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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal From York County
Court of Common Pleas
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2009-CP-46-01941

Jackie Hartley, Respondent,

v.

A.P. Karras, LLC d/b/a Eat Well Family
Restaurant, Andrew P. Karagounis,
Lucas Giannatos and Stacey Giannatos

of whom
Lucas Giannatos and Stacey Giannatos are. . . Appellants.

MOTION TO DISMISS APPEAL

Respondent Jackie Hartley ("Hartley") hereby moves this Court to dismiss this Appeal on the grounds that Appellants Lucas Giannatos and Stacey Giannatos (collectively, "Appellants") failed to file a notice of appeal in this matter within the time limits prescribed by Rule 203, SCACR. Accordingly, this appeal should be dismissed for lack of subject matter jurisdiction. Pursuant to Rule 240, SCACR, Hartley submits the following memorandum in support of this Motion.

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SC Court of Appeals

I. Facts and Procedural History

On April 30, 2009 Hartley filed this action for collection of unpaid rent and damages resulting from breach of a commercial lease agreement guaranteed by Appellants. On December 8, 2010, Hartley filed a Notice and Motion for Summary Judgment ("SJ Motion")¹ against Appellants. The SJ Motion was primarily based on the content of Request for Admissions² served upon Appellants pursuant to Rule 36(a) and 5(b)(1), SCRCP, and Appellants' failure to respond to any discovery including the Requests for Admissions. On January 27, 2011 a hearing was held on the SJ Motion before the trial court. Appellants appeared at the hearing *pro se*.

The trial court granted summary judgment in favor of Hartley and awarded damages in the amount of \$21,467.72 plus interest as set forth in the Order Granting Summary Judgment entered and mailed on February 14, 2011 ("SJ Order").³ Of fundamental importance to the SJ Order was the determination by the trial court that Hartley served the Requests for

¹ A true and correct copy of the Notice and Motion for Summary Judgment is attached hereto at Page 22.

² A true and correct copy of the Requests for Admissions were included as an exhibit to the SJ Motion and can be found in this Motion at Page 31.

³ A true and correct copy of the Order Granting Summary Judgment is attached to this Motion at Page 38.

Admissions in accordance with the SCRCPP; that Appellants failed to respond to the Requests for Admissions within the time prescribed by the SCRCPP; and that each matter contained in the Requests for Admissions was deemed admitted pursuant to Rule 36, SCRCPP. (SJ Order, pp. 2,3.)

On March 1, 2011 Appellants filed a Motion for Relief from Judgment⁴ pursuant to Rule 60(b), SCRCPP (the "Rule 60 Motion") seeking relief from the judgment on the grounds of excusable neglect. The Rule 60 Motion was the only post-judgment motion filed by Appellants. On June 16, 2011 a hearing was held on the Rule 60 Motion. The Court entered an Order⁵ on July 11, 2011 ("Rule 60 Order") denying Appellants' Rule 60 Motion and finding that Appellants failed to present sufficient evidence of excusable neglect. (Rule 60 Order, p. 2.) Appellants served the Notice of Appeal on August 15, 2011.

⁴ A true and correct copy of the Motion for Relief From Judgment is attached hereto at Page 43.

⁵ A true and correct copy of the Order denying the Motion for Relief from Judgment is attached hereto at Page 49.

II. Discussion

A. Rule 203, SCACR; Subject Matter Jurisdiction.

Pursuant to Rule 203, SCACR, a party must serve a notice of appeal within 30 days after receiving written notice of the entry of a final order or judgment.

"The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." Elam v. S. Carolina Dept. of Transp., 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004); Mears v. Mears, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985). "Rule 203(b), SCACR, requires a party to serve his notice of appeal within thirty days after receiving written notice of the entry of a final order or judgment, and failure to do so divests this court of subject matter jurisdiction and results in dismissal of the appeal." Canal Insur. Co. v. Caldwell, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999).

In the instant matter Appellants are attempting to appeal issues that were determined with finality in the SJ Order, and as such their appeal is untimely under Rule 203, SCACR. The

Initial Brief of Appellants⁶ sets forth three issues on appeal, all of which directly relate to the trial court's findings with respect to the service and receipt of the Requests for Admissions.⁷ These issues were central to the written SJ Motion, the arguments made by Appellants and counsel for Hartley during the SJ Motion hearing, and the trial court's ultimate determination to award summary judgment in favor of Hartley, as set forth in the SJ Order.

The SJ Order was entered and mailed on February 14, 2011. Appellants would have received written notice of the SJ Order no later than March 1, 2011, the date of filing of Appellants' Rule 60 Motion. Therefore, Appellants were required to serve a notice of appeal with respect to the SJ Order no later than March 31, 2011. However, Appellants did not serve the Notice of Appeal in this action until August 15, 2011. Pursuant to South Carolina law, Appellants' appeal is untimely.

⁶ Appellants erroneously titled their initial appellate brief in this matter as "Initial Brief of Respondent." To avoid confusion, this Motion shall refer to Appellants' initial brief as "Initial Brief of Appellants."

⁷ The sole three issues presented by Appellants in this matter read from the Initial Brief of Appellants as follows: (1) "The Issue in this case is how the Appellants can prove non-receipt of mailed discovery requests"; (2) "The applicable precedent allows the Appellants to prove non-receipt of the discovery requests"; and (3) "The precedent in seeming opposing to allowing proof of non-service is itself subject to factual exceptions."

B. A Rule 60(b) Motion for Relief from Judgment Does not Toll Time to Serve Notice of Appeal.

It is well-established that the filing of a motion for relief from judgment pursuant to Rule 60, SCRCF "does not toll the running of the time for appeal" with respect to the underlying judgment. Otten v. Otten, 287 S.C. 166, 167, 337 S.E.2d 207, 208 (1985); see also Coward Hund Const. Co., Inc. v. Ball Corp., 336 S.C. 1, 5, 518 S.E.2d 56, 59 (Ct. App. 1999). Though certain timely post-judgment motions will toll the time period to file a notice of appeal, such motions do not include those made pursuant to Rule 60(b) and are limited to "a timely motion for judgment n.o.v. (Rule 50, SCRCF), motion to alter or amend the judgment (Rules 52 and 59, SCRCF), or a motion for a new trial (Rule 59, SCRCF). . . ." Rule 203(b)(1), SCACR.

In the Notice of Appeal Appellants state that they are appealing both the SJ Order and the Rule 60(b) Order. However, all issues presented by Appellants in their Appeal directly concern the Requests for Admissions that were determined with finality in the SJ Order. Because the Rule 60 Motion did not toll the time for filing the notice of appeal, this appeal was required to be filed no later than March 31, 2011. Therefore the August 15, 2011 filing of this appeal is untimely.

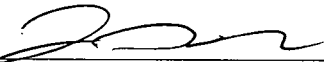
Though Appellants reference the Rule 60(b) Order in their Notice of Appeal, a quick review of the Initial Brief of Appellants shows that they are not appealing any issues relating to the lack of excusable neglect as determined by the trial court in the Rule 60(b) Order. In essence Appellants are attempting to use what they claim to be a timely appeal of a Rule 60(b) Order as a means of bringing before this Court issues which were required, by governing law, to be appealed in March 2011.

III. Conclusion

For the reasons set forth above Appellants appeal is untimely under Rule 203, SCACR, and should be dismissed for lack of subject matter jurisdiction. Hartley respectfully requests that this Court grant this Motion and dismiss the above-captioned appeal by Appellants, award costs to Hartley, and grant such other relief as the Court deems just and proper.

Respectfully Submitted,

SPENCER & SPENCER, P.A.

By: 

W. Chaplin Spencer, Jr.

Jeremy D. Melville

226 East Main Street

P.O. Box 790

Rock Hill, SC 29731

Phone: (803) 327-7191

Fax: (803) 327-3868

ATTORNEYS FOR RESPONDENT
JACKIE HARTLEY

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Jackie Hartley,)

Plaintiff,)

vs.)

A. P. Karras, LLC d/b/a Eat)
Well Family Restaurant, Andrew)
P. Karagounis, Lukas Giannatos,)
and Stacey Giannatos,)

Defendants.)

IN THE COURT OF COMMON PLEAS

MOTION COVER SHEET

C.A. No.: 09-CP-46-41

FILED - RECEIVED
20 DEC - 8 PM 3:27
MID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

<p>Plaintiff's Attorney: W. Chaplin Spencer, Jr. Jeremy D. Melville (SC Bar # 77473) 226 E. Main Street P.O. Box 790 Rock Hill, SC 29731 Phone: (803) 327-7191 Fax: (803) 327-3868</p>	<p>Defendants' Attorneys: Lukas Giannatos (Pro Se) Stacey Giannatos (Pro Se) 1416 Sagestone Court Charlotte, NC 28262</p>
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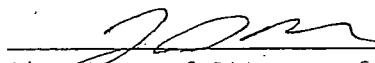
Motion Hearing Requested (attach written motion and complete Sections I and III)
 Form Motion, No Hearing Requested (complete Sections II and III)
 Proposed Order/Consent Order (complete Sections II and III)

SECTION I: Hearing Information

Nature of Motion: Summary Judgment
 Estimated Time Needed: 45 minutes Court Reporter Needed: Yes/ No

SECTION II: Motion Type

Written Motion attached
 Form Motion - I here by move for the relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff/ Defendant Date 12/6/10

PENCER & SPENCER, P.A.
ATTORNEYS AT LAW
226 E. MAIN STREET
P.O. BOX 790
ROCK HILL, S.C. 29731
TEL. 803 / 327-7191

SECTION III: Motion Fee

Paid-Amount: \$25.00

- Exempt: Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
 Other

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- Motion Fee Collected: _____
 Contested-Amount Due: _____

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Jackie Hartley,)
Plaintiff,)
vs.)
A.P. Karras, LLC d/b/a Eat Well)
Family Restaurant, Andrew P.)
Karagounis, Lucas Giannatos and)
Stacy Giannatos,)
Defendants.)

