium owned by K&T Group. Instead, rent was structured so that neither managing member of K&T Group would pay any rent for their own “large office” space. I find this was their business model.

This is where the problems arose in this legal and financial relationship and why the amount of rent paid by Taylor Tax Law is not material to what it received in rent.

As David Taylor testified at the March 10, 2025 hearing, “So...all we had to do was pay periodic set scheduled rent. If both of those spaces were allocated and paid rent on a periodic basis, none of this is an issue. This is an issue that your client caused.” Transcript 18:22-19:1.

The Court concludes that while there was a business relationship between the members of the LLC, it was not based on profit but on equity – each party was to pay the same amount of rent; therefore, it did not matter what the amount of rent was paid, provided that rent was equal. While Taylor Capital, LLC did not always pay rent on time, it did eventually pay its share.

Furthermore, on the issue of whether the fraud alleged in Plaintiff’s Rule 60(b)(3), SCRCF Motion, the Court reverses its decision as to extrinsic fraud. Since April Shores was disclosed as a witness and this information could have been discovered during this litigation, the Court concludes that the fraud alleged in this instance is not extrinsic but is intrinsic to this case. In the colloquy on pages 42-44 of the March 10, 2025 transcript, Defendant Taylor disclosed that Taylor Tax Law was paying rent to K&T Group. Plaintiff Kachmarsky was present at Taylor’s deposition when this was disclosed and no further inquiry was made during discovery.¹ See *Chewning v. Ford Motor Co.*, 354 S.C. 72, 579 S.E.2d 605 (2003).

¹ There are multiple Taylor entities involved here, which can cause confusion, but for which the Plaintiff was made aware.

While Plaintiff has established that Taylor Capital, LLC received more income than it paid to K&T Group, under the business relationship which they used, that matter becomes immaterial. Furthermore, this could have been discovered during litigation, but apparently was not.

The Court therefore grants the Motion to Reconsider, filed May 2, 2025, and reinstates its original Order of November 26, 2024. Accordingly, this matter is ended.

_____, 2025

Mikell R. Scarborough
Master in Equity, Charleston County



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-06-17 15:02:21 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1002589

John Kachmarsky et al
PLAINTIFF(S)

David G Taylor 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:

While the information and events presented to the Court post-trial give this Court concern, the parties have the ability to resolve this matter between themselves. The Court, however, is limited to the record presented at trial and accordingly, the Plaintiff's Rule 59(e) Motion to Reconsider is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/31/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-07-31 16:51:43 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CASE NO.: 2022-CP-10-_____

John Kachmarsky, Individually, as Manager
of K&T Group, LLC and as Trustee
of the Revocable Trust of John Kachmarsky
dated November 30, 2007, as Member
of K&T Group, LLC,

Plaintiffs,

vs.

David G. Taylor, Individually, and as
Manager of
K&T Group, LLC, Taylor Capital, LLC, as
Member of K&T Group, LLC and K&T
Group,
LLC,

Defendants.

SUMMONS
(Non-Jury)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is served upon you herewith, and to serve a copy of your answer to said Complaint on the subscriber at his office, Slotchiver & Slotchiver, LLP, within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for judgment by default to be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

s/Daniel S. Slotchiver

DANIEL S. SLOTCHIVER, ESQUIRE (S.C. BAR NO. 15129)

SLOTCHIVER & SLOTCHIVER, LLP

751 JOHNNIE DODDS BLVD., STE. 100

MOUNT PLEASANT, SC 29464

PHONE: (843) 577-6531

FACSIMILE: (843) 577-0261

DAN@SLOTCHIVERLAW.COM

ATTORNEY FOR PLAINTIFFS

June 7, 2022
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-_____
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T Group,	)	
LLC,	)	
	)	COMPLAINT
	)	(Non-Jury)
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
David G. Taylor, Individually, and as Manager of	)	
K&T Group, LLC, Taylor Capital, LLC, as	)	
Member of K&T Group, LLC and K&T Group,	)	
LLC,	)	
	)	
Defendants.	)	

Plaintiffs, Complaining of Defendants, would respectfully show unto the Court:

FIRST CAUSE OF ACTION
 (Breach of Contract)
 (As to Defendants' Taylor and Taylor Capital)

1. Plaintiff, John Kachmarsky, (hereinafter "Kachmarsky") is an individual who resides in Charleston County, South Carolina and is a manager of K&T Group, LLC (hereinafter "K&T") which was formed in 2003 as a South Carolina, term, manager-managed limited liability company.

2. Plaintiff, John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007, (hereinafter "Kachmarsky Trust") is a revocable trust and member of Defendant, K&T owning a fifty (50%) percent membership interest in K&T.

3. Defendant, David G. Taylor, (hereinafter "Taylor") is an individual who resides in Charleston County, South Carolina and is a manager of K&T.

4. Defendant, Taylor Capital, LLC (hereinafter "Taylor Capital") is a limited liability company, organized and existing under the laws of the State of South Carolina and member of K&T owning a fifty (50%) percent membership interest in K&T.

5. K&T owns a 5,106 square foot commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 comprised of TMS Number 458-05-03-120 with 1,186 square feet and TMS Number 458-05-03-121 with 3,920 square feet further described on Exhibit "A" attached hereto.

6. Kachmarsky practices law in the suite as John Kachmarsky, P.C., d/b/a, the Law Office of John Kachmarsky.

7. Taylor and his affiliated law firm practice law in the suite as Taylor Foley, LLC.

8. Kachmarsky and Taylor originally reached an oral agreement whereby each of them would have their own executive office, each would have one associate office and each would have 3 spaces in the common area for support staff.

9. Kachmarsky and Taylor paid equal amounts of rent to K&T to cover the expenses incurred which exceeded the other rental income.

10. Shortly after the above verbal arrangement was made, Taylor hired an additional associate and agreed to pay \$1,000.00 per month for an additional associate office.

11. Later, Taylor, unilaterally and without the permission or consent of Kachmarsky, negotiated and obtained an additional associate office from the existing tenants of space owned by K&T which was leased on a square foot basis month at a monthly rent of \$435.68 per month.

12. The tenant occupying the space rented on a square foot basis subsequently defaulted on their lease and moved out and the remaining space rented on a square foot basis could not be rented in whole because it was already partially occupied by Taylor.

13. Both additional offices occupied by Taylor could have been rented by K&T for \$1,250 per month.

14. K&T suffered financial losses due to the actions of Taylor while Kachmarsky proceeded to rent the remaining offices individually.

15. In mid-2014, Taylor vacated one of his additional associate offices and simultaneously took the position that he should not have been paying rent of \$1,000 or \$435.68 for the extra associate offices he previously rented, nor have to pay for the extra associate office he continued to occupy based on the fact that there was a vacancy in the suite.

16. After consulting with a CPA who was a friend of both Kachmarsky and Taylor, Taylor agreed to pay \$1,250 per month for the extra associate office.

17. During all times, for a period of approximately 19 years, Kachmarsky has managed the leasing of the remaining space in the suite not used by either firm without compensation or remuneration and has rented individual offices in the suite as further set forth in Exhibit "B".

18. In March 2014, K&T's loan payable to Wells Fargo came up for renewal.

19. Because of Taylor's personal financial condition and credit history, Wells Fargo declined to renew the loan.

20. Kachmarsky managed to secure additional financing for K&T through his banking relationship with Ameris Bank.

21. Because of Taylor's financial condition and credit history, Ameris charged K&T an interest rate of 4.75% instead of 4.25%, the prevailing market rate that Kachmarsky was obtaining similar financing for.

22. As part of the agreement with Ameris to provide the financing, K&T agreed to

open its operating account with Ameris, and Taylor further agreed to open his law practice operating account with Ameris.

23. Although an operating account for K&T and a law practice operating account for Taylor was opened at Ameris, Taylor, who was responsible for paying K&T's bills during this period, opened an operating account for K&T with First Reliance Bank, and used it to transact K&T's business, instead of the Ameris operating account as previously agreed.

24. In addition, Taylor failed to use his law practice operating account with Ameris as previously agreed.

25. As a result, and in order to preserve his banking relationship and honor the commitments he made individually and on behalf of K&T with Ameris, Kachmarsky, in October 2015, began directly collecting the rents of K&T, depositing them into the Ameris operating account, and paying K&T's operating expenses.

26. In January 2016, Kachmarsky vacated his associate office with the intent of renting it on behalf of K&T in the amount of \$1,250.

27. Taylor, unilaterally and against Kachmarsky's expressed objection, occupied that associate office in January 2016 and further refused to pay rent to K&T for one of the two additional associate offices he occupies.

28. As a result of Taylor refusing to pay rent, the property taxes due in mid-January 2016 were not paid and continued to not be paid from January 2016 through July 2016 as Taylor continued to refuse to pay rent for the additional office.

29. On June 27, 2016, Kachmarsky again sent an email setting forth the amounts of rent and capital call owed as a result of Taylor's continuing refusal to pay rent.

30. On July 19, 2016, Taylor paid the full amount of rent and capital call outstanding

at which time the outstanding past due property taxes were paid.

31. Beginning early 2021, Taylor again began to occupy a third additional office without paying rent to K&T in the amount of \$1,250 per month and totaling \$15,000 for the calendar 2021 calendar year.

32. In early 2022, Kachmarsky opted to occupy an additional office so that beginning in 2022, Taylor would be paying the correct rent going forward if he continued paying the same rent for the additional two offices he occupied.

33. In January 2022, Kachmarsky sent several emails to Taylor requesting he pay rent for two additional offices in the amount of \$2,500.00, escrow for taxes and insurance in the amount of \$1,000.00, monthly shortage of \$1,175.00 and \$1,000.00 for a monthly total of \$5,675.00 and in addition pay rent of \$15,000.00 for use of an additional office in calendar year 2022.

34. In March 2022, Kachmarsky retained counsel who noticed Taylor of Kachmarsky's intent to file suit by forwarding Taylor a copy of this summons and complaint.

35. After noticing Taylor of Kachmarsky's intent to file suit, Taylor deposited \$28,788.71 in April 2022 into an operating account of K&T in satisfaction of the \$32,025.00 amount Kachmarsky considered due, acknowledging use of an additional office from August 5, 2022 through December 31, 2022, but further denying use of the office from the beginning of the year through August 5, 2022.

36. Taylor has failed to pay rent for the months of May and June, 2022.

37. Taylor has breached his duties of loyalty and care to K&T and has a conflict of interest with K&T, in that he has occupied office space of K&T for his benefit and failed to pay rent to K&T, or to pay fair market value rent to K&T at various times that he occupied additional

space that otherwise could have been rented to third parties.

38. Taylor breached his duties of loyalty and care to K&T and had a conflict of interest with K&T, in that he maintained other bank accounts and his own operating account at a bank where he was desiring to obtain personal financing for himself, thereby failing to honor the commitments he had made individually, and on behalf of K&T to Ameris Bank.

39. Kachmarsky Trust, as member of K&T is entitled to have Taylor Capital expelled from K&T by judicial determination under Section 33-44-601(6) of the South Carolina Uniform Limited Liability Company Act of 1996 in that Taylor and Taylor Capital have (i) engaged in wrongful conduct that adversely and materially affected the company's business; (ii) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; and (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the Taylor and Taylor Capital.

40. As a result of such judicial expulsion from K&T, Kachmarsky and Kachmarsky Trust respectfully request Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T attached as Exhibit "C" hereto.

SECOND CAUSE OF ACTION

(Violation of South Carolina Statute §33-44-601 (6) (i) (ii) and (iii))

(As to Defendants' Taylor and Taylor Capital)

40. Kachmarsky re-alleges and adopts as though more fully set forth herein the allegations contained in Paragraphs 1 through 39 above.

41. Kachmarsky respectfully requests the Court judicially determine that Taylor Capital be expelled from K&T pursuant to South Carolina Statute §33-44-601 (6) (i), (ii) and (iii) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky

Trust and K&T as recited above.

42. As a result of such judicial expulsion from K&T, Kachmarsky and Kachmarsky Trust respectfully request Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T attached as an exhibit hereto.

THIRD CAUSE OF ACTION

(Violation of South Carolina Statute §33-44-801 (4) (a), (b) and (e))
(As to Defendants' Taylor and Taylor Capital)

43 Kachmarsky re-alleges and adopts as though more fully set forth herein the allegations contained in Paragraphs 1 through 34 above.

44. Kachmarsky respectfully requests the Court judicially dissolve K&T pursuant to South Carolina Statute §33-44-801 (4) (a), (b) and (e) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky Trust and K&T as recited above.

WHEREFORE, Plaintiff prays as follows:

AS TO FIRST CAUSE OF ACTION

(1) That Taylor and Taylor Capital be found to have breached their fiduciary duty to Kachmarsky, Kachmarsky Trust and K&T and further be expelled from K&T by judicial determination under Section 33-44-601(6) of the South Carolina Uniform Limited Liability Company Act of 1996.

(2) That Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T.

AS TO SECOND CAUSE OF ACTION

(1) That Taylor and Taylor Capital be judicially expelled from K&T.

(2) That Taylor Capital's interest in K&T to be disposed of in accordance with the operating agreement of K&T.

AS TO THIRD CAUSE OF ACTION

- (1) That K&T be judicially dissolved.
- (2) That the real property owned by K&T be partitioned and that Taylor's Capital interest in the real property be disposed of in accordance with the operating Agreement of K&T.

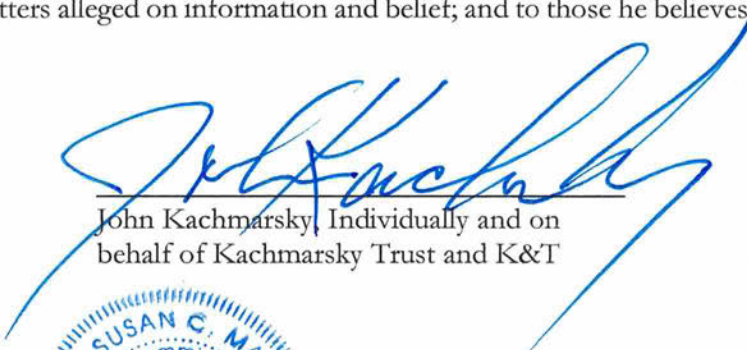
Respectfully submitted,

s/Daniel S. Slotchiver
DANIEL S. SLOTCHIVER, ESQUIRE
SLOTCHIVER & SLOTCHIVER, LLP
751 Johnnie Dodds Boulevard, Suite 100
Mt. Pleasant, SC 29464
SC Bar No.: 15129
(843) 577-6531 (phone)
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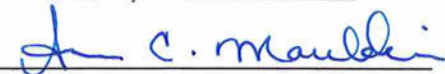
ATTORNEY FOR PLAINTIFFS

Mt. Pleasant, South Carolina
June 8, 2022

PERSONALLY appeared before me, John Kachmarsky, who, being first duly sworn, deposes and says that he is a Plaintiff and authorized representative of trust and limited liability entity Plaintiffs identified in the above referenced matter; that he has read the foregoing Summons and Complaint, knows the contents therein, and verifies all matters alleged therein are true and accurate to the best of his knowledge, save and except any matters alleged on information and belief; and to those he believes them to be true.


 John Kachmarsky, Individually and on
 behalf of Kachmarsky Trust and K&T

Sworn to and subscribed before me
 this 3rd day of June 2022



Notary Public for South Carolina

Printed Name Susan C. Mauldin

My Commission Expires: June 23, 2024





Suite 330

Exhibit "A"

330 Franke Building			Loan	478,000.00	4.00%
K&T Group, LLC	5,106 SF				
Year	1	2	3	4	5
Rental Income	8,800.00	8,800.00	8,800.00	8,800.00	8,800.00
Regime Fee	2,772.50	2,772.50	2,772.50	2,772.50	2,772.50
Taxes	1,565.47	1,565.47	1,565.47	1,565.47	1,565.47
Insurance	225.00	225.00	225.00	225.00	225.00
Cleaning	430.00	430.00	430.00	430.00	430.00
Electric	450.00	450.00	450.00	450.00	450.00
Miscellaneous	100.00	100.00	100.00	100.00	100.00
Shredding	69.00	69.00	69.00	69.00	69.00
Payment @ 4.00%	6,641.43	6,641.43	6,641.43	6,641.43	6,641.43
Total Expenses	12,253.40	12,253.40	12,253.40	12,253.40	12,253.40
Net Rental Income	-3,453.40	-3,453.40	-3,453.40	-3,453.40	-3,453.40
	-41,440.80	-41,440.80	-41,440.80	-41,440.80	-41,440.80

Rent Roll

Linck Investments, LLC	600.00
Taylor & Foley	1,250.00
Taylor & Foley	1,250.00
Glenn Wolfe & Associates, Inc	1,150.00
Glenn Wolfe & Associates, Inc	1,150.00
Law Office of David Savage	1,250.00
Pacific Precious Metals, LP	1,250.00
Markham Law Firm	200.00
Church Street Financial Management	700.00
	<u>8,800.00</u>

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
OF
K&T GROUP, LLC**

**TAYLOR & ASSOCIATES, PA
Attorneys & Counselors at Law
171 Church Street – Suite 330
Charleston, South Carolina 29401
Telephone 843.723.2000**

OFFICIAL COMPANY NAME: **K&T Group, LLC**

PLACE OF ORGANIZATION: **Charleston County, South Carolina**

DATE OF ORGANIZATION: **November 11, 2003**

DATE BEGIN BUSINESS: **November 11, 2003**

MEMBERS:

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

ANNUAL MEETING: **Not Required**

ADDRESS: **171 Church Street, Suite 330
Charleston, South Carolina 29401**

REGISTERED AGENT: **John Kachmarsky**

MANAGEMENT COMMITTEE: **David Glenn Taylor
John Kachmarsky**

COMPANY PROPERTY: **171 Church Street, Suites 318, 320 & 330
Charleston, South Carolina 29401**

FEIN: 

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
K&T GROUP, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT ("Agreement") is made and entered into to be effective as of the 1st day of January, 2009, by and among Taylor Capital, LLC and John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007 (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the Company was originally formed on the 11th day of November, 2003, with David Glenn Taylor and John Kachmarsky each owning a Fifty (50%) percent of the Membership Interests for the Company; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, David Glenn Taylor transferred One Hundred (100%) percent of his said Membership Interests in the Company to Taylor Capital, LLC; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from David Glenn Taylor to Taylor Capital, LLC; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, John Kachmarsky transferred One Hundred (100%) percent of his said Membership Interests in the Company to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from John Kachmarsky to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

NOW, THEREFORE, BE IT KNOWN that the parties hereto, do hereby amend the Operating Agreement for K&T Group, LLC by striking all Articles of said indenture in their entirety and restating said Articles as set forth herein. This indenture, as amended, shall be referred to and known as the First Amended and Restated Operating Agreement for K&T Group, LLC.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement have heretofore formed a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be K&T Group, LLC.

1.3 Articles of Organization. The Company has filed Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. The Company shall not be required to file an Annual Report with the South Carolina Secretary of State.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company in South Carolina shall be John Kachmarsky. The street address of the registered agent for service of process on the Company in South Carolina shall be 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be term Company. The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

1.8 Statement of Company & Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes. The purposes of the Company shall also be to engage in any other business or activity which is allowed by law, common, statutory or otherwise.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

(k) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) **“Act”** shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) **“Action of the Company”** and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) **“Agreement”** shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) **“Articles of Organization”** shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) **“Capital Account”** shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) **“Capital Contribution”** or **“Contribution to Capital”** shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) **“Company”** shall mean K&T Group, LLC a South Carolina limited liability company.

(i) **“Company Liability”** shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) **“Company Property”** shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) **“Disinterested”** shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Family”** shall mean the spouse, lineal descendants and ancestors of a Member.

(m) **“Financial Rights”** shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase “Financial Rights” shall have the same meaning, and describe the same rights, as the phrase “Distributional Interest” as used in the Act.

(n) **“Losses”** shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) **“Management Committee”** shall mean the Management Committee elected from time to time pursuant to ARTICLE V.

(p) **“Manager”** shall mean any Person elected to the Management Committee from time to time pursuant to ARTICLE V. The initial Managers shall be David Glenn Taylor and John Kachmarsky.

(q) **“Member”** shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term “Member” includes any Member who has withdrawn or otherwise dissociated from the Company.

(r) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(s) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) **“Profits”** shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) **“S.C. Code”** shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III **Membership and Capitalization**

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member’s initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the unanimous consent of all Members who own one hundred (100%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member’s admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member’s admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee’s admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor’s obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(a) If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this SECTION 3.8 may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Financial Rights and Voting Rights of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

(b) The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.8. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV

Member Meetings

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum & Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. Except as an action is permitted to be accomplished without a meeting as provided in SECTION 4.5, in order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Ratification. Under the quorum and voting requirements of SECTION 4.3, the Members may ratify and adopt any and all acts done on behalf of the Company.

ARTICLE V

Management and Control

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the unanimous approval of the Members of the Company who own one hundred (100%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the unanimous consent of those Disinterested Members in the Company who own one hundred (100%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than seventy-five (75%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(g) The Company shall not hire anyone who is a member of a Member's or Manager's Family without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Managers shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than fifty (50%) percent of the Managers. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Manager shall be entitled to one (1) vote. Fifty (50%) percent of the Managers constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than fifty (50%) percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee. Managers may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.8 Managers: Number, Election, Tenure and Qualifications. The Company shall initially have two (2) Managers. The initial Managers shall be David Glenn Taylor and John Kachmarsky. The Managers need not be Members in the Company. Each Manager shall agree to be bound by the provisions of this Agreement as they relate to Managers. The number of Managers on the Management Committee may be changed from time to time by the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights in the Company. The Managers shall be elected by the affirmative and unanimous vote of those Members who own one hundred (100%) of the Voting Rights in the Company. Following his election, each Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first.

5.9 Removal of Managers. A Manager may be removed at any time, with or without cause, by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

5.10 Resignation of Managers. Any Manager may resign at any time by giving written notice to all Members (other than the Manager so resigning should such Manager also be a Member). The resignation shall be effective upon receipt of such written notice by the last Member receiving such notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member or Manager done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI

Fiduciary Duties, Right to Rely, Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

6.3 Duty of Care. A Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Duty of Confidentiality. Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
- (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

(1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);

(2) Such Member's distributive share of Losses;

(3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and

(4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;

(2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and

(3) To elect to be excluded from the provisions of Subchapter K of the Internal Revenue Code pursuant to Treasury Regulation Section 301.7701-3(a).

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. John Kachmarsky is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII

Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the “Traditional Method with Curative Allocations” under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the “ceiling rule” (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the “ceiling rule” for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property’s economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the “ceiling rule”, the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members’ Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member’s Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company’s taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member’s share of the net decrease in Company Minimum Gain. A Member’s share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member’s percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member’s share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated

items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

- (a) The unanimous written consent of the Members who own one hundred (100%) percent of the Voting Rights in the Company;
- (b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;
- (c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own one hundred percent (100%) of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X **Dissociation**

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

- (a) The death of the Member;
- (b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and
- (d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be as determined under SECTION 11.2(a). The parties to this Agreement agree that any purchase price determined and reduced under the provisions of this Agreement shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of any purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI

Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior unanimous written consent of those Members who own one hundred (100%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the “Withdrawing Member”), such Withdrawing Member shall be deemed to have immediately offered to sell to the Company all of the Withdrawing Member’s Membership Share at the price determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If the Company does not accept said offer within sixty (60) days after receiving written notice of the dissociation by the Withdrawing Member and the determination of the purchase price, the Withdrawing Member’s Membership Share shall be deemed to have been immediately thereon offered to the other Members (the “Remaining Members”) at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after such deemed offer, the Company and the Remaining Members shall have no obligation to purchase the Withdrawing Member's Membership Share until the date of the expiration of the specified term of the Company that existed on the date of such wrongful dissociation if the expiration of the specific term does not result in the dissolution and winding up of the Company's business under Section 33-44-801 of the Act. The purchase price on such date, if any, shall be determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, or if a Member properly dissociates, other than by reason of death or disability, from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Dissolving Member is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer such Dissolving Member's Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms provided in subsection (b) of this SECTION 11.2.

(c) **Dissociation by Death or Disability.** If a Member dissociates by reason of death or disability (meaning a Member is disabled continuously for more than twelve (12) months), such Member (the "Dissolving Member") is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. The definition of disability shall mean totally and permanently disabled so that a Member is unable to engage in his usual duties of employment as determined by a doctor selected and paid by the Company. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member (or his estate) and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If no Remaining Members purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then the Company shall purchase, and the Dissolving Member, the estate of the Dissolving Member, or such Dissolving Member's successor in interest by operation of law shall sell all of the Dissolving Member's Membership Share in the Company at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Dissolving Member's Membership Share shall be the purchase price agreed upon by the Withdrawing or Dissolving Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Management Committee, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member. Such appointments shall be made by the respective parties within forty-five (45) days following the death, disability, attempted transfer or the event of dissociation. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. Should any party fail to so appoint an qualified appraiser within such prescribed time period, such failing party shall lose any right to so appoint an appraiser. If one party fails to appoint a qualified appraiser within the prescribed time period for such appointment, the sole appointed appraiser shall determine the Appraised Value and such Appraised Value determined by such sole appointed appraiser shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns. Where both parties properly appoint appraisers and both appraisers

cannot agree on an Appraised Value within thirty (30) days after they have both been selected, such appraisers shall appoint a third appraiser within ten (10) days of the expiration of the thirty (30) day period for the two original appraisers to agree upon an Appraised Value. The third appraiser shall determine the Appraised Value within thirty (30) days after such third appraiser's appointment. Appraised Value shall then be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties, but in all events such closing shall take place within thirty (30) days after the date upon which the Appraised Value is determined under the provisions of SECTION 11.3, unless the parties otherwise mutually agree in writing. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest compounded annually at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing or Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note, but in no case may the seller participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Managers hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

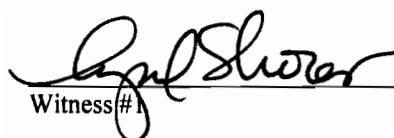
12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

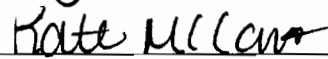
12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

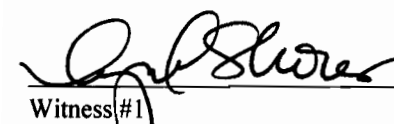
12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement to be effective as of the day and year first above written.

WITNESSES:

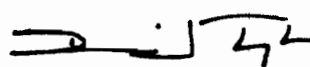

Witness #1


Witness #2 or Notary


Witness #1


Witness #2 or Notary

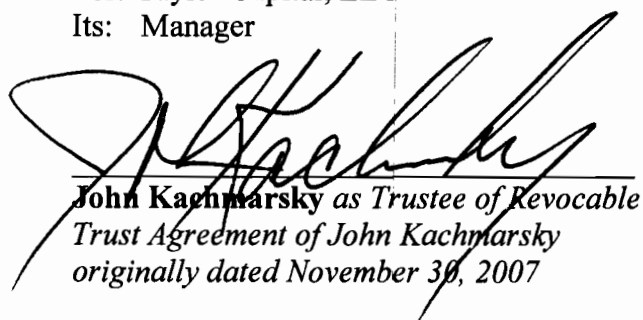
MEMBER:



By: **David Glenn Taylor**

For: Taylor Capital, LLC

Its: Manager

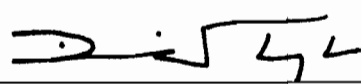

**John Kachmarsky as Trustee of Revocable
Trust Agreement of John Kachmarsky
originally dated November 30, 2007**

ACKNOWLEDGEMENT BY MANAGER

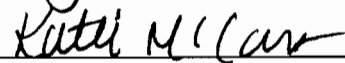
IN WITNESS WHEREOF, David Glenn Taylor hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:**MANAGER:**


Witness #1



David Glenn Taylor



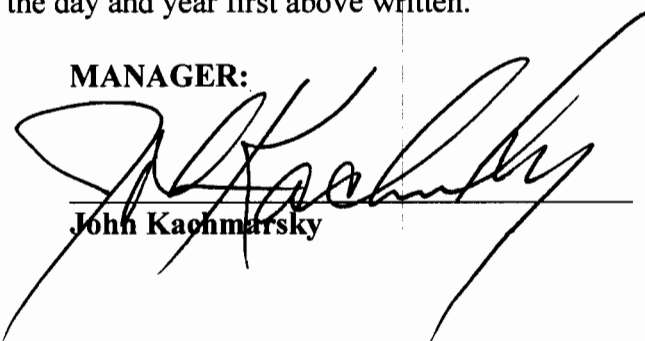
Witness #2 or Notary

ACKNOWLEDGEMENT BY MANAGER

IN WITNESS WHEREOF, John Kachmarsky hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:**MANAGER:**


Witness #1



John Kachmarsky



Witness #2 or Notary

EXHIBIT A

Description of Initial Company Property

- (1) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by Taylor Capital, LLC.
- (2) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

EXHIBIT B

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**ANSWER TO COMPLAINT AND
COUNTERCLAIM**

Defendants David G. Taylor (“Taylor”), individually and as manager of K&T Group, LLC, (“K&T”) and Taylor Capital, LLC, (“Taylor Capital”) as a member of K&T (together, “Defendants”), hereby answer Plaintiff John Kachmarsky (“Kachmarsky”) and John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007’s (“Kachmarsky Trust”) (together, “Plaintiffs”) Complaint as follows:

GENERAL DENIAL

Defendants deny all allegations of the Complaint not specifically admitted herein.

**FOR A FIRST DEFENSE AND ANSWER,
AND AS TO THE FIRST CAUSE OF ACTION**

1. Defendants admit the allegations of Paragraphs 1 through 4.
2. With respect to Paragraph 5, Defendants admit that K&T owns a commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 (the

“K&T Office Suite”). Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 and therefore deny the same.

3. Defendants admit the allegations of Paragraphs 6 and 7.

4. With respect to Paragraph 8, Defendants admit that Kachmarsky and Taylor reached an oral agreement whereby each of them would have his own executive office. Defendants deny the remaining allegations of Paragraph 8.

5. Defendants admit that the parties paid equal amounts to cover the expenses that exceeded rental income and deny the remaining allegations of Paragraph 9.

6. With respect to Paragraph 10, Defendants admit that Taylor hired an additional associate and that Taylor paid for an additional associate office. Defendants deny the remaining allegations of Paragraph 10.

7. Defendants deny the allegations of Paragraphs 11, 12, 13, 14, and 15.

8. Defendants admit the allegations of Paragraph 16.

9. With respect to Paragraph 17, Defendants admit that Kachmarsky has managed the leasing of the spaces in the suite not used by either firm. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and therefore deny the same.

10. Defendants admit the allegations of Paragraph 18.

11. Defendants deny the allegations of Paragraph 19.

12. With respect to Paragraph 20, Defendants admit that Kachmarsky obtained financing for K&T through Ameris Bank. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore deny the same.

13. Defendants deny the allegations of Paragraph 21.

14. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 22 and therefore deny the same.

15. With respect to Paragraph 23, Defendants admit that Taylor maintained an operating account for K&T with First Reliance Bank. Defendants deny the remaining allegations of Paragraph 23.

16. Defendants deny the allegations of Paragraph 24.

17. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 25 and 26 and therefore deny the same.

18. Defendants deny the allegation of Paragraph 27.

19. Defendants deny the allegations of Paragraph 28.

20. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 29 and therefore deny the same.

21. With respect to Paragraph 30, Defendants admit that Taylor paid rent and a capital call in an amount determined by Kachmarsky on July 19, 2016. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 30 and therefore deny the same.

22. Defendants deny the allegations of Paragraph 31.

23. With respect to Paragraph 32, Defendants admit that in early 2022, Kachmarsky opted to occupy an additional office. Defendants deny the remaining allegations of Paragraph 32.

24. With respect to Paragraph 33, Defendants admit that Kachmarsky sent two emails to Taylor requesting that Taylor pay additional rent, escrow for taxes and insurance, and a monthly shortage. Defendants deny the remaining allegations of Paragraph 33.

25. Defendants admit the allegations of Paragraph 34.

26. With respect to Paragraph 35, Defendants admit that Taylor deposited \$28,788.71 into K&T's operating account. Defendants deny the remaining allegations of Paragraph 35.

27. To the extent that Paragraphs 36 through 40 include legal conclusion, no response is required. Defendants deny the remaining allegations of Paragraphs 36 through 40.

AS TO THE SECOND CAUSE OF ACTION

28. Answering the allegations of Paragraph 40a¹, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

29. Paragraphs 41 and 42 do not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraphs 41 and 42, and deny any allegations contained therein.

AS TO THE THIRD CAUSE OF ACTION

30. Answering the allegations of Paragraph 43, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

31. Paragraph 44 does not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraph 44 and deny any allegations contained therein.

32. Responding to the WHEREFORE Paragraph and Subparagraphs, Defendants deny that Plaintiffs is entitled to any relief in this action, including the relief prayed for in his Complaint.

FOR A SECOND DEFENSE

33. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and therefore should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

¹ The Complaint includes two paragraphs numbered 40. For clarification, Defendants refer to the latter Paragraph 40 as Paragraph 40a.

FOR A THIRD DEFENSE

34. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and/or by the doctrine of laches.

FOR A FOURTH DEFENSE

35. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

36. Defendants reserve the right to amend their Answer and assert such additional affirmative defenses as may become available or apparent to it during the course of discovery.

FOR A FIRST COUNTERCLAIM
(Breach of the Operating Agreement)

37. Defendants incorporate and reallege each preceding paragraph as if fully stated herein.

38. On January 1, 2009, Taylor, on behalf of Taylor Capital, and Kachmarsky, on behalf of the Kachmarsky Trust, entered into the K&T Operating Agreement.

39. Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty.

40. Section 6.3 of the K&T Operating Agreement imposes upon all managers a duty of care.

41. Section 6.4 of the K&T Operating Agreement requires each manager to discharge his duties "consistently with the obligation of good faith and fair dealing."

42. Section 6.8 of the K&T Operating Agreement provides for the recovery of attorney's fees in the enforcement of the Agreement.

43. As a manager of K&T, Kachmarsky owed to K&T the duties of loyalty, care, and good faith and fair dealing.

44. Shortly after the parties entered into the K&T Operating Agreement, Kachmarsky moved personal belongings into the K&T Office Suite and began consistently staying in the Office Suite overnight. Kachmarsky's occupancy of the Office Suite as his primary residence lasted years.

45. Kachmarsky's years-long residential occupancy of the K&T Office Suite caused problems for K&T's then-current tenants and negatively affected K&T's ability to place new tenants.

46. In or around 2016, Kachmarsky acquired several other office suites near the K&T Office Suite through other entities owned by him.

47. Kachmarsky simultaneously acted as the property manager for both the K&T Office Suite and the nearby office suites he owned through other entities.

48. From the time he acquired the nearby office suites, Kachmarsky prioritized placing tenants in the office suites he owned over the office suites owned by K&T. Over the course of his property management of K&T, Kachmarsky diverted opportunities from K&T to other entities owned by Kachmarsky.

49. Kachmarsky's diversion of business opportunities from K&T constitutes a breach of the K&T Operating Agreement.

50. Section 12.1 of the K&T Operating Agreement guarantees all members and their agents the right to receive company information upon demand, which includes the right to access, inspect, and copy company records.

51. As a member of K&T, Taylor Capital, is entitled to access K&T's financial records upon a demand to do so. As an agent of Taylor Capital, Taylor is entitled to access K&T's financial records upon a demand to do so.

52. In or around 2016, Kachmarsky unilaterally took control of K&T's accounts.

53. As a result, Kachmarsky currently maintains K&T's financial records and the login credentials to its QuickBooks account.

54. In January 2022, Taylor demanded access to the K&T's financial records and requested the login credentials to K&T's QuickBooks account from Kachmarsky.

55. In response, Kachmarsky provided Taylor with defective credentials.

56. Taylor thereafter demanded that Kachmarsky provide Taylor with working credentials to K&T's QuickBooks account.

57. Kachmarsky has refused to provide Taylor with the proper credentials to K&T's QuickBooks account and has failed to otherwise provide Taylor access to any of K&T's financial records.

58. Kachmarsky's refusal to provide Taylor access to K&T's financial records and accounts constitutes a breach of the K&T Operating Agreement.

59. As a direct and proximate result of Kachmarsky's breaches, K&T has suffered damages in an amount to be proven at trial. As a result of Kachmarsky's breaches, Taylor Capital, as a member of K&T, has likewise suffered damages in an amount to be proven at trial.

60. Further, Taylor is entitled to specific performance of the Operating Agreement and specifically entitled to access, inspect, and copy K&T's financial records.

61. Pursuant to the K&T Operating Agreement, Defendants are entitled to reasonable attorney's fees.

WHEREFORE, having answered Plaintiffs' Complaint, Defendants pray that the Court: (1) enter an order dismissing Plaintiffs' Complaint with prejudice, (2) tax the costs of this litigation against Plaintiffs, (3) order Kachmarsky to provide Taylor access to K&T's financial records and accounts, (4) enter a judgment in favor of Defendants and against Plaintiffs in accordance with the

above-stated counterclaim and award damages in an amount to be proven at trial, (5) award Defendants reasonable attorney's fees, and (6) provide such other and further relief as the Court deems just and proper.

s/ Wilson Daniel

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Wilson Daniel (SC ID No. 104317)
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Attorneys for Defendants

August 19, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Kachmarsky, Individually, as Manager of
K&T Group, LLC and as Trustee of the
Revocable Trust of John Kachmarsky dated
November 30, 2007, as Member of K&T Group,
LLC,

Plaintiffs,

vs.

David G. Taylor, Individually, and as Manager of
K&T Group, LLC, Taylor Capital, LLC, as
Member of K&T Group, LLC and K&T Group,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-02589

**PLAINTIFF'S REPLY TO
COUNTERCLAIMS**
(Non-Jury)

Plaintiffs, replying to the Counterclaims of the Defendants, alleges and says:

FIRST DEFENSE

(Answers to Enumerated Paragraphs of Counterclaims)
(As to Defendants' Taylor and Taylor Capital)

1. Paragraph 37 does not contain allegations and therefore require no response by Plaintiffs.
2. Paragraph 38 is admitted.
3. Paragraph 39 is admitted.
4. Paragraph 40 is admitted.
5. Paragraph 41 is admitted.
6. Paragraph 42 is admitted.
7. Answering paragraph 43 it is admitted that all managers, including Kachmarsky and Taylor owed to K&T the duties of loyalty, care, and good faith and fair dealing.
8. Answering paragraph 44 it is admitted Plaintiff Kachmarsky periodically stayed in the

office suite overnight. Except as admitted, paragraph 44 is denied.

9. Paragraph 45 is denied and Plaintiffs demand strict proof thereof.

10. Answering paragraph 46 it is admitted that Kachmarsky owns other office space in the Franke Building as does Taylor. Except as admitted, paragraph 46 is denied.

11. Paragraph 47 is admitted.

12. Paragraph 48 is denied and Plaintiffs demand strict proof thereof.

13. Paragraph 49 is denied.

14. Paragraph 50 is admitted.

15. Paragraph 51 is admitted.

16. Answering paragraph 52 it is admitted that Kachmarsky again began collecting rents and depositing them into the Ameris bank account because Taylor had not been honoring his obligations with Ameris Bank which were to maintain operating accounts for his law practice and for K&T as a condition for Ameris Bank providing financing to K&T. Except as admitted, paragraph 52 is denied.

17. Paragraph 53 is admitted but Plaintiffs deny that it is a result of the allegation contained in paragraph 52.

18. Paragraph 54 is denied to the extent that Taylor demanded access to K&T's financial records. Taylor requested access to K&T's financial records and access was provided by Kachmarsky.

19. Answering Paragraph 55 it is denied that the credentials provided by Kachmarsky were defective. Except as denied, paragraph 55 is admitted.

20. Paragraph 56 is denied.

21. Paragraph 57 is denied.

22. Paragraph 58 is denied in that there has been no refusal by Kachmarsky to provide

financial records or accounts to Taylor. The remainder of paragraph 58 is denied.

23. Paragraph 59 is denied.

24. Answering paragraph 60 it is admitted that Taylor is entitled to access, inspect, and copy K&T's financial records. Except as admitted, paragraph 60 is denied.

25. Paragraph 61 is denied.

SECOND DEFENSE

(Equitable Defenses)

(As to Defendants' Taylor and Taylor Capital)

Plaintiffs' plead all applicable equitable defenses, including but not limited to laches, unclean hands, estoppel, and waiver, in bar of and as affirmative defenses against the Defendants' Counterclaims.

WHEREFORE Plaintiffs' request that the Court deny all relief sought by the Defendants in its Counterclaims, grant Plaintiff all relief sought in its Complaint, and grant such other relief to the Plaintiff as the Court deems just and proper.

Respectfully submitted,

/s/ Daniel S. Slotchiver

DANIEL S. SLOTCHIVER, ESQUIRE

SLOTCHIVER & SLOTCHIVER, LLP

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ATTORNEYS FOR PLAINTIFFS

Charleston, South Carolina

September 6, 2022

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**AMENDED ANSWER TO COMPLAINT
AND COUNTERCLAIM**

Defendants David G. Taylor (“Taylor”), individually and as manager of K&T Group, LLC, (“K&T”) and Taylor Capital, LLC, (“Taylor Capital”) as a member of K&T (together, “Defendants”), hereby answer Plaintiff John Kachmarsky (“Kachmarsky”) and John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007’s (“Kachmarsky Trust”) (together, “Plaintiffs”) Complaint as follows:

GENERAL DENIAL

Defendants deny all allegations of the Complaint not specifically admitted herein.

**FOR A FIRST DEFENSE AND ANSWER,
AND AS TO THE FIRST CAUSE OF ACTION**

1. Defendants admit the allegations of Paragraphs 1 through 4.
2. With respect to Paragraph 5, Defendants admit that K&T owns a commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 (the

“K&T Office Suite”). Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 and therefore deny the same.

3. Defendants admit the allegations of Paragraphs 6 and 7.

4. With respect to Paragraph 8, Defendants admit that Kachmarsky and Taylor reached an oral agreement whereby each of them would have his own executive office. Defendants deny the remaining allegations of Paragraph 8.

5. Defendants admit that the parties paid equal amounts to cover the expenses that exceeded rental income and deny the remaining allegations of Paragraph 9.

6. With respect to Paragraph 10, Defendants admit that Taylor hired an additional associate and that Taylor paid for an additional associate office. Defendants deny the remaining allegations of Paragraph 10.

7. Defendants deny the allegations of Paragraphs 11, 12, 13, 14, and 15.

8. Defendants admit the allegations of Paragraph 16.

9. With respect to Paragraph 17, Defendants admit that Kachmarsky has managed the leasing of the spaces in the suite not used by either firm. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and therefore deny the same.

10. Defendants admit the allegations of Paragraph 18.

11. Defendants deny the allegations of Paragraph 19.

12. With respect to Paragraph 20, Defendants admit that Kachmarsky obtained financing for K&T through Ameris Bank. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore deny the same.

13. Defendants deny the allegations of Paragraph 21.

14. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 22 and therefore deny the same.

15. With respect to Paragraph 23, Defendants admit that Taylor maintained an operating account for K&T with First Reliance Bank. Defendants deny the remaining allegations of Paragraph 23.

16. Defendants deny the allegations of Paragraph 24.

17. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 25 and 26 and therefore deny the same.

18. Defendants deny the allegation of Paragraph 27.

19. Defendants deny the allegations of Paragraph 28.

20. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 29 and therefore deny the same.

21. With respect to Paragraph 30, Defendants admit that Taylor paid rent and a capital call in an amount determined by Kachmarsky on July 19, 2016. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 30 and therefore deny the same.

22. Defendants deny the allegations of Paragraph 31.

23. With respect to Paragraph 32, Defendants admit that in early 2022, Kachmarsky opted to occupy an additional office. Defendants deny the remaining allegations of Paragraph 32.

24. With respect to Paragraph 33, Defendants admit that Kachmarsky sent two emails to Taylor requesting that Taylor pay additional rent, escrow for taxes and insurance, and a monthly shortage. Defendants deny the remaining allegations of Paragraph 33.

25. Defendants admit the allegations of Paragraph 34.

26. With respect to Paragraph 35, Defendants admit that Taylor deposited \$28,788.71 into K&T's operating account. Defendants deny the remaining allegations of Paragraph 35.

27. To the extent that Paragraphs 36 through 40 include legal conclusion, no response is required. Defendants deny the remaining allegations of Paragraphs 36 through 40.

AS TO THE SECOND CAUSE OF ACTION

28. Answering the allegations of Paragraph 40a¹, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

29. Paragraphs 41 and 42 do not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraphs 41 and 42, and deny any allegations contained therein.

AS TO THE THIRD CAUSE OF ACTION

30. Answering the allegations of Paragraph 43, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

31. Paragraph 44 does not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraph 44 and deny any allegations contained therein.

32. Responding to the WHEREFORE Paragraph and Subparagraphs, Defendants deny that Plaintiffs is entitled to any relief in this action, including the relief prayed for in his Complaint.

FOR A SECOND DEFENSE

33. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and therefore should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

¹ The Complaint includes two paragraphs numbered 40. For clarification, Defendants refer to the latter Paragraph 40 as Paragraph 40a.

FOR A THIRD DEFENSE

34. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and/or by the doctrine of laches.

FOR A FOURTH DEFENSE

35. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

36. Defendants reserve the right to amend their Answer and assert such additional affirmative defenses as may become available or apparent to it during the course of discovery.

FOR A FIRST COUNTERCLAIM

(Breach of the Operating Agreement)
(Against Plaintiffs/Counterclaim Defendants)

37. Defendants incorporate and reallege each preceding paragraph as if fully stated herein.

38. On January 1, 2009, Taylor, on behalf of Taylor Capital, and Kachmarsky, on behalf of the Kachmarsky Trust, entered into the K&T Operating Agreement.

39. Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty.

40. Section 6.3 of the K&T Operating Agreement imposes upon all managers a duty of care.

41. Section 6.4 of the K&T Operating Agreement requires each manager to discharge his duties "consistently with the obligation of good faith and fair dealing."

42. Section 6.8 of the K&T Operating Agreement provides for the recovery of attorney's fees in the enforcement of the Agreement.

43. Acting in his capacity as manager of K&T, Kachmarsky owed to K&T the duties of loyalty, care, and good faith and fair dealing.

44. In early 2022, a change in personnel for Taylor's law firm, a lack of information, and questions over the amounts Kachmarsky claimed were owed led to a delay in payment of amounts owed by Taylor Capital.

45. Kachmarsky did not send notice of any default of obligations or duties to Taylor Capital under Section 12.2 of the Operating Agreement.

46. Kachmarsky did not take advantage of the procedures available to him in the Operating Agreement to call a member meeting (Section 4.2), to call a Management Committee meeting (Section 5.5), or to make a capital call (Section 3.8).

47. Instead, following an exchange of emails with Taylor, Kachmarsky hired counsel and threatened suit in March 2022.

48. In April 2022, Taylor Capital made all the payments demanded by Kachmarsky, save for a "nominal" disputed payment of \$8,750.

49. Kachmarsky was demonstrably wrong in his demand for additional funds from Taylor Capital, and a brief review of his own emails would have revealed his error.

50. Nonetheless, Kachmarsky filed suit in June 2022 seeking to expel Taylor Capital or dissolve K&T.

51. As the basis for his requests for expulsion and dissolution, Kachmarsky used stale and minor disputes. In fact, the stated basis for Kachmarsky's suit was pretext to achieve what he really wanted: to force Taylor Capital out of the parties' common investment with claims of wrongful dissociation and the accompanying penalties under Article XI of the Operating

Agreement that would reduce the value of Taylor Capital's half interest by 25%, impose additional discounting, and authorize the recovery of costs and attorneys' fees.

52. At all relevant times, Kachmarsky acted in his capacity as Trustee of the Kachmarsky Trust and as manager of K&T.

53. Kachmarsky's actions constitute breaches of his obligations under sections 6.2, 6.3, and 6.4 of the K&T Operating Agreement.

54. As a direct and proximate result of the breaches pleaded herein, Defendants have suffered damages in an amount to be proven at trial, including but not limited incurring costs and attorneys' fees to defend against this action.

55. Pursuant to the K&T Operating Agreement, Defendants are entitled to reasonable attorney's fees.

WHEREFORE, having answered Plaintiff's Complaint, Defendants pray that the Court: (1) enter an order dismissing Plaintiff's Complaint with prejudice, (2) tax the costs of this litigation against Plaintiff, (3) enter a judgment in favor of Defendants and against Plaintiff in accordance with the above-stated counterclaim, (5) award Defendants reasonable attorney's fees to be supported by an affidavit of fees when requested by the Court, and (6) provide such other and further relief as the Court deems just and proper.

[Signature on following page]

s/ Wilson Daniel

Brian C. Duffy (SC ID No. 16247)

Wilson Daniel (SC ID No. 104317)

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Attorneys for Defendants

October 10, 2024

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Kachmarsky, Individually, as Manager of K&T Group, LLC and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC,

Plaintiffs,

VS.

David G. Taylor, Individually, and as Manager of K&T Group, LLC, Taylor Capital, LLC, as Member of K&T Group, LLC and K&T Group, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-02589

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
AS TO DEFENDANTS'
COUNTERCLAIM**

Comes now Plaintiffs, by and through their undersigned attorney, to move the Court for summary judgment pursuant to Rule 56 as there is no material dispute of fact, thus Plaintiffs are entitled to judgment as a matter of law against the Defendants with regard to Defendants' Counterclaim. The basis for the motion for summary judgment is the sworn deposition testimony of Defendants from their deposition on July 7, 2023. During his deposition, Defendants testified that they suffered no damages as a result of Plaintiffs' purported breach of the operating agreement. Thus, the facts are not in dispute and Defendants' counterclaim fails to meet an essential element of their claim for breach of the operating agreement. Accordingly, Plaintiffs are entitled to summary judgment as a matter of law with regard to said counterclaim.

Plaintiffs reserve the right to rely on the pleadings, discovery, and deposition transcripts in support of his motion. Plaintiffs further reserve the right to supplement this motion with any

additional documents, evidence, memoranda of law, affidavits, and/or testimony as may be submitted prior to a hearing on this matter.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver
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ATTORNEY FOR PLAINTIFF

Mt. Pleasant, South Carolina
August 23, 2023

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Kachmarsky, Individually, as Manager of K&T Group, LLC and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC,

Plaintiffs,

VS.

David G. Taylor, Individually, and as Manager of K&T Group, LLC, Taylor Capital, LLC, as Member of K&T Group, LLC and K&T Group, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-10-02589

**MEMORANDUM IN
SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
AS TO DEFENDANTS'
COUNTERCLAIM**

Comes now Plaintiff, by and through his undersigned attorney, and submits this Memorandum in Support of Plaintiffs' Motion for Summary Judgment as to Defendants' Counterclaim.

INTRODUCTION

Plaintiff filed suit on June 3, 2022, asserting causes of action for Breach of Contract, Violation of South Carolina Code of Laws § 33-44-601(6)(i),(ii), and (iii), Violation of South Carolina Code of Laws § 33-44-801(4)(a), (b), and (e), and further alleging Breach of Fiduciary Duty and requesting that Defendant be judicially expelled from the LLC and that the LLC be judicially dissolved. On August 19, 2022, Defendants filed an Answer and Counterclaim asserting a single cause of action for Breach of Operating Agreement. Defendants specifically allege in Paragraph 59 of their Counterclaim:

“As a direct and proximate result of Kachmarsky’s breaches,

Taylor Capital, as a member of K&T, has likewise suffered damages in an amount to be proven at trial.”

(See Defendants’ Counterclaim, Paragraph 59).

Plaintiff requests an Order granting summary judgment as to Defendants’ Counterclaim. On July 7, 2023, Defendants testified, under oath, at their deposition, that they suffered *no damages* as a result of Plaintiffs’ purported breach of the operating agreement. Based on the Defendants’ sworn testimony, Plaintiffs filed a Motion for Summary Judgment as to Defendants’ Counterclaim on August 23, 2023.

STANDARD OF REVIEW

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, a party may move, with or without supporting affidavits, for summary judgment in his favor as to all or part of a claim. Rule 56(a), SCRPC. The trial court must grant the motion “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56(c), SCRPC. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). “With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility ‘may be discharged by “showing”—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party’s case.” Id. (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986)). “The moving party need not ‘support its motion with affidavits or other similar materials *negating* the opponent’s claim.” Id. (quoting Celotex, 477 U.S. at 323, 106 S.Ct. at 2553, 91 L.Ed.2d at 274) (Emphasis in original). Once the moving party carries its initial burden, the

opposing party must come forward with admissible evidence that shows there is a genuine issue of fact remaining for trial. Baughman v. Am. Tel. & Tel. Co., 306 S.C. at 115, 410 S.E.2d at 545 (1991).

LEGAL ARGUMENT

I. Plaintiffs are entitled to Summary Judgment as a Matter of Law regarding Defendants' Counterclaim.

Defendants' Counterclaim alleges a single cause of action for Breach of the Operating Agreement. Defendants further allege in their Counterclaim that "[a]s a direct and proximate result of Kachmarsky's breaches, Taylor Capital, as a member of K&T, has likewise suffered damages in an amount to be proven at trial." (See Paragraph 59 of Defendants' Counterclaim). However, at their deposition on July 7, 2023, Defendants testified, under oath, that they suffered no damages as a result of Plaintiffs' purported breach of the operating agreement. Specifically, Defendants testified, as follows:

Q. Have you lost any tenants as a result of it?

A. I don't know if we lost any tenants...

(Transcript of Deposition of David Taylor, July 7, 2023, P. 98, L. 1-3).

Q: So how would you quantify monetary damage for the fact that John would stay in his office overnight, if you lost no tenants?

MR. DUFFY: Object to the form.

THE WITNESS: I don't know. That would be for a court to decide.

BY MR. SLOTCHIVER:

Q. I'm asking you.

A. I don't know.

Q. Are you aware of any lost revenue that anybody has incurred because John would spend the night in his office?

A. That would be hard for me to say.

(Transcript of Deposition of David Taylor, July 7, 2023, P. 99, L. 4-16).

Q. Did anybody ever tell you they refused to move into that office because John Kachmarsky would stay there periodically?

A. No one ever told me that...

(Transcript of Deposition of David Taylor, July 7, 2023, P. 100, L. 3-6).

During the deposition, Defendants testified that they suffered no damages as a result of Plaintiffs' purported breach of the operating agreement. Thus, the facts are not in dispute and Defendants' counterclaim fails to meet an essential element of their claim for Breach of the Operating Agreement. Accordingly, Plaintiffs are entitled to summary judgment as a matter of law with regard to said counterclaim.

CONCLUSION

For the aforementioned reasons, Plaintiffs' Motion for Summary Judgment as to Defendants' Counterclaim should be granted. Pursuant to Rule 56, SCRCp, there is no material dispute of fact, thus Plaintiffs are entitled to judgment as a matter of law against the Defendants with regard to Defendants' Counterclaim.

Plaintiffs reserve the right to rely on the pleadings, discovery, and deposition transcripts in support of his motion. Plaintiffs further reserve the right to further supplement this motion with any additional documents, evidence, memoranda of law, affidavits, and/or testimony as may be submitted prior to a hearing on this matter.

[Signature on the following page]

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP

s/Daniel S. Slotchiver

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ATTORNEY FOR PLAINTIFFS

Mt. Pleasant, South Carolina
December 28, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2022-CP-10-02589

John Kachmarsky, Individually, as Manager of
K&T Group, LLC, and as Trustee of the
Revocable Trust of John Kachmarsky dated
November 30, 2007, as Member of K&T
Group, LLC,

Plaintiffs,

v.

David G. Taylor, Individually and as Manager
of K&T Group, LLC; Taylor Capital, LLC, as
Member of K&T Group, LLC; and K&T
Group, LLC,

Defendants.

**DEFENDANTS' MEMORANDUM IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

Defendants David G. Taylor; Taylor Capital, LLC; and K&T Group, LLC
("Defendants") hereby respectfully submit this memorandum in opposition to Plaintiffs' motion
for summary judgment.

Summary judgement is appropriate only "when the evidence is susceptible of only one
reasonable interpretation," Bell v. Progressive Direct Ins. Co., 407 S.C. 565, 576, 757 S.E.2d
399, 404 (2014), and "there is no genuine issue as to any material fact," Singleton v. Sherer, 377
S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008) (citing SCRCP 56). "[W]here further
inquiry into the facts of the case is desirable to clarify the application of the law," "[s]ummary
judgment is inappropriate." Id. "Even when there is no dispute as to evidentiary facts, but only
as to the conclusions or inferences to be drawn from them, summary judgment should be
denied." Id. (citing Montgomery v. CSX Transp., Inc., 376 S.C. 37, 656 S.E.2d 20 (2007)).

The Court should deny Plaintiffs' motion because genuine issues of material fact

underlie Defendants' counterclaim. The deposition testimony on which Plaintiffs rely, even standing alone, does not entitle Plaintiffs to summary judgment on Defendants' counterclaim. Further, as counsel will address at the hearing, other evidence, including the deposition testimony of Plaintiff John Kachmarsky ("Kachmarsky"), supports Defendants' counterclaim, making summary judgment inappropriate. Defendants attach hereto as Exhibit A the transcript and exhibits from the deposition of Plaintiff John Kachmarsky.

Defendants respectfully request that Plaintiffs' motion for summary judgment be denied.

s/ Brian Duffy

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Attorneys for Defendants

January 4, 2024
Charleston, South Carolina

EXHIBIT A

In the Matter of:

JOHN KACHMARSKY

VS.

DAVID G. TAYLOR

John Kachmarsky

July 7, 2023



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF
COMMON PLEAS FOR THE
NINTH JUDICIAL CIRCUIT

- - -

John Kachmarsky, Individually,	:	CASE NO.:
as Manager of K&T Group, LLC and	:	2022-CP-10-02589
as Trustee of the Revocable	:	
Trust of John John Kachmarsky	:	
dated November 30, 2007, as	:	
Member of K&T Group, LLC,	:	
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
David G. Taylor, Individually,	:	
and as Manager of K&T Group, LLC,	:	
Taylor Capital, LLC, as Member of	:	
K&T Group, LLC and K&T Group, LLC,	:	
	:	
Defendants.	:	

DEPOSITION OF JOHN KACHMARSKY

DATE TAKEN: FRIDAY, JULY 7, 2023
TIME BEGAN: 2:01 P.M.
TIME ENDED: 4:40 P.M.
LOCATION: SLOCHIVER & SLOCHIVER, LLC
751 JOHNNIE DODDS BOULEVARD, SUITE 100
MT. PLEASANT, SOUTH CAROLINA 29464

REPORTED BY: DEIRDRE J. WEYER, RPR
SPECTRUM COURT REPORTING SERVICES
P.O. BOX 1296
MT. PLEASANT, SOUTH CAROLINA 29202

APPEARANCES:

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Representing the Defendant

ALSO PRESENT:

Edward Lapine, Esquire

JOHN KASHMARSKY,
after having been first duly sworn, was
examined and testified as follows:

EXAMINATION

BY MR. DUFFY:

Q All right, John, thank you for being here.
As you know, I'm Brian Duffy, and I represent
David Taylor and the other defendants in the action
that you brought. Is it okay if I call you John?

A Sure.

Q All right. And have you been deposed
before, John?

A I've -- yes.

Q Okay. In what context was that?

A I have no idea.

Q Do you know how long ago it was you were
deposed?

A It's been a long time. I mean, I just
know that I have been once, I think. Maybe not.
Maybe not.

Q Would it have been -- were you a party in
that action or just a witness to the case?

A I don't recall.

Q Okay. Well, I expect you recall that you

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EXAMINATION	PAGE
By Mr. Duffy	4
Certificate of Reporter	108

EXHIBITS

DEFENDANT'S	DESCRIPTION	MARKED
1	Listing Agreement	26
2	Listing of Space Available for Rent Franke Building	60

sat through Mr. Taylor's deposition, correct?

A Yes.

Q Okay. And so you understand how the rules
work?

A Sure.

Q And as Mr. Slotchiver said, you know,
couple things to keep in mind. Make sure you're not
giving head nods. Give audible responses, no
uh-huhs, uh-uhs. Those are just hard to have a clear
transcript with, so please try to say yes or no. If
there's a question that you don't understand, please
ask me to rephrase it. I'd be happy to do that.
Otherwise, I will presume you understood the
question; is that fair?

A Fair.

Q Okay. Any reason that you couldn't give
full, truthful testimony today?

A No reason.

Q Okay. All right. Would you describe for
me what your legal practice is.

A Tax lawyer. Do estate planning, some
transactions, and fight with the government a lot.

Q All right. And how long have you been
doing that type of practice?

A Almost 40 years.

Page 6

1 Q Okay. And where is your law firm located?

2 A In Suite 330, 171 Church Street in The

3 Franke Building, Charleston.

4 Q Okay. How long has it been located there?

5 A Since 2005. Well, actually, I've

6 practiced law in that building since 1993.

7 Q All right. And at one point did you

8 practice with Mr. Taylor?

9 A I thought it was 2000 to 2003, but I think

10 it was like in 1999. I bought the office in '99,

11 Suite 140. And very soon after I bought it, David

12 became a tenant.

13 Q Okay. And did you -- was -- was David's

14 practice just a tenant or did y'all practice law

15 together?

16 A Well, I mean, he did the same thing I did,

17 so -- but he was just a tenant to start with. And

18 then we started just doing things together and

19 eventually ended up forming a partnership.

20 Q Okay. And what was that called?

21 A Kachmarsky & Taylor.

22 Q And what was -- can you tell me the years

23 of the existence of Kachmarsky & Taylor?

24 A I don't remember exactly when it started.

25 I would guess it was around 2003 and then it lasted

Page 8

1 Q Okay. And that was what -- that

2 transaction is what prompted the IRS --

3 A Yes.

4 Q -- raid?

5 A Yeah.

6 Q Okay. There was reference earlier to a

7 criminal investigation. Is that the same -- is that

8 resulting from the same transaction?

9 A Yes.

10 Q Okay. Can you tell me what other

11 companies that you have -- and I mean private,

12 smaller entities, not -- not public entities that you

13 have an ownership interest in?

14 A Well, I have LLCs that own individual

15 properties.

16 Q Okay. And what are those?

17 A 140 Franke Building, LLC; 150 Franke

18 Building, LLC; 230 Franke Building, LLC; 340 Franke

19 Building, LLC.

20 Q Okay. And are you the sole owner of each

21 of those four LLCs?

22 A Yes.

23 Q And is the primary purpose of each of

24 those to own and lease the property identified in the

25 name?

Page 7

1 until we got with Fitz O'Connor, which was probably

2 around -- right after we bought the suite. 2006,

3 maybe. And then we were raided. I got out of that

4 partnership. I just filed -- you know, basically

5 disassociated myself from the partnership. We became

6 O'Connor, Kachmarsky, and Taylor, and I just

7 disassociated from that and practiced on my own ever

8 since.

9 Q Okay. And why'd you disassociate from

10 that?

11 A Well, Fitz O'Connor, I mean, just

12 wasn't -- nothing was what he said it was. He wasn't

13 making the money he said he was. The whole thing was

14 just kind of a joke, and I got out of it. And I

15 don't know what David did, if he stayed with it; but,

16 you know, within a year, we got raided by the IRS

17 come in. And they were, as best I can tell,

18 primarily interested in Fitz.

19 Q Uh-huh. And so your understanding is that

20 the IRS raid had to do with something that

21 Fitz -- Fitz's actions?

22 A Well, we all had developed a transaction

23 called Vextra and we all worked on it. I did, David

24 did, and so did staff in our office. So we all

25 worked on the documents. It was Fitz's idea.

Page 9

1 A Yes.

2 Q Can you tell me -- we'll start with

3 140 -- when you -- when that LLC began and

4 essentially when you acquired the property?

5 A It was '99.

6 Q Okay. What about 150?

7 A Same time. Those two were purchased

8 together. It was one unit, actually. They can be

9 put together or separated.

10 Q Okay. What about 230?

11 A That would have been around '15, and the

12 same with 340. They were, like, within a year of

13 each other.

14 Q Okay. And we'll start with 140. How

15 would you describe the space that you have there for

16 rent? I mean, I'm not asking if it's occupied or not

17 now, but could you describe what the space is like

18 that you rent out?

19 A Well, it was rented on a per-square-foot

20 basis. It's not rented on a per-square-foot basis

21 anymore.

22 Q Okay. And what is it rented on now?

23 A Individual offices.

24 Q And when did you make that change?

25 A Recently. I just renovated it. It's not

1 even finished yet.
2 Q So within the last year?
3 A Yeah. Actually starting in March.
4 Q Okay. And why the change to individual
5 offices?
6 A Because you get a lot more rent renting
7 them individually.
8 Q So are you more -- is it fully occupied
9 now?
10 A I have vacancies. I've got -- 140 is
11 half -- basically, half full. 150 is leased on a
12 square-foot basis.
13 Q And is it fully occupied?
14 A 150 is, yes.
15 Q How long has it been fully occupied?
16 A Well, I mean, pretty much the entire time
17 I've had it except I had one vacancy, like, during
18 COVID. There was a period of time during COVID when
19 I had a tenant move out prior to COVID and then I
20 wasn't able to -- you know, nobody was doing
21 anything.
22 Q Okay. So you said -- you mentioned that
23 140 is about half full now. How would you describe
24 your -- the history of your -- or your rental history
25 of 140? Was it, you know, usually fully rented, or

1 340 --
2 A Roughly.
3 Q -- were those -- have those all been
4 rented on a square-foot basis?
5 A They're rented on an individual office
6 spaces.
7 Q And has that been true since 2015?
8 A Yes.
9 Q And it would be common for you to have a
10 vacancy in 230?
11 A Right now, I have two vacancies in 230, I
12 have one vacancy in 340, and I've probably got
13 about -- let's see, one, two, three, four, five,
14 six -- seven vacancies in 140. And 150 is full and
15 K&T is full. That's 330.
16 Q All right. So 230, you said you have two
17 vacancies now. Would it be common that you always
18 had at least one vacancy in 230 since 2015?
19 A I would say no. I mean, the vacancies are
20 that we -- I've had and that K&T have had have been
21 kind of across the board. I mean, COVID, that was a
22 period of time and David was talking about, like,
23 NEFA. You know, there would be periods of time
24 when -- you know, like 2007 and '8, I mean, there was
25 vacancies everywhere.

