

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSIMER  
JUDGMENT IN A CIVIL CASE  
CASE NO: 2013CP2303075

IN THE COURT OF COMMON PLEAS 2013 NOV 13 PM 4 10

Sherman Financial Group LLC vs. FM FRI Greenville LLC

- 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: \_\_\_\_\_
- 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;  Statement of Judgment by the Court:

**NOTICE**

This is a notice to you that an Order For Tenant To Pay June/July Rent/Motion For Contempt Preserved in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to [bjeffords@greenvillecounty.org](mailto:bjeffords@greenvillecounty.org). If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 13th day of November, 2013.

PRESIDING JUDGE -

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Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE )

Sherman Financial Group, LLC, )

C.A. No. 2013-CP-23-03075

Plaintiff, )

v. )

ORDER

FM FRI Greenville, LLC, )

Defendant. )

FILED IN CLERK OF COURT  
GREENVILLE CO. S.C.  
PAUL B. WICKENSHIER  
2013 NOV 13 PM 4 10

This matter has been referred to the Greenville County Master-In-Equity by Order of the Circuit Court dated September 16, 2013. Before the Court on November 5, 2013 by way of hearing was the Motion of the Defendant, FM FRI Greenville, LLC ("Defendant" or "Landlord") for Contempt and Sanctions. Sherman Financial Group, LLC ("Plaintiff" or "Tenant") opposed such motion. Also before the Court was Tenant's Motion for Withdrawal of the Preliminary Injunction reduced to writing and filed on June 26, 2013 (which injunction incorporated the Temporary Restraining Order of May 31, 2013 where not inconsistent) and return of the \$152,137.76 cash bond incident to the Temporary Restraining Order (the "bond"). Landlord did not oppose the withdrawal of the Preliminary Injunction but opposed the return of the bond.

**PROCEDURAL SUMMARY**

On or about June 11, 2013, Tenant filed a motion for leave to deposit certain rents with the Court. Tenant asserted in said motion, among other things, its right to a certain alleged tenant allowance. On July 31, 2013, the Circuit Court entered an Order denying such motion and directing Tenant to "bring the rent current by making the full payment of both June and July rent to the Defendant in accordance with the terms of the lease." Said Order found that "the specific

terms of the lease require payment." The Order also provided that the "issue of whether there has been a material breach under the contract is outstanding," and is "appropriately left to a trial on the merits, allowing for a full inspection by the triers of fact." Tenant filed a motion to reconsider. The Court denied such motion by way of Order dated August 23, 2013. In said Order, the Court stated that it "made no rulings with respect to the merits of the case and leaves open for a trial on the merits all justiciable issues raised in the parties' pleadings." The Court also stated that the Order was without prejudice to any party with respect to the alleged tenant allowance or allegations of breach under the lease.

Before the Court is the Affidavit of Brian Schiedemeyer dated November 4, 2013 indicating the Tenant has not paid June, July, August, September, October, or November 2013 rent. Such affidavit has calculated the amounts past due under the lease for June and July 2013 in the amount of \$313,757.86.

Landlord argues that Tenant should be held in contempt for failure to bring the rent current in accordance with the July 31, 2013 Order. Tenant argues that the only remedy available under Section 27-37-155 of the South Carolina Code of Laws for failure to pay rent is ejection, and the Court does not have the authority to compel Tenant to pay rent under that Section. Accordingly, Tenant argues that it cannot be held in contempt because to interpret the Orders as Landlord suggests would be to follow an order that is unauthorized under Section 27-37-155 and is unconstitutional.

### LEGAL ANALYSIS

#### A. The prior Orders are the law of the case.

The July 31, 2013 Order and the August 23, 2013 Order are the law of the case. See, e.g., ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472

(1997) (unappealed ruling is the law of the case). It is well-settled that a successor judge cannot reverse, overrule, or disregard the rulings of a prior judge. Charleston County Dept. of Social Services v. Fether, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). Notwithstanding the prior Orders of Judge Stilwell, this Court would likewise rule that 27-37-155 does not prohibit Landlord from collecting past due rent under the facts of this case.

The July 31, 2013 Order directs Tenant to bring the rent current by making full payment of June and July rent to Landlord. Such has not been done. This Court will enforce such Order, and directs Tenant to make such past due rent payments for June and July not later than November 15, 2013. Non-payment shall subject Tenant to this Court's contempt powers.

**B. The bond must remain in place.**

The Court has previously ordered in the Temporary Restraining Order that the \$152,137.76 shall remain on deposit with the Court as a bond incident to the Temporary Restraining Order. The Preliminary Injunction incorporates the Temporary Restraining Order, where not inconsistent. The bond shall stay in place through the conclusion of this case, or until further order of the Court.

**CONCLUSION**

Based on the foregoing, it is

**ORDERED, ADJUDGED AND DECREED** that Tenant shall make payment of June and July rent to Landlord in the amount of \$313,757.86 on or before November 15, 2013. All other issues related to Landlord's motion for contempt and sanctions, including Landlord's alleged right to additional months' rent, are held in abeyance and preserved.

By consent, the Preliminary Injunction dated June 26, 2013, incorporating the Temporary Restraining Order dated May 31, 2013 where not inconsistent, is withdrawn and dissolved.

The bond in the amount of \$152,137.76 shall remain in place through the conclusion of this case or until further order of the Court.

**IT IS SO ORDERED.**



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The Honorable Charles B. Simmons, Jr.

November 8, 2013  
Greenville, South Carolina