

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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JUL 16 2015

APPEAL FROM BEAUFORT COUNTY

S.C. Supreme Court

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

OPINION NUMBER 5309

FILED APRIL 1, 2015

WITHDRAWN, SUBSTITUTED, AND REFILED JUNE 3, 2015

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince d/b/a
The Law Office of Beth Ann Gilleland, LLC,

Petitioner.

APPENDIX

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ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530
Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

RECORD ON APPEAL

VOL. 1

pp.1-100

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RECEIVED
JAN 15 2014
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-07-1530

BLUFFTON TOWNE CENTER, LLC,)
)
Plaintiff,)

vs.)

**ORDER GRANTING JUDGMENT
TO PLAINTIFF**

BETH ANN GILLELAND-PRINCE d/b/a)
THE LAW OFFICE OF BETH ANN)
GILLELAND, LLC,)
)
Defendant.)
_____)

This commercial landlord-tenant matter came before me for a final hearing on Thursday, October 25, 2012 at 9:00 a.m. at the Beaufort County Courthouse. Appearing on behalf of the Plaintiff was Russell P. Patterson along with Paul Watson, representative of the Plaintiff. Appearing on behalf of the Defendant was Beth Ann Gilleland-Prince, who appeared pro se. Mr. Watson testified on behalf of the Plaintiff. The Defendant called no witnesses at trial and presented no evidence. ✓

After due and careful consideration of the testimony proffered by the Plaintiff, arguments of counsel, and the post-trial briefs submitted by each side, I find for the Plaintiff for the reasons set forth below.

FINDINGS OF FACT

1. This is a standard, routine collection matter on a commercial lease in which no facts are in dispute.

10/28/12
000004

2. On or about January 1, 2009, the parties entered into a written three (3) year lease agreement at a rental rate of \$1,825 per month, or \$21,900 per year ("Lease"). The lease term commenced on January 1, 2009 and ended December 31, 2011.

3. Approximately thirteen (13) months after the 3-year lease term started, the Defendant notified the Plaintiff that she was vacating the property in January or February, 2012 and made arrangements to return the keys on or about April 1, 2010.

4. The Defendant did not occupy the premises after February, 2010.

5. The Plaintiff on April 18, 2012 filed suit for rent due for the remaining rental term, after providing credit for two (2) tenants it was able to find (Joe Wilson Re-Election Campaign; Downtown Deli).

6. I find and conclude the Plaintiff properly mitigated its damages by taking commercially reasonable efforts to re-let the premises in order to reduce or offset its damages. These efforts included timely marketing the property, listing same for rent with a commercial rental agent and renting same to Joe Wilson's re-election campaign and a portion of the premises to the Downtown Deli. ✓

7. That the total damages the Plaintiff is entitled to receive for non-payment of rent under the Lease by the Defendant is \$35,784.00, calculated as follows:

- | | | |
|----|---------------------------------------|-------------|
| A. | <u>Rent Owed Under Lease</u> | |
| | Three years (1/1/2009 – 12/31/2011) | |
| | at \$21,900 per year X 3 years | \$65,700.00 |
| B. | <u>Less: Credits</u> | |
| | (a) Rent paid – Jan. 2009 – Jan. 2010 | 24,375.00 |
| | by Defendant – 13 mos. X \$1,875 | |

(b) Rent from Joe Wilson Re-election Lease – 4½ months @ \$1,200/month	5,400.00
Less: Leasing Commission	<u>(384.00)</u>
	5,016.00
(c) Rent from Downtown Deli Lease (adjacent tenant leased two offices in unit 104 at \$335/month) Aug – Dec 2011 – 5 months	<u>1,675.00</u>
Total Credits	(31,066.00)
C. <u>Plus:</u> Late Fees – (23 months x \$50 per month)	<u>1,150.00</u>
Total Damages	<u>\$35,784.00</u>

8. The Lease expressly provided for the recovery of attorney fees and costs in the event of a breach by the Defendant. Plaintiff's counsel submitted a detailed affidavit in support of its request for an award of attorney fees and costs of \$3,873.55. The Defendant at trial did not question or dispute the reasonableness of said charges. This Court has reviewed said invoices attached to the Affidavit carefully and finds all of said activities were reasonably related to this action and are fair and reasonable charges. In addition, Plaintiff's counsel has significant experience in handling landlord and tenant matters, and other similar types of civil litigation in this area for over 30 years. Based upon the time expended, the results obtained and the experience of counsel, I find such request is fair and reasonable for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the lease documents. Services anticipated to be performed until final adjudication contemplates completion of this matter within reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, appeals, etc. Plaintiff's counsel can move for a review of said attorney fees and costs if unanticipated events subsequently occur.

9. The Defendant presented no testimony at trial, but argued after the conclusion of the evidentiary portion of the case that since the Plaintiff had terminated the lease and re-took possession, under the 1927 decision of Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927), it was not entitled to any damages for the non-payment of the future rent. She asserts she is only liable for the rent due in February 2010, the only month she occupied the premises where rent was not paid. In Simon there was a three-year written lease in which the tenant, after signing the lease, never took possession of the property. The Court held that the landlord could recover the rent obligations up to the date of termination, but not future unpaid rents after termination, unless the lease provided the tenant was still liable for the future rents. Simon, id., p. 618. The lease in Simon had no such language.

10. As discussed below, it is this Court's conclusion that the statement of law in Simon is no longer valid under prevailing South Carolina authorities. Even if Simon is still valid, Plaintiff is clearly entitled to the full claimed damages for the entire term of the Lease since the subject Lease specifically provided the Defendant remained liable for future rents in at least two separate provisions.

A. Simon is Not Valid Law

11. It is the finding and conclusion of this Court that Simon does not state the modern law of damages for the breach of a lease in South Carolina today. The modern rule is clearly stated in a subsequent case, which cites Simon, United States Rubber Company v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). In that case, the landlord terminated the lease due to the failure of the tenant to pay rent (§ 27-35-140 of the South Carolina Code of Laws, formerly § 41-65 of the 1952 Code, and under § 27-35-150 (formerly § 41-66 of the 1952 Code)) for abandonment. These are the identical grounds that the Plaintiff in the instant action also terminated the lease. The Court in White

Tire, citing Simon, stated that upon the termination of the lease, the relationship of the parties as landlord and tenant came to an end. However, although the tenant no longer had an obligation to pay the landlord future rent, it did have an obligation for damages resulting from its breach of the contract. The measure of damages was stated as follows by the Court at p. 409:

“The measure of such damages is the amount that she (landlord) would have received as rent for the remainder of the term, had there been no default, less such amount as she (landlord) may receive from the new tenant, - for it was her duty (landlord) to minimize her damages. Burkhalter v. Townsend, 139 S.C. 324, 138 S.E. 34.”
(parenthetical material added)

12. In Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950), the Court dealt with a long-term bowling alley lease located in South Carolina. Again citing Simon, the Court adopted basically the same rule for damages as found in White Tire, at p. 671:

“It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and perspective, which were the necessary and direct result of the breach; and the measure of the damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may result from the breach.”

13. This same rule has been applied by subsequent courts on various occasions. See: Richman v. Joray Corp., 192 F.2d 660 (4th Cir. 1951); In re: Builders Transport, Inc., 471 F.3d 1178 (11th Cir. 2006 – applying South Carolina contract law).

14. If the rule announced in the 1927 Simon decision were still in existence today, the Plaintiff would be in a “Catch-22” position, with no way to mitigate its damages. If it requested the Defendant to vacate (either voluntarily or through eviction), under Simon it would forego all rights to damages for the remaining term. If it took no action to require the Defendant to vacate (either voluntarily or through eviction), it could not regain control of the premises to re-let, thus never having the opportunity to mitigate its damages by finding a replacement tenant. This Court believes

such a result is not consistent with the modern South Carolina rule found in White Tire and the other cases cited above.

B. Prince Liable for Future Rents Even if Simon Valid Law

15. This Court finds and concludes that even if the rule announced in 1927 by the Court in Simon is still applicable today, the Plaintiff is entitled to the full damages it claims because it specifically reserved the right for all damages under the subject Lease.

16. On page 1 of the Lease, in the last section, captioned "DEFAULTS", there is the following language:

"DEFAULTS – *. Subject to any governing provision of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's right to damages. *** Tenant shall pay all costs, damages, and expenses (including reasonable attorneys fees and expenses) suffered by Landlord by reason of Tenant's defaults."** (emphasis added)

17. A more clear, unambiguous intention to reserve all rights against the Defendant for the rents due during the full term is more difficult to imagine. Not only did the Plaintiff specifically reserve its right to damages (i.e., recovery of future rents in the event of termination), but the lease provided a specific damage formula by providing the Defendant must pay all costs, damages and expenses as a result of default. It is clear the most critical, common and obvious "damages" suffered by a Plaintiff under a commercial lease is the payment of rent, which is the primary monetary obligation of the Defendant. No other construction would provide full meaning to all of the terms of the Lease.

18. The language in the Lease in paragraph 1 is also consistent with the parties' conduct when the Defendant announced she was not going to honor the Lease and vacate early. The e-mail exchange between the parties of December 18, 2009 is revealing as to this point.

a. Defendant E-Mail to Plaintiff – "I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize the lease will not expire for another year."

b. Plaintiff E-Mail in Response to Defendant – "As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. . . . I am not willing to forgive the balance of the lease."

c. Subsequently, on February 26, 2010, in the Plaintiff's notice of default and right to cure letter to Defendant (Exhibit 3), the third paragraph clearly provides Defendant was liable for all future rents. ("... you will still be obligated and responsible for payment of money set forth below, together with additional costs, legal fees, expenses and rents that continue to accrue under the terms of the lease because of non-payment.")

19. Finally, Mr. Watson testified that the Defendant referenced at least one potential replacement tenant to reduce her obligations under the Lease, although said prospective tenant never signed a lease. If at that time she construed the Lease to impose no obligation as to future rents, there would have been no legitimate business reason for the Defendant to make such a referral. Thus, it is clear both the Defendant and the Plaintiff construed the Lease as an obligation of the Defendant for all future rents.

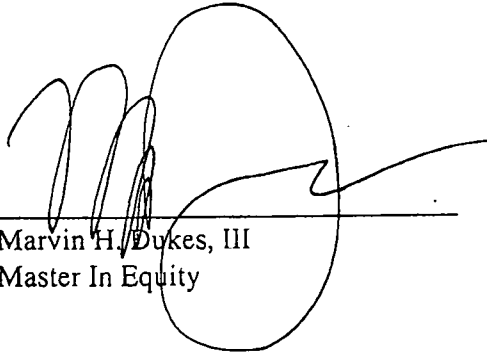
20. The same result was reached by the Court in Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), which also cites Simon. Just as in this case, the tenant signed a long-term lease and advised the landlord it would not perform. Just as in this case, the landlord gave

notice of the breach, that it would try to re-let the premises, but was holding the tenant responsible for future rents. The Court in Camden, citing Simon, held that future rents were clearly recoverable, holding at p. 307 the future rents were "... a proper element of damage for the breach of a lease contract."

21. Finally, the Court in Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (1992), which also cited Simon, reached the identical result. In that case, the Court held that the landlord's claim for future rents was still valid since the existing lease provided that a termination would not release said future obligations. The language in said lease provided that the exercise of the right of termination shall "... not prejudice any other rights which a lessor may have against the lessee hereunder... including the obligation to pay rents." The subject Lease, as discussed above, contains very similar language, providing that a notice of termination and landlord taking possession will not prejudice landlord's right to damages. Thus, even if Simon is still good law, as interpreted and applied by the Court in Camden and Blumberg, the Plaintiff's claims survive.

22. I find and conclude that the Plaintiff is entitled to a judgment in the amount of \$39,627.55 (\$35,784.00 in rent and late fees and \$3,843.55 in attorney fees and costs) against Beth Ann Gilleland-Prince.

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Master In Equity

Beaufort, South Carolina
December 26 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

BLUFFTON TOWNE CENTER, LLC,

Plaintiff(s)

vs.

BETH ANN GILLELAND-PRINCE d/b/a THE LAW
OFFICE OF BETH ANN GILLELAND, LLC,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVER SHEET

2012-CP - 07

APR 18 PM 12:07
CLERK OF COURT
JUDICIAL BRANCH

(Please Print)

Submitted By: Russell P. Patterson

Address: P. O. Drawer 8047, Hilton Head Island, SC
29938

SC Bar #: 4375

Telephone #: (843) 341-9300

Fax #: (843) 341-9301

Other:

E-mail: russell@russellpattersonlaw.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☒ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: 4/7 - 12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRC, Rule
Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.
SCCA / 234 (03/09)

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Record on Appeal
2012-000305

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-07- 1530

BLUFFTON TOWNE CENTER, LLC)
Plaintiff,)

vs.)

**SUMMONS
(Non-Jury)**

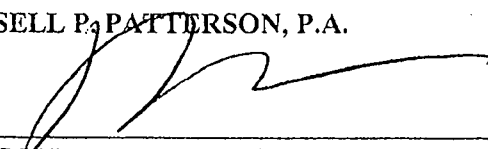
BETH ANN GILLELAND-PRINCE d/b/a)
THE LAW OFFICE OF BETH ANN)
GILLELAND, LLC,)
Defendant.)

12 APR 18 PM 12:07
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at the offices of Russell P. Patterson, P.A., Post Office Box 8047, Hilton Head Island, South Carolina, 29938, within thirty (30) days after service hereof, exclusive of the date of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

RUSSELL P. PATTERSON, P.A.



RUSSELL P. PATTERSON
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
Attorney for the Plaintiff

Hilton Head Island, South Carolina
April 14, 2012

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000014

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Record on Appeal
2012-0000205

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-07- 1530

BLUFFTON TOWNE CENTER, LLC)
Plaintiff,)

vs.)

BETH ANN GILLELAND-PRINCE d/b/a)
THE LAW OFFICE OF BETH ANN)
GILLELAND, LLC,)
Defendant.)

COMPLAINT
(Non-Jury)

12 APR 18 PM 12:01
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Plaintiff, complaining of the acts of the Defendant herein, alleges as follows:

1. That the Plaintiff is a limited liability company organized and created under the laws of the State of South Carolina.
2. That the Plaintiff is informed and believes that the Defendant, Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Ann Gilleland, LLC ("Gilleland") is an individual residing in Beaufort County, South Carolina.
3. That on or about January 1, 2009, the Plaintiff leased commercial office space to the Defendant (Gilleland) pursuant to a written lease agreement, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.
4. Under the terms and provisions of the lease, the Defendant agreed to lease Unit Space 104, 27 Dr. Mellichamp Drive, Bluffton, South Carolina 29910 ("Premises") commencing on January 1, 2009, and ending on December 31, 2011 at the rate of \$1,875 per month.

5. That the Defendant has failed or refused to pay the rents due and owing, having paid only the first month's rent for January 2009 in the amount of \$1,875.

6. That through efforts to re-let the property, the Plaintiff was able to rent the property to third parties, as follows:

a. Four and one-half (4½) months to Joe Wilson Campaign at \$1,200 per month - \$5,400;

b. Downtown Deli, August through December 2011, five (5) months at \$335 per month - \$1,675

7. That the total rents received from third parties was \$7,075.

8. That after deducting the one month's rent paid of \$1,875, and the \$7,075 collected from third parties, the total due and owing for unpaid rent from the Defendant is \$34,850, as reflected on the accounting attached as Exhibit 1.

9. That under the terms of the Lease, Plaintiff is entitled to \$1,150 in late fees (\$50 x 23 months).

10. That the Plaintiff is entitled to judgment against the Defendant in the sum of \$36,000.

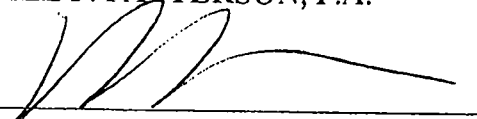
11. Under the terms and provisions of the lease and the default by the Defendant, the Plaintiff is entitled to reasonable attorneys fees and costs.

WHEREFORE, the Plaintiff prays as follows:

1. For judgment against the Defendant in the amount of \$36,000, as set forth on Exhibit A, plus its reasonable attorneys fees and costs.

2. For such other relief as this Court may deem just and proper.

RUSSELL P. PATTERSON, P.A.



Russell P. Patterson

P.O. Drawer 8047

Hilton Head Island, SC 29938

(843) 341-9300

russell@russellpattersonlaw.com

Attorney for the Plaintiff

Hilton Head Island, South Carolina
April 16, 2012

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT (THE ACT)
15 U.S.C. Section 1601, As Amended**

1. The amount of the debt is stated in the Complaint attached herein.
2. The Creditor, to whom the debt is owed, is the Plaintiff as named in the Summons and Complaint.
3. The debt as described in the attached Complaint will be assumed to be valid by the Creditor's law firm unless you, the Debtor, thirty (30) days, dispute the validity of the debt or some portion thereon.
4. If the Debtor notifies the Creditor's law firm in thirty (30) days from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the Debtor by the Creditor's law firm.
5. If the Creditor named in the attached letter is not the original Creditor, and if you make a written request to the Creditor's law firm thirty (30) days, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Russell P. Patterson, Esquire, Russell P. Patterson, P.A., P.O. Drawer 8047, Hilton Head Island, SC 29938.
7. This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

DAMAGES SUMMARY

4/16/12

Beth Ann Gilleland – lease accounting
Bluffton Towne Center - unit 104
27 Dr. Mellichamp Dr., Bluffton, SC 29910

Rents

Two years (1/1/2009 – 12/31/2011)
at \$21,900 per year

\$43,800.00

Credits:

(a) Rent paid – Jan. 2009 by Defendant \$1,875.00

(b) Rent from Joe Wilson re-election
office – 4½ months @ \$1,200/month 5,400.00

(c) Rent from Downtown Deli (adjacent
tenant that has leased two offices in
unit 104 at \$335/month
Aug – Dec 2011 – 5 months 1,675.00

Total Credits (8,950.00)

Plus: Late Fees 1,150.00

Net amount owed for Rent \$36,000.00

REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

TERM. The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

USE OF PREMISES. Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

EXHIBIT 1

Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Name: Bluffton Towne Center, LLC
Address: 2217 Princess Anne St., Suite 325
Fredericksburg, Virginia 22401

TENANT:

Name: Beth Ann Gilleland-Prince and Miguel Picco
Address: 27 Dr. Mellichamp Dr., Suite 104
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

LATE PAYMENTS. Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

UTILITIES AND SERVICES.

Tenant shall be responsible for all utilities and services in connection with the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

LANDLORD:

Bluffton Towne Center, LLC

By: _____

TENANT:

Beth Ann Gilleland-Prince
Beth Ann Gilleland-Prince

Miguel Picco
Miguel Picco

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EXHIBIT A

Landlord shall make the following improvements to unit 104;

1. Reverse door opening from hall way to utility room.
2. Repair and paint sheetrock walls in utility room.
3. Install base cabinet and sink in utility room.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
2012-CP-07-1530

BLUFFTON TOWNE CENTER, LLC,)
)
Plaintiff,)

vs.)

BETH ANN GILLELAND-PRINCE)
d/b/a THE LAW OFFICE OF BETH)
ANN GILLELAND, LLC,)
)
Defendant.)

ANSWER

**TO: PLAINTIFF BLUFFTON TOWNE CENTER, LLC AND
RUSSELL P. PATTERSON, ATTORNEY FOR THE PLAINTIFF**

1. Any allegation set forth in the Plaintiff's complaint not herein specifically admitted is hereby denied and strict proof is demanded thereof.
2. The allegation contained in paragraph 1 of the Plaintiff's complaint is admitted.
3. The allegation contained in paragraph 2 of the Plaintiff's complaint is denied and strict proof is demanded thereof. In further answering, the Defendant would submit that Beth Ann Gilleland-Prince is an individual residing in Beaufort County, South Carolina. However, The Law Office of Beth Ann Gilleland, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.
4. In responding to the allegations contained in paragraphs 3 and 4, the Defendant craves reference to the document referred to therein and further submits that the document speaks for itself.
5. Defendant denies the allegations contained in paragraph 5 of the Plaintiff's complaint and strict proof is demanded thereof.
6. The Defendant is without sufficient information to form a belief pertaining to the allegations contained in paragraphs 6 and 7 of the Plaintiff's complaint, and such allegations are therefore denied and strict proof demanded thereof.
7. The defendant denies the allegations contained in paragraphs 9, 10 and 11 of the Plaintiff's complaint and strict proof is demanded thereof.

FOR A FIRST DEFENSE

(Motion to Dismiss Pursuant to SCRPC Rule 12 (b)(6))

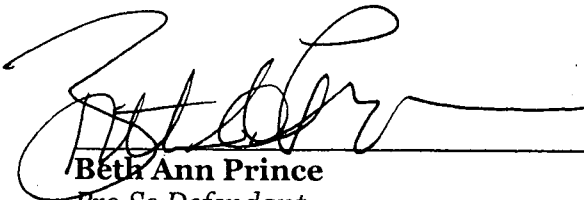
8. The Defendant moves this Court to dismiss this matter pursuant to SCRPC Rule 12(b)(6) in that the Plaintiff has failed to state a claim upon which relief may be granted.

FOR A SECOND DEFENSE

(Expiration of Statute of Limitations)

9. The Defendant is informed and believes this matter is barred by the applicable statute of limitations.

Wherefore, based upon the foregoing, the Defendant prays this Honorable Court to dismiss the Plaintiff's complaint in its entirety and Order such other and further relief as deemed just and proper.


Beth Ann Prince
Pro Se Defendant
PO Box 2797
Bluffton, SC 29910
(843) 706-2797

Bluffton, SC
May 21, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT)

BLUFFTON TOWN CENTER,) CASE NO.: 2012-CP-07-1530
)
Plaintiff,)
)
v.)
)
BETH ANN GILLELAND PRINCE)
Et al.,)
)
Defendants.)
)
)
)
_____)

Reference Hearing held before the Honorable
Marvin H. Dukes, III, Master in Equity and Special
Circuit Judge for Beaufort Common Pleas, in his
chambers at the Beaufort County Courthouse, Room
212, 102 Ribaut Road, Beaufort, South Carolina,
commencing at approximately 10:00 a.m. on the 26th
day of October, 2012.

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APPEARANCES

For the Plaintiff: Russell Patterson, Esquire
Post Office Box 8047
Hilton Head Island, SC 29938

For the Defendant Beth Ann Prince, Esquire
Post Office Box 840
Bluffton, SC 29910

Reported by: Joanne B. McDonald, CVR

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COURT: Good morning everyone. We are here in Case 12-CP-07-1530 which is Bluffton Town Center vs. Beth Ann Gilleland Prince d/b/a Law Office of Beth Ann Gilleland, LLC. I have reviewed the Summons and Complaint in this matter. I previously had a telephone conversation with the parties in which I encouraged the parties to attempt a resolution but none was possible so we are here today for a final hearing. Any preliminary matters we need to take up prior to the trial of this case?

MR. PATTERSON: Nothing from the Plaintiff, Your Honor.

MS. PRINCE: Or from the Defendant.

COURT: Happy to hear from you Mr. Patterson.

MR. PATTERSON: We call Mr. Paul Watson. Your Honor I went ahead and took the liberty of marking and pre-marking the Plaintiff's Exhibits and I have copied co-counsel to speed things along and we can begin with Mr. Watson.

MR. PAUL WATSON, called as a
witness, after being duly sworn,
testified as follows:

BY MR. PATTERSON:

Q. State your full name please.

A. Paul C. Watson.

Q. And what do you do for a living Mr. Watson?

A. I am a real estate broker and property manager.

Q. And where do you live?

A. In Fredericksburg, Virginia.

Q. Are you the owner of the Bluffton Town Center,
LLC?

A. Yes.

Q. In April of 2006 did you purchase a commercial
building in Bluffton?

A. Yes.

Q. And what is that called or describe that for me.

A. It is a shopping center called Bluffton Town
Center. It's about 400,000 square feet and it has ten
spaces.

Q. And was the Defendant, Beth Ann Prince a tenant in
space 103 at the time you purchased property in April,
2006?

A. Yes.

Q. And so the space that the lease is about is space 104 a different space, correct?

A. Correct.

Q. And what type of business was Ms. Prince operating in space 103?

A. A law office.

Q. And did Ms. Prince rent space 103 until January of 2009?

A. Yes.

Q. And looking at Exhibit 1, what is that document?

A. It is a lease of January 1, 2009.

Q. Okay, who are the tenants?

A. Beth Ann Gilleland Prince d/b/a Law Office of Beth Ann Gilleland and Miguel Pico d/b/a Hispanic Solutions.

Q. Okay and what space is this for?

A. This is space 104.

Q. Is that a larger space than 103?

A. Yes.

Q. What was the term of the lease?

A. It was for three years.

Q. From when to when?

A. Beginning January 1, 2009 and terminating December 31, 2011.

Q. What was the rent under the lease?

A. \$1,825.00 per month.

Q. And on the first page under Default, were you required to give a ten day notice on a default?

A. Yes..

Q. And in that same provision on the bottom of the first page, if there was a default were you entitled to recover attorney's fees and costs?

A. Yes.

Q. And was there any security deposit paid?

A. No.

Q. And under the top of Page 3 was there a \$50.00 late fee for each payment missed?

A. Yes.

Q. And did you and Ms. Gilleland, Ms. Prince excuse me, sign Exhibit 1?

A. Yes.

MR. PATTERSON: Your Honor, we would offer Exhibit 1 into evidence.

MS. PRINCE: No objection.

COURT: All right.

(WHEREUPON, PLAINTIFF'S
EXHIBIT NUMBER 1 WAS MARKED
AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. Did Defendants pay the rent for the first year until January, 2010?

A. Yes.

Q. What is Exhibit 2?

A. It is an email exchanged between myself and Ms. Prince where she had advised me that she had accepted a position as Magistrate Court Judge and she was going to be vacating the space.

Q. And did you file part of Exhibit 2 as her email to you?

A. Yes.

Q. That's on or about December 18, 2009 when you received that?

A. Yes.

Q. And did Ms. Prince tell you when she was going to vacate?

A. She said approximately January or February.

Q. And did she tell you that she realized that the lease still had another year remaining?

A. Yes.

Q. And is the top part of Exhibit 2 your response to her?

A. Yes.

Q. And what did you tell her?

A. Well I thanked her for the notice and advised her that I expected her to honor the obligation and I would not forgive the balance of the lease.

Q. And were there any conversations by phone other than this email?

A. Not that I recall.

Q. So the only communication you had concerning Ms. Prince leaving and being responsible for the remaining lease was this email?

A. Yes.

MR. PATTERSON: Your Honor, I would like to offer this as Exhibit 2 into evidence.

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S

EXHIBIT NUMBER 2 WAS MARKED

AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. Did -- tell me what Exhibit 3 is.

A. It is a ten day notice to pay or quit dated February 26, 2010 to both Ms. Prince and Mr. Pico.

Q. And you sent that certified, return receipt?

A. I did, yes.

Q. And is the second page where Ms. Prince received that notice?

A. Yes.

Q. And this was for nonpayment of the January rent?

A. Yes.

Q. Excuse me, February, 2010 rent?

A. Yes.

Q. And did she ever pay this -- that rent?

A. No.

Q. Did you receive any response to Exhibit 3?

A. No.

MR. PATTERSON: I would offer Exhibit 3 into evidence Your Honor.

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 3 WAS MARKED AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. Did you hire an attorney in March of 2010?

A. Yes.

Q. And did you direct your attorney to send an email which is Exhibit 4?

A. Yes.

Q. And did you ask Ms. Prince through your attorney to vacate the property?

A. Yes.

Q. Is Exhibit 4 a copy of that email?

A. Yes.

MR. PATTERSON: Your Honor, I would offer that into evidence.

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S EXHIBIT
NUMBER 4 WAS MARKED AND ENTERED
INTO EVIDENCE).

BY MR. PATTERSON:

Q. Through your attorney did you receive a response Exhibit 5 dated March 28th from Ms. Prince?

A. Yes.

Q. And what did she advise?

A. She said she had not had any contact with Mr. Pico for approximately a year and she did not know how to locate him.

Q. What did she say about paying the monies due on the remaining lease term?

A. She said she was not able to pay them.

Q. Because why?

A. She didn't give a reason. She just said I am unable to pay the back rent.

Q. Or else I would pay it?

A. Yes.

Q. You mean she didn't have the money to pay?

A. Apparently yes.

MR. PATTERSON: I would offer
Exhibit 5 into evidence.

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S
EXHIBIT NUMBER 5 WAS MARKED
AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. Is Exhibit 6 an email where through your attorney you still tried to get the key to the property?

A. Yes.

Q. So you could re-rent?

A. Yes.

MR. PATTERSON: I would offer
Exhibit 6 into evidence Your Honor.

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S
EXHIBIT NUMBER 6 WAS MARKED
AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. And would this be Exhibit 7, 8 and 9 e-mails between Ms. Prince and your attorney and your real estate agent to try to get the key?

A. Yes.

Q. And as shown by Exhibit 9?

MS. PRINCE: How would he know these exhibits. I don't have any objection to the admission of any of these.

COURT: Okay, why don't you walk your way through just for the record, seven, eight and nine. Is that what you said?

MR. PATTERSON: Yes.

BY MR. PATTERSON:

Q. And did eventually -- we would offer those into evidence, Your Honor.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS 7, 8 AND 9 WERE MARKED AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. Eventually on or about April 1, 2010 did you secure the key to the property?

A. Yes.

Q. Tell me what Exhibit 10 is.

A. On May 5, 2010 I signed a listing agreement with a real estate company to lease the space. This was Charter One Commercial Real Estate.

MR. PATTERSON: Your Honor, we would offer that into evidence.

COURT: All right, as I understand it the entire --

MS. PRINCE: No objection.

(WHEREUPON, PLAINTIFF'S

EXHIBIT NUMBER 10 WAS MARKED

AND ENTERED INTO EVIDENCE).

BY MR. PATTERSON:

Q. So was the real estate agent able to find a tenant for the space?

A. Yes. He found a short term tenant Joe Wilson For Congress campaign office for four and a half months.

Q. Okay and was that for a rent of Twelve Hundred Dollars a month?

A. Yes.

Q. And is Exhibit 11A a leasing commission that Charter One was due of \$384.00 to find that tenant?

A. Yes.

Q. And did Joe Wilson stay there for the entire time and pay the rent for four and a half months?

A. Yes.

Q. And did you credit Ms. Prince the amount of monies you received; the net amount of monies after the commission?

A. Yes.

Q. Tell me what Exhibit 12 is.

A. Adjacent to 104 is another tenant called Downtown Deli. When the space was vacant they contacted me and said they needed more space and asked if they could lease some portion of 104 so I agreed to carve out two office spaces for 104 and leased it to Downtown Deli.

Q. And what was the amount you agreed to for rent for the two office spaces of 104?

A. Three thirty-five a month.

Q. And is Exhibit 13 a copy of the lease with The Downtown Deli?

A. Yes.

Q. And is that a lease for both the original space and the two office spaces?

A. Yes.

Q. And does it reference the two office spaces in the first paragraph under premises?

A. Yes.

Q. And attached as Exhibit A to Exhibit 13 is that a diagram of Ms. Prince's unit, Unit 104?

A. Yes.

Q. And where it says Downtown Deli Catering, was those the two offices that the adjoining tenant rented for \$335.00 a month?

A. Yes.

Q. And did Downtown Deli have they been paying on their lease Exhibit 13?

A. Yes.

Q. After Ms. Prince's lease expired December 31, 2011 did you have your attorney send a notice for payment, Exhibit 14?

A. Yes.

Q. Did you receive any response?

A. No.

Q. Have you used your best efforts to try to rent space 104?

A. Yes.

Q. Why weren't you able to find another tenant other than Joe Wilson and Downtown Deli?

A. I guess just the poor market.

Q. Is Exhibit 15 a summary of the damages you are claiming in this action?

A. Yes.

Q. And that's a total of \$35,784.00?

A. Yes.

Q. Just briefly walk through with me how you determined that.

A. Okay, the first amount of \$65,700 was rent for three years from January 1, 2009 through December 31, 2011 and then under Item D is the credits Ms. Prince paid from January, 2009 through January, 2010 which is \$24,375.00. Rents received from Joe Wilson less the leasing commission and then you see Downtown Deli. Total credits of \$31,066 plus the late fees of twenty-three months of \$1,150.00 is a total of \$35,784.00.

MR. PATTERSON: Your Honor, I don't have any other questions of Mr. Watson. If you would answer any that Ms. Prince may have.

COURT: What is that last Exhibit number?

MR. PATTERSON: Exhibit 15, I am
sorry. Let me make sure you have that.

COURT: There it is. I do have it,
I am sorry.

BY MS. PRINCE:

Q. Do you have the stack of exhibits still in front
of you?

A. I do.

Q. Okay I want to refer you if you would to the
Plaintiff's Exhibit 2 it's the email exchange between
you and I back in December of 2009. Over the course of
these years that you and I were in a landlord-tenant
relationship, we didn't speak on the phone very often,
did we?

A. No.

Q. As a matter of fact if we had spoken on the phone,
it may have only been possibly once or twice. Is that
about right?

A. That sounds correct yes.

Q. So our general course of communication was pretty
much always through email was it not?

A. Yes.

Q. So did you think it was unusual that I was communicating with you about this strictly through email rather than a telephone call or any other method?

A. No.

Q. I would also like to ask you a couple of questions about my email to you and that is, what was the reason that I gave why I was vacating the space?

A. You was appointed Magistrate Court Judge and as a result had to close your law office.

Q. Because I was prohibited from engaging in the full time practice of law, correct?

A. Yes.

Q. And I also told you in there when I believed I would be leaving, correct?

A. Correct.

Q. Either the end of January or possibly some of February, correct?

A. Correct.

Q. And is that to your knowledge approximately when I did leave?

A. Yes.

Q. Okay, let's go on to Plaintiff's Exhibit 3 your notice to pay or quit. The first paragraph "You are hereby notified that you have ten days to pay to the

undersigned office rent now due from you in the amount of \$1,875.00 as set forth below or your right to possession of the above-referenced premises will cease and you must quit the same". Did you intend, if I did not pay, to file an eviction action against me to require me to leave?

A. Yes.

Q. And did you intend for me to continue to have any rights under the lease?

A. Well if you were evicted you would not have any rights, I assume. I mean I don't know the law.

Q. Well I am not asking you what the law is, I am asking what your intention was. Would you - what did you believe those circumstances would entail.

A. Well the lease required me to give you a ten day notice since you were in default so this notice complied with the lease.

Q. Let's go back and talk about the -- well one more question about Plaintiff's Exhibit 3 while you have it in front of you. Anywhere in there are you requesting me to return the keys to you? Did you specifically request that anywhere?

A. No.

Q. And anywhere in there do you specifically request a response from me of any sort?

A. I am requesting a response to the term of paying.

Q. But wouldn't you agree that by the terms of the letter that you sent that a non-response, meaning no rent being sent to you, that it would be safe to presume that I have either left or intending to leave? You never needed to file an eviction action against me, correct?

A. Well I would assume I would, yes.

Q. But you didn't need to, correct; because I left voluntarily pursuant to the terms of this letter?

A. Yes.

Q. Okay, do you have any reason to believe that by my not presenting you with the rent -- for the one month rent that you asked for including the late fee that I understood that to mean that if I don't pay you, I have to go?

A. What's your question again?

Q. My question is by the terms of the letter would you presume that me as the recipient of the letter with the lease that if I don't pay this, I need to leave or else there's going to be an eviction action?

A. Yes.

Q. Okay, I am going to ask you now if you would go back to Plaintiff's Exhibit 1 for me. That's the lease agreement and I am going to refer you specifically to the first page down at Defaults and I am going to read you a portion here. "Landlord may take possession of the premises without further notice to the extent permitted by law without prejudicing Landlord's right to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this lease." Anywhere in that default provision and not necessarily just the portion I read, but I am highlighting the area of where it would speak to that, does it say that if you terminate the lease I am still required and obligated to pay rent.

MR. PATTERSON: I think I would object, that's asking for a legal conclusion. The lease says what it says and that's what Your Honor is here to do is to interpret what the lease says.

COURT: I think that -- is there a claim that it's ambiguous or something?

MS. PRINCE: The law is very clear that you don't have any more obligation

as the future lease is due -- that the tenant will remain obligated for rent even in the event the lease is terminated. The Landlord is not entitled to collect any future rent after the lease is terminated.

COURT: Your question though goes to the language in the lease itself.

MS. PRINCE: Right, but I think that we need to go to the intention of the parties. He is the one that drafted the lease presumably when he presented it to me.

COURT: Well that's why I was asking about ambiguity because if the document is not ambiguous and the parties --

MS. PRINCE: I think that he can --
- I am not asking him to interpret it. I am asking him, does it say he is entitled to future rent -- does it say you are entitled to future rents?

COURT: You are asking him to read it to the extent that you want him to

find certain passages and read them? I will certainly allow you to do that but as to the interpretation of it --

MS. PRINCE: I am not asking him for interpretation. I am asking him just strictly, is there a provision in here that says -- has that contained language to the effect of Landlord is entitled to collect future rents in the event the lease is terminated.

MR. PATTERSON: Your Honor, she just read the language that says, "without prejudicing Landlord's right to damages" --

MS. PRINCE: Damages and future rent are not the same thing.

MR. PATTERSON: Okay, well that's a legal argument. It is not a question for this witness.

COURT: I think there is no argument that this is an ambiguous document so I think it's probably my job at some point to look through the lease itself and see what it means, but as far

as the witness's opinion what this means
I will sustain the objection.

MS. PRINCE: Just so I can be clear
for the record the basis that you are
sustaining the objection is because you
believe I am asking for an opinion
rather than a factual statement of
whether the lease contains language that
says future rent or not?

COURT: I don't mind if you pick
out the portion and say, can you read
the first sentence such and such, but if
you get to, what does that mean, then
you have crossed the line. I think if
you say, can you tell me where in this
lease it says such and such I think
that's fine.

MS. PRINCE: Judge I think that's
exactly what my question was. Can you
tell me does it say this?

COURT: I think that's probably
argument for you to make at the end that
nowhere in this lease does it say that
or whatever but I think anything beyond

that may -- again I think the lease says what it says and it speaks for itself or it doesn't speak for itself so I believe it's proper for argument so --

MS. PRINCE: Okay, then.

BY MS. PRINCE:

Q. All right Mr. Watson let's go on to Plaintiff's Exhibit 4 and this is the letter that your attorney had sent -- or actually it's an email, had sent to me back in March of 2010 and I just want to point out after Item number 3 where it says "If we cannot work out an agreement along these lines, we will have to file an ejectment action and a suit for back rent which is not a course we wish to follow." Do you see that?

A. Yes.

Q. Okay and I am just going to ask again I understand it may be subject to objection, if I am missing something, does that refer anywhere to future rent?

A. It is not mentioned here, no.

Q. All right let's go on to Plaintiff's Exhibit 5 and is this the email where I responded to your attorney to that particular email and he specifically asked me if I knew where Mr. Pico was and I just want to reaffirm here does it not say that I vacated the unit at the

beginning of February and the only items that I am aware of that are still in the unit are furniture that was there when I moved in?

A. Yes.

Q. Okay. And do you have any reason to believe that that is not a factual statement?

A. No.

Q. Mr. Watson, do you ordinarily not keep a key to your properties?

A. I do not keep a key.

Q. Do you have any type of routine course of action upon a tenant vacating wherein you change the locks or do you just -- so you do ordinarily change the locks after somebody leaves?

A. Yes.

Q. Okay. So you would have probably changed the locks whether or not I ever gave you a key back?

A. Yes.

Q. And presumably you do that for security reasons and what not?

A. Yes.

Q. But to your knowledge when it was brought to my attention that you did not have a key and one was requested, I rather promptly provided them actually on

A. Yes.

Q. Can you tell me why that was?

A. Well I think that was the market at the time. The -- my real estate agent advised me that that was fair, that was about what the market was.

Q. But you are getting more than that now for that space are you not for the space that you have Ron Lee renting? Aren't they paying about \$11.00 a square foot?

A. Yes.

Q. Okay. What can you account for the change in such a short period a time in the market rate?

A. Well of course The Downtown Deli lease is a whole lot of difference, leasing two spaces so therefore the terms are different.

Q. But in terms of price per square foot, there is a difference between what I was paying at 12 understandably what you accepted from Joe Wilson for Congress which was \$8.00 per square foot and at least for a portion of the space Ron Lee are paying \$11.00 per square foot?

A. Yes.

Q. Over the course of approximately two years from the last correspondence I received from your attorney

in March of 2010 when we made arrangements for David to come pick up the keys, to your knowledge was there ever a bill or a request for rent payments sent to me over the course of the next two years?

A. No.

Q. Why was that?

A. Well I don't think it was necessary. You were sent a ten day letter when you vacated and the lease was in place.

Q. I was trying to understand. If you thought you were entitled to collect the rent for every single month that I was not there or at least the difference in what you were collecting what I would have paid, why wouldn't you be sending me a bill each month?

A. Well I don't send bills or invoices to any tenants. When you have a lease you routinely send rent each month.

Q. Even when you are requesting a late fee, you usually send something, don't you?

A. Well when people are late I sent letters.

Q. And you are requesting late fee for every single month that from the date that I left until the end of the lease, correct?

A. Right. You advised that you were not able to pay.

Q. I am just asking a question. For your new tenant, you have changed your lease, haven't you?

A. Yes.

Q. You changed it significantly haven't you? You have gone from about four pages to close to twenty probably?

A. Yes.

Q. And you've got some pretty specific language in there you didn't have before correct?

MR. PATTERSON: Your Honor, I would object for relevance. It doesn't matter what kind of new lease he's got. That doesn't have anything to do with this lease.

COURT: What's the relevance?

MS. PRINCE: The relevance is that what I am expecting is going to happen at the end here is that counsel is going to argue that damages means rent and I think that it is important to understand we haven't gotten to ambiguity yet, but I think it is coming and I would like some testimony on the record that Mr. Watson is a very sophisticated business

man. This is what he does for a living and I think that it is important to note that his new leases include very specific language under the liability clause in the event of termination due to tenant default and they also have very specific language regarding surrender and acceptance. I think that that goes to the intention of the parties and what he thought he was contracting for at the time with me.

MR. PATTERSON: There is no way that what somebody did in 2009 and the intention of the parties can be reflected by what somebody did five years later, with some other party and some other circumstance, some other negotiations. It is completely irrelevant to try to pull any leases that were done that she had nothing to do with and there could be a million reasons why he is using a different lease forward. It has nothing to do with this case.

1 MS. PRINCE: We do it all the time
2 when we talk about statutory
3 construction. We talk about legislative
4 intent and we talk about use of specific
5 language and that it is presumed if you
6 don't use that specific language but we
7 know you are capable of using that
8 that's not what you intended.

