

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

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S.C. Supreme Court

Opinion No. 2010-150790 (S.C. Ct. App. filed February 22, 2012)

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah

Aka Lynwood K. Daniels, ... Petitioners

APPENDIX

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 97-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, ...Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF ORANGEBURG) CASE NO.:07-CP-38-717

William Parker and Dorothy
Parker,

Plaintiffs,

v.

Pier Abdullah and Aazim Abdullah
a/k/a Lynwood K. Daniels,

Defendants.

)
)
)
) ORDER DENYING DEFENDANT'S MOTION
) TO RECONSIDER
)
)

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Winnys B. Clair
CLERK OF COURT

This matter was before me on September 30, 2009 for a hearing and argument on Defendant's Rule 59(e) Motion for Reconsideration of this Court's Order filed May 5, 2009. After hearing the arguments of counsel and reviewing the case law presented, I find Defendant's Motion for Reconsideration should be DENIED.

Defendants' primary argument is that the Court has miscalculated the date on which Plaintiff's option to purchase had expired. However, Defendant offered no new evidence or caselaw which would cause the Court to change its prior Order. Based on the internal ambiguities, which must be construed against the Defendant as drafter, I find the option expired on June 15, 2006. Accordingly, Plaintiff's letter, served via personal service, was sufficient to exercise the option, as the Plaintiffs at all times were ready and able to close on the purchase. I find that tender of the full purchase price was not specifically required under the terms of the contract in order to exercise the option.

Defendants also argue that the parties had reached an accord and satisfaction prior to the filing of the lawsuit. The parties agreed there was no written agreement, and

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there was no evidence offered at the initial hearing from which this Court could determine whether the parties had actually agreed on a settlement and what terms would constitute such. Lacking any such evidence or guidance, this Court finds that Defendants have failed to establish the defense of Accord and Satisfaction by a preponderance of the evidence.

Finally, I find the calculation of damages to be correct. Plaintiffs are entitled to \$16,800 reimbursement of the rents paid which should have been applied to the purchase price of the property. I further find Plaintiff's are entitled to \$450 in moving expenses. Finally, the contract called for the award of attorney's fees to the prevailing party. I find Mr. Wilson's petition for \$4,824.65 for attorneys' fees and costs to be reasonable.

IT IS THEREFORE ORDERED, that Plaintiff's shall have judgment against Defendants in the amount of \$22,074.65. Defendants Motion for Reconsideration is DENIED.



O. Davie Burgdorff
Orangeburg County Master in Equity

1-4, 2019

Orangeburg, SC

0000002

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

William Parker and Dorothy Parker,)
)
Plaintiff)

ORDER

vs.)

Case No. 07-CP-38-717

Pier Abdullah and Aazim Abdullah)
)
aka Lynwood K. Daniels,)
)
Defendant)

This matter came before the Court on December 10, 2008 pursuant to an Order of Reference in this matter. The Court heard the arguments of counsel and received evidence by way of testimony and the introduction of exhibits.

Prior to receiving evidence, the Plaintiff dismissed the causes of action for fraud/negligent misrepresentation and Unfair Trade Practices. The Court then heard the testimony of Dorothy Parker and Azim Abdulla aka Lynwood Daniels. The parties also submitted several exhibits, including a written contract for the lease and/or sale of real estate ("Residential Lease with Option to Purchase"). At the conclusion of Plaintiffs' case, Defendants moved for directed verdict, which the Court denied.

After considering the evidence and the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. Plaintiffs and Defendants entered into a written contract, a "Residential Lease with Option to Purchase" (hereinafter lease/option), whereby Plaintiffs leased from Defendants a certain property located at 183 Mill Branch Road, Orangeburg, South Carolina (real estate and mobile home) from Defendants. In addition, the lease/option

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Wingja B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

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provided that Plaintiffs had an option to purchase the property (real estate and mobile home). Plaintiffs submitted a copy of the lease/option into evidence.

2. The lease/option was prepared by Defendant Azim Abdullah aka Lynwood Daniels and presented to Plaintiffs for their approval and execution. Defendant Azim Abdullah had been involved in a number of real estate transactions prior to this transaction with Plaintiffs, some of which involved leases with options to purchase. Defendant Azim Abdullah had even been involved in preparation of other lease/option contracts using the same form he used to prepare the lease/option contract at issue here. Plaintiffs had never been involved in the sale or purchase of real estate or the preparation and execution of a lease with option to purchase. Neither party had an attorney involved in preparing the lease/option.

3. The lease/option contract provided that the lease term would begin June 15, 2004, and continue for 24 months (see paragraph 2), with Defendants paying a \$3,000.00 security deposit (see paragraph 11) and \$700.00 per month as rent (see paragraph 3). The contract contains no ambiguities or inconsistencies in its terms regarding the lease of the property by Defendants.

4. However, the lease/option contract prepared by Defendant Azim Abdullah contained several ambiguities or inconsistent provisions with respect to the option to purchase. Paragraph 2 of the contract provides that the lease would begin June 15, 2004 for a period of 24 months and the option to purchase would expire "at the end of the 24 month lease." This language would indicate the option to purchase expired if not exercised by June 15, 2006. In contradiction and later in the contract, in paragraph 26, the contract provided that the option to purchase would expire at midnight on June 9,

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2006. An ambiguous contract, which contains terms that are inconsistent on their face, should be construed "liberally and most strongly" in favor of the party who did not prepare the contract. Myrtle Beach Lumber Company v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981); Ward v. West Oil Company, Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008), rehearing denied (citing Myrtle Beach Lumber Co. v. Willoughby, *infra*). Furthermore, where two provisions of an agreement are inconsistent with each other and "repugnant" to each other, the first provision controls. Smith v. Clinkscales, 102 S.C. 227, 85 S.E. 1064 (1915); Brady v. Carolina Steel Bridge & Constr. Co., 76 S.C. 297, 56 S.E. 964 (1907). As such, the option to purchase contained in the lease/option at issue here expired on June 15, 2006 as set forth in paragraph 2 of the lease/option— not June 9, 2006 as set forth much later in paragraph 26. Plaintiffs therefore exercised the option timely.

413 } 5. The lease/option contract also contained significant and additional ambiguities and inconsistencies in its provisions regarding the purchase price. The contract provided in paragraph 19 that if the Plaintiffs exercised their option to purchase, and did purchase the property pursuant to the lease/option, that the purchase price would be \$65,000.00. The lease/option further provided in paragraph 19 that all deposits and/or rents paid during the first or second year by Plaintiffs would be applied at 100% credit toward the \$65,000.00 purchase price, with all remaining monies owed on the purchase price paid by cash or certified funds. However, later in the contract, in paragraph 27, and in contradiction to the provisions of paragraph 19, the contract provided that rent paid by Plaintiffs would only be applied at a 25% credit. These inconsistent provisions create an ambiguous contract which the Court must construe. Ward, *infra*. As with the other

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ambiguous, inconsistent and contradictory contract provisions noted in the above paragraph of this Order, this ambiguous contract should be construed "liberally and most strongly" in favor of Plaintiffs who were not involved in the preparation of the contract and the earlier provision of the contract controls. Myrtle Beach Lumber Co., infra; Ward, infra; Smith, infra; Brady, infra. Since Defendants prepared the lease/option to include paragraph 19 with 100% credit for rents paid toward the purchase price, and since paragraph 19 precedes paragraph 27 and its 25% credit provisions, the Court construes the lease/option to provide that upon proper exercise of the option, Defendants were required to sell Plaintiffs the property for \$65,000.00, giving Plaintiffs 100% credit toward the purchase price for all rents and security deposits paid.

6. The lease/option contract provided that notice of the exercise of the option had to be delivered to Defendants (paragraph 27) and that any closing had to be within 10 days of the exercise of the option (paragraph 24).

7. Several weeks prior to the expiration of the 24-month lease, Plaintiffs verbally informed Defendants of their intent to exercise the option to purchase. In accordance with the contract provisions, Plaintiffs also delivered to Defendant Azim Abdullah by process server a written notice of their intent to exercise the option to purchase by delivering a letter dated June 15, 2006 with a copy of a cashiers check payable to Mr. Parker attached to the letter. Plaintiffs therefore properly notified Defendants of their intent to exercise the option to purchase.

8. The June 15, 2006 letter from Plaintiffs exercising the option to purchase included a calculation from Plaintiffs of the monies that remained owing on the purchase price, taking credit for the \$3,000.00 security deposit and the two years of rent paid at

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\$700.00 per month. The Plaintiffs calculated that \$45,200.00 was still owing and included a copy of a First Citizens cashiers check to William Parker, Jr. in that amount to show Defendants the monies were available for closing. The letter also included a request from Plaintiffs that Defendants notify Plaintiffs of a closing date immediately and which attorney Plaintiffs wished to use for the transaction.

9. In response to the June 15, 2006 letter from Plaintiffs, Defendant Azim Abdullah immediately communicated very clearly to Plaintiffs that he would not sell the property under those terms, and he unsuccessfully attempted to negotiate a new arrangement with Plaintiffs. Defendant Azim Abdullah testified that he did not consider the June 15, 2006 letter a valid exercise of the option for various reasons, which the Court finds not valid, and that he therefore refused to then sell the property to Plaintiffs.

Defendant Azim Abdullah pointed out in his testimony that no closing occurred or was arranged by Plaintiffs within 10 days of the exercise of the option. He testified that Plaintiffs failed to pay or properly tender the monies which remained owing on the purchase price, instead merely sending a copy of a cashiers check with the June 15, 2006 letter. Defendant Azim Abdullah testified he felt that for those reasons he was justified in not selling the property to Plaintiffs. However, Defendant Azim Abdullah clearly testified that upon receiving the June 15, 2006 letter from Plaintiffs, he did not intend to sell them the property under those terms for the reasons above and he immediately notified Plaintiffs of this. Once a party to a contract refuses to perform his part of the contract and notifies the other party that he does not intend to perform, the other party is not required to tender further performance. McCall Co. v. Hobbs-Henderson Co., 138 S.C. 435, 136 S.E. 762 (1927) (citing Clinton Oil and Mfg. Co. v. Carpenter, 113 S.C.

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10, 101 S.E. 47 (1919)). See also, Elliott v. Dew, 264 S.C. 40, 212 S.E.2d 421 (1975) (perfect tender not required in specific performance case if tender of any amount would be rejected and therefore "futile"); Jackson v. Rogers, 111 S.C. 49, 96 S. E. 692 (1918). Plaintiffs were therefore not required to schedule a closing date within 10 days of the exercise of the option or pay Defendants the remaining monies when Defendant Azim Abdullah had clearly indicated his intention to not accept the option and to not sell the property to Plaintiffs. To require Plaintiffs to do so when Defendant Azim Abdullah had notified them he would not sell the property to them under the contract terms would require a futile act by Plaintiffs and make bad policy. Under the circumstances, Plaintiffs' failure to set a closing within 10 days of their exercise of the option and their failure to pay the remaining monies owed to Defendants do not justify Defendants breach of the contract and failure to sell the property to Plaintiffs.

10. Afterwards, Plaintiffs remained in the home for approximately 2 months, without paying rent, and Defendant ultimately returned the Plaintiffs \$3,000.00 security deposit with a deduction for 2 months rent at \$700 per month and a \$50 repair charge.

11. The Court finds that Defendants breached the lease/option contract by failing to honor the option to purchase provisions and selling the property to Plaintiffs at the terms stated in paragraph 19 of the contract, with Plaintiffs getting 100% credit for rents and deposits paid. The Court finds the parties entered into a binding contract which contained inconsistent terms that the Court resolves as set forth above, and that the Plaintiffs performed all obligations of the contract by paying rent and security deposit and properly exercising the option to purchase. The Court finds that Defendants breached the contract by failing to sell the property to Plaintiffs pursuant to their proper

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exercise of the option to purchase. The Court further finds that Plaintiffs have been harmed and damaged because of Defendant's breach of the contract terms.

12. In addition to not being allowed to purchase the property and incurring approximately \$450.00 in costs of moving into a new residence, Plaintiffs lost the monies paid to Defendants for rent which should have applied to the purchase of the home but were not so applied because Defendants refused to sell the home to Plaintiffs. Plaintiffs paid Defendants \$16,800.00 in rent (\$700.00 per month for 24 months) and are entitled to repayment of these monies, which would have applied and should have been applied at 100% credit to the purchase of a home for Plaintiffs from Defendants had Defendants not breached the contract. Defendants should not be allowed to retain monies paid which should have applied to the purchase of a home which Defendants prevented by their breach of the lease/option. The Court finds that Plaintiffs have been repaid the \$3,000.00 security deposit, with a reduction for the repair charge and unpaid rent for the 2 months Plaintiffs remained in the home, and Plaintiffs are not entitled to any further repayment in that regard. The Court finds that Plaintiffs are entitled to repayment of \$16,800.00 from Defendants plus the \$450.00 in moving costs incurred by Plaintiffs.

13. In addition, the lease/option provides in paragraph 13 that in the event of a dispute and legal action "to enforce" the terms of the lease/option, the "prevailing party" is entitled to "all costs incurred" including a reasonable attorney fee. In this regard, Plaintiffs have submitted an Affidavit of attorney fees and costs, which the Court finds reasonable after considering all relevant factors for the determination of an award of attorney fees and costs. The Court finds that since Plaintiffs are the "prevailing party"

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The Court therefore finds that Plaintiffs are entitled to judgment against Defendants in the total amount of \$22,074.65 – \$16,800.00 for rents paid which should have applied toward the purchase of the property, \$450.00 in moving costs incurred, and \$4,824.65 for attorney fees and costs pursuant to the lease/option - and judgment should be entered accordingly.

65. 

5/4, 2009

Congress, SC

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COMMON PLEAS COURT

William Parker and Dorothy Parker
Plaintiffs

COMPLAINT

vs.

Case No. 07-CP-38-_____

Pier Abdullah and Aazim R. Abdullah aka
Lynwood K. Daniels
Defendants

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Plaintiffs would allege and show unto the Court as follows:

1. The plaintiffs are a citizens and residents of Orangeburg County, South Carolina.
2. The plaintiffs are informed and believe that the defendant Pier Abdullah is a citizen and resident of Orangeburg County, South Carolina and that Defendant Aazim R. Abdullah aka Lynwood K. Daniels is a citizen and resident of Aiken County, South Carolina.
3. On or about June 8, 2004, plaintiffs and defendants entered into a Residential Lease with Option to Purchase (copy attached) concerning certain lands owned by defendants.

4. Plaintiffs made all payments due under the lease/option until such time as plaintiffs properly executed the terms of the option to purchase and gave notice of their intent to purchase said properties pursuant to the terms of the Residential Lease with Option to Purchase.

5. Plaintiffs have demanded performance of the terms of the lease/option from defendants and tendered or offered tender of its obligations, but defendants have refused to perform its obligations and breached the terms of the lease/option.

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J. A. Williams
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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6. In reliance upon the above lease/option between plaintiffs and defendants, plaintiffs have expended monies and efforts.

FOR A FIRST CAUSE OF ACTION

(BREACH OF CONTRACT)

7. The above allegations are realleged and incorporated herein by reference.

8. Plaintiffs and Defendants entered into a binding contract as set forth above.

9. The plaintiffs have made all payments as due under the terms of the contract and performed all obligations under the contract and demanded performance by defendants of their obligations under the terms of the contract.

10. Defendant's breach of the contract has caused plaintiffs harm and damage.

PCW #2

FOR A SECOND CAUSE OF ACTION

(FRAUD/NEGLIGENT MISREPRESENTATION)

11. The above allegations are realleged and incorporated herein by reference.

12. Defendants made assertions and representations to Plaintiffs concerning the subject property and the above Residential Lease with Option to Purchase. The Defendants' representations concerning the subject property were material to the Plaintiffs and Plaintiffs justifiably relied on these representations.

13. Defendants owed Plaintiffs a duty of care to see that truthful information concerning the subject property was conveyed to Plaintiffs and Defendants had a pecuniary interest in making such representations.

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14. Defendants breached this duty as set forth above and the representations made were false.

15. The Plaintiffs are informed and believe that the Defendants, by their acts and delicts mentioned, was "unreasonable", negligent, willful, wanton and acted with reckless disregard and with intent to defraud and deceive the Plaintiffs.

16. That the aforesaid acts, delicts, misrepresentations and omissions were material and substantially affected the Plaintiff's ability to adequately assess the situation and transaction.

17. That the Defendants knew their representations were false and misleading, incomplete and untrue and were recklessly made without a reasonable basis and were material and were made wrongfully, with reckless disregard for the truth and were deceitful when made with the intent to coerce or influence the Plaintiffs.

18. That at all times mentioned, Defendants fully intended that Plaintiffs rely on their representations.

19. That the Plaintiffs had no knowledge of the misrepresentations, and relied on the Defendants to be truthful and communicate accurate information as Plaintiffs had a right to do.

20. That the Plaintiffs were justified in relying on the Defendants' representations and constructive representations due to Defendants' superior knowledge not available to Plaintiffs and due to the Defendants promoting themselves as trustworthy and fair in business dealings.

21. That such acts were intended to and did deceive the Plaintiffs and had a substantial impact on Plaintiffs.

22. That as a direct and proximate result of Defendants' acts or omissions complained of, and as a result of their representations, misrepresentations, failure to act, communicate and negotiate in good faith, misrepresenting their intentions to act in a self-serving manner, failure to timely and adequately advise the Plaintiffs of their adverse position, the use of various deceitful and fraudulent acts, failing to act reasonably and in good faith, constituted fraud and misrepresentation, for which the Defendants are liable.

23. That as a direct and proximate result of the Defendants' acts and omissions, heretofore described, and/or the willful, intentional and fraudulent acts heretofore described and the harm and damages suffered by Plaintiffs, Plaintiffs are entitled to judgment against the Defendants and an award of actual, consequential and punitive damages against in an amount as may be determined by a jury.

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FOR A THIRD CAUSE OF ACTION

(BREACH OF CONTRACT WITH FRAUDULENT INTENT)

24. The above allegations are realleged and incorporated herein by reference.

25. As described above, defendants have breached the terms of the contract with the fraudulent intent of keeping plaintiff's monies paid to defendants under the terms of the contract and accompanied by the fraudulent act of misrepresenting the basis for the breach.

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26. Defendant's breach of the contract with the above fraudulent intent has caused plaintiffs harm and damage and plaintiffs are entitled to recover from the defendants actual and punitive damages in such amount as may be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(BREACH OF GOOD FAITH AND FAIR DEALING)

27. The above allegations are realleged and incorporated herein by reference.

28. There existed between Plaintiffs and Defendants a contract between the parties concerning the subject property and Defendants owed a duty of good faith and fair dealing to Plaintiffs under the contract.

29. Defendants have breached the duty of good faith and fair dealing and have acted wrongfully, unreasonably, and in bad faith, and furthermore acted recklessly, wantonly and willfully.

30. As a result, Plaintiffs have been harmed and damaged and believe they are entitled to an award of actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(UNFAIR TRADE PRACTICES)

31. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

32. That, upon information and belief, these Defendants are currently, as well as at all times mentioned, authorized to do business within the State of South Carolina and in accordance with the laws and regulations of the State of South Carolina, including but not limited to the provisions of Chapter 5, Section 39-5-10, et. seq. Code of Laws of

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South Carolina, as amended, prohibiting unfair or deceptive acts or practices that affect public interest;

33. That on or about the times mentioned herein, the Defendants committed unfair and/or deceptive acts or practices by all in a manner adverse to the Plaintiffs interests and for the benefit of the Defendants.

34. That Defendants engaged in a pattern of improper and self-serving conduct as above which was adverse to Plaintiffs and for the benefit of the Defendants, all in violation of South Carolina's Unfair and Deceptive Trade Practices Act, §§ 39-5-20 et. seq. That the Defendants' conduct was unfair and deceptive and did, in fact, deceive the Plaintiff, in that the Plaintiff was deprived of any information of any potential problems of the purchase/residence that the Defendants had knowledge of and withheld from Plaintiff.

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35. The Defendants' conduct, upon information and belief, is capable of repetition.

36. That the Defendants knew or should have known that its conduct violated or would be a violation of the Act and, as such, was in willful violation of the Act.

37. That the Defendants' conduct constitutes a willful violation of South Carolina's Unfair and Deceptive Trade Practices Act, §§ 39-5-20 et seq., entitling the Plaintiffs to actual damages, attorneys' fees, costs, and expenses incurred in prosecuting this action and treble damages pursuant to §§ 39-5-140(a) of the South Carolina Code Ann.

FOR A SIXTH CAUSE OF ACTION
(UNJUST ENRICHMENT)

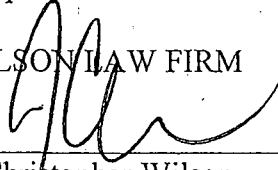
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38. That Plaintiff reiterates the relevant allegations of the preceding paragraphs as fully as if repeated verbatim.

39. Because of Defendants' actions and inactions and the expenditure of monies and resources be Plaintiffs, the Defendants have been unjustly enriched.

WHEREFORE, the plaintiff respectfully requests that the Court would enter a judgment in favor of the plaintiffs and against the defendants for specific performance, for actual and punitive damages, for treble damages and attorney fees and costs, and for such other and further relief as the Court deems just and proper.

WILSON LAW FIRM



J. Christopher Wilson
P.O. Box 1150
Bamberg, SC 29003
(803) 245-7799
Attorney for Plaintiff

Bamberg, SC

June 6, 2007

0000017

STATE OF SOUTH CAROLINA) IN COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG) FIRST JUDICIAL CIRCUIT
Civil Action NO. 2007-CP-38-717

WILLIAM PARKER and
DOROTHY PARKER,

Plaintiffs,

-vs-

PIER ABDULLAH,
AAZIM R. ABDULLAH
A/K/A LYWOOD K. DANIELS,

Defendants.

ANSWER OF DEFENDANTS

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LAWYER
COURT
2007 JUN 27 PM 3:40

Comes Now the Defendant and files this his Answer to Plaintiff's Complaint, by and through his attorney of record, as follows:

1. Defendants admit the remaining allegations contained in Paragraphs 1, 2, 3 and 13 of Plaintiff's Complaint.

2. Defendants deny the allegations contained in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of Plaintiff's Complaint.

3. Defendant are without sufficient knowledge to neither admit or deny the allegations contained in Paragraphs 19 and 20 of Plaintiff's Complaint.

WHEREFORE, Defendant having fully answered Plaintiff's Complaint hereby prays

- a. That Plaintiff's Complaint be dismissed at Plaintiff's expense; and
- b. For such other and further relief as this Court may seem just and proper.

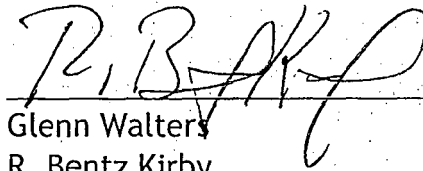
1 ATTEST: TRUE COPY

L. W. Mizell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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Respectfully submitted, June 27, 2007, at Orangeburg, South Carolina.

Glenn Walters, Attorney at Law, PA



Glenn Walters

R. Bentz Kirby

PO Box 1346

Orangeburg, SC 29116

(803) 531-8844

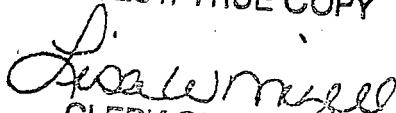
Facsimile (803) 531-3628

Attorneys for the Defendants

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

2007 JUN 27 PM 3:40

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CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 27 day of June, 2007
GLENN WALTERS

BY _____

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

WILLIAM PARKER and
DOROTHY PARKER,

Plaintiffs,

-vs-

PIER ABDULLAH,
AAZIM R. ABDULLAH
A/K/A LYNWOOD K. DANIELS,

Defendants.

) IN COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) Civil Action NO: 2007-CP-38-717

AMENDED
ANSWER OF DEFENDANTS

FILED FOR RECORD
CLERK OF COURT
ORANGEBURG, SC

2007 JUN 29 PM 5:37

Comes Now the Defendant and files this his Answer to Plaintiff's Complaint, by and through his attorney of record, as follows:

1. Defendants admit the remaining allegations contained in Paragraphs 1, 2, 3 and 13 of Plaintiff's Complaint.
2. Defendants deny the allegations contained in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of Plaintiff's Complaint.
3. Defendants are without sufficient knowledge to neither admit or deny the allegations contained in Paragraphs 19 and 20 of Plaintiff's Complaint.
4. Plaintiffs elected to rescind the lease/contract between the parties.
5. Defendant assert the affirmative defense of waiver.

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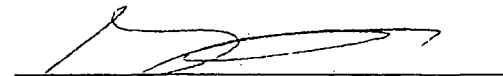
D. W. Mizell
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

WHEREFORE, Defendants having fully answered Plaintiffs' Complaint hereby prays

- a. That Plaintiff's Complaint be dismissed at Plaintiff's expense; and
- b. For such other and further relief as this Court may seem just and proper.

Respectfully submitted, June 27, 2007, at Orangeburg, South Carolina.

Glenn Walters, Attorney at Law, PA



Glenn Walters
R. Bentz Kirby
PO Box 1346
Orangeburg, SC 29116
(803) 531-8844
Facsimile (803)531-3628
Attorneys for the Defendants

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof.

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 29 day of June, 2007
GLENN WALTERS

BY [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

) IN COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
) Civil Action No. 2007-CP-38-717

WILLIAM PARKER and
DOROTHY PARKER,

Plaintiffs,

-vs-

PIER ABDULLAH,
AAZIM R. ABDULLAH
A/K/A LYNWOOD K. DANIELS,

Defendants.

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) MOTION TO RECONSIDER
) ORDER DATED MAY 4, 2009
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FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

2009 JUN 15 P 3:35

TO: THE HONORABLE O. DAVIE BURGDORF:

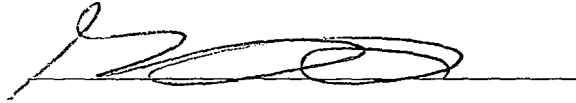
Defendants hereinabove, by and through their attorney of record, in the above captioned case, moves the Court to reconsider an Order in this case dated May 4, 2009.

Grounds for this motion are as follows:

1. Defendants are informed and believe that the Court's calculations of the judgment amount is incorrect;
2. Defendants are informed and believe that the evidence presented before the court substantiates the parties entered into an accord and satisfaction and therefore Plaintiffs should be denied the relief they requested.
3. Plaintiff failed to exercise the option to purchase in a timely manner. The option expired on June 14, 2006; the Plaintiff were one day late.
4. The exercise of said option was not perfected, i.e., the Plaintiff's presented the Defendants with a cashier's check made payable to Dorothy Parker.
5. The Plaintiffs are informed and believe the Plaintiffs failed to present any evidence of actual and consequential damages to support the award of a Judgment of \$22,074.65.

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WHEREFORE, based upon the above, Defendants, respectfully moves the Court to reconsider the Court's Order dated May 4, 2009.



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Dated: 06/15/2009
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Transcript of the
Testimony of:
Hearing -- Parker v. Abdullah

Date: December 10, 2008

Case: William Parker and Dorothea Parker v. Pier Abdullah, Aazim R.
Abdullah a/k/a Lynwood K. Daniels

Case No.: 2007-CP-38-717

Name of Court Reporter: Christina L. Richardson
Notary Public for South Carolina

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Examination of Dorothy Parker

Hearing -- Parker v. Abdullah -- December 10, 2008

Page 6

1 Q Okay. Tell me just a little bit about your
2 educational background. Did you finish high
3 school?

4 A Yes, I did.

5 Q And where did you go to high school?

6 A I started off in Calhoun County, ended up at
7 Orangeburg-Wilkerson High.

8 Q Okay. Did you do any kind of schooling or
9 anything after high school?

10 A No.

11 Q Okay. And what's your work experience been like?
12 What have you done for a living?

13 A I basically work at the South Carolina Department
14 of Transportation doing construction jobs.

15 Q Okay. And are you currently working or are you
16 retired or what?

17 A I'm currently working.

18 Q Currently working, okay. All right. Have you
19 ever had any dealings or experience in the real
20 estate business or in any kind of real estate --

21 A No, I haven't.

22 Q -- purchase or transactions?

23 A No.

24 Q Okay. Have you and your husband ever bought a
25 place before your contact with Mr. Abdullah?

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1 A No, we haven't.

2 Q You'd always rented where you lived?

3 A Right.

4 Q Okay. Now, I want to -- had you ever had any
5 experience where you tried to rent to own or
6 entered into a lease with an option-type
7 arrangement before Mr. Abdullah?

8 A No, we hadn't -- we hadn't.

9 Q Okay. I want to show you what has been marked as
10 Plaintiffs' Exhibit number one.

11 A Okay.

12 Q And ask you to take a look at all three pages of
13 this and tell me if you recognize this.

14 A Okay. Yes, sir; I do.

15 Q And can you tell me what that is, please?

16 A This is a contract where my husband and I had
17 spoke with Mr. Abdullah about purchasing --
18 renting to own this property that he wanted to
19 sell us.

20 Q Okay. All right. And is that a contract that
21 you entered into or that you signed?

22 A No, sir; it's not.

23 Q Okay. Did you have some contact with Mr.
24 Abdullah about the place that's at 183 Mill
25 Branch Road?

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- 1 A Yes, sir; I did.
- 2 Q And you and your husband had talked to him and
- 3 told him you were interested in renting it?
- 4 A Yes, we did.
- 5 Q And that you'd like to have an option to purchase
- 6 it?
- 7 A Right.
- 8 Q Okay. And did Mr. Abdullah draw up that
- 9 contract?
- 10 A Yes, he did.
- 11 Q Okay. And he presented it to your husband?
- 12 A Correct.
- 13 Q Were you present when your husband first saw
- 14 that?
- 15 A No, I wasn't.
- 16 Q Were you present when your husband first signed
- 17 it?
- 18 A No, I wasn't.
- 19 Q And does your husband -- do you know how far --
- 20 what type of education your husband has?
- 21 A It's not a whole lot.
- 22 Q And does he read much?
- 23 A Not -- not well at all.
- 24 Q Okay. And did he bring that home for you to take
- 25 a look at?

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1 A Yes, he did.

2 Q And -- and did Mr. Abdullah tell you or your
3 husband that if there was anything about that
4 contract that y'all weren't agreeable with or
5 that needed to be changed to let him know?

6 A Yes, he did.

7 MR. WILSON: Okay. I want to enter
8 that in as Plaintiffs' Exhibit number one,
9 Your Honor.

10 MR. WALTERS: No objection, Your Honor.

11 THE COURT: Okay.

12 (Whereupon, Plaintiffs' Exhibit
13 No. 1, Contract consisting three pages, was
14 entered into the record.)

15 MR. WILSON: And I'm going to -- Judge,
16 I'm going to show it to her just for two
17 things and then I'll hand it right up for
18 you to take a look at.

19 Q Were there -- was there anything in that
20 Plaintiffs' Exhibit number one that after you
21 reviewed it that wasn't agreeable with you or --

22 A Yes, sir; it was.

23 Q -- that you thought need to be changed?

24 A Yes, there was.

25 Q And tell me specifically what it was and where we

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1 find it on that contract.

2 A Okay. The first thing I asked about was number
3 3, which is the rent -- the date where he wanted
4 to be -- well, he had 1st date and we initially
5 wanted to change it to the 5th, then we asked him
6 could we do it -- instead of the 5th, could we do
7 it on the 8th.