IN THE COURT OF COMMON PLEAS

**NOTICE AND MOTION
FOR SUMMARY JUDGMENT**

C.A. No.: 09-46-41

FILED - RECEIVED
DEC - 8 PM 3:21
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

PLEASE TAKE NOTICE that plaintiff Jackie Hartley ("Lessor") hereby moves, pursuant to Rule 56(a), SCRPC, at such time and place as is convenient to the Court and defendants Stacey and Lukas Giannatos (collectively, the "Giannatos"), but no sooner than ten days from the date of service hereof, for an order granting summary judgment in favor of Lessor against the Giannatos. In support of this Motion, Lessor respectfully submits the following.

I. Background

On April 30, 2009 Lessor filed the Complaint in this lawsuit against the above-captioned defendants for breach of a commercial lease of property located at 1919 Cherry Road, Rock Hill, South

SPENCER & SPENCER, P.A.
ATTORNEYS AT LAW
226 E. MAIN STREET
P.O. BOX 790
ROCK HILL, S.C. 29731
TEL. 803 / 327-7191

Carolina (the "Premises") and for breach of guaranty agreements relating thereto.¹

In the Complaint Lessor asserts a cause of action against the Giannatos for breach of a Partial Guaranty² (the "Guaranty"). (Complaint ¶¶ 35-42.) As asserted by Lessor in this action, on or about July 11, 2005 the Giannatos and Lessor entered into a lease of the Premises. Subsequently, the Giannatos sought to sell their business and terminate the original lease with Lessor. (Guaranty, p. 1.) In consideration for Lessor agreeing to a termination of the original lease agreement, the Giannatos agreed to execute the Guaranty. (Guaranty, p.1.) Pursuant to the Guaranty, the Giannatos unconditionally guaranteed payment of all rent and other sums due under a lease agreement executed by and between Lessor and A.P. Karras, LLC, the subsequent tenant of the Premises, dated October 6, 2006 (the "Lease") as well as for all costs and expenses incurred by Lessor in enforcing the covenants and agreements of the Lease and the Guaranty. (Complaint, p. 7, ¶¶ 37, 40) (Guaranty, p.1).

The Summons and Complaint were served upon Stacey Giannatos on May 6, 2009 and upon Lukas Giannatos on May 8, 2009. The

¹ Defendants A.P. Karras, LLC d/b/a Eat Well Family Restaurant and Andrew P. Karagounis have since been dismissed from this lawsuit by Stipulation of Dismissal filed on June 9, 2010: Therefore, procedural and substantive details of this action relating to the dismissed defendants shall be omitted except to the extent relevant for this Motion.

² The Guaranty is attached to and incorporated into the Complaint at Exhibit "E".

Giannatos filed an Answer to the Complaint on June 1, 2009. The Answer by the Giannatos contains a blanket denial of the claims asserted by Lessor in the Complaint and do not specifically reference any allegations of the Complaint. (Answer, ¶¶ 1-4.)

On March 5, 2010 Lessor served upon the Giannatos the following discovery requests: Interrogatories, Requests for Production and Requests for Admissions (collectively, the "Discovery Requests"). The Giannatos have failed to respond in any way to the Discovery Requests, including the Requests for Admissions, as of the date of this Motion.

Pursuant to the Pre-Trial Order filed in this action on September 30, 2010, this case is set on the trial roster for February 21, 2011.

II. Summary Judgment Standard

Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder. Bankers Trust of S.C. v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). Summary judgment should be granted if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRPC.

The Court may also grant a partial summary judgment for the moving party if on the motion for summary judgment, a judgment is not rendered as to the whole case and the Court "may thereupon

make an order specifying the facts that appear without substantial controversy and what material facts are actually and in good faith controverted." Rule 56(d), SCRCP.

III. Discussion

The only cause of action left to be tried in this case is one for breach of the Guaranty against the Giannatos. (Complaint ¶¶ 35-42.) "This being an action for the breach of contract, the burden [is upon the plaintiff] to prove the contract, its breach, and the damages caused by such breach." Fuller v. Eastern Fire & Casualty Insurance Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

Based on the content of the Requests for Admissions (the "Requests") and the failure of the Giannatos to respond to the Requests, no genuine issue of material fact exists in this matter and Lessor is entitled to summary judgment as a matter of law.

"South Carolina has long had the discovery rule that failure to respond to requests for admission renders any matter listed in the request conclusively admitted for trial." Scott v. Greenville Housing Authority, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003). Rule 36(a), SCRCP, provides in pertinent part that "[t]he matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow... the party to whom the request is directed serves upon the party requesting the admission a written answer or objection

SPENCER & SPENCER, P.A.

ATTORNEYS AT LAW

226 E. MAIN STREET

P.O. BOX 790

ROCK HILL, S.C. 29731

TEL. 803/327-7191

Motion to Dismiss Appeal

14

addressed to the matter, signed by the party or his attorney...." A matter that is deemed admitted is conclusively established for all purposes of the civil action. Rule 36(b), SCRPC.

The Giannatos were required to respond to the Requests within thirty days of the date of service thereof. As of the date of filing this Motion, the Giannatos have failed to serve responses to the Requests. Therefore, pursuant to Rule 36, SCRPC, each matter contained in the Requests is deemed admitted and established conclusively thereby. In pertinent part, the Giannatos have admitted the following matters at issue in this action and pertinent to this Motion:

- (1) The Guaranty, attached to the Complaint at Exhibit E, is a genuine copy of the original document (Requests, p. 2, ¶ 1)
- (2) Lukas Giannatos and Stacey Giannatos each signed the Guaranty. (Requests, p.2, ¶¶ 2-3)
- (3) The Giannatos guaranteed payment of rent and all other sums due under the Lease³ up through December 31, 2009. (Requests, p. 2, ¶ 4)
- (4) The Giannatos guaranteed the performance by A.P. Karras, LLC of all terms and conditions of the Lease. (Requests, p. 2, ¶ 5)
- (5) The Giannatos received notice that A.P. Karras, LLC failed to pay rent to Lessor since November 2008. (Requests, p. 2, ¶ 6)
- (6) The Giannatos received notice that A.P. Karras, LLC vacated the Premises, took certain property

³ The "Lease," as used herein, has the same meaning and definition as that set forth in the Requests for Admissions and Interrogatories served on the Giannatos.

belonging to Lessor and left the Premises in need of substantial repairs. (Requests, p. 2, ¶ 7)

- (7) The Giannatos owe Lessor the sum of \$21,467.72 plus interest at the rate of \$8.52 per diem for each day after April 29, 2009 until payment in full. (Requests, p.2. ¶ 10)

In sum, based on the responses to the Requests, the Giannatos have admitted that they each executed the Guaranty; that pursuant to the Guaranty they were obligated for the payment of rent and other sums due under the Lease; that they have breached the Guaranty; and that they owe Lessor for amounts due under the Lease in the amount of \$21,467.72⁴ plus additional interest as set forth above. Because there are no further issues to be tried in this breach of contract action, Lessor is entitled to judgment in its favor as a matter of law.

IV. Exhibits; Affidavits and Memorandum of Law

In support of this Motion, Lessor submits the following: the (1) Lease (2) Guaranty (3) Requests for Admissions and Certificate of Service and (4) the Verified Statement of Account of Lessor. Prior to the hearing on this Motion, and in accordance with the rules of this Court, Lessor may file with the Court and serve upon the Giannatos reply affidavits, as well as other evidence and a memorandum in support of this Motion. At the hearing Lessor will make such arguments and offer such law as appears pertinent and dispositive at that time.

⁴ This amount is the same as that amount set forth in the Verified Statement of Account submitted by Lessor as Exhibit "B" to the Complaint.

WHEREFORE, Lessor respectfully requests that the Court enter an order granting summary judgment in favor of Lessor and awarding Lessor a judgment against the Giannatos, joint and several, as set forth herein.

SPENCER & SPENCER, P.A.