9 COURT: This is not statutory
10 construction law. I mean this is more
11 like a subsequent remedial measure kind
12 of thing and even assuming it is a
13 remedial measure I mean again no one
14 told me that this is an ambiguous
15 contract.
16

17 MS. PRINCE: I have not said it is
18 an ambiguous contract. I have said that
19 I anticipate that counsel is going to
20 say it is ambiguous because I have a
21 feeling that this is going to come down
22 to the Plaintiff and the defense having
23 two different meaning of what the term
24 damages means.
25

COURT: Well let's do this. I don't think that another lease entered into by this Plaintiff and another party two years later has any relevance to this case. And again I will certainly allow you to argue as much as you want with regard to your belief or understanding of what this lease Exhibit 1 means, but I think a whole other lease entered into years down the road with another party probably doesn't have relevance as to this lease so I am going to sustain the objection.

MS. PRINCE: I don't have any further questions.

BY MR. PATTERSON:

Q. A couple of questions. Look at Exhibit 4 please. You were asked where in this document it says it would have put Ms. Prince on notice she was responsible for future rents. Would you read paragraph 2 please?

A. That the rent due for the last two months be paid and that you continue to make rent payments for the space.

Q. Okay and there was some discussion about the key and whether you needed to have the key or not. Do you know if it is cheaper to rekey property by giving the locksmith the key to the unit so they can get to the inside of the lock?

A. It is, yes.

Q. Did you turn down any tenants during the time you tried to relent the premises?

A. No.

Q. Did anybody offer you a lot more money?

A. No.

Q. Was the rental market for commercial space in Bluffton during this time period really strong?

A. No.

Q. Did you do the best you could on the advice of your local Charter One Commercial real estate agent to find the best tenants for the most money?

A. Yes.

Q. Would there be any reason why you wouldn't want to get more money for your space during this time period?

A. No.

Q. I see in Exhibit 2 Ms. Prince had said she would -
- you had asked her if she could sublease the property

after she told you she was going to leave and not honor the rest of the lease?

A. Yes.

Q. And did she indicate she would let you know if she found any tenants?

A.. Yes..

Q. Did she ever during this whole time period where she wasn't paying rent and vacated, did she ever send you some tenants?

A. At one point she said that she had someone to sublease part of the space but then it didn't turn out.

Q. How much of the space did that person want?

A. I don't know.

Q. How much did he want to pay for rent? Was it \$300.00?

A. I don't recall.

Q. Did that person ever sign a lease or follow up to try to lease the space?

A. No.

Q. Other than that one person did Ms. Prince ever send you any other potential tenants?

A. No.

Q. Did she ever sublet the property?

A. No.

Q. And I think you already answered it, is the reason why you didn't send a bill every single month for two and a half years to Ms. Prince because she said she didn't have any money and wasn't going to pay?

A. Yes.

Q. And even after we sent her a letter Exhibit 14 asking the money, did she ever pay any money?

A. No.

Q. So from the day she left until today she has never paid any money for the space?

A. No.

Q. Never indicated a willingness to pay?

A. No.

Q. Did that have anything to do with the reason you didn't send her bills every single month?

A. No, well yes I didn't send a bill for the reason she told me she wasn't able to pay it.

Q. Okay, I don't have any other questions.

COURT: Anything else?

MS. PRINCE: Yes, just a few follow up questions.

BY MS. PRINCE:

Q. Mr. Patterson just ask you if I made any attempts to sublease the space. Would I have had the right to do that under the circumstances?

A. I think so, yes.

Q. Well how could I have subleased the space? Did I have use of the space?

A. Well before you vacated you could have.

Q. Well no I am not talking before I vacated. I am talking about after that. I mean I believe that was the context of the question -- after I left and hadn't paid you anything else. If I had sent anybody to try to fill that space or if I had made any attempt to sublease it. Is that something I would have had the right to do?

A. Well you could have presented that option to me for my decision regarding somebody to take over the space or to sublease in your place.

Q. So you are saying my lease was still in effect?

A. Yes.

Q. What rights did I have under the lease? Was I able to use the space?

A. Well not after you defaulted.

Q. As a matter of fact you told me if you don't pay you need to get out or I am going to file an eviction action and make you get out, right?

A. Right.

Q. So I am just trying to be clear here. You told me I had to go and I couldn't come back and you wanted the keys. You can't use the space but I want you to pay for it, right?

A. Yes.

Q. I don't have any further questions.

MR. PATTERSON: Nothing further,
Your Honor.

COURT: Is that the Plaintiff's
case?

MR. PATTERSON: Your Honor, except
for the attorney's fees and I have
submitted an Affidavit and prepared
Exhibit 16. You can come down Mr.
Watson. And am prepared to testify as
to the attorney's fees we are claiming
which are set forth in the Affidavit.

COURT: Have you had an opportunity
to look at the Affidavit?

MS. PRINCE: I have not. It was presented to me right when the whole stack of exhibits was.

COURT: Go off the record for a second and take a look at it if you would like to cross-examine Mr. Patterson about the Affidavit.

MS. PRINCE: I don't -- I mean I see the total fees here, I don't -- it's --

COURT: Back on the record - back on the record. Have you had an opportunity to review the Affidavit of Mr. Patterson with regard to this case and have you been given the opportunity to cross-examine Mr. Patterson with regard to that Affidavit, but I understand you having reviewed it, you don't have any --

MS. PRINCE: I don't have any questions, Your Honor.

COURT: As I understand it that Affidavit has been offered as an exhibit and is part of this exhibit package?

MR. PATTERSON: Yes, Your Honor, it is Exhibit 16.

MS. PRINCE: And I don't have any objection.

COURT: Okay so it is 16 without objection.

(WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 16 WAS MARKED AND ENTERED INTO EVIDENCE).

MR. PATTERSON: That's the Plaintiff's case Your Honor.

COURT: Where is the total amount you are claiming? Do you have a breakdown?

MR. PATTERSON: It is on paragraph 6 the total amount we are claiming is \$3,843.55 and that's also the same number that we would ask that that be added to the damages on Exhibit 15.

COURT: All right, happy to hear from you.

MS. PRINCE: This Defendant is not going to present a case, Your Honor.

COURT: All right then, I am happy to hear closing arguments.

MR. PATTERSON: Your Honor this is very straightforward, simple case. We have got a standard lease. The tenant breached the lease, moved out, did not pay for the time period that we have got from -- after she vacated. Exhibit 15 summarizes the total obligations of the tenant under the lease. I gave her credit for the rent paid which she only paid for thirteen months. We then had a credit for Joe Wilson and the Downtown Deli lease. It is undisputed that the the Landlord used his best efforts, hired one of the best real estate agents -- firm to lease the property, used his best efforts. Ms. Prince never committed any valid tenants. She tries to reduce these damages. There is no evidence we turned down any good tenant deals. The lease provides for recovery of attorney's fees which are undisputed as being reasonable so that brings us to

the issue that defense counsel is trying to raise that somehow the lease doesn't allow for the Landlord to collect for the rent that's not paid. There is no way a reasonable person reading this lease could come to that conclusion. There is no ambiguity. Under the -- it clearly says the Tenant is responsible for the lease payments for the whole term of the lease. Tenant shall pay the Landlord a monthly rent of \$1,825.00 payable the first of the month \$21,900.00 during the term of the lease. The term of the lease is January 1st, 2009 to December 31, 2011. The lease doesn't require we send her notice, send her a bill. She is obligated because she signed. Under the default section - - we obviously complied with the ten day default. It says "If the Tenant fails to cure a financial obligation within ten days after written notice of default, Landlord may take possession of the premises without further notice and

without prejudicing the Landlord's right to damages". Then it says "Tenant shall pay all costs, damages and expenses including reasonable attorney's fees and expenses suffered by the Landlord by reason of Tenant's defaults." So damages clearly include the one thing -- the only thing that tenants pay under this is rent. It's the only thing that could possibly be included as the rent under there and so for her to say that damages as used twice in the lease and the obligation to pay the rent somehow doesn't include the payment of the rent is trying to completely rewrite the lease.

There is no evidence of an ambiguity and we are entitled to the rent. It just doesn't make sense for her interpretation that damages doesn't include the payment of rent.

COURT: Happy to hear from you.

MS. PRINCE: It is not my interpretation that damages does not

include rent. It's South Carolina's Supreme Court Simon vs. Kirkpatrick. I could go on about this for several pages. I don't dispute any of the facts of the case at all. Would you like a copy of the case, Judge?

COURT: Thank you.

MR. PATTERSON: What is the cite for that?

MS. PRINCE: Citation is 139 SE 614. This particular case is from September of 1927. This has been reaffirmed also in Bloomberg vs. Neal Co. which is from 1992 and I will go ahead and pass that up as well. Mr. Patterson, the citation to that is 416 SE2d 211, South Carolina Court of Appeals from 1992. That was remanded as to the issue of attorney's fees only. I don't have the second part of the case because it is not relevant to what we are here about today but back to Simon vs. Kirkpatrick. This is kind of the grandfather of this line of cases and

there is not a lot of case law on landlord-tenant in the State of South Carolina. I don't know if these cases don't get appealed very often. I don't know what happens but there's not a lot out there. But what is out there is pretty clear.

MR. PATTERSON: Do you have an extra copy of that case there?

MS. PRINCE: You know I thought I made a third copy, but I did not and I do apologize for that. I don't ordinarily come without a copy for everybody. I think I was thinking we would be sitting around a big table and I could pass -- it talks about termination of the lease and once the consideration for the promise to pay rent has been withdrawn, that the obligation to pay rent no longer exists unless it is very specific in the lease that -- and it needs to refer to rent, not just damages. Damages could refer to back rent. Damages could refer to

all sorts of things. Let me get to something specific here. I think it is also important that I was sent a notice to either pay or I would be evicted and then sent a second letter that said either pay or you will be evicted and the message was very clear. I want you to leave and you gotta leave now. So it was not a question of surrender and acceptance. It wasn't a matter of the course of action on the parties. It was a very expressed request to leave. Eviction unquestionably terminates the lease. The question now becomes is there anything in this lease that is going to allow Mr. Watson or Bluffton Town Center to collect future rents. Upon a termination of a lease for conditions broken the Lessor is entitled to rent which had previously become due but not in the absence of an expressed agreement entitled to recover rent subsequently to become due. And this is just a whole long line of cases that the

South Carolina Supreme Court has adopted from other jurisdictions because they didn't have anything prior to this. The law seems to be clear that if a Lessor enters the premises it declares a forfeiture for the failure of the Lessee to pay rent. All rent is deemed as collectible by the Lessor but the rent that which has not fully become due at the time of entry in forfeiture an action cannot be maintained. In this case the Appellant elected to terminate the lease for non-payment of rent and evict the respondent by an action of law. This effectually terminated the tenancy, exonerated the Lessee from all liability for rent not due at the time of the eviction. And I am just picking out highlights here because it does go on for quite some time. I am going to go on now and talk about Hoover vs. Neal Co. where they have again reaffirmed the rulings and reasonings adopted in Simon vs. Kirkpatrick in a much more recent

case from 1992 and I am going to refer you to the second page of the case. In this particular case conversely the lease did provide for future rents and that is why the judge dismissed the claim without prejudice in that particular instance and the reason being the judge dismissed Bloomberg's claim for future payments without prejudice. Ordinarily a termination of a lease will terminate a Lessor's rent to future payments. However, if the lease agreement provides for payment of future rents, termination will not release the Lessee of such future obligations and as an example in this particular case this is what the lease said. It goes on for about a paragraph about termination but in pertinent part it says "If such default continues for five days after written notice to Lessee then the entire rent specified herein for the entire term of the lease or if any rent thereof shall become due and payable at that

time and the Lessor shall have the right at its sole option forthwith to terminate this lease and to repossess the leased premises. Exercise or non-exercise by Lessor of such right of termination shall not prejudice any other rights which the Lessor may have against the Lessee hereunder and shall not operate to relieve the Lessee of its obligation to pay rental or its obligations under any other covenants and agreements herein contained." And it is because of that very specific provision about obligation to pay rental that the judge said I am going to dismiss this without prejudice. I will say this, Mr. Watson does this for a living. He drafted that lease.

MR. PATTERSON: Your Honor, I would object to that. There is no testimony that he drafted the lease.

MS. PRINCE: I thought I asked that question but perhaps I didn't. He is the one that presented the lease to me.

Either he drafted or somebody drafted it on his behalf.

MR. PATTERSON: Or the Defendant drafted it because we don't have any testimony as to who drafted it so we have to cover all the options.

MS. PRINCE: I am representing I did not draft this.

COURT: We are just in argument.

MS. PRINCE: I didn't draft the lease nor did I make any amendments or modifications to it. It says what it says. It does not refer to rents. It does not refer to future obligations. It refers to damages and I think to say that in light of case law it very specifically says if you want future rent, you need to put in your lease you get future rent. That you have future rental obligations in the event of termination due to non-payment of rent. I don't think that a general provision for damages which could refer to many things, having nothing to do with future

rent is sufficient to cover that. I was told on several occasions cease and leave and yet I am also required in the absence of a provision that I am required to pay rental after termination. The lease is terminated. Get out and don't come back. I think it is pretty clear I had no rights under the lease after that. Consideration was withdrawn. I had not contracted prior to this in the lease to be obligated for future rental and I was well aware of that fact when I signed that lease. I don't have anything further.

COURT: All right.

MR. PATTERSON: Briefly Your Honor.

MS. PRINCE: Your Honor, I could prepare a brief.

COURT: Why don't we do this? If you all want to give me any additional case law or anything, I'll give you a couple of days. I am not going to look at it for a couple of days anyway so I will know --

MS. PRINCE: A couple of days in my world and a couple of days in your world might not be the same thing. Why don't you give me a specific day?

COURT: How about a week from now?

MS. PRINCE: Perfect.

COURT: 5:00, Mr. Patterson will that give you enough time?

MR. PATTERSON: Yes, Your Honor.

COURT: By Thursday whatever next Thursday is.

MS. PRINCE: And via email is good?

COURT: Yes, just copies to other back and forth.

MS. PRINCE: Sure, of course.

COURT: I will look at it and let's not have any additional argument, a summary letter enclosed please find the case -- and I will take a look at all of this and let you all know and in the interim as always if you figure out a way to reach a happy resolution to this, let me know and --

MR. PATTERSON: . You want the
exhibits? Or you have the sets?

COURT: Yes, just the originals.
All right thank you very much.

MS. PRINCE: Thank you, it was good
to see you.

(WHEREUPON, the Hearing
Was Concluded.)

C E R T I F I C A T E

I, Joanne B. McDonald, Certified Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing One Hundred Five (105) Pages of typewritten testimony were taken down by me, then reduced to transcript with computer-aided transcription; that the same is a true, correct and complete transcript of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto and, further, that I have no interest whatsoever in the outcome of said proceedings.

SO WITNESS MY HAND AND SEAL this 2nd of October, 2011.

Notary Public/Court Reporter

My Commission Expires 09/27/2013

1/1/09

1

REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

TERM. The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

USE OF PREMISES. Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Name: Bluffton Towne Center, LLC
Address: 2217 Princess Anne St., Suite 325
Fredericksburg, Virginia 22401

TENANT:

Name: Beth Ann Gilleland-Prince and Miguel Picco
Address: 27 Dr. Mellichamp Dr., Suite 104
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

LATE PAYMENTS. Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

UTILITIES AND SERVICES.

Tenant shall be responsible for all utilities and services in connection with the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

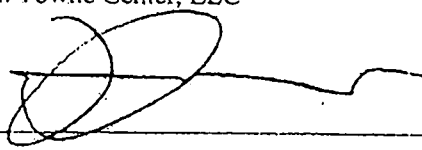
ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

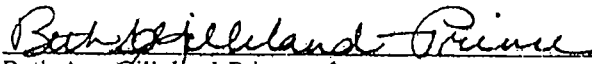
SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

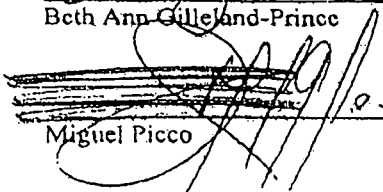
LANDLORD:

Bluffton Towne Center, LLC

By: 

TENANT:


Beth Ann Gilleland-Prince


Miguel Picco

12-18-09

**PLAINTIFF'S
EXHIBIT**

2

Date: Friday, December 18, 2009 9:31 AM
From: pcwatson@cox.net
To: bethanngil@aol.com
Subject: Re: Lease

Thanks for the notice. As you know, office space is very difficult to rent now. As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. I have not pressed you for the full rent since Miguel moved, but I am not willing to forgive the balance of the lease. Ideally, you can sub-lease the space. If not, perhaps we can negotiate some kind of buy-out for the balance of the lease.

----- bethanngil@aol.com wrote:

Hi Paul. I was appointed as a magistrate court judge a few weeks ago. I have very recently committed to taking the position full-time, which means that I am required close my practice. All full-time judges are prohibited from engaging in private practice. As such, I am in the process of getting cases finished and trying to wrap things up. I know that I will be needing to stay through the end of January, and possibly some of February. I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize that the lease will not expire for another year. However, this judicial appointment is a great honor, and obviously, I could not pass that up.

I will also keep my eyes and ears open for anyone who may want the space.

Thanks.

Beth Ann Gilleland-Prince, Esquire
The Law Office of Beth Ann Gilleland, LLC
27 Dr. Mellichamp Drive, Suite 104
Bluffton, SC 29910
(843) 757-7261
Fax (843) 757-7361

--

Paul Watson, CBA, CMEA, CCIM, CBI

HFI Companies / Capital Business Appraisers
2217 Princess Anne Street
Suite 325
Fredericksburg, VA 22401
Tel. 540-373-9500
FAX 540-373-9527
Cell 540-287-4064
pcwatson@cox.net

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2-26-10

Bluffton Towne Center, LLC

Bluffton's Finest Small Retail Shops

**PLAINTIFF'S
EXHIBIT**

3

February 26, 2010

Ms. Beth Ann Gilleland-Prince
4819 Bluffton Parkway
Bluffton, SC 29910

Mr. Miguel Picco
240 Moss Creek Drive
Hilton Head Island, SC 29926

10 Day Notice to Pay or Quit

Dear Ms. Gilleland-Prince and Mr. Pico:

You are hereby notified that you have ten (10) days to pay to the undersigned office rent now due from you in the amount of \$1,875.00 as set forth below, or your right to possession of the above referenced premises will cease and you must quit the same.

The amount set forth below should be remitted to this office within aforesaid ten (10) day period in the form of money order or certified check. Personal or business checks will not be accepted. If it should become necessary to institute further legal action, it may result in legal fees and court costs being assessed against you.

In the event you do not satisfy all the requirements of this ten (10) day notice by paying the amount set forth below and do either voluntarily or by court leave the premises, you will still be obligated and responsible for payment of monies set forth below, together with any additional costs, legal fees, expenses and rents that continue to accrue under the terms of the lease because of non-payment.

Furthermore, if you do not pay rent due within this ten (10) day period and do not quit the premises, legal action will be instituted for possession of the premises referenced above plus rent, attorney fees and other costs.

Sincerely,



Paul C. Watson, Managing Member

Base Rent: \$1,825

Late Charge: \$50.00

TOTAL DUE WITHIN TEN DAYS: \$1,875.00

DATE DELIVERED: March 2, 2010

2217 Princess Anne Street Suite 325 ♦ Fredericksburg, Virginia 22401
(540) 373-9500 ♦ Fax (540) 373-9527

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Plaintiff
000007

7006 2150 0005 2523 8494

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: Miguel A. Picco
 Street, Apt. No. or PO Box No. 240 Moss Creek Dr.
 City, State, ZIP+4® Bluffton SC 29910

7006 2150 0005 2523 8491

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: Both Gikeland-Prince
 Street, Apt. No. or PO Box No. 4819 Bluffton Pkwy
 City, State, ZIP+4® Bluffton SC 29910

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.	A. Signature X <u>[Signature]</u> ☐ Agent ☐ Addressee B. Received by (Printed Name) _____ C. Date of Delivery _____ D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No
1. Article Addressed to: <u>Both Gikeland-Prince</u> <u>4819 Bluffton Pkwy</u> <u>Bluffton, SC</u> <u>29910</u>	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.
2. Article Number (Transfer from service label) <u>7006 2150 0005 2523 8491</u>	4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-04-1540

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Plaintiff
000008

3-28-10

PLAINTIFF'S
EXHIBIT

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-----Original Message-----

From: bethanngil@aol.com [mailto:bethanngil@aol.com]
Sent: Sunday, March 28, 2010 8:52 PM
To: Russell Patterson
Subject: Re: Bluffton Towne Center v. Gilleland-Prince , Pico

Russell,

I have not had any contact with Mr. Pico in approximately one year. I do not know where he is or where to find him. I vacated the unit at the beginning of February, and the only items that I am aware of that are still in the unit are furniture that was there when I moved in.

I am happy to assist in getting the place rerented, however, I am simply unable to pay the back rent, or else I would pay it. Filing an ejectment action is simply unnecessary. I have been out of the unit for nearly two months, as Mr. Watson requested.

Beth Ann Prince
Beaufort County Magistrate Court Judge
Bluffton Magistrate Court
4819 Bluffton Parkway
Bluffton, SC 29910
843-757-1500

6

3-25-10

Russell Patterson

From: Russell Patterson
Sent: Tuesday, March 30, 2010 9:26 AM
To: Beth Ann Gilleland (E-mail)
Cc: Paul Watson (E-mail)
Subject: Bluffton Towne Center

Thank-you for your response. My client does not have a key to the unit. Can you please send one to me or leave one at your office for the realtor to pick-up? Thanks

Russell P. Patterson
Law Offices of Russell P. Patterson PA
P.O. Drawer 8047
21 Office Park Rd - Carolina Building suite 104 (zip 29928)
Hilton Head Island SC 29938
ph: 843-341-9300 fax -843-341-9301
russell@russellpattersonlaw.com

IRS CIRCULAR 230 DISCLOSURE:

Any Federal tax advice contained herein is not written to be used for, and the recipient and any subsequent reader cannot use such advice for, the purpose of avoiding any penalties asserted under the Internal Revenue Code. If the foregoing contains Federal tax advice and is distributed to a person other than the addressee, each additional and subsequent reader hereof is notified that such advice should be considered to have been written to support the promotion or marketing of the transaction or matter addressed herein. In that event, each such reader should seek advice from an independent tax advisor with respect to the transaction or matter addressed herein based on the reader's particular circumstances.

-----Original Message-----

From: bethanngil@aol.com [mailto:bethanngil@aol.com]
Sent: Thursday, April 01, 2010 10:11 AM
To: Russell Patterson
Subject: Re: Bluffton Towne Center

4/1/10
**PLAINTIFF'S
EXHIBIT**
7

Russell,

I had the keys ready to send to you, but if you would prefer, you can send someone over to the Bluffton Magistrate Court to pick them up. I will be here all day.

Beth Ann Prince
Beaufort County Magistrate Court Judge
Bluffton Magistrate Court
4819 Bluffton Parkway
Bluffton, SC 29910
843-757-1500

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Plaintiff
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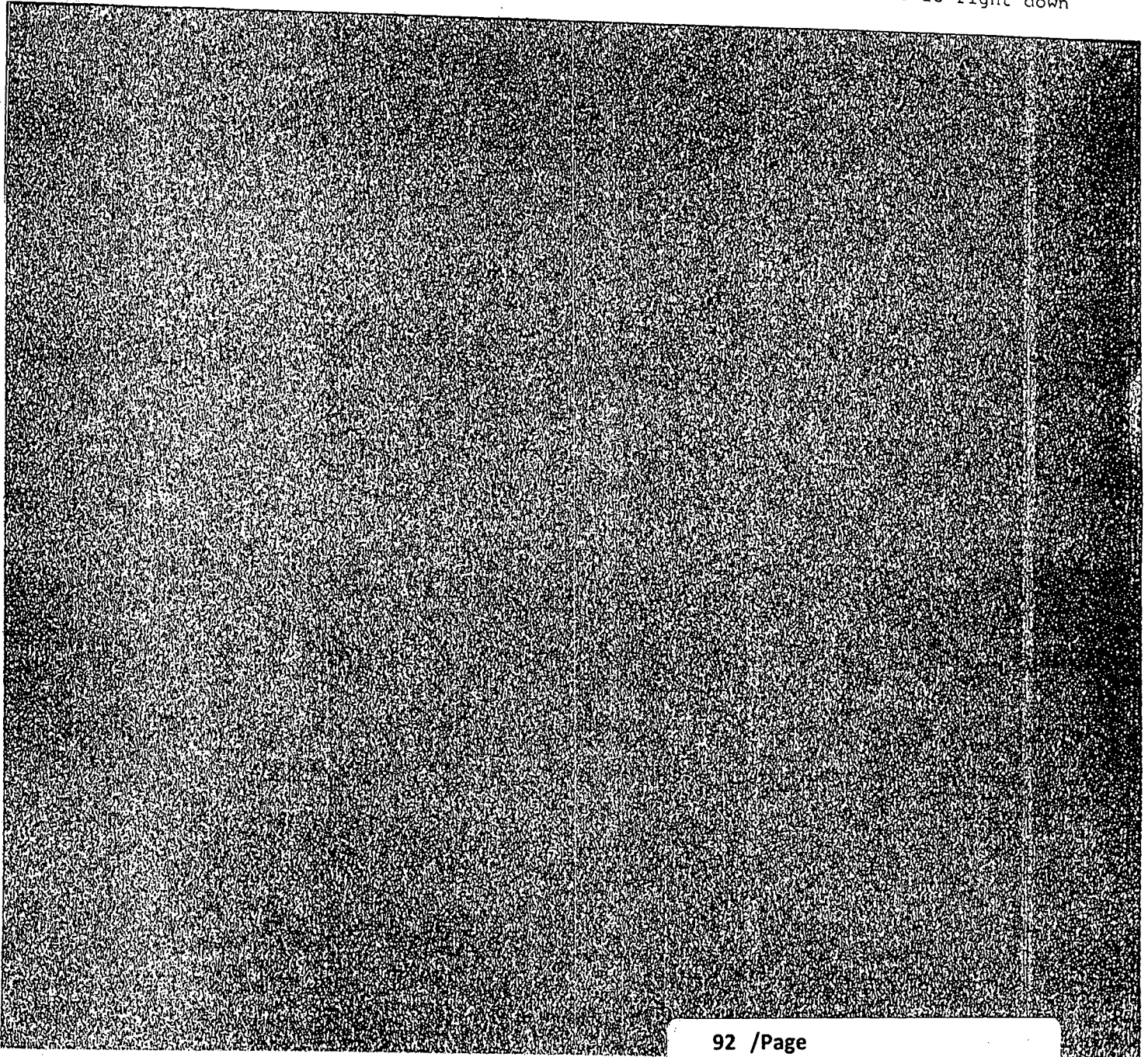
Russell Patterson

PLAINTIFF'S
EXHIBIT

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From: Russell Patterson [russell@russellpattersonlaw.com]
Sent: Thursday, April 01, 2010 11:28 AM
To: 'bethanngil@aol.com'
Cc: 'David Batchelder Jr (E-mail)'; 'Paul Watson (E-mail)'
Subject: RE: Bluffton Towne Center

I will ask David to come by and pick them up at the Magistrates office today. Can you leave them at the front desk with his name on same. I believe his office is right down the street. Thanks.



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Plaintiff
000014

From: bethanngil@aol.com (mailto:bethanngil@aol.com)
Sent: Thursday, April 01, 2010 10:31 AM
To: Russell Patterson
Subject: Re: Bluffton Towne Center

4/1/10

That is no problem. I will leave them at the traffic window
name
on them.

PLAINTIFF'S
EXHIBIT

9

Beth Ann Prince
Beaufort County Magistrate Court Judge
Bluffton Magistrate Court
4819 Bluffton Parkway
Bluffton, SC 29910
843-757-1500

10

5-3-10

EXCLUSIVE RIGHT TO LEASE LISTING AGREEMENT

THE STATE OF SOUTH CAROLINA, BEAUFORT COUNTY

This Agreement is made and entered into this 5 day of May, 2010

By and between Bluffton Towne Center, LLC & Bluffton Towne Center II, LLC, (Owner/s) and
Charter I Commercial, Inc., (Broker)

A. EMPLOYMENT: In consideration of the Broker's services, Owner does hereby employ Charter I Commercial, Inc. as its sole and exclusive leasing agent for the herein described property (Property), and give Broker the exclusive right and authority to lease the Property, from 5/23/2010 to 11/22/2011 subject to the terms and conditions herein.

B. PROPERTY DESCRIPTION:

Tax Map Number: R610-039-00A-0014-0000
Address: 27 Dr. Mellichamp Drive, Unit 104, Bluffton, SC 29910
Square Footage: approximately 1,500
Other Description: _____

C. TERMS: As below or on other terms acceptable to Owner:

Lease Rate: \$12.00 (NNN) per square foot or rate accepted by Owner
Length of Term: As acceptable by Owner
Allowance: None unless one is agreed upon by Owner

D. DEFECTS: Owner represents, that to the best of its belief, the Property is not subject to any defect and does not contain any hazardous or toxic substance.

E. COMMISSIONS: Owner agrees that Broker has earned a commission if Owner and tenant enter into a fully executed lease agreement for the herein described property. Said commissions are to be paid to Broker whether tenants are found by Broker, Owner or other broker/agents. Commissions are to be paid by Owner upon commencement of the initial term of a lease and for renewals, extensions or expansions as defined below. Commissions are to be computed as follows:

1. For leases with an initial term of five (5) years or longer, Owner agrees to pay Broker a leasing commission of 6% of the rent for the initial term and 3% for the first renewal.
2. For leases with an initial term of less than five (5) years, Owner agrees to pay Broker a leasing commission of 6% of the rent for the initial term and all renewals up to five years.
3. For leases that are based on a month-to-month term, Owner agrees to pay Broker a leasing commission of 8% of the rent every six (6) months.

F. DEFAULT OF TENANT: Broker does not guarantee the financial or business strength of any Lessee. Broker will, at Owner's request, obtain any financial or background information deemed necessary by Owner for Owner's review. Should Tenant go into Default at any time during their Lease Term, Broker will not be held accountable for any commissions paid to Broker for Lessee's term.

G. TERMINATION: If within one hundred twenty (120) days after the termination of this agreement, Owner leases the Property to a prospective tenant who was shown the property during Broker's listing period, Owner shall pay the aforementioned commission to Broker, provided that the names of the prospective tenants to whom the property was shown are furnished to Owner by Broker in writing within ten (10) days after termination of this exclusive listing period.

H. PROCURING CAUSE FOR SALE OF PROPERTY: If during or immediately following the term of the leases entered into pursuant to this agreement, any of the said lessees purchase all or part of said Property, Charter I Commercial, Inc. shall be considered the procuring cause for such sale. As the procuring cause a sales commission of 5% of the purchase price, reduced by any remaining prepaid unearned leasing commission, shall be paid to Broker at the time of closing.

I. MARKETING/CO-BROKERAGE: Owner directs Broker to market and advertise this listing and offer subagency to all South Carolina licensees. Owner agrees that Broker may compensate an Agent representing the Tenant from the fee described above.

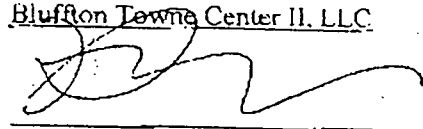
Warranty is hereby made that the undersigned is the Owner/s of this property and/or have the authority to execute this agreement.

Broker: Charter I Commercial, Inc.

By: _____
David M. Bachelder, CCIM

Address: 1544 Fording Island Road
Hilton Head Island, SC 29926
Phone: (843) 837-4460

Bluffton Towne Center, LLC &
Owner: Bluffton Towne Center II, LLC

By: 
Paul Watson

Address: 2217 Princess Anne Street, #325
Fredericksburg, VA 22401
Phone: (540) 373-9500

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7/7/10

LEASE

THIS AGREEMENT OF LEASE is made this 7 day of July, 2010, by and between Bluffton Towne Center, LLC (hereinafter called "Landlord") and Joe Wilson for Congress, (hereinafter called "Tenant").

ARTICLE I PREMISES

Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Tenant, its successors and assigns, to be paid, kept, observed and performed, by these presents does hereby lease, rent, let and demise unto Tenant, and Tenant does hereby take and hire, upon and subject to the terms, provisions, covenants, conditions and limitations hereof, the retail premises, known as the Bluffton Towne Center, Unit 104, located at 27 Dr. Mellichamp Drive, Bluffton, SC 29910.

ARTICLE II TERM

2.1 The Lease Term shall be for four and one half months ("Term"). The Lease Term shall commence on July 15, 2010 ("Lease Commencement Date"). If the Lease Commencement Date is not the first day of a month, then the Lease Term shall be extended to include the partial month in which the Lease Commencement Date occurs. The Lease shall expire November 30, 2010.

2.2 If Landlord is unable to give possession of the Premises on or about the Anticipated Occupancy Date by reason of the holding over or retention of possession of any Tenant or occupant, or if repairs, improvements or decorations to the Premises, or to the building of which the Premises form a part ("Building") are not completed, or for any other reason, Landlord shall not be subject to any liability for the failure to give possession on the Anticipated Occupancy Date. Under such circumstances the rent reserved and covenanted to be paid herein shall not commence until the possession of the Premises is given or the Premises are available for occupancy by Tenant, and no such failure to give possession on the Anticipated Occupancy Date shall in any other respect affect the validity of this Lease or the obligations of Tenant hereunder, nor shall the same be construed in any way to extend the Term of this Lease. If permission is given to Tenant to possess the Premises or to occupy premises other than the Premises prior to the Anticipated Occupancy Date, Tenant covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease.

ARTICLE III RENT

3.1 Tenant covenant and agree to pay to Bluffton Towne Center, LLC at 2217 Princess Anne Street, Suite 325, Fredericksburg, VA 22401 without notice or demand and without abatement, deduction or setoff, in funds drawn on a member bank of the Federal Reserve System, Fifth District, the following:

3.2 Minimum Rent: Tenant shall pay in advance, on the first day of each calendar month, One thousand two hundred and 00/100 Dollars (\$1,200.00) (hereinafter called the "Fixed Minimum Rent"). The Rent Commencement Date shall be July __, 2010.

ARTICLE IV SECURITY DEPOSIT

4.1 Tenant has paid to Landlord One thousand two hundred Dollars (\$1,200.00), ("Security Deposit") as security for compliance with the terms of this Lease. Upon the occurrence of any default by Tenant, Landlord may, from time to time in its sole discretion, without prejudice to any other remedy, use and apply the Security Deposit to the extent necessary to make good any arrearages of rent and any other damage, injury, expense or liability suffered by Landlord by such default. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand as additional rent the amount so applied in order to restore the Security Deposit to its original amount. Within thirty (30) days after the Lease Expiration Date and after the Premises have been properly vacated and inspected and the keys returned to Landlord, then Landlord shall return said Security Deposit to Tenant, without interest, less such portion of the Security Deposit as Landlord shall have used to satisfy Tenant's obligations under this Lease. If Landlord transfers the Security Deposit to any transferee of the Shopping Center or Landlord's interest therein, then said transferee shall be liable to Tenant for the return of the Security Deposit, and Landlord shall be released from all liability for the return of the Security Deposit.

ARTICLE V USE OF THE PREMISES AND OPERATION OF BUSINESS

5.1 Permitted Use: Tenant will use and occupy the Premises solely for the following express use(s) and purpose(s) and for no other use or purpose: general office use, operating under the name of "Joe Wilson for Congress." ("Permitted Use").

ARTICLE VI ENVIRONMENTAL COVENANTS

6.1 (a) Tenant, its employees, agents, contractors and invitees shall, at Tenant's own expense, comply with all Environmental Laws, as herein defined, in connection with its use and occupancy of the Premises or the Shopping Center and shall obtain, maintain and comply with all necessary environmental permits, approvals, registrations and licenses.

(b) Tenant, its employees, agents, contractors and invitees shall not use, generate, release, manufacture, treat, refine, produce, process, store, dump or dispose of any Hazardous Substance, as herein defined, on, under, or about the Premises, the Building or the Shopping Center, or transport to or from the Premises, the Building or the Shopping Center any Hazardous Substance except normal office products, which products shall be used, stored and disposed of in accordance with all Environmental Laws.

(c) Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities or Authority") under the Environmental Laws. Tenant shall provide Landlord with copies of any environmental audit prepared by or for Tenant with respect to the Premises and any report(s) or filing(s) made by Tenant with any Authority.

ARTICLE VII LATE CHARGE

7.1 Tenant agrees to pay to Landlord, as additional rent, a late fee equal to five percent (5%) of any amount due for monthly Fixed Minimum Rent or other payments due hereunder if said payments have not been received by Landlord within five (5) days of the due date.

ARTICLE IX ASSIGNMENT & SUBLETTING

8.1 Tenant shall not assign this Lease or any of Tenant's rights or obligations hereunder, or sublet or permit anyone to occupy the Premises or any part hereof, without the prior written consent of Landlord which will not be unreasonably withheld. No assignment or transfer of this Lease may be effected by operation of law or otherwise without Landlord's prior written consent. The consent of Landlord to any assignment or subletting shall not be construed as a waiver or release of Tenant from liability for the performance of all covenants and obligations to be performed by Tenant under this Lease. The transfer, whether a single transfer or multiple transfers, of fifty percent (50%) or more of the ownership interests of Tenant within a twelve (12) month period shall be deemed equivalent to an assignment or subletting requiring consent of Landlord. Any attempted assignment or subletting made without Landlord's consent shall, at the option of Landlord, be deemed an Event of Default under this Lease. Landlord's acceptance or collection of rent from any assignee, sub-Tenant or occupant shall not be construed (a) as a consent to or acceptance of such assignee, sub-Tenant or occupant as a Tenant, (b) as a waiver by Landlord of any provision hereof, (c) as a waiver or release of Tenant from liability for the performance of any obligation to be performed under this Lease by Tenant, or (d) as relieving Tenant or any assignee, sub-Tenant or occupant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment, subletting or occupancy. Tenant hereby assigns to Landlord any rent due from any assignee, sub-Tenant or occupant of Tenant as security for Tenant's performance of its obligations pursuant to this Lease; provided, however, that Tenant shall have the right to collect such rent as long as Tenant is not in default under the terms of this Lease. Tenant authorizes each such assignee, sub-Tenant or occupant to pay such rent directly to Landlord if such assignee, sub-Tenant or occupant receives written notice from Landlord specifying that such rent shall be paid directly to Landlord. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant, without notifying Tenant, or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease. Tenant shall not

mortgage this Lease without Landlord's consent, which consent may be granted or withheld in Landlord's reasonable discretion. All restrictions and obligations imposed pursuant to this Lease on Tenant shall be deemed to extend to any sub-Tenant, assignee or occupant of Tenant, and Tenant shall cause such persons to comply with all such restrictions and obligations.

ARTICLE X, Repairs

10.1 Landlord shall keep and maintain the roof and other exterior portions of the Premises (exclusive of doors, windows, glass, showcases and storefronts) and heating and air conditioning equipment in good repair, provided that Tenant shall give Landlord written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by Tenant, its agents, contractors, invitees or employees, in which event Tenant shall be responsible therefore and shall promptly repair such damage. The provisions of this Section 10.1 shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain in which event the obligations of Landlord shall be as set forth in Articles XXV and XXVI. Except as provided in this Section 10.1, Landlord shall have no obligation or liability for repair or maintenance of the Premises, or any part thereof, nor shall Landlord be obligated to make any improvements of any kind upon the Premises, or to make any repairs, replacements or improvements to any equipment, facilities or fixtures contained therein, except Landlord shall be responsible for replacing any defective heating and air conditioning equipment.

10.2 Tenant, at Tenant's sole cost and expense, shall keep the interior of the Premises, including but not limited to all doors, windows and glass, and other mechanical installations and equipment used by or in connection with the Premises in clean, safe and sanitary condition and in good order and repair, excluding HVAC and promptly replace any plate glass which may be broken or damaged with glass of like kind and quality, and will suffer no waste or injury thereto, and quit and surrender the Premises at the expiration of the Term in as good condition as when received, except for ordinary wear and tear. Without limitation of the generality of the foregoing, Tenant, at Tenant's sole cost and expense, shall promptly make all repairs and replacements to (a) Tenant's signs, (b) all glass, window panes and doors. Tenant shall be responsible, at Tenant's sole cost and expense, for providing all janitorial, cleaning, pest and termite control services for the Premises. All such services shall be provided in accordance with standards customarily maintained for similar shopping centers and Tenant shall maintain, at Tenant's sole cost and expense, service contracts therefore. Tenant will not overload the electrical wiring and will not install any additional electrical wiring or plumbing unless it has first obtained Landlord's written consent thereto, and if such consent is given, Tenant will install such wiring or plumbing at its own cost and expense. Tenant will repair promptly, at its own expense, any damage to the Premises or the Building caused by bringing into the Premises or the Building any property for Tenant's use or by the installation, use or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused by Landlord's, its agents', employees' or contractors' gross negligence or willful misconduct.

10.3 Intentionally Deleted.

10.4 If permitted by law, Landlord shall have the right at any time and from time to time during the Lease Term to either continue to contract for service from the current utility

service provider or contract for service from a different company or companies providing utility service (each such company shall hereinafter be referred to as an "Alternate Service Provider"). Tenant shall cooperate with Landlord, the utility service provider, and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, utility service provider, and any Alternate Service Provider reasonable access to the Property's pipes, electric lines, feeders, risers, wiring, and any other machinery within the Premises. Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenant may sustain or incur by reason of any change, failure, interference, disruption, or defect in the supply or character of the utility service furnished to the Premises, or if the quantity or character of the service supplied by the utility service provider or any Alternate Service Provider is no longer available or suitable for Tenant's requirements, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenant to any abatement or diminution of rent, or relieve Tenant from any of its obligations under the Lease.

ARTICLE XI UTILITIES

11.1 Tenant, at its own expense, shall arrange with the appropriate utility companies for the provision of any and all utilities. Tenant shall pay promptly when due the charges for all utility services rendered or furnished on the Premises, including, without limitation, heat, water, sewer, telephone, gas and electricity (whether by meter or sub-meter). Landlord will provide and maintain the necessary mains and electrical conduits to bring water, gas and electricity to the perimeter of the Premises. Under no circumstances shall Landlord be liable to Tenant in damages or otherwise (a) if any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (b) for any interruption in service of electricity, water, sewer, gas, heat, ventilation, telephone or air conditioning caused by fire, accidents, strikes, breakdowns, necessary maintenance, alterations, repairs, acts of God or any other causes; and the foregoing shall not constitute a termination of this Lease or an actual or constructive eviction and shall not entitle Tenant to terminate this Lease or to an abatement of rent payable hereunder.