8 Q So you wanted to be able to pay your rent by the
9 8th each month?

10 A Correct.

11 Q And was there a reason for that?

12 A Yes, sir; because my husband was getting his
13 workman's comp and it was coming around the 5th
14 of the month, so we figured we'd give it enough
15 time where we'd be certain that we would have it
16 by the eighth.

17 Q Okay. And did Mr. Abdullah seem agreeable with
18 that change?

19 A Yes, he did.

20 Q Okay. And then did -- was there anything else
21 that you looked at and saw you didn't think was
22 agreeable or asked Mr. Abdullah to consider
23 changing?

24 A Yes, sir.

25 Q And what was that?

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1 A It was number 19 option where he had on there
2 that the purchase price, which was \$65,000 which
3 was agreeable upon, and then he said all deposit
4 and rent paid within the first year would be at
5 100% toward the purchase price and the second
6 year would be 50% --

7 Q Okay.

8 A -- of the purchase price.

9 Q Was that agreeable with you and your husband?

10 A No, it wasn't.

11 Q Okay. And what kind of discussions did you have
12 with Mr. Abdullah as to what would be agreeable?

13 A We had asked him -- well, first I asked him what
14 was the reason for the second year being
15 different from the first and he said that he
16 could make both of them at 100%.

17 Q Okay. So you and he had discussions about the
18 fact that the rent that you paid if you exercised
19 the option to purchase the property, rent paid in
20 the first year and the deposits in the first year
21 would be deducted at a 100% from the purchase
22 price?

23 A That's correct.

24 Q And in that first contract that your husband
25 brought home, the second year rents were

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1 deductible at 50% from the purchase price?

2 A That's correct.

3 Q And you told Mr. Abdullah that y'all needed it to
4 be at 100%?

5 A Correct.

6 Q And you were agreeable with that?

7 A Yes, I was.

8 Q And your husband was?

9 A Right.

10 Q And Mr. Abdullah seemed agreeable with that?

11 A Yes --

12 Q Okay.

13 A -- he did.

14 Q Did you ever had any contact directly with Mrs.
15 Abdullah?

16 A No, not --

17 Q Your dealings were with Mr. Abdullah?

18 A Correct. That's correct.

19 Q Okay. And did Mr. Abdullah make those changes to
20 the agreement and contract? I want to show you
21 what's Plaintiffs' Exhibit 2.

22 MR. WILSON: Your Honor, I'm going to
23 hand up number 1. The areas she referred
24 specifically are number 3 and number 19 on
25 that. They're marked 3 and 19 down the

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1 side.

2 Q Did Mr. Abdullah, he agreed with those things
3 that you pointed out in the first contract or the
4 first draft?

5 A Yes, sir; he did. He went and changed the date -
6 -

7 Q Okay.

8 A -- from the 1st or the 5th until the 8th.

9 Q Okay.

10 A Which is on number 3. And then on number 19 he
11 also changed it where he had all deposits within
12 the first year would be 100% towards the purchase
13 price and the second year would be at 100% of the
14 purchase price.

15 Q Okay.

16 A And all security deposits.

17 Q And I'm going to -- I want to hand -- I want to
18 move in. And did you -- let me back up before I
19 do that. Did you sign that contract?

20 A Yes, sir; I did.

21 Q And did your husband sign it?

22 A Yes, he did.

23 Q And did Mr. and Mrs. Abdualлах sign it?

24 A Yes, Mr. Abdullah did.

25 Q Okay. And all y'all signed that on June the 8th

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1 of 2004, looks like?

2 A Right.

3 Q Okay.

4 MR. WILSON: I want to move that in as
5 Exhibit number 2, Your Honor. I'm going to
6 move that in as Exhibit 2.

7 MR. WALTERS: Oh, no objection.

8 MR. WILSON: All right.

9 (Whereupon, Plaintiffs' Exhibit
10 No. 2, Contract dated 6/8/04 consisting of three
11 pages, was entered into the record.)

12 Q I going to show you what's been -- what's a copy
13 of what the Judge is looking at as Exhibit 2.
14 This is the contract after Mr. Abdullah made the
15 changes to it. Is that correct?

16 A Okay. Yes, it is.

17 Q And in number -- I'm sorry -- in number 3 what
18 day is rent now due?

19 A It's due on the 8th. On the 8th of each month.

20 Q And in number 19, what's the arrangement as far
21 as the option to purchase?

22 A The arrangements were 100% for the first year and
23 100% of the second year.

24 Q Okay. And how about as far as the deposits?

25 A That was in number --

1 Q Were the deposits deductible at 100% also?

2 A Correct.

3 Q Okay. And the purchase price on the option was
4 \$65,000?

5 A That's correct.

6 Q Okay. Now, you and your husband had entered into
7 a two-year lease --

8 A That's correct.

9 Q -- of the property?

10 A Right.

11 Q And that lease was to begin on June the 15th of
12 2004?

13 A That's correct.

14 Q Which was about a week after y'all signed this
15 contract?

16 A Right.

17 Q Okay. And it was continued for 24 straight
18 months?

19 A That's correct.

20 Q And your understanding of it was that at the --
21 that any time prior to the expiration of the 24
22 months that you and your husband could exercise
23 the right to buy the property or the option to
24 purchase the property?

25 A That's correct.

1 Q And if you purchased the property the price was
2 going to be \$65,000; correct?

3 A Correct.

4 Q And there was going to be a deduction for any
5 monies that were paid for deposits in the first
6 year or rent in the first year or rent in the
7 second year; is that correct?

8 A That's correct.

9 Q And those were going to be dollar-for-dollar,
10 100% reductions?

11 A That's correct.

12 Q Okay. And you had discussed that with Mr.
13 Abdullah and that was the agreement that you and
14 he had reached or that you and your husband and
15 he had reached?

16 A That's correct.

17 Q Okay. Did the contract also set forth that the
18 option would be exercised by delivering or
19 mailing to him a written notice?

20 A That's correct.

21 Q Okay. And did the contract also set forth that
22 after --

23 MR. WILSON: And Your Honor, that's
24 section 27, I believe.

25 Q Is that here in section 27 about exercising the

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1 option?

2 A That's correct, yes.

3 Q And did the contract also set forth in section 24
4 that if you exercise the option you would have
5 ten days from the date of the exercise of the
6 option to actually close and purchase the
7 property?

8 A That's correct.

9 Q The contract has a whole bunch of other
10 provisions in it, but does it also provide in
11 section 13 that if the legal action had to be
12 brought to in force the terms of the contract
13 that the prevailing party would be entitled to
14 recover attorney's fees and costs?

15 A That's correct.

16 Q Okay. And all of that was what you went over
17 with Mr. Abdullah; y'all went over the contract,
18 reached that agreement and then signed the
19 contract?

20 A That's correct.

21 Q Okay. So you and your husband start renting and
22 start living in the place June 15th, of 2004?

23 A Correct.

24 Q Okay. Did you pay Mr. Abdullah the \$3000
25 security deposit?

1 A Yes, we did.

2 Q And was that done some time right about June
3 15th, of 2004?

4 A I know it was in June. I'm not quite sure about
5 the date right now, but I know it was in the
6 month of June.

7 Q So it was within a week or two weeks of having
8 moved into the property?

9 A Right.

10 Q And you paid him the full \$3000?

11 A Yes, we did.

12 Q Okay. And did you start paying him rent June of
13 2004?

14 A We started paying him in July, the following
15 month. We paid the security deposit in June.

16 Q Okay.

17 A And we started paying him \$700 a month for rent
18 in July.

19 Q And the rent was \$700 a month?

20 A Correct.

21 Q Okay. And were there -- were there some time
22 during the two years where there were a couple of
23 months that you and your husband may have been
24 late making a payment of maybe didn't make the
25 full payment by the 8th; is that --

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1 A Correct.

2 Q -- correct?

3 A That's correct.

4 Q Was that more than a couple of occasions?

5 A No, it wasn't.

6 Q Was Mr. Abdullah okay with y'all either making
7 partial payment and the rest of the payment later
8 or making the payment a little bit late.

9 A He was.

10 Q Did he accept all of those rent payments?

11 A He did.

12 Q Okay. And when you're getting up around the time
13 of June of 2006, about the end of the two year
14 lease term, were you and your husband paid
15 current on all of your rent?

16 A Yes, we was.

17 Q Okay. So you'd paid \$700 a month for all of
18 those months?

19 A That's correct.

20 Q And you had paid the \$3000 security deposit?

21 A Correct.

22 Q Okay. Did you and your husband make a decision
23 at some in time prior to the end of that two-year
24 lease that would've started June 15th, of 2004,
25 and ended June 15th, of 2006, did y'all make a

1 decision that you wanted to exercise the option
2 and go ahead and purchase the property?

3 A Yes, we did.

4 Q Okay. And did you convey that decision to Mr.
5 Abdullah in words verbally?

6 A Yes, we did.

7 Q Okay. About how far in advance of June 15th, of
8 2004, did you get with Mr. Abdullah and explain
9 to him that you wanted to exercise the option and
10 purchase the property?

11 A We met with him about a month prior to that.

12 Q Okay. And you told him you wanted to exercise
13 the option?

14 A That's right.

15 Q Okay. And did you explain to him what your
16 intentions were as far as getting the money and
17 going forward to purchase the property?

18 A Yes, we did.

19 Q Okay. And did y'all sit down and calculate how
20 much money that was remaining owed to purchase
21 the property?

22 A That's correct.

23 Q And your calculations were based on \$65,000 less
24 credit for the rent and deposits that had been
25 paid in the first year and the second year; is

1 that correct?

2 A That's correct.

3 Q And did that total come out to around \$45,200?

4 A That's correct.

5 Q Okay. So you'd paid \$700 a month in rent for two
6 year would be about \$16,800?

7 A That's correct.

8 Q And you had a \$3000 security deposit?

9 A That's correct.

10 Q And when you took that off of the \$65,000 your
11 calculation were \$45,200?

12 A That's correct.

13 Q Okay. And what was Mr. Abdulla's response when
14 you met with him and told him verbally you wanted
15 to exercise the option and purchase the property?

16 A That he had made a mistake in the contract, that
17 he couldn't honor it at that price, that he
18 couldn't do it at 100%.

19 Q Okay. And what was his response as to why he
20 couldn't do or why he couldn't honor the contract
21 or -- and what do -- and what do mean by "do it
22 at 100%," what do you mean by that?

23 A He said he couldn't sell it to us at that 100%
24 because he had made a mistake in the contract
25 where he said he could only do it at 25%.

1 Q So what you're saying is that he didn't want to
2 give you credit against the purchase price for a
3 100% of the rents that were paid or the deposits
4 that were paid?

5 A That's correct.

6 Q He only wanted to give you 25% credit against
7 those?

8 A That's correct.

9 Q Okay. And what was your response to Mr.
10 Abdullah?

11 A Well, I in turn asked him, "Well, if you drew up
12 the contract and you made the mistake, could you
13 -- could we meet something in the middle?" Or if
14 it was 100% that you drew it up on, and now you
15 want to go to 25%, could you -- we meet in the
16 middle, maybe 75 or --

17 Q And was he --

18 A 25%. And he said, "No, he" -- I meant to 50%, he
19 said, "No, he couldn't do it at that."

20 Q Okay. And what did he tell you that he would do?

21 A He said, "I'll tell you what I'll do. I'll make
22 y'all an offer. I'll throw in the property in
23 the back."

24 Q And what was the credit on that if he threw in
25 the property in the back?

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1 A He would still do it at the 25% and give us the
2 property in the back.

3 Q And it was a lot or a one acre lot or something
4 like that?

5 A It was lot. I don't think it was quite an acre.

6 Q Okay. So let me make sure I understand this
7 clearly. You get in touch with Mr. Abdullah tell
8 him -- meet with him, tell verbally you want to
9 exercise the option that you are taking credit
10 for 100% of the deposits and a 100% of the rent
11 paid in the first year and the second against the
12 purchase price under 19 here in the contract; is
13 that correct?

14 A That's correct.

15 Q And he tells you that he can't do that and that
16 he only wants to give you credit at 25%?

17 A That's correct.

18 Q Did he point out to you or tell you that
19 somewhere in the contract it only called for 25%
20 credit?

21 A Yes, he did. On the -- right, in option number
22 27.

23 Q And so he pointed out to you that in the contract
24 in the very back last provision number twenty --

25 MR. WILSON: Next to the last

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1 provision, number 27, what's she's looking
2 at, Your Honor.

3 Q -- that there's some language that says that if
4 he exercises the event -- the option is exercised
5 25% of the rent would be credited?

6 A That's right.

7 Q Did you know that provision existed in the
8 contract when you signed the contract?

9 A No, I did not.

10 Q At any point in time during the two years that
11 you paid rent on the contract, or you and your
12 husband, did you know that provision existed?

13 A No, we did not.

14 Q Did you realize there was an inconsistency or an
15 ambiguity in the contract between the terms in
16 provision number 19 that gave you credit at the
17 rate of a 100% for rents and deposits as opposed
18 to the language that's in number 27 that only
19 gave you 25% credit? Did you know that that
20 difference was in the contract?

21 A Only when we met them, about the month before.

22 Q Okay. So during the time you signed the contract
23 and the time you lived in it and paid the rent,
24 you didn't know that was a problem?

25 A Right, that's correct.

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1 Q Only when you confronted him about purchasing the
2 property?

3 A That's correct.

4 Q Okay. There's also another inconsistency,
5 ambiguity or discrepancy in the contract as far
6 as the date that the option could be exercised, I
7 believe. You and your husband had a two-year
8 lease starting June 15th of 2004?

9 A That's correct.

10 Q And does the contract provide in paragraph number
11 2 that the option to purchase the property would
12 expire at the end of the 24-month lease?

13 A That's correct.

14 Q Okay. And so your understanding and you believed
15 Mr. Abdullah's understanding was that the option
16 could be exercised up until June 15th, of 2006,
17 when the lease expired?

18 A That's correct.

19 Q Now, did you later find out that there was a term
20 in the back of the contract all the way back at
21 provision number 26 that had a different date for
22 the expiration of the option?

23 A Yes, sir; that's correct.

24 Q And what's that other date?

25 A That date was June the 9th, of 2006.

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1 Q Which is clearly different than up on the front
2 provision?

3 A That's correct.

4 Q Okay. Did you know that at the time that you
5 signed the contract that there was that
6 difference in the contract?

7 A No, I did not.

8 Q Okay. Did you know that -- that at any point in
9 time during the two years that you paid rent to
10 Mr. Abdullah?

11 A No.

12 Q When did you find out that there was that
13 difference in the contract between the dates on
14 the time that you could exercise the option?

15 A I think just on that very same day --

16 Q That you met with him.

17 A -- it was called to my attention.

18 Q So the day that you met with him is when you
19 found that out also?

20 A It was on the -- the 15th, June the 15th is when
21 I got someone else to look over the contract and
22 they brung that to my attention that there was a
23 discrepancy in the date.

24 Q You had read the contract before you signed it
25 though, right?

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1 A Yes.

2 Q But you didn't realize those differences were in
3 there?

4 A Right; that's correct.

5 Q Okay. Or did you know what they meant?

6 A No, I did not.

7 Q Okay. All right. So we're up to the point where
8 June -- somewhere around the end of May, first of
9 June, of 2006, you and your husband had been
10 living in Mr. Abdullah's home, been paying him
11 rent at \$700 a month for two years, and you've
12 decided you wanted to purchase the property. And
13 you've met with him and told him you wanted to
14 purchase the property and he's told you that he's
15 not going to sell you the property pursuant to
16 those terms; is that correct?

17 A That's correct.

18 Q And so what did you decide to do after that?

19 Well, let me back up instead of asking it that
20 way. Let me show you what I'm going to put into
21 evidence as Exhibit number 3. Can you tell me
22 what that is, please?

23 A Yes, sir. This is the letter that we sent to Mr.
24 Aazim advising him that we wanted to purchase the
25 property under the option where it was dated June

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1 the 15th of -- by that date of 2006.

2 Q Okay. So you put it in -- you'd already told him
3 verbally and that was sometime about a month
4 before June 15th, of 2006, you wanted to buy the
5 property?

6 A That's correct.

7 Q And now you're putting it in writing to him by a
8 letter dated June 15th, of 2006 --

9 A That's correct.

10 Q -- that you want to purchase the property;
11 correct.

12 A Correct.

13 Q And you want to purchase the property based on
14 the purchase price of \$65,000; correct?

15 A Correct.

16 Q With a credit of rent for \$700 a month of 24
17 months and the \$3000 security deposit?

18 A That's correct.

19 Q And you calculate all that out in your letter and
20 you tell him that the balance would be \$45,200;
21 is that correct?

22 A That's correct.

23 Q You include a copy of the lease with the option
24 to the letter; is that correct?

25 A That's correct.

1 Q And did you also include a copy of a cashier's
2 check made payable to you on a First Citizen's
3 account of \$45,200?

4 A That's correct.

5 Q I'm going to show you what's Plaintiffs' Exhibit
6 number 4.

7 A Uh-huh (affirmative).

8 Q Is that a copy of the check?

9 A Yes, sir; it is.

10 Q And was a copy of that attached to this letter
11 that attached to this letter that was delivered
12 to Mr. and Mrs. Abdullah?

13 A Yes, it was.

14 MR. WILSON: I want to move these in as
15 3 and number 4.

16 MR. WALTERS: No objection, Your Honor.

17 THE COURT: Okay.

18 (Whereupon, Plaintiffs' Exhibit
19 No. 3, a letter from the Parker's to Mr. and Mrs.
20 Abdullah dated 6/15/06, was entered into the
21 record.)

22 (Whereupon, Plaintiffs' Exhibit
23 No. 4, a copy of a cashier's check in the amount
24 of \$45,200, was marked for identification.)

25 Q Now, did you have those papers delivered to Mr.

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1 Abdullah on June the 15th, of 2006?

2 A Yes, sir; we did.

3 Q Were they delivered by a process server or a
4 paper server?

5 A Yes, sir.

6 Q And do you know that he got those papers on June
7 15th, of 2006?

8 A Yes, sir.

9 Q And did you tell him that you wanted to purchase
10 the property?

11 A Yes, sir.

12 Q Did you tell him that you wanted to honor the
13 terms of the contract dated June 8th, of 2004?

14 A Yes, sir.

15 Q And that you wanted the credits that you were
16 entitled to?

17 A Right; yes, sir.

18 Q And did you tell him you had the money available
19 to go forward and close on the property?

20 A That's correct.

21 Q And you showed him by check the same thing?

22 A That's correct.

23 Q Okay. Now, did Mr. Abdullah accept the exercise
24 of the option to purchase that you sent on June
25 15th, of 2006, or the verbal exercise that you

1 had given -- exercise of the option that you had
2 given about a month earlier?

3 A No, he did not.

4 Q Did he tell you that he was going to go forward
5 and sell you the property or that he wasn't?

6 A He told us he couldn't do it at that -- at that
7 100%.

8 Q So he couldn't give you credit for a 100%?

9 A That's correct.

10 Q Did he tell you that had anything to do with a
11 mortgage or a lien or any money he owed on the
12 property?

13 A No, he did not.

14 Q And did he give you any reason why he couldn't
15 honor the terms of the agreement?

16 A Except for the fact that he made a mistake in the
17 contract is all he -- is all he said.

18 Q Okay. All right. And so did you and your
19 husband start looking for another place?

20 A Yes, sir; we did.

21 Q Okay. Did you move out of his place immediately?

22 A No, we didn't.

23 Q Okay. What happened?

24 A We stayed over an additional two months until we
25 found another place.

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1 Q Okay. So it took you about two months?

2 A Correct.

3 Q Okay. And did you find another place?

4 A Yes, sir; we did.

5 Q Okay. And did y'all end up renting another place
6 or buying another place or what?

7 A We bought another place.

8 Q Okay. Same place, smaller place, what?

9 A It was a smaller place.

10 Q Okay. All right. And did you have to incur any
11 costs or time in moving to the new place?

12 A Yes, sir; we did.

13 Q Did you have to pay somebody or did you move
14 yourself?

15 A We paid somebody.

16 Q Okay. Do you remember who or what you paid
17 somebody?

18 A Well, it was basically like family members that -
19 - that helped. And we roughly, probably about
20 \$50 per load to help us to get them moved in.

21 Q About how many loads?

22 A Probably about four trips, I should say.

23 Q Okay.

24 A Four load.

25 Q Okay. So two hundred or so dollars in moving

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1 costs?

2 A Correct.

3 Q Okay. Did you have to incur any charges in
4 hooking up new power or new water service or
5 anything like that?

6 A Yes, sir; we did.

7 Q What did you incur?

8 A Probably about \$250 towards getting the -- all
9 the stuff approved from the courthouse; septic
10 tank and --

11 Q Okay.

12 A -- electrical bills.

13 Q Okay. So electrical hookup, septic tank, two
14 hundred and fifty or so dollars?

15 A Right.

16 Q How about hookup power -- I mean, hookup phone?
17 Any kind of phone hookup service or anything like
18 that?

19 A Yes, it was some of that. Probably, roughly,
20 about \$100 to --

21 Q Okay.

22 A -- get everything transferred and hooked up.

23 Q Okay. And did you have all those services
24 already in place at the property on Mill Branch
25 Road that you were renting and trying to buy from

1 Mr. Abdullah?

2 A Yes, sir; we did.

3 Q Okay. Were you also out the money that you had
4 paid Mr. Abdullah, the \$700 a month for 24
5 months?

6 A Yes, sir; we were.

7 Q Okay. And that's \$16,800 I believe?

8 A That's correct.

9 Q Okay. And were you also out the \$3000 -- at that
10 point in time were you also out the \$3000 that
11 you had paid him as a security deposit?

12 A That's correct.

13 Q Okay. So you were out the \$16,800 in rent, the
14 \$3000 in security deposit and then these other
15 costs of moving?

16 A Correct.

17 Q Okay. Mr. Parker, did you ultimately make a
18 demand on Mr. Abdullah to refund you or to pay
19 you back the \$3000?

20 A No, we did not.

21 Q Did you -- did you write him a letter or tell him
22 you wanted your \$3000 back?

23 A Yes, we did do that.

24 Q Okay. And did he pay you -- did he ever pay you
25 any part of the \$3000 back?

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1 A Yes, sir; he did.

2 Q Okay. And what did he pay you?

3 A It was \$1550.

4 Q Okay. So he paid you \$1550 of the \$3000 back?

5 A That's correct.

6 Q And on what basis did he claim to you that he
7 paid \$3000 -- the \$1550 back -- \$1550 of the
8 \$3000 back?

9 A It was for -- \$50 or so was something for some
10 damages and the two months' rent for us staying
11 past the deadline.

12 Q Okay. So he held out \$700 a month for the two
13 months that you were there after he wouldn't sell
14 you the property?

15 A That's correct.

16 Q Okay. Did you ultimately have to come hire me
17 and retain my services to pursue this case for
18 you?

19 A Yes, sir; I did.

20 Q Okay. And is mine and your arrangement a
21 contingency fee arrangement, one-third, 33.33% is
22 what the attorney's fee is?

23 A That's correct.

24 Q Plus whatever the cost to pursue the case?

25 A That's correct.

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1 MR. WILSON: Your Honor, I'm going to
2 submit to the Court, I'll just go ahead and
3 do it now instead of wait until the end.
4 I'll make it Exhibit number 5. An affidavit
5 of Attorney's Fees and Costs that I'll
6 submit for the Court's consideration in the
7 event the Court determines we are entitled
8 to attorney's fees and costs.

9 (Whereupon, Plaintiffs' Exhibit
10 No. 5, Affidavit of Attorney's fees and Costs,
11 was entered into the record.)

12 Q Mrs. Parker?

13 A Yes, sir.

14 Q You understand there have been costs incurred as
15 far as filing fees and deposition fees and other
16 fees to pursue your case?

17 A Yes, sir.

18 Q And you understand I've been spending time and
19 effort in pursuing your case?

20 A Yes, sir.

21 Q Okay. What -- what are you asking the court to
22 do or what do you feel the court should do in
23 this situation?

24 A If possible, reimburse us all the money that we
25 have paid into renting to own this property in

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1 far as accumulation for the attorney fees.

2 Q Okay. If Mr. Abdullah had honored the contract
3 would you and your husband have gone forward and
4 purchased the place on Mill Branch Road?

5 A Yes, sir; we would have.

6 Q And in purchasing the place on Mill Branch Road
7 would you have gotten the use of and the benefit
8 of the money that you had paid in rent for him
9 for two years?

10 A That's correct.

11 Q And a security deposit that you had paid him?

12 A Yes, sir; that's correct.

13 Q Okay.

14 MR. WILSON: Your Honor, that's all the
15 questions I'd have for Mrs. Parker.

16 THE COURT: Okay.

17 MR. WALTERS: May it please The Court,
18 Your Honor, if I could start with contracts
19 that Attorney Wilson entered into the
20 record. I think it's one and two.

21 THE COURT: Two.

22 MR. WALTERS: I believe that's them.
23 Yeah. And three. And this is the first
24 contract, that's the second contract.

25 MR. WILSON: It should be one and two.

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1 THE COURT: Wait a minute, here is. I
2 think it's in here.

3 MR. WALTERS: Thank you.

4 EXAMINATION OF DOROTHY PARKER

5 BY MR. WALTERS:

6 Q All right. Mrs. Parker, I believe that --

7 MR. WALTERS: Your Honor, may I
8 approach?

9 THE COURT: Sure.

10 Q Mrs. Parker, your attorney alluded to the fact
11 that in section 27 of the first contract -- and
12 I'm going to -- I want to use the, I guess, the
13 characterization of each contract as Attorney
14 Wilson did. There was one contract that was
15 signed by William Parker and Mrs. Abdullah and it
16 was signed on 6/8/2004 and that was the contract
17 that was presented to you by your husband?

18 A That's correct.

19 Q All right. And in section 27 what does it state?
20 It states that 25% of the option -- 25% of rents
21 paid would go towards the purchase of the house;
22 is that correct?

23 A That's correct.

24 Q All right. And that's what it says in the first
25 contract; is that right?

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1 A That's right.

2 Q All right. And the second contract that your
3 attorney alluded to that -- that we will refer to
4 as the second contract because it has all four
5 signatures. What does it state in section 27 the
6 amount of money that should be applied toward the
7 purchase of the property? It's 25% isn't it?

8 A It is, 25% percent.

9 Q Okay. So in the first contract it says 25%, in
10 the second contract it says 25%; is that correct?

11 MR. WILSON: Are you asking about the -
12 - are you asking her about those specific
13 sections?

14 MR. WALTERS: Those particular
15 sections.

16 Q Section 27 from the first contract says 25% will
17 applied towards the purchase price and the second
18 contract, section 27 says 25% will be applied
19 toward the purchase price. Is that right?

20 A That's correct.

21 Q All right. So those two particular sections, 27,
22 for the first contract and the second contract
23 are consistent; is that right?

24 A That's correct.

25 Q So there's no ambiguity with regard to section

1 27. Section 27 says only 25% of what you paid
2 would be applied towards the purchase price?

3 A Excuse now, repeat that.

4 Q Section 27 in the first contract --

5 A Uh-huh (affirmative).

6 Q -- and section 27 in the second contract, both
7 sections from each contract consistently
8 unambiguously state that only 25% of the money
9 you paid will be applied toward the purchase
10 price.

11 A Okay. Okay, that's correct.

12 Q That's correct isn't it?

13 A That's correct.

14 Q So there's no ambiguity there?

15 A Here no.

16 Q All right. Now, let's move to the other two
17 sections. I'm referring to the contract that was
18 signed by Mr. Parker, I'll refer to that as the
19 first contract. We dispute that, but I'm going
20 to use the characterization that your attorney
21 put on it. Let's refer to section 19, all right?
22 We just read Section 27, which we refer to as the
23 Exercise Option. I want to refer to section 19,
24 and it's referred to as "Option;" is that
25 correct?

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1 A That's correct.

2 Q All right. And I believe that you're holding in
3 your hand the first contract that Mr. Parker,
4 your testimony is that he brought to you; is that
5 correct?

6 A That's correct.

7 Q And in section 19 of that particular contract it
8 says that the first year -- and I'll point it out
9 to you. It says that the first year, it says
10 100% will applied to the purchase price and then
11 the second year it would be 50%; is that correct?

12 A That's correct.

13 Q All right. And then the second contract that I
14 want you to look at that has all four signatures,
15 it says in section 19 Option, a 100% for the
16 first year and a 100% for the second year; is
17 that right?

18 A That's correct.

19 Q All right. So the ambiguity rests with section
20 19 and reconciling that with section 27; is that
21 right?

22 A That's correct.

23 Q All right. So your testimony is, is that section
24 27 each time you looked at it was consistent?

25 A Say that again now.

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1 Q Section 27 --

2 A 27, okay.

3 Q -- was consistent on both contracts?

4 A Okay, section 27. Okay, yes.

5 Q And it said only 25%. The dispute is with
6 regards to section 19 where it says 50% in one
7 place and it says 100% in another place.

8 A Okay. That's correct.

9 Q And you realize that His Honor has to interpret
10 the contract based upon what's sound and what's
11 reasonable. Do you understand that?

12 A That's correct.

13 Q All right. Now if you get a 100% credit for the
14 rent that you paid towards the purchase price --

15 A Uh-huh (affirmative).

16 Q -- that means that essentially you're staying in
17 the home for free. Would you agree with that?

18 A Yes, sir; I would.

19 Q So if you apply 100% of what you pay towards the
20 purchase price, that means Mr. Abdullah makes no
21 with regards to you staying there for 24 months.
22 Do you consider that to be reasonable?

23 A With him being the one drawing up the contract;
24 yes, sir.

25 Q So your testimony is because he made a mistake in

1 one section of the contract the Court should
2 construe it where he's going to lose everything.
3 Is that right?

4 A Yes, sir.

5 Q So you're before this Court today and you're
6 saying, "I want all the money I paid because I
7 should've been allowed to stay there for free.
8 And because Mr. Abdullah made a mistake in
9 drawing up the contract, he should be burned and
10 that way we take all the money. And the time
11 that we stayed there we don't have to pay one
12 dime for that." Is that what you're saying?

13 A No, sir; I basically say that because he's the
14 one that drew up the contract --

15 Q Uh-huh (affirmative).

16 A -- that if he had honored the contract we would
17 have gone ahead and purchased it for the amount
18 that was left to pay.

19 Q All right.

20 A We would have never, you know, came that point.

21 Q Well, let's follow your line of reasoning then.

22 A Okay.

23 Q If -- if Mr. Abdullah had done what you wanted
24 him to do, okay?

25 A Okay.

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1 A Yes, I have --

2 Q -- your husband was working for Mr. Abdullah and
3 you were working for Mr. Abdullah.

4 A That's correct.

5 Q He had been hurt in Workers' Compensation
6 accident?

7 A That's correct.

8 Q He claimed that he was going to pay my client
9 when he got the Workers' Compensation money?

10 A That's correct.

11 Q When you got the Workers' Compensation money you
12 didn't pay my client y'all bought a car.

13 A No, sir.

14 Q Okay.

15 A No, sir.

16 Q All right. So then after he got the Workers'
17 Compensation money and you say you didn't buy a
18 car, are you telling me that you never came
19 forward to Mr. Abdullah -- and you got the money
20 well in advance of June 15th; isn't that right?