1 did you often have vacancies?
2 A No. I had a vacancy in 2007 or '8. When
3 everything went in the toilet, I had a vacancy for a
4 year. That's the only vacancy I think I ever had in
5 that suite. And then the only vacancy I ever had in
6 150 was probably one or two for short periods of time
7 in the last couple of years.
8 Q When you say one or two, one or two
9 individual offices?
10 A No, that's always been rented on a
11 square-foot basis, 150. And 140 traditionally was as
12 well, but not anymore.
13 Q Okay. So you said it's half-full now.
14 Are you making as much money with it half-full as
15 when you rented it entirely on a square-foot basis?
16 A I've got -- it was renting for about 9500
17 a month and I think I've got about 7,000 a month now.
18 Q So if you had it fully occupied on the
19 individual office spaces --
20 A I'd be getting about 14- or \$15,000 a
21 month.
22 Q Okay. And remind me when it was that
23 y'all purchased 330.
24 A It would have been around 2005.
25 Q Okay. And the 2015 purchases of 230 and

1 Q Okay. Well, right now I just want to
2 focus on 230, which you bought in 2015, right?
3 A Roughly, yeah.
4 Q Okay. So is it fair to say that's never
5 been fully occupied?
6 A No, it's been fully occupied.
7 Q Okay. When would it have been fully
8 occupied?
9 A It was fully occupied about the same time
10 K&T was fully occupied three years ago.
11 Q Okay. And when did the two vacancies
12 arise?
13 A They come and go all the time. I mean,
14 you know, I've had the vacancies probably less than a
15 year.
16 Q Okay. Similar questions about 340. Is it
17 common to have a vacancy in 340?
18 A I've had it full and I've had -- but, you
19 know, it's not uncommon to have a vacancy.
20 Q Okay. Any other limited liability
21 companies that you have an ownership interest in?
22 A Well, I've got ownership interest in the
23 entity that we're here about, K&T Group. I don't
24 know if my house is personally in a LLC or not, but I
25 own a, you know, condo on James Island that I live

1 in. And that's all I own in terms of real property.
 2 I had a bunch of rental properties. They were, like,
 3 low-income. I sold all those. That's what I used
 4 the money to go into Suites 230 and 340. I did,
 5 like, kind of exchanges into them.
 6 Q Okay. And where is the property on James
 7 Island where you live now?
 8 A It's 620 Harbor Creek Place.
 9 Q And how long have you owned that?
 10 A Since, like, 1995.
 11 Q Okay. Is it -- how long has it been your
 12 residence?
 13 A Pretty much since '95, with the exception
 14 that I did have a house on Johns Island. There was a
 15 period of time when I lived out there and rented my
 16 condo.
 17 Q Okay. And just roughly speaking, when was
 18 that that you lived in Johns Island?
 19 A That would have been around -- I would say
 20 around '15, maybe, when I sold it, around that time.
 21 Q Now, was there a period of time when you
 22 were living in Suite 330?
 23 A I stayed there a lot when I was separated
 24 from my ex-wife.
 25 Q What time frame would you say when you

1 stayed a lot at Suite 330?
 2 A I would guess it was around '15.
 3 Q So were you living with your now ex-wife
 4 on Johns Island in 2015 -- the house that was sold
 5 around 2015?
 6 A Well, I was kind of going back and forth.
 7 I mean, I would go out there and stay until it wasn't
 8 comfortable to be there and then I would come
 9 downtown. But, I mean, we separated for a year. It
 10 was roughly around '15.
 11 Q Okay. And at that time, you owned the 620
 12 Harbor Creek Place where you live now, correct?
 13 A Yes.
 14 Q Any reason you didn't go stay there
 15 instead of at the --
 16 A I had tenants in it.
 17 Q So you were renting it instead of using
 18 it?
 19 A Yeah.
 20 Q And that rental, is that -- maybe you told
 21 me you don't recall if that property is owned in an
 22 LLC or directly in your name?
 23 A Well, it was at one point. I know it was.
 24 During the time I rented it, I put it in an LLC. And
 25 then there was some issue about a personal residence

1 being in an LLC, which is not a problem any longer;
 2 but I just don't remember if I deeded it back out.
 3 My guess is it's probably in my name because to get
 4 the mortgage, I think they normally -- the banks
 5 don't want to lend to an LLC on a residential
 6 property.
 7 Q Okay. So would it be fair to say that if
 8 it were owned in an LLC at the time, 2015, roughly,
 9 that you were the beneficial owner of the LLC?
 10 A Yes.
 11 Q Okay. And so you elected to spend a
 12 considerable amount of time in Suite 330 as your
 13 residence instead of the property you owned at 620
 14 Harbor Creek Place, correct?
 15 A Well, I never really considered it my
 16 residence. But I had tenants in 620 Harbor Creek
 17 Place. They were in the process of building a house.
 18 They're people I know, they're friends, and I didn't
 19 want to kick them out; but I did. Ended up, you
 20 know, not kicking them out, but, I mean, we agreed
 21 that they would leave after a certain period of time
 22 prior to them having their new house to move into.
 23 Q Okay. But during that time where you were
 24 staying in Suite 330, they were paying you rent for
 25 that space --

1 A Yes.
 2 Q -- during that same time?
 3 Now, are you familiar with the K&T Group,
 4 LLC, being a term company?
 5 A Yes.
 6 Q And do you understand what the basic
 7 purpose of selecting a term company is?
 8 A It creates a perpetual duration, which is
 9 contrary to what it sounds like.
 10 Q Fair enough. And is it fair to say that
 11 it is -- that electing a term company provides for a
 12 more limited means of interest being transferred?
 13 A Yes, it will.
 14 Q And it provides a more limited means of
 15 members disassociating and getting out of the
 16 company?
 17 A Right. That's all we form is term
 18 companies.
 19 Q Okay. So you understood that --
 20 A Yeah.
 21 Q -- before you formed it?
 22 Do you understand that K&T is manager
 23 managed?
 24 A Yes.
 25 Q And what would you describe the difference

Page 18

1 of a manager-managed company versus member-managed?

2 A Might not be any difference at all. But

3 in our particular case, it requires both of us

4 agreeing, whether as members or whether as manager.

5 Q Both of you agreeing to what?

6 A Anything.

7 Q Who handles the leasing for the four other

8 LLCs that own property in the Franke Building?

9 A When you say "who" -- I mean, I have a

10 broker named Zach Lord who handles the leasing for

11 all of it, including K&T.

12 Q How long have you been using a broker for

13 the leasing?

14 A Well, we've had a broker, but we weren't

15 getting much traction until we got Zach. I mean, I

16 think I had things listed with Charlie Carmody for a

17 long time. I don't know that we ever got anything

18 from him. But we always had somebody, theoretically,

19 that was listing them.

20 Q I'm sorry. Theoretically, what?

21 A That was listing the property -- anything

22 that was available. I mean, they were usually on the

23 MLS -- always on the MLS. But we got most of our

24 leads through Craigslist and through the website that

25 I created called TheFrankeBuilding.com.

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1 discovery, but I'll just let you know I'm going to

2 ask for you to produce records of any marketing that

3 you've done for rentals in the Franke Building,

4 including Craigslist ads and work on

5 TheFrankeBuilding.com.

6 A I think I've already answered that.

7 Q You've already answered it. Have you

8 already produced them?

9 A I don't think that I'm going to produce

10 any of that. You can go onto the website and see

11 what's there.

12 Q Okay. I'll -- you and your lawyer can

13 respond.

14 MR. DUFFY: I'm going to ask you to

15 produce what you say that you have done for marketing

16 for renting the properties.

17 MR. SLOTHIVER: Right. If you'll send me

18 a supplemental production, we'll take a look at it

19 and, if we have it, we'll produce it unless we think

20 there's some privilege. Then we'll raise it to you.

21 MR. DUFFY: Thank you.

22 BY MR. DUFFY:

23 Q Did you or any of your LLCs get any money

24 for -- get paid for doing any of this marketing?

25 A No. Just tenants. I mean, that's what

Page 19

1 Q Okay. Do you still have records of posts

2 you made on Craigslist and FrankeBuilding.com?

3 A I mean, they would be on Craigslist in the

4 history. I don't know how far back they keep them.

5 Q Is that anything you searched for in

6 connection with responding to discovery requests?

7 A I didn't search for them. I told -- I

8 said in the discovery, I answered that they existed,

9 that that's where we put ads. But if -- if they're a

10 matter of public record, no, I didn't.

11 Q Okay. Is that something -- would you be

12 able to find the records of the ads you put on

13 Craigslist?

14 A I would, but so would you.

15 Q Would you be able to find records of

16 anything you posted on FrankeBuilding.com?

17 A It's a website and it's there for anybody

18 to look at.

19 Q Have you ever made any changes to the

20 Franke Building website?

21 A I have.

22 Q Would I be able to see those if I pulled

23 up TheFrankeBuilding.com?

24 A I don't know.

25 Q Well, I can follow up by written

Page 21

1 they produced is tenants.

2 Q Okay. But, for example, presumably you

3 had Craigslist ads for one or more of 140, 150, 230,

4 and 340 Franke; is that right?

5 A Right.

6 Q Okay. Did any of those LLCs pay you money

7 for putting up those ads or listings?

8 A I didn't -- they paid me rent. I mean,

9 you know, I didn't get paid a commission by time or

10 anything like that.

11 Q Okay. So you recall -- well, you've had a

12 broker at all times. Zach Lord is current broker.

13 When do you recall engaging Zach Lord?

14 A He's been around for maybe two years.

15 Q Okay. And you mentioned Carmody. Do you

16 recall, was Carmody the predecessor?

17 A Yes.

18 Q Okay. And do you recall anyone else who's

19 listed the properties in the Franke Building for you?

20 A I don't recall anybody specifically, no.

21 Q But do you think there may have been

22 someone before Carmody?

23 A I think there may have been somebody that

24 held them for a short period of time. I know David

25 at one point, April tried to list -- list it or

1 something, and that never went anywhere. And then we
2 changed back to somebody else.

3 Q Okay. You said "we changed back." Did
4 you discuss with David who you were going to have
5 list the property?

6 A I had a conversation maybe with April
7 about it. You know, when she wanted to go list it
8 with somebody else, she did.

9 Q Okay.

10 A I don't know how much of that was
11 communicated to David directly.

12 Q And do you know what she did? If she said
13 that she was going to list it, she found someone else
14 to do the listing?

15 A Well, the only reason I know that she
16 listed it was because it canceled the existing
17 leasing agreement that I had with whoever it was
18 with, if it was Charlie Carmody or... And then at
19 some point, we -- we weren't getting any leads on it
20 and we just switched back to I think -- switched to
21 Charlie Carmody. I don't know if that was the first
22 time he ever had it or not.

23 Q Okay. And it's your testimony that most
24 of the leads for tenants at Suite 330 came through
25 your Craigslist ads or your website that you put up?

1 period listed on the front page says June 2021 to
2 June 30, 2023. It's my expectation that the 2021 is
3 a misprint because this is signed on 2022, and I'm
4 just going to clarify that.

5 A As a general rule, they were always for a
6 year.

7 Q Okay.

8 A So he probably took the one from the year
9 before and just made some changes to it, is what it
10 looks like to me.

11 Q Okay. And so if you look at the
12 signatures, would you be comfortable that this was a
13 2022 to 2023 agreement?

14 A That's what it looks like, yes.

15 Q Okay. And so this addresses -- or
16 offers -- strike that.

17 This is an agreement for the exclusive
18 right to lease and list the properties that includes
19 Suites 140, 150, 230, 330, and 340 at the Franke
20 Building; is that right?

21 A Yes.

22 Q All right. Can you tell me -- can you
23 describe for me what the commission was set up for?
24 How is the broker getting paid here?

25 A Offices that he rented that were less than

1 A Yes.

2 Q How else would you acquire potential
3 tenants?

4 A That was pretty much it. I mean,
5 word-of-mouth, I mean, with lawyers. I mean, Dan
6 would know. He knew I had space available. I mean,
7 I've always talked about it with anybody that I saw
8 as a prospect or...

9 Q Okay. I'm going to hand you a document
10 here. Do you recognize this document, John?

11 A Yes.

12 Q What is it?

13 A It's a listing agreement.

14 Q Okay. And it lists you as the owner,
15 correct?

16 A Yes.

17 Q And Carolina One Commercial Real Estate as
18 the broker; is that right?

19 A Yes.

20 Q Okay. And if you look at the back at the
21 last page, Zach Lord's signature is 6/15 of 2022. Do
22 you see that? And your signature on the page before
23 it, 7/7/2022, do you see that?

24 A No, I don't see where --

25 Q Okay. I'll just -- just to be clear, the

1 a thousand, I pay three months' rent. So if the
2 office rented for \$600, I would pay him \$1800. If
3 the office rented for over a thousand but less than
4 2000, I paid him two months' rent. So an office that
5 would rent for 1500, I'd pay him a commission of
6 3,000. If it was over 3,000, then I just paid one
7 month's rent. Unless it was on a square-foot basis,
8 then that would have been their -- whatever 6 percent
9 or whatever they get.

10 Q Well, that was sort of going to be my
11 question is how does this -- how does this setup
12 compare to a standard 6 percent?

13 A It's not.

14 Q Well, as far as the broker's concerned,
15 are you making more money? Is this more attractive
16 for a broker or is the 6 percent commission more
17 attractive?

18 A This would be more attractive.

19 Q And you say it's more attractive that way
20 because you ultimately, if you're renting it out,
21 you're going to make more than 6 percent?

22 A Well, I mean, if you rent an office that's
23 \$1500 and they only rent it for one month, 6 percent
24 of that is whatever it is. You know, that's not much
25 motivation. I think that was one of the problems

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1 with, you know, having it listed with
2 Charlie Carmody. At the end of the day, there just
3 wasn't enough meat in the game, so to speak.

4 Q The 6 percent for him wasn't attractive?

5 A Well, I mean, he would have -- he's got
6 large commercial deals. You know, he's doing
7 something where, you know, the total commission might
8 be a hundred thousand dollars. I mean, there's not
9 much incentive for him to list something for \$1500 a
10 month. I mean, he listed it, but I never got any
11 action on it.

12 Q Okay. But you did have 6
13 percent -- agreement for a 6 percent for Carolina One
14 as well, didn't you, at some point?

15 A Well, Suite 150 was leased on a
16 square-foot basis and I paid a commission that
17 was -- I think it's 6 percent on that. And in the
18 past when Suite 140 was leased on a square-foot
19 basis, which was in the last couple of years, I paid
20 a commission on that at 6 percent.

21 MR. SLOTCHIVER: Okay. Go ahead and mark
22 that as Exhibit 1.

23 (Plaintiff's Exhibit Number 1 was marked
24 for identification.)

25 BY MR. DUFFY:

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1 there during this period of time. So it's just all
2 of them are listed, but if there was no vacancy -- we
3 had one vacancy in K&T about a year ago. It was
4 vacant for like a month or two and then it was
5 re-rented.

6 Q Okay. Well, let's talk about the history
7 then at 330. So let me make sure I understood what
8 you said. 330 is fully occupied right now, right?

9 A Yes.

10 Q And is it fair to say the purpose of K&T
11 is to own and lease that property?

12 A Yes.

13 Q Okay. And it's currently fully occupied
14 and you've been in charge of how it's leased out; is
15 that right?

16 A Yes.

17 Q Okay. Any complaints right now about
18 who's in there or what their lease term is or what
19 their rental rate is?

20 A I don't have any complaints. I would be
21 renting the office -- offices for more -- more like
22 1500 instead of 1250.

23 Q You said you would be. You would be if
24 what?

25 A If we were getting vacancies, I would

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1 Q Have you been personally involved with
2 showing any of this office space in the Franke
3 Building to potential tenants?

4 A Yes.

5 Q Would you usually be involved with showing
6 a potential tenant office space?

7 A I try not to be, but, you know, I do get
8 involved in it from time to time. What I do -- so if
9 I get a lead, I'll just pass it off to Zach, just
10 shoot him an email with the information and let him
11 do the rest.

12 Q Okay. But you said that it's common for
13 you to be showing the space; is that right?

14 A I have showed it a lot in the past.

15 Q Okay.

16 A Not so much since Zach has been around,
17 but I did, yes.

18 Q Now, how would you get the lead and
19 know -- if it's being marketed together, how would
20 you know what property a particular tenant is
21 interested in and, therefore, you choose to show them
22 a certain property?

23 A Everybody was shown everything, whatever
24 was available. I mean, I noticed that 330 is on this
25 agreement, but I don't think we've had a vacancy

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1 rerent them at that rate. I tried not to have people
2 with similar offices paying different rents, you
3 know, and creating an issue, you know, between
4 tenants and, you know, figuring out they were paying
5 something different than everybody else.

6 Q I gotcha. So you'd rather even it out and
7 raise the rates when the time comes, but right now
8 everything's going fine?

9 A We're fully occupied, yeah.

10 Q Okay. Is there anything that David Taylor
11 is doing to frustrate the operation of K&T leasing
12 out the property now?

13 A Frustrating? Other than not paying his
14 rent, no.

15 Q Tell me what rent you say is outstanding.

16 A Well, at this point, he never really paid
17 for the period of time of '21, I think. He occupied
18 the office the entire year. He paid from August the
19 5th. That number is not when he took that office.
20 That date, rather, is a date that April Shores sent
21 me an email showing me that Mr. Spears' name was on a
22 list of entry codes, I think, to get into the
23 building. I just know that he was there at least by
24 August the 5th. That's all I know.

25 Q Okay. Do you know if he was there before

1 August the 5th?

2 A Yes, I know he was, but I don't know how

3 much -- I don't know exactly what day. So I came in

4 the office after Christmas of 2001, and there was a

5 girl in the office because it's right outside of

6 mine. She was there on the first of the year. She

7 was there. She -- April told me she was a temporary.

8 And I didn't say -- I said, Fine, you know. But then

9 she stayed. And then when they hired Mr. Spears, she

10 left.

11 Q Okay. And do you know, was this person an

12 intern who sat in the office from time to time?

13 A She was in there all the time. She

14 worked. I don't know what she was. I don't think

15 she was a lawyer. She wasn't -- nobody told me she

16 was a lawyer.

17 Q Now, let me make sure I understand

18 something. Will you agree with me that you don't

19 have -- you don't have any expectation of David's

20 firm paying rent if there is a vacancy in the office

21 and someone just happens to sit in the office from

22 time to time?

23 A That's not true.

24 Q You do dispute that?

25 A Yes.

1 happens to sit in an office once or twice a week

2 because it's wide open and vacant, do you expect that

3 firm to pay rent for that office in that

4 circumstance?

5 A I expect them to pay rent if I cannot show

6 the office and cannot lease it.

7 Q Okay.

8 A They should pay rent for it.

9 Q Tell me what makes an office an office

10 that you can't show or lease.

11 A Well, if he's got somebody in there

12 permanently. I'm not going to go show an office

13 that's in there permanently. I'm going to ask him to

14 pay rent for it. And that's pretty much our history.

15 Q Right. Okay. Then that's similar to what

16 I'm saying. If you moved in there and you got a

17 professional permanently working in an office, that

18 you expect him to pay rent for, right?

19 MR. SLOTCHIVER: Object to form. You can

20 still answer.

21 THE WITNESS: Okay. If he's using the

22 office on a -- I don't care if, you know, it's going

23 to be for four months in a row; but if somebody's in

24 there and I can't lease it, then I expect the rent to

25 be paid.

1 Q Do you think they should have rent -- pay

2 rent?

3 A Yes. Yes.

4 Q Okay.

5 A If they're using it, they should be paying

6 for it.

7 Q Would you agree with me that you have told

8 David in the past, including in writing, that you

9 don't have -- that you do not expect payment of rent

10 if someone just happens to sit in an office from time

11 to time if it's otherwise vacant, versus moving in

12 and using the office as a professional office full

13 time?

14 A I have allowed him to go in and use an

15 office and I probably have used an office on maybe

16 throwing stuff in it or something like that. But I

17 wrote him an email, I mean, saying exactly what I

18 felt about this, which was once we got -- first of

19 all, he created the need -- he created the vacancy

20 with NEFA. We didn't have a vacancy.

21 Q Can we get back to my question --

22 A Okay.

23 Q -- and then you can explain?

24 What I want to understand is your

25 expectation, if someone associated with his firm

1 BY MR. DUFFY:

2 Q Okay. And you told me you can't show it

3 or lease it if someone's in there permanently, right?

4 A Right.

5 Q Okay. And can you tell me -- I'm just

6 curious -- if it were something that David and you as

7 the owners of K&T agreed could be leased even if

8 someone's there, why couldn't you show it?

9 A Ask that question again.

10 Q Okay. If both of you actually agreed that

11 the office could be leased and someone from David's

12 office was in there, why couldn't you show the

13 office?

14 A One more time. Ask it one more time. I'm

15 not sure.

16 Q Okay. You told me you couldn't show an

17 office if someone was in there, right?

18 A Generally, yes.

19 Q Okay. Why not?

20 A Because somebody's in there. So they

21 either need to pay rent or they need to get out and

22 let me lease it to somebody else.

23 Q I'm talking about showing it. You can't

24 say, hey, you know, Mr. X, I'm bringing a prospective

25 tenant in here tomorrow, make sure it's clean and

1 that you're not in here?
2 Could you do that?
3 A Probably could.
4 Q Okay. So you could show it even if
5 somebody is using the office?
6 A I guess, yeah.
7 Q Okay. And is there any prohibition -- if
8 both you and David agree that that office is
9 available for lease, is there any reason you couldn't
10 lease that office even though somebody had been using
11 it?
12 A I don't see a reason why it couldn't be
13 shown, but...
14 Q Right, or leased, correct?
15 A Correct, I guess. I mean, I don't...
16 Q So getting back to this particular office
17 where you say -- we'll just put it this way: David
18 says he was occupying -- his office was occupying
19 this office as of August 5th, 2021, right? And you
20 say he was occupying it before that?
21 A He was occupying it for the entire year.
22 Q Okay. And earlier you were talking about
23 going in there after Christmas, I think you said
24 2021; but are you telling me it was -- so it would
25 have been January 2021?

1 Q She had pictures on the wall?
2 A The office was furnished, yeah. I don't
3 know if she put pictures on the wall, but, I mean,
4 she -- it was furnished and she had moved -- moved
5 in, yes.
6 Q So she moved the furniture in there?
7 A No. There was some furniture in there.
8 Some of my furniture is still in there, actually.
9 Q So I want to know how you know she didn't
10 just go and sit and use it because it was empty
11 versus she was there every day as a professional
12 installed in that office?
13 A Yes.
14 Q Okay. And so you say she was there every
15 day?
16 A Yes.
17 Q All right. Did she have -- you don't know
18 if she had pictures on the wall. Did she have books
19 on the bookshelf?
20 A I don't -- would not know anything about
21 the office.
22 Q You know it had furniture that was already
23 in there?
24 A Yeah.
25 Q Anything else that you know about the

1 A Yes.
2 Q Okay. So you saw somebody using it in
3 January of 2021?
4 A And used it the entire year, yes.
5 Q Okay. When else did you see that person
6 using the office?
7 A That person used the office from the
8 beginning of January to whatever time Mr. Spears came
9 in. I don't know when that was exactly.
10 Q Okay. On a daily basis?
11 A Yes.
12 Q And were you there on a daily basis?
13 A Yes.
14 Q Okay. So your testimony is you saw that
15 person on a daily basis using the office that's in
16 dispute for rent?
17 A Yes.
18 Q Okay. What'd that person look like?
19 A It was a woman. I don't know. Young
20 woman.
21 Q Young woman. Okay. What color hair?
22 A She never really came out very much. I
23 don't know.
24 Q All right. Did she have --
25 A I never knew her name.

1 details of her use of that office?
2 A I just knew she was in there.
3 Q Did you ask anybody who she was?
4 A I didn't ask anybody. I was told that she
5 was somebody that they had hired on a temporary basis
6 and that she was going to be in there for a little
7 while or something. And the office was empty and I
8 didn't have any objection to it.
9 Q Okay. So you didn't object to it at the
10 time; is that right?
11 A No, I didn't.
12 Q Okay. When did you decide later that rent
13 should have been paid for the temporary employee
14 sitting in the office?
15 MR. SLOTCHIVER: Object to form.
16 THE WITNESS: I decided after I was
17 ghosted from November of 2021 through May of 2022. I
18 sent various emails to David about paying rent. What
19 I told him was, in '22, I decided I wanted -- there
20 was an extra office, so I took an extra office. And
21 I told him that he had two extra offices at this
22 point and if he would just pay the same rent in '22
23 that he had paid in '21, I think -- yeah -- that, you
24 know, everything would be squared. And, basically, I
25 let him get away with using that office for a year at

1 that point. And then when he continued to ghost me,
2 I finally said, Oh, by the way, why don't you pay,
3 you know, in addition to that, \$15,000 for the office
4 that you used last year, since we were going down
5 that path again.

6 Q Okay. So you had previously had no
7 objection. Then because you didn't get a response to
8 the emails, you decided that the rent should be due
9 for the entire year for that other office?

10 A Well, David had a habit of --

11 Q Okay. Just, did I get that part right?

12 MR. SLOTCHIVER: I think he can answer.
13 He finished his response.

14 MR. DUFFY: He's going a different
15 direction. I'm happy for him to explain whatever he
16 wants. I just want to understand the answer.

17 THE WITNESS: Well, there's a pattern of
18 him using office space and not paying for it. And I
19 let him get away with it quite a bit, actually, you
20 know. But when the office is completely full
21 and -- or when the office can be used by somebody
22 else and pay rent, then that's a problem.

23 BY MR. DUFFY:

24 Q Now, is it true that David's law office is
25 its own business entity? Is that fair?

1 for the extra office that he had, which actually is
2 not paying any more rent. Because if we were, like,
3 minus 2500 a month, let's say, and I got out of one
4 office and I rented it for 1250 and then he paid rent
5 on his 1250, then he's got no shortage. His shortage
6 was 1250 and now he's just paying rent of 1250 but
7 he's got three offices. Does that make sense?

8 Q I think so, but I'm still trying to -- I'm
9 trying to clarify what I thought had happened in the
10 past, which was, because of your reduction in space,
11 you then tell the --

12 A It happened one time.

13 Q -- Taylor Foley Law Firm that it owes more
14 rent; is that right?

15 A That happened one time, yes.

16 Q Okay. And in that situation, Taylor Foley
17 didn't acquire new space that prompted the raise in
18 rent; is that fair?

19 A That's correct.

20 Q Okay. And that was following what you had
21 told me was y'all agreeing to split the rental
22 expenses evenly?

23 A We split it -- as long as they were
24 occupied evenly, we split everything evenly. That's
25 been the rub from the beginning. It's not been equal

1 A Yeah.

2 Q Okay. And it pays rent for being in the
3 space?

4 A It pays rent for the extra space it uses.
5 Basically, the way we have always set it up is that
6 we would split everything evenly. And that worked
7 fine until the offices were used disproportionately.

8 Q Okay. Is it true that from time to time
9 you would take extra space and then you would reduce
10 the space he would use?

11 A I don't recall ever doing that. What I
12 recalled doing is moving into the extra space in '22,
13 I guess it was, and just telling him that if he kept
14 paying the same rent, he had two more offices than I
15 did. He was paying for two extra offices even though
16 he had three. That was the only time that I ever
17 remember rent going into another office.

18 Q Okay. Are you still using that office?

19 A I'm using that office, yes.

20 Q Okay. So is there not a time when you
21 reduced what office space you were using and then
22 told David, Now your rent is higher?

23 A When I moved out of the office, I guess
24 that he's now occupying, I did tell him that I was
25 going to rent it and that I expected him to pay rent

1 and he has not wanted to pay rent on numerous
2 occasions.

3 Q Okay. But what you're telling me today is
4 the only rent that you say is outstanding is you
5 think there was rent owed on that extra property that
6 ultimately David paid for from August of 2021? You
7 think there's rent due from January to that August
8 5th time?

9 A Well, yes, that's true. But, I mean,
10 historically, there's a lot more than that. It would
11 all be past statute and all the kind of stuff, but
12 it's been a lot more than that.

13 Q Sitting here today, how much is that rent
14 from January to August that you say is outstanding?

15 A It would be 1250 a month.

16 Q Okay. And when did you send -- after
17 David made the payment for the -- from the August
18 time frame which he says is when they occupied the
19 office, when did you send notice of what more was
20 due?

21 A I sent him an email before he paid the
22 rent telling him what was due.

23 Q And he disputed that he had that space and
24 paid what he thought was due, correct?

25 A Yes.

1 Q Okay. And did you tell him after that an
2 amount that you contended was still due?
3 A I've never changed -- I've never sent him
4 an email and told him that he had paid what I
5 expected him to pay. He knew what I expected him to
6 pay; he didn't pay it. And, no, I have not sent him
7 another email asking him to pay what I already told
8 him to pay that he didn't pay.
9 Q Okay. Have you called a meeting of the
10 LLC about it?
11 A No.
12 Q Have you had a vote about it?
13 A No.
14 Q Have you brought suit about it?
15 A Yes. And it's not just about that.
16 Q What other rent -- stop there.
17 What other rent beyond the 1250 a month
18 from January to the beginning of August do you say is
19 outstanding?
20 MR. SLOTCHIVER: And just for clarity --
21 I'm not trying to change it -- but time frames, are
22 you referring to what's outstanding today or what was
23 outstanding at the time he filed the lawsuit?
24 because I think it can be confusing if we don't
25 clarify it.

1 A Well, I just mean if we're going back
2 three years, we're pretty square. But historically,
3 there's a lot of money on the table.
4 Q Okay. I want to talk about your claim in
5 this lawsuit, okay. So if you think it's relevant,
6 tell me. If you don't, then you can just tell me the
7 past is behind us. So that's --
8 A I think it's relevant.
9 Q Okay.
10 A I mean, this is a pattern that's gone on
11 for -- since 2005.
12 Q Okay. So what else do you think is owed,
13 is my question to you?
14 A I would say about probably \$600,000 if you
15 wanted to add it all up between lost rents from a
16 thousand dollars a month and then there's the
17 inability to raise the rents \$1500 a month.
18 Q What's the inability to raise rents have
19 to do with the --
20 A Well --
21 Q -- with an obligation from David to the
22 company?
23 A Say that again.
24 Q I'm asking you what David as the owner of
25 K&T owes K&T, and you're talking about something

1 MR. DUFFY: Thank you.
2 BY MR. DUFFY:
3 Q I'm asking about today. What do you think
4 is outstanding today beyond the part we just talked
5 about, the earlier 2021?
6 A Well, he's been paying an extra thousand
7 dollars a month for, I don't know, six or eight
8 months. So it would be nominal, if anything, at this
9 point, unless he's taken a position that he shouldn't
10 being paying that amount and he would have been
11 making up for the 8,000, whatever, \$10,000 he owed.
12 Q Okay. But sitting here today, anything
13 beyond the early 2021 you say would be nominal, if
14 anything, outstanding?
15 A At this point, yes.
16 Q Okay. Other than this 2021 rental issue,
17 is there any other money that you contend that David
18 as part owner of K&T owes K&T?
19 A Well, I mean, without going into the
20 statute of limitations, there's plenty. He would
21 have -- he occupied two offices for \$1435 that were
22 worth \$2500 a month.
23 Q Okay. I just need some clarification.
24 You said without going into the statute of
25 limitations, so please tell me --

1 about an inability to raise rents?
2 A He should be paying \$1500 for each
3 additional offense that he has.
4 Q How much do you pay for your office?
5 A To the -- I'm talking about -- he doesn't
6 really pay for his office. I don't really pay for my
7 office.
8 Q Well, what's the rate that you assign to
9 your office?
10 A There is no rate. We split -- after
11 payment of the rent for the additional offices,
12 everything's split equally. It's just the problem is
13 getting him to pay for what he is using extra.
14 That's always been a problem.
15 Q Well, didn't y'all have this dispute and
16 go to Dan Magree for some help?
17 A Yeah, and you would think that that would
18 have solved the problem, but the problem still keeps
19 coming up.
20 Q Didn't Dan suggest that you put leases in
21 place for your law firm?
22 A Dan suggested that we pay fair market
23 value for the offices. I did not want to do that and
24 did not do it. I wanted to just get the rent for the
25 extra offices that he used and then we split

1 everything equally. It's just simple.
 2 Q Right, but you wanted him to pay fair
 3 market value for what he used and you didn't want to
 4 pay fair market value for what you used; is that
 5 right?
 6 A That's not true.
 7 Q That sounded like what you're telling
 8 me --
 9 MR. SLOTCHIVER: Object to form.
 10 THE WITNESS: No, that's not true.
 11 BY MR. DUFFY:
 12 Q So you don't pay fair market value and you
 13 don't want to pay fair market value for your space;
 14 is that right?
 15 A I pay for my half of what I owe. Whatever
 16 we need -- it is -- it's rent, basically. You can
 17 call it whatever you want, but when I put up my half,
 18 I'm paying rent.
 19 Q Is that fair market value?
 20 A It varies, you know. Sometimes it's more
 21 than fair market value; sometimes it's less. It
 22 depends on what other vacancies are in the suite.
 23 Q Okay. But you agree to go have issues
 24 resolved with the help of Dan Magree; is that right?
 25 A Yes, and they were resolved exactly the

1 MR. DUFFY: Please let me finish the
 2 question, both of you.
 3 BY MR. DUFFY:
 4 Q Do you understand that to have been his
 5 position?
 6 A I understand that to be his position.
 7 Q Okay.
 8 A I understand as a matter of law that if
 9 you own space in a partnership and you use it, that
 10 you should pay for it.
 11 Q And y'all went to Dan Magree to help
 12 resolve --
 13 A And that's what he concluded.
 14 Q And he suggested a way for you not to have
 15 this dispute going forward and you rejected that,
 16 correct?
 17 A That's not really true. I was paying --
 18 Q You suggested -- didn't he suggest -- go
 19 ahead.
 20 A I was paying rent in the form of whatever
 21 deficiency we needed to pay all the bills in the
 22 suite. We did it every month.
 23 Q Which is the way you wanted it set up,
 24 correct?
 25 A It's the way it was set up from pretty

1 way I told him -- in other words, he occupied an
 2 office that he didn't want to pay for. He was going
 3 back and deciding that he didn't want to pay for the
 4 \$1435. He wanted to do retroactively, like get a
 5 refund for that.
 6 Q So you understand you and David, through
 7 the companies, are owners of that space, right?
 8 A Of course.
 9 Q And you understand David felt like he
 10 shouldn't have to pay for space that wasn't otherwise
 11 being used in the company; is that right?
 12 A That's -- that was his position. The
 13 problem is, is that he created the vacancy in NEFA.
 14 When he went and he got Sallie's office, he rented it
 15 for \$435 a month. When NEFA moved out, I could not
 16 rent that side out on a square-foot basis because he
 17 was occupying one of the offices.
 18 Q I'm talking philosophically because you're
 19 saying what he wants and this, that, and the other
 20 what was brought to Dan. You understood David's
 21 point was, Look, we own this space. If it's not
 22 being used, I want to be able to use it and not pay
 23 for it. Did you understand that --
 24 A I understand --
 25 MR. SLOTCHIVER: Object to form.

1 much the beginning.
 2 Q That was how you wanted things to work,
 3 correct?
 4 A I don't know that I wanted it. It was the
 5 way we did it.
 6 Q Well, you didn't change it, did you?
 7 A No.
 8 Q Okay. And Dan suggested that you change
 9 it, correct?
 10 A He suggested that we pay money for our
 11 individual offices.
 12 Q In fact, his first recommendation of going
 13 forward was each firm should enter into a lease
 14 agreement and be bound to make the appropriate
 15 monthly rent as stated in the lease, right?
 16 A That's what he recommended, yes.
 17 Q Okay. And you didn't want to do that,
 18 correct?
 19 A I didn't do it, no.
 20 Q And you didn't want to do it?
 21 A No.
 22 Q Okay.
 23 A I don't see much sense in putting money
 24 into an LLC and then turning around and distributing
 25 it back out. I mean, that's exactly what would have

1 happened.

2 Q When did you start handling the rentals
3 for K&T?

4 A I pretty much have done it from inception.

5 Q Okay. Did you and David ever talk about
6 you handling the rentals?

7 A He let me. And, I mean, we -- when we
8 moved in, we had half of the office to the left side
9 was empty. We didn't occupy it. I leased it to
10 Altman, lawyer. They occupied it for a good while.
11 Then I think NEFA came in. They occupied it. But it
12 was always rented on a square-foot basis, the
13 whole -- the rest of it is one piece.

14 Q Okay. But y'all never discussed, hey,
15 guess what, you know, we got to do some things in
16 this company and, John, you ought to be the guy
17 renting space?

18 A He never did. I mean, I just did it,
19 yeah.

20 Q Okay.

21 A There was never any real discussion about
22 it. He didn't have any interest in doing it.

23 Q There was never any discussion about it;
24 is that right?

25 A There would have been a discussion. I

1 would have told him that I was going to rent the
2 space, try to rent it on a square-foot basis. There
3 was a discussion when he occupied that office. I
4 told him that I brought Leslie Faullaubaum over to
5 look at the space and she said, obviously, it
6 couldn't be rented on a square-foot basis because he
7 occupied some of it. She said to rent the offices
8 individually. I communicated that to him in an email
9 and verbally. He was fine with it and I rented them
10 individually.

11 Q And when was this?

12 A Maybe 2005. I mean, it would have been in
13 the, you know, like '12, '11, something like that,
14 maybe.

15 Q And you had been involved or you organized
16 the rental to NEFA?

17 A Yes.

18 Q And did NEFA fail to pay rent?

19 A They did.

20 Q How much money are we talking about?

21 A I don't know exactly how long they were
22 over there before, basically, we told them to leave.
23 It was -- I don't know. I don't remember the exact
24 number. I know they didn't pay for a while.

25 Q Okay. Are you talking about two months or

1 ten months?

2 A Probably ten, I mean, if given a choice
3 between those two.

4 Q Okay. And when did you determine was long
5 enough that it's time to kick them out?

6 A I don't know that I kicked them out. I
7 mean, I think we just all reached an agreement that
8 they need to get out, and they left.

9 Q Do you know what their rental rate was?

10 A No, I don't.

11 Q And when you say "we all reached an
12 agreement," who do you mean by "we"? We all reached
13 an agreement they needed to get out, who are you
14 talking about?

15 A Well, I was talking with the tenants that
16 they need to get out so we can rent the space.

17 Q Okay. And that was roughly ten months in?

18 A I don't remember exactly. I said given
19 the choice between two months and ten I would take
20 ten, but I don't know.

21 Q Okay. So is that how much time they were
22 in total or how much time they were in without paying
23 rent?

24 A No, they were in the office for, I think,
25 a number of years.

1 Q Okay. What would you say is a -- for your
2 history renting properties in Franke Building, what
3 is the normal duration for a vacancy? When could you
4 get something re-rented? How long?

5 A I don't think there's really an answer to
6 that question. I mean, it depends. I mean, we had
7 an economic downturn in 2007 and '8 and you couldn't
8 rent anything during those periods of time. So it
9 depends on, you know, what's the state of the economy
10 when things come open.

11 Q What about 2012?

12 A Things were picking up a little bit around
13 that time, just a little better, you know, so not as
14 long.

15 Q Okay. Once they were out, how long did it
16 take you to rent space where NEFA was?

17 A Well, there was -- one, two, three, four,
18 five -- it took a while to get -- I mean,
19 individually, I rent them one at a time. That's the
20 downside of doing it that way. But you get more rent
21 in the long run, so that's the upside.

22 Q Okay. So when did you first put someone
23 in who was rent-producing after NEFA left?

24 A I don't remember exactly when. I mean, I
25 know that we had a guy back there named Scott Helman

1 who leased in the corner. We've had numerous lawyers
2 come and go through there. Some of them were there a
3 long time. Nancy Vavra.

4 Q Right, but, I mean, was the whole
5 place -- from NeFA leaving, was the whole place
6 vacant for eight months or did you start filling it
7 up within a month or two?

8 A We started filling it up. I mean, I
9 don't -- you say fill it up, I mean, there's probably
10 seven or eight offices, maybe. It's a lot, you know,
11 so we started putting people in them.

12 Q Right. How long after that's really what
13 I'm trying to get at.

14 A I don't know. I mean, they come and go.
15 Some people you put in there, they stay for a couple
16 months and they leave and -- but the goal is always
17 to get them in there and they become permanent, like
18 David Savage. I mean, he's been there for ten years.
19 I don't know.

20 Q Yeah. So when NEFA left, how many months
21 before you had anybody income-producing in any of
22 those offices?

23 A I don't know exactly how long it was. I
24 mean, it would -- I don't remember. I mean, we went
25 to work immediately to get them, you know,

1 Q Last name? I'm sorry.

2 A V-A-V-R-A, Vavra.

3 Q And how much space did Nancy rent?

4 A She had one office for a while and then
5 she had two offices for a while.

6 Q And what type of work did Nancy do?

7 A She was a domestic lawyer.

8 Q Did you do any work with Nancy as a
9 professional?

10 A Yes.

11 Q Okay. What was that?

12 A Well, I mean, I remember she worked for a
13 doctor client of mine seeking, like, alimony
14 adjustment.

15 Q Did you personally do any work with Nancy?

16 A Nancy, I think, mediated my -- my divorce.

17 Q Do you remember what time frame Nancy was
18 occupying space in 330?

19 A She was there for a long time, but she's
20 been gone a long time. I would say she's probably
21 gone around 2017 and she might have been there from
22 '10 to '17.

23 Q What period of time from 2010 to 2017 was
24 Nancy failing to pay rent?

25 A She started to not pay rent, I guess,

1 individually done and we did that. I don't remember
2 exactly when they came in, each person.

3 Q Yeah. I'm just trying to get an
4 understanding. Certainly, you'd remember if the
5 whole place was vacant for eight months, I would
6 think?

7 A Seems to me that was a bad time. That
8 was, you know, around 2008, '9, you know, when the
9 economy was down.

10 Q Okay. I thought you were telling
11 me -- well, this Leslie coming in 2012, was that not
12 right after NEFA, or am I missing that?

13 A Okay. Well, the dates I'm not certain of.
14 I don't remember exactly when. I mean, I know we
15 bought the place in 2005. I know that that side was
16 probably rented for three or four years and towards
17 the, you know, 2010 and going forward is when, you
18 know, we had the individual offices, something like
19 that. That's just a rough time frame. I don't
20 remember exactly.

21 MR. SLOTCHIVER: You done?

22 BY MR. DUFFY:

23 Q So who is Nancy you were referring to as
24 renting there?

25 A Vavra.

1 towards the end. I told David. I went to him and I
2 told him that she wasn't paying rent. We had another
3 office open, or two. I said, You know, we can kick
4 her out or, you know, we can let her go. She had
5 promised me that she would pay it and she promised
6 David that she would pay, and she ultimately did not.

7 Q Okay. And what period of time was that
8 she wouldn't pay you?

9 A I mean, it might have been at -- I don't
10 know. Ten months, six months. I'm not sure.

11 Q How would we figure out the exact time
12 frame?

13 A I guess we could look at when she stopped
14 paying rent and then try to figure out from there how
15 long she had been in the space before she left.

16 Q Right. And where -- who holds the rental
17 records?

18 A The rental records are -- I mean, you can
19 look at the rent that was deposited in the accounts.

20 Q And where are those accounts?

21 A The -- where are they?

22 Q Uh-huh.

23 A They're with Pinnacle Bank at this point.

24 Q And would all of that be reflected in the
25 QuickBooks records?

1 A Yes.

2 Q And do you agree that David should have

3 access to the QuickBooks records?

4 A Absolutely.

5 Q Okay. Will you provide access to David to

6 the QuickBooks records?

7 A I -- absolutely. I always have and always

8 will as long as he's an owner.

9 Q Okay. Well, do you understand that you

10 provided some type of information that was invalid or

11 faulty and David couldn't access the records?

12 A He for over numerous periods of time had

13 asked for the records. They were always provided to

14 him. He sent -- I sent him an email giving him the

15 QuickBooks file, I sent him another email giving him

16 the password, and I never heard anything about him

17 not having access to the records until he filed his

18 Answer.

19 Q Okay. Did you correct that and say, hey,

20 here it is. I don't know what you are talking about,

21 but here's the information -- the correct information

22 for logging on?

23 A We provided everything in discovery,

24 including, I think, the QuickBooks file and all the

25 paperwork and everything that was paid out of it.

1 communicated to her in that regard would have been if

2 there was extra offices being used that there needed

3 to be rent paid for those.

4 Q Do you have any dispute with how she was

5 handling the books?

6 A Well, she was just doing what David told

7 her to do. So, no, I don't have any dispute with her

8 at all.

9 Q I'll hand you this exhibit.

10 MR. DUFFY: This will be Number 2.

11 (Defendant's Exhibit Number 2 was marked

12 for identification.)

13 BY MR. DUFFY:

14 Q Have you seen this document before, John?

15 A I mean, I recognize the building. I don't

16 know that I've seen this document, no.

17 Q Okay. Do you see at the top left that

18 it's prepared by Zach Lord for Carolina One

19 Commercial?

20 A Yeah, I noticed that, yes.

21 Q Okay. And do you recognize this as a

22 listing of space available for rent?

23 A Well, I mean, it looks like it's space for

24 rent. I don't know exactly what is for rent.

25 Q Well, you see there are several columns

1 Q Do you know off the top of your head what

2 the QuickBooks password is?

3 A Probably 171 Church with a capital "C."

4 And it seems like there might be another character or

5 something. I'm not sure exactly.

6 Q All right. Well, we'll include that with

7 our discovery request.

8 When did you start handling the

9 bookkeeping or the books for K&T?

10 A I've handled it pretty much the entire

11 time that we've been in it with one two-year

12 exception. It was around '14 or '15 when his

13 bookkeeper, Julie, would write the checks out of the

14 account and she would send me emails telling me, you

15 know, what we need to pay.

16 Q And --

17 A That was her doing that, by the way, not

18 me.

19 Q Her doing what? I'm sorry.

20 A Calculating what our rent was.

21 Q And was she following your direction?

22 A Following my direction?

23 Q Did you tell her what was paid or what

24 should be owed or anything like that?

25 A The only thing I would have ever

1 that say, "available space"?

2 A Yes.

3 Q Okay. And do you see that they're all in

4 the Franke Building?

5 A I don't know that I see that, but I assume

6 they are just because you got a picture of the Franke

7 Building up here, but I don't know.

8 Q Well, the title of the document is,

9 "Franke Building historic office space, 171 Church

10 Street."

11 Do you see that?

12 A Yes.

13 Q Okay. Now, you're the one who engaged

14 Zach Lord, correct?

15 A Yes.

16 Q And are you not familiar with what he's

17 doing to list the property or rent the property?

18 A I am familiar with what he's doing. I

19 don't know that I've ever seen this particular

20 document, no. I mean, what he was doing is he posts

21 on Craigslist weekly. I would try to make changes to

22 the website once in a while just to drive traffic to

23 it and I would give him whatever leads that came

24 through the website. I sent to him the leads that

25 came through Craigslist. I didn't really have much

1 to do with those. He would take those people and
2 bring them and show the office space.

3 Q Okay. Is it fair to say that the ads on
4 Craigslist and on the website that you have are
5 similar to Exhibit 2 in the extent that it groups all
6 of these properties together, all of these suites
7 together?

8 A If that's what this does.

9 Q Well, you see it lists available space in
10 unit 230, 230A, 230B, 230D, 230F, 230H, 230I, 330A,
11 330B, 340C, 340D, 340F?

12 A Yes.

13 Q Okay. So would you call that grouping the
14 open space together?

15 A Grouping open space -- everything was
16 always showed. Everything was always listed and
17 shown.

18 Q Okay. Now, if your -- if your primary
19 duty was to market and rent space in Suite 330, would
20 you advertise it in a list of things where you have
21 to pick it out in the middle there like this?

22 A Ask that question again.

23 Q If your primary duty was to rent space --

24 A Not my primary duty.

25 Q If your primary duty was to rent space in

1 Suite 330, wouldn't you do a better job of it if you
2 singled it out rather than grouped it together in a
3 list of suites like as shown on Exhibit 2?

4 A I don't agree with that statement.

5 Q Okay. Well, let's start with one of them.
6 You said it's not your primary duty. Tell me what
7 you mean by that.

8 A Well, I practice law for a living. I took
9 the responsibility of leasing these spaces in the K&T
10 Group, created a website that benefitted it.
11 Basically, everything that I did that benefitted K&T
12 was stuff that I paid for. My time, my employees'
13 time, and K&T benefited from it. I have a duty to
14 myself as well for other space I own, and I just
15 showed everything equally. It's always been that
16 way.

17 Q Okay. If your primary duty was for 330,
18 you would do it differently. But if your duty is the
19 same for all your other LLCs, you put it all
20 together?

21 MR. SLOTCHIVER: Object to the form.

22 THE WITNESS: My duties are equal to K&T
23 and to my duties to myself and to the other LLCs. I
24 see them as all equal.

25 BY MR. DUFFY:

1 Q Okay. And is it fair to say -- well, let
2 me step back.

3 I think you were disputing my suggestion
4 that if your goal -- primary goal was renting space
5 in Suite 330, you would have an individual listing
6 not grouped with all of these others, and I think you
7 were disputing that. So if you do dispute that, I'm
8 curious to hear your response.

9 A I do dispute it. I mean, I don't think
10 that I was David Taylor's indentured servant because
11 we owned one space together. I have other space; he
12 has other space in the building. I didn't expect him
13 to not try to rent his own individual stuff out. I
14 rented K&T, I rented my own stuff, and they were
15 always treated equally.

16 Q I understand that position. I'm asking
17 a --

18 A Right.

19 Q -- little bit different question, which is
20 if your primary goal --

21 A Was not my primary goal.

22 Q I understand that and I'm clear on that.
23 But my question is if it were your primary goal,
24 wouldn't you do it differently and highlight 330
25 rather than mix it up with all of these other

1 properties?

2 A I don't agree with that.

3 Q Right, and that's what I'm asking you.
4 Why not?

5 A I don't. I mean, like I just told you, I
6 rented everything individually and I treated K&T like
7 I treated my own. And my primary duty was not to
8 K&T. My primary duty was to K&T and to myself and
9 equally.

10 Q Would you call yourself a disinterested
11 player in the agreement with Zach Lord?

12 A Disinterested?

13 Q Yeah.

14 A No, I would not.

15 Q And did you clear this -- these listings
16 with David Taylor?

17 A No.

18 Q Same question about all the other years I
19 have for agreements with brokers. Were you
20 disinterested in those agreements?

21 A No.

22 Q Okay. And did you clear any of those with
23 David Taylor?

24 A No. We never really discussed renting
25 offices. He was happy to let me do all that, and I

1 did.

2 Q Did y'all ever discuss whether you should
3 handle the bookkeeping?

4 A I don't know why he ended up keeping the
5 books for, like, two years. The reason I took the
6 books back was because we were speaking with our
7 lender. According to the terms of our commitment
8 letter from them, we were supposed to keep our
9 accounts over there. Linda informed me that we were
10 not using the accounts. I didn't know that K&T was
11 not being operated through a bank account at First
12 Reliance Bank. I didn't know that. So at that
13 point, I took -- took control over everything and
14 started using the accounts like I had committed to
15 do.

16 Q Okay, John, my question was did y'all ever
17 discuss you handling the books?

18 A I don't know if we did or not. I know we
19 discussed when she took them over, and I don't know
20 if I discussed with him taking it back over or not.
21 I don't recall.

22 Q Okay. Is it fair to say that, by and
23 large, you've been in control of leasing the property
24 and you've been in control of the bookkeeping?

25 A When you say control, I've been in control

1 A Well, I think that where we would end up
2 is we would end up paying somebody an additional
3 amount of money to manage a property and they
4 wouldn't have got it where it is right now, which is
5 full. And it would cost me money personally and it
6 would cost him money, you know. And I don't see
7 where it would have benefitted us in any form or
8 fashion.

9 Q Wouldn't a property manager take the
10 necessity or take -- remove the necessity of you
11 having to interact on any of these issues with
12 the -- with the rent or with the leasing, et cetera?

13 A Ask that question again.

14 Q Okay. You said you wanted a divorce?

15 A A divorce from him.

16 Q Right. You don't want to deal with him,
17 right?

18 A Right.

19 Q Okay. Now, if you remove the things that
20 you've been acting in control of and put those with a
21 property manager, wouldn't that get you away?

22 A No.

23 MR. SLOTCHIVER: Object to the form.

24 THE WITNESS: That would actually set me
25 up to be taken advantage of further, basically.

1 of the bookkeeping but he's had access to that. I've
2 given -- on numerous occasions, Julie has asked me
3 for QuickBooks access to it and I always gave her an
4 accountant's copy or something like that and the
5 password was never a problem. As far as in control
6 of managing, by default, I guess I ended up in
7 control, but it wasn't my objective.

8 Q Okay. Well, would you say David's in
9 control of K&T?

10 A I don't think that David cares anything
11 about K&T. I mean, the rent, he's never expressed
12 any interest in it. I can tell you that.

13 Q I'm sorry. I didn't mean to interrupt.
14 My question is would you characterize David as being
15 in control of K&T?

16 A He's in as much control of it as I am.

17 Q Okay. What's your goal with the lawsuit
18 you brought, John?

19 A A divorce.

20 Q Have you -- do you understand that David
21 has proposed that the company engage a property
22 manager?

23 A Yeah.

24 Q And what is your reason for not agreeing
25 to engaging a property manager?

1 BY MR. DUFFY:

2 Q Has the company ever made distributions?

3 A No.

4 Q Have you ever proposed that the company
5 make distributions?

6 A No.

7 Q Does the company have capital accounts?

8 A When you say capital accounts, I mean,
9 whatever money's in the account, you know, it
10 doesn't -- I guess it does, yeah, sort of. I mean,
11 it's not on QuickBooks. I mean, if you look on the
12 tax return, it says there's capital -- whatever it
13 says on the tax return is what the capital account
14 would be.

15 Q And you're the tax-managing partner,
16 right -- tax-managed partner?

17 A Yes.

18 Q Okay. And do you know what the capital
19 accounts look like? Are they even?

20 A Yes.

21 Q And is that by your direction that that's
22 how it's reflected?

23 A By my direction? It's a 50/50 deal and so
24 it should be even -- they should be even, yes.

25 Q And do you have -- have you ever consulted

1 with David about the tax returns?
 2 A Consulted with him?
 3 Q Yeah.
 4 A What do you consult about a tax return?
 5 Q You say, here's what I propose that we
 6 submit, what do you think? Did you ever say that?
 7 A His girl, Julie, prepared the tax returns
 8 for a number of years.
 9 Q Okay. How about this past year?
 10 A Past year, I prepared them.
 11 Q Okay. And did you consult with David?
 12 A I don't know what there is to consult with
 13 about. You know, no, I didn't.
 14 Q Okay. Well, when Julie prepared them,
 15 would she send them to you for review?
 16 A She would -- she may have. I don't know.
 17 I mean, she filed them. There's not anything much to
 18 look at on a tax return that has one piece of
 19 property and a couple of tenants and a few bills. I
 20 mean, I don't know what there is to look at.
 21 Q Okay. I just wanted to know if you did
 22 look at it or didn't. You're the tax-managed
 23 partner. Did they get filed without you looking at
 24 them?
 25 A I don't know.

1 space, that he's supposed to pay rent for it. And
 2 I've let him get away with it. But there's --
 3 there's no dispute about the fact that he ought to be
 4 paying and there's no dispute about the fact that
 5 I've had argument after argument after argument over
 6 the same thing, which he knows, as a matter of law,
 7 that he needs to be paying for his space.
 8 Q Okay. And I'm talking about the claims in
 9 your lawsuit and you've told me that aside from
 10 January to August, with this office you say was
 11 occupied, he says it wasn't, aside from that rent,
 12 everything else is diminished?
 13 MR. SLOTCHIVER: Objection. I think that
 14 mischaracterizes the testimony.
 15 THE WITNESS: There's been numerous
 16 occasions where bills have not been paid. They've
 17 all -- and they all stem from him not paying rent
 18 where we had our mortgage didn't get paid almost
 19 within 30 days, where we had a few things that were
 20 overdue and I'm sending him emails and he's ignoring
 21 me or he has taken a position -- ultimately, he
 22 folded every single time on what I told him that he
 23 was supposed to pay. He had always ended up paying
 24 it, because I've never asked him for anything that he
 25 wasn't supposed to be paying.

1 Q Okay.
 2 A I don't know if she gave them to me before
 3 or after she filed them. I don't know. But I
 4 certainly looked at them. There was no -- nothing
 5 wrong with anything.
 6 Q Don't you contend in this lawsuit, isn't
 7 your goal that you're going to try to get David's
 8 interest in this company at a significant discount?
 9 A The operating agreement provides that if
 10 he has breached his duty, that I would be entitled to
 11 buy him out at 75 percent of fair market value. The
 12 operating agreement was produced by Taylor Foley.
 13 He's the author of it.
 14 Q Okay. And right now, we've narrowed down
 15 that there is a dispute of whether somebody was fully
 16 occupying the space for a number of months in 2021,
 17 right? That's the money you're talking about?
 18 MR. SLOTCHIVER: Object to form.
 19 THE WITNESS: There's no -- there's no
 20 dispute. Once we had gotten past Dan Magree, he
 21 understood that if he occupied extra space, that he
 22 was supposed to pay for it. And the fair market
 23 value is very easily determined because the offices
 24 are all rented at 1250 apiece. He knows that if he
 25 rents an extra -- or goes in and he uses an extra

1 BY MR. DUFFY:
 2 Q Aren't there instances where people in
 3 David's office had to tell you they had paid rent and
 4 that your rent's outstanding?
 5 A No. Now, we can go through that. We had
 6 a time when he was claiming that he shouldn't have to
 7 pay for the extra office. And what essentially that
 8 was doing was forcing me to put money into the
 9 account which he owned into the account, which he
 10 ultimately conceded that he did put in -- and did put
 11 it into the account on three or four different
 12 occasions, including 2022. And that's a really
 13 pretty good example of he was going to get away -- I
 14 was going to let him get away with using that office
 15 for an entire year.
 16 And rather than just pay the rent, he
 17 comes back and he's already gotten \$15,000 worth of
 18 benefit and he's worried about whether or not I'm
 19 going to take -- I'm taking advantage of him or
 20 something like that. I mean, it's kind of crazy to
 21 me, but...
 22 Q Did the young woman who spent some time in
 23 the office in 2021 prevent you from renting that
 24 office out?
 25 A We already went through that. I mean, I

1 don't know -- all I was told is that she was going to
 2 be there for a short period of time. And all I know
 3 is that that was not true, that she ended up staying
 4 there until somebody else occupied the space. So
 5 what was represented to me was false.
 6 Q Did you remove it from the listing?
 7 A I don't -- I don't know. I don't know if
 8 it was shown by -- it would have been Zach at that
 9 point or Cody. I don't know. One of them.
 10 Q So you can't tell me somebody would
 11 have -- was interested in renting it but didn't
 12 because this person -- this young woman was there?
 13 A I don't know, no.
 14 Q Okay. Now, the money -- well, put it this
 15 way: Well, you made a capital call for something
 16 beyond any disputed rent, that was -- I believe I saw
 17 evidence of that happening one time. Do you recall
 18 that?
 19 A It was a capital call. I mean, we had a
 20 special assessment and we needed to put some extra
 21 money in to pay that. And that would be, quote, a
 22 capital call of sorts. I mean, you know, it was just
 23 the extra money we needed to put it into the account
 24 to be able to meet the obligations.
 25 Q Do you recall a capital call being made by

1 Q And that was by your choice, correct?
 2 A There was one instance when he suggested
 3 doing that; otherwise, there was never anybody wanted
 4 to do a lease. We never had a lease.
 5 Q Right. And Dan suggested it and David
 6 suggested it, and you didn't want it?
 7 A We went through that, yes.
 8 Q And now you're complaining that you're
 9 enforcing lease terms that he disputes, right?
 10 That's what he -- it's all about he wouldn't pay the
 11 rent pursuant to your view of what rent should be
 12 paid, right?
 13 MR. SLOCHIVER: Object to the form.
 14 THE WITNESS: I don't agree with that. I
 15 mean, he's always ended up paying exactly what I told
 16 him to pay because I was, I mean, right, or I was
 17 being fair to him. I mean, I was never unfair to
 18 him. If anything, he's gotten away with -- he was
 19 going to get away with '21. He got away with paying
 20 \$1435 a month for something that was worth \$2500 a
 21 month for years. And then there's been, you know, as
 22 he took over additional space, each time he did, we
 23 ended up in another fight.
 24 BY MR. DUFFY:
 25 Q Now, when you took over additional space,

1 you in 2016?
 2 A I mean, I can look through the emails and
 3 see if there was. But there was a dispute in '16,
 4 there was a dispute '14 and '15, another dispute in
 5 '21 and '22, and if you want -- I wouldn't use the
 6 term capital call, but that's okay. Yes.
 7 Q Would you dispute that you did use the
 8 term "capital call" in 2016?
 9 A I don't remember using that term. I'm not
 10 saying I did or didn't.
 11 Q Okay. Do you have any recollection of
 12 David ever not paying something that you framed as a
 13 capital call?
 14 A Not paying... No. The problem was he
 15 wouldn't pay his rent. And so he was taking the
 16 position all the time that, you know, we should be
 17 splitting something 50/50 when he's using it and he's
 18 not paying his rent, and then he wanted me to use the
 19 term "capital call." I mean, no, it was not so much
 20 about capital, it was about paying his rent.
 21 Q Did you have a rental agreement you were
 22 trying to enforce?
 23 A A rental agreement -- there was no rental
 24 agreement in place on any office that he occupied or
 25 that I occupied in that space.

1 when you expanded, did you pay a higher rent?
 2 A I have never occupied more space than him.
 3 Q Right, right, but -- right. So because
 4 you have a smaller operation, you can bring on more
 5 space and not pay fair market value, right?
 6 A That would not be true. If -- if I were
 7 to bring -- like right now, he's paying for two
 8 additional offices because he's using two additional
 9 offices. If I were to use another office, I would
 10 say, David, you only need pay for one additional
 11 office because --
 12 Q I understand.
 13 A -- we're paying, you know, and vice versa.
 14 It goes both ways.
 15 Q Now, I believe I covered this to some
 16 extent earlier, but am I correct that you've never
 17 called for a meeting of the managers or management
 18 committee?
 19 A Neither one of us have ever called a
 20 meeting that I'm aware of.
 21 Q Okay. And you're not aware of a vote
 22 ending in deadlock?
 23 A A vote ending in deadlock. Nothing comes
 24 to mind. I'm not...
 25 Q Okay. Are you aware of any managers both

1 signing a consent form so the management committee
2 could take an action without a meeting?
3 A Nobody's ever done that.
4 Q Okay. And has anybody ever signed a
5 delegation of authority to an individual from the
6 management committee?
7 A Not from the management committee.
8 Q Some other signature?
9 A Well, I mean, I've signed listing
10 agreements, obviously, as a manager.
11 Q Oh, sure. I just mean have the two of you
12 as the owners or the managers, have y'all ever signed
13 something together that delegated authority to one of
14 the two of you?
15 A Not that I'm aware of.
16 MR. TAYLOR: Can we take a break?
17 MR. DUFFY: Yeah, sure. Let's take ten
18 minutes -- five minutes.
19 (A break was taken from 3:43 p.m. to
20 3:50 p.m.)
21 BY MR. DUFFY:
22 Q Okay. Do you recall a refinance of debt
23 for K&T with Ameris Bank?
24 A Yes.
25 Q And do you recall what the rate was that

1 thought maybe he had a -- I didn't know that there
2 were judgments against him or -- I didn't know that.
3 Q When did you find that out?
4 A Mostly just recently looking at all this
5 stuff. I mean, I never had any reason to go look up
6 his records or anything like that.
7 Q Other than this -- the suggestion that it
8 was a higher interest rate, are there any
9 other -- any other effect that you think that David's
10 credit or any judgments had some impact on you --
11 A Well, I know that we had been at Wells
12 Fargo and that we purchased the property in 2005 and
13 we had a Libor product, so our interest rate was like
14 two and a quarter. And then in 2010, Wells Fargo
15 refinanced and they refinanced us again at Libor.
16 And I looked at David and I said, "David, you know,
17 we just stepped in it and came out smelling like a
18 rose," because you couldn't even borrow money. And
19 they renewed us at Libor product that was below fair
20 market value. It was below prime. So it was a great
21 deal. And if everything would have been the same in
22 2015, we may have ended up with another Libor product
23 the way they were operating.
24 Q Did you know if they were doing that for
25 other people in 2015?

1 K&T got?
2 A It's in the Complaint. I think it was
3 four and three-quarters. Yeah, it was four and
4 three-quarters.
5 Q Okay. And do you recall a reference that
6 the prevailing market rate was four and one-quarter?
7 A Yeah, I just -- just got another loan, I
8 think, on 140, because I remember asking Linda why it
9 was higher. And it was -- it was higher because his
10 credit, was what I was told.
11 Q Okay. And so you had a loan around the
12 same time at 140?
13 A Yes.
14 Q Okay. And I'm -- just as a heads up, I'm
15 going to ask for those records of that loan as a part
16 of follow-up discovery.
17 Any other loan that you suggest -- or any
18 other reason that you suggest that four and
19 one-quarter was -- was the prevailing market rate?
20 A I asked her, Linda Kennedy.
21 Q You asked her at the time --
22 A Yeah, I wanted to know why we were
23 paying -- having to pay more. And I -- and I was
24 told that it was because of his credit. I mean, I
25 didn't -- I guess I didn't understand the time. I

1 A I don't know what they were doing. I know
2 that they just wouldn't -- that was the terms of our
3 original loan and every time they -- five years came
4 up, it seemed to me like they were just rubber
5 stamping it again for the same product, basically, or
6 at least they did in -- like I said, 2010, you
7 couldn't even borrow money. If we had to go to a new
8 institution or something, we would have been -- I
9 don't even know if we would have been able to.
10 Q So you got the same terms on a renewal in
11 2010 and you're hopeful that you might have gotten
12 that in 2015, or whenever this refinancing was?
13 A It might have been, yeah. I don't know.
14 Q Right, but do you have any evidence
15 suggesting that that's what -- beyond the initial
16 renewal, that that's what Wells Fargo was doing
17 during that market time frame?
18 A I don't. I know I was just surprised that
19 they did it in 2010.
20 Q Okay. Anything else? I know you had a
21 relatively contemporaneous loan you say in 140 and
22 your discussion with Linda. Anything else that
23 you're aware of to suggest that K&T should have
24 gotten four and a quarter instead of four and
25 three-quarters when -- with Ameris Bank?

1 A Again, that's what I was told, that, you
 2 know, we would have gotten four and a quarter.
 3 I -- see, I don't remember. I mean, I had refinanced
 4 Suite 140 or something. I think I had gotten four
 5 percent and then there had been a little click in
 6 rates up, which was -- would have gotten it to four
 7 and a quarter but not four and three-quarters.
 8 Q Okay. And how would you compare the space
 9 or put it -- step back for a second.
 10 You have experience with borrowing money
 11 on rental spaces in the Franke Building; is that fair
 12 to say?
 13 A Yes.
 14 Q Do you understand there to be any
 15 differences from a lender's perspective between 330
 16 and 140?
 17 A Would there be any differences?
 18 Q Any material differences that would change
 19 what rate the bank might want to offer?
 20 A Not from the space itself.
 21 Q Okay. The ownership?
 22 A The ownership, apparently, it does matter.
 23 Q Aside from the -- any credit issues that
 24 David had, is there anything else that would be, in
 25 your understanding, materially different between the

1 330?
 2 A 5106.
 3 Q So at the high end, you would say that's
 4 worth a million nine, fourteen seven-fifty; does that
 5 sound right?
 6 A Is that at 375 a foot?
 7 Q Yes. Yes.
 8 A At the high end.
 9 Q Okay. And is it fair to say that 25
 10 percent of that is roughly \$475,000?
 11 A That sounds about right.
 12 Q And is it your contention that you should
 13 get David's half of that -- well, let's say half of
 14 475 would be 237-ish; is that fair?
 15 A I think that's right, yeah.
 16 Q Okay. And so 25 percent of David's
 17 interest in the property would be roughly worth that
 18 amount?
 19 A David's 25 percent interest in the
 20 property?
 21 Q Well, I mean, I'll just make it clear
 22 that, I mean, what you're seeking in the lawsuit is
 23 to get his interest in the property at 75 percent of
 24 the value of it; is that right?
 25 A That's what the operating agreement

1 two spaces?
 2 A I don't know of any differences between
 3 340 and 330.
 4 Q Okay. What would you say the fair market
 5 value is of Suite 330 right now?
 6 A They're all between 350 and 375 a foot. I
 7 don't think there's any difference between one space.
 8 Our space, arguably, looks nice because it has a lot
 9 of building shelving and cabinetry in the conference
 10 room and in David's office and my office. But at the
 11 end of the day, that's not going to affect the value
 12 of the property.
 13 Q Okay. When you said "they all," are you
 14 referring to your property, or you just mean
 15 everything in the Franke Building?
 16 A Everything in the Franke Building.
 17 Q Okay. And what are you basing that off
 18 of?
 19 A Recent sales. I think Nick Clekis sold
 20 his office. That was a pretty good comp. And I
 21 think -- I don't remember the exact numbers. There
 22 was one space that sold for a little bit more than
 23 that, but it was a real tiny sliver. So it's really
 24 not a very good comp.
 25 Q Okay. And what's the square footage of

1 provides.
 2 Q Is that what you're looking for?
 3 A Well, as you know, we were in a mediation
 4 and that was not what I was proposing we do, but
 5 that's plan B, which is now plan A.
 6 Q Okay. So you're trying to get -- you're
 7 trying to get David's interest in the property at 75
 8 percent over extended payment terms; is that right?
 9 A Whatever the operating agreement provides
 10 in that.
 11 Q Okay. And you think that your gain of
 12 that amount of value is a fair result?
 13 A It's what the operating agreement provides
 14 and I do think it is a fair result based on his
 15 conduct, yes.
 16 Q Okay. Is it fair to say, John, that
 17 you've been sort of the front person, public-facing
 18 person for K&T renting property?
 19 A Yes.
 20 Q And is it fair to say that you've had some
 21 negative coverage in the news and publicly
 22 personally?
 23 A Well, I mean, I know I was arrested for
 24 criminal domestic violence and I was a judge at Folly
 25 Beach and I got my name in the paper. Yeah, that

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1 happened.