ARTICLE XII TENANT'S TAXES

12.1 Tenant shall pay before delinquency any business, rent or other taxes that are now or hereafter levied, assessed or imposed upon Tenant's use or occupancy of the Premises, the conduct of Tenant's business at the Premises, or Tenant's equipment, fixtures, furnishings, inventory or personal property. If any such taxes are enacted, changed or altered so that any of such taxes are levied against Landlord, or the mode of collection of such taxes is changed so that Landlord is responsible for the collection or payment of such taxes, then Tenant shall pay as additional rent due hereunder the amount of any and all such taxes.

ARTICLE XIII COMPLIANCE WITH LAWS

13.1 Tenant shall comply with all present and future laws, rules, regulations, orders, directions and requirements of all governmental departments, bodies, bureaus, agencies and officers, and with all rules, directions, requirements and recommendations of fire departments,

THE STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530
Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

RECORD ON APPEAL

VOL. 2

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SC Court of Appeals

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the local board of fire underwriters and other fire insurance rating organizations for the area in which the Shopping Center is situated, pertaining to the Premises or the use and occupancy thereof, including the making of such alternations, modifications and improvements as may be so required. In the event Tenant shall fail or neglect to comply with any of the aforesaid laws, rules, regulations, orders, directions, requirements or recommendations, Landlord or its agents may enter the Premises and take all such action and do all such work in or to the Premises as may be necessary in order to comply with such laws, rules, regulations, orders, directions, requirements or recommendations, and Tenant shall reimburse Landlord promptly upon demand for the expense incurred by Landlord in taking such action and performing such work. Tenant shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, including but not limited to public liability, or which will prevent Landlord from procuring such policies in companies reasonably acceptable to Landlord; and if anything done, omitted to be done or suffered to be done by Tenant, or kept or suffered by Tenant to be kept in, upon or about the Premises shall cause the cost of fire or other insurance on the Premises, in companies reasonably acceptable to Landlord, to be increased, Tenant will pay the amount of such increase promptly upon Landlord's demand.

ARTICLE XIV NUISANCES

14.1 Tenant shall not permit any objectionable noise, offensive odors and sounds to be emitted from the Premises, nor do or permit anything tending to create a nuisance.

ARTICLE XV REMODELING AND ALTERATIONS

15.1 Tenant accepts the Premises in its "AS IS" condition. Landlord is under no obligation to make any structural or other alterations, decorations, additions, improvements, renovations or other changes (collectively "Alterations") in or to the Premises.

15.2 Tenant shall not alter or in any way change the exterior of the Premises. Tenant may, at its expense, make such non-structural alterations and improvements to the interior of the Premises and install interior partitions as may be required for the conduct of its business; provided, however, that the written approval of Landlord is first obtained, the improvements and alterations are done in a workmanlike manner and the work is done in conformance with all building codes and regulations and is in no way harmful to the structure of the Premises; and provided further that, if Landlord so requests in writing at least thirty (30) days prior to the expiration of the Term of this Lease or any renewal or extension thereof, Tenant shall, at its expense and immediately prior to such expiration, restore the Premises, including without limitation walls, ceilings and floors, to their condition immediately prior to the making by Tenant of such improvements and alterations, and otherwise restore the Premises to its original condition as received, reasonable wear and tear excepted.

15.3 Any trade or lighting fixtures and/or equipment placed in or upon the Premises by Tenant shall remain Tenant's property, with the right to remove the same at any time; provided,

however, that Tenant is not in default under any provisions of this Lease and that Tenant shall repair any damage to the Premises occasioned by such removal. Tenant agrees to install all show cases and sales fixtures in the sales space of the Premises so that all fixtures and equipment visible to store customers are neat, clean and attractive in appearance.

15.4 Landlord shall, at its option, have the right to remodel or alter the exterior of the Property, including the store front of the Premises and Tenant grants Landlord permission to temporarily remove Tenant' signs and perform any other action which Landlord deems appropriate for such remodeling or alterations.

ARTICLE XVI MECHANICS LIENS

16.1 Tenant covenants not to suffer or permit any mechanics' or materialmen's liens (or a petition to establish such lien) or other similar liens to be filed against the Premises, the fee estate or any leasehold interest in this Shopping Center or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenant or anyone holding the Premises or any part thereof through or under Tenant. If any such lien shall at any time be filed, Tenant shall, within thirty (30) days after receiving notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Tenant shall also defend on Landlord's behalf and at Tenant' sole cost and expense any action, suit or proceeding for the enforcement of any such lien, and Tenant shall pay as additional rent any damages and satisfy and discharge any judgment entered thereon and indemnify and save Landlord harmless from any fees, costs, expenses, claims or damages resulting therefrom.

ARTICLE XVII ROOF AND WALLS

17.1 Landlord shall have the exclusive right to use all or any part of the roof and side walls of the Premises and the Building for any purpose, to erect additional stores or other structures over or adjacent to all or any part of the Premises or the Building, and to erect and maintain in connection with the construction thereof temporary scaffolds and other aids to construction on the exterior of the Premises or the Building; provided, however, that access to the interior of the Premises shall not be denied and that there shall be no encroachment upon the interior of the Premises.

ARTICLE XVIII INDEMNITY

18.1 Landlord, its employees and agents shall not be liable to Tenant, its employees, agents, invitees or any other person or entity claiming through Tenant for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on or arising out of any cause whatsoever (except as otherwise provided in this Section), including without limitation the following: (a) repair to any portion of the Premises, (b) interruption in the use of the Premises or any equipment therein; (c) any

accident or damage resulting from any use or operation (by Landlord, Tenant or any other person or entity) of elevators or heating, cooling, electrical, sewerage or plumbing equipment or apparatus; (d) termination of this Lease by reason of damage to the Premises, the Building or the Shopping Center; (e) fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; (f) actions of any other person or entity; (g) failure or inability of Landlord to furnish any utility or service specified in this Lease; and (h) leakage in any part of the Premises, the Building, or from water, rain, ice or snow that may leak into, or flow from, any part of the Premises, the Building, or from drains, pipes or plumbing fixtures in the Premises. Landlord shall not be liable in damages, nor shall this Lease be affected, for conditions arising or resulting from the construction of contiguous premises, which may affect the Building of which the Premises are a part. Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Premises. If any employee of Landlord receives any package or article delivered for Tenant, then such employee shall be acting as Tenant's agent for such purpose and not as Landlord's agent. For purposes of this Article XVIII, the term "Shopping Center" shall be deemed to include the Land. Notwithstanding the foregoing provisions of this Section, Landlord shall not be released from liability to Tenant for any physical injury or any natural person caused solely by Landlord's or its employees' or agents' gross negligence or willful misconduct except to the extent covered by Article XIX of this Lease

18.2 Tenant shall indemnify and hold Landlord, its employees and agents harmless from and against all costs, damages, claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, expenses and damages of any kind and nature (including without limitation attorneys' fees and the costs of investigation and settlement of any claims) asserted by or on behalf of any person, entity or governmental authority against Landlord, directly or indirectly, based on or arising out of (a) Tenant's use and occupancy of the Premises or the business conducted by Tenant therein, (b) any act or omission of Tenant or any employee, agent, or invitee of Tenant in or on the Premises, the Building, and (c) any accident, injury or damage whatsoever to any person, or the property of any person, occurring in or on the Premises, the Building unless the same was caused by the sole gross negligence or willful misconduct of Landlord, its employees or agents.

18.3 Tenant and all those claiming by, through or under Tenant shall store their property in and shall occupy and use the Premises and any improvements therein and appurtenances thereto and all other portions of the Property solely at their own risk, and Tenant and all those claiming by, through or under Tenant hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

18.4 Landlord shall not be responsible or liable at any time to Tenant, or to those claiming by, through or under Tenant, for any loss of life, bodily or personal injury, or damage to property or business or for business interruption that may be occasioned by or through the acts, omissions or negligence of any other persons or any other Tenants or occupants of any portion of the Shopping Center.

18.5 Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in any buildings or improvements in the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life or injury or damage to any person or to any property or business of Tenant, or those claiming by, through or under Tenant, caused by or resulting from the bursting, breaking, exploding, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises, the Building or caused by or resulting from acts of God or the elements, or resulting from any defect or negligence by third parties in the occupancy, construction, operation or use of any buildings or improvements in the Property, including the Premises.

18.6 Tenant shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or in the Building of any defects therein or in any of its fixtures, machinery or equipment.

ARTICLE XIX INSURANCE

19.1 Landlord agrees that it will keep the Property insured against loss due to fire and other property risks included in standard all risk coverage insurance policies, and covering loss of income from such property risk, or in lieu thereof, insure the Property against loss or damage as a self insurer.

19.2 Throughout the Lease Term, Tenant shall insure the contents of the Premises, including, without limitation, alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by or on behalf of Tenant, and the other personal property of Tenant in the Premises, against loss due to fire and other property risks included in standard all risk coverage insurance policies, in an amount equal to the replacement cost thereof and covering loss of income from such property risk. All insurance carried by Tenant hereunder shall be primary and not contributing with any insurance carried by Landlord.

19.3 Landlord and Tenant agree that all insurance policies required to be carried pursuant to Section 19.1 hereof shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Tenant, and that all insurance policies required to be carried pursuant to Section 19.2 shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Landlord, its managing agent and any mortgagee of Landlord. Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, maintained by such party or required to be maintained by such party under this Lease, to the extent that such loss or damage is recovered under said insurance policies or would have been recovered if the insurance policies required hereunder had been maintained as required pursuant to this Lease. Written notice of the terms of said mutual waivers shall be given to each insurance carrier and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

19.4 Throughout the Lease Term, Tenant shall obtain and maintain commercial general liability insurance on any occurrence basis protecting against any liability occasioned by any occurrence on or about the Premises and containing contractual liability coverage and business interruption coverage. Such insurance shall be initially in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate and shall be for a minimum term of one (1) year.

ARTICLE XX TRASH

20.1 Tenant, at its sole cost and expense, shall keep the Premises clean, both inside and outside, and will remove all refuse from the Premises and from adjacent areas, all at its own expense. Tenant will not burn any trash or garbage of any kind in the Premises, the Building, nor permit refuse, rubbish or garbage to accumulate or fire hazard to exist about the Premises, the Building or the Shopping Center. No trash shall be stored outside Tenant's Premises.

ARTICLE XXI SIGNS

21.1 Tenant may place a sign which refers to its trade name on the exterior of the Premises where designated by Landlord provided Landlord gives its written approval prior to installation. This sign shall comply with Landlord's specifications for size, color, style and materials. No other signs shall be permitted to be exposed to the exterior of the Premises. Signs and window displays shall not revolve, move, blink or flash. Sign shall conform to all zoning regulations, and be properly maintained at Tenant's expense.

ARTICLE XXIII SUBORDINATION

23.1 This Lease is subject and subordinate at all times to all ground or underlying leases, all mortgages and/or deeds of trust, all covenants, restrictions, easements, and encumbrances which may now or hereafter affect such leases or the real property of which the Premises form a part, and all future renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination shall be required by any mortgagee or trustee. In confirmation of such subordination, Tenant shall promptly execute and deliver without charge any certificate or document that Landlord may request in a form which recognizes this Lease and is otherwise reasonably acceptable to Tenant within ten (10) days following Landlord's written request. Tenant hereby constitutes and appoints Landlord as Tenant's attorney-in-fact to execute any such certificate or certificates for and on behalf of Tenant. Provided, however, that notwithstanding the foregoing, the party secured by any such deed of trust shall have the right to recognize this Lease, and in the event of any foreclosure sale under such deed of trust, this Lease shall continue in full force and effect at the option of the party secured by such deed of trust or the purchaser under any such foreclosure sale, in which event Tenant shall attorn to such party secured by such deed of trust or purchaser as Landlord under this Lease. Upon such attornment such party secured by such deed of trust or purchaser shall not be (a) bound by any payment of rent or additional rent more than one (1) month in advance, (b) bound by any amendment of this Lease made without the consent of the

holder of the deed of trust existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord, or (d) subject to any offsets or defenses which Tenant might have against any prior landlord; provided, however, that after succeeding to Landlord's interest, such party secured by such deed of trust or purchaser shall perform, in accordance with the terms of this Lease, all obligations of Landlord arising after the date of acquisition of title to the Shopping Center. Tenant covenants and agrees that it will, at the written request of the party secured by any such deed of trust, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of said deed of trust to the lien of this Lease.

23.2 At the option of any landlord under any ground or underlying lease to which this Lease is now or may hereafter become subject or subordinate, Tenant agrees that neither the cancellation nor termination of such ground or underlying lease shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenant hereunder, and Tenant covenants and agrees to attorn to such Landlord or to any successor to Landlord's interest in such ground or underlying lease subject to the attornment provisions set forth in Section 23.1 above. In that event, this Lease shall continue as a direct lease between Tenant herein and such landlord or its successor.

ARTICLE XXIV DESTRUCTION

24.1 If the Premises, the Building shall be partially damaged by fire or other casualty insured under Landlord's insurance policies, then, upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenant's trade fixtures, decorations, signs and contents) substantially in the condition immediately prior to such damage or destruction; such repair or restoration shall be limited, however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence: (a) the Premises are rendered wholly untenantable; (b) the Premises are damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance policies; (c) the Premises are damaged in whole or in part during the last two (2) years of the term or of any renewal term hereof; (d) the Building is or are damaged (whether or not the Premises are damaged) to an extent of fifty percent (50%) or more of the then replacement value thereof; or (e) any or all of said building are damaged (whether or not the Premises are damaged) to such an extent that the property cannot, in the sole judgment of Landlord, be operated as an integral unit, then, or in any of such events, Landlord may elect either to repair the damage as aforesaid or to cancel this Lease by written notice of cancellation given to Tenant within one hundred twenty (120) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in Landlord's notice was the date herein fixed for the expiration of the Term hereof, and Tenant shall vacate and surrender the Premises to Landlord. Upon the termination of this Lease as aforesaid, Tenant's liability for the rents reserved hereunder shall cease as of the effective date of termination of this Lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth. Unless this Lease is terminated by Landlord as aforesaid, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary, and Tenant shall repair, restore or replace Tenant's trade fixtures, decorations, signs and contents in the Premises in a manner and to

at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by Tenant on said property shall be held in trust by Tenant for the purposes of such repair, restoration or replacement. If by reason of such fire or other casualty the Premises are rendered wholly unTenantable, the Fixed Minimum Rent shall be fully abated, or if only partially damaged, the Fixed Minimum Rent shall be abated proportionately as to that portion of the Premises rendered unTenantable, in either event (unless Landlord shall elect to terminate this Lease as aforesaid) until fifteen (15) days after notice by Landlord to Tenant that the Premises have been substantially repaired and restored or until Tenant's business operations are restored in the entire Premises, whichever shall occur sooner. Tenant shall continue the operation of Tenant's business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management and, except for such abatement of the Fixed Minimum Rent as hereinabove set forth, nothing herein contained shall be construed to abate Tenant's obligations for the payment of the Fixed Minimum Rent, Percentage Rent or any other additional rent and charges reserved hereunder, except that the computation of such Percentage Rent shall be based upon the revised Fixed Minimum Rent as the same may be abated. If such damage or other casualty shall be caused by the negligence of Tenant or of Tenant's subTenants, concessionaires, licensees, contractors or invitees or their respective agents or employees, there shall be no abatement of rent. Except for the abatement of the Fixed Minimum Rent hereinabove set forth, Tenant shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Premises and/or the Common Areas and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute, rule, regulation, ordinance, order or other law which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenant is given the right to terminate a lease upon the occurrence of any such damage or destruction, are hereby expressly waived by Tenant.

ARTICLE XXV CONDEMNATION

25.1 Total: If the entire Premises or such part thereof as will render the remainder unTenantable shall be acquired or taken by eminent domain for any public or quasi-public use or purpose or by private purchase in lieu thereof, then this Lease and the Term hereof shall automatically cease and terminate as of the date of title vesting in such public authority.

25.2 Partial: If any part of the Premises shall be taken by eminent domain and such partial taking shall render that portion not so taken unsuitable for the purposes for which the Premises were leased, then Landlord and Tenant shall each have the right to terminate this Lease by written notice given to the other within sixty (60) days after notice of such taking. If any part of the Premises shall be so taken and this Lease shall not be terminated as aforesaid, then this Lease and all of the terms and provisions hereof shall continue in full force and effect, except that the Fixed Minimum Rent shall be reduced in the same proportion that the floor area of the Premises taken (including basement and mezzanine space, if any) bears to the original floor area demised, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations (exclusive of Tenant's trade fixtures, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances

will permit, and to the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit; provided, however, that Landlord, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Landlord as damages for the taking of such part of the Premises and of the Building, and Tenant, at Tenant's expense, shall make all necessary repairs and alterations to Tenant's trade fixtures, decorations, signs and contents.

25.3 As used herein, the amount received by Landlord shall mean that portion of the award in condemnation received by Landlord from the condemning authority which is free and clear of all prior claims or collections by the holders of mortgages or deeds of trust or other liens and encumbrances.

25.4 If more than twenty percent (20%) of the floor area of the Building shall be taken as aforesaid, Landlord shall have the right, by written notice given to Tenant, to terminate this Lease, such termination to be effective as of the date of title vesting in such authority.

25.5 If this Lease is terminated as provided in this Article XXV, all rent shall be paid by Tenant up to the date that title vests in such public authority, and Landlord shall make an equitable refund of any rent paid by Tenant in advance and not yet earned.

25.6 Award: All damages or compensation awarded or paid for any such taking whether for the whole or a part of the Premises or any part of the Land, buildings and improvements constituting the Property, shall belong to and be the property of Landlord without any participation by Tenant, whether such damages or compensation shall be awarded or paid for diminution in value of the fee or any interest of Landlord in any ground or underlying lease covering the Property or in the leasehold estate created hereby, and Tenant hereby expressly waives and relinquishes all claims to such award or compensation or any part thereof and of the right to participate in any such condemnation proceedings against the owners of any interest in the Property. Tenant shall not make any claim against Landlord or the authority for any portion of such award, damages or compensation. Tenant may, if allowed by statute, seek such awards or damages for moving expenses, loss of profits and fixtures and other equipment installed by it which do not, under the terms of this Lease, become the property of Landlord at the termination hereof. Such awards or damages must be made by a condemnation court or other authority and must be separate and distinct from any award to Landlord for the Land and Shopping Center and shall not diminish or otherwise adversely affect Landlord's award. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section of the Lease.

ARTICLE XXVI BANKRUPTCY

26.1 The following shall be Events of Bankruptcy under this Lease: (a) Tenant, a guarantor or a general partner of Tenant ("General Partner") becoming insolvent, as that term is defined in Title 11 of the United States Code (the "Bankruptcy Code"), or under the insolvency laws of any state (the "Insolvency Laws"); (b) appointment of a receiver or custodian for any property of Tenant, a guarantor or a General Partner, or the institution of a foreclosure or

attachment action upon any property of Tenant, a guarantor or a General Partner; (c) filing of a voluntary petition by Tenant, a guarantor or a General Partner under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenant, a guarantor or a General Partner as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (i) is not dismissed within sixty (60) days of filing, or (ii) results in the issuance of an order for relief against the debtor; or (e) Tenant, a guarantor or a General Partner making or consenting to an assignment for the benefit of creditors or a composition of creditors.

ARTICLE XXVII DEFAULT

27.1 Each of the following shall constitute an Event of Default: (a) Tenant' failure to make any payment of the Fixed Minimum Rent, Percentage Rent, additional rent or any other sum within ten (10) days of written notice from Landlord of Tenant' failure to make such payment on such payment's due date; (b) Tenant' failure to take possession of the Premises within thirty (30) calendar days after delivery thereof to Tenant; (c) Tenant' failure to continuously operate its business in the Premises as required by the terms of this Lease; (d) Tenant' violation or failure to perform or observe any other covenant or condition of this Lease for a period of thirty (30) days following Landlord's written notice thereof to Tenant; (e) Tenant' abandonment or vacation of the Premises; (f) an Event of Bankruptcy as specified in Section 26.1 with respect to Tenant, any General Partner or any guarantor; or (g) Tenant' dissolution or liquidation.

27.2 If there shall be an Event of Default, including an Event of Default prior to the Lease Commencement Date, then Landlord shall have the right, at its sole option, to terminate this Lease. In addition, with or without terminating this Lease, Landlord may reenter the Premises, terminate Tenant' right of possession and take possession of the Premises. The provisions of this Section shall operate as a notice to quit, any other notice to quit or of Landlord's intention to reenter the Premises being hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Premises under and by virtue of the laws of the jurisdiction in which the Property is located, or by such other proceedings, including reentry and possession, as may be applicable. If Landlord elects to terminate this Lease and/or elects to terminate Tenant's right of possession, then everything contained in this Lease to be done and performed by Landlord shall cease, without prejudice, however, to Landlord's right to recover from Tenant all rent and other sums due hereunder through the Lease Expiration Date as defined in Section 2.1. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenant.

27.3 Landlord's rights and remedies set forth in this Lease are cumulative and in addition to Landlord's other rights and remedies at law or in equity, including those available as a result of any anticipated breach of this Lease. Landlord's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Landlord's delay or failure to exercise or enforce any of Landlord's rights or remedies or Tenant' obligations shall not constitute a waiver of any such rights, remedies or obligations.

27.4 No payment by Tenant or receipt by Landlord of a lesser amount than the monthly installments of rent or other charges herein stipulated shall be deemed to be a payment in full of the stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. Landlord shall have the right to apply Tenant's payments to any balance or arrearage Tenant has outstanding. Landlord's reentry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

ARTICLE XXVIII WAIVER OF JURY TRIAL

28.1 LANDLORD, TENANT, AND ALL GUARANTORS AND GENERAL PARTNERS OF TENANT AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF SAID PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

28.2 Tenant consents to service of process and any pleading relating to any such action at the Premises; provided, however, that nothing herein shall be construed as requiring such service at the Premises. Landlord, Tenant, all guarantors and all General Partners of Tenant waive any objection to the venue of any action filed in any court situated in the jurisdiction in which the Shopping Center is located and waive any right under the doctrine of forum non conveniens or otherwise, to transfer any such action filed in any such court to any other court.

ARTICLE XXIX LEGAL FEES

29.1 If, as a result of any breach or default in the performance of any of the provisions of this Lease (whether or not such default is later cured), Landlord uses the services of an attorney in order to secure compliance with such provisions or recover damages, or to terminate this Lease or evict Tenant, or if Landlord is required to defend itself or the terms of this Lease and Landlord uses the services of an attorney, then Tenant shall reimburse Landlord, if prevailing, upon demand for any and all attorneys' fees and expenses so incurred by such prevailing party with such amounts being additional rent in the event Landlord is the prevailing party. In the event of default by Landlord, then Tenant shall have the same rights as described above for Landlord.

ARTICLE XXXI ACCESS TO PREMISES

31.1 Landlord, its employees and representatives shall have the right at any time during the Lease Term, upon reasonable notice except in an emergency, to enter into and upon any and

all parts of the Premises during business hours (or, in an emergency, at any hour) to (a) view, inspect, secure and clean the Premises, (b) make repairs to the Premises, the Building or the Property, or introduce, replace, repair, alter or make new or change existing connections from any fixture, pipes, wires, ducts, conduits, or other construction therein, (c) remove, without being held responsible therefore, placards, signs, lettering, window or door coverings and the like not expressly consented to or (d) show the Premises to prospective Tenant, purchasers or lenders; and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall such be deemed to be an actual or constructive eviction. Landlord shall have the right to use a portion of the Premises for all necessary pipes and wires heading to and from the portions of the Building not hereby leased, which will not unreasonably interfere with Tenant's use of the Premises. Landlord may, within one hundred and twenty (120) days preceding the expiration of the Lease Term, enter the Premises to place and maintain notices for letting, free from hindrance or control of Tenant. If Tenant shall vacate the Premises during the last month of the Lease Term, Landlord shall have the unrestricted right to enter the Premises after Tenant's moving to commence preparations for the succeeding Tenant or for any other purpose whatever, without affecting Tenant's obligation to pay rent for the full Lease Term.

ARTICLE XXXII EXCAVATION

32.1 If any excavation shall be made upon land adjacent to the Premises, Tenant shall permit the party authorized to cause such excavation to be made to enter upon the Premises for the purpose of doing such work as such party may deem necessary to preserve the wall of the building of which the Premises form a part from damage and to support the same by proper foundations and shoring, and Tenant hereby waives all claims for inconvenience, disturbance, loss of business or other damages against Landlord therefore and without in any manner affecting Tenant's obligations under this Lease, nor shall the same constitute any ground for an abatement of any rent hereunder.

ARTICLE XXXIII QUIET ENJOYMENT

33.1 If Tenant pays all the rent herein reserved and performs and observes all of the other terms, covenants and conditions of this Lease on Tenant's part to be performed and observed hereunder, Tenant shall, during the Term, peaceably and quietly have, hold and enjoy the Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease.

ARTICLE XXXIV SURRENDER OF PREMISES

34.1 Upon the expiration or sooner termination of the Term of this Lease, Tenant agrees to quit and surrender the Premises, broom-clean, in good condition and repair, reasonable wear and tear and casualty excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except Personal Property and other

unattached movable trade fixtures put in at Tenant' expense, all of which shall thereupon become the property of Landlord without any claim by Tenant therefore but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenant shall remove all of Tenant' Personal Property and unattached movable trade fixtures and, at Landlord's option, Tenant shall also remove any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenant in, upon or to the interior or exterior of the Premises. If Tenant shall fail to remove any of Tenant' Personal Property and trade fixtures, such property shall, at the option of Landlord, be deemed abandoned and become the exclusive property of Landlord or Landlord shall have the right to remove and store said property, at the expense of Tenant, without further notice to or demand upon Tenant, and hold Tenant responsible for any and all charges and expenses incurred by Landlord therefore. If the Premises is not surrendered as and when aforesaid, Tenant shall indemnify Landlord against all loss or liability resulting from the delay by Tenant in so surrendering same, including without limitation any claims made by any succeeding occupant founded on such delay. Tenant' obligations under this Section shall survive the expiration or sooner termination of the Term of this Lease.

ARTICLE XXXV HOLDING OVER

35.1 This Lease shall terminate on the Lease Expiration Date pursuant to the terms of this Lease without the necessity of notice from either Landlord or Tenant. Any holding over by Tenant after the Lease Expiration Date without Landlord's prior written consent as provided in Section 35.2 shall be an unlawful detainer and Tenant shall be subject to immediate eviction. During such hold over, all the terms and conditions set forth in this Lease shall apply, except that Tenant shall pay to Landlord Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term ("Hold Over Rent"). In addition to paying to Landlord the Hold Over Rent, if Tenant fails to surrender and vacate the Premises on the Lease Expiration Date, Tenant shall indemnify and hold Landlord harmless from and against any and all loss, liability, damages and expenses (including without limitation, attorneys' fees, the costs of investigation and settlement of any claims) sustained or incurred by Landlord on account of or resulting from such failure, including, without limitation, claims made by any succeeding Tenant of all or any part of the Premises or the loss by Landlord of the rent from any succeeding Tenant of all or any part of the Premises.

35.2 If, within the written consent of Landlord, Tenant or any party claiming by, through or under Tenant remains in possession of the Premises, or any part thereof, after the Lease Expiration Date, Landlord shall treat such holding over by Tenant as the creation of a month-to-month tenancy, subject to all the terms, covenants and conditions set forth in this Lease insofar as the same are applicable to a month-to-month tenancy, except that Tenant shall pay a Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term. Tenant shall give to Landlord at least thirty (30) days' prior written notice from the first day of the month of any intention to quit said Premises, and Tenant shall be entitled to the same thirty (30) days' prior written notice to quit said Premises, except in the event of non-payment of rent in advance or of any breach of any other covenant by Tenant, in which event Tenant shall not be entitled to any notice to quit,

the usual thirty (30) days' notice to quit being hereby expressly waived; provided, however, that in the event Tenant shall hold over after the expiration of the Lease Term, and if Landlord shall desire to regain possession of the Premises promptly at the expiration of the Lease Term, then at any time prior to Landlord's acceptance of rent from Tenant as a monthly Tenant hereunder, Landlord, at its option, may forthwith reenter and take possession of the Premises without process, or by legal process in force in the jurisdiction in which the Property is located.

ARTICLE XXXVI NO WAIVER

36.1 The failure of Landlord to insist upon the strict performance of any provisions of this Lease or the failure of Landlord to exercise any rights, options or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Landlord of any act by Tenant requiring Landlord's consent or approval shall not be construed to waive or render the requirement of Landlord's consent or approval of any subsequent similar act by Tenant. The receipt by Landlord of rent with knowledge of a breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord. No waiver of Landlord in favor of any other Tenant or occupant of the Property shall constitute a waiver in favor of Tenant herein.

ARTICLE XL LIMITATION OF LIABILITY OF LANDLORD

40.1 Anything contained in this Lease to the contrary notwithstanding, Tenant agrees that Tenant shall look solely to Landlord's equity in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be kept, observed and performed by Landlord, subject, however, to the prior rights of any ground or underlying landlords or any mortgagee of all or any part of the Property, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenant's claim.

ARTICLE XLI NOTICES

41.1 All notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefore (such as Federal Express) or by certified mail. Notices to Landlord shall be sent to Bluffton Towne Center, LLC, 2217 Princess Anne Street, Suite 325, Fredericksburg, Virginia 22401. Notices to Tenant shall be sent to: PO Box 2145, West Columbia, SC 29171.

ARTICLE XLV MISCELLANEOUS

45.1 No Representations. Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises or the Shopping Center except as herein expressly set forth, and no rights, privileges, easements or licenses are being acquired by Tenant except as herein expressly set forth.

45.2 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenant, or to create any other relationship between the parties hereto other than that of landlord and Tenant.

45.3 Authority. Landlord and Tenant covenant each for itself, that each has full right, power and authority to enter into this Lease upon the terms and conditions herein set forth.

45.4 Force Majeure. If Landlord is in any way delayed or prevented from performing any of its obligations under this Lease due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Landlord's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention.

45.5 Additional Rent. All other costs and expenses which Tenant assumes or agrees to pay to Landlord pursuant to this Lease shall be deemed to be "additional rent" and, in the event of nonpayment thereof, Landlord shall have all the rights and remedies provided for in the case of nonpayment of rent, including assessment of interest and late fees. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectable as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

45.6 No Recording. Both Landlord and Tenant agree that this Lease shall not be recorded in any office legally established for the purpose of giving public notice of real estate records and any attempt to do so may be treated by Landlord as an Event of Default under this Lease.

45.7 Governing Law. This Lease is governed under the laws of the jurisdiction in which the Property is located.

45.8 Captions. Section headings are used for convenience and shall not be considered when construing this Lease.

45.9 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

45.10 Tenant Liability. If two or more individuals, corporations, partnerships or other persons (or any combination of two or more thereof) shall sign this Lease as Tenant, the liability of each such individual, corporation, partnership or other persons to pay the rent and perform all other obligations hereunder shall be deemed to be joint and several.

45.11 Time is of the Essence. Time is of the essence with respect to each and every provision of this Lease.

45.12 Entire Agreement. This Lease contains the entire agreement of the parties in regard to the Premises and this Lease and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease shall be of any force or effect. This Lease may not be amended, modified or changed in whole or in part in any manner other than by an agreement in writing duly signed by both parties hereto.

45.13 Benefit and Burden. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective heirs, executors, administrators, successors, and assigns. Landlord may freely assign its interest hereunder.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

45.16 Survival. Tenant's liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

45.17 Submission of Lease. The submission of this Lease for examination does not constitute a reservation of or an option for lease, and the same shall not be effective as a lease or otherwise until execution and delivery by both Landlord and Tenant.

45.18 Designation of Agent. Landlord's registered agent for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon Landlord and the registered agent's office address is William M. Smoot, Esq., Smoot, Pitts Elliot & Biel, 15C Lafayette Place, Hilton Head, SC 23439.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed under seal by a duly authorized officer, intending to be legally bound hereby, as of the day and year first above written. The covenants of Tenant are joint and several obligations of each party signing as Tenant, and, when the parties signing as Tenant are partners, shall be the obligations of the firm and of the individual members thereof.

TENANT:

Joe Wilson for Congress

By: _____

LANDLORD:

Bluffton Towne Center, LLC

By: _____



CHARTER I
COMMERCIAL, INC.

**PLAINTIFF'S
EXHIBIT**

11 - A

LEASING COMMISSION INVOICE

July 27, 2010

Landlord: Bluffton Towne Center, LLC
2217 Princess Anne St., Suite 325
Fredericksburg, VA 22401

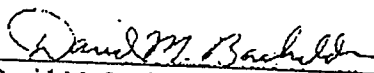
Location: Bluffton Towne Center, Unit 104
27 Mellichamp Drive
Bluffton, SC 29910

Tenant: Joe Wilson for Congress

Terms: 4 month lease @ \$4,800.00 (7/15/10 - 11/15/10)
8% commission

Total Due: **\$384.00**

If Tenant decides to purchase unit, Broker will be paid a commission of 6% of the purchase price less the amount of unearned leasing commission that has been paid.


David M. Bachelder, President, CCIM

Paul Watson

Please make check payable and mail to:

Charter I Commercial, Inc.
1544 Fording Island Road
Hilton Head Island, SC 29926

1544 Fording Island Road • Hilton Head Island, SC 29926
(843) 837-4460 • FAX (843) 837-4461 • 888-837-4460
www.charter1commercial.com

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000117

Record on Appeal
2013-000305

Plaintiff
000078

12

5-31-11

Date: Tuesday, May 31, 2011 4:26 PM

From: pcwatson@cox.net

To: downtowndel23@yahoo.com

Subject: Re: Zumba

I have not heard back from the zumba people, so I am assuming they are not interested. I just spoke to Lynn Jackson and she said she got my name and number from Leah. Thanks. It sounds like she might complement you all better than Zumba and she only needs about 1200-1300 sq. ft. As you probably know, she wants to move/open a gift shop.

Attached is the unit 104 floorplan. While I was there last week, I measured the back two offices. The back corner office is 13.5 X 13.5, or about 182 sq. ft. Both offices combined would be about 351 sq. ft. Since you all only need about 200 sq. ft., I assume the one corner office would work. If so, I am willing to carve out that office and let you all connect with the deli. I think the rent should be \$175 per mo. This is about \$11.50 per sq. ft., but includes CAM, taxes and utilities, which would total well over \$2 per sq. ft.

If we are to do this, I want you all to sign a lease extension of at least one year. Also, you all take it as is and do the work to connect the two spaces. I will have someone finish out the wall on the unit 104 side after you have closed it off.

----- Original message ----- wrote:

Hey Paul...any word from the zumba guy. He want to move forward as quickly as possible with that space so we can get it set up this summer. In time for our wedding season beginning in August. Thanks for everything

Ryan

Sent on the Sprint® Now Network from my BlackBerry®

Paul Watson, CBA, CMAA, CCM, CBT

HFI Companies / Capital Business Appraisers

2217 Princess Anne Street

Suite 325

Fredericksburg, VA 22401

Tel. 540-373-9500

FAX 540-373-9527

Cell 540-287-4064

www.hfi.com

www.hfi.com

unit104_deli.pdf

Begin July 1
 Current - \$1975 / mo
 New (\$11.50) 335
 \$2,310 / mo

351 SF
 @ \$11.50
 = \$335 / mo
 (\$4,036.50 / yr)

LEASE

THIS AGREEMENT OF LEASE is made this 29 day of July, 2011, by and between Bluffton Towne Center, LLC (hereinafter called "Landlord") and Ryan McCarthy and Leah McCarthy (hereinafter called "Tenants").

ARTICLE I PREMISES

Landlord, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of Tenants, its successors and assigns, to be paid, kept, observed and performed, by these presents does hereby lease, rent, let and demise unto Tenants, and Tenants does hereby take and hire, upon and subject to the terms, provisions, covenants, conditions and limitations hereof, the retail premises, known as the Bluffton Towne Center, Unit 105 and approximately two office spaces located in unit 104 (shown on the attached Exhibit A), all located at 27 Dr. Mellichamp Drive, Bluffton, SC 29910.

ARTICLE II TERM

2.1 The Lease Term shall be for one (1) year ("Term"). The Lease Term shall commence on August 1, 2011 ("Lease Commencement Date"). If the Lease Commencement Date is not the first day of a month, then the Lease Term shall be extended to include the partial month in which the Lease Commencement Date occurs. The date on which the Lease Term expires shall be the Lease Expiration Date.

2.2 If Landlord is unable to give possession of the Premises on or about the Anticipated Occupancy Date by reason of the holding over or retention of possession of any Tenants or occupant, or if repairs, improvements or decorations to the Premises, or to the building of which the Premises form a part ("Building") are not completed, or for any other reason, Landlord shall not be subject to any liability for the failure to give possession on the Anticipated Occupancy Date. Under such circumstances the rent reserved and covenanted to be paid herein shall not commence until the possession of the Premises is given or the Premises are available for occupancy by Tenants, and no such failure to give possession on the Anticipated Occupancy Date shall in any other respect affect the validity of this Lease or the obligations of Tenants hereunder, nor shall the same be construed in any way to extend the Term of this Lease. If permission is given to Tenants to possess the Premises or to occupy premises other than the Premises prior to the Anticipated Occupancy Date, Tenants covenants and agrees that such occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this Lease.

ARTICLE III RENT

3.1 Tenants covenant and agree to pay to Bluffton Towne Center, LLC at 2217 Princess Anne Street, Suite 325, Fredericksburg, VA 22401 without notice or demand and

without abatement, deduction or setoff, in funds drawn on a member bank of the Federal Reserve System, Fifth District, the following:

3.2 Minimum Rent: Tenants shall pay in advance, on the first day of each calendar month, annual minimum rent of Twenty four thousand four hundred twenty and 00/100 Dollars (\$24,420.00) (hereinafter called the "Fixed Minimum Rent") for the first Lease Year in equal monthly installments in the amount of Two thousand thirty five and 00/100 Dollars (\$2,035.00). Such Fixed Minimum Rent (and the monthly installments thereof) shall be adjusted annually pursuant to Section 3.3 hereof. The first payment shall be made August 15, 2011, and the second and subsequent monthly payments shall be made on the fifteenth day of each and every calendar month. The Rent Commencement Date shall be August 1, 2011.

3.3 Additional Rent. Tenants shall pay as additional rent, \$100.00 per month for common area maintenance, \$75 per month, as its pro-rata share of real estate taxes and \$100 per month for trash, with the monthly rent.

3.4 The term "Lease Year" shall mean each period of twelve (12) consecutive calendar months commencing on the Lease Commencement Date, except that if the Lease Commencement Date is not the first day of a month, then the first Lease Year shall commence on the Lease Commencement Date and shall continue for the balance of the month in which the Lease Commencement Date occurs, and for a period of twelve (12) calendar months thereafter and subsequent Lease Years shall commence on the day following the last day of the preceding Lease Year. The term "Partial Lease Year" shall mean any period of less than twelve (12) calendar months during the last Lease Year of the Lease if the Lease Expiration Date occurs prior to the end of a full Lease Year.

ARTICLE IV SECURITY DEPOSIT

4.1 Tenants' security deposit was waived at occupancy.

ARTICLE V USE OF THE PREMISES AND OPERATION OF BUSINESS

5.1 Permitted Use: Tenants will use and occupy the Premises solely for the following express use(s) and purpose(s) and for no other use or purpose: restaurant, deli and catering business.

5.2 Trade Name: Tenants will conduct business in the Premises in the trade name of Downtown Deli and Downtown Catering.

ARTICLE VI ENVIRONMENTAL COVENANTS

6.1 (a) Tenants, its employees, agents, contractors and invitees shall, at Tenants' own expense, comply with all Environmental Laws, as herein defined, in connection with its use

and occupancy of the Premises or the Shopping Center and shall obtain, maintain and comply with all necessary environmental permits, approvals, registrations and licenses.

(b) Tenants, its employees, agents, contractors and invitees shall not use, generate, release, manufacture, treat, refine, produce, process, store, dump or dispose of any Hazardous Substance, as herein defined, on, under, or about the Premises, the Building or the Shopping Center, or transport to or from the Premises, the Building or the Shopping Center any Hazardous Substance except normal office products, which products shall be used, stored and disposed of in accordance with all Environmental Laws.

(c) Tenants shall, at Tenants' own expense, make all submissions to, provide all information required by, and comply with all requirements of all governmental authorities (the "Authorities or Authority") under the Environmental Laws. Tenants shall provide Landlord with copies of any environmental audit prepared by or for Tenants with respect to the Premises and any report(s) or filing(s) made by Tenants with any Authority.

ARTICLE VII LATE CHARGE

7.1 Tenants agrees to pay to Landlord, as additional rent, a late fee equal to five percent (5%) of any amount due for monthly Fixed Minimum Rent or other payments due hereunder if said payments have not been received by Landlord within five (5) days of the due date

ARTICLE IX ASSIGNMENT & SUBLETTING

8.1 Tenants shall not assign this Lease or any of Tenants' rights or obligations hereunder, or sublet or permit anyone to occupy the Premises or any part hereof, without the prior written consent of Landlord which will not be unreasonably withheld. No assignment or transfer of this Lease may be effected by operation of law or otherwise without Landlord's prior written consent. The consent of Landlord to any assignment or subletting shall not be construed as a waiver or release of Tenants from liability for the performance of all covenants and obligations to be performed by Tenants under this Lease. The transfer, whether a single transfer or multiple transfers, of fifty percent (50%) or more of the ownership interests of Tenants within a twelve (12) month period shall be deemed equivalent to an assignment or subletting requiring consent of Landlord. Any attempted assignment or subletting made without Landlord's consent shall, at the option of Landlord, be deemed an Event of Default under this Lease. Landlord's acceptance or collection of rent from any assignee, sub-Tenants or occupant shall not be construed (a) as a consent to or acceptance of such assignee, sub-Tenants or occupant as a Tenants, (b) as a waiver by Landlord of any provision hereof, (c) as a waiver or release of Tenants from liability for the performance of any obligation to be performed under this Lease by Tenants, or (d) as relieving Tenants or any assignee, sub-Tenants or occupant from the obligation of obtaining Landlord's prior written consent to any subsequent assignment, subletting or occupancy. Tenants hereby assigns to Landlord any rent due from any assignee, sub-Tenants or occupant of Tenants as security for Tenants' performance of its obligations pursuant to this Lease; provided, however,

that Tenants shall have the right to collect such rent as long as Tenants is not in default under the terms of this Lease. Tenants authorizes each such assignee, sub-Tenants or occupant to pay such rent directly to Landlord if such assignee, sub-Tenants or occupant receives written notice from Landlord specifying that such rent shall be paid directly to Landlord. In the event of default by any assignee of Tenants or any successor of Tenants in the performance of any of the terms hereof, Landlord may proceed directly against Tenants without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenants, without notifying Tenants, or any successor of Tenants, and without obtaining its or their consent thereto and such action shall not relieve Tenants of liability under this Lease. Tenants shall not mortgage this Lease without Landlord's consent, which consent may be granted or withheld in Landlord's reasonable discretion. All restrictions and obligations imposed pursuant to this Lease on Tenants shall be deemed to extend to any sub-Tenants, assignee or occupant of Tenants, and Tenants shall cause such persons to comply with all such restrictions and obligations.