21 A A month prior.

22 Q Right.

23 A A month prior.

24 Q And my client came to you and said, "When y'all
25 said after you settle the Workers' Comp case, you

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1 would go ahead and shore this up and deal with
2 this contract and you would pay me." All right.
3 Now, do you have anything here to present before
4 this Court that says you exercised you option by
5 paying my client? He couldn't cash a Xeroxed
6 copy of a check.

7 A That's correct.

8 Q He couldn't take that to the bank, there's no way
9 that's considered certified funds, and there's no
10 way that's consider cash; wouldn't you agree?

11 A I would agree, but as I stated that was only to
12 inform him that the money readily available, that
13 was all that was about.

14 Q But that was June --

15 A Upon him responding.

16 Q But that was June 15th; is that correct?

17 A That's correct.

18 Q And if we follow your reasoning of the contract
19 you were supposed to stay there for free, get
20 100% pay toward the contract and then by June
21 15th, you were supposed to exercise your option
22 to purchase the property by producing cash or
23 certified funds. And your testimony is, is that
24 you gave him a Xeroxed copy of a check; is that
25 right?

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1 A That's correct.

2 Q Okay. And then after June 15th, if he didn't
3 have the money in his hand, what gave you the
4 expectation that you could still buy the
5 property?

6 A You said "after that"?

7 Q Well, after -- it said midnight, June 15th. If I
8 -- my impression is -- and you correct me on what
9 you think.

10 A Uh-huh (affirmative).

11 Q My impression is, is that I got to have the money
12 in his hand by midnight, June 15th. If I
13 interpret the contract just like you've
14 interpreted it, and you say you owe \$45,200, and
15 you get a full credit for staying there for free
16 for two years. If we follow your reasoning, I
17 know I got to have in his hand by midnight, June
18 15th, cash or certified funds for the full
19 amount. Is that right?

20 A That's right. Which could've readily be made
21 available before then prior to him responding.
22 We had the money available it's just waiting for
23 him to respond back to our -- to our letter.

24 Q All right. Well --

25 A Which was before that time.

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1 Q All right. Well, then my next question is, is
2 that after that occurred you then turn around and
3 you say, "Well, we were done wrong." Then you've
4 drafted a letter dated July 18th, of 2006. I'll
5 show you this letter, it has your signature on
6 it. Take a look at it.

7 A That's correct. Okay.

8 Q All right. In that letter it said, "We want our
9 money back for the security deposition." It
10 says, "We want the full \$3000 dollars back." You
11 ever heard of something under the law called
12 Accord and Satisfaction?

13 MR. WILSON: Your Honor, I'm going to -

14 -

15 A You said, "Have I"?

16 MR. WILSON: I'm going to -- you need
17 to let her -- you need to let her --

18 MR. WALTERS: That's -- that's fine.

19 A Could I read the --

20 MR. WILSON: I'll withdraw that. Ask
21 her what you want.

22 Q This is a letter that you sent and you say, "We
23 want our money back." And you had stayed over
24 two months on the property and Mr. Abdullah
25 explained to you, "You can't stay here for free."

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1 You've already said you could stay for free for
2 two years. And then there was an additional two
3 months and you hadn't paid and you said, "Well,
4 we want out of this thing and we want our money
5 back." Okay? And you were given your money
6 back, minus the two additional months that you
7 stayed; is that correct?

8 A That's correct. Which is after the fact of the
9 deadline date.

10 Q Okay.

11 A A month later is when this letter was --

12 Q Right.

13 A -- was sent.

14 Q But you would agree with me on June 15th, at
15 midnight, assuming that you're argument is
16 correct, you never tendered the money, you never
17 paid the money to Mr. Abdullah.

18 A No, I did not.

19 Q All right. And then after June 15th, after you
20 didn't pay the money to Mr. Abdullah, you then
21 asked for your money back that you'd put down and
22 you agreed that you would accept it minus the
23 couple of months that you'd stayed there; is that
24 correct?

25 A Yes, which states that because of his decision to

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1 terminate out agreement --

2 Q Uh-huh (affirmative).

3 A -- is why we asked for the money back because he
4 never responded as to whether we could give him
5 the money. In which states that, being that he
6 didn't do that we were requesting our money back.
7 It's not -- I don't feel like he should've kept
8 it.

9 Q And you know what, I agree with you. My question
10 is this:

11 A Uh-huh (affirmative).

12 Q If you were going to buy the house and you knew
13 you were going to buy it by midnight of June
14 15th, what made you think that you had fulfilled
15 the requirements of this particular option when
16 you sent him a Xeroxed copy of a check made out
17 to you?

18 A What made me think that is the fact that I was
19 advising him that we had the money readily
20 available, that he would respond to where we
21 could get the money to him.

22 Q All right. Well, let's talk about the --

23 MR. WALTERS: And I want to enter this
24 in as Defendants' Exhibit number one.

25 MR. WILSON: No objection, Your Honor.

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1 (Whereupon, Defendants' Exhibit
2 No. 1, letter from the Parker's to Mr. Abdullah
3 dated 7/18/06, was entered into the record.)

4 Q Now, if you look at what's going on here, your
5 attorney asked you about ten days to exercise the
6 option after you gave notice and things of that
7 nature. All right?

8 A Excuse me, that says, "upon receipt --

9 Q Uh-huh (affirmative).

10 A -- of the money."

11 MR. WILSON: It's ten days to close.

12 MR. WALTERS: Right.

13 MR. WILSON: I didn't ask her about
14 exercising --

15 Q It says, "receipt of the money." When did you
16 ever provide the money?

17 A As I stated, we never provided the money due to
18 the fact that he never contacted us. It's a
19 matter of five minutes going into the bank to
20 pick up a check, then the money was readily
21 available. Just that five or ten minutes of
22 going into a bank to pick up a cashier's check is
23 all it would've taken me.

24 Q All right. Now, in 2006, you sent that letter
25 out and you got your money back. And you then

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1 turned around and you filed this lawsuit June, of
2 2007. Okay? And you've alluded to the fact that
3 you should get every single dime back from living
4 inside of the home. This is a Court of Equity.

5 What makes you think that you should get an award
6 of rent for staying somewhere for two years and
7 you shouldn't have to pay one dime at all?

8 A What makes me think that is the fact that this is
9 what he presented to me is what made me think
10 that, sir.

11 Q All right.

12 A This is what Mr. Aazim presented to me.

13 Q I understand. And because he made a mistake
14 you're entitled to all the money; is that right?

15 A If the mistake -- if I had been -- sometimes you
16 have to pay for our errors. If I had made the
17 mistake, then I felt like, you know, the mistake
18 would've been on me if it was. But being that he
19 made the mistake, this was his contract that he
20 drew up, then --

21 Q But Mr. Aazim, he offered you the back lot with
22 regards to this particular house didn't he?

23 A And I also offered him would he do 75 or 50 --

24 Q All right.

25 A -- instead of the 25.

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1 Q Okay. But nevertheless, what happened was, was
2 that you said your husband has some trouble
3 reading and writing?

4 A That's correct.

5 Q And you handle the affairs for the family?

6 A Yes, that's correct.

7 Q And you looked at that contract and you went over
8 it and you said, "These are the things I wanted,"
9 you represented yourself. And it says in two
10 different section consistently that only 25%
11 would be applied toward the option. And there's
12 a dispute about the percentage with regards to
13 section 19. But it's undisputed that you had to
14 pay all of the money to Mr. Aazim by midnight on
15 June 15th; is that right?

16 A That's correct.

17 Q And you didn't pay him, under your theory the
18 \$45,200, on June 15th. You did not present him a
19 check. You gave him a Xeroxed copy. He couldn't
20 cash a Xeroxed copy. You didn't tender the
21 money; is that right?

22 A That's correct.

23 MR. WALTERS: I beg The Court's
24 indulgence, Your Honor.

25 Q Now, you've alluded to the fact that you got

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1 certain damages and you said you have \$200 in
2 moving costs. Do you have any documentation to
3 substantiate that you paid a family \$50 for four
4 trips?

5 A No, I don't have any.

6 Q All right. You also alluded to the fact that --
7 and we all get light bills and water bills. You
8 said it was \$250 to establish new power and
9 things of that nature. Do you have that
10 documentation to present before The Court.

11 A With me? No, I don't have it with me.

12 Q You also said that there was phone service that
13 you were supposed to provide or some phone
14 service you had to set up. Do you have any
15 documentation to substantiate the cost for that?

16 A Not with me, no --

17 Q Okay.

18 A -- I don't.

19 Q All right. And when you going through your
20 damages you believe you're entitled to every
21 single penny that was paid for 24 months and Mr.
22 Aazim get's nothing. In addition to that you
23 talked about the \$3000 security deposition.
24 You're not before this Court saying you're
25 entitled to the difference because you did stay

1 two months that you had to pay for; is that
2 right?

3 A Correct. Not by choice, but that's correct.

4 Q All right. So let me get your reasoning
5 together. The 24 months you say, "I want that
6 for free, but I'm willing to pay for the two
7 months that went after the contract deadline, the
8 option deadline"?

9 A I wasn't willing, if he kept the money that was
10 part of his willingness.

11 Q Okay. But I just wanted you to explain it to me.

12 A Okay.

13 Q All right. And then of course you asked for your
14 attorney's fees; is that correct?

15 A That's correct.

16 MR. WALTERS: I beg The Court's
17 indulgence, Your Honor.

18 Q You stated that you are entitled to some damages
19 for the use and benefit of the money; is that
20 correct?

21 A That's correct.

22 Q All right. And what -- what did you lose?

23 A Money, time.

24 Q Go ahead.

25 A To redo all the things that we had already had

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1 done at that particular place. As far when you
2 go into that courthouse, now there's a lot of
3 things that you have to do to get set-up when
4 you're dealing with mobile home. There was a
5 bunch of charges.

6 Q All right. But you don't have anything to
7 present before this Court, do you?

8 A I don't have it with, but I do have it at --
9 readily available.

10 Q Okay.

11 MR. WALTERS: Your Honor, I have no
12 further questions.

13 MR. WALTERS: Your Honor, just a couple
14 of things in follow-up. Can I get those, 1
15 & 2 back? Or actually, I don't need them.
16 That's fine. Your Honor, I'm going to be
17 asking her about Section number 24, though,
18 on those contract.

19 FURTHER EXAMINATION OF DOROTHY PARKER

20 BY MR. WILSON:

21 Q Mrs. Parker, do you know what a closing is? I
22 know Mr. Walters knows what a real estate closing
23 is and I'm sure Judge Burgdorf does, a real
24 estate closing is when go into a lawyer or a real
25 estate agent's office and the party that you're

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1 buying a property from give you a deed and you
2 give them the money for the -- for the property
3 you're buying. Do you know what I'm talking
4 about?

5 A Yes, sir.

6 Q Okay. And either sometimes a lawyer's involved
7 and sometimes a lawyer's not involved, but a
8 closing is when the actual transaction
9 formalizes, takes place and everybody gets paid
10 and the title to the property changes hands.
11 Understand what I'm talking about?

12 A Yes, sir.

13 Q Okay. Now, the -- Mr. Walters made a big deal
14 about you not having the money to Mr. Abdullah by
15 June 15th, of 2006, midnight. It's clear that
16 you didn't give him certified funds or cash funds
17 for \$45,200 on June 15th, of 2006. You didn't
18 give that to Mr. Abdullah did you?

19 A No we didn't.

20 Q He had already told you verbally he wasn't going
21 honor the contract; correct?

22 A Correct.

23 Q He had already told you he wasn't going to give
24 you the property based on the contract that you
25 and he and his wife and your husband had entered

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1 into; right?

2 A That's right.

3 Q But you went ahead and exercised the option in
4 writing because you wanted to -- you felt like
5 you wanted to exercise your rights; correct?

6 A That's correct.

7 Q Okay. And the contract provides, in section 24,
8 that there would be a closing within ten days
9 from the exercise of the option unless it was
10 extended further than that; correct?

11 A That's correct.

12 Q And your understanding of that is that when you
13 tell Mr. Abdullah verbally and then you tell him
14 in writing that you want to exercise the option,
15 that there's an additional ten days to close the
16 transaction; correct?

17 A Correct.

18 Q And that's an additional ten day for you to
19 provide him the money and him to provide you a
20 deed to the property; correct?

21 A That's correct.

22 Q Okay. And when you served the written --
23 exercised an option on him on June 15th, of 2006,
24 did he convey back to you that he was not going
25 to honor the -- the contract?

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1 A Yes, he did.

2 Q And did he tell you that he wasn't going to
3 accept your exercise of the option?

4 A That's correct.

5 Q And then did you try to move forward and give him
6 money on top of that? You didn't try to pay him
7 the money after that?

8 A No, I did not.

9 Q Because he had already told you no matter what he
10 wasn't going to sell you the property?

11 A That's right.

12 Q Okay.

13 A That's correct.

14 Q All right. Now, the two months that you and your
15 husband had to stay in his property after June
16 15th, of 2006, were you looking for another place
17 while you were there?

18 A Yes, we were.

19 Q You were trying to find a place to get out of
20 there as quick as you could?

21 A Yes, sir.

22 Q Okay. And had Mr. Abdullah gone ahead and
23 honored the contract and sold you the property
24 would you have had to hold over for two months?

25 A No, sir; we wouldn't.

0000081

1 Q It would've been your property wouldn't it?

2 A That's correct.

3 Q If he would've honored the contract were you
4 clearly ready, willing and able to purchase the
5 property?

6 A Yes, sir; that's correct.

7 Q And if you'd have purchased the property -- let
8 me ask you this. Let me rephrase that. Mr.
9 Abdullah rented you the property for \$700 a
10 month; correct?

11 A That's correct.

12 Q And in doing so he got somebody to rent from him;
13 correct?

14 A That's correct.

15 Q And he also got somebody who had an interest and
16 ultimately wanted to purchase the property;
17 correct?

18 A That's correct.

19 Q Okay. And if he would've honored the contract
20 you would've purchased the property and he
21 would've gotten a sale for his property; correct?

22 A That's correct.

23 Q Okay.

24 MR. WILSON: That's all I have, Your
25 Honor.

0000032

1 MR. WALTERS: May it please The Court.

2

3

FURTHER EXAMINATION OF DOROTHY PARKER

4

BY MR. WALTERS:

5

Q Attorney Wilson alluded to section 24 --

6

MR. WALTERS: And I don't know if

7

you're using -- is that the exhibit?

8

MR. WILSON: It's not, but you can use

9

it.

10

Q Section 24 it says you must exercise the option

11

and you've got ten days to close, let's go

12

through that. It says, "Closing shall be within

13

ten day when they exercise the option." Well,

14

the option expires on the 15th, and that means

15

you've got to exercise that option at least ten

16

days before that. Is that right?

17

A "Closing shall be within ten days from the

18

exercised option unless otherwise extended..."

19

Q "...by other terms of this agreement." Was there

20

any agreement signed by you and Mr. Abdullah to

21

extend the option?

22

A No, sir; it was not.

23

Q All right. And did you ever tender the funds in

24

order to purchase the property; cash or certified

25

funds?

000000

1 A No, sir; we did not.

2 MR. WALTERS: I have no further
3 questions, Your Honor.

4 MR. WILSON: I have nothing further.

5 THE COURT: Okay.

6 MR. WILSON: Your Honor, I call Mr.
7 Aazim Abdullah.

8 WHEREUPON, Aazim Abdullah, being
9 duly sworn and cautioned to speak the truth, the
10 whole truth, and nothing but the truth, testified
11 and deposed as follows:

12 EXAMINATION OF AAZIM R. ABDULLAH

13 BY MR. WILSON:

14 Q Mr. Abdullah, we've met before, Chris Wilson.
15 I've got a few questions for you. You're a
16 business man, right?

17 A Yes.

18 Q Okay. And you had an insurance agency at one
19 time or acted as an insurance agent at one time?

20 A I work as an insurance agent.

21 Q Okay. You actually owned your own company called
22 Jan Pro which was a cleaning service at one time?

23 A I had a franchise with Jan Pro which is the
24 master franchise.

25 Q Okay. And you had your own franchise that you

0000034

1 owned and ran; correct?

2 A Yeah, we had a cleaning service which was
3 franchise that I owned.

4 Q Okay. And you've also are somewhat in the real
5 estate business in that you've bought, fixed up,
6 sold, transferred mobile homes, real estate,
7 other properties; correct?

8 A Yes, I did -- I did that. Not as a business per
9 se, but as a --

10 Q Just kind of on the side?

11 A Correct.

12 Q Okay. Over the course of the years you've
13 probably been involved in 15 to 20 different real
14 estate transactions?

15 A Possibly.

16 Q Okay. Some of them were straight sales?

17 A Yes, sir.

18 Q Some of them were rent-to-own type situations,
19 lease with and option to purchase?

20 A Correct.

21 Q Okay. So you've had some experience and some
22 dealing in that; correct?

23 A Correct.

24 Q Okay. Now, I want to show you what's been marked
25 as -- as what's been entered as Plaintiffs'

0000085

1 Exhibit number 2. Are you familiar with that
2 document and that's the contract between you and
3 your wife and the Parker's?

4 A Yes, I am.

5 Q Okay. And my understanding is that you prepared
6 that contract?

7 A Yes, I did.

8 Q You prepared it without any assistance from
9 anyone, you prepared it yourself; correct?

10 A I went online and -- and generated it from one of
11 the legal document --

12 Q Okay.

13 A -- services online.

14 Q Mr. and Mrs. Parker didn't have any involvement
15 in actually preparing the document did they?

16 A No, sir.

17 Q They had some discussions with you negotiating
18 out the terms?

19 A Of course.

20 Q Okay. But they didn't actually prepare anything
21 to do with the document?

22 A Correct.

23 Q Okay. And my understanding is, your wife didn't
24 really have any involvement in particular with
25 the negotiations or the preparing of the

0000086

1 document, that would've all kind of been handled
2 through you?

3 A Correct.

4 Q Most of your dealing were with Mrs. Parker?

5 A Both Mr. and Mrs. Parker.

6 Q Okay. And so you reached an agreement or an
7 arrangement where you were going to rent the
8 Parker's this property at \$700 a month; isn't
9 that correct?

10 A Correct.

11 Q For a two-year term, a two-year lease starting
12 June 15th, of --

13 MR. WILSON: Can I get that back, Your
14 Honor?

15 Q -- June 15th, of 2006; is that correct? I'll
16 show you the document. It's section number 2.

17 A Now, this is -- stated June 7, 2004, not 2006.

18 Q Okay. You're right. That's the date that the
19 agreement was signed, June 7th, of 2004; correct?

20 A Right.

21 Q But the lease -- the lease didn't actually start
22 until June 15th, of 2004; isn't that correct?

23 It's section number 2.

24 A Yes.

25 Q Okay. And it was a 24-month two-year lease;

0000087

1 correct?

2 A Yes.

3 Q Would it expire June 15th, of 2006, two years
4 later; correct?

5 A Correct.

6 Q Okay. And the rent was \$700 a month payable on
7 the 8th of each month; correct?

8 A Correct.

9 Q Okay. Now, read section number 2 right there for
10 me.

11 A Term?

12 Q (Nods head up and down in an affirmative
13 response.)

14 A "The term hereof shall commence on June 15, 2004
15 and continue for a period of 24 months
16 thereafter."

17 Q Okay.

18 A "Option shall expire at the end of the 24-month
19 lease."

20 Q You had given the Parker's an option to purchase
21 the property during that two-year lease; correct?

22 A Correct.

23 Q And the option that they had to purchase the
24 property was they could purchase it for \$65,000;
25 correct?

0000088

1 A Correct.

2 Q And they were going to be credited for the rent
3 and the deposits that were paid to you during
4 that two-year period; is that correct?

5 A A portion, correct.

6 Q All right. Your testimony is that they were
7 going to be credited a portion; correct?

8 A Well, before Mrs. Parker when she was here she
9 stated that the other contract which you have was
10 the one that was submitted first and this was the
11 one that was submitted second.

12 Q Uh-huh (affirmative).

13 A That is incorrect.

14 Q Okay. All right.

15 A All four of us, my wife, Mr. and Mrs. Parker, we
16 sat down together in my home and did this first
17 contract which is this one with all four
18 signatures on it.

19 Q Okay.

20 A Afterwards I realized I had made a mistake, a
21 typographical error where I had 100% in both of
22 the categories for the first year and second
23 year. Mr. Parker came by the house, I notified
24 him and Mrs. Parker of the -- of the error and I
25 brought him the new contract which he signed that

0000089

1 same day.

2 Q Okay.

3 A So the second contract is the one that has the
4 50% on it. This is the very first contract, not
5 the second contract.

6 Q Well, let me -- I understand you dispute how much
7 credit they're entitled to, Mr. Abdullah, so I'm
8 not going to -- I'm not going -- that's a
9 decision the Judge is ultimately going to make.
10 Okay? I won't --

11 A I'm just -- I'm just stating the facts.

12 Q You and I won't agree on that and you and the
13 Parker's don't agree on that, so the Judge is
14 going hash that issue out. But the contract
15 calls for them to have a two-year lease starting
16 June 15th, of 2004; correct?

17 A Yes, sir.

18 Q And they pay \$700 a month in rent; correct?

19 A Correct.

20 Q And it clearly says in section number two that
21 the option to purchase it, the option expires at
22 the end of the 24-month lease; you agree with
23 that?

24 A I agree.

25 Q Now, somewhere further back here way back in the

0000090

1 back, paragraph 26 is says the option expires
2 June 9th, of 2006; you agree with that? That's
3 clearly different that what the front paragraph
4 says, it says the option expires at the end of
5 the 24-month lease, which would be June 15th, of
6 2006.

7 A Do you have the other agreement?

8 Q I've got it right here.

9 A Okay. Do you mind if I look at it for a second?

10 Q I want to ask about that one and then I'll be
11 glad to show you this one. That clearly has two
12 different provisions in it about when the option
13 will expire?

14 A I made a -- in these -- in these type of --

15 Q Answer my question and then you can explain it.
16 That clearly has two different sections that say
17 two different things about when the option will
18 expire; correct?

19 A Correct. I agree.

20 Q Okay. And explain anything you want to explain.

21 A Okay. Did I make any adjustments on that one?

22 Q This one also has two years -- this is the first
23 one, this is Exhibit number one. It has two
24 years in paragraph number two --

25 A Okay.

0000091

1 Q -- and June 9th, in paragraph number 26. The
2 same provisions.

3 A Okay.

4 Q Okay. All right.

5 A I have no problems with that.

6 Q Okay. So you agree with me that the option did
7 not expire until June 15th, 2006?

8 A The only problem I have is that the -- it was --
9 Mrs. Parker mislead you to believe that this was
10 the second document and that was the first and
11 that is not the case.

12 Q I understand that.

13 A This is the first document. All four of us were
14 present: my wife, Mrs. Parker, Mr. Parker. And
15 all four of us signed this contract together.
16 This was the first contract.

17 Q Okay. All right.

18 A And that was the adjusted contract right there
19 based on the 50%.

20 Q Okay. You'll also agree with me at what's
21 Exhibit number 2 has a provision in Section
22 number 19 that the option is that they can
23 purchase the property for \$65,000; correct?

24 A Correct.

25 Q And it also provides that the rent and the

0000092

1 deposits paid in the first year are credited
2 against the purchase price at 100%; correct?

3 A On this contract, yes, that's what's on this
4 contract.

5 Q Okay. And the second year rent's credited at a
6 100% also; correct?

7 A That's what's on there.

8 Q Okay.

9 A That's where the typographical error was.

10 Q Okay. And there's a provision, number 27, that
11 says that rents are only be credited -- a little
12 bit further back in the contract, 27 says rents
13 are only going to be credited at 25%; correct?

14 A Correct.

15 Q Okay. Those two provisions are different, one
16 says 100% and one says 25%; agree with that?

17 A Correct.

18 Q Okay. And I understand your testimony to be that
19 this contract that's Exhibit number 2 was the
20 first contract that was entered into and then
21 this contract that's Exhibit number 1,
22 Plaintiffs' number 1, was the second contract?

23 A Yes, sir. This was the -- this was the revision
24 on the amount from 100% to 50%.

25 Q Okay. And when was that entered into?

0000093

1 look on page 42 right there and I asked you in
2 line 5, "It was before the contract?" And what
3 was your answer, starting with line 6, read it
4 for me please.

5 A (No audible response.)

6 Q Just read me line 6.

7 A "Because we had the meeting in my back..." Sir,
8 this was after -- this was at the end of the
9 contract. This has nothing to do with either one
10 of those contracts. "Because we had the meeting
11 in my backyard before the end of the contract..."
12 Which is, I'm talking about the end of the
13 contract, not at the beginning, sir.

14 Q Okay.

15 A "...not later -- not after the end of the
16 contract," that's what I said.

17 Q And at this point we're talking about the
18 contract that you say had some changes made to it
19 --

20 A Well, let me take --

21 Q -- where you -- no, let me ask my question and
22 then you get to answer, that's how it works in
23 here. Okay?

24 A No problem, sir.

25 Q You -- you said that there was a contract that

0000094

1 had been changed and you had penned it out and
2 put 50% in it, I believe, is that correct? You
3 said there was change made to the contract where
4 you wanted to pen it out and put 50% in it; is
5 that correct?

6 A You want me to explain to you?

7 Q I want you to answer my question and then --

8 A Okay.

9 Q -- I'll be glad for you to explain it.

10 A Well, what -- what -- what you're alluding to is
11 a -- is a conversation that Mr. and Mrs. Parker
12 had with me in my backyard at the end of the
13 contract.

14 Q Okay.

15 A Where we sat down and I said, "Well, let's
16 negotiate if y'all want to purchase this
17 property." Mr. Parker said he was going to be
18 getting his settlement. I said, "I want to sell
19 the property to you because I don't need the
20 property."

21 Q Okay.

22 A "I would love to sell it to you." So we sat down
23 and we agreed -- I -- I thought we had an
24 agreement to sell the property with me taking the
25 50% and giving the 50% credit. And I ask him, I

0000033

1 said, "Just to make the deal sweeter I will throw
2 in that one acre of land in the back of the
3 property" -- because Mr. Parker said he wanted it
4 the whole time -- "I'll throw that in the deal
5 just to make it, you know, to compensate the
6 difference if you feel like you need to have some
7 more out of the deal."

8 Q Okay.

9 A And that's --

10 Q All right.

11 A -- that's what we -- that's what we were talking
12 about.

13 Q Okay.

14 A They told me at about the next day or so -- Mr.
15 Parker came to me and said, "I found a better
16 deal. I found another piece of property. We're
17 not going to go through with this deal."

18 Q Okay. Mr. Abdullah, is this the first time you
19 had ever used that form to prepare a lease
20 option?

21 A Is it the first time?

22 Q Is it the first time you had ever used that form
23 before that you said you pulled off the internet?

24 A I -- I -- every time you have to make
25 modifications to it. You have to add in the

0000096

1 person's information, you have to put in the
2 dates and all that, so. But I've used the same
3 format, it's a template.

4 Q So you had used it several times before the
5 Parker's?

6 A I've used it a few times before, yes.

7 Q And you've used it several times since the
8 Parker's?

9 A If I'm not mistaken, I think that was the last
10 rental property that I've done.

11 Q Okay. I want to go back on 42. I asked you
12 about this other contract that we were talking
13 and -- and you were reading line 6, you said -- I
14 asked you, and you tell me if I've got this
15 wrong, "It was before the contract?" And your
16 answer was, "Because we had that meeting in my
17 backyard before the end of the contract, not
18 after the end of the contract." "Okay. So prior
19 contract that you're talking about..." -- this is
20 the question. "The prior contract that you were
21 talking about was before June 8th of 2004?" And
22 you say, "Correct." And then you say, "Before
23 June 8th, of 2000 [sic]." "And what was the end
24 of the termination that was before the end of the
25 contract?" "All right. We signed this on 2004,

0000097

1 so two years after that would've been 2006, so it
2 was before June 8th, of 2006."

3 A Yeah, I'm talking about the end of the contract,
4 I'm not talking about what -- those two contracts
5 there relate to the beginning when we first
6 started out.

7 Q Okay.

8 A That was in 2004. What I'm discussing with you
9 and I'm trying to clarify to you in this here
10 conversation here is that we had a meeting in my
11 backyard about 30 days before the end of the
12 contract where I was trying to come up with some
13 type of reasonable arrangement with Mr. and Mrs.
14 Parker for them to purchase the property.

15 Q I understand. All right. There's no question
16 that you got the document brought to your home
17 and delivered to your home by a process server on
18 June 15th, of 2006?

19 MR. WILSON: Judge, I'm sorry, I want
20 to get number 3 for just a moment. Thank
21 you.

22 Q What's entered into evidence as Exhibit number 3,
23 this letter where the Parker's attempt to
24 exercise the option. There's no question that
25 was delivered to your home by a process server,

0000038

1 June 15th, of 2006; correct?

2 A This is the -- this is a copy of the same lease.

3 Q The letter that's on the front.

4 A Yes, that -- a process server brought this to my
5 house, and as I stated in my deposition to you,
6 she came by late that evening and my wife and I
7 was pulling out of the yard. I told that we were
8 in a hurry, we had an appointment, that we had
9 meet with someone, and when we left there we came
10 back to the house. The next morning I came out
11 of my front door I found a package from the
12 process server that was left outside by my
13 mailbox. And this is what's -- and this is what
14 was in it.

15 Q Okay.

16 A When I looked in it what I saw was a copy of
17 check made out to either Mr. or Mrs. Parker. I
18 think it was one of them. I think maybe Mrs.
19 Parker.

20 Q Okay.

21 A A copy of a check.

22 Q So the process server brings that to your house,
23 attempts to hand it to you, you tell her that you
24 and your wife are in a hurry, the process server
25 leaves that for you; correct?

0000099

1 A Correct.

2 Q Okay. So they attempted to hand it you but you
3 were in such a hurry that you couldn't take it --

4 A We had a very important meeting we had to go to,
5 yes.

6 Q You couldn't take it because you were in a hurry
7 and the process server left it at your home;
8 correct?

9 A Correct.

10 Q Okay. And attached to this Exhibit number 3 was
11 the copy of a cashier's check that you
12 referenced?

13 A When I looked in the package it showed there was
14 a copy of a cashier's check made out to Mr.
15 Parker or Mrs. Parker.

16 Q Okay.

17 A It wasn't anything made out to me.

18 Q And you -- whether or not that was the Parker's
19 exercising their option to purchase the property,
20 you didn't accept that as their proper exercise
21 of the option to purchase the property; correct?

22 A Mr. and Mrs. Parker had, on numerous occasions,
23 told me that he was waiting on his settlement to
24 come and it never came through. And when he
25 finally got his settlement they never came to the

0000100

1 table to exercise the consummation of this here
2 deal. If -- if he had had his money a month
3 before, as he said a few minutes ago, what kept
4 them from coming to purchase the property at that
5 time?

6 Q Let me ask you this, Mr. Abdullah: You didn't
7 accept that letter, Plaintiffs' Exhibit number 3,
8 or the copy of the cashier's check that was
9 attached to it as being a proper exercise of the
10 option to purchase the property by the Parker's;
11 isn't that correct?