2 Q Okay. When was that?

3 A It would have been around, I guess, '11 or

4 '12, in that area.

5 Q Okay. Have you been arrested more than

6 once?

7 A Yes.

8 Q Was it more than one occasion for criminal

9 domestic violence?

10 A Yes. It was the same thing.

11 Q Okay. I'm sorry. It's a separate charge

12 but the same charge; is that right? Separate

13 incident?

14 A They were separate incidents, separate

15 people.

16 Q Okay. And one was 2011-2012 time frame?

17 A Between 2010 and 2015.

18 Q Okay. And then when was the next one?

19 A The first one was around 2000 and -- 2000.

20 Q Okay. Sorry. And were the -- were the

21 people complaining -- I don't mean to say it that

22 way.

23 Was the person on the other side of the

24 incident in each occasion, were you married to that

25 person?

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1 for a restaurant on Market Street in 1993.

2 Q What was the name of the restaurant?

3 A Johnny Rockets.

4 Q Do you have a favorable opinion of Lee &

5 Associates?

6 A Well, I don't know -- I don't have any

7 opinion of them. I mean, Bob Nuttall, I -- you know,

8 he did his job.

9 Q Okay. Now, have you ever been involved or

10 had a foreclosure action brought against you?

11 A I don't know. Not that I'm aware of.

12 Q Have you ever been a defendant personally

13 in an action in circuit court in Charleston County?

14 A Yes.

15 Q Can you tell me the situation?

16 A Well, there was -- I was -- kind of

17 convoluted. I was appointed, I think, as a special

18 administer of an estate and a lawyer who represented

19 a client who had no interest in the estate sued me.

20 And, ultimately, the whole thing just disappeared

21 because she didn't have any standing. She wasn't a

22 beneficiary of the estate and it just kind of ended.

23 I know I had Morris Rosen represent me.

24 Q Gotcha. Okay. I'm just -- there are

25 records that reflect that you're a defendant in an

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1 A Yes.

2 Q How were the initial charges resolved?

3 A They were all just dismissed. I mean,

4 there wasn't -- I don't think I should have been

5 arrested either time. I was laying on the floor and

6 was basically kicked and was accused of hitting her

7 leg and they took me to jail.

8 MR. SLOTCHIVER: Do you want the facts or

9 you just wanted to know how it was resolved --

10 MR. DUFFY: Yeah. I'm sorry. I just --

11 THE WITNESS: The second time, I got hit

12 and got --

13 MR. SLOTCHIVER: He just wants to know how

14 it was finally ended up. Dismissed.

15 BY MR. DUFFY:

16 Q John, do you know Bob Nuttall with Lee &

17 Associates?

18 A I know who he is.

19 Q Do you know him by reputation --

20 A I've dealt with him, personally.

21 Q Do you --

22 A And his brother, John -- John.

23 Q Are you familiar with Lee & Associates as

24 property managers?

25 A I know -- I negotiated a lease with Bob

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1 action -- foreclosure action with a judgment entered

2 in January of 2008. Are you familiar with that?

3 A No. No. No.

4 Q Okay.

5 A I don't know of any foreclosure that I

6 would have been involved in. 2008.

7 Q All right. Any other civil actions you

8 recall being involved in as a defendant?

9 A Not off of the top of my head, no. I'm

10 not saying there's not some out there, but.

11 Q Okay. I'm looking through your responses

12 to interrogatories and there's a list of individuals

13 that you provided who would be witnesses concerning

14 the facts of the case. One is Cody Deckert. What do

15 you understand Cody's relevant information or

16 knowledge would be?

17 A Well, Cody was the one who started the

18 Craigslist and basically, thanks to him in large

19 part, had K&T completely leased up.

20 Q Have you had any discussions with Cody

21 about this lawsuit?

22 A No.

23 Q Okay. Lenora Norell?

24 A She's a real estate paralegal that works

25 for me currently.

1 Q Okay. And what was -- what would her
2 relevant knowledge be?

3 A Her knowledge would be more towards the
4 attitude of people that worked in our suite; namely,
5 April Shores, her attitude, which is very poor, I
6 must say.

7 Q And poor -- poor just a general attitude
8 or poor in how she addresses certain people, or what
9 are you getting at?

10 A She's difficult to deal with. She's
11 always got a problem with everything that goes on in
12 the office. She's -- she's a -- she has a continual
13 problem with everything, whether it be somebody
14 didn't throw the paper towel and they left it on the
15 whatever. She goes down and complains top our -- one
16 of our tenants about he was -- he had a candle
17 burning, a candle. She didn't like the smell of it.
18 I mean, it's just -- it's ongoing all the time.

19 Q Now, are you -- I understand there have
20 been some complaints that you have locked the control
21 for the HVAC unit?

22 A I put boxes on all of them. I've given
23 them a key to it so they can change it anytime they
24 want. But, yes, I put control boxes on all of my
25 suites, basically, not so much to regulate the

1 A Well, again, dealing with April and being
2 a tenant in there, it would be more about the -- the
3 attitude of -- it's -- David's staff -- I mean,
4 David Foley used to work for me, okay, and David
5 asked me when he hired David if I recommended he do
6 that and I said yes. I mean, he's a good lawyer. I
7 don't have any problem with anybody in his staff
8 except for April, who is a constant pain to deal
9 with. I mean, across the board. I almost wanted to
10 allege things in the lawsuit about it, which would be
11 valid, but it just seems like it's just a personality
12 thing. It's not me and her. It's everybody and her.

13 Q Okay. And so what does that have to do
14 with this lawsuit?

15 A Well, he -- Brent also, I mean, he is
16 witness to, you know, the suites being leased, who
17 they were leased to. He was a tenant. But mostly
18 about her attitude. And it does have something to do
19 with it because I've had tenants that have left
20 because of her. I've had employees that have quit
21 because of her.

22 Q Okay. Which tenants left because of
23 April?

24 A We had a couple of lawyers. I think the
25 guy's name was Giel or something. I mean, I usually

1 temperature during the daytime, but what they do is
2 they're programmed to turn the temperature way up in
3 the summertime, up to, like, 80 so that you're not
4 sitting there -- we used to have people -- it's
5 actually saved K&T probably, on average, \$500 a month
6 in utilities, basically.

7 Q Now, did you provide him a key right when
8 you put the box there or only after some complaints?

9 A I don't recall there ever being a
10 complaint. If they wanted -- I don't know if I did
11 right after or when they first asked me. And I don't
12 recall anybody complaining about anything.

13 Q Are you aware of April or others in the
14 office complaining about people eating their food out
15 of the refrigerator?

16 A I heard that, yes.

17 Q And is that something that -- that you
18 would have done when you were spending time there as
19 a resident?

20 A Maybe. I might have.

21 Q Is that --

22 A I'd also go buy stuff and put it in there
23 too, to replace it.

24 Q Brent Halversen, what's his basic
25 knowledge of relative to this case?

1 go in and kind of talk to them, the tenants, about
2 if, you know, they have an issue with her, to come
3 see me to kind of minimize, I guess, their
4 interactions. I mean, we're not allowed to sign
5 something that comes in. We have different lawyers.
6 We have different people. There needs to be a little
7 bit of cooperation with each other. People come in
8 the front door. David Savage's girl, you know,
9 she'll bring somebody back to me if they came in the
10 office for me. If they ask April, April will just
11 say, I don't know, you know. I don't know.

12 Q Okay. I understand there might be some
13 frustrations dealing with whichever direction, but I
14 want to focus on the lawsuit. And so you mentioned
15 that you think you lost some tenants because of
16 April, and I'm looking for what names you think the
17 people left because of April?

18 A Well, I just told you one I thought. Last
19 name was Giel, G-I-E-L or G-E-E-L. I don't know
20 that -- that we've had others than that.

21 Q Let me put it even more crystalized. Are
22 you having -- do you have any complaint or any claim
23 in this suit about K&T losing anything because of
24 April's actions or attitude?

25 A No.

1 Q Okay. Have you spoken with Lenora -- I
2 don't remember if I asked you this -- about the
3 lawsuit?
4 A I mean, she knows that we've got one.
5 Q Did you speak to her about testimony?
6 A No.
7 Q Have you spoken to Brent about the
8 lawsuit?
9 A I've told him that I was naming him as a
10 witness.
11 Q Did you tell him why?
12 A I mean, he would have witnessed firsthand
13 a lot of...
14 Q I just want to know if you talked to him
15 at all about his testimony?
16 A No.
17 Q Zach Lord, beyond being the broker, is
18 there any special -- any knowledge he would have
19 relevant to this dispute?
20 A He's had some issues with April, yeah.
21 Q Okay. Do those -- whatever issues Zach
22 may have had with April, are they -- do they form the
23 basis or evidence of any claims you have in this
24 suit?
25 A I think so. Actually --

1 Q Have you spoken with Zach about the
2 lawsuit?
3 A He knows it exists.
4 Q I want to know if you talked to him. I
5 know he knows. We subpoenaed him --
6 A Yeah.
7 Q Have you spoken to him?
8 A I mean, I have talked to him a time or two
9 about it.
10 Q Okay.
11 A He's just asking me what's going on or
12 whatever. I don't know. We just filed the lawsuit.
13 Q And what did you say?
14 A I didn't say anything really much to him.
15 I just said it was ongoing.
16 Q Linda Kennedy, we've talked about her
17 position at Ameris Bank. Anything else beyond that
18 that you understand she has relevant testimony for?
19 A I mean, she's going to testify about
20 Ameris Bank, but she would also be able to testify
21 about Pinnacle Lane, you know, whatever documents she
22 got from him. So when we go to renew, she always
23 deals with David directly and deals with me directly.
24 Q Okay.
25 A I don't know that I'm answering your

1 Q How?
2 A Well, I know she was screaming at him one
3 time because the -- the fire alarm went off and she's
4 telling him to get out. He didn't like interacting
5 with her. Damages, I don't know. But I don't know
6 that there would be any damage as a result of that,
7 but it's -- he can certainly testify as to her
8 demeanor.
9 Q Right. I've heard that a lot about these
10 people. What I'm trying to find out is what does her
11 demeanor or attitude have to do with a suit. So
12 that's why I'm asking. Do you have -- are you
13 alleging any claim or is that evidence of the support
14 to any of your claims, in your understanding?
15 April's attitude and how she deals with people, what
16 does that have to do with this suit?
17 A I don't know that it has a lot to do with
18 it. That's why I didn't make it part of the
19 Complaint.
20 Q Okay. Have you spoken with Zach about the
21 lawsuit?
22 A He knows it exists.
23 Q Okay.
24 A His records have been subpoenaed from
25 Carolina One.

1 question, but...
2 Q The banking relationship, basically.
3 Anything beyond the banking relationship?
4 A It would be primarily the banking
5 relationship.
6 Q Okay. Now, we were talking about April
7 and I want to understand something. Do you have an
8 understanding of whether David's staff has any duties
9 to K&T Group?
10 A Has any duties? No.
11 Q Okay. Nancy Vavra, that's who we talked
12 about who was a tenant for a while; is that right?
13 A Yes.
14 Q Have you spoken to her about the lawsuit?
15 A I don't even know if she knows it exists,
16 no.
17 Q Okay. Have you spoken to Linda Kennedy
18 about the lawsuit?
19 A She knows it exists, yes, I have talked to
20 her.
21 Q Okay. And what was that conversation?
22 A Some possible scenarios about getting out
23 of it.
24 Q And tell me about that.
25 A Well, there would be two scenarios. One

1 would be that we split the suite and, you know, how
2 that would affect our loan and whether or not the
3 loans could be split and separated. Or the second
4 one would be purchasing his interest and what that
5 might look like.

6 Q So exploring options with her, with that
7 financial relationship?

8 A Right.

9 Q Okay. Now, has anyone approached you with
10 an interest in buying your part of Suite 330?

11 A No.

12 Q Would you have an interest in selling your
13 half of Suite 330?

14 A No. No.

15 Q And why would you not want to sell it?

16 A Because it's a lot of work to put those
17 deals together and I've put the deals together. It's
18 a lot of work to get tenants in them. I've got
19 tenants in them, and I have no interest in walking
20 away from a deal that I pretty much put together and
21 worked to get it to where it is today.

22 Q Okay. Now, in the interrogatories, we
23 asked for an itemized statement of all damages
24 claimed to have been sustained by the party, and the
25 answer was to see the Complaint. Is there anything

1 outside of the Complaint that you would offer as a
2 statement of your damages?

3 A I think the Complaint lays out pretty much
4 exactly what has happened on a regular basis. And
5 no, I don't have anything else.

6 MR. DUFFY: Let's take a break for about
7 five minutes --

8 MR. SLOTCHIVER: Sure.

9 MR. DUFFY: -- reorganize here.

10 (A break was taken from 4:21 p.m. to
11 4:26 p.m.)

12 BY MR. DUFFY:

13 Q Okay. John, I want to talk to some of the
14 allegations in the Complaint. And do you happen to
15 have one in front of you?

16 A Yes.

17 Q Make it easier that way.

18 I'm happy to give you one if you don't.

19 MR. SLOTCHIVER: Here you go.

20 THE WITNESS: Okay. I got it.

21 BY MR. DUFFY:

22 Q All right. So paragraph 39 -- all right.
23 You'll see in 39 you allege that there have been
24 violations of section 33-44-601, parentheses, 6, end
25 parentheses, and that there are three separate

1 enumerated allegations. Do you see that?

2 A Yes.

3 Q Okay. I'm going to ask you about each of
4 them. You say that the counter member of K&T has
5 engaged in wrongful conduct that adversely and
6 materially affected the company's business. Tell me
7 everything you think fits within that category.

8 A Not paying rent for space being used.

9 Q Okay.

10 A Wrongfully. I mean, it's all about not
11 paying rent.

12 Q Okay. Number 2, Willfully or persistently
13 committed a material breach of the operating
14 agreement or of a duty owed to the company or the
15 other members under section 33-44-409"?

16 A Not paying rent.

17 Q Okay. And the third one is, "Engaged in
18 conduct relating to the company's business which
19 makes it not reasonably practicable to carry on the
20 business with Taylor and Taylor Capital."

21 A Or end up in the same spot again doing the
22 same thing in another five years. I don't want to.

23 Q Okay. So the conduct is what I'm asking
24 for.

25 A It's not paying rent.

1 Q Okay. Okay. And so when you then say,
2 "In the third cause of action violation of 33-44-801
3 for A, B, and E" --

4 MR. SLOTCHIVER: What paragraph are you
5 looking at?

6 MR. DUFFY: It's page 7 of 8, paragraph
7 43. So it's the third cause of action, which is then
8 in paragraph 44.

9 THE WITNESS: It's page 60.

10 MR. DUFFY: Third cause of action --

11 MR. SLOTCHIVER: Page 7.

12 MR. DUFFY: I've got the final version.
13 Yeah, it's 7 of 8.

14 MR. SLOTCHIVER: Yeah, take this one.
15 Yep.

16 BY MR. DUFFY:

17 Q Okay. And I'm happy to go to the statute
18 and roll through A, B, and E, unless you're going to
19 tell me again that the whole issue is about you
20 saying he's not paying the rent.

21 A Well, I mean, that is the primary issue
22 and, I mean, there are the issues with regard to the
23 extra expense of higher interest rate.

24 Q Okay. Just so I'm clear on this, though,
25 33-44-801A -- okay. So 4 is you are seeking a

1 judicial decree that the economic purpose of the
2 company is likely to be unreasonably frustrated.
3 Okay. So you're suggesting there are breaches of
4 duty owed by Taylor and Taylor Capital that make it
5 to where the economic purpose is likely to be
6 unreasonably frustrated.

7 What breaches of duties are you referring
8 to?

9 A Not paying rent.

10 Q Okay. Then B is, "Another member has
11 engaged in conduct relating to the company's business
12 that makes it not reasonably practicable to carry on
13 the company's business with that member," which I
14 think is also in the other one we talked about. So
15 is that the same answer --

16 A Yes.

17 Q -- not paying rent?

18 Okay. And E, "The managers or members in
19 control of the company have acted, are acting, or
20 will act in a manner that is unlawful, oppressive,
21 fraudulent, or unfairly prejudicial to the
22 petitioner."

23 So what breaches of duty are you referring
24 to that establish that?

25 A Not paying rent.

1 didn't go in every single time that we paid an
2 expense and to see if one class was underwater or
3 above or anything like that. But if they were, at
4 the end of the month or whenever, periodically,
5 everything was, you know, cleared up by a transfer.
6 We never borrowed money that I'm aware of. But
7 that's what he's referring to.

8 Q Okay. So in that situation where there
9 may have been some accounting imbalance that you
10 described, was it ever the result of you taking money
11 for yourself?

12 A I don't think so. It's just paying bills.

13 Q Right. But paying bills of the entity or
14 paying your bills, I guess is my question?

15 A I paid -- if there was money in the
16 account, the bill came in, I just paid it.

17 Q Right. Right.

18 A It was --

19 Q A bill for your firm?

20 A Yes.

21 Q Okay.

22 A It wouldn't have been paid out of that
23 account if wasn't for the firm or...

24 Q You said "or." Is there anything else?

25 A No, I mean -- no. If it was for something

1 Q Okay. Now, one other thing I needed to
2 address is I'm going back to you and David practicing
3 law together. Was there a situation where you were
4 taking money out of the operating account that
5 basically was creating a deficit and it was an uneven
6 draw for your benefit?

7 A No.

8 Q So was there never a situation where you
9 had taken out more money than had been allocated or
10 provided to David and y'all had to borrow money so
11 that you could pay that back and pay his share?

12 A No. I will explain this in a nutshell,
13 though. I had the books set up to where there was a
14 class. Kachmarsky was a class and Taylor was a
15 class, and we operated as a partnership. I had the
16 books set up to where if you ran a profit and loss
17 and you looked at the profit and loss by class by
18 Kachmarsky and a profit and loss by Taylor, the two
19 numbers would equal what was in the bank account,
20 okay. So I was responsible for paying the bills at
21 K&T. And when I -- we had money in the account,
22 bills came in, my secretary was instructed to pay the
23 bills as they came in.

24 And if you could go in -- I showed David
25 exactly how you could see where the money was. I

1 else, it would have been paid out of a different
2 account. I mean, if it was a personal expense of
3 mine, it would have been paid out of my personal
4 account.

5 Q Is there a reason why you didn't get the
6 NEFA tenant out of the property sooner when they
7 failed to pay rent?

8 A Well, I don't know how long they were in
9 there without paying rent. What I know is that when
10 they signed the lease, they had -- they had three
11 million dollars cash. And this guy, Scott Key, who
12 is not a friend of mine -- he's an acquaintance -- he
13 apparently got them involved in this needle company
14 that -- this company that made these disposable
15 needles who's taken everybody in Charleston for a
16 ride. People like Tommy Baker, Paul Steadman, and a
17 bunch of other people. Jim Smith invested in it.
18 And he put that money basically into that needle
19 company and then they went belly up and we were
20 sitting there holding the bag. That's what happened.

21 Q Yeah, and I was curious, how long do you
22 think is a reasonable time for a tenant to go without
23 paying rent before you evict them?

24 A I would want them out as soon as possible.
25 I don't know what was going on, if we thought we

Page 106 1 might end up -- you know, they were having a 2 temporary slump. I mean, I didn't know what was 3 going on with them at that time. I thought they had 4 plenty of money and that, I guess, we were going to 5 get paid, but we didn't. And I don't know how many 6 months was involved -- 7 Q Okay. 8 A -- at this point. 9 Q You'd think after three months you ought 10 to get rid of somebody if they hadn't paid? 11 A Well, I mean, I'd be certainly talking to 12 them about it, and I remember talking to -- I can't 13 remember the guy's name. But anyhow, I did talk to 14 him. I mean, I was -- they were assuring -- I don't 15 know that they knew what was going on. So they 16 seemed to be wanting to pay the rent; but, I mean, we 17 got them out of there when -- you know, at some 18 point. I don't remember how long it was, though. I 19 really don't. I mean, do you know for a fact what 20 the time frame is? 21 Q You're the one giving the testimony today, 22 and I think you're done with it. 23 A Okay. 24 Q That's fine. 25 MR. DUFFY: Yeah. Thank you.	Page 107 1 COURT REPORTER: Mr. Slotchiver, do you 2 want an etran of this? 3 MR. SLOTCHIVER: Yes, please. 4 (Deposition was concluded at 4:40 p.m.) 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
Page 108 1 STATE OF SOUTH CAROLINA) 2 COUNTY OF BERKELEY) 3 I, Deirdre J. Weyer, Registered Professional 4 Reporter and Notary Public for the State of South 5 Carolina at Large, do hereby certify that the witness 6 in the foregoing deposition was by me duly sworn to 7 testify to the truth, the whole truth, and nothing 8 but the truth in the within-entitled cause; that said 9 deposition was taken at the time and location therein 10 stated; that the testimony of the witness and all 11 objections made at the time of the examination were 12 recorded stenographically by me and were thereafter 13 transcribed by computer-aided transcription; that the 14 foregoing is a full, complete, and true record of the 15 testimony of the witness and of all objections made 16 at the time of the examination; and that the witness 17 was given an opportunity to read and correct said 18 deposition and to subscribe the same. 19 20 Should the signature of the witness not be 21 affixed to the deposition, the witness shall not have 22 availed himself/herself of the opportunity to sign or 23 the signature has been waived. 24 I further certify that I am neither related to 25 nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 9th day of August 2023, at Moncks Corner, Berkeley County, South Carolina.  Deirdre J. Weyer, RPR My Commission Expires: June 26, 2033	



EXCLUSIVE RIGHT TO LEASE LISTING AGREEMENT (COMMERCIAL)



In consideration of the covenants herein contained, John Kachmarsky, Sole Property Owner(s) (hereinafter called "OWNER") and Carolina One Commercial Real Estate, Real Estate Company (hereinafter called "BROKER"), agree as follows:

Broker will serve as a ☐ non agency transaction broker or ☐ an agency listing broker in the this transaction.

For the period of time beginning on June 1, 2021, and ending at midnight on June 30, 2023, Owner hereby grants to Broker the sole and exclusive right to lease the real property known as:

Address 171 Church St, Vacancies, executive space in available offices, including suites 140, 150, 230, 330, 340

Tax Map # 458-05-03-137 City Charleston Zip 29401-3135

County of Charleston, State of South Carolina.

1. EMPLOYMENT: In consideration of the services and facilities of your office and of your agreement to enter the within described property in the Multiple Listing Service of which BROKER is a member, the undersigned Owner does hereby employ the above named BROKER as the sole and exclusive agent, and give said BROKER the exclusive right and authority to lease the herein described property, From June 1, 2021, To June 30, 2023, inclusive, subject to all the terms and conditions hereof.

2. LEASE RATE: Said property is, hereby, listed to lease at a rate of \$ See below

3. TERMS: Said property may be leased subject to the following terms: \$600-1500 per month full service rate on executive suites. TBD rates on other vacancies.

4. POSSESSION of property shall be relinquished by the Owner to the Tenant in accordance with the terms of the rental agreement.

5. DEFECTS: Owner represents that the property is not subject to any defect and does not contain any hazardous or toxic substance to the best of Owner's belief after due inquiry, unless expressly disclosed herein. Owner agrees to disclose to the BROKER any defects (whether latent affects or otherwise) of the herein described property and to hold said BROKER harmless from any liability or damages including without limit attorney's fees arising from any defects. Owner represents to the best of Owner's information and belief after due inquiry (i) that Owner has not received notice of any claimed environmental hazard or condition in connection with the property; (ii) that the property contains no hazardous or toxic wastes, asbestos or other substance dangerous or harmful to human health or the environment, and has not been used for the manufacture, storage, or transport of any such substance; and (iii) that no part of the property consists of federal jurisdictional wetlands. Any additional stipulations shall be set forth in writing in this agreement.

6. TERMS:

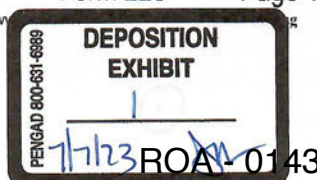
- Owner agrees that said BROKER has earned a commission of See below if a tenant who is ready, willing, and able to lease the herein described property at the lease rate and on the terms aforesaid or at any price and terms acceptable to the Owner. Commission to be paid by Owner as follows:
On executive suites without another tenant rep broker, one months rent due to Carolina One Commercial
. If another agent represents tenant, and Carolina One Commercial represents landlord, two months rent
due to Carolina One Commercial, split between Carolina One Commercial and other tenant rep broker
equally.

DS JK] OWNER, [DS SL] OWNER, AND [DS SL] BROKER HAVE READ THIS PAGE.

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for the initial term and any renewals, extensions or modifications of any lease entered into pursuant to this listing agreement and for any expansions of, or additions to, the space covered by any lease entered into pursuant to this listing agreement.

2. Owner understands that Broker shall pay cooperating agents/transaction brokers a fee of \$ see above or a commission of N/A % of gross lease price. Owner and Broker agree that there shall be no variation or exception in the amount of the fee or commission to be paid, unless otherwise specified in this agreement.
3. Said commission to be paid to BROKER whether said Tenant is found by BROKER, by another Broker, by the undersigned Owner or by any other person.
4. If within 60 consecutive days after the termination of this agreement, a lease of the herein described property is made or effected by the undersigned Owner, directly or through any other person to a prospective tenant to whom any agent of the Listing BROKER, any Cooperating Broker, or the Owner has shown or offered said property during this exclusive listing period, the Owner shall pay the aforementioned commission to the Listing BROKER, provided that the names of the prospective tenants to whom the property was shown by the Listing BROKER or any Cooperating Broker are furnished to the Owner by the Listing BROKER in writing within ten (10) days after termination of this exclusive listing period.
This protection period shall end at 11:59 p.m. on August 31, 2023.
5. In the event that property is sold during the term of this agreement, owner agrees that any outstanding commissions owed to Listing BROKER will be payable at closing.

7. MULTIPLE LISTING SERVICE: The property ☐ shall be ☒ shall not be entered into the Multiple Listing Services of which Broker is a member, which shall constitute an offer of cooperating brokerage to all members of the listing service. Owner agrees that Broker may compensate an agent/transaction broker representing/facilitating for the buyer from the fee described above.

8. LEAD-BASED PAINT: For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended.

9. ADDITIONAL TERMS AND CONDITIONS: The following terms and conditions are a part of this Exclusive Right To Lease Listing Agreement of which other terms and conditions are set forth on the front side hereof. The Owner and BROKER do further agree:

1. Said property to be leased subject to zoning ordinances, restrictions, easements and conditions of public record; and
2. Owner shall refer to BROKER any inquiries received by the owner and shall not deal directly with prospective tenants for this property during the continuance of this agency and shall allow the BROKER or any participating Broker to show said property at reasonable times upon reasonable notice and shall commit no act which might tend to obstruct the BROKER's performance hereunder; and
3. Owner shall cooperate with BROKER to ascertain all pertinent data concerning subject property so as to avoid error, exaggeration, misrepresentation or concealment of pertinent facts. Owner warrants the accuracy of the information furnished herein and agrees to hold the BROKER harmless from any liabilities or damages arising out of incorrect or undisclosed information. Owner agrees to notify the listing BROKER promptly of any material changes in said information; and
4. The listing BROKER is not responsible for vandalism, theft, damage or maintenance of herein described property; and
5. The Owner agrees to enter into a contract of lease with and to lease said Property to any such ready, willing and able tenant for the rent or upon such other terms and conditions as Owner may hereafter approves, said approval to specifically include Owner's review and acceptance of the credit worthiness of any such tenant; and
6. BROKER ☐ shall ☒ or shall not place such "For Lease" signs on said property as BROKER may deem advisable and no other signs shall be placed on said property; and
7. Broker is granted the authority and approval to list and publish all lease data pertaining to the lease of the hereinabove described property. Owner understands and acknowledges that lease data are published for the use

JK] OWNER, [] OWNER, AND SL] BROKER HAVE READ THIS PAGE.

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and information of the members of all the Boards/Associations of REALTORS® and the Multiple Listing Services (MLS) of which Broker is a member; for their use of same in marketing, leasing and selling of all properties listed in said publication; and

8. Owner shall carry at own expense public liability insurance in an amount of at least \$ 1,000,000.00 to protect the interest of the parties to this Agreement; and
9. Owner hereby indemnifies Agent against and agrees to hold and save Agent, its directors, officers, partners, members, employees and agents, harmless from and against any loss, damage, or expense (including courts costs and reasonable attorneys' fees) resulting from any breach of Client's duties and obligations under this Agreement or the negligence, gross negligence, willful misconduct or fraud of Client or its employees, agents and contractors. Agent hereby indemnifies Owner against and agrees to hold and save Owner, its directors, officers, partners, members, employees and agents, harmless from and against any loss, damage, or expense (including courts costs and reasonable attorneys' fees) resulting from any breach of Agent's duties and obligations under this Agreement or the negligence, gross negligence, willful misconduct or fraud of Agent or its employees, agents and contractors.

10. RESPONSIBILITIES OF AGENCY BROKER: In consideration of granting BROKER this Exclusive Right to Lease Listing, the BROKER agrees:

1. To direct concentrated efforts in bringing about a lease.
2. To advertise said property as BROKER deems advisable.
3. To encourage cooperating brokers in lease efforts of said property by furnishing information and assistance.
4. To keep the Owner/s informed as to the progress made toward finding a tenant for said property.
5. To make an earnest and continued effort to lease the property.

11. RESPONSIBILITIES OF NON-AGENCY TRANSACTION BROKER: Tenants and Owners who do not establish an agency relationship with a Broker and use the services of the Broker are customers. Landlord and Owner agree that Broker shall provide the following customer services to Owner. The Broker shall:

1. Use skill, care, and diligence to facilitate the transaction;
2. Be honest, fair and provide accurate information;
3. Account in a timely manner for all funds received by the Broker on behalf of a party to a real estate transaction;
4. Disclose material adverse facts actually known by the Broker that affect the transaction, or the value or condition of the real property and that are not readily ascertainable;
5. Promptly present all written offers and counteroffers involving the sale, lease or exchange of property even when the property is subject to a contract of sale;
6. Keep information confidential as requested in writing by the Owner.

12. BROKER LIABILITY LIMITATION: *In Agents performance of the duties herein to secure a lease or leases for the Property Owner agrees Broker provided Owner with benefits, services, assistance, and value in bringing about said lease(s). In consideration and recognition of the risks, rewards, compensation and benefits arising from said lease(s) to Broker, Owner agrees that he shall pay Broker's attorney fees and that Broker, shall not be liable to Owner, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omission, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of Broker shall not exceed the amount set forth herein. Owner will indemnify and hold harmless and pay attorneys fees for Broker from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Broker. Owner agrees that there is valid and sufficient consideration for this limitation of liability and that Broker is the intended third-party beneficiary of this provision.*

13. NOTICES: All notices provided for this Listing Agreement shall be in writing and shall be deemed to be given when sent by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to Owner: John Kachmarsky
171 Church Street
Charleston, SC 29401

If to Agent: Zack Lord
191 Rutledge Avenue
Charleston, SC, 29403

JK] OWNER, [] OWNER, AND ZL] BROKER HAVE READ THIS PAGE.

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14. CONFIDENTIALITY: All financial data and other proprietary information with regard to the Property shall be treated as confidential by Agent and shall be disseminated to third parties on a "need to know" basis only. Upon the termination or completion of this agreement, Broker shall keep confidential all information received during the course of this agreement which was made confidential by written request or instructions from the client, except as provided for under South Carolina law.

15. SPECIAL STIPULATIONS: The following stipulations shall, if conflicting with printed matter, control (use addendum if necessary): _____

16. ENFORCEMENT: The parties agree that Broker may take action to enforce this Agreement or collect any associated costs, fees, and damages. Owner agrees to reimburse or indemnify or pay all Broker costs in enforcing this Agreement or collecting costs, fees, and damages including any incidental expenses or attorneys fees.

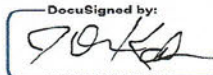
17. MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

18. NO CONTROL OF COMMISSION RATES OR FEES: The Broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the board/association, the MLS, or by any persons not a party to the listing agreement. Any compensation paid by the Listing Broker to a Cooperating Broker or Buyer's Broker in respect to any listing is established by the Listing Broker in Broker's offer of compensation, and is not fixed, controlled, suggested, recommended or maintained by the board/association, the MLS or by any persons other than the Listing Broker.

19. OTHER TERMS AND CONDITIONS: N/A

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

DocuSigned by:  7/7/2022 | 14:21 PM EDT
 Owner: _____ Date _____ Time _____
 F4A32915D830429
 John Kachmarsky
 Email: johnk@jktaxlaw.com Phone: (843)830-3660 Fax: _____

Witness: _____ Date _____ Time _____

DS [] OWNER, [_____] OWNER, AND [] BROKER HAVE READ THIS PAGE.

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Owner: _____ Date _____ Time _____
 Email: _____ Phone: _____ Fax: _____
 Witness: _____ Date _____ Time _____

Owner's Mailing Address: **171 Church St, Suite 330**
Charleston, SC 29401

Real Estate Firm: **Carolina One Commercial Real Estate** Phone: **(854)222-4535**
 By: *Zack Lord* 6/15/2022 | 12:03 PM EDT
 500259E8B9A2434... Date _____ Time _____
Zack Lord

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Franke Building Historic Office Space

171 Church St, Charleston, SC 29401

Listing ID: 30736041
 Status: Active
 Property Type: Office For Lease
 Office Type: Business Park, Executive Suites
 Contiguous Space: 150 - 2,700 SF
 Total Available: 5,570 SF
 Lease Rate: \$600 - 86,400 (Annual)
 Unit Price: \$4 - 62.50 PSF (Annual)
 Base Monthly Rent: \$50 - 7,200
 Lease Type: Full Service



Overview/Comments

Executive office suites available in the historic Franke Building!

Space features a covered walk from the Cumberland Street Garage, three story elevators, exposed wood/brick interior, bottom floor atrium, fully furnished courtyard, USPS/FedEx/UPS boxes and passcode access to the building after business hours and on weekends.

The suites feature beautifully furnished common areas including reception and conference rooms. The suites also feature large floor-to-ceiling windows, exposed wood beams, and exposed brick.

This is the best office space that the Franke Building has to offer!

More Information Online

<http://catylist.sccmls.com/listing/30736041>

QR Code

Scan this image with your mobile device:



General Information

Taxing Authority:	Charleston County	Zoning:	GB - General Business
Tax ID/APN:	458-05-03-135	Building Name:	Franke Building
Office Type:	Business Park, Executive Suites, Coworking, Office Building	Class of Space:	Class A

Available Space

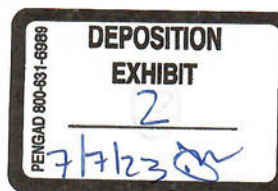
Suite/Unit Number:	230 Entire Unit	Space Type:	New
Space Available:	2,700 SF	Date Available:	06/02/2021
Minimum Divisible:	2,700 SF	Lease Rate:	\$7,200 (Monthly)
Maximum Contiguous:	2,700 SF	Lease Type:	Full Service
Space Subcategory 1:	Office Building	Kitchen/Breakroom:	Yes
Space Description:	Entire unit available, with shared common bathroom, breakroom and kitchen.	Parking Spaces:	20
		Rent Escalators:	Percentage Lease

Available Space

Suite/Unit Number:	230A	Space Type:	New
Space Available:	150 SF	Date Available:	06/01/2021
Minimum Divisible:	150 SF	Lease Rate:	\$600 (Monthly)
Maximum Contiguous:	150 SF	Lease Type:	Full Service

Available Space

Suite/Unit Number:	230B	Space Type:	New
Space Available:	150 SF	Date Available:	06/01/2021
Minimum Divisible:	150 SF	Lease Rate:	\$600 (Annual)
Maximum Contiguous:	150 SF	Lease Type:	Full Service



Prepared by Zack M Lord, Carolina One Commercial Real Estate
Jul 8, 2021 on SCCMLS

854-222-4535 [M] 843-937-8585 [O] zack.lord@carolinaone.com
Licensed to practice Real Estate in South Carolina

Available Space

Suite/Unit Number:	230D	Sublease Expiration Date:	06/01/2021
Space Available:	180 SF	Date Available:	06/01/2021
Minimum Divisible:	180 SF	Lease Rate:	\$600 (Monthly)
Maximum Contiguous:	180 SF	Lease Type:	Full Service
Space Type:	New		

Available Space

Suite/Unit Number:	230F	Space Type:	New
Space Available:	280 SF	Date Available:	06/01/2021
Minimum Divisible:	280 SF	Lease Rate:	\$1,250 (Monthly)
Maximum Contiguous:	280 SF	Lease Type:	Full Service

Available Space

Suite/Unit Number:	230H	Space Type:	New
Space Available:	220 SF	Date Available:	06/01/2021
Minimum Divisible:	220 SF	Lease Rate:	\$1,000 (Monthly)
Maximum Contiguous:	220 SF	Lease Type:	Full Service

Available Space

Suite/Unit Number:	230I	Space Type:	New
Space Available:	240 SF	Date Available:	06/01/2021
Minimum Divisible:	240 SF	Lease Rate:	\$1,250 (Monthly)
Maximum Contiguous:	240 SF	Lease Type:	Full Service

Available Space

Suite/Unit Number:	330A	Space Type:	New
Space Available:	300 SF	Date Available:	06/02/2021
Minimum Divisible:	300 SF	Lease Rate:	\$1,250 (Monthly)
Maximum Contiguous:	300 SF	Lease Type:	Full Service
Space Description:	Executive Suites within unit 330, sharing common area & waiting rooms with other legal professionals.	Offices:	3
		Kitchen/Breakroom:	Yes
		Parking Spaces:	20

Available Space

Suite/Unit Number:	330B	Space Type:	New
Space Available:	300 SF	Date Available:	06/01/2021
Minimum Divisible:	300 SF	Lease Rate:	\$1,250 (Monthly)
Maximum Contiguous:	300 SF	Lease Type:	Full Service

Available Space

Suite/Unit Number:	340C	Space Type:	New
Space Available:	350 SF	Date Available:	06/02/2021
Minimum Divisible:	350 SF	Lease Rate:	\$1,500 (Monthly)
Maximum Contiguous:	350 SF	Lease Type:	Full Service
Space Description:	Executive Suite within unit 340, sharing space with legal professionals	Kitchen/Breakroom:	Yes
		Parking Spaces:	2

Available Space

Suite/Unit Number:	340D	Space Type:	New
Space Available:	350 SF	Date Available:	06/02/2021
Minimum Divisible:	350 SF	Lease Rate:	\$1,500 (Monthly)
Maximum Contiguous:	350 SF	Lease Type:	Full Service
Space Subcategory 1:	Office Building	Kitchen/Breakroom:	Yes
Space Description:	Executive Suite within unit 340, sharing space with legal professionals	Parking Spaces:	2

Available Space

Suite/Unit Number:	340F	Maximum Contiguous:	350 SF
Space Available:	350 SF	Space Subcategory 1:	Office Building
Minimum Divisible:	250 SF		

Prepared by Zack M Lord, Carolina One Commercial Real Estate
Jul 8, 2021 on SCCMLS

854-222-4535 [M] 843-937-8585 [O] zack.lord@carolinaone.com
Licensed to practice Real Estate in South Carolina

Space Description:	Executive Suite within unit 340, sharing space with legal professionals	Lease Rate:	\$1,500 (Monthly)
Space Type:	New	Lease Type:	Full Service
Date Available:	06/02/2021	Kitchen/Breakroom:	Yes
		Parking Spaces:	2

Area & Location

Airports: Charleston International Airport - 22 minutes
Site Description: Single building, with access entrances on both sides. Connected by awning to Cumberland parking garage to protect from rain.
Area Description: Located near Market Shed at Charleston City Market.

Property Located Between Conveniently located on Church Street across from Tommy Condon's, one half block from Market Street, and three blocks from the Courthouse.

Building Related

Total Number of Buildings:	1	Parking Type:	Structure
Number of Stories:	3	Parking Description:	Parking available in Cumberland Garage next door.
Typical SF / Floor:	29,000 SF	Passenger Elevators:	0
Year Built:	1909	Freight Elevators:	0
Construction/Siding:	Brick	Heat Type:	Electricity
Exterior Description:	Brick		

Interior Description Nicely carpeted with exposed wooden beams throughout, common area bathrooms and kitchens available in all units. Waiting room and fountain next to elevators upon entrance.

Land Related

Zoning Description:	General Business, Office Condos	Lot Depth:	273
In Flood Plain?:	Yes	Legal Description:	171 Church St Charleston, SC 29401-3135
Lot Frontage:	152		

Location

Address:	171 Church St, Charleston, SC 29401	MSA:	Charleston-North Charleston
County:	Charleston	Submarket:	51 - Peninsula Chas. inside of crosstown



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T Group,	)	
LLC,	)	
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' PRE-TRIAL BRIEF,
	)	EXHIBIT LIST, WITNESS LIST AND
	)	LEGAL ISSUES
David G. Taylor, Individually, and as Manager of	)	
K&T Group, LLC, Taylor Capital, LLC, as	)	
Member of K&T Group, LLC and K&T Group,	)	
LLC,	)	
	)	
Defendants.	)	

The Parties above-named entered into a business arrangement for purpose of owning an office suite, Suite 330 of the Franke Building at 171 Church Street, wherein they could rent out the offices within the suite to cover the debt, and for the purpose of ultimately sharing in the revenue and profit stream of the business.

The arrangement was a 50/50 equitable division where the Partners would pay and contribute equitably based on the use of the office space. This case arose based on conduct by Defendant David Taylor wherein he inequitably occupied space without paying for the same. Defendants' position is that because the Partners owned the business together, he [Defendant] can use any office space not currently occupied without paying rent for the same. Under this theory, if there were 9 offices, 1 of which was occupied by Plaintiff, and the 8 remaining offices were all unoccupied, Defendant would be able to use all remaining 8 offices without paying rent for the same. This is not what the agreement calls for, and is certainly not equitable.

Plaintiff filed suit on June 3, 2022, asserting causes of action for Breach of Contract, Violation of South Carolina Code of Laws § 33-44-601(6)(i),(ii), and (iii), Violation of South Carolina Code of Laws § 33-44-801(4)(a), (b), and (e), and further alleging Breach of Fiduciary Duty and requesting that Defendant be judicially expelled from the LLC and that the LLC be judicially dissolved. On August 19, 2022, Defendants filed an Answer and Counterclaim asserting a single cause of action for Breach of Operating Agreement. Defendants specifically allege in Paragraph 59 of their Counterclaim:

“As a direct and proximate result of Kachmarsky’s breaches, Taylor Capital, as a member of K&T, has likewise suffered damages in an amount to be proven at trial.”

(See Defendants’ Counterclaim, Paragraph 59).

On September 6, 2022, Plaintiffs filed a Reply to Defendants’ Counterclaim.

As a result of the Defendants refusal to abide by the terms of the Operating Agreement, Defendants have breached the terms of the Operating Agreement, and engaged in conduct in violation of South Carolina Code of Laws § 33-44-601(6)(i),(ii), and (iii), and § 33-44-801(4)(a), (b), and (e), making a judicial determination necessary.

At this time, Plaintiffs do not anticipate any overly-complex contested evidentiary issues. Plaintiffs anticipate that considering the facts and the number of witnesses, the trial may take approximately one to two days to complete.

PLAINTIFFS’ EXHIBITS

1. Any and all documents, emails, and/or attachments produced or referenced by either party during discovery.

PLAINTIFFS’ WITNESSES

1. John Kachmarsky

2. David Taylor
3. Linda Kennedy
4. Zach Lord
5. Brent Halversen
6. Ed Lapine (depending on the Court's ruling regarding Defendants' late-filed Motion to Amend Counterclaim)

LEGAL ISSUES

1. Whether Defendants' inequitable use of office space without paying for the same violated the Operating Agreement and had a material impact on the Company's business such that an expulsion is justified?
2. Whether Defendants have breached their duties of loyalty and care to K&T and have a conflict of interest with K&T, in that Defendants has occupied office space of K&T for their benefit and failed to pay rent to K&T, or to pay fair market value rent to K&T at various times that they occupied additional space that otherwise could have been rented to third parties?
3. Whether Defendants breached their duties of loyalty and care to K&T and had a conflict of interest with K&T, in that Defendants maintained other bank accounts and their own operating account at a bank where Defendants were desiring to obtain personal financing for Defendant David Taylor himself, thereby failing to honor the commitments Defendants had made individually, and on behalf of K&T to Ameris Bank?
4. Whether Kachmarsky Trust, as member of K&T is entitled to have Taylor Capital expelled from K&T by judicial determination under Section 33-44-601(6) of the South Carolina Uniform Limited Liability Company Act of 1996 in that Taylor and Taylor Capital have

- (i) engaged in wrongful conduct that adversely and materially affected the company's business; (ii) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; and (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the Taylor and Taylor Capital?
5. Whether Kachmarsky is entitled to have the Court judicially determine that Taylor Capital be expelled from K&T pursuant to South Carolina Statute §33-44-601 (6) (i), (ii) and (iii) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky Trust and K&T?
6. Whether Kachmarsky is entitled to have the Court judicially dissolve K&T pursuant to South Carolina Statute §33-44-801 (4) (a), (b) and (e) by virtue of the breach of duties owed by Taylor and Taylor Capital to Kachmarsky, Kachmarsky Trust and K&T?

Respectfully submitted,

s/ Daniel S. Slotchiver
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ATTORNEYS FOR PLAINTIFFS

Mt. Pleasant, South Carolina
September 16, 2024

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' MOTION TO AMEND
ANSWER TO COMPLAINT AND
COUNTERCLAIM**

COME NOW Defendants and hereby move the Court for an Order allowing Defendants leave to file and serve an Amended Answer and Counterclaim pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure. Defendants' proposed Amended Answer and Counterclaim serves to narrow the scope of their counterclaim by removing allegations that are no longer at issue and to articulate a single basis for the existing claim. The Amended Answer and Counterclaim does not join parties, add claims, or request new or different relief. Accordingly, Plaintiff will not be prejudiced by Defendants' proposed amendment, and the Court should grant leave pursuant to Rule 15(a). Counsel for Defendants have reached out to Plaintiffs' counsel but have not yet obtained Plaintiffs' position on the motion.

Rule 15(a) states that "a party may amend his pleading . . . and leave shall be freely given when justice so requires and does not prejudice any other party." SCRCP 15(a). "Motions to amend pleadings to conform to proof may be made upon motion of any party at any

time, even after judgment, and are within the sound discretion of the trial judge.” *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (citing Rule 15(b), SCRCPP).

A Court should grant a motion to amend under Rule 15(a) unless a party is “prejudiced by the amendment or [] there [i]s some other substantial reason to deny it.” *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017). “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716–17 (Ct. App. 2005); *see also Patton*, 420 S.C. at 491, 804 S.E.2d at 262–63 (“Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In sum, Rule 15(a) instructs that the Court grant leave to amend freely, and denial of a motion to amend is appropriate only where a party demonstrates that prejudice will result from the proposed amendment. Because Defendants’ Amended Answer and Counterclaim does not add any claim asserted against Plaintiff or any relief sought against Plaintiff, Plaintiffs will not be prejudiced by it. The substantive issue addressed in the amended counterclaim has been a central issue in the parties’ dispute. Therefore, Defendants respectfully request that the Court grant Defendants leave to file and serve the Amended Answer and Counterclaim attached hereto as Exhibit A. Defendants’ motion is further supported by the pleadings and discovery in this case, South Carolina law, and any additional materials that they may submit to the Court.

[Signature on following page]

Respectfully submitted,

s/ Wilson Daniel

Brian Duffy (SC Bar No. 16247)

C. Wilson Daniel (SC Bar No. 104317)

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Attorneys for Defendants

September 16, 2024

Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,

Plaintiffs,

v.

David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,

Defendants.

**AMENDED ANSWER TO COMPLAINT
AND COUNTERCLAIM**

Defendants David G. Taylor ("Taylor"), individually and as manager of K&T Group, LLC, ("K&T") and Taylor Capital, LLC, ("Taylor Capital") as a member of K&T (together, "Defendants"), hereby answer Plaintiff John Kachmarsky ("Kachmarsky") and John Kachmarsky, Trustee of the Revocable Trust of John Kachmarsky Dated November 30, 2007's ("Kachmarsky Trust") (together, "Plaintiffs") Complaint as follows:

GENERAL DENIAL

Defendants deny all allegations of the Complaint not specifically admitted herein.

**FOR A FIRST DEFENSE AND ANSWER,
AND AS TO THE FIRST CAUSE OF ACTION**

1. Defendants admit the allegations of Paragraphs 1 through 4.
2. With respect to Paragraph 5, Defendants admit that K&T owns a commercial office suite in the Franke Building located at 171 Church Street, Suite 330, Charleston, SC 29401 (the

“K&T Office Suite”). Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 5 and therefore deny the same.

3. Defendants admit the allegations of Paragraphs 6 and 7.

4. With respect to Paragraph 8, Defendants admit that Kachmarsky and Taylor reached an oral agreement whereby each of them would have his own executive office. Defendants deny the remaining allegations of Paragraph 8.

5. Defendants admit that the parties paid equal amounts to cover the expenses that exceeded rental income and deny the remaining allegations of Paragraph 9.

6. With respect to Paragraph 10, Defendants admit that Taylor hired an additional associate and that Taylor paid for an additional associate office. Defendants deny the remaining allegations of Paragraph 10.

7. Defendants deny the allegations of Paragraphs 11, 12, 13, 14, and 15.

8. Defendants admit the allegations of Paragraph 16.

9. With respect to Paragraph 17, Defendants admit that Kachmarsky has managed the leasing of the spaces in the suite not used by either firm. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17 and therefore deny the same.

10. Defendants admit the allegations of Paragraph 18.

11. Defendants deny the allegations of Paragraph 19.

12. With respect to Paragraph 20, Defendants admit that Kachmarsky obtained financing for K&T through Ameris Bank. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 20 and therefore deny the same.

13. Defendants deny the allegations of Paragraph 21.

14. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 22 and therefore deny the same.

15. With respect to Paragraph 23, Defendants admit that Taylor maintained an operating account for K&T with First Reliance Bank. Defendants deny the remaining allegations of Paragraph 23.

16. Defendants deny the allegations of Paragraph 24.

17. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraphs 25 and 26 and therefore deny the same.

18. Defendants deny the allegation of Paragraph 27.

19. Defendants deny the allegations of Paragraph 28.

20. Defendants are without knowledge or information sufficient to form a belief as to the allegations of Paragraph 29 and therefore deny the same.

21. With respect to Paragraph 30, Defendants admit that Taylor paid rent and a capital call in an amount determined by Kachmarsky on July 19, 2016. Defendants are without knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 30 and therefore deny the same.

22. Defendants deny the allegations of Paragraph 31.

23. With respect to Paragraph 32, Defendants admit that in early 2022, Kachmarsky opted to occupy an additional office. Defendants deny the remaining allegations of Paragraph 32.

24. With respect to Paragraph 33, Defendants admit that Kachmarsky sent two emails to Taylor requesting that Taylor pay additional rent, escrow for taxes and insurance, and a monthly shortage. Defendants deny the remaining allegations of Paragraph 33.

25. Defendants admit the allegations of Paragraph 34.

26. With respect to Paragraph 35, Defendants admit that Taylor deposited \$28,788.71 into K&T's operating account. Defendants deny the remaining allegations of Paragraph 35.

27. To the extent that Paragraphs 36 through 40 include legal conclusion, no response is required. Defendants deny the remaining allegations of Paragraphs 36 through 40.

AS TO THE SECOND CAUSE OF ACTION

28. Answering the allegations of Paragraph 40a¹, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

29. Paragraphs 41 and 42 do not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraphs 41 and 42, and deny any allegations contained therein.

AS TO THE THIRD CAUSE OF ACTION

30. Answering the allegations of Paragraph 43, Defendants repeat and reiterate the foregoing paragraphs as if fully stated herein.

31. Paragraph 44 does not contain allegations and therefore require no response. Defendants oppose the relief requested in Paragraph 44 and deny any allegations contained therein.

32. Responding to the WHEREFORE Paragraph and Subparagraphs, Defendants deny that Plaintiffs is entitled to any relief in this action, including the relief prayed for in his Complaint.

FOR A SECOND DEFENSE

33. Plaintiffs' Complaint fails to state a claim upon which relief can be granted and therefore should be dismissed under South Carolina Rule of Civil Procedure 12(b)(6).

¹ The Complaint includes two paragraphs numbered 40. For clarification, Defendants refer to the latter Paragraph 40 as Paragraph 40a.

FOR A THIRD DEFENSE

34. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and/or by the doctrine of laches.

FOR A FOURTH DEFENSE

35. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

36. Defendants reserve the right to amend their Answer and assert such additional affirmative defenses as may become available or apparent to it during the course of discovery.

FOR A FIRST COUNTERCLAIM

(Breach of the Operating Agreement)
(Against Plaintiffs/Counterclaim Defendants)

37. Defendants incorporate and reallege each preceding paragraph as if fully stated herein.

38. On January 1, 2009, Taylor, on behalf of Taylor Capital, and Kachmarsky, on behalf of the Kachmarsky Trust, entered into the K&T Operating Agreement.

39. Section 6.2 of the K&T Operating Agreement imposes upon all managers a duty of loyalty.

40. Section 6.3 of the K&T Operating Agreement imposes upon all managers a duty of care.

41. Section 6.4 of the K&T Operating Agreement requires each manager to discharge his duties "consistently with the obligation of good faith and fair dealing."

42. Section 6.8 of the K&T Operating Agreement provides for the recovery of attorney's fees in the enforcement of the Agreement.

43. Acting in his capacity as manager of K&T, Kachmarsky owed to K&T the duties of loyalty, care, and good faith and fair dealing.

44. In early 2022, a change in personnel for Taylor's law firm, a lack of information, and questions over the amounts Kachmarsky claimed were owed led to a delay in payment of amounts owed by Taylor Capital.

45. Kachmarsky did not send notice of any default of obligations or duties to Taylor Capital under Section 12.2 of the Operating Agreement.

46. Kachmarsky did not take advantage of the procedures available to him in the Operating Agreement to call a member meeting (Section 4.2), to call a Management Committee meeting (Section 5.5), or to make a capital call (Section 3.8).

47. Instead, following an exchange of emails with Taylor, Kachmarsky hired counsel and threatened suit in March 2022.

48. In April 2022, Taylor Capital made all the payments demanded by Kachmarsky, save for a "nominal" disputed payment of \$8,750.

49. Kachmarsky was demonstrably wrong in his demand for additional funds from Taylor Capital, and a brief review of his own emails would have revealed his error.

50. Nonetheless, Kachmarsky filed suit in June 2022 seeking to expel Taylor Capital or dissolve K&T.

51. As the basis for his requests for expulsion and dissolution, Kachmarsky used stale and minor disputes. In fact, the stated basis for Kachmarsky's suit was pretext to achieve what he really wanted: to force Taylor Capital out of the parties' common investment with claims of wrongful dissociation and the accompanying penalties under Article XI of the Operating

Agreement that would reduce the value of Taylor Capital's half interest by 25%, impose additional discounting, and authorize the recovery of costs and attorneys' fees.

52. At all relevant times, Kachmarsky acted in his capacity as Trustee of the Kachmarsky Trust and as manager of K&T.

53. Kachmarsky's actions constitute breaches of his obligations under sections 6.2, 6.3, and 6.4 of the K&T Operating Agreement.

54. As a direct and proximate result of the breaches pleaded herein, Defendants have suffered damages in an amount to be proven at trial, including but not limited incurring costs and attorneys' fees to defend against this action.

55. Pursuant to the K&T Operating Agreement, Defendants are entitled to reasonable attorney's fees.

WHEREFORE, having answered Plaintiff's Complaint, Defendants pray that the Court: (1) enter an order dismissing Plaintiff's Complaint with prejudice, (2) tax the costs of this litigation against Plaintiff, (3) enter a judgment in favor of Defendants and against Plaintiff in accordance with the above-stated counterclaim, (5) award Defendants reasonable attorney's fees to be supported by an affidavit of fees when requested by the Court, and (6) provide such other and further relief as the Court deems just and proper.

[Signature on following page]

s/ Wilson Daniel

Brian C. Duffy (SC ID No. 16247)

Wilson Daniel (SC ID No. 104317)

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Attorneys for Defendants

September 16, 2024

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-02589
	)	
John Kachmarsky, Individually, as Manager of	)	
K&T Group, LLC and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T Group,	)	
LLC,	)	
	)	MOTION FOR RECONSIDERATION
Plaintiffs,	)	
	)	
vs.	)	
	)	
David G. Taylor, Individually, and as Manager	)	
of	)	
K&T Group, LLC, Taylor Capital, LLC, as	)	
Member of K&T Group, LLC and K&T Group,	)	
LLC,	)	
	)	
Defendants.	)	

TO: THE DEFENDANTS’ ABOVE-NAMED AND THEIR COUNSEL:

PLEASE TAKE NOTICE that Plaintiffs John Kachmarsky, Individually, as Manager of K&T Group, LLC and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC, (hereinafter referred to collectively as the “Platintiffs”), hereby give notice and hereby move before the Honorable Mikell R. Scarborough pursuant to Rules 52(b), 59(e), and 60 of the South Carolina Rules of Civil Procedure, for an Order reconsidering, altering, amending, or relieving Plaintiffs from the Order entered November 26, 2024 (hereinafter the “Order”) dismissing Plaintiffs’ claims with prejudice, entering judgment on Defendants’ David G. Taylor, Individually, and as Manager of K&T Group, LLC, Taylor Capital, LLC, as Member of K&T Group, LLC and K&T Group, LLC, (hereinafter referred to collectively as the “Defendants”) counterclaim in favor of Defendants against Kachmarsky only, and awarding Defendants reasonable costs and attorneys’ fees for the defense of claims in this matter.

Plaintiffs file this Motion because the Court misunderstood, mistook, failed to fully consider, and/or rule upon the arguments or issues raised in Plaintiff's Complaint, at the Trial, and in the record, exhibits, and testimony. See generally, Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) ("A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it."). Plaintiffs should be relieved from the Order and/or this Court should reconsider its ruling based upon the evidence and arguments set out herein. Plaintiffs fully incorporate the pleadings, arguments, evidence, testimony, and exhibits in the Court's record and at trial on September 17, 2024, as fully applicable to this Motion.

FACTS/PROCEDURAL HISTORY

This case was filed June 8, 2022, as an action for (1) breach of contract, (2) judicial expulsion of a member from a limited liability company ("LLC") pursuant to South Carolina Code Sections 33-44-601 (6) (i), (ii) and (iii), et seq., (3) judicial decree of dissolution of an LLC pursuant to South Carolina Code Section 33-44-801 (4), and (4) partition of real property in kind. On August 19, 2022, Defendant filed his Answer and Counterclaim alleging Plaintiff had breached the company's operating agreement. By consent order filed July 18, 2023, the case was assigned to the Master in Equity. On January 4, 2024, this court heard Plaintiff's Motion for Summary Judgment as to Defendant's counterclaim, which this court denied. On the eve of trial, Defendant moved to withdraw the original counterclaim and to amend the Answer and Counterclaim bringing an additional counterclaim alleging that Plaintiff had in other ways breached the LLC's operating agreement. Plaintiffs objected to Defendants' pre-trial motion to amend, arguing that allowing the amendment was prejudicial to Plaintiffs. After hearing arguments of Counsel, the Court held that

Defendants could proceed with their amendment and new counterclaim. The transcript of the September 17, 2024 hearing and trial is attached hereto as **Exhibit A**.

APPLICABLE STANDARDS

“In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon.” Rule 52(a), SCRPC. Upon a motion for reconsideration made by a party within 10 days after receipt of notice of the entry of the judgment, “the court may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial.” Rule 52(b), SCRPC.

“A Rule 59(e) motion [may be viewed] not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” Elam v. S.C.D.O.T., 361 S.C. 9, 602 S.E.2d 772 (2004); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992) (“[The] purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the judge to reconsider matters properly encompassed in a decision on the merits”); Curcio v. Caterpillar, Inc., 355 S.C. 316, 585 S.E.2d 272 (2003). “There is nothing inherently unfair in allowing a party one final chance ... to call the court's attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” Elam, 361 S.C. at 22, 602 S.E.2d at 773. A Rule 59(e) motion may be granted “to correct **a clear error of law** or **prevent manifest injustice**.” Slachta v. Reliance Std. Life Ins. Co., 444 F. Supp. 2d 587, 592 (D.S.C. 2006) (quoting United States ex rel. Becker v. Westinghouse Savannah River Co., 305 F.3d 284, 290 (4th Cir. 2002) (emphasis added)).

Under Rule 60(b)(3), SCRPC, the Court may relieve a party from an order based on the “fraud, misrepresentation, or other misconduct of an adverse party.” The Court may also correct clerical mistakes in orders arising from oversight or omission under Rule 60(a), SCRPC.

Accordingly, Plaintiffs respectfully request that this Court alter or amend its Order to correct clear errors of law and to prevent manifest injustice to the Plaintiffs.

ARGUMENT

Plaintiffs request this Court reconsider, alter, or amend its Order because Plaintiffs clearly and convincingly demonstrated that Defendants have breached the contract, that judicial expulsion is appropriate, that judicial dissolution is appropriate, and the Property should be Partitioned.

I. The Court must alter or amend its Order as there are findings which contradict the verifiable record and which result in improper rulings.

The Court disregarded the evidence as presented and made findings inconsistent with the evidence and testimony presented at the trial. Plaintiffs proceed to address the errors with each of the Court's findings in turn:

404(b) Evidence and Defendants' Pattern of Conduct

Initially, Plaintiffs would like to address the findings in the Court's Order maintaining that the Court cannot consider Defendants' prior conduct based on the Statute of Limitations. While Plaintiffs certainly understand the Court has determined it can only rule on one instance of Defendants' conduct as it relates to the Plaintiffs causes of action for Breach of Contract, Judicial Expulsion, and Judicial Dissolution; Rule 404(b), South Carolina Rules of Evidence, does enable the Court to consider Defendants' prior acts here, as they relate to the history and pattern of conduct of Defendant. While Plaintiffs contend there exists more than one instance of Defendants' prior conduct which was detrimental to the entity which the Court should have considered and ruled upon in favor of Plaintiffs. By way of example, the Court should have considered the following:

- Defendant had failed to pay rent for 6 months without explanation and after being requested to do so;
- Defendant failed to pay any rent for an office used in 2021;

- Defendant paid an amount of rent in April, 2022 that admitted use of the office since August and then proved by way of Counterclaim that he had permanently used the office since at least May of 2021;
- Defendant failed to pay rent for May and June 2022 at which time the suit was commenced;
- Defendant failed to also pay rent for the months of July and August, 2022 which is additional evidence that could have been provided if Plaintiff's were able to timely defend against the Counterclaim in addition to conducting additional discovery to prove that the office had been used during all of 2021 by way of Defendant's employment records.

These, and many other examples which were presented by Plaintiff and are in the record, should have considered by the Court regarding Defendants' pattern of conduct, as it is admissible "to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." See Rule 404(b), SCRE. The Court should reconsider, alter, or amend its Order, and consider the Defendants' complete pattern of conduct, which is admissible to show Defendants' existence of a common scheme or plan and/or intent, which reflect Defendants' abusive conduct which had and continues to frustrate the purpose of the entity and makes it impossible for the entity to continue.

Breach of Contract

The Court should reconsider, alter, or amend its Order regarding the Plaintiff's Breach of Contract claim, as evidence and testimony was presented which support a finding that Defendants breached the contract with Plaintiffs.

Beginning early 2021, Taylor yet again began to occupy a third additional office, without paying rent to K&T for the agreed upon amount of \$1,250 per month, and totaling \$15,000 for the 2021 calendar year. In early 2022, Kachmarsky opted to occupy an additional office so that beginning in 2022, Taylor would be paying the correct rent going forward if he continued paying the same rent for the additional two offices he occupied. In January, February and March 2022, Kachmarsky was compelled again to send communication to Taylor requesting he pay rent for two additional offices in the amount of \$2,500.00, escrow for taxes and insurance in the amount of \$1,000.00, monthly shortage of \$1,175.00 and \$1,000.00, for a monthly total of \$5,675.00 and in addition pay rent of \$15,000.00 for use of an additional office in calendar year 2021. Following this, and only after Kachmarsky noticed Taylor of Kachmarsky's intent to file suit, Taylor deposited \$28,788.71 in April 2022 into an operating account of K&T in satisfaction of the \$32,025.00 amount due, acknowledging use of an additional office from August 5, 2021 through December 31, 2021, but further denying use of the office from the beginning of the year through August 5, 2021. Taylor had also failed to pay rent for the months of May and June, 2022, when Kachmarsky filed suit against Taylor on June 8, 2022.

The testimony of the witnesses and the evidence presented was clear that there was an additional office employee occupying the office at least since February of 2021. Defendants offered no testimony or witnesses to refute this fact, or the fact that Defendants were occupying the office with no intention of paying for it. David Taylor testified that he wasn't at the office on a regular basis, thus he wouldn't know whether office was being occupied. There was no testimony presented to contradict the testimony of Plaintiff and his associate, that David Taylor had an employee occupying the office since at least February 2021. Moreover, Defendants' own

Counterclaim that they filed referenced that they occupied the office from May until August. The Court should reconsider its ruling regarding these rents due, as Defendants themselves concede that they had an employee using the office from May until August. See Counterclaim of Defendants. The Order as it stands is inconsistent with the facts, evidence, and testimony presented, and the Court should reconsider, alter, or amend its Order finding that Defendants breached the contract.

Judicial Expulsion

Defendants have exhibited a pattern of “wrongful conduct that adversely and materially affected the company’s business”, has “willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409”, or “engaged in conduct relating to the company’s business which makes it not reasonably practicable to carry on the business with the member”.

S.C. Code Ann. Section 33-44-601(6).

Plaintiffs presented evidence and testimony supporting the same, and the Court should reconsider, alter, or amend its Order to find that Judicial Expulsion is appropriate here. Specifically, the Court should reconsider the Defendants’ prior conduct considering Rule 404(b), South Carolina Rules of Evidence. The Order as it stands, misconstrues Plaintiffs’ argument regarding the pattern of conduct of Defendants, which was ongoing and which demonstrated Defendants’ chronic and repeated acts of failing to pay rent and failing to communicate with Plaintiff. Such conduct of Defendants clearly makes it “not reasonably practicable to carry on the business with the member”. Defendants conduct in this business relationship has been abusive and repeated, and forcing Plaintiffs to continue to maintain the business relationship is unjust and “adversely and materially affect[s] the company’s business”.