ARTICLE X: Repairs

10.1 Landlord shall keep and maintain the roof and other exterior portions of the Premises (exclusive of doors, windows, glass, showcases, and storefronts) in good repair, provided that Tenants shall give Landlord written notice of the necessity for such repairs, and provided that the damage thereto shall not have been caused by Tenants, its agents, contractors, invitees or employees, in which event Tenants shall be responsible therefore and shall promptly repair such damage. The provisions of this Section 10.1 shall not apply in the case of damage or destruction by fire or other casualty or by eminent domain in which event the obligations of Landlord shall be as set forth in Articles XXV and XXVI. Except as provided in this Section 10.1, Landlord shall have no obligation or liability for repair or maintenance of the Premises, or any part thereof, nor shall Landlord be obligated to make any improvements of any kind upon the Premises, or to make any repairs, replacements or improvements to any equipment, facilities or fixtures contained therein, except Landlord shall be responsible for replacing any defective heating and air conditioning equipment.

10.2 Tenants, at Tenants' sole cost and expense, shall keep the interior of the Premises, including but not limited to all doors, windows and glass, and other mechanical installations and equipment used by or in connection with the Premises in clean, safe and sanitary condition and in good order and repair, and promptly replace any plate glass which may be broken or damaged with glass of like kind and quality, and will suffer no waste or injury thereto, and quit and surrender the Premises at the expiration of the Term in as good condition as when received, except for ordinary wear and tear. Without limitation of the generality of the foregoing, Tenants, at Tenants' sole cost and expense, shall promptly make all repairs and replacements to (a) Tenants' signs, (b) all glass, window panes and doors. Tenants shall be responsible, at Tenants' sole cost and expense, for providing all janitorial, cleaning, pest and termite control services for the Premises. All such services shall be provided in accordance with standards customarily maintained for similar shopping centers and Tenants shall maintain, at Tenants' sole cost and expense, service contracts therefore. Tenants will not overload the electrical wiring and will not install any additional electrical wiring or plumbing unless it has first obtained Landlord's written

consent thereto, and if such consent is given, Tenants will install such wiring or plumbing at its own cost and expense. Tenants will repair promptly, at its own expense, any damage to the Premises or the Building caused by bringing into the Premises or the Building any property for Tenants' use or by the installation, use or removal of such property, regardless of fault or by whom such damage shall be caused, unless caused by Landlord's, its agents', employees' or contractors' gross negligence or willful misconduct.

10.3 Intentionally Deleted.

10.4 If permitted by law, Landlord shall have the right at any time and from time to time during the Lease Term to either continue to contract for service from the current utility service provider or contract for service from a different company or companies providing utility service (each such company shall hereinafter be referred to as an "Alternate Service Provider"). Tenants shall cooperate with Landlord, the utility service provider, and any Alternate Service Provider at all times and, as reasonably necessary, shall allow Landlord, utility service provider, and any Alternate Service Provider reasonable access to the Property's pipes, electric lines, feeders, risers, wiring, and any other machinery within the Premises. Landlord shall in no way be liable or responsible for any loss, damage, or expense that Tenants may sustain or incur by reason of any change, failure, interruption, or defect in the supply or character of the utility service furnished to the Premises, or if the quantity or character of the service supplied by the utility service provider or any Alternate Service Provider is no longer available or suitable for Tenants' requirements, and no such change, failure, defect, unavailability, or unsuitability shall constitute an actual or constructive eviction, in whole or in part, or entitle Tenants to any abatement or diminution of rent, or relieve Tenants from any of its obligations under the Lease.

ARTICLE XI UTILITIES

11.1 Tenants, at its own expense, shall arrange with the appropriate utility companies for the provision of any and all utilities. Tenants shall pay promptly when due the charges for all utility services rendered or furnished on the Premises, including, without limitation, heat, water, sewer, telephone, gas and electricity (whether by meter or sub-meter). Landlord will provide and maintain the necessary mains and electrical conduits to bring water, gas and electricity to the perimeter of the Premises. Under no circumstances shall Landlord be liable to Tenants in damages or otherwise (a) if any utility shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (b) for any interruption in service of electricity, water, sewer, gas, heat, ventilation, telephone or air conditioning caused by fire, accidents, strikes, breakdowns, necessary maintenance, alterations, repairs, acts of God or any other causes; and the foregoing shall not constitute a termination of this Lease or an actual or constructive eviction and shall not entitle Tenants to terminate this Lease or to an abatement of rent payable hereunder. Notwithstanding the foregoing, the utilities for the space in unit 104 shall be furnished by the Landlord and included in the rent.

ARTICLE XII TENANTS' TAXES

12.1 Tenants shall pay before delinquency any business, rent or other taxes that are now or hereafter levied, assessed or imposed upon Tenants' use or occupancy of the Premises.

the conduct of Tenants' business at the Premises, or Tenants' equipment, fixtures, furnishings, inventory or personal property. If any such taxes are enacted, changed or altered so that any of such taxes are levied against Landlord, or the mode of collection of such taxes is changed so that Landlord is responsible for the collection or payment of such taxes, then Tenants shall pay as additional rent due hereunder the amount of any and all such taxes.

ARTICLE XIII COMPLIANCE WITH LAWS

13.1 Tenants shall comply with all present and future laws, rules, regulations, orders, directions and requirements of all governmental departments, bodies, bureaus, agencies and officers, and with all rules, directions, requirements and recommendations of fire departments, the local board of fire underwriters and other fire insurance rating organizations for the area in which the Shopping Center is situated, pertaining to the Premises or the use and occupancy thereof, including the making of such alterations, modifications and improvements as may be so required. In the event Tenants shall fail or neglect to comply with any of the aforesaid laws, rules, regulations, orders, directions, requirements or recommendations, Landlord or its agents may enter the Premises and take all such action and do all such work in or to the Premises as may be necessary in order to comply with such laws, rules, regulations, orders, directions, requirements or recommendations, and Tenants shall reimburse Landlord promptly upon demand for the expense incurred by Landlord in taking such action and performing such work. Tenants shall not do or suffer to be done, or keep or suffer to be kept, anything in, upon or about the Premises which will contravene Landlord's policies insuring against loss or damage by fire or other hazards, including but not limited to public liability, or which will prevent Landlord from procuring such policies in companies reasonably acceptable to Landlord; and if anything done, omitted to be done or suffered to be done by Tenants, or kept or suffered by Tenants to be kept in, upon or about the Premises shall cause the cost of fire or other insurance on the Premises, in companies reasonably acceptable to Landlord, to be increased, Tenants will pay the amount of such increase promptly upon Landlord's demand.

ARTICLE XIV NUISANCES

14.1 Tenants shall not permit any objectionable noise, offensive odors and sounds to be emitted from the Premises, nor do or permit anything tending to create a nuisance.

ARTICLE XV REMODELING AND ALTERATIONS

15.1 Tenants accept the Premises in its "AS IS" condition. Tenants will make the necessary alterations in order to connect units 104 and 105. The Landlord is under no obligation to make any structural or other alterations, decorations, additions, improvements, renovations or other changes (collectively "Alterations") in or to the Premises.

15.2 Tenants shall not alter or in any way change the exterior of the Premises. Tenants may, at its expense, make such non-structural alterations and improvements to the interior of the

Premises and install interior partitions as may be required for the conduct of its business; provided, however, that the written approval of Landlord is first obtained, the improvements and alterations are done in a workmanlike manner and the work is done in conformance with all building codes and regulations and is in no way harmful to the structure of the Premises; and provided further that, if Landlord so requests in writing at least thirty (30) days prior to the expiration of the Term of this Lease or any renewal or extension thereof, Tenants shall, at its expense and immediately prior to such expiration, restore the Premises, including without limitation walls, ceilings and floors, to their condition immediately prior to the making by Tenants of such improvements and alterations, and otherwise restore the Premises to its original condition as received, reasonable wear and tear excepted.

15.3 Any trade or lighting fixtures and/or equipment placed in or upon the Premises by Tenants shall remain Tenants' property, with the right to remove the same at any time; provided, however, that Tenants is not in default under any provisions of this Lease and that Tenants shall repair any damage to the Premises occasioned by such removal. Tenants agrees to install all show cases and sales fixtures in the sales space of the Premises so that all fixtures and equipment visible to store customers are neat, clean and attractive in appearance.

15.4 Landlord shall, at its option, have the right to remodel or alter the exterior of the Property, including the store front of the Premises and Tenants grants Landlord permission to temporarily remove Tenants' signs and perform any other action which Landlord deems appropriate for such remodeling or alterations; with notice to Tenant.

ARTICLE XVI MECHANICS LIENS

16.1 Tenants covenants not to suffer or permit any mechanics' or materialmen's liens (or a petition to establish such lien) or other similar liens to be filed against the Premises, the fee estate or any leasehold interest in this Shopping Center or any part thereof by reason of work, labor, services or materials supplied or claimed to have been supplied to Tenants or anyone holding the Premises or any part thereof through or under Tenants. If any such lien shall at any time be filed, Tenants shall, within thirty (30) days after receiving notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Tenants shall also defend on Landlord's behalf and at Tenants' sole cost and expense any action, suit or proceeding for the enforcement of any such lien, and Tenants shall pay as additional rent any damages and satisfy and discharge any judgment entered thereon and indemnify and save Landlord harmless from any fees, costs, expenses, claims or damages resulting therefrom.

ARTICLE XVII ROOF AND WALLS

17.1 Landlord shall have the exclusive right to use all or any part of the roof and side walls of the Premises and the Building for any purpose, to erect additional stores or other structures over or adjacent to all or any part of the Premises or the Building, and to erect and maintain in connection with the construction thereof temporary scaffolds and other aids to

construction on the exterior of the Premises or the Building; provided, however, that access to the interior of the Premises shall not be denied and that there shall be no encroachment upon the interior of the Premises.

ARTICLE XVIII INDEMNITY

18.1 Landlord, its employees and agents shall not be liable to Tenants, its employees, agents, invitees or any other person or entity claiming through Tenants for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on or arising out of any cause whatsoever (except as otherwise provided in this Section), including without limitation the following: (a) repair to any portion of the Premises, (b) interruption in the use of the Premises or any equipment therein; (c) any accident or damage resulting from any use or operation (by Landlord, Tenants or any other person or entity) of elevators or heating, cooling, electrical, sewerage or plumbing equipment or apparatus; (d) termination of this Lease by reason of damage to the Premises, the Building or the Shopping Center; (e) fire, robbery, theft, vandalism, mysterious disappearance or any other casualty; (f) actions of any other person or entity; (g) failure or inability of Landlord to furnish any utility or service specified in this Lease; and (h) leakage in any part of the Premises, the Building, or from water, rain, ice or snow that may leak into, or flow from, any part of the Premises, the Building, or from drains, pipes or plumbing fixtures in the Premises. Landlord shall not be liable in damages, nor shall this Lease be affected, for conditions arising or resulting from the construction of contiguous premises, which may affect the Building of which the Premises are a part. Landlord assumes no liability or responsibility whatsoever with respect to the conduct and operation of the business to be conducted in the Premises. If any employee of Landlord receives any package or article delivered for Tenants, then such employee shall be acting as Tenants' agent for such purpose and not as Landlord's agent. For purposes of this Article XVIII, the term "Shopping Center" shall be deemed to include the Land. Notwithstanding the foregoing provisions of this Section, Landlord shall not be released from liability to Tenants for any physical injury or any natural person caused solely by Landlord's or its employees' or agents' gross negligence or willful misconduct except to the extent covered by Article XIX of this Lease.

18.2 Tenants shall indemnify and hold Landlord, its employees and agents harmless from and against all costs, damages, claims, demands, liabilities, fines, suits, actions, proceedings, orders, decrees, judgments, expenses and damages of any kind and nature (including without limitation attorneys' fees and the costs of investigation and settlement of any claims) asserted by or on behalf of any person, entity or governmental authority against Landlord, directly or indirectly, based on or arising out of (a) Tenants' use and occupancy of the Premises or the business conducted by Tenants therein, (b) any act or omission of Tenants or any employee, agent, or invitee of Tenants in or on the Premises, the Building, and (c) any accident, injury or damage whatsoever to any person, or the property of any person, occurring in or on the Premises, the Building unless the same was caused by the sole gross negligence or willful misconduct of Landlord, its employees or agents.

18.3 Tenants and all those claiming by, through or under Tenants shall store their property in and shall occupy and use the Premises and any improvements therein and

appurtenances thereto and all other portions of the Property solely at their own risk, and Tenants and all those claiming by, through or under Tenants hereby release Landlord, to the full extent permitted by law, from all claims of every kind, including loss of life, personal or bodily injury, damage to merchandise, equipment, fixtures or other property, or damage to business or for business interruption arising, directly or indirectly, out of or from or on account of such occupancy and use or resulting from any present or future condition or state of repair thereof.

18.4 Landlord shall not be responsible or liable at any time to Tenants, or to those claiming by, through or under Tenants, for any loss of life, bodily or personal injury, or damage to property or business or for business interruption that may be occasioned by or through the acts, omissions or negligence of any other persons or any other Tenants or occupants of any portion of the Shopping Center.

18.5 Landlord shall not be responsible or liable at any time for any defects, latent or otherwise, in any buildings or improvements in the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall Landlord be responsible or liable at any time for loss of life or injury or damage to any person or to any property or business of Tenants, or those claiming by, through or under Tenants, caused by or resulting from the bursting, breaking, exploding, leaking, running, seeping, overflowing or backing up of water, steam, gas, sewage, snow or ice in any part of the Premises, the Building or caused by or resulting from acts of God or the elements, or resulting from any defect or negligence by third parties in the occupancy, construction, operation or use of any buildings or improvements in the Property, including the Premises.

18.6 Tenants shall give prompt notice to Landlord in case of fire or other casualty or accidents in the Premises or in the Building of any defects therein or in any of its fixtures, machinery or equipment.

ARTICLE XIX INSURANCE

19.1 Landlord agrees that it will keep the Property insured against loss due to fire and other property risks included in standard all risk coverage insurance policies, and covering loss of income from such property risk, or in lieu thereof, insure the Property against loss or damage as a self insurer.

19.2 Throughout the Lease Term, Tenants shall insure the contents of the Premises, including, without limitation, alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by or on behalf of Tenants, and the other personal property of Tenants in the Premises, against loss due to fire and other property risks included in standard all risk coverage insurance policies, in an amount equal to the replacement cost thereof and covering loss of income from such property risk. All insurance carried by Tenants hereunder shall be primary and not contributing with any insurance carried by Landlord.

19.3 Landlord and Tenants agree that all insurance policies required to be carried pursuant to Section 19.1 hereof shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Tenants, and that all

insurance policies required to be carried pursuant to Section 19.2 shall either permit or contain an express waiver of any right of recovery (by subrogation or otherwise) by the insurance company against Landlord, its managing agent and any mortgagee of Landlord. Each party hereby waives any and every right or cause of action for any and all loss of, or damage to, any of its property (whether or not such loss or damage is caused by the fault or negligence of the other party or anyone for whom said other party may be responsible), which loss or damage is covered by valid and collectible fire, extended coverage, "All Risk" or similar policies, maintained by such party or required to be maintained by such party under this Lease, to the extent that such loss or damage is recovered under said insurance policies or would have been recovered if the insurance policies required hereunder had been maintained as required pursuant to this Lease. Written notice of the terms of said mutual waivers shall be given to each insurance carrier and said insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers.

19.4 Throughout the Lease Term, Tenants shall obtain and maintain commercial general liability insurance on any occurrence basis protecting against any liability occasioned by any occurrence on or about the Premises and containing contractual liability coverage and business interruption coverage. Such insurance shall be initially in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) general aggregate and shall be for a minimum term of one (1) year.

ARTICLE XX TRASH

20.1 Tenants, at its sole cost and expense, shall keep the Premises clean, both inside and outside, and will remove all refuse from the Premises and from adjacent areas, all at its own expense. Tenants will not burn any trash or garbage of any kind in the Premises, the Building, nor permit refuse, rubbish or garbage to accumulate or fire hazard to exist about the Premises, the Building or the Shopping Center. No trash shall be stored outside Tenants' Premises.

ARTICLE XXI SIGNS

21.1 Tenants may place a sign which refers to its trade name on the exterior of the Premises where designated by Landlord provided Landlord gives its written approval prior to installation. This sign shall comply with Landlord's specifications for size, color, style and materials. No other signs shall be permitted to be exposed to the exterior of the Premises. Signs and window displays shall not revolve, move, blink or flash. Signs shall conform to all zoning regulations, and be properly maintained at Tenants' expense.

ARTICLE XXIII SUBORDINATION

23.1 This Lease is subject and subordinate at all times to all ground or underlying leases, all mortgages and/or deeds of trust, all covenants, restrictions, easements, and encumbrances which may now or hereafter affect such leases or the real property of which the Premises form a part, and all future renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative and no further instrument of subordination

shall be required by any mortgagee or trustee. In confirmation of such subordination, Tenants shall promptly execute and deliver without charge any certificate or document that Landlord may request in a form which recognizes this Lease and is otherwise reasonably acceptable to Tenants within ten (10) days following Landlord's written request. Tenants hereby constitutes and appoints Landlord as Tenants' attorney-in-fact to execute any such certificate or certificates for and on behalf of Tenants. Provided, however, that notwithstanding the foregoing, the party secured by any such deed of trust shall have the right to recognize this Lease, and in the event of any foreclosure sale under such deed of trust, this Lease shall continue in full force and effect at the option of the party secured by such deed of trust or the purchaser under any such foreclosure sale, in which event Tenants shall attach to such party secured by such deed of trust or purchaser as Landlord under this Lease. Upon such attornment such party secured by such deed of trust or purchaser shall not be (a) bound by any payment of rent or additional rent more than one (1) month in advance, (b) bound by any amendment of this Lease made without the consent of the holder of the deed of trust existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord, or (d) subject to any offsets or defenses which Tenants might have against any prior landlord; provided, however, that after succeeding to Landlord's interest, such party secured by such deed of trust or purchaser shall perform, in accordance with the terms of this Lease, all obligations of Landlord arising after the date of acquisition of title to the Shopping Center. Tenants covenants and agrees that it will, at the written request of the party secured by any such deed of trust, execute, acknowledge and deliver any instrument that has for its purpose and effect the subordination of said deed of trust to the lien of this Lease.

23.2 At the option of any landlord under any ground or underlying lease to which this Lease is now or may hereafter become subject or subordinate, Tenants agrees that neither the cancellation nor termination of such ground or underlying lease shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of Tenants hereunder; and Tenants covenants and agrees to attorn to such Landlord or to any successor to Landlord's interest in such ground or underlying lease subject to the attornment provisions set forth in Section 23.1 above. In that event, this Lease shall continue as a direct lease between Tenants herein and such landlord or its successor.

ARTICLE XXIV. DESTRUCTION

24.1 If the Premises, the Building shall be partially damaged by fire or other casualty insured under Landlord's insurance policies, then, upon Landlord's receipt of the insurance proceeds, Landlord shall, except as otherwise provided herein, repair and restore the same (exclusive of Tenants' trade fixtures, decorations, signs and comments) substantially in the condition immediately prior to such damage or destruction; such repair or restoration shall be limited, however, to the extent of the insurance proceeds received by Landlord. If by reason of such occurrence: (a) the Premises are rendered wholly untenable; (b) the Premises are damaged in whole or in part as a result of a risk which is not covered by Landlord's insurance policies; (c) the Premises are damaged in whole or in part during the last two (2) years of the term or of any renewal term hereof; (d) the Building is or are damaged (whether or not the Premises are damaged) to an extent of fifty percent (50%) or more of the then replacement value

thereof; or (e) any or all of said building are damaged (whether or not the Premises are damaged) to such an extent that the property cannot, in the sole judgment of Landlord, be operated as an integral unit, then, or in any of such events, Landlord may elect either to repair the damage as aforesaid or to cancel this Lease by written notice of cancellation given to Tenants within one hundred twenty (120) days after the date of such occurrence, and thereupon this Lease shall cease and terminate with the same force and effect as though the date set forth in Landlord's notice was the date herein fixed for the expiration of the Term hereof, and Tenants shall vacate and surrender the Premises to Landlord. Upon the termination of this Lease as aforesaid, Tenants' liability for the rents reserved hereunder shall cease as of the effective date of termination of this Lease, subject, however, to the provisions for the prior abatement of rent hereinafter set forth. Unless this Lease is terminated by Landlord as aforesaid, this Lease shall remain in full force and effect, and the parties waive the provisions of any law to the contrary, and Tenants shall repair, restore or replace Tenants' trade fixtures, decorations, signs and contents in the Premises in a manner and to at least a condition equal to that existing prior to their damage or destruction, and the proceeds of all insurance carried by Tenants on said property shall be held in trust by Tenants for the purposes of such repair, restoration or replacement. If by reason of such fire or other casualty the Premises are rendered wholly unTenantsable, the Fixed Minimum Rent shall be fully abated, or if only partially damaged, the Fixed Minimum Rent shall be abated proportionately as to that portion of the Premises rendered unTenantsable, in either event (unless Landlord shall elect to terminate this Lease as aforesaid) until fifteen (15) days after notice by Landlord to Tenants that the Premises have been substantially repaired and restored or until Tenants' business operations are restored in the entire Premises, whichever shall occur sooner. Tenants shall continue the operation of Tenants' business in the Premises or any part thereof not so damaged during any such period to the extent reasonably practicable from the standpoint of prudent business management and, except for such abatement of the Fixed Minimum Rent as hereinabove set forth, nothing herein contained shall be construed to abate Tenants' obligations for the payment of the Fixed Minimum Rent, Percentage Rent or any other additional rent and charges reserved hereunder, except that the computation of such Percentage Rent shall be based upon the revised Fixed Minimum Rent as the same may be abated. If such damage or other casualty shall be caused by the negligence of Tenants or of Tenants' subTenants, concessionaires, licensees, contractors or invitees or their respective agents or employees, there shall be no abatement of rent. Except for the abatement of the Fixed Minimum Rent hereinabove set forth, Tenants shall not be entitled to and hereby waives all claims against Landlord for any compensation or damage for loss of use of the whole or any part of the Premises and/or the Common Areas and/or for any inconvenience or annoyance occasioned by any such damage, destruction, repair or restoration. The provisions of any statute, rule, regulation, ordinance, order or other law which may be in effect at the time of the occurrence of any such damage or destruction, under which a lease is automatically terminated or a Tenants is given the right to terminate a lease upon the occurrence of any such damage or destruction, are hereby expressly waived by Tenants.

ARTICLE XXV CONDEMNATION

25.1 Total: If the entire Premises or such part thereof as will render the remainder unTenantsable shall be acquired or taken by eminent domain for any public or quasi-public use

or purpose or by private purchase in lieu thereof, then this Lease and the Term hereof shall automatically cease and terminate as of the date of title vesting in such public authority.

25.2 Partial: If any part of the Premises shall be taken by eminent domain and such partial taking shall render that portion not so taken unsuitable for the purposes for which the Premises were leased, then Landlord and Tenants shall each have the right to terminate this Lease by written notice given to the other within sixty (60) days after notice of such taking. If any part of the Premises shall be so taken and this Lease shall not be terminated as aforesaid, then this Lease and all of the terms and provisions hereof shall continue in full force and effect, except that the Fixed Minimum Rent shall be reduced in the same proportion that the floor area of the Premises taken (including basement and mezzanine space, if any) bears to the original floor area demised, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations (exclusive of Tenants' trade fixtures, decorations, signs and contents) to restore the portion of the Premises remaining to as near its former condition as the circumstances will permit, and to the Building to the extent necessary to constitute the portion of the Building not so taken a complete architectural unit; provided, however, that Landlord, in any event, shall not be required to spend for such repair and alteration work an amount in excess of the respective amounts received by Landlord as damages for the taking of such part of the Premises and of the Building, and Tenants, at Tenants' expense, shall make all necessary repairs and alterations to Tenants' trade fixtures, decorations, signs and contents.

25.3 As used herein, the amount received by Landlord shall mean that portion of the award in condemnation received by Landlord from the condemning authority which is free and clear of all prior claims or collections by the holders of mortgages or deeds of trust or other liens and encumbrances.

25.4 If more than twenty percent (20%) of the floor area of the Building shall be taken as aforesaid, Landlord shall have the right, by written notice given to Tenants, to terminate this Lease, such termination to be effective as of the date of title vesting in such authority.

25.5 If this Lease is terminated as provided in this Article XXV, all rent shall be paid by Tenants up to the date that title vests in such public authority, and Landlord shall make an equitable refund of any rent paid by Tenants in advance and not yet earned.

25.6 Award: All damages or compensation awarded or paid for any such taking whether for the whole or a part of the Premises or any part of the Land, buildings and improvements constituting the Property, shall belong to and be the property of Landlord without any participation by Tenants, whether such damages or compensation shall be awarded or paid for diminution in value of the fee or any interest of Landlord in any ground or underlying lease covering the Property or in the leasehold estate created hereby, and Tenants hereby expressly waives and relinquishes all claims to such award or compensation or any part thereof and of the right to participate in any such condemnation proceedings against the owners of any interest in the Property. Tenants shall not make any claim against Landlord or the authority for any portion of such award, damages or compensation. Tenants may, if allowed by statute, seek such awards or damages for moving expenses, loss of profits and fixtures and other equipment installed by it which do not, under the terms of this Lease, become the property of Landlord at the termination

hereof. Such awards or damages must be made by a condemnation court or other authority and must be separate and distinct from any award to Landlord for the Land and Shopping Center and shall not diminish or otherwise adversely affect Landlord's award. Each party agrees to execute and deliver to the other all instruments that may be required to effectuate the provisions of this Section of the Lease.

ARTICLE XXVI BANKRUPTCY

26.1 The following shall be Events of Bankruptcy under this Lease: (a) Tenants, a guarantor or a general partner of Tenants ("General Partner") becoming insolvent, as that term is defined in Title 11 of the United States Code (the "Bankruptcy Code"); or under the insolvency laws of any state (the "Insolvency Laws"); (b) appointment of a receiver or custodian for any property of Tenants, a guarantor or a General Partner, or the institution of a foreclosure or attachment action upon any property of Tenants, a guarantor or a General Partner; (c) filing of a voluntary petition by Tenants, a guarantor or a General Partner under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenants, a guarantor or a General Partner as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (i) is not dismissed within sixty (60) days of filing, or (ii) results in the issuance of an order for relief against the debtor; or (e) Tenants, a guarantor or a General Partner making or consenting to an assignment for the benefit of creditors or a composition of creditors.

ARTICLE XXVII DEFAULT

27.1 Each of the following shall constitute an Event of Default: (a) Tenants' failure to make any payment of the Fixed Minimum Rent, Percentage Rent, additional rent or any other sum within ten (10) days of written notice from Landlord of Tenants' failure to make such payment on such payment's due date; (b) Tenants' failure to take possession of the Premises within thirty (30) calendar days after delivery thereof to Tenants; (c) Tenants' failure to continuously operate its business in the Premises as required by the terms of this Lease; (d) Tenants' violation or failure to perform or observe any other covenant or condition of this Lease for a period of thirty (30) days following Landlord's written notice thereof to Tenants; (e) Tenants' abandonment or vacation of the Premises; (f) an Event of Bankruptcy as specified in Section 26.1 with respect to Tenants, any General Partner or any guarantor; or (g) Tenants' dissolution or liquidation.

27.2 If there shall be an Event of Default, including an Event of Default prior to the Lease Commencement Date, then Landlord shall have the right, at its sole option, to terminate this Lease. In addition, with or without terminating this Lease, Landlord may reenter the Premises, terminate Tenants' right of possession and take possession of the Premises. The provisions of this Section shall operate as a notice to quit, any other notice to quit or of Landlord's intention to reenter the Premises being hereby expressly waived. If necessary, Landlord may proceed to recover possession of the Premises under and by virtue of the laws of the jurisdiction in which the Property is located, or by such other proceedings, including reentry and possession, as may be applicable. If Landlord elects to terminate this Lease and/or elects to

terminate Tenant's right of possession, then everything contained in this Lease to be done and performed by Landlord shall cease, without prejudice, however, to Landlord's right to recover from Tenants all rent and other sums due hereunder through the Lease Expiration Date as defined in Section 2.1. No such reentry or taking possession of the Premises by Landlord shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Tenants.

27.3 Landlord's rights and remedies set forth in this Lease are cumulative and in addition to Landlord's other rights and remedies at law or in equity, including those available as a result of any anticipated breach of this Lease. Landlord's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Landlord's delay or failure to exercise or enforce any of Landlord's rights or remedies or Tenants' obligations shall not constitute a waiver of any such rights, remedies or obligations.

27.4 No payment by Tenants or receipt by Landlord of a lesser amount than the monthly installments of rent or other charges herein stipulated shall be deemed to be a payment in full of the stipulated rent nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided. Landlord shall have the right to apply Tenants' payments to any balance or arrearage Tenants has outstanding. Landlord's reentry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

ARTICLE XXVIII WAIVER OF JURY TRIAL

28.1 LANDLORD, TENANTS, AND ALL GUARANTORS AND GENERAL PARTNERS OF TENANTS AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. THE RELATIONSHIP OF LANDLORD AND TENANTS, TENANTS' USE OR OCCUPANCY OF SAID PREMISES AND/OR ANY CLAIM OF INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

28.2 Tenants consents to service of process and any pleading relating to any such action at the Premises; provided, however, that nothing herein shall be construed as requiring such service at the Premises. Landlord, Tenants, all guarantors and all General Partners of Tenants waive any objection to the venue of any action filed in any court situated in the jurisdiction in which the Shopping Center is located and waive any right under the doctrine of forum non conveniens or otherwise, to transfer any such action filed in any such court to any other court.

ARTICLE XXIX LEGAL FEES

29.1 If, as a result of any breach or default in the performance of any of the provisions of this Lease (whether or not such default is later cured), Landlord uses the services of an attorney in order to secure compliance with such provisions or recover damages, or to terminate this Lease or evict Tenants, or if Landlord is required to defend itself or the terms of this Lease and Landlord uses the services of an attorney, then Tenants shall reimburse Landlord, if prevailing, upon demand for any and all attorneys' fees and expenses so incurred by such prevailing party with such amounts being additional rent in the event Landlord is the prevailing party. In the event of default by Landlord, then Tenants shall have the same rights as described above for Landlord.

ARTICLE XXXI ACCESS TO PREMISES

31.1 Landlord, its employees and representatives shall have the right at any time during the Lease Term, upon reasonable notice except in an emergency, to enter into and upon any and all parts of the Premises during business hours (or, in an emergency, at any hour) to (a) view, inspect, secure and clean the Premises, (b) make repairs to the Premises, the Building or the Property, or introduce, replace, repair, alter or make new or change existing connections from any fixture, pipes, wires, ducts, conduits, or other construction therein, (c) remove, without being held responsible therefore, placards, signs, lettering, window or door coverings and the like not expressly consented to or (d) show the Premises to prospective Tenants, purchasers or lenders; and Tenants shall not be entitled to any abatement or reduction of rent by reason thereof, nor shall such be deemed to be an actual or constructive eviction. Landlord shall have the right to use a portion of the Premises for all necessary pipes and wires heading to and from the portions of the Building not hereby leased, which will not unreasonably interfere with Tenants' use of the Premises. Landlord may, within one hundred and twenty (120) days preceding the expiration of the Lease Term, enter the Premises to place and maintain notices for letting, free from hindrance or control of Tenants. If Tenants shall vacate the Premises during the last month of the Lease Term, Landlord shall have the unrestricted right to enter the Premises after Tenants' moving to commence preparations for the succeeding Tenants or for any other purpose whatever, without affecting Tenants' obligation to pay rent for the full Lease Term.

ARTICLE XXXII EXCAVATION

32.1 If any excavation shall be made upon land adjacent to the Premises, Tenants shall permit the party authorized to cause such excavation to be made to enter upon the Premises for the purpose of doing such work as such party may deem necessary to preserve the wall of the building of which the Premises form a part from damage and to support the same by proper foundations and shoring, and Tenants hereby waives all claims for inconvenience, disturbance, loss of business or other damages against Landlord therefore and without in any manner affecting Tenants' obligations under this Lease, nor shall the same constitute any ground for an abatement of any rent hereunder.

ARTICLE XXXIII QUIET ENJOYMENT

33.1 If Tenants pays all the rent herein reserved and performs and observes all of the other terms, covenants and conditions of this Lease on Tenants' part to be performed and observed hereunder, Tenants shall, during the Term, peaceably and quietly have, hold and enjoy the Premises without molestation or hindrance by Landlord or any party claiming through or under Landlord, subject to the provisions of this Lease.

ARTICLE XXXIV SURRENDER OF PREMISES

34.1 Upon the expiration or sooner termination of the Term of this Lease, Tenants agrees to quit and surrender the Premises, broom-clean, in good condition and repair, reasonable wear and tear and casualty excepted, together with all keys and combinations to locks, safes and vaults and all improvements, alterations, additions, fixtures and equipment at any time made or installed in, upon or to the interior or exterior of the Premises, except Personal Property and other unattached movable trade fixtures put in at Tenants' expense, all of which shall thereupon become the property of Landlord without any claim by Tenants therefore but the surrender of such property to Landlord shall not be deemed to be a payment of rent or in lieu of any rent reserved hereunder. Before surrendering the Premises, Tenants shall remove all of Tenants' Personal Property and unattached movable trade fixtures and, at Landlord's option, Tenants shall also remove any improvements, alterations, additions, fixtures, equipment and decorations at any time made or installed by Tenants in, upon or to the interior or exterior of the Premises. If Tenants shall fail to remove any of Tenants' Personal Property and trade fixtures, such property shall, at the option of Landlord, be deemed abandoned and become the exclusive property of Landlord or Landlord shall have the right to remove and store said property, at the expense of Tenants, without further notice to or demand upon Tenants, and hold Tenants responsible for any and all charges and expenses incurred by Landlord therefore. If the Premises is not surrendered as and when aforesaid, Tenants shall indemnify Landlord against all loss or liability resulting from the delay by Tenants in so surrendering same, including without limitation any claims made by any succeeding occupant founded on such delay. Tenants' obligations under this Section shall survive the expiration or sooner termination of the Term of this Lease.

ARTICLE XXXV HOLDING OVER

35.1 This Lease shall terminate on the Lease Expiration Date pursuant to the terms of this Lease without the necessity of notice from either Landlord or Tenants. Any holding over by Tenants after the Lease Expiration Date without Landlord's prior written consent as provided in Section 35.2 shall be an unlawful detainer and Tenants shall be subject to immediate eviction. During such hold over, all the terms and conditions set forth in this Lease shall apply, except that Tenants shall pay to Landlord Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term ("Hold Over Rent"). In addition to paying to Landlord the Hold Over Rent, if Tenants fails to surrender and vacate the Premises on the Lease Expiration Date, Tenants shall indemnify and hold Landlord harmless from and against any and all loss, liability, damages and expenses

(including without limitation, attorneys' fees, the costs of investigation and settlement of any claims) sustained or incurred by Landlord on account of or resulting from such failure, including, without limitation, claims made by any succeeding Tenants of all or any part of the Premises or the loss by Landlord of the rent from any succeeding Tenants of all or any part of the Premises.

35.2 If, within the written consent of Landlord, Tenants or any party claiming by, through or under Tenants remains in possession of the Premises, or any part thereof, after the Lease Expiration Date, Landlord shall treat such holding over by Tenants as the creation of a month-to-month tenancy, subject to all the terms, covenants and conditions set forth in this Lease insofar as the same are applicable to a month-to-month tenancy, except that Tenants shall pay a Fixed Minimum Rent and Percentage Rent equal to twice the Fixed Minimum Rent and Percentage Rent in effect during the last month of the Lease Term. Tenants shall give to Landlord at least thirty (30) days' prior written notice from the first day of the month of any intention to quit said Premises, and Tenants shall be entitled to the same thirty (30) days' prior written notice to quit said Premises, except in the event of non-payment of rent in advance or of any breach of any other covenant by Tenants, in which event Tenants shall not be entitled to any notice to quit, the usual thirty (30) days' notice to quit being hereby expressly waived; provided, however, that in the event Tenants shall hold over after the expiration of the Lease Term, and if Landlord shall desire to regain possession of the Premises promptly at the expiration of the Lease Term, then at any time prior to Landlord's acceptance of rent from Tenants as a monthly Tenants hereunder, Landlord, at its option, may forthwith reenter and take possession of the Premises without process, or by legal process in force in the jurisdiction in which the Property is located.

ARTICLE XXXVI NO WAIVER

36.1 The failure of Landlord to insist upon the strict performance of any provisions of this Lease or the failure of Landlord to exercise any rights, options or remedy hereby reserved shall not be construed as a waiver for the future of any such provision, right, option or remedy or as a waiver of a subsequent breach thereof. The consent or approval by Landlord of any act by Tenants requiring Landlord's consent or approval shall not be construed to waive or render the requirement of Landlord's consent or approval of any subsequent similar act by Tenants. The receipt by Landlord of rent with knowledge of a breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver shall be in writing signed by Landlord. No waiver of Landlord in favor of any other Tenants or occupant of the Property shall constitute a waiver in favor of Tenants herein.

ARTICLE XL LIMITATION OF LIABILITY OF LANDLORD

40.1 Anything contained in this Lease to the contrary notwithstanding, Tenants agrees that Tenants shall look solely to Landlord's equity in the Property for the collection of any judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by

Landlord with respect to any of the terms and provisions of this Lease to be kept, observed and performed by Landlord, subject, however, to the prior rights of any ground or underlying landlords or any mortgagee of all or any part of the Property, and no other assets of Landlord shall be subject to levy, execution or other judicial process for the satisfaction of Tenants' claim.

ARTICLE XLI NOTICES

41.1 All notices required hereunder by either party to the other shall be sent by recognized overnight courier with receipt therefore (such as Federal Express) or by certified mail. Notices to Landlord shall be sent to Bluffton Towne Center, LLC, 2217 Princess Anne Street, Suite 325, Fredericksburg, Virginia 22401. Notices to Tenants shall be sent to the Premises. Tenants merely elects domicile at the Premises for the purpose of service of all notices, writs of summons, or other legal documents, or process, in any suit, action, or proceeding which Landlord may undertake under this Lease.

ARTICLE XLV MISCELLANEOUS

45.1 No Representations. Tenants acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representations or promises with respect to the Premises or the Shopping Center except as herein expressly set forth, and no rights, privileges, easements or licenses are being acquired by Tenants except as herein expressly set forth.

45.2 No Partnership. Nothing contained in this Lease shall be deemed or construed to create a partnership or joint venture of or between Landlord and Tenants, or to create any other relationship between the parties hereto other than that of landlord and Tenants.

45.3 Authority. Landlord and Tenants covenant each for itself, that each has full right, power and authority to enter into this Lease upon the terms and conditions herein set forth.

45.4 Force Majeure. If Landlord is in any way delayed or prevented from performing any of its obligations under this Lease due to fire, act of God, governmental act or failure to act, strike, labor dispute, inability to procure materials or any other cause beyond Landlord's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention.

45.5 Additional Rent. All other costs and expenses which Tenants assumes or agrees to pay to Landlord pursuant to this Lease shall be deemed to be "additional rent" and, in the event of nonpayment thereof, Landlord shall have all the rights and remedies provided for in the case of nonpayment of rent, including assessment of interest and late fees. If such amounts or charges are not paid at the time provided in this Lease, they shall nevertheless, if not paid when due, be collectable as additional rent with the next installment of rent thereafter falling due hereunder, but nothing herein contained shall be deemed to suspend or delay the payment of any

amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord.

45.6 No Recording. Both Landlord and Tenants agree that this Lease shall not be recorded in any office legally established for the purpose of giving public notice of real estate records and any attempt to do so may be treated by Landlord as an event of Default under this Lease.

45.7 Governing Law. This Lease is governed under the laws of the jurisdiction in which the Property is located.

45.8 Captions. Section headings are used for convenience and shall not be considered when construing this Lease.

45.9 Severability. If any term or provision of this Lease, or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

45.10 Tenants Liability. If two or more individuals, corporations, partnerships or other persons (or any combination of two or more thereof) shall sign this Lease as Tenants, the liability of each such individual, corporation, partnership or other persons to pay the rent and perform all other obligations hereunder shall be deemed to be joint and several.

45.11 Time is of the Essence. Time is of the essence with respect to each and every provision of this Lease.

45.12 Entire Agreement. This Lease contains the entire agreement of the parties in regard to the Premises and this Lease and no representations, inducements or agreements, oral or otherwise, between the parties not contained in this Lease shall be of any force or effect. This Lease may not be amended, modified or changed in whole or in part in any manner other than by an agreement in writing duly signed by both parties hereto.

45.13 Benefit and Burden. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and each of their respective heirs, executors, administrators, successors, and assigns. Landlord may freely assign its interest hereunder.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

45.16 Survival. Tenants' liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

45.15 Gender and Number. Feminine or neuter pronouns shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, in any place or places herein in which the context may require such substitution or substitutions. Landlord herein for convenience has been referred to in the neuter form.

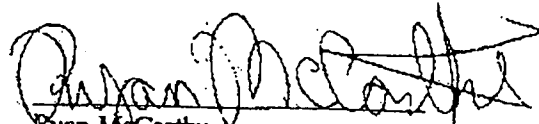
45.16 Survival. Tenants' liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

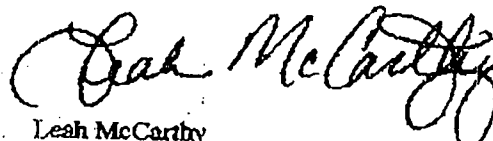
45.17 Submission of Lease. The submission of this Lease for examination does not constitute a reservation of or an option for lease, and the same shall not be effective as a lease or otherwise until execution and delivery by both Landlord and Tenants.

45.18 Designation of Agent. Landlord's registered agent for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon Landlord and the registered agent's office address is William M. Smoot, Esq., Smoot, Pitts Elliot & Biel, 15C Lafayette Place, Hilton Head, SC 23439.

IN WITNESS WHEREOF, Landlord and Tenants have caused this Lease to be executed under seal by a duly authorized officer, intending to be legally bound hereby, as of the day and year first above written. The covenants of Tenants are joint and several obligations of each party signing as Tenants, and, when the parties signing as Tenants are partners, shall be the obligations of the firm and of the individual members thereof.