12 A No, it's not. I mean, can I cash a copy of a
13 check made out to someone else?

14 Q I'm asking you did you accept it as a proper
15 exercise of the option?

16 A Of course not.

17 Q And you told me in your deposition you didn't
18 accept it as a proper exercise of the option for
19 two reasons: Number one, you didn't think it was
20 enough money because you thought they were only
21 supposed to get 25%; isn't that correct? 25%
22 credit; isn't that correct?

23 A Well, there is two -- two reasons: First of all,
24 it was not certified funds --

25 Q Okay.

1 A -- as the contract stipulates that it has to be
2 certified funds. Secondly, no it was not the
3 proper amount of funds that I -- that should've
4 been paid I felt.

5 Q But you also told me in your deposition you
6 didn't think it was timely. You didn't think
7 they had gotten it to you in time because they
8 didn't get there by June 9th, of 2006?

9 A If Mr. and Mrs. Parker really wanted to purchase
10 that property I would've did -- I have bent over
11 --

12 Q Answer my --

13 A -- backward to try to sell that property.

14 Q Answer my question first. You told me in the
15 deposition that you didn't think they had gotten
16 it to you timely because they didn't get it to
17 you by June 9th, of 2006; isn't that correct?

18 A Well, first of all, Mr. Parker told me he'd
19 already bought another property.

20 Q Answer my question and then you can explain
21 anything you want to explain.

22 A All right, go ahead.

23 Q You told me in the deposition that you didn't
24 think they had gotten it to you timely because
25 they didn't get it to you by June 9th, of 2006,

0000102

1 they didn't get it to you until June 15th, of
2 2006; isn't that correct?

3 A I did think they got it to me late.

4 Q Okay. But today you're telling the Court they
5 had up until June 15th, of 2006, to exercise the
6 option and get it to you?

7 A I read what was in that contract, based on
8 whatever's in that contract and that's what I
9 read to you a few minutes ago, so.

10 Q They had told you about a month or so before June
11 15th, of 2006, that they wanted to buy the
12 property; isn't that correct?

13 A No, sir.

14 Q They had not told you verbally?

15 A When?

16 Q About a month or so before June 15th, of 2006,
17 they hadn't verbally gotten with you and told you
18 that they wanted to exercise the option and
19 purchase the property?

20 A Do you want me to give you exactly what happened?

21 Q I want to know, did they talk to you about a
22 month ahead of time and tell you that they wanted
23 to exercise the option to purchase the property?

24 A We sat down in my backyard --

25 Q Okay.

0000103

1 A -- to negotiate the sale of the property.

2 Q Okay.

3 A I sat down with Mr. and Mrs. Parker. Mr. and
4 Mrs. Parker after we -- I thought we came to some
5 kind of understanding as to the 50%. About the
6 next day or two days later Mr. Parker said, "I've
7 found me a better deal."

8 Q Okay.

9 A He said, "I found me another piece of property
10 cheaper and that's what we're going to go with."

11 Q Okay.

12 A So they basically said they didn't want to buy my
13 property.

14 Q Okay. Isn't that the point in time -- when they
15 told you about a month ahead of June 15th, of
16 2006, they wanted to buy the property, isn't that
17 the point in time where the dispute arose and
18 y'all realized the contract had 100% in one part
19 of it and 25% in the other part? Isn't that --

20 A No, sir. No, sir.

21 Q So your testimony --

22 A Matter of fact --

23 Q -- is not when that --

24 A You remember she said that she -- Excuse me, sir.

25 Q Go ahead.

0000104

1 A She said that she was the one that brought up the
2 50 to 75%? No, I'm the one that brought up the
3 50 to 75%, not Mrs. Parker. I'm the one who
4 said, "Well, let's come up with a figure which we
5 both can reasonably agree to."

6 Q Okay.

7 A Neither one of them brought up that statement.
8 I'm the one that brought that statement up. And
9 it was in order for me to try and help them to
10 consummate the deal.

11 Q Okay. So when y'all sat down and had this
12 meeting in your backyard, sometime towards the
13 end of the two-year lease is when you're saying
14 you started trying to get them to negotiate an
15 arrangement with you at 50% and you were going to
16 throw in the lot in the back, is that what I'm
17 understanding your testimony to be?

18 A It was about within 30 days prior to the -- I'd
19 say about 30 days prior to the end of the
20 contract we sat down in my backyard.

21 Q Okay.

22 A And Mr. Parker had said all along he wanted to
23 buy both properties. First -- the house is on
24 one acre and the lot in the back is another acre
25 and he said he wanted both properties.

0000103

1 Q Okay.

2 A And the property in the back was valued at about
3 \$15,000.

4 Q But they didn't a need to negotiate a deal with
5 you to purchase the property, did they Mr.
6 Abdullah? Y'all had already negotiated a deal.
7 And the deal was that you had given them option
8 to purchase the property for \$65,000 if they
9 exercised the option within two years of the
10 lease or during the two-year lease term. And
11 that if they exercised the option that they would
12 get credit for the deposits that they had paid at
13 100% and the rents that they paid in year one and
14 year two at 100%. That --

15 A That's not what we agreed on.

16 Q That was the deal y'all had already negotiated;
17 isn't it?

18 A That's not what we agreed to. And if you look at
19 the contract which is the second contract, which
20 Mr. Parker signed on, it says 50%, sir.

21 Q Okay. All right. Their exercise of the option
22 complied with the terms of the lease and the
23 option when they served that paper on you June
24 15th, of 2006; didn't it?

25 A That's not exercising the option. It was not

0000106

1 certified funds, it was not cash. There was no
2 certified funds that was -- that were sent in
3 that -- by that server.

4 Q Okay. Well let me ask you this: The contract
5 required the option to be and the right to be
6 exercised -- I'm sorry. The contract required
7 the exercise of the option to be in writing in
8 number 27; didn't it?

9 A "Option shall be exercised by mailing or
10 deliverer -- delivering written notice to the
11 leasor" --

12 Q Okay.

13 A -- "prior to the expiration of this option."

14 Q So it had to be in writing; correct?

15 A Yes.

16 Q Okay. And it had to be delivered to you prior to
17 the expiration of the option; correct?

18 A Correct.

19 Q And you've told the Court that was June 15th, of
20 2006, as you testify today?

21 A Now, if -- if we're going by this particular
22 section 27 then you're agreeing to the 25%; is
23 that what I'm saying?

24 Q I'm asking you if the option had to be delivered
25 to you before the expiration of the option. And

0000107

1 you've told the Court that that -- your
2 understanding of that and your testimony today is
3 that's June 15th, of 2006; correct?

4 A Correct.

5 Q And it was delivered to you by June 15th, of
6 2006; correct? That Exhibit number 3?

7 A Well, let me read the whole thing if you don't
8 mind, please.

9 Q Sure.

10 A So are we going by this particular category 27?

11 Q I'm asking you, the option -- the letter they
12 sent you exercising the option, Exhibit number 3,
13 that I showed you was in writing; correct?

14 A The letter that they sent to me I do not consider
15 as a legitimate excise of the option.

16 Q Okay.

17 A It was not certified funds, it was a cashier's
18 check made out to Mr. Parker. When I looked at
19 that, it -- I thought that was Mr. Parker's
20 settlement check for his Workman's Comp case.

21 Q Okay.

22 A I did not think that that was any type of
23 exercise of an option towards the purchase of the
24 property.

25 Q Okay. And the reason that you think that is

0000108

1 because they didn't give you cash or certified
2 funds of \$45,200 on June the 15th, of 2006;
3 correct?

4 A The reason why I think that is because the funds
5 was not made out --

6 Q To you?

7 A -- to me.

8 Q Okay. So the only reason you didn't consider
9 that a full exercise of the option, as you sit
10 here and testify today, is because those funds
11 weren't made payable to you or cash to you?

12 A No, sir; it was made payable to Mr. Parker or
13 Mrs. Parker.

14 Q And that's why you didn't consider it to be a
15 proper exercise of the option; correct?

16 A That's one of the -- one of several reasons.

17 Q Okay. You told me in the deposition it wasn't
18 timely and you told the Court today now that it
19 was timely. So what are the other reasons?

20 A I'm telling you it was one of several reasons.

21 Q Okay.

22 A One reason was it was not certified funds made
23 payable to me.

24 Q Okay.

25 A The second reason was Mr. and Mrs. Parker both

0000109

1 told me prior to that that they had already found
2 another property that they were going to be
3 purchasing and they wanted a refund of the money,
4 the \$3000 deposit that they had.

5 Q Okay. Any other reason?

6 A That was another reason.

7 Q Any others?

8 A The third reason was is that after we sat and
9 tried to negotiate this deal in my backyard, both
10 of them gave me clear indication that they were
11 not going to purchase the property.

12 Q Okay.

13 A Or exercise an option.

14 Q Okay.

15 THE COURT: That's all the questions I
16 have, Your Honor.

17 MR. WALTERS: May it please, The Court.

18 FURTHER EXAMINATION OF AAZIM R. ABDULLAH

19 BY MR. WALTERS:

20 Q Mr. Abdullah, when you started off this
21 relationship with the Parker's, would you tell
22 the Court how did you know these people?

23 A I was working a regional director for Jan Pro.
24 And at that time we had some contracts here in
25 Orangeburg. Mrs. Parker came and interviewed

0000110

1 with me for a job to service some of the accounts
2 that we had a need for servicing here in
3 Orangeburg. I hired her and then when my wife
4 and I bought a franchisee -- bought a franchise
5 because it was -- it was going to be a conflict
6 of interest. I took over the accounts in
7 Orangeburg, Bamberg County and Hampton County.
8 And then I removed myself from the position of
9 awarding franchises and just became an
10 operational officer. I had Mrs. Parker and Mr.
11 Parker working for me. And Mrs. Parker's --
12 about two or three of her sisters and cousins and
13 at least both -- at least two of their children
14 servicing these contracts. Mr. Parker, he -- he
15 had -- he was -- he was -- and this -- this is
16 janitorial work. Basically, we were servicing
17 most of the dialysis centers here in Orangeburg
18 and Bamberg and Hampton County, we serviced most
19 of those accounts. Mr. Parker and Mrs. Parker
20 were working together at first -- at first. And
21 then I came to find out that Mr. Parker had filed
22 a Workman's Comp claim with -- I think he was
23 working out at that Cope plant at SC E&G.
24 Q So he worked during the day with Cope and then he
25 worked with you during the night?

0000111

1 A Correct.

2 Q Okay.

3 A But I -- I think he had filed that claim and was
4 working exclusively with us because he couldn't
5 go back out there to work. And when I found out
6 that he had filed a Workman's Comp claim and he
7 was still working at our facilities --

8 Q What was your conversation with him?

9 A My conversation was, is that you couldn't -- you
10 can't work for me, because we're covered under
11 Workman's Comp with Jan Pro and all these
12 companies that we service have Workman's Comp
13 type of arrangement and I can't afford to have
14 you file a claim against us or file a claim
15 against them, you know, faking that you're
16 actually hurt and, you know, and -- and
17 defrauding my company or any of these companies
18 that we're servicing.

19 Q Is this where your relationship started to sour?

20 A This is when it started souring. And --

21 Q All right. So let me get this straight. He
22 wasn't working for SC E&G; was he supposed to
23 home and he claims he wasn't hurt?

24 A He claimed his back was -- he had a bad -- he had
25 hurt his back or something or leg or something on

1 the job and he couldn't work. But he --

2 Q But he'd come work with you at night?

3 A He was servicing these contracts with Mrs.

4 Parker. Sometimes Mr. Parker would be there by

5 his self, sometimes Mrs. Parker would be there

6 with him, but they -- they were working together.

7 Q All right. And how did you end up allowing him

8 to rent this particular property from you?

9 A Well, they needed a place to live. Their -- they

10 had some bad -- some credit issues. And I had

11 this house that I had purchased and I told them

12 that since they -- you know, I knew that they

13 were getting a certain amount of income coming in

14 from these accounts that we -- I was paying them

15 that they would -- I wouldn't consider running

16 any kind of credit checks or anything like that.

17 I would allow them to lease the property. Mr.

18 Parker said he wanted to buy the property. So I

19 said, "Well, I can work out some type of lease-

20 purchase arrangement with you." So that's

21 basically how we --

22 Q So you were paying them as they were supposed to

23 be working for you and they were renting from

24 you; is that right?

25 A Yes, sir.

0000113

1 Q And we've got these agreements that are before
2 the Court; is that right?

3 A Correct.

4 Q All right. And were you ever assured -- well,
5 let's go back to this. How did your relationship
6 sour over him working for you and he was supposed
7 to be home because he was on Workers' Comp?

8 A Well, sometimes when I -- I had them fill out
9 timesheets and the timesheets would have Mr. and
10 Mrs. Parker on the timesheets. Then Mrs. Parker
11 said, "Well, I can't have -- I need to have these
12 timesheets just in my name only. I can't have
13 Mr. Parker's name on the timesheets because we've
14 got this issue with -- with the Workman's Comp."
15 And that's when I found out about the Workman's
16 Comp claim that he had filed. And I said, "Well,
17 hey, you know, he can't work on any of these
18 jobs."

19 Q All right.

20 A So in reality what that did was that cut their
21 income somewhat because, you know, he couldn't --

22 Q All right. But the agreement that you entered
23 into, were you assured by Mr. Parker that you
24 were going to be paid from the Workers' Comp
25 settlement?

0000114

1 A That's all he kept telling me. He kept -- and
2 when she mentioned about them only being late a
3 couple of times, they were late several time. I
4 mean, on numerous months during this two-year
5 contract period. And each time Mr. Parker would
6 use the excuse about he was waiting on his
7 Workman's Comp check to come or he was waiting on
8 his settlement to come. And basically he kind of
9 painted this picture like, "Oh, once I get my
10 Workman's Comp I'm going to buy the house and the
11 lot behind it."

12 Q Now, the contract that you entered into, and
13 you've seen the first one and the second one and
14 there's dispute about which one was first and
15 which one was second. Do you think it's fair for
16 the Parker's to receive 100% credit to
17 essentially stay there for free?

18 A That was not the arrangement. That was not the
19 agreement. That was not the understanding. I
20 mean, it's almost like I'm -- I tried to help --
21 I tried to help so many people in this lady's
22 family. You know, this really hurts me because,
23 you know, I have done everything I can to bend
24 over backwards to help this family and now it's
25 almost like they're trying to stab me in the

0000115

1 back. That's the way it really feels. I mean,
2 Mrs. Parker, when she was -- when she would be
3 sick and she couldn't service an account, I would
4 have my two sons go out there and service the
5 accounts.

6 Q Well, tell me this: You enter into these
7 contracts and there's this discrepancy about the
8 percentage. Your testimony is, is that you
9 were the one that came up with, "Let's try to
10 compromise and work this out"?

11 A I sure did.

12 Q And what was Mrs. Parker's position?

13 A She was quite the whole time.

14 Q Uh-huh (affirmative).

15 A Mr. Parker, he'd kind of shake his -- he would
16 shake his head and say, "Uh-huh." And -- and so
17 I said, "Okay. Well, what about if I throw the
18 property in?" And it seemed like they were --
19 they said, "Okay, well" -- it kind of gave me the
20 impression that they were -- they were going to
21 go and we were going to get the deal done. I
22 waited a day, didn't hear from them. I waited
23 another couple of days and I called them on the
24 phone and then Mr. Parker called me up and he
25 said, "We found another deal. We found a better

0000116

1 deal. We found some property that -- we're going
2 to buy that and it's cheaper. And we're not
3 going to go with you."

4 Q How did you know he had gotten Workers' Comp
5 settlement? Did he purchase anything?

6 A He purchased a car. Matter of fact, when he came
7 over to see me that day, I think Mrs. Parker was
8 driving the car. I don't know why she says they
9 didn't purchase a car, because it was car that
10 they had purchased. And they hadn't purchased
11 the car before. So they probably paid --
12 probably paid cash from the settlement for it.

13 Q All right. So they come over, they're in a
14 different car, and did they tell you, "The
15 contract's over, we're going somewhere else"?

16 A Well, they gave me the impression -- well, like I
17 said before, yeah, Mr. Parker had came over and
18 said that he had found a better deal and he
19 didn't want to consummate purchasing this
20 property.

21 Q All right. So what -- what were you thinking at
22 that time when he tells you, "We don't want it?"

23 A I said, "Well, I need to find another person to
24 rent the property."

25 Q All right. And let's make sure the Court's aware

0000117

1 of the status of the property at this time. Tell
2 the Court the status of the property at this
3 time.

4 A The property has been foreclosed on.

5 Q All right.

6 A I've lost the property. And matter of fact, I
7 think the two months that Mr. and Mrs. Parker
8 stayed in the property without paying rent was
9 they were trying to wait me out and see if I
10 would lose the property, and that's why didn't
11 want to pay me rent for those two months. But me
12 and my wife we went and we covered the -- covered
13 the note on those funds and kept it up until they
14 finally decided they were going to move out.

15 Q Now, during the time you were negotiating and
16 trying to work this out with the Parker's, and
17 it's your testimony your intent to do so, they
18 were working for you; is that correct?

19 A Yes, it is.

20 Q All right. And of course you said you bent over
21 backwards -- I think you had about seven or eight
22 of their family members working in different
23 dialysis facilities; is that correct?

24 A That's right. And I'll tell you, out of all the
25 people that was servicing accounts that I had,

0000118

1 Mrs. -- Mr. and Mrs. Parker and them lost more
2 accounts for me than anybody else. Matter of
3 fact, her personal medical doctor who's accounts
4 that we serviced here in Orangeburg, called me up
5 on the phone and said, "I don't want them coming
6 back to my office anymore."

7 Q Tell the Judge just for the Court's edification,
8 what's the status of your Jan Pro franchise now.

9 A My Jan Pro franchise, I lost that also.

10 Q All right. Now, let's talk about the contract.
11 You stated that he told you, "We found something
12 else." What was your reaction when you got this
13 letter that said -- and I think it's Plaintiff's
14 Exhibit number 1 -- that --

15 MR. WILSON: It's three.

16 MR. WALTERS: I'm sorry. Defendant's
17 Exhibit number 1 is -- yeah, right here.

18 Q What was your reaction when you received that
19 letter and they say, "We want our money back"?

20 A Well, when I received this letter I said, "Well,
21 okay. Well, no problem. I'll" -- you know, this
22 was -- I think I received this letter after they
23 were in there for, what, about maybe -- they were
24 in there for over a month without paying me any
25 type of rent or anything.

0000119

1 Q And I believe that in Plaintiff's Exhibit number
2 1, it says that if they stay over on the property
3 you have a right to charge them; is that right?

4 A Oh, yeah.

5 Q According to section 17; is that correct?

6 A Correct.

7 Q All right. So as far as this \$3000 they wanted
8 back you heard Mrs. Parker's testimony as to
9 whether you should receive that money or you
10 shouldn't, you had a right to do that under the
11 lease?

12 A Yes.

13 Q All right.

14 A And basically, all I -- when I went to the house,
15 Mrs. Parker -- all I found was -- I only charged
16 them, I think it was maybe, \$50 for some torn
17 underpinning on the mobile home. They had torn -
18 - they had torn the backside of the underpinning
19 and said, "Okay. I only deducted \$50 for that
20 torn underpinning and the two months' rent that
21 you've lived in there without paying any rent,
22 and the balance of the \$3000 will be refunded to
23 you," and I cut them a check that same day for
24 it.

25 Q Now, in section 16 is there a notice with regards

0000120

1 to the essence in the agreement and time being of
2 the essence?

3 A Yes, it says, "Time is of essence of this
4 agreement. This offer shall terminate if not
5 accepted before June the 8th, of 2004."

6 Q All right. Now I want to ask you this: With
7 this particular contract it's alleged that you
8 somehow cheated someone out of their money, they
9 they're owed a -- their testimony is that \$700
10 for 24 months. If you pay them \$700 for 24
11 months, what money do you receive?

12 A I receive nothing. I don't know anybody that can
13 rent a place for free.

14 Q Now, we talked about June 15th. You stated that
15 you received a Xeroxed copy of a check; is that
16 right?

17 A Yes, sir.

18 Q All right. You also stated that there was a
19 letter that was received; is that right?

20 A Correct.

21 Q All right. Did you consider that a proper
22 exercise of the order -- of the option?

23 A No, I did not.

24 Q All right. Could you go to the bank and cash a
25 Xeroxed copy of the check?

0000121

1 A I've never been able to cash one yet.

2 Q All right. But let's back up. Before that even
3 occurred on the 15th, of June, were you already
4 told that they weren't going to exercise the
5 option?

6 A He'd already told me prior to the -- prior to
7 this day they'd already found another property.
8 Matter of fact, the two months that they were
9 staying in the property without living, I think -
10 - without paying any rent, I assumed that they
11 were in there moving their stuff into their new
12 property that they'd already bought.

13 Q Now, the letter that we've got that's dated the
14 18th, manila colored letter, when they wanted
15 that \$3000 back, does that represent the -- the
16 security deposit, the money that was paid down?

17 A Yes, it does.

18 Q And you gave them that back after you had taken
19 the time they stayed over on the property?

20 A Correct.

21 Q Which the lease gave you the right to do?

22 A Correct.

23 Q All right. At any time did they say to you,
24 "We're going to sue you. We think you've been
25 wrong to us, you've done something wrong." Did

0000122

1 they ever tell you that, "We're going to -- we're
2 going to go forward with this agreement and we're
3 going to get 100% credit"?

4 A No, never did. And I'm going to tell you, it
5 would've been to my betterment to have them to
6 purchase the property or do whatever I could to
7 accommodate them purchasing the property instead
8 of having it as a scar on my credit, you know.
9 For me to have a foreclosure on my credit, it
10 would've been better for me to do whatever I can
11 to try and make sure that that property got sold.
12 And that's why I tried to sweeten the deal by
13 throwing in the land in the back, a \$15,000 value
14 on the property. Mr. Parker and I both even
15 talked about the value of the property and how
16 much I would sell him that property for. And
17 here I was giving that property and putting that
18 in deal, it was a one full acre of land. You
19 could put two double-wide mobile homes on that --
20 that land in the back. So, you know. And it
21 just makes me feel -- it really saddens me to
22 find that people who you bend over backwards to
23 try to help, I've done everything I could
24 reasonably possible to try and help Mr. and Mrs.
25 Parker. Financially, I have covered for them on

0000123

1 accounts that they were servicing for me with the
2 company so that I wouldn't have to lose the
3 account. I've covered on them where I've take
4 the brunt of the burden and still let them
5 maintain and service the account. Until they end
6 up actually loosing the account for me. And I
7 had no way of covering after that. So they've
8 cost me a tremendous amount of money just in my
9 business.

10 Q Did you --

11 A My credit.

12 Q Did you believe that they -- the agreement was
13 over?

14 A Yes, I did.

15 Q You come to an agreement by receiving that
16 letter. Now, that letter is dated the 18th; is
17 that right?

18 A Correct.

19 Q All right. So if the option had to be exercised
20 by the 15th, that's three days later they turned
21 around and said, "Give us our money back."

22 A That's right.

23 Q They took the money and you didn't hear from them
24 until a lawsuit was filed in 2007; is that right?

25 A Correct.

0000124

1 Q And do you believe you owe them any money?

2 A Of course not.

3 Q Now, you understand that there's an ambiguity in
4 the contract? You admit that?

5 A And I sat down to try and clear that up with them
6 when I sat down with them and Mr. Parker signed
7 on the agreement where I cleared up that with
8 him.

9 Q And you understand that the Court in interpreting
10 an ambiguity has to look at the behavior of the
11 parties and what they actually did. All right.
12 But section 27 was it different with regards to
13 the first contract or the second contract?

14 A No, it was still the same.

15 Q All right. And do you believe you've acted in
16 good faith when you sat down and said, "I made a
17 mistake, let's try to work it out"?

18 A Yes, I did.

19 Q Do you believe it's unreasonable for someone to
20 ask for 100% credit as if they just stayed there
21 for free for two year?

22 A No. I have to pay rent where I live. Everybody
23 I know who has a property they they're living in
24 and taking care of, they have to pay to cover the
25 rents. What they're asking is very unreasonable.

0000125

1 I don't even see how they can even open their
2 mouths to even consider asking me to -- to cover
3 the expenses for them and their entire family.
4 That's basically what they're asking me to do is
5 have her and her family live in a property that
6 I'm having to pay a monthly payment on for free.
7 I've got my own family to take care of and pay
8 the responsibilities on.

9 Q All right.

10 MR. WALTERS: I have no further
11 questions, Your Honor.

12 THE COURT: I'd like to have a little
13 discussion with the attorneys. Approach the
14 bench please.

15 (Sotto voce discussion between The
16 Court and Counsel.)

17 FURTHER EXAMINATION OF AAZIM R. ABDULLAH

18 BY MR. WILSON:

19 Q Mr. Abdullah, when the Parker's delivered Exhibit
20 number 3, that letter to you on June 15th, 2006,
21 by the process server, you conveyed back to them
22 that you didn't have any intentions of honoring
23 that as an option -- as an exercise of the option
24 in that you didn't intend to sell them the
25 property; isn't that correct?

0000126

1 A No, sir. When I received that -- that letter, I
2 looked at it and I said this is -- I said to
3 myself it's not exercise of the option.

4 Q Okay.

5 A I tried to communicate with Mr. and Mrs. Parker
6 because at that -- even at that point still, I
7 wanted to sell the property to them. That
8 property, if we look at it on that date, it was
9 still being occupied by them. So, yeah, I wanted
10 to sell the property. Whichever way we could
11 work a deal I wanted to be to try and work a
12 deal.

13 Q Okay. And by saying --

14 A But I -- but I never did tell them, no, I wasn't
15 going to sell them the property. If they wanted
16 to -- if they wanted to actually consummate the
17 deal, I was the main person that wanted to get it
18 done more than anyone else.

19 Q Okay. Okay, I want to show your deposition. So
20 your testimony today, in this Court, is that you
21 never told the Parker's that you didn't consider
22 Exhibit number 3, that June 15th, 2006, letter to
23 not be a proper exercise of the option to
24 purchase the property?

25 A That I -- that I said it or I didn't say it?

0000127

1 Q That you did or didn't tell them that.

2 A I told --

3 Q You --

4 A I -- I said I did not consider that as being a --
5 a execution of their option to purchase because I
6 did not consider that check as certified funds or
7 cash as the contract stipulated. And I did not
8 feel like they were sincere in their efforts to
9 actually purchase the property.

10 Q Okay. And you told them that didn't you? You
11 told the Parker's that?

12 A When I tried to communicate with them they didn't
13 give me the impression that they wanted to
14 purchase the property or negotiate the purchase
15 of the property.

16 Q Okay. Mr. Abdullah --

17 A I don't recall --

18 Q -- it's a pretty simple question, okay.

19 A Okay.

20 Q You've testified already that you did not
21 consider that letter, June 15th, of 2006, to be a
22 proper exercise of the option; correct?

23 A Correct.

24 Q And if it wasn't a proper exercise of the option,
25 you will agree with me, you had no obligation to

0000128

1 sell the property to them Parker's; correct?

2 A I had no obligation, but would've loved to have
3 sold it them.

4 Q But you had no obligation if they didn't exercise
5 the option properly to convey the property to
6 them; correct?

7 A Not under those terms, no.

8 Q Okay.

9 A I couldn't sell it that way, not with a copy of
10 the check.

11 Q Okay. All right. And you told the Parker's
12 that, that you didn't consider it to be a proper
13 exercise of the option; correct?

14 A Yeah, I probably did.

15 Q And you told them that you didn't have any
16 obligation to sell them the property, under the
17 terms of the contract with 100% credit, because
18 they had not properly exercised the option;
19 correct?

20 A I told them based on the -- the contract that Mr.
21 Parker signed, which shows the 50%, I would sell
22 them that property under that -- under that
23 agreement, which is the second agreement not the
24 first agreement.

25 Q All right. And let's just do this.

0000129

1 A I did discuss that with them.

2 Q All right. Let's just do this. This is your
3 deposition that I took seven, eight, nine months
4 ago.

5 A Okay.

6 Q Okay. And I want you to look on page 61.

7 MR. WILSON: Your Honor, do you want
8 the deposition to follow? Do you want the
9 deposition? I have it.

10 THE COURT: No.

11 Q I want you to look on page 61 and I want to say -
12 - I want to read the question and you read the
13 answer. I'm going to start on line 16. "Mr.
14 Abdullah, isn't it true you never made any type
15 of response to the Parker's letter dated June
16 15th, of 2006?" And your answer was?

17 A Hold on one second. I thought you said 16. 16
18 says, "Okay, just a couple and then..." --

19 Q Okay. Well, I skipped the first --

20 A All right.

21 Q -- phraseology.

22 A I didn't follow you.

23 Q Starting on line 16, page 61, I say, "Okay, just
24 a couple and then I'm done." A couple more
25 questions. "Mr. Abdullah, isn't it true that you

0000130

1 never made any type of response to the Parker's
2 letter dated June 15th, of 2006?" And your
3 answer?

4 A My answer, it says here, "Did I make any response
5 to this letter?" I'm just getting clarification
6 of the question.

7 Q And I ask you again, "Did you make any response
8 to the Parker's?" And your answer was?

9 A I said, "I think, yeah. I -- we talked over the
10 telephone."

11 Q Okay. And I said, "Okay." And then what do you
12 say?

13 A "But there was no written response."

14 Q And then I ask the question, "Okay. So you
15 talked with them over the phone, but you
16 indicated to them that you did not accept this as
17 a valid exercise of the option to purchase the
18 property; isn't that correct?" And your answer?

19 A "Correct."

20 Q Okay.

21 A And I still don't.

22 Q Okay.

23 A I mean, I -- I don't see where that was any
24 different from what I just told you a few minutes
25 ago.

0000131

1 Q Okay. And your testimony is, that after the
2 Parker's stayed after June 15th, of 2006, and the
3 Parker's stayed in it for a couple more months
4 and didn't purchase the property, because y'all
5 didn't get together, things went so bad you lost
6 the property by foreclosure? That's your
7 testimony?

8 A Correct. The property stayed vacant for several
9 months.

10 Q The property had been in foreclosure before the
11 Parker's ever even moved in hadn't it?

12 A No, sir.

13 Q It wasn't in foreclosure back in October of 2005?

14 A The property was -- we had worked out a -- a
15 payment arrangement with Washington Mutual --

16 Q Okay.

17 A -- to reinstate the loan, which is what I did.

18 Q They had actually filed foreclosure action
19 against you prior to working that out hadn't
20 they?

21 A That has nothing to do with reinstatement, sir.
22 When I reinstated that means that I brought all --
23 -- I made an arrangement with the bank to bring
24 all the payments current while making a payment
25 arrangement with them, which is what I did.

0000132

1 Q Okay. But prior to the Parker's ever even --
2 while the Parker's were renting the home your
3 property had -- this property had gone into
4 foreclosure and then you had to work something
5 out with the bank to get it out of foreclosure;
6 isn't that correct?

7 A It didn't go into foreclosure. It wasn't
8 foreclosed on. It was -- it was in a state where
9 it was in default.

10 Q Okay.

11 A And we brought it current.

12 Q Okay. And you understand that if the Parker's
13 exercised the option to purchase the property,
14 the contract provided for a closing to take place
15 ten days later? Do you understand that to be a
16 term of the contract?