The inappropriate actions of the Defendants, coupled with this Order essentially blessing this conduct, are not justified, equitable, or correct.

Judicial Dissolution

The Court should reconsider, alter, or amend its Order to find that Judicial Dissolution is appropriate here, as Plaintiffs presented evidence and testimony to support that:

- (a) the economic purpose of the company is likely to be unreasonably frustrated;
- (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
- (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

S.C. Code Ann. Section 33-44-801(4)(a)(b), and (e).

Defendants have demonstrated again and again that they are unwilling and/or is incapable of continuing the relationship to fulfil the economic purpose of the entity, and Defendants' conduct has unreasonably frustrated the same. Thus, the Court should judicially dissolve the LLC. The Order fails to account for the multiplicity of improper, non-forthright acts the Defendants have taken. The factual findings are inconsistent with the record and do not support the conclusions reached.

Plaintiffs pray that this Court correct and amend its factual findings, and, in doing so, reconsider the issues under the *proper* set of facts, including Defendants' conduct in a 404(b) context, reevaluate the credibility of the witnesses, and reach the proper conclusion of judicial dissolution, and Partition the property. Reconsideration and reversal of the Order is the only way by which this Court can correct a clear error of law and prevent manifest injustice and prejudice to Plaintiffs.

II. The Court should alter or amend its Order as it fails to rule on issues raised and/or arguments asserted.

In addition to the erroneous findings and rulings addressed above, the entered Order fails to rule on certain arguments and factual issues Plaintiffs properly presented to this Court, specifically the issue of whether a Partition is appropriate. Evidence and testimony was presented regarding a Partition, however the Court did not rule on this issue. Plaintiff respectfully asks this Court reevaluate the issue and render specific findings.

Rule 52(a), SCRCP, requires the court sitting without a jury “find the facts specifically and state separately its conclusions of law thereon.” “The rule is directorial in nature so ‘where a trial court **substantially complies with Rule 52(a) and adequately states the basis for the result it reaches**, the appellate court should not vacate the trial court’s judgment for lack of an explicit or specific factual finding.” In re Treatment and Care of Luckabaugh, 351 S.C. 122, 131, 568 S.E.2d 338 (2002) (quoting Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 123 (1991)).

This:

[A]llow[s] a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it—represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.

Id. at 132. The lower court’s findings must be sufficient to allow an appellate court to “ensure the law is faithfully executed below.” Id. at 133. The appellate court’s task is impossible when the reasons for the underlying decision are left to speculation. Id. “To leave the chore of sorting through the record to review contradictory testimony taxes the judicial system and is unfair to the litigants as well as the lower court to whose factual determinations we [the appellate courts] give deference.” Id.

Plaintiffs respectfully request this Court reconsider its conclusions and issue an Order reconsidering and/or amending the Court's position and issue a ruling granting a Partition. In any event, Plaintiffs ask this Court to explain why it reached its ultimate legal conclusion in light of the record and arguments before it.

III. The Court should reverse its Order regarding Defendants' Counterclaim, dismiss Defendants' Counterclaim, and reverse its Order granting attorneys' fees to Defendants.

On the eve of trial, Defendants moved to withdraw the original counterclaim and to amend the Answer and Counterclaim bringing an additional counterclaim alleging that Plaintiff had in other ways breached the LLC's operating agreement. The Court allowed the same, which greatly prejudiced Plaintiffs, as they had no opportunity to conduct additional discovery, develop a defense on Defendants' additional counterclaim, or determine the damages Defendants were complaining of, prior to being forced to defend against Defendants' amended Counterclaim immediately thereafter at trial. In addition, the Court's findings that Kachmarsky breached his fiduciary duties by bringing suit against Defendants is erroneous. Kachmarsky simply exercised his right to pursue a valid legal claim against Defendants. There is evidence and testimony in the record supporting the basis for Kachmarsky bringing the claims, the erroneous finding that bringing suit against Defendant in and of itself was a breach of his fiduciary duties creates a chilling effect and will dissuade others from exercising their rights to bring valid legal claims in our judicial system. Such an impact cannot stand. Moreover, the Court's finding awarding attorneys' fees and costs to Defendant is manifestly unfair and there is no basis for the same. Further, upon information and belief, Defendants' will be requesting fees and costs of approximately \$9,500. It is unfairly prejudicial to Plaintiff for him to have to incur the cost of Defendants' attorneys' fees and costs solely due to the chronic, repeated, pattern of conduct of Defendant; such conduct which has been

detrimental to the economic purpose of the entity, and such conduct which has frustrated the purpose of the entity and made continuing on in the entity impossible.

CONCLUSION

Based upon the foregoing arguments and legal authority, the Petitioners request that this Court **GRANT** Plaintiffs' Motion to Reconsider, Alter, or Amend its Previous Order, reconsider its conclusions and issue an Order reconsidering and/or amending the Court's position, granting Plaintiff's claims for Breach of Contract, Judicial Expulsion, Judicial Dissolution, and issuing a Partition, as well as dismissing Defendants' Counterclaim, withdrawing its ruling that Kachmarsky breach his fiduciary duties by pursuing a legal remedy against Defendants, and withdrawing its ruling awarding attorneys' fees and costs to Defendants. In any event, Plaintiffs ask this Court to explain why it reached its ultimate legal conclusion in light of the record and arguments before it.

Respectfully submitted,

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Mt. Pleasant, South Carolina
 December 6, 2024

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2022-CP-10-02589
4

5 John Kachmarsky, et al,)

)

7 Plaintiffs,)

)

9 vs.)

)

11 David G. Taylor, et al,)

)

13 Defendants.)

14
15
16
17 Trial before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina,
21 September 17th, 2024 commencing at 10:05 a.m.
22
23
24
25

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2 PREVIOUSLY MARKED FOR IDENTIFICATION.)

3 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 25 WERE
4 PREVIOUSLY MARKED FOR IDENTIFICATION.)

5 THE COURT: We're in the case of Kachmarsky
6 versus Taylor, 2022-CP-10-2589. The first thing I
7 want to disclose to y'all, and I don't know that I had
8 done this previously, but I don't think I knew this.

9 This involves a condominium unit in the
10 Franke Building. I have a son, Thomas, who was a
11 property manager for -- I think it's ACT. He's no
12 longer with that company, but he moved back to town
13 about two or three years ago and was a property
14 manager. And I think this is -- I noted the Franke
15 Building was one of the companies or entities. I
16 wanted to make sure I disclose that.

17 He told me he had been in and out of the
18 Franke Building. I have been in and out of the Franke
19 Building. I'm sure every lawyer in Charleston has
20 been in and out of the Franke building. I just wanted
21 to put that on the record and make sure you were okay
22 with that from the standpoint that I hear the case.

23 MR. DUFFY: We don't have any concerns.

24 MR. SLOTCHIVER: We don't either, Judge.

25 THE COURT: It just dawned on me last night.

1 I said, Thomas used to go in there and tell me he was
2 in there. I was in there recently myself. That's the
3 first thing I wanted to cover.

4 The other thing, just sort of general rules
5 of thumb, we have it scheduled for two days, so we
6 should have plenty of time I think. I hope. Some
7 motions in limine to try and limit some of the
8 testimony. We'll talk about that in a second.

9 And then I usually work until about 12:30,
10 1:00 and break for lunch for an hour, little more than
11 an hour, because I've found you can't really get lunch
12 in an hour in Charleston.

13 And then today, I've got to release my court
14 reporter by 5:00. She's got some child care issues to
15 take care of. And then we've got all day tomorrow,
16 and she tells me she's got plenty of time tomorrow. I
17 hope we're not going until 8:00 tomorrow.

18 So today we'll work until about 5:00 and then
19 tomorrow, we will start back a little earlier. I had
20 a doctor's appointment this morning that I needed to
21 get to, which is why I set y'all for 10:00 today.

22 All right. So we've got that. So then I've
23 gotten just recently -- I know we've statused it a
24 couple of times. I have received a few motions, and I
25 have received your pretrial briefs, and I appreciate

1 that.

2 I have had a chance to go through some but
3 not all of the material that you've sent me, which
4 includes the -- I have not read the depositions.
5 Y'all submitted full depositions and not transcripts,
6 so I haven't gone through the whole thing. But I did
7 receive -- let's make sure we'll take them in some
8 type of order -- the defendants' motion to amend the
9 answer to the complaint and the counterclaim.

10 I saw where the plaintiffs addressed briefly
11 in the pretrial brief. I've got also defendants'
12 motion to exclude evidence unrelated to K&T Group, LLC
13 or Taylor Capital, LLC as well as the defendants'
14 motion to exclude evidence of events happening before
15 the statutory period. And that basically boils down
16 to arguing three years prior to the filing, which I
17 think is in June of '22. June 8 of '22 as I recall.

18 All right. And then I've got your pretrial
19 briefs, which are extremely helpful, and I've been
20 doing a little research on the law to refresh my
21 memory.

22 It's statutory claims in here because Limited
23 Liability Company Act is a State statute. Are there
24 any motions from the plaintiff? Let me just make sure
25 I covered that. I didn't see any.

1 MR. SLOTCHIVER: No, Your Honor. The only
2 thing, and I brought it to Brian Duffy, was that based
3 on his motion to amend, which we're going to oppose
4 and we can talk to that in a few minutes, but if you
5 were to grant that, we would want to add one witness.

6 THE COURT: And that was Mr. Lapine?

7 MR. SLOTCHIVER: Yes. Nothing other than
8 that.

9 THE COURT: All right. Let me turn then to
10 Mr. Duffy. And, Mr. Duffy, you can take them up in
11 whatever order.

12 MR. DUFFY: Thank you, Your Honor. If it
13 pleases the Court, I will address the motion to amend
14 and then I will ask Mr. Daniel to address the motion
15 in limine.

16 So basically, Your Honor, we had alleged a
17 breach counterclaim. We had a variety of allegations
18 to support that. And as we have gone through, we've
19 just been determined in our position that a lot of
20 this is not worth fighting on some of those things.

21 But the one thing that's been central to this
22 case is this alleged disputed rent from 2021. And we
23 intend to show that Mr. Kachmarsky is wrong about that
24 and should have known he was wrong about that in his
25 pursuing another member for payment of that is a

1 breach of his duty of good faith and good dealing and
2 duties under the operating agreement.

3 And so that issue of the rent at that time
4 has been a central issue in this whole case. So I
5 don't think there's any prejudice to the point that
6 that's what we're focused on with a narrowed down
7 counterclaim.

8 THE COURT: Okay. So Rule 15(a), liberal
9 allowance of amendments of pleadings. And this is
10 something that y'all brought up in discovery that's
11 been harangued about the last two years or so?

12 MR. DUFFY: There have been lots of
13 discussion, documents, and deposition testimony about
14 what, if anything, was owed in 2021.

15 THE COURT: Okay. All right.
16 Mr. Slotchiver, what prejudice do you --

17 MR. SLOTCHIVER: So, Your Honor, it's a
18 little bit different as has been relayed. There's a
19 difference of opinions.

20 From our perspective, this case is about the
21 failure to comply with the requirements under the
22 operating agreement, and it's not just about rent. In
23 fact, it goes so much further back because that's an
24 ongoing pattern of conduct.

25 But if you recall, the only counterclaim that

1 was ever made against my client before was there was
2 an argument that he somehow rather, while managing it,
3 was using it to the advantage of himself with office
4 space that he owned separate from the office suites
5 they owned together, number one.

6 And, number two, there was damages that were
7 incurred because at a point John allegedly was living
8 in his office suite and maybe there would be a beer
9 can in the private bathroom that John had next to him,
10 and those have gone away. So we have come to court on
11 the motion for summary judgement, Your Honor, giving
12 him time to move forward and to do discovery.

13 There's been no discovery since then.
14 Nothing has taken place. And then yesterday morning
15 was the first time we learned about this new
16 counterclaim and that they're going to raise issues
17 and damages that we've never heard of before.

18 And although one of the components of our
19 claim is his failure to pay rent over a certain period
20 of time, there have never been a counterclaim for
21 that. We don't know what the damages are. We don't
22 know what the theories are. And we don't think it's
23 appropriate at this point.

24 We don't have an opportunity to understand
25 the basis of their claim, what the damages they're

1 claiming for it are. We understand it's one of the
2 issues that we're dealing with in the case. It's our
3 allegation about rent. But there's a difference in us
4 saying you violated your agreement and one of the
5 basis is not paying when you're supposed to pay and
6 not paying what you're supposed to pay, there's a
7 difference in that and saying we damaged you by it.

8 We don't know what the damages could possibly
9 be because there's an underpayment -- even in the
10 pretrial brief, they referenced that they did
11 underpay, which is almost an admission of the case to
12 begin with.

13 They said we didn't underpay as much as you
14 say we did, but we did underpay. So we don't
15 understand how that gives rise to a counterclaim. I'm
16 aware of the fact that you can move to amend before,
17 during, and after trial. I understand the rule, and I
18 have argued that myself. But I think in this
19 particular situation, it's improper because it does
20 prejudice my client because we don't know the basis of
21 what their claims are going to be other than a basic
22 issue we can defend.

23 They can defend all they want to, but we
24 don't think they should be able to make a claim
25 against us. That's why we would oppose it.

1 THE COURT: There were counterclaims before,
2 and this would still provide for counterclaims. It
3 sounds to me like they sort of maybe given up some of
4 those claims and moved on into one --

5 MR. SLOTCHIVER: They've given up both
6 different counterclaims, and now they've asserted a
7 new counterclaim for something and claiming damages,
8 and we don't understand what those could be. And
9 without understanding them, how do we defend against
10 them?

11 And I know that part of the litmus test is is
12 there a prejudice to us? And I think there is. We're
13 not opposed to them -- they're going to defend the
14 case. They're going to ask questions. These factors
15 are going to come out.

16 But I think the prejudice is not that the
17 factors come out. The prejudice is that they're going
18 to be asserting some type of damages, and we don't
19 know what they are. And without knowing what they
20 are, how do we defend against them?

21 There's a lot of witnesses that we could have
22 deposed, but we make a decision based on the
23 information before us. I don't know how it's relevant
24 at this point. I think it is prejudicial, so we would
25 oppose it.

1 THE COURT: Notwithstanding that, you've
2 added this additional name in response to this claim,
3 right?

4 MR. SLOTCHIVER: Your Honor, what we did is
5 we stated in our brief that we're only adding him if
6 the Court is inclined to grant it.

7 THE COURT: Okay.

8 MR. SLOTCHIVER: But other than that, we're
9 not planning to add that in there. We weren't
10 planning to call him. We had never listed him before.
11 He's an employee. He's been there during this time
12 period. But we didn't find it relevant to the cause
13 of issue before us. We have other evidence we plan to
14 go forward. But if the Court is inclined to grant it
15 then we wanted you to be aware that we wanted to put
16 Edward Lapine in. But if not, we don't think he's
17 relevant and we don't plan to call him.

18 THE COURT: Mr. Lapine is an employee of
19 whom?

20 MR. SLOTCHIVER: Of Kachmarsky. So he's a
21 witness to what was going on. He's a lawyer here in
22 Charleston.

23 THE COURT: Okay. Thank you. Mr. Duffy?

24 MR. DUFFY: Thank you, Your Honor. I can
25 make this real easy. But, first, I want to mention

1 there was discovery since the initial delay. We had
2 subpoenaed records. We were trying to get records of
3 the rent history, et cetera.

4 And ultimately they've been going out a long
5 time. Whatever was in three years, we're like, we're
6 not going to argue about this. We're going to move
7 on.

8 It's the same cause of action, breach of
9 contract. It is narrowed to an issue which
10 Mr. Slotchiver just agreed is going to have -- we're
11 going to have argument about the same factors being
12 presented. What he claimed is prejudice was what
13 damages are they claiming. We're only claiming we're
14 enforcing this agreement and we're entitled to our
15 legal fees. So there was no discovery, no damage, or
16 for some damages that he thinks he can otherwise
17 undertake discovery about. That's all it is.

18 You should have known that this rent is not
19 due. And there is no concession of any underpayment.
20 It's not due. He should have known it's not due. And
21 the fact that he is persisting in this and bringing
22 this action and chasing the member down to pay some
23 rent that isn't due is a breach of the agreement.

24 And we contend that the defendants are
25 entitled to legal fees for that. No other damages.

1 MR. SLOCHIVER: And, Your Honor, two points
2 I wanted to raise. Number one, in his own brief, he
3 admits there was money due. He says it's not
4 substantial.

5 So that issue is not really before the Court.
6 You can take judicial notice there's money due. The
7 question is how much.

8 And, second, Your Honor, I want to make sure
9 I don't miss this opportunity. At this point, we're
10 not arguing over how far back we can go into evidence,
11 correct?

12 THE COURT: Right.

13 MR. SLOCHIVER: Okay. And let me point out
14 to the particular part of it if I may real quickly.

15 MR. DUFFY: Well, this may relate to an issue
16 I was going to bring to the Court's attention in a
17 pretrial brief, which was that -- I have it turned
18 here to raise with you was a mistake on my part.

19 And, Dan, page 2, the end of the second
20 paragraph when quoting Mr. Kachmarsky as saying that
21 there was only a nominal payment from defendants, if
22 anything, his testimony about nominal payment was if
23 anything else is due beyond this particular rent,
24 which by the way, is calculated at \$8,750. That's the
25 dispute we're talking about.

1 So the nominal reference was really that he's
2 saying there's really nothing else to argue about
3 money wise, only that 8,750. Anything else would be
4 nominal, if anything. So that quote was mistakenly
5 applied to that set up.

6 THE COURT: That's the last quote, bottom of
7 page 2?

8 MR. DUFFY: Right. But what he does dispute
9 is there's \$8,750 owed, which we dispute. And to the
10 extent there's anything else, it would be nominal if
11 anything.

12 MR. SLOTCHIVER: Just for clarity, Your
13 Honor, the timeframe is important. Because what
14 happened -- I want you to have a general
15 understanding.

16 This is a history of nonpayments. And when
17 the last amendment was made, Mr. Taylor made a
18 significant payment of \$28,000 that was late again and
19 now he's claiming, well, it's only \$8,000 due. And
20 that was separate and distinct from the money owed for
21 the other office that was rented.

22 So there's other factors. But the problem
23 with taking things out of writing, as we all know, is
24 context. And we can take a sentence but it doesn't
25 necessarily relate to the context.

1 I wanted you to understand before we start
2 that we do not agree with that statement in the
3 context it was provided.

4 THE COURT: Okay. I'm with you. Okay. All
5 right.

6 I was just comparing the two counterclaims
7 because there's a clear breach of contract
8 counterclaim in the initial answer and counterclaim
9 filed August -- breach of the operating agreement,
10 August 19 of '22. The amendment that is proposed by
11 the defendants reads the same. For first count, clear
12 breach of the operating agreement. It does change
13 some of the language and omits a bunch of stuff, but
14 it goes back to that early '22 timeframe.

15 Paragraph 44, it starts out in early '22
16 change of personnel. The original -- this reason,
17 January '22, Taylor demanded access to the books.

18 I think there's sufficient notice. Y'all
19 have been in discovery for a couple of years. I'm
20 going to allow the amendment. I think it's -- I don't
21 see the prejudice. The prejudice may be damages. But
22 what I hear them saying it has to do with \$8,750 and
23 whether or not there's -- one of the issues in all
24 these cases who breached first and therefore who's
25 entitled to award of damages as a result of that, and

1 what Mr. Duffy indicates is they're seeking attorney's
2 fees for that. So I'm going to allow the amendment.

3 MR. SLOTCHIVER: We would ask we would be
4 able to call the new witness to testify.

5 THE COURT: Certainly. You may respond. And
6 I think that's the prejudice that the rule provides
7 for.

8 The one that always gets me is post trial
9 amendments or pleadings, but I guess it depends on how
10 you try the case. Sometimes they try differently from
11 time to time.

12 MR. DUFFY: Thank you, Your Honor. My only
13 point is, again, the damages -- there are no new
14 damages. We're seeking fees before, and we're seeking
15 fees now.

16 As far as the new witness, I mean, this guy
17 wasn't listed in discovery as somebody with knowledge
18 of the facts, and these facts clearly have been in
19 dispute. So, you know, I will -- I won't protest too
20 much. I'll just make that point.

21 THE COURT: Okay. You can raise that again
22 when the time comes. All right? And y'all can always
23 take his deposition at night. Be like the good old
24 federal court days. Working while we're working.

25 All right. Next to, then, Mr. Daniel.

1 You're going to argue the motions in limine. Is that
2 right?

3 MR. DANIEL: Thank you, Your Honor. I can
4 handle those separately one at a time if the Court
5 prefers that.

6 Thank you, Your Honor. I'll start with the
7 motion in limine to exclude evidence that is unrelated
8 to K&T Group. The plaintiff has asserted this action
9 as a pure LLC dispute. The only relief the plaintiff
10 seeks is to exclude the defendant Taylor Capital from
11 K&T or alternatively to dissolve K&T Group, the LLC
12 that's the subject of this matter.

13 And, yet, the plaintiff intends to introduce
14 all of this evidence of things that have nothing to do
15 with K&T Group, for example, evidence of Mr. Taylor's
16 ventures from more than a decade ago that have nothing
17 to do with K&T Group. They have nothing to do with
18 Taylor Capital, which is the entity that is a member
19 of the K&T Group, and they have nothing to do with
20 Mr. Taylor's role as a manager of K&T Group. That
21 evidence is therefore irrelevant, and we would ask
22 that the Court exclude it.

23 As I mentioned, Your Honor, the plaintiff
24 asks for two alternative remedies here, both of which
25 as Your Honor noted earlier, are statutory remedies

1 that fall under the LLC Act. And those are, first, to
2 judicially expel Taylor Capital from K&T under
3 33-44-601 and alternatively to dissolve K&T entirely
4 under 33-44-801.

5 And as the Court knows, the plaintiff has a
6 high bar to meet under the LLC Act to achieve those
7 remedies. The court of appeals very recently
8 underscored the significance of that burden, and I
9 will read a quote.

10 THE COURT: Which case are you referring to?

11 MR. DANIEL: This is *Boathouse at Breach*
12 *Inlet versus Stoney*. I'm sure a case that Your Honor
13 is familiar with.

14 THE COURT: They're making law for us.

15 MR. DANIEL: That's right. And I brought a
16 copy of that case if the Court would like it.

17 THE COURT: I burned one off before I came
18 out.

19 MR. DANIEL: Well, just for the purposes of
20 the record, then, Your Honor, the quote is this.
21 Quote, "Limited liability company members seeking to
22 expel a fellow member are required to clear a high
23 bar. In order to clear that bar, it must be
24 unfeasible despite reasonable efforts to keep the
25 limited liability company operating while the disputed

1 member remains affiliated with it."

2 So in this case, Your Honor, to meet that
3 high bar, the plaintiff intends to introduce evidence
4 that is totally unrelated to the LLC of what
5 Mr. Taylor has done in the past in his individual
6 capacity.

7 But the problem with doing that, Your Honor,
8 is that none of that stuff can serve as support for
9 the relief that the plaintiff is asking for here. The
10 Court can dissolve an LLC for wrongful conduct -- and
11 this is under the statute -- quote, "related to the
12 company's business."

13 So evidence unrelated to K&T has nothing to
14 do with the business and it cannot support a finding
15 of dissolution.

16 Similarly, Your Honor, the Court can expel a
17 member for wrongful conduct, quote, "related to the
18 company's business," or, quote, "that has adversely
19 and materially affected the company's business."

20 And that's from the statute in the LLC Act.
21 And that's not what we have here. There's no dispute
22 that the company has fulfilled its purpose for
23 decades, that it continues to fulfill its purpose
24 despite the plaintiffs' complaints. And the evidence
25 that is unrelated to K&T Group has nothing to do with

1 the LLC's purpose or the business of the LLC.

2 Instead, what we have is the plaintiff trying
3 to drum up as much perceived dirt as he can on
4 Mr. Taylor individually as a means to achieve the
5 result he wants, which is to get out of a joint
6 venture on terms that are beneficial for the plaintiff
7 and damaging to Mr. Taylor.

8 That should not be allowed, Your Honor. And
9 so we ask the Court to exclude any evidence that is
10 related to Mr. Taylor individually but not related to
11 K&T Group or to Taylor Capital, who is the member of
12 K&T Group or to Mr. Taylor's capacity as a manager of
13 K&T. Any evidence unrelated to K&T Group.

14 THE COURT: I want to make sure I'm clear.
15 The partnership, the LLC that's involved here, is the
16 K&T Group, LLC. Mr. Taylor's membership in it is
17 through Taylor Capital, LLC, his own separate LLC, and
18 I'm assuming is he the sole member of that LLC?

19 MR. DANIEL: He is the sole member -- oh, no.
20 He's not. Family trust. And Mr. Taylor individually
21 is a manager of K&T Group, so evidence of things that
22 Mr. Taylor did in his capacity as manager would be
23 admissible. But things Mr. Taylor did outside of his
24 capacity as manager of K&T that have nothing to do
25 K&T, that's what we're asking to be excluded.

1 THE COURT: Is your motion -- and I'm not
2 trying to bleed into the other one. Is your motion
3 relative to Mr. Taylor individually, or is it limited
4 in time to prior to three years from the inception of
5 this case? That's my question.

6 MR. DANIEL: You're right, Your Honor. They
7 blend a little bit. Because some of this evidence
8 meets both categories. It's just about Mr. Taylor
9 individually and it's too far back. But this motion
10 is just about evidence, excluding all evidence that
11 has just to do with Mr. Taylor individually.

12 THE COURT: Okay. Mr. Slotchiver?

13 MR. SLOTCHIVER: Thank you, Your Honor. A
14 few comments. 404(b) under the Rules talks about the
15 admissibility to prove a common scheme for a
16 plaintiff. I think that's going to come up today.

17 Secondly, Your Honor, as to Mr. Taylor,
18 there's going to be credibility issues that are going
19 to come forward. There's going to be a difference of
20 opinions. And what the evidence would show and the
21 reason I believe it's relevant is that Mr. Taylor has
22 been a habitual defaulter for over ten-plus years.

23 He's done it with multiple schemes. He's
24 done it with multiple investments. He's had multiple
25 judgements against him. He's had multiple failed

1 investments, including a recent attempt to become a
2 personal injury advertising lawyer in Myrtle Beach
3 with a bunch of investors.

4 He's got a lawsuit against Hostilo claiming
5 that Hostilo breached some agreement with him.
6 Hostilo is one of the advertising lawyers out of
7 Georgia that came over here.

8 And in every one of these things, there's an
9 excuse as to why he's not at fault. But at every one
10 of those things, we have judgements. The Court can
11 take judicial notice. We plan to go into it because
12 it goes to the credibility.

13 From a timing standpoint, it shows the
14 pattern of how things developed. It shows this is how
15 he's done things in the past. And it's relevant to
16 the exact same issues that we have here, which is
17 financial issues.

18 When financial problems beset him, it seems
19 like those are the times when payments aren't made.
20 And so this is not an isolated incident of they're
21 alleging \$8,500 or this much larger number, but this
22 is a repeated incident of failing to pay for months.

23 The evidence will show that John Kachmarsky
24 essentially had become the banker to provide for his
25 partner. So when we talk about the issues of --

1 Wilson talked about unfavorable despite reasonable
2 efforts. I think we can address reasonable efforts.
3 But how far is it reasonable and when does it get
4 beyond being reasonable? And all of this evidence
5 goes to the credibility of the testimony as to the
6 past conduct of the testimony. He said that it's not
7 about partners of the company. We think is it.

8 This comes in front of you all the time. Two
9 people go into business to open up an office suite
10 together. This is a very large office suites with
11 lots of offices despite the fact they're basically at
12 the time solo practitioners.

13 So they use the rental income from whether
14 it's the NEFA company or all the individual lawyers --
15 now, it's a lot of individual lawyers -- to pay the
16 rent and to offset the expenses. And they have to
17 make up the difference if there is a difference. And
18 that's how it works, and it happens all the time.

19 So when one person is not contributing but is
20 using space and not paying for that space, that does
21 affect the company's purpose because the purpose is
22 not to be a law firm together. The purpose is to run
23 a profitable, to an extent -- to pay off the debt of
24 the mortgages by renting out to people.

25 And when you block people from renting and

1 you have other lawyers or staff members in offices,
2 that, I believe, does go against the purpose. That's
3 why we think it's all relevant.

4 And I know Your Honor can take that all into
5 account at the end of the case in reviewing
6 everything, but certainly for purposes of putting the
7 case forward, we believe that all of this is relevant
8 and are prepared to talk about it. And although it is
9 a K&T entity, the testimony that we're going to hear
10 is going to be of Mr. Taylor.

11 THE COURT: All right. As it relates to
12 Mr. Taylor individually, I'm going to deny your
13 motion. I'm more interested in the timing issue. I
14 think that's your second motion.

15 MR. DANIEL: Thank you, Your Honor. It is.
16 And I will move to that. We just discussed a little
17 earlier the relief the plaintiff is seeking in this
18 action, which is dissolution of the company or
19 expulsion of Taylor Capital.

20 I'm going to turn to the claims that the
21 plaintiff has asserted, and there are three. Breach
22 of the operating agreement is the first, and then
23 second there is a clam for judicial expulsion
24 independently, and the third a claim for judicial
25 dissolution.

1 Of course Your Honor knows the statute of
2 limitations for the breach of contract claim is three
3 years. In the court of appeals, Your Honor has held
4 that there is the same statute of limitation three
5 years for any member's claim arising under the LLC
6 Act. And that's a case, Your Honor, that's cited in
7 our motion called *Mazloom*. And I have a copy for Your
8 Honor as well.

9 THE COURT: I am well aware.

10 MR. DANIEL: This case, as Your Honor noted,
11 was filed in June of '22. So the statutory period
12 began to run in June of 2019. So that's the timing
13 that we're talking about.

14 June of 2019 to the present would be the
15 statutory period. And the point is, Your Honor, that
16 events occurring before the statutory period cannot
17 support a claim for dissolution. They cannot support
18 a claim for breach of contract. They cannot support a
19 claim for judicial expulsion as a matter of law. The
20 Court can't dissolve a company. The Court cannot
21 expel a member of an LLC for conduct that occurred
22 more than three years prior to the filing of the suit.
23 Otherwise, it would undermine the entire purpose of
24 the statute of limitations, which is not to litigate
25 stale claims.

1 By the same coin, the plaintiff cannot use
2 events or conduct that occurred prior to June of 2019
3 for the relief that he seeks here. And if that
4 evidence cannot support the plaintiffs' claims
5 substantively, then all it can be, Your Honor, is
6 character evidence.

7 Evidence that says, hey, look at this bad
8 conduct this defendant did in the past. I'm going to
9 use that to ask you give me relief now for the claims
10 I'm asserting. And that's exactly what Rule 404 of
11 the South Carolina Rule of Evidence prohibits.

12 So I'll be brief, Your Honor. Evidence that
13 precedes the statutory period cannot support the
14 claims here. Because they cannot support the claims
15 here, it is character evidence which is inadmissible
16 and that's why we ask the Court to exclude all
17 evidence of event and conduct prior to June of 2019.

18 And I will briefly mention Rule 404(b), Your
19 Honor, which I'm sure Your Honor is very familiar
20 with. And as the Court knows, 404(b) -- you know, 404
21 the rule is that character evidence in a civil matter
22 is prohibited always.

23 404(b) is the exception to the rule, and it's
24 a very narrow exception. And it very clearly and
25 specifically enumerates the kind of evidence that can

1 come in despite being character evidence. And it's
2 evidence of a felony crime. It's evidence that
3 indicates a person is lying or untrustworthy.

4 And that's not what we have here. We have
5 evidence -- if there's evidence that Mr. Taylor made
6 an investment in 2014 that went bad and there's a
7 judgement against him, that's not indicative that --
8 that's not a crime. That's not something that means
9 he's dishonest. That's character evidence of
10 something that happened a long time ago and is not
11 relevant here, and it is just the kind of character
12 evidence that Rule 404 prohibits.

13 And so that's why we would ask that you
14 exclude all evidence of events occurring before June
15 of 2019. Thank you, Your Honor.

16 THE COURT: Mr. Slotchiver?

17 MR. SLOTCHIVER: We disagree completely. We
18 think 404(b) is dead on point. It goes to the issue
19 of trustworthiness and how he's handled things in the
20 past. Not paying for rent, staying in offices.

21 I mean, it's an interesting case as we get
22 into the facts. We're going to learn there was
23 actually a deal made and he -- you're going to hear
24 from his own mouth that there was a deal made.

25 He agreed back in 2015 that the understanding

1 would be that when John Kachmarsky and David Taylor
2 own space together, that they would each pay for the
3 office space that they occupied, and if they occupied
4 more than the other party occupied that they would pay
5 1250 per month per office.

6 That was the agreement that he's admitted to.
7 That's his understanding of the agreement.

8 THE COURT: That was an oral agreement or did
9 that get reduced to writing?

10 MR. SLOTCHIVER: I'm reading from the
11 deposition of David Taylor who agrees. This is his
12 agreement. This is what he said. "This is my
13 agreement."

14 THE COURT: What time period was that?

15 MR. SLOTCHIVER: This deposition --

16 THE COURT: No, no, no. When was the
17 agreement?

18 MR. SLOTCHIVER: 2015. And it wasn't have
19 paid, will pay. So from that point forward,
20 everything was copacetic, but you'll learn again that
21 it stopped again.

22 So when it comes to trustworthiness, you look
23 at the actions of what somebody did. When you have a
24 deal and you have an agreement and you violate that
25 deal blatantly, that goes to trustworthiness. I think

1 it squarely fits into 404(b).

2 THE COURT: My recollection from reviewing
3 the briefs was that they actually entered into the LLC
4 in like 2003; is that right?

5 MR. DUFFY: Yes, sir.

6 THE COURT: So they've got a 20-year history
7 of working together and had some issues I gathered.
8 And then sometime in 2015, they came up with some
9 understanding.

10 MR. SLOTCHIVER: I think there's been five
11 different rounds of issues throughout the whole
12 period.

13 THE COURT: I'm not interested in trying
14 those. So to the extent that -- here's my feeling,
15 and I have pulled out Rule 404. It does talk about
16 character evidence is not admissible. I don't know
17 that character is consummated in payments or
18 nonpayments.

19 404(a) is your balancing act between what's
20 prejudicial versus probative and that gives you some
21 opportunity there. 404(b) is your prior bad acts or
22 other crimes and wrongs but they're not admissible to
23 prove character or to show action. However, they may
24 be admissible to show motive, identity, existence of
25 common scheme or plan, or the absence of mistake.

1 As a general rule of thumb, I plan to try a
2 case within the three-year statutory period, but I'll
3 not exclude plaintiffs' attempts to offer evidence
4 that the Court finds relevant and probative on some of
5 the issues that are going to be tried here in the
6 case.

7 I'm not going to go far field. If it's more
8 than ten years, probably going to shut you out. I'm
9 more interested in what's happened in the last three
10 years that brought this case to the Court. Okay? I
11 hope that helps.

12 All right. Very good. All right. Any other
13 matters, then, to present before we begin?

14 MR. SLOTCHIVER: Your Honor, we've got a few
15 witnesses if we can figure out from a time
16 perspective -- and I wanted to notify them very
17 briefly. It looks like we're going to get started
18 now.

19 THE COURT: You want to take five minutes and
20 touch base and see how you do? I can take them out of
21 turn. It doesn't matter to me. I'm interested in
22 getting through the case.

23 MR. SLOTCHIVER: Sure. That would be great.

24 THE COURT: Let's come right back at the top
25 of the hour.

1 (Recess from 10:51 to 11:07 a.m.)

2 MR. SLOTCHIVER: We're going to waive opening
3 statements and go straight to it.

4 We combined this together or clipped together
5 on the exhibits that we plan to go through. We
6 premarked them. We will call John Kachmarsky to the
7 stand.

8 (JOHN KACHMARSKY having been duly sworn to
9 tell the truth, the whole truth, and nothing but the
10 truth, was examined and testified as follows:

11 THE COURT: Thank you, sir. Please have a
12 seat. And when you get comfortable, give us your full
13 name and address for the record.

14 WITNESS: John Kachmarsky,
15 K-A-C-H-M-A-R-S-K-Y.

16 MR. SLOTCHIVER: Your Honor, I'm aware of
17 your instructions related to older dated materials but
18 we want to go through the background of how this came
19 about and how the operating agreement came about. I
20 will move swiftly and try to get you to the relevant
21 part.

22 DIRECT EXAMINATION

23 BY MR. SLOTCHIVER:

24 Q. John, would you state your full name for the
25 record?

1 A. I just did.

2 Q. Okay. And just for the record, what do you
3 do for a living?

4 A. I'm a tax lawyer.

5 Q. Okay. And how long have you been practicing
6 law?

7 A. 40 years.

8 Q. And where do you practice law?

9 A. In the Franke Building, 171 Church.
10 Currently it's Suite 330.

11 Q. Okay. Do you own that suite?

12 A. With David Taylor and K&T Group.

13 Q. Okay. Do you own other suites in the Franke
14 Building?

15 A. I do.

16 Q. What other suites do you own in the Franke
17 Building?

18 A. Suite 140, Suite 150, Suite 230, Suite 340.

19 Q. Okay. And does David likewise own other
20 suites in the building?

21 A. He owns a suite on the second floor.

22 Q. Okay. Can you tell the Court how it is that
23 you became involved in a working business relationship
24 with David Taylor?

25 A. With David, when I met him, he was working

1 for a firm, Holmes and Thompson. That firm was
2 disintegrating, I guess, and a lot of the lawyers were
3 heading over to Moore and Van Allen. David was on the
4 fence about whether or not he was going to go to Moore
5 and Van Allen or start his own practice.

6 He originally went to Moore and Van Allen. He
7 was over there for less than three months and then he
8 came back. I was in Suite 140, and he ultimately
9 rented an office from me. It was a single office that
10 he rented for like \$1250. That was what I was
11 charging back then.

12 Q. Was your operational mode at that point to
13 rent executive offices?

14 A. Yes. I mean, I had my own office and there
15 were several other offices available, and I rented
16 those to individual people. I think Deborah Nelson,
17 she was a certified financial planner was in there. I
18 had a number of different people over the course of
19 time.

20 Q. Okay. And just there's no surprise, Your
21 Honor -- John, you've got in front of you a notebook
22 that has copies of the depositions -- not depositions.
23 Copies of the e-mails and copies of information you
24 believe relevant to your testimony?

25 A. Yeah. Well, I mean, I have an index of

1 everything that's in here, yes.

2 Q. All right. And you are welcome to look at
3 that if it helps you. And if Mr. Duffy wants to see
4 it, please show it to him.

5 Okay. So David came in and he rented a suite
6 from you. Tell me what happened next.

7 A. Well, we are both tax lawyers. At some
8 point, we were collaborating on cases, and we
9 eventually formed a partnership, a law partnership.

10 Our two professional corporations became the
11 partners in that. And it was really more of an
12 expense sharing arrangement. We did not share
13 revenues. We shared expenses basically. Whatever
14 revenues he made, he kept. Whatever revenues I made,
15 I kept.

16 Q. Did you own an office suite at that time
17 together?

18 A. No.

19 Q. Okay. All right. So were you still working
20 on the first floor at that time?

21 A. I was working on the first floor. David
22 wanted to buy into basically Suites 140 and 150.
23 They're 5,000 square feet combined.

24 I told him I wasn't really interested in doing
25 that, that it was a lot of work to put together a deal

1 like that. And at some point, I suggested to him that
2 if he were willing to swap his suite on the second
3 floor, I might consider that.

4 He didn't want to do that, so we never did
5 anything with 140 or 150 or the one on the second
6 floor.

7 Q. Why don't you walk us through how it is that
8 you and he came to acquire the suite on the third
9 floor that we're here talking about today?

10 A. Well, somebody was going to buy Suite 330,
11 and both David and I had a right of first refusal. I
12 knew he wanted to own Suite 140, 150, or a portion of
13 it. So I asked if he wanted to do the suite together,
14 and we did purchase it.

15 Q. And when you purchased it, what entity bought
16 the suite?

17 A. It was K&T Group.

18 Q. Okay. And was there an operating agreement
19 created for the purposes of running K&T Group?

20 A. There was.

21 Q. And is that the operating agreement that is
22 attached to the complaint as an exhibit?

23 A. It is not. It was amended around 2011 I
24 think.

25 Q. Okay. And I believe I've marked a copy of

1 the operating agreement as an exhibit. It's Number 3.

2 Number 3 if you'd like a copy, Your Honor.

3 MR. DUFFY: Is that amended?

4 MR. SLOTCHIVER: This is the amended.

5 MR. DUFFY: No objection.

6 THE COURT: Okay. Thank you.

7 Q. What was the purpose of -- what was the
8 purpose of owning the suite together? What was the
9 business purpose under the operating agreement?

10 A. Well, I mean, we actually occupied half of
11 the suite and then the other half, we -- it was to
12 basically own real property and to rent and manage it.
13 And like I said, we occupied half of it and the other
14 half we rented out.

15 Q. And that was around 2005 that you purchased
16 this?

17 A. We moved into the suite -- I think it was
18 2005.

19 Q. And so you and David and your perspective
20 staffing operated half of the -- basically half of the
21 building and the other half was rented out?

22 A. Correct.

23 Q. Okay. And how did you and he decide what the
24 payments were going to be for purposes of your own
25 offices and your own staffing?

1 A. Well, we, at that time, had an equal number
2 of offices. We had one what I would call partner
3 office each, and then we each had two what I would
4 call associate offices.

5 And so it was equal, and we collected the rent
6 from whoever was on the other side. We had three or
7 four different tenants over there, and then we split
8 the rest equally.

9 Q. Okay. And then you would use the revenue
10 that was generated from the rent to offset the
11 expenditures?

12 A. Correct.

13 Q. Was it ever profitable or did it just
14 generally go to pay the expenses?

15 A. I mean, we were always needing to put money
16 into the account so . . .

17 Q. So there was no access, but it would cover a
18 lot of the expenses?

19 A. It would cover a lot, yes.

20 Q. At some point, did the firm of Kachmarsky and
21 Taylor convert into another firm?

22 A. We purchased Fitz O'Connor, a tax lawyer out
23 of Columbia, South Carolina, we purchased his
24 practice. That would have been about the same time,
25 2005.

1 Q. And did the fact that you purchased his
2 practice and took on more people, staffing, whatever
3 you want to call it, did that change the arrangement
4 that you and he had with reference to how the
5 operating agreement worked for purposes of --

6 A. I don't think it really changed anything
7 because they had an office in Columbia. So we didn't
8 really have any new employees that were physically
9 located in our suite.

10 Q. Okay. Was there a time when David took on
11 more offices than you had?

12 A. Yes. There was a time when -- this is after
13 our partnership with Fitz was finished. He hired an
14 associate. He had another office. I asked him to pay
15 rent for that, and the number was \$1250. We ended up
16 kind of negotiating that, and he ended up paying a
17 thousand dollars for it.

18 And then he also -- he did this without my
19 knowledge. I found out about it. But he went into
20 the suite next door which was kind of separate and it
21 was all leased on a square foot basis to an
22 organization called NEFA.

23 His staff negotiated taking an office over there,
24 and he was renting it for \$435 a month based on a
25 square foot.

1 Q. And let me make sure I understand this. It
2 was still part of the 5,000 square foot office that
3 you have, correct?

4 A. Correct.

5 Q. There were two sides. There was the side you
6 and David were on and then there was the side you
7 leased out?

8 A. Correct.

9 Q. On the side you leased out, NEFA took that
10 entire side?

11 A. Correct.

12 Q. And David took NEFA and negotiated to take
13 back one of the offices that NEFA had?

14 MR. DUFFY: Your Honor, I object. Just to
15 note this seems like we're going down side directions
16 of a dispute from 2014.

17 THE COURT: Sounds like a long time ago.

18 MR. SLOTCHIVER: It was, but it goes exactly
19 to the pattern of conduct. And I will be brief, but
20 it does go to the pattern of conduct.

21 THE COURT: Okay. Go ahead.

22 Q. And that's an office that currently today
23 rents for the same price as every other office in that
24 suite?

25 A. \$1250.

1 Q. And so that office he negotiated and instead
2 of paying \$1250, he was paying \$435?

3 A. Correct.

4 Q. So while you were still getting the same that
5 NEFA was paying you, it was not NEFA in that office,
6 it was him in that office paying much less than
7 anybody else would have paid for that spot?

8 A. Correct. I mean, once it goes to on a per
9 office basis, the rent would be \$1250.

10 Q. Okay. So at this point, he's occupying two
11 offices for \$1450 instead of for \$2500?

12 A. Correct.

13 Q. Was that an issue with you and him?

14 A. Well, I mean, we worked through it, and I
15 accepted it at that time.

16 Q. When you say you worked through it, you
17 didn't move or file before the Court; you just
18 accepted it?

19 A. Right.

20 Q. Okay. All right. The person in that office
21 was his employee, Sallie?

22 A. Sallie Holder.

23 Q. Okay. And then did Sallie offer to leave in
24 2014?

25 A. I think it was right around 2014 when she

1 left.

2 Q. Okay. And did the employee who was using
3 that other office for a thousand dollars also leave?

4 A. Well, Sallie left first. And that's kind of
5 what started another round of this thing. When Sallie
6 left, David e-mailed me and said that -- we had a
7 long-term understanding that he wouldn't pay rent if
8 there were offices open.

9 And there was -- I don't know if it was just
10 Sallie's office that was open or if it was that whole
11 side opened up, but he didn't want to pay. He wanted
12 his money back from what I could tell, the \$1435 he
13 had been paying for about three years.

14 Q. So for three years, he was paying the money
15 without objecting to it or remembering those
16 conversation or at least voicing to you he had a
17 conversation where he agreed he could have unfettered
18 access as long as nobody was in there, and at this
19 point, he decided to raise the issue?

20 A. It was okay to throw like a file or something
21 in a office that was sitting there empty, but I never
22 had intended for anybody or myself to use an office
23 and to take I guess exclusive possession of it and not
24 pay for it.

25 Q. So was that contradictory to the purpose of

1 the business arrangement?

2 A. Yes.

3 Q. Okay.

4 A. And we ultimately decided -- we were both
5 friends with Dan Legare. He's a CPA and we had done a
6 lot of work with him. We each kind of told our story
7 to Dan, and we asked him to sort of mediate the case.

8 He came back and basically says that David ought
9 to be paying \$1250 for the office that he had.

10 Q. Let's back it up just a moment. Would you
11 look at Plaintiff's Exhibit 3 *[sic]*? And by 3, I
12 mean -- it's all marked. But it's the third one in
13 the plaintiffs' packet.

14 A. Okay.

15 Q. What does this represent?

16 A. This represents him having two offices at
17 \$1435 that were worth basically \$2500.

18 MR. DUFFY: Can I see what you're referring
19 to as Exhibit 3? Is it the labeled 3?

20 MR. SLOTCHIVER: Label 3, yes. It's under
21 Exhibit 1, but it's number 3.

22 THE COURT: Page 3 I've got looks like an
23 itemized expense sheet. Is that what we're talking
24 about?

25 MR. SLOTCHIVER: Yes, sir.

1 A. So on the bottom, you see 435. That's from
2 David, due from David. A thousand due from David.
3 And then the 641 is the split. And you can see that
4 he gets -- that's the half after the rent is paid.
5 641 to me and 641 to David.

6 Q. And then if you look at page number 9, it
7 says: I have taken off the adjustment of \$1,000 for
8 Sallie's office. Let me know if I need to make
9 further adjustments.

10 That's signed by Julie Tilman who was a CPA for
11 Taylor's office?

12 A. She was his bookkeeper.

13 Q. What was the purpose of this?

14 A. I think she was confused because it wasn't
15 Sallie's office that was the 1000. It was his
16 associate's office.

17 But this is when he's taken the position that he
18 should not be paying rent for the extra office going
19 forward.

20 Q. And is that when he sent you the e-mail more
21 or less on number 11?

22 A. Yes.

23 Q. And is that the first time you have heard of
24 this agreement, this long standing agreement, that if
25 you had empty space available in the office that

1 neither of us would pay extra for using the space
2 unequally?

3 A. I have never had any kind of agreement like
4 that.

5 Q. Once again, the purpose of the office
6 arrangement was in order to -- if they were filled, to
7 make money to go towards the debt?

8 A. Correct.

9 Q. It says: Somehow our agreement has been
10 overlooked.

11 But I guess that's by the fact he's been paying
12 for three years, he had overlooked it?

13 A. I don't know. I don't remember exactly when
14 an office became available, but that was always the
15 position is that if we had an office open, that he
16 should not have to pay rent for anything that he's
17 using.

18 And when we're talking about using, I'm talking
19 about in excess of. So if we've got five offices that
20 somebody is using and somebody else is using three,
21 the only thing on the table really is the two offices
22 that they ought to be paying rent for, and everything
23 else would be split equally.

24 Q. What does page 14 show us?

25 A. Well, this is something David wanted to --

1 Q. 14 through 16?

2 A. He was wanting to look at how much rent he
3 had paid and how much rent I had paid.

4 Q. Is the reason he paid more rent than you is
5 because he was using more offices than you?

6 A. Two more offices.

7 Q. And those are the offices he's paying less
8 than market value for?

9 A. Correct.

10 Q. Same thing with number 19?

11 A. So I rented the individual offices, and these
12 were the tenants that were in.

13 Q. On page 31, you wrote him a letter. What was
14 the purpose of that letter?

15 A. Well, I thought that he was basically seeking
16 a refund of five or six years worth of rent he had
17 paid or something, and I just took the time to
18 basically clarify where I stood on a number of issues
19 with him.

20 You want me to just kind of go through it?

21 Q. Yeah, please.

22 MR. DUFFY: Which number, Dan?

23 MR. SLOTCHIVER: 31.

24 A. I talked about, you know, first regarding
25 discrepancies in rent. I wasn't going to go do a

1 bunch of work to figure out what he thought was a
2 discrepancy, so I was not going to do that.

3 I said other than the \$1,000 per month and the
4 435 per month, you paid for the extra offices. I am
5 certain that I have paid the same amount as you.
6 There were certain instances where taxes and insurance
7 were paid at different times or something like that.
8 But basically, you know, the only difference was the
9 difference in the rent.

10 Q. John, just for clarity for the Court, during
11 the duration of this partnership, other than a period
12 of about two years, who has been the person who has
13 managed everything?

14 A. I have. I mean, I have done all the leasing,
15 kept the books.

16 Q. You did all the leases?

17 A. Yes.

18 Q. All the advertising for the leasing?

19 A. Yes.

20 Q. All of the bills? You have done everything,
21 correct?

22 A. There was one period of time where I think
23 David had April -- they tried to find another broker
24 or something for leasing. I think they did lease it,
25 actually, but that was it. We never got any leads or

1 any new tenants.

2 Q. And when it's come time to refinance with the
3 banks and doing all those negotiations, who's the one
4 that did all of that?

5 A. I did.

6 Q. Did you have a time when you had a bank
7 decline to renew your loan?

8 A. I think the loan originally came due
9 somewhere around 2009, and I don't know where we
10 originated that loan, but it ended up at Wells Fargo.
11 And in 2009, I mean, there was -- I mean, you couldn't
12 borrow money commercially. And our loan came due, and
13 Wells Fargo, we were on a LIBOR project, and we were
14 paying two and a quarter percent. And Wells Fargo
15 just rubber stamped it for another five years.

16 Q. What happened at the end of the five years?

17 A. At the end of the five years, basically they
18 wouldn't renew the loan. And they cited essentially
19 David's credit as the reason that they wouldn't renew
20 it.

21 Q. So what did you do to get a loan?

22 MR. DUFFY: Object to the form, Your Honor.
23 I just want to make a point. We're still in 2014 or
24 2015.

25 MR. SLOTCHIVER: We're moving right into why

1 it's relevant, Your Honor. And what you'll hear in a
2 moment is that because of this, he had to go to a
3 different bank and they made terms with the bank which
4 David signed off on and failed to comply with.

5 THE COURT: Go ahead.

6 Q. So as a result of the bank loan not being
7 accepted, is that when you went to -- who did you go
8 to?

9 A. I went to Ameris Bank. Linda Kennedy was
10 with them at that time.

11 Q. Okay. And what arrangement was made with
12 Linda?

13 A. They made the loan. I had just refinanced
14 Suite 140 and 150 downstairs. I think my interest
15 rate on the downstairs unit was like four and a
16 quarter. And this one ended up being four and three
17 quarters.

18 Q. Okay. And what type of arrangements did
19 you -- and let me show you a copy of a document, a
20 letter from Ameris Bank.

21 A. Okay. This is I guess a commitment letter.

22 MR. SLOTCHIVER: Why don't we mark that as
23 Exhibit 4.

24 MR. DUFFY: Your Honor, same objection. This
25 is 2014. They got a loan. There's no pattern of loan

1 issues. We're going to be a while.

2 MR. SLOTCHIVER: It's not about the loan,
3 Your Honor. It's about the commitment and the
4 promises made that were ignored.

5 MR. DUFFY: In 2014?

6 MR. SLOTCHIVER: In 2014. It's a pattern of
7 conduct. They were ignored, and it goes to his
8 credibility and it goes to what he's done. And it's
9 not a disputed fact they were ignored is what you will
10 learn.

11 THE COURT: Let me ask. Do you intend to put
12 the document into evidence, or are you going to
13 testify about it?

14 MR. SLOTCHIVER: I would like to mark it into
15 evidence.

16 THE COURT: You can mark it for ID purposes.
17 Objection is to the document or just going further
18 field than we need to?

19 MR. DUFFY: The document prompted it because
20 I wanted to note my objection for the same reasons.

21 THE COURT: I'm going to keep the document
22 out, but you can testify about it.

23 (PLAINTIFF EXHIBIT NUMBER 4 WAS MARKED FOR
24 IDENTIFICATION.)

25 Q. What were the terms as far as what you and

1 David would have to do from a banking relationship?

2 A. Well, I guess on the top of page 2, it talks
3 about deposit accounts and says in consideration of
4 the interest rate outlined above and law practices
5 shall maintain their primary business deposit accounts
6 with Ameris Bank during the life of the loan.

7 Q. Did you maintain your primary business
8 account with Ameris Bank for the life of the loan as
9 required under the document?

10 A. Around this time, David -- I'm not sure I
11 know exactly why, but Julie was collecting the rents
12 for about two years around this time.

13 I had my law practice account with Ameris. David
14 had opened his law practice account there, and we had
15 also opened an account for K&T Group.

16 I learned from Linda that the K&T Group account
17 was not being used, so it was just sitting there.
18 David opened an account with First Reliance Bank, and
19 he was depositing all the rents over there.

20 Q. Did you comply with your obligation under the
21 agreement?

22 A. That's when I started collecting the rents
23 and depositing them in the Ameris account.

24 Q. Did you, John Kachmarsky, your law firm,
25 comply with your requirements under that agreement?

1 A. Yes.

2 Q. Okay. And then you took back over. You
3 started collecting the rents in order to make sure the
4 firm was also in compliance?

5 A. Correct.

6 Q. Because the firm wasn't in compliance until
7 you did it?

8 A. That's correct.

9 Q. Okay.

10 THE COURT: Let me stop you there. And prior
11 to that, Mr. Taylor was collecting the rent?

12 WITNESS: His office collected the rents for
13 a period of about two years.

14 THE COURT: Okay. This is in the 2014 time
15 period?

16 WITNESS: Yes, sir.

17 THE COURT: And since that time, you have
18 been in charge of that?

19 WITNESS: Yes.

20 Q. And then on the last page of the document,
21 was there a signature spot for you to sign and for
22 David to sign?

23 A. Yes.

24 Q. Okay. Did you both sign on the document?

25 A. We did.

1 Q. Okay. Look at document 20 and tell me
2 what -- this looks to be about the same timeframe.
3 Tell me what this references.

4 A. We are arguing about him paying rent again.

5 THE COURT: Which page are we on? I'm sorry.

6 MR. SLOTCHIVER: 20.

7 THE COURT: All right.

8 Q. Is that when David has an office that he's
9 not paying for?

10 A. That would be correct.

11 Q. If you look at page 35 --

12 A. So basically -- I mean, just for an example,
13 if there was \$10,000 that needed to be paid into the
14 account in a given month and David had two extra
15 offices, then I would calculate that as he needs to
16 pay the 2500. And then the other 7500, we would split
17 equally and that's what would go into the account.

18 David was taking the position that he wasn't
19 going to pay rent and he was just splitting the 5,000.
20 He put his 5,000 in, but he didn't put the rest in.

21 Q. And that's what made you short?

22 A. Yes. And I put what I was supposed to put in
23 which was half after the rents.

24 Q. Because even more in, you're getting deeper
25 into the hole?

1 A. Right.

2 Q. So on page 35 when he says, he writes: My
3 position is that there will be no adjustment for an
4 extra office as long as there is comparable --

5 COURT REPORTER: Can you slow down, please?

6 Q. Page 35, he writes Julie and says: My
7 position is that there will be no adjustment for an
8 extra office as long as there is a comparable space
9 vacant in our suite. So even 50/50 is what the split
10 should be.

11 So what he's saying to you is I'm not going to
12 contribute the amount for the offices that I'm taking
13 because it's extra and you have to pay half of the
14 full amount?

15 A. Right. Basically he was forcing me to either
16 put money into the account or not pay some bills. And
17 some bills didn't get paid, including a mortgage
18 payment that we had just gotten on a new loan.

19 Q. Okay. So all of this is building up to the
20 Dan Legare meeting, correct?

21 A. Correct.

22 Q. And then at that point is when you told him
23 that you're going to take the rent from one of the
24 other tenants directly in order to offset the
25 expenditure?

1 A. Well, I told him, you know, I could go about
2 it a couple of different ways. It all would come out
3 the same way. If he was going to take an office and
4 not pay rent on it then I would take an office and I
5 would rent it out to somebody and be even. Just
6 saying I could get there different ways.

7 Q. At the end of the day, you're just trying to
8 get back to the point that you and David have equal
9 use of the office?

10 A. I just wanted him to pay, yes, either equal
11 use of the office or he pays rent on the extra offices
12 he has.

13 Q. Okay. Tell me about how it is that you got
14 to meet with Dan Legare and what came of that.

15 A. Well, we both basically told him our story.
16 I said he's got an extra office. I think he ought to
17 pay for it. Dan says he's got an extra office, and I
18 think he ought to pay for it. And then he did.

19 Q. So from that point forward, did David pay
20 back the money he owed and also pay for the extra
21 office?

22 A. Yes.

23 Q. And that was in 2014?

24 A. Yes.

25 Q. So you thought everything was done and

1 copacetic?

2 A. I thought he understood, you know, if you use
3 something, you're supposed to pay for it.

4 Q. What happened in 2015? You call this round
5 three. Or let me back up one second. I wanted to go
6 over one more document first.

7 When you met with Dan Legare, was his
8 recommendation put into writing?

9 A. Yes.

10 Q. Was that on page 54?

11 A. Yes.

12 Q. Did you agree with all of his
13 recommendations?

14 A. No, I didn't agree with I guess what would be
15 the second paragraph, and it wasn't -- not that I
16 thought he was wrong.

17 Q. Second or third paragraph? Beginning with
18 what word?

19 A. Well, it's the second paragraph. Because
20 he's basically saying we ought to be putting money --
21 paying rent for --

22 Q. What's the first word of this paragraph?

23 A. "Next."

24 Q. All right. That's the third paragraph on the
25 page.

1 A. Okay. And we had just -- and I'm not saying
2 that was wrong. I mean, it's typically what you would
3 do. But I was in a situation where I was being
4 essentially forced to put money into an account, and
5 he was taking the position that he shouldn't be paying
6 rent.

7 I wasn't going to put my money into an account
8 that could be used to pay bills because he wouldn't
9 put the money into the account. So I just maintained
10 the rent the same way I always did. If you have an
11 extra office, you pay for it and we split the
12 difference and we put that amount in every month and
13 everything got paid.

14 Q. And that's commiserate with the understanding
15 that David represented in his deposition, correct?

16 A. That's correct. He understood that he should
17 be paying \$1250 for an extra office if he possessed
18 it.

19 Q. But then paragraph 4 provided a different
20 alternative?

21 A. I was also trying to get -- I was asking Dan
22 to find a permanent solution as well. I wanted to get
23 out of this thing. I have been sort of wanting to get
24 out of it since the first round.

25 Q. Is that because of all the different issues

1 you were dealing with and you're the banker?

2 A. We keep fighting over the same thing, and we
3 can't keep ending up in the same place.

4 Q. Okay. So what about the alternative he
5 proposed in paragraph 4?

6 A. Well, as far as I know, David didn't want to
7 do that. That would require him taking half the
8 offices and doing his own marketing. I mean, we never
9 really discussed it any further.

10 Q. Okay. So then we go into 2015. Let's talk
11 about what happened.

12 A. Okay. In 2015, I think that is when I had
13 two offices, two associate offices, and David had two.
14 And I was going to vacate one of mine, and I told him
15 I was going to put it on the market and rent it, and I
16 was asking him to pay an extra 1250 for the extra
17 office he had.

18 Q. Okay.

19 A. And I think I got that office rented pretty
20 quickly. And as I recall, he still didn't want to pay
21 the rent after the -- he still didn't want to pay rent
22 after the office was full.

23 Q. And is this time period referenced by pages
24 58 and 59 and 60?

25 A. Yes. And here, he said he's not in agreement

1 with paying extra rent. He said I could rent the
2 other office and retain the proceeds outside of K&T
3 Group.

4 He says that here, but then he said I couldn't do
5 it. I think because I suggested to him that I could
6 take rent from Nancy's office and he could keep the
7 office for free. Again, I'm just trying to find
8 different ways to get to the same place.

9 Q. So on page 58, he says you can rent the other
10 office and retain the proceeds outside of the K&T
11 Group?

12 A. Right.

13 Q. And then on page 62, he said: I do not agree
14 with you keeping any rent.

15 A. That's correct.

16 Q. Okay. So these are the types of
17 inconsistencies you're referring to. Okay. And is
18 that why you wrote on page 63 that it appears that
19 your office has taken possession of my office despite
20 my telling you that I intended to keep it?

21 A. Yeah. It was the office right outside of
22 mine, I'm pretty sure it was, or two from mine.

23 Q. So the Court understands, the way that -- the
24 area that you and David practice in, you've got kind
25 of a bull pen in the middle where staff is

1 theoretically and then you have each of your own large
2 offices on the corners and then you have offices next
3 to the bull pen.

4 A. Two additional ones before you get to the
5 brick wall.

6 Q. Before you get to the brick wall, which is
7 the one where you close the door, you would have a
8 completely different office suite?

9 A. Correct.

10 Q. Okay. And that's the type some offices have
11 done. They've put a wall in and TMS number and
12 created two suites?

13 A. David and Jimmy Streetman did it. They
14 brought a suite on the second floor from Jerry Zucker,
15 and they split it and closed that door. It's an
16 identical footprint to what Suite 330 is. It's just
17 kind of a flip flop, but it's the same identical
18 footprint.

19 Q. Okay. So backing up for a second, in round
20 three in December of '15, he had more offices than you
21 but he wasn't paying for more offices than you,
22 correct?

23 A. Correct.

24 Q. Which is inconsistent with the settlement
25 agreement and the representation that he made in his

1 testimony and in agreement with Dan Legare, correct?

2 A. Correct.

3 Q. Okay. So what did you do as a result of
4 that?

5 A. Well, I told him I wanted to split the
6 offices and go separate ways. But I got the office
7 rented. And this was -- actually, I retained you and
8 Steve Spitz. We actually drafted a complaint, pretty
9 much the complaint that's been filed with a couple of
10 additional paragraphs added to it for what occurred
11 after that.

12 Q. What did he do as a result of that?

13 A. Well, I don't think he knew -- I don't know
14 if he knew that I was getting ready to file a suit. I
15 got back to my office. Seems like it was a hot summer
16 day. And there was a check on my desk for everything
17 that had been past due, which was approximately
18 \$30,000.

19 Q. Okay. So he made that debt good?

20 A. He did.

21 Q. Okay. All right. Let's move forward to
22 January of 2021.

23 A. Okay. The last week and a half of December,
24 I always let my staff off. And David --

25 Q. Let me back up. One thing I want to do is

1 refer to page 61. Is 61 the letter that you sent that
2 precipitated him making payment in full?

3 A. I told him I was going to file suit.

4 Q. Okay. And I apologize. Go back to 2021.

5 THE COURT: I want to follow up, though.
6 This e-mail is dated December 16 of '15. You said it
7 was a hot summer day that the check came in. Is that
8 six months later or is that a hot day in December, you
9 think?

10 WITNESS: I think it was probably a cold day.

11 Q. All right. So let's go to January of 2021.

12 A. Okay. Like I was saying, I always give my
13 staff off the last week and a half, two weeks, of
14 December and just pay them as kind of like a little
15 Christmas bonus or something. And that was COVID
16 year. That was 2020.

17 And I usually am in the office during that period
18 of time, and I was that year. There was nobody in the
19 office at all. The office outside of my office had
20 been emptied for the entire year, I'm pretty sure.
21 COVID wasn't making -- you know, people were not
22 running around looking for office space.

23 When I walked in my office on the first business
24 day of 2021, it would have been January the whatever,
25 there was a girl sitting in the office next to mine.

1 She had not been there before.

2 When I walked out, April, his assistant, told me
3 that they had hired a girl on a temporary basis that
4 she was going to be in there. I mean, I didn't say
5 anything about it at that point.

6 Q. Was your agreement -- had your agreement ever
7 been changed that if you utilize an office, you pay
8 for it?

9 A. No.

10 Q. Okay. So she was utilizing the office?

11 A. She was utilizing the office and, you know,
12 when they use the word "temp," you know, maybe she'd
13 be there for a week or two weeks. Well, she never
14 left. I mean, she did leave eventually but that
15 office was occupied the entire year.

16 Q. Over that year period, who was in that office
17 besides her?

18 A. Well, I think it was -- I don't know who the
19 temp was, if that was a temp. And then there was I
20 think an intern. Her name is Gabrielle. And then
21 there was a gentleman named Spears. He was an
22 associate attorney that they hired.

23 Q. And so throughout that entire year, when you
24 walked by the office that was right next to your door
25 to your office, somebody was utilizing it for the

1 year?

2 A. Somebody was using it.

3 Q. Furniture in there, person in there, activity
4 in there?

5 A. There was kind of limited furniture in there.
6 I mean, I don't know if they had carried in a -- I
7 mean, it might have been a table. Just something that
8 somebody could use as a desk, and there was a chair.
9 And then David had some furniture that he had gotten
10 from a client of his. It's a credenza. They were in
11 there.

12 Q. Okay. And was rent paid for during that
13 entire year?

14 A. No.

15 Q. Is that part of the issue we're here about
16 today?

17 A. Yes.

18 Q. Has rent ever been paid since it was owed on
19 that office?

20 A. Rent has been paid. I told David that he
21 needed to pay rent for that year. And he goes, how
22 did you -- I said it was \$15,000. He said how do you
23 calculate that? I said 12 times 1250 is \$15,000.

24 He said I only use the office for a month or two
25 was his response.

1 Q. Was that correct?

2 A. No.

3 Q. Okay. So it's the same issue you've had
4 repeatedly over all these years?

5 A. Yes. So I went in my -- kind of just looking
6 through scrolling through trying to find some evidence
7 of when I thought they had used the office. I found a
8 e-mail from April Shores.

9 Q. Objective evidence?

10 A. Yes.

11 Q. Okay.

12 A. And I found an e-mail where he had a parking
13 card, Mr. Spears, on August the 5th of 2021. April
14 wrote me an e-mail, and she said based on what we
15 understand from your e-mails, we're paying the rent
16 from August the 5th through December 31st, and they
17 calculated an amount and paid it.