By: 

W. Chaplin Spencer, Jr.
Jeremy D. Melville
226 East Main Street
P.O. Box 790
Rock Hill, SC 29731
Phone: (803)327-7191
Fax: (803)327-3868

*Attorneys for Plaintiff Jackie
Hartley*

Rock Hill, South Carolina

Date: 12/6/10

SPENCER & SPENCER, P.A.
ATTORNEYS AT LAW
226 E. MAIN STREET
P.O. BOX 790
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Motion to Dismiss Appeal

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Jackie Hartley,)
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 Plaintiff,)
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 vs.)
)
 A. P. Karras, LLC d/b/a Eat)
 Well Family Restaurant, Andrew)
 P. Karagounis, Lucas Giannatos,)
 and Stacy Giannatos,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

C.A. No.: 09-4641

FILED - RECEIVED
 2010 DEC - 8 PM 3:27
 DAVID HAMILTON
 C.C.C.P. & GS
 YORK COUNTY, SC


I certify that the foregoing Notice and Motion for Summary Judgment has been served on the following by depositing a copy in a United States Postal Service mail box, first class, postage-prepaid, on the date and to each of the addressees shown below.

Stacey and Lukas Giannatos
 1416 Sagestone Court
 Charlotte, NC 28260

Rock Hill, S.C.

SPENCER & SPENCER, P.A.

December 7, 2010

By: 
 W. Chaplin Spencer, Jr.
 Jeremy D. Melville
 226 East Main Street
 P.O. Box 790
 Rock Hill, SC 29731
 Tel: (803) 327-7191
 Fax: (803) 327-3868

ATTORNEYS FOR JACKIE HARTLEY

SPENCER & SPENCER, P.A.
 ATTORNEYS AT LAW
 226 E. MAIN STREET
 P.O. BOX 790
 ROCK HILL, S.C. 29731
 TEL. 803 / 327-7191

AK
J.C.A.
Mr.

STATE OF SOUTH CAROLINA

LEASE AGREEMENT

COUNTY OF YORK

AK J.C.A.
October

THIS LEASE AGREEMENT, is made and entered into this 2 day of ~~September~~, 2006, by and between Jackie C. Hartley ("Lessor") and A. P. Karras, LLC, a South Carolina Limited Liability Company, d/b/a East Well Family Restaurant (collectively, "Lessee").

WHEREAS, Lessor is the owner of certain real property located in or near the City of Rock Hill, York County, South Carolina, located at 1919 Cherry Road, Rock Hill, South Carolina and improved by a restaurant building located thereon ("Premises");

WHEREAS, Lessee desires to lease for a term the Premises from Lessor and Lessor desires to lease for a term the Premises to Lessee as set forth herein; and

WHEREAS, Lessor and Lessee intend to express hereinbelow all of the terms, covenants and conditions pertaining to the lease of the Premises.

NOW, THEREFORE, for and in consideration of the above preambulatory recitals, as well as the terms covenants and conditions set forth below, Lessor and Lessee hereby agree as follows:

1. Recitals Incorporated herein. The above recitals are hereby incorporated in and made a part of this Lease Agreement ("Agreement") as fully as if set forth verbatim herein.

2. Demise of Premises. Lessor demises and leases to Lessee and Lessee leases from Lessor, for the term and upon the rental, covenants and agreements herein set forth, the Premises, as defined and described above.

AK J.C.A.
October

3. Lease Term. The Lease Term of this Agreement commences on ~~September~~ 1, 2006, and expires on April 30, 2009 ("first term"). Lessee has the option of two consecutive additional five (5) year terms ("additional terms") commencing on May 1 and expiring on April 30 provided that Lessee gives Lessor three months written notice of its intent to exercise the option prior to expiration of any term. However, Lessee shall have thirty (30) days in which to exercise either of such Additional Terms following the Lessor's written inquiry to Lessee as to whether Lessee is going to exercise the next ensuing Additional Terms, which inquiry the Lessor shall make no more than One Hundred Twenty (120) days before the first day of the next ensuing additional term.

4. Rent Deposit. Lessee has paid a \$4,000.00 deposit, the receipt of which is acknowledged. The deposit shall be refunded upon expiration of the first term (April 30, 2009), if Lessee has properly maintained the Premises and is in material compliance with all of the terms and provisions of this Agreement. Lessee covenants and agrees to pay Lessor monthly rent in advance in the amount of \$4,000.00 for the initial term commencing on the first day of the initial term; \$4,400.00 per month for the first additional term commencing on May 1, 2009; and \$4,800.00 per month for the second additional commencing on May 1, 2014 and ending on April 30, 2019. Rent is due on the first day of each month and may not be withheld for any reason whatsoever. Rent shall be paid by cash or cashier's check. For

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the Additional Terms, rent shall include the amounts due for insurance, real property taxes and assessments as set forth in Paragraphs 12 and 13 hereof.

5. Use of Premises. Lessee may use the Premises for a restaurant. Lessee shall not use or permit the Premises to be used for any other purpose without the written consent of Lessor. Lessee shall comply with all governmental laws, rules and regulations. Lessee agrees not to use or permit the Premises to be used in any illegal, offensive, noisy, or dangerous manner.

6. Warranties of Title and Quiet Possession. Lessor covenants that Lessor is seized of the Premises in fee simple and has full right and authority to make and enter into this Agreement. If, and for so long as, Lessee pays all sums due Lessor hereunder and performs and observes all the covenants and promises hereof, Lessee shall quietly enjoy the Premises, subject, however to the terms of this Agreement, and Lessor will warrant and defend Lessee in the enjoyment and peaceful possession of the Premises throughout the terms of this Agreement.

7. Waste and Nuisance. Lessee shall not commit or suffer to be committed, any waste on the Premises, or any nuisance.

8. Improvements, Alterations, Additions and Maintenance. Lessor does not warrant the fitness, merchantability, design, condition, capacity, suitability or performances of the Premises and makes no expressed or implied warranties, but rather leases the Premises "as is." Lessee agrees to make necessary improvements, alterations, and additions to the Premises (collectively, "improvements"). The improvements, which shall have Lessor's prior written approval are as follows: (a) shall not impair the value of the Premises; (b) be built in good and workmanlike manner and in compliance with all governmental regulations; and (c) be promptly paid for by Lessee. A permanent sign may be placed on the premises provided that such sign complies with applicable zoning restrictions. Lessee shall maintain the Premises to keep the same in a good and tenantable condition during the term of this Agreement, including keeping the interior and exterior clean and orderly. In addition, Lessee is responsible for the plumbing, electrical, heat and air-conditioning systems, roof, windows and glass and keeping the grass cut and the parking lot free of trash and debris.

9. Personal Property and Fixtures. Lessor's fixtures and equipment located on the Premises shall remain the property of Lessor. Lessee may install furniture, supplies, inventory, and merchandise and other personal property consistent with and necessary for the Use of the Premises; such property remains Lessee's personal property, which Lessee may remove at any time. All fixtures and improvements to the Premises shall become the property of Lessor immediately upon the construction, installation or attachment thereof to the Premises. Included in this Lease Agreement is Lessee's right to use the following equipment (collectively, the "Equipment"), which is owned by Lessor:

- 45 chairs
- 16 booths
- 25 tables
- 1 ice machine
- 1 hood/ventilation system
- 11 stainless racks
- 1 stainless sink (3-compartment)

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- 1 walk-in cooler and freezer
- 1 stainless dishwasher/washtable with sprayer

Lessee shall maintain the Equipment in good working order and replace any broken or damaged Equipment with similar equipment. At any time, Lessee may return any of the equipment to Lessor (excluding the hood, sink and walk-in cooler and freezer) and upon such return, Lessee shall have no further responsibility for such equipment, except the equipment shall be in the aforesaid condition at the time of such return.

10. Abandonment. Lessee shall not vacate or abandon the Premises at any time during the term of this Agreement. If Lessee abandons, vacates, or surrenders the Premises, or is dispossessed by process of law, or otherwise, for a period exceeding 30 days, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor.

11. No Estate in Land/Ownership of Improvements. This Agreement creates the relationship of Landlord and Tenant, between Lessor and Lessee; no estate shall pass out of Lessor, and the rights of Lessee under this Agreement constitute a usufruct, not subject to levy and sale.

12. Property Taxes and Assessments. Lessor shall pay all real property taxes and assessments for the initial term. Lessee shall pay all one-half of property taxes and assessments levied against the Premises during the additional terms of this Agreement by paying a prorated amount each month which will total Lessee's share for the total of the amount due for annual property taxes and assessments. Lessor will pay the property taxes by making monthly payments in addition to monthly rent, which shall be due with the rent payments. If property taxes are more than the amounts paid to Lessor, Lessee shall pay Lessor any additional amounts due within 30 days notice of additional amounts due. Lessor shall refund or credit any amounts that Lessor paid for property taxes in excess of the amount actually owed for property taxes.

Lessee shall pay all property taxes and assessments on personal property or equipment located at the Premises.

13. Insurance. Lessee shall maintain and keep in force insurance of the types and in amounts customarily carried in lines of business similar to Lessee, including but not limited to general liability in the amount of \$1,000,000.00 and adequate worker's compensation, carried in companies and in amount satisfactory to Lessor; and Lessee shall exhibit or deliver to Lessor such policies or insurance upon request of Lessor. During the initial term, Lessor shall pay the property insurance on the Premises. During any additional terms, Lessee shall pay one-half of the property insurance on the Premises.