17 A I don't have the contract in front of me to see
18 that. May I see, please?

19 Q Sure. Section number 24 right here. You
20 understand that that contract calls for a
21 provision that if the Parker's exercised the
22 option then --

23 A It says, "Closing shall be within ten days --
24 within ten days from the exercise of option --

25 Q Okay.

0000133

1 A -- unless otherwise extended by other terms of
2 this agreement." They -- they never indicated
3 that they were ready to close.

4 Q Mr. Parker -- Mr. Abdullah, they exercised the
5 option, you didn't accept it as a valid exercise
6 of the option; correct?

7 A When I talked with Mr. and Mrs. Parker --

8 Q Answer my question. They -- they sent you a
9 letter attempting to exercise the option and you
10 didn't accept that as a valid exercise of the
11 option; correct?

12 A Correct, it was not valid.

13 Q Okay. You conveyed that to the Parker's and you
14 told them you were not going to sell them the
15 property at \$65,000 with 100% reduction for the -
16 - credits for the rent and the deposits; correct?

17 A What I told them was that I did not accept that
18 as a valid execution of the option.

19 Q Okay.

20 A It was not certified funds involved, it was just
21 a copy of a copy of a check which I felt was Mr.
22 Parker's settlement check on his Workman's Comp
23 case.

24 Q Okay. And you told --

25 A Which does not -- which does not -- which does. 0000134

1 not indicate anything to me about purchasing the
2 property from me.

3 Q And you told them that you could not go forward
4 and sell them the property wherein -- where they
5 would receive 100% credit for the rents that they
6 had paid and the deposits that they had paid?

7 A That's not what we agreed to.

8 Q Okay. But at the time you told them when they
9 exercised -- when they sent you that letter and
10 you contacted them you told them you would not
11 sell them the property under an arrangement where
12 they got 100% credit; isn't that correct.

13 A I told them that this was not the arrangement
14 that we had a contract on.

15 Q Okay.

16 A I have an agreement for 50% not 100%.

17 Q Okay. So you told them you wouldn't sell it to
18 them with a 100% credit that you would --

19 A I told them that --

20 Q -- consider something else, 50%, but you would
21 not sell it with 100% credit; correct?

22 A I told them, I said, "If y'all to purchase the
23 property we can sit down and we can negotiate a
24 deal." And that was the extent of it.

25 Q Okay.

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1 A They never came back to me and said that they
2 actually wanted to close.

3 Q Okay. All right.

4 MR. WILSON: That's all I have. Thank
5 you, Your Honor.

6 THE COURT: Okay. Is there anything
7 further?

8 MR. WALTERS: I have no questions, Your
9 Honor.

10 THE COURT: All right. Okay. If I
11 could just speak to y'all, the lawyers,
12 quick, please.

13 (Whereupon, off the record at 3:19
14 p.m.; back on the record at 3:21 p.m.)

15 MR. WILSON: Judge -- and I don't know
16 -- oh, I'm sorry.

17 MR. WALTERS: What procedure are we
18 going through here?

19 THE COURT: Well, I -- that's --

20 MR. WILSON: Okay.

21 THE COURT: I mean, it's a little
22 unusual to do this.

23 MR. WILSON: Oh, I though you didn't
24 want to put anything up. I thought you had
25 said up there you weren't putting anything

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1 up.

2 MR. WALTERS: Yeah. I mean, that's
3 fine, but do you want to talk to us outside
4 of the presence of everyone and then come
5 back or --

6 THE COURT: No.

7 MR. WALTERS: -- do you --

8 THE COURT: I though y'all had
9 basically closed your case.

10 MR. WILSON: I'm resting. And I -- I
11 took it by our conversation that you were
12 resting too?

13 THE COURT: Yeah, I did too. Maybe I
14 misunderstood.

15 MR. WALTERS: No, no, no. If you're
16 resting then I've got a motion to make with
17 regards to the Plaintiff's case.

18 THE COURT: Oh.

19 MR. WILSON: I'm resting, Your Honor.

20 THE COURT: Okay.

21 MOTIONS BY MR. WALTERS:

22 MR. WALTERS: Okay. Your Honor, I have
23 a motion to make with regards to the
24 Plaintiffs' case. First, in regards to the
25 Summons and Complaint, we make a motion to

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1 dismiss with regards to several causes of
2 action. There's one for fraudulent and
3 negligent misrepresentation.

4 MR. WILSON: Agree to dismiss that,
5 Your Honor.

6 THE COURT: Okay.

7 MR. WALTERS: There's also one for
8 breach of contract with fraudulent intent;
9 that hadn't been shown. Unfair trade
10 practices; that hadn't been shown.

11 MR. WILSON: Your Honor, I agree on the
12 unfair trade.

13 THE COURT: Okay.

14 MR. WALTERS: As far as the breach of
15 good faith and fair dealing; I don't think
16 that's been shown. What's been shown is, is
17 that these people have gone back and forth
18 with each other with regards to what they
19 consider in their best in the best interests
20 of the parties. But there's been no
21 testimony from either of the parties as to -
22 - when you look for things with regard to
23 the contents of good faith and fair dealing,
24 what we're looking for is acts that were
25 against public policy when people deal with

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1 each other and we impose good faith on each
2 other. And it doesn't that happened here.
3 What happened here was is that these people,
4 they went the drawing of a contract. He
5 drew up a contract and of course she
6 represented that, "I speak on behalf of the
7 family because I can read and write and I'm
8 looking at the contract." And one issue
9 that's come up is, is that, "Well, Mr.
10 Abdullah drew up the contract." Well, we
11 also say if you buy land caveat emptor,
12 buyer beware. And of course, neither party
13 consulted with a lawyer. And of course we
14 have a contract that's before the Court that
15 needs to be interpreted. I don't think that
16 they've proven there was a breach of the
17 contract, because what's happened here is,
18 is satisfaction. Someone said, "I I want my
19 money back and I'm out of here." And that's
20 essentially what that letter says, "Give us
21 our money back and we're gone." And under
22 the circumstances they hold over for two
23 months. That's another 60 day where they
24 simply could've filed suit or done something
25 with regards to this matter. But what did

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1 they choose to do? An accord and
2 satisfaction, they turned and said, "Hey,
3 give us our \$3000, but we know under section
4 16 that we've got to pay for the two months
5 because we're staying here as tenants."

6 So as far as the causes of actions that
7 are before the Court, they've consented to
8 the fraudulent and negligent
9 misrepresentation, also the breach of
10 contract with fraudulent intent, also the
11 unfair trade practices. I would argue that
12 the breach of good faith and fair dealing
13 they have not substantiated. And as far as
14 the unjust enrichment, he doesn't own the
15 property anymore. And their argument before
16 the Court is, and it's their testimony on
17 their damages, we deserve 100% of the money
18 back. Well, nobody stays anywhere for free,
19 so there's no unjust enrichment with regard
20 to that property. And of course, in this
21 particular case, I think the only thing that
22 they're left with is breach of a contract.
23 Well, the elements for breach of a contract
24 is, is that that number one you got to show
25 there's a meeting of minds.

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1 THE COURT: Excuse me. Let me -- I
2 don't want to -- I hate to stop you while
3 you're on a roll --

4 MR. WALTERS: Yes.

5 THE COURT: -- Mr. Walters. But I
6 really wasn't interested in hearing of --
7 and you say they're motions.

8 MR. WALTERS: It was a motion to
9 dismiss those particular --

10 THE COURT: Yeah. Have you covered --

11 MR. WALTERS: -- cause of action --

12 THE COURT: Have you covered all those
13 motions?

14 MR. WALTERS: Yes. And then, of
15 course, I was going to make a motion for a
16 directed verdict.

17 THE COURT: Okay. Well -- Okay. Well
18 --

19 MR. WILSON: Your Honor, just very
20 briefly. I've consented to dismiss the
21 fraud and unfair trade practices, I believe
22 those go out.

23 THE COURT: Yeah. Okay.

24 MR. WILSON: I think it can rise to the
25 level to be directed verdict on all the

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1 other causes of action that are there.
2 Those are decisions the court's going to
3 have make, but the factual issues are there
4 for the Court to decide.

5 THE COURT: I think the only one is
6 what you -- everything is -- all the motions
7 are granted then, basically is what I'm
8 saying, except for the directed verdict,
9 which as you know there's an old sign that
10 says, "No spitting, no -- no cursing and no
11 directed verdict," you know. But -- and
12 that's -- that's what I wanted to talk with
13 y'all about.

14 MR. WALTERS: Yes, sir.

15 THE COURT: you know, after everybody's
16 through making motions or doing anything
17 else --

18 MR. WALTERS: Okay.

19 THE COURT: -- that needed to be on the
20 record.

21 MR. WILSON: I'm -- I'm good on the
22 record, Your Honor.

23 THE COURT: Okay. You are done on the
24 record now?

25 MR. WALTERS: Yes, sir; I've made my 0000142

1 motions with regards to the complain and I
2 made a motion for a directed verdict.

3 THE COURT: Okay. And I've granted
4 everything, but the directed verdict.

5 MR. WALTERS: Okay.

6 THE COURT: And we were going to take
7 care of that when -- the way I usually do it
8 is go -- basically tell you what is -- Chris
9 may know. Just talk with you and tell where
10 -- where I'm coming from and --

11 MR. WALTERS: Yes, sir.

12 THE COURT: -- then we'll do proposed
13 orders.

14 MR. WALTERS: Yes, sir.

15 THE COURT: And that'll act as your --
16 as your directed verdict.

17 MR. WALTERS: Yes, sir.

18 THE COURT: If that's okay?

19 MR. WALTERS: Yes, sir.

20 THE COURT: Okay. Very good. Let's do
21 that then.

22
23
24
25 0000143

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG)

C/A No. 07-CP-38-717

William Parker and)
Dorothy Parker,)

Plaintiffs,)

v.)

Pier Abdullah, Aazim R.)
Abdullah a/k/a Lynwood K.)
Daniels,)

Defendants.)
-----)

COPY

HEARING

Wednesday, September 30, 2009
11:00 a.m. - 11:23 a.m.

The hearing before the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, was taken at 190 Gibson Street, Orangeburg, South Carolina on the 30th day of September, 2009 before Lyn Allen, Court Reporter and Notary Public in and for the State of South Carolina..

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EXHIBITS

(NO EXHIBITS WERE MARKED)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the South Carolina Rules of Civil Procedure.

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1 THE COURT: Whenever you're ready.

2 MR. WALTERS: May it please the Court. Your Honor,
3 I believe that in the order, with regards to
4 the order is our motion to reconsider. I'm
5 well aware of the rules that we can't introduce
6 any new evidence. And certainly my motion is
7 base upon the evidence that's been presented
8 before the Court. The first issue was with
9 regards to the calculation. I believe it just
10 simply says that they have a judgment against
11 the defendants in the amount of \$22,000. I
12 believe that's in error with regards to the
13 order. It should be the \$22,000 minus the
14 \$16,800. And then of course 450 in moving
15 costs and \$4,824 for attorney's fees. In other
16 words the judgment that's entered on the record
17 should not reflect \$22,000 because the Court
18 clearly stated it's \$22,074.65 minus \$16,800.
19 And then you add the 450 and 4824.65. So when
20 you ordered the \$22,000 I believe that's in
21 error and it should reflect the correct amount.
22 I don't know if Mr. Luginbill is willing to
23 concede that. The second issue is is that in
24 this particular case we argued there was an
25 accord and satisfaction. And under the

1 circumstances what happened was is that they
2 asked for their money back. They got their
3 money back. And then of course there was a
4 deduction with regard to repairs on a house.
5 And then they moved out of the house. So under
6 those circumstances we believe there was an
7 accord and satisfaction from the evidence that
8 was presented. But then the most compelling
9 evidence that we have that they failed to
10 exercise the option properly, if it runs from
11 June 14th of one year to the next year no
12 matter what, the testimony is they exercised
13 the option on June 15th which was a day late.
14 I don't think they can get around that. No
15 matter what they did it was just a day late.
16 So the option doesn't state that you get the
17 time under the option plus an additional day.
18 The testimony is, and it's clear from the
19 record that they exercised it a day late under
20 those circumstances. And that's essentially
21 what the record shows. In addition to that
22 they exercised the option itself, if one argued
23 that the option was perfected in exercising,
24 you know, the right to use the option, they
25 presented my client with a cashier's check that

1 was payable to Dorothy Parker. Under those
2 circumstances that's not exercising the option.
3 If I was buying your car, I wouldn't present a
4 check to you with my wife's name on it. I
5 would present a check to you with your name on
6 it or a check to you on the remitter part I
7 would probably put for the purchase of your
8 car. But they didn't do that. What they did
9 was is they presented a check that said Dorothy
10 Parker's name on it. And under the
11 circumstances we don't believe that they
12 perfected the option by doing so. And as far
13 as the actual or consequential damages as a
14 result of this under the circumstances there
15 was 450 in moving costs that they alluded to.
16 And it never was clear about this issue with
17 regard to attorney's fees because we have one
18 instance where they were sitting down saying
19 that we had to pay someone. And on the other
20 instance we didn't know whether it was a
21 contingency fee or what exactly was going on.
22 But the bottom line is is that under this
23 motion to reconsider, first of all the wording
24 of the order the last sentence should be
25 changed so that if it's entered into the

1 record, because when the clerk looks at this,
2 they're going to put down \$22,000 against my
3 client. And that's totally incorrect. It's 22
4 thousand minus the 16,800 and some change in
5 summation here. And the second issue is is
6 that we believe there was an accord in
7 satisfaction because they got their money back.
8 We paid them their money back. They said we're
9 out of here. And we thought the deal was over.
10 And of course the third issue is which they
11 can't get around, they exercised the option a
12 day late instead of exercising it on the 14th
13 of June. And most importantly if one argued
14 that they did exercise the option properly, in
15 order to do so you've got to present my client
16 with a check. You don't present a check with
17 your wife's name on it. And then the third
18 issue is is that the consequential damages that
19 were produced, we've already argued that issue
20 with regard to the attorney's fees. So under
21 these circumstances I believe that they, the
22 order that's been issued by the Court we
23 believe should be reconsidered based on the
24 evidence that's been presented. And I just
25 don't know how they can get around being a day

1 late. Thank you, your Honor.

2 MR. LUGINBILL: I didn't know if you wanted to
3 question him or are you ready for me?

4 THE COURT: Go ahead.

5 MR. LUGINBILL: Thank you, Judge. I'm going to take
6 them sort of in reverse order, Judge. The
7 issue of the attorney's fees and whether or not
8 a contingency fee agreement precludes an award
9 of attorney's fees I think is very well-
10 settled. Mr. Wilson had sent to the Court in
11 a letter shortly after the initial hearing, the
12 case of, I believe, it's Columbia Teacher's
13 Federal Credit Union versus Newsome. In that,
14 that was an Unfair Trade Practices Act claim.
15 And in that the fact that there was a
16 contingency fee agreement between the plaintiff
17 and plaintiff's attorney did not preclude the
18 court from awarding attorney's fees. Whether
19 or not there is a contingency fee agreement is
20 pretty well-settled in South Carolina. It is
21 merely one factor for the Court to consider
22 when awarding attorney's fees. So clearly it
23 is within the Court's discretion whether to
24 award them or not and the Court awarded
25 attorney's fees as it should have. There are

1 additional, I saw a supplemental attorney fee
2 petition in the file last night as I was
3 getting ready for this hearing. I would ask
4 the Court today to allow me to supplement the
5 record for my time here today seeking an award
6 of additional attorney's fees because but for
7 the defendant's 59(e) motion of bringing us up
8 here, the client wouldn't be incurring
9 additional legal costs. With regard to the
10 insufficient tender, the contract itself
11 doesn't specify how tender has to be made. It
12 simply says -- or how the option has to be
13 exercised. It simply says that it needs to be
14 exercised within 24 months. In looking at the
15 terms of it, you go back to what was argued
16 again at the hearing in that any ambiguities in
17 the contract are to be construed against the
18 drafter. The drafter in this case is the
19 defendant. The exercise of the option simply
20 states may be exercised any time prior to its
21 expiration. There's more here that says June
22 9th of 2006 and then obviously there's 24
23 months prior. On another part of it that's one
24 ambiguity. The Court has ruled that the later
25 date controls, the 15th being the date. I

1 think that's the right, obviously the way it's
2 supposed to be. One is the first in line in
3 the contract so it's given priority. Secondly,
4 it creates a patent ambiguity on its face to be
5 resolved against the drafter. But how it's
6 done is not discussed at all in the contract.
7 In this case the evidence clearly showed that
8 he was, the defendant was served by a process
9 server, physically served with a letter saying
10 that they were exercising the option and with
11 a copy of the cashier's check attached to it.
12 The letter clearly said we are attaching this
13 to show that the funds are available. So they
14 were simply telling him that they were ready to
15 close. It is the standard, they had ten day to
16 close under the terms of the contract. You
17 wouldn't pay the money until you came to
18 closing. That's how closings work. You come
19 to the closing with the money. He comes to the
20 closing with the deed. You swap. Everybody
21 goes on their way. There is nothing requiring
22 them to tender actual payment on the contract
23 at the time of exercising the option. In fact,
24 the contract specifically envisioned a later
25 closing date. They exercised it by making them

1 aware that they were exercising it. So I
2 believe the Court ruled correctly on that
3 initially. There is, just simply is no
4 insufficient tender. As to the accord and
5 satisfaction, the accord and satisfaction is a
6 contractual defense where the parties enter
7 into an agreement to solve a future problem.
8 It has to be all the elements of a contract,
9 offer, acceptance, consideration, meeting of
10 the minds. Because the accord and satisfaction
11 that they're claiming in this particular case
12 involves the sale of real property, all that
13 had to be done in writing to satisfy the
14 statute of frauds or it would have been of no
15 effect as being enforced against my clients.
16 There is no such writing. The repayment of the
17 security deposit is just that. It's a security
18 deposit. It's a separate issue. It has
19 nothing to do with the exercise of the option,
20 providing a deed, all those sorts of things.
21 None of that was done in writing. It cannot be
22 held against our client to be in accord and
23 satisfaction. There was no offer, no
24 consideration that spelled out the terms of
25 what they were settling. There's no release

1 language anywhere. There's no this settles our
2 disagreement language in any of the testimony
3 nor was there any document to that effect. So
4 because of that accord and satisfaction just
5 simply fails. The defense failed to show the
6 elements necessary for an accord and
7 satisfaction in the trial of the case. That
8 defense was not, was not proven. As to the
9 amount of the judgment, I again cannot agree
10 with my learned counsel. What you have here is
11 a judgment in the amount of \$22,074.65. Then
12 you have a dash. That's not a minus sign.
13 There's a dash in the order that says how it
14 gets there based on the prior ruling in the two
15 paragraphs prior. \$16,800 for rents paid.
16 That represents 24 months at \$700 per month
17 which should have been applied towards the
18 property. \$450 in moving costs incurred which
19 gets added to that. And finally there's
20 \$4824.65 in attorney's fees which the Court
21 awarded which gets added on top of the other
22 two. So when you take 4824, add the 450, add
23 the 16,800, you come with the \$22,074.65 which
24 is the correct amount for the judgment in this
25 case. There is no mathematical error. That is

1 simply explaining how the judgment was arrived
2 at. And that is very clear from the preceding
3 paragraph. That takes care of that amount.
4 And lastly, your Honor the day late. It's
5 well-settled again in the law that when you are
6 calculating time you start with the day of the
7 event. It would be no different than if the
8 plaintiffs had been in a car wreck on the 15th.
9 They would have until the 15th two years later
10 to file their lawsuit if the statute was two
11 years. You don't count that day. It's sort of
12 like your anniversary. You get married on the
13 15th. Your anniversary is the 15th the next
14 year. It's the 15th the next year, it's the
15 15th every year for the rest of your life. The
16 15th was the day that the option expired. They
17 exercised it on that day. It was timely.
18 Additionally, your Honor, they also, he knew it
19 was coming. He told them, they told them
20 verbally and acknowledged that in the record
21 that they were exercising the option verbally
22 prior to that date. And they served him on
23 that date with a letter filed that day. It was
24 timely filed.

25 MR. WALTERS: May it please the Court. Your Honor,

1 with all due respect, there's case law on this
2 where you calculate a statute you don't get
3 until the next day. Your statute runs the day
4 before at five o'clock. If today's my birthday
5 --

6 MR. LUGINBILL: Judge, I would like to see that
7 case. Because that's not it.

8 MR. WALTERS: This specifically goes to the
9 calculation. If today's my birthday and you
10 say two years from now on this particular day
11 will I be two years old you are correct because
12 it's the first day of that new age. And in
13 this particular case the statute runs the day
14 before at five o'clock. Most lawyers calculate
15 their statutes, if you said September 30th is
16 the day of the event, most lawyers sit down and
17 think, well, three years from now it will be
18 September 30th on that particular day. That's
19 totally incorrect. Three years would be the
20 day before at five o'clock. Your statute runs
21 the day before, not on that day. The day of
22 September 30th three years from now is the
23 beginning. If I'm 45 years old now, three
24 years from now I'll be 48. If I have time to
25 file a statute while I'm, until I'm 47, the

1 last day I'm 47 is the day before September
2 30th which would be September 29th. I would
3 like counsel to correct me if I'm wrong. But
4 three years from now I'll be 48 years old. But
5 the day of my birthday I'm a year older. Your
6 statute runs the day before.

7 MR. LUGINBILL: Contract calls for two full years,
8 24 months --

9 MR. WALTERS: It does.

10 MR. LUGINBILL: -- from the date.

11 MR. WALTERS: Right.

12 MR. LUGINBILL: That's the language. From the date

13 MR. WALTERS: And it says --

14 MR. LUGINBILL: You don't count the date of the event
15 and you get 365 times two all the way around
16 which is going to put you back on that date.
17 Additionally, that's not clear. If they wanted
18 to make it clear they could have done it. He
19 could have said in here it expires at twelve
20 midnight on the 14th of 2000. He did not do
21 that.

22 MR. WALTERS: It doesn't say that.

23 MR. LUGINBILL: To be construed against him.

24 MR. WALTERS: But it's not an ambiguity in the
25 contract.

1 MR. LUGINBILL: It is an ambiguity because it's not
2 specified.

3 MR. WALTERS: Well, the problem we have here is that
4 you're arguing that it's 24 months and a day.
5 And that's just not the case here. What we've
6 got here as I said, you've got 24 months that
7 ended on the 14th the day before. It doesn't
8 say 24 months and an additional day. And back
9 to my point about the statutes. The statute
10 runs the day before the event at five o'clock.
11 You don't get an additional day. Correct me if
12 I'm wrong.

13 MR. LUGINBILL: I disagree. I believe he's wrong.

14 MR. WALTERS: I would love to follow up with some
15 case law because I've been there before where
16 I've sat down and said, we've got three years.
17 And then someone in your office walks in and
18 says we can file it today by five o'clock. And
19 my reaction to that is I don't think so. I
20 think we ran out of three years the day before.

21 THE COURT: Well, I think getting back to we're not
22 talking about a statute of limitations.

23 MR. WALTERS: Right. We're not.

24 THE COURT: And I think counsel was correct in saying
25 that it's from that day. Had it been two days

1 or three days or four days, I think we would
2 have to look at the situation, but that day I
3 would, here again, I'll study the both orders
4 and so forth, and the contract. And the way
5 it's written, the way it's ordinarily to take
6 it from its ordinary conclusion would be, that
7 would be within the time frame and certainly
8 would not prejudice your client on that.

9 MR. WALTERS: Yes, sir. And I respect your ruling.

10 I want to address one other issue. The 16,800
11 that's paid for rents, by the Court allowing
12 them to keep \$16,800 in this particular case,
13 what essentially happens is is the Court is
14 saying you can stay here for free because you
15 never paid any rent. And we believe that's in
16 error because under the circumstances, and this
17 goes back to this calculation again, if you
18 stay in the property for 16,800, in other
19 words, you know, it says rents paid which have
20 been applied towards the purchase price, under
21 the circumstances we're essentially allowing
22 these people to walk out of this courtroom and
23 they never paid one dime to stay there. We're
24 saying during the time you were there the
25 16,800 that you paid, you get it all back. We

1 believe that's unequitable and we believe it's
2 in error because under the circumstances no one
3 should be allowed to pay 16,800 for the time
4 that they stayed in the property and the Court
5 turn around and say we're going to give you
6 16,800 back and you're essentially in a
7 position where you've stayed somewhere for
8 free. What's equitable under the circumstances
9 is is that if you've got the use and benefit of
10 staying in the property, there has to be some
11 offset for that because the owner or the seller
12 of the property allowed you to stay there for
13 X period of time. Okay? And if I allow you to
14 stay there for that period of time, what this
15 Court is saying is is that if they believe
16 there is a breach of contract then you get
17 absolutely nothing. Her son was staying in a
18 property for that period of time. If you
19 wanted to make these people whole under the
20 circumstances what we believe is equitable in
21 making them whole there has to be some equity
22 in order for the owner of the property to
23 receive some compensation for the time that
24 they lived there. After all, he's received
25 nothing. And that's essentially what this

1 Court is saying. You rented this property.
2 And we believed there was an imbroglio. There
3 was a dispute. And now what we're going to do
4 to make everyone whole we're going to give all
5 the money back to one side. But client's
6 sitting there saying, well, they've used my
7 property for X period of time. And are you
8 saying that they could stay there for free for
9 that continuous period of time? We don't
10 believe that's fair. It's not equitable. And
11 under the circumstances the bottom line is is
12 that if this is a court of equity and \$16800 is
13 given back to these individuals that were
14 renting the property, that after their money
15 back, they got \$16800 back and they also got
16 the security deposit back, they moved out of
17 the property. And this Court has ruled that,
18 well, it was in an accord and satisfaction.
19 And this Court has also ruled you don't have to
20 give any of the \$16800 back to my client. We
21 simply put before the Court if this is a court
22 of equity that's simply just unfair. It's
23 obvious that there are some ambiguities with
24 the contract. But is it fair for someone to
25 sit in a property for that period of time

1 almost 24 months? No. They went over 24
2 months. They stayed an additional month. To
3 stay for 24 months. And this Court is simply
4 saying to them you walk away and you get all of
5 your money back. We believe that's
6 inequitable.

7 MR. LUGINBILL: Your Honor, I would say that the
8 Court's ruling followed the approach taken by
9 our Supreme Court in Conner versus Alvarez,
10 it's 285 South Carolina 97. It's a 1985 case.
11 The exact facts is right on point. In this
12 case you had Conner was paying monthly rentals
13 to Alvarez. The court awarded him all the
14 monthly rentals that he paid as damages when
15 Alvarez failed to tender the deed after the
16 exercise of the option. Conner had also
17 claimed in that case that he wasn't able to
18 finance the property when he, at the prevailing
19 rate back then and rates went up. And so that
20 cost him money. And the court said, no, we're
21 not going to give you that. But basically what
22 they said in this case it would be grossly
23 unfair and manifestly violative of law and
24 equity to permit Alvarez to breach the
25 agreement and then deny Conner credit for the

1 payments made by him and accepted by Alvarez.
2 You can't breach the contract and come out
3 where you would have been anyway. My clients
4 would have had two years' worth of equity built
5 into that house while they were staying there
6 had he followed through with the contract.
7 That's why they're entitled to that credit
8 because his breach caused him to lose that
9 equity and therefore it's not inequitable to
10 award it. In fact, the Court exactly followed
11 the Supreme Court precedent in this case and I
12 think the Court should uphold its own ruling.

13 THE COURT: I have to agree that although it may
14 seem on the surface to be unequitable that
15 based on what that I believe 85 case that
16 basically locks it in.

17 MR. WALTERS: Yes, sir.

18 THE COURT: a bad situation makes bad law a lot of
19 times.

20 MR. WALTERS: I understand.

21 THE COURT: But some of these cases like this can
22 get real, very very difficult to decide much
23 less make a ruling that may seem on its surface
24 to be inequitable but yet sometimes that's how
25 that happens. This is one of those cases. I

1 guess, excuse me, I guess that's one reason you
2 need to get a lawyer to draw your paper work up
3 in the first place. It's like a will.

4 MR. LUGINBILL: Moral of the story.

5 THE COURT: The moral is get a lawyer first, don't
6 draw your own paperwork up. That way you don't
7 get caught in a bind like this. So that's
8 basically it?

9 MR. WALTERS: Motion denied?

10 THE COURT: Motion denied.

11 (Off the Record)

12 MR. LUGINBILL: As to the, just to clean it up, I
13 think I know how you're going to rule, but as
14 to the supplemental award of attorney's fees of
15 having to appear today.

16 MR. WALTERS: Let me address that issue. We weren't
17 put on notice of that as far as any attorney's
18 fees with regards to this motion to reconsider.
19 I don't know if there was a reply filed for my
20 motion to reconsider.

21 MR. LUGINBILL: I didn't see one.

22 THE COURT: I'm not going to --

23 MR. LUGINBILL: Thank you, judge.

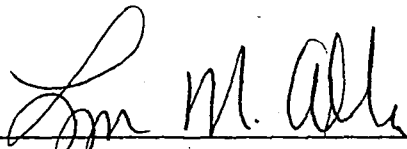
24 (There being no further questions, the hearing
25 concluded at 11:23 a.m.)

CERTIFICATE

This is to certify that the within Hearing consisting of Twenty-One (21) pages, is a true and correct transcript of the testimony given; said hearing was reported by the method of Stenotype with Backup.

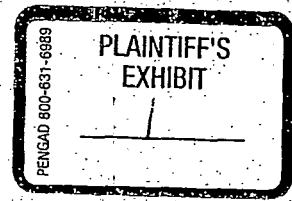
I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 19, 2009.



Lyn M. Allen
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: February 8, 2016



**RESIDENTIAL LEASE
WITH
OPTION TO PURCHASE**

Azim Abdullah
William Parker Jr.

THIS AGREEMENT made and entered into on this 7th day of June, 2004 by and between Azim R. Abdullah _____ hereinafter called Lessor and _____ hereinafter called Lessee.

The Lessor, for and in consideration of the sum of \$ 3,000.00 dollars paid by the Lessee, receipt of which is hereby acknowledged, hereby leases to Lessee, his/her heirs or assignees, the premises situated in the City of Orangeburg County of Orangeburg State of South Carolina, legally described as:

(If the legal description is not included at the time of execution, it may be attached to and incorporated herein afterward.) Commonly known as: 183 Mill Branch Road, Orangeburg, SC 29115 and consisting of a single family home and the attached property (1 acre) upon the following

TERMS and CONDITIONS:

✓ 1. **Personal Property:** Said lease shall include the following personal property:

✓ 2. **Term:** The term hereof shall commence on June 15, 2004 and continue for a period of 24 months thereafter. Option shall expire at the end of the 24 month lease.

✓ 3. **Rent:** Rent shall be \$ 700.00 per month, payable in advance, upon the first day of each calendar month to Lessor or his/her authorized agent at the following address: 902 Ellis Ave. N. E. Orangeburg, SC 29115 or at such other places as may be designated by Lessor from time to time. In the event rent is not paid within five (5) days after due date, Lessee agrees to pay a reasonable late charge of \$ 25.00 plus interest at 10% per annum on the delinquent amount.

4. **Utilities:** Lessee shall be responsible for the payment of all utilities and services except which shall be paid by the Lessor.

