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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-1647
Appellate Case No. 2015-000044

Virgil "Ray" Passailaigue

Appellant,

v.

Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents,

RECORD ON APPEAL
Volume 2 of 2

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Certificate of Counsel

Certificate of Compliance

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

VIRGIL "RAY" PASSAILAIGUE)

Plaintiff,)

vs.)

HENRY KUZNIK, ET AL.)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-01647

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment Pursuant to SCRPC 56

Estimated Time Needed: 30 MINS.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

07/01/2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Virgil "Ray" Passailaigue	)	
	)	
Plaintiff,	)	Ca. No. : 2013-CP-10-1647
	)	
v.	)	
	)	MOTION FOR SUMMARY
Henry Kuznik, Alfred L. Saad, III,	)	JUDGMENT AND JOINDER
Paul D. Hollen, III and Thornwell	)	TO CO-DEFENDANTS' MOTION
Partners, LLC,	)	
	)	
Defendants.	)	

FILED
 2014 JUL -1 PM 12:51
 JULIE J. ARMSTRONG
 CLERK OF COURT

**PAUL D. HOLLEN III'S MOTION FOR SUMMARY JUDGMENT
JOINDER CO-DEFENDANTS' MOTIONS**

PLEASE TAKE NOTICE that the undersigned attorney for Paul D. Hollen, III ("Hollen") moves the Court of Common Pleas at the Charleston County Courthouse, Charleston, South Carolina, on the tenth (10th) day after service hereof or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an entry of judgment in favor of Hollen dismissing the claims of the named Plaintiff against the defendant under Rule 56 of the South Carolina Rules of Civil Procedure.

The basis of this motion is that the pleading, depositions, answers to interrogatories, and affidavits of record show that there is no genuine issue as to any material fact, and Defendant Hollen is entitled to summary

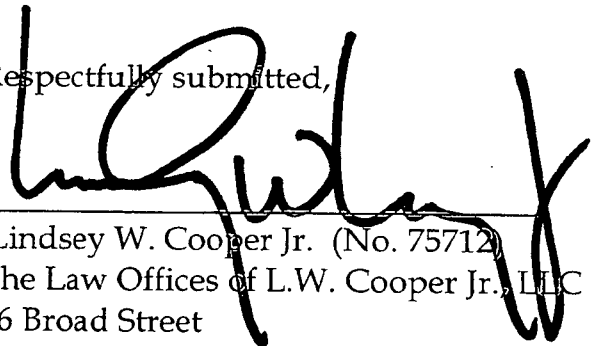
judgment as a matter of law. The primary basis is that Hollen has no liability under his guarantee because no payment is due under his note.

In addition, the Defendant Hollen joins Defendant Alfred L. Saad, III and Thornwell Partners, LLC's Motions for Summary Judgment as if Defendant Hollen fully recited herein as its basis and argument for summary judgment to the extent that it does not conflict with the arguments of Defendant Hollen contained herein. Hollen reserves the right to join additional motions if filed.

Hollen also reserves the right to supplement this motion with legal memoranda in the future with additional grounds as may be appropriate.

WHEREFORE, the Court should grant Paul D. Hollen III's motion for summary judgment.

Respectfully submitted,



Lindsey W. Cooper Jr. (No. 75712)
The Law Offices of L.W. Cooper Jr., LLC
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Facsimile: 843.375.6623

Counsel for Paul D. Hollen III

Dated: July 1, 2014
Charleston, South Carolina

13-1647

CERTIFICATE OF SERVICE

It is hereby certified that on July 1, 2014, I, Chelsea G. Brewer,
caused to be served the foregoing MOTION FOR SUMMARY JUDGMENT
to the following recipients via electronic and first-class mail to:

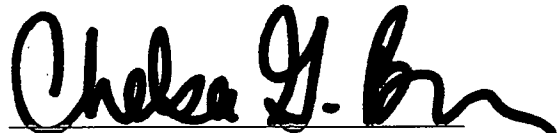
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FILED
2014 JUL -1 PM 12:51
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____


Chelsea G. Brewer, Law Clerk
The Law Offices of L.W.
Cooper, Jr., LLC



LINDSEY W. COOPER

LWC@LWCOOPER.COM

July 1, 2014

VIA FIRST-CLASS MAIL

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Ste 106
Charleston, SC 29401-2210

Re: *Virgil "Ray" Passailaigue v. Henry Kuznik, et al.*
CA No: 2013-CP-10-01647

Dear Ms. Armstrong:

Enclosed please find the original copy and one copy of Defendant Paul D. Hollen III's Motion and Order Information Form and Coversheet and Motion for Summary Judgment and Joinder to Co-Defendants' Motions with a certificate of service in the above-referenced action. Also enclosed is a \$25.00 check made payable to the Charleston County Clerk of Court for the filing fee.

Enclosed is a pre-addressed, pre-paid envelope to return to this Office a copy of the filed motion.

If you have any questions, please contact me at 843.375.6622. Many thanks.

Sincerely yours,

Chelsea G. Brewer

Enclosures: As stated.

- 1 -

36 BROAD STREET
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ROA000504

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul D.
Hollen, III and Thornwell Partners, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-01647

MEMORANDUM IN SUPPORT OF
ALFRED L. SAAD, III AND
THORNWELL PARTNERS, LLC'S
MOTION FOR SUMMARY
JUDGMENT

2014 SEP -5 PM 2:30

FILED

Defendants Alfred L. Saad, III ("Saad") and Thornwell Partners, LLC ("Thornwell") respectfully submit this memorandum in support of their motion for summary judgment dated June 30, 2014.

BACKGROUND

Plaintiff, an individual, seeks to hold all Defendants liable for a Promissory Note drawn in favor of Passailaigue Homes, Inc., a corporation that Plaintiff admits he legally dissolved, was insolvent due to ongoing creditor claims and litigation, and never distributed or assigned the Promissory Note to him. Moreover, Plaintiff brings this action despite the fact that the Promissory Note clearly states payment shall only come from the "net" proceeds of the sale of the subject property, and the undisputed evidence is that there were no available net proceeds from the sale, but rather a net loss of \$238,093.38. For these two reasons, all Defendants must be granted summary judgment.