18 Q. Okay. So they acknowledged that they hadn't
19 paid the rent, which they were required to do. But
20 they, again, tried to make it good down the road but
21 they just shortened you on that one?

22 A. Right.

23 Q. I'm looking to see where that e-mail is.

24 A. D12 starts on E. And plaintiffs' 85 and 86.

25 Q. Okay. So on Exhibit 2, defendants' page 12.

1 THE COURT: Defendants' 2, page 12?

2 MR. SLOTCHIVER: Yes, Your Honor.

3 Q. And that's where you're told by David: We
4 did not use the extra office for the entire year. I
5 had it for a few months.

6 A. For a month or two.

7 THE COURT: Y'all lost me there. And that's
8 when you wrote him on 12 and told him he's arrived at
9 \$15,000, 12 times 1250. And then he asked you how was
10 it arrived at and he wanted to meet with you. That's
11 on page 13, correct?

12 A. Correct.

13 Q. And then on 14, you had more discussions
14 about this?

15 A. Yes. We had a special assessment also that
16 year so things were moving around.

17 Q. Did he pay for the special assessment in a
18 timely manner?

19 A. Well, he was behind. He had ghosted me.
20 This is in '22. He didn't -- from November to I think
21 it was March or April, he had not paid anything. I
22 asked -- I sent him an e-mail and asked him to get
23 April to write a check. And, I mean, I just never
24 heard anything from him.

25 Q. Was it your agreement that he was allowed to

1 have months at a time where he wasn't contributing?

2 A. No. I mean, it caused problems paying the
3 bills. We had bills to pay.

4 Q. Was it your agreement that you each were
5 required at the end of the month to come up with any
6 short numbers?

7 A. Well, we always came up with -- normally came
8 up with the money except we had these periods of time
9 when he didn't pay. This one was only like three
10 months. The other ones, there were two periods where
11 it was six months.

12 Q. I understand. But was your agreement with
13 him, your understanding, was that you would each make
14 up at the end of the month what you had to contribute
15 to it?

16 A. That's our practice and that's what we
17 always -- I thought that's what we were supposed to do
18 and that's what I expected him to do.

19 Q. Did that frustrate the purpose of the
20 business when you had to come out of pocket to make up
21 the difference?

22 MR. DUFFY: Objection, leading.

23 A. Well, I mean, the mortgage didn't get paid.
24 You know, regime fees didn't get paid. I'm getting
25 calls and e-mails from the bank and getting calls and

1 e-mails from the regime people. Yeah. Frustrated the
2 business. I mean, we weren't paying our bills.

3 Q. So when you're demanding all these payments
4 be paid, that's when he decided to ask you to see your
5 books?

6 A. He asked me on a couple of occasions to see
7 the books. Usually it was through Julie. And I
8 just --

9 Q. Page 71, if you'll look at that.

10 A. Is this plaintiffs'?

11 Q. Yes.

12 A. This is from April. So I think this is --
13 Julie is out of the picture now. And then David
14 wanted to look at them directly. So I e-mailed April
15 the same thing I e-mailed Julie in the past, which is
16 an accountant's copy of the QuickBooks file for K&T
17 Group.

18 Q. And is that referenced on page 75 or is that
19 something different? Or is 75 the one you sent and
20 received no response for?

21 A. I'm pretty sure this is one of the times I
22 didn't receive a response. That's in January. He was
23 not responding at that time. He wasn't responding
24 between like November and I would say -- when I say
25 responding, he responded with a check at some point in

1 March or April. On 74 is where I was asking for a
2 check from David directly.

3 Q. What does page 85 and 86 represent?

4 A. 85 is the parking card. And this e-mail was
5 sent by April on the next page. It was sent August
6 5th, 2021.

7 Q. So that was confirmation that he had been
8 using the office?

9 A. It was confirmation that Spears had been
10 there. I don't know. This kind of turned into when
11 did Spears get there. I don't really care when he got
12 there. I cared about when the office was occupied,
13 which is at the beginning of the year. That's clear
14 to me.

15 Q. Okay. Look at Defendant Number 11 dated
16 Friday April 22 of '22.

17 A. It says -- well, this is where April says we
18 deposited 28,000 blah, blah, blah into the K&T account
19 at First Reliance.

20 Again, this is -- oh, I don't know. It said:
21 The contribution was calculated based on what we
22 understand from prior e-mails from you. This includes
23 contributions from January through April into the
24 account for the use of office by Jay Spears from
25 August 5 through December 31st.

1 So basically at this point, they're -- and I
2 don't know when Spears came. I wasn't saying that he
3 came on the 5th. I just was saying I know he was
4 there --

5 Q. Did this account for someone using the office
6 from January until August?

7 A. No.

8 Q. Okay.

9 A. I mean, they were basically taking the
10 position they weren't going to pay for the office
11 prior to August the 5th.

12 Q. And even then, the August the 5th through
13 December 31st wasn't paid until April of the next
14 year?

15 A. Correct.

16 Q. Okay. So unequivocally through this -- well,
17 strike that.

18 A. Well, they sent some additional e-mails on --
19 it was Friday? This Friday? And Sunday. And there's
20 an internal e-mail in here that I have.

21 Q. Call out the number, please.

22 A. I'm looking at 103 right now. I think this
23 is it. It says: Grant and Foley -- those are his two
24 associates -- tell me that we are hiring a new law
25 clerk that will be here full time starting in May and

1 then I know we are looking to hire a new associate.

2 So, I mean, they know on April the 20th that they
3 have certainly taken, again, possession of that office
4 permanently and they intend to keep it permanently and
5 that I know it was occupied since the beginning of the
6 year. I mean, I walked past the office every day that
7 I was working during that time.

8 Q. And, again, your position is that you are
9 supposed to make timely payments, correct?

10 A. Yes. I mean, he knew if he occupied the
11 office, he was supposed to pay for it.

12 Q. After the April payment that he made, did he
13 pay May or June?

14 A. No, he did not. I mean, he was late when we
15 filed the complaint. He had not paid those months.
16 That's why I put it in the complaint.

17 Q. When did Edward Lapine start working for you?

18 A. Sometime in February.

19 Q. So he would have been there and he would be a
20 witness to when it was that that office was occupied?

21 A. Right. He would have had to walk by that
22 office to come into my office, and he would have been
23 doing that on a regular basis. And that was February
24 of '21.

25 Q. Almost done, Your Honor. If I could just

1 have a moment.

2 It's your position today that David Taylor
3 breached his duty of loyalty and care of K&T?

4 A. That's correct.

5 Q. And that's supported by the occupied, unpaid
6 office spaces that he took advantage of and used?

7 A. On a repeated basis.

8 Q. And that he breached his duty and had a
9 conflict when he did not maintain his bank accounts or
10 his operating account at the bank that he promised to
11 do at Ameris Bank?

12 MR. DUFFY: Object to the form, Your Honor.
13 That's, first of all, legal conclusions for whatever
14 that's worth. On top of it, he's going back to a
15 breach of a 2014 agreement and keeping an account at
16 the bank.

17 THE COURT: I'll sustain that.

18 MR. SLOTCHIVER: Withdraw that one, Your
19 Honor.

20 Q. And paragraph 29, your claim states an
21 assertion that he engaged in wrongful conduct that
22 adversely and materially affected the company's
23 business.

24 Is that by not making payments?

25 A. By refusing to pay rent, yes.

1 Q. And that he willfully and persistently
2 committed a material breach of the operating agreement
3 or of a duty owed to the company or other members?
4 Same basic argument?

5 A. Yes.

6 Q. And he engaged in conduct related to the
7 company's business which makes it not reasonably
8 practical to carry on the business?

9 A. Correct.

10 Q. Is the fact that at some point down the road
11 after basically screaming and shouting and arguing and
12 writing letters that he would ultimately make
13 payments, does that alleviate the fact that he didn't
14 make them on a timely manner?

15 A. No. I mean, he ultimately would make the
16 payment. He has never really made the payment this
17 last time. I mean, he maintains this position that he
18 didn't have possession of that office for that whole
19 year when he did.

20 And I guess whatever that counterclaim is, I
21 don't think I understand it. I think it supports my
22 claim, actually.

23 Q. And then let me just make sure. I want to
24 read to you a portion of the testimony and ask you if
25 this is consistent with your understanding.

1 And this is testimony from David Taylor.

2 "Would the terms of the settlement basically be
3 that you own office space together, that you would
4 each pay for the office space that you occupied and if
5 you occupy more space than the other partner owns then
6 you will pay the 1250 per month for that office?"

7 MR. DUFFY: Object to the form, Your Honor.
8 It's testimony from another witness who has not
9 testified yet, and there's a whole lot more in that
10 deposition that we can go down.

11 Q. Is that your understanding?

12 THE COURT: Overruled. Go ahead. You can
13 answer.

14 A. That was the agreement that we came to
15 through Dan Legare, that as far as I'm concerned has
16 been our agreement ever since and just simply not been
17 adhered to.

18 Q. Was it also your agreement beforehand? Was
19 that always your understanding even before then?

20 A. Well, yes. But, I mean, we did have the
21 offices full. I mean, he actually created the need
22 for me to be able to rent those offices individually.
23 And once I started doing that, that kind of changed
24 everything, and we went to the 1250 per month.

25 Q. How did he create the need for you to do

1 that?

2 A. We had the whole side rented, including
3 there's an office behind the reception area and that
4 office has a door on each side so it can go sort of
5 with the right side or it can go kind of with the left
6 side.

7 We had it rented to NEFA. And when they moved
8 out, I asked Leslie Fellabom (ph) to, you know, come
9 down and lease the space out. And she saw that Sallie
10 was in that office. And she goes: How are you going
11 to lease this out, you know, when you've got somebody
12 over here?

13 And Sallie wasn't leaving, I guess. So that's
14 when I just started leasing them individually. I told
15 David that's what I was going to do, and he was fine
16 with it, and that's what I did.

17 MR. SLOTCHIVER: We would move into evidence
18 the packets of e-mails that we produced, Your Honor.

19 THE COURT: Okay. That was I think marked as
20 Plaintiff's 1 or 2?

21 MR. SLOTCHIVER: I believe -- I have one
22 document that I haven't gone to. I will very briefly.

23 Number 1 was the plaintiffs' e-mails.
24 Defendants' was Number 2. And then we have the
25 operating agreement, which was 3. And then we had --

1 and 4 was not admitted. For ID purposes only.

2 MR. DUFFY: No objection to operating
3 agreement as stated. And generally no objection to,
4 you know, the authenticity of e-mails except for
5 everything goes back to the same motion in limine.

6 (PLAINTIFF EXHIBIT NUMBERS 1, 2, 3 WERE
7 ADMITTED INTO EVIDENCE.)

8 THE COURT: Okay. Got it.

9 MR. SLOTCHIVER: All right. Thank you, Your
10 Honor.

11 THE COURT: Yes, sir. It's 12:15. How much
12 time are you going to take?

13 MR. DUFFY: Certainly more than 15 minutes,
14 Your Honor.

15 THE COURT: More than 45 or not?

16 MR. DUFFY: Probably around there.

17 THE COURT: I'd just as soon roll through it
18 if you would.

19 CROSS EXAMINATION

20 BY MR. DUFFY:

21 Q. Good afternoon, Mr. Kachmarsky.

22 A. Good afternoon.

23 Q. Is it all right if I call you John?

24 A. That's okay.

25 Q. Okay. Thank you. I just want to touch base

1 on a couple of things that you went through with
2 Mr. Slotchiver, and I'm going to hand you one of
3 the -- a page that was on one of the -- in the e-mail
4 group there that counsel had identified or moved in as
5 an exhibit.

6 They weren't numbered yet, but this is an e-mail.
7 If you'll see, it's March 13th, 2014. Do you see the
8 e-mail at the bottom from you to Linda Kennedy?

9 A. I see: The agreement for Taylor Capital, LLC
10 will be coming from April. The sooner we can get a
11 definitive answer on this, the sooner I can get rid of
12 Wells Fargo.

13 Q. Right. So you were indicating you were
14 looking forward to getting rid of Wells Fargo?

15 A. They were getting rid of us would probably
16 have been a better way of characterizing.

17 Q. That's not how you characterized it at the
18 time, though, is it?

19 A. No.

20 Q. Okay. There were some talk about Taylor
21 Foley not paying market rent for their office space.
22 Does your law firm pay market rent for its office
23 space?

24 A. They're not paying rent for the extra offices
25 they have, and I've explained this. I am paying rent

1 in the form of -- we both pay rent in the form of we
2 put equal amounts in after we collect rents. That is
3 our rent.

4 Q. I understood all that. But what I kept
5 hearing Mr. Slotchiver saying --

6 MR. SLOTCHIVER: I'm not sure he has finished
7 his answer, Your Honor.

8 A. We got into this in my deposition. You want
9 to talk about whether or not it's rent or it's
10 capital. It's rent. I put the money --

11 Q. That's not what I'm asking you.

12 MR. SLOTCHIVER: Let him finish his answer.

13 Q. I asked if you're paying fair market value.
14 Is your law firm paying fair market value for the
15 space that you occupied?

16 A. I don't know.

17 Q. Don't know? Didn't Mr. Legare suggest
18 everybody get fair market value leases to avoid all
19 this?

20 A. I agreed with the statement that he made, but
21 I am not in agreement with putting money into an
22 account when I am fighting with somebody who is not
23 paying their rent so that I am now in a situation
24 where I'm paying his expenses would really be what it
25 boiled down to.

1 Q. Mr. Kachmarsky, I'm not asking for the whole
2 story we just heard. I asked about fair market value
3 rent. You said you don't know if you're paying it.
4 I said didn't Mr. Legare suggest y'all get leases for
5 fair market. Is that a yes?

6 A. Yes, it is a yes.

7 Q. Okay. Thank you. You didn't want to do it,
8 do you?

9 A. I think I did it.

10 Q. You did get fair market value leases?

11 A. I told you on -- well, I told on direct
12 testimony that I wasn't going to do that and I said
13 the reason why.

14 Q. Did you produce any leases between K&T Group
15 and Taylor Foley or your law firm?

16 A. There are no leases.

17 Q. Right. There aren't any leases.

18 A. Right.

19 Q. Okay. So you didn't do it, did you? You
20 didn't enter fair market value leases as Mr. Legare
21 suggested as a way to stop what you were concerned
22 about?

23 A. It wasn't -- well, no, I didn't.

24 Q. Okay. Now, you testified that other than two
25 years of someone associated with Mr. Taylor keeping

1 the books that essentially you have handled the books
2 and the leasing and everything for the company since
3 2003; is that right?

4 A. Pretty much, yes.

5 Q. So you have been in control of its
6 operations?

7 A. I wouldn't say control. I mean, I have
8 handled the leasing and I have handled the books.
9 I've paid the bills, and we own it 50/50.

10 Q. Okay. What else does it do as an operation
11 other than lease and pay bills and get listings, get
12 people signed up? What else does it do?

13 A. Deal with banks.

14 Q. Do you do that?

15 A. I have, yes.

16 Q. Okay. You do that and not Mr. Taylor?

17 A. Well, he has had to provide his information
18 separately.

19 Q. But you manage that relationship. You just
20 told us already.

21 A. I mean, what --

22 Q. You manage the relationships with the banks,
23 right?

24 A. I'm the one who has dealt with the banks.

25 Q. Right. You've managed the operations of the

1 LLC of K&T Group?

2 A. I have, yes.

3 Q. Okay. Now, will you agree with me that the
4 only money in dispute with the claims that you brought
5 that you say is owed is this rent that we're talking
6 about from January 2021 through July of 2021?

7 A. I'm not sure about that, actually. I mean,
8 I'm under like a quantum merit theory. I know that
9 this has been an expensive relationship for me. It's
10 cost me a lot of money over the period of time that we
11 have been in this thing together.

12 Q. Okay. Would you agree with me that you would
13 characterize the situation as if you're talking about
14 anything within three years of before the lawsuit that
15 you're, quote, "pretty square"?

16 A. David, as I said, testified he has paid the
17 rent after I essentially, I don't know, forced him to
18 after every round we've gone through. And at this
19 point, the difference in what he paid and what I said
20 he should pay is the amount in dispute, whatever that
21 is.

22 Q. That's what I started asking. We're talking
23 about the \$8,750. That's the only amount of money in
24 dispute right now. And you're trying to hedge on
25 that. So I want to know is that the only amount of

1 money in dispute?

2 A. I'm trying to hedge on it because it's cost
3 me a lot of money over the course of 20 years.

4 Q. Right. And then I said, okay, well, let's
5 talk about anything within three years of when you
6 brought suit, and you said before that you're pretty
7 square. Do you agree with that now or no?

8 A. Based on the rents, again, yes. I mean, it's
9 what we agreed to. What I -- the difference between
10 what I asked him to pay and what he paid is the amount
11 that is arguably in dispute at the moment.

12 Q. Okay. Got it. Now, one thing I didn't hear
13 you talk about on direct is the idea that y'all
14 agreed -- you indicated, didn't you, that if somebody
15 was temporarily using an office, it didn't have a
16 permanent employee there, you didn't expect any law
17 firm to pay rent for that?

18 A. I have never agreed to that. I mean, that
19 keeps coming up. And I think I made it clear in my
20 e-mail to him that I expected him to pay rent for an
21 extra office if he used it.

22 Q. Would you agree with me that it was your
23 position and has been that you expect Taylor Foley to
24 pay rent if Taylor Foley's occupying an office
25 permanently, which you would say means you can't show

1 it for lease?

2 A. If they have exclusive possession of it I
3 think is the term I would use then they should pay
4 rent for it.

5 Q. Okay. But I want to make sure. I want to
6 understand if you're agreeing with me or not.

7 Well, the question is if it's something of a
8 temporary nature and there is otherwise space opened
9 for rent and you can still show the office that's
10 temporarily being used to be leased, are you saying
11 that Taylor Foley should pay rent for that or is okay
12 not paying rent for that?

13 A. They should pay rent for it.

14 Q. Okay.

15 MR. DUFFY: Your Honor, may I open the sealed
16 deposition?

17 THE COURT: Please do.

18 Q. There you are, John. John, I'm going to ask
19 you to follow with me in a few places. First, if you
20 will turn to page 32 with me. We're exploring this
21 topic in a deposition, and I'm asking about this
22 temporary nature of things. And you'll see at the top
23 of 32, I'm saying: Do you expect that the firm would
24 pay -- for the firm to pay rent for that office in the
25 circumstance of something temporary?

1 And your answer was: I expect them to pay rent
2 if I cannot show the office and cannot lease it.

3 Do you see that?

4 A. I do.

5 Q. Do you agree with that?

6 A. I do.

7 Q. Okay. And then I asked: Tell me what makes
8 an office an office that you can't show or lease.

9 And your answer was: Well, if he's got somebody
10 in there permanently. I'm not going to go show an
11 office that's in there permanently. Okay. I'm going
12 to ask him to pay rent for it. And that's pretty much
13 our history.

14 Did I read that correctly?

15 A. Yes.

16 Q. You mentioned "permanently" twice, right?

17 A. If that's what I did, yeah.

18 Q. Well, you see it, don't you? I'm not making
19 that up.

20 A. Okay.

21 Q. Okay. And then you say that's what your
22 history has been, right?

23 A. That's what it says.

24 Q. Okay. And then on page 34, when I'm again
25 addressing somebody in there temporarily, and I say:

1 Okay. You could show it even if somebody is using the
2 office?

3 And you say: I guess, yeah.

4 A. Yeah. And I've learned since that that
5 honestly is not true.

6 Q. Okay. So you're changing the deal from the
7 time of your testimony of your deposition which was --

8 MR. SLOTCHIVER: Objection. Argumentative.

9 Q. -- July 7th, 2023?

10 THE COURT: Just one second. Hold on,
11 everybody.

12 MR. SLOTCHIVER: I want to make an objection.
13 Argumentative. He's badgering him. He can ask him a
14 question and he'll answer the question. He doesn't
15 have to beat him up.

16 THE COURT: All right. Mr. Duffy, restate
17 your question.

18 Q. I believe my question was answered in that,
19 in fact, you could still show an office even if
20 somebody were temporarily using it; would you agree
21 with that?

22 A. No, I would not.

23 Q. But you did agree with that at the time of
24 your deposition?

25 A. I said, "I guess" --

1 Q. Okay.

2 A. -- at that point but that has not been what
3 has happened. And what I have learned the hard way is
4 that an office that has maybe not so much furniture
5 but if you've got a person in an office and you show
6 that office to a prospective tenant, they're not going
7 to bite on it.

8 I mean, the history has been real clear. And the
9 same thing with putting boxes or stuff like that in an
10 office. If you show that office to a person that has
11 boxes in it, they're going to -- inevitably they don't
12 take it. I just went through this with some of my
13 offices downstairs.

14 Q. Okay. But as far as your deal with
15 Mr. Taylor, when you're saying you're expecting him to
16 pay rent if someone is in there permanently and you
17 can't show it, the understanding was you could still
18 show it if someone was in there temporarily?

19 A. You might be able to show it. I'm not even
20 sure Zach would show it. Zach Lord who is -- if he
21 saw offices that had people in them or that had junk
22 in them, debris, whatever, he basically would not show
23 them. He stopped showing them.

24 Q. Okay. Well, whatever that hypothetical may
25 be after the fact of this issue, you can't tell me

1 that somebody tried to show the office that we're
2 talking about whether rent should be paid from January
3 1 through the end of July, can you?

4 A. What was the question?

5 Q. There was no effort that got blocked?

6 A. Actually, that is a question you need to ask
7 Zach Lord.

8 Q. Okay. You're not aware of any evidence to
9 suggest someone tried to show that office and
10 couldn't, are you?

11 A. I'm not aware of anybody showing that office
12 when there was somebody present in it, either.

13 Q. Okay. Now, about this particular office,
14 would you agree with me that someone from Taylor Foley
15 advised you that somebody was going to be hired on a
16 temporary basis and would be in that office and you
17 had no objection to it?

18 A. I didn't object to it. I didn't know how
19 long temp -- I didn't know what that meant.

20 Q. At the time of this very office we're talking
21 about, when you understood it was going to be in
22 temporary use, you did not expect Taylor Foley to pay
23 rent for that; is that fair?

24 A. I expected them to pay rent for it after they
25 kept it for a month and they kept using it. They

1 should have paid rent for it.

2 Q. Okay. Let's be clear about it and look on
3 page 37, please.

4 A. Okay.

5 Q. So we're talking about the particular office
6 at issue. And I was asking: Did you ask anybody who
7 this person was who showed up?

8 And you answered: I didn't ask anybody. I was
9 told that she was somebody that they had hired on a
10 temporary basis and that she was going to be in there
11 for a little while or something, and the office was
12 empty, and I didn't have any objection to it.

13 And then I asked: Okay. So you didn't object to
14 it at the time; is that right?

15 And your answer was: No, I didn't.

16 A. That's because Taylor had an obligation. He
17 knew he had an obligation.

18 Q. Can I ask the question first? Is that right?

19 A. That's what it says, yes.

20 Q. Okay. And then later is --

21 MR. SLOTCHIVER: Your Honor, he can finish
22 his answer.

23 A. I mean, it goes to -- because I knew
24 Taylor -- he knew that he was supposed to pay rent for
25 the office, 1250. I wasn't supposed to go out there

1 and ask him to do what he knew he was already supposed
2 to do and he had agreed to do.

3 Q. No one was going in there permanently, which
4 is what you testified was a problem with showing it.
5 You weren't going to show if it was permanent. They
6 told you it was going to be temporary, and you didn't
7 object, correct?

8 A. They also told me that the office was not
9 occupied until August when they took permanent
10 possession of it in May. And when I use that term
11 "permanent," they had had somebody in there for the
12 four months prior to that. They had permanent
13 possession of the office for the entire year.

14 Q. You didn't decide until 2022 that you thought
15 they should pay for the time that the temporary person
16 was in there; isn't that right?

17 A. I didn't decide anything. I decided finally
18 to tell him he what he already knew, which was he
19 supposed to pay that money.

20 Q. You got approached, told someone it was going
21 to be temporary, said that's fine with you, and then
22 later when you were in an argument about stuff that
23 should get paid, you said, by the way, you should pay
24 me for the full year. Am I right?

25 MR. SLOTCHIVER: Objection.

1 Mischaracterizing the evidence.

2 THE COURT: Overruled. Go ahead.

3 A. I mean, I realized when we got the special
4 assessment that -- and I was moving some people into
5 another office, I realized at that time that he had
6 possession of the office during the entire year.

7 Q. Okay. Let's --

8 A. And that he had not paid rent for it. And I
9 asked him to pay the rent on it, which he should have
10 done by himself.

11 Q. Let's look at page 37. I'm not misstating
12 anything. I'm trying to get direct answers, and if we
13 have to go back to your testimony, we'll just look at
14 it.

15 So page 37. I say: Okay. When did you decide
16 later that rent should have been paid for the
17 temporary employee sitting in that office?

18 Your answer was: I decided after I was ghosted
19 from November of '21 through May of '22.

20 Is that right?

21 A. That's when I decided that I was going to
22 tell him that he needed to pay it. But, again, that
23 doesn't remove his obligation to have done it in the
24 first place.

25 Q. You just said -- do you agree with me that

1 you told them I have no objection to a temporary
2 employee being in there?

3 MR. SLOTCHIVER: Asked and answered
4 repeatedly.

5 THE COURT: Okay.

6 Q. Good. Okay. Now, when you were testifying
7 at your deposition, I understood you to say that the
8 office was occupied from January 2021 through July of
9 2021 by the same woman. Is that your understanding?

10 A. Well, my understanding at this point is I
11 don't -- I testified to what my understanding is at
12 this point.

13 Q. Right. Now you're saying that there was two
14 different people?

15 A. Well, there was one or two women. I don't
16 know if they're the same ones or different ones. And
17 there was one gentleman.

18 Q. Will you turn -- do you have the defendants'
19 binder in front of you?

20 24 is what I want to look at. If you look with
21 me, I'm going to start at the back e-mail which is one
22 from April Shores to you on April 20th of 2021.

23 And you know April Shores worked from Taylor
24 Foley?

25 A. Of course.

1 Q. Okay. And she is indicating to you in April
2 that they have a new intern who will be working
3 starting in May. Do you see that?

4 A. Yes.

5 Q. And he's asking you if they can rent a
6 parking card from you; is that right?

7 A. Correct.

8 Q. And, in fact, they did rent one from you for
9 some time; is that right?

10 A. They did.

11 Q. Okay. And April tells you that she starts on
12 May 3rd; is that right?

13 A. That's what the e-mail says, yes.

14 Q. Okay. And this is Gabrielle Murphy who was a
15 summer intern for Taylor Foley; is that your
16 recollection?

17 A. I have no recollection of this. I didn't
18 know what a clerk was, where the clerk was going to go
19 or anything. I just know that they asked me for a
20 parking card. I had one, and I let them use it.

21 Q. And you were citing earlier in your
22 testimony, you pulled out and called attention to
23 Defendants' 103 in I believe it was Exhibit 2 for the
24 plaintiffs' that was Bates-labeled Defendants' 103.

25 A. This is number 2 here?

1 Q. No, I'm sorry. It's what you pulled out
2 earlier when you were on direct. So it's from the --
3 did you hand over the documents?

4 A. I've got some.

5 Q. From Dan? I'm talking about documents from
6 Dan, the second stack.

7 MR. SLOTCHIVER: The Court has them.

8 Q. Okay. So if you turn to page 103, please.
9 Do you remember this e-mail and you calling it to the
10 attention of the Court earlier?

11 A. Yeah. Because it's the first time I saw it
12 was like on Friday.

13 Q. And you see here, this is an internal
14 discussion from April to David saying that we have
15 this new law clerk starting, right?

16 A. That's what I --

17 Q. That's what this was about. Are you with me?

18 A. Yeah.

19 Q. Okay. And if you see the second paragraph,
20 it says -- well, we'll start with the second sentence
21 where she's indicating it would probably be best to go
22 ahead and get the basics furniture wise, desk, chair,
23 and rug for the office.

24 So is it fair to say that before April, there
25 wasn't even a desk, chair, or rug in the office?

1 A. No, I don't think that's fair to say. There
2 was somebody sitting in there, and they were there
3 from the beginning of the year.

4 There was some type of furniture in there. I
5 didn't pay that much attention to it. There was a
6 person sitting behind a table or a desk, whatever you
7 want to call it. And that was from January 1 through
8 December 31st.

9 I didn't pay attention to the changes in the
10 furniture. But there was furniture in there and there
11 was a person in there.

12 Q. Right. And in your deposition, you testified
13 that that person was in the office from the beginning
14 of January to when they hired Mr. Spears in August; do
15 you recall that?

16 MR. SLOTCHIVER: Asked and answered. He's
17 already testified he doesn't know who it was but that
18 it was a female, but it might have been two people.

19 MR. DUFFY: Your Honor, in his deposition, he
20 testified that the same woman was there from January
21 to the end of July. Earlier -- now after he's just
22 seeing this documents he said he saw on Friday, now
23 he's saying it's two different people. So I want to
24 clarify that.

25 A. I didn't say it was two different people. I

1 said it might have been two different people or could
2 have been the same one. I don't know.

3 MR. SLOTCHIVER: That's what he said a few
4 minutes ago, the exact same thing. He said I'm not
5 saying it was the same person. He said there was a
6 female there up until a certain point and then a
7 gentleman, if you recall.

8 THE COURT: His position is it was occupied
9 since January 1. On that, I'm clear. Okay?

10 Q. Okay. Mr. Kachmarsky, I just want to
11 understand your testimony. You're saying that -- can
12 we agree that at least at the time of your deposition
13 that your testimony was that there was a woman who
14 stayed there from the first of the year until
15 Mr. Spears came?

16 A. That's what I said in my deposition, yes.

17 Q. Okay. And am I correct that today you're
18 saying it might not have been the same woman; it might
19 have been somebody else?

20 MR. SLOTCHIVER: Same, asked and answered for
21 the third time.

22 MR. DUFFY: I'm trying to clarify.

23 A. There was someone in that office for some
24 period of time. That's all I know. I mean, I can
25 tell the difference between a man and a woman real

1 easy.

2 Q. Right. And you said she was in there all the
3 time; is that right?

4 A. A woman was in there all the time.

5 Q. Okay. That's my only point is today for the
6 first time I heard you say that it might have been two
7 different people.

8 A. It could have been three different people. I
9 don't know.

10 Q. Okay. Got you. And you just recently saw
11 the e-mails which indicated when the law clerk was
12 going to be starting for Taylor Foley in May; is that
13 right?

14 A. Yeah.

15 Q. Okay. Got it.

16 A. Yes.

17 Q. Now, isn't it true that you basically -- at
18 this point, you just sent any referrals to Zach -- any
19 referrals for leasing to Zach at Carolina One?

20 A. I have created a website called
21 frankebuilding.com. We traditionally have advertised
22 on Craigslist. And when I get leads, I forward those
23 e-mails to Zach Lord and he takes it from there.

24 Q. Right. And even David sent you some leads
25 and you forwarded those to Zach?

1 A. Correct.

2 Q. Okay. Okay. And can you agree with me that
3 David Taylor or Taylor Capital has done nothing to
4 frustrate K&T leasing space in the property?

5 MR. SLOTCHIVER: I'm sorry. I didn't hear
6 you, Brian. I apologize.

7 Q. Let me clarify. From any time three the
8 years before the lawsuit until now, can we agree that
9 there's nothing that David Taylor is doing to
10 frustrate the operation of K&T leasing out the
11 property?

12 A. If he has somebody in an office or if he's
13 putting files in an office, which he has done, he is
14 frustrating K&T leasing.

15 Q. Okay. Will you turn to page 29 for me in
16 your deposition? I want to clarify the timeframe.
17 Because my question here was whether at the time of
18 your deposition, so let me say it a little
19 differently.

20 At least at the time of your deposition, the
21 property was fully rented; is that right?

22 A. It was fully rented at that time, yes.

23 Q. Okay. And, in fact, you had had an
24 agreement -- let's go ahead and introduce that.

25 Will you turn to Exhibit 12, please? Are you

1 with me?

2 A. Yes.

3 Q. Okay. This is a listing agreement that you
4 entered into with Carolina One Real Estate, right?

5 A. Looks like it, yes.

6 Q. And is this what basically gives Zach Lord
7 the responsibility as an agent?

8 MR. SLOTCHIVER: Your Honor, can I place an
9 objection on the record? I'm not really sure what the
10 relevancy is. At this point, they have dismissed
11 their initial counterclaim that dealt with leasing
12 issues, so I don't know how this is relevant to where
13 we are today.

14 THE COURT: Okay.

15 MR. DUFFY: This is the point that David
16 Taylor is not frustrating any leasing that is being
17 done by Zach Lord. And I'm getting to the point where
18 in his deposition, Mr. Kachmarsky says ever since I
19 had this agreement, it's basically been fully
20 occupied. And that's perfectly relevant to the fact
21 that this place is operating just fine.

22 THE COURT: Okay.

23 MR. DUFFY: I'm going to get there if I can.

24 THE COURT: I'll allow it. Overruled. Go
25 ahead.

1 Q. Now you know where I'm going, John. You see
2 Exhibit 12?

3 A. Okay.

4 Q. This is when you entered into an agreement
5 that gives Zach at Carolina One -- lets him be the
6 agent for leasing the building, right, the suite?

7 A. Yes.

8 Q. Okay.

9 A. I think so. I'm pretty sure it is.

10 Q. Now, to be clear, it's giving him authority
11 to lease more than just 330; it's your other suites as
12 well, correct?

13 A. I don't see any suites listed on here.

14 Q. Okay. Well, I mean, just at the top where it
15 says address, vacant executive space, and available
16 offices.

17 A. Okay. That's what I was looking for, yes.
18 It's 140, 150, 230, 330 and 340.

19 Q. Right. And we're talking about 330?

20 A. 330 is K&T.

21 Q. Okay. Would you agree with me other than a
22 month or two from the time this agreement was entered
23 in 2021, at least until the time of your deposition in
24 July of 2023, that Suite 330 was fully occupied?

25 A. Give me the timeframe again, please.

1 Q. This agreement was entered June 1, 2021.
2 Your deposition was July 7, 2023. And it's my
3 understanding that Suite 330 has been fully occupied
4 during that time other than maybe a month or two; is
5 that right?

6 A. I think that's correct. And I do own --
7 there is a vacancy now. We had a vacancy that came
8 open in August, and we have another one that came open
9 this month.

10 Q. Okay. And do you know what efforts have been
11 made to lease those?

12 A. Same efforts as always.

13 Q. Okay. And so let me get back to my question
14 in the deposition, which was at the time of your
15 deposition, is there anything that David Taylor was
16 doing to frustrate the operation of K&T leasing
17 property?

18 MR. SLOTCHIVER: Where are you looking at the
19 deposition?

20 MR. DUFFY: Page 29 line 10.

21 A. Am I supposed to be looking at that now?

22 Q. Yeah. Sorry, John. Page 29, line 10 where I
23 asked: Is there anything that David Taylor is doing
24 to frustrate the operation of K&T leasing out the
25 property now?

1 A. Okay. Well, the thing I'm trying to explain
2 to you is we were full at that time. So, no, there
3 wouldn't have been anything that he could do. And
4 I -- other than having April Shores in the office who
5 is telling our tenants what to do and what not to do
6 and that sort of thing, which I think is very -- has
7 been very frustrating.

8 But other than that, no, there was not a vacancy
9 and there wasn't anything he could be doing to be
10 frustrating the leasing at that point.

11 Q. Okay. And so now when you say there are two
12 vacancies, is there anything that David Taylor or
13 Taylor Capital is doing to frustrate the leasing of
14 the space now?

15 A. At this point, there's not that I'm aware of.

16 Q. Okay. Okay. The basic setup of the business
17 that you described, is it fair to say that each of
18 your law firms occupies space in Suite 330?

19 A. Each of our law firms does occupy some space
20 in Suite 330.

21 Q. And each of your law firms pays rent for
22 space in 330?

23 A. Yes, we pay rent.

24 Q. Okay. And it's been part of what we're
25 talking about here is that the rent is determined

1 based on what other funds are coming in to K&T Group;
2 is that right?

3 A. Yes.

4 Q. Okay. And so isn't it true that in some of
5 the -- at least one of the circumstances that you were
6 talking about earlier, your law office had decided not
7 to use an office that it had been using, and so you
8 went to Taylor Foley and said now you have to pay
9 higher rent; is that right?

10 A. Yes. The example I gave you was that if we
11 had a \$2500 negative deficit and we had two offices --
12 or we had one office that was vacant, that would be
13 the one I moved out of, that office was rented for
14 2500, David would pay another 1250. 1250 each.
15 Basically he's paying the exact same amount, but he's
16 paying it in the form of rent and not as a deficit.

17 Q. I understand. And so in fact that happened
18 also in this 2022 timeframe, isn't that right, when
19 beginning in January, you took an additional office so
20 that then affected that Taylor Foley's rent could stay
21 where it was?

22 A. He had two more offices than me, and I asked
23 him to pay for two more offices than I had.

24 Q. Right. And you were letting him know you had
25 taken a different one so his obligation would vary

1 based on what you had done?

2 A. My obligation would vary based on what he
3 does as well, that's correct.

4 Q. Now, we talked about Dan Legare recommending
5 fair market value leases to avoid any disputes like
6 this. Has David proposed using a property manager?

7 A. He has.

8 Q. Okay. And you didn't want to do that, did
9 you?

10 A. No.

11 Q. Okay. How long have you been a lawyer,
12 Mr. Kachmarsky?

13 A. 40 years.

14 Q. Okay. And you specialize in business
15 organizations and business formations; is that fair?

16 A. I form them.

17 Q. Okay. And you advise your clients when you
18 form them; is that right?

19 A. Correct.

20 Q. And in this agreement, the K&T Group, LLC,
21 you decide here -- you agreed that company would be a
22 term company; is that right?

23 A. That's correct.

24 Q. And, in fact, I believe you testified that
25 that is what you recommend your clients all the time?

1 A. Right. It creates perpetual duration.

2 Q. Perpetual duration. And it has limited
3 transfer and exit rights; is that right?

4 A. Right.

5 Q. Okay. You can either look at 3 or 1 one for
6 us. It's the operating agreement for K&T.
7 Plaintiff's 3 or Defendants' 1.

8 So I would like to walk through a couple of
9 provisions here, John. If you look with me on page 2,
10 section 127 is in fact where it is stated this is a
11 term company; is that right?

12 A. Yes.

13 Q. Okay. And if you turn with me to page 326 --
14 I'm sorry. To page 8, section 3.6, do you see that
15 there's -- ceasing to be a member is if you transfer
16 your entire membership share or are expelled by
17 judicial determination, those are two ways you cease
18 to be a member?

19 A. Yes.

20 Q. And transfer of a share would be by unanimous
21 approval; is that right?

22 A. I think it would require both parties
23 agreeing.

24 Q. Okay. Another provision I want to highlight
25 is 3.8. This company may make a mandatory capital

1 call. Do you see that provision?

2 A. Yes.

3 Q. Okay. If you look with me on page 13,
4 section 5.5, a management committee meeting may be
5 called at any time by any manager. Do you agree with
6 that?

7 A. Yes.

8 Q. And if you look with me on page 26, section
9 11.2, that's the wrongful disassociation section in
10 the transfer article. It's about the right to buy.
11 Do you see that?

12 A. Yes.

13 Q. Do you see there that about a quarter of the
14 way down in that section, it says notwithstanding
15 anything in this agreement or the act to the contrary,
16 any purchase price to be paid for a wrongfully
17 disassociated membership share shall equal 75 percent
18 of the appraised value of such member's membership
19 share. Do you see that?

20 A. I do.

21 Q. Okay. And then there's reference to 11.3
22 with the purchase price, which is on page 28. And
23 that appraised value takes into account minority or
24 marketability discounts. Do you see that?

25 A. Yes.

1 Q. Okay. And the last point I just want to get
2 through is 12.2 is a notices provision. It's on page
3 30.

4 A. It's a generic notice provision.

5 Q. Right. And it says it shall be in writing
6 and hand delivered or sent by certified or registered
7 mail, postage prepaid. Do you see that?

8 A. I see it.

9 Q. Okay. You didn't send that kind of notice to
10 Taylor Capital for any default, did you?

11 A. Not in a postage envelope with all that, no.

12 Q. Okay. And you never called a member meeting
13 to address the claims about rent from January through
14 July, did you, of 2021?

15 A. I did not and neither did Mr. Taylor.

16 Q. Okay. And you didn't call a management
17 committee meeting, did you?

18 A. Informally, all of this was pretty much done
19 through the e-mails. I mean, it's . . .

20 Q. Okay. And you mentioned certain things
21 didn't get paid. You didn't make a capital call under
22 the agreement, did you?

23 A. You use the term capital call. You can call
24 it whatever you want to call it. It's semantics. I
25 told him what he owed, and I gave him the formula for

1 how it was calculated.

2 Q. You said Taylor Foley owed rent for that
3 office, right?

4 A. For the '21 we're talking about?

5 Q. Yeah.

6 A. After he didn't do what he was supposed to
7 do, I did, through an e-mail that you have.

8 Q. And there wasn't a vote that you called for
9 that ended in a deadlock, was there?

10 A. Well, if we didn't disagree, that's the only
11 vote we were going to have. That's where we were.

12 Q. You didn't send a notice for a meeting or a
13 vote or a default or anything?

14 A. No, and neither did Mr. Taylor.

15 Q. Right. He didn't sue you, did he?

16 A. Counterclaimed.

17 Q. Right. Okay. Would you agree with me that
18 the idea of getting a property manager is a reasonable
19 idea?

20 A. No, I think it's a terrible idea.

21 Q. Okay. You don't like it, but do you think
22 it's unreasonable and impractical?

23 A. I didn't say it's unreasonable. I think it's
24 a terrible idea for what we have and what we're doing.

25 Q. My question is is it in the context of people

1 who have an office suite that they're renting out to
2 different tenants and they occupy some together, is it
3 reasonable to have a property manager?

4 A. Reasonable or unreasonable? I mean, if
5 that's what you want, it's fine.

6 Q. Okay. And is it practical to be able to go -
7 - I mean, there are plenty of property managers around
8 that you can hire and it's practical?

9 A. There's plenty around.

10 Q. Okay. Now, the same question about getting
11 leases. If you could get, you know, the law firm to
12 enter into fair market leases, I mean, that's
13 something that is reasonable; is that right?

14 A. Well, my general opinion of where you're
15 going with this is that you hire somebody who you then
16 pay them 10 percent, at least the last time I looked
17 at this stuff, that's kind of the going rate, to do
18 essentially a job worse than is being done.

19 So all it would have done is cost money, and I
20 don't think there's any way they could have marketed
21 the space any better than it was already marketed.

22 Q. I'm talking about the fair market value lease
23 now. You agree with me that's something law firms
24 could reasonably do if they're in the situation like
25 your law firm and Taylor Foley?

1 A. If you want to get a property manager, yeah,
2 you can get one.

3 Q. Okay. We talked about that. Now I'm
4 talking -- so property manager is one way you could
5 address your situation. Another way like Dan Legare
6 proposed was get the law firms to enter fair market
7 value leases. Do you recall that?

8 A. I recall it, and I told you I was not going
9 to do that, absolutely not. Based on the history that
10 we had, that was -- I was not going to put money into
11 an account and then have somebody turn around and tell
12 me they didn't rent a space or didn't take it and then
13 use my money to pay bills that belonged to him.

14 Q. Right. But if you had a fair market value
15 lease in place, you could just say the lease says you
16 have to pay this, correct?

17 A. I don't know what that means actually.

18 Q. You would enforce the lease, right? If
19 Taylor Foley didn't pay what was required under the
20 lease, you would say, hey, you have to pay what's
21 under the lease and you could enforce that lease; is
22 that fair?

23 A. I have probably 25 or 30 month-to-month
24 leases, but they're month to month. I mean, you can
25 have a lease. A person wants to leave, they leave.

1 It doesn't really make any difference.

2 Q. I understand that you've chosen a different
3 course. My point is what Mr. Legare suggested is a
4 way to solve these issues is one reasonable way, and
5 would you agree with that?

6 A. It would have resolved the issues if you had
7 a partner who was going to basically do whatever he
8 said he was going to do. Every time you get a new
9 property, he's going to go in there and lease it
10 again? It's going to create a new lease and pay
11 money? That would have resolved this issue?

12 Q. I'm asking is it reasonable and practical for
13 a company that owns and leases space to enter into
14 fair market value leases with its tenants?

15 A. It's done all the time. I said if that's
16 what you want to do.

17 Q. And would you agree with me that Taylor
18 Capital is not in control of K&T Group?

19 A. He's not in control, and I'm not in control.
20 We are deadlocked 50/50.

21 Q. Now, you went through with Mr. Slotchiver the
22 sort of statutory provisions in your complaints about,
23 you know, different things that fall under those
24 provisions, and I just want to make sure I understand.
25 When I went through those things with you in your

1 deposition, and I think it's probably the same. I
2 just want to clarify.

3 Basically you're saying he's not paying rent for
4 space that's being used, and that's the answer to all
5 of these things?

6 A. It's been chronic.

7 Q. Right. You're saying it's all about not
8 paying rent, correct?

9 A. It's all about not paying rent or paying
10 capital calls or whatever you want to call it.

11 Q. That's a little bit different because you've
12 been calling it rent and it's not about rent and it's
13 about paying rent. You've said that over and over; am
14 I right?

15 A. Those terms in this context that we are in do
16 not mean anything different to me.

17 Q. Okay. Let's look at page 100 of your
18 deposition, please. Okay. I'm asking you about the
19 enumerated allegations of the complaint, and I said
20 I'm going to ask you about each of them. And I ask
21 you to tell me everything you think fits within that
22 category. Do you see that?

23 A. Yes.

24 Q. Okay. And then your answer was: Not paying
25 rent for space being used.

1 Correct?

2 A. Correct.

3 Q. And then you say: Wrongfully. I mean, it's
4 all about not paying rent.

5 Correct?

6 A. Correct.

7 Q. And then I go through the next pages and ask
8 you about each thing enumerated in your complaint
9 under the statutes, and your answer is: Not paying
10 rent. It's not paying rent.

11 Correct?

12 A. Right.

13 Q. Okay. Now, one point, what we're talking
14 about in this lawsuit that you claim hasn't been paid
15 is rent from January 2021 through July of 2021 --

16 MR. DUFFY: Objection, Your Honor.
17 Mischaracterizes the testimony.

18 THE COURT: Overruled. Go ahead.

19 Q. -- which comes out to be \$8,750, right?

20 A. That's what the number is today. That's not
21 what the number was when he failed to pay it. It was
22 more like \$30,000 on numerous occasions.

23 Q. The money you're asking for that you say is
24 in dispute any time -- I heard a lot from 2014 that
25 got resolved in 2015 and whatever arguments he had

1 before. But any time three years before you filed
2 suit in 2022, the only rent outstanding right now that
3 you contend is outstanding is 8,750?

4 MR. SLOTCHIVER: Asked and answered. He's
5 mischaracterized the testimony. He said that's the
6 amount still left but it's not the amount that was
7 owed at the time he filed it. It's not appropriate
8 with the Court because it's setting a message that
9 it's different than what he testified to.

10 THE COURT: Acknowledged. Overruled.

11 Q. I would be happy to go through the
12 deposition. Tell me what rent you think is
13 outstanding today.

14 A. I've already answered that question. I told
15 you it was the difference between what he paid and
16 what I put in my e-mail. I don't know what that
17 number is. It's \$8,000 or something like that.

18 Q. Okay. Great. Got it. Okay. And there's
19 \$8,000 in dispute. Would you agree with me that -- or
20 roughly 9,000.

21 Would you agree with me that the Suite 330 is
22 valued at somewhere close to \$2 million?

23 A. It's 325 a foot. 5,106 times 325 a foot.
24 Something like that.

25 Q. Okay. Is it fair to say at the time of your

1 deposition, you agreed that it was on a higher end 1.9
2 plus million dollars?

3 A. It was a little bit higher when I had my
4 deposition. There's an office for sale in that
5 building. It's for sale at 345 a foot, and there have
6 been no takers.

7 Q. Okay. Well, is it fair to say that a quarter
8 of the value is \$450,000 plus?

9 A. Walk me through the math.

10 Q. Well, it would be 500,000 would get you to 2
11 million. 450 is a good bit lower than 2 million. At
12 least that amount for 25 percent; would you agree with
13 that?

14 A. If it were 2 million and it was 75 percent of
15 that would be 1.5, I agree with that.

16 Q. Okay. And so half of that 25 percent -- so
17 Taylor Capital and your trust own the building half
18 and half, right? 50 percent each? The LLC, 50
19 percent each?

20 The value of Suite 330 roughly being just under
21 \$2 million, a quarter of that is roughly \$450,000?

22 A. Correct.

23 Q. Then half of that, meaning your part of that
24 and his part of that, 25 percent is \$225,000 -- just
25 these are approximate numbers. You agree with that?

1 A. Following the math.

2 Q. Okay. And so isn't it true that you are
3 seeking to push Taylor Capital out of the company and
4 get his interest valued at \$225,000 lower than it
5 otherwise would be plus discounting that would be
6 appropriate in an appraisal?

7 A. Well, as I told you in my deposition, that
8 was plan B. But it's now plan A.

9 Q. Right. So we've got under \$9,000 in dispute
10 for rent, and you're seeking to push him out and get
11 the value of -- at the low end \$225,000 from the
12 discount?

13 MR. SLOTCHIVER: Same objection.
14 Mischaracterization of the testimony.

15 THE COURT: Overruled.

16 Q. That's correct, right?

17 A. As you know, we have discussed partitioning
18 it as well, and that was plan A originally.

19 Q. Your lawsuit is about pushing him out and
20 getting this value as a result; is that right?

21 A. My lawsuit is -- I mean, this is what the
22 agreement says. That's what it says.

23 Q. Okay. And Taylor Capital is a member of the
24 LLC, correct?

25 A. That's my understanding.

1 Q. And Taylor Capital doesn't owe any rent to
2 K&T Group, does it?

3 A. I don't -- I mean, I don't -- it's the law
4 firm that I guess is level for the rent.

5 Q. Thank you.

6 MR. SLOTCHIVER: I won't be that long. Or we
7 can stop lunch. It's 1:15 now.

8 THE COURT: Let's just press on.

9 REDIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. John, there were questions given to you about
12 did you figure out the fair market value of your
13 personal offices.

14 My understanding your personal office and David
15 Taylor's personal office are basically mirrors of each
16 other.

17 A. They are the exact same square footage.

18 Q. So as long as you both are occupying one of
19 those offices and you're still sharing the rest of the
20 expenses after taking into account the money that came
21 in to offset it, it doesn't matter what those offices
22 are worth because the value to the two of you still
23 works out to be the same way?

24 A. That's always been my opinion.

25 Q. Mr. Duffy has repeatedly asked you questions

1 insinuating the only money that's owed is this \$8,500.

2 Is that because -- and I believe you testified to
3 this -- because after pushing him and writing him
4 again and again, he finally made the payment?

5 A. I mean, it's been, I testified, two times
6 when rent was six months behind. This last time, it
7 was three or four. And it just repeats and repeats.

8 Q. And to be clear, you wrote him a letter and
9 said you've got to pay the rent. You owe the rent.
10 And he paid part of the rent, not all of the rent, and
11 that's when you filed the lawsuit?

12 A. Correct.

13 Q. Okay. So the dispute is not over \$8500; the
14 dispute is over the fact that he doesn't pay the rent.
15 He doesn't pay the capital calls. Whatever he is
16 obligated to do, he doesn't pay it, and you're all
17 just having to cover or deal with it until eventually
18 he'll come and pay it?

19 A. I always end up in a dispute. Walk on
20 eggshells trying not to create a problem and end up
21 with another problem.

22 On this last round, all I said was just keep
23 paying the same amount that you're paying. And we got
24 this problem. I mean . . .

25 Q. Because you took another office and he still

1 wanted to do that, correct?

2 A. Right.

3 Q. Okay. Just to be clear, your position is
4 that Taylor Foley owes rent if it uses an office?

5 A. Correct.

6 Q. And he brought up the point that for a while,
7 Zach was -- that all the offices were filled.

8 Is one of the reason that all the offices were
9 filled is because he was occupying offices in his firm
10 but some of those offices were not being paid for?

11 A. On and off, that has continually happened.

12 Q. So while the offices are filled, the business
13 purpose of generating income from the use of those
14 offices by rental couldn't be fulfilled because some
15 of them were being occupied without rent being paid?

16 A. Correct.

17 Q. There was a point in time you testified about
18 in January when an employee, an intern, a clerk,
19 whatever you want to want to call it, took possession
20 of the office outside of your office.

21 And then you were asked did you object to it, and
22 you said no because they were supposed to pay rent for
23 it, which you brought up later on down the road.
24 Correct?

25 A. Correct. And he understands he has an

1 obligation to do that.

2 Q. And that's the same obligation you've always
3 had and the same obligation that was affirmed or
4 reaffirmed with Dan Legare?

5 A. Right.

6 Q. So when he asked you about how did they
7 frustrate the purpose, I guess they frustrated the
8 purpose by not paying rent therefore affecting what
9 the purpose of the whole business was was to generate
10 rent to offset the expenses so you can build equity in
11 the property and at the same time use it?

12 A. That's correct.

13 Q. I believe you stated -- let me clarify -- you
14 consider rent to be interchangeable with capital
15 calls?

16 A. In this context, yes.

17 Q. So when you use the word rent, it could be
18 rent, it could be capital calls, it could be rent and
19 capital calls?

20 A. Correct.

21 Q. In this case, it's actually both?

22 A. Yeah, I mean, like special assessment would
23 be more capital call-ish.

24 Q. And, again, to be clear, what rent is
25 outstanding today was not precipitous to filing the

1 action; it was the failure to pay rent which was a
2 much larger amount than the \$8500, correct?

3 A. It was like \$30,000.

4 Q. Or the action that you're moving for today,
5 basically to expel him or to terminate the group, you
6 filed a lawsuit, correct?

7 A. Yes, I did.

8 Q. And in connection with the lawsuit, you had
9 him and the defendant served with a lawsuit, right?

10 A. I believe they accepted it for service but,
11 yes.

12 Q. Okay. And so the service if you look back --
13 there was an issue made over 12.2, which was in the
14 defendants' notebook, tab 1, page 30.

15 Is it your position that that notice was
16 satisfied by having him served with the lawsuit?

17 A. Yes. Actually, it was before the lawsuit
18 also he was noticed.

19 Q. And he was noticed beforehand with
20 communication, correct?

21 A. Correct.

22 Q. There's been an argument made that the
23 pretext was for you to get advantage of some hundreds
24 of thousands of dollars of equity. The truth is you
25 filed for -- or, in the alternative, a partition

1 action, correct?

2 A. I did.

3 Q. And you asked the Court to sever and to
4 divide that suite into two units, correct?

5 A. Correct.

6 Q. And there's another unit next door and
7 throughout the building where that exact same thing
8 has taken place?

9 A. He's actually done the exact same thing.

10 Q. And you would ask the Court to award you if
11 they were to go that direction the section of the
12 office suite where you currently are and to give David
13 the section where NEFA was?

14 A. Correct.

15 Q. Okay. Or in the alternative to pursue with
16 the termination of the agreement and then to let you
17 buy it back or buy him out based on the terms set
18 forth in the agreement?

19 A. Yes.

20 Q. And the agreement was drafted by him,
21 correct?

22 A. Yes.

23 MR. SLOTCHIVER: Okay. Nothing further.
24 Thank you.

25 THE COURT: Let me just ask this. Is

1 partition still an option for you? That's what I'm
2 trying to figure out.

3 WITNESS: That's what I would prefer.

4 THE COURT: I got you. Is it my
5 understanding there are no leases with the K&T Group?

6 WITNESS: Well, there's none --

7 THE COURT: Let me restate that. No written
8 leases with the K&T Group?

9 WITNESS: Not with the law firms.

10 THE COURT: Not with the members?

11 WITNESS: Right. But there are with the
12 other ones. They're all month to month.

13 THE COURT: The rest of them are month to
14 month. They're written leases, but they're month to
15 month leases with whatever the tenants are that are in
16 the outlying units?

17 WITNESS: Yes, sir.

18 THE COURT: Okay. All right. And as relates
19 to the members of the LLC, is that rent amount, the
20 1250 figure and whatever else y'all get, is that the
21 same as its been since 2003?

22 WITNESS: Yes.

23 THE COURT: Or is that part of the 2015
24 agreement? What's the genesis of that?

25 WITNESS: That's what it was when we started.

1 And, frankly, I mean, I've got other suites that have
2 comparables offices that I'm getting 1500 and \$1750
3 for.

4 That's also been one of the problems here is
5 that if I were to increase the rent, I would have to
6 go to David and say would you mind paying another 250
7 or \$500 per office.

8 In the grand scheme of thing, it costs me
9 money and it costs me money not being able to do that,
10 but I would end up in another argument about it, so I
11 haven't done it.

12 THE COURT: All right. But as people come
13 and go from the units, they're paying something that's
14 relative to more of a market value rent?

15 I understand if you own something, you take
16 out a 30-year mortgage and you pay the same amount.
17 I'm with you on that.

18 WITNESS: But we've had a lot of
19 consistency -- the market really changed a lot after
20 COVID and then in the last year or two with inflation,
21 so a lot of this has been very recent.

22 THE COURT: All right. You had some other
23 questions?

24 MR. DUFFY: I just wanted to clarify.

25 RECROSS EXAMINATION

1 BY MR. DUFFY:

2 Q. John, we're talking about the rent for the
3 law firm being in the spaces. Who pays the rent for
4 your law firm? Is it the law firm?

5 A. Yes.

6 Q. Okay. And does Taylor Foley pay the rent
7 that's associated with Taylor Foley's use?

8 A. Yes.

9 Q. Okay. Thanks.

10 THE COURT: Any follow-up? All right. Well,
11 we went about an hour longer than I thought we might.
12 We made some progress.

13 Thank you, Mr. Kachmarsky. You may step
14 down. All right. How about 2:30?

15 MR. SLOTCHIVER: 2:30 is great.

16 (Recess from 1:28 to 2:37 p.m.)

17 THE COURT: Back on the record.

18 MR. SLOTCHIVER: The plaintiffs would like to
19 call Linda Kennedy. This is dealing with the
20 transaction that took place in 2014. The relevancy of
21 it is the pattern of conduct. The same that we argued
22 before. It will take about two minutes, but I wanted
23 to call her regarding the Ameris note.

24 THE COURT: The document I wouldn't let into
25 evidence?

1 MR. DUFFY: Right.

2 THE COURT: Okay. Is there a stipulation as
3 to this? Do we have acknowledgment or not?

4 MR. DUFFY: I don't think -- there's
5 certainly no pattern that there was -- that something
6 happened with a bank. This didn't have anything to do
7 with rent from Taylor Foley or anything else.

8 MR. SLOTCHIVER: The pattern is not doing
9 what you have agreed to do and obligated yourself to
10 do.

11 I will be happy to stipulate if you wish to
12 the extent you want take it under relevancy that
13 Ameris required him to move his operational account
14 and that he did not do that.

15 MR. DUFFY: I mean, I don't think any of that
16 is relevant to the case. That's my objection.

17 MR. SLOTCHIVER: We can stipulate to that?

18 MR. DUFFY: I'm not going to stipulate to
19 anything.

20 THE COURT: Go ahead and call your witness,
21 but I'm going to limit you to about five minutes.

22 MR. SLOTCHIVER: You got it. Let me call
23 Linda Kennedy to the stand.

24 THE COURT: Ms. Kennedy, come on up, if you
25 would.

1 LINDA KENNEDY having been duly sworn to tell
2 the truth, the whole truth, and nothing but the truth,
3 was examined and testified as follows:

4 THE COURT: Thank you, ma'am. Give me your
5 full name and address for the record.

6 WITNESS: Linda Holiday Kennedy. And it's
7 [REDACTED] Meggett, South Carolina,
8 29449.

9 DIRECT EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. Thank you, Your Honor. May it please the
12 Court.

13 Ms. Kennedy, my name is Dan Slotchiver and I
14 represent John Kachmarsky in this action which is
15 pending before the Court today. In that capacity, we
16 subpoenaed you to be here. So here we go. I will be
17 as quick as I can.

18 Okay. Where do you currently work?

19 A. Pinnacle Bank.

20 Q. I'm sorry?

21 A. Pinnacle.

22 Q. And back in 2014, were you working at Ameris
23 Bank?

24 A. Yes.

25 Q. Okay. And in 2014, did you have an

1 opportunity to -- or did you have a general working
2 relationship with K&T Group where you would handle
3 banks for them?

4 A. Yes.

5 Q. Okay. Do you recall a scenario where John
6 Kachmarsky reached out to you for some financing in
7 2014 to see if you would take over a note?

8 A. I don't recall, but I have a copy of my
9 commitment letter.

10 Q. You have paperwork showing a copy of the
11 correspondence?

12 A. Yes.

13 Q. And is that the same document that I'm
14 holding here?

15 A. Yes. Yeah. That's it.

16 Q. So this is what's previously been marked by
17 identification for the Court.

18 THE COURT: Plaintiff's 4 for ID.

19 Q. Ms. Kennedy, my understanding is at the time
20 you quoted the loan, the rate was at a fixed rate of
21 4.75 percent for this loan; is that correct?

22 A. Right.

23 Q. And my understanding is at the same time you
24 had quoted John Kachmarsky on a different suite a
25 lower rate of 4.25. Do you recall that?

1 A. I don't recall.

2 Q. Okay.

3 A. I can't.

4 Q. You don't recall the reason as to why or if
5 that took place?

6 A. It's ten years ago.

7 Q. Fair enough. If you'll look at --

8 THE COURT: Rates were certainly better back
9 then.

10 WITNESS: Yeah. Better than now.

11 Q. If you'll look at the second page of the
12 document under caption A, deposit accounts, do you see
13 that?

14 A. Yeah.

15 Q. And it says in consideration of the interest
16 rate outlined above, borrower and law practices shall
17 maintain their primary business deposits accounts with
18 Ameris Bank during the life of the loan.

19 A. That's correct.

20 Q. Okay. Was that a material term to this
21 agreement?

22 A. Well, we write that in all of our
23 commitments.

24 Q. So that's a requirement in order to get the
25 loan?

1 A. Yeah.

2 Q. If you don't agree to that, you don't get the
3 loan?

4 A. Well, we would honor this when we had part of
5 it because, you know . . .

6 Q. I'm sorry?

7 A. I know that John Kachmarsky opened his
8 accounts and was using his accounts at Ameris, and so
9 therefore we went ahead and honored the note.

10 Q. Okay. All right. And do you understand that
11 David Taylor did not move his operational account?

12 A. He didn't move his operational. They did
13 have K&T with us.

14 Q. Okay. And this was signed on the back
15 accepting this by both John Kachmarsky and David
16 Taylor?

17 A. Yes.

18 Q. Okay. Did you strong arm David Taylor
19 individually or in capacity as representing any of
20 these different organizations to sign this document?

21 A. No.

22 Q. Okay. Did he sign it voluntarily?

23 A. Yes.

24 Q. But he did not comply with the terms of the
25 agreement, correct?

1 A. Yes.

2 Q. Okay. I've got nothing further. Thank you.
3 You may have some questions by opposing counsel
4 Mr. Duffy.

5 CROSS EXAMINATION

6 BY MR. DANIEL:

7 Q. Thank you, Your Honor. May it please the
8 Court.

9 Ms. Kennedy, we were talking about the commitment
10 that Ameris made back in 2014; is that correct?

11 A. Yes.

12 Q. Okay. And did you have a relationship with
13 Mr. Kachmarsky before 2014?

14 A. Yes.

15 Q. Okay. What was that relationship?

16 A. I did some financing for his offices.

17 Q. Okay. Do you remember when that business
18 relationship started?

19 A. When I was at South Trust, which I don't
20 know. I think I left them in 2006.

21 Q. Okay. So at least as far back as 2006, you
22 had a business relationship with Mr. Kachmarsky; is
23 that fair?

24 A. Yeah.

25 Q. Okay. And fair to say that Mr. Kachmarsky in

1 2014 had other accounts open with you at Ameris Bank?

2 A. Yes.

3 Q. Okay. To your knowledge, did Taylor Capital
4 ever agree with Mr. Kachmarsky or his trust to obtain
5 financing at an optimal credit rate? Is that
6 something you have knowledge of?

7 A. No. I don't know exactly what you're asking.

8 Q. You don't have any knowledge of any
9 agreements between Mr. Taylor and Mr. Kachmarsky
10 related to your financing, correct?

11 A. No.

12 Q. Okay. Do you have knowledge about whether
13 K&T Group's change in financing to Ameris Bank in 2014
14 had any impact on K&T's business?

15 A. No.

16 Q. Okay. Do you have any knowledge of whether
17 that change in financing had any impact on K&T's
18 ability to place tenants at the Franke Building?

19 A. No.

20 Q. Okay. Mr. Slotchiver asked you a question
21 about Mr. Taylor's account moving or not moving to
22 Ameris Bank; is that correct?

23 A. Right.

24 Q. And you testified it did not move to Ameris
25 Bank?

1 A. Yes.

2 Q. Did that impact K&T's loan with Ameris Bank
3 in any way?

4 A. No.

5 Q. Okay. Thank you. No further questions.

6 REDIRECT EXAMINATION

7 BY MR. SLOTCHIVER:

8 Q. One follow up, Your Honor. You were asked by
9 Mr. Wilson if the loan provided by Ameris Bank had any
10 impact on the business of K&T.

11 Would you agree with me that if the loan that you
12 provided to K&T was higher, at a higher interest rate
13 because of Mr. Taylor's credit, than what would
14 otherwise be afforded, if the higher interest rate
15 cost more money, and if it cost more money, then it
16 does have an impact on someone's business?

17 A. Well, I don't recall any of the rates back
18 then.

19 Q. I understand that. But I'll represent to you
20 and you can take as a hypothetical that Mr. Kachmarsky
21 has testified he was offered four and a quarter for
22 his other property but because of Mr. Taylor's credit,
23 it was 4.75. So 4.75 is a higher payment than four
24 and a quarter, correct?

25 A. Yes.

1 Q. Okay. So higher payment means that the net
2 monies retained by the group would be less than if it
3 was a lower payment, correct?

4 A. Yes.

5 Q. Okay. And therefore over time that would
6 have a negative impact on the company?

7 A. Yes.

8 Q. Okay. Thank you.

9 THE COURT: You still have the document in
10 front of you?

11 WITNESS: Yes.

12 THE COURT: Would you have been involved with
13 the underwriting as well as the senior lender or the
14 business banking manager?

15 WITNESS: No.

16 THE COURT: Terms were determined by the bank
17 and make sure it gets done?

18 WITNESS: Yes.

19 THE COURT: And is that your signature on
20 what's page 5 of the document?

21 WITNESS: That's right.

22 THE COURT: All right. And so I think it was
23 dated the 24th of April and gave a deadline of the 1st
24 of May and looks like everybody else signed it on the
25 28th; is that right?

1 WITNESS: That's right.

2 THE COURT: Does that look to be a true and
3 accurate copy of what they signed at the time?

4 WITNESS: Yes.

5 MR. SLOTCHIVER: We would move to enter this
6 into evidence again.

7 THE COURT: Granted. Thank you. You may
8 step down.

9 (PLAINTIFF EXHIBIT NUMBER 4 WAS ADMITTED INTO
10 EVIDENCE.)