TENANTS:

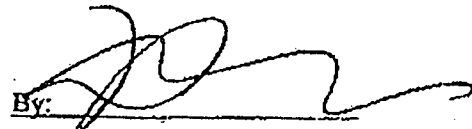

Ryan McCarthy


Leah McCarthy

LANDLORD:

Bluffton Towne Center, LLC

23

By: 

7/29/11

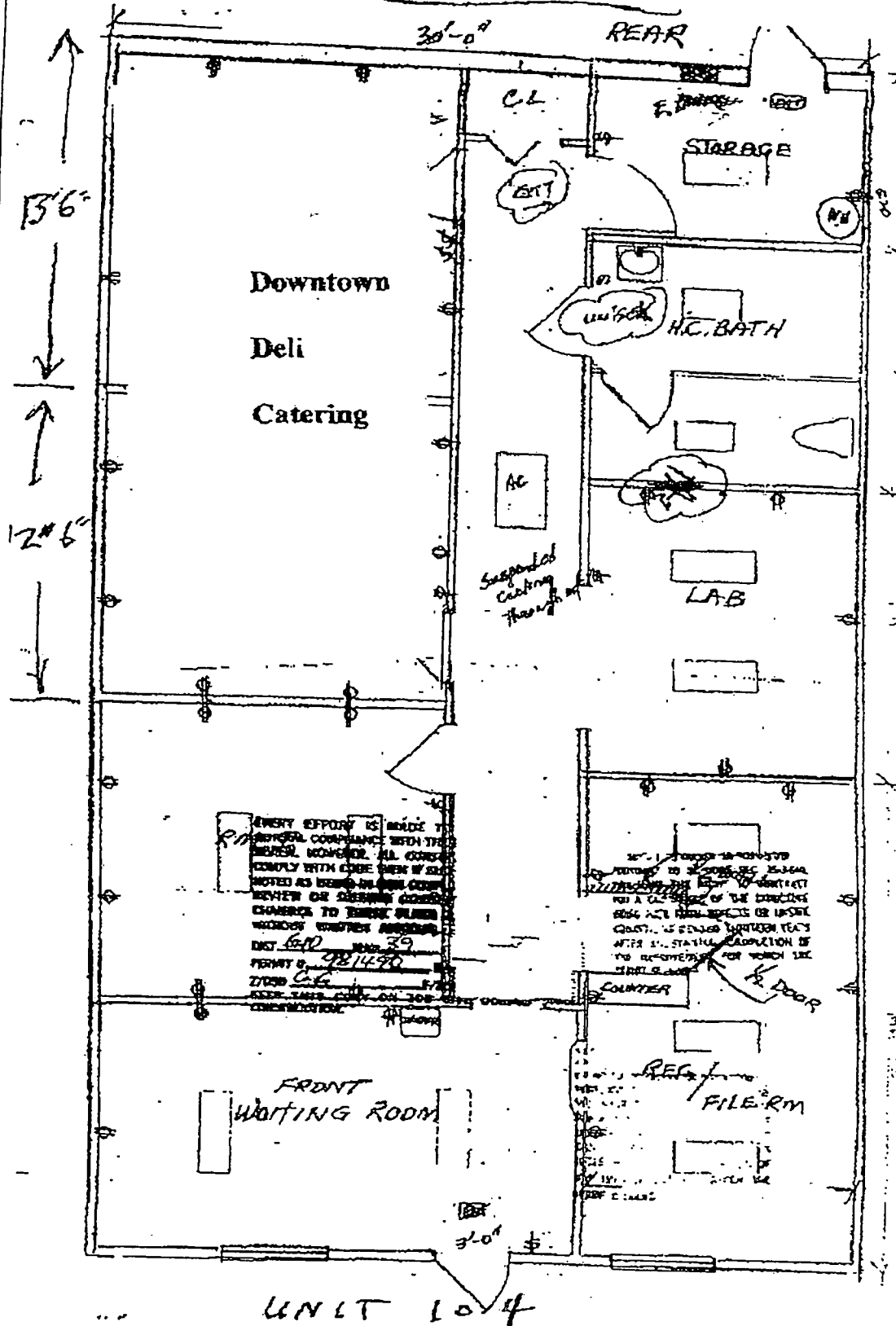
138/Page

000139

Record on Appeal
2013-000305

Plaintiff
000050

EXHIBIT A



Russell P. Patterson, P.A.



3/9/12

21 Office Park Road
Carolina Bldg. Suite 104
Hilton Head, SC 29928
russell@russellpattersonlaw.com

Serving the Lowcountry for over 25 years

P.O. Box 8047
Hilton Head, SC 29938
(843) 341-9300
(843) 341-9301 fax

PLAINTIFF'S
EXHIBIT

14

March 9, 2012

Beth Ann Gilleland
4819 Bluffton Pkwy., 2nd Floor
Bluffton, SC 29910

Via E-Mail: bethanngil@aol.com
and First Class Mail

Re: Bluffton Towne Center, LLC v. Beth Ann Gilleland-Prince d/b/a The Law Office
of Beth Ann Gilleland, LLC and Miguel Pico d/b/a Hispanic Solutions

Dear Beth:

Please be advised that my client, Bluffton Towne Center, LLC, has contacted me concerning the rental monies due and owing under your January 1, 2009 lease. I have attached a summary of the total monies due, which amount to \$34,850. Despite his best efforts, my client was only able to rent the property for four and one-half (4½) months to Joe Wilson's campaign, and a portion of the space that was subdivided to Downtown Deli, as reflected in said summary.

Prior to filing an action for the monies due under the lease, I wanted to give you an opportunity to try to work out a resolution of this matter. Please contact me within the next ten (10) days and provide to me your proposal to deal with these outstanding monies.

I look forward to your response.

Sincerely,
RUSSELL P. PATTERSON, P.A.


Russell P. Patterson

RPP:djt
Enclosure
cc: Paul Watson (w/encl.) – e-mail

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140/Page

000141

Record on Appeal
2013-000305

Plaintiff
000019

Beth Ann Gilleland - lease accounting
Bluffton Towne Center - unit 104
27 Dr. Mellichamp Dr. Bluffton, SC 29910

Lease:

Two years (1/1/2009 - 12/31/2011)
at \$21,900 per year

\$ 43,800.00

Credits:

Rent paid - Jan 2009

\$ 1,875.00

Rent I received from Joe Wilson re-election
office - 4 1/2 months @ \$1200 / mo

\$ 5,400.00

Rent from Downtown Deli (adjacent tenant that has
leased two offices in unit 104 at \$335/mo
Aug - dec 2011 - 5 mo

\$ 1,675.00

Total credits

\$ 8,950.00

Net amount owed

\$ 34,850.00

REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

TERM. The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

USE OF PREMISES. Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Name: Bluffton Towne Center, LLC
Address: 2217 Princess Anne St., Suite 325
Fredericksburg, Virginia 22401

TENANT:

Name: Beth Ann Giffeland-Prince and Miguel Picco
Address: 27 Dr. Mellichamp Dr., Suite 104
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

LATE PAYMENTS. Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

UTILITIES AND SERVICES.

Tenant shall be responsible for all utilities and services in connection with the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

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LANDLORD:

Name: Bluffton Towne Center, LLC
Address: 2217 Princess Anne St., Suite 325
Fredericksburg, Virginia 22401

TENANT:

Name: Beth Ann Giheland-Prince and Miguel Picco
Address: 27 Dr. Mellichamp Dr., Suite 104
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

LATE PAYMENTS. Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

UTILITIES AND SERVICES.

Tenant shall be responsible for all utilities and services in connection with the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

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PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

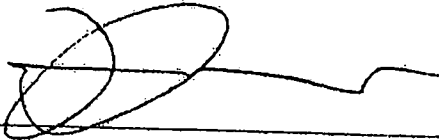
damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

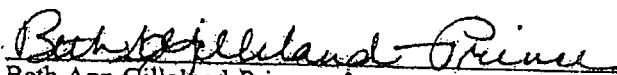
DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

LANDLORD:
Bluffton Towne Center, LLC

By: 

TENANT:


Beth Ann Gilleland-Prince

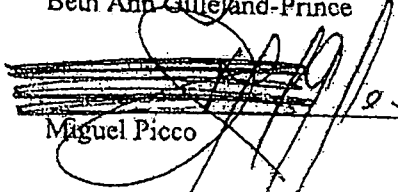

Miguel Picco

EXHIBIT A

Landlord shall make the following improvements to unit 104:

1. Reverse door opening from hall way to utility room.
2. Repair and paint sheetrock walls in utility room.
3. Install base cabinet and sink in utility room.

BLUFFTON TOWNE CENTER, LLC

vs.

BETH ANN GILLELAND-PRINCE

(C.A. 12-CP-07-1530)

**PLAINTIFF'S
EXHIBIT**

15

DAMAGES SUMMARY

10/23/12

Beth Ann Gilleland-Prince

Bluffton Towne Center - Unit 104

27 Dr. Mellichamp Dr., Bluffton, SC 29910

A.	<u>Rent Owed Under Lease</u> Three years (1/1/2009 – 12/31/2011) at \$21,900 per year X 3		\$65,700.00
B.	<u>Less: Credits</u>		
	(a) Rent paid – Jan. 2009 – Jan. 2010 by Defendant – 13 mos. X \$1,875	24,375.00	
	(b) Rent from Joe Wilson Re-election Lease – 4½ months @ \$1,200/month Less: Leasing Commission	5,400.00 <u>(384.00)</u>	5,016.00
	(c) Rent from Downtown Deli Lease (adjacent tenant leased two offices in unit 104 at \$335/month) Aug – Dec 2011 – 5 months		<u>1,675.00</u>
	Total Credits		(31,066.00)
C.	<u>Plus: Late Fees</u> – (23 months x \$50 per month)		<u>1,150.00</u>
	Total Damages		<u>\$35,784.00</u>

Plus: Attorney fees and costs - To be determined by Trial Court

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

BLUFFTON TOWNE CENTER, LLC,)

Plaintiff,)

vs.)

BETH ANN GILLELAND-PRINCE d/b/a)

THE LAW OFFICE OF BETH ANN)

GILLELAND, LLC,)

Defendant.)

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-07-1530

AFFIDAVIT OF ATTORNEY FEES

PERSONALLY appeared before me, Russell P. Patterson, Esquire, who being duly sworn deposes and says:

1. I am an attorney for the Plaintiff in the above matter.
2. That he is a member of the South Carolina Bar engaged in the general practice of law in the Law Offices of Russell P. Patterson, P.A. of Hilton Head Island, South Carolina.
3. That he is and has been a member of the South Carolina Bar Association and the South Carolina Trial Lawyers Association since November, 1982, and has an hourly billing rate of Two Hundred Twenty-Five and No/100 (\$225.00) Dollars per hour.
4. That Exhibit "A" to this Affidavit, which is a listing of my firm's billing in this matter, as well as the costs incurred with all available invoices and raw billing, and reflects the attorney's fees actually incurred through September 30, 2012. These fees and costs total \$2,831.00 in connection with this action.

5. Under Dede v. Strickland, 414 S.E.2d. 134 (S.C. 1992), the Supreme Court has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

a. Nature, Extent and Difficulty of the Legal Services Rendered. As stated earlier, this is an action to enforce the terms and provisions of a long-term lease. That he has reviewed extensive lease documents, attempted to reach a settlement with the Defendant, filed suit, arranged for service, filed and responded to standard discovery, had the case referred and set for trial.

b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. The number of hours he expended in this matter is reflected through the facts stated earlier, as well as from the listing of services performed in Exhibit "A". Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case. That he expects to incur additional costs and fees of approximately \$1,462.50 to complete this matter (6.5 hours).

c. Professional Standing of Counsel. I am a licensed member of the Bar of the State of South Carolina, as well as the United States Court of Appeals for the Fourth Circuit, and United States District Court for the District of South Carolina. I completed law school in 1984. For approximately the last 30 years, I have been employed as an attorney on Hilton Head Island, South Carolina. I am a member of the Beaufort County Bar Association, the American Bar Association, the Litigation Section of the South Carolina Bar, and other professional

organizations. Approximately 40% of my practice consists of litigation, including construction cases, mechanic's lien cases, foreclosure cases, community association lien and collection cases, land title questions, and other business related litigation. Accordingly, I submit that I have a high professional standing in general and in this area of practice.

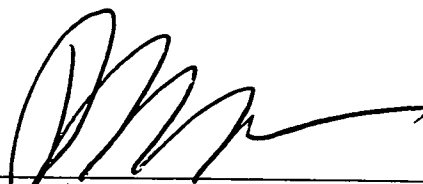
d. Contingency of Compensation. Compensation in this case is based on the hourly rate of \$225.00 per hour.

e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with clients, other attorneys in the Beaufort area, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are, in the Beaufort area, from \$200 to \$350 per hour. As stated earlier, my hourly rate is within this range in this case. Accordingly, this hourly rate is the fee customarily charged in this locality for similar services.

f. Beneficial Results Obtained. This attorney expects to obtain beneficial results for the Plaintiff in this action by securing a judgment enforcing the terms of the lease documents. Accordingly, it is submitted that beneficial results were obtained by this firm on the Plaintiff's behalf.

6. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, the expense time, effort and cost to complete this portion of the case, I respectfully submit that an award of attorney's fees and costs to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiff is entitled to recover \$3,843.55 (\$2,381.05 + \$1,462.50) in attorney's fees.

FURTHER DEPONENT SAYETH NAUGHT.



Russell P. Patterson

SWORN TO before me this
23rd day of October, 2012.



Notary Public for South Carolina

My Commission Expires: 10-12-17

Russell P. Patterson, P.A.
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Paul Watson
2217 Princess Anne Street
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Fredericksburg, VA
22401

495.00 +
90.00 +
157.50 +
719.95 +
180.00 +
70.30 +
555.25 +
313.75 +
249.30 +
2,831.05 *

April 2, 2010

File #: 0350
Inv #: 927

Attention:

RE: Collection - Gilleland R

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-17-10	Initial telephone conference with client [REDACTED] [REDACTED], Draft memo to client [REDACTED] [REDACTED]	0.40	90.00	RPP
Mar-25-10	Receipt and review documents and e-mails from client; Contact Gilleland; [REDACTED] [REDACTED] at	0.50	112.50	RPP
Mar-28-10	Draft e-mail to tenant; Draft letter to same	0.30	67.50	RPP
Mar-29-10	Receipt and review memo from tenants; Draft memo to client [REDACTED]	0.40	90.00	RPP
Mar-30-10	Receipt and review memo from client [REDACTED] [REDACTED] Draft memo to tenant	0.30	67.50	RPP
Mar-31-10	Receipt and review memo from client [REDACTED] [REDACTED]	0.30	67.50	RPP
	Totals	2.20	\$495.00	

Total Fee & Disbursements
Trust Transferred at Billing

\$495.00
495.00

Balance Now Due

\$0.00

TAX ID Number 26-4505804

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2013-000305

PAYMENT DETAILS

Apr-02-10	Payment for invoice: 927	495.00
	Total Payments	\$495.00

TRUST STATEMENT

	Disbursements	Receipts
Mar-25-10 Received From: Bluffton Towne Center LLC Retainer - Paul Watson - Collection Gilleland Rent		1,000.00
Apr-02-10 Paid To: Russell P. Patterson, P.A. Payment for invoice: 927	495.00	
Total Trust	\$495.00	\$1,000.00
Trust Balance		\$505.00

Russell P. Patterson, P.A.

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Paul Watson
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Suite 325
Fredericksburg, VA
22401

May 4, 2010

Attention:

File #: 0350

Inv #: 998

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-01-10	Telephone conference with David Bachelor; Draft memo to Gilleland; Draft memo to same; Contact David to pick up keys	0.40	90.00	RPP
	Totals	0.40	<u>90.00</u>	
	Total Fee & Disbursements			<u>\$90.00</u>
	Trust Transferred at Billing			90.00
	Balance Now Due			<u>\$0.00</u>

TAX ID Number 26-4505804

PAYMENT DETAILS

May-04-10	Payment for invoice: 998	90.00
	Total Payments	<u>\$90.00</u>

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TRUST STATEMENT

		Disbursements	Receipts
	Trust Balance Forward		505.00
May-04-10	Paid To: Russell P. Patterson, P.A. Payment for invoice: 998	90.00	
	Total Trust	\$90.00	\$505.00
	Trust Balance		\$415.00

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Paul Watson
2217 Princess Anne Street
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Fredericksburg, VA
22401

April 4, 2012

Attention:

File #: 0350

Inv #: 3099

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Mar-05-12	Telephone conference with client; Receipt and review two (2) memos from same	0.30	67.50	RPP
Mar-23-12	Receipt and review memo from client [REDACTED]	0.20	45.00	RPP
Mar-26-12	Receipt and review memo from client [REDACTED]	0.20	45.00	RPP
Totals		0.70	\$157.50	

Total Fee & Disbursements

\$157.50

Trust Transferred at Billing

157.50

Balance Now Due

\$0.00

TAX ID Number 26-4505804

PAYMENT DETAILS

Apr-04-12	Payment for invoice: 3099	157.50
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Total Payments

\$157.50

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TRUST STATEMENT**Disbursements****Receipts**

Trust Balance Forward

415.00

Apr-04-12

Paid To: Russell P. Patterson, P.A.
Payment for invoice: 3099

157.50

Total Trust

\$157.50

\$415.00**Trust Balance****\$257.50**

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Paul Watson
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Fredericksburg, VA
22401

May 4, 2012

Attention:

File #: 0350

Inv #: 3204

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-15-12	Review file; Draft Summons, Complaint, and letter to Clerk of Court; Review and revise damages summary; Draft memo to client	1.00	225.00	RPP
Apr-16-12	Receipt and review memo from client; Review and revise Complaint; Draft memo to client [REDACTED]	0.30	67.50	RPP
Apr-20-12	Receipt and review pleadings from courthouse; Draft memo to Defendant, along with an Acknowledgment of Service form	0.30	67.50	RPP
Apr-23-12	Receipt and review e-mail response as to Prince e-mail; Arrange for personal service on Defendant	0.30	67.50	RPP
Apr-27-12	Receipt and review Affidavit of Service; File same	0.30	67.50	RPP
	Totals	2.20	\$495.00	

DISBURSEMENTS

	Postage		2.75
Apr-15-12	Copying 20 @ 0.15		3.00
Apr-17-12	Filing Fee-Initial Pleadings (Bluffton Towne Ctr v. Gilleland)		150.00
	Copying 28 @ 0.15		4.20
Apr-30-12	service of process charges inv 12-144	000162	65.00

Totals

\$224.95

Total Fee & Disbursements**\$719.95**

Trust Transferred at Billing

257.50

Balance Now Due**\$462.45**

TAX ID Number 26-4505804

PAYMENT DETAILS

May-04-12 Payment for invoice: 3204

257.50

Total Payments**\$257.50**

TRUST STATEMENT**Disbursements****Receipts**

Trust Balance Forward

257.50

May-04-12

Paid To: Russell P. Patterson, P.A.
Payment for invoice: 3204

257.50

Total Trust

\$257.50

\$257.50**Trust Balance****\$0.00**

Russell P. Patterson, P.A.

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Paul Watson

2217 Princess Anne Street

Suite 325

Fredericksburg, VA

22401

June 5, 2012

Attention:

File #: 0350

Inv #: 3275

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
May-24-12	Receipt and review Answer from defendant; Draft memo to client; Draft Order of Reference, memo to defendant; Receipt and review memo from client ~~REDACTED~~	0.80	180.00	RPP
	Totals	0.80	\$180.00	
	Total Fee & Disbursements			\$180.00
	Previous Balance			462.45
	Previous Payments			462.45
	Balance Now Due			\$180.00

TAX ID Number 26-4505804

PAYMENT DETAILS

May-24-12	For Services Rendered	462.45
	Total Payments	\$462.45

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Paul Watson
2217 Princess Anne Street
Suite 325
Fredericksburg, VA
22401

July 3, 2012

Attention:

File #: 0350

Inv #: 3436

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-07-12	Review and revise discovery requests, Consent Order of Reference	0.30	67.50	RPP
	Totals	0.30	<u>\$67.50</u>	

DISBURSEMENTS

Jun-08-12	Postage	1.30
	Copying 10 @ 0.15	1.50
	Totals	<u>\$2.80</u>

Total Fee & Disbursements	\$70.30
Previous Balance	180.00
Previous Payments	180.00
Balance Now Due	\$70.30

TAX ID Number 26-4505804

PAYMENT DETAILS

Jul-02-12	For Services Rendered	180.00
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Total Payments

\$180.00

Russell P. Patterson, P.A.

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Paul Watson
2217 Princess Anne Street
Suite 325
Fredericksburg, VA
22401

August 2, 2012

Attention:

File #: 0350
Inv #: 3542

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-17-12	Receipt and review memo from client [REDACTED] [REDACTED], Draft response; Draft memo to defendant as to failure to respond to discovery	0.40	90.00	RPP
Jul-25-12	Receipt and review discovery responses from defendant; Draft memo to client; Draft letter to Clerk of Court regarding Order of Reference, request hearing date; Draft memo to Beth Prince	0.40	90.00	RPP
Jul-26-12	Receipt and review memo from client [REDACTED] [REDACTED] Review and revise letter to Judge as to trial date	0.30	67.50	RPP
Jul-31-12	Receipt and review discovery responses filed by defendant, letter concerning payments; Draft memo to client; Draft responses to defendant's discovery requests, letter to same; Receipt and review memo from client [REDACTED] [REDACTED]	0.80	180.00	RPP
	Totals	1.90	\$427.50	

DISBURSEMENTS

Jul-27-12	Postage	1.55
	Motion Fee (2012-CP-07-1530)	25.00
	Hearing Fee (2012-CP-07-1530)	100.00

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Copying 8 @ 0.15

1.20

Totals

\$127.75**Total Fee & Disbursements**

\$555.25

Retainers Applied

180.00

Previous Balance

70.30

Previous Payments

70.30

Balance Now Due

\$375.25

TAX ID Number 26-4505804

PAYMENT DETAILS

Jul-30-12

For Services Rendered

250.30

Total Payments

\$250.30

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Paul Watson
2217 Princess Anne Street
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Fredericksburg, VA
22401

September 7, 2012

Attention:

File #: 0350

Inv #: 3640

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Aug-13-12	Review and revise discovery responses; Draft memo to client	0.30	67.50	RPP
Aug-14-12	Receipt and review memo and documents from client; [REDACTED] Review and revise answers to discovery request; Draft memo to client [REDACTED]	0.40	90.00	RPP
Aug-21-12	Review and revise discovery responses; Submit same along with numbered documents to Defendant; Draft memo to client [REDACTED]	0.30	67.50	RPP
Aug-31-12	Receipt and review memo from client; Draft memo to defendant as to hearing date	0.30	67.50	RPP
	Totals	1.30	\$292.50	

DISBURSEMENTS

	Postage	4.90
Aug-14-12	Copying 20 @ 0.15	3.00
Aug-22-12	Copying 89 @ 0.15	13.35
	Totals	\$21.25

Total Fee & Disbursements

Previous Balance

\$313.75

Previous Payments

375.25

375.25

Balance Now Due

\$313.75

TAX ID Number 26-4505804

PAYMENT DETAILS

Sep-06-12

For Services Rendered

375.25

Total Payments

\$375.25

000171

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Fax:(843) 341-9301

Paul Watson
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Suite 325
Fredericksburg, VA
22401

October 1, 2012

Attention:

File #: 0350
Inv #: 3727

RE: Collection - Gilleland Rent

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-07-12	Receipt and review memo from client and from Defendant as to trial date; Draft memo to Master's office as to potential trial dates	0.40	90.00	RPP
Sep-10-12	Receipt and review memo from Clerk of Court; Draft Notice of Hearing, letter to Clerk of Court	0.40	90.00	RPP
Sep-12-12	Receipt and review memo from court as to status conference; Receipt and review memo from client; [REDACTED]	0.30	67.50	RPP
	Totals	1.10	\$247.50	

DISBURSEMENTS

Sep-11-12	Postage	0.90
	Copying 6 @ 0.15	0.90
	Totals	\$1.80

Total Fee & Disbursements

\$249.30

Previous Balance

313.75

Balance Now Due

\$563.05

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Record on Appeal
2013-000305

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	THE FOURTEENTH JUDICIAL CIRCUIT
	)	CIVIL ACTION NO.: 2012-CP-07-1530
BLUFFTON TOWNE CENTER, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	PLAINTIFF'S POST-TRIAL BRIEF
	)	
BETH ANN GILLELAND-PRINCE d/b/a	)	
THE LAW OFFICE OF BETH ANN	)	
GILLELAND, LLC,	)	
	)	
Defendant.	)	
	)	

The Plaintiff respectfully submits this Post-Trial Brief in connection with the trial of the above matter heard before your Honor on Thursday, October 25, 2012.

A. FACTUAL BACKGROUND

This is a standard, routine collection matter on a commercial lease in which no facts are in dispute. On or about January 1, 2009, the parties entered into a written three (3) year lease agreement at a rental rate of \$1,825 per month (Exhibit 1 - attached). The lease term commenced on January 1, 2009 and ended December 31, 2011. Approximately thirteen (13) months after the 3-year lease term started, the Defendant, Beth Ann Gilleland-Prince ("Prince"), notified the Plaintiff that she was vacating the property in January or February, 2012 and made arrangements to return the keys on or about April 1, 2010. The Plaintiff on April 18, 2012 filed suit for the remaining rental term, after giving credit for two (2) tenants he was able to find (Joe Wilson Re-Election Campaign; Downtown Deli Lease). As reflected on the damages summary submitted by the Plaintiff

(Exhibit 15) the total damages Plaintiff seeks is \$35,784, plus attorney fees and costs of \$3,843.55 (Exhibit 16), for a total judgment of \$39,627.55 (\$35,784 + \$3,843.55).

B. LEGAL DISCUSSION

The Defendant presented no testimony at trial, but argued after the conclusion of the evidentiary portion of the case that since the Plaintiff had terminated the lease and re-took possession in order to mitigate his damages, under the 1927 decision of Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927), he was not entitled to any damages for the non-payment of the future rent. In Simon there was a three-year written lease in which the tenant, after signing the lease, never took possession of the property. The Court held that the landlord could recover the rent obligations up to the date of termination, but not future unpaid rents after termination, unless the lease provided the tenant is still liable for the future rents. Simon, id., p. 618. The lease in Simon had no such language.

It is the Plaintiff's position that the statement of law in Simon is no longer valid under prevailing South Carolina authorities. Assuming, arguendo, Simon is still valid, Plaintiff is clearly entitled to the full claimed damages for the entire term of the lease since the subject lease (Exhibit 1) specifically provided Prince remained liable for future rents in at least two separate provisions.

A. Simon is Not Valid Law

It is clear that the 1927 decision in Simon does not state the modern law of damages for the breach of a lease in South Carolina today. That rule is clearly stated in a subsequent case, which cites Simon, United States Rubber Company v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). In that case, the landlord terminated the lease due to the failure of the tenant to pay rent (§ 27-35-140 of the South Carolina Code of Laws, formerly § 41-65 of the 1952 Code, and under § 27-35-150 (formerly § 41-66 of the 1952 Code)) for abandonment. These are the identical grounds that

the Plaintiff in the instant action also terminated the lease. The Court in White Tire, citing Simon, stated that upon the termination of the lease, the relationship of the parties as landlord and tenant came to an end. However, although the tenant no longer had an obligation to pay the landlord future rent, it did have an obligation for damages resulting from its breach of the contract. The measure of damages was stated as follows by the Court at p. 409:

"The measure of such damages is the amount that she (landlord) would have received as rent for the remainder of the term, had there been no default, less such amount as she (landlord) may receive from the new tenant, - for it was her duty (landlord) to minimize her damages. Burkhalter v. Townsend, 139 S.C. 324, 138 S.E. 34." (parenthetical material added)

In Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950), the Court dealt with a long-term bowling alley lease located in South Carolina. Again citing Simon, the Court adopted basically the same rule for damages at p. 671:

"It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and perspective, which were the necessary and direct result of the breach; and the measure of the damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may result from the breach."

This same rule has been applied by subsequent courts on various occasions. See: Richman v. Joray Corp., 192 F.2d 660 (4th Cir. 1951); In re: Builders Transport, Inc., 471 F.3d 1178 (11th Cir. 2006 – applying South Carolina contract law).

B. Prince Liable for Future Rents Even if Simon Valid Law

Assuming, arguendo, that the rule announced in 1927 by the Court in Simon is still applicable today, the Plaintiff is entitled to the full damages it claims because it specifically reserved the right for all damages under the lease. On page 1 of the Lease, in the last section, captioned "DEFAULTS", there is the following language:

“DEFAULTS – *. Subject to any governing provision of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord’s right to damages. *** Tenant shall pay all costs, damages, and expenses (including reasonable attorneys fees and expenses) suffered by Landlord by reason of Tenant’s defaults.”** (emphasis added)

A more clear intention to reserve all rights against the Tenant for the rents due during the full term is more difficult to imagine. Not only did the Plaintiff specifically reserve its right to damages (i.e., recovery of future rents in the event of termination), but the lease provided a specific damage formula by providing the Tenant must pay all costs, damages and expenses as a result of default. It is clear the most critical “damages” suffered by a Plaintiff under a commercial lease is the payment of rent, which is the primary monetary obligation of the Tenant. No other construction would provide full meaning to all of the terms of the lease.

The language in the Lease in paragraph 1 is consistent with the parties’ conduct when Prince announced she was not going to honor the lease and vacate early. The e-mail exchange between the parties of December 18, 2009 (Exhibit 2 – attached) is revealing as to this point.

a. Prince E-Mail to Plaintiff – “I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize the lease will not expire for another year.”

b. Plaintiff E-Mail in Response to Prince – “As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. . . . I am not willing to forgive the balance of the lease.”

Subsequently, on February 26, 2010, in the Plaintiff’s notice of default and right to cure letter to Prince (Exhibit 3), the third paragraph clearly provides Prince was liable for all future rents.

("... you will still be obligated and responsible for payment of money set forth below, together with additional costs, legal fees, expenses and rents that continue to accrue under the terms of the lease because of non-payment.")

Finally, Mr. Watson testified that Prince referenced at least one potential replacement tenant to reduce her obligations under the lease, although said prospective tenant never signed a lease. Thus, it is clear both Prince and the Plaintiff construed the lease as an obligation of Prince for all future rents.

The same result was reached by the Court in Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), which also cites Simon. Just as in this case, the tenant signed a long-term lease and advised the landlord it would not perform. Just as in this case, the landlord gave notice of the breach, that it would try to re-let the premises, but was holding the tenant responsible for future rents. The Court in Camden, citing Simon, held that future rents were clearly recoverable, holding at p. 307 the future rents were "... a proper element of damage for the breach of a lease contract."

The same result is found by the Court in Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (1992), which also cited Simon. In that case, the Court held that the landlord's claim for future rents was still valid since the existing lease provided that a termination would not release said future obligations. The language in said lease provided that the exercise of the right of termination shall "... not prejudice any other rights which a lessor may have against the lessee hereunder... including the obligation to pay rents." The subject Lease (Exhibit 1), as discussed above, contains very similar language, providing that a notice of termination and landlord taking possession will not prejudice landlord's right to damages. Thus, even if Simon is still good law, as interpreted and applied by the Court in Camden and Blumberg, the Plaintiff's claims survive.

D. CONCLUSION

It is the Plaintiff's position that the measure for damages for the breach of a lease is accurately described in the cases cited above as the difference between the rent that should have under the lease, less what was actually received, assuming the landlord managed to properly mitigate its damages. There is no dispute in this case that the Landlord did properly mitigate its damages and provide the appropriate credit.

Even if the Defendant's contention is correct and South Carolina follows the strict rules set forth in Simon, the subject lease expressly provides in at least two (2) places that the Plaintiff reserves all rights for damages, even if the lease is terminated, and thus is entitled to judgment for the full amount due.

Respectfully submitted,



Russell P. Patterson
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(843) 341-9300
russell@russellpattersonlaw.com
Attorney for the Plaintiff

Hilton Head Island, South Carolina
October 24, 2012

PLAINTIFF'S
EXHIBIT

1/1/09

REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 2009, by and between Bluffton Towne Center, LLC ("Landlord"), and Beth Ann Gilleland-Prince, dba The Law Office of Beth Ann Gilleland, LLC and Miguel Picco, dba Hispanic Solutions, ("Tenants"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant Unit 104 (the "Premises") at 27 Dr. Mellichamp Dr., Bluffton, South Carolina 29910.

TERM. The lease term will begin on January 1, 2009 and will terminate on December 31, 2011.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly payments of \$1,825.00 per month, payable in advance on the first day of each month, beginning on January 1, 2009, for a total annual lease payment of \$21,900.00. Lease payments shall be made to the Landlord at 2217 Princess Anne St, Suite 325, Fredericksburg, Virginia 22401, which may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on January 1, 2009, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

USE OF PREMISES. Tenant may use the Premises only for general office use. The Premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any anticipated extended absence from the Premises not later than the first day of the extended absence.

PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by

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EXHIBIT

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Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Name: Bluffton Towne Center, LLC
Address: 2217 Princess Anne St., Suite 325
Fredericksburg, Virginia 22401

TENANT:

Name: Beth Ann Gilleland-Prince and Miguel Pico
Address: 27 Dr. Mellichamp Dr., Suite 104
Bluffton, SC 29910

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

SECURITY DEPOSIT. At the time of the signing of this Lease, Tenant has paid to Landlord, in trust, a security deposit of \$0 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law.

LATE PAYMENTS. Tenant shall pay a late fee equal to \$50.00 for each payment that is not paid within 10 days after its due date.

HOLDOVER. If Tenant maintains possession of the Premises for any period after the termination of this Lease ("Holdover Period"), Tenant shall pay to Landlord a lease payment for the Holdover Period equal to 150% of the normal payment rate set forth in the following Renewal Terms paragraph. Such holdover shall constitute a month to month extension of this Lease.

NON-SUFFICIENT FUNDS. Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

MAINTENANCE. Landlord shall have the responsibility to maintain the Premises in good repair at all times, except that the tenant shall be responsible for general interior maintenance, including doors, windows, HVAC filters, light bulbs, minor plumbing repairs and carpet and painting. Tenant accepts premises in "as is" condition, except for the Landlord improvements described in Exhibit A.

UTILITIES AND SERVICES.
Tenant shall be responsible for all utilities and services in connection with the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$100,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Landlord shall pay all real estate taxes and assessments for the Premises.

PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conducting of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the

damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.

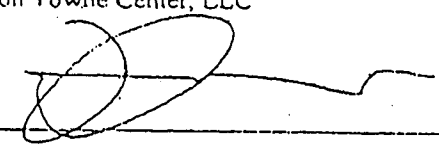
ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

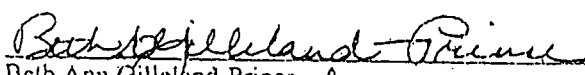
SUBORDINATION OF LEASE. This Lease is subordinate to any mortgage that now exists, or may be given later by Landlord, with respect to the Premises.

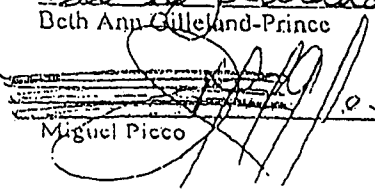
LANDLORD:

Bluffton Towne Center, LLC

By: 

TENANT:


Beth Ann Gilleland-Prince


Miguel Picco

PLAINTIFF'S
EXHIBIT

2

Date: Friday, December 18, 2009 9:31 AM

From: pcwatson@cox.net

To: bethanngil@aol.com

Subject: Re: Lease

Thanks for the notice. As you know, office space is very difficult to rent now. As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. I have not pressed you for the full rent since Miguel moved, but I am not willing to forgive the balance of the lease. Ideally, you can sub-lease the space. If not, perhaps we can negotiate some kind of buy-out for the balance of the lease.

----- bethanngil@aol.com wrote:

Hi Paul. I was appointed as a magistrate court judge a few weeks ago. I have very recently committed to taking the position full-time, which means that I am required close my practice. All full-time judges are prohibited from engaging in private practice. As such, I am in the process of getting cases finished and trying to wrap things up. I know that I will be needing to stay through the end of January, and possibly some of February. I am trying to give you as much notice as possible. I hope that you and I will be able to work something out amicably, because I realize that the lease will not expire for another year. However, this judicial appointment is a great honor, and obviously, I could not pass that up.

I will also keep my eyes and ears open for anyone who may want the space.

Thanks.

Beth Ann Gilleland-Prince, Esquire
The Law Office of Beth Ann Gilleland, LLC
27 Dr. Mellichamp Drive, Suite 101
Bluffton, SC 29910
(843) 757-7261
Fax (843) 757-7361

--
Paul Watson, CBA, CMEA, CCIM, CBI

HFI Companies / Capital Business Appraisers
2217 Princess Anne Street
Suite 325
Fredericksburg, VA 22401
Tel. 540-373-9500
FAX 540-373-9527
Cell 540-287-4064
pcwatson@cox.net

EXHIBIT

2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2012-CP-07-1530

BLUFFTON TOWNE CENTER, LLC,

Plaintiff,

vs.

BETH ANN GILLELAND-PRINCE
d/b/a THE LAW OFFICE OF BETH
ANN GILLELAND, LLC,

Defendant.

DEFENDANT'S POST-TRIAL
MEMORANDUM OF LAW
(IN REPLY)

TO: THE HONORABLE MARVIN DUKES, III, AND RUSSELL PATTERSON,
ATTORNEY FOR THE PLAINTIFF

This Memorandum of Law is submitted in Reply to the Plaintiff's Post-Trial Brief submitted to the Court, dated October 21, 2012. In compliance with the Defendant's understanding of the Court's instructions regarding submission of any post-trial material, this Memorandum shall not reiterate the Defendant's closing argument, but shall specifically respond to those matters raised in the Plaintiff's Post-Trial Brief.

It would appear based upon the Plaintiff's arguments set forth in the Plaintiff's Post-Trial Brief, that there is a fundamental misunderstanding of the case law on the issues modes and methods of termination of commercial leases, and the corresponding obligations (or lack thereof) of the parties dependent thereon. In Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927), the South Carolina Supreme Court set forth a detailed analysis of what happens when a lease is terminated and what that means for the tenant thereafter. The facts of Simon are very similar to those of the case at bar. In both instances, upon the tenant's breach of lease by failure to pay rent, the landlord specifically chose to notify the tenant it was terminating the lease, and that the tenant would no longer have any rights thereunder.¹

The Court in Simon found that such a notice undoubtedly terminated the landlord/tenant relationship, and thus, extinguished any obligation by the tenant for future rent.² Moreover, the Court then goes on to discuss the various other options that had been

¹ In the case at bar, the landlord mailed a notice to the defendant shortly after rent was not paid for the month of February, and informed the Defendant she must vacate immediately, or else the landlord would file an action for ejectment. Upon cross examination, the landlord testified that as of the date of the February notice, the Defendant no longer had any rights under the lease.

² Despite the fact the Court determined that the relationship between the parties was mischaracterized as "landlord/tenant" due to

available to the landlord, which would have necessarily resulted in different outcomes. For example, had the landlord not opted to affirmatively terminate the lease he may have done the following:

He might have awaited the expiration of the term, and, upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed upon rental less rental which he had in the meantime received or with proper effort should have received. Id. at 617.

The Plaintiff has argued that Simon is no longer good law, and that it misstates the modern rule of contract or lease damages. However, there is simply no support whatsoever for this position. Not only has Simon not been overruled, or even modified in any way, it has been repeatedly cited for its holdings. Moreover, the Plaintiff urges this Court to dismiss the holding and logic set forth in Simon in favor of the damages analysis referred to above (agreed upon rental less rental received with duty to mitigate damages), when in fact Simon stands for the very same proposition. Whether or not a tenant shall remain obligated for future rent depends on a number of things. If the landlord has chosen to terminate the lease by demanding the tenant to vacate or by ejectment, the landlord cannot collect future rent, *unless* the lease specifically provides for future rent in the event of default or termination. Merely referencing "damages" is not sufficient to include an obligation for "future rent." *Only* if the landlord retakes possession after abandonment or default and re-lets for the tenant's account, may he pursue damages in the form of the difference between rent agreed upon and rent collected after mitigation. Id.

Plaintiff fails to take into account or even mention the singlemost significant event in the history between the parties in the case at bar. It is indisputable, that the landlord did not under any interpretation of the facts repossess after abandonment or re-let for the Defendant's account. After failing to receive February 2010 rent by the due date (Defendant was current up to that point), the Plaintiff mailed a notice to the Defendant demanding she immediately vacate the premises and that failure to do so within 10 days would result in the filing of an ejectment action with the magistrate court. Further, the Plaintiff testified that he would have filed the ejectment action had the tenant not vacated after receipt of the notice, and that he understood the notice to effectively terminate the lease and preclude the Defendant from any rights under the lease as a result of the termination. These circumstances are nearly identical to the facts of Simon, and the court therefore, should adopt the reasoning set forth in Simon: that the

the fact the tenant in Simon did not ever actually take possession, the Court nonetheless offers that the "error in the particulars...has absolutely nothing to do with the main issue, whether the notice terminated the relation of the parties." Id. at 617.

Defendant is not obligated for any rent after the termination of the lease.

The Plaintiff urges the Court to dismiss Simon, and claims that the "modern" law the Court should follow is set forth in U.S. Rubber Co. v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). A careful look at U.S. Rubber indicates that the law is restated nearly verbatim from Simon. Id. at 95. Despite the Plaintiff's claim that the facts of U.S. Rubber are "identical" to those of the case at bar, that simply is incorrect. U.S. Rubber is specific to the proper application or return or a deposit after a tenant's default and does not actually address any issues of future rent, and therefore, there is no analysis useful to the case at bar contained in the opinion.

The Plaintiff offers Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944) as additional support for his position. However, Camden Inv. Co. actually strongly supports the Defendant's position. In Camden Inv. Co. the tenant informed the landlord he was not going to honor the lease, and thereafter went into default. The landlord then notified him he was in breach of the lease and that he would attempt to re-let *for the tenant's account*. The landlord did not, as in the case at bar, demand the tenant vacate immediately, thereby terminating the lease. Further, the landlord does not attempt to collect any "future rent." He simply was asking for recompense for his losses the few months the premises were vacant and the fee involved in finding a new tenant, which he was rightly awarded.

Finally, the Plaintiff also offers Blumberg v. Nealco, 307 S.C. 537, 416 S.E. 2d 211 (Ct. App. 1992) as supportive of his position. Again, Blumberg provides much stronger support for the Defendant's position, by affirming the lower Court's ruling as follows:

The judge dismissed Blumberg's claim for future payments without prejudice. Ordinarily, the termination of a lease will terminate a lessor's right to future payments. United States Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E. 2d 403 (1956). However, if the lease agreement provides for payment of future rents, termination will not release the lessee of such future obligations. Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927).

The lease provides as follows:

Section 20.01. Termination. In the event lessee shall fail to pay any monthly installment of rental promptly as the same shall become due....lessor shall have the right, at its sole option...to terminate this lease...but the exercise or non-exercise of such right of termination shall not prejudice any other rights which the lessor may have against the lessee hereunder and *shall not operate to relieve the lessee of its obligation to pay rental* or of its obligations under any other covenants and agreements herein contained. Emphasis added.

