

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Sea Island Food Group, LLC d/b/a Squeeze,)
)
Plaintiff,)

v.)

Yaschik Developent Company, Inc., d/b/a)
Yaschik Enterprises, Charleston Capital)
Corporation, Thomas M. Ervin, and Michael)
J. Quillen Family Limited Partnership,)

Defendants.)

Quillen Enterprises, LLC d/b/a The Brick,)
)
Plaintiff-Intervenor,)

v.)

Yaschik Developent Company, Inc., d/b/a)
Yaschik Enterprises, Hilton Smith East Bay)
Company, LTD., and Michael J. Quillen)
Family Limited Partnership,)

Defendants.)

Michael J. Quillen Family Limited)
Partnership)

Third-Party Plaintiff)

v.)

Top of the Bay, Inc. d/b/a Club Light,)

Third-Party Defendant)

Top of the Bay, Inc. d/b/a Club Light,)

Fourth-Party Plaintiff)

v.)

Yaschik Developent Company, Inc., d/b/a)
Yaschik Enterprises,)

Fourth-Party Defendant)

IN THE COURT OF COMMON PLEAS)
)
NINTH JUDICIAL CIRCUIT)
)
CASE NO. 2013-CP-10-7107)

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NOV 25 2015

SC Court of Appeals

FILED
2015 SEP 17 PM 2:19
JULIE J. ARMSTRONG
CLERK OF COURT

**FOURTH-PARTY DEFENDANT
YASCHIK DEVELOPMENT
COMPANY, INC. d/b/a YASCHIK
ENTERPRISES' ANSWER TO
FOURTH-PARTY PLAINTIFF TOP OF
THE BAY, INC., d/b/a CLUB LIGHT'S
FOURTH-PARTY COMPLAINT**

Yaschik Development Company, Inc., doing business as Yaschik Enterprises ("Yaschik Development"), by and through counsel, hereby answers Fourth-Party Plaintiff Top of the Bay, Inc., d/b/a Club Light's ("Plaintiff Club Light") Fourth-Party Complaint of as follows:

Paragraphs 1 through 38 represent Plaintiff Club Light's Answer to Third-Party Plaintiff's Complaint and Paragraphs 39 through 52 represent Plaintiff Club Light's Counterclaims against Michael J. Quillen Family Limited Partnership. As such, Paragraphs 1-52 do not necessitate a response. To the extent any response is required, the allegations are hereby denied.

ANSWER TO FOURTH-PARTY COMPLAINT

ANSWERING FIRST CAUSE OF ACTION AGAINST YASCHIK
(Breach of Contract)

1. Responding to Paragraph 53, Yaschik Development incorporates by reference its responses set forth in the preceding paragraphs of this answer as fully as if repeated verbatim herein.

2. Responding to Paragraph 54, Yaschik Development admits that a valid contract existed between Yaschik Development and FLP in the form of the Master Lease before it was automatically terminated on account of the total destruction of the premises at 213 East Bay Street. Yaschik Development craves reference to said Master Lease and denies any allegations inconsistent therewith.

3. The allegations of Paragraph 55 are denied.

4. The allegations of Paragraph 56 are denied.

5. The allegations of Paragraph 57 are denied.

ANSWERING SECOND CAUSE OF ACTION AGAINST YASCHIK
(Breach of Contract Accompanied by Fraudulent Act)

6. Responding to Paragraph 58, Yaschik Development incorporates by reference its responses set forth in the preceding paragraphs of this answer as fully as if repeated verbatim herein.

7. Responding to Paragraph 59, Yaschik Development admits that a valid contract existed between Yaschik Development and FLP in the form of the Master Lease before it was automatically terminated on account of the total destruction of the premises at 213 East Bay Street. Yaschik Development craves reference to said Master Lease and denies any allegations inconsistent therewith.

8. The allegations of Paragraph 60 are denied.

9. The allegations of Paragraph 61 are denied.

10. The allegations of Paragraph 62 are denied.

11. The allegations of Paragraph 63 are denied.

12. The allegations of Paragraph 64 are denied.

13. The allegations of Paragraph 65 are denied.

ANSWERING THIRD CAUSE OF ACTION AGAINST YASCHIK
(Intentional Interference with a Contractual Relationship)

14. Responding to Paragraph 66, Yaschik Development incorporates by reference its responses set forth in the preceding paragraphs of this answer as fully as if repeated verbatim herein.