11 MR. SLOTCHIVER: Thank you, Judge. We would
12 call Edward Lapine.

13 THE COURT: Mr. Lapine?

14 EDWARD LAPINE, having been duly sworn to tell
15 the truth, the whole truth, and nothing but the truth,
16 was examined and testified as follows:

17 THE COURT: And if you would when you get
18 comfortable give us your full name and address,
19 please, sir.

20 WITNESS: Edward Peter Lapine. 45 Pedal
21 Creek Avenue, Charleston, South Carolina, 29412.

22 THE COURT: Okay. Thank you.

23 DIRECT EXAMINATION

24 BY MR. SLOTCHIVER:

25 Q. Mr. Lapine, would you please advise the Court

1 what you do for a living?

2 A. I work at the Law Office of John Kachmarsky.

3 Q. Are you a lawyer?

4 A. Yes, sir.

5 Q. Okay. You're a practicing lawyer?

6 A. Yes, sir.

7 Q. Okay. And can you tell us about when it was
8 that you came to work for Mr. Kachmarsky?

9 A. February 2021.

10 Q. Okay. And did you work in the same office
11 suite that his office is located in?

12 A. Yes.

13 Q. Okay. Are you still working for John as we
14 speak today?

15 A. Correct.

16 Q. And you work in a different office suite?

17 A. Yes.

18 Q. Neighboring office suite?

19 A. Yes.

20 Q. Okay. And not going to belabor with "why,"
21 but if the Court wanted to know, I'd be happy to go
22 into it.

23 THE COURT: Is it Suite 330?

24 Q. You work in --

25 A. -- 340.

1 Q. Okay. And is the reason you work in 340
2 because of issues with personnel in 330?

3 A. I'd say that was a contributing factor, yes.

4 Q. When you went to work for John initially,
5 describe to the Court -- so, you know, the background
6 of this, the office has two partner suites, partner
7 offices, and then there's two associate offices for
8 lack of a better term, and then there's kind of a
9 bullpen.

10 And the bullpen is where all the different staff
11 can work from the offices. Was your location in the
12 bullpen?

13 A. Yes.

14 Q. Okay. In February of '21, who if anybody --
15 or was there a person occupying the office next door
16 to John Kachmarsky's personal office, an office that I
17 would also describe as the associate office?

18 A. So John's office, the office in question, and
19 then Brent Bullock's office.

20 Q. And then Brent Bullock's office and David's
21 office?

22 A. Yeah. There was a woman who was working
23 there when I got there.

24 Q. Okay. And so when you started in February,
25 there was a woman who worked in that office?

1 A. Yes, sir.

2 Q. She worked there on a regular basis?

3 A. I mean, I worked there on a part-time basis
4 at that time, so I was working about 20 hours a week.
5 And whenever I was there, I felt like I would see her
6 in that office, yes.

7 Q. Okay. Did she generally keep her door open
8 so you would know if she was there or not there?

9 A. I would say the door was basically always
10 open.

11 Q. In order for you to get into John's office,
12 did you have to walk by her office?

13 A. Yes.

14 Q. And when you left John's office to go to your
15 office, you would walk by her office?

16 A. Correct.

17 Q. And as a young lawyer, you would do that on a
18 regular basis?

19 A. Back and forth all day.

20 Q. Did somebody, whether her or somebody else,
21 utilize working for Taylor Capital in that office the
22 entire calendar year?

23 A. I remember seeing that woman in there fairly
24 consistently, and then there was a gentleman that was
25 working in there after her. And it's like three and a

1 half years ago, so my mind -- first she was there and
2 then he was there.

3 Q. Okay. I've got nothing further. Thank you.

4 CROSS EXAMINATION

5 BY MR. DUFFY:

6 Q. Good afternoon, Mr. Lapine.

7 A. Yes, sir.

8 Q. When were you first contacted about being a
9 witness in this case?

10 A. Several months ago, I guess.

11 Q. Several months ago. And who contacted you?

12 A. I work in the office with John, so John.

13 Q. Okay. And did he tell you it was about
14 whether somebody was occupying this office that you
15 just talked about?

16 A. Well, there was that issue and some other
17 issues possibly, but, yeah.

18 Q. Okay. So this was you're saying a few months
19 ago from now, so this was summer of 2024?

20 A. I feel like it was whenever the case was
21 started and filed. I don't know.

22 Q. Well, that was summer of '22, so that's more
23 than a few months ago. So when was it that you were
24 first approached about being a witness?

25 A. I feel like it was when it was first filed,

1 he asked me about it and asked me to look at the
2 complaint.

3 Q. Okay. And did he ask you then about whether
4 somebody had been in the office the year before?

5 A. No.

6 Q. Okay. The first time you've thought about
7 that issue is when? First time you've thought about
8 who was sitting in the office in January of 2021
9 through July of 2021?

10 A. Sorry, what's the question?

11 Q. All right. I asked when you were first asked
12 to be a witness, and I think you first said a few
13 months ago.

14 A. Right.

15 Q. But you looked at the complaint maybe when it
16 was filed, right?

17 A. Right.

18 Q. So you're a witness here today about whether
19 somebody was in the office in 2021.

20 A. Okay.

21 Q. And when were you first approached with that
22 question?

23 A. I would say I guess a couple of months ago.

24 Q. And had you thought about that at any time
25 from 2021 until a couple of months ago?

1 A. Only if it had been brought up.

2 Q. And was it?

3 A. I wasn't -- truly, you know -- I wouldn't say
4 so, no.

5 Q. Okay. All right. So now you come in today
6 and you said that someone was in the office when you
7 started in February of 2021, right?

8 A. Uh-huh.

9 Q. Yes?

10 A. Yes, sir. Sorry.

11 Q. And what was her name?

12 A. The woman in the office?

13 Q. Yeah.

14 A. I do not know.

15 Q. Did you ever speak to her?

16 A. I don't believe I did.

17 Q. You walked back and forth with her office
18 door open, looked at her all day back and forth, and
19 you never spoke to her?

20 A. Walking to John's office and back to my desk.

21 Q. Did she ever come out of the office?

22 A. I'm sure she did, but I don't remember having
23 any interaction.

24 Q. You didn't interact with her at all?

25 A. No, sir, not that I can recall.

1 Q. Does the name Gabrielle Murphy sound
2 familiar?

3 A. Not particularly.

4 Q. Okay. So when you would walk back and see
5 this woman -- let's say February, you get there.
6 She's got her office open. Is she just sitting at a
7 desk in a chair?

8 A. Yeah. Again, I was walking to John's office
9 and I would just, you know, walk by and see somebody
10 in the office, and I wasn't staring in.

11 Q. You said you walked by and saw her all the
12 time. Is she sitting at a desk in a chair, a
13 computer? What's she doing?

14 A. I saw her in the office, and so she was in
15 the office I presume sitting at a desk.

16 Q. Okay. Was it an office space that looked
17 like some professional is using it? It's got carpet,
18 desk, chair and whatever else? Is that what it looked
19 like?

20 A. Yes, sir.

21 Q. Okay. And you don't know her name? What did
22 she look like?

23 A. Caucasian woman wearing like office clothes,
24 professional, casual business attire.

25 Q. And this was the same person you saw from

1 February of 2021 through end of July of 2021?

2 A. Again, in my mind, I was, you know, going in
3 and I was seeing a woman in that office for the first
4 several months, and then next thing I know, there's a
5 guy in that office.

6 Q. Mr. Spears moved in in August. We all agree
7 on that.

8 A. Okay.

9 Q. And you're saying that the woman you saw was
10 there from when you started in February until
11 Mr. Spears moved in?

12 A. Basically, yeah.

13 Q. Okay. Thank you. That's all the questions I
14 have.

15 REDIRECT EXAMINATION

16 BY MR. SLOTCHIVER:

17 Q. Just a quick follow-up, Your Honor. Is the
18 reason you never spoke to the person in the office
19 because you were working in somewhat of a hostile
20 environment?

21 A. You could say that.

22 Q. Did you generally wear noise-canceling
23 headphones because of the noise in the bullpen?

24 A. I did.

25 Q. Okay. And were you made to feel unwelcome in

1 the portion of the office where you were working?

2 A. I mean, not explicitly, but it wasn't very
3 welcoming.

4 Q. Is that part and parcel why John moved you to
5 a different office suite so that you would be away
6 from that environment?

7 A. It was a very big contributing factor.

8 Q. One second, Your Honor. And one of the
9 reasons that you moved next door to a different suite
10 was because there was nothing available in your
11 office?

12 A. Correct.

13 Q. Okay. So the office next to John's was
14 occupied by somebody from David's office?

15 A. Yes.

16 Q. Okay. I've got nothing further. Thank you.

17 RECROSS EXAMINATION

18 BY MR. DUFFY:

19 Q. Follow up on that last point. So when was it
20 that you moved from the bullpen area to 340?

21 A. January of this year.

22 Q. Okay. So you were in there in that bullpen
23 area until that time. In February of 2021, were you a
24 lawyer?

25 A. No, sir. Well, I was a law school graduate.

1 Q. When did you pass the bar?

2 A. May '22.

3 Q. Okay.

4 A. I think.

5 Q. And, ultimately, do you meet with clients?

6 A. Yes.

7 Q. Okay. And you do that in Suite 340, right?

8 A. Yes.

9 Q. Wouldn't really be a good place to do that in
10 a bullpen area with a lot of different people around;
11 is that fair?

12 A. I would say so.

13 Q. And would you think that's a reason why
14 you're in Suite 340?

15 A. I can say that is a conceivably contributing
16 factor.

17 Q. And do you know if anybody at Taylor Capital
18 was being rude to you?

19 A. When you say Taylor Capital, are you talking
20 about everybody who worked in like that area out there
21 with me?

22 Q. Do you know who works at Taylor Capital? Do
23 you know anything about Taylor Capital?

24 A. Is Taylor Capital Taylor Foley, or is that
25 something different?

1 Q. Taylor Capital, LLC. Do you know anything
2 about it and do you have complaints about how Taylor
3 Capital, LLC behaved towards you?

4 A. I don't know what Taylor Capital is involved
5 with or in, so no complaints about Taylor Capital.

6 Q. You didn't get along with people or didn't
7 enjoy the atmosphere with people at Taylor Foley; is
8 that right?

9 A. No, I didn't enjoy it. It was a difficult
10 environment to work in.

11 Q. And when you passed the bar and meeting with
12 clients, you moved to Suite 340, right?

13 A. Among other reasons.

14 Q. And you're not part of the Kachmarsky Trust,
15 are you?

16 A. No, sir. No, sir.

17 Q. Okay. Thank you.

18 THE COURT: Can you describe this bullpen?
19 Are there multiple people in one room? What
20 constitutes a bullpen? I know what a bull is and I
21 know what a bullpen is. I'm unfamiliar with that in
22 the legal environment context.

23 WITNESS: So it's an area like about as big
24 as half this courtroom maybe or maybe a little shorter
25 than that.

1 And there was -- so there's the law offices
2 here and then like 10 feet and then there's the two
3 Taylor Foley girls. They worked face to face here
4 like sort of -- I'm across like six feet away from
5 their desks on the other side of that room, and then
6 there was another desk next to me that was unoccupied.
7 And then back here was like -- I think their
8 bookkeeper was back there. So there were usually two
9 or three people out there with me.

10 THE COURT: You described there being four
11 people and at least five desks in the space you just
12 talked about; does that sound about right?

13 WITNESS: Me being one of those people?

14 THE COURT: Yes.

15 WITNESS: Yes, sir.

16 THE COURT: So if somebody is on the phone
17 talking to somebody else, you can overhear them in the
18 background and it's not conducive to interviewing
19 clients and that type of thing?

20 WITNESS: Yes, sir.

21 THE COURT: And the difficulty in the work
22 environment, is it the noise or is it one person in
23 particular that worked in the room? Where are you
24 getting that there?

25 WITNESS: Generally it was the noise, but it

1 seemed to be exacerbated by certain people out there
2 making things louder and more disruptive.

3 THE COURT: In the bullpen?

4 WITNESS: Yes, sir.

5 THE COURT: Got it. Okay. All right.
6 That's all I need to know. Okay.

7 MR. SLOTCHIVER: Nothing further.

8 THE COURT: Mr. Lapine, thank you very much.
9 May he be excused and go back to making a living?

10 MR. SLOTCHIVER: Yes, sir.

11 THE COURT: Go all right. Very good. All
12 right.

13 MR. SLOTCHIVER: Your Honor, at this point,
14 we're going to rest our case.

15 THE COURT: All right. Very good. Plaintiff
16 rests.

17 Mr. Duffy?

18 MR. DUFFY: Despite what Your Honor just said
19 about lawyers on the witness stand, I'm going to ask
20 Mr. Taylor to come up.

21 THE COURT: All right. Mr. Taylor's turn.
22 All right.

23 DAVID TAYLOR, having been duly sworn to tell
24 the truth, the whole truth, and nothing but the truth,
25 was examined and testified as follows:

1 THE COURT: Thank you, sir. Give us your
2 full name and address, please.

3 WITNESS: David Glenn Taylor, 167 Cooper
4 River Drive, Mount Pleasant, South Carolina 29,464.

5 THE COURT: Thank you, sir.

6 DIRECT EXAMINATION

7 BY MR. DUFFY:

8 Q. David, will you please tell the Court a
9 little bit about your background?

10 A. Yes. I've been a lawyer. I graduated from
11 law school in 1996. Studied and received an LLM in
12 taxation. I moved back to South Carolina and took a
13 job at Holmes and Thompson in 1998 and loved those
14 people. I was very happy with that culture and that
15 environment. Great lawyers. I practiced with Holmes
16 and Thompson for a year and a quarter.

17 Our business department split from the firm and
18 went to Moore and Van Allen. I did not want to leave
19 Holmes and Thompson, but there was no law firm left.

20 So I went over to Moore and Van Allen with our
21 business department. I stayed there three weeks and
22 knew it wasn't a good fit for me, and I left and
23 started my own practice.

24 Q. Okay. Good. You know, the Court's heard a
25 good bit about the history, but why don't you just

1 tell us briefly about you getting in contact with
2 Mr. Kachmarsky and how it led to K&T Group?

3 A. Yes, sir. I had a roommate of mine from law
4 school that was an associate of John's, and John had
5 just purchased a suite in the Franke Building at 140.
6 His associate and my friend mentioned there was office
7 space.

8 At that time, I had been invited with multiple
9 former Holmes and Thompson lawyers to join them and
10 just sort of wanted to do my own thing. And so I went
11 over and saw some space in Suite 140 and had met John
12 before that and just rented space from him in that
13 suite.

14 Q. Okay. And tell me how the 330 opportunity
15 came up.

16 A. Yes. So John testified at some point about a
17 year after we were -- I was a tenant, we were office
18 mates together. John approached me about forming a
19 law partnership.

20 So we had done that -- I think that was the
21 beginning of 2000 probably. And then at some point as
22 John mentioned in the Franke Building, if you own real
23 property in the building, there's a right of first
24 refusal. So each owner has a right to step into the
25 contract of a potential purchaser.

1 Warren and Sinkler had Suite 330, had purchased
2 it, and then had put it back on the market. And
3 Robert Rosen and I think his wife had another
4 contract. John came to me and said that he wanted to
5 buy it and wanted to know if I wanted to buy it with
6 him.

7 He had a vendetta against Robert, and I wanted to
8 buy space in the building for my law practice, and so
9 it was just a good fit.

10 Q. Okay. Good. And so y'all created K&T Group.
11 And tell me how that operated once you moved into 330.

12 A. We created K&T Group. Purchased the
13 property. We moved into the -- well, after we
14 purchased it, we did some renovations and put in
15 hardwood floors and reconfigured the offices that John
16 and I have now. I have one; he has the other. And
17 after the renovation, we moved in and started
18 practicing law there.

19 Q. Okay. Can you grab that black binder booklet
20 there and look at Exhibit 1, which is the first
21 amendment in the operating agreement. Just verify is
22 that in fact the operating agreement, most recent
23 governing agreement?

24 A. Yes, sir.

25 Q. Okay. And does it indicate when the entity

1 was first formed?

2 A. Yes, sir.

3 Q. When is that?

4 A. November 11th of 2003.

5 Q. Okay. And so tell me again how -- or tell
6 me -- walk me through how it worked, you know, when
7 y'all first got started in Suite 330. Who was there?
8 Who paid what?

9 A. It's been a long time ago. I don't really
10 remember who all was part of our firm at that point.
11 I know we had staff level people, paralegals and the
12 like.

13 It's been a long time ago. I'm not sure who all
14 was in the firm at that point. I'm not sure I'm
15 answering your question.

16 Q. Fair enough. We'll fast forward. Ultimately
17 at some point you and John had a disagreement about
18 how the space was going to be used and paid for. Do
19 you agree with that?

20 A. Yes, sir. Well, at some point after we
21 purchased the space, our law partnership disbanded.
22 So it went from us as a law partnership to John and
23 his own law firm and me with my own law firm.

24 Q. Okay.

25 A. And at that point, we had to, you know,

1 figure out who's sitting where and who's working for
2 whom. And at that point, some disagreements about how
3 to use space became an issue.

4 For a very long time, we -- it's a very large
5 space. John said it's 5160. I think it's bigger than
6 that. It's a lot of space, and we had a lot of open
7 space. It was almost eerie.

8 And so there were instances where with all this
9 open space, I had someone working for me in my law
10 firm, and with a spacial need bigger than John's, I
11 would suggest that they would sit in that empty space
12 and occupy it.

13 And John at some point voiced some issues with
14 that. I think, if memory serves, it was after we had
15 started to lease out the space but not before.

16 Q. Okay. Will you take just a minute and try to
17 get this through this quickly. It was addressed
18 earlier, so I want to touch on it.

19 Will you look through Exhibits 2, 3, 4 and 5
20 there and just page through them and refresh your
21 recollection and I will ask you some questions about
22 it.

23 A. Yes.

24 Q. Okay. Is it fair to say -- trying to cut
25 through some of it -- that you directly addressed with

1 John you had a different perspective than he did on
2 how space in the building y'all owned together would
3 be used?

4 A. Yes, sir.

5 Q. And did you, with John's agreement, reach out
6 to Dan Legare for some help in resolving that between
7 you?

8 A. Yes, I did.

9 Q. Okay. And did, in fact, Mr. Legare suggest
10 that you should pay for space -- that your law firm
11 should pay for space that you're using if it's more
12 than what John's law firm is using?

13 A. Dan suggested we treat the property as an
14 investment like any other owner would and that our
15 respective organizations pay for space, occupy that
16 space under a lease agreement, and treat it as an
17 investment.

18 Q. Okay. But y'all didn't enter into the fair
19 market value leases that he was referring to?

20 A. We did not.

21 Q. And why didn't y'all enter into lease
22 agreements?

23 A. John did not want to.

24 Q. Okay. Was it your understanding that there
25 was a difference between hiring --

1 MR. SLOTCHIVER: Objection, leading question.

2 Q. Is it your understanding there was a
3 difference between placing someone as a permanent
4 employee and having a temporary use of office?

5 A. Absolutely.

6 Q. Okay. Tell me about that.

7 A. Well, when you have someone coming in on a
8 temporary basis, you find a place for them to sit
9 that's open. It wasn't uncommon for us to have like a
10 clerk or intern sit in our conference room, for
11 example, or grab an open desk that's -- you know,
12 they're there for a temporary period of time. You're
13 just giving them some place to sit.

14 Q. Okay. And there was some talk earlier about
15 fair market value lease or whatever, and you had
16 leased some space back from this NEFA group. Tell me
17 what that was about.

18 A. Yes. Again, this has been a while ago. My
19 staff handled most of this. Sallie Holder, who was
20 sitting in that NEFA space, was hired to come in and
21 run the practice.

22 I was in New York at the time, and so my staff
23 handled all of that. But she needed space to sit.
24 NEFA, who is a tenant that John had procured, wasn't
25 using the space, so my staff went over and negotiated

1 a deal with NEFA for her to sit in basically a
2 conference room.

3 Q. But NEFA already had control of that through
4 their arrangement that John orchestrated?

5 A. Yes, sir.

6 Q. Okay. So that has no impact whatsoever on
7 K&T Group, does it?

8 A. No, sir.

9 Q. Okay. Okay. Let's talk a minute about that
10 early 2022, and I will turn your attention to Exhibit
11 7, 8, and 9. Do you recall that Mr. Kachmarsky had
12 been reaching out to someone named Julie?

13 A. I do recall.

14 Q. Can you tell me about that?

15 A. Yes, sir. Julie Tilman is a CPA. She has
16 been part of our team on a temporary basis, like two
17 days a week, to do bookkeeping and handle financial
18 affairs for our organization and for K&T Group
19 actually.

20 And around the beginning of -- at the end of
21 2021, I think it was, Julie left our -- she went to do
22 other things, so we had to replace her with a few
23 other bookkeepers. We had a problem finding someone
24 that could do that work.

25 At some point, I'm not sure if it's Julie or the

1 person who replaced Julie, sent a message to me saying
2 that John or somebody -- must have been the lady that
3 replaced Julie. Somebody had come by and requested
4 that a check be cut and wanted to run it by me and
5 verify it. And so that was the situation at the
6 beginning of 2022.

7 Q. Okay. And do you recall reaching out through
8 Ms. April Shores to get more information?

9 A. Yes.

10 Q. And tell me, why did you do that?

11 A. Well, because the request for the payment
12 came from John and, historically, John's request for
13 payments and other things like that aren't very
14 accurate. And I don't have a lot of faith in his
15 ability to accurately summarize obligations that are
16 owed.

17 Q. And do I understand correctly that when
18 Ms. Tilman was there, Ms. Tilman handled whatever the
19 payments --

20 MR. SLOTCHIVER: Objection to the leading
21 testimony.

22 Q. Did you just testify that Ms. Tilman was
23 there as a CPA who handled payments for K&T Group?

24 A. Yes, sir.

25 Q. Okay. And so does that mean that you relied

1 on her to do that rather than you doing that?

2 A. Yes, sir.

3 Q. And she was gone, and now you started to look
4 into it; is that fair?

5 A. Yes, sir. The question came to me asking for
6 confirmation for the payments, and they weren't
7 standard payments. It didn't appear to be standard
8 payments. There were things in there that I needed to
9 understand what they were.

10 Q. Okay. And is it fair to say ultimately --
11 you see in Exhibit 8 you were e-mailing directly with
12 Mr. Kachmarsky in early March?

13 A. Yes.

14 Q. And do you see that he's e-mailing about your
15 inquiring about the \$15,000 number that he said on
16 March 7 was something in addition that you needed to
17 pay?

18 A. Yes. As John mentioned, not our first time
19 that a request for payment would be made and then it
20 would change and things sort of bounced around.

21 So, yes, I was trying to figure out what payments
22 were for and confirm everything.

23 Q. And ultimately at the top of Exhibit 8, he
24 responds the 12 times 1250 equals 15,000, which is a
25 reference to 12 months at that monthly rate; is that

1 right?

2 A. That was my understanding, yes, sir.

3 Q. And so that's what we're here about today is
4 this additional office that John was demanding payment
5 for for use of all year; is that right?

6 A. Yes, sir.

7 Q. Okay. And you see on Exhibit 9 that you made
8 payment in April in the reference there at the bottom,
9 do you see the August 5th through December 31st?

10 A. I do, yes.

11 Q. Okay. Tell me why did you pay for office
12 space use at that time?

13 A. Because we had our new associate, Jay Spears,
14 obviously -- that was his starting date.

15 Q. Okay. And was someone in that office before
16 Jay Spears?

17 A. Not to my knowledge at the time. I have
18 since found out that a temporary employee of a law
19 clerk, Gabby Murphy, would sit in there when she was
20 in the office.

21 Q. Okay. And so on Exhibit 8, you see that at
22 March 7, you're having these discussions with
23 Mr. Kachmarsky.

24 If you look at Exhibit 10, what did you receive
25 on March 17th?

1 A. A letter from Dan Slotchiver.

2 Q. Okay. And the re line is the caption of this
3 lawsuit; is that right?

4 A. Yes, sir.

5 Q. Okay. Aside from those e-mails, you had not
6 received a notice of a capital call, had you?

7 A. I've never received a notice of a capital
8 call.

9 Q. Management meeting, anything like that?

10 A. No, sir.

11 Q. Okay. Taylor Foley hadn't received an
12 eviction notice, had they?

13 A. No, sir.

14 Q. Okay. Let's skip a few and look with me to
15 Exhibit 22, please. Can you tell me what that is?

16 A. My eyes could be better, but it's a payroll
17 summary report for Gabby Murphy.

18 Q. And what period of time does it indicate that
19 this is for?

20 A. Parts of May through July.

21 Q. But just under payroll summary report, what
22 time does this capture?

23 A. January 1st, '21 through December 31st, '21.
24 All of the 2021 year.

25 Q. And what entries show when Ms. Murphy was

1 working with you?

2 A. May 14th and through the end of July.

3 Q. Okay. So this would be payroll on May 14th,
4 which she might have started earlier in May, but this
5 is when she hits that payroll; is that fair?

6 A. Yes, sir, probably fair.

7 Q. Look at Exhibit 23 with me, please. We've
8 seen this one before earlier today.

9 A. Yes, sir.

10 Q. And do you see that this is indicating that
11 this law clerk is going to be starting in May?

12 A. Yes.

13 Q. And what else is April indicating to you in
14 this e-mail?

15 A. That we need to buy furniture for that office
16 in anticipation of hiring Jay Spears in August and
17 that there was no furniture in the office previous to
18 that. And Ms. Murphy was going to sit in there on a
19 temporary basis if she wanted to -- April wanted to
20 furnish the office in anticipation of the August
21 occupation.

22 Q. Okay. And if you look at Exhibit 24 with me,
23 please.

24 A. Yes, sir.

25 Q. Now, we looked at this with Mr. Kachmarsky.

1 Does this reflect that -- the first e-mail at the
2 back, you see Ms. Shores. Does Ms. Shores work with
3 Taylor Foley?

4 A. She does, yes.

5 Q. What is she advising Mr. Kachmarsky of?

6 A. The acquisition of a parking card so that the
7 law clerk would have ability to park in May.

8 Q. In May. So at the bottom of 105, does she
9 indicate when this person is going to be starting?

10 A. In May.

11 Q. Yeah. Okay. And Mr. Kachmarsky acknowledges
12 that and agrees with the parking card; is that fair?

13 A. Yes, sir.

14 Q. And then Ms. Shores on the first page there
15 says she technically starts May 3rd; is that right?

16 A. Yes, sir.

17 Q. Okay. And so on Exhibit 25, does that
18 indicate that Ms. Shores is following up on payment
19 that was being paid to Mr. Kachmarsky for this parking
20 card?

21 A. Yes, sir, it does.

22 Q. Did your office have anybody in that space
23 that Ms. Murphy used prior to Ms. Murphy in 2021?

24 A. No, sir. No one.

25 Q. Do you have any idea who could have been a

1 young woman with Taylor Foley sitting in that office
2 space?

3 A. We don't have any young women or any women
4 working for our firm except for the two young ladies
5 that sit in the bullpen that Ed Lapine mentioned.
6 Gabby Murphy was the only other female in our
7 organization.

8 Q. And did you do any investigation of Taylor
9 Foley's files on people to find out if in fact that is
10 correct or if you missed something?

11 A. I did. I actually was so confused by it I
12 asked for a staff meeting --

13 MR. SLOTCHIVER: Objection, Your Honor.
14 Hearsay.

15 MR. DUFFY: He's testifying to his
16 understanding.

17 MR. SLOTCHIVER: He's testifying about
18 conversations he had with people that are not here
19 today. That's hearsay.

20 MR. DUFFY: It's his understanding. It's not
21 being truth of the matter, it's being what is his
22 understanding and why.

23 MR. SLOTCHIVER: I believe the question was
24 did you do any investigation and the response was yes,
25 I reached out to . . .

1 That's not understanding at that point. That
2 becomes testimony about hearsay.

3 THE COURT: All right. Restate the question.
4 Let me get this.

5 Q. Did you investigate whether or not your
6 understanding was correct?

7 A. I did, thoroughly.

8 Q. And did you confirm it?

9 A. Yes, sir.

10 Q. Now let's talk a little bit about some issues
11 came up about how whatever disputes come up can be
12 fixed. What is your view of that?

13 A. I'm sorry?

14 Q. What's your view of how you make sure you and
15 John don't have disputes about rent for each law firm?

16 A. I think it's very simple. It's a real estate
17 investment. If you have real property leases with the
18 rights of the landlord and tenant and the obligations
19 of everyone, it's very well documented and set forth,
20 then all these disputes go away.

21 If you have the property manager that enforces
22 those leases and leases any open space, it all goes
23 away.

24 So, you know, this has been a very good
25 investment for both John and I and should continue to

1 be that way. And, to me, these issues need to be
2 taken up and we can be owners and go practice law.

3 Q. From 2003 on, the company is continuing to --
4 K&T Group owns, leases, manages the property at Suite
5 330; is that right?

6 A. Yes, sir.

7 Q. Okay. Thank you very much.

8 A. Okay. Thank you.

9 CROSS EXAMINATION

10 BY MR. SLOTCHIVER:

11 Q. David, do you work in your office on location
12 every day of the week?

13 A. Not every day of the week, no.

14 Q. All right. Is it fair to say that there are
15 weeks when you don't come in at all and weeks when you
16 come in every single day?

17 A. It's fair to say I have times when I'm in the
18 office and times when I'm out.

19 Q. But you have extensive times when you're not
20 in the office. I'll represent John has told me there
21 will be weeks that go by --

22 MR. DUFFY: Your Honor, speaking of hearsay.
23 Putting it in his question.

24 MR. SLOTCHIVER: It's cross examination. I
25 think there's some leeway.

1 MR. DUFFY: That's somebody else's statement.

2 THE COURT: Hold on. Go ahead and ask the
3 question.

4 Q. My understanding is that weeks go by when
5 you're not in the office.

6 A. I don't know if weeks go by, but I have times
7 when I'm in the office and times when I'm not.

8 Q. In fact, you've got an office manager who
9 generally uses your office because you're not there
10 that often.

11 A. Right now, I have a CEO, office manager, who
12 we hired on August 1st that's sitting in my office
13 right now, yes, sir.

14 Q. Okay. So if you're not there on an everyday
15 basis then you don't necessarily know what's going on
16 on an everyday basis; is that a fair statement?

17 A. I think I would know what's going on with my
18 firm when I take it up with my staff. But I'm not
19 sure -- give me specific examples of questions, I
20 could answer them.

21 Q. Sure. I'll come to that in a minute. Let's
22 go through a couple of housekeeping things that will
23 help us move along.

24 Would you agree with me that back in 2014, your
25 credit was not good?

1 A. I wouldn't agree with that. I don't know
2 what my credit was in 2014.

3 MR. DUFFY: Your Honor, just for the record,
4 credit in 2014 has nothing to do with the claims in
5 the lawsuit.

6 THE COURT: Got it.

7 MR. SLOTCHIVER: May I open and publish his
8 deposition, Your Honor?

9 THE COURT: All right. Well, the objection
10 has been raised on relevance. Where are we going?

11 MR. SLOTCHIVER: Your Honor, one of the
12 issues is credibility. There's an obvious dispute as
13 to what discussions took place and what facts were
14 discussed, and I think the response to his answer just
15 now is inconsistent with what I will tell you the
16 testimony shows.

17 THE COURT: All right. Go ahead. You can
18 open it up.

19 Q. If you'll turn to page 39.

20 A. Okay.

21 Q. And you remember my taking your deposition,
22 correct?

23 A. Yes, sir.

24 Q. And this was back on July 7th of 2023. Look
25 and read along with me on line 12. I asked you: Do

1 you have any credit issues?

2 And your response was: I don't. Not right now,
3 I don't.

4 And my next question was: Have you back in 2014?
5 Did you have any judgements against you?

6 And you said: I did.

7 I said: Do you have any judgements against you
8 that are current?

9 You said: I don't. They all expired.

10 So if you had judgements against you back in
11 2014, would you agree with me that you had credit
12 issues in 2014?

13 A. No. Credit issues in my view is credit
14 score. Judgements don't necessarily show up on credit
15 scores. What I mean was I don't know what my credit
16 score was in 2014.

17 Q. Okay. Do you remember that Wells Fargo
18 declined to renew your loan because of your personal
19 financial condition and credit history?

20 A. Do I remember that?

21 Q. Yes.

22 A. That came to my attention in this lawsuit. I
23 did not realize that beforehand.

24 Q. Okay. So you would agree with me back in
25 2014 when Wells Fargo declined to renew your loan, it

1 was because of your credit history?

2 A. I read that in the response, which seemed a
3 canned read. Whether that was part of their decision
4 to not renew our loan is -- I don't know that for a
5 fact.

6 Q. Well, you say "canned," but that's what not
7 your testimony was. If you'll look on page 80, the
8 question reads -- my question to you is: You've
9 testified earlier that Wells Fargo declined to renew
10 the loan because of your personal financial credit and
11 credit history. Do you disagree with that?

12 And your response was: What I'm saying is I
13 believe that the denial was based on more than that.

14 And I said: Despite the fact that you received a
15 letter from Wells Fargo stating essentially that, you
16 think there's more to it?

17 And you said: I believe there's more to it than
18 a canned letter from Wells Fargo.

19 And the next thing I read to you was: It's been
20 alleged because of your -- I'll strike that. It's not
21 a part of the transcript.

22 Would you agree with me back in 2014 you had
23 significant and multiple judgements against you?

24 A. I don't recall the judgements in 2014. I
25 don't recall time periods and judgements, no.

1 Q. Okay. I can show them to you.

2 A. Okay.

3 MR. DUFFY: Again, I don't know why we're
4 going through this, Your Honor. I would object to
5 judgements in 2014 against somebody -- or against an
6 individual, not a member, and not for the entity, not
7 acting on behalf of the entity we're here for.

8 THE COURT: I'm going to allow him leeway to
9 go back ten years but no more.

10 MR. SLOTCHIVER: Fair enough.

11 Q. I want to go to 16. If I may approach, Your
12 Honor.

13 Here's a copy of the judgement against you in PNC
14 Bank Association that was rendered in the amount of
15 the judgement of favor of Capital Bank in the amount
16 of \$2,233,709.77.

17 Can you look at this and see if this refreshes
18 your recollection?

19 A. It does as to which project. This was --
20 this was a -- yes, it does.

21 Q. Okay. So that was a judgement against you
22 after 2014, correct?

23 A. Let me look.

24 Q. Here's another one. Take your time. I'm
25 sorry.

1 A. Okay. I remember that, yes.

2 Q. Okay. Do you admit now that judgement is a
3 judgement that was entered against you back in 2014
4 and forward?

5 A. It appears to be a 2016 document or letter.

6 MR. SLOTCHIVER: Okay. I'd like to introduce
7 that into evidence or mark it for identification.

8 THE COURT: You can mark it for ID. It's not
9 coming in as evidence.

10 MR. SLOTCHIVER: Let's mark it for ID, then.

11 (PLAINTIFF EXHIBIT NUMBER 5 WAS MARKED FOR
12 IDENTIFICATION.)

13 THE COURT: I assume this is being offered
14 for impeachment, right? He couldn't remember? You're
15 just trying to refresh his memory?

16 MR. SLOTCHIVER: I am, Your Honor. There's a
17 handful.

18 Q. Here's another one for \$1,569,926.44. This
19 is from PNC. 2016.

20 A. This is the same matter.

21 Q. Is it the same matter I gave you?

22 A. Yes, sir. This property was a development on
23 Daniel Island with more than one partner. And the
24 entire development had retail, office, residential so.
25 The entire project was carved up into facilities.

1 It's the same primary project.

2 Q. What made the deal fall apart?

3 A. 2008. Came to CO it in December of 2007, and
4 we couldn't get any tenants or we couldn't sell any
5 property, couldn't sell any of the residential
6 properties, and the other partners involved couldn't
7 make any payments.

8 Q. Why were you not able to make the payment of
9 the debt when it came due?

10 A. Because the other partners couldn't put in
11 the capital. I tried, and I couldn't.

12 Q. So you remember it now?

13 A. I remember the project.

14 Q. And you remember the fact you weren't able to
15 make the payments and therefore there was a judgement
16 entered against you?

17 A. Well, your original question was whether I
18 had judgements against me in 2014, and I didn't
19 remember if I had them in 2014.

20 This project was from 2007, so I don't know about
21 the judgements and your timing.

22 Q. Okay. So you've had judgements since back in
23 2007?

24 A. No, sir. The project was in 2007. We COed
25 it at the end of 2007 and then things fell apart as

1 the economy fell apart.

2 Q. Okay. You entered into an arrangement --
3 also, do you recall dealing with legal advertising
4 where you were advertising as basically a car wreck
5 lawyer in the Myrtle Beach area?

6 A. Injury lawyer.

7 Q. Injury lawyer under D.T. Law?

8 A. David Taylor Law, yes, sir.

9 Q. And you took on investors in order to gain
10 capital to utilize for purposes of the advertising?

11 A. Yeah. A group of lawyers put money into a
12 fund so that we could go and operate in that industry
13 a little differently than other people do.

14 So our intention for that fund was to do things a
15 little differently in the injury world.

16 Q. And you've advertised the lawyer, the car
17 wrecks, and all that kind of stuff?

18 A. That's part of it.

19 Q. You've never handled a car wreck?

20 A. No.

21 Q. You've never been in a jury trial before as a
22 lawyer?

23 A. That's right.

24 Q. Okay. And isn't it true that even with your
25 advertising plan that -- it came at a horrible time

1 because it came during COVID. But despite that, you
2 never actually put any real money into it; you did a
3 line of credit?

4 A. I had a lot of credit and I had capital
5 invested, too.

6 Q. You had capital invested by your partners but
7 not capital by you?

8 A. Yes, I did.

9 Q. Okay. I haven't seen that in the paperwork,
10 but okay.

11 And that was a failed venture, correct?

12 A. It's still operating. I wouldn't call it a
13 home run venture, no. But it's still operating.

14 Q. Then you've got a --

15 A. We have active cases. We have active lawyers
16 on the case.

17 Q. And you have a lawyer against Hostilo,
18 correct?

19 A. Yes.

20 Q. And Hostilo is one of the advertising lawyers
21 out of Georgia?

22 A. Yes.

23 Q. And you're claiming that he owes you money
24 because he failed to comply with a deal he made you to
25 let you basically go national with a different way of

1 legal --

2 A. He wanted to come to Charleston, and he
3 wanted to team up and take our branding into his
4 branding and team up and let us -- let the team that I
5 assembled be the South Carolina operating
6 administrative arm.

7 Q. Okay. And that failed?

8 A. He backed out 13 days before we were supposed
9 to launch.

10 Q. Okay. That lawsuit is currently pending?

11 A. Yes, sir.

12 Q. Okay. Would you agree with me that John
13 handled for the most part all of the day-to-day
14 activity with this suite that you own together?

15 A. Yes, sir.

16 Q. Okay. And you admit that -- I believe your
17 testimony about NEFA a few minutes ago was that NEFA
18 had rented the suite, you rented part of it back from
19 them so it didn't cost K&T anything because the same
20 amount of money that NEFA was going to pay for that
21 office was still being paid to K&T.

22 A. I didn't testify to that. I said we rented
23 space from NEFA, that NEFA had all of that space on
24 that side of the building.

25 Q. When you rented the space from NEFA, you were

1 paying \$435 a month, correct?

2 A. That's what I have read since this lawsuit.
3 I didn't know that beforehand.

4 Q. You were not aware of that?

5 A. No, sir.

6 Q. Who would have been aware of that, your
7 bookkeepers?

8 A. Sallie Holder, who was running the firm at
9 that point, and Julie.

10 Q. You were aware at the time that you met with
11 Dan Legare and he discussed one of the issues were
12 that you have to pay market value for the offices
13 you're using, correct?

14 A. I don't remember if that was brought up with
15 Dan. But I think we met with Dan in 2014 and Sallie
16 started in 2011. So I'm not sure when I found out
17 about it.

18 Q. And you remember writing e-mails saying: I
19 don't think I should have paid any of that money
20 because our agreement was if an office is empty, we
21 can utilize it?

22 A. I don't remember that, what you're saying.
23 Can you repeat that?

24 Q. Sure. My understanding is that your position
25 that was asserted about three years after Sallie moved

1 into the office, when she moved out was that you
2 should not have had to pay rent for the office that
3 Sallie is in or for the office that your other
4 associate was in.

5 You were paying 435 for Sallie and a thousand
6 dollars for the other associate, because if those
7 offices were empty, you should be able to utilize
8 them?

9 A. Well, I believe that was a difference of
10 opinion that John and I had all the way up until we
11 met with Dan and decided to do something differently,
12 but I don't remember having an issue with anything I
13 paid NEFA because that's something my staff did with
14 another third party.

15 I'm sure that I did have an issue with when a
16 5,000 square foot office is sitting there empty, it's
17 a little odd to be paying -- by the same token, why
18 don't John and I pay rent for our offices? They're
19 sitting there as well.

20 Q. At the end --

21 A. Can I finish? We had a difference of opinion
22 before we met with Dan Legare.

23 Q. At the end of the day, you and John equaled
24 out on your offices because you both had your own
25 offices, correct, so it dealt with the extra offices?

1 A. The principal remains the same. Either you
2 own a space and you use it however you see fit based
3 on the demand for it, or what I would prefer to do,
4 which is have a fair market value lease and everybody
5 knows their rights.

6 Q. Your theory, if you had empty offices and
7 eight staff members, you could fill all of the offices
8 that were empty. Let's say you had ten offices in the
9 whole building. You take one and John takes one. If
10 there's eight empty ones, you fill all the other
11 offices without paying rent because nobody else is
12 there?

13 A. That would be my theory because at that
14 point, you would not have anything to offer to the
15 general public.

16 What I'm talking about is if you have eight
17 offices and you need one more and there's not a clear
18 need for the other seven then it makes sense to me
19 that you could use space that is sitting there vacant
20 or you could pay for it under a lease and everybody
21 knows that one is off the table and now you just have
22 seven.

23 Q. If you take one under a lease then the
24 payment is being made to the group, correct?

25 A. Uh-huh.

1 Q. Okay. And by the group, I mean you and John
2 are 50/50 owners. So if you're paying 435 a month for
3 an office that would otherwise rent for 1250, then
4 John is being injured every month because he's getting
5 less in his column and you're benefiting more by
6 getting a lower rate and still having an office with
7 somebody?

8 A. I'm not paying John. I'm subleasing a space
9 because that's the only space that she could go in to
10 at the time.

11 Q. When you're subleasing a space, you broke it
12 off from the rental and it was worth 1250 but instead
13 you were paying 435?

14 A. I'm sorry. I was subleasing it from a tenant
15 that had rights over the whole space, and that's what
16 occurred.

17 Q. Okay. So just as well as subleasing, you
18 could have subleased that space and rented it out for
19 1250 and paid market value, correct?

20 A. I don't know what you just said.

21 Q. The only person benefiting from this was you,
22 not your partner, because you took advantage of the
23 fact that you subleased from a tenant at a lower rate
24 than you would have had to pay if you were renting it
25 from the group?

1 A. I don't know how that harms my partner or by
2 extension me, too, since we owned it 50/50 when I'm
3 subleasing it from someone who's renting it from the
4 partnership because there was no other space.

5 Q. Just to be clear we're on the same page, if
6 NEFA had released that office and it were marketed at
7 the rate that all the other offices were marketed for
8 since 2003 then it would have been for \$1250 a month?
9 We've heard that testimony, correct?

10 A. In the hypothetical land and now the tenant
11 that had the whole half of the office and the only
12 space we could go into, they weren't there and it was
13 sitting wide open with all the other spaces that NEFA
14 had that also were now wide open, before I met with
15 Dan Legare, would it be my contention that one of my
16 staff go sit in one of the five open offices? Before
17 I met with Dan Legare, it would be. After I met with
18 Dan Legare, it wouldn't have been.

19 Q. Let's go to Dan Legare. When you met with
20 Dan Legare, do you remember testifying that the terms
21 of the settlement that you entered with John via the
22 meeting with Dan Legare was that basically that you
23 own office space together; is that correct?

24 You and John owned office space together? That's
25 the agreement?

1 A. Can you ask the question --

2 Q. Was the agreement that you and John entered
3 into after meeting with Dan Legare that you owned
4 office space together, that you would each pay for the
5 office space that you occupied, and if you occupied
6 more space than the other partner owns, then you will
7 pay the 1250 per month for that office?

8 A. That's right.

9 Q. Okay. So in 2014, you entered into that
10 agreement. And then in 2015, you took office space
11 and did not pay for it?

12 A. Could you tell me in 2015 what office space
13 you mean?

14 Q. Yes. And, actually, I'll move all the way up
15 to 2021. Why don't we go into the timeframe we're
16 talking about.

17 In 2021, the testimony we've heard today is that
18 you put a person into the office next to John's
19 office, correct, and did not pay for it?

20 A. August 5th, Jay Spears moved into John's
21 office on a permanent basis with all of his stuff and
22 his picture and diplomas, and we did pay for it.

23 Q. Okay. But you didn't pay for it in August,
24 did you?

25 A. It's not outstanding. We paid for it.

1 Q. That wasn't the question. The question was
2 you didn't pay for it in the month of August, did you?

3 A. I don't think it was paid in the month of
4 August because we had a new bookkeeper that left and a
5 new one that came on.

6 John presented a bill for more than just August
7 5th through whatever date he submitted it. It wasn't
8 accurate, which is standard with him.

9 I took time; I reviewed it; I clarified it. And
10 once we found out -- again, it wasn't even accurate.
11 The first bill wasn't accurate, and the second bill
12 wasn't accurate.

13 We found the accurate amount and made the
14 payment.

15 Q. You didn't pay for the August rent in August,
16 correct?

17 A. There was no August bill.

18 Q. You had a lawyer in August, correct?

19 A. Yes.

20 MR. DUFFY: Asked and answered.

21 Q. Did you make a payment in the month of August
22 for the lawyer who was using the office that you admit
23 to in August?

24 A. The payment did not occur in August.

25 Q. Did you make it in September?

1 A. No. It was made in I think March or April of
2 the next year.

3 Q. So this gap from August until March, your
4 admission you had somebody here from August, but you
5 actually had somebody in since May, correct?

6 A. Somebody in? No. We had somebody
7 permanently in on August 5th.

8 Q. I believe the testimony was you had a law
9 clerk move in in May. That's when you started renting
10 the card, correct? And you didn't put a permanent
11 lawyer in there until August?

12 A. That's correct.

13 Q. So by your own testimony, you occupied that
14 space from May until the end of the year without
15 making any payment?

16 A. Actually, I didn't know that Gabby Murphy sat
17 in that office or wherever else she sat in May through
18 July, not until this dispute.

19 But a real lawyer with books and art and all the
20 stuff that you bring into an office that is your
21 office started on August 5th. No one sat in that
22 office -- there wasn't any furniture in that office
23 before May except for --

24 Q. -- well, the testimony --

25 A. (crosstalk) -- that David Lewis gave to me, a

1 former client. That's the only thing that was in the
2 office.

3 Q. Well, let's go back to the agreement you made
4 with Mr. Legare that we just talked about.

5 Would the terms of the settlement basically be
6 that you owned the office together and you would each
7 --

8 COURT REPORTER: I'm sorry --

9 THE COURT: Slow down.

10 MR. SLOTCHIVER: I apologize.

11 Q. Would the terms of the agreement basically be
12 that you own office space together, that you would
13 each pay for the office space that you occupied, and
14 if you occupy more space than the other partner owns,
15 then you will pay the 1250 per month for that office;
16 was that the agreement we discussed earlier?

17 A. I'll use the word "basically" to describe --

18 Q. I'm asking you a question --

19 A. I'm giving my answer.

20 Q. Did I read it correctly?

21 A. I'm giving my answer.

22 Q. Did I read it correctly?

23 A. Read it again, please.

24 Q. If you look at it, you have it in front of
25 you.

1 A. Okay. Then I can talk about the word
2 "basically" now.

3 THE COURT: Hold on a second. Mr. Taylor, if
4 you'll answer his question yes or no and then I'm
5 going to allow you to explain it.

6 WITNESS: Okay.

7 Q. Page 53. You're welcome to turn to it.
8 Let's look at line 18. Why don't we start at line 15.
9 "Dan proposed a settlement. John and I agreed to it."

10 Question: Okay. Would the terms of the
11 settlement basically be that you own office space
12 together, that you would each pay for the office space
13 that you occupied, and if you occupy more space than
14 the other partner owns, then you would pay the 1250
15 per month for that office?

16 And your response was: I think that's my
17 recollection, yeah.

18 Did I read it correctly?

19 A. You did.

20 Q. That is on page 53 of the deposition. Okay.
21 Can you tell me where in this deposition transcript
22 here that it reflects the agreement that it has to be
23 a lawyer versus a law clerk or an intern?

24 A. It doesn't say that in this deposition word
25 for word. The spirit of my answer was that it was a

1 permanent basis, not a temporary student coming in to
2 work for a few hours a few days a week.

3 Q. Okay. So by permanent basis, you mean a
4 permanent person, not the permanent occupancy?

5 A. What I mean is if I need a desk and I go out
6 in the hall and I find a desk like this and I sit
7 there and do something while we're at lunch, that's
8 not permanently occupying that space.

9 Q. Well, your testimony, to be correct, is that
10 effective -- we take the position it's all January
11 forward.

12 But from your testimony that I've heard, it's
13 from May forward. You had somebody in that space that
14 wasn't a lawyer in May. The lawyer came in August.
15 But from May forward, you had somebody in that space
16 all the way through the end of the year, correct?

17 A. No. Because in that space, I am finding it
18 differently from August 5th through the end of the
19 year than before. It's no different if Gabby came in
20 one day and sat in the conference room.

21 She didn't leave her stuff there. She didn't
22 have anything in the drawers. She didn't have any
23 furniture or any pictures or anything else.

24 She was a law student who came in and sat down
25 every day to do research. How is that occupying the

1 space?

2 Q. How do you even know that if you said you
3 didn't even know she was using that office?

4 A. Because I've been told that by everybody I
5 have talked to since then.

6 Q. How do you know that of personal knowledge?

7 A. I talked to her and I talked to everybody on
8 my staff.

9 Q. Okay. And you've heard testimony that
10 someone has been in there since May?

11 A. I'm sorry?

12 Q. You've heard the testimony that someone has
13 been in there since January forward?

14 A. Well, that's absolutely incorrect.

15 Q. Okay. And you've heard testimony that -- in
16 fact, you've introduced testimony that you obtained a
17 parking card for the purpose of someone who was going
18 to come to your office to use effective May?

19 A. Yes, sir.

20 Q. Okay. And your testimony now is that she
21 might use that office or she might use somewhere else?

22 A. Yes, sir.

23 Q. Okay.

24 A. She was coming in and grabbing a desk.

25 Q. Okay. And her work space, according to the

1 witnesses who have testified, was in that office next
2 to John's?

3 A. The witnesses that have testified that, yeah,
4 that's what they testified. My understanding from
5 talking to my team is --

6 Q. I'm not asking what your team told you. Your
7 only testimony is based on something somebody else
8 told you who is not in court today to testify,
9 correct?

10 A. Not yet.

11 Q. You have no personal knowledge?

12 A. No, I never saw Gabby working in that space
13 or anywhere else.

14 Q. Okay. Fair enough. And regardless if it was
15 May through the end of the year, January through the
16 end of the year, or August through the end of the
17 year, you admit that payments were not paid until the
18 following spring?

19 A. A large payment was made in March or April
20 once I was able to go through and verify the correct
21 amounts, not the amounts that John submitted because
22 they were incorrect.

23 And by the way, not just the difference of
24 opinion on when rent for that office should start.
25 Other amounts in his calculation were incorrect.

1 Q. And they weren't paid until you received
2 notification that John was going to file a lawsuit
3 against you? That was just coincidental?

4 A. Very coincidental.

5 Q. And the fact that you knew the office went
6 for 1250 a month didn't require you in your mind to go
7 ahead and make payments despite the fact that at least
8 in August, you had somebody permanently in that spot?

9 A. As soon as I realized that there hadn't been
10 any payments made. Because Julie Tilman left in the
11 fall of 2021 and then John submitted to the new
12 bookkeeper, hey, you owe this amount of money. And my
13 question to her was where did that number come from?

14 And so through iterations of e-mails from John
15 and looking at -- and talking to my team and asking to
16 see the books of K&T Group, I worked in that time
17 period to figure out the exact amount of rent because
18 I didn't trust John's calculations, which turned out
19 to be correct and weren't accurate.

20 Q. Well, I mean, you did make a payment of
21 \$28,000, right?

22 A. And some change because I calculated the
23 correct amount.

24 Q. So you knew you owed some money, you just
25 weren't sure how much?

1 A. That's right.

2 Q. And you understand the purpose of this
3 business is to generate money in order to pay down the
4 debt, and you weren't contributing any money over this
5 time period.

6 A. Weren't contributing is a good question.
7 We're talking about rent. If there needed to be a
8 capital call then we could at least put in the capital
9 to provide the company with whatever financing it
10 needs.

11 There is a way to run an investment and there's a
12 way to run a landlord/tenant relationship. But
13 throwing big numbers on somebody's desk that don't
14 understand what's due and when and expecting them to
15 just pay is not fair.

16 Q. What about the idea of saying I don't know if
17 I owe you that much, but let me give you some money,
18 at least the monthly rent, because I know I owe that
19 because I know we're occupying it? You never did
20 that, either, did you?

21 A. No. I figured out the correct amount and
22 paid it.

23 Q. Eight months later, nine months later?

24 A. I don't know if it was nine months later.
25 This was in March or April when John presented that

1 amount for the end of the year. Three months.

2 Q. Whether John presents it to you or not, you
3 know you're occupying in August and you know you're
4 not paying the rent?

5 A. Well, I had to go verify everything.

6 Q. Even the fact you were occupying an office?

7 A. I knew when Jay started, but I didn't know
8 what the entire amount was constituting and I needed
9 to go figure it out.

10 I needed to get it to match the books of the
11 company because I don't have eyes on that and I try to
12 get that from John as well.

13 Q. Would you agree with me that most of the time
14 you're asking to see the books of the company is when
15 John is pressuring you to make payments that are
16 overdue?

17 A. Not when I don't have a CPA that's been
18 looking over that for the last eight years like Julie
19 Tilman was.

20 Q. Was it John's problem that you did not have a
21 CPA?

22 A. No, sir. It was his problem that I couldn't
23 get into our books that he unilaterally took away from
24 my CPA the year before.

25 Q. If the Court were to determine the

1 appropriate measure to take in the case was to
2 partition this property, to close the door and --
3 there's a door now. You can permanently close that
4 door between the offices we have described as you and
5 John's and the bullpen and the other two offices and
6 the rest of the offices, would you agree with me that
7 that would be consistent with a pattern of conduct
8 that has taken place not only in the Franke Building
9 but in one of the office suites that you own in the
10 Franke Building?

11 A. Well, I stated before I don't believe the
12 value of that space is enhanced by it being
13 partitioned. I believe the opposite. And I know
14 because I partitioned one on the second floor with
15 Jimmy Streetman, and it impaired the value.

16 And if I could buy Jimmy Streetman's space back
17 from him, I would put them back together. So, no, I
18 don't believe that a property in the Franke Building
19 is maximized by partitioning. In fact, I think the
20 building has been a little bit ruined by that
21 occurring.

22 Q. When was it that you and Jimmy Streetman
23 partitioned that property?

24 A. A long time ago.

25 Q. So your experience is based on something that

1 happened 15-plus years ago?

2 A. We bought our office in there in 2003, so
3 it's been a long time.

4 Q. Okay.

5 A. But I am an active real estate investor. I
6 keep my eye on everything. I have right of first
7 refusal.

8 Q. We've spoken about this before, and I wasn't
9 aware that you had any basis why other than you just
10 didn't want to do it?

11 A. That's the valuation piece.

12 Q. We hadn't discussed that before.

13 A. You permanently impair it.

14 Q. But that's something that's customary in that
15 building throughout and people are doing the exact
16 same thing? They're dividing it into multiple TMS
17 numbers and solidifying that door?

18 A. I don't know how often that happens, but it's
19 not something I think is smart for the property.

20 Q. You would agree with me that if that did
21 happen, that you and John could both continue to
22 practice in the Franke Building and you could both
23 continue to go into your offices, although one would
24 be in a different set than the other office, and it
25 would not result in impact where if the Court agrees

1 with our position that John would buy you out for 75
2 cents on the dollar over a five-year time period?

3 A. I don't know why I entered into a business
4 investment with my former partner and friend in 2003
5 why now I'm forced into a different investment than I
6 bargained for and now I'm -- I would be potentially
7 forced to vacate my office that I've been in for over
8 20 years. I don't know why that's happening. That
9 doesn't make any sense to me.

10 Q. Have you considered the fact that it's
11 because repeatedly over and over again you've
12 neglected to make payments for periods of time and
13 John has had to cover them or he's had to deal with
14 the fall-out until you have caught up?

15 A. I don't agree with that characterization.
16 We've had differences of opinion on how certain things
17 have looked. I mean, there's times in our past where
18 John was negative in our operating account. I didn't
19 sue him over it. We worked it out. This is a
20 business investment with somebody I've been in
21 business with for a long time.

22 And if you do business with anybody for over 20
23 years, I'm sure everything wasn't agreeable all the
24 time.

25 But right now, we've worked everything else out

1 until he decided to file a lawsuit presumably to try
2 to take my investment at a discount. That doesn't
3 make any sense to me.

4 Q. Or to partition it?

5 A. And ruin the value and kick me out of my
6 office that I've been in for 20 years.

7 Q. How many offices are in the other suite? If
8 we were to close it off, we know there's yours and
9 John's and two associate offices. How many offices
10 are on the other side?

11 A. I'm not sure of the count.

12 THE COURT: Why don't we take about five
13 minutes?

14 MR. SLOTCHIVER: I'm about ready to wrap up.

15 THE COURT: Let's take five minutes. You may
16 step down and come back up.

17 (Recess from 4:04 to 4:11 p.m.)

18 MR. SLOTCHIVER (resumed):

19 Q. David, how many lawyers do you have in your
20 office?

21 A. Currently in our office, Charleston, we have
22 five.

23 Q. Okay. I know it's you, David Foley, Brent is
24 the CEO?

25 A. Yes, sir.

1 Q. Okay. You have two other lawyers and then
2 you have staff, correct?

3 A. Yes.

4 Q. So my understanding is that the other side of
5 the office actually has six offices and a conference
6 room. That's more than you have, right, that you
7 occupy right now, correct?

8 A. We occupy -- we have lawyers in offices and
9 staff not in offices.

10 Q. Correct. Okay. All right. We received some
11 documents the other day.

12 Do you have the notebook that your lawyer gave
13 you?

14 A. This?

15 Q. Let's use some of his exhibits. Okay. Your
16 testimony, to make sure I got this straight, is that
17 one of the reasons that you don't believe you owe rent
18 prior to the time that your lawyer came in August of
19 '21 is because Gabrielle would just come and get a
20 desk and float around different places different
21 times, correct?

22 A. I'm saying she wasn't there on a permanent
23 basis.

24 Q. Okay. Can we look at Exhibit 23?

25 MR. SLOTCHIVER: Your Honor, do you have a

1 copy of this notebook?

2 THE COURT: I do.

3 A. Yes, sir.

4 Q. And this is dated -- it's an e-mail from
5 April Shores. She's your office manager? One of your
6 paralegal staff?

7 A. She's an executive assistant.

8 Q. Okay. April 20th. Brent and Foley tell me
9 that we are hiring a new law clerk that will be here
10 full time starting in May.

11 Full time, correct? Not part time? Do you agree
12 that's what it says?

13 A. That's what she wrote.

14 Q. Do you think she misspoke?

15 A. Probably.

16 Q. Okay. Do you agree that full time is
17 generally 40 hours a week and less than 40 is not full
18 time?

19 A. Full time to me is either salaried or -- I
20 don't even have a good definition of full time.

21 Q. Why don't we take a look, then, at Exhibit
22 22.

23 A. Okay.

24 Q. And this appears to be a payroll summary
25 report of Gabriel M., who I understand from you,

1 Gabrielle Murphy is the law clerk we're talking about,
2 correct?

3 A. Yes.

4 Q. And this seems to indicate from my reading of
5 this is that these are two-week increments referencing
6 payments in the amount of hours you worked.

7 Do you see the reference 5/14/21 to 86.76 for a
8 two-week period? That would be a little over 40 hours
9 per week, correct?

10 A. I do. Those numbers are all hard entered.
11 This is actually asked of April. That's not
12 indicative of anything other than her pay schedule,
13 how much she was guaranteed in payment.

14 Q. This is a document that your lawyer presented
15 to me this past Friday. Okay. Would you agree with
16 me on the face of this document -- because I don't
17 work for your office and John doesn't work for your
18 office. I can't verify what you're telling me.

19 But on the face of the document, this shows that
20 every two weeks, she was working 86.67 hours, correct?

21 A. No, she was paid on a schedule that would
22 hard enter those hours into this program summary, but
23 that's more indicative on how she was paid.

24 Q. So this document is wrong?

25 A. No, sir. I'm saying this document doesn't

1 speak to the fact of how and where she worked, how
2 often and where she worked.

3 Q. All right. Even though it seems to be
4 consistent with document 23 which talks about her
5 being hired to work full time?

6 A. I mean, I don't know what April meant by full
7 time. But anybody that's -- she's certainly not
8 salary. She's there for a few months. She was in
9 school.

10 Q. Uh-huh. Okay. Would you agree with me that
11 it is in the best interest of the group to receive as
12 much rent as possible?

13 A. It's in the best interest of an investment to
14 maximize its revenue, yes, sir.

15 Q. All right. And would you agree with me that
16 it's in the best interest of your law firm to minimize
17 to the best of your ability your expenses?

18 A. No, it's in the best interest of my law firm
19 to provide services to our client that are best in
20 class.

21 Q. Well, that's part of it.

22 A. That's all of it.

23 Q. But also it deals with expenses as a
24 business.

25 A. No. It's professional practice. It's not an

1 expense-driven practice. I disagree with that.

2 Q. Would you agree with me paying less than
3 market value rent to the group by a tenant does not
4 benefit the group?

5 A. I'm sorry. Say that again, please.

6 Q. Would you agree with me that someone
7 occupying a space and renting an office and paying
8 less than market value does not benefit the group, the
9 investment group?

10 A. It has to be contextual. Like there was many
11 times in our ownership of this property when there's
12 multiple offices sitting there open, there's no
13 demand. As John testified like during COVID, there's
14 just no demand.

15 Q. How many offices were open at the time you
16 took the one from NEFA?

17 A. I didn't take it. I paid for it. My firm
18 paid for it as a subtenant. There was no offices
19 open.

20 Q. And you got a discount because you paid 435
21 instead of 1250?

22 A. I subleased. I don't know what you mean by
23 discount. I got a discount as if there was another
24 space open that I could have rented in our office, it
25 would have been more; is that what you mean?

1 Q. You could have just taken that property back
2 and then rented it for the market value. You would
3 have gotten half in your column and John would have
4 gotten half in his column.

5 A. How am I supposed to take property back from
6 a tenant that has a lease on it and part of the
7 property back?

8 Q. So you were doing them a favor --

9 A. You're saying me. This is a law firm dealing
10 with another tenant of an organization that there's a
11 landlord. I mean . . .

12 Q. It was relatively kind of you to pay less
13 rent than it would have been. I don't know how that
14 helps your company, but it seems like it doesn't help
15 --

16 A. If I paid 1250 rent to NEFA, would that have
17 gone to K&T Group?

18 Q. You could have carved it out of NEFA, taken
19 the office back, which is essentially what you did,
20 but then paid 1250 and then John's column would have
21 been much more flush than only giving \$217 a month.

22 A. I think I just had testimony that I couldn't
23 take an office back from somebody that had a lease in
24 place.

25 Q. Well, you essentially did by subleasing it.

1 A. Subleasing is pretty normal in the world.
2 This is pretty much normal business.

3 Q. Do you understand why it appears to breach a
4 fiduciary duty when you take advantage of a situation
5 and put a lawyer in an office that could otherwise be
6 rented for 1250 -- or a staff member -- and only pay
7 435?

8 MR. DUFFY: Object to the form, Your Honor.
9 Asking for legal conclusions about something that
10 happened in 2014 before they came to a different
11 agreement.

12 MR. SLOTCHIVER: He's a lawyer. He can give
13 us some legal conclusions.

14 THE COURT: I'm going to sustain the
15 objection. Let's move on.

16 MR. SLOTCHIVER: Your Honor, I've got nothing
17 further. Thank you.

18 REDIRECT EXAMINATION

19 BY MR. DUFFY:

20 Q. David, just touching on this law clerk point,
21 the law clerk was going to be there on a temporary
22 basis; is that right?

23 A. Yes, sir.

24 Q. You mentioned that she's in school? She was
25 in school?

1 A. She was in school, yes.

2 Q. So she was there for the summer; is that
3 right?

4 A. Yes.

5 Q. Your staff raised the point that you had
6 someone temporary come in with John; is that right?

7 A. Yes.

8 Q. Office was otherwise open and John indicated
9 he had no objection; is that right?

10 A. Correct.

11 MR. DUFFY: Okay. All I'd like to do now is
12 move in Exhibits 1 through 25.

13 THE COURT: All right. Without objection?
14 Very good.

15 (DEFENDANT EXHIBIT NUMBERS 1 THROUGH 25 WERE
16 ADMITTED INTO EVIDENCE.)

17 THE COURT: All right. So let me just ask
18 this so I'm clear. NEFA, whatever this company was
19 that was there, they had a lease in place, did they
20 not?

21 WITNESS: I believe -- that was my
22 understanding.

23 THE COURT: As far as you know, they were
24 paying the lease?

25 WITNESS: They were paying the lease for a

1 while and then there was some times when they weren't
2 paying the lease. I'm not sure when that was.

3 THE COURT: Okay.

4 WITNESS: That was something John managed.

5 THE COURT: Did the lease then end and they
6 vacate the space or did they vacate the space and
7 continue to pay for a while?

8 WITNESS: I'm not sure. I don't recall.

9 MR. SLOTCHIVER: If I may, Your Honor.

10 RECROSS EXAMINATION

11 BY MR. SLOTCHIVER:

12 Q. Isn't it true that after NEFA moved out, you
13 continued to only pay the 435 a month?

14 A. I don't have any recollection of that.

15 Q. It's what the bookkeeping logs we have shown
16 you today indicate. They are what they are, correct?

17 A. I don't even know what you're talking about.
18 I haven't seen those and reviewed those. Like Brian
19 mentioned, it's been a long time ago. I don't
20 remember.

21 Q. Okay. Speaks for themselves into the record.
22 Thank you.

23 REDIRECT EXAMINATION

24 BY MR. DUFFY:

25 Q. What year was NEFA a tenant? What years?

1 A. So long ago. I'm not sure. It was a 9/11
2 foundation, so it's been a while.

3 Q. I mean, was it before 2015?

4 A. Way before. Sallie left in 2013 or 2014 or
5 something like that. Started in like '11 maybe.

6 THE COURT: We saw them on some sheet that
7 showed a zero balance. I think that was in the
8 '14/'15 time period.

9 Back to the funds that were paid, at the time
10 the action was commenced, apparently there was a claim
11 for some 30-something-thousand dollars. Must have
12 been the 28,000 and some change was paid it looked
13 like in April of '22, was it not?

14 MR. DUFFY: Yes, before the action.

15 THE COURT: Before the action was commenced.
16 Okay. After the letter of March '17 but before the
17 action was commenced. Okay.

18 And it's your position that, one, there was
19 nobody in there in January. Clearly appears that this
20 Gabrielle Murphy who was a summer law clerk was in the
21 office in the summer, May, June, July timeframe
22 working for your office, but she was a temporary
23 employee.

24 WITNESS: Yes, sir.

25 THE COURT: And then when Mr. Spears came in,

1 you got the request for the payments. You checked
2 back on the record and you sent whatever 28,000 and
3 some change in.