14. Utilities. Lessee shall pay all charges for gas, water, fuel, electricity and other utilities used by Lessee on the Premises.

15. Indemnifications. Lessee agrees to and shall indemnify, defend, save and hold harmless Lessor from and against any and all loss, liability, expenses or damage of any kind or nature and from any suits, causes of action, claims or demands, including reasonable attorneys' fees and any other costs associated therewith, involving, arising from Lessee's actions at the Premises.

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16. Lessor's Right of Entry. Lessee shall permit Lessor and his agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting, testing, assessing, or showing the Premises to potential purchasers or tenants, or for the purpose of posting notices, without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises occasioned by the entry. For the purpose of this paragraph, any time, with or without notice, during the hours of operation of Lessee's business operations shall be deemed a reasonable time for entry.

17. Condemnation. In the event the entire Premises shall be appropriated or taken under the power of eminent domain, this Agreement shall terminate and expire as of the date of such taking, and Lessee shall then be released from any liability thereafter accruing under this Agreement. In the event a portion of the Premises shall be so appropriated or taken and the remainder of the Premises shall not be reasonably suitable for Lessee's use and occupation, then Lessee may terminate this Lease by notice to Lessor within 60 days after the date of condemnation. If Lessee so terminates this Lease, rent abates as of the date of termination. If partial taking occurs and Lessee cannot or does not elect to terminate this Agreement, this Agreement shall continue in force as to the remaining portion of the Premises with a fair abatement of the Monthly Rent. In the event of a partial taking, Lessor (i) may make, at its sole expense, any repairs or alterations to the Premises which may be necessary to restore the Premises, in so far as possible, to their condition prior to the taking or condemnation; or (ii) may, by giving notice to Lessee within 60 days after the date of such taking or condemnation, terminate this Agreement. In any event, the condemnation award belongs to Lessor, but Lessee may seek a separate award for its losses; if Lessee's award does not diminish Lessor's award.

18. Assignment and Sublease. Lessee may not assign or sublease its rights or obligations hereunder to any other person or entity, without prior written permission of the Lessor. Lessor retains the right to approve or reject sublease or assignee, subject to a good faith standard.

19. Default. The following events shall constitute a default of this Agreement.

A. The Lessee is guilty during any full twelve (12) month consecutive period preceding such late payment of being late in paying Rent more than two (2) times, then the non-payment of Rent for a period exceeding five (5) days after the due date thereof shall be a default;

B. The nonperformance by Lessee of any term, covenant, or condition of this Agreement (other than payment obligations) which is not cured or a good faith effort to cure such default is not commenced during such 30 days and diligently pursued if the default is such that it cannot be reasonably cured within 30 days after written notice thereof from Lessor;

C. Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition under any bankruptcy, reorganization, insolvency, or moratorium law, or any law for the relief of, or relating to, debtors; and

D. The filing of any involuntary petition under any bankruptcy statute against Lessee, or the appointment of any receiver or trustee to take possession of the Premises unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 20 days or the date of the filing or appointment.

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20. Remedies on Default. On occurrence of any of the foregoing events of default, Lessor may:

A. Terminate this Agreement, such termination to be effective ten (10) days following written notice by Lessor to Lessee of Lessor's election to terminate this Agreement if Lessee has not cured such default during such ten (10) day notice period;

B. If Lessee does not pay Rent within five days of the due date, Lessor can start to have Lessee evicted. This is Lessee's notice and Lessee is not entitled to other notice. So long as the failure of the Lessee to pay the Rent by the due date has not occurred more than two (2) times in any full twelve (12) month preceding such non-payment, the Lessor agrees to allow the Lessee to remedy the default if the Lessee pays such Rent no more than ten (10) days after Lessor's notice of such failure which notice the Lessor may give by any means reasonably likely to be received by Lessee;

C. Without declaring this Lease terminated, sue for and collect all sums or amounts due Lessor from Lessee under this Agreement, including, but not limited to, accrued rent, accelerated future rents, damages, resulting from Lessee's defaults of this Agreement, and other consequential damages;

D. Re-enter and re-let the Premises for and on behalf of Lessee without terminating this Agreement; and

E. Exercise any applicable legal or equitable remedy.

21. Payment, Late Charge and Interest. A payment to Lessor is deemed made and effective as of the date of actual receipt by Lessor, in the event Lessee shall fail to make payment of Rent on or before the fifth day following the due date thereof a late charge equal to 10% of the Rent amount shall become immediately due and payable for each such late payment. All sums payable to Lessor under this Lease, if not paid when due, shall accrue interest at a rate of 15% from their due date until paid.

22. Election to Terminate. The commencement and prosecution of any action by Lessor in forcible entry and detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Premises, shall not be construed as an election to terminate this Agreement unless Lessor expressly exercises its option hereinabove provided to declare the term hereof ended, whether or not such entry or re-entry is had or taken under summary proceedings or otherwise, and shall be deemed to have absolved or discharged Lessee from any of its obligations and liabilities for the remainder of the term of this Agreement, and Lessee shall notwithstanding such entry or re-entry, continue to be liable for the periodic payment of the rents and the performance of the other covenants and conditions hereof and shall pay to Lessor all monthly deficits after any such re-entry in monthly installments as the amounts of such deficits from time to time are ascertained.

23. Remedies Cumulative. Every right and remedy provided in this Agreement is distinct from and cumulative to every other right or remedy under this Agreement or afforded by law or equity. Every such right and remedy may be exercised concurrently, independently or successively.

J.C.H.

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24. Waiver of Notice. Except for such notices to Lessee as are specifically required to be given under this Agreement, Lessee waives the service of any notice to terminate this Agreement or to re-enter the Premises; and waives the service of any demand for payment of rent or for possession of the Premises and other demand or notice prescribed by law.

25. Acceptance of Rent after Default. The receipt and acceptance by Lessor payments as they become due from Lessee where Lessor has knowledge of the existence of a breach of a term or condition of this Agreement, or after Lessor has served notice, commenced an action, or obtained a final judgment for a breach of this Agreement by Lessee, shall not be construed as a waiver of the breach by Lessor and shall not operate to prejudice, waive or affect any right or remedy that Lessor may have under this Agreement or by operation of law, as that breach or any future breach of the same or of a different nature.

26. Costs, Expenses and Attorneys' Fees. Lessor shall be entitled to recover all costs and expenses incurred by it, including reasonable attorneys' fees, in the enforcement or defense of any provision of this Agreement regardless of whether or not a civil action is commenced. However, in any litigation under this Lease, the parties agree that the losing party shall be obligated to pay the reasonable attorney fee and other costs and expenses for the prevailing party, as such prevailing party is determined and such fee and costs are set by the presiding Judge.

27. Captions. The captions and headings of the Paragraph of this Agreement are for convenience only and are not to be used to interpret or define the provisions of this Agreement.

28. No Waiver. No waiver of a breach of any of the covenants or promises of this Agreement shall be construed as a waiver of any succeeding breach of the same or other covenant or promise.

29. Severability. In the event that any provision of clause of this Agreement conflicts with any applicable law, the other provisions of this Agreement shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.

30. Entire Agreement. The parties acknowledge that no warranties (express or implied), representations or inducements have been made other than those expressed herein; that this Agreement supersedes any and all prior memoranda, correspondence, conversations, negotiations and agreements pertaining to the Premises or the matters herein expressed; and that this Agreement constitutes the entire agreement between them.

31. Amendment. The terms of this Agreement may be modified in whole or in part only by a written instrument signed by the Lessee and Lessor. Any oral agreement to modify this Agreement shall be void and of no force and effect.

32. Governing Law and Forum. The validity, construction and effect of this Agreement shall be governed by the laws of the state of South Carolina, and the parties hereby consent to the exclusive jurisdiction of the Courts of the South Carolina for resolution of any dispute arising hereunder.

J.C.H.

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33. Notices. All notices, requests, demands or other communications given hereunder shall be in writing and be sent either (a) by hand, or (b) by certified United States Mail, return receipt requested, or (c) by commercial overnight delivery service, and in any event with all postage, fees and delivery charges prepaid. Such notice shall be deemed to have been given on the earlier date of the following: (i) receipt or refusal of delivery, if delivered by hand or by overnight carrier, or (ii) the fifth day following the date of deposit in an official depository of the United States mail, if mailed. All notices shall be mailed or delivered, as set forth above, addressed to the following addresses:

To Lessor: Jackie C. Hartley
2638 Claxton Drive
Rock Hill, SC 29732

To Lessee: Andrew P. Karagounis, Manager
A. P. Karras, LLC
6303 Robin Hollow Drive
Mint Hill, NC 28227

Each party may change the address or addresses to which notice is to be delivered to it by notifying the other party of the address or addresses in the manner provided herein for giving notice, and each such change of address shall be effective 30 days after such notice of change is given.

34. Property Authority and Acknowledgement. By the respective signatures on this Agreement, Lessor and Lessee represent, declare and warrant that each has the property legal authority to execute and enter into this Agreement, and to become bound by thereto.

35. Sealed Instrument. Lessee and Lessor agree that by signing below they intend to place their hands and seals upon this Agreement and that this Agreement shall be considered in every respect to be a sealed instrument.

