

FILED
OFFICE OF CLERK
OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

2013 MAR 15 AM 11:55

SIXTH JUDICIAL CIRCUIT

2013-CP-29-398

INDIAN LAND FL, LLC,

CLERK OF COURT
LANCASTER, SC

Plaintiff,

vs.

JAMES A. KNAPIK, d/b/a CONE'S ICE
CREAM COMPANY AND CAFÉ, CONE'S
ICE CREAM COMPANY, LLC AND JAMES
A. KNAPIK,

COMPLAINT

Defendants.

Plaintiff Indian Land FL, LLC ("Plaintiff"), through its undersigned counsel, hereby submits its Complaint against Defendants, and alleges as follows:

1. Plaintiff is a duly formed North Carolina limited liability company doing business in Lancaster County, South Carolina. ✓

2. Upon information and belief, Defendant James A. Knapik, d/b/a Cone's Ice Cream Company and Cafe ("Cone's") is a company now or formerly doing business in Lancaster County, South Carolina. ✓

3. Upon information and belief, Defendant Cone's Ice Cream Company, LLC ("LLC") is a South Carolina limited liability company now or formerly doing business in Lancaster County, South Carolina. ✓

4. Upon information and belief, Defendant James A. Knapik ("Knapik") is a resident of York County, South Carolina. ✓

5. On or about August 16, 2011, Plaintiff and Cone's entered into a 60-month lease (the "Lease") pursuant to which Cone's leased from Plaintiff certain commercial real property located at 8169 Charlotte Highway, Fort Mill (Indian Land) South Carolina, 29707 (the "Premises"). ✓

6. Upon information and belief, LLC is the entity established by Knapik which was actually leasing the Premises. Any reference to Cone's herein shall also include LLC. ✓

7. Knapik executed a guaranty in connection with the Lease, whereby Knapik personally guaranteed all obligations undertaken by Cone's under the Lease (the "Guaranty"). X

8. On or about December 2012, Cone's and Knapik became in default under the Lease by failing to make rental payments when due.

9. On or about December 7, 2012 Cone's vacated the Premises.

10. Pursuant to the terms of the Lease, Plaintiff notified Cone's and Knapik of their respective defaults under the Lease and the Guaranty.

11. The rental amount presently due and owing to Plaintiff under the Lease and the Guaranty is \$11,775.00. 7

12. Despite repeated demands for payment for all rent due under the Lease, and despite promises and assurances from Cone's and Knapik that the payments would be made, Cone's and Knapik have failed to pay the amount owed to Plaintiff.

CLAIM FOR RELIEF
(BREACH OF CONTRACT)

13. Plaintiff restates and incorporates herein by reference paragraphs 1 through 12.

14. The Lease is a valid, binding, and enforceable contract between the Plaintiff and Cone's. Plaintiff has fully performed its obligations under the Lease, but Cone's has failed to perform its obligations under the Lease, and is therefore in breach of same.

15. The Guaranty is a valid, binding, and enforceable contract between Plaintiff and Knapik. Knapik has failed to perform his obligations under the Guaranty, and is therefore in breach of same. X

16. As a result of the above-described breaches of the Lease and Guaranty, Plaintiff is entitled to payments of all amounts due, plus interest at eighteen percent (18%) annually, plus costs and attorneys' fees, plus fifteen percent (15%) of the total attorney's expense incurred as an administrative fee. ✓

WHEREFORE, having set forth its Complaint, Plaintiff Indian Land FL, LLC prays the Court for judgment against the Defendants as follows:

1. For damages from James A. Knapik d/b/a Cone's Ice Cream Company and Café and Cone's Ice Cream Company, LLC and James. A. Knapik for breach of the Contract in the amount of \$11,775.00;
2. For an award of Plaintiff's costs and attorneys' fees;
3. An award of prejudgment and post-judgment interest;
4. An award of fifteen percent (15%) of the total attorney's expense incurred as an administrative fee; and

5. For such other and further relief as this court deems just and proper.

Respectfully submitted this 13 day of March, 2013.

HORACK, TALLEY, PHARR & LOWNDES, P.A.

By: Cynthia Jones
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Phillip E. Lewis / S.C. Bar Number 73973
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STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

INDIAN LAND FL, LLC

Plaintiff(s)

vs.

JAMES A. KNAPIK d/b/a CONE'S ICE CREAM COMPANY AND CAFÉ, CONE'S ICE CREAM COMPANY, LLC, and JAMES A. KNAPIK,

Defendant(s)

IN THE COURT OF COMMON PLEAS

FILED OFFICE OF CLERK OF COURT CIVIL ACTION COVERSHEET

2013 MAR 15 AM 11:58 013-CP-29-398

COURT OF COURT LANCASTER, SC

(Please Print)

Submitted By: Cynthia Jones
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Medical Malpractice (220)
Torts - Personal Injury: Assault/Slander/Label (300)
Real Property: Claim & Delivery (400)
Immature Petitions: Other (599)
Judgments/Settlements: Death Settlement (700)
Administrative Law/Relief: Reinstatement Driver's License (800)
Appeals: Arbitration (900)
Special/Complex/Other: Environmental (600)

Submitting Party Signature:

Cynthia Jones

Date: 3/14/2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

FOLKS, KHOURY & DeVENNY

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DATE: DECEMBER 30, 2013

FROM: T. ALSTON DEVENNY

PLEASE DELIVER THIS COVER SHEET AND THE FOLLOWING 4

PAGES TO:

NAME: AMELIA / SC COURT OF APPEALS

RE: INDIAN LAND FL, LLC VS. JAMES A. KNAPIK, ET AL
CASE NO.: 2013-CP-29-388

RECEIVER'S FAX NO.: 803-734-1496

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COMMENTS:

AMELIA,

PER YOUR REQUEST ATTACHED PLEASE FIND THE COMPLAINT FILED IN THE ABOVE-REFERENCED MATTER.

IF YOU NEED ANY ADDITIONAL INFORMATION PLEASE DON'T HESITATE TO CONTACT ME.

THANK YOU,

HEIKE MYERS
LEGAL ASSISTANT TO T. ALSTON DEVENNY