5. **Use:** The premises shall be used as a residence and for no other purpose without prior written consent of Lessor.

6. **House Rules:** In the event that the premises are in a building containing more than one unit, Lessee agrees to abide by any and all house rules, whether promulgated before or after the execution hereof including, but not limited to, rules with respect to noise, odors, disposal of refuse, pets, parking, and use of common areas.

7. **Assignment And Subletting:** Lessee may not assign this agreement or sublet any portion of the premises without prior written consent of the Lessor.

8. **Maintenance, Repairs, Or Alterations:** Lessee shall maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings therein, and shall surrender the same at termination thereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for damages caused by his/her negligence and that of his/her family, or invitees or guests. Lessee shall maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish and weeds, if such grounds are part of the premises and are exclusively for use of the Lessee.

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9. **Entry and Inspection:** Lessee shall permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises or for making repairs.

10. **Possession:** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby nor shall this agreement be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this agreement if possession is not delivered within 10 days of the commencement of the term hereof.

11. **Security/Option Consideration:** The security deposit of \$ 3,000.00 shall secure the performance of the Lessee's obligations hereunder. Lessor may, but shall not be obligated to, apply all or portions of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee.

12. **Deposit Funds:** Any returnable deposits shall be refunded within fifteen (15) days from the date possession is delivered to Lessor or his/her authorized agent.

13. **Attorney Fees:** The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorneys' fees.

14. **Notices:** Any notice which either party may or is required to give may be given by mailing the same, postage prepaid, to Lessee or at such other places as may be designated by the parties from time to time.

15. **Heirs, Assigns, Successors:** This lease and option shall include and insure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

16. **Time:** Time is of the essence of this agreement. This offer shall terminate if not accepted before June 8, 2004

17. **Holding Over:** Any holding over after expiration of the term of this lease, with the consent of the Lessor, shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable.

18. **Default:** If Lessee shall fail to pay rent when due or perform any term hereof after not less than three (3) days written notice of such default given in the manner required by law, the Lessor at his/her option may terminate all rights of the Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property while in default of payment of rent, Lessor may consider any property left on premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the lessor reasonably believes that such abandoned property has no value, it may be discarded.

19. **Option:** Lessee shall have the option to purchase the leased premises described herein upon the following TERMS and CONDITIONS:

- a. The total purchase price shall be Sixty Five Thousand Dollars (\$65,000.00)
- b. All deposits and rents paid within the first year will be applied at 100% towards the purchase. Second years rents will apply at 50%.
- c. The purchase price shall be paid as follows: Cash or Certified Funds.

20. **Encumbrances:** Lessee shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Covenants, conditions, restrictions, reservations, rights, rights of way, and easements of record, if any.

21. **Examination of Title:** Lessee shall have fifteen (15) days from the date of receipt of title report to examine the title to the property and to report, in writing, any valid objections thereto. Any exceptions to the title, which would be disclosed by examination of the records, shall be deemed to have been accepted unless reported in writing within said fifteen (15) days. If Lessee objects to any exceptions to the title,

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Lessor shall use all due diligence to remove such exceptions at his/her own expense within sixty (60) days thereafter. But if such exceptions cannot be removed within the sixty (60) days allowed, all rights and obligations hereunder may, at the election of the Lessee, terminate and end unless he/she elects to purchase the property subject to such exceptions.

22. Evidence Of Title: Lessor shall provide evidence of Title in the form of a policy of title insurance at Lessor's expense.

23. Bill Of Sale: The personal property identified in paragraph shall be conveyed by bill of sale.

24. Closing: Closing shall be within 10 days from exercise of the option unless otherwise extended by other terms of this agreement.

25. Prorations: Tax and insurance escrow account, if any, to be transferred intact to Lessee with no prorations. Interest and other expenses of the property to be prorated as of the date of closing. Unpaid real estate taxes, security deposits, advance rentals, or considerations involving future lease credits shall be credited to the Lessee.

26. Expiration Of Option: This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

27. Exercise Of Option: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice, if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given upon the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

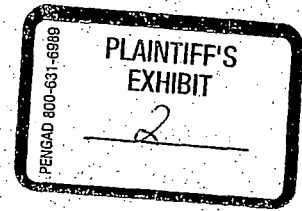
28. Right To Sell: Lessor warrants to Lessee that Lessor is the legal owner of the leased premises and has the legal right to sell leased premises under the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

_____ LESSEE	_____ LESSOR
<i>William Parker Jr.</i> LESSEE	<i>Ben Abdullah</i> 6/8/2004 LESSOR
_____ ADDRESS	902 Ellis Ave N. E., _____ ADDRESS
<i>183 Millbranch Rd</i>	Orangeburg, SC 29115

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**RESIDENTIAL LEASE
WITH
OPTION TO PURCHASE**



THIS AGREEMENT made and entered into on this 7th day of June, 2004 by and between Pier Abdullah and Aazim R. Abdullah hereinafter called Lessor and Dorothy Parker and William Parker Jr., hereinafter called Lessee.

The Lessor, for and in consideration of the sum of \$ 3,000.00 dollars paid by the Lessee, receipt of which is hereby acknowledged, hereby leases to Lessee, his/her heirs or assignees, the premises situated in the City of Orangeburg County of Orangeburg State of South Carolina, legally described as:

(If the legal description is not included at the time of execution, it may be attached to and incorporated herein afterward.) Commonly known as: 183 Mill Branch Road., Orangeburg, SC 29115 and consisting of a single family home and the attached property (1 acre) upon the following
TERMS and CONDITIONS:

1. Personal Property: Said lease shall include the following personal property:

2. Term: The term hereof shall commence on June 15, 2004 and continue for a period of 24 months thereafter. Option shall expire at the end of the 24 month lease.

3. Rent: Rent shall be \$ 700.00 per month, payable in advance, upon the 8th day of each calendar month to Lessor or his/her authorized agent at the following address: 902 Ellis Ave. N. E. Orangeburg, SC 29115 or at such other places as may be designated by Lessor from time to time. In the event rent is not paid within five (5) days after due date, Lessee agrees to pay a reasonable late charge of \$ 25.00 plus interest at -0- % per annum on the delinquent amount.

4. Utilities: Lessee shall be responsible for the payment of all utilities and services except which shall be paid by the Lessor.

5. Use: The premises shall be used as a residence and for no other purpose without prior written consent of Lessor.

6. House Rules: In the event that the premises are in a building containing more than one unit, Lessee agrees to abide by any and all house rules, whether promulgated before or after the execution hereof, including, but not limited to, rules with respect to noise, odors, disposal of refuse, pets, parking, and use of common areas.

7. Assignment And Subletting: Lessee may not assign this agreement or sublet any portion of the premises without prior written consent of the Lessor.

8. Maintenance, Repairs, Or Alterations: Lessee shall maintain the premises in a clean and sanitary manner including all equipment, appliances, furniture and furnishings therein, and shall surrender the same at termination thereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for damages caused by his/her negligence and that of his/her family, or invitees or guests. Lessee shall maintain any surrounding grounds, including lawns and shrubbery, and keep the same clear of rubbish and weeds, if such grounds are part of the premises and are exclusively for use of the Lessee.

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9. Entry and Inspection: Lessee shall permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises or for making necessary repairs.

10. Possession: If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby nor shall this agreement be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this agreement if possession is not delivered within 10 days of the commencement of the term hereof.

* **11. Security/Option Consideration:** The security deposit of \$ 3,000.00 shall secure the performance of the Lessee's obligations hereunder. Lessor may, but shall not be obligated to, apply all or portions of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee.

12. Deposit Funds: Any returnable deposits shall be refunded within fifteen (15) days from the date possession is delivered to Lessor or his/her authorized agent.

* **13. Attorney Fees:** The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorneys' fees.

14. Notices: Any notice which either party may or is required to give may be given by mailing the same, postage prepaid, to Lessee or at such other places as may be designated by the parties from time to time.

15. Heirs, Assigns, Successors: This lease and option shall include and insure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

16. Time: Time is of the essence of this agreement. This offer shall terminate if not accepted before June 8, 2004

17. Holding Over: Any holding over after expiration of the term of this lease, with the consent of the Lessor, shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable.

18. Default: If Lessee shall fail to pay rent when due or perform any term hereof after not less than three (3) days written notice of such default given in the manner required by law, the Lessor at his/her option may terminate all rights of the Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property while in default of payment of rent, Lessor may consider any property left on premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the lessor reasonably believes that such abandoned property has no value, it may be discarded.

19. Option: Lessee shall have the option to purchase the leased premises described herein upon the following TERMS and CONDITIONS:

- a. The total purchase price shall be Sixty Five Thousand Dollars (\$65,000.00)
- b. All deposits and rents paid within the first year will be applied at 100% towards the purchase. Second years rents will apply at 100%.
- c. The purchase price shall be paid as follows: Cash or Certified Funds. _____

20. Encumbrances: Lessee shall take title to the property subject to: (1) Real Estate Taxes not yet due and (2) Covenants, conditions, restrictions, reservations, rights, rights of way, and easements of record, if any.

* **21. Examination of Title:** Lessee shall have fifteen (15) days from the date of receipt of title report to examine the title to the property and to report, in writing, any valid objections thereto. Any exceptions to the title, which would be disclosed by examination of the records, shall be deemed to have been accepted unless reported in writing within said fifteen (15) days. If Lessee objects to any exceptions to the title,

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Lessor shall use all due diligence to remove such exceptions at his/her own expense within sixty (60) days thereafter. But if such exceptions cannot be removed within the sixty (60) days allowed, all rights and obligations hereunder may, at the election of the Lessee, terminate and end unless he/she elects to purchase the property subject to such exceptions.

22. Evidence Of Title: Lessor shall provide evidence of Title in the form of a policy of title insurance at Lessor's expense.

23. Bill Of Sale: The personal property identified in paragraph shall be conveyed by bill of sale.

24. Closing: Closing shall be within 10 days from exercise of the option unless otherwise extended by other terms of this agreement.

25. Prorations: Tax and insurance escrow account, if any, to be transferred intact to Lessee with no prorations. Interest and other expenses of the property to be prorated as of the date of closing. Unpaid real estate taxes, security deposits, advance rentals, or considerations involving future lease credits shall be credited to the Lessee.

26. Expiration Of Option: This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

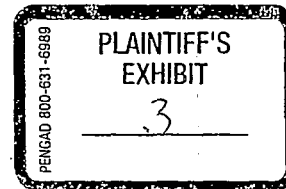
27. Exercise Of Option: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice, if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given upon the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

28. Right To Sell: Lessor warrants to Lessee that Lessor is the legal owner of the leased premises and has the legal right to sell leased premises under the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

<u>Dorothy A. Parker</u> LESSEE	<u>Lee Abdullah</u> LESSOR
<u>William Parker Jr.</u> LESSEE	<u>Ag R. Cobb</u> LESSOR
<u>121 Quest Field Dr.</u> ADDRESS	<u>902 Ellis Ave N. E.</u> ADDRESS
<u>North S. C. 29112</u>	<u>Orangeburg, SC 29115</u>

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June 15, 2006

Hand Delivered
Mr. Pier Abdullah and Aazim R. Abdullah

Orangeburg, S.C. 29115

RE: 183 Mill Branch Road, Orangeburg
Option to Purchase

Dear Mr. Abdullah and Mr. Abdullah:

Please be advised that we are exercising our right to purchase the above property. Per the Option to purchase, we are exercising our right under option No. 2 of the said Lease with Option dated June, 2004. We hereby further exercise our right according to the said Lease, number 19 Option, that the said purchase price is \$65,000.00. As stated, a credit of 24 months at \$700.00, which totals, \$16,800.00. In addition, we exercise our right to \$3,000.00 credit of deposit. The total of \$19,800.00. The balance of \$45,200.00 is ready for payment via the cashier's check drawn on First Citizens Bank. I am enclosing a copy of the same. This payment will be made immediate upon Title Examination, No. 21, of our Option to Purchase. Please advise me of the attorney in which you wish to use for this transaction.

Again, this letter is to serve as official notice and our right to purchase the above property per our contract dated June, 2004. This option to purchase is being done according to No. 19 terms and conditions. We have met the condition to notify you and provide proof that the funds are available.

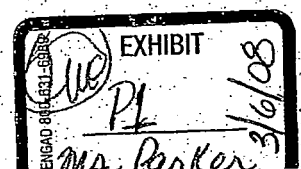
Please notify us immediately for closing date. Thanking you in advance for your cooperation in this matter.

Sincerely,

Dorothy Parker and William Parker

William Parker Jr.
Dorothy G. Parker

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**RESIDENTIAL LEASE
WITH
OPTION TO PURCHASE**

THIS AGREEMENT made and entered into on this 7th day of June, 2004 by and between __ Pier Abdullah and Aazim R. Abdullah __ hereinafter called Lessor and __ Dorthy Parker and William Parker Jr., hereinafter called Lessee.

The Lessor, for and in consideration of the sum of \$ 3,000.00_ dollars paid by the Lessee, receipt of which is hereby acknowledged, hereby leases to Lessee, his/her heirs or assignees, the premises situated in the City of Orangeburg __ County of Orangeburg __ State of South Carolina __, legally described as:

(If the legal description is not included at the time of execution, it may be attached to and incorporated herein afterward.) Commonly known as: 183 Mill Branch Road., Orangeburg, SC 29115 and consisting of a single family home and the attached property (1 acre) upon the following
TERMS and CONDITIONS:

1. Personal Property: Said lease shall include the following personal property:

2. Term: The term hereof shall commence on __ June 15, 2004 __ and continue for a period of 24 __ months thereafter. Option shall expire at the end of the 24 month lease.

3. Rent: Rent shall be \$ 700.00 __ per month, payable in advance, upon the __ 8th __ day of each calendar month to Lessor or his/her authorized agent at the following address: 902 Ellis Ave. N. E. Orangeburg, SC 29115 __ or at such other places as may be designated by Lessor from time to time. In the event rent is not paid within five (5) days after due date, Lessee agrees to pay a reasonable late charge of \$ 25.00 __ plus interest at -0- % per annum on the delinquent amount.

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9. **Entry and Inspection:** Lessee shall permit Lessor or Lessor's agents to enter the premises at reasonable times and upon reasonable notice for the purpose of inspecting the premises or for making necessary repairs.

10. **Possession:** If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby nor shall this agreement be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this agreement if possession is not delivered within 10 days of the commencement of the term hereof.

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12. **Deposit Funds:** Any returnable deposits shall be refunded within fifteen (15) days from the date possession is delivered to Lessor or his/her authorized agent.

* 13. **Attorney Fees:** The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorneys' fees.

14. **Notices:** Any notice which either party may or is required to give may be given by mailing the same, postage prepaid, to Lessee or at such other places as may be designated by the parties from time to time.

15. **Heirs, Assigns, Successors:** This lease and option shall include and insure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto.

16. **Time:** Time is of the essence of this agreement. This offer shall terminate if not accepted before June 8, 2004

17. **Holding Over:** Any holding over after expiration of the term of this lease, with the consent of the Lessor, shall be construed as a month-to-month tenancy in accordance with the terms hereof, as applicable.

18. **Default:** If Lessee shall fail to pay rent when due or perform any term hereof after not less than three (3) days written notice of such default given in the manner required by law, the Lessor at his/her option may terminate all rights of the Lessee hereunder, unless Lessee, within said time, shall cure such default. If Lessee abandons or vacates the property while in default of payment of rent, Lessor may consider any property left on premises to be abandoned and may dispose of the same in any manner allowed by law. In the event the lessor reasonably believes that such abandoned property has no value, it may be discarded.

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- b. All deposits and rents paid within the first year will be applied at 100% towards the purchase. Second years rents will apply at 100%.
- c. The purchase price shall be paid as follows: Cash or Certified Funds. _____

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* 21. **Examination of Title:** Lessee shall have fifteen (15) days from the date of receipt of title report to examine the title to the property and to report, in writing, any valid objections thereto. Any exceptions to the title, which would be disclosed by examination of the records, shall be deemed to have been accepted unless reported in writing within said fifteen (15) days. If Lessee objects to any exceptions to the title,

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Lessor shall use all due diligence to remove such exceptions at his/her own expense within sixty (60) days thereafter. But if such exceptions cannot be removed within the sixty (60) days allowed, all rights and obligations hereunder may, at the election of the Lessee, terminate and end unless he/she elects to purchase the property subject to such exceptions.

22. Evidence Of Title: Lessor shall provide evidence of Title in the form of a policy of title insurance at Lessor's expense.

23. Bill Of Sale: The personal property identified in paragraph shall be conveyed by bill of sale.

24. Closing: Closing shall be within 10 days from exercise of the option unless otherwise extended by other terms of this agreement.

* **25. Prorations:** Tax and insurance escrow account, if any, to be transferred intact to Lessee with no prorations. Interest and other expenses of the property to be prorated as of the date of closing. Unpaid real estate taxes, security deposits, advance rentals, or considerations involving future lease credits shall be credited to the Lessee.

* **26. Expiration Of Option:** This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

* **27. Exercise Of Option:** The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice, if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given upon the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

28. Right To Sell: Lessor warrants to Lessee that Lessor is the legal owner of the leased premises and has the legal right to sell leased premises under the terms and conditions of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written:

Dorothy A. Parker ^{6/8/04} [Signature]
LESSEE LESSOR

William Parker ^{6/8/04} [Signature]
LESSEE LESSOR

121 Quest Field Dr. 902 Ellis Ave N.E.
ADDRESS ADDRESS

North S.C. 29112 Orangeburg, SC 29115

0000175

PRINTED WITH A BLUE BACKGROUND ON WHITE PAPER - THE BACK OF THIS CHECK HAS AN ARTIFICIAL WATERMARK HOLE AT AN ANGLE TO VIEW



340 70001
BRANCH NO.

DEBBY PARKER

DATE JUN 15, 2006

PAV Forty Five Thousand Two Hundred Dollars and 00/100**

\$ 45,200.00

06/15/06
ORDER
OF

340020-0067 Cashier's Check CC \$45,200.00

CASHIER CHECK

FIRST CITIZENS BANK AND TRUST COMPANY, INC.

DEPOSIT COPY
NON-NEGOTIABLE

AUTHORIZED SIGNATURE

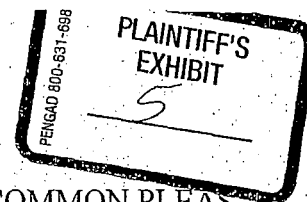
PENGAD 800-631-6889

PLAINTIFF'S
EXHIBIT

4

Account Number	Posting Date	Amount	Serial Number	Sequence Number
9801994990	2006-06-15	\$45,200.00	3968756	00000000007000167261

0000176



STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

William Parker and Dorothy Parker,)

Plaintiff)

vs.)

Pier Abdullah and Aazim Abdullah)
aka Lynwood K. Daniels,)

Defendant)

AFFIDAVIT OF ATTORNEY FEES
AND COSTS
Case No. 07-CP-38-717

Personally appeared before me, J. Christopher Wilson, who being duly sworn,
says:

I am attorney for Plaintiff in this action. I was admitted to the South Carolina Bar
in November 1994 and have been engaged in the private practice of law since July 1995.
I am engaged in trial practice. I am an active member of the South Carolina and
Bamberg County Bar.

I incorporate herein Rule 407 of the South Carolina Appellate Court rules, and
further call attention the factors which should be considered in setting attorney fees, and
rely upon the discretion of the Court in determination of the amount of fees, based upon
among other things, the Court file, the Court's knowledge of the litigation between the
parties, the difficulty of the services rendered, the time necessarily expended, the result,
the professional standing of counsel, fees customarily charged in this area.

The Contract at issue in this matter calls for attorney fees and costs to the
prevailing party.

0000177

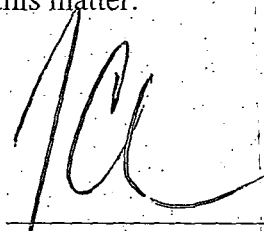
During this case, the time and expenses more fully set forth herein and on the attached Time/Cost Sheet were necessary and expended in this matter.

SWORN TO and SUBSCRIBED BEFORE ME

THIS 10th day of December, 2008

Victoria

Notary Public for S. C. - COMM. Expires: 3/5/09



J. Christopher Wilson

0000178

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

William Parker and Dorothy Parker,)
)
Plaintiff)

vs.)

Pier Abdullah and Aazim Abdullah)
aka Lynwood K. Daniels,)
)
Defendant)

AFFIDAVIT OF ATTORNEY FEES
AND COSTS - Attachment
Case No. 07-CP-38-717

02-28-07	Meeting with Plaintiffs	1.00
03-07-07	Legal Research re: specific performance/unjust enrichment	0.55
03-20-07	Research Courthouse records re: Defendants/property	1.00
03-23-07	Review plat	0.20
05-01-07	Legal research	0.90
05-08-07	Travel Orangeburg; view property	1.00
05-21-07	Research RMC/Courthouse records re: Defendants	0.60
05-21-07	Review fax and pleadings re: Foreclosure of property	0.25
05-29-07	Meeting with Plaintiffs	0.30
06-06-07	Draft and prepare/file Summons and Complaint	2.00
06-07-07	Internet Research re: Defendant/ Defendant location	0.40
06-07-07	Letters – serving S&C	0.20
07-03-07	Review Defendant Answer; letter – clients re: Answer	0.30
07-09-07	Prepare discovery requests to Defendants; letters	0.60
09-07-07	Prepare Motion to Compel; letters	0.40
11-30-07	Prepare consent order re: Motion to Compel	0.30
12-04-07	Letter re: consent order	0.10
12-19-07	Review Defendant discovery responses	0.50
01-02-08	Letters re: depositions	0.25
02-15-08	Internet Research re: Defendant criminal background	0.20
02-20-08	Letters re: depositions	0.25
03-06-08	Meeting with Plaintiffs re: depo prep; attend Plaintiff Dorothy Parker deposition; Attend Defendants' depositions; Travel-Orangeburg	2.50
03-12-08	Letter – Defendant attorney re: offer of settlement	0.30
05-12-08	Prepare and send Supp Discovery request; letter	0.40
06-12-08	TC – Defendant attorney re: settlement/Order of Reference	0.20
06-17-08	TC – clients re: settlement/Order of Reference	0.20
06-18-08	Letter – client	0.10
07-27-08	Meeting with Plaintiffs; prepare for trial term	1.85

0000179

07-27-08	Attend CP Roll Call; travel – Orangeburg	2.00
08-04-08	Letters re: trial hearing	0.30
09-04-08	Review Defendant attorney letter and discovery requests	0.25
09-09-08	Letter re: depositions/Spec Ref hearing	0.25
10-14-08	Prepare Discovery responses to Defendant; letter	1.00
10-31-08	Meeting with William Parker re: depo prep; travel – Orangeburg; attend Deposition of Plaintiff William Parker	1.60
11-14-08	Review Plaintiff William Parker Deposition; Letter – client	0.50
12-02-08	Letter re: ERRATA Sheet (William Parker)	0.10
12-08-08	Prepare for trial; legal research	2.00
12-09-08	Meeting with clients re: trial preparation	1.00

TOTAL TIME: 25.85 hours

HOURLY RATE: \$150.00 per hour

25.85 hours * \$150.00 per hour = \$3,877.50

TOTAL COSTS = \$947.15 (see attached cost sheet)

TOTAL TIME AND COSTS: 4,824.65

0000180

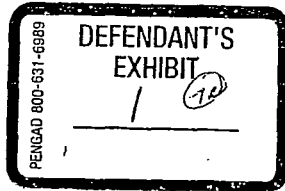
Dorothy Parker

Page 1

Dorothy Parker
12/10/2008

Date	Num	Transaction	Increase	C	Decrease	Balance
4/30/2007		Opening Balance cat: [Dorothy Parker]				0.00
6/8/2007		Orangeburg Clerk Of Court cat: Filing Fee memo: S&C			150.00	150.00
9/7/2007		Orangeburg Clerk Of Court cat: Filing Fee memo: motion to compel			25.00	175.00
5/16/2008		Adams Reporting Services cat: Deposition memo: Dorothy Parker; Aazim Abdullah; Pier Abdullah			641.40	816.40
8/4/2008		Honorable O. Davie Burgdorf cat: Hearing Exp.			50.00	866.40
12/10/2008		Creel Court Reporting cat: Deposition memo: W. Parker			80.75	947.15

0000181



William & Dorothy Parker

183 Millbranch Road

Orangeburg, SC 29115

Telephone: (803) 837-2348

July 18, 2006

To: Mr. Aazim Abdullah

From: Mr. William and Dorothy Parker

Re: Security Deposit

Please be advised, because of your decision to terminate our agreement without just cause; per our agreement to purchase the property located @ 183 Mill Branch Road we the leaseholder request the sum of three thousand dollars (\$3000.00) be returned to us in the form of cash, cashier check or money order that was given to you as a security deposit.

Please respond with a call letting us know what date we can expect to receive our full refund or the refund can be mailed via certified mail to the above address.

In Appreciation,

William & Dorothy Parker

William & Dorothy Parker
Property Owner

Date 7/19/2006

Lessor

Date _____

0000182

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

William Parker and Dorothy Parker,)

Plaintiff)

vs.)

Pier Abdullah and Aazim Abdullah)
aka Lynwood K. Daniels,)

Defendant)

SUPPLEMENTAL
AFFIDAVIT OF ATTORNEY FEES
AND COSTS
Case No. 07-CP-38-717

Personally appeared before me, J. Christopher Wilson, who being duly sworn,
says:

I am attorney for Plaintiff in this action. I was admitted to the South Carolina Bar
in November 1994 and have been engaged in the private practice of law since July 1995.
I am engaged in trial practice. I am an active member of the South Carolina and
Bamberg County Bar.

I incorporate herein Rule 407 of the South Carolina Appellate Court rules, and
further call attention the factors which should be considered in setting attorney fees, and
rely upon the discretion of the Court in determination of the amount of fees, based upon
among other things, the Court file, the Court's knowledge of the litigation between the
parties, the difficulty of the services rendered, the time necessarily expended, the result,
the professional standing of counsel, fees customarily charged in this area.

The Contract at issue in this matter calls for attorney fees and costs to the
prevailing party.

0000133

During this case, the time and expenses more fully set forth herein and on the attached Time/Cost Sheet (Attachment A) were necessary and expended in this matter.

SWORN TO and SUBSCRIBED BEFORE ME

THIS 21 day of April, 2008

Gayle Swaloda

Notary Public for S. C. – COMM. Expires: 1-30-2012

J. Christopher Wilson
J. Christopher Wilson

0000184

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 William Parker and Dorothy Parker,)
)
 Plaintiff)
)
 vs.)
)
 Pier Abdullah and Aazim Abdullah)
 aka Lynwood K. Daniels,)
)
 Defendant)

IN THE COURT OF COMMON PLEAS

SUPPLEMENTAL
 AFFIDAVIT OF ATTORNEY FEES
 AND COSTS – Attachment A
 Case No. 07-CP-38-717

02-28-07	Meeting with Plaintiffs	1.00
03-07-07	Legal Research re: specific performance/unjust enrichment	0.55
03-20-07	Research Courthouse records re: Defendants/property	1.00
03-23-07	Review plat	0.20
05-01-07	Legal research	0.90
05-08-07	Travel Orangeburg; view property	1.00
05-21-07	Research RMC/Courthouse records re: Defendants	0.60
05-21-07	Review fax and pleadings re: Foreclosure of property	0.25
05-29-07	Meeting with Plaintiffs	0.30
06-06-07	Draft and prepare/file Summons and Complaint	2.00
06-07-07	Internet Research re: Defendant/ Defendant location	0.40
06-07-07	Letters – serving S&C	0.20
07-03-07	Review Defendant Answer; letter – clients re: Answer	0.30
07-09-07	Prepare discovery requests to Defendants; letters	0.60
09-07-07	Prepare Motion to Compel; letters	0.40
11-30-07	Prepare consent order re: Motion to Compel	0.30
12-04-07	Letter re: consent order	0.10
12-19-07	Review Defendant discovery responses	0.50
01-02-08	Letters re: depositions	0.25
02-15-08	Internet Research re: Defendant criminal background	0.20
02-20-08	Letters re: depositions	0.25
03-06-08	Meeting with Plaintiffs re: depo prep; attend Plaintiff Dorothy Parker deposition; Attend Defendants' depositions; Travel-Orangeburg	2.50
03-12-08	Letter – Defendant attorney re: offer of settlement	0.30
05-12-08	Prepare and send Supp Discovery request; letter	0.40
06-12-08	TC – Defendant attorney re: settlement/Order of Reference	0.20
06-17-08	TC – clients re: settlement/Order of Reference	0.20
06-18-08	Letter – client	0.10
07-27-08	Meeting with Plaintiffs; prepare for trial term	1.85

0000185

07-27-08	Attend CP Roll Call; travel – Orangeburg	2.00
08-04-08	Letters re: trial hearing	0.30
09-04-08	Review Defendant attorney letter and discovery requests	0.25
09-09-08	Letter re: depositions/Spec Ref hearing	0.25
10-14-08	Prepare Discovery responses to Defendant; letter	1.00
10-31-09	Meeting with William Parker re: depo prep; travel – Orangeburg; attend Deposition of Plaintiff William Parker	1.60
11-14-08	Review Plaintiff William Parker Deposition; Letter – client	0.50
12-02-08	Letter re: ERRATA Sheet (William Parker)	0.10
12-08-08	Prepare for trial; legal research	2.00
12-09-08	Meeting with clients re: trial preparation	1.00
12-10-08	Travel to Orangeburg; attend hearing	4.00
12-11-08	Legal Research	1.40
1-12-09	Legal Research; prepare Order	1.65
2-26-09	Review Judge letter; letter – clients	0.20
4-2-09	TC – Glenn Walters	0.10
4-16-09	TC- Glenn Walters	0.20
4-20-09	Legal Research – damages	0.90
4-21-09	TC – Glenn Walters; prepare for hearing	1.65

TOTAL TIME: 35.95 hours

HOURLY RATE: \$150.00 per hour

25.85 hours * \$150.00 per hour = \$5,392.50

TOTAL COSTS = \$1,733.99 (see attached cost sheet)

TOTAL TIME AND COSTS: 7,126.49

0000186

William and Dorothy Parker

Dorothy Parker

Page 1

4/21/2009

Date	Num	Transaction	Increase	C	Decrease	Balance
4/30/2007		Opening Balance cat: [Dorothy Parker]				0.00
6/8/2007		Orangeburg Clerk Of Court cat: Filing Fee memo: S&C			150.00	150.00
6/8/2007		Travel Expense Orangeburg cat: 39 Miles @ .44 memo: filing papers			17.16	167.16
9/7/2007		Orangeburg Clerk Of Court cat: Filing Fee memo: motion to compel			25.00	192.16
5/16/2008		Adams Reporting Services cat: Deposition memo: Dorothy Parker; Aazim Abdullah; Pier Abdullah			641.40	833.56
7/28/2008		Travel Expense cat: 38 Miles @ .585 memo: Roster meeting			22.23	855.79
8/4/2008		Honorable O. Davie Burgdorf cat: Hearing Exp.			50.00	905.79
11/3/2008		Travel Expense cat: 38 Miles @ .585			22.23	928.02
12/10/2008		Creel Court Reporting cat: Deposition memo: W. Parker			80.75	1,008.77
12/10/2008		Travel Expense Orangeburg cat: 39 Miles @ .585 memo: Master-In-Equity hearing			22.82	1,031.59
12/12/2008		Creel Court Reporting cat: Deposition			80.75	1,112.34
2/23/2009		Co Star Reporting cat: Depo Exp.			621.65	1,733.99

0000187

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted this the 3rd day of November, 2010 at Orangeburg, South Carolina.