RELEVANT FACTS

The following facts are stated in the light most favorable to the Plaintiff solely for the purpose of this motion. Defendants Saad, Henry Kuznik ("Kuznik"), and Paul D. Hollen, III ("Hollen") were all once members of defendant Thornwell Partners, LLC ("Thornwell"). Plaintiff

was also a member of Thornwell. However, Plaintiff instructed Jerry T. Saad, CPA, Thornwell's accountant, to indicate in the corporate records of Thornwell that Plaintiff had transferred his membership interest prior to 2008 to a corporation held solely by Plaintiff, Passailaigue Homes, Inc. [Ex. A, Pl.'s Depo. pp. 56:6 - 58:16].

Thornwell was a single purpose entity. [Ex. B, Saad Depo., pp. 48:18 - 49:6]. The purpose of Thornwell was to acquire and sell a piece of real estate referred to by the parties as the Dassinger Tract. [Id. pp. 49:25 - 51:11]. Plaintiff held the membership interest of an LLC that had a contract to purchase the Dassinger Tract. Defendants agreed to pay the LLC \$1 million over the contract amount in exchange for the LLC's assignment of the contract to purchase the Dassinger Tract. [Ex. A, pp. 15:3 - 16:13]. Plaintiff's limited liability company received full payment of the \$1 million obligation.

On or about November 7, 2008, Thornwell executed two (2) substantively identical copies of a promissory note in favor of Passailaigue Homes, Inc. ("Passailaigue") for the sum of \$130,000.00 (the "Note"). Plaintiff states that Passailaigue Homes, Inc. gave up its membership interest in Thornwell in exchange for the Note. [Ex. A, pp. 76:24 - 77:13]. The individual Defendants, including Saad, signed guarantees that would trigger in the event Thornwell did not meet its payment obligations under the Note. [Ex. C, Pl.'s Depo. Ex. 3].

Neither copy of the Note includes any unconditional promise to pay. Rather, first copy of the Note expressly states that "[t]his sum is to be repaid in its entirety from the *net* proceeds from the future sales of the property known as the Dassinger Tract...." [Ex. D, Pl.'s Depo. Ex. 1]. The word "net" was hand-written into the first copy of the Note. [Id.]. On the second copy of the Note, the language regarding the conditional obligation to pay is the same, but the difference is that the word "net" was actually typed into the document. [Ex. E, Pl.'s Depo. Ex. 2]. Plaintiff

testified that the word “net” was intentionally added into the Note as a result of the parties’ negotiations, that the word “proceeds” without the qualifier “net” was insufficient to reflect the parties’ agreement, and that the addition of “net” was not superfluous but was intended to carry meaning. [Ex. A, pp. 88:6 - 90:12].

After Passailaigue Homes, Inc. received the Note, Plaintiff filed for Chapter 7 bankruptcy in the United States District Court for the District of South Carolina, Case No. 11-01866 DRD. Plaintiff did not claim or disclose any personal interest in the Note during his bankruptcy, but rather he represented to the Bankruptcy Trustee that the Note was an asset of the insolvent corporation Passailaigue Homes, Inc. [Id. pp. 61:12 - 62:20].

Plaintiff testified he has received no distribution or assignment of the Note on which he now sues. [Id. pp. 46:23 - 47:14]. Plaintiff never placed Passailaigue Homes, Inc. into bankruptcy despite many ongoing creditor lawsuits against the insolvent corporation. [Id. p. 62:21 - 65:11]. Plaintiff simply dissolved Passailaigue Homes, Inc. after his personal bankruptcy. [Id. p. 46:2-12]. Plaintiff cannot testify that he ever performed “winding up” of Passailaigue Homes, Inc. or that he ever provided notice to its many creditors of its dissolution under S.C. Code Ann. §§ 33-14-106 and 107. [Id. pp. 47:15 - 48:2]. Plaintiff could not testify that he ever received a distribution from Passailaigue Homes, Inc. of any interest in the Note. [Id. pp. 48:3 - 49:15].¹

Plaintiff agrees that the Note does not say anything about the Defendants “taking any money out of their pocket” to pay the balance of the Note in the event there are not available net proceeds from the sale of the Dassinger Tract, but rather the Note requires payment solely from the net proceeds from the sale of the Dassinger Tract. [Id. pp. 84:6 - 85:1]. Plaintiff testified that he did not have any knowledge that there were any net proceeds from the sale of the Dassinger

¹ Had Plaintiff distributed the Note to himself from the insolvent corporation

Tract. [Id. p. 85:5-12; 14-19]. Plaintiff has never provided any evidence of net proceeds from which he could have been paid or any calculation demonstrating any net proceeds from which he could have been paid from the sale of the Dassinger Tract. [Id. pp. 85:2-94:14]. Plaintiff has failed to present any evidence to dispute the affidavit testimony of Jerry Saad, CPA, reflecting that the sale of the Dassinger Tract resulted in a net loss of \$238,093.38. [Id.; Ex. F].

LEGAL STANDARD

Summary judgment must be granted for Defendants based on the clear, unambiguous terms of the promissory note and guarantees. The construction of a clear and unambiguous contract presents a question of law for the court. S. Carolina Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct.App.2008). It is also a question of law whether the language of a contract is ambiguous. Id. (citing South Carolina Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001)). When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary, and popular sense. C.A.N. Enters., Inc. v. South Carolina Health and Human Servs. Fin. Comm'n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988); Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc., 362 S.C. 12, 14, 605 S.E.2d 750, 752 (Ct.App.2004).

Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it. Ebert v. Ebert, 320 S.C. 331, 338, 465 S.E.2d 121, 125 (Ct.App.1995). South Carolina courts are without authority to alter an unambiguous contract by construction or to make new contracts for the parties. C.A.N. Enters., Inc., 296 S.C. at 378, 373 S.E.2d at 587. Rather, our courts must enforce an unambiguous contract according to its terms regardless of its

wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Lindsay v. Lindsay, 328 S.C. 329, 340, 491 S.E.2d 583, 589 (Ct.App.1997).

Summary judgment must be granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. S.C. R. Civ. P. 56(c). In determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn therefrom, must be viewed in the light most favorable to the nonmoving party. BPS, Inc. v. Worthy, 362 S.C. 319, 325, 608 S.E.2d 155, 158 (Ct.App.2005). "Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by "showing" -that is, pointing out to the [trial] court- that there is an absence of evidence to support the nonmoving party's case.' " Id. (alteration in original) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). "The moving party need not 'support its motion with affidavits or other similar materials *negating* the opponent's claim.'" Id. (quoting Celotex, 477 U.S. at 323,); *see also* Richardson v. State-Record Co., 330 S.C. 562, 499 S.E.2d 822 (Ct.App.1998).

Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial. Baughman, 306 S.C. at 115, 410 S.E.2d at 545. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003).

ANALYSIS

- I. EVEN IF PLAINTIFF COULD SUE ON THE AGREEMENTS, THE PRECONDITION FOR THE OBLIGATION OF PAYMENT – THE AVAILABILITY OF NET PROCEEDS FROM THE SALE OF THE DASSINGER TRACT WITH WHICH TO PAY THE HOLDER OF THE NOTE – DID NOT OCCUR; THEREFORE DEFENDANTS MUST BE GRANTED SUMMARY JUDGMENT.**

Under the plain language of the Note, Thornwell must repay the entire balance solely from the “net” proceeds from the sale of the Dassinger Tract. Black’s Law Dictionary (9th ed. 2009) states “net” is “an amount of money remaining after a sale, minus any deductions for expenses, commissions, and taxes.” This definition is the plain and ordinary understanding of the term and the understanding of the term among accountants. [Ex. F, ¶ 6]; see www.merriam-webster.com/dictionary/net (defining “net” when used as an adjective, as “free from all charges or deductions: as remaining after the deduction of all charges, outlay, or loss” and providing usage examples such as “net earnings” and “net worth” and contrasting with the word “gross”).

The plain meaning of the word “net” controls the construction of the Note and demands the conclusion that payment under the Note was intended to have come from some amount of money remaining after the costs of the sale of the Dassinger Tract. C.A.N. Enters., Inc., 296 S.C. at 377, 373 S.E.2d at 586. Because there is no dispute that the inclusion of “net” was an intentional, negotiated term and the term has a clear, common meaning, the court cannot allow Plaintiff’s speculative and suggestive testimony to create an issue for the jury’s consideration; the services of a fact finder is not necessary to determine whether “net” means its normal, dictionary definition or, as Plaintiff states, means “that if you don’t have enough net proceeds to pay your obligations, you either have to come out of pocket with it or in my case with Passailaigue Homes had to declare bankruptcy -- I mean not Passailaigue Homes but personally.” [Ex. A. p. 87:16-21]). S. Carolina Dep’t of Transp., 379 S.C. at 655, 667 S.E.2d at 13. Dawkins,

354 S.C. at 69, 580 S.E.2d at 439.

Defendants have provided the affidavit of Jerry Saad, Thornwell's accountant, who has calculated, without contradiction from Plaintiff, the net loss Thornwell experienced on the sale of the Dassinger Tract. Plaintiff has offered zero evidence of any "net" proceeds from which Thornwell could have paid Passailaigue Homes, Inc. from the sale. Rather, Plaintiff has testified he has no knowledge of any net proceeds and cannot provide a calculation that demonstrates any net proceeds from which Passailaigue Homes, Inc. could have been paid under the Note. [Ex. A. pp. 85:2-94:14]

Since there is no evidence that Thornwell owed any payment or obligation under the promissory note, the individual defendants' liability under the plain language of the Guarantees is not triggered. [Ex. C]. Plaintiff cannot simply rely on the allegations of his pleadings, his denials, and mere speculation or suggestion to defeat summary judgment. Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010) (reversing the court of appeals and reinstating the trial court's order granting summary judgment because plaintiff failed to create a genuine issue of material fact). Therefore, all Defendants are entitled to summary judgment.

II. PLAINTIFF IS NOT IN PRIVITY OF CONTRACT WITH DEFENDANTS, AND HE IS NOT A THIRD PARTY BENEFICIARY UNDER THE PROMISSORY NOTE; THEREFORE DEFENDANTS MUST BE GRANTED SUMMARY JUDGMENT.

As is readily apparent from a cursory review of the Note and the Guarantees attached hereto, Plaintiff is not a party or a signatory to any of the agreements. Plaintiff admits that the consideration given for the Note came from Passailaigue Homes, Inc., the entity that Plaintiff testified gave up its membership interest in Thornwell in exchange for the Note. [Ex. A, p. 77:8-13]. Therefore, Plaintiff amended its complaint in an attempt to avoid a prior pending motion to dismiss by adding the allegation that Plaintiff is the "real party in interest" under the agreements.

However, the agreements themselves offer no support to Plaintiff's allegation, and therefore Defendants are entitled to summary judgment.

Generally, a third person not in privity of contract with the contracting parties does not have a right to enforce the contract. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445, 494 S.E.2d 827, 833 (Ct.App.1997) (holding that other tenants are not third-party beneficiary under lease terms regarding illegal actions in common areas); *see also* 1500 Range Way Partners, LLC v. JPMorgan Chase Bank, Nat. Ass'n, 800 F.Supp.2d 716 (D.S.C. 2011) (holding that JPMorgan was not liable under lease agreement for lease of prior bank tenant because of lack of any assignment). "However, if a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to such third person." Bob Hammond Constr. Co. v. Banks Constr. Co., 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct.App.1994) (finding no third party beneficiary relationship).