36. Effective Date. The Effective Date of this Agreement shall be deemed to be the latest date that all parties have affixed their signature hereto.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed and sealed as of the effective date.

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IN THE PRESENCE OF:

X [Signature]
X [Signature]

LESSOR:

By: [Signature] (Seal)
Jackie C. Hartley

DATE: Oct 6, 2006

LESSEE:

A.P. Karras, LLC

By: [Signature]
Andrew P. Karagounis, Sole Member and Manager

Witness:

[Signature]
[Signature]

Exhibit B

STATE OF SOUTH CAROLINA)
) AGREEMENT FOR TERMINATION OF
COUNTY OF YORK) LEASE AND PARTIAL GUARANTY

THIS AGREEMENT FOR TERMINATION OF LEASE AND PARTIAL GUARANTY is made and entered into this 6th day of October, 2006 by Stacy Giannatos and Lucas Giannatos (collectively, "Guarantors").

WITNESSETH:

WHEREAS, Jackie C. Hartley ("Lessor") leased the Premises, consisting of the real property and building located at 1919 Cherry Road, Rock Hill, South Carolina, including any fixtures and equipment owned by Lessor, to Guarantors by Lease Agreement signed January 18, 2006 ("Lease").

WHEREAS, Guarantors seek to sell their business to A.P. Karras, LLC, including any rights in and to the Lease;

WHEREAS, the Lease contains a provision allowing assignment or sublease upon Lessor's approval and the payment of \$8,000; and

WHEREAS, rather than assign the Lease, Guarantors wish to terminate the Lease with the payment of the \$8,000 fee and partial guaranty of the new lease with A.P. Karras, LLC ("New Lease").

NOW, THEREFORE, for and in consideration termination of the Lease and of Lessor's entry into the New Lease with A.P. Karras, LLC, the receipt and sufficiency of which is hereby acknowledged, Guarantors agree as follows.

1. Recitals Incorporated Herein. The above recitals are hereby incorporated in and made a part of this Guaranty as fully as if set forth verbatim herein.

2. Termination of Lease; Payment. Upon the execution of this Agreement, the payment of \$8,000 to Lessor and A.P. Karras, LLC's entry into the New Lease, the Lease shall be terminated. Payment shall consist of (i) Guarantors tendering a certified or cashier's check payable to Lessor in the amount of \$4,000 upon execution of this Agreement and (ii) Lessor keeping the \$4,000 deposit paid by Guarantors described in Paragraph 4 of the Lease.

3. Partial Guaranty. As consideration for termination of the Lease and Lessor's entry into the New Lease with A.P. Karras, LLC, Guarantors unconditionally guarantee up and through December

J.C.H.

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31, 2009: (i) the due and punctual payment of all Rent and all other sums due, including interest and penalties, to be paid by A.P. Karras, LLC to Lessor pursuant to the New Lease or arising out of A.P. Karras, LLC's default thereof; and (ii) the performance by A.P. Karras, LLC of all the terms, conditions, covenants and agreements of the New Lease. Guarantors covenant and agree to pay all of Lessor's costs, expenses and reasonable attorneys' fees incurred in enforcing the covenants and agreements of A.P. Karras, LLC in the New Lease or incurred by Lessor in enforcing this Guaranty.

4. Notices. If A.P. Karras, LLC defaults in any covenant or agreement of the New Lease, subject to the December 31, 2009 date referenced above, Guarantors shall pay to Lessor all payment obligations within five days of notice of default and demand for payment. Except for the notice set forth in the preceding sentence, Guarantors expressly waive notice of the acceptance of this Guaranty, presentment, protest, notice of protest and any and all demands for performance or any and all notices of non-performance that might otherwise be a condition precedent to the liability of Guarantors under this Guaranty. Notice shall be considered effective and valid, whether or not actually received by Guarantors, if deposited in the United States Mail with sufficient postage attached thereto and addressed as follows:

Stacey Giannatos and Lukas Giannatos

1416 Sauratown Ct
Charlotte NC 28260

5. Guaranty of Payment. This Guaranty is a guaranty of payment and not of collection. The liability of Guarantors on this Guaranty shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against A.P. Karras, LLC. Guarantors waive any right to require that an action be brought against A.P. Karras, LLC. In the event A.P. Karras, LLC defaults and fails to cure, Guarantors shall become, without notice, immediately liable to Lessor for the full amount of the default.

6. Liability Unaffected. Guarantors covenant and agree that, without releasing, diminishing or otherwise affecting the liability of Guarantors or the performance of any obligations contained in this Guaranty and without affecting the rights of Lessor, Lessor may, at any time and from time to time, and without notice to or further consent of Guarantors: (i) make any agreement reducing the term of the New Lease or otherwise modifying the

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terms of the New Lease, including terms with respect to payments of Rent or other sums due thereunder; (ii) waive, exercise or refrain from exercising any right Lessor might have under the New Lease; and (iii) consent to any assignment or sublease in accordance with the New Lease.

Neither Guarantors' obligation to make payment in accordance with the terms of this Guaranty nor any remedy for the enforcement of this Guaranty shall be impaired, modified, changed, released, or limited in any manner by any impairment, modification, change, release, or limitation of the liability of A.P. Karras, LLC or its estate in bankruptcy.

7. Defined Terms. Capitalized terms not otherwise defined in this Guaranty shall have the meanings provided therefor in the New Lease.

8. Severability. In the event that any provision or clause of this Guaranty conflicts with any applicable law, the other provisions of this Guaranty shall be given effect as fully as possible without the conflicting provision, and to this end the provisions of this Guaranty are declared to be severable.

9. Governing Law and Forum. The validity, construction and effect of this Guaranty shall be governed by the laws of the State of South Carolina, and Guarantors hereby consent to the exclusive jurisdiction of the courts of the state of South Carolina for resolution of any dispute arising hereunder.

10. Successors and Assigns. This Guaranty shall bind the successors and assigns of Guarantors and inure to the benefit of the successors and assigns of Lessor.

IN WITNESS WHEREOF, Guarantors have caused this Guaranty to be executed and sealed as of the date set forth below.

JCH

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IN THE PRESENCE OF:

Gregory M. Neal

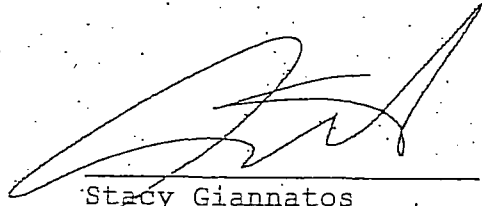
Anna Stanley

Gregory M. Neal

Anna Stanley

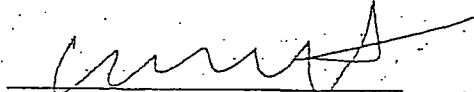
Gregory M. Neal

Anna Stanley



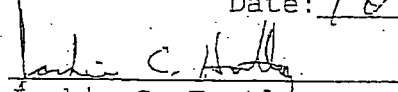
Stacy Giannatos

Date: 10-6-06



Lucas Giannatos

Date: 10-6-06



Jackie C. Hartley

Date: 10-6-06

J.C.H.

h.c. ab

SPENCER & SPENCER
PROFESSIONAL ASSOCIATION

Attorneys and Counselors at Law

C.E. SPENCER (1849-1921)
C.W.F. SPENCER (1876-1956)
C.W.F. SPENCER, JR. (1911-1985)
W.C. SPENCER †
WILLIAM L. "RED" FERGUSON †
EMIL W. WALD †
PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPkins*
JEREMY D. MELVILLE*

† Of Counsel
* Also admitted in NC

SUITE 200
226 EAST MAIN STREET
P.O. BOX 790
ROCK HILL, S.C. 29731-6790

Telephone
803-327-7191

Telecopier
803-327-3868

E-Mail Address
jeremymelville@spencerfirm.com

March 5, 2010

Lukas and Stacey Giannatos
1416 Sagestone Court
Charlotte, NC 28260

Re: Jackie Hartley v. A.P. Karras, LLC d/b/a Eat Well Family
Restaurant, et al.
C.A. No. 09-CP-46-1941

Dear Mr. and Ms. Giannatos:

Enclosed please find Interrogatories, Requests for Production
and Requests for Admissions to defendants Lukas Giannatos and
Stacey Giannatos in the matter referenced above. Please call if
you have any questions.

Respectfully,

SPENCER & SPENCER, P.A.



Jeremy D. Melville

Enclosures

cc: James W. Bradford, Jr., Esq.

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	
Jackie Hartley,)	
)	
Plaintiff,)	
)	REQUESTS FOR ADMISSIONS TO
vs.)	DEFENDANTS LUKAS GIANNATOS
)	<u>AND STACEY GIANNATOS</u>
A. P. Karras, LLC d/b/a Eat)	
Well Family Restaurant, Andrew)	C.A. No. 09-CP-46-1941
P. Karagounis, Lucas Giannatos,)	
and Stacy Giannatos,)	
)	
Defendants.)	
)	

Plaintiff Jackie Hartley ("Lessor") hereby serves upon defendants Lukas Giannatos and Stacey Giannatos (collectively and individually, "Defendants"), the following Requests for Admissions (the "Requests") pursuant to Rules 26 and 36, SCRPC. You shall respond to the Requests within the time and in the manner prescribed by 26 and 36, SCRPC, and serve a copy of your responses upon the undersigned as counsel for Lessor.