4 WITNESS: Yes, sir.

5 THE COURT: And it's your belief that that
6 took care of whatever that claim was.

7 WITNESS: Yes. I calculated that myself.

8 THE COURT: All right. And I think you
9 covered -- but that's still from August to April is
10 eight months so it would have been eight months later.
11 Took that long for you to do the calculations?

12 WITNESS: Well, I got the request closer to
13 the end of the year. I had a new bookkeeper, and I
14 couldn't get into the K&T records to verify the
15 information so I had to piece all of this together.

16 THE COURT: Were you ultimately provided
17 those records or access to the records?

18 WITNESS: I have never gotten into the
19 records, no, sir. But we also had a different
20 bookkeeper. Julie left at the end of '21. We had a
21 new bookkeeper. She lasted until about April. Didn't
22 work out. And had a new bookkeeper, and that was when
23 I was able to export the records from other areas to
24 make the calculation.

25 THE COURT: So was it the new bookkeeper that

1 got you the number or was it the interim person?

2 WITNESS: Not the interim person. She could
3 not perform.

4 THE COURT: Got you. Okay. I think that's
5 all the questions I have. Thank you. You may step
6 down.

7 MR. DUFFY: Defense rests.

8 THE COURT: All right. Very good. It is
9 about 4:30. I don't know if you plan on putting any
10 reply testimony up. I was looking at your witnesses.
11 I saw three names that I haven't heard from yet.

12 MR. SLOTCHIVER: No, the trial changed when
13 the counterclaims changed. And then a lot of ours is
14 based on what the testimony was and what came in, so
15 we don't have anyone else to call, Your Honor.

16 THE COURT: Very good. Let me talk to you
17 lawyers back here for a second. Let's talk about this
18 case a second, and I don't think we're going to need
19 to go back on the record.

20 (Off the record at 4:25 p.m. on September
21 17th, 2024.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 11th DAY OF OCTOBER 2024.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**AFFIDAVIT OF COSTS AND
ATTORNEYS' FEES**

PERSONALLY, appeared before me, C. Wilson Daniel, who after being duly sworn, does depose and testify that:

1. My name is C. Wilson Daniel, and I am a citizen and resident of the State of South Carolina. I am over eighteen years of age, am competent to make this affidavit, and do so of my own personal knowledge.
2. I am an associate of the law firm Duffy & Young, LLC. I, along with Brian C. Duffy, serve as counsel to Defendants David G. Taylor and Taylor Capital, LLC, in the above-referenced matter.
3. My firm began working on this matter in April of 2022 when we were retained by Mr. Taylor and Taylor Capital after Mr. Taylor received a letter from Mr. Kachmarsky's counsel in March 2022, indicating that Mr. Kachmarsky intended to file this lawsuit, which he then filed in June of 2022.

4. I and others in my firm keep detailed and contemporaneous time entries for the purpose of submitting invoices to our clients.

5. I have reviewed the invoices and time spent on this matter and believe them to be reasonable for the work done in this case.

6. I spent 76.25 hours on this matter, and Brian C. Duffy spent 119.25 hours on this matter. Paralegals in my law firm spent 43.25 hours working on this matter as well.

7. In this case, my firm charged Brian Duffy's time at a reduced hourly rate of \$500.00; my time at an hourly rate of \$350.00; and paralegals' time at the hourly rate of \$175.00. The total fees incurred by Defendants are approximately \$93,881.25.

8. In addition, the total costs Defendants incurred in this matter are \$2,410.20.

9. The total fees and costs of Duffy & Young, LLC for the matter through December 4, 2024 is \$96,291.45.



C. Wilson Daniel (SC Bar No. 104317)
Duffy & Young, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
wdaniel@duffyandyoung.com

Attorney for Defendants

This 11 day of December, 2024.
Charleston, South Carolina.

SWORN AND SUBSCRIBED

Before me this 11 day of
December, 2024.


Notary Public ~~for South Carolina~~

My Commission Expires: 6/27/2025



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL
CIRCUIT

COUNTY OF CHARLESTON

) CASE NO.: 2022-CP-10-02589
)John Kachmarsky, Individually, as Manager of
K&T Group, LLC and as Trustee of the
Revocable Trust of John Kachmarsky dated
November 30, 2007, as Member of K&T Group,
LLC,)
)
)
)
)
)

Plaintiffs,

)
)
)

vs.

)
)David G. Taylor, Individually, and as Manager of
K&T Group, LLC, Taylor Capital, LLC, as
Member of K&T Group, LLC and K&T Group,
LLC,)
)
)
)
)

Defendants.

)
)
)**PLAINTIFFS' RULE 60(b)(2)
MOTION FOR RELIEF FROM
JUDGMENT DUE TO
NEWLY DISCOVERED EVIDENCE**

Pursuant to Rule 60(b)(2), SCRCP, Plaintiffs hereby move for relief from this Honorable Court's Order, filed November 26, 2024. A copy of the subject order is attached as Exhibit A. The grounds for this Motion are that (1) Plaintiffs have recently discovered evidence, which could not have been discovered in time to move for a new trial under Rule 59(b), and (2) the evidence further satisfies the burden of proof for claims asserted in the Complaint. Specifically, Plaintiffs recently discovered that Defendant David G. Taylor, a Manager of K&T Group, LLC, violated his duty of loyalty to K&T Group, LLC ("the Company"), by surreptitiously collecting and diverting rental payments owed to the Company from tenant Taylor Foley, LLC for his own benefit. (See Affidavit of April M. Shore of Taylor Foley, LLC, attached as Exhibit B).

From October 1, 2015 to through January 2025, tenant Taylor Foley, LLC paid \$982,300.00 in rent for use of office space held by K&T Group, LLC. (Affidavit at Exhibit B). At Defendant David Taylor's direction, however, Taylor Foley, LLC did not make these rent payments directly to K&T Group, LLC, but rather to Taylor Tax Law, LLC, an entity owned and controlled by David Taylor. Defendant David Taylor did not submit and/or report the entirety of the rental payments received from Taylor Foley, LLC to K&T Group, LLC. Instead, Defendant David Taylor only submitted \$587,061.00 of the sums received from tenant Taylor Foley, LLC to K&T Group, LLC, causing \$395,239.00 in undisclosed rental proceeds to be withheld from the Company. (Affidavit of John Kachmarsky at Exhibit C, noting amounts received). It was unbeknownst to Plaintiffs that Defendant had collected these additional undisclosed sums in rent.

Defendant's appropriation of tenant rents and Company opportunity is a direct violation of Sections 6.2 (Duty of Loyalty), 6.3 (Duty of Care), and 6.4 (Fiduciary Duties) of the Company's Operating Agreement. (See Operating Agreement, attached as Exhibit D). Further, Defendant's willful misconduct provides sufficient grounds for granting Plaintiffs' request for judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, judicial dissolution under S.C. Code Ann. § 33-44-801, and partitioning of the subject property.

LEGAL STANDARD

A trial court may relieve a party from a final judgment, order, or proceeding if "newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)" is presented to the trial court. Rule 60(b)(2), SCRPC. "To receive a new trial based on newly discovered evidence, the moving party must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted;

(2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching.” *Southeastern Hous. Found. v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (Ct. App. 2008) (citations omitted).

ARGUMENT

1. Plaintiffs should be granted relief from the judgment because they recently discovered evidence that David G. Taylor, Manager of K&T Group, LLC, had surreptitiously collected and diverted rental payments owed to K&T Group, LLC from tenant Taylor Foley, LLC.

It was unknown to Plaintiffs that Defendant David G. Taylor, *a Manager of K&T Group, LLC*, had caused \$395,239.00 in undisclosed rental proceeds from a tenant to be withheld from the Company. Although Plaintiffs asserted that Defendants had failed to pay their fair share of rental proceeds for use of the office space, Plaintiffs had no reason to believe that undisclosed rents had been surreptitiously collected, diverted, and withheld from the Company at the direction Defendant David Taylor in contravention of Sections 6.2 (Duty of Loyalty), 6.3 (Duty of Care), and 6.4 (Fiduciary Duties) of the K&T Group, LLC Operating Agreement.

Having recently discovered that the amounts of rent paid by tenant Taylor Foley, LLC at the direction of K&T Group Manager David Taylor far exceeds the amounts reported and submitted to the Company, sufficient grounds exist for setting aside the judgment, which was based on a finding that “Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint,” that “Plaintiffs have failed to justify expelling Taylor Capital, LLC from the Company,” and that “Plaintiffs have failed to demonstrate that judicial dissolution is appropriate here.” Indeed, this newly discovered evidence clearly contradicts the Court’s finding that “the Court has determined that no additional rent payments were owed.” (Order at p. 7). Here, we have a tenant expressly identifying undisclosed rent payments made at the direction of K&T Manager David Taylor, which were withheld from the Company. (Affidavit of April M. Shore

of Taylor Foley, LLC, attached as Exhibit B). Accordingly, grounds exist based on newly discovered evidence to grant Plaintiffs relief from the Judgment and/or grant a new trial.

2. The newly discovered evidence is likely to change the result of the judgment.

Evidence that Defendant David Taylor, a Manager of K&T Group, LLC, directed a tenant to make rental payments owed to K&T Group, LLC to a third-party entity controlled by Defendant Taylor, and that Defendant Taylor caused undisclosed sums of rent to be surreptitiously collected, diverted, and withheld from the Company is likely to change the result of the judgment. Specifically, the newly discovered evidence is likely to change the Court's judgment as to Plaintiffs' claims for breach of contract as they pertain to the Operating Agreement, Plaintiff's claims for judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, Plaintiffs' claims for judicial dissolution under S.C. Code Ann. § 33-44-801, and finally Plaintiffs' request for partition of the subject property.

As the Court's Order correctly sets forth, a court may judicially expel a member from a limited liability company if the member (i) engaged in wrongful conduct that adversely and materially affected the company's business; (ii) willfully or persistently committed a breach of the operating agreement or of a duty owed to the company or other member under Section 33-44-409; or (iii) engaged in conduct reasonably practicable to carry on the business with the member. Here, the newly discovered evidence supports all three grounds for judicial expulsion.

Further, as Section 6.2 of the Operating Agreement, titled Duty of Loyalty, states:

A Manager's duty of loyalty to the Company and the Members is limited to the following:

- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of the party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

Here, the newly discovered evidence via Ms. Shore's sworn affidavit demonstrates that Defendant David Taylor, did not "hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct... of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity." Indeed, concealing and diverting rents owed to the Company is the exact opposite of holding property, profits, or benefits in trust for the Company. Such acts are the very definition of appropriating a Company opportunity.

The newly discovered evidence also demonstrates that Defendant did not "refrain from dealing with the Company in the conduct... of the Company's business as or on behalf of the party having an interest adverse to the Company." Here, Defendant expressly instructed the tenant to make the rent payments to third parties controlled by Company Manager David Taylor in direct contravention of this and other provisions of the Operating Agreement. Finally, the newly discovered evidence demonstrates that Defendant Taylor, as Manager of the Company, did not refrain from competing with the Company in the conduct of the Company's business. The evidence indicates that Mr. Taylor did the exact opposite, causing \$395,239.00 in undisclosed rent paid by a tenant to be withheld from the Company. Accordingly, Plaintiffs respectfully request that the judgment be set aside. Defendants, which include a Manager of the Company, should not be rewarded for concealing the diversion of rents owed to the Company.

3. The newly discovered evidence was discovered since the Order was entered and before Plaintiffs could move for a new trial under Rule 59(b), SCRPC.

Although Plaintiffs asserted that Defendants had failed to pay their fair share of rental proceeds for use of the office space, Plaintiffs had no reason to believe that undisclosed rents had been surreptitiously collected, diverted, and withheld from the Company at the direction Defendant David Taylor in contravention of Sections 6.2 (Duty of Loyalty), 6.3 (Duty of Care), and 6.4 (Fiduciary Duties) of the K&T Group, LLC Operating Agreement. Plaintiffs did not discover that Defendants had been engaging in these acts until after the deadline for seeking a new trial pursuant to Rule 59(b) had expired, or after December 6, 2024.

4. The newly discovered evidence could not have been discovered before trial.

Defendants did not disclose that they were collecting more rents from tenant Taylor Foley, LLC than what had been reported or provided to Plaintiffs. Plaintiffs had no reason to believe that undisclosed rents had been surreptitiously collected, diverted, and withheld from the Company at the direction Defendant David Taylor, who is an active member of the South Carolina Bar and held to certain rules of conduct and professional responsibility. Accordingly, Defendants' concealment of the actual amounts received in rents could not be discovered before trial.

5. The newly discovered evidence is material to the issues before the Court.

As set forth in Argument 2, *supra*, the newly discovered evidence is material to the issues before the Court. Specifically, evidence that Defendant David Taylor, a Manager of K&T Group, LLC, directed a tenant to make rental payments owed to K&T Group, LLC to a third-party entity controlled by Defendant Taylor, and that Defendant Taylor caused undisclosed sums of rent to be surreptitiously collected, diverted, and withheld from the Company are material to the issues before the court and likely to change the result of the judgment. Specifically, the newly discovered evidence is likely to change the Court's judgment as to

Plaintiffs' claims for breach of contract as they pertain to the Operating Agreement, Plaintiff's claims for judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, Plaintiffs' claims for judicial dissolution under S.C. Code Ann. § 33-44-801, and finally Plaintiffs' request for partition of the subject property. The newly discovered evidence is relevant to each and every one of Plaintiffs' claims.

6. The newly discovered evidence is not merely cumulative or impeaching.

The newly discovered evidence, for the first time, provides Plaintiffs with additional, independent grounds to support their claims for breach of contract, judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, judicial dissolution under S.C. Code Ann. § 33-44-801, and support Plaintiffs' request for partition of the subject property. Accordingly, Plaintiffs should be granted Relief from the underlying judgment and/or granted a new trial in light of newly discovered evidence that is material to the issues before the Court.

CONCLUSION

For each of the reasons set forth above, Plaintiffs respectfully request that this Honorable Court grant their Rule 60(b)(2) Motion for Relief from Judgment. Plaintiffs should be granted relief from the underlying judgment because newly discovered evidence demonstrates that Defendant David G. Taylor, a Manager of K&T Group, LLC, violated his duty of loyalty to K&T Group, LLC, by surreptitiously collecting and diverting rental payments owed to the Company from tenant Taylor Foley, causing \$395,239.00 in undisclosed rental proceeds to be withheld from the Company.

Defendant's appropriation of tenant rents and Company opportunity is a direct violation of Sections 6.2 (Duty of Loyalty), 6.3 (Duty of Care), and 6.4 (Fiduciary Duties) of the Company's Operating Agreement. Further, Defendant's willful misconduct provides sufficient grounds for

granting Plaintiffs' request for judicial expulsion pursuant to S.C. Code Ann. § 33-44-601, judicial dissolution under S.C. Code Ann. § 33-44-801, and partitioning of the subject property.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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ATTORNEY FOR PLAINTIFFS

January 17, 2025
Mount Pleasant, South Carolina

Exhibit A

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

**IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2022-CP-10-02589**

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

ORDER

On September 17, 2024, this Court held a bench trial in the matter between Plaintiffs John Kachmarsky, Individually, as Manager of K&T Group, LLC, and as Trustee of the Revocable Trust of John Kachmarsky dated November 30, 2007, as Member of K&T Group, LLC (“Plaintiffs”) and Defendants David G. Taylor, Individually and as Manager of K&T Group, LLC; Taylor Capital, LLC, as Member of K&T Group, LLC; and K&T Group, LLC (“Defendants”). Having considered all matters of record and the evidence and arguments presented at trial, the Court finds that Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint and dismisses those claims with prejudice. The Court further finds that Defendants satisfied their burden of proof for their counterclaim and enters judgment in Defendants’ favor on that claim.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston.

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities (law firms) within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

Plaintiffs presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. One such disagreement led the parties to a common understanding to address significantly different expectations for use of the property. In 2014, Kachmarsky and Taylor addressed their respective law firms’ use of additional office space in Suite 330 and whether such use of unoccupied office space obligated that firm to make additional

rental payments to K&T. (Defs' Ex. 2.) The parties brought that issue to a trusted third party. (Defs' Ex. 4.) With the third party's guidance, the parties agreed that a law firm's sustained use of vacant office space would require that firm to make additional rent payments. The parties moved forward, however, allowing the firms to use additional space without payment when each firm used an equivalent amount of additional space. (Trial Tr. 102:16 – 104:3.) And K&T permitted temporary use of empty office space by a law firm without additional payment as long as the temporary use did not preclude rental of the space to interested third parties. (Trial Tr. 84:18 – 85:23; 155:2-13.) In light of Kachmarsky's resistance, K&T did not follow the third party's suggestion to enter lease agreements with the law firm occupants in Suite 330. (Trial Tr. 80:1–23; 110:3 - 111:16; 104:4–10; 154:9–23.)

The disagreements raised by Plaintiffs occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) That one disagreement that occurred during the statutory period involves the Taylor Foley law firm's use of an otherwise vacant office in Suite 330 for the firm's summer intern in 2021.

During trial, Taylor testified that the summer intern used an available office on a part-time basis and only in the summer months of May, June, and July. (Trial Tr. 159:15–20; 160:14–164:9.) Defendants presented documents demonstrating that a summer intern began working for Taylor Foley in May and that the summer intern was paid by Taylor Foley only for the months of May, June and July 2021. (Defs' Exs. 22, 23, and 24; Trial Tr. 160:14– 162:21.) In fact, the evidence was clear that Kachmarsky knew that the firm's intern started in May. (Defs' Exs. 24, 25.) Taylor testified that no other person associated with Taylor Foley used vacant office space in Suite 330 during that time, that Taylor Foley had no records of any female that might have utilized that space

prior to May, and that Taylor's investigation into the matter confirmed that no Taylor Foley employee utilized vacant office space prior to May 2021. (Trial Tr. 163:22–164:9.)

There is no credible evidence of an additional Taylor Foley employee having been hired and placed in that (otherwise unoccupied) office before May 2021. Indeed, although an employee of Kachmarsky's law firm testified that he remembered a female using the subject vacant office in February 2021, he could recall little detail from that time years ago except that only one female had occupied the subject office in 2021, until the male associate took the office in August. (Trial Tr. 138:20 –139:3; 142:21 –143:12.)

In early 2022, rent payments due to the Company from Taylor Foley were delayed. Taylor Foley's longtime bookkeeper—who had historically handled rent payments to K&T—exited, and the firm had difficulty finding a replacement. (Trial Tr. 156:14–157:6.) When the matter of rental payments was brought to Taylor's attention, he sought information from Kachmarsky -- a more detailed statement as to what Kachmarsky said was owed. (*Id.* at 156:25–159:2.) In April of 2022, following email exchanges between Taylor and Kachmarsky and Kachmarsky's counsel threatening litigation as to K&T and its members, Taylor Foley paid rent for the use of the additional office starting in August of 2021 when its full-time associate attorney started work. (Defs' Ex. 9.) Kachmarsky contends that rent remains due for the months of January through July of 2021.

Plaintiffs filed this lawsuit in June 2022.

B. Procedural History

In this action, Plaintiffs assert three claims against Defendants: (1) breach of contract, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim

for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pre-trial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiffs' claims and Defendants' counterclaim on September 17, 2024.

C. Discussion

Having considered the evidence and arguments presented at trial and all matters of record, the Court addresses the parties' claims below.

1. Plaintiffs' Claim for Breach of Contract

As an initial matter, the Court declines to consider any alleged breach which occurred prior to the statutory period, that is, more than three years before the initiation of this action. *See Maher v. Tietex Corp.*, 331 S.C. 371, 376, 500 S.E.2d 204, 207 (Ct. App. 1998) ("An action for breach of contract must be brought within three years from the date the action accrues.") (citing S.C. Code Ann. § 15-3-530(1)). Although Kachmarsky presented evidence to demonstrate why he would prefer that his Trust be permitted to exit the term company K&T after twenty years, he concedes that the dispute over eight months of rent he says Taylor Foley should pay K&T "is the amount that is arguably in dispute at the moment." (Trial Tr. 83:4 – 11.) Plaintiffs are correct that what is in dispute is whether Taylor Foley must pay for alleged use of one office for seven months of 2021, prior to its full-time employee occupying that office in August of that year. Plaintiffs are incorrect, however, in pressing that claim for \$8,750.00 in rent against the Defendants.

The party that rents space from the Company, and which temporarily used and ultimately rented the specific office at issue, is the law firm Taylor Foley. (Trial Tr. 102:16 – 23; 78:20 – 79:10.) Kachmarsky communicated with Taylor Foley employees about office space and rent

2. Plaintiffs' Claim for Judicial Expulsion

The Court finds that Plaintiffs have failed to justify expelling Taylor Capital, LLC from the Company. A Court may judicially expel a member from a limited liability company if the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company's business;
- (ii) wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; or
- (iii) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member[.]

S.C. Code Ann. § 33-44-601(6). The South Carolina Court of Appeals has recently recognized that:

[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar" and a court may not order disassociation "merely because there is a conflict." "[D]isagreements and disputes among [limited liability company] members that bear no nexus to the [limited liability company's] business" do not justify a member's expulsion, and "it must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it.

Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

At trial, Plaintiffs failed to clear this "high bar" for three reasons. As an initial matter, just as the Court cannot consider stale alleged breaches, it cannot consider allegedly wrongful conduct that occurred more than three years prior to the filing of this action in determining whether expulsion is warranted. *See Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011) (finding that claims asserted under the

South Carolina Limited Liability Act are subject to a three-year limitations period) (citing S.C. Code Ann. § 33-44-410)). Accordingly, the Court considers only circumstances that occurred within the statutory period, that is, from June 2019 to June 2022.¹

Plaintiffs’ request for expulsion relies upon the same conduct as their breach of contract claim—the non-payment of rent based on Taylor Foley’s alleged use of vacant office space in 2021. (Trial Tr. 73:20 - 25.) That conduct does not justify Talyor Capital’s expulsion from K&T. For one, for the same reasons explained above, the Court cannot expel Taylor Capital from the Company based on the alleged misconduct of Taylor Foley. If any obligation to pay rent was in fact owed, it was owed by Taylor Foley, and not by Taylor Capital.

Second, as a factual matter, the Court has determined that no additional rent payments were owed. As explained in greater depth above, the evidence demonstrates that the subject office was not in use from January through April. And the Court finds that the temporary use of the office by Taylor Foley’s intern from May through July did not give rise to any rental obligations. (*See, e.g.*, Trial Tr. 84:18 – 85:23; 87:14 – 88:12.)

Third, even if additional rent payments had been owed for three months of temporary use, an outstanding receivable of \$3750 in no way makes it “unfeasible, despite reasonable efforts, to keep the [limited liability company] operating[.]” *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. In fact, Plaintiffs agreed that no Defendant is frustrating the operation of K&T. (Trial Tr. 101:22 – 102:15.) Indeed, the evidence demonstrates that Taylor Foley pays rent for the office space it utilizes, and K&T continues to fulfill its purpose “to hold and manage Company Property.”

¹ Moreover, even if the Court were to consider the full record of complaints lodged by Plaintiffs, these few disagreements over a twenty-year lifespan are not sufficiently material or injurious to the continued operation of the company for its intended purpose. Nearly all were resolved without incident.

While Kachmarsky testified that this lawsuit arises from “[n]ot paying rent for space being used,” (Trial Tr. 112:17–113:12), he acknowledged that the rent he sought from Taylor Foley would change depending on his law firm’s use of space; there was no set lease amount. (Trial Tr. 102:16 – 104:3.) Nevertheless, aside from the months of 2021 at issue, there is no dispute that Taylor Foley has paid any rent Plaintiffs consider to have been due. The core of the dispute here is whether temporary use of a vacant office for three months by a summer intern triggers obligations for Taylor Foley to pay rent for that space. As the Plaintiffs have known and resisted for years, one solution to any guesswork about what is due from each firm and when, and how to enforce that obligation, is **to have the Company enter written leases with the law firms**. That is one reasonable and practicable way for the members to carry on the Company’s business.

The issues presented by Plaintiffs are more aptly categorized as “disagreements and disputes among members” that do not justify judicial intervention. *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493. Even viewing the evidence in the light most favorable to Kachmarsky, the total amount in dispute at the time that this lawsuit was filed was \$8,750. (*Id.* at 113:13 – 114:17.) That amount-in-controversy pales in comparison to the value of the Suite 330, the Company’s primary asset, which Kachmarsky testified is worth well over \$1.5 million. (*Id.* at 113:13–115:6.) An \$8,750-dollar rent dispute does not clear the “high bar” required to justify expulsion, and there is no evidence in the record indicating that the continued operation of K&T would be “unfeasible” if Taylor Capital were not expelled. *Boathouse at Breach Inlet*, 442 S.C. at 652, 900 S.E.2d at 493.

Accordingly, the Court finds that the circumstances do not warrant judicial expulsion under S.C. Code Ann. § 33-44-601.

misguided lawsuit violates these duties as well as the duty of loyalty. And Defendants contend that seeking the result of, or leverage from, a claim to expel Taylor Capital and impose the penalties of wrongful dissociation further violates these duties.

The K&T Operating Agreement establishes duties that the managers owe to the Company and to the Members. Specifically, section 6.2(a) of the Company’s Operating Agreement imposes upon the Managers a duty of loyalty: “[t]o refrain from dealing with the Company in the conduct or winding up of the business as or on behalf of a party having an interest adverse to the Company.” Section 6.3 imposes upon the Managers a duty of care “to refrain[] from engaging in grossly negligent or reckless conduct” And section 6.4 of the Operating Agreement demands that “[e]ach Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members.”

Kachmarsky, in his capacity as Manager of the Company,² breached the Operating Agreement’s duties of loyalty, care, and good faith and fair dealing owed to Taylor Capital by seeking to dissolve the company over \$8,750 in rental payments allegedly owed, and when any such obligation clearly belonged to a third party. Moreover, any reasonable inquiry into the matter by Manager Kachmarsky would have demonstrated that the most money even arguably at issue was \$3750 for three months of use. To the extent Kachmarsky wished to address issues within K&T, he could have availed himself of any of several other less drastic alternatives, such as (a) sending notice of any alleged default of obligations to Taylor Capital per section 12.2 of the Operating Agreement, (b) calling a member meeting per section 4.2, (c) calling a Management Committee meeting per section 5.5, or (d) pursuing a capital call per section 3.8.

² The applicable duties of the Company’s Operating Agreement apply to Managers and generally not to Members. Accordingly, the Court analyzes this claim as to the acts of Kachmarsky as Manager and not as to the Kachmarsky Trust.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master In Equity, Charleston County

_____, 2024
Charleston, South Carolina

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Charleston Common Pleas

Case Caption: John Kachmarsky , plaintiff, et al VS David G Taylor , defendant, et al

Case Number: 2022CP1002589

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-11-26 10:24:32 page 14 of 14

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Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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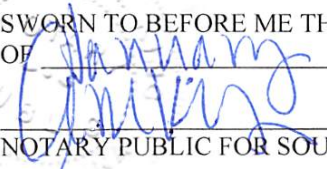
AFFIDAVIT OF APRIL M. SHORES

After first being sworn, the undersigned April M. Shores, deposes and says:

1. I am over the age of 18 years and competent to make this affidavit.
2. I previously served in several roles for over eighteen (18) years at Taylor Foley, LLC (or its predecessor), a law firm that rendered legal services in Charleston, South Carolina until December 31, 2024, to include office manager and personal assistant to David Glenn Taylor.
3. It is my understanding that David Glenn Taylor, a partner and manager of Taylor Foley, LLC, advised the remaining partners and managers of Taylor Foley, LLC (David Foley and Brent Bullock) that he intended to separate from Taylor Foley, LLC effective December 31, 2024.
4. Since January 1, 2025, the partners and I have been working on separating the practices of David Glenn Taylor from that of David Foley and Brent Bullock as I was advised that David Glenn Taylor would be relocating his practice to 16 Charlotte Street, Charleston, SC.
5. Based on this, David Foley and Brent Bullock have been trying to obtain a lease for our new firm, Foley Bullock, LLC, at the historical space of Taylor Foley, LLC located at 171 Church Street, Suite 330, Charleston, South Carolina, owned by K&T Group, LLC.
6. To do this, David Foley, Brent Bullock, and I have examined the business records of Taylor Foley, LLC to determine how rent was being paid to K&T Group, LLC and in what amounts.
7. Taylor Foley, LLC has not been paying rent directly to K&T Group, LLC. Based on the records of the company and the decision and direction of David Glenn Taylor, Taylor Foley, LLC has been paying Taylor Tax Law, LLC (owned by David Glenn Taylor) rent for the office space since July 21, 2014.
8. The rent paid from Taylor Foley, LLC to Taylor Tax Law, LLC varied from the amount of \$30,000.00 a month to \$6,600.00 a month in any given month over the years. Beginning in August of 2022, the rent paid from Taylor Foley, LLC to Taylor Tax Law, LLC leveled at \$10,500.00 a month through January of 2025.
9. Based on the business records of Taylor Foley, LLC, since July 21, 2014, the amount of rent paid from Taylor Foley, LLC to Taylor Tax Law, LLC through January 1, 2025 is \$1,116,542.71.

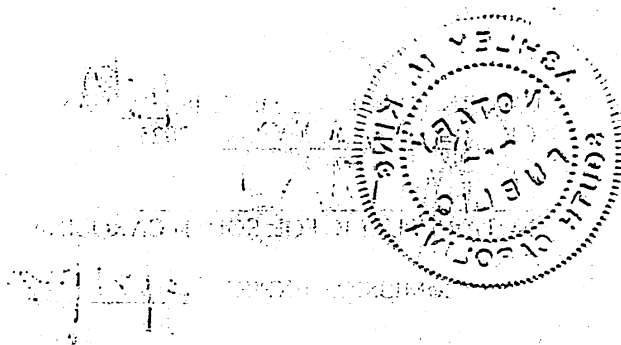

April M. Shores

SWORN TO BEFORE ME THIS 15th DAY
OF JANUARY, 2025


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 2/21/30

[Handwritten signature]



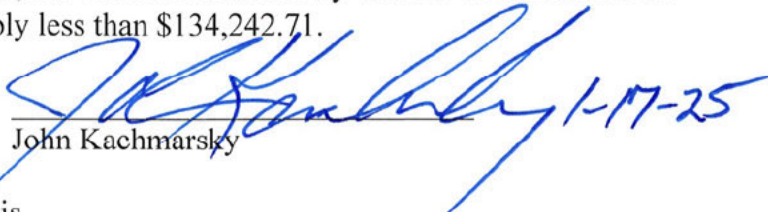
5.10.2025

Exhibit C

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON) AFFIDAVIT OF JOHN KACHMARSKY

After first being sworn, the undersigned John Kachmarsky deposes and says:

1. I am over the age of 18 years and competent to make this affidavit.
2. I am a manager and member of K&T Group, LLC owning 50% of the membership interests in K&T Group, LLC.
3. Based on Affidavit of April M. Shores, I have learned that Taylor Foley, LLC has not always been paying rent directly to K&T Group, LLC but rather to other entities owned by David Glenn Taylor.
4. Based on Affidavit of April Shores, I have learned that since October 1, 2015, through January 1, 2025 the amount of rent paid from Taylor Foley, LLC to Tayor Tax Law, LLC or entities owned by David Glenn Taylor is \$982,300.
5. Based on my examination of the records of K&T Group, LLC, the amount of rent received from Taylor Foley, LLC or from entities owned by David Glenn Taylor during the same period of time beginning October 1, 2015 through January 17, 2025 is \$587,061.
6. Based on Affidavit of April M. Shores, I have learned that since July 21, 2014, the amount of rent paid from Taylor Foley, LLC to Tayor Tax Law, LLC or entities owned by David Glenn Taylor is \$1,116,542.71 or an additional \$134,242.71 for the period beginning July 21, 2014 and ending September 30, 2015.
7. Based on my examination of the records of K&T Group, LLC from July 21, 2014 through September 30, 2015, which records were kept by David Glenn Taylor during such period, I am unable to provide the exact amount of rent received from Taylor Foley, LLC or from entities owned by David Glenn Taylor, but can state definitively that the amount received by K&T Group, LLC was considerably less than \$134,242.71.


 John Kachmarsky

SWORN to and subscribed before me this
17 day of January, 2025

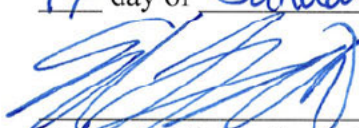

 Notary Public for South Carolina
 My Commission Expires: 9/6/33



Exhibit D

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
OF
K&T GROUP, LLC**

TAYLOR & ASSOCIATES, PA
Attorneys & Counselors at Law
171 Church Street – Suite 330
Charleston, South Carolina 29401
Telephone 843.723.2000

OFFICIAL COMPANY NAME: **K&T Group, LLC**
PLACE OF ORGANIZATION: **Charleston County, South Carolina**
DATE OF ORGANIZATION: **November 11, 2003**
DATE BEGIN BUSINESS: **November 11, 2003**
MEMBERS:

MEMBER'S NAME AND ADDRESS	CAPITAL CONTRIBUTION	FINANCIAL RIGHTS	VOTING RIGHTS
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

ANNUAL MEETING: **Not Required**
ADDRESS: **171 Church Street, Suite 330
Charleston, South Carolina 29401**
REGISTERED AGENT: **John Kachmarsky**
MANAGEMENT COMMITTEE: **David Glenn Taylor
John Kachmarsky**
COMPANY PROPERTY: **171 Church Street, Suites 318, 320 & 330
Charleston, South Carolina 29401**
FEIN: 

Company Details for K & T Group, LLC

ROA - 0415

**FIRST AMENDED AND RESTATED
OPERATING AGREEMENT
FOR
K&T GROUP, LLC**

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT ("Agreement") is made and entered into to be effective as of the 1st day of January, 2009, by and among Taylor Capital, LLC and John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007 (collectively referred to as the "Members" and individually as a "Member").

WITNESSETH:

WHEREAS, the Company was originally formed on the 11th day of November, 2003, with David Glenn Taylor and John Kachmarsky each owning a Fifty (50%) percent of the Membership Interests for the Company; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, David Glenn Taylor transferred One Hundred (100%) percent of his said Membership Interests in the Company to Taylor Capital, LLC; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from David Glenn Taylor to Taylor Capital, LLC; and

WHEREAS, pursuant to that certain Transfer and Assignment of Membership Interests dated to be effective as of the 1st day of January, 2009, John Kachmarsky transferred One Hundred (100%) percent of his said Membership Interests in the Company to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007; and

WHEREAS, David Glenn Taylor and John Kachmarsky each give their approval to the transfer of Membership Interests in the Company from John Kachmarsky to John Kachmarsky as Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007.

NOW, THEREFORE, BE IT KNOWN that the parties hereto, do hereby amend the Operating Agreement for K&T Group, LLC by striking all Articles of said indenture in their entirety and restating said Articles as set forth herein. This indenture, as amended, shall be referred to and known as the First Amended and Restated Operating Agreement for K&T Group, LLC.

NOW, THEREFORE, the parties hereto have agreed and do hereby agree as follows:

ARTICLE I

Formation, Purposes and Powers

1.1 Formation. The parties to this Agreement have heretofore formed a limited liability company under the laws of the State of South Carolina, and agree to and adopt the terms and conditions set forth in this Agreement. The limited liability company ("Company") shall exist under and be governed by the provisions of the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 *et. seq.* of the Code of Laws of South Carolina (1976), as amended (the "Act"), except as otherwise provided or modified by this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.

1.2 Name. The name of the Company shall be K&T Group, LLC.

1.3 Articles of Organization. The Company has filed Articles of Organization with the South Carolina Secretary of State, and shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.

1.4 Annual Report. The Company shall not be required to file an Annual Report with the South Carolina Secretary of State.

1.5 Designated Office. The Company shall maintain a designated office in South Carolina in accordance with Section 33-44-108(a) of the Act. The initial designated office shall be at 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may from time to time change the location of the Company's designated office.

1.6 Registered Agent and Address. The registered agent for service of process on the Company in South Carolina shall be John Kachmarsky. The street address of the registered agent for service of process on the Company in South Carolina shall be 171 Church Street - Suite 330 - Charleston - 29401. The Management Committee may change the registered agent's street address or designate a new agent for service of process by filing with the Secretary of State a Statement of Change, in compliance with Section 33-44-109 of the Act.

1.7 Term Company. The Company shall be term Company. The Company commenced on the date the Articles were filed with the Secretary of State of South Carolina for the Company and shall continue in existence for the period fixed in the Articles for the duration of the Company, or such earlier time as this Operating Agreement may specify.

1.8 Statement of Company & Fictitious Name Certificates. The Members shall execute and file in the proper offices such statement of the Company and such assumed or fictitious name certificates as may be required by law.

1.9 Income Tax Election. The Company shall be taxed as a partnership for state and federal income tax purposes, and the Management Committee shall make all elections necessary and file all documents and forms required to obtain and maintain such income tax treatment for the Company and the Members.

1.10 Purposes. The character of business and purposes of the Company shall be to hold and manage the Company Property, including but not limited to servicing, managing, improving, operating, leasing, mortgaging, refinancing, pledging, selling or otherwise dealing with the Company Property and engaging in such other activities as the Management Committee deems necessary or appropriate to the foregoing purposes. The purposes of the Company shall also be to engage in any other business or activity which is allowed by law, common, statutory or otherwise.

1.11 Powers. Subject to the provisions of this Agreement, the Company shall have the same powers as an individual to do all things necessary or convenient to carry on its business and affairs, including the power to:

- (a) Sue and be sued, and defend in its name;
- (b) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, maintain, manage, operate and otherwise deal with property of any kind, real, personal, tangible and intangible, or any legal or equitable interest in property, wherever located;
- (c) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (d) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (e) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- (f) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- (g) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (h) Conduct its business, locate offices, and exercise the powers granted by this Agreement and the Act within or without the State of South Carolina;

(i) Appoint officers, employees, and agents of the Company, define their duties, fix their compensation, and lend them money and credit;

(j) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former Members, officers, employees, and agents;

(k) Make donations for the public welfare or for charitable, scientific, or educational purposes;

(l) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the Company;

(m) Perform any act and execute and deliver any documents required by any governmental authority; and

(n) Perform any and all other acts or activities customary, incidental, necessary or convenient to the purposes and powers enumerated herein.

1.12 Company Accounts. The Company shall maintain such separate bank accounts as appropriate for the conduct of the Company's business, in the name of the Company, at such bank or banks as from time to time may be designated by the Management Committee.

1.13 Foreign Qualification. Prior to the Company doing any business in a state other than South Carolina, the Management Committee shall determine if the Company is required to "qualify to do business" in that state, and if so, the Management Committee shall take all steps necessary to qualify the Company in that state before conducting any business there.

1.14 Construction. If and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

1.15 Minimum Insurance Requirements. Unless otherwise determined by the Management Committee, the Company shall carry and maintain in force, or cause to be carried and maintained in force, insurance insuring the Company for the fair market value of the Company Property (other than land), including without limitation, insurance for all insurable improvements owned or leased by the Company against loss or damage by fire or other hazards, including extended coverage, vandalism and malicious mischief, and public liability insurance against claims for bodily injury, death or property damage. All such insurance shall be effected under policies issued by insurers and be in forms and for amounts approved by the Management Committee. If the Company renders professional services within the meaning of Section 33-19-103(7) of the Code of Laws of South Carolina (1976), as amended, the Company shall acquire and maintain such additional insurance or segregated funds as may be required by the applicable licensing authority.

ARTICLE II

Definitions

2.1 Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

(a) **“Act”** shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(b) **“Action of the Company”** and any reference to an action taken, or to be taken, by the Company shall mean any action properly approved by the Management Committee in accordance with ARTICLES V and VI.

(c) **“Agreement”** shall mean this Operating Agreement and any amendments made thereto from time to time.

(d) **“Articles of Organization”** shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act.

(e) **“Capital Account”** shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

(f) **“Capital Contribution”** or **“Contribution to Capital”** shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

(g) **“Code”** shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

(h) **“Company”** shall mean K&T Group, LLC a South Carolina limited liability company.

(i) **“Company Liability”** shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

(j) **“Company Property”** shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company, including, but not limited to, the property described on EXHIBIT A attached hereto.

(k) **“Disinterested”** shall mean with respect to any Member or Manager, a Member or Manager who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Family”** shall mean the spouse, lineal descendants and ancestors of a Member.

(m) **“Financial Rights”** shall mean the right of a Member, or any other person, to share in the Profits and Losses of the Company and the right to share in distributions. The phrase “Financial Rights” shall have the same meaning, and describe the same rights, as the phrase “Distributional Interest” as used in the Act.

(n) **“Losses”** shall mean the losses of the Company as determined under SECTION 8.3 hereof.

(o) **“Management Committee”** shall mean the Management Committee elected from time to time pursuant to ARTICLE V.

(p) **“Manager”** shall mean any Person elected to the Management Committee from time to time pursuant to ARTICLE V. The initial Managers shall be David Glenn Taylor and John Kachmarsky.

(q) **“Member”** shall mean the parties to this Agreement from time to time. For purposes of ARTICLES IX, X and XI, the term “Member” includes any Member who has withdrawn or otherwise dissociated from the Company.

(r) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(s) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(t) **“Profits”** shall mean the profits of the Company as determined under SECTION 8.3 hereof.

(u) **“S.C. Code”** shall mean the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided for herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members, or the total Voting Rights represented at a meeting of the Members at which a quorum exists.

ARTICLE III **Membership and Capitalization**

3.1 Initial Members. Upon transfer of the property and/or cash constituting each Member's initial Capital Contribution to the Company, the Financial Rights and Voting Rights of the Members shall be in the percentages shown on EXHIBIT B attached hereto.

3.2 Admission of New Members. Except in the case of transferees of all or any part of a Membership Share, who shall be subject to SECTION 3.3, additional Members may be admitted to the Company only with the unanimous consent of all Members who own one hundred (100%) percent of the Voting Rights in the Company. Members shall indicate their consent to the admission of a new Member by executing a memorandum to be attached to this Agreement setting forth the names and addresses of all the Members, the amount of cash or fair market value of property being contributed by the new Member (if applicable), and the percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission. In addition, no Person shall become a Member unless such Person:

(a) Agrees in writing to assume and to be bound by all the obligations and subject to all the restrictions of this Agreement and any further agreement with respect to the Company;

(b) Executes and acknowledges, as required, a certificate amending the fictitious name certificate or assumed name certificate of the Company in order to reflect the Member's admittance and to take any other action that may be required in connection therewith;

(c) Notifies the Company of his current address and provides his federal and state tax identification numbers and such other information as the Management Committee may deem appropriate.

3.3 Effect of Transfer of Membership Share - Transferee Admitted as a Member. A transferee of all or any part of a Membership Share who is not already a Member may only become a Member if (a) the Members who own the percentage of Voting Rights in the Company required by SECTION 3.2 consent to the transferee's admission (without regard to the Voting Rights of the transferor or transferee) and (b) such transferee meets all the qualification requirements for Members contained in this Agreement, including but not limited to, all requirements of SECTION 3.2. If the transferee becomes a Member, he shall be entitled to all rights and powers and subject to all restrictions and liabilities of a Member, including the transferor's obligations to make contributions to the Company.

Notwithstanding anything herein to the contrary, no creditor of a Member who obtains any portion of a Membership Share, including any Financial Rights, by charging order pursuant to Section 33-44-504 of the Act, or otherwise, or any person or entity, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a full Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

3.4 Transferee not Admitted as a Member. If the transferee of all or any part of a Member's Membership Share is not admitted as a Member, he shall be entitled to receive only the distributions to which the transferor would otherwise be entitled. The transferee shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any rights of a Member. The transferee takes all Financial Rights subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change a Member's rights and consequently affect the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under Section 33-44-801(b)(6) of the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred.

Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Company written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.5 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under Section 33-44-504 of the Act, the Management Committee may cause the Company to redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with Section 33-44-504(c) of the Act. Nothing in this SECTION 3.5 shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with Section 33-44-504(c) of the Act.

3.6 Ceasing to be a Member. A Member shall cease to be a Member and shall have no power to exercise any rights of a Member if such Member:

- (a) Transfers his entire Membership Share; or
- (b) Is expelled from the Company by judicial determination under Section 33-44-601(6) of the Act.

3.7 Power of Attorney. Any Member may give another Member power of attorney to act for or to execute documents in the name of such Member and any action taken pursuant to such power of attorney shall be valid for all purposes as if done or executed by the Member giving such a power of attorney, provided the Member giving such power of attorney delivers a copy of the power of attorney to the Company. Any such power of attorney may be general or may be limited to certain acts or instruments, may contain conditions and restrictions, and may be changed or revoked at any time by the Member who gave such power giving notice of its change or revocation to the Company.

3.8 Additional Capital Contributions. The Company may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this SECTION 3.8, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

(a) If any Member fails to make his proportionate Capital Contribution within thirty (30) days after receiving notice of a mandatory capital call ("Defaulting Member"), each Member who has made his required Capital Contribution pursuant to this SECTION 3.8 may make an additional Contribution to Capital equal to such Member's proportionate share of the Defaulting Member's required contribution. If any Member fails to make any such additional Capital Contributions within thirty (30) days after expiration of the original thirty (30) day period, the other Members may make further contributions in proportion to their Financial Rights until either the entire amount of the Defaulting Member's obligation is paid, or until no Member wishes to make any additional Capital Contributions. The Members shall have thirty (30) days to make such additional Contributions to Capital. Any Member that contributes additional capital to the Company shall have his Membership Share increased so that it is equal to a fraction, the numerator of which is the sum of all such Member's Capital Contributions to the Company and the denominator of which is the sum of all Capital Contributions to the Company made by each Member. The Financial Rights and Voting Rights of the Defaulting Member and each Member that elects not to make an additional Capital Contribution to the Company shall be reduced accordingly. To the extent a Defaulting Member's obligation to make Capital Contributions remains unsatisfied, such obligation of the Defaulting Member shall be a personal debt obligation of the Defaulting Member enforceable by the Company and the other Members as provided herein.

(b) The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's unpaid obligation under this SECTION 3.8. If the Defaulting Member fails to satisfy his obligation hereunder by making Capital Contributions to the Company in the amount required within ninety (90) days after receiving notice of a mandatory capital call, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligation. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture.

ARTICLE IV **Member Meetings**

4.1 Place of Meetings. All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

4.2 Time of Meeting. Meetings of the Members may be called at any time by any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

4.3 Quorum & Voting Requirement. Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. More than fifty (50%) percent of the Voting Rights in the Company constitutes a quorum. Except as an action is permitted to be accomplished without a meeting as provided in SECTION 4.5, in order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights represented at the meeting shall constitute a valid decision of the Members, unless the matter being voted on is one which requires a different vote pursuant to the Act or this Agreement.

4.4 Proxies. Members may vote by proxy appointed by an instrument in writing.

4.5 Action without Meeting. The Members may take action without notice and a meeting if all the Members consent to such action by signing a Consent of the Members which sets forth the action to be taken and contains the signature of each Member.

4.6 Waiver of Notice. A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

4.7 Ratification. Under the quorum and voting requirements of SECTION 4.3, the Members may ratify and adopt any and all acts done on behalf of the Company.

ARTICLE V **Management and Control**

5.1 General Authority. Except as otherwise expressly provided by this Agreement or required by any nonwaivable provisions of applicable law, the business and affairs of the Company shall be managed by the Management Committee. The Management Committee shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, the Management Committee shall have the power and authority on behalf of the Company to:

- (a) Acquire property, real, personal, tangible and intangible;
- (b) Borrow money for the Company from banks, other lending institutions, and other persons on such terms as the Company deems appropriate and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
- (c) Purchase liability and other insurance to protect the Company Property and business;
- (d) Hold and own any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, interests in general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature;
- (e) Invest and reinvest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments including real estate, stocks, options, general and limited partnerships, limited liability companies, common trust funds, mutual funds, futures, rights, warrants, puts, calls, contracts, public and private bonds, debentures, securities, and other debt and equity interests and to actively trade, speculate on and manage the same;
- (f) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
- (g) Employ accountants, legal counsel, managing agents money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them from Company funds;
- (h) Screen, interview, and examine staff and personnel to be employed by the Company;
- (i) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (j) Maintain the assets of the Company in good order;
- (k) Collect sums due the Company;
- (l) Pay debts and obligations of the Company to the extent that Company funds are available;

(m) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber, develop, improve, subdivide, or otherwise deal with any property, including Company Property;

(n) Bring suit on the Company's behalf or defend the Company in any such action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;

(o) File on behalf of the Company a voluntary petition for bankruptcy, or to bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding;

(p) Invest and reinvest in any kind of property, real, personal, tangible and intangible, including, but not limited to, common trust funds, stocks, bonds, notes, mortgages, general or limited partnerships, limited liability companies, savings accounts and certificates of deposit, mutual funds, and real estate; and

(q) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

5.2 Members' Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

(a) Any amendment to this Agreement or the Articles of Organization shall require the unanimous approval of the Members of the Company who own one hundred (100%) percent of the Voting Rights in the Company.

(b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the unanimous consent of those Disinterested Members in the Company who own one hundred (100%) percent of the Voting Rights of all Disinterested Members in the Company.

(c) The Company shall not sell, or contract to sell, or otherwise dispose of substantially all of the Company Property without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company. For purposes of this paragraph, all or substantially all of the Company Property shall mean more than seventy-five (75%) percent of such property by value.

(d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(e) The Company shall not open any additional offices or additional locations without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(f) The Company shall not close any existing office without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

(g) The Company shall not hire anyone who is a member of a Member's or Manager's Family without the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.3 Liability for Certain Acts. A Manager who performs his duties in good faith and in a manner he reasonably believes to be in the best interests of the Company shall not have any liability solely by reason of being or having been a Manager of the Company. A Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of such Manager's fraud, deceit, gross negligence, willful misconduct, breach of this Agreement or a knowing violation of the law.

5.4 Compensation. The Managers shall be entitled to reasonable compensation for the performance of their duties. The amount of such compensation shall be determined by the Management Committee, subject to the unanimous approval of those Members who own one hundred (100%) percent of the Voting Rights in the Company.

5.5 Management Committee Meetings - Place, Time and Notice. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by more than fifty (50%) percent of the Managers. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting. Each Manager shall be entitled to one (1) vote. Fifty (50%) percent of the Managers constitutes a quorum. Except as provided in SECTION 5.7, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy. Once a quorum is established, the affirmative vote of more than fifty (50%) percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee. Managers may vote by proxy appointed by an instrument in writing.

5.6 Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

5.7 Action without Meeting. The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.

5.8 Managers: Number, Election, Tenure and Qualifications. The Company shall initially have two (2) Managers. The initial Managers shall be David Glenn Taylor and John Kachmarsky. The Managers need not be Members in the Company. Each Manager shall agree to be bound by the provisions of this Agreement as they relate to Managers. The number of Managers on the Management Committee may be changed from time to time by the affirmative and unanimous vote of those Members who own one hundred (100%) percent of the Voting Rights in the Company. The Managers shall be elected by the affirmative and unanimous vote of those Members who own one hundred (100%) of the Voting Rights in the Company. Following his election, each Manager will serve until (a) his removal, (b) his resignation, or (c) the election of a successor, whichever occurs first.

5.9 Removal of Managers. A Manager may be removed at any time, with or without cause, by those Members who own more than fifty (50%) percent of the Voting Rights in the Company.

5.10 Resignation of Managers. Any Manager may resign at any time by giving written notice to all Members (other than the Manager so resigning should such Manager also be a Member). The resignation shall be effective upon receipt of such written notice by the last Member receiving such notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member and shall not constitute a withdrawal from the Company by the Member.

5.11 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf the Company.

5.12 Ratification. The Management Committee may ratify and adopt any and all acts of a Member or Manager done on behalf of the Company.

5.13 Delegation of Powers. From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.

ARTICLE VI

Fiduciary Duties, Right to Rely, Indemnification

6.1 Duties of Members. A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.

6.2 Duty of Loyalty. A Manager's duty of loyalty to the Company and the Members is limited to the following:

(a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) To refrain from competing with the Company in the conduct of the Company's business before dissolution of the Company.

6.3 Duty of Care. A Manager's duty of care to the Company and the Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

6.4 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

6.5 Duty of Confidentiality. Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

6.6 Right to Rely. The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Managers reasonably believe are within such other Person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, Profits or Losses of the Company or any other facts relevant to the existence or amount of assets from which distributions to Members might properly be made.

6.7 Indemnification of Managers. To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, intentional misconduct, or knowing violation of the law.

6.8 Remedies. Each Manager acknowledges and represents that irreparable damage and harm could be done to the Company if there is a breach of the covenants contained herein, and that in the event of a breach, each Manager agrees that the Company shall be entitled to injunctive relief (both temporary and/or permanent), without posting bond, as well as monetary damages and reasonable attorney's fees for the enforcement of this Agreement. Each Manager agrees to return all documents and copies of documents upon request by the Company.

6.9 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this ARTICLE VI to the extent of the managerial authority delegated to the Members by this Agreement.

ARTICLE VII

Capital Accounts and Accounting

7.1 Capital Accounts. The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).

- (a) Each Member's Capital Account shall be credited with the following:
- (1) Such Member's Capital Contributions;
 - (2) Such Member's distributive share of Profits;
 - (3) The amount of any Company Liabilities that are assumed by such Member or that are secured by any property distributed to such Member; and
 - (4) With respect to a transferee Member, a pro rata portion of the Capital Account of the transferor Member.

(b) Each Member's Capital Account shall be debited by the following:

- (1) The amount of cash and the net fair market value of any property distributed to such Member (as of the date of the distribution);
- (2) Such Member's distributive share of Losses;
- (3) The amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company; and
- (4) With respect to a transferor Member, a pro rata portion of the Capital Account of the transferee Member.

7.2 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.3 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to SECTION 7.6 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.4 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.5 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

- (1) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;
- (2) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and
- (3) To elect to be excluded from the provisions of Subchapter K of the Internal Revenue Code pursuant to Treasury Regulation Section 301.7701-3(a).

(b) In the event of a distribution of Company Property to a Member or a transfer, whether during life or at death, by a Member of all or any part of his Membership Share, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

7.6 Compliance with Section 704(b) of the Code. The provisions of this Agreement as they relate to the maintenance of Capital Accounts are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to ARTICLE VIII to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.

7.7 Tax Matters Partner. John Kachmarsky is designated the tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time.

ARTICLE VIII

Interim Distributions and Allocations

8.1 Interim Distributions. From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the business, including, but not limited to, operating expenses, debt service, acquisitions, reserves, amounts owed as payments under Section 707(c) of the Code, and all amounts necessary to preserve, maintain and repair any Company Property. Company Cash shall be applied first to payment of all Company Liabilities and expenses that are due and owing, retention of all amounts necessary for the aforementioned Company Liabilities, expenses or reserves, and the Company shall retain all amounts deemed necessary for the conduct of the Company's business. Subject to SECTION 8.2, any remaining Company Cash may be distributed to the Members. All such distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights with respect to the property and cash distributed to all the Members. Any Person who holds Financial Rights in the Company but who is not otherwise a Member shall be allocated distributions only if such Person has provided a current address to the Management Committee, and has given notice and proof of his Financial Rights satisfactory to the Management Committee.

8.2 Restrictions on Distributions. Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this SECTION 8.2.

8.3 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) (organizational expenditures which the Company elects not to amortize under Code Section 709(b)) and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

8.4 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Share, distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.5 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

8.6 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution. In the event the Company uses the “Traditional Method with Curative Allocations” under Treasury Regulations Section 1.704-3(c) to correct for distortions caused by the “ceiling rule” (as defined therein) in making allocations pursuant to Section 704(c) of the Code, the Company may make curative allocations in any given year to offset the effects of the “ceiling rule” for prior taxable years. Any such allocations shall be made over a reasonable period of time, such as over the property’s economic life, in compliance with Treasury Regulations Section 1.704-3(c)(3)(ii). If cost recovery deductions with respect to an item of contributed property have been limited by the “ceiling rule”, the general limitation on the character of any curative allocation, contained in Treasury Regulations Section 1.704-3(c)(3)(iii)(A), shall not apply to income from disposition of the contributed property.

8.7 Nonrecourse Deductions. Notwithstanding anything herein to the contrary, beginning in the first taxable year of the Company in which there are nonrecourse deductions, all nonrecourse deductions and distributions of proceeds attributable to nonrecourse borrowing (as defined in Treasury Regulations Section 1.704-2) shall be allocated in accordance with the Members’ Financial Rights or in any other manner that is reasonably consistent with allocations that have substantial economic effect of some other significant Company item attributable to the property securing the nonrecourse liabilities. Items attributable to a particular Member’s Nonrecourse Liability (as defined in Treasury Regulations Section 1.704-2(b)(4)) shall be allocated to the Member that bears the economic risk of loss for the liability.

8.8 Minimum Gain Chargeback Requirements. Except as otherwise provided in Treasury Regulations Section 1.704-2(f), if there is a net decrease in Company Minimum Gain (as determined under Treasury Regulations Section 1.704-2(d)) for the Company’s taxable year, each Member must be allocated items of income and gain for that taxable year equal to that Member’s share of the net decrease in Company Minimum Gain. A Member’s share of the net decrease in Company Minimum Gain is the amount of the total net decrease multiplied by the Member’s percentage share of Company Minimum Gain at the end of the immediately preceding taxable year (as determined in Treasury Regulations Section 1.704-2(g)). A Member is not subject to this minimum gain chargeback requirement to the extent the Member’s share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly a recourse liability or a Member Nonrecourse Liability, and the Member bears the economic risk of loss (within the meaning of Treasury Regulations Section 1.752-2) for the newly guaranteed, refinanced, or otherwise changed liability.

If during a taxable year there is a net decrease in Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(2)), any Member with a share of that Member Nonrecourse Debt Minimum Gain (as determined under Treasury Regulations Section 1.704-2(i)(5)) as of the beginning of that taxable year must be allocated

items of income and gain for that taxable year (and, if necessary, for succeeding taxable years) equal to that Member's share of the net decrease in the Member Nonrecourse Debt Minimum Gain. A Member's share of the net decrease in Member Nonrecourse Debt Minimum Gain is determined in a manner consistent with the provisions of Treasury Regulations Section 1.704-2(g)(2). A Member is not subject to this minimum gain chargeback requirement, however, to the extent the net decrease in Member Nonrecourse Debt Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the Member Nonrecourse Minimum Gain chargeback is added to the Member's share of Company Minimum Gain under Treasury Regulations Section 1.704-2(g)(3).

8.9 Qualified Income Offset. Unless otherwise agreed, a Member is not required to fund any deficit in the Member's Capital Account at any time. However, if a Member unexpectedly receives an adjustment, allocation, or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), or (6), and the unexpected adjustment, allocation, or distribution results in a deficit balance in the Capital Account for the Member (or a deficit balance in excess of any limited dollar amount the Member is obligated to restore), the Member will be allocated items of income and gain consisting of a pro rata portion of each item of Company income and gain for such year in an amount and manner sufficient to eliminate the deficit balance or the increase in the deficit balance as quickly as possible. This SECTION 8.9 will be interpreted, applied, and if necessary modified to constitute a "qualified income offset" as defined in Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

8.10 Distributions Subject to Set-Off. Subject to SECTIONS 3.3 and 3.4, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE IX

Dissolution, Winding Up, Termination

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

(a) The unanimous written consent of the Members who own one hundred (100%) percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this section;

(c) On application by a Member or a dissociated Member, upon entry of a judicial decree that:

(1) The economic purpose of the Company is likely to be unreasonably frustrated;

(2) Another Member has engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with that Member;

(3) It is not otherwise reasonably practical to carry on the Company's business in conformity with the Articles of Organization and this Agreement;

(4) The Company failed to purchase the petitioner's Financial Rights as required by Section 33-44-701 of the Act; or

(5) The Members in control of the Company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial the petitioner.

(d) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to Section 33-44-810 of the Act.

(e) The expiration of the period fixed for the duration of the Company, as set forth in the Articles of Organization, unless those Members who own one hundred percent (100%) of the Voting Rights in the Company extend the term of the Company.

9.2 Waiver of Right to Wind Up. Notwithstanding anything herein to the contrary, at any time after the dissolution of the Company and before the winding up of its business is completed, the Members, including a dissociated Member whose dissociation caused the dissolution, may unanimously waive the right to have the Company's business wound up and the Company terminated. In that case, (a) the Company shall resume carrying on its business as if dissolution had never occurred and any liability incurred by the Company or a Member after the dissolution and before the waiver is determined as if the dissolution had never occurred, and (b) the rights of a third party accruing under Section 33-44-804(a) of the Act or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver shall not be adversely affected.

9.3 Winding Up: Powers and Duties of Liquidator. Following the dissolution of the Company, if the Members do not continue the Company's business under SECTION 9.1 or SECTION 9.2, the Management Committee shall appoint one or more Members or Managers or an independent third party to serve as liquidator. The liquidator shall have full authority in winding up the Company's affairs, and may preserve the Company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the Company's business, dispose of and transfer the Company's property, discharge the Company's liabilities, distribute the assets of the Company pursuant to SECTION 9.6, settle disputes by mediation or arbitration, and perform other necessary acts. In winding up the Company's affairs, the liquidator shall:

(a) Deliver notice of the Company's dissolution to all of the Company's known claimants and creditors in the form and manner described in Section 33-44-807 of the Act;

(b) Publish notice of the Company's dissolution as provided in Section 33-44-808 of the Act;

(c) Make final liquidating distributions as provided in SECTION 9.6, and distribute any Company Property discovered after any such final liquidating distributions in accordance with SECTION 9.6; and

(d) After dissolution and the completion of winding up, file Articles of Termination with the South Carolina Secretary of State to terminate the legal existence of the Company in accordance with Section 33-44-805 of the Act.

9.4 Sale of Company Property. Unless otherwise determined by the Management Committee, the liquidator shall first attempt to sell all or any part of the Company's business as a going concern. If any such sale or partial sale is not consummated within six (6) months after the date of the dissolution, or such other period of time determined by the Management Committee, the liquidator shall publish notice that all unsold Company assets are for sale and solicit bids for such assets. Any Company assets which remain unsold six (6) months after the date of the first publication of such notice shall be marshaled and auctioned by the liquidator. All assets unsold after the auction shall be distributed in kind in accordance with SECTION 9.5.

9.5 Distribution In Kind. The Company may distribute assets in kind to satisfy any or all of its obligations. If the Company will distribute assets in kind, the Members shall have thirty (30) days to agree upon the fair market value of such assets. If the Members cannot agree on the fair market value of any asset, the liquidator shall hire two (2) independent appraisers to appraise the asset(s) in question. The fair market value of each asset or group of assets appraised shall be the average of the two appraisals. Any property distributed in kind shall be treated in accordance with Sections 721, 736, 737 and 751 of the Code. The liquidator shall adjust the Members' Capital Accounts to reflect any gain or loss which would have been allocated had such property been sold for its fair market value.

9.6 Final Liquidating Distributions. After the sale of all Company assets, or the determination of fair market value for distribution in kind of Company assets, the liquidator shall apply the proceeds of the sale or the Company assets as follows:

(a) Payment or adequate provision for payment shall be made to creditors including the liquidator if the liquidator is not a Member for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company, and to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company;

(b) If the liquidator is a Member, to the liquidator for reimbursement for out-of-pocket expenses incurred and reasonable compensation for services rendered in connection with winding up the Company;

(c) All remaining cash and other assets shall be distributed to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for the taxable year of the Company during which the distribution occurs, including adjustments for distributions made under this SECTION 9.6.

9.7 Deficit Capital Account Balances. Notwithstanding anything herein to the contrary, and notwithstanding any custom or rule of law to the contrary, any deficit in a Member's Capital Account upon dissolution of the Company shall not be an asset of the Company and such Member shall not be obligated to contribute any amount to the Company in excess of any limited dollar amount the Member has otherwise agreed to restore.

9.8 Final and Complete Distribution. The distributions provided for in this ARTICLE IX shall constitute a complete return of the Members' Contributions to Capital, and a final and complete distribution to the Members in satisfaction of all of their rights in the Company.

ARTICLE X **Dissociation**

10.1 Events of Proper Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a proper dissociation:

(a) The death of the Member;

(b) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement;

(c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; and

(d) Withdrawing, retiring or resigning from the Company with the consent of those Members who own more than seventy-five (75%) percent of the Voting Rights in the Company (without regard to the Voting Rights of the withdrawing, retiring or resigning Member).

10.2 Effect of Member's Proper Dissociation. Unless otherwise agreed between the Company and the other Members, the rights of a properly dissociating Member shall be governed by ARTICLE XI.

10.3 Events of Wrongful Dissociation. If a Member dissociates in any one or more of the following ways, such shall be deemed to be a wrongful dissociation:

(a) The voluntary withdrawal, retirement or resignation of any Member other than as permitted in SECTION 10.1; or

(b) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:

(1) Engaged in wrongful conduct that adversely and materially affected the Company's business; or

(2) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or

(3) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member.

10.4 Effect of Member's Wrongful Dissociation. A wrongfully dissociating Member is liable to the Company and to the other Members for all costs, expenses (including reasonable attorneys' fees) and damages caused by the wrongful dissociation, including the reasonable costs of obtaining replacement of the services the wrongfully dissociating Member was obligated to perform. The Company may offset such costs, expenses and damages against any distributions to which the wrongfully dissociating Member may be entitled in addition to pursuing any remedies provided for in this Agreement or otherwise available under applicable law. The parties to this Agreement agree that a wrongfully dissociating Member's sole entitlement upon wrongfully dissociating from the Company shall be as determined under SECTION 11.2(a). The parties to this Agreement agree that any purchase price determined and reduced under the provisions of this Agreement shall constitute fair value for the Membership Share of a wrongfully dissociating Member within the meaning of Sections 33-44-701 and 33-44-702 of the Act, and that payment of any purchase price upon the terms contained in SECTION 11.4 is permissible, authorized and in compliance with all provisions of the Act. The parties waive any right they may have to assert that the provisions of this Agreement regarding the rights of a wrongfully dissociating Member are inconsistent with, or in contravention of the Act.

10.5 Character of Payments. To the extent permitted by the Code and all applicable Treasury Regulations, all payments made to any dissociating Member (whether proper or wrongful), including those which relate to unrealized receivables and the goodwill of the Company, shall be treated as payments described in Section 736(a) of the Code.

10.6 Statement of Dissociation. A dissociated Member or the Company may file a Statement of Dissociation in accordance with Section 33-44-704 of the Act.

ARTICLE XI

Restrictions on Transfer and Buy-Sell Provisions

11.1 Restrictions on Transfer. No Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior unanimous written consent of those Members who own one hundred (100%) percent of the Voting Rights in the Company (without regard to the transferor Member). If such consent is obtained, no provision of this ARTICLE XI shall apply, and the provisions of ARTICLE III shall govern the rights of the transferor and transferee. With regard to all other transfers, ARTICLE XI shall control, and any attempted conveyance or encumbrance of all or a portion of a Membership Share in contravention of this ARTICLE XI shall be null, void and without effect.