A third-party beneficiary is a party that contracting parties intend to directly benefit. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (holding real estate listing broker is not a third party beneficiary of a real estate sales contract). South Carolina courts have stated, "in order to determine whether the parties intended a nonsignatory to be a third party beneficiary, we must look within 'the four corners of the [contract].'" Brantley v. Republic Mortgage Ins. Co., 424 F.3d 392, 396 (4th Cir. 2005) (quoting R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n, 384 F.3d 157, 164 (4th Cir.2004) and Gardner v. Mozingo, 293 S.C. 23, 358 S.E.2d 390, 392 (1987) and holding mortgage insurer could not compel mortgagors to arbitrate FCRA claim under their arbitration agreement with mortgagee). Third party beneficiary status is an "exceptional privilege" and, to avail oneself of this exceptional

privilege, a party must “at least show that [the contract] was intended for his *direct* benefit.” Glass v. United States, 258 F.3d 1349, 1354 opinion amended on reh'g, 273 F.3d 1072 (Fed. Cir. 2001) (emphasis in original) (quoting German Alliance Ins. Co. v. Home Water Supply Co., 226 U.S. 220, 230 (1912)).

None of the agreements at issue make any reference to Plaintiff individually. The agreements do not include any statements or words to suggest any intent by the parties that Plaintiff - and not Passailaigue Homes, Inc.’s future shareholders, assigns, successors, creditors, etc. – benefit personally from the payment of the amount due under the Note. Plaintiff points to no other fact than his status as a former shareholder of this now dissolved, insolvent company as the basis for his claim to sue under the corporation’s Note and guarantees. Therefore, Plaintiff’s contention is insufficient as a matter of law to establish third party beneficiary status. Goode, 329 S.C. at 445, 494 S.E.2d at 833; Bob Hammond Constr. Co., 312 S.C. at 424, 440 S.E.2d at 891; *see also* Glass, 258 F.2d at 1354 (holding that shareholders, simply by virtue of their shareholder status, do not have third-party beneficiary status under corporate contracts and citing additional authorities with the same holdings); Macksey v. Egan, 633 N.E.2d 408, 411-412 (Mass.App.Ct. 1994) (reversing lower court and holding that shareholder was not a third-party beneficiary to corporation’s contract with venture capitalists);

If this court concludes Plaintiff is a third-party beneficiary solely by virtue of his status as a shareholder of Passailaigue Homes, Inc. and allow him to proceed to trial in this case, this court would indicate that all shareholders and members of corporate entities have third-party beneficiary standing to sue on corporate obligations by virtue of the mere possibility of receiving a distribution from the corporation. *See* AMESCO Exports v. Associated Aircraft Mfg. & Sales, 977 F.Supp. 1014, 1016 (C.D.Ca. 1997) (“But the contract was not entered into by the

corporation with the intention of fulfilling an obligation to pay money to [shareholder]. Rather, as a shareholder of AMESCO, he receives an incidental benefit from the contract. To find otherwise would indicate that any shareholder may sue on any contract upon which the corporation was a signatory. This is clearly too broad a finding.”) (vacated on other grounds); *see also Citicorp Intern. v. Western Oil & Refining*, 771 F.Supp. 600, 604 (S.D.N.Y 1991) (holding shareholders were not intended third-party beneficiaries of corporation’s agreement); *Tredennick v. Bone*, 647 F.Supp.2d 495, 498. W.D.Pa. 2007 (Granting motion to dismiss and holding that shareholder was not a third-party beneficiary to the contract for tax services between corporation and accountant). Such a broad, sweeping conclusion is unsupported by the weight of binding and persuasive authority.

CONCLUSION

For the reasons stated herein, Defendants Saad and Thornwell respectfully request that the court issue an order granting Defendants summary judgment on Plaintiff’s claim and granting Saad and Thornwell’s prayer for relief under S.C. Code Ann. § 15-36-10 et. seq. or, in the alternative, allowing Saad and Thornwell to submit a motion for such relief.

Respectfully submitted,



Shaun C. Blake

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Attorneys for Defendants Alfred L. Saad, III and
Thornwell Partners, LLC

September 4, 2014

EXHIBIT A

1 STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2 COUNTY OF CHARLESTON
3

4 VIRGIL "RAY" PASSAILAIGUE,

5 Plaintiff,

6 vs.

CASE NO. 2013-CP-10-1647

7 HENRY KUZNIK, ALFRED L. SAAD, III, PAUL D. HOLLEN,
8 III and THORNWELL PARTNERS, LLC,

9 Defendants.
10

11 DEPOSITION OF: VIRGIL R. PASSAILAIGUE

12 DATE: January 10, 2014

13 TIME: 10:09 AM

14 LOCATION: Law Offices of
15 The Richter Firm, LLC
16 622 Johnnie Dodds Boulevard
Mount Pleasant, SC

17 TAKEN BY: Counsel for the Defendant
18 Henry Kuznik

19 REPORTED BY: TERRI L. BRUSSEAU, RPR,
CERTIFIED REALTIME REPORTER
20

21 A. WILLIAM ROBERTS, JR., & ASSOCIATES

22 Fast, Accurate & Friendly

23 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

24 Columbia, SC Greenville, SC Charlotte, NC
(803) 731-5224 (864) 234-7030 (704) 573-3919
25

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ALSO PRESENT: Henry Kuznik
Alfred L. Saad, III
Paul D. Hollen, III

(INDEX AT REAR OF TRANSCRIPT)

1 STIPULATION

2 It is stipulated by and among Counsel
3 that this deposition is being taken in accordance
4 with the South Carolina Rules of Civil Procedure,
5 Rule 30; that all objections as to Notice of this
6 deposition are hereby waived; that all objections
7 except as to form are reserved until the time of
8 trial; and that the deponent does not waive reading
9 and signing of this deposition.