DEFINITIONS

These Requests are to be read and interpreted in accordance with the definitions found in the Interrogatories to Defendants Lukas Giannatos and Stacey Giannatos ("Interrogatories") propounded by Lessor of even date.

REQUESTS

You are requested to admit or deny the following:

SPENCER & SPENCER, P.A.
ATTORNEYS AT LAW
225 E. MAIN STREET
P.O. BOX 790
COCKE HILL, S.C. 29731
TEL. 803 / 327-7191

Motion to Dismiss Appeal

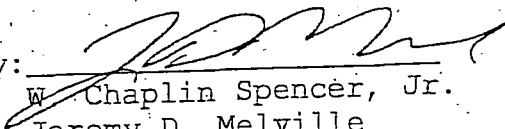
1. The Guaranty, attached to the Complaint at Exhibit E, is a genuine copy of the original document.
2. Lukas Giannatos signed the Guaranty.
3. Stacey Giannatos signed the Guaranty.
4. Under the Guaranty, you guaranteed payment of rent and all other sums due under the Lease up through December 31, 2009.
5. Under the Guaranty you guaranteed the performance by A.P. Karras, LLC of all terms and conditions of the Lease.
6. You received notice that A.P. Karras, LLC failed to pay rent to Lessor since November 2008.
7. You received notice that A.P. Karras, LLC vacated the Premises, took certain property belonging to Lessor and left the Premises in need of substantial repairs.
8. You have not made any payment to Lessor from November 2008 to the date hereof.
9. You represented to A.P. Karras, LLC that you were the owner of various items located on the Premises including a nine-foot stainless steel table, a twelve-foot stainless steel salad bar and fifteen stainless steel racks.
10. You owe Lessor the sum of \$21,467.72 plus interest at the rate of \$8.52 per diem for each day after April 29, 2009 until payment in full.

SPENCER & SPENCER, P.A.

Rock Hill, South Carolina

March S, 2010

By:


W. Chaplin Spencer, Jr.

Jeremy D. Melville

226 East Main Street

P.O. Box 790

Rock Hill, SC 29731

803/327-7191 - Telephone

803/327-3868 - Telecopy

ATTORNEYS JACKIE HARTLEY

SPENCER & SPENCER, P.A.

ATTORNEYS AT LAW

226 E. MAIN STREET

P.O. BOX 790

ROCK HILL, S.C. 29731

TEL. 803 / 327-7191

Motion to Dismiss Appeal

34

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

Jackie Hartley,)

) Plaintiff,)

) CERTIFICATE OF SERVICE

) vs.)

) C.A. No.: 09-CP-46-1941

) A. P. Karras, LLC d/b/a Eat)
) Well Family Restaurant, Andrew)
) P. Karagounis, Lucas Giannatos,)
) and Stacy Giannatos,)

) Defendants.)

I certify that the foregoing Interrogatories, Requests for Production and Requests for Admissions to defendants Lukas Giannatos and Stacey Giannatos have been served on the following by depositing a copy in a United States Postal Service mail box, first class, postage-prepaid, on the date and to each of the addressees shown below.

James W. Bradford, Jr.
Bradford & Bradford, P.A.
P.O. Box 977
York, SC 29745

Stacey and Lukas Giannatos
1416 Sagestone Court
Charlotte, NC 28260

Rock Hill, S.C.

SPENCER & SPENCER, P.A.

March 5, 2010.

By: 

W. Chaplin Spencer, Jr.

Jeremy D. Melville

226 East Main Street

P.O. Box 790

Rock Hill, SC 29731

803/327-7191 - Telephone

803/327-3868 - Telecopy

SPENCER & SPENCER, P.A.
ATTORNEYS AT LAW
226 E. MAIN STREET
P.O. BOX 790
ROCK HILL, S.C. 29731
TEL. 803/327-7191

ATTORNEYS FOR JACKIE HARTLEY

Motion to Dismiss Appeal

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Jackie Hartley,)

Plaintiff,)

vs.)

A. P. Karras, LLC d/b/a Eat)
Well Family Restaurant, Andrew)
P. Karagounis, Lucas Giannatos,)
and Stacy Giannatos,)

Defendants.)

IN THE COURT OF COMMON PLEAS

VERIFICATION OF ACCOUNT

C.A. No. 09-CP-46-_____

BEFORE ME personally appeared Jackie Hartley, who, being duly sworn, says that he is the Plaintiff in the above-styled matter; that as such he has the authority and knowledge to verify the attached Account Summary; that he has carefully read the attached Account Summary and knows of his own knowledge that the matters and things therein are true and correct, except for those matters and things therein related on information and belief; as to such matters, he verily believes the same to be true.

By: Jackie Hartley
Jackie Hartley

Sworn to before me this 29th
day of April, 2009.

Stephanie S. Decker
Notary Public for South Carolina
My Commission Expires: 11-27-17

Account Summary

Property at 1919 Cherry Road, Rock Hill, SC

December 2008 Rent	
Principal	\$4,000.00
Late Fee	<u>\$400.00</u>
	\$4,400.00

January 2009 Rent	
Principal	\$4,000.00
Late Fee	<u>\$400.00</u>
	\$4,400.00

Repair, Replacement and Maintenance Fees

HVAC	\$10,450
Plumbing	\$2,598.00
Fire System	\$630.00
Light Bulbs	\$142.00
Cleaning	\$900.00
Painting	\$1,000.00
Tiles	<u>\$150.00</u>
	\$15,870.00

Eviction Action	
Filing Fees	\$30.00
Service of Process	<u>\$35.00</u>
	\$65.00

Credit of Deposit (4,000.00)

Total Principal:	\$20,735.00
Interest: ¹	<u>\$732.72</u>

Grand Total: \$21,467.72

¹ Interest at the rate of 15% per annum or \$8.52 per diem from February 1, 2009 until April 29, 2009. All debts were accrued prior to February 1, 2009 but one date is used to simplify matters.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF YORK

CASE NO: 2009CP4601941

IN THE COURT OF COMMON PLEAS

Jackie Hartley vs. A P Karras LLC

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Order Granting Summary Judgment

Dated at York, South Carolina, this 4th day of February, 2011.

Court Reporter:

s/S. Jackson Kimball

PRESIDING JUDGE - S. JACKSON KIMBALL

This judgment was entered on the 14th day of February, 2011, and a copy mailed first class this 14th day of February, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

W Chaplin Spencer Jr Spencer & Spencer, PA
P.O. Box 790 Rock Hill, SC 29731

Lucas Giannatos 1416 Sagestone Ct Charlotte,
NC 28262
Stacy Giannatos 1416 Sagestone Ct Charlotte,
NC 28262

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRCP APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Jackie Hartley,)

Plaintiff,)

vs.)

A.P. Karras, LLC d/b/a Eat Well Family)
Restaurant, Andrew P. Karagounis, Lucas)
Giannatos and Stacy Giannatos,)

Defendants.)

**ORDER GRANTING
SUMMARY JUDGMENT**

Case No.: 2009-CP-46-1941

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

2011 FEB 14 AM 9:01

FILED-RECEIVED

This matter came before me on January 27, 2011, upon the Motion for Summary Judgment (the "Motion") of Plaintiff. Jeremy D. Melville appeared on behalf of Plaintiff, and Stacey Giannatos and Lukas Giannatos¹ (collectively, the "Giannatos") appeared *pro se*. Based on the record and the arguments made before the Court, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On April 30, 2009, Plaintiff filed this action asserting a claim against the Giannatos for breach of a Partial Guaranty agreement (the "Claim"). The Partial Guaranty at issue was attached to and incorporated in the Complaint as Exhibit "E".

2. The Partial Guaranty contains obligations relating to a commercial Lease between Plaintiff and A.P. Karras, LLC for the rental of the premises located at 1919 Cherry Road, Rock Hill, South Carolina (the "Lease"). A copy of the Lease described above was attached to and incorporated in the Complaint as Exhibit "A".

3. The Giannatos filed a joint Answer on June 1, 2009.

4. On March 5, 2010, Plaintiff served "Requests for Admissions to Defendants Lukas

¹ The spelling of the names for Stacey and Lukas Giannatos have been modified in this Order to reflect the spelling as provided by the Giannatos in the joint Answer they filed in this lawsuit.

and Stacey Giannatos" (the "Requests") upon the Giannatos by mailing the Requests pursuant to Rules 36 and 5(b)(1), SCRCF. The Requests and a Certificate of Service was included as an Exhibit to the Motion.