Glenn Walters, Attorney at Law, PA



R. Bentz Kirby

Glenn Walters

PO Box 1346

Orangeburg, South Carolina 29116

803-531-8844

Facsimile 803-513-3628

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 97-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah

Aka Lynwood K. Daniels, ...Appellants.

BRIEF OF APPELLANT

Glenn Walters, Attorney at Law, PA
R. Bentz Kirby
Glenn Walters
Post Office Box 1346
Columbia, SC 29116
(803) 531-8844
Attorneys for Appellant

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<u>Golini v. Bolton</u> , 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997).	7
<u>Smith-Cooper v. Cooper</u> , 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001)	7
<u>Ellie, Inc. v. Miccichi</u> , 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)	7
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<u>Hawkins v. Greenwood Dev. Corp.</u> , 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997)	7
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Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997) 15

Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). 15

Secondary Sources

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Black's Law Dictionary, Sixth Ed., (West Publishing 1995) 9

STATEMENT OF ISSUES ON APPEAL

1. Did the court err by holding that the lease expired on June 15, 2006 when the express language of the contract was that it was for a term of two years, which would expire on June 14, 2006 and therefore, the lease option was not exercised within two years.
2. Did the Court err by awarding damages equal to all the rents paid when the Plaintiffs failed to offer any evidence of other than minimal damages and this results allows them to use the Defendants' property rent free for two years.
3. Did the Court commit error by failing to hold that the Plaintiffs were barred from recovery by demanding the return of their deposit and accepting the same in accord and satisfaction.
4. Did the Court err in granting the amount of attorneys' fees when the Plaintiffs only submitted evidence of damages amounting to \$550.00 and the court awarded \$4824.65 for attorneys' fees and costs.

STATEMENT OF CASE

The Plaintiff initiated this action by filing a Complaint on June 6, 2007. [R, pp 11-17]. The Defendant filed an Answer on June 27, 2007[R, pp 18-19] and Amended Answer on June 29, 2007. [R, pp 20-21]. The Amended Answer raised the affirmative defense of Waiver. Discovery was had by both written discovery and by depositions.

Thereafter, the case was called for trial on December 10, 2008, before the Honorable O. Davie Burgdorf, Master-in-Equity for Orangeburg County. After the trial, the Court granted a Motion to Dismiss on all causes of action, except the breach of contract claim. He did not direct a verdict on the breach of contract claim and directed the Attorneys to submit purposed Orders which would be the ruling on the Directed Verdict Motion with regard to the Breach of Contract cause of action. [R. pp. 137, l. 22- p. 143, l. 21]. The parties submitted purposed Orders and the Judge signed the Order drafted by the Plaintiffs attorney, which effectively denied the Motion for a Directed Verdict and granted judgment to the Plaintiffs for \$22,074.65, which constituted \$16,800.00 for rents paid, \$450.00 for moving costs, and \$4,824.65 for attorneys' fees and costs.

[R, pp 3-10; R, pp 166-168, and pp 183-187].

The Defendant filed post trial motions to Reconsider the Order pursuant to Rule 59. The grounds were stated as that the calculation of the judgment amount is incorrect, the evidence proved there was an accord and satisfaction among the parties, the Plaintiffs' failed to exercise the option in an timely manner, the exercise of the option was not perfected as the funds were not tendered, and there was no evidence to support any actual and consequential damages. [R, pp 22-23]. A hearing was held on this Motion on September 30, 2009. [R, pp 144-165]. The Motions were denied and this appeal followed.

FACTS

On June 8, 2004, the Plaintiffs and the Defendants signed two contracts with regard to the subject real estate. [R, pp 166-168 and pp 169-171]. There is a dispute as to which was signed first as the Plaintiff, Dorothy Parker, testified that Ex. 2 [R, pp 169-171] was signed first by William Parker and Aazim Abdullah and then Ex. 1 [R, pp 166-168] was signed by both Plaintiffs and Defendants. [R, pp. 28, l. 19- p.31, l.11, R, pp. 32, l. 2- l. 14, R pp. 32, l. 17- p. 33, l. 23]. The Defendant, Aazim Abdullah testified that the four signed Ex. 2 [R, pp 169-171] first and then when he realized there was a mistake in paragraph 19 about the amount of rent to be applied to the purchase price he made the change and had it signed by both himself and William Parker. [R, pp 89, l.6- p.90,l.5, R p 93, l.18- l. 14, R. p 106, l. 4- l. 20]. The primary difference in the contract was the application of the rents under paragraph 19 as Exhibit 2 [R, 169-171] provides for 100% of the second year's rent to be applied and paragraph 20 as Exhibit 1 [R, 166-168] provides for 50% of the second year's rent to be applied to the purchase amount.

According to both parties, they met approximately a month before the lease expired and discussed the possibility of the Plaintiffs purchasing the property. [R, p. 39, l 7 - l 18, pp 94, l 25-

96, l 12]. The parties agreed that Mr. Abdullah insisted he could not give them credit for 100% of the second year's rent and he offered at least 25% credit and the addition of another lot to close the deal. The Plaintiffs say they did not accept this offer. [R, pp 40, l 13- 42, l 5]. The Defendant testified that they indicated that deal would work but called him a few days later and told him they had found another piece of property and did not want to purchase this property. [R, pp. 94, l.5- p. 96 l. 17; pp 103, l. 16- p 106, l. 20].

The lease provide for monthly payments of \$700.00 for rent which was to be applied to the contract purchase price of \$65,000.00. There is a dispute as to which lease controlled and the percentage to be applied to the purchase price. The Plaintiffs made all the payments under the lease except for the two months they held over under the lease. [R, pp 39, l 19- 40, l 12, R, pp 50 l 21- p 51, l 2, pp 53, l 21- p 54 l 15] The lease by its terms was a two year lease regardless of the document.¹ The lease as shown by Exhibit 2 [R, pp 169-171] provided:

2. Term: The term hereof shall commence on June 15, 2004, and continue for a period of 24 months thereafter. Option shall expire at the end of the 24 month lease.

26. Expiration of Option: This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

27. Exercise of Option: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given on the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

The Defendants take the position that both the lease and the option expired on June 14, 2006, while

¹ For the purposes of the briefing and because this Court used Exhibit 2 to calculate its damages, the portions set forth shall be from Exhibit 2.

the Plaintiffs take the position, and the Court so ruled, that the lease and the option expired on June 15, 2006.

Prior to the expiration of the lease, both parties agreed in their testimony that they met to discuss the Option to Purchase and that Mr. Abdullah told the Plaintiffs he could not give them credit for 100% of the rents paid in the second year. Mr. Abdullah believed they had reached an agreement to give them credit of 50% for the second years rent and he would add in an acre of undeveloped lot adjacent to this property. However, he testified that a few days later they called him and told him they were going to purchase another property and he understood the Option was not going to be exercised. [R, pp. 38, l. 22- p. 42, l.14; pp 95, l. 9- p. 96, l. 17; pp 103, l. 14- p. 106, l. 20, pp 116, l. 6- p. 117 l. 3]. The Defendant believed the Plaintiffs were bound by Exhibit 1 [R, pp 166-168], and that they made it clear they were not going to buy the property after this discussion. [Tr. p. 110 l. 5- 14].

On June 15, 2006, the Defendants had a written exercise of the Option delivered to the Defendants by a process server. There also was attached a copy of a check made payable to William Parker Jr. in the amount of \$45,200.00. [R, pp 46, l 18- 49, l 22]. This was done after the above referenced conversation. [R. pp 46, l.18- p. 48, l.13]. The Plaintiffs say that the Defendants refused to close and give them 100% credit for the second years rent. [R. pp 48, l. 25- p. 51, l.9]. However, the Defendant testified he did not tell them he would not sell them the property, but he wanted to because, among other things, he was having financial difficulties, and he thought the deal was over. [R, pp. 117, l. 25- 120, l. 24; p. 122, l. 2- p. 124, l. 25]. The closing never took place and the Defendant testified the Option was not exercised timely as no payment was made and they never asked for a closing or tendered the money. [R, pp. 126, l. 19- 132, l. 9; pp 133 l. 19- p. 134, l. 3].

On July 18, 2006, while the Plaintiffs were occupying the property without paying any rent,

they sent a letter stating the Defendants had terminated the “agreement without just cause” and demanded the return of the \$3000.00 deposit. [R, p 182]. This was sent with the Plaintiff’s address being shown as the rental property in question. According to the testimony of both the Defendants and Plaintiffs, the money was returned less a deduction for two months rent and some minor claim for damage to the trailer. [R. pp. 50, l. 18- p. 51 l. 7; p. 53, l. 21- p. 54, l.15; p. 70, l. 1- p. 72, l. 8; p. 120, l. 7- 24, p. 122, l. 13- p. 124, l. 25]. The lawsuit was filed almost a year after the lease ended and the money was returned. [R, pp 11-17].

At trial, the Plaintiffs testified that the Defendants should not receive any funds for rent since he did not close. [R, pp. 61, l. 13- p. 62, l.18; pp 73, l 24 - p 74, l 20, p. 121, l. 6-13]. The only testimony or evidence regarding any actual damages was the Plaintiffs’ testimony that they had paid \$200.00 to some relatives to help them move, \$250.00 to hook up utilities and \$100.00 to hook up the phone. [R, pp 51, l. 10- p. 54, l. 15]. The only other amounts were the rents paid to stay for two years. The Plaintiffs admitted they had no receipts or other evidence to back up the claim that they had paid the sum of \$550.00 to third parties. [R, p. 75, l. 25- p 77, l. 15]. Despite this absolute lack of any proof of damages the court allowed them the return of 24 months rent, \$16,800.00, plus \$450.00 in moving expenses and \$4824.65 in attorneys’ fees and costs. [R, pp 1-2, R, pp 3-10].

ARGUMENTS

I. THE COURT ERRED IN CONCLUDING THAT THE LEASE EXPIRED ON JUNE 15, 2006 AND THE OPTION WAS EXERCISED TIMELY.

The Respondent argues that because of an ambiguity in the contract, the Court could consider the testimony of the parties as parole evidence to ascertain the meaning of the terms of the contract. However, this argument is misplaced as the ambiguity is whether the option to purchase terminates on June 9, 2006 as set forth in paragraph 26 or twenty four months after it commenced

on June 15, 2004 as stated in paragraph 2. [R, pp 166-168, R, pp 169-171]. There is nothing within the written terms of the lease which creates an ambiguity as to whether the option terminates on June 14, 2006, twenty-four months after the lease began on June 15, 2004, or on June 15, 2006, twenty four months and one day after the lease began on June 15, 2004. Option contracts are to be strictly construed in favor of the optionor and against the optionee. Barnacle Broadcasting, Inc. vs. Baker Broadcasting, Inc., 343 SC 140, 538 SE2d 672 (Ct. App. 2000); 49 Am. Jur. 2d, Landload and Tenant, §314 (2006). If the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required. Id.; 49 Am. Jur. 2d, Landlord and Tenant, §323 (2006). The intention of the parties is to be gathered from the whole scope and effect of the language used. Id. There is nothing within either contract, exhibits 1 or 2, which indicates an extra day was to be allowed to the lessees to exercise the option. The court read this into the contract and reliance upon parole evidence was improper as it extended the meaning of the contract beyond the express language in the contract. See, McGill vs. Moore, 381 SC 179, 672 SE2d 571 (2009).

In a recent case the Court of Appeals discussed the law and its general application to a case such as this when a judge tries a breach of contract action without a jury. Ward vs. West Oil Company, Inc., 379 SC 225, 665 SE2d 618 (SC Ct. App. 2008). In this case the Court states as follows:

An action for breach of contract seeking money damages is an action at law." (Citations omitted). Generally, an action to construe a contract is one at law. Patricia Grand Hotel, LLC v. MacGuire Enter., Inc., 372 S.C. 634, 638, 643 S.E.2d, 692, 694 (Ct. App. 2007); see Jacobs v. Service Merch. Co., 297 S.C. 123, 127, 375 S.E.2d 1, 3 (Ct. App. 1988) (noting an action to construe an unambiguous written contract is one at law); see also Barnacle Broad., Inc. v. Baker Broad., Inc., 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000).

In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably

supports the judge's findings... The judge's findings are equivalent to a jury's findings in a law action." Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976); accord , Patricia Grand Hotel, 372 S.C. at 638, 643 S.E.2d at 694; Cohens v. Atkins, 333 S.C. 345, 347, 509 S.E.2d 286, 288 (Ct. App.1998); Small v. Pioneer Mach. Inc., 329 S.C. 448, 461, 494 S.E.2d 835, 841 (Ct. App. 1997). "[Q]uestions regarding the credibility and the weight of evidence are exclusively for the trial judge." Golini v. Bolton, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997).

In light of the contract being ambiguous, the contract is to be interpreted by the Court. Smith-Cooper v. Cooper, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct. App. 2001). "A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear." Ellie, Inc. v. Miccichi, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). "[A]n ambiguous contract is one capable of being understood in more senses than one, an agreement obscure in meaning, through indefiniteness of expression, or having a double meaning." Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 155-56, 161 S.E.2d 179, 181 (1968) (citation omitted).

The construction of a clear and unambiguous contract is a question of law for the court. S.C. Dep't of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001). Whether a contract's language is ambiguous is a question of law. S.C. Dep't of Natural Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001). A contract is ambiguous when the terms of the contract are inconsistent on their face, or are reasonably susceptible of more than one interpretation. Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Id.*

It is clear that the one of the Defendants drafted the contract and therefore it is to be

construed against the Defendants. Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning should be resolved against the party who prepared the contract or is responsible for the verbiage. Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981).

This case is very similar to the Ward vs. West Oil case in that there were multiple agreements and the provisions within the contract, taken as a whole, which contained conflicting provisions. Therefore, this Court has to interpret the contract, including any parole evidence in order to give effect to the intent of the parties. However, as stated in Ward, the court is to use common sense as its touchstone in construing the contract. Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail.

Here there are two contracts and a dispute as to which was executed first. The Defendants drafted the contracts so for the purpose of argument we will assume that Plaintiffs' Ex. 1 [R, pp 166-168] is the applicable contract and the Plaintiffs would be entitled to 100% of the rents paid in the second year as a credit. However, the court mis-interpreted the contract and deviated from common sense when it held that "Based upon the internal ambiguities, which must be construed against the Defendants, I find the option expired on June 15, 2006. [R, pp 1-2]. At no place in either contract does the contract state that the Option expires on June 15, 2006. The conflict and ambiguity is between the language in paragraph 26, where it says the option expires on June 9, 2006 and in paragraph 1 which states that the Option shall expire at the end of the 24 month lease. It does not in any written portion of the contract state that the Option or Lease expires on June 15, 2004. The

lease does state that it commences on June 15, 2004 and is for a 24 month term. Twenty-four months is equal to a two year lease. A year is the "period in which the revolution of the round the sun, and the accompanying changes in the order of nature, are completed. Generally, when a statute speaks of a year, twelve calendar, and not lunar months are intended." Black's Law Dictionary, Sixth Ed., pg 1615, (West Publishing 1995). A Calendar Month is defined as "Period terminating with day succeeding month, numerically corresponding to day of its beginning, less one. Id., at 204. And a Calendar Year is defined as "The period from January 1 to December 31 inclusive. Id. at 204. Thus looking to common sense definitions, and the way statutes of limitations are interpreted, the year does not include the day upon which it begins. Thus, the 24 month, or two year, period ended at midnight on June 14, 2006. The court's interpretation that the option expires on June 15, 2006 is not supported by either the contract or common sense.

As set forth above there is an ambiguity but it does not include the date of June 15, 2006. The Court was in error to so read and interpret the contract as it expired on June 14, 2006, as did the option and it was not timely exercised. The Court can not expand the term of the lease and the option by arbitrarily adding a day to the term of its existence. There is no ambiguity in the language that it began on June 15, 2006 and ran for twenty four months. Thus the lower court was in error and no damages should have been awarded as the Option was not timely exercised.

"An option contract is interpreted according to its actual terms and the context in which the contract was made. In general, if the contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular sense." Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (S.C. 2000). "Option contracts generally have three main characteristics: (1) they are unilateral contracts where the optionor, for a valuable consideration, grants the optionee a right to make a

contract of purchase but does not bind the optionee to do so; (2) they are continuing offers to sell, irrevocable during the option period; and (3) the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract.” Id. “It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and against the optionee. See Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976). Furthermore, if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required. Id. at 653, 230 S.E.2d at 717-718.” Id.

It is therefore clear that the Plaintiffs failed to comply with the terms of the Option in the Lease contract and the trial court should have directed a verdict in favor of the Plaintiffs.

II. THE COURT ERRED IN ALLOWING THE RECOVERY OF DAMAGES BY THE PLAINTIFFS WHEN THE PLAINTIFFS FAILED TO PROVE THEY SUFFERED ANY DAMAGES AND THE COURT FAILED TO ACCOUNT FOR THE VALUE OF THE RENT FOR TWO YEARS.

The Court allowed the Plaintiffs to recover all the rent they paid as damages for a breach of the option contract in the lease, together with \$450.00 in moving costs. [R, pp 3-10; pp1-2]. The Court finds that the Plaintiffs breached the Option Contract in the Lease by failing to sell the property when the Plaintiffs exercised the Option. [R, pp 3-10]. However, instead of providing any reason or justification for awarding the rent paid for two years as damages, it simply states that “Defendants should not be allowed to retain monies paid which should have been applied to the purchase of the home which Defendants prevented by their breach of the lease/option. [Id. at 7]. The position of the Defendants is that this is not a common sense reading of the contract as it does not account for the rent payments which were due for the 24 months. Nor, does the Court state, or do the Plaintiffs testify as to how this is a measure of their damages.

The Plaintiffs did not bring an action for specific performance. Had they done so, the rents would have been applied to the purchase price. This would then be a correct measure of damages they suffered and they would then pay for the Option and receive the property by way of a deed. Conner vs Alvarez, 285 SC 97, 328 SE2d 334 (1985). This case is not like Conner because the Defendants did not seek specific performance, rather they sued for money damages for a breach of contract. Damages for a breach of contract are to put the Plaintiff into the same position he would have been had the contract been performed. Minter v. GOCT, Inc., 322 SC 525, 473 SE2d 67 (1996). As shown in the testimony set forth above, according to this calculation of damages the Defendants received no consideration for allowing the Plaintiffs to rent the property for two years.

The Plaintiffs chose to purchase another property rather than to sue for specific performance. There was no testimony that the amount of rent was excessive or inappropriate. Rather, the only testimony was that the Plaintiffs did not believe the Defendants should keep the rent because they would not sell the property. [R, pp. 53, l 3- p 56, l10, pp 73, l. 24- p 78, l. 9]. There is no testimony that the Plaintiffs could have lived rent free somewhere else during this time period. The only testimony as to any damages is for a total of \$550.00. [R, pp. 51, l. 13- p. 52, l. 22]. This is the only proof of any damages which were suffered as a result of the Defendants purported failure to comply with the lease/option contract. Therefore, the most damages which could have been awarded were \$550.00 to put the Plaintiffs back in the position they would have been if the contract had been completed.²

Damages must be prove to a reasonable specificity to be awarded and are not to be allowed

² Even this measure of damages fails to take into account the fact the Plaintiffs did not have to pay the money it would have taken to comply with the contract. This measure of damages simply returns all rent paid by them.

upon speculation. Here there is insufficient evidence to support the damages award for returning the entire amount of rent paid for 24 months as there is no evidence they suffered any damages because of the failure to have the option exercised and they purchase another property. See Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981) (holding that in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount with reasonable certainty or accuracy and that neither the existence, causation, nor amount of damages can be left to conjecture, guess, or speculation). For instance, the Plaintiffs did not offer any evidence that the property they purchased cost them more than the property owned by the Defendants.³ An actual loss from the breach of contract must be shown. South Carolina Federal Sav. Bank. Vs. Thornton-Crosby Development Co., Inc., 303 SC 232, 399 SE2d 8 (Ct. App. 1990 aff'd South Carolina Federal Sav. Bank vs. Thornton-Crosby Development Co. Inc., 310 SC 232, 423 SE2d 114 (1992). The damages can not be based upon conjecture or speculation. Id.

There is no credible evidence to support the award of the entire 24 months of rent, simply the Court's statement that the Defendants should not be allowed to keep the rents because they did not comply with the lease/option. This is in the nature of punitive damages which are not allowed for a simple breach of contract. Williams v. Riedman, 339 SC 251, 529 SE 2d 28 (2000).

The only evidence of damages amounted to a total of \$550.00 and if the breach of contract finding below is affirmed, the damages should be reduced to the \$450.00 for which some evidence was actually introduced. However, it is the position of the Defendants that because the Plaintiffs testified they had no proof of the payment of any of the expenses, even this award is speculative and

³ Also, the evidence set forth in the record shows they had to wait until a workers compensation award was paid to purchase either property, so there was no lost use of their money.

should be reversed and a directed verdict entered in favor of the Defendants.

III THE COURT ERRED IN CONCLUDING AND HOLDING THAT NO ACCORD AND SATISFACTION OCCURRED AND THE PLAINTIFFS WERE BARRED FROM ANY RECOVERY WHEN THEY DEMANDED AND RECEIVED A REFUND OF THE DEPOSIT.

As set forth above there was evidence that the Plaintiffs demanded the return of their deposit because the Defendants did not sell the property to them. [R, pp 72, l, 21 - p 73, l 15] Further the parties testified that they accepted the return of the sum, less the deduction for two months rent and some small amount for damage to the property. [R., pp. 71, l 19- p 78, l. 9]. The Defendant testified that he believed the matter was resolved and heard nothing from the Plaintiffs until he was sued. [R, pp. 38, l. 22- p. 42, l.14; pp 95, l. 9- p. 96, l. 17; pp 103, l. 14- p. 106, l. 20, pp 116, l. 6- p. 117 l. 3]. The position of the Defendants is that this evidence was sufficient to prove an accord and satisfaction.

Accord and satisfaction occurs when there is an agreement to settle a dispute and consideration to support the agreement. Wilson vs Builder's Transport, Inc., 330 SC 287, 498 SE 2d 674 9 (Ct. App. 1998). There must be a meeting of the minds and the parties must agree to accept something different from what they are claiming is due. Tremont Const. Co. Inc. V. Dunlap, 310 SC 180, 433 SE2d 792 (Ct. App. 1992).

On July 18, 2006, while the Plaintiffs were occupying the property without paying any rent, they sent a letter stating the Defendants had terminated the "agreement without just cause" and demanded the return of the \$3000.00 deposit. [R, pp 166-168]. This was sent with the Plaintiff's address being shown as the rental property in question. According to the testimony of both the Defendants and Plaintiffs, the money was returned less a deduction for two months rent and some minor claim for damage to the trailer. [R., pp. 50, l. 18- p. 51 l. 7; p. 53, l. 21- p. 54, l.15; p. 70, l.

1- p. 72, l. 8; p. 120, l. 7- 24, p. 122, l. 13- p. 124, l. 25]. The lawsuit was filed almost a year after the lease ended and the money was returned. [R, pp 11-17]. There was a meeting of the minds as the Plaintiffs demanded the return of the \$3000 for the failure to sell the real estate and the parties met and agreed that the money would be returned, less two months rent and \$50 for damages. [R, pp 119, l. 10- p.2002, l. 24].

The evidence was introduced at trial and is in the record. The Rule 59 Motion stated that the Accord and Satisfaction had not been taken into account by the Court and the final Order addressed the defense. [R, pp 22-23, pp 1-2). Additionally, the matter was argued before the court without objection. [R, pp 146-147].

It appears from the evidence that the Plaintiffs demanded \$3000.00 in settlement of their claims and accepted the amount tendered which deducted the rent and damages. This is a meeting of the minds and an Accord and Satisfaction. Therefore, the Defendants were entitled to a directed verdict on these grounds at trial.

IV. THE COURT ERRED IN AWARDING THE AMOUNT OF ATTORNEYS FEES AS IT WAS NOT REASONABLE IN LIGHT OF THE ACTUAL DAMAGES WHICH WERE PROVEN.

The relevant provision relating to the award of attorneys' fees is found in paragraph 13 of the Contract which provides as follows:

13. Attorney Fees: The prevailing party shall be entitled to all costs incurred in connection with any legal action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorney's fees.

[R, pp 169-171]. As stated in the recent case of Laser Supply and Services, Inc. v. Orchard Park Associates, 382 S.C. 326, 676 S.E.2d 139 (S.C.App. 2009):

The review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard. See S.C. Elec. & Gas Co. v. Hartough, 375 S.C. 541, 550, 654 S.E.2d 87, 91 (Ct.App.2007) (concluding that, when an award of attorney fees is based upon a contract between the parties, the determination of the fees is left to the discretion of the trial court and will not be disturbed absent an abuse of discretion). An appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support. See Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997) (holding that an abuse of discretion occurs when there is an error of law or a factual conclusion that is without evidentiary support). When an attorney's services and the value of those [382 S.C. 341] services are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence. Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

The Plaintiffs submitted both an Affidavit of Fees and Costs and a Supplemental Affidavit of Fees and Costs. The court awarded \$4824.65 for both attorneys fees and costs. [R, pp 3-10; pp 1-2]. The Order does not specifically find how the award is broken down. The court, in its first Order simply states that the Plaintiffs are the prevailing party and the action was to enforce the terms of the lease/option. Additionally it summarily states that the award is relevant after considering all relevant factors without stating what it considered. [R, pp 3-10]. Attached to the Second Affidavit is a costs sheet stating the costs are \$1733.99. They include filing fees, travel expenses and deposition costs. [R, pp 185-187]. Therefore, assuming all the costs were awarded, the amount for attorneys fees would be \$3090.66.

The factors to be considered when determining an award of attorneys fees "are as follows: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained." Laser Supply, supra. The affidavits set forth the time which may imply the labor involved. Therefore, the court should examine whether the Plaintiffs are the prevailing party and the beneficial results obtained.

If the complete award of \$17,250.00 is upheld, then only in that event, would the Defendants concede that the award of the attorneys' fees is reasonable. However, if the Defendants are granted the relief sought and the verdict is directed in their favor, then the Plaintiffs would no longer be the prevailing party and therefore, the finding of the justification of the award would be removed and the award should be set aside. However, if the Court found that the award of the return of the rent, but the \$450.00 was justified, then the award of the attorneys fees should be examined to determine if they are excessive in light of the beneficial results obtained. Laser Supply, supra. While it is true that the award of attorneys fees may exceed the actual recovery, the Defendants argue that an award of \$450.00 does not justify attorneys fees of \$3090.60.

The Defendants argue the judgment below should be reversed and they should be declared the prevailing party. In that event they award of attorneys fees and costs should be set aside. In the alternative, the award should be remanded for reconsideration if the award of damages is reduced to \$450.00 to determine if it is reasonable in light of the results obtained.

CONCLUSION

As shown by a review of the evidence the record is entirely devoid of any evidence to support any of the lower court's rulings. The case should be reversed with a judgment entered in favor of the Defendants.

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Respectfully submitted, this the 23^d day of November, 2010, at Orangeburg, South Carolina.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Olin Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah
a/k/a Lynwood K. Daniels, ... Appellants.

BRIEF OF RESPONDENTS

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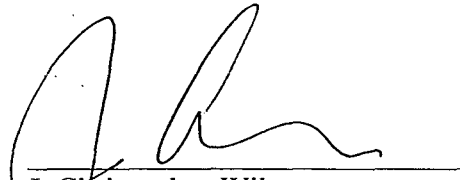
Pier Abdullah and Aazim Abdullah
a/k/a Lynwood K. Daniels,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
SCACR.

November 22, 2010



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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY HOLDING THAT THE OPTION TO PURCHASE CONTAINED IN THE LEASE EXPIRED ON JUNE 15, 2006?
2. DID THE TRIAL COURT ERR BY AWARDING DAMAGES TO THE RESPONDENTS EQUAL TO ALL THE RENTS PAID DURING THE TERM OF THE LEASE AND OTHER INCIDENTAL EXPENSES?
3. DID THE TRIAL COURT ERR IN FAILING TO FIND THE PARTIES HAD REACHED AN ACCORD AND SATISFACTION?
4. DID THE TRIAL COURT ERR IN ITS AWARD OF COSTS AND ATTORNEYS' FEES TO RESPONDENTS?

STATEMENT OF THE CASE

The Respondents initiated this action by filing a Summons and Complaint on June 6, 2007. [R. pp 11-17.] The Appellants filed an Answer on June 27, 2007 which was followed by the filing of an Amended Answer on June 29, 2007. [R. pp. 18-21.] The parties conducted discovery through depositions as well as written discovery.

The case was called to trial before the Honorable Olin Davie Burgdorf, Master-in-Equity for Orangeburg County, on December 10, 2008. At the close of the trial, Appellants' attorney moved and Respondents' attorney agreed to dismiss the causes of action of fraudulent and negligent representation, unfair trade practices, breach of contract with fraudulent intent, and breach of good faith and fair dealing. [R. p. 137, line 22-p. 143, line 2.] Appellants' motion for a directed verdict on the breach of contract claim was denied. [R. p. 143, lines 3 - 4.] The Master directed counsel to submit proposed orders. [R. p. 143, lines 12 - 13.]

The Master's Order denied Appellants' Motion for Directed Verdict and granted judgment to the Respondents for Breach of Contract. The Order awarded \$22,074.65 to Respondents for \$16,800.00 rents paid, \$450.00 for moving costs and \$4,824.65 for attorneys' fees and costs. [R. pp. 3-10.]

On June 15, 2009, Counsel for Appellants filed a Motion to Reconsider the May 4, 2009 Order. [R. pp. 22-23.] A hearing on the motion was held on September 30, 2009 and denied by the Master. [R. pp. 1-2.] This appeal followed.

FACTS

Appellants and Respondents entered into a written contract, a "Residential Lease with Option to Purchase" (hereinafter lease/option), whereby Respondents leased from Appellants certain property located at 183 Mill Branch Road, Orangeburg, South Carolina (real estate and mobile home). [R. p. 32, line 19-p.33, line 2.] In addition, the lease/option provided that Respondents had an option to purchase the property (real estate and mobile home). [R. pp. 166-171.]

The lease/option was prepared by Appellant Azim Abdullah aka Lynwood Daniels and presented to Respondents for their approval and execution. [R. p. 27, line 8-p. 28, line 6 and p. 80, lines 1-16.] Appellant Abdullah had been involved in a number of real estate transactions prior to this transaction with Respondents, some of which involved leases with options to purchase. [R. p. 85, lines 12 – 23.] Appellant Abdullah had even been involved in preparation of other lease/option contracts using the same form he used to prepare the lease/option contract at issue here. [R. p. 96, line 18-p.97, line 6.] Respondents had never been involved in the sale or purchase of real estate or the

preparation and execution of a lease with option to purchase. [R. p. 23, line 18- p. 24, line 8.] Neither party had an attorney involved in preparing the lease/option. [R. p. 86, lines 5 – 13.]