10 * * * * *

11 VIRGIL R. PASSAILAIGUE

12 being first duly sworn, testified as follows:

13 EXAMINATION

14 BY MR. BLEEKER:

15 Q. Would you please state your full name.

16 A. Virgil Ray Passailaigue.

17 Q. Mr. Passailaigue, you have been present
18 at two or three depositions here in this office, is
19 that correct?

20 A. That's correct.

21 Q. And how are you feeling today?

22 A. Wonderful.

23 Q. Are you under any drugs or alcohol, any
24 kind of substance that would influence your ability
25 to tell the truth today?

1 marked for identification.)

2 BY MR. BLEEKER:

3 Q. Now I'm going to hand you what has been
4 marked Exhibit 4 and ask you to identify that.

5 A. This appears to be where they paid me
6 the 1,022,900 dollars.

7 Q. Appears to be --

8 A. For the assignment of the contract.

9 Q. Okay. That's -- it's a note, is that
10 correct?

11 A. That's what it says.

12 Q. A promise to pay?

13 A. Yes. I say it does. A promise to pay.

14 Q. It's a note.

15 A. It's a note. Yes, it says, it is
16 expressly agreed and declared that this note is
17 given as consideration for and under the terms of
18 that certain assignment or contract of even date
19 attached hereto as Exhibit A.

20 Q. And is the contract attached?

21 A. It doesn't have to this.

22 Q. This one is not attached but when you
23 received that, did it have a contract?

24 A. I don't remember whether it was or not,
25 I do not know.

1 Q. Tell us about the contract that we're
2 talking about. You being given that note, tell us
3 about those contracts.

4 A. The contract that I wrote to the
5 Dassinger Brothers was for -- I don't remember the
6 exact number but then when I got a contract to
7 bring the other gentlemen in, they were paying me a
8 million dollars over what I had contracted for.

9 Q. And there was a little bit more than a
10 million dollars?

11 A. Correct. It was 22,900 dollars because
12 we had the zoning changed on the property and
13 that's what it cost.

14 Q. All right. And --

15 A. There could have been some other
16 incidental expenses in there, I don't know if it
17 was a survey or what, but any expenses.

18 Q. Approximately how much were the
19 Dassinger contracts?

20 A. 2.5, I believe, total.

21 Q. 2.5 million?

22 A. I think so.

23 Q. And there are two brothers?

24 A. Yes, sir, William and Harold Dassinger.

25 Q. They contracted to sell the property to

1 A. No, sir.

2 Q. When was the last time you recall
3 operating through Passailaigue Homes, Inc.?

4 A. I don't recall.

5 Q. Do you recall it was prior or after
6 your bankruptcy?

7 A. We dissolved it after bankruptcy if I
8 remember correctly.

9 Q. You say we. Who was involved in the
10 dissolution?

11 A. My sister filled out the dissolution
12 papers, I signed them and sent them in.

13 Q. And which sister was that?

14 A. Mary Cartrette, works for Elmo
15 Ilderton.

16 Q. And he's your CPA?

17 A. Yes.

18 Q. Mary did that as an assistant, she
19 wasn't a shareholder, correct?

20 A. That's correct.

21 Q. You were the sole shareholder?

22 A. Yes, sir.

23 Q. And Passailaigue Homes, Inc. is the
24 beneficiary -- or the lender on the 130,000 dollar
25 note, is that correct?

1 A. That's correct.

2 Q. Did Passailaigue Homes, Inc. ever make
3 an assignment to you of that interest?

4 A. I don't recall.

5 Q. You don't recall ever during the
6 winding-up period of Passailaigue Homes, Inc. ever
7 making a distribution of the interest of that note
8 to you individually?

9 A. I don't recall.

10 Q. Do you have any paperwork in your
11 possession that would reflect that that assignment
12 took place?

13 A. I don't know. I don't know if there's
14 something somewhere. I have no idea.

15 Q. Our corporation statute I'll represent
16 to you has a process for corporate dissolution and
17 it requires a notice to creditors. Are you aware
18 of that?

19 A. I think I am, yeah.

20 Q. What notice did you provide the public
21 and your creditors of the dissolution of
22 Passailaigue Homes, Inc.?

23 A. I'm not so certain. I don't know.

24 Q. Are you aware of any notice that you
25 provided any gentlemen sitting in here today of

1 notice of the dissolution of that entity?

2 A. No, I'm not.

3 Q. Okay. How is it then that you have an
4 interest in the note that you're asserting in this
5 lawsuit?

6 A. Well, who would own -- who would have
7 owned Passailaigue Homes?

8 Q. Does anybody own Passailaigue Homes at
9 this point?

10 A. Well, it's dissolved.

11 Q. And there was no distribution to you of
12 the assets of Passailaigue Homes, correct?

13 MR. NAPOLSKI: Object to the form.

14 BY MR. BLAKE:

15 Q. Was there a distribution of any assets
16 of Passailaigue Homes, Inc. to you upon its
17 dissolution?

18 A. I guess I don't understand the
19 question. I don't really know what you're saying.
20 I'm sorry.

21 Q. Okay. Did you recognize on your
22 personal taxes the year that you dissolved
23 Passailaigue Homes, Inc. any distribution from
24 Passailaigue Homes, Inc. to you of the assets of
25 that entity?

1 A. I don't know.

2 Q. Who would be able to answer that
3 question?

4 A. Elmo Ilderton would be able to do that,
5 I assume.

6 Q. Okay. Are you aware of any
7 documentation that you've provided to him that
8 would demonstrate the dissolution activities you
9 took with -- in connection with that entity?

10 A. Say the question again, please.

11 Q. Are you aware of any documentation that
12 you provided your CPA regarding the activities you
13 took surrounding the dissolution of that entity,
14 Passailaigue Homes?

15 A. I'm not. I don't remember.

16 Q. Okay. Passailaigue -- there's an LLC
17 that I think is the actual party of the 1.2 million
18 dollar note, is that correct? Ray Passailaigue,
19 LLC is the lender on the 1,022,900 dollar note, is
20 that correct?