15. Responding to Paragraph 67, Yaschik Development admits that a valid contract existed between Yaschik Development and FLP in the form of the Master Lease before it was automatically terminated on account of the total destruction of the premises at 213 East Bay

Street. Yaschik Development craves reference to said Master Lease and denies any allegations inconsistent therewith.

16. The allegations of Paragraph 68 are denied.

17. Responding to Paragraph 69, Yaschik Development admits that it was aware that the Master Tenant had sublet the premises to one or more subtenants. Yaschik Development did not learn the details of the sub-leases, including the sub-lease for Club Light, however, until after the fire. The remaining allegations of Paragraph 69 are denied.

18. The allegations of Paragraph 70 are denied.

19. The allegations of Paragraph 71 are denied.

BY WAY OF AFFIRMATIVE DEFENSES

FOR A FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

20. Plaintiff Club Light has failed to state a claim upon which relief can be granted, and some or all of the claims in 20. Plaintiff Club Light's Amended Complaint should, therefore, be dismissed pursuant to SCRC 12(b)(6).

FOR A SECOND AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

21. Plaintiff Club Light's claims are barred by the doctrines of waiver and/or estoppel.

FOR A THIRD AFFIRMATIVE DEFENSE

(Laches)

22. Plaintiff Club Light's claims are barred by the doctrine of Laches.

FOR A FOURTH AFFIRMATIVE DEFENSE

(Good Faith and Reasonable Procedures)

23. Any actions taken by and/or any procedures followed by Yaschik Development were taken in good faith, in a reasonable manner, and were authorized by statutes, reasonable in

time and manner, and in compliance with any laws and contracts, and therefore Plaintiff Club Light is precluded from recovery against Yaschik Development.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Intervening Actions of Third Party)

24. Any injury or damage suffered by Plaintiff Club Light, if any, was due to or caused by or occasioned by the intervening actions or omissions of a third party or parties for whom Yaschik Development is not responsible and, therefore, Plaintiff Club Light's claims should be barred or reduced accordingly.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

25. The damages recoverable by Plaintiff Club Light, if any, must be reduced by any amount of damages caused by Plaintiff Club Light's failure to mitigate such damages in whole or in part.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands and In Pari Delicto)

26. Plaintiff Club Light's claims are barred by the Doctrines of Unclean Hands and/or In Pari Delicto.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Failure to Allege Fraud with Particularity)

27. Plaintiff Club Light has failed to allege fraud with the particularity required under SCRC 9(b).

FOR A NINTH AFFIRMATIVE DEFENSE
(Lack of Standing)

28. Plaintiff Club Light lacks the capacity, authority, and/or standing to assert some or all of the Claims asserted in the Fourth Party Complaint.

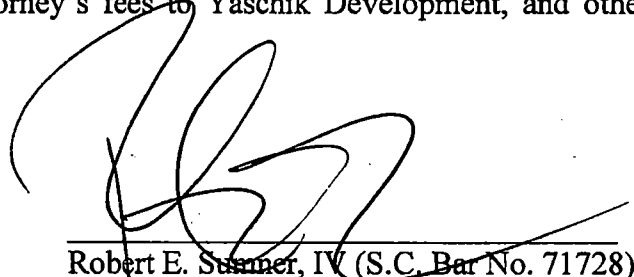
FOR A TENTH AFFIRMATIVE DEFENSE
(Third Party Beneficiary)

29. Plaintiff Club Light's claims are barred in whole or in part based on the fact that the terms of the Lease fail to include any third-party beneficiaries.

ELEVENTH AFFIRMATIVE DEFENSE
(Reservation of Rights to Assert Additional Defenses)

30. Yaschik Development specifically reserves any additional affirmative defenses as may be available to it as are revealed during the course of its investigation and/or discovery in the case, as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Plaintiff Club Light's Answer to Third-Party Plaintiff's Complaint and Counterclaim Against Third-Party Plaintiff Michael J. Quillen Family Limited Partnership and Fourth-Party Complaint Against Yaschik Development Company, Inc., Yaschik Development prays that Plaintiff Club Light's Fourth-Party Complaint be dismissed, with prejudice, and that the Court award attorney's fees to Yaschik Development, and other relief as the Court may deem just and proper.