5. In the Requests Plaintiff requested that the Giannatos admit or deny the following matters:

- a. The Guaranty, attached to the Complaint as Exhibit "E", is a genuine copy of the original document. (Requests, ¶1.)
- b. Lukas Giannatos signed the Guaranty (Requests, ¶2.)
- c. Stacey Giannatos signed the Guaranty (Requests, ¶3.)
- d. Under the Guaranty, you guaranteed payment of rent and all other sums due under the Lease² up through December 31, 2009. (Requests, ¶3.)
- e. Under the Guaranty you guaranteed the performance by A.P. Karras, LLC of all terms and conditions of the Lease. (Requests, ¶4.)
- f. You received notice that A.P. Karras, LLC failed to pay rent to Lessor since November 2008. (Requests, ¶6.)
- g. You received notice that A.P. Karras, LLC vacated the Premises, took certain property belonging to Lessor and left the Premises in need of substantial repairs. (Requests, ¶7.)
- h. You have not made any payment to Lessor from November 2008 to the date hereof. (Requests, ¶8.)
- i. You owe Lessor the sum of \$21,467.72 plus interest at the rate of \$8.52 per diem for each day after April 29, 2009 until payment in full. (Requests, ¶10.)

6. Pursuant to Rules 36(a), 5(b)(1), 6(a) and (e), SCRCF, the Giannatos had until April 9, 2010, to serve responses to the Requests.

7. The Giannatos did not respond to the Requests within the prescribed time period and have not responded to the Requests as of the date of the hearing on the Motion.

² The "Lease" is defined in the Requests as the Lease Agreement dated October 2, 2006 between Jackie C. Hartley and A.P. Karras relating to the Premises.

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CONCLUSIONS OF LAW

Based on the foregoing findings of fact and the applicable law, I make the following conclusions of law.

Summary judgment is an integral part of the rules of procedure, intended to expedite the disposition of cases not requiring the services of a fact finder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). Summary judgment should be granted if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Rule 56(c), SCRPC.

A party's failure to respond to requests for admissions results in each of the requests being deemed to have been admitted. "South Carolina has long had the discovery rule that failure to respond to requests for admission renders any matter listed in the request conclusively admitted for trial." *Scott v. Greenville Housing Authority*, 353 S.C. 639, 645, 579 S.E.2d 151, 154 (Ct. App. 2003); Rule 36, SCRPC. A matter deemed admitted is conclusively established for all purposes of the civil action. *Id.*

Pursuant to Rule 36, the Giannatos were required to respond to the Requests on or before April 9, 2010. They failed to do so. Thus, pursuant to Rule 36, each matter contained in the Requests is deemed admitted and established conclusively thereby for all purposes in this matter.

The Claim against the Giannatos is for breach of the Partial Guaranty, which is a breach of contract action. "This being an action for the breach of contract, the burden [is upon the plaintiff] to prove the contract, its breach, and the damages caused by such breach." *Fuller v. Eastern Fire & Casualty Insurance Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). Based on the content of the Requests and the failure of the Giannatos to respond to them, the following is conclusively established: that Lukas and Giannatos executed and entered into the Partial Guaranty attached to the Complaint at Exhibit "E"; that pursuant to the Partial Guaranty, the Giannatos guaranteed the payment of all rent and other sums due under the Lease between Plaintiff and A.P. Karras and guaranteed the performance by A.P. Karras, LLC of all terms and conditions of the Lease through December 31, 2009; that the Giannatos received proper notice of the defaults of A.P. Karras, LLC under the Lease; that the Giannatos failed to make payment or otherwise perform as prescribed by the Partial Guaranty; and that as a result of the defaults, Plaintiff suffered damages in the amount of \$21,467.72 plus interest, as more fully set forth in the Verified Statement of Account which was included as an Exhibit to the Motion.

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Based on the foregoing, I conclude that no genuine issue of material fact exists in this matter, and that Plaintiff is entitled to summary judgment against the Giannatos for breach of contract as a matter of law.

THEREFORE, IT IS HEREBY ORDERED that the Plaintiff's Motion for summary judgment be granted and that judgment be entered against Stacey Giannatos and Lukas Giannatos, jointly and severally, in the amount of \$21,467.72, plus interest at the rate of \$8.52 per diem from April 29, 2009 through the date of entry of judgment.

AND IT IS SO ORDERED.

February 4, 2011



S. Jackson Kimball
Special Circuit Judge
York County

#4

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE CIRCUIT COURT FOR
SIXTEENTH JUDICIAL CIRCUIT

Jackie Hartley,)
)
Plaintiff,)

Case No. 09-CP-46-1941

v.)

MOTION FOR RELIEF FROM
JUDGMENT

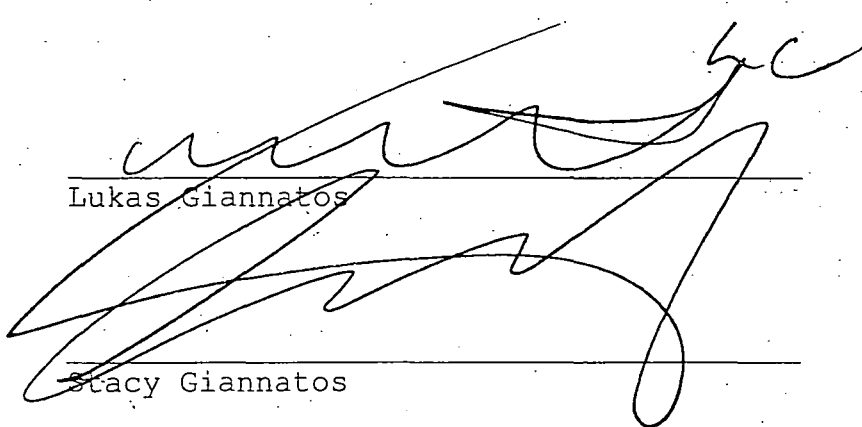
A.P. Karra, LLC d/b/a/)
Eat Well Family)
Restaurant, Andrew P.)
Karagounis, Lucas)
Giannatos and Stacy)
Giannatos)
Defendant.)

DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, SC

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Lucas Giannatos and Stacy Giannatos move pursuant to Rules 60 S.C.R. Civ. P. for relief from the judgment and order that was entered in this action on or about February 4, 2011. The grounds for this motion are that summary judgment was entered on the basis of plaintiff's Requests for Admissions, which the Giannatos did not receive, and to which the Giannatos were unable to timely respond, constituting excusable neglect. Although the record appears to show that the requests were served by regular mail, as shown in the attached affidavit, the Giannatos never received them. The Giannatos received the notice of hearing, which was sent by the York County Clerk to the same address as indicated in the requests, but cannot explain why they did not receive the requests, which were not sent by certified mail.

The Giannatos are ready, willing and able to present a substantive defense to the plaintiff's claims, including evidence of payment retained by the plaintiff and not credited to their account, and inequitable conduct by the plaintiff and others. Had the Giannatos received the requests, they would have served responses and denied that they owe the plaintiff the sum of \$21,467.72, plus interest at the rate of \$8.52 per diem for each day after April 29, 2009, as stated in Request No. 10.



Lukas Giannatos

Stacy Giannatos

February 24, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE CIRCUIT COURT FOR
SIXTEENTH JUDICIAL CIRCUIT

Jackie Hartley,)
)
Plaintiff,)

Case No. 09-CP-46-1941

v.)

AFFIDAVIT OF STACY GIANNATOS

A.P. Karra, LLC d/b/a/)
Eat Well Family)
Restaurant, Andrew P.)
Karagounis, Lucas)
Giannatos and Stacy)
Giannatos)
Defendant.)

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DAVID HAMILTON
C.C.C.P. & S.S.
YORK COUNTY, SC

Personally appeared before me, Stacy Giannatos who first being duly sworn says:

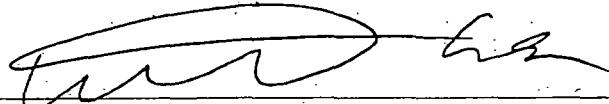
1. I am a resident of Charlotte, North Carolina, and my mailing address is 1416 Sagestone Court, Charlotte, NC, 28260. I was born in Greece, but have lived in the United States for many years. The matters set forth in this affidavit are based upon my personal knowledge or belief.

2. I have reviewed the Notice and Motion for Summary Judgment filed by the Plaintiff and dated December 6, 2010, and the Requests for Admission that are attached to it. The first time I ever saw these two documents was at the hearing last month. I never received a copy of the Requests in the mail, and never received a copy of the Motion until I was handed a copy in court. Both of these documents show that they were sent to me and my husband at our address in

Charlotte, and I cannot explain what happened, but I never received these documents in the mail, and therefore was unable to respond to them.

3. I have received other documents from the court and from the plaintiff's attorney when they were sent to me by certified mail, including the notice of hearing, and the notice of trial date. My wife and I work from early morning until late at night, and while I regularly check my mail every day, my neighborhood has had problems with strangers intercepting mail from mailboxes. I cannot say whether that happened in this case, but can only say that I never received these papers.

4. I request the opportunity to present my defense to the plaintiff's case, which would include evidence of payment by me to the plaintiff of deposits of \$12,000.00 that have not been credited to me, and the fact that I had nothing to do with the plaintiff's replacement of the HVAC system in the building rented by A.P. Karras, and should not be responsible for any costs charged for it.