21 A. Yes.

22 Q. And your testimony is that note was
23 paid off for 1,022,900 dollars, correct?

24 A. That's correct.

25 Q. And that was for the assignment of your

1 Q. Four paragraphs down on the first page.

2 A. Oh, from plaintiff's attorney. Yeah.

3 We had to have some conversations with

4 Mr. Nossokoff about just different odds and ends.

5 Everything I did I had to go through him.

6 Q. Now, you initially took your membership
7 interest in Thornwell Partners individually,
8 correct?

9 A. Correct.

10 Q. And that changed later?

11 A. Yes.

12 Q. Did that change on the advice of your
13 bankruptcy counsel?

14 A. No, it did not.

15 Q. Well, why did that change?

16 A. I don't recall why we did it.

17 Q. If I show you some of the e-mails that
18 were being exchanged between you and the other
19 parties during that time period, would that help
20 refresh your recollection?

21 A. Yeah, probably so. Where did the
22 e-mails come from?

23 MR. NAPOLSKI: Are we getting into
24 the --

25 MR. BLAKE: One of the e-mails you

1 produced in discovery --

2 MR. NAPOLSKI: Okay.

3 MR. BLAKE: -- right? There's an
4 e-mail that you produced in the stack of discovery?
5 We can go off the record.

6 (Off-the-record conference.)

7 (DFT. EXH. 10, E-mail chain dated
8 6/22/09 to Ray Passailaigue from Jerry Saad, Saad
9 000093 to 000096, was marked for identification.)

10 BY MR. BLAKE:

11 Q. I'm going to hand you what we've marked
12 as -- what I'm going to mark Defendant's 10, Saad
13 000093 to 96. Will you take a moment, please, to
14 look over that. If you need to discuss with
15 counsel --

16 MR. NAPOLSKI: Yeah. These I did not
17 produce so if you don't mind, we're going to
18 take -- let's take these out.

19 MR. BLAKE: That's fine.

20 (A recess transpired.)

21 BY MR. BLAKE:

22 Q. Mr. Passailaigue, did you have an
23 opportunity to go through what we've marked as
24 Defendant's Exhibit Number 10?

25 A. I did.

1 Q. Did that refresh your recollection
2 about your conversations with Mr. Hollen and
3 Mr. Saad regarding changing the membership interest
4 to reflect Passailaigue Homes as the member?

5 A. Only from a standpoint I vaguely
6 remember the conversation but that's about it. I
7 don't remember the e-mails.

8 Q. Okay. Do you remember why you wanted
9 it to be Passailaigue Homes?

10 A. I do not.

11 Q. But you'll agree it was your idea to
12 change it --

13 A. Yes, sir.

14 Q. -- from Ray Passailaigue to
15 Passailaigue Homes?

16 A. Yes, sir.

17 Q. What benefit did you receive from
18 making that change?

19 A. I do not remember.

20 Q. Was it a tax benefit?

21 A. I don't remember.

22 Q. Do you know if Passailaigue Homes, Inc.
23 took any tax benefits as a result of its membership
24 interest in Thornwell Partners?

25 A. I do not remember.

1 bankruptcy.

2 MR. NAPOLSKI: It hasn't been produced
3 by us and I haven't received it from you.

4 MR. BLAKE: Do you need to discuss this
5 with him?

6 MR. NAPOLSKI: I would like to because
7 I haven't seen that before.

8 MR. BLAKE: Okay.

9 MR. NAPOLSKI: Thank you.

10 (A recess transpired.)

11 BY MR. BLAKE:

12 Q. Mr. Passailaigue, did you have an
13 opportunity to look over Defendant's Exhibit Number
14 11 with your counsel?

15 A. Briefly.

16 Q. I'm only going to draw your attention
17 to what's been Bates labeled Saad 121 in this
18 exhibit and I'm pointing to you Entry Number 32 on
19 that page. I'd ask you to read that and see if it
20 refreshes your recollection on the assets that you
21 identified through your bankruptcy.

22 A. It says, Passailaigue Homes, 100
23 percent ownership. Real estate assets under
24 foreclosure. Corporation -- that should be has --
25 corporation HS substantial debt. Corporation has a

1 note receivable from Thornwell Partners, LLC to
2 130,000 dated 11/7/2008, contingent on sale of
3 Thornwell Partners real estate holdings, with
4 personal guarantees for the note receivable, there
5 was insufficient value to benefit the estate. The
6 trustee abandons now.

7 Q. So at the time you went into
8 bankruptcy, did Passailaigue Homes, Inc. have
9 liabilities that exceeded the 130,000 dollars?

10 A. Yes.

11 Q. Do you have a recollection of what the
12 liabilities of Passailaigue Homes, Inc. was during
13 that time?

14 A. I think it was somewhere around 12
15 million dollars.

16 Q. So would you agree with the
17 determination of the trustee here that Passailaigue
18 Homes, Inc. was insolvent even if the 130,000
19 dollar note was collectible?

20 A. Yes.

21 Q. Did you ever put Passailaigue Homes,
22 Inc. into bankruptcy?

23 A. No, sir.

24 Q. There was no formal lining up that
25 you're aware of that took place?

1 A. There was no bankruptcy on Passailaigue
2 Homes.

3 Q. You just simply dissolved it is your
4 testimony, correct?

5 A. It's in the paperwork, yes, sir.

6 Q. Yeah. What happened with the creditors
7 of Passailaigue Homes, Inc., were they made whole?

8 A. No, sir, not that I know of.

9 Q. Do you have a feel for the rough losses
10 that the creditors of Passailaigue Homes, Inc.
11 experienced in connection with this dissolution?

12 A. Not at all.

13 Q. Did you ever reduce that liability from
14 12 million dollars down to a lesser number prior to
15 this dissolution?

16 A. No, sir.

17 Q. So is it fair to say that the creditors
18 roughly experienced a 12 million dollar loss?

19 A. No, sir.

20 Q. How would you characterize the loss the
21 creditors of Passailaigue Homes, Inc. experienced
22 during that time period?

23 A. Whatever real estate they sold they
24 recovered some of that money. I don't know what
25 they sold the properties for.