11.2 Right to Buy.

(a) Wrongful Dissociation of a Member. If a Member wrongfully dissociates from the Company within the meaning of SECTION 10.3 (the “Withdrawing Member”), such Withdrawing Member shall be deemed to have immediately offered to sell to the Company all of the Withdrawing Member’s Membership Share at the price determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If the Company does not accept said offer within sixty (60) days after receiving written notice of the dissociation by the Withdrawing Member and the determination of the purchase price, the Withdrawing Member’s Membership Share shall be deemed to have been immediately thereon offered to the other Members (the “Remaining Members”) at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys’ fees) and damages incurred by the Company as a result of the Withdrawing Member’s wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member’s Membership Share shall equal seventy-five (75%) percent of the “Appraised Value” of such Member’s Membership Share as determined pursuant to SECTION 11.3. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Withdrawing Member's Membership Share within sixty (60) days after such deemed offer, the Company and the Remaining Members shall have no obligation to purchase the Withdrawing Member's Membership Share until the date of the expiration of the specified term of the Company that existed on the date of such wrongful dissociation if the expiration of the specific term does not result in the dissolution and winding up of the Company's business under Section 33-44-801 of the Act. The purchase price on such date, if any, shall be determined under SECTION 11.3 and on the terms contained in SECTION 11.4, except that the purchase price shall be reduced by the amount of all costs, expenses (including reasonable attorneys' fees) and damages incurred by the Company as a result of the Withdrawing Member's wrongful dissociation from the Company. Notwithstanding anything in this Agreement or the Act to the contrary, any purchase price to be paid for a wrongfully dissociating Member's Membership Share shall equal seventy-five (75%) percent of the "Appraised Value" of such Member's Membership Share as determined pursuant to SECTION 11.3.

(b) Transfers Other Than Death or Disability. If a Member attempts to transfer all or a portion of his Membership Share without obtaining the other Members' consent as required in SECTION 11.1, or if a Member properly dissociates, other than by reason of death or disability, from the Company within the meaning of ARTICLE X (the "Dissolving Member"), such Dissolving Member is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If the Remaining Members do not purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then a Dissolving Member may offer such Dissolving Member's Membership Share for sale to any other Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

In the event any sale of a Membership Share to a third person shall not be consummated within sixty (60) days after the expiration of the Remaining Members' option to purchase, the Dissolving Member shall have no right to sell said Membership Share or any portion thereof unless the same shall be offered again to the Company and the Remaining Members in the manner and in accordance with the terms provided in subsection (b) of this SECTION 11.2.

(c) **Dissociation by Death or Disability.** If a Member dissociates by reason of death or disability (meaning a Member is disabled continuously for more than twelve (12) months), such Member (the "Dissolving Member") is deemed to have offered to the Company all of such Dissolving Member's Membership Share at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. The definition of disability shall mean totally and permanently disabled so that a Member is unable to engage in his usual duties of employment as determined by a doctor selected and paid by the Company. If the Company does not accept said offer within sixty (60) days after receiving written notice of the attempted transfer or dissociation by the Dissolving Member (or his estate) and the determination of the purchase price, the Dissolving Member's Membership Share shall be offered in writing to the other Members (the "Remaining Members") at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4. If any one or more of the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by such one or more Remaining Members. In the event more than one of the Remaining Members accept the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

If no Remaining Members purchase the Dissolving Member's Membership Share within sixty (60) days after receipt of such offer in writing, then the Company shall purchase, and the Dissolving Member, the estate of the Dissolving Member, or such Dissolving Member's successor in interest by operation of law shall sell all of the Dissolving Member's Membership Share in the Company at the price determined in accordance with SECTION 11.3 and upon the terms contained in SECTION 11.4.

11.3 Purchase Price. Subject to SECTION 11.2(a), the price to be paid for a Withdrawing or Dissolving Member's Membership Share shall be the purchase price agreed upon by the Withdrawing or Dissolving Member and the Company, or the Remaining Members who have elected to buy, as the case may be. If the parties do not agree upon the purchase price of the Membership Share within thirty (30) days following the death, disability, attempted transfer or the event of dissociation, then the purchase price shall be the "Appraised Value" (as defined in the next sentence) of the Membership Share. Appraised Value shall mean the value obtained, taking into account all applicable minority, lack of marketability and other discounts, by agreement of two (2) appraisers, one appointed by the Management Committee, or a majority of the Remaining Members who wish to purchase the offered Membership Share and who have not previously agreed upon the purchase price, and one appointed by the Withdrawing or Dissolving Member. Such appointments shall be made by the respective parties within forty-five (45) days following the death, disability, attempted transfer or the event of dissociation. Both appraisers must have at least five (5) years experience valuing businesses similar to the business of the Company. Should any party fail to so appoint an qualified appraiser within such prescribed time period, such failing party shall lose any right to so appoint an appraiser. If one party fails to appoint a qualified appraiser within the prescribed time period for such appointment, the sole appointed appraiser shall determine the Appraised Value and such Appraised Value determined by such sole appointed appraiser shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns. Where both parties properly appoint appraisers and both appraisers

cannot agree on an Appraised Value within thirty (30) days after they have both been selected, such appraisers shall appoint a third appraiser within ten (10) days of the expiration of the thirty (30) day period for the two original appraisers to agree upon an Appraised Value. The third appraiser shall determine the Appraised Value within thirty (30) days after such third appraiser's appointment. Appraised Value shall then be the average of all three (3) appraisals. The seller and the purchaser(s) shall each pay the costs of the appraiser appointed by them, and one-half (2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns.

11.4 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company, or at such other place as the parties may agree, and at a time and date designated by the parties, but in all events such closing shall take place within thirty (30) days after the date upon which the Appraised Value is determined under the provisions of SECTION 11.3, unless the parties otherwise mutually agree in writing. Unless the parties mutually agree otherwise, the purchase price shall be paid in twenty (20) equal and consecutive quarterly installments of principal and interest beginning ninety (90) days after the death, disability, attempted transfer or event of dissociation, and the determination of the purchase price has been made. The purchase price shall be evidenced by a promissory note made by the purchaser(s) to the order of the seller and shall bear interest compounded annually at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon default of any payment of interest or principal, the note shall become due and payable immediately, at the option of the holder of the note. Upon payment of the purchase price, the Withdrawing or Dissolving Member's Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the purchase price is paid in full, the seller's Membership Share shall be held by the seller as collateral security for payment of the note, but in no case may the seller participate in the management of the Company as long as the note is not in default.

Any closing adjustments which are then usual and customary shall be made between the seller and the purchaser(s) on and as of the date of closing. The seller shall pay any transfer, gains or similar taxes arising out of or in connection with the sale and transfer of his Membership Share. Except as specifically provided in this Agreement, such sale shall be subject to all liabilities and obligations of the Company, matured and unmatured, absolute or contingent. All Members agree to execute and deliver all certificates and other instruments reasonably necessary to effectuate any transaction contemplated herein. Without limiting the foregoing, any Member transferring his Membership Share shall transfer such interest free and clear of any liens, encumbrances or any interests of any third party and shall execute or cause to be executed any and all documents required to fully transfer good and clear title to such Membership Share to the purchaser(s), including, but not limited to, any documents required to release any interest of a Member's spouse or any other party who may claim an interest in such Member's Membership Share.

ARTICLE XII
Miscellaneous Provisions

12.1 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provided former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(1) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(2) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(c) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

12.2 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Managers, the Management Committee and the Company, at the Company's principal place of business, and to a Member at the address on EXHIBIT B attached hereto, or to such other address as may hereafter be designated by any amendment or addendum to this Agreement. All notices, consents or other communications shall be deemed given when actually hand delivered, or three (3) days after mailing in accordance with this Section.

12.3 Time of Essence. Time is of the essence of this Agreement.

12.4 Governing Law. This Agreement shall be governed by and construed in accordance with the South Carolina Uniform Limited Liability Company Act of 1996, as amended, any corresponding provisions of future laws, and other applicable laws of the State of South Carolina.

12.5 Consent to Jurisdiction. The parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business, regardless of the residence, now or in the future, of any party hereto. The parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

12.6 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

12.7 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. If any such invalidity shall be caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

12.8 Counterparts. This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.

12.9 Captions. The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.

12.10 Entire Agreement. This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.

12.11 Remedies Cumulative. Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.

12.12 Binding Effect. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.

12.13 Use of Terms. Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.

12.14 Further Assurances. Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement.

12.15 Equitable Remedies. The rights and remedies of the Members, the Company and the Managers hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any party aggrieved against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

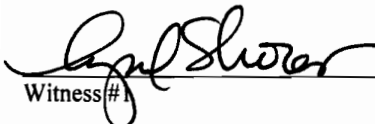
12.16 Memorandum of Company. If the Management Committee deems it appropriate, the Management Committee shall cause the Company to file and record either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

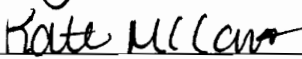
12.17 Exhibits. The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.

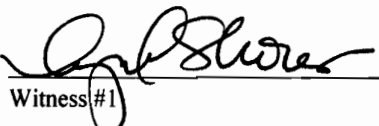
12.18 Effective Date. This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.

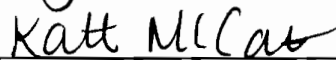
IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement to be effective as of the day and year first above written.

WITNESSES:

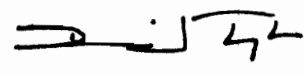

Witness #1


Witness #2 or Notary

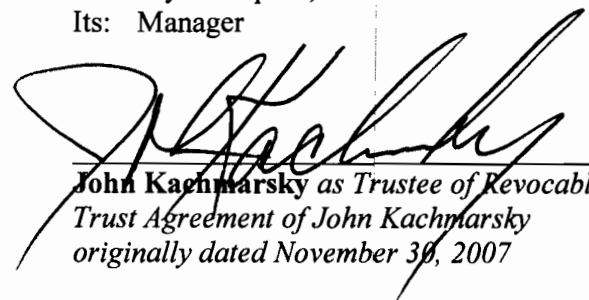

Witness #1


Witness #2 or Notary

MEMBER:



By: **David Glenn Taylor**
For: Taylor Capital, LLC
Its: Manager


**John Kachmarsky as Trustee of Revocable
Trust Agreement of John Kachmarsky
originally dated November 30, 2007**

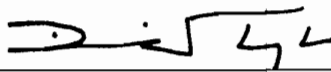
ACKNOWLEDGEMENT BY MANAGER

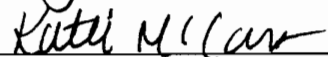
IN WITNESS WHEREOF, David Glenn Taylor hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

MANAGER:


Witness #1


David Glenn Taylor

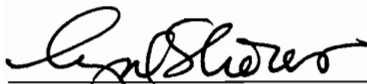

Witness #2 or Notary

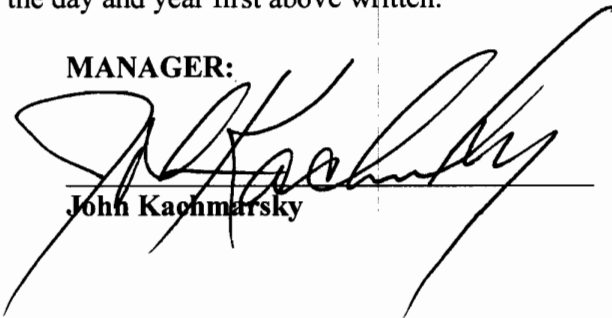
ACKNOWLEDGEMENT BY MANAGER

IN WITNESS WHEREOF, John Kachmarsky hereby accepts the powers and obligations set forth herein for the capacity as Manager and has executed this Agreement in acknowledgement of same to be effective as of the day and year first above written.

WITNESSES:

MANAGER:


Witness #1


John Kachmarsky

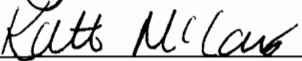

Witness #2 or Notary

EXHIBIT A

Description of Initial Company Property

- (1) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by Taylor Capital, LLC.
- (2) _____ and No/100 United States Dollars (U.S.\$_____.00)
-- contributed by John Kachmarsky as Trustee of Revocable Trust Agreement of
John Kachmarsky originally dated November 30, 2007.

EXHIBIT B

<u>MEMBER'S NAME AND ADDRESS</u>	<u>CAPITAL CONTRIBUTION</u>	<u>FINANCIAL RIGHTS</u>	<u>VOTING RIGHTS</u>
Taylor Capital, LLC 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
John Kachmarsky <i>Trustee of Revocable Trust Agreement of John Kachmarsky originally dated November 30, 2007</i> 171 Church Street – Suite 330 Charleston, South Carolina 29401	\$_____.00	50.00%	50.00%
TOTALS	\$_____.00	100.00%	100.00%

Exhibit B – First Amended and Restated Operating Agreement of K&T Group, LLC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2022-CP-10-02589
John Kachmarsky, Individually, as Manager	)	
of K&T Group, LLC, and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T	)	
Group, LLC	)	
	)	
Plaintiffs,	)	
	)	
	)	VERIFIED PETITION AND
	)	APPLICATION
v.	)	FOR INTERVENTION
	)	PURSUANT TO RULE 24, SCRCP
	)	
David G. Taylor, Individually and as Manager	)	
of K&T Group, LLC; Taylor Capital, LLC, as	)	
Member of K&T Group, LLC; and K&T	)	
Group, LLC,	)	
	)	
Defendants.	)	

This Verified Petition and Application for Intervention pursuant to Rule 24, SCRCP, is made by Foley Bullock, LLC, a South Carolina Limited Liability Company ("Foley Bullock"). The Petition and Application is made under Rule 24(a)(2), SCRCP and alternatively under Rule 24(b)(2). The two members of Foley Bullock, LLC are David Foley and Brent Bullock (through their entities), each of whom verify what is contained herein.

David G. Taylor, David Foley, and Brent Bullock have practiced law together for years with the firm of Taylor Foley, LLC ("Taylor Foley"). Taylor Foley's offices were located in the office space owned by K&T Group, LLC, which is the subject of this action (Suite 330 of the Franke Building at 171 Church Street in Charleston) (the "Property").

Recently, David G. Taylor notified David Foley and Brent Bullock that as of January 1, 2025, he would no longer be practicing law with Taylor Foley and he would be moving his office and his new firm to 16 Charlotte Street, Charleston, South Carolina, which is a property owned jointly by Taylor, Foley, and Bullock, through their respective entities.

David Foley and Brent Bullock have been attempting to obtain a lease for the Property from K&T Group, LLC to continue working there with their new firm of Foley Bullock. When the topic of lease rate for the Property began to be discussed, two different rental rates were provided: one rate from John Kachmarsky and one rate from David G. Taylor (through counsel). John Kachmarsky provided Foley and Bullock a lease rate below \$6,000.00 per month payable to K&T Group, LLC and David G. Taylor (through counsel) provided Foley and Bullock a lease rate of \$10,500.00 per month payable to Taylor Tax Law, LLC pursuant to an alleged sub-lease between Taylor Tax Law, LLC and K&T Group, LLC.

David Foley and Brent Bullock investigated the rent that was being paid and discovered that Taylor Foley has not paid rent directly to K&T Group, LLC since April 8, 2014. Rather, it has been discovered that on July 21, 2014, Taylor Foley began paying rent to Taylor Tax Law, LLC which is another entity solely owned and controlled by David G. Taylor. David Foley and Brent Bullock have never approved the payment of rent by David G. Taylor to Taylor Tax Law, LLC or the amounts that were paid¹.

Based on the business records of Taylor Foley, the rent paid by Taylor Foley to Taylor Tax Law, LLC varied from the amount of \$30,000.00 a month to \$6,600.00 a month in any given month over the years. Beginning on August 2, 2022, the rent paid from Taylor Foley to Taylor Tax Law, LLC leveled at \$10,500.00 per month through January 1, 2025.

Based on the business records of Taylor Foley, since July 21, 2014, the amount of rent paid by Taylor Foley to Taylor Tax Law, LLC or Taylor Capital, LLC (another entity owned solely by

¹ David Foley became a partner and Manager at Taylor Foley in 2013. Brent Bullock became a partner and Manager at Taylor Foley in 2021. Neither of them approved the payments to Taylor Tax Law, LLC for this "rent" nor the amounts.

David G. Taylor) through January 1, 2025 is \$1,116,542.71, of which approximately one-half was remitted by Taylor Tax Law, LLC to K&T Group, LLC.

Foley Bullock investigated whether there is a sublease between K&T Group, LLC and Taylor Tax Law, LLC, and no such sublease exists and none has been provided.

Foley Bullock has already paid one month of rent (commencing January 1, 2025) to K&T Group, LLC and provided a check for such payment to John Kachmarsky. Despite originally being open to a lease for Foley Bullock, David G. Taylor then went radio silent on the Foley Bullock lease, then attempted to use the possibility of a lease as leverage and now has recently said he intends to move back in the Property with his new firm. Foley Bullock has an interest in the Property, which is the subject of this action, as well as a leasehold interest in the Property. Foley Bullock seeks relief from the Court in the form of an Order allowing it to intervene in order to protect its leasehold and the rights of the firm Foley Bullock and its employees in light of David G. Taylor's abrupt decision to terminate his involvement with Taylor Foley. John Kachmarsky has also signed a lease, on behalf of K&T Group, LLC, in favor of Foley Bullock for the Property, other than David G. Taylor's personal office. John Kachmarsky has always handled the leasing for the K&T Group, LLC office space.

Pursuant to Rule 24(a)(2), SCRCP, upon timely application, anyone shall be permitted to intervene in an action when an applicant for intervention claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

An entity seeking intervention as a matter of right under Rule 24(a)(2), SCRCP must necessarily: (1) establish timely application; (2) assert an interest relating to the property or

transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties. *Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93, 99, 847 S.E.2d 87, 90 (2020).

An intervenor seeking permissive intervention under Rule 24(b)(2), SCRCP must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties. *Builders Mut. Ins. Co. v. Island Pointe, LLC*, 431 S.C. 93, 101, 847 S.E.2d 87, 91 (2020).

Here, Foley Bullock's intervention in this case is appropriate under Rule 24(a)(2) or Rule 24(b)(2). At issue in this case are the interests in K&T Group, LLC among the members, payment disputes in K&T Group, LLC, lease payments within K&T Group, LLC, and the partition of the Property. Foley Bullock is a successor in interest to the leasehold of Taylor Foley, a fact acknowledged by John Kachmarsky, a manager of K&T Group, LLC, who recognizes the interest, legal and equitable, of Foley Bullock, which has hired 100% of the former attorney and paralegal employees of Taylor Foley² and which occupies 90% of the premises previously allotted by K&T Group, LLC to Taylor Foley. The space leased in the Property by Foley Bullock is necessary for the operations of Foley Bullock and its clients and staff. Attached as **Exhibit A** is a lease agreed to by Foley Bullock with John Kachmarsky as manager of K&T Group, LLC.

As to intervention as a matter of right, Foley Bullock's application is timely, as it just learned about the issues related to lease payments from Taylor Foley to Taylor Tax Law, LLC over the years and in excessive amounts for the leased space on December 17, 2024 as well as David

² Not including the hiring of certain employees that were hired without the consent of Foley or Bullock.

G. Taylor's recent position of returning to the Property, despite Foley Bullock's leasehold. Foley Bullock assert and have an interest in the Property which is the subject of its action based on their presence in the Property, the delivery of funds, a signed lease and the consent of the member of K&T Group, LLC who has been responsible for all leasing. Foley Bullock is in a position that without intervention, disposition of the action will impair, impede and prejudice its ability to protect the interest. Foley Bullock is not adequately represented by the existing parties.

As to permissive intervention, Foley Bullock's application is timely, as it just learned about the issues related to lease payments from Taylor Foley to Taylor Tax Law, LLC over the years and in excessive amounts for the leased space on December 17, 2024. Foley Bullock assert a claim or defense that has a question of law and fact in common with the underlying action. Foley and Bullock's participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties as there are still matters before the Court.

Foley Bullock requests that the Court grant its application for intervention and the relief of establishing a leasehold interest in the Property and an order preserving the status quo in order to protect Foley Bullock, its employees and clients. The proposed complaint is attached as **Exhibit B**. This application and petition may be further supported by arguments of counsel, evidence presented to the Court and further briefing. Foley Bullock requests a hearing before the Court at the soonest available time.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

McCULLOUGH ▪ KHAN ▪ APPEL

s/Jamie A. Khan

Jamie A. Khan, Esq. (SC Bar # 76685)

Forrest W. Lewis, Esq. (SC Bar # 105525)

2036 eWall Street, Suite 200

Mount Pleasant, SC 29464

(843) 937-0400

(843) 937-0706 (fax)

jamie@mklawsc.com

forrest@mklawsc.com

EPTING & RANNICK, LLC

s/Jaan G. Rannick

Jaan G. Rannick, Esq. (S.C. Bar #103014)

Andrew K. Epting, Esq.

46A State Street

Charleston, SC 29401

(843) 377-1871

ake@epting-law.com

jgr@epting-law.com

COUNSEL FOR PETITIONER

January 22, 2025

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

John Kachmarsky, Individually, as Manager
of K&T Group, LLC, and as Trustee of the
Revocable Trust of John Kachmarsky dated
November 30, 2007, as Member of K&T
Group, LLC

Plaintiffs,

v.

David G. Taylor, Individually and as Manager
of K&T Group, LLC; Taylor Capital, LLC, as
Member of K&T Group, LLC; and K&T
Group, LLC,

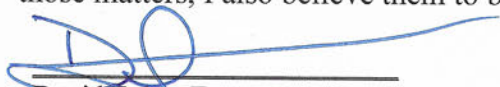
Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) CASE NO.: 2022-CP-10-02589

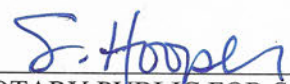
) **VERIFICATION OF PLEADING**

I am an agent of Foley Bullock, LLC. I have read the attached Petition and Application for Intervention Pursuant to Rule 24, SCRCP. I know the facts therein to be true and accurate based upon my own knowledge, except as to those matters stated on information and belief, and as to those matters, I also believe them to be true and accurate.


David Foley, Esq.
Foley Bullock, LLC
171 Church Street - Suite 330
Charleston, South Carolina 29401


Brent Bullock, Esq.
Foley Bullock, LLC
171 Church Street - Suite 330
Charleston, South Carolina 29401

SWORN TO BEFORE ME THIS 21st DAY
OF JANUARY, 2025


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8.1.34

Exhibit A

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of the 1st day of January, 2025, is made and entered into by and between **K&T Group, LLC** (the "Landlord") and **Foley Bullock, LLC** (the "Tenant" or "Tenants").

The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord for the term of this Lease the office spaces designated as "Offices G, I and J", the common area designated in yellow and the joint common area designated in green on that certain floor plan attached hereto as Exhibit "A" in a shared suite in the Franke Building, located at 171 Church Street, Suite 330 in the City of Charleston, Charleston County in the State of South Carolina (the "Premises").

1. **TERM.** The initial term of this Lease shall be 3 Months beginning January 1, 2025 and ending March 31, 2025. Thereafter, the term of this Lease shall be on a month to month basis. The Tenant shall be required to give the Landlord thirty (30) days' notice to terminate this Lease. The Landlord may also terminate this Lease after the initial term by giving the Tenant thirty (30) days' notice.

2. **RENTAL.** The rent for the period beginning January 1, 2025, and ending on March 31, 2025, shall be Five Thousand Five Hundred and No/100 (\$5,500.00) Dollars per month (\$1,750.00 each for offices G, I and J and the use of the joint common area designated in green on that certain floor plan, and \$250.00 for the use of the common area designated in yellow (to include the exclusive use of all furniture presently located in the common area designated in yellow) as set forth in Exhibit "A"). Further, Tenant shall be able to use the attic spaces, including those above the kitchen for internet and IT related equipment. **Rent is payable in advance on or before the 1st day of each rental month. Rent is to be made payable directly to: K&T Group, LLC, 171 Church Street, Suite 330, Charleston, SC 29401. If rent is not received by the 5th of each month, a late fee equal to 5% percent of the monthly rent shall be assessed. If rent is not received by the 10th of the month, an additional late fee equal to 5% percent of the monthly rent shall be assessed.**

3. **DEPOSIT.** Tenant shall be required to remit a deposit equal to the first month of the monthly rent representing earnest money to reserve the Premises. The deposit shall be collected by the Landlord upon execution of this Lease and shall thereafter be applied to the rent for the first month of this Lease.

4. **UTILITIES.** The Tenant shall be responsible for payment of all internet and telephone service during the term of this Lease. The Landlord shall be responsible for the payment of water and electricity furnished to the Premises during the term of this Lease.

5. **TAXES.** The Landlord shall be responsible for payment of all ad valorem taxes assessed against the Premises.

6. **INSURANCE.** The Landlord shall maintain a commercial policy.

Tenant is responsible for insurance on his/her personal contents maintained in or on the property.

7. **USE.** The Premises shall be used for business purposes and for no other purposes, without the prior written consent of the Landlord.

8. **PETS.** No pets or animals of any kind shall be allowed in or upon the Premises.

9. **SMOKING.** Smoking shall not be allowed within the Premises at any time.

10. **OFFENSIVE USE.** The Tenants agree that they shall not make any illegal or offensive use of the Premises, that they will not do or suffer to be done in or upon said property any act or thing which shall cause or may be a nuisance, annoyance, inconvenience, or damage to the Landlord or to any other person. Tenants specifically agree that the Premises will not be used in such a way to cause any nuisance, annoyance, inconvenience or damage to other persons in the vicinity of the Premises.

11. **MAINTENANCE, REPAIRS OR ALTERATIONS.** The Tenant shall, at their expense, and at all times, maintain the Premises in good condition and repair and shall surrender the same, at termination hereof, in as good condition as received or as improved from time to time by Landlord, normal wear and tear excepted. Tenant shall be responsible, at their expense, for damages caused by his/her negligence and that of his/her clients or invitees or guests.

12. **INDEMNIFICATION.** Landlord shall not, in any event whatsoever, be liable for any injury or damage to any person present on or about the Premises or for any damage to any property of the Tenant or property of any other person on the Premises. Tenant shall indemnify and save the Landlord harmless from and against any and all liability, loss, cost, expense and damage and from and against any and all suits, claims and demands of every kind and nature, including reasonable counsel fees, arising during or resulting from Tenants' use or occupancy of the Premises, including, without limitation, any claims related to the violation of any Environmental Law (as hereinafter defined) or the handling of any Hazardous Materials (as hereinafter defined).

13. **ASSIGNMENT AND SUBLETTING.** Tenant shall not have the right to assign this Lease or any and all rights hereunder nor to sublet the Premises or any portion thereof without the prior written consent of the Landlord. In such event, Tenant shall remain liable for lease payments in event sublessee does not make lease payments.

14. **DEFAULT.** Any failure by Tenant to pay rent when due, or perform any term hereof, shall, at the option of the Landlord, terminate all rights of Tenant hereunder. In the event that Tenant shall be absent from the premises for a period of five (5) consecutive days, while in default, Tenant shall, at the option of the Landlord, be deemed to have abandoned the Premises and any property left on the Premises shall be considered abandoned and may be disposed of by Landlord in any manner allowed by law. In the event that Landlord reasonably believes that any such abandoned property has no value, it may be discarded.

In the event of a default by Tenant, Landlord may elect to (a) continue the Lease in effect and enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant (i) all rent due for the remainder of the lease term, (ii) an amount sufficient to cover any damages

to the Premises, (iii) any costs incurred recovering the premises, and (iv) reasonable attorneys' fees.

15. RIGHT OF ENTRY. The Landlord shall have the right, at Landlord's pleasure, at reasonable hours to enter the Premises either in person or by the Landlord's agent, with reasonable notice.

16. NOTICES. All notices required by this lease shall be in writing and shall be delivered to the following addresses:

Notice to Landlord shall be addressed to:

Notice to Tenant shall be addressed to:

K&T Group, LLC
John Kachmarsky, Manager
171 Church Street, Suite 330
Charleston, South Carolina 29401
johnk@jktaxlaw.com

Foley Bullock, LLC
Brent Bullock, Manager
171 Church Street, Suite 330
Charleston, South Carolina 29401
bbullock@foleybullock.com

17. END OF TERM. Upon the expiration or earlier termination of the term of this Lease or any renewal hereof, the Tenant shall quit and surrender to the Landlord the Premises, in the same good condition and repair in which the Premises had been delivered to the Tenant by the Landlord, normal wear and tear excepted. Prior to the end of the term of this Lease, Tenant shall (i) provide Landlord with Thirty (30) days notice of intent to vacate or renew lease terms with Landlord and (ii) cause the removal from the Premises of any and all refuse and any and all improvements or alterations made by Tenant to the Premises that Landlord requests Tenant to remove. In the event that this Lease becomes a month-to-month agreement, either Landlord or Tenant must give Thirty (30) days' notice before termination of the Lease.

18. ATTORNEYS' FEES. In the event that any party hereto (or any third-party beneficiary of this Agreement) shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, shall be entitled to their court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorneys' fees and court costs incurred in courts of original jurisdiction, bankruptcy courts or appellate courts.

19. BINDING EFFECT. This Lease shall be binding upon the parties hereto and their respective heirs and assigns, and the benefits hereof shall inure to the parties hereto and their respective heirs and assigns.

20. GOVERNING LAW. This Lease shall be governed and construed in accordance with the laws of the State of South Carolina.

21. COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which, taken together, shall constitute one and the same instrument.

22. COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS. Tenant shall comply with and shall be responsible for compliance with all applicable federal, state and local laws, regulations, ordinances, directives and orders, including, without limitation all Environmental Laws,

applicable to the Premises or Tenant's occupancy, use and maintenance of the Premises and the streets and alleys of other public land and thoroughfares that the Premises may abut. Without Landlord's prior written consent, Tenant shall not receive, store or otherwise handle any Hazardous Materials. "Environmental Laws" shall mean and include the Resource Conservation and Recovery Act, 43 U.S.C. 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., The Clean Water Act, 33 U.S.C. 1251 et seq., and all federal, state and local environmental, health and safety laws, ordinances, rules and regulations relating to regulation or control of hazardous or toxic substances wastes, or related materials (collectively "Hazardous Materials"). Such compliance shall be at Tenant's sole expense.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:



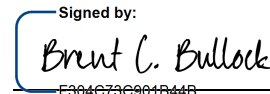
**John Kachmarsky, Manager
K&T Group, LLC**

TENANT:

FOLEY BULLOCK, LLC

Signed by:


By: David M. Foley, Esq. - Manager

Signed by:


By: Brent Bullock, Esq. - Manager

Exhibit "A"

Suite 330



Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2022-CP-10-02589
John Kachmarsky, Individually, as Manager	)	
of K&T Group, LLC, and as Trustee of the	)	
Revocable Trust of John Kachmarsky dated	)	
November 30, 2007, as Member of K&T	)	
Group, LLC	)	
	)	<i>Proposed</i>
Plaintiffs,	)	
	)	INTERVENING PARTY COMPLAINT
	)	
v.	)	
	)	
	)	
David G. Taylor, Individually and as Manager	)	
of K&T Group, LLC; Taylor Capital, LLC, as	)	
Member of K&T Group, LLC; and K&T	)	
Group, LLC,	)	
Defendants.	)	

COMES NOW Plaintiff Foley Bullock, LLC, complaining of the above-named Defendant K&T Group, LLC and alleging as follows:

THE PARTIES

1. Plaintiff Foley Bullock, LLC (“Foley Bullock”) is a limited liability company organized and existing under the laws of the State of South Carolina.
2. Defendant K&T Group, LLC (“K&T”) is a limited liability company organized and existing under the laws of the State of South Carolina.
3. Defendant Taylor Tax Law, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.

JURISDICTION & VENUE

4. This Court has jurisdiction over the Defendant and over the subject matter of this action.

5. Venue is proper in the Court of Common Pleas for Charleston County pursuant to South Carolina law.

FACTS

6. This case is brought by the intervening Foley Bullock law firm for a determination of its rights in this Court of Equity.

7. Taylor Foley, LLC was an active law firm operated by David G. Taylor (“Taylor”), David Foley (“Foley”) and Brent Bullock (“Bullock”) as partners.

8. Taylor Foley, LLC was in the office space owned by K&T Group, LLC, which is the subject of this action (Suite 330 of the Franke Building at 171 Church Street in Charleston) (the “Property”).

9. Recently, David G. Taylor notified Foley and Bullock that as of January 1, 2025, he would no longer be practicing law with Taylor Foley and he would be moving his office and his new firm to 16 Charlotte Street, Charleston, South Carolina, which is a property owned jointly by Taylor, Foley, and Bullock, through their respective entities.

10. Despite significant disputes that have arisen between David G. Taylor, Foley, and Bullock related to information discovered and the manner in which David G. Taylor has been unilaterally operating Taylor Foley, LLC (which are not waived and preserved), the goal of separating the parties’ practices has been paramount since David G. Taylor made his intentions known.

11. One component of separating the practices was for Foley Bullock to secure a lease from K&T Group, LLC as the successor in interest to the leasehold of Taylor Foley, LLC in order to minimize disruption to the continued practice of law by Foley Bullock¹.

¹ Neither Foley or Bullock caused the separation. It was placed upon them by David G. Taylor without much notice and just prior to the 2024 holiday season. Foley and Bullock need to earn income and practice law for the benefit of

12. This component was discussed with John Kachmarsky and David G. Taylor (through counsel). Mr. Kachmarsky was initially in favor of documenting a lease in favor of Foley Bullock, then went radio silent on terms, then attempted to use the leasehold for leverage and extraction against Foley and Bullock and now has since said that he does not consent and will return to the Property.

13. When the topic of lease rate for the Property began to be discussed, two different rental rates were provided: one rate from John Kachmarsky and one rate from David G. Taylor (through counsel).

14. John Kachmarsky provided Foley and Bullock a lease rate payable to K&T Group, LLC below \$6,000.00 per a month that is based on the rate that K&T Group, LLC charged unrelated third-parties. However, David G. Taylor (through counsel) provided Foley and Bullock a lease rate of \$10,500.00 per a month payable to Taylor Tax Law, LLC pursuant to an alleged sub-lease between Taylor Tax Law, LLC and K&T Group, LLC.

15. Foley and Bullock then investigated the rent that was historically being paid by Taylor Foley, LLC to K&T Group, LLC in order to try and make sense of the disparity between the figures. Foley and Bullock also investigated whether a sublease was in place for Taylor Tax Law, LLC and discovered there was no sublease and no lease at all for Taylor Tax Law, LLC or Taylor Foley.

16. What was discovered was that Taylor Foley, LLC had not paid rent to K&T Group, LLC since April 8, 2014.

17. It was discovered that on July 21, 2014, Taylor Foley, LLC began paying rent to Taylor Tax Law, LLC which is another entity solely owned and controlled by David G. Taylor.

their clients and provide the staff with a secure place to work. Foley Bullock hired 100% of the associates and paralegals that previously worked for Taylor Foley.

18. The rent paid by Taylor Foley, LLC to Taylor Tax Law, LLC varied from the amount of \$30,000.00 a month to \$6,600.00 a month in any given month over the years. Beginning on August 2, 2022, the rent paid from Taylor Foley, LLC to Taylor Tax Law, LLC leveled at \$10,500.00 per month through January 1, 2025.

19. Neither Foley nor Bullock ever approved the payment of rent by Taylor Foley, LLC to Taylor Tax Law, LLC nor did they approve the amounts.

20. David G. Taylor had instructed staff of Taylor Foley, LLC to pay the firm's rent in this manner and in these amounts, without authorization of the Management Committee.

21. Upon information and belief, David G. Taylor and Taylor Tax Law, LLC would then remit a fraction of the rent collected to K&T Group, LLC and David G. Taylor and Taylor Tax Law, LLC simply retained the balance.

22. K&T Group, LLC, by and through its historic managing partner and historic leasing manager, has signed a lease agreement with Foley Bullock, attached as Exhibit A.

23. Foley Bullock has paid for its first month rent.

24. Foley Bullock is occupying the same footprint as Taylor Foley, LLC did, save for David G. Taylor's personal office as he has not removed the contents. Foley Bullock would lease David G. Taylor's personal office as well, but it is unsure of David G. Taylor's status in that particular office. .

25. David G. Taylor was originally silent on Foley Bullock's lease terms and his precise intentions are unknown, although his counsel has recently said that David G. Taylor intends to return to the Property despite previously leaving with his new firm.

26. Foley Bullock has an interest in the Property which is the subject of this action as well as a leasehold interest in the Property.

27. Foley Bullock believes that David G. Taylor will take action against it or attempt to harm its leasehold interest or otherwise interfere with it.

28. Despite stating he was leaving, actually leaving and stating he was moving to 16 Charlotte Street, Charleston, SC with his new firm, David G. Taylor now says that he wants to come back and/or that Foley Bullock cannot occupy the space.

29. Foley Bullock seeks relief from this Court in the form of an Order to protect its leasehold, protect its quiet enjoyment and the rights of the Foley Bullock law firm and its clients and employees.

30. Foley Bullock also seeks relief from this Court in the form of an Order preserving the status quo and preventing interference from David G. Taylor.

FOR A FIRST CAUSE OF ACTION

Declaratory Judgment Action pursuant to S.C. Code Ann. §15-53-30

31. The Plaintiff repeats and realleges all of the previous allegations as if they were set forth verbatim herein.

32. The Plaintiff is interested under the lease it has and in its leasehold in the Property and is interested in quiet enjoyment free from interference.

33. The Plaintiff has had to start as a new law firm due to the actions of David G. Taylor and has employees and clients and the security of its physical space and offices is paramount.

34. The Plaintiff, in equity, requests that the Court inquire into these matters, and as it relates to K&T Group, LLC, issue appropriate orders preserving the status quo, determining the sufficiency of its leasehold interests, preserving quiet enjoyment and that it will be free from interference, and which prohibits David G. Taylor from interfering with its tenancy, and any such other and further relief deemed appropriate by the Court.

35. The Plaintiff is aware of the current disputes among the members of K&T Group, LLC pending in this case already. The Court is fully familiar with the parties and the subject matter of the Property.

36. The Plaintiff requires that its rights and quiet enjoyment are protected for the benefit of its practice, its clients and employees.

37. The Court's declaratory judgment would terminate the uncertainty for the Plaintiff.

FOR A SECOND CAUSE OF ACTION
Accounting

38. The Plaintiff repeats and realleges all of the previous allegations as if they were set forth verbatim herein.

39. Significant sums of money have been secretly paid to Taylor Tax Law, LLC for rent for the Property over the years and not paid or remitted to K&T Group, LLC.

40. The Plaintiff requests that the Court conduct an accounting of the amounts paid and received by K&T Group, LLC or otherwise misdirected to Taylor Tax Law, LLC.

41. The Plaintiff requests that the Court enter appropriate orders after its accounting in order to account to the rightful owners of those funds and allocate those funds.

WHEREFORE, the Plaintiff prays that the Court grant it declaratory relief, grant it an order preserving the status quo, conduct an accounting and issue appropriate order and grant the Plaintiff attorney's fees and costs, enter an order in its favor on all issues sought and raised, and such other and further relief requested and deemed appropriate by the Court.

[SIGNATURE PAGE TO FOLLOW]

Respectfully Submitted,

McCULLOUGH ▪ KHAN ▪ APPEL

s/Jamie A. Khan

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jgr@epting-law.com

COUNSEL FOR PETITIONER

January __, 2025

Charleston, South Carolina

Exhibit A

LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated as of the 1st day of January, 2025, is made and entered into by and between **K&T Group, LLC** (the "Landlord") and **Foley Bullock, LLC** (the "Tenant" or "Tenants").

The Landlord hereby leases to the Tenant and the Tenant hereby leases from the Landlord for the term of this Lease the office spaces designated as "Offices G, I and J", the common area designated in yellow and the joint common area designated in green on that certain floor plan attached hereto as Exhibit "A" in a shared suite in the Franke Building, located at 171 Church Street, Suite 330 in the City of Charleston, Charleston County in the State of South Carolina (the "Premises").

1. **TERM.** The initial term of this Lease shall be 3 Months beginning January 1, 2025 and ending March 31, 2025. Thereafter, the term of this Lease shall be on a month to month basis. The Tenant shall be required to give the Landlord thirty (30) days' notice to terminate this Lease. The Landlord may also terminate this Lease after the initial term by giving the Tenant thirty (30) days' notice.

2. **RENTAL.** The rent for the period beginning January 1, 2025, and ending on March 31, 2025, shall be Five Thousand Five Hundred and No/100 (\$5,500.00) Dollars per month (\$1,750.00 each for offices G, I and J and the use of the joint common area designated in green on that certain floor plan, and \$250.00 for the use of the common area designated in yellow (to include the exclusive use of all furniture presently located in the common area designated in yellow) as set forth in Exhibit "A"). Further, Tenant shall be able to use the attic spaces, including those above the kitchen for internet and IT related equipment. **Rent is payable in advance on or before the 1st day of each rental month. Rent is to be made payable directly to: K&T Group, LLC, 171 Church Street, Suite 330, Charleston, SC 29401. If rent is not received by the 5th of each month, a late fee equal to 5% percent of the monthly rent shall be assessed. If rent is not received by the 10th of the month, an additional late fee equal to 5% percent of the monthly rent shall be assessed.**

3. **DEPOSIT.** Tenant shall be required to remit a deposit equal to the first month of the monthly rent representing earnest money to reserve the Premises. The deposit shall be collected by the Landlord upon execution of this Lease and shall thereafter be applied to the rent for the first month of this Lease.

4. **UTILITIES.** The Tenant shall be responsible for payment of all internet and telephone service during the term of this Lease. The Landlord shall be responsible for the payment of water and electricity furnished to the Premises during the term of this Lease.

5. **TAXES.** The Landlord shall be responsible for payment of all ad valorem taxes assessed against the Premises.

6. **INSURANCE.** The Landlord shall maintain a commercial policy.

Tenant is responsible for insurance on his/her personal contents maintained in or on the property.

7. **USE.** The Premises shall be used for business purposes and for no other purposes, without the prior written consent of the Landlord.

8. **PETS.** No pets or animals of any kind shall be allowed in or upon the Premises.

9. **SMOKING.** Smoking shall not be allowed within the Premises at any time.

10. **OFFENSIVE USE.** The Tenants agree that they shall not make any illegal or offensive use of the Premises, that they will not do or suffer to be done in or upon said property any act or thing which shall cause or may be a nuisance, annoyance, inconvenience, or damage to the Landlord or to any other person. Tenants specifically agree that the Premises will not be used in such a way to cause any nuisance, annoyance, inconvenience or damage to other persons in the vicinity of the Premises.

11. **MAINTENANCE, REPAIRS OR ALTERATIONS.** The Tenant shall, at their expense, and at all times, maintain the Premises in good condition and repair and shall surrender the same, at termination hereof, in as good condition as received or as improved from time to time by Landlord, normal wear and tear excepted. Tenant shall be responsible, at their expense, for damages caused by his/her negligence and that of his/her clients or invitees or guests.

12. **INDEMNIFICATION.** Landlord shall not, in any event whatsoever, be liable for any injury or damage to any person present on or about the Premises or for any damage to any property of the Tenant or property of any other person on the Premises. Tenant shall indemnify and save the Landlord harmless from and against any and all liability, loss, cost, expense and damage and from and against any and all suits, claims and demands of every kind and nature, including reasonable counsel fees, arising during or resulting from Tenants' use or occupancy of the Premises, including, without limitation, any claims related to the violation of any Environmental Law (as hereinafter defined) or the handling of any Hazardous Materials (as hereinafter defined).

13. **ASSIGNMENT AND SUBLETTING.** Tenant shall not have the right to assign this Lease or any and all rights hereunder nor to sublet the Premises or any portion thereof without the prior written consent of the Landlord. In such event, Tenant shall remain liable for lease payments in event sublessee does not make lease payments.

14. **DEFAULT.** Any failure by Tenant to pay rent when due, or perform any term hereof, shall, at the option of the Landlord, terminate all rights of Tenant hereunder. In the event that Tenant shall be absent from the premises for a period of five (5) consecutive days, while in default, Tenant shall, at the option of the Landlord, be deemed to have abandoned the Premises and any property left on the Premises shall be considered abandoned and may be disposed of by Landlord in any manner allowed by law. In the event that Landlord reasonably believes that any such abandoned property has no value, it may be discarded.

In the event of a default by Tenant, Landlord may elect to (a) continue the Lease in effect and enforce all its rights and remedies hereunder, including the right to recover the rent as it becomes due, or (b) at any time, terminate all of Tenant's rights hereunder and recover from Tenant (i) all rent due for the remainder of the lease term, (ii) an amount sufficient to cover any damages

to the Premises, (iii) any costs incurred recovering the premises, and (iv) reasonable attorneys' fees.

15. RIGHT OF ENTRY. The Landlord shall have the right, at Landlord's pleasure, at reasonable hours to enter the Premises either in person or by the Landlord's agent, with reasonable notice.

16. NOTICES. All notices required by this lease shall be in writing and shall be delivered to the following addresses:

Notice to Landlord shall be addressed to:

Notice to Tenant shall be addressed to:

K&T Group, LLC
John Kachmarsky, Manager
171 Church Street, Suite 330
Charleston, South Carolina 29401
johnk@jktaxlaw.com

Foley Bullock, LLC
Brent Bullock, Manager
171 Church Street, Suite 330
Charleston, South Carolina 29401
bbullock@foleybullock.com

17. END OF TERM. Upon the expiration or earlier termination of the term of this Lease or any renewal hereof, the Tenant shall quit and surrender to the Landlord the Premises, in the same good condition and repair in which the Premises had been delivered to the Tenant by the Landlord, normal wear and tear excepted. Prior to the end of the term of this Lease, Tenant shall (i) provide Landlord with Thirty (30) days notice of intent to vacate or renew lease terms with Landlord and (ii) cause the removal from the Premises of any and all refuse and any and all improvements or alterations made by Tenant to the Premises that Landlord requests Tenant to remove. In the event that this Lease becomes a month-to-month agreement, either Landlord or Tenant must give Thirty (30) days' notice before termination of the Lease.

18. ATTORNEYS' FEES. In the event that any party hereto (or any third-party beneficiary of this Agreement) shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, shall be entitled to their court costs and reasonable attorneys' fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorneys' fees and court costs incurred in courts of original jurisdiction, bankruptcy courts or appellate courts.

19. BINDING EFFECT. This Lease shall be binding upon the parties hereto and their respective heirs and assigns, and the benefits hereof shall inure to the parties hereto and their respective heirs and assigns.

20. GOVERNING LAW. This Lease shall be governed and construed in accordance with the laws of the State of South Carolina.

21. COUNTERPARTS. This Lease may be executed in one or more counterparts, each of which, taken together, shall constitute one and the same instrument.

22. COMPLIANCE WITH LAWS; HAZARDOUS MATERIALS. Tenant shall comply with and shall be responsible for compliance with all applicable federal, state and local laws, regulations, ordinances, directives and orders, including, without limitation all Environmental Laws,

applicable to the Premises or Tenant's occupancy, use and maintenance of the Premises and the streets and alleys of other public land and thoroughfares that the Premises may abut. Without Landlord's prior written consent, Tenant shall not receive, store or otherwise handle any Hazardous Materials. "Environmental Laws" shall mean and include the Resource Conservation and Recovery Act, 43 U.S.C. 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., The Clean Water Act, 33 U.S.C. 1251 et seq., and all federal, state and local environmental, health and safety laws, ordinances, rules and regulations relating to regulation or control of hazardous or toxic substances wastes, or related materials (collectively "Hazardous Materials"). Such compliance shall be at Tenant's sole expense.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

LANDLORD:



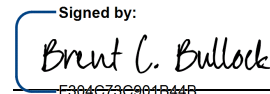
**John Kachmarsky, Manager
K&T Group, LLC**

TENANT:

FOLEY BULLOCK, LLC

Signed by:


By: David M. Foley, Esq. - Manager

Signed by:


By: Brent Bullock, Esq. - Manager

Exhibit "A"

Suite 330



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-10-02589

**John Kachmarsky, Individually, as
Manager of K&T Group, LLC, and as
Trustee of the Revocable Trust of John
Kachmarsky dated November 30, 2007, as
Member of K&T Group, LLC,**

Plaintiffs,

v.

**David G. Taylor, Individually and as
Manager of K&T Group, LLC; Taylor
Capital, LLC, as Member of K&T Group,
LLC; and K&T Group, LLC,**

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR
RECONSIDERATION**

COME NOW Defendants and respectfully submit this response in opposition to Plaintiffs' motion for reconsideration.¹

In the Court's Order dated November 24, 2024 (the "Order"), the Court—having considered the arguments of counsel, the documentary evidence, and live witness testimony proffered during the trial—correctly determined that Plaintiffs failed to satisfy their burden of proof with respect to each of their claims. First, the Court correctly found that Plaintiffs could not demonstrate a breach of the Operating Agreement by any Defendant because (a) the evidence demonstrated that no additional rental obligations were due to K&T Group, LLC ("K&T" or the "Company") and (b) even if rental obligations were due, those obligations were held by K&T's tenant, who is not a party to the Operating Agreement and not a defendant in this lawsuit. Order at

¹ On the morning of the date of this brief, Defendants received Plaintiffs' new Motion for Relief from Judgment under SCRCP 60(b)(2). This brief does not address that motion. Defendants will address that motion in a separately filed response brief.

5–6. Second, the Court correctly found that Plaintiffs failed to meet the “high bar” set by South Carolina law to expel Taylor Capital from K&T because the alleged wrongful conduct asserted by Plaintiffs (a) was not substantiated by the evidence, (b) even if substantiated, was done by K&T’s tenant, who is not a member of K&T, and (c) even if substantiated, did not render it “unfeasible, despite reasonable efforts, to keep [K&T] operating[.]” Order at 8 (quoting *Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney*, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024)). Third, the Court correctly found that Plaintiffs did not satisfy their high burden to judicially dissolve K&T, for the same reasons that are fatal to their claim for judicial expulsion and because Kachmarsky, not Taylor, was substantially in control of K&T. Order at 10.

Likewise, the Court correctly determined that Defendants demonstrated a breach of the Operating Agreement by Plaintiff John Kachmarsky, in his capacity as manager of the Company, based on his failure to avail himself of the dispute resolution mechanisms required by the Operating Agreement and his attempt, instead and in bad faith, to dissolve the Company altogether. Order at 10–12. Accordingly, the Court entered judgment in favor of Defendants on their counterclaim for breach of the Operating Agreement. The Court’s findings are supported by substantial evidence and consistent with South Carolina law.

Now, Plaintiffs ask the Court to reconsider the Order, reverse its findings, and withdraw its entry of judgment. Plaintiffs’ arguments in support of their request for reconsideration miss the mark, and the Court should reject them.

First, Plaintiffs argue that the Court’s findings contradict the record, but Plaintiffs fail to point to any specific evidence that the Court misunderstood or failed to consider. *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 722, 780 (2004) (finding that a motion to reconsider is appropriate only when the Court “has misunderstood, failed to fully consider, or perhaps failed

to rule on an argument or issue”). Though Plaintiffs generally argue that the Court should have considered evidence that arose prior to the statutory period under Rule 404(b), Plaintiffs point to no specific evidence that the Court failed to consider, leaving the Court to guess which evidence it failed to consider and what, if any, impact such evidence would have had on its findings. Of course, such vague claims of error cannot support a motion for reconsideration.

Second, Plaintiffs argue that the Court failed to rule on its “action for . . . partition of real property in kind.” Pls’ Mot. at 2. But Plaintiffs did not assert a claim for partition of real property, nor could they have under South Carolina law. Instead, Plaintiffs asserted partition as requested relief under their claim for judicial dissolution. Compl. at 8. Because the Court correctly found that Plaintiffs did not satisfy their burden on their claim for judicial dissolution, the Court could not have granted any relief Plaintiffs sought thereunder. Further, Plaintiffs could not have brought a claim for partition as a matter of law because the relevant property is wholly owned by the Company, not by joint owners or tenants in common. *See* S.C. Code Ann. § 15-61-10 (authorizing partition actions only for property held by joint tenants or tenants in common).

Third, Plaintiffs argue that the Court’s finding in favor of Defendants on their counterclaim for breach of the Operating Agreement is erroneous (a) because the Court wrongfully permitted Defendants to amend their counterclaim and (b) because the Court wrongfully based its holding on the fact that Kachmarsky filed a lawsuit. Not so. The Court permitted Defendants to amend their counterclaim under the liberal standard ascribed by Rule 15(a), correctly finding that the amendment did not prejudice Defendants because the substantive issue addressed in the amended counterclaim was always a central issue in the parties’ dispute. *See Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (“Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within

the sound discretion of the trial judge.”). And the Court found for Defendants on their breach-of-contract counterclaim not because Kachmarsky filed a lawsuit, but because Kachmarsky attempted to dissolve the Company in bad faith over a dispute worth \$8,750 and failed to instead avail himself of the less drastic alternatives required by the Operating Agreement. *See* Order at 10–11. For these reasons, which are discussed in greater depth below, the Court should deny Plaintiffs’ motion.

A. Facts

This dispute involves the interests of a limited liability company formed in 2003: K&T Group, LLC (“K&T” or the “Company”). K&T’s interests are owned in equal halves by Plaintiff the Revocable Trust of John Kachmarsky dated November 30, 2007 (the “Kachmarsky Trust”), and Defendant Taylor Capital, LLC (“Taylor Capital”). The respective principals of those member entities are John Kachmarsky (Trustee) and David Taylor, who are also the managers of K&T. The primary asset of the Company is a commercial office known as Suite 330 of the Franke Building at 171 Church Street in Charleston (“Suite 330”).

Under the Company’s Operating Agreement, K&T is a Term company. Under the South Carolina Uniform Limited Liability Act (the “LLC Act”), a Term company like K&T has limited rights of transfer and exit. *See* S.C. Code Ann. § 33-44-101(19) (“Term company means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.”); Trial Tr. 104:20 – 105:4. According to the Operating Agreement, the stated purpose of the Company is “to hold and manage Company Property.” (Defs’ Ex. 1, § 1.10.) Kachmarsky and Taylor operate different commercial entities within Suite 330, and K&T rents the remaining office space in Suite 330 to third parties. For the last several years, Suite 330 has been occupied by rent-paying tenants, save for infrequent vacancies. (Trial Tr. 100:21–101:9.)

At trial, Plaintiffs presented evidence of payment disputes having arisen a few times during the more than twenty years of company operations. The disagreements raised by Plaintiffs occurred prior to the statutory period, that is, more than three years before the filing of this action, save one. (Trial Tr. 82:3 – 83:11.) The one disagreement that occurred during the statutory period involves the Taylor Foley law firm’s use of an otherwise vacant office in Suite 330 for the firm’s summer intern in 2021. At trial, the Court received evidence and testimony regarding that dispute, as set forth in the Order.

B. Procedural History

Plaintiffs filed this lawsuit in June 2022, asserting three claims against Defendants: (1) breach of the Operating Agreement, (2) judicial expulsion under S.C. Code Ann. § 33-44-601, and (3) judicial dissolution under S.C. Code Ann. § 33-44-801. On August 19, 2022, Defendants filed an answer and asserted a counterclaim for breach of the Operating Agreement. On September 16, 2024, Defendants filed a motion to amend their answer and counterclaim, attaching a proposed amended answer and counterclaim as an exhibit to the motion. The Court granted that motion during a pretrial hearing on September 17, 2024. The Court then held a non-jury trial on Plaintiffs’ claims and Defendants’ counterclaim, where it received documentary evidence and live witness testimony.

On November 26, 2024, the Court issued the Order, finding that Plaintiffs did not satisfy their burden of proof for the claims asserted in their Complaint and dismissing those claims with prejudice, and finding that Defendants satisfied their burden of proof for their counterclaim and entering judgment in Defendants’ favor on that claim. On December 6, 2024, Plaintiffs filed the instant motion for reconsideration.

C. Standard

Plaintiffs move for reconsideration under South Carolina Rules of Civil Procedure 52(b), 59(e) and 60(b).

Under Rule 52(b), a party may request that the Court amend its findings after an entry of judgment in conjunction with a motion for a new trial under Rule 59(e). The Supreme Court of South Carolina has recognized that a party may file a Rule 59(e) motion only “when [the party] believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue[.]” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 722, 780 (2004). “A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.*

Rule 60(b) authorizes the Court to relieve a party from a final judgment only for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or misconduct by an opposing party; (4) the judgment is void; [and] (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

SCRCP 60(b).

A party may not generally use Rule 60(b) as a vehicle for relief from a mistake of law. *Hillman v. Pinion*, 347 S.C. 253, 256, 554 S.E.2d 427, 429 (Ct. App. 2001). Nor may a party use Rule 60(b) to relitigate an issue that could have been pursued on appeal. *Tench v. S.C. Dep’t of Educ.*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001). Nor may a party “use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” *Anderson Mem’l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994). Whether to grant or deny

a motion under Rule 60(b) lies within the sound discretion of the judge. *Raby Constr., L.L.P. v. Orr*, 358 S.C. 10, 17–18, 594 S.E.2d 478, 482 (2004).

D. Argument

The Court should deny Plaintiffs’ motion to reconsider because the Court’s findings in the Order are supported by the law and the substantial evidence.

1. The Court reached the correct conclusions in the Order.

On September 17, 2024, the Court held a trial in this matter, during which it received the arguments of counsel, documentary evidence, and live witness testimony. In the resulting Order, the Court correctly determined that Plaintiffs failed to satisfy their burden of proof with respect to each of their claims. In so doing, the Court provided detailed supporting citations to the record and the material evidence. The Court’s findings are correct, and the Court should not disturb them.

First, the Court correctly found that Plaintiffs did not demonstrate a breach of the Operating Agreement. The parties disputed whether a Talyor Foley employee occupied office space in Suite 330 from January to July 2021 and therefore whether the tenant owed rental obligation to K&T based on that use. Based on the evidence and testimony presented, the Court found “no credible evidence of an additional Taylor Foley employee having been hired and placed in th[e] (otherwise unoccupied) office before May 2021.” Order at 4 (citing Trial Tr. 138:20–139:3; 142:21–143:12). The Court considered Plaintiffs’ proffered evidence that the office was in fact occupied during that time, but the Court found that evidence to be not credible and contrary to documentary evidence in the record. *Id.* at 3–4.

Further, the Court determined that, even assuming that rental obligations were owed based on the occupation of extra office space, any such obligations were held by the tenant, who is not a party to the Operating Agreement and not a defendant in this lawsuit. Order at 5–6. As the Court

correctly held, the actions of a tenant (a non-party to the Operating Agreement) cannot support a breach-of-contract claim against Defendants. *Id.* (citing *Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 652, 780 S.E.2d 263, 272 (Ct. App. 2015)).

Second, the Court correctly found that Plaintiffs failed to satisfy the “high bar” set by South Carolina law for judicial expulsion of a member. A Court may judicially expel a member from a limited liability company if the member:

- (i) engaged in wrongful conduct that adversely and materially affected the company’s business;
- (ii) wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under Section 33-44-409; or
- (iii) engaged in conduct relating to the company’s business which makes it not reasonably practicable to carry on the business with the member[.]

S.C. Code Ann. § 33-44-601(6). The South Carolina Court of Appeals has recently recognized that:

[Limited liability company] members seeking to expel a fellow member . . . are required to clear a high bar” and a court may not order disassociation “merely because there is a conflict.” “[D]isagreements and disputes among [limited liability company] members that bear no nexus to the [limited liability company’s] business” do not justify a member’s expulsion, and “it must be unfeasible, despite reasonable efforts, to keep the [limited liability company] operating while the disputed member remains affiliated with it.

Boathouse at Breach Inlet, LLC by & through Stoney v. Stoney, 442 S.C. 633, 652, 900 S.E.2d 483, 493 (Ct. App. 2024), *reh'g denied* (Apr. 29, 2024) (quoting *IE Test, LLC v. Carroll*, 226 N.J. 166, 140 A.3d 1268, 1279 (2016)) (alterations in original).

The Court correctly found that the alleged wrongful conduct asserted by Plaintiffs did not justify judicial expulsion of Taylor Capital for three reasons. First, the Court correctly declined to consider conduct that occurred more than three years prior to the filing of the lawsuit. Order at 7

(citing *Mazloom v. Mazloom*, 382 S.C. 307, 323, 675 S.E.2d 746, 755 (Ct. App. 2009), *aff'd*, 392 S.C. 403, 709 S.E.2d 661 (2011) (finding that claims asserted under the South Carolina Limited Liability Act are subject to a three-year limitations period) (citing S.C. Code Ann. § 33-44-410)). Second, as discussed above, the Court determined as a factual matter that Taylor Capital did not owe any rental obligations to the Company, meaning that any alleged unpaid rent could not justify expulsion. Order at 8.

And third, the Court correctly found that, “even if additional rent payments had been owed for three months of temporary use, an outstanding receivable of \$3750 in no way makes it ‘unfeasible, despite reasonable efforts, to keep the [limited liability company] operating[.]’” Order at 8 (citing *Boathouse*, 442 S.C. at 652, 900 S.E.2d at 493). As the Court noted, K&T’s tenants continue to pay rent to K&T, such that K&T continues to fulfill its purpose “to hold and manage Company Property.” Order at 8. As the Court explained:

Even viewing the evidence in the light most favorable to Kachmarsky, the total amount in dispute at the time that this lawsuit was filed was \$8,750. (*Id.* at 113:13 – 114:17.) That amount-in-controversy pales in comparison to the value of the Suite 330, the Company’s primary asset, which Kachmarsky testified is worth well over \$1.5 million. (*Id.* at 113:13–115:6.) An \$8,750-dollar rent dispute does not clear the “high bar” required to justify expulsion, and there is no evidence in the record indicating that the continued operation of K&T would be “unfeasible” if Taylor Capital were not expelled. *Boathouse at Breach Inlet*, 442 S.C. at 652, 900 S.E.2d at 493

Order at 9.

Additionally, the Court correctly found that Plaintiffs did not satisfy their burden for their claim of judicial dissolution, for the same reasons fatal to their claim for judicial expulsion. Order at 10. The Court also found that Plaintiffs failed to demonstrate that Taylor Capital or manager Taylor is in control of the Company, specifically citing to evidence showing that Kachmarsky was in control of the Company because he managed Company operations and Company money. Order

at 10 (citing Trial Tr. 48:10–49:5; 80:24–82:2; 111:17–20.).

Likewise, the Court correctly determined that Defendants demonstrated a breach of the Operating Agreement by Plaintiff John Kachmarsky, in his capacity as manager of the Company. The Operating Agreement establishes duties that the managers owe to the Company and to the Members, including a duty of loyalty and an obligation of good faith and fair dealing. The Operating Agreement also sets forth certain procedures in the event of non-payment or a member dispute. As the Court found, Kachmarsky, in his capacity as Manager of the Company, breached the Operating Agreement’s duties of loyalty, care, and good faith and fair dealing by seeking to dissolve the company over \$8,750 in rental payments allegedly owed by a tenant, rather than availing himself of any of the remedies set forth in the Operating Agreement. Order at 11. As the Court found, “any reasonable inquiry into the matter would have demonstrated that the most money even arguably at issue was \$3750 for three months of use.” *Id.* Accordingly, the Court correctly held that Kachmarksy’s conduct constituted a breach of the Operating Agreement.

2. The Court did consider the evidence cited in Plaintiffs’ Motion, and Plaintiffs fail to point to any evidence that the Court in fact misapprehended or failed to consider.

In their motion to reconsider, Plaintiffs argue that the Court’s findings contradict the record. However, Plaintiffs fail to point to any specific evidence that the Court misunderstood or failed to consider. Instead, Plaintiffs generally posit that the Court’s findings on each claim are contrary to the record and, in support, point to evidence that the Court did consider but rejected. *See* Pls’ Mot. at 4–5. As just one example, Plaintiffs argue that “the Court should have considered [that] Defendant had failed to pay rent for 6 months without explanation and after being requested to do so.” Pls’ Mot. at 4. But the Court did consider that evidence and explicitly explained its view of that evidence in the Order. Order at 4 (Explaining why “rent payments due to the Company . . .

were delayed”). Neither unsubstantiated nor general claims of error justify reconsideration. *See Elam*, 361 S.C. at 24, 602 S.E.2d at 780 (finding that a motion to reconsider is appropriate only when the Court “has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue”).

Plaintiffs also argue that the Court should have considered Defendants’ conduct that occurred outside of the applicable statutory period, citing Rule 404(b). But again, Plaintiffs do not cite to any specific evidence outside of the statutory period that the Court should have considered but did not consider. Instead, Plaintiffs point only to evidence that occurred within the statutory period and that the Court specifically did consider. Pls’ Mot. at 4–5 (citing to evidence of events that occurred in 2021 and 2022). In any event, the Court did not fail to consider evidence prior to the statutory period; instead, it declined to consider any alleged breach of contract or grounds for judicial expulsion/dissolution that occurred prior to the statutory period, because the Court’s reliance on any such event would render Plaintiffs’ claim untimely. *See* Order at 5 (“[T]he Court declines to consider any alleged breach which occurred prior to the statutory period, that is, more than three years before the initiation of this action.”), 7 (“[The Court] cannot consider allegedly wrongful conduct that occurred more than three years prior to the filing of this action in determining whether expulsion is warranted.”). Accordingly, the Court should reject Plaintiffs’ argument that the Court failed to consider material evidence.

3. Plaintiffs did not, and could not, assert a claim for partition of real property.

Plaintiffs assert that the Court failed to rule on its argument that partition is appropriate. But Plaintiffs did not assert a claim for partition of real property. Instead, Plaintiffs requested partition as relief under their claim for judicial dissolution. Compl. at 8. Because the Court correctly found that Plaintiffs did not satisfy their burden on their claim for judicial dissolution,

see Order at 10, the Court could not have reached the issue of whether the relief Plaintiffs requested under that cause of action would be appropriate. Of course, a plaintiff must prove a claim before a Court can grant relief. Because Plaintiffs failed to prove their claim for judicial dissolution, the Court correctly did not reach the issue of the relief they requested.

Moreover, Plaintiffs could not have brought a claim for partition of Suite 330 under South Carolina law. Partition is a remedy “compellable between certain joint tenants and tenants in common.” S.C. Code Ann. § 15-61-10. There is no South Carolina common or statutory law that authorizes the member of a limited liability company to file a partition action with respect to real property wholly owned by the limited liability company. Here, Plaintiffs could not assert a partition action because Suite 330 is not owned by joint tenants or by tenants in common; instead, it is wholly owned by K&T. Accordingly, Plaintiffs do not have a legal basis or standing to pursue a partition action with respect to Suite 330.

4. The Court correctly found in favor of Defendants on their counterclaim for breach of the Operating Agreement.

Plaintiffs argue that the Court’s finding in favor of Defendants on their counterclaim for breach of contract is erroneous for two reasons. First, Plaintiffs contend that the Court wrongfully permitted Defendants to amend their counterclaim under SCRCP 15(a). Rule 15(a) states that “a party may amend his pleading . . . and leave shall be freely given when justice so requires and does not prejudice any other party.” SCRCP 15(a). “Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge.” *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (citing Rule 15(b), SCRCP).

A Court should grant a motion to amend under Rule 15(a) unless a party is “prejudiced by the amendment or [] there [i]s some other substantial reason to deny it.” *Patton v. Miller*, 420 S.C.

471, 490, 804 S.E.2d 252, 262 (2017). “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716–17 (Ct. App. 2005); *see also Patton*, 420 S.C. at 491, 804 S.E.2d at 262–63 (“Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.”). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

In their motion to amend, Defendants sought to narrow the scope of their counterclaim by removing allegations that were obviated by discovery and to articulate a single basis for their breach-of-contract counterclaim. The proposed amendment did not join parties, add claims, or request new or different relief. Accordingly, the Court granted Defendants’ motion to amend their counterclaim, finding that the amended counterclaim involved the same issues within the same timeframe as the Complaint and initial counterclaim, and that the amendment did not prejudice Plaintiffs because it involved the same subject matter that was the subject of two years of discovery. Trial Tr. 17:4–18:11.

Second, Plaintiffs argue that the Court wrongfully based its holding on the fact that Kachmarsky filed a lawsuit. However, as discussed in detail above, the Court found that Kachmarsky breached the Operating Agreement by seeking to dissolve the company over \$8,750 in rental payments allegedly owed a tenant, rather than availing himself of any of the remedies set forth in law or in the Operating Agreement. Order at 11. Accordingly, the Court should affirm its finding in favor of Defendants on Defendants’ counterclaim.

E. Conclusion

Accordingly, Defendants respectfully request that the Court deny Plaintiffs' motion for reconsideration.

Respectfully submitted

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