Lukas Giannatos

Sworn to before me this
28th day of February, 2011.

Carolyn Mayton
Notary Public for South Carolina
My commission expires: 2017.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE CIRCUIT COURT FOR
SIXTEENTH JUDICIAL CIRCUIT

Jackie Hartley,)
)
Plaintiff,)

Case No. 09-CP-46-1941

v.)

AFFIDAVIT OF LUKAS GIANNATOS

A.P. Karra, LLC d/b/a/)
Eat Well Family)
Restaurant, Andrew P.)
Karagounis, Lucas)
Giannatos and Stacy)
Giannatos)
Defendant.)

DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

2011 MAR -1 PM 4:25

FILED-RECEIVED

Personally appeared before me, Lukas Giannatos who first being duly sworn says:

1. I am a resident of Charlotte, North Carolina, and my mailing address is 1416 Sagestone Court, Charlotte, NC, 28260. I was born in Greece, but have lived in the United States for many years. The matters set forth in this affidavit are based upon my personal knowledge or belief.

2. I have reviewed the Notice and Motion for Summary Judgment filed by the Plaintiff and dated December 6, 2010, and the Requests for Admission that are attached to it. The first time I ever saw these two documents was at the hearing last month. I never received a copy of the Requests in the mail, and never received a copy of the Motion until I was handed a copy in court. Both of these documents show that they were sent to me at my address in

Charlotte, and I cannot explain what happened, but I never received these documents in the mail, and therefore was unable to respond to them.

3. I have received other documents from the court and from the plaintiff's attorney when they were sent to me by certified mail, including the notice of hearing, and the notice of trial date. My wife and I work from early morning until late at night, and while I regularly check my mail every day, my neighborhood has had problems with strangers intercepting mail from mailboxes. I cannot say whether that happened in this case, but can only say that I never received these papers.

4. I request the opportunity to present my defense to the plaintiff's case, which would include evidence of payment by me to the plaintiff of deposits of \$12,000.00 that have not been credited to me, and the fact that I had nothing to do with the plaintiff's replacement of the HVAC system in the building rented by A.P. Karras, and should not be responsible for any costs charged for it.



Lukas Giannatos

Sworn to before me this
28th day of February, 2011.

Carolyn Mayton
Notary Public for South Carolina
My commission expires: 2017.

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP4601941

Jackie Hartley vs. A P Karras LLC

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

Order

Dated at York, South Carolina, this 6th day of July, 2011.

Court Reporter:

s/S. Jackson Kimball

PRESIDING JUDGE - S. JACKSON KIMBALL

This judgment was entered on the 11th day of July, 2011, and a copy mailed first class this 11th day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

W Chaplin Spencer Jr Spencer & Spencer, PA
P.O. Box 790 Rock Hill, SC 29731

Lucas Giannatos 1416 Sagestone Ct Charlotte,
NC 28262
Stacy Giannatos 1416 Sagestone Ct Charlotte,
NC 28262

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

SCRPC APP-24/FORM 4

David Hamilton - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

Jackie Hartley,)
)
Plaintiff,)

vs.)

A.P. Karras, LLC d/b/a Eat Well Family)
Restaurant, Andrew P. Karagounis, Lucas)
Giannatos and Stacy Giannatos,)
)
Defendants.)

ORDER

Case No.: 2009-CP-46

DAVID HAMILTON
SO. C. C. P. & GS
YORK COUNTY, SC

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This matter came before the court on June 16, 2011, upon the Motion for Relief from Judgment (the "Motion") filed by defendants Lucas and Stacy Giannatos (collectively, "Giannatos") pursuant to Rule 60(b), South Carolina Rules of Civil Procedure ("SCRCP"). Jeremy D. Melville appeared on behalf of Plaintiff, and John Martin Foster appeared on behalf of Stacy Giannatos and Lucas Giannatos (collectively, "Defendants"), who were also present.

Based on the record and the arguments presented, I find and conclude as follows.

STATEMENT OF CASE

On January 27, 2011, a hearing was held before the undersigned on a Motion for Summary Judgment filed by Plaintiff ("Summary Judgment Motion"). Defendants appeared *pro se* at the hearing to defend against the Summary Judgment Motion. On February 14, 2011, I entered an Order Granting Summary Judgment ("Order") in favor of Plaintiff. On March 1, 2011, Defendants filed this Motion seeking relief from judgment pursuant to Rule 60(b), SCRCP, on the grounds of excusable neglect, relating to their failure to respond to certain Requests for Admissions served upon them in this action. The factual matter contained in the Requests for Admissions were deemed admitted, and established conclusively for all purposes of this action pursuant to Rule 36, SCRCP. Defendants assert that they did not receive copies of the Requests for Admissions, and that their failure to respond constitutes excusable neglect.

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DISCUSSION

“[A] party making a motion under Rule 60(b) has the burden of presenting evidence providing the facts essential to entitle him to relief.” *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008).

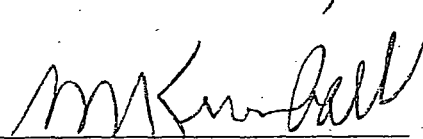
The Court finds that Defendants have not presented sufficient evidence of excusable neglect entitling them to relief from final judgment under Rule 60(b), SCRCF. As set forth in the Order, this Court previously determined that the Requests for Admissions at issue in this action were properly served by Plaintiff upon Defendants by mailing the requests pursuant to Rules 36 and 5(b)(1) of the South Carolina Rules of Civil Procedure. (Order, pp. 1-2, ¶ 4.) See *Roche v. Young Brothers*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995) (“When the civil rules on service are followed, there is a presumption of proper service.”). Defendants have not presented evidence either at the hearing on the Summary Judgment Motion, or in this Motion, to rebut the presumption that the Requests for Admissions were properly served upon Defendants. Every other document served in this case was received by Defendants at the same address to which the Requests for Admission were sent.

Furthermore, Defendants have not presented any other evidence to the Court which would qualify as excusable neglect or otherwise entitle them to relief from final judgment under Rule 60(b), SCRCF.

Therefore, it is ordered that Defendants’ Motion for Relief from Judgment be denied.

AND IT IS SO ORDERED.

July
~~June~~ 16, 2011



S. Jackson Kimball
Special Circuit Court Judge
York County

#2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal From York County
Court of Common Pleas
S. Jackson Kimball, Special Circuit Court Judge

Case No. 2009-CP-46-01941

Jackie Hartley, Respondent,

v.

A.P. Karras, LLC d/b/a Eat Well Family
Restaurant, Andrew P. Karagounis,
Lucas Giannatos and Stacey Giannatos

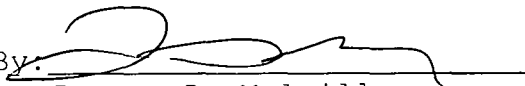
of whom
Lucas Giannatos and Stacey Giannatos are. . . Appellants.

PROOF OF SERVICE

I certify that I have served the foregoing Motion To
Dismiss Appeal by depositing a copy thereof in the United
States Mail, postage prepaid, on July 9th, 2012, addressed to:

John Martin Foster
223 East Main Street, Suite 520
P.O. Box 106
Rock Hill, SC 29731

SPENCER & SPENCER, P.A.

By: 
Jeremy D. Melville
226 East Main Street
P.O. Box 790
Rock Hill, SC 29731

ATTORNEYS FOR JACKIE HARTLEY

RECEIVED
JUL 10 2012

100350-2
SC Court of Appeals

SPENCER & SPENCER
PROFESSIONAL ASSOCIATION

Attorneys and Counselors at Law

C.E. SPENCER (1849-1921)
C.W.F. SPENCER (1876-1956)
C.W.F. SPENCER, JR. (1911-1985)
W.C. SPENCER †
WILLIAM L. "RED" FERGUSON †
EMIL W. WALD †
PAUL W. DILLINGHAM
W. MARK WHITE*
W. CHAPLIN SPENCER, JR.*
R. ALEXANDER SULLIVAN*
R. BRENT THOMPCKINS*
JEREMY D. MELVILLE*

† Of Counsel
* Also admitted in NC

SUITE 200
226 EAST MAIN STREET
—
P.O. BOX 790
ROCK HILL, S.C. 29731-6790
—
Telephone
803-327-7191
—
Telecopier
803-327-3868
—
E-Mail Address
jeremymelville@spencerfirm.com

July 9, 2012

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

**Re: Jackie Hartley v. A.P. Karras, LLC d/b/a Eat Well Family
Restaurant, Andrew P. Karagounis, Lucas Giannatos and Stacey
Giannatos
Case No. 2009-CP-46-01941**

Dear Ms. Kitchings:

Enclosed please find the following documents relating to the appeal referenced above: (1) an original and six (6) copies of the Motion to Dismiss Appeal submitted by respondent Jackie Hartley ("Respondent"); (2) a Proof of Service; and (3) a check in the amount of \$25.00 for filing fees. Please contact me if you have any questions or concerns. Thank you for your assistance.

Respectfully,

SPENCER & SPENCER, P.A.



Jeremy D. Melville

cc: John Martin Foster, Esq.

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JUL 10 2012
SC Court of Appeals