1 Q. So the assets that were held in
2 Passailaigue Homes were primarily real estate?

3 A. Yes, sir.

4 Q. And those assets were foreclosed upon?

5 A. Yes, sir.

6 Q. And the creditors were primarily
7 lending institutions?

8 A. Yes, sir.

9 Q. And so you're saying that those assets
10 were short of the obligations that were owed but
11 you're not sure how short?

12 A. Not even close. Don't even have an
13 idea.

14 Q. Did they pursue deficiency judgments
15 against you?

16 A. They did.

17 Q. Were those resolved through your
18 bankruptcy?

19 A. Yes, they were in Berkeley County, not
20 in Charleston County.

21 Q. What happened in Charleston County?

22 A. Waiting on it to come up on the docket.

23 Q. They're just submitting?

24 A. Yes, sir.

25 Q. Are those creditors in Charleston

1 County aware that you're pursuing this action on
2 this note that was once an asset of Passailaigue
3 Homes, Inc.?

4 A. Do not know.

5 Q. And the actions that did take place in
6 Berkeley County were foreclosure actions still?

7 A. Yes, sir.

8 Q. And the Charleston actions are
9 foreclosure actions where they're pursuing a
10 deficiency against you?

11 A. Yes, sir.

12 Q. Do you know the name of the specific
13 lenders that are pursuing those actions?

14 A. I know a few but I don't know them all.

15 Q. If you can just name the ones you can.

16 A. Sun Trust is one, Southcoast Community
17 Bank is another. There are several others but I
18 just don't remember. Sun Trust is the largest one.

19 Q. Okay. When the K-1's were amended to
20 reflect Passailaigue Homes as the real member
21 throughout the life of Thornwell Partners, LLC, you
22 received a new K-1, correct?

23 A. I assume I did.

24 Q. Did you include the amended K-1 in your
25 tax returns?

1 A. Doesn't look -- I don't know who that
2 person is.

3 Q. Okay. Do you recall signing that
4 document in front of anyone named Sharon or
5 Shannon?

6 A. No, I don't.

7 Q. Okay. Look at 13 with me if you would,
8 please.

9 A. All right.

10 Q. So do you recognize either witness?

11 A. I do not.

12 Q. Is Vance Grady a name that rings a
13 bell? Vance Grady?

14 A. No, sir, it does not.

15 Q. You would agree that you personally are
16 not the maker of either one of those notes, is that
17 correct?

18 A. The promissory note?

19 Q. Either note. Either promissory note,
20 the one -- the 1,022,000 or the 130,000 dollars,
21 correct?

22 A. I don't know who made it up. I don't
23 remember. I don't know if -- I don't know.

24 Q. My question is because the 130,000
25 dollar promissory note recites that there was

1 actually 130,000 dollars lent. You personally
2 never actually gave 130,000 dollars in exchange for
3 that note, is that correct?

4 A. That is correct, I did not.

5 Q. And neither did Passailaigue Homes,
6 correct?

7 A. That is correct.

8 Q. Passailaigue Homes -- correct me if I
9 mischaracterize your testimony. Passailaigue Homes
10 gave up its membership interest in Thornwell
11 Partners in exchange for the 130,000 dollar note,
12 that's your testimony, correct?

13 A. That is correct.

14 Q. Okay.

15 A. To get me out of the membership.

16 Q. Now, that's -- would you have signed an
17 agreement -- well, how about this. Would you have
18 signed a note -- would you have signed an operating
19 agreement giving up your interest six months
20 earlier without that note in hand if it was the
21 consideration for the note?

22 A. I don't know. I have no idea. Don't
23 remember. Don't know what I would have done back
24 then.

25 Q. So as a business practice would it be

1 A. To whom?

2 Q. To any party.

3 A. Not that I recall.

4 Q. Okay. And I'm referring for the record
5 to Page Saad 000079.

6 You would agree that the promissory
7 note for 130,000 dollars, both versions that you
8 discussed with Mr. Bleeker says that the sum to be
9 repaid is, quote, entirely from the net proceeds
10 from the future sales of the property known as the
11 Dassinger tract, correct?

12 A. Yes.

13 Q. Even if something is negative?

14 A. Even if something is negative, that's
15 the net proceeds.

16 Q. How can you be paid out of negative
17 proceeds?

18 A. The money out of your pocket.

19 Q. It doesn't say anything about them
20 taking any money out of their pocket in this note?

21 A. No, sir.

22 MR. NAPOLSKI: Object to the form.

23 BY MR. BLAKE:

24 Q. In fact, it says you would be repaid
25 entirely from the net proceeds, correct?

1 A. Yep.

2 Q. Can you do a net proceeds calculation
3 on this transaction for me here today?

4 A. No, sir.

5 Q. Well, do you have any knowledge in fact
6 there are net proceeds?

7 A. No, sir, I don't.

8 Q. So you brought this action without
9 knowing in fact whether or not there were any net
10 proceeds?

11 MR. NAPOLSKI: Object to form.

12 THE WITNESS: Don't know.

13 BY MR. BLAKE:

14 Q. What have you done to determine whether
15 or not there are net proceeds?

16 A. I let my attorneys handle it.

17 Q. Okay. And have you identified any net
18 proceeds to date?

19 A. I have not.

20 Q. Okay. And if there are no net
21 proceeds, you'd agree there's no amount due?

22 MR. NAPOLSKI: Object to form.

23 THE WITNESS: That would be between the
24 attorneys. The attorneys would have to answer
25 that.

1 BY MR. BLAKE:

2 Q. Okay. Which attorneys would have to
3 answer that?

4 A. You guys. Hold on one second.

5 (Off-the-record conference.)

6 THE WITNESS: All right, what's the
7 question? I'm sorry.

8 BY MR. BLAKE:

9 Q. Well, I'm trying to determine how I
10 can before we go to trial because when we go to
11 trial I'm just going to tell you I'm going to put
12 you on the stand with a whiteboard and ask you to
13 do a net proceeds calculation and I need to see
14 that before we get in there so I know what your
15 answer is going to be. So what do I need to do to
16 get an answer from you regarding the net proceeds
17 calculation?