Based upon the foregoing, the Blumberg court affirmed the trial court inasmuch as it was not

error to dismiss the claim for future rent *without* prejudice due to the fact the lease specifically provided for future rents, and thus, it may be appropriate for the claim to be filed at a later date.³

Finally, Blumberg should also make clear that the Plaintiff's argument regarding any language in the lease in the case at bar regarding damages should be interpreted as meaning "future rent." The language contained in the lease in Blumberg is very specific to "rent." "Damages" and "rent" are not interchangeable, and further, any ambiguity should be resolved against the drafter of the document, which in this case, was the Plaintiff.

Therefore, based upon the foregoing, the Defendant again would respectfully request the Court to adopt the reasoning and analysis set forth in Simon, *supra*, and find for the Defendant in the above-captioned case.



Beth Ann Prince
Pro Se Defendant
PO Box 2797
Bluffton, SC 29910
(843) 706-2797

Bluffton, SC
November 30, 2012

³ The reason for the dismissal is not clear; however, it would be fair speculation that the lease term in question had not yet expired.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530
2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

CERTIFICATION OF COUNSEL
PURSUANT TO SCACR RULE 210 (g)

I, Beth Ann Prince, the undersigned, certify that the Record on Appeal contains
all material proposed to be included by any and all parties and not any other material.



Beth Ann Prince
Post Office Box 2797
Bluffton, South Carolina 29910
(843)473-0745
SC Bar #68834
Pro Se Appellant

December 23, 2013
Bluffton, SC

ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

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Respondent,

v.

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d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

FINAL BRIEF OF THE APPELLANT

RECEIVED

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR AS A MATTER OF LAW IN DETERMINING THE HOLDINGS SET FORTH IN SIMON V. KIRKPATRICK, 141 S.C. 251, 139 S.E. 614 (1927) WERE NO LONGER "VALID LAW"?
- II. DID THE TRIAL COURT ERR AS A MATTER OF LAW BY FINDING THAT THE LEASE IN THE INSTANT CASE WAS TERMINATED BY ABANDONMENT WHEN SUCH FINDING WAS UNSUPPORTED BY THE FACTS AND/OR THE LAW?
- III. DID THE TRIAL COURT ERR AS A MATTER OF LAW BY DETERMINING THE TERM "DAMAGES," AS CONTAINED IN THE LEASE, NECESSARILY AND UNAMBIGUOUSLY ENTITLED THE LANDLORD TO "FUTURE RENTS" IN THE EVENT OF TERMINATION?
- IV. DID THE TRIAL COURT ERR AS A MATTER OF LAW BY CONSIDERING EXTRINSIC EVIDENCE INTRODUCED BY THE RESPONDENT REGARDING INTENT OF THE PARTIES, WHEN THE COURT FOUND THE LEASE TO BE UNAMBIGUOUS?
- V. DID THE TRIAL COURT ABUSE ITS DISCRETION BY REFUSING TO ALLOW THE DEFENDANT TO INTRODUCE ANY EXTRINSIC EVIDENCE OR TESTIMONY SHOWING INTENT OF THE PARTIES, WHEN THE TRIAL COURT CLEARLY CONSIDERED EXTRINSIC EVIDENCE IN ITS DECISION?
- VI. DID THE TRIAL COURT ERR AS A MATTER OF LAW BY FAILING TO RECOGNIZE THAT THE LEASE TERMS WERE AMBIGUOUS, AND THEREBY SHOULD HAVE CONSTRUED SUCH AMBIGUITY AGAINST THE RESPONDENT, AS THE DRAFTER OF THE LEASE?

STATEMENT OF THE CASE
AND STATEMENT OF FACTS

On or about January 2009, the Defendant/Appellant, Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Ann Gilleland, LLC (hereinafter referred to as "Tenant," "Prince" or "Appellant"), entered into a commercial lease agreement with the Plaintiff/Respondent, Bluffton Towne Center, LLC (hereinafter referred to as "Landlord," or "Respondent"), for a term of three (3) years, beginning January 1, 2009 and ending December 31, 2011.¹ R., p. 81. Prince had been operating the Law Office of Beth Ann Gilleland, LLC at Towne Center since 2005.²

The lease between the parties, drafted entirely by the Respondent, was approximately 3 ½ pages long. The Default provision of the lease reads in pertinent part as follows:

Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days...after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's right to damages....Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. R., p. 81, lines 31-35.

On or about November of 2009, Prince, rather unexpectedly, accepted an appointment as a full-time magistrate court judge in Beaufort County, which would prohibit her from practicing law. Therefore, at that time, Prince would no longer be

¹ Another tenant to the lease agreement was Miguel Picco, who vacated the premises shortly after entering into the lease. It appears the whereabouts of this individual are unknown, which presumably accounts for the fact such individual was not a named defendant in the above captioned action.

² For clarification purposes, Prince's maiden name is "Gilleland." She continued the use of her maiden name for professional purposes from 2006 until 2009, and transitioned by using a hyphenated version of her maiden and married names. Currently, she rarely uses the hyphenated version of "Gilleland-Prince," and is generally known in the community as, "Beth Ann Prince."

permitted to use the premises for the purpose specifically provided for in the lease. R., p. 81, line 19.

On or about December 18, 2009, Prince notified Respondent, by and through its owner, Mr. Paul Watson, that she would eventually have to vacate the space because she would no longer be legally permitted to operate her law practice and was, therefore, beginning the process of closing her practice. At that time she was unsure exactly how long it would take to accomplish the task, and notified Respondent she expected it likely would be no later than February 2010. R., p. 85, lines 9-19. The Respondent replied to her email on the same date of December 18, 2009, stating, "I would assume you will honor your obligation under the lease." R, p. 85, lines 2-3.

There was no further communication between the parties for more than 60 days, during which time Prince continued to occupy the space and pay rent. Prince then defaulted in the rent for the month of February 2010, after which Prince received a "10 Day Notice to Pay or Quit" (hereinafter referred to also as "Notice") from the Respondent dated February 26, 2010. R., p. 86. In the Notice, Respondent stated, "You are hereby notified that you have ten (10) days to pay to the undersigned office rent now due from you in the amount of \$1,875.00 as set forth below, or your right to possession of the above referenced premises will cease and you must quit the same." R., p. 86. The Notice further contained the following language:

In the event you do not satisfy all the requirements of this ten (10) day notice by paying the amount set forth below and do either voluntarily or by court leave the premises, you will still be obligated and responsible for payment of monies set forth below, together with any additional costs, legal fees, expenses and rents that continue to accrue under the terms of the lease because of non-payment." R., p. 86.

It was undisputed at trial that Prince did not pay the amount requested in the Notice, and did, in fact, relinquish possession of the premises, as requested in the Notice. Tr. Transcript, p. 19. In fact, Paul Watson, representative of the Plaintiff, testified at trial that when he did not receive the past due rent within the 10 days as requested, he believed the Defendant vacated the premises as demanded. R., p. 44, lines 19-21.

Nonetheless, several weeks later after Prince vacated the premises, as requested in the Notice, she received an email from the Respondent's attorney, on March 28, 2010, which contained several propositions, as if the Notice sent directly from Respondent had not existed. R., p. 88. In fact, the propositions contradicted the demands in the February 26, 2010 Notice. In the March 28 email, Plaintiff's attorney now proposed that Prince pay the back rent for February and March 2010, and that she voluntarily vacate the space and then continue to make rent payments until the space is re-let, and if that were unacceptable, the Respondent intended to file an eviction action and suit for *back rent*. Emphasis added. R., p. 88. Somewhat puzzled by this correspondence, Prince responded via email to Respondent's attorney on the same date, and informed him, "I have been out of the unit for nearly two months, as Mr. Watson requested." R., p. 89.

The next communication between the parties was via email 4 days later, on April 1, 2010, in which Respondent's attorney informed Prince the Respondent did not have an extra key to the premises, and requested Prince to provide any keys in her possession to the rental broker, which Prince did that same day. R., pp. 90-93. Prince was again somewhat puzzled by the request inasmuch as Respondent had never requested the keys be returned, and in fact, had obviously been inside the premises since Prince's departure, as indicated by inquiries of items remaining in the premises contained in the

Respondent's March 28, 2010 email, to which Prince informed Respondent that all items remaining were actually property of the landlord. R., pp. 88-89.

After the arrangements for Prince's original keys to be picked up by the landlord's rental broker on April 1, 2010, there was no communication between the parties for nearly 2 years. On or about March 9, 2012, Respondent's attorney sent Prince correspondence demanding \$34,850.00, which Respondent believed it was owed pursuant to the lease agreement. R., p. 140. Prince did not agree that the lease and the circumstances of the lease termination legally entitled the Respondent to any rent past February 2010. As a result, Respondent filed this action on or about April 18, 2012. The matter was tried before the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County on October 26, 2012. The parties were each given an opportunity to submit post-trial briefs following the trial, and on December 26, 2012, the Court issued its Order Granting Judgment to the Plaintiff for the entire amount requested, plus attorney's fees and costs in the amount of \$3,843.55, for a total judgment of \$39,627.55. Thereafter, Prince filed a Notice of Appeal.

ARUGMENT

- I. THE TRIAL COURT ERRED IN DETERMINING THE HOLDINGS SET FORTH IN SIMON V. KIRKPATRICK, 141 S.C. 251, 139 S.E. 614 (1927) WERE NO LONGER "VALID LAW."

Prince's main argument at trial was that the lease's default provision was insufficient to entitle the Respondent to future rent in the event of termination of the lease agreement*

prior to the lease expiration. R., p. 69, line 23-- p. 77, line 14. In support of this argument, she presented the Court with a copy of Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927). The facts of Simon are very similar to those of the case at bar. In both instances, upon the tenant's breach of lease by failure to pay rent, the landlord specifically chose to notify the tenant it was terminating the lease, and that the tenant would no longer have any rights thereunder. In Simon, the lower court granted a new trial following a jury verdict for the landlord (Simon). In its order granting the new trial, which was affirmed by the South Carolina Supreme Court, the lower court in Simon stated the following:

Had Simon notified Kirkpatrick that he was holding or taking possession of the premises for the account of Kirkpatrick, it is my opinion that he would clearly have been entitled to the amount of the verdict, as, I think, the facts warranted it. The relationship of landlord and tenant would not then have been terminated and loss resulting to Simon by reason of Kirkpatrick's breach of the contract within the 13 months could properly have been charged up to Kirkpatrick as the defaulting tenant.

But Simon elects to rely upon the authority given in the lease and evicts *Kirkpatrick* and precludes him 'from any further right or benefit thereunder.' *The only reasonable deduction is that this act terminated the relationship of landlord and tenant between them.* And is (in?) (sic) such a circumstance, the authorities available seem clear that the rent, or liability on the contract ceases. Emphasis in original. Id. at 616.

Specifically, the notice provided by Simon to Kirkpatrick stated that due to failure to pay rent, Kirkpatrick, "as per terms of the lease (you) are thereby precluded from any further right to benefit thereunder." Id. at 617. The Court in Simon determined

this notice undoubtedly terminated the landlord/tenant relationship, and thus, extinguished any obligation by the tenant for future rent.³

The rule, as we understand it, is that termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations. 36 C.J. 335. The lease in the case at bar does not carry a provision to the effect mentioned. Id.

However, the Court in Simon discussed the various other options which had been available to the landlord, in which he may have been able to recover damages for the balance of the lease term. For example, had the landlord not opted to affirmatively terminate the lease he may have done the following:

He might have awaited the expiration of the term, and, upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed upon rental less rental which he had in the meantime received or with proper effort should have received. Id. at 617.⁴

The Respondent in the instant case, likewise, could just as easily have declined to terminate the lease via the February 26, 2010 Notice to Pay or Quit, and simply re-entered the premises and attempted to re-let for the account of Prince. However, that is not what the Respondent chose to do. Further, testimony at trial made clear it was in fact the Respondent's intention that all of Prince's rights under the lease be extinguished, as is proven by the following excerpt from the Trial

³ Despite the fact the Simon Court determined the relationship between the parties had been mischaracterized as "landlord/tenant" due to the fact the tenant in Simon never actually took possession of the leased premises, the Court nonetheless offered that the, "error in the particulars...has absolutely nothing to do with the main issue, whether the notice terminated the relation of the parties." Id. at 617.

⁴ It is this alternate measure of damages, as espoused in Simon v. Kirkpatrick that the trial court in the instant case, on the one hand promulgates as the "modern rule," while at the same time, rejecting the main holding as "invalid."

Transcript, wherein Prince queries the Respondent as to what rights she had under the lease if she failed to pay the February rent within 10 days as demanded in the Notice:

Q. What rights did I have under the lease? Was I able to use the space?

A. Well not after you defaulted.

Q. As a matter of fact you told me if you don't pay you need to get out or I am going to file an eviction action and make you get out, right?

A. Right.

Q. So I am just trying to be clear here. You told me I had to go and I couldn't come back and you wanted the keys. You can't use the space but I want you to pay for it, right?

A. Yes.

R., p. 63, line 20 – p. 64, line 9.

The trial court in the instant case found and concluded that Simon is no longer "valid law," despite the fact that Simon has never been overruled, and actually has been repeatedly cited for its holdings, See United States Rubber Co. v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956), Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (Ct. App. 1992) (*cert. granted August 31, 1992, overruled on other grounds*). R., pp. 6-8. Moreover, the trial court found and concluded that Simon does not state the "modern law of damages for breach of a lease in South Carolina today." R., p. 6, lines 16-17. The trial court then proclaimed the "modern rule" to be set forth in United States Rubber Co. v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956). The Appellant cannot fathom to what the trial court attributed the

"invalidity" of Simon or for what reason it deemed the following language contained in U.S. Rubber, to be the "modern rule."

The measure of such damages is the amount that she would have received as rent for the remainder of the term, had there been no default, less such amount as she may receive from the new tenant, for it was her duty to minimize her damages. Burkhalter v. Townsend, 139 S.C. 324, 138 S.E. 34 (Ct. App. 1927).

It must be noted that not only is Burkhalter factually distinguishable from the case at bar, and from Simon v. Kirkpatrick, but most interestingly, it was decided several months *prior to* Simon v. Kirkpatrick, and in fact is nearly verbatim to the language adopted by Justice Blease in the Simon opinion as the measure of damages available to the landlord had he not opted to terminate the lease.

There is simply no legal foundation upon which the trial court arbitrarily declared the portion of Simon argued by the Appellant as applicable to the case at bar, to be "no longer valid law," and yet at the same time offer another portion of Simon to be the "modern rule" regarding breach of lease damages.⁵ The trial court appeared to deem U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956) (referred to in the trial court's order as "White Tire") as the seminal case in the entire body of case law regarding the measure of damages for breach of lease. However, there is no support for this position. U.S. Rubber, again, is factually distinguishable from the case at bar in that the landlord did not terminate the lease by eviction (or threat thereof), and preclude the tenant from any rights under the lease from a certain day forward. The landlord/tenant relationship in U.S. Rubber was terminated by the landlord re-letting after the tenant's abandonment of the

⁵ The trial court does not at any time acknowledge in its order that Simon contains the very language it considers to be the "modern rule," which the trial court appears to attribute to originating in U.S. Rubber.

premises, following the tenant's insolvency and appointment of a receiver. *Id.* Further, the dispute in U.S. Rubber was over the return of a security deposit and/or how such deposit may be applied. The Court in U.S. Rubber properly looked to the lease to determine what rights the parties had under the circumstances. In paragraph 14, the lease specifically spoke to the issue of a receiver being appointed for the tenant, and allowed the landlord to terminate the lease or continue if satisfactory security was given to secure the terms of the lease "and the payments therein provided." *Id.* at 88. The Court determined it must construe the lease as a whole to ascertain, "the intention of the parties with regard to the deposit required under Paragraph 18..." and decided that, "Viewing that paragraph in relation to the others, especially Paragraphs 14 and 15, it seems clear that the deposit was intended to protect the lessor against any loss resulting from the lessee's default, whether such loss should be in respect of rent or maintenance...." *Id.* at 95-96. Again, the facts of U.S. Rubber are obviously distinguishable from the case at bar, and the holding thereof is wholly consistent with Appellant's argument in favor of reversal of the trial court's ruling in the instant case.

Based upon the ruling in U.S. Rubber, and the underlying factual basis thereof, the trial court had no basis upon which to find a "modern rule" within the holding of U.S. Rubber Co. v. White Tire Co. which would in any way abrogate or invalidate Simon v. Kirkpatrick, *supra*. Additionally, the trial court fails to consider in each of the citations offered for further support of its ruling, that the cases are each factually distinguishable from the case at bar. Moreover, the direct quotes are often taken out of context, when a more comprehensive reading of the opinion actually

supports the Appellant's position that the holding in Simon has been consistently recognized by our Courts. For example, the trial court cites Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950), and sets forth a quote that "the measure of damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may result from the breach." Id. at 671. However, the trial court overlooks several key points in Richman. First, the case is factually distinguishable from the case at bar on many levels, namely, the landlord never terminated the lease by eviction, rather, the parties entered into a settlement agreement following the surrender of the premises by the tenant. Second, the lease between Richman and Joray Corp. contained very specific language regarding application of rental payments should the landlord need to re-let the premises due to tenant's default, and that the "balance (if any) to be paid over to the tenant who shall remain liable for any deficiency...." Id. at 668. Third, the Court noted the general rule, "as laid down in Simon v. Kirkpatrick, 141 S.C. 251, 262, 139 S.E. 614...the termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but *it does absolve him from future obligations, unless the lease otherwise provides.*"

Emphasis added. Id. at 669-670. The Court then opined as follows:

In the first place it is noteworthy that the lease is taken from the general rule, that the termination of a lease absolves the lessee from future obligations thereof, by the explicit provision in Section 7 of the lease...and by the provisions of Section 19 that in case of eviction and re-entry, the landlord may re-let the premises at the risk of the tenant and retain the deposit as security until the time fixed for the expiration of the term. Id. at 670.⁶

⁶ It is noteworthy that although the trial court offers Richman v. Joray Corp. as support that U.S. Rubber contains the "modern rule," Richman v. Joray Corp. was actually decided several years prior.

Finally, Simon v. Kirkpatrick, *supra*, was most recently cited in Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (Ct. App. 1992) (*cert. granted August 31, 1992, reversed and remanded on other grounds*). Although, Blumberg is cited in the trial court's order in the case at bar as support for its ruling in favor of the Respondent, the case actually provides much stronger support for the Appellant's position, by affirming the lower Court's ruling as follows:

The judge dismissed Blumberg's claim for future payments without prejudice. Ordinarily, the termination of a lease will terminate a lessor's right to future payments. United States Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E. 2d 403 (1956). However, if the lease agreement provides for payment of future rents, termination will not release the lessee of such future obligations: Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927).

The lease provides as follows:

Section 20.01. Termination. In the event lessee shall fail to pay any monthly installment of rental promptly as the same shall become due....lessor shall have the right, at its sole option...to terminate this lease..but the exercise or non- exercise of such right of termination shall not prejudice any other rights which the lessor may have against the lessee hereunder and *shall not operate to relieve the lessee of its obligation to pay rental* or of its obligations under any other covenants and agreements herein contained. Emphasis added.

Based upon the foregoing, the Blumberg court affirmed the trial court inasmuch as it was not error to dismiss the claim for future rent *without* prejudice due to the fact the lease specifically provided for future rents, and thus, it may be appropriate for the claim to be filed at a later date.⁷

⁷ The reason for the dismissal was not completely clear; however, it would be fair speculation that the lease term in question had not yet expired.

The long-standing doctrine of *stare decisis* necessarily required the Court to follow the body of case law which begins with the holdings in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E.2d 614 (1927). "The doctrine of stare decisis says that where a principle of law has become settled by a series of court decisions, it should be followed in similar cases." Langley v. Boyter, 284 S.C. 162, 180, 325 S.E.2d 550, 560 (Ct.App.1984), *quashed on other grounds*, 286 S.C. 85, 332 S.E.2d 100 (1985). The trial court's failure to follow the precedent set by Simon v. Kirkpatrick and its progeny constitutes error, and therefore, the trial court's ruling in favor of the Respondent should be reversed.

II. THE TRIAL COURT ERRED BY FINDING THAT THE LEASE IN THE INSTANT CASE WAS TERMINATED BY ABANDONMENT.

Along with the terms of the lease itself, whether or not a landlord is entitled to "future rent" after a tenant vacates depends largely upon the facts upon which the tenant vacated, and whether or not such results in the termination of the lease agreement. If the landlord terminates the lease by eviction, "the estate is at an end; the lessee is liable for the stipulated rent, as damages, up to the date of the termination; after that, his obligation, as well as his rights under the lease, have been annihilated." Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E.2d, 614, 618 (1927). However, a different result may arise if the premises were abandoned by the tenant, such as the case in U.S. Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E. 2d 403 (1956). In U.S. Rubber the tenant had abandoned the property and the lease subsequently was terminated due to the lessor's re-entry and re-letting of the property.

When a tenant abandons the leased premises and the landlord re-enters and re-lets, the Courts look to the lease terms and the facts and circumstances of the case in order to determine whether or not the landlord is re-letting for the account of the tenant or for his own account, which shall determine if the lease is actually terminated and/or if the tenant is further obligated for rent subsequent to the re-entry. See Surety Realty Corp. v. Asmer, 249 S.C. 114, 153 S.E.2d 125 (1967); Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944). The factual scenario of abandonment by a tenant is distinctly different from termination by the landlord by eviction. Eviction clearly terminates the lease agreement, and failing lease provisions obligating the tenant to future rents in the event of eviction, the general rule is that any obligations for future rent are also terminated.

Inexplicably, in its order, the trial court ignores the singlemost significant piece of correspondence between the parties, which is the landlord's "10 Day Notice to Pay or Quit," dated February 28, 2010. R., p. 86. There can be no factual dispute as to whether or not this Notice sent to Prince on February 26, 2010 terminated the lease agreement. By its very terms it terminated the agreement, and this intent was confirmed by Watson's testimony at trial, as already reproduced hereinabove. Further, a plain reading of the subject lease quickly reveals the absence of any specific provision obligating a tenant to "future rent" in the event of termination due to tenant's default or otherwise.⁸

Therefore, based upon the foregoing, the trial court finding that the lease between the parties was terminated by abandonment is without support of any competent

⁸ Respondent argued vigorously at trial, and the trial court agreed, that reference to the term "damages" was tantamount to referring to "future rent." Record, *supra*.

evidence, and therefore, constitutes error as a matter of law. As such, the trial court's ruling in favor of the Respondent should be reversed.

III. THE TRIAL COURT ERRED BY FINDING THE TERM "DAMAGES" AS CONTAINED IN THE LEASE, NECESSARILY AND UNAMBIGUOUSLY ALSO ENTITLED THE LANDLORD TO "FUTURE RENTS."

On page 6 of the trial court's order, it ruled as follows:

15. This Court find and concludes that even if the rule announced in 1927 by the Court in Simon is still applicable today, the Plaintiff is entitled to the full damages it claims because it specifically reserved the right for all damages under the subject Lease.

16. On page 1 of the Lease, in the last section, captioned "DEFAULTS", there is the following language:

DEFAULTS--*Subject to any governing provision of law to the contrary, if tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages.***Tenant shall pay all costs, damages, and expenses (including reasonable attorneys fees and expenses) suffered by Landlord by reason of Tenant's defaults."**
(Emphasis added in original).

17. *A more clear, unambiguous intention to reserve all rights against the Defendant for rents due during the full term is more difficult to imagine.* Not only did the Plaintiff specifically reserve its rights to damages (i.e., recovery of future rents in the event of termination) but the lease provided a specific damage formula by providing the Defendant must pay all costs, damages and expenses as a result of default....No other construction would provide full meaning to all of the terms of the Lease. Emphasis added.

R., p. 8, lines 4-24.

Appellant is astounded by such a bold statement that "a more clear, unambiguous intention to reserve all rights against the Defendant for rents due during the full term is more difficult to imagine." In fact, the language contained

in that very paragraph of the trial court's order is more specific than that contained in the lease. The use of the parenthetical "(i.e., recovery of future rents in the event of termination)" should not have been necessary to illustrate the point if it in fact were so obviously unambiguous. Further, it would have been so very simple to insert that exact language in the lease, thus rendering this discussion unnecessary. Moreover, nearly every lease referred to in each and every citation within the trial court's order, with the exception of the lease in Simon, contained language specifically referring to future rental obligations. If the term "damages" alone were sufficient, certainly Richman v. Joray Corp., *supra*, and Blumberg v. Nealco, *supra*, both would have been decided differently.

Appellant would submit that the much more common interpretation of this default provision in the subject lease is that the Landlord's repossession due to tenant's default does not prejudice his rights to any damages to which he may be entitled to *under the law*, such as back rent and damages to the premises. "Damages" can mean such an overwhelmingly large number of things, but in no case can the use of the term, without something more, entitle the Respondent to types or forms of damages it is not otherwise entitled to. The body of law on this principle has repeatedly ruled that in order to be entitled to "future rent" as a damage, in the event of lease termination, the landlord must *specifically* provide for same. *Id.* At best, "damages" is a general term, and is simply insufficient to *specifically* refer to "future rent." Therefore, the ruling of the trial court should be reversed.

IV. THE TRIAL COURT ERRED IN CONSIDERING EXTRINSIC EVIDENCE INTRODUCED BY THE RESPONDENT REGARDING INTENT OF THE PARTIES, WHEN THE COURT FOUND THE LEASE TO BE UNAMBIGUOUS.

The parol evidence rule prohibits the introduction of extrinsic evidence to explain the written instrument, when the contract's language is clear and unambiguous. Davis v. KB Home of South Carolina, Inc., 394 S.C. 116, 713 S.E.2d 799 (Ct. App. 2011), McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009), Gilliland v. Elmwood Props., 301 S.C. 295, 391 S.E.2d 577 (1990). Yet, despite the fact the trial court clearly found the lease between the parties to be unambiguous, it nonetheless, in paragraphs 18 (a), (b), (c) and 19, on page 7 of the Order, sets forth an analysis of the correspondence and behaviors of the parties which the Court claims, "Thus, it is clear both the Defendant and the Plaintiff construed the Lease as an obligation of the Defendant for all future rents." R., p. 9, lines 4-20.

Not only does the Appellant vehemently disagree that any conduct or correspondence between the parties subsequent to the execution of the lease have the ability to impose lease terms which do not exist, but if the Court found the lease itself to unambiguous on its face, it was an error of law to consider this extrinsic evidence in its analysis, and therefore, the trial court's decision should be reversed.

V. IF THE TRIAL COURT WERE GOING TO CONSIDER EXTRINSIC EVIDENCE, IT ABUSED ITS DISCRETION BY REFUSING TO ALLOW THE DEFENDANT TO INTRODUCE ANY EVIDENCE SHOWING INTENT OF THE PLAINTIFF OR QUESTION THE PLAINTIFF REGARDING INTENT.

During trial, the Appellant attempted several times to elicit testimony regarding intent of the Plaintiff as to particular terms of the lease, largely due to the fact the Plaintiff was the sole drafter of the lease. However, the Court sustained the Respondent's objections to even allow the Appellant to ask Mr. Watson during cross examination if the default provision of the lease specifically contained language referring to "future rent," to wit:

Q. Okay, I am going to ask you now if you would go back to Plaintiff's Exhibit 1 for me. That's the lease agreement and I am going to refer you specifically to the first page down at Defaults and I am going to read you a portion here. "Landlord may take possession of the premises without further notice to the extent permitted by law without prejudicing Landlord's right to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this lease." Anywhere in that default provision and not necessarily just the portion I read, but I am highlighting the area of where it would speak to that, does it say that if you terminate the lease I am still required and obligated to pay rent.

MR. PATTERSON: I think I would object, that's asking for a legal conclusion. The lease says what it says and that's what Your Honor is here to do is to interpret what the lease says.

COURT: I think that -- is there a claim that it's ambiguous or something?

MS. PRINCE: The law is very clear that you don't have any more obligation as the future lease is due -- that the tenant will remain obligated for rent even in the event the lease is terminated. The Landlord is not entitled to collect any future rent after the lease is terminated.

COURT: Your question though goes to the language in the lease itself.

MS. PRINCE: Right, but I think that we need to go to the intention of the parties. He is the one that drafted the lease presumably when he presented it to me.

COURT: Well that's why I was asking about ambiguity because if the document is not ambiguous and the parties --

MS. PRINCE: I think that he can --- I am not asking him to interpret it. I am asking him, does it say he is entitled to future rent -- does it say you are entitled to future rents?

COURT: You are asking him to read it to the extent that you want him to find certain passages and read them? I will certainly allow you to do that but as to the interpretation of it --

MS. PRINCE: I am not asking him for interpretation. I am asking him just strictly, is there a provision in here that says -- has that contained language to the effect of Landlord is entitled to collect future rents in the event the lease is terminated.

MR. PATTERSON: Your Honor, she just read the language that says, "without prejudicing Landlord's right to damages" --

MS. PRINCE: Damages and future rent are not the same thing.

MR. PATTERSON: Okay, well that's a legal argument. It is not a question for this witness.

COURT: I think there is no argument that this is an ambiguous document so I think it's probably my job at some point to look through the lease itself and see what it means, but as far as the witness's opinion what this means I will sustain the objection.

MS. PRINCE: Just so I can be clear for the record the basis that you are sustaining the objection is because you believe I am asking for an opinion rather than a factual statement of whether the lease contains language that says future rent or not?

COURT: I don't mind if you pick out the portion and say, can you read the first sentence such and such, but if you get to, what does that mean, then you have crossed the line. I think if you say, can you tell me where in this lease it says such and such I think that's fine.

MS. PRINCE: Judge I think that's exactly what my question was. Can you tell me does it say this?

COURT: I think that's probably argument for you to make at the end that nowhere in this lease does it say that or whatever but I think anything beyond that may -- again I think the lease says what it says and it speaks for itself or it doesn't speak for itself so I believe it's proper for argument so --

MS. PRINCE: Okay, then.

R., p 47, line 1—p. 51, line 5.

Slightly later during cross examination of Mr. Watson, the Appellant began to question him about Plaintiff's Trial Exhibits 11 and 13, which are lease agreements for

the premises formerly occupied by Prince. These agreements are nearly identical to each other in form, and appear to be the Respondent's new "form" lease agreement. However, they are substantially different from the agreement entered into by the parties in the case at bar, and had increased from approximately 4 pages to 20. As a result, the Appellant wanted to question Mr. Watson, as the purported drafter of the agreement, about the default provisions they contained, which very specifically speak to "future rents." See Plaintiff's Tr. Ex.'s 11 and 13, "Defaults", sect. 27.2 ("If Landlord elects to terminate this Lease...and/or Tenants right of possession, then everything contained in this Lease to be done...shall cease, without prejudice...to Landlord's right to recover from Tenant *all rent* and sums due hereunder through the Lease Expiration date.") Emphasis added. R., p. 108A, lines 28-34; p. 131, line 38—p. 132, line 4. The Respondent objected on the grounds of relevance, and despite the Appellant's explanation of relevance regarding intent due to the fact that although she was not claiming the lease was ambiguous, she anticipated the issue of ambiguity would soon be raised. R., pp. 56-59. The Court, *sua sponte*, sustained the objection on the grounds of inadmissibility as a subsequent remedial measure pursuant to SCRE Rule 407. R., p. 58, lines 9-15.

Appellant would submit that SCRE Rule 407, prohibiting admissibility of subsequent remedial measures, is wholly inapplicable in a contract case, and even if it were to apply, such evidence may still be admitted for purposes of "feasibility of precautionary measures, if controverted, or impeachment." Certainly, the exception of impeachment should have allowed the introduction of the evidence, if the evidence could in fact even be considered a subsequent remedial measure, which Appellant, again, submits, it is not.

If the trial court considered extrinsic evidence in reaching its decision, which it appeared it did, despite its finding that the lease was unambiguous, it abused its discretion in refusing to allow the Defendant to introduce any evidence regarding intent of the parties. As such, the trial court erred as a matter of law and the judgment against the Appellant should be reversed.

VI. THE TRIAL COURT ERRED BY FAILING TO RECOGNIZE THAT THE LEASE TERMS WERE AMBIGUOUS, AND SUCH AMBIGUITY SHOULD HAVE BEEN CONSTRUED AGAINST THE DRAFTER, WHICH WAS THE RESPONDENT.

"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." Rosen v. University of South Carolina, 398 S.C. 703, 708, 731 S.E.2d 298, 301 (Ct. App. 2011). Further, even if both parties are arguing against ambiguity, yet are offering differing arguments, "the issue of a contract's interpretation necessarily subsumes the primary question of whether the contract's language is clear or ambiguous....Therefore, we not only have the authority but also the responsibility to recognize an ambiguity in a contract." Wallace v. Day, 390 S.C. 69, 75, 700 S.E.2d 446, 449 (Ct. App. 2010). In the instant case, both parties offered opposing interpretations of the terms of the contract, specifically regarding the meaning of the term, "damages." Although the Appellant does not concede the contract is ambiguous, and maintains that the term damages unambiguously *does not* include "future rent," inasmuch as the court appeared to consider extrinsic evidence to determine the intention of the parties, it would appear the

trial court, in fact, did find ambiguity. As a result, the ambiguity should have been resolved against the Respondent, the drafter of the lease. "Were we to entertain the idea of an ambiguity, such ambiguity would have to be construed against the Bank which drafted the agreement." Duncan v. Little, 384 S.C. 420, 426, 82 S.E.2d 788, 791 (2009), (citing, Williams v. Teran, Inc., 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting the rule of contract interpretation that an ambiguous contract will be construed against the drafting party); Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 175, 644 S.E.2d 718, 722 (2007) ("[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement.")).

Based upon the foregoing, even if this Court were to find an ambiguity does exist, such ambiguity should have been resolved against the Respondent, and therefore, the ruling of the trial court should be reversed.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the trial court.

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Bluffton, SC
January 6, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and
Beaufort County Special Court Judge

Case No. 2012-CP-07-1530
Court of Appeals Number:
2013-000305

RECEIVED

JAN 09 2014

SC Court of Appeals

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince d/b/a The Law
Office of Beth Anne Gilleland, LLC,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court Properly Find the Tenant Responsible For Future Rents?
- II. Did the Trial Court Make Any Evidentiary Rulings Requiring Reversal?
- III. If This Court Should Determine the Lease is Ambiguous, the Landlord is Still Entitled to Future Rents (Additional Sustaining Ground, Rule 208(b)(2) SCACR)

STATEMENT OF FACTS

On or about January 1, 2009 Bluffton Towne Center, LLC ("Landlord"), entered into a long-term rent and lease agreement with Beth Ann Gilleland-Prince ("Tenant") and Miguel Pico ("Pico"), for office space in Bluffton, South Carolina (R.pp. 81-84, Ex. 1). The lease provided for monthly payments of \$1,825 for a three (3) year term commencing January 1, 2009 and ending December 31, 2011. Tenant operated her law practice from the leased premises. (R.p. 31, lines 1-6). Pico has moved from the area and was never served with the Complaint. Thus, no judgment was rendered against Pico at trial.

On December 18, 2009, the Tenant wrote the Landlord advising that she had accepted a position as a magistrate court judge, would be closing her law office and would probably stay in the premises through the end of February, 2010 (R.p. 85, Ex. 2). She stated she hoped to be able to work something out with the Landlord amicably, acknowledging that the lease would not expire for another year. The Landlord acknowledged receipt of the notice and stated he assumed the Tenant would honor the lease as an attorney and judge, confirming that she was liable for the remaining term of the lease. (R.p. 85, Ex. 2)

On February 26, 2010, the Landlord sent written notice to the Tenant requesting the rent due for February, 2010, that she vacate the property within ten (10) days, and confirming that she

was still obligated and responsible for all rents that continued to accrue under the remaining term of the lease (R.p. 86-87, Ex. 3). Thereafter, counsel for the Landlord on March 28, 2010 notified the Tenant that the Landlord requested the rent for February and March, 2010, as well as all monthly payments during the remaining term of the lease. (R.p. 88, Ex. 4) Tenant responded that she would be happy to help in trying to find a new tenant, but that she was unable to pay the rent or else she would pay same. (R.p. 89, Ex. 5) The Tenant vacated the premises and turned over the keys in April, 2010. (R.pp. 91-93, Exs. 7, 8, 9)

In an effort to mitigate its damages, the Landlord leased the property to two separate (2) tenants for a portion of the remaining term, at reduced rates. After the term of the lease had expired, Landlord filed suit for damages on December 31, 2012. At trial the Landlord provided undisputed testimony that its total damages for nonpayment of rent was \$35,784. Landlord's counsel introduced an Affidavit of Attorney's Fees for an additional recovery of \$3,843.55, for total damages of \$39,627.55 that were awarded by the Trial Court. The Tenant put up no evidence at trial, simply arguing that under the lease provisions she was not responsible for future rents accruing after she vacated.

STANDARD OF REVIEW

This matter was heard by the Beaufort County Master-in-Equity pursuant to an Order of Reference with finality. An action for collection of rents due under a lease is an action of law. Sapp v. Wheeler, 402 S.C. 502, 741 S.E.2d 565 (S.C.App. 2013). This Court cannot disturb the trial court's findings of fact unless no evidence reasonably supports its findings. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). The appellate court can correct errors of law. Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C., 353 S.C. 327, 334, 577 S.E.2d 468, 472 (Ct.App. 2003).

ARGUMENT

1. The Trial Court Properly Found the Tenant Responsible for Future Rents

The Trial Court found that Tenant owed the Landlord for future rents after the Tenant vacated in the amount of \$35,784, applying the more "modern rule" for landlord's damages after termination of a lease as set forth in United States Rubber Company v. White Tire Company, 231 S.C. 84, 97 S.E.2d 403 (1956), Alternately, the Trial Court also applied the standard set forth in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927) to reach the same result. A review of the apparent separate and distinct remedies available under Simon and U.S. Rubber find that the Trial Court reached the correct result, regardless if Simon has been modified by U.S. Rubber, as discussed below.

A. The Tenant is Responsible for Future Rents Under Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E. 614 (1927)

Assuming, *arguendo*, that Simon is still valid and controlling, the Tenant is responsible for the future rents after the Tenant vacated under the terms of the subject lease, as found by the Trial Judge. In Simon, the lessee refused to take delivery. The Court stated that the lessor had three remedies available, as follows:

(1) Sue under a breach of contract theory for the full amount of damages, present and prospective, which were the result of the violation of the contract, citing Cleveland v. Bryant, 16 S.C. 634 (1882). The measure of damages under this remedy was the rent fixed under the lease, less the rental value of the premises for the remaining term, together with any special damages; or

(2) Sue for damages actually sustained, calculated at the rental rate provided in the lease less the actual rents received, or which should have been received, upon due diligence by the Landlord; or

(3) The lessor could re-enter and repossess the premises and expel and remove the lessee. Under that option, the lease is deemed terminated.

The court in Simon stated that once the lease was terminated, regardless of the method of termination, the tenant's estate ends, the tenant is responsible for the stipulated rent as damages up to the date of termination, and the tenant has no further obligations "... unless the lease shall provide that, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations." Simon 139 S.E. at 618 (emphasis added). This limitation of remedies of the landlord is based on the historical nature of a lease, as a conveyance of land. From a property law perspective, the rationale for this approach is that once the tenant no longer has access to the property, it should no longer be responsible for rent. 2 R. Powell, The Law of Real Property, §16.02(1)(a)(2000); Schneicker v. Gordon, 732 P.2d 603 (Colo. 1987).

The court in Simon made it clear that the tenant would be responsible at the termination of the lease for such future rent as damages, if the lease so provided, since no rent could be due since the lease was deemed terminated. As no language expressing an intent to bind the tenant for future damages was present in the lease in Simon, the tenant was found not to be responsible for rents accruing after termination. The Tenant in the instant case is arguing that under Simon this requirement was not met as there was no special language as to obligating a tenant for rent after termination.

Unlike the lease in Simon, the Trial Court in this case correctly held the subject lease clearly contained language that upon termination, the tenant was not relieved of future obligations for damages in the form of rent. In the default section of the subject lease (R.pp. 81-82, Ex. 1), this reservation of right is clearly and unambiguously stated as follows:

DEFAULTS. *** Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), **and without prejudicing Landlord's right to damages.**
*** Tenant shall pay all costs, **damages**, and expenses (including reasonable

attorneys fees and expenses) suffered by Landlord by reason of Tenant's defaults." (emphasis added)

Unlike the lease in Simon, the instant lease specifically reserved the right for the Landlord to take possession of the property without prejudicing its right to "damages". The third sentence under the same default provision provides the Tenant shall pay all costs and "damages" and expenses as a result of its default. It is well understood in South Carolina that "[t]he intent of the parties is to be determined solely from the language of the contract, if that language is clear and unambiguous." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Havird, 355 S.C. 642, 518 S.E.2d 48, 50 (1999). In addition, the "... court should give the terms of an unambiguous contract their plain, ordinary and popular meaning." *Id.* 518 S. E.2d at 50. The common, ordinary and popular definition of the term "damages" under a lease clearly encompasses the payment of rent. This is especially true as to this lease, where there are no other material monetary obligations of the Tenant. The Tenant has provided no other alternative meaning for the term "damages" in the lease which would give logical meaning to all provisions of the lease. The Court must construe the terms and provisions of an agreement to give affect to all provisions; and not create an ambiguity by an unreasonable interpretation of a particular word. Middleton v. Eubank, 388 S.C. 8, 694 S.E.2d 31 (S.C.App. 2010).

In Simon, the Court throughout its opinion, equates damages with the non-payment of rents in its discussion of the landlord's remedies. This is because once the lease is deemed terminated, the tenant no longer owes any rent, but may have liability for certain damages. Certainly a drafter of a lease, after reading Simon, would be confident the use of the same term "damages" would include rents in a lease. The application of these rules of construction and the Simon decision is entirely consistent with the Trial Court's conclusion damages includes rents under the lease.

Tenant relies heavily in her arguments as to her interpretation of the lease on the well-established line of South Carolina cases that hold that where there is an ambiguity in a contract, the ambiguity is to be construed against the party which drafted same. Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 644 S.E.2d 718 (2007). This rule of construction has no application for three (3) reasons. First, there is absolutely no evidence in the record that the Landlord drafted the lease. In fact, the record is devoid of any testimony as to who prepared same. Counsel's own statements and arguments to the Court that the Landlord drafted the lease are clearly not admissible testimony as to this issue.