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Charleston, SC
September 17, 2015

*Attorneys for Yaschik Development
Company, Inc., doing business as Yaschik
Enterprises, Charleston Capital
Corporation and Thomas M. Ervin*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2013-CP-10571072

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SC Court of Appeals

SEA ISLAND FOOD GROUP, LLC)
Doing business as SQUEEZE,)
)
Plaintiff,)

vs.)

YASCHIK DEVELOPMENT)
COMPANY, INC., doing business as)
YASCHIK ENTERPRISES,)
CHARLESTON CAPITAL)
CORPORATION, THOMAS M. ERVIN,)
and MICHAEL J. QUILLEN FAMILY)
LIMITED PARTNERSHIP,)

CERTIFICATE OF SERVICE

Defendants.)

QUILLEN ENTERPRISES, LLC doing)
business as THE BRICK,)

Plaintiff-Intervenor,)

vs.)

YASCHIK DEVELOPMENT)
COMPANY, INC. doing business as)
YASCHIK ENTERPRISES and)
MICHAEL J. QUILLEN FAMILY)
LIMITED PARTNERSHIP,)

Defendants.)

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2015 SEP 17 PM 2:49

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This is to certify that I have this date served a true and correct copy of **Fourth-Party Defendant Yaschik Development Company, Inc. d/b/a Yaschik Enterprises' Answer to Fourth-Party Plaintiff Top of the Bay, Inc., d/b/a Club Light's Fourt-Party Complaint** on the parties identified below by electronic mail and/or by US Mail with proper postage affixed:

M. Brooks Derrick, Esquire
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Charleston, SC 29401

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Michael Quillen Family Limited Partnership*

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And

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*Attorneys for Third-Party Defendant and Fourth-Party Plaintiff
Top of the Bay d/b/a Club Light*

Wendy Stockhausen
Wendy Stockhausen

Charleston, SC

September 17, 2015

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SC Court of Appeals

Moore & Van Allen

September 17, 2015

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

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**Re: Sea Island Food Group, LLC doing business as Squeeze v. Yaschik Development Company, Inc.
Case No. 2013-CP-10-7107
MVA File No. 029018.23**

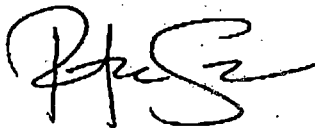
Dear Ms. Armstrong:

Enclosed for filing, please find the original and one copy of the **Fourth-Party Defendant Yaschik Development Company, Inc. d/b/a Yaschik Enterprises' Answer to Fourth-Party Plaintiff Top of the Bay, Inc. d/b/a Club Light's Fourth-Party Complaint**. Please file the original document and return the filed-stamped copy to our courier for return to me.

Thank you for your assistance in this matter.

Sincerely,

Moore & Van Allen PLLC



Robert E. Sumner, IV.

RES/wss

Enclosure: as stated

cc (w/enclosures): M. Brooks Derrick, Esquire
John T. Lay, Esquire
Curtis L. Ott, Esquire
Charles J. Baker III, Esquire
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November 20, 2015

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Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

***Re: Sea Island Food Group v. Yaschik Development Co.
Appellate Case No.: 2015-00-2187***

Dear Ms. Kitchings:

I am in receipt of your November 10 letter requesting a copy of an order or complaint that matches the caption submitted. In response to your request, I have enclosed a copy of Fourth-Party Defendant Yaschik Development Company's Answer to Fourth-Party Plaintiff's Complaint. Should this document not comply with the Court's instruction, I would welcome the opportunity to speak with you in an attempt to correct the deficiency.

Should you have any questions or require any additional information, please do not hesitate to contact me on my mobile at (843) 670-7400 or via email (bderrick@derricklawoffice.com).

With kind regards,

M. Brooks Derrick

Enclosure(s): as stated
cc: Charles J. Baker (U.S. Mail)

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