The lease/option contract provided that the lease term would begin June 15, 2004, and continue for 24 months [R. pp. 166-171.], with Respondents paying a \$3,000.00 security deposit [R. pp. 166-171.] and \$700.00 per month as rent [R. pp. 166-171.] The lease/option also contained an option to purchase the property. [R. pp. 166-171.] Paragraph 2 provided that the lease would begin June 15, 2004 for a period of 24 months and the option to purchase would expire “at the end of the 24 month lease.” [R. pp. 166-171.] Later in the contract, the contract provided that the option to purchase would expire at midnight on June 9, 2006. [R. pp. 166-171.]

The lease/option contract also contained provisions regarding the purchase price of Sixty-Five Thousand (\$65,000.00) Dollars if the option was exercised [R. pp. 166-171.] The lease/option further provided that all deposits and/or rents paid during the first or second year by Respondents would be applied at 100% credit toward the \$65,000.00 purchase price, with all remaining monies owed on the purchase price paid by cash or certified funds. [R. p. 166-168.] Later in the contract, the contract provided that rent paid by Respondents would only be applied at a 25% credit [R. pp. 166-168.]

The lease/option contract provided that notice of the exercise of the option had to be delivered to Appellants, and that any closing had to be within 10 days of the exercise of the option. [R. pp. 166-171.] Several weeks prior to the expiration of the lease, Respondents verbally informed Appellants of their intent to exercise the option to purchase. [R. p. 47, lines 2-6.] In accordance with the contract provisions, Respondents

also delivered to Appellant Azim Abdullah by process server a written notice of their intent to exercise the option to purchase by delivering a letter dated June 15, 2006 with a copy of a cashiers check in the amount of Forty-Two Thousand Five Hundred (\$42,500.00) Dollars payable to Mr. Parker attached to the letter. [R. pp.172-176 and p. 98, line 22-p. 99, line 4.]

Respondents calculated monies were still owing and included a copy of a First Citizens cashiers check to William Parker, Jr. in that amount to show Appellants the monies were available for closing. [R. p. 47, line 19-p. 49, line 20.] The letter also included a request from Respondents that Appellants notify Respondents of a closing date immediately and which attorney Appellants wished to use for the transaction. [R. p. 172.] In response to the June 15, 2006 letter from Respondents, Appellant Azim Abdullah immediately communicated very clearly to Respondents that he would not sell the property under those terms, and he unsuccessfully attempted to negotiate a different arrangement with Respondents. [R. p. 131.] Appellant Azim Abdullah testified that he did not consider the June 15, 2006 letter a valid exercise of the option for various reasons. [R. p. 108, line 14-p.110, line 11.]

Afterwards, Plaintiffs remained in the home for approximately 2 months, without paying rent, and Defendant ultimately returned the Plaintiffs \$3,000.00 security deposit with a deduction for 2 months rent at \$700 per month and a \$50 repair charge. [R. p. 120, lines 15-24.] Plaintiffs testified they incurred \$450.00 in miscellaneous moving expenses. [R. p. 51, line 10-p.53, line 2.]

In addition, the lease/option provides in paragraph 13 that in the event of a dispute and legal action "to enforce" the terms of the lease/option, the "prevailing party" is

entitled to "all costs incurred" including a reasonable attorney fee. [R. pp. 166-171.]

Respondents have submitted an Affidavit and Supplemental Affidavit concerning attorney fees and costs. [R. pp. 177-181 and pp. 183-187.]

ARGUMENTS

1. BECAUSE THE RESPONDENTS DELIVERED TO APPELLANTS WRITTEN NOTICE TO EXERCISE THE OPTION TO PURCHASE ON JUNE 15, 2006, THE COURT CORRECTLY CONCLUDED THAT THE OPTION WAS TIMELY EXERCISED.

The lease/option contract prepared by Respondent Aazim Abdullah contained several ambiguities and/or inconsistent provisions with respect to the option to purchase. [R. pp. 166-171; p. 86, lines 5-16; and p. 139, lines 4-10.] Paragraph 2 of the parties' agreement provides that the term of the lease would commence June 15, 2004 and continue for a period of 24 months thereafter. The parties' agreement further provides that the option to purchase would expire "at the end of the 24 month lease." [R. pp. 166-171.] This language indicates the option to purchase expired June 15, 2006. In contradiction and later in the contract, paragraph 26 provides that the option to purchase would expire at midnight on June 9, 2006. [R. pp. 166-171.] An ambiguous contract, which contains terms that are inconsistent on their face, should be construed "liberally and most strongly" in favor of the party who did not prepare the contract. Myrtle Beach Lumber Company v. Willoughby, 276 S.C. 3, 274 S.E.2d 423 (1981). Furthermore, where two provisions of an agreement are inconsistent with each other and "repugnant" to each other, the first provision controls. Smith v. Clinkscales, 102 S.C. 227, 85 S.E. 1064 (1915); Brady v. Carolina Steel Bridge & Constr. Co., 76 S.C. 297, 56 S.E. 964 (1907).

Additionally, where a written agreement is ambiguous, parol testimony is admissible to show its true meaning. Carolina Ceramics, Inc. v. Carolina Pipeline Company, 251 S.C. 151, 161 S.E. 2d 179 (1968). Both Respondent and Appellant Mr. Abdullah testified that it was their understanding the option to purchase expired on June 15, 2006. [R. p. 44, lines 14-18 and p. 107, line 14-p. 110, line 14.] Mr. Abdullah stated that he did not consider the letter of June 15, 2006 to be a valid exercise of the option, not because of the date, but because (1) certified funds payable to him did not accompany the letter, because (2) Mr. and Mrs. Parker told him they had already found another place, and because (3) Abdullah claimed that the Parkers indicated to him at a meeting previous to June 15, 2006 that they were not going to purchase the property. [R. p. 107, line 14-p. 110, line 14.] Respondents therefore complied with the terms of the contract and exercised the option timely. Appellant's counsel did not argue the timeliness of the exercise of the option by Respondent's at the trial of this matter, but instead argued it on his Motion for Reconsideration.

2. BECAUSE APPELLANTS BREACHED THEIR CONTRACT WITH RESPONDENTS, THE COURT CORRECTLY AWARDED DAMAGES TO RESPONDENTS.

The Respondents maintain that had the Appellants not breached the contract, they would have purchased the home and the credited payments would have constituted a substantial equity investment in the property. [R. p. 56, lines 2-10.] The testimony showed that negotiations began because the Respondents wanted to purchase a home. [R. p. 113, line 9.] The Appellant's testimony was that because the Respondents were receiving income from him he knew they could make payments. When he offered to

lease the property to them, Mr. Parker indicated that he wanted to buy the property, so the Appellant said, "Well, I can work out some type of lease-purchase arrangement with you." [R. p. 113, lines 12-20.] The Parkers relied on this arrangement, not to lease a place and build no equity investment, but to lease a place and build equity investment which would be realized when they exercised the option to purchase. [R. p. 56, lines 2-10.]

It is well established that "[t]he purpose of an award of damages for breach of contract is to put the plaintiff in as good a position as he would have been in if the contract had been performed. The proper measure of compensation is the loss actually suffered by the plaintiff as a result of the breach." Drews Co. v. Ledwith-Wolfe Assoc., 296 S.C. 207, 371 S.E.2d 532 (1988).

Section 347 of the Restatement of Contracts, addresses the measure of damages in general:

Subject to the limitations stated in §§ 350-53, the injured party has a right to damages based on his expectation interest as measured by

- (a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus
- (b) any other loss, including incidental or consequential loss, caused by the breach, less
- (c) any cost or other loss that he has avoided by not having to perform.

RESTATEMENT (SECOND) OF CONTRACTS § 347 (1981).

A comment of this section expounds, "*Expectation interest*. Contract damages are ordinarily based on the injured party's expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as good a position as he would have been in had the contract been performed." RESTATEMENT (SECOND) OF CONTRACT § 347 cmt. a (1981).

The Master correctly calculated the amount of damages for Appellant's breach and determined damages to be Sixteen Thousand Eight Hundred (\$16,800.00) Dollars paid by Respondents to Appellants and Four Hundred Fifty (\$450.00) Dollars in incidental expenses. [R. pp. 3-10 and p. 53, lines 3-8.] Our Supreme Court has ruled damages may be recovered if evidence shows the amount was determined with reasonable certainty or accuracy. Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E. 2d 794, 796 (1981). The amount of payments made during the lease period was not disputed by either party, thereby enabling the Court to determine the amount with certainty and accuracy.

3. BECAUSE THE RETURNED BALANCE OF THE SECURITY DEPOSIT WAS PROPERTY OF THE RESPONDENTS, THE COURT CORRECTLY CONCLUDED AND RULED THAT THE RETURN OF THE DEPOSIT WAS NOT ACCORD AND SATISFACTION.

Appellant asserted in his Motion to Reconsider and at the Motion hearing that an Accord and Satisfaction occurred between the parties. [R. pp. 22-23; p.146, lines, 23-25; and p. 153, line 4- p. 154, line 8.]

The relevant provision relating to the security deposit is found in Paragraph 11 of the Lease which provides as follows:

11.Security/Option Consideration: The security deposit of \$3,000.00 shall secure the performance of the Lessee's obligations hereunder. Lessor may, but shall not be obligated to, apply all or portions of said deposit on account of Lessee's obligations hereunder. Any balance remaining upon termination shall be returned to Lessee.

[R. p. 167.]

According to South Carolina Code Section 27-40-210(18), “ ‘security deposit’ means a monetary deposit from the tenant to the landlord which is held in trust by the landlord to secure the full and faithful performance of the terms and conditions of the lease agreement as provided in Section 27-40-410.” S.C.Code Ann. §27-40-210(18) (Supp. 2001). When it became apparent that the Appellants were not going to honor the option to purchase, the Respondents merely requested monies owed them under this provision. [R. p. 182; p. 53, lines 17-25; and p. 119, line 18-p. 120, line 24.]

Appellants’ return of the security deposit was not a discharge of a claim, but rather what was required by the lease upon termination of the lease. Black’s Law Dictionary defines an accord and satisfaction as:

A method of discharging a claim whereby the parties agree to give and accept something in settlement of the claim and perform the agreement. The "accord" being the agreement and the "satisfaction" its execution or performance, and it is a new contract substituted for an old contract which is thereby discharged, or for an obligation or cause of action which is settled, and must have all the elements of contract. Black’s Law Dictionary (5th ed.) p 16.

Further, this Court has ruled “An accord and satisfaction occurs when there is (1) an agreement to accept in discharge of an obligation something different from that which the creditor is claiming or is entitled to receive; and (2) payment of the consideration expressed in the new agreement.” Mercury Marine Division of Brunswick Corp. v. Costas. , 288 S.C. 383, 342 S.E.2d 632 (Ct.App.1986). The record does not indicate that refund of the security deposit was anything different than that which the Respondents were entitled to receive, nor was acceptance of the refund consideration expressed in a new agreement. To the contrary, the return of the security deposit was a refund of monies belonging to Respondents after deductions by Appellants for their claimed

damage and holdover rent. [R. p. 120, lines 7-24.] Accordingly, the Trial Court correctly ruled there was not an accord and satisfaction between the parties.

4. BECAUSE THE LEASE ALLOWED FOR AN AWARD OF ATTORNEYS' FEES AND COSTS AND BECAUSE RESPONDENTS WERE THE PREVAILING PARTIES IN THE TRIAL COURT ACTION, THE COURT CORRECTLY AWARDED REASONABLE COSTS AND ATTORNEYS' FEES TO THE RESPONDENTS.

At the onset, Respondent notes that Appellant did not argue the issue of attorney fees and costs at the trial of this matter and on its Motion for Reconsideration. In equity actions, an award of fees and costs is discretionary with the trial judge and will not be disturbed absent a clear abuse of discretion. State ex rel. McLeod v. C & L Corp., Inc., 280 S.C. 519, 313 S.E.2d 334 (S.C.App. 1984). The general rule is that attorney's fees are not recoverable unless authorized by contract or statute. Baron Data Sys., Inc. v. Loter., 297 S.C. 382, 377 S.E.2d 296 (1989); Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978); Collins v. Collins., 239 S.C. 170, 122 S.E.2d 1 (1961).

The provision in the contract that deals with attorneys' fees and costs is found in paragraph 13. [R. p. 167.] It appears as follows:

13. Attorney Fees: The prevailing party shall be entitled to all costs incurred in connection with any action brought by either party to enforce the terms hereof or relating to the demised premises, including reasonable attorneys' fees.

When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown. Baron, supra. "Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by *any* competent evidence." Baron., 297 S.C. at 384, 377 S.E.2d 296 (emphasis added). Respondents' attorney

submitted to the Master an Affidavit of Attorney's Fees and Costs for his consideration.

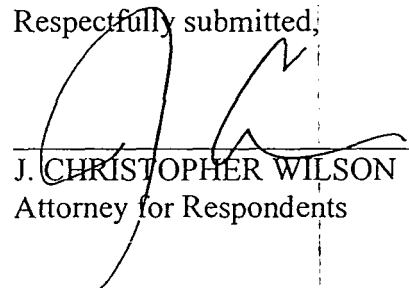
[R. pp. 177-181.] Testimony was given as to the time and costs expended by Mr. Wilson.

[R. p. 55, lines 12-20.] The Court used the testimony and exhibits presented at trial and the Master's evaluation of the Affidavit and Supplemental Affidavit when considering whether to award attorney's fees and costs and the amount of such. [R. pp. 3-10; pp. 166-171; and p. 55, lines 12-20.] The Master considered the relevant factors and found evidence to support the award of attorney fees and costs, and correctly awarded attorneys' fees to Respondents in the amount of \$4,824.65. The Master did not abuse his discretion and the award of attorney fees and costs should be upheld.

CONCLUSION

For the foregoing reasons, Respondents respectfully submit that the Court should affirm the judgment of the Master-in-Equity in all respects.

Respectfully submitted,


J. CHRISTOPHER WILSON
Attorney for Respondents

November 22, 2010.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 97-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, ... Appellants.

REPLY BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the court err by holding that the lease expired on June 15, 2006 when the express language of the contract was that it was for a term of two years, which would expire on June 14, 2006 and therefore, the lease option was not exercised within two years.
2. Did the Court err by awarding damages equal to all the rents paid when the Plaintiffs failed to offer any evidence of other than minimal damages and this results allows them to use the Defendants' property rent free for two years.
3. Did the Court commit error by failing to hold that the Plaintiffs were barred from recovery by demanding the return of their deposit and accepting the same in accord and satisfaction.

STATEMENT OF CASE

The Appellant adopts the Statement of the Case from its Appellant's Brief.

FACTS

In addition to the facts set forth in the Appellants' Brief, the Appellant also sets forth the following facts for the Court to consider. The conflicts within the terms of the lease are in the following paragraphs of the contract. The lease as shown by Exhibit 2 [R, pp 169-171] provided:

2. Term: The term hereof shall commence on June 15, 2004, and continue for a period of 24 months thereafter. Option shall expire at the end of the 24 month lease.

19. Option: Lessee shall have the option to purchase the leased premises described herein upon the following TERMS and CONDITIONS:

- a. The total purchase price shall be Sixty Five Thousand Dollars (\$65,000.00)
- b. All deposits and rents paid in the first year will be applied at 100% towards the purchase. Second years rents will apply at 100%.
- c. The purchase price shall be paid as follows: Cash or Certified Funds.

26. Expiration of Option: This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

27. Exercise of Option: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given on the day shown on the postmark of the envelope in which such

notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

The terms set forth in the lease entered as Exhibit 1 [R, pp 166-168] state in relevant part:

2. Term: The term hereof shall commence on June 15, 2004, and continue for a period of 24 months thereafter. Option shall expire at the end of the 24 month lease.

19. Option: Lessee shall have the option to purchase the leased premises described herein upon the following TERMS and CONDITIONS:

- a. The total purchase price shall be Sixty Five Thousand Dollars (\$65,000.00)
- b. All deposits and rents paid in the first year will be applied at 100% towards the purchase. Second years rents will apply at 50%.
- c. The purchase price shall be paid as follows: Cash or Certified Funds.

26. Expiration of Option: This option may be exercised at any time prior to its expiration at midnight June 9, 2006. Upon expiration, Lessor shall be released from all obligations hereunder and all of Lessee's rights hereunder, legal or equitable, shall cease.

27. Exercise of Option: The option shall be exercised by mailing or delivering written notice to the Lessor prior to the expiration of this option. Notice if mailed, shall be by certified mail, postage prepaid, to the Lessor at the address set forth below, and shall be deemed to have been given on the day shown on the postmark of the envelope in which such notice is mailed. In the event the option is exercised, 25% percent of the rent paid hereunder, as well as any security deposit paid, prior to the exercise of the option shall be credited upon the purchase price.

The primary difference between the two contracts is that the amount of deposits and rent to b applied to the purchase in paragraph 19 b. varies from 50% in Exhibit 1 [R, pp 166-168] and 100% in Exhibit 2 [R, pp 169-171]. This comports with the testimony of the Defendant Aazim Abdullah that he recognized there was an error in the lease and altered it to be the version entered as Exhibit 1 [R, pp 166-168]. The testimony of Mr. Abdullah was that the Exhibit 1 was the correct contract. [R, pp 103, l. 20 - 106, l. 20]. The Court did not take into account this discrepancy between the two leases when making its ruling in this case.

ARGUMENTS

I. THE COURT ERRED IN CONCLUDING THAT THE LEASE EXPIRED ON JUNE 15, 2006 AND THE OPTION WAS EXERCISED TIMELY.

The Respondent argues that because of an ambiguity in the contract, the Court could consider the testimony of the parties as parole evidence to ascertain the meaning of the terms of the contract. However, this argument is misplaced as the ambiguity is whether the option to purchase terminates on June 9, 2006 as set forth in paragraph 26 or twenty four months after it commenced on June 15, 2004 as stated in paragraph 2. [R, pp 166-168, 169-171]. There is nothing within the written terms of the lease which creates an ambiguity as to whether the option terminates on June 14, 2006, twenty-four months after the lease began on June 15, 2004, or on June 15, 2006, twenty four months and one day after the lease began on June 15, 2004. Option contracts are to be strictly construed in favor of the optionor and against the optionee. Barnacle Broadcasting, Inc. vs. Baker Broadcasting, Inc., 343 SC 140, 538 SE2d 672 (Ct. App. 2000); 49 Am. Jur. 2d, Landlord and Tenant, §314 (2006). If the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required. Id.; 49 Am. Jur. 2d, Landlord and Tenant, §323 (2006). The intention of the parties is to be gathered from the whole scope and effect of the language used. Id. There is nothing within either contract, exhibits 1 or 2, which indicates an extra day was to be allowed to the lessees to exercise the option. The court read this into the contract and reliance upon parole evidence was improper as it extended the meaning of the contract beyond the express language in the contract. See, McGill vs. Moore, 381 SC 179, 672 SE2d 571 (2009).

Further, the Respondents testified they had to tender the funds for the purchase of the property at the exercise of the option, but did not deliver the funds. [R p 75, l. 7-22]. It is therefore

clear that the Plaintiffs failed to comply with the terms of the Option in the Lease contract and the trial court should have directed a verdict in favor of the Plaintiffs.

II. THE COURT ERRED IN ALLOWING THE RECOVERY OF DAMAGES BY THE PLAINTIFFS WHEN THE PLAINTIFFS FAILED TO PROVE THEY SUFFERED ANY DAMAGES AND THE COURT FAILED TO ACCOUNT FOR THE VALUE OF THE RENT FOR TWO YEARS.

The Respondent's argue that if there had been no breach of the contract, they would have received a equity investment and therefore they suffered and actual loss. Even if the Court were to accept this proposition, there is no evidence introduced from which the trial court could have made a finding that the damages were proved to any certainty. As stated in the recent case of Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (S.C. 2010) "Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). " While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.*"

The Respondents failed to introduce any evidence with regard to the value of the property, the amount of the mortgage owed by the Appellants, or how much actual equity they would have had in the property. The amount must be determined and shown to a reasonable degree of certainty, not by speculation. The general measure of damages in such a case would be the damages are usually the difference in the value of the property and the contract price, and such damages may include any improvements made to the property by the tenant. 49 Am. Jur. 2d, Landlord and Tenant, §353 (2006). Further, the amount may be nominal if the property is encumbered by a mortgage which this property was as the Appellants testified the property ultimately was foreclosed upon. *Id.*

[R. pp 117 l. 25- 118, l. 14]. The Respondents did not even put into evidence the cost of the alternative property they purchased. Therefore, the only actual proof of damages was the proof of the \$450.00 in moving costs.

III THE COURT ERRED IN CONCLUDING AND HOLDING THAT NO ACCORD AND SATISFACTION OCCURRED AND THE PLAINTIFFS WERE BARRED FROM ANY RECOVERY WHEN THEY DEMANDED AND RECEIVED A REFUND OF THE DEPOSIT.

The Respondents argue that the demand for the return of the deposit was not an accord and satisfaction as it was the return of the funds which belonged to them and to which they were entitled a return. However, the letter sent by the Respondents does not seek to limit the scope of the requested recovery and the Court's ruling does not set forth this as a ground for its ruling, it simply says there was not proof of an Agreement to constitute an Accord and Satisfaction. [R, pp 1-2]. However, when their demand, they did not state it was simply a demand for a return of their security deposit. Rather the demand stated:

Please be advised, because of your decision to terminate our agreement without just cause; per our agreement to purchase the property located @ 183 Mill Branch Road we the leaseholder request the sum of Three Thousand Dollars (\$3000.00) be returned to us in the form of cash, cashier check or money order that was given to you as a security deposit.

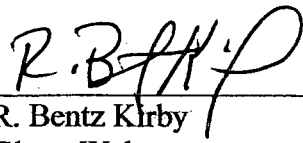
[R, p 182]. The return was demanded without any demand for any payment of damages or a return of the lease payments. It stated that because of the termination by the Appellants, the Respondents demanded the return of the deposit. It did not demand any further payment or claim any other damages. The Appellants returned the money, less the rent and damages, in expectation that the entire matter was resolved and the Respondents agreed they would accept the return of these funds. [R pp 70, l 1- 74, l. 10]. Therefore, when examining the letter, demand and the testimony of both the Appellants and Respondents, it is clear the parties thought this was the end of the case at the time

the letter was sent and the funds returned. There was no claim of any other damages or for the return of the rental monies until such time as a law suit was filed almost one year later.

CONCLUSION

As shown by a review of the evidence the record is entirely devoid of any evidence to support any of the lower court's rulings. The case should be reversed with a judgment entered in favor of the Defendants.

Respectfully submitted, this the 23rd day of November, 2010, at Orangeburg, South Carolina.



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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

William Parker and Dorothy
Parker,

Respondents,

v.

Pier Abdullah and Aazim
Abdullah aka Lynwood K.
Daniels,

Appellants.

Appeal From Orangeburg County
Olin D. Burgdorf, Master-in-Equity

Unpublished Opinion No. 2012-UP-107
Heard January 25, 2012 – Filed February 22, 2012

AFFIRMED

Glenn Walters and R. Bentz Kirby, both of
Columbia, for Appellants.

J. Christopher Wilson, of Bamberg, for Respondents.

PER CURIAM: Pier and Aazim Abdullah appeal the master-in-equity's award to William and Dorothy Parker of \$17,250 in damages and \$4,824.65 in costs and attorney's fees arising out of the breach of a lease agreement with the option to purchase. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

1. As to the date the option to purchase expired: Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) [SCRCP] motion which could have been raised at trial.").

2. As to the amount of damages awarded: Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008) ("An action to construe a contract is an action at law. Likewise, '[a]n action for breach of contract seeking money damages is an action at law.' (alteration by court) (citations omitted)); id. at 590, 658 S.E.2d at 542 ("When reviewing a judgment made in a law case tried by a master without a jury, the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them."); Conner v. Alvarez, 285 S.C. 97, 101, 328 S.E.2d 334, 336 (1985) ("Courts are without authority to alter a contract by construction or to make a new contract for the parties. Their duty is limited to the interpretation of the contract made by the parties themselves . . . regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." (omission by court) (citations and quotation marks omitted)); Bell v. Bennett, 307 S.C. 286, 294-95, 414 S.E.2d 786, 791 (Ct. App. 1992) (holding issues not raised in appellate brief are deemed abandoned and prior rulings on those issues constitute the law of the case); Madren v. Bradford, 378 S.C. 187, 195, 661 S.E.2d 390, 395 (Ct. App. 2008) ("When calculating damages for breach of contract, damages should place a nonbreaching party in the position he would have enjoyed had the contract been performed.").

3. As to whether the refund of the Parkers' deposit constituted an accord and satisfaction: Linda Mc Co. v. Shore, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010) ("The elements of an accord and satisfaction are (1)

an agreement between the parties to settle a dispute and (2) the payment of the consideration which supports the agreement."); id. at 555-56, 703 S.E.2d at 505 ("The debtor must intend and make unmistakably clear that the payment tendered fully satisfies the creditor's demand. Without an agreement to discharge the obligation there can be no accord, and without an accord there can be no satisfaction." (citations and quotation marks omitted)).

4. As to the award of attorney's fees: Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009) ("The review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard. . . . An appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support.").

AFFIRMED.

FEW, C.J., and THOMAS and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

O. Davie Burgdorf, Master-in-Equity

Case No. 2007-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

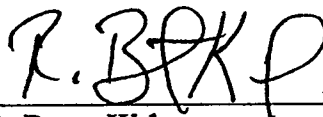
Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, ... Appellants.

CERTIFICATE OF SERVICE

On the 8th day of March, 2012, the undersigned served a copy of the Appellants' Motion for a Rehearing upon opposing counsel by placing a copy in the United States Mail, postage fully paid, to the following address:

J. Christopher Wilson
Wilson, Luginbill & Kirklands, LLC
PO Box 1150
Bamberg, SC 29003

Glenn Walters, Attorney at Law, PA



R. Bentz Kirby
Glenn Walters
Post Office Box 1346
Columbia, SC 29116
(803) 531-8844
Attorneys for Appellant

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Respectfully submitted, this the 8th day of March, 2012, at Orangeburg, South Carolina.

A handwritten signature in black ink, appearing to read "R. Bentz Kirby". The signature is stylized with large, flowing letters and a prominent "K".

Glenn Walters, Attorney at Law, PA

R. Bentz Kirby

Glenn Walters

Post Office Box 1346

Columbia, SC 29116

(803) 531-8844

Attorneys for Appellant

the lower court's findings of fact if there is evidence to support those findings.¹ However, the Court is required to correct errors of law. See Madren vs Bradford above. The award of 100% of the rent paid without any factual determination that any damages were suffered, in a case for damages, not specific performance is in the nature of punitive damages which is an error of law in a contract case. Williams v. Riedman, 339 SC 251, 529 SE 2d 28 (2000). Additionally, the interpretation of the contract by both courts was in favor of the Plaintiffs and against the Defendants. This is an error of law as an option contract is to be interpreted in favor of the Defendants in this instance. It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and against the optionee. See Cotter v. James L. Tapp Co., 267 S.C. 647, 230 S.E.2d 715 (1976). Thus, the Court failed to properly apply the law regarding the interpretation of the contract and the measure and proof of damage. Rather, the Court's decision awards punitive damages to the Plaintiffs and does not take into account the value of the rental of the premises during the lease period.

CONCLUSION

Because of the Court's improper application of law and failure to adhere to the actual facts and damages proved at trial, the Defendants are entitled to a Rehearing in order to address these errors of law and of findings of fact.

[SIGNATURE ON FOLLOWING PAGE]

¹ The Appellants address in their first argument why there are no facts proved to support the award of 100% of the rent paid under the lease.

purchased another house. They were in fact placed in the same position they would have been had the contract been performed. The only evidence of damages was the loss of some \$550 of extra expenses they had. They did not introduce any evidence that they were damaged by paying a fair market rental value for the time they occupied the house. They did not sue for specific performance and were not entitled to the credit provided for in the contract. There being no proof of any damages other than \$550, there is no evidence to support the finding that of the trial court. The Court seemed to fixate upon this narrow language in the contract and to make some assumption that regardless of proof the Plaintiffs were entitled to the credit of 100% of their payments. However, this assumption overlooks the actual facts proved at trial and the fact that the Plaintiffs did in fact receive the benefit of their bargain. They received a place to live for the period of the lease and paid the agreed monthly lease payments for that privilege. At the end of the lease, they took their money and bought a house. They proved it cost them damages of \$550 to purchase another house and move to that house. They did not offer any proof the house was of lesser value or any other financial loss. This Court has ignored the actual facts proved at trial and adopted a reading of the contract which is not supported by law of facts to make a determination on damages which is not supported by the record. The awarded damages were purely based upon speculation and not on any facts proved at trial. South Carolina Federal Sav. Bank. Vs. Thornton-Crosby Development Co., Inc., 303 SC 232, 399 SE2d 8 (Ct. App. 1990 aff'd South Carolina Federal Sav. Bank vs. Thornton-Crosby Development Co. Inc., 310 SC 232, 423 SE2d 114 (1992).

2. The conclusions of the trial court are not supported by law and this court failed to correct the errors of law of the lower court. In its opinion, the Court only addressed the maxim it is bound by

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Case No. 07-CP-38-717

William Parker and Dorothy Parker, ... Respondents,

v.

Pier Abdullah and Aazim Abdullah
Aka Lynwood K. Daniels, ... Appellants.

MOTION FOR REHEARING

The Court issued its opinion on February 22, 2012, and affirmed the lower court decision in Opinion 2012-UP-107. The Appellants, by and through their undersigned attorneys, hereby make the following Motion for Rehearing in accord with Appellate Rule 221 and respectfully represent unto this Honorable Court as follows:

1. An incorrect measure of damages was used by the lower court and the Court of Appeals. The Court looked to Conner vs Alvarez, 285 SC 97, 328 SE2d 334 (1985) and the principal of law that the Appellate Court would not overturn findings of fact which have any evidence to support them. It further held that when calculating damages a non-breaching party should be placed in a position it would have enjoyed had the contract been performed. Madren vs Bradford, 378 SC 187, 661 SE2d 390 (Ct. App. 2008). The Conner case is one where the purchaser sued for specific performance and in such a case, the damages are measured by the credit to be applied pursuant to the contract. In this case, this Court, and the lower court, failed to take into account that the Plaintiffs did not sue for specific performance. Rather, they took the funds they would have paid to the Defendants and

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The South Carolina Court of Appeals

William Parker and Dorothy Parker, Respondents,

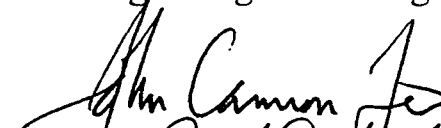
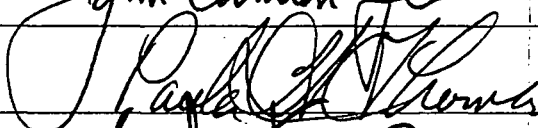
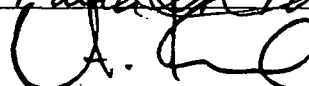
v.

Pier Abdullah and Aazim Abdullah aka Lynwood K.
Daniels, Appellants.

Appellate Case No. 2010-150790

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

cc:

R. Bentz Kirby

J. Christopher Wilson

FILED

June 4, 2012