Secondly, neither party at trial asserted that the lease was ambiguous, and in fact the Tenant affirmatively represented to the Court that she was not asserting in this case that it was ambiguous (R.p. 58, lines 9-25; pp. 183-186, Def. Post-Trial Brief). The Trial Court found correctly the lease was unambiguous (R.pp. 3-9, § 17, Order). Finally, the Tenant has asserted for the first time on appeal that the lease is ambiguous. Since this theory was not argued or asserted at trial, it cannot be raised for the first time on appeal. McCain v. Brightharp, 39 S.C. 240, 730 S.E.2d 916 (S. C. App. 2012).

The Tenant's argument suggests that there exists under South Carolina case law some type of "bright line" test requiring specific language in a lease in order to be entitled to the recovery of future rents after termination under Simon. Not only does Simon not require such special language, none of the cases applying Simon contain any such language.

In Camden Inv. Co. v. Gibson, 204 S.C. 513, 30 S.E.2d 305 (1944), the court allowed the recovery by the landlord of two months rent, plus commissions after the lease was terminated. The landlord notified the tenant of the breach of the lease, that it would attempt to rent the building and would expect the tenant to be responsible for any loss. There was no discussion of

any special reservation of rights under the lease, although future rents were allowed to be received.¹

In Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950) the Federal court, applying South Carolina state law, held that a lease did reserve the right of the landlord to sue for future damages under Simon. The language relied upon by the court in section 19 of the lease provided the landlord the right to re-let the premises, with the tenant remaining liable for any deficiency. The court in Richman simply found that the lease stated an intention of the parties for the tenant to be responsible for damages for future rents, just as such intention is found in the instant lease under the default section. (R.pp. 81-84, Ex. 1)

In U.S. Rubber, the Court, citing Simon, found that the relationship of landlord and tenant came to an end upon the tenant's abandonment of the property and default of payment of rent. The Court confirmed the tenant had no further obligation for future rent under Simon, but did still have a liability for damages under a breach of contract theory. The measure of damages was the rent provided for in the lease under the remaining term, less the monies actually received, assuming the landlord properly mitigated its damages. U.S. Rubber, 97 S.E.2d at 409. There was no review or discussion by the Court of any language (special or otherwise) in the lease which provided upon the termination, the tenant was still liable or responsible for future rents. Rents due after termination of the lease were thus recovered by the landlord.

In Blumberg v. Nealco, Inc., 307 S.C. 537, 416 S.E.2d 211 (Ct. App. 1992) *aff'd as modified*, 310 S.C. 492, 427 S.E.2d 659 (1993), the court found that the lease was properly terminated and that the landlord could recover future rents after termination because the lease specifically reserved said rights. The reservation of rights under the lease read as follows, in section 20.01:

¹ Note, this is virtually identical to the notice provided the Tenant in this case, as discussed on pp. 18-20 herein.

"But the exercise or non-exercise by lessor of such right of termination shall not prejudice any other rights which the lessor may have against the lessee hereunder, and shall not operate to relieve the lessee of its obligations to pay rent or of its obligations under any other covenants and agreements herein contained."

In summary, the requirement for any bright line, special language by our courts since Simon in order for a landlord to recover future rents after a lease has been terminated simply does not exist, and in some cases has not been required at all. (See: U.S. Rubber; Camden Inv. Co.) In Richman and Blumberg, where language was present, all that was required was the intention in the lease of the landlord to hold the tenant responsible for future rents. Under the existing language of the subject lease, this intention is clearly stated and should be enforced by the Court. The reservation of the right to collect damages clearly meets this requirement.

B. The Trial Court Properly Ruled That Simon Has Been Modified by United States Rubber Company

The Trial Court held that U.S. Rubber stated the "modern rule" for recovery of damages upon abandonment of a lease by a tenant and that Simon was no longer controlling. A close review of U.S. Rubber and the law in other jurisdictions confirms this was the correct result.

In U.S. Rubber, the parties were disputing the disposition of a \$7,000 security deposit under a lease where the landlord was seeking rent due after termination of the lease. The court, citing Simon, found that the relationship of landlord and tenant came to an end upon the tenant's abandonment of the property and default of payment of rent, citing § 27-35-140 and § 27-35-150 of the S.C. Code of Laws (1976). While the Court held the tenant had no further obligation for future rent under Simon, it further ruled the tenant did have a liability for damages under a breach of contract theory. The measure of damages was the rent provided for in the lease under the remaining term, less the monies actually received, assuming the landlord properly mitigated

its damages. U.S. Rubber, 97 S.E.2d at 409. There was no review by the Court of any language in the lease which provided upon the termination, the tenant was still liable or responsible for future rents, as was previously required under Simon. Rents due after termination of the lease were thus recovered by the landlord.

While the Court in U.S. Rubber, nor any other South Carolina appellate court decision, directly states the rule requiring an express reservation of the recovery of future rents in a lease is no longer required, as announced in Simon, the result reached in U.S. Rubber implicitly leads to the conclusion a change in said requirement has been made by our Court. Such a change in our state law has been recognized by at least one other Court. In Schneicker, 732 P.2d at 608, the Colorado court provided a very good summary of the remedies of a landlord upon terminating a lease. The Court noted that U.S. Rubber, and other similar cases, recognized that although the relationship of landlord and tenant may end upon the termination of a lease, the right of the landlord to pursue its contractual remedies for damages clearly survived said termination.

The traditional interpretation of leases as just an interest in real estate when fashioning remedies for a landlord against a tenant in default are now changing. As explained by the Court in Schneicker, 732 P.2d at 607-608,

"The traditional emphasis of the courts on the lease as a conveyance, to the exclusion of its contractual characteristics, has generated much criticism by commentators. E.g., 1 American Law of Property, supra, § 3.11; Hicks supra; Love, supra; *608 McCormick, The Rights of The Landlord Upon Abandonment Of The Premises By The Tenant, 23 Mich.L.Rev. 211 (1925); Weissenberger, supra. In recognition of the increasing importance of the covenants found in modern leases, as well as the policy of discouraging economic and physical waste, courts in recent times have begun to look to principles of contract law in analyzing the rights and obligations of a landlord and a tenant upon abandonment of premises by a tenant. E.g., Danpar Associates v. Somersville Mills Sales Room, Inc., 182 Conn. 444, 438 A.2d 708 (1980); Wichita Properties v. Lanterman, 6 Kan.App.2d 656, 633 P.2d 1154 (1981); Bernstein v. Seglin, 184 Neb. 673, 171 N.W.2d 247 (1969); Sommer v. Kridel, 74 N.J. 446, 3378 A.2d 767 (1977); MAR-SON, Inc. v. Terwaho Enterprises, Inc., 259 N.W.2d 289 (N.D. 1977); Wright v. Baumann, 239 Or.

410, 398 P.2d 119 (1965); United States Rubber Co. v. White Tire Co., 231 S.C. 84, 97 S.E.2d 403 (1956)."

The Court in Schneicker, citing U.S. Rubber and other similar cases, found that while the acceptance of surrender or abandonment ends the real property relationship between the parties, it does not impact the contractual remedies available to the landlord for damages.

The myriad problems and pitfalls that exist for a landlord upon the termination of the lease by the tenant upon abandonment, and the application of various remedies, many times inconsistent and conflicting, based upon ancient real property applications have been well documented by commentators. Love, Landlord's Remedies When the Tenant Abandons: Property, Contract and Leases, 30 U. Kan. L. Rev. 533 (1981-1982); Hicks, The Contractual Nature of Real Property Leases, 24 Baylor L. Rev. 443 (1972); Weissenberger, The Landlord's Duty to Mitigate Damages on the Tenant's Abandonment: a Survey of Old Law and New Trends, 53 Temp. L. Q. 1 (1980). As noted by said commentators and the Court in Schneicker, the application of the contractual remedies in the case of an abandonment of a lease by the tenant provides the best balance of equities for the parties to said contract.

In U.S. Rubber our Court has clearly made this transition, although perhaps not as clearly stated or explained as in Schneicker. The Trial Court's reliance on the contractual remedy set forth in U.S. Rubber was thus valid and correct and leads to a fair and equitable result. The Tenant is responsible for only the actual damages sustained by the Landlord when she abandoned the premises.

The arguments of the Tenant in the present case best illustrate the dilemma of a landlord under the outdated Simon rule and the unfair potential result. In this case, Tenant voluntarily moved out, closed her law office, quit paying rent and returned the keys to the Landlord. She

announced directly I am not going to pay rent under the lease. All of the communications from the Landlord confirmed in every instance it intended to hold the Tenant responsible for the future rents (R.p. 59, lines 16-23; pp. 85-89, Ex 2- 5). The Tenant properly mitigated its damages by procuring leases during the remaining term, still being left with a short fall of over \$35,000 in unpaid rent. Under the rationale of Simon, these events are to be deemed an "acceptance" by the Landlord of Tenant's "offer" of the return of the premises, the termination of the lease and an "agreement" to release the Tenant from future rents. Such an agreement surely requires the consent of the Landlord, which is clearly not present in this case.

The application of contractual remedies for this clear breach of the lease provides a more realistic, fair result, without the use of legal fictions (ie., acceptance by landlord of return of premises upon condition of no liability by tenant for future rents) that was never intended by the parties. The result proposed by the Tenant is patently unfair to the Landlord. In addition, the application of contractual remedies eliminates the clearly conflicting duties of the Landlord to mitigate its damages by re-letting the premises while at the same time allowing the Tenant possession and control of the premises so future rent can be collected under Simon.

Finally, the Court in Simon clearly stated that the reason or basis the lease was terminated has no bearing on the end result – the landlord cannot recover future rents unless said right is reserved in the lease. Simon, 139 S.E. at 618. Thus, Tenant's effort to reconcile U.S. Rubber with Simon as to the basis for termination are misplaced.

2. The Trial Court's Evidentiary Rulings Were Correct.

Tenant seeks reversal of the Trial Court's decisions based on two evidentiary rulings. As discussed below, both decisions were correct and resulted in no prejudice to the Tenant, even if erroneous.

A. Cross Examination of Landlord as to Existence of Language in Existing Lease

Tenant asserts that the Trial Judge committed reversal error by not allowing her to cross examine the Landlord as to the existence of specific language in the subject lease. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 529 (2000)

It is important to note that the Tenant clearly was seeking only to ask the Landlord to locate in the subject lease specific language concerning remedies upon default. She was not asking any questions about the intention of the parties or the Landlord's interpretation of any provision. This is clear by the following exchange with the Court:

"Court: You are asking him to read it [lease] to the extent that you want him to find certain passages and read them? I will certainly allow you to do that but as the interpretation of it –

Ms. Prince: I am not asking him for interpretation. I am asking him just strictly, is there a provision here that says – has that contained language to the affect of Landlord is entitled to collect future rents in the event the lease is terminated." (parenthetical matter added) (R.p. 48, line 22 to p. 49, line 10)

The Trial Judge subsequently ruled she could ask the witness to point out such language (R.pp. 50, line 3 to p. 51, line 6). The Trial Judge never prohibited counsel from asking said questions. After this exchange, counsel simply did not ask any further questions on this issue (R.p. 51).

In addition, the lease was in evidence (R.pp. 81-84, Ex. 1), so the Tenant was free to cite any language in the lease (or lack thereof) during argument. There must be some prejudice to the

appealing party to warrant a reversal. Bocook Outdoor Media, Inc. v. Summy Outdoor Advertising, Inc., 294 S.C. 169, 363 S.E.2d 390 (Ct. App. 1987). In this case, there is obviously no prejudice.

B. Two Subsequent Leases Were Not Relevant

Tenant sought to cross examine the Landlord as to the language in two subsequent leases it entered into to mitigate its damages during the remaining term (R.p. 56, line 1 to p. 59, line 15). Specifically, the Tenant asked about changes the Landlord made in the later July, 2010 lease (R.pp. 96-115, Ex. 11) and the July, 2011 lease (R.pp. 118-139, Ex. 13) from the subject lease as to reserving the right to future rents upon termination. The Trial Court properly denied this line of questioning on the grounds of relevance, since the subsequent leases were made years after the subject lease and with totally different parties (R.p. 59, lines 1-13). This ruling was clearly correct.

Relevant evidence has been defined as “. . . evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. It is clear the Trial Court properly determined that the language in the subsequent leases, in which the Tenant was not a party and which were made years later, could not possibly shed any light on the use of the term “damages” in the subject lease, or the intent of the parties under the original lease. In addition, the two leases were already in evidence, thus the Trial Court’s ruling had absolutely no impact on the ability of the Tenant to limit or restrict her arguments in this regard. If there is no prejudice, any error is deemed harmless. Bocook Outdoor Media, Inc.

**3. Even if This Court Determines The Lease is Ambiguous,
the Landlord is Still Entitled to Damages for Future Rents**

As an additional sustaining ground under Rule 208(b)(2) SCACR, assuming *arguendo*, this Court finds the lease ambiguous as to the recovery of future rents after termination of the lease, the evidence clearly indicates such an intention by the parties themselves was present. It is well established that when a contract is found to be ambiguous, the interpretation and construction used by the parties themselves is entitled to great, if not controlling influence. Stackhouse v. Pure Oil Co., 176 S.C. 318, 180 S.E. 188, 196 (1935); Langston v. Niles, 265 S.C. 445, 219 S.E.2d 829 (1975). As noted by the Trial Court, it is absolutely clear that both Landlord and Tenant understood the Tenant was responsible for future rents after she voluntarily vacated the premises. (R.p. 9, Order, §§ 18-19)

On December 18, 2009, when the Tenant notified the Landlord she was vacating the property (R.p. 33, lines 5-23; p. 85, Ex. 2), she confirmed her understanding of her liability for future rents, by the following statement:

"I hope that you and I will be able to work something out amicably, because I realize that the lease will not expire for another year * * * I will also keep my eyes and ears open for anyone who may want the space."

In the Landlord's response on the same date (R.p. 33, line 24 to p. 34, line 11; p. 85, Ex.2), he clearly confirmed his intention to hold the Tenant liable for the entire remaining term, with the following language:

"As a judge and attorney, I would assume that you will honor your obligation under the lease. As you know, you are liable for the entire rent, not just your portion. I have not pressed you for the full rent since Miguel moved, but I am not willing to forgive the balance of the lease." (emphasis added)

In the February 26, 2010 ten day notice to pay or quit (R.p. 86, Ex. 3), the Landlord specifically advised the Tenant she was still obligated for all future rents (R.p. 34, line 21 to p. 35, line 11). Said letter reads in part as follows:

"In the event you do not satisfy all the requirements of this ten (10) day notice by paying the amount set forth below and do either voluntary or by court leave the premises, you will still be obligated or responsible for payment of monies set forth below, together with all additional costs, legal fees, expenses and rents that continue to accrue under the term of the lease because of nonpayment.

Furthermore, if you do not pay the rent within this ten (10) day period and do not quit the premises, legal action will be instituted for possession of the premises referenced above **plus rent, attorneys fees and other costs.**" (emphasis added)

In the March 28, 2010 memo from Landlord's counsel to the Tenant, in Paragraph 2 it was again confirmed that the Landlord was seeking rent for the remaining term of the lease (R.p. 88, Ex. 4, § 2). The Tenant's response of the same day does not dispute she owes rent for the remaining term (R.p. 36, line 14 to p. 37, line 6; p.89; Ex. 5). She states as follows:

"I am happy to assist in getting the place rented, however, I am simply unable to pay the back rent or else I would pay it."

Thus, at no time did the Tenant ever state she was not responsible for future rents, only that she had no monies. If she did not believe she was responsible for said rents, there would be no reason for her to seek new tenants for the space, as she did after she vacated (R.p. 60, line 22 to p. 61, line 12), or to try and "work something out amicably" (R.p. 85, Ex. 2). The Landlord at no time ever indicated he was taking back control of the property with no expectation of payment of future rents.

The subsequent actions of both parties are entirely consistent with the construction of the lease that it was the intention of the parties for the Tenant to be responsible for rents after she vacated.

CONCLUSION

The Trial Court reached the correct result, whether this Court finds the appropriate standard for recovery is as stated in Simon or U.S. Rubber. The lease unambiguously states the Landlord can recover all damages after termination of lease, which clearly includes rent. The evidentiary issues raised by Tenant have no merit. The Trial Court's decision should be affirmed.

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January 7, 2014

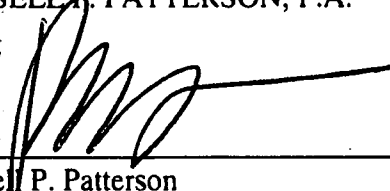
Counsel for the Respondent, Bluffton Towne Center, LLC, hereby certifies that the Final
Brief of Respondent complies with Rule 211(b), SCACR.

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JAN 09 2014

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SC Court of Appeals



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Attorney for Respondents

January 8, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and
Beaufort County Special Court Judge

Case No. 2012-CP-07-1530
Court of Appeals Number:
2013 - 000305

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JAN 09 2014

SC Court of Appeals

Bluffton Towne Center, LLC,

Respondent,

v.

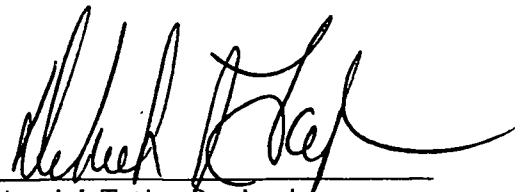
Beth Ann Gilleland-Prince d/b/a The Law
Office of Beth Anne Gilleland, LLC,

Appellant.

PROOF OF SERVICE

I certify that I have served three (3) copies of the Final Brief of Respondent, on the Appellant by depositing said copies of it in the United States Mail, postage prepaid, on January 8, 2014, addressed to its attorney of record as follows:

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P.O. Box 2797
Bluffton, SC 29910


Deborah J. Taylor, Paralegal to
Russell P. Patterson
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P.O. Drawer 8047
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Attorneys for Respondent

January 8, 2014

THE STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Case No. 2012-CP-07-1530
Court of Appeals No. 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

FINAL REPLY BRIEF OF THE APPELLANT

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SC Court of Appeals

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ARGUMENT

- I. THE RECORD ON APPEAL CONTAINS AMPLE EVIDENCE THAT THE RESPONDENT WAS THE DRAFTER OF THE SUBJECT LEASE, AND THEREFORE, ANY AND ALL AMBIGUITIES IN SUCH LEASE SHOULD BE RESOLVED AGAINST THE RESPONDENT.

Respondent claims, incorrectly, that the "record is devoid of any testimony as to who prepared [the lease]. Counsel's own statements and arguments to the Court that the landlord drafted the lease are clearly not admissible testimony as to this issue." Respondent's Brief, p. 10. Respondent fails to recognize or acknowledge that the "Counsel" referred to is the Appellant in this matter, and although she is a member of the South Carolina Bar, she *represented herself* in this action.¹ As is demonstrated below, it is simply inaccurate to allege the record contains no testimony or evidence to support the fact the Respondent drafted the lease. In fact, the record does not and cannot support any other conclusion.

A significant portion of the Appellant's cross examination of Mr. Paul Watson included questions about the lease in this action, the entirety of which clearly presumed that Mr. Watson had drafted the lease.² This fact was obviously known and recognized by both the witness, Mr. Watson, and Ms. Prince, the opposing party to the action, acting as her own counsel. During questioning, Ms. Prince refers to Mr. Watson as the drafter of the lease, without any objection from the Respondent: "I think that we need to go to

¹ The undersigned *pro se* Appellant has prepared all briefs in this matter in the third person.

² Mr. Watson is the principal of the Respondent entity, Bluffton Towne Center, and the sole witness at trial for same.

the intention of the parties. He [Mr. Watson] is the one that drafted the lease presumably when he presented it to me.”³ R., p. 48, lines 11-13.

The Appellant’s next line of questioning was directed to changes in the content from the lease between the parties and those of subsequent tenants, which again clearly presumed an understanding between Mr. Watson and Ms. Prince that Mr. Watson had, in fact, drafted the lease in the subject action, to wit:

Q. For your new tenant, you have changed your lease, haven’t you?

A. Yes.

Q. You changed it significantly, haven’t you? You have gone from about four pages to close to twenty probably?

A. Yes.

R., p. 56, lines 1-7.

If Mr. Watson had not drafted the lease, it would be inappropriate and confusing for the parties to refer to the lease as being “his” lease. Yet, no one appears remotely confused by Ms. Prince repeatedly asking Mr. Watson about “his” lease. Moreover, she never once refers to it as “our” or “my” lease. Again, the Respondent makes no objection during this line of questioning on the basis of Mr. Watson’s status as drafter of the lease. Further, during Respondent’s objection to relevance of the line of questioning, he states, “[T]here could be a million different reasons why he is using a different lease forward.” R., p. 57, lines 22-24. Respondent’s counsel’s own statement implies or suggests that Mr. Watson “used” a certain lease, which necessarily implies he is the drafter of such lease.

³Although this line of questioning drew several objections from the Respondent on the basis that the questions allegedly required the witness to make a legal interpretation or opinion of the meaning of certain lease terms, no objection was made regarding the status of Mr. Watson as the drafter of the lease.

Interestingly, after Appellant's cross examination of Mr. Watson, counsel for the Respondent asked Mr. Watson another 20 questions. Never once does he ask Mr. Watson if he or Ms. Prince drafted the lease, thereby giving him an opportunity to clear up any potential misunderstanding as to which party drafted the lease. The reason for this, of course, is obvious. It is not until closing arguments that the Respondent shocks the Appellant with the outrageous claim that no testimony existed that Mr. Watson drafted the subject lease, to wit:

MS. PRINCE: ...I will say this, Mr. Watson does this for a living. He drafted that lease.

MR. PATTERSON: Your honor, I would object to that. There is no testimony that he drafted the lease.

MS. PRINCE: I thought I had asked that question but perhaps I didn't. He is the one that presented the lease to me. Either he drafted or somebody drafted it on his behalf.

MR. PATTERSON: Or the Defendant drafted it because we don't have any testimony as to who drafted it so we have to cover all the options.

MS. PRINCE: I am representing I did not draft this.

COURT: We are just in argument.

MS. PRINCE: I didn't draft the lease nor did I make any amendments or modifications to it....

R., pp. 75-76, lines 17-25; 1-12.

The question of "Who Drafted the Lease" was not an impossible mystery to solve. At this point in the proceedings, both Mr. Watson and Ms. Prince were still present. It was a non-jury trial. Mr. Patterson could have moved to have the proceedings reopened to question his client and clear up this crucial issue which heretofore had never been in dispute. Yet, he did not. Mr. Patterson could have objected to the Court considering any statements by the Appellant during argument, which were allegedly not testified to, and

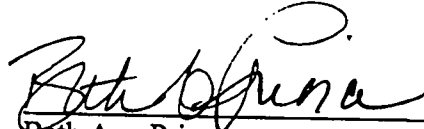
requested such matter be stricken from the record. Yet, he did not. Moreover, Mr. Patterson could have requested the Court allow him to cross examine Ms. Prince if the Court were to refuse to strike such statements from the record, had the proper objection been made in the first place. However, no proper move to strike was ever made. Once a statement is on the record, in order to preserve the issue of the statement's admissibility, the party must make a motion to strike. See, State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). In this instance the issue of whether or not the Court could or should consider Ms. Prince's statements that Mr. Watson was the drafter of the lease is not preserved for appeal. Even if this Court were to disregard any statements made by Ms. Prince, the record still contains ample evidence to support Mr. Watson as the drafter of the subject lease.

CONCLUSION

Therefore, based upon the foregoing, the Court should determine that sufficient evidence in the record supports the fact that the Respondent was the drafter of the lease in the subject action, and as such, any and all ambiguities in such lease should be resolved against the Respondent.

The Appellant hereby re-incorporates and restates her Initial Brief in its entirety and for the reasons expressed therein, as well as those expressed above in the Appellant's

Reply Brief, the Appellant respectfully requests this Court to reverse the trial court's ruling.



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SC Bar #68834

Pro Se Appellant

Bluffton, SC
January 6, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge

Case No.: 2012-CP-07-1530
Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

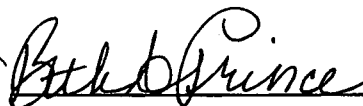
Appellant.

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I certify that I have served the Appellant's Final Brief and Final Reply Brief on the Respondent, Bluffton Towne Center, LLC, by depositing a copy of it in the U.S. Mail, postage prepaid, on January 13, 2014, addressed to its attorney of record, Russell P. Patterson, PO Box 8047, Hilton Head, SC 29938.

January 12, 2014



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge

Case No.: 2012-CP-07-1530
Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
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Appellant.

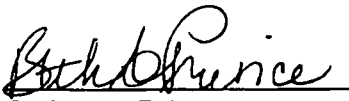
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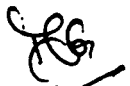
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I certify that I the Appellant's Final Brief and Final Reply Brief, filed and served
on today's date, are both in compliance with Rule 211, SCACR.

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APPEAL FROM BEAUFORT COUNTY **SC Court of Appeals**

Court of Common Pleas

Marvin H. Dukes, III, Master-in Equity and Special Circuit Court Judge

Court of Appeals No.: 2013-000305

Bluffton Towne Center, LLC,

Respondent,

v.

Beth Ann Gilleland-Prince d/b/a
The Law Office of Beth Ann Gilleland, LLC,

Appellant.

**APPELLANT'S PETITION FOR HEARING AND
SUGGESTION FOR REHEARING *EN BANC***

Appellant, Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Ann Gilleland, LLC, hereby petitions this Court for rehearing and suggests rehearing *en banc*, pursuant to Rules 201, 221 and 240, SCACR, of its Order filed April 1, 2015 Opinion No. 5309, which affirmed as modified the trial court's ruling in the above-referenced matter. Further, as more fully discussed below, Appellant suggests rehearing *en banc* because consideration by the full court is necessary to secure or maintain uniformity of its decisions, inasmuch as it appears the Appellate panel overlooked or misapprehended a

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number of matters of fact and law, and as a result misapplied the applicable precedent and mischaracterized relevant facts. As grounds for her petition for rehearing and suggestion for rehearing *en banc* Appellant contends the panel's decision overlooks or misapprehends the following:

1. The panel overlooked the opinion of Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010) (per curiam) in determining Appellant failed to preserve for appeal the issue that the trial court erred by failing to recognize the lease at issue was ambiguous.
2. The panel overlooked the significance of the "express" language requirement in order to allow a landlord to collect future rent after termination of a lease agreement, as set forth in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E.2d 614 (1927).
3. The panel misapprehended the Appellant's argument in her brief, overlooking the fact Appellant argued the lease at issue had been terminated by the landlord's February 26, 2010 notice to pay or quit the premises. The panel overlooked the specific language in Appellant's brief, and instead conducted an analysis of whether or not the Appellant had been constructively evicted.
4. The panel overlooked the significance of the landlord electing a remedy after a tenant defaults and how such election affects the rights and responsibilities of the parties.
5. The panel overlooked the difference between a landlord reentering and reletting for its own account, which operates to terminate a lease agreement, as opposed to the landlord reentering and reletting for the account of the tenant, which does not operate to terminate the lease agreement, as set forth in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E.2d 614 (1927) and Surety Realty Corp. v. Asmer, 249 S.C. 114, 153 S.E.2d 125 (1967).
6. The panel overlooked or misapprehended the factual sequence of events leading up to the termination of the lease, the effect of which mischaracterized actions taken by both parties, resulting in a ruling which is inconsistent with the applicable precedent.
7. The panel overlooked or misapprehended the timing of the extrinsic evidence admitted at trial, which is inconsistent with the panel's finding that such admission was harmless error.

Appellant incorporates by reference the Record filed in this appeal and both of Appellant's final briefs, including the issues and arguments raised therein. For purposes of this petition, the pertinent facts in this matter are as follows:

FACTS

On or about January 2009, the Appellant, Beth Ann Gilleland-Prince d/b/a The Law Office of Beth Ann Gilleland, LLC (hereinafter also referred to as "Tenant," "Prince" or "Appellant"), entered into a commercial lease agreement for the purposes of operating a law office, with the Respondent, Bluffton Towne Center, LLC (hereinafter referred to as "Landlord," or "BTC"), for a term of three (3) years, beginning January 1, 2009 and ending December 31, 2011. R., p. 81.

The lease between the parties, drafted entirely by the Respondent, was approximately 3 ½ pages long. The Default provision of the lease reads in pertinent part as follows:

Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days...after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's right to damages....Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. R., p. 81, lines 31-35.

On or about December 18, 2009, Prince notified Respondent, by and through its owner, Mr. Paul Watson, that she needed to close her practice in order to accept an appointment as a magistrate and would eventually vacate the space because she would no longer be legally permitted to operate her law practice. At that time she was unsure exactly how long it would take to accomplish the task. R., p. 85, lines 9-19.

Still in the process of closing the office, Prince defaulted in the rent for the month of February 2010, after which Prince received a "10 Day Notice to Pay or Quit" (hereinafter referred to also as "Notice") from the Respondent dated February 26, 2010. R., p. 86. In the Notice, Respondent stated, "You are hereby notified that you have ten

(10) days to pay to the undersigned office rent now due from you in the amount of \$1,875.00 as set forth below, or your right to possession of the above referenced premises will cease and you must quit the same." R., p. 86.

It was undisputed at trial that Prince did not pay the amount requested in the Notice, and did, in fact, relinquish possession of the premises, as requested in the Notice. In fact, Paul Watson, representative of the Plaintiff, testified at trial that when he did not receive the past due rent within the 10 days as requested, he believed the Defendant vacated the premises as demanded. R., p. 44, lines 19-21.

Nonetheless, several weeks later after Prince vacated the premises, as requested in the Notice, she received an email from the Respondent's attorney, on March 28, 2010, which contained several propositions, as if the Notice sent directly from Respondent had not existed. R., p. 88. In fact, the propositions contradicted the demands in the February 26, 2010 Notice. In the March 28 email, Plaintiff's attorney now proposed that Prince pay the back rent for February and March 2010, and that she voluntarily vacate the space and then continue to make rent payments until the space is re-let, and if that were unacceptable, the Respondent intended to file an eviction action and suit for *back rent*. Emphasis added. R., p. 88. Somewhat puzzled by this correspondence, Prince responded via email to Respondent's attorney on the same date, and informed him, "I have been out of the unit for nearly two months, as Mr. Watson requested." R., p. 89.

The next communication between the parties was via email 4 days later, on April 1, 2010, in which Respondent's attorney informed Prince the Respondent did not have an extra key to the premises, and requested Prince to provide any keys in her possession to the rental broker, which Prince did that same day. R., pp. 90-93. There were no further

communications between the parties for nearly 2 years. Then, on or about March 9, 2012, Respondent's attorney sent Prince correspondence demanding \$34,850.00, which Respondent believed it was owed pursuant to the lease agreement. R., p. 140. Prince did not agree that the lease and the circumstances of the lease termination legally entitled the Respondent to any rent past February 2010. As a result, Respondent filed this action on or about April 18, 2012.

The matter was tried before the Honorable Marvin H. Dukes, III, Master-in-Equity for Beaufort County on October 26, 2012. On December 26, 2012, the Court issued its Order Granting Judgment to the Plaintiff for the entire amount requested, plus attorney's fees and costs in the amount of \$3,843.55, for a total judgment of \$39,627.55. Thereafter, Prince filed a Notice of Appeal. The Appellate panel heard oral argument in this matter on November 4, 2014, and its Order was filed April 1, 2015, Opinion No. 5309, affirming the master's order as modified. This petition for rehearing and suggestion for rehearing *en banc* followed.

ARGUMENT

It appears the panel overlooked the opinion of Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010) (per curiam) when it determined Appellant failed to preserve for appeal the issue that the trial court erred in failing to recognize the lease at issue was ambiguous, and therefore, should have been construed against the drafter.

This panel determined that because "Tenant never argued to the master that the terms of the contract were ambiguous," she therefore failed to preserve the issue for review, citing Knight v. Waggoner, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App.

2004); Wilson v. Builders Transp., Inc., 330 S.C. 287, 294, 498 S.E.2d 674, 678 (Ct. App. 1998). However, this Court ruled differently in Wallace v. Day, 390 S.C. 69, 75, 700 S.E.2d 446, 449 (Ct. App. 2010) (per curiam). This Court rejected an identical argument raised by one of the parties in Wallace where, “[t]he Wallaces contend[ed] that neither party argued before the trial court or this Court that any contractual provisions were ambiguous, and, therefore, issue preservation rules prohibit this Court from recognizing any ambiguities in the contract.” Id. at 450, 75. This Court found such argument to be meritless, and ruled, “[b]ecause the Wallaces dispute Day’s interpretation of the contract’s default provision, this Court is called upon to decide whether the provisions in question are reasonably susceptible to more than one interpretation and thus ambiguous.” Id. at 450, 76. See S.C. Dep’t of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001) (“A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation.”).

Therefore, it appears the panel overlooked this Court’s previous ruling in Wallace, where, as in the instant case, even if both parties argue against ambiguity, yet offer differing interpretations, “the issue of a contract’s interpretation necessarily subsumes the primary question of whether the contract’s language is clear or ambiguous....Therefore, we not only have the authority but also the responsibility to recognize an ambiguity in a contract.” Wallace, 390 S.C. at 75, 700 S.E.2d at 449.

Appellant does not concede the contract is ambiguous, and maintains the general term “damages” unambiguously *does not* expressly specify, “future rent.” Nonetheless, “[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.” Rosen v. University of South Carolina, 398 S.C. 703, 708, 731 S.E.2d 298, 301 (Ct. App. 2011). In the instant case, both parties offered opposing interpretations of the terms of the contract, specifically regarding the meaning of the term, “damages.” Thus, it appears the terms of the agreement may be capable of more than one meaning when viewed under such circumstances as espoused in Rosen.

Therefore, Appellant respectfully requests the panel to reconsider its decision in this instant matter in light of its ruling in Wallace. Appellant then urges the panel to find that any ambiguity in the lease at issue should have been resolved against the Respondent, the drafter of the lease. “Were we to entertain the idea of an ambiguity, such ambiguity would have to be construed against the Bank which drafted the agreement.” Duncan v. Little, 384 S.C. 420, 426, 82 S.E.2d 788, 791 (2009), (citing, Williams v. Teran, Inc., 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) (noting the rule of contract interpretation that an ambiguous contract will be construed against the drafting party); Chassereau v. Global Sun Pools, Inc., 373 S.C. 168, 175, 644 S.E.2d 718, 722 (2007) (“[A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement.”)).

It would appear the panel also overlooked the significance of the requirement that a lease must contain “express” language in order to reserve landlord’s right to future rent in the case of termination following default by the tenant, as set forth in Simon v. Kirkpatrick, 141 S.C. 251, 139 S.E.2d 614 (1927). The Court in Simon stated as follows:

The rule as we understand it, is that the termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations. Id. at 618. (*citing* 36 C. J. 335).

The issue appeared to be a case of first impression in South Carolina, and the Simon Court proceeded to explain by citing a string of cases from multiple jurisdictions.

Upon termination of a lease for conditions broken, the lessor is entitled to rent which had previously become due, but not, in the absence of an *express* agreement, entitled to recover rent subsequently become due. (emphasis added) Galbraith v. Wood, 124 Minn. 210, 144 N.W. 945, 50 L.R.A. (N.S.) 1034, Ann. Cas. 1915B, 609. The retaking of the premises by the lessor releases the lessee from subsequently accruing rents, unless the lease *expressly* provides otherwise.(emphasis added) Burke v. Norton, 42 Cal. App. 705, 184 P. 45; 1 Taylor, Land. & T. (8th Ed.) Sections 377, 378; 2 Wood, Land. & T, (2d Ed.) Section 477. Resumption of possession by the lessor of the thing leased...puts an end to the lessee's liability for future installments of rent, unless otherwise *plainly* provided. (emphasis added) Lamson Co. v. Bowland (C.C.A.) 114 F. 639.

In subsequent cases decided in South Carolina, cited in this Court's opinion in the case at bar, each instance where the Court found the terms of the lease exempted the case from the general rule that termination of the lease absolves the tenant from future rental obligations, the lease at issue contained language which spoke specifically to rental obligations, not merely a reservation by the landlord for general "damages." See U.S. Rubber v. White Tire Co., Inc., 231 S.C. 84, 97 S.E.2d 403 (1956) (lease term provided specifically, "The purpose of this agreement being to protect the Lessor against any loss of rental during the term of this lease."); Blumberg v. Nealco, 307 S.C. 537, 416 S.E.2d 211 (Ct. App. 1992) (*cert. granted August 31, 1992, reversed and remanded on other grounds*) ("lessor shall have the right, at its sole option...to terminate this lease...but the exercise or non- exercise of such right of termination shall not prejudice any other rights

which the lessor may have against the lessee hereunder and *shall not operate to relieve the lessee of its obligation to pay rental* or of its obligations under any other covenants and agreements herein contained.”) (emphasis added); Richman v. Joray Corp., 183 F.2d 667 (4th Cir. 1950) (lease contained clause referring specifically to application of security deposit to future rental obligations, as well as an acceleration clause in the case of default by tenant, thereby taking the lease “out of the general rule, that the termination of a lease absolves the lessee from future obligations thereof....”).

Although it does not appear the South Carolina courts have considered the definition of “express,” it is defined in Black’s Law Dictionary (9th ed. 2009) as, “Made known distinctly and explicitly, and not left to inference or implication. Declared in terms; set forth in words. Manifested by direct and appropriate language, as distinguished from that which is inferred from conduct. The word is usually contrasted with ‘implied.’” State v. Denny, 118 Ind. 449, 21 N. E. 274, 4 L R. A.65. In the opinion in the case at bar, the panel conceded, “the term “damages” was not specifically defined in the lease,” but then the panel determined after the master looked to “the four corners of the subject lease” and when “[r]eading the lease as a whole, ...the parties clearly and unambiguously intended that, upon default, Tenant would be liable to BTC for the rents due during the full term as damages.” However, of the “four corners” and the “lease as a whole,” the panel refers only to the default provision which allows for “costs, damages, and expenses,” which the panel had already stated a few sentences prior that “damages” was not specifically defined. It seems a circular logic to look to the phrase, “costs, damages, and expenses” in order to define the term “damages.”

As illustrated by the foregoing, it would appear the panel overlooked the necessity of a lease provision to be express and specific when referring to a tenant's obligation to pay future rental installments in the event of termination of the lease agreement. Simon, *supra*. Even if the panel were to determine no specificity requirement exists, it nonetheless appears to have overlooked the circular logic which led to its ruling on the definition of "damages." Therefore, Appellant respectfully requests the panel to reconsider and amend its ruling to find the general term "damages" is not sufficient to specifically include "future rental obligations," as required by Simon.

The panel affirmed the master's determination that the subject lease had been terminated by abandonment. Yet, despite the fact the panel affirmed the master's ruling that it was Tenant's abandonment of the premises that terminated the lease, the panel later stated in the opinion that the lease was terminated by BTC reentering and reletting. The panel did not specify if BTC's reentering and reletting was done for the account of the tenant or the landlord's own account, which is a crucial distinction, because one effectively terminates the lease, and the other does not. More specifically, if the landlord has decided re-enter and relet for the account of the tenant, the leasehold is *not* terminated. See Surety Realty Corp.v. Asmer, 249 S.C. 114, 153 S.E.2d 125 (1967). Moreover, the panel unequivocally stated in the opinion the lease was terminated, although parts of its analysis seemed to imply the lease was not terminated and that the landlord had reentered and relet for the account of the tenant. These remedies are mutually exclusive, and therefore, it appears the panel overlooked or misapprehended several crucial points in its analysis of this issue, which are outlined in detail below.

First, the panel misapprehended the Appellant's argument in her brief. In its opinion, the panel states, "According to Tenant, Watson's ten-day notice to pay or quit the premises was the equivalent of an eviction." The argument heading in Appellant's brief read as follows, "THE TRIAL COURT ERRED BY FINDING THAT THE LEASE IN THE INSTANT CASE WAS TERMINATED BY ABANDONMENT." (Capitalization in original). Appellant's argument was best summarized by the following excerpt from her brief:

There can be no factual dispute as to whether or not this Notice sent to Prince on February 26, 2010 terminated the lease agreement. By its very terms it terminated the agreement, and this intent was confirmed by Watson's testimony at trial...." (R. ____).

It may seem a fine point, but one with a significant distinction. Tenant argued that the lease was terminated by an action taken by BTC, not abandonment by Tenant, and that the master erred in ruling the lease had been terminated by abandonment, because abandonment cannot operate to terminate a lease agreement. Especially instructive on this issue is the Restatement (Second) of Prop.: Landlord's Right and Remedies § 12.1 (1977):

The tenant does not end his obligation to pay rent by abandoning the leased property, unless the landlord accepts what is in effect the tenant's offer to surrender the leased property, *thereby terminating the lease*.

Prior to any action being taken by the landlord that amounts to an acceptance of the tenant's offer to surrender the leased property, and prior to any reletting of the premises for the benefit of the tenant's account, the tenant may retake possession of the leased property and cancel his abandonment.

Tenant does not concede that the act of vacating the premises manifests any intent to permanently abandon possession, particularly when the Tenant had in fact demonstrated a desire to assist in finding a replacement tenant. (R. p. ____). However, such

act alone simply cannot dictate whether the lease is terminated without considering the response from BTC, as it is the landlord that elects the remedy for the default. The Court in Simon offered the following analysis of the various remedies available to the landlord, and the consequences of each:

Had Simon notified Kirkpatrick that he was holding or taking possession of the premises for the account of Kirkpatrick, it is my opinion that he would clearly have been entitled to the amount of the verdict, as, I think, the facts warranted it. The relationship of landlord and tenant would not then have been terminated and loss resulting to Simon by reason of Kirkpatrick's breach of the contract within the 13 months could properly have been charged up to Kirkpatrick as the defaulting tenant.

But Simon elects to rely upon the authority given in the lease and *evicts Kirkpatrick* and precludes him 'from any further right or benefit thereunder.' *The only reasonable deduction is that this act terminated the relationship of landlord and tenant between them.* And is (in?) (sic) such a circumstance, the authorities available seem clear that the rent, or liability on the contract ceases. (emphasis in original) Id. at 616.

The rule, as we understand it, it that termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding the termination for cause by the lessor, the lessee shall not be relieved of such future obligations. 36 C.J. 335. The lease in the case at bar does not carry a provision to the effect mentioned. Id.

Specifically, the notice provided by Simon to Kirkpatrick stated that due to failure to pay rent, Kirkpatrick, "as per terms of the lease (you) are thereby precluded from any further right to benefit thereunder." Id. at 617. The Court in Simon determined this notice undoubtedly terminated the landlord/tenant relationship, and thus, extinguished any obligation by the tenant for future rent. Id. It appears the panel overlooked the uncanny similarity between the notice in Simon and that sent by BTC in the instant case.

The Court in Simon also discussed the various other options which had been available to the landlord had he so chosen, in which he may have been able to recover damages for the balance of the lease term. For example, had the landlord not opted to affirmatively terminate the lease he may have done the following:

He might have awaited the expiration of the term, and, upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed upon rental less rental which he had in the meantime received or with proper effort should have received. Id. at 617.

In light of the foregoing analysis set forth in Simon, it appears the panel overlooked or misapprehended the importance of the landlord's decisions and election of remedies. The landlord's election of remedy is crucial when considering whether or not the leasehold has been terminated and by what means. The panel appeared to overlook or misapprehend that after Tenant defaulted, BTC chose its own remedy, when other remedies, which may have been more advantageous to BTC were equally available. Moreover, the panel also appeared to overlook the fact that the time for BTC to adequately protect itself from loss of future rents was before the parties executed the lease agreement. "The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." Blakely v. Rabon, 266 S.C. 68, 73, 221 S.E.2d 767, 769 (1976)(citing Kable v. Simmons, 217 S.C. 161, 60 S.E.2d 79 (1950). In fact, the panel clearly overlooked or misapprehended BTC's own responsibility to protect itself. The panel opined,

The Court in Simon found it would be unfair to hold the *lessor* "to a liability against which he could not have protected himself" when the lessor withdrew any consideration for the lessee's promise to pay rent and was enjoying the premises for his own benefit. Id. at 260-61, 139 S.E. at 617-18. The same cannot be said for the instant case. In fact, we believe it would be unfair to allow Tenant to simply abandon the leased premises and terminate rent payments at her own leisure...without any consequence for such actions. (Emphasis added).

The panel either overlooked or misapprehended the actual content and context of the above quote from Simon. The actual quote is, "Is it fair, then, to *[the lessee,] Kirkpatrick*, to hold him to a liability against which he could not have protected himself..." (emphasis added) Id. Moreover, the Simon Court preceded that comment with a discussion in which it declared, "It must be assumed that Simon exercised his option to terminate the lease as his personal interest dictated. If he restored his own right to the use and occupancy of the lot....Kirkpatrick could not have had the same right at the same time...." Id. In the instant case, it should likewise be assumed that BTC chose to terminate the lease as its personal interest dictated, and when it did so, it precluded Tenant from exercising any right to use and occupancy. Nevertheless, the panel appeared to overlook BTC's responsibility for its own actions, and instead appeared to take a position which implied BTC was powerless to protect itself, subject to the whims of an opportunistic Tenant. As the Court in Blakely observed, the Court's responsibility is to enforce the terms of the contract, despite any failure of a party to adequately protect itself. Blakely, at 73, 796.

Second, in its analysis of the factual scenario which took place between the parties in the instant case, it appears the panel overlooked or misapprehended a number of key points as well. The panel applied the standard of review for reviewing a master's judgment in an action at law, as stated in Silver v. Aabstract Pools & Spas, Inc., 376 S.C.

585, 590, 658 S.E.2d 539, 541-2 (Ct. App. 2008). “[T]he appellate court will not disturb the master’s findings of fact unless the findings are found to be without evidence reasonably supporting them.” *Id.* at 590, 542. The “reviewing court is free to decide questions of law with no particular deference to the [master].” *Id.* (quoting Hunt v. S.C. Forestry Comm’n, 358 S.C. 564, 569, 595 S.E.2d 846, 848-49 (Ct. App. 2004) (internal quotation marks omitted)).

The panel applied a constructive eviction analysis as authority to support its position Tenant was not evicted from the premises, and cited Thomas v. Hancock, 271 S.C. 273, 153 S.E.2d 125 (1967). Thomas v. Hancock is distinguishable in that it was a tenant suing her former landlord for unlawful ouster, or constructive eviction. The basis for the tenant’s claim was that the landlord had made a verbal demand for her to move out, which she subsequently did. The Court found no constructive eviction took place, “the theory being that to constitute constructive eviction there must be some substantial interference which is injurious to the tenant’s beneficial use and enjoyment of the premises.” *Id.* at 276, 606. The Appellant in the case at bar never claimed constructive eviction, and this analysis is misplaced.

In reaching its factual conclusion that the master’s ruling that Tenant abandoned the premises is reasonably supported by evidence in the record, the panel pointed to two events which took place nearly two months apart. Specifically, the panel stated in the opinion, “Because Tenant returned her keys and admitted to voluntarily vacating the lease premises prior to the February 26, 2010 notice to pay or quit the premises, the record simply does not support her argument that BTC evicted her and terminated the lease via the notice.” The Record does not support such a version of the facts in the

instant case. The panel overlooked or misapprehended the sequence of events, resulting in what can only be described as a mischaracterization of the facts. The undisputed facts in proper sequence are as follows: (1) Tenant was in the process of vacating the premises during the month of February 2010. (2) BTC sent a ten-day notice to pay or quit the premises on February 26, 2010. (3) Tenant did not pay, and thereafter completely relinquished possession of the premises, as requested in the notice. (4) BTC contacted Tenant six weeks later, asking for her set of keys to be returned. (5) Tenant complied. Inexplicably, the panel opined that Tenant's actions of, "voluntarily vacating the leased premises prior to the February 26, 2010 notice to pay or quit the premises" and "return[ing] her keys" supported the master's ruling, as if these actions taken together (despite the number of weeks in between) somehow neutralized BTC's notice to pay or quit the premises. Moreover, the panel overlooked that such an interpretation of the facts may be construed as taking the position that *Tenant terminated the lease in early February 2010 by vacating (which the panel equated with abandonment) the premises. BTC sent a notice on February 26, 2010 to pay or quit the premises, which the panel determined had no effect on the lease agreement or the relationship between the parties. Then in the first few days of April, 2010, Tenant terminated the lease agreement again by returning the keys to BTC.* The panel overlooked or misapprehended how such a position is wholly inconsistent with the applicable case law and pertinent facts.

Third, as illustrated above, it appears the panel overlooked or misapprehended that even if the Tenant had abandoned the premises prior to receipt of the ten-day notice to pay or quit the premises, this sequence of events does not nullify the ramifications of landlord electing to deliver the notice. There are no cases on point in South Carolina

addressing the issue of the significance of a similar sequence of events as those in the instant case. However, an interesting case was decided in the Fifth Circuit in 2013. In Southpark Comm. Hosp., LLC v. Southpark Acquisition Co., LLC, et al, 126 So.3d 805, 2013-59 (La. App. 3 Cir. 10/30/13). In Southpark, the Court was considering whether or not the tenant had abandoned the property, was in the process of abandoning the property, or if action taken by the landlord in electing its remedy to re-enter and relet for its own account terminated the lease along with any and all of the tenant's rental obligations. In restating the well established law in the state of Louisiana, which appears to closely mirror that set forth in Simon, the Court set forth the landlord's available remedies as follows:

In the event that a lessee breaches a lease, the lessor may pursue one of two options:

He may sue to *cancel* the lease and to recover accrued rentals due, or he may sue to *enforce* the lease and to recover both accrued rentals and future accelerated rentals (if the lease contains an acceleration clause). These remedies are mutually exclusive. If the lessor elects to *cancel* the lease, the lease is terminated and the lessor is entitled to return into possession, but he forfeits the right to all future rentals. On the other hand, if the lessor elects to *enforce* the lease, he may obtain a money judgment against the lessee based on the terms of the lease agreement, but the lease remains in effect and the lessee retains the right of occupancy for the remainder of the term of the lease. Id. at 815, 14-15.

The Court in Southpark then went on to discuss the factual scenario where although there was some question as to abandonment by the tenant, the question was resolved by the fact the landlord sent a written notice to the tenant informing them it would have no further authority or rights to the leased premises. The Court found that action by the landlord finally and completely terminated the lease agreement, and by disallowing the tenant any rights to the property, it was re-entering and reletting for its

own account, thereby relieving the tenant of any further rental obligation. Id. at 819, 21-22.

Despite the fact there are no cases in South Carolina where the facts are identical, Simon, *supra*, comes so close as to be nearly identical. However, it appears the panel overlooked or misapprehended the facts in Simon, by distinguishing it on the basis that the tenant in Simon never actually took possession of the premises. In its opinion the panel stated:

More importantly, unlike the Tenant in this case, the lessee in Simon never actually took possession of the premises prior to the lessor sending a notice terminating his rights under the lease. The court in Simon was notably concerned with precluding the lessee from enjoying any rights and benefits under the lease, while also holding him responsible for the future obligations under it. In the instant case, however, Tenant occupied the leased premises for several years and renewed the subject lease prior to defaulting on rent payment and breaching the lease. Further, Tenant voluntarily abandoned the premises prior to Watson's notice to pay or quit, the effect of which was not to preclude her from entering the premises or exercising any rights or benefits under the lease.

This position by the Court overlooks a large portion of the Simon decision, as well as several key facts in the case at bar. The Simon Court contemplates the significance, or lack thereof, of the fact the tenant never actually took possession of the premises throughout the opinion. The Simon Court recognized that the trial judge improperly characterized the parties' relationship as landlord and tenant because the tenant never actually took possession of the premises. However, the Simon Court deemed the possession by tenant, "has absolutely nothing to do with the main issue, whether the notice terminated the relation of the parties." Id. at 617. The Simon Court expanded on this idea as follows:

We can perceive no difference between a case of termination of a lease following by eviction of the tenant, where that is possible by reason of his possession, and that of termination of a lease by the lessor by reason of the fact the lessee has never been in possession. In either case, the lessor will have done all that he could do to terminate the lease. If a demand to *get out* is a termination when the lessee is in possession, a demand to *stay out* would be equally effective when he is not possession. (emphasis in original) *Id.* at 618 (citing Gardiner v. Butler, 245 U.S. 603, 38 S. Ct. 214, 62 L. Ed. 505 (1918)).

As demonstrated by this analysis set forth in Simon, occupancy is not a requirement to preclude a tenant from the premises. The Simon Court made emphatically clear the result of the case would not have changed if the tenant had, in fact, taken possession. Therefore, distinguishing the instant case on the basis of occupancy does not comport with the analysis used in Simon. It appears this Court overlooked or misapprehended the controlling law and improperly imposed an occupancy requirement in order for the landlord to effectively preclude a tenant from the premises.

The panel overlooked or misapprehended that the notice sent by BTC unequivocally precluded Tenant from any and all rights under the lease, just as the notice did in Simon. BTC undoubtedly intended for all of Tenant's rights under the lease to be extinguished if she failed to pay as demanded in the ten-day notice to pay or quit premises. Consider the following excerpt from the Trial Transcript, wherein Tenant queries Paul Watson from BTC as to what rights he intended her to have after he sent the ten-day notice to pay or quit:

Q. What rights did I have under the lease? Was I able to use the space?

A. Well not after you defaulted.

Q. As a matter of fact you told me if you don't pay you need to get out or I am going to file an eviction action and make you get out, right?

A. Right.

Q. *So I am just trying to be clear here. You told me I had to go and I couldn't come back and you wanted the keys. You can't use the space but I want you to pay for it, right?*

A. Yes.

(emphasis added). R., p. 63, line 20 – p. 64, line 9.

Based upon the foregoing, it appears the panel overlooked or misapprehended a number of issues as a matter of fact and as a matter of law. Therefore, Tenant respectfully requests the panel to amend its decision consistent with the Appellant's Final Brief and the arguments set forth herein, and rule that BTC's ten-day notice to pay or quit the premises effectively terminated the lease agreement.

The panel found the master's consideration of extrinsic evidence despite his finding that the lease was unambiguous, was harmless error. The panel appears to have overlooked the fact that the evidence the master considered and referenced in the opinion was all in the form of communications which took place between the parties over a year after the lease was executed. (As set forth in the Facts, above, the lease was executed in January 2009, and the extrinsic evidence was a series of emails referred to spanned approximately December 2009 to April 2010). "The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument." McGill v. Moore, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009) (citing In re Estate of Holden, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000)). The extrinsic evidence the master considered was not contemporaneous with or prior to execution of the lease, and the consideration of them in connection with interpreting the terms of the lease was error as a matter of law.

"Interpretation of a contract is governed by the objective manifestation of the parties' assent at the time the contract was made, rather than the subjective, after-the-fact meaning one party assigns to it." Laser Supply and Services, Inc. v. Orchard Park Associates, 382 S.C. 326, 334 S.E.2d 139, 144 (Ct. App. 2009). Therefore, it would appear the panel overlooked the fact the extrinsic evidence at issue were not contemporaneous or prior to the execution of the lease. Appellant respectfully requests the panel to amend its ruling and find the trial court's erred as a matter of law, and that such error was not harmless.

For the foregoing reasons, and for any other reason supported by the Appellant's briefs and the Record in this matter, Appellant respectfully requests that the Court grant a rehearing of the panel's decision and reverse the panel decision consistent with the arguments set forth herein.



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Bar No. 68834
Pro Se Appellant

April 14, 2015
Bluffton, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity and Special Circuit Court Judge

Case No.: 2012-CP-07-1530
Court of Appeals No.: 2013-000305

RECEIVED

APR 15 2015

Bluffton Towne Center, LLC,

Respondent, **SC Court of Appeals**

v.

Beth Ann Gilleland-Prince
d/b/a The Law Office of Beth
Ann Gilleland, LLC,

Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Petition for Rehearing and Suggestion for Rehearing *En Banc* on the Respondent, Bluffton Towne Center, LLC, by depositing a copy of it in the U.S. Mail, postage prepaid, on April 14, 2015, addressed to its attorney of record, Russell P. Patterson, PO Box 8047, Hilton Head, SC 29938.

April 14, 2015



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April 20, 2015

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APR 22 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk for the South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

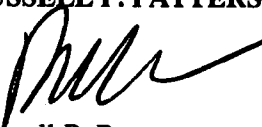
Re: Bluffton Towne Center, LLC v. Beth Ann Gilleland-Prince
Appellate Case No. 2013-000305

Dear Ms. Kitchings:

Oh behalf of the Respondent, Bluffton Towne Center, LLC, please let this letter confirm that pursuant to Rule 240(e) SCACR, we have elected not to file a return to Appellant's Return for Rehearing. We believe the original appellate court decision adequately addressed all issues.

Please contact me with any questions.

Sincerely,
RUSSELL P. PATTERSON, P.A.


Russell P. Patterson

RPP:djt

Enclosures

cc: Paul Watson (w/encl.) – e-mail
Beth Ann Prince, Esq. (w/encl.)

ENCLOSURE

ENCLOSURE

The South Carolina Court of Appeals

Bluffton Towne Center, LLC, Respondent,

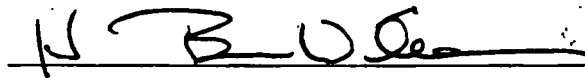
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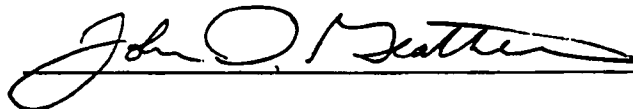
Beth Ann Gilleland-Prince d/b/a The Law Office of Beth
Ann Gilleland, LLC, Appellant.

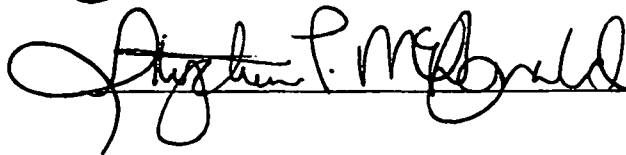
Appellate Case No. 2013-000305

ORDER

Appellant's petition for rehearing is denied; however, the attached opinion is substituted for the previous opinion, Op. No. 5309, which is withdrawn.

 J.

 J.

 J.

Columbia, South Carolina

FILED

cc:
Beth Ann Gilleland-Prince
Russell Pierce Patterson, Esquire
The Honorable Marvin H. Dukes, III

June 3, 2015 27

000272

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bluffton Towne Center, LLC, Respondent,

v.

Beth Ann Gilleland-Prince d/b/a The Law Office of Beth
Ann Gilleland, LLC, Appellant.

Appellate Case No. 2013-000305

Appeal From Beaufort County
Marvin H. Dukes, III, Master-in-Equity

Opinion No. 5309
Heard November 4, 2014 – Filed April 1, 2015
Withdrawn, Substituted, and Refiled June 3, 2015

AFFIRMED AS MODIFIED

Beth Ann Prince, pro se, for Appellant.

Russell Pierce Patterson, of Russell P. Patterson, P.A., of
Hilton Head Island, for Respondent.

WILLIAMS, J.: In this civil matter, Beth Ann Prince (Tenant) appeals the master-in-equity's order awarding Bluffton Towne Center, LLC (BTC) \$35,784 in rent and late fees for Tenant's breach of a commercial lease. Tenant argues the master erred in (1) finding the lease was terminated by abandonment; (2) finding Tenant was liable for future rents under the lease; (3) considering extrinsic evidence after finding the lease unambiguous; (4) not allowing Tenant to cross-examine Paul Watson, the managing member of BTC, about specific language in

the subject lease and language in two subsequent leases BTC entered into with different parties; and (5) failing to recognize the lease was ambiguous. We affirm as modified.

FACTS/PROCEDURAL HISTORY

On January 1, 2009, BTC entered into a commercial lease agreement with Tenant for office space in Bluffton, South Carolina. Under the three-year term lease, Tenant was required to make monthly rental payments of \$1,825 from January 1, 2009, to December 31, 2011. At issue in this case is the default provision of the lease:

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by [BTC] to Tenant, [BTC] may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing [its] rights to damages. In the alternative, [BTC] may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by [BTC] by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent."

On December 18, 2009, Tenant emailed Watson to inform him she was closing her law practice. In the email, Tenant noted she would need to stay in the space through the end of January and "possibly some of February." She further stated, "I hope that you and I will be able to work something out amicably[] because I realize that the lease will not expire for another year. . . . I will also keep my eyes and ears open for anyone who may want the space." Watson responded to the email on the same day, stating he was not willing to forgive the remaining balance and assumed Tenant would honor her obligation under the lease.

On February 26, 2010, after Tenant defaulted on her rent payment for that month, Watson sent Tenant a written ten-day notice to pay or quit the premises. The notice stated, "You are hereby notified that you have ten (10) days to pay to the undersigned office rent now due from you in the amount of \$1,875.00 as set forth below, or your right to possession of the . . . premises will cease and you must quit same." The notice further contained the following language:

In the event you do not satisfy all the requirements of this ten (10) day notice by paying . . . [\$1,875] and do either voluntarily or by court leave the premises, you will still be obligated and responsible for payment of monies set forth below, together with any additional costs, legal fees, expenses[,] and rents that continue to accrue under the terms of the lease because of non-payment.

Tenant did not respond, and on March 28, 2010, BTC's counsel emailed Tenant requesting that she (1) remove all of her possessions from the space, (2) pay the rent due for February and March 2010, (3) continue to make monthly payments until the space was relet, and (4) pass along the names of any potential tenants to BTC's rental agent. His email further stated if they could not reach an agreement along those lines, BTC would be forced to file an ejectment action and suit for back rent. In Tenant's email response, she explained that filing an ejectment action was unnecessary because she vacated the unit at the beginning of February 2010. Tenant further stated, "I am happy to assist in getting the place rerented, however, I am simply unable to pay the back rent, or else I would pay it."

BTC subsequently retrieved the keys from Tenant in April 2010. For the remainder of the lease term, BTC rented the unit to two separate tenants at reduced rates. In a March 9, 2012 letter, BTC's counsel informed Tenant she owed \$34,850, but said he wanted to give her "an opportunity to try to work out a resolution of this matter" prior to filing an action for damages pursuant to the lease.

After the lease term expired, BTC filed suit for damages on April 16, 2012. The matter was tried before the master-in-equity for Beaufort County, South Carolina, on October 26, 2012.

At trial, Watson testified on behalf of BTC, and on cross-examination, Tenant questioned Watson regarding the sequence of events as well as the correspondence between the parties after Tenant defaulted under the lease. Tenant attempted to elicit testimony from Watson regarding specific language in the subject lease.

BTC objected to the line of questioning, arguing Tenant was improperly seeking Watson's legal interpretation of the lease, and the master sustained the objection. Tenant further tried to elicit testimony from Watson regarding language in two subsequent leases BTC entered into with different parties. BTC, however, objected on relevance grounds, and the master sustained the objection.

On December 26, 2012, the master issued an order granting judgment to BTC in the amount of \$39,627.55. In his order, the master concluded the holding in *Simon v. Kirkpatrick*, 141 S.C. 251, 139 S.E.2d 614 (1927)—that a lessor's termination of the lease absolves a lessee from future obligations unless the lease provides the lessee is not relieved of such obligations—"does not state the modern law of damages for the breach of a lease in South Carolina today." Instead, the master found *U.S. Rubber Co. v. White Tire Co.*, 231 S.C. 84, 97 S.E.2d 403 (1956), states the modern rule for damages a landlord may recover for a tenant's breach of the lease, holding Tenant was liable for future rents as damages under this rule. The master concluded in the alternative that, even if *Simon* remains valid law, BTC was still entitled to recover future rents because it reserved the right to all damages in the default provision of the subject lease. This appeal followed.

ISSUES ON APPEAL

- I. Did the master err in finding Tenant terminated the subject lease by abandonment?
- II. Did the master err in finding that *Simon* is no longer valid law and, pursuant to the ruling in *U.S. Rubber*, Tenant was responsible for future rents as damages to BTC under the default provision in the subject lease?
- III. Did the master err in considering extrinsic evidence after finding the subject lease was unambiguous?
- IV. Did the master err in not allowing Tenant to cross-examine Watson regarding language in the subject lease as well as language in two subsequent leases BTC entered into with different parties?
- V. Did the master err in failing to recognize the lease was ambiguous?

STANDARD OF REVIEW

"A lease agreement is a contract, and an action to construe a contract is an action at law." *Middleton v. Eubank*, 388 S.C. 8, 14, 694 S.E.2d 31, 34 (Ct. App. 2010)

(citations omitted). "An action for breach of contract seeking money damages is an action at law." *Sapp v. Wheeler*, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013) (citing *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541–42 (Ct. App. 2008)). When reviewing a master-in-equity's judgment made in an action at law, "the appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them." *Silver*, 376 S.C. at 590, 658 S.E.2d at 542. Nevertheless, the "reviewing court is free to decide questions of law with no particular deference to the [master]." *Id.* (quoting *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 569, 595 S.E.2d 846, 848–49 (Ct. App. 2004)) (internal quotation marks omitted).

LAW/ANALYSIS

I. Termination by Abandonment

Tenant first argues the master erred in finding the subject lease was terminated by abandonment. According to Tenant, Watson's ten-day notice to pay or quit the premises was the equivalent of a termination by eviction. We disagree.

Any act that involves the "direct deprivation of possession" or "so affects the tenant's enjoyment of the premises" that the tenant relinquishes possession is an eviction. *Thomas v. Hancock*, 271 S.C. 273, 275, 246 S.E.2d 604, 605 (1978) (citation omitted). The act, however, must provide the tenant with a legal justification for relinquishing possession. *Id.* (citation omitted). Conversely, a tenant's abandonment—or voluntary surrender of possession—of leased premises does not constitute an eviction. *See id.* at 275, 246 S.E.2d at 606 (citation omitted).

Our supreme court has held "the relationship of landlord and tenant is terminated where the lessor, for his own purposes, re-enters and relets the demised premises upon the lessee's abandonment of the property and default in the payment of the rent." *Sur. Realty Corp. v. Asmer*, 249 S.C. 114, 119, 153 S.E.2d 125, 128 (1967) (citing *U.S. Rubber*, 231 S.C. at 95, 97 S.E.2d at 409). Nevertheless, "[w]hen a tenant delivers the keys of the leased premises to the landlord[,] and he receives them so as to be able to rent the premises for the account of the lessee, such is insufficient to terminate the lease or release the tenant from further liability for rent." *Id.* (citations omitted).

In the instant case, we find Tenant abandoned the leased premises. In a March 28, 2010 email, Tenant stated she had "vacated the unit at the beginning of February." She further explained that "[f]iling an ejectment action [was] simply unnecessary" because she had "been out of the unit for nearly two months, as Mr. Watson

requested." Moreover, Tenant voluntarily surrendered possession of the premises by turning over the keys to BTC in April 2010. Because Tenant returned her keys and admitted to voluntarily vacating the leased premises prior to the February 26, 2010 notice to pay or quit the premises, the record simply does not support her argument that BTC evicted her and terminated the lease via the notice.

Based on the foregoing, we find the master properly concluded that BTC terminated the subject lease upon Tenant's abandonment by reentering and reletting the premises.

II. Damages Recoverable for Breach of a Commercial Lease

Next, Tenant argues the master erred in concluding *Simon* is no longer valid law and holding *U.S. Rubber* states the modern rule for damages recoverable for breach of a lease. While we agree the master erred in concluding *Simon* was overruled by *U.S. Rubber*, we find the master properly held BTC was entitled to recover future rents as damages under the theories of both *Simon* and *U.S. Rubber*.

A. *Simon* Remains Valid Law

As a preliminary matter, we find the master erred in concluding the rule set forth in *Simon* is no longer a valid statement of the law.

In his order, the master concluded—without further explanation—that *Simon* is no longer valid and does not set forth "the modern law of damages for the breach of a lease in South Carolina today." The master, however, failed to cite any case in which a court overruled *Simon* or gave its ruling negative treatment. Indeed, a review of the relevant case law reveals that *Simon* has not been overruled and, in fact, courts have cited its propositions with approval. *See, e.g., U.S. Rubber*, 231 S.C. at 95, 97 S.E.2d at 409 (citing *Simon* for the proposition that, upon the lessor's reentry and reletting of the premises following the lessee's abandonment of the property, the lessor-lessee or landlord-tenant relationship came to an end); *Camden Inv. Co. v. Gibson*, 204 S.C. 513, 518-19, 30 S.E.2d 305, 307 (1944) (citing *Simon* as outlining the proper elements of damages available for breach of a lease contract).

Therefore, contrary to the master's findings, we hold that *Simon* remains valid law.

B. Liability Under *Simon* and *U.S. Rubber*

Although the master erred in concluding *Simon* is no longer valid law, we find he correctly concluded—in the alternative—that BTC was entitled to recover future rents under the damages term in the lease pursuant to *Simon*. Accordingly, we affirm as modified the portion of the master's order in which he analyzed the validity and applicability of *Simon*'s holdings to the facts of this case.

In *Simon*, the lessor entered into a three-year written contract under which he leased a vacant lot to the lessee. 141 S.C. at 253, 139 S.E. at 615. The lease contained the following default provision:

It is agreed that if there is default in the payment of rent above stipulated for as much as 60 days after same is due, . . . [the lessor] shall have the right to re-enter and repossess said premises, at his option[,] and to expel and remove therefrom . . . [the lessee] or any other person occupying the same.

Id. at 254, 139 S.E. at 615. After the lessee refused to take possession of the leased premises and defaulted on the payment of two months' rent, the lessor gave notice that he was terminating the lessee's rights under the lease and reentered the premises. *Id.* at 261, 139 S.E. at 618. The lessor's notice stated the following: "You are due me two (2) months' rent at one hundred and fifty dollars (\$150) each as of September 1, 1924, you having failed to make payment as per terms of lease, are thereby precluded from any further right or benefit thereunder." *Id.* at 254–55, 139 S.E. at 615–16. When the lessee refused to pay the three years of rent due under the lease, the lessor filed an action against him for breach of contract. *Id.* at 253–54, 139 S.E. at 615.

Because the lessee in *Simon* never took possession of the premises and notified the lessor he did not intend to do so, our supreme court concluded the landlord–tenant relationship was never consummated and the parties' relationship, instead, was that of lessor and lessee under a written lease contract. *Id.* at 256, 139 S.E. at 616. The court further found it was clear that, when the lessee refused to fulfill his obligation under the lease by taking possession of the lot, he breached the contract and became liable to the lessor for damages resulting from the breach. *Id.* at 258, 139 S.E. at 617.

Moreover, the court stated "[t]he measure of damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term, at the time of the breach, together with such special damages as [the lessor] may prove to

have resulted from the breach." *Id.* at 259, 139 S.E. at 617. In addition to this option, the court stated the lessor could have waited until the term expired and, "upon a showing of reasonable efforts to minimize his damage, sued for the damage actually sustained, the agreed rental less rental which he had in the meantime received or with proper effort should have received." *Id.*

The lessor in *Simon*, however, was not required to adopt any of the above-mentioned remedies because the default provision of the lease provided for one. *Id.* In fact, as the court noted, the lessor chose to adopt the remedy provided for in the lease by sending the notice, precluding the lessee from any further rights or benefits under the lease. *Id.* at 259-60, 139 S.E. at 617. Because the lessor chose this method, the court found it was illogical and unfair to preclude the lessee from all rights and benefits under the lease, while simultaneously holding him liable for future obligations under it. *Id.* at 260, 139 S.E. at 617. According to the court, the applicable rule provides as follows:

[T]he termination of a lease does not absolve the lessee from obligations incurred up to the date of termination, but it does absolve him from future obligations, unless the lease shall provide that, notwithstanding this termination for cause by the lessor, the lessee shall not be relieved of such future obligations. The lease in the case at bar does not carry a provision to the effect mentioned.

Id. at 262, 139 S.E. at 618 (citation omitted).

Unlike the provision at issue in *Simon*, the default provision in the subject lease expressly reserved BTC's right to recover all damages resulting from Tenant's breach after reentering the premises. The default provision in this case provides, in relevant part, that BTC "may take possession of the Premises . . . without prejudicing [its] rights to damages. . . . Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by [BTC] by reason of Tenant's default."

More importantly, unlike Tenant in this case, the lessee in *Simon* never actually took possession of the premises prior to the lessor sending a notice terminating his rights under the lease. The court in *Simon* was notably concerned with precluding the lessee from enjoying any rights and benefits under the lease, while also holding him responsible for the future obligations under it. In the instant case, however, Tenant occupied the leased premises for several years and renewed the subject

lease prior to defaulting on rent payment and breaching the lease. Further, Tenant voluntarily abandoned the premises prior to Watson's notice to pay or quit, the effect of which was not to preclude her from entering the premises or exercising any rights or benefits under the lease.

The court in *Simon* found it would be unfair to hold the lessee "to a liability against which he could not have protected himself" when the lessor withdrew any consideration for the lessee's promise to pay rent and was enjoying the premises for his own benefit. *Id.* at 260-61, 139 S.E. at 617-18. The same cannot be said for the instant case. In fact, we believe it would be unfair to allow Tenant to simply abandon the leased premises and terminate rent payments at her own leisure—thereby breaching a written lease contract—without any consequence for such actions. In any event, we find that, under the rule in *Simon*, the default provision in the subject lease adequately provided for BTC's right to recover all damages upon Tenant's default in rent payments and breach of the lease.

Likewise, in *U.S. Rubber*, our supreme court faced a situation in which the lessor terminated the lease by reentering and reletting the property after the lessee abandoned the premises and defaulted in the payment of rent. 231 S.C. at 95, 97 S.E.2d at 409. Citing *Simon*, the court first noted that the landlord-tenant relationship came to an end upon termination of the lease and the tenant had no further obligation to the landlord for future rent thereafter. *Id.* (citing *Simon*, 141 S.C. at 261, 139 S.E. at 618). While the tenant no longer had an obligation for future rents, the court stated the tenant was still liable for damages resulting from its breach of contract. *Id.* The court explained that the measure for such damages was "the amount [the landlord] would have received as rent for the remainder of the term, had there been no default, less such amount as [it] may receive from the new tenant" because it was the landlord's duty to minimize any damages. *Id.* (citation omitted).

After a thorough review of the case law, we agree with BTC's contention that the above statement in *U.S. Rubber* is more reflective of the modern rule for damages recoverable upon the breach of a lease. In concluding the landlord was entitled to recover damages due to the tenant's breach of contract, we find our supreme court in *U.S. Rubber* was merely expanding upon the *Simon* ruling and explaining a theory that has been adopted in this state as well as other jurisdictions. *See, e.g., Richman v. Joray Corp.*, 183 F.2d 667, 671 (4th Cir. 1950) ("It is the rule in South Carolina that when a lessee declines to perform his contract, a cause of action immediately arises in favor of the lessor for full damages, present and prospective, which were the necessary and direct result of the breach; and the measure of the

damages is the difference between the rent fixed in the lease and the rental value of the premises for the entire term at the time of the breach, together with such special damages as may have resulted from the breach."). Therefore, we hold that *Simon* and *U.S. Rubber* are not mutually exclusive of one another and may be read together.

Although the landlord-tenant relationship was terminated by Tenant's abandonment and BTC's reentry and reletting of the premises in the instant case, we find this sequence of events did not affect Tenant's contractual liability to BTC under the lease. Accordingly, we find the master properly concluded BTC was entitled to damages measured by the amount BTC would have received as rent for the remainder of Tenant's term had there been no default, less the amount of rent BTC received from the two subsequent tenants it acquired in an effort to mitigate damages. See *U.S. Rubber*, 231 S.C. at 95, 97 S.E.2d at 409.

Because we find BTC was entitled to recover under the theories of both *Simon* and *U.S. Rubber*, we affirm the master's ruling as modified.

III. "Damages" Term in the Subject Lease

Additionally, Tenant argues the master erred in construing the "damages" term in the subject lease to entitle BTC to recover future rents. We disagree.

Courts should construe contracts liberally "to give them effect and carry out the intention of the parties." *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497, 649 S.E.2d 494, 501 (Ct. App. 2007) (citation omitted). When construing terms in a contract, a court "must first look at the language of the contract to determine the intentions of the parties." *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (citation omitted). Furthermore, a court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein. *Ecclesiastes Prod. Ministries*, 374 S.C. at 498, 649 S.E.2d at 502 (citation omitted). If practical, a court should interpret the agreement so as to give effect to all of its provisions. See *id.* (citation omitted). "It is fundamental that[,] in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." *Id.* at 498-99, 649 S.E.2d at 502 (quoting *Brady v. Brady*, 222 S.C. 242, 246, 72 S.E.2d 193, 195 (1952)). Generally, a contract is "interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary, and popular

sense." *Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 414, 661 S.E.2d 62, 67 (2008) (citing *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 110, 531 S.E.2d 287, 293 (2000)).

We find the master properly concluded the parties clearly and unambiguously intended for BTC to reserve all rights against Tenant for rents due during the full term of the lease. Unlike the lease at issue in *Simon*, the subject lease stated BTC could reenter and repossess the property without prejudicing its right to damages. Because the term "damages" was not specifically defined in the lease, the master had to first look to the four corners of the subject lease to determine the meaning and effect the parties intended to give the term. Not only did the lease reserve BTC's right to recover damages upon termination, but it also provided a specific damages formula in the default provision stating Tenant must pay all costs, damages, and expenses BTC suffers by reason of Tenant's default. The default provision further made clear that, upon termination of the lease, Tenant was not relieved of future obligations for damages resulting from her breach of the lease.

Reading the lease as a whole, we find the parties clearly and unambiguously intended that, upon default, Tenant would be liable to BTC for the rents due during the full term as damages. The "costs, *damages*, and expenses . . . suffered by [BTC] by reason of Tenant's defaults" undoubtedly includes the rent BTC was unable to recover during the remainder of the subject lease term due to Tenant's default. We find no other construction would provide full meaning to all of the terms in the lease.

Accordingly, we affirm the master's finding that BTC was entitled to recover future rents as damages from Tenant under the default provision of the lease.

IV. Extrinsic Evidence

Tenant also argues the master erroneously considered extrinsic evidence regarding the parties' intent after finding the subject lease was unambiguous. While we agree the master erred in admitting extrinsic evidence, we believe such error was harmless.

In construing or interpreting a contract, "it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984)) (internal quotation marks omitted). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no

construction is required and the contract's language determines the instrument's force and effect." *Id.* (citation omitted). Moreover, "[i]f a contract is unambiguous, extrinsic evidence cannot be used to give the contract a meaning different from that indicated by its plain terms." *Watson v. Underwood*, 407 S.C. 443, 455, 756 S.E.2d 155, 161 (Ct. App. 2014) (quoting *Bates v. Lewis*, 311 S.C. 158, 161 n.1, 427 S.E.2d 907, 909 n.1 (Ct. App. 1993)) (internal quotation marks omitted); *see also Gordon Farms, Inc. v. Carolina Cinema Corp.*, 294 S.C. 158, 160, 363 S.E.2d 235, 237 (Ct. App. 1987) ("No authority is needed for the proposition that extraneous evidence is not admissible to alter or vary the terms of an unambiguous written contract.").

"The parol evidence rule prevents the introduction of extrinsic evidence of agreements or understandings contemporaneous with or prior to execution of a written instrument when the extrinsic evidence is to be used to contradict, vary[,] or explain the written instrument." *McGill v. Moore*, 381 S.C. 179, 188, 672 S.E.2d 571, 576 (2009) (citing *In re Estate of Holden*, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000)). "Where a written instrument is unambiguous, parol evidence is inadmissible to ascertain the true intent and meaning of the parties." *Id.* (citing *Holden*, 343 S.C. at 275–76, 539 S.E.2d at 708). Under the parol evidence rule, the terms of the writing are controlling, even if extrinsic evidence is admitted without objection or admitted over appropriate objection. *Adams v. Marchbanks*, 253 S.C. 280, 282, 170 S.E.2d 214, 215 (1969) (citations omitted).

In construing a master's order, an appellate court must do so in light of the master's intent "as discerned from the order as a whole." *White's Mill Colony, Inc. v. Williams*, 363 S.C. 117, 123 n.1, 609 S.E.2d 811, 814 n.1 (Ct. App. 2005).

"Adhering to this principle, this court has refused to hold parties bound by language in a lower court order that we found was not necessary to the decision of the issues presented." *Id.* (citing *Weil v. Weil*, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989)).

In this case, the master interpreted the default provision of the lease in paragraph 17 of his order and specifically reached the following conclusions:

A more clear, unambiguous intention to reserve all rights against [Tenant] for the rents due during the full term is more difficult to imagine. Not only did [BTC] specifically reserve its right to damages (i.e., the recovery of future rents in the event of termination), but the lease provided a specific damage formula by providing

[Tenant] must pay all costs, damages[,] and expenses as a result of default. It is clear the most critical, common[,] and obvious "damages" suffered by a [landlord] under a commercial lease is the payment of rent, which is the primary monetary obligation of the [tenant]. No other construction would provide full meaning to all of the terms of the Lease.

In paragraphs 18(a)–(c) and 19, however, the master discussed the correspondence between the parties, noting it was further evidence that BTC and Tenant construed the subject lease as an obligation for Tenant to pay future rents. Tenant argues that, by referencing certain testimony and exhibits to support his interpretation of the lease, the master erred in considering extrinsic evidence outside the four corners of the contract. We agree, but we find the master's error was harmless.

Based upon our review of the order as a whole, we find any error in considering extrinsic evidence was harmless because it is reasonable to infer the master was simply setting forth alternative grounds for his interpretation of the contract. *See Williams*, 363 S.C. at 123 n.1, 609 S.E.2d at 814 n.1 (noting that, in construing a judge's order, an appellate court must do so in light of the judge's intent "as discerned from the order as a whole"); *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 336, 676 S.E.2d 139, 145 (Ct. App. 2009) (stating it was "reasonable to infer that the circuit court was setting forth alternative grounds for its interpretation of the contract" by referencing certain testimony and exhibits in its order). Furthermore, the master's interpretation—based on the extrinsic evidence presented at trial—was consistent with the contract's language. *See Laser Supply*, 382 S.C. at 336, 676 S.E.2d at 145; *see also Jensen v. Conrad*, 292 S.C. 169, 172, 355 S.E.2d 291, 293 (Ct. App. 1987) (holding a judgment will not be reversed for insubstantial errors that do not affect the result).

Accordingly, while the master erred in referencing extrinsic evidence in his order, we find the master was merely setting forth alternative grounds for his interpretation that the damages term in the lease unambiguously entitled BTC to future rents. Thus, we affirm the master's conclusion on this point because any error in referencing the extrinsic evidence was harmless, particularly when the master's interpretation was consistent with the contract's language.

V. Tenant's Cross-Examination of Landlord

Tenant further argues the master abused his discretion by not allowing her to cross-examine Watson about language in the subject lease as well as language in two subsequent leases BTC entered into with different parties. We disagree.

A. Language in the Subject Lease

Tenant contends the master erred in sustaining BTC's objection to the line of questioning during her cross-examination of Watson regarding BTC's intent behind specific language in the subject lease. Tenant argues that, because the master considered extrinsic evidence in reaching his decision, he abused his discretion by not allowing her to introduce evidence regarding intent. We find this issue is not properly preserved for appellate review.

"An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory." *Potter v. Spartanburg Sch. Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011); *see also S.C. Dep't of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct. App. 2007) (finding an issue abandoned because the appellant made "a conclusory argument without citation of any authority to support her claim"); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct. App. 2004) ("Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.").

In her brief, Tenant merely provided a recitation of the trial transcript and made a conclusory argument, while citing no legal authority to support her claim. Therefore, we find this issue is abandoned and not preserved for appellate review. *See Hunt*, 358 S.C. at 573, 595 S.E.2d at 851.

B. Language in Two Subsequent Leases

Tenant next contends the master erred in sustaining BTC's objection to the line of questioning during her cross-examination of Watson regarding language in two subsequent leases BTC entered into with two different tenants. Specifically, Tenant claims the master improperly sustained BTC's objection "on the grounds of inadmissibility as a subsequent remedial measure" pursuant to Rule 407, SCRE.¹ We find this issue is not properly preserved for appellate review.

¹ Under Rule 407, SCRE, "When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the

Because the master clearly sustained BTC's objection on relevance grounds, Tenant's argument that he committed legal error by sustaining the objection pursuant to Rule 407, SCRE, is without merit. Aside from Rule 407, Tenant failed to cite any authority in support of her conclusory argument that the master erred in sustaining BTC's objection. Therefore, we find this issue is abandoned and not preserved for appellate review. *See Hunt*, 358 S.C. at 573, 595 S.E.2d at 851.

VI. Ambiguity

Finally, Tenant argues the master erred by failing to recognize the lease terms were ambiguous. We disagree.

In light of our holding in Part III, *supra*, we find the master properly concluded the subject lease was unambiguous.² After reading the subject lease as a whole, we find the parties clearly and unambiguously intended that—upon Tenant's default and breach of the lease—Tenant would be liable to BTC for the rents due during the full term as damages. *See Cullen v. McNeal*, 390 S.C. 470, 483, 702 S.E.2d 378, 385 (Ct. App. 2010) ("In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." (citation and internal quotation marks omitted)); *Ecclesiastes Prod. Ministries*, 374 S.C. at 497, 649 S.E.2d at 501 (stating a court must gather the parties' intention from the contents of the entire agreement, not from any particular clause therein (citation omitted)); *id.* at 500, 649 S.E.2d at 503 ("The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully." (citations omitted)).

CONCLUSION

Based on the foregoing analysis, the master's decision is

AFFIRMED AS MODIFIED.

subsequent measures is not admissible to prove negligence or culpable conduct in connection with the event."

² Tenant also argues the master erred in not construing ambiguous terms against the drafter of the lease. In light of our finding that the contract was unambiguous, we need not reach the second prong of Tenant's argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

GEATHERS and McDONALD, JJ., concur.

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