18 A. Put your numbers on the board and if
19 you're short, you got to make it up out of your
20 pocket.

21 Q. And you say that the note supports that
22 conclusion? Let me word that -- you agree that the
23 only basis for that opinion is this note, correct?

24 A. Say that one more time.

25 Q. The only basis for that opinion, your

1 right, in other words, are determined under this
2 note, true?

3 A. It is my opinion that when the property
4 is sold, transferred, whatever --

5 Q. Right.

6 A. -- then whoever has to -- the three of
7 them need to make up the difference and pay the
8 note off.

9 Q. And that obligation arises under this
10 note, correct? It doesn't arise from any other
11 source?

12 A. No.

13 Q. So it's your contention that the
14 language of this agreement then supports your
15 opinion?

16 A. It's my opinion that if you don't have
17 enough net proceeds to pay your obligations, you
18 either have to come out of pocket with it or in my
19 case with Passailaigue Homes had to declare
20 bankruptcy -- I mean not Passailaigue Homes but
21 personally.

22 Q. Right. And again, that opinion is not
23 from any outside agreement that you have with any
24 other parties, it's from this note?

25 A. It is my opinion and when we made the

1 promissory note and we had the personal guarantee
2 that if whatever, they would be responsible for the
3 130,000 dollars, business-wise or personal. Once
4 the property is sold, they needed to pay the
5 130,000 dollars.

6 Q. And you reduced that agreement to
7 writing, correct?

8 A. Yes.

9 Q. And that agreement is the promissory
10 note, one of these two promissory notes, you're not
11 sure which one, correct?

12 A. No.

13 Q. One of those two promissory notes
14 reflects that agreement and then the personal
15 guarantees, correct?

16 A. The personal guarantee overrides
17 probably the promissory note, I guess, I don't
18 know.

19 Q. And you would agree in both of those
20 documents the word net was specifically added in,
21 correct?

22 A. By someone.

23 Q. Right. It was actually handwritten on
24 this one, correct?

25 A. And then typed in.

1 Q. And then typed in on another one?

2 A. Yes.

3 Q. So initially it just says proceeds,
4 right?

5 A. Yes.

6 Q. Didn't have any net effect at all?

7 A. That's correct.

8 Q. Profit or loss, correct?

9 A. That's correct.

10 Q. And then later the word net was added
11 in, true?

12 A. I agree with that, um-hum.

13 Q. And the word net carries some meaning,
14 you agree with that, right?

15 A. I assume it does, yes.

16 Q. I mean, you wouldn't have agreed to it
17 to be added in if it was a superfluous word, would
18 you?

19 A. No, it depends on your terminology the
20 way you understand it.

21 Q. I understand. But you were having
22 conversations during this time, right, you just
23 testified to that?

24 A. Yes.

25 Q. And your conversations were reduced to

1 writing and those writings were then amended to
2 reflect those conversations, correct?

3 A. That's correct.

4 Q. And they were to include the word net?

5 A. I assume so, yes.

6 Q. Proceeds wasn't enough, correct?

7 A. That's right. Maybe they put it in
8 there, maybe they wanted it.

9 Q. And you agreed to it?

10 A. I was okay with that.

11 Q. And you agreed to it?

12 A. Yes. Could have gone either way.

13 Q. And as we sit here today you're aware
14 of no net proceeds, correct?

15 A. I don't know whether there were or not.

16 Q. And you would defer to the
17 accountant -- the accounting testimony, whatever it
18 ends up being, if there's no net proceeds you don't
19 dispute that either, correct?

20 A. No, not necessarily.

21 Q. Well, if you don't have any -- I need
22 to know the basis on which you're going to dispute
23 that.

24 A. Suppose they transfer the property and
25 did it for whatever reason, just say that I owned

1 the property and I transferred it to Joe Blow for
2 no money. Well, there are no net proceeds. So
3 something could happen. Maybe they took out a loan
4 and took the property and then they're getting a
5 monthly income, I don't know.

6 Q. But those would be the net proceeds
7 then, correct?

8 A. No, not necessarily because there
9 wouldn't be any net proceeds according to what
10 you're saying but there's a way to hide it. And
11 are they hiding it? I don't know. I have no idea
12 whether they're hiding it or not.

13 Q. So one way you might disagree with
14 whatever the accounting testimony is is if you can
15 discover some type of fraud they're committing to
16 hide the net proceeds, correct?

17 A. I don't know how to answer that because
18 I don't know.

19 Q. Okay. Besides them hiding net
20 proceeds, what other basis would you use to dispute
21 any accounting testimony as to what the actual net
22 proceeds are?

23 A. I have -- I guess you'd have to do a
24 forensic accounting of it, of everything that
25 happened with Thornwell and all the checking

1 accounts and do a forensic analysis to see exactly
2 what happened.

3 Q. And you'd agree that Jerry Saad was the
4 bookkeeper for that period?

5 A. I have no idea.

6 Q. You had many communications with Jerry
7 Saad surely.

8 A. But I'm not sure.

9 Q. Did he issue your K-1's?

10 A. He did.

11 Q. Did you pay him for issuing your K-1s?

12 A. I did.

13 Q. And you would agree that he was
14 handling other financial matters during that time
15 period for this company?

16 A. I assume he was.

17 Q. Okay.

18 A. I'm not a hundred percent sure but I
19 assume he was.

20 Q. You wouldn't have been e-mailing with
21 him if he wasn't, would you have?

22 A. I wouldn't think so but I'm not a
23 hundred percent certain either. I would assume he
24 is.

25 Q. Are you aware of any other accountants

1 that were being used by --

2 A. No, sir, I am not.

3 Q. What point did you stop being involved
4 in the Thornwell Partners activity?

5 A. Once we signed the promissory note and
6 once we signed the personal guarantee I was out of
7 it.

8 Q. You were no longer affiliated with any
9 of their business?

10 A. Um-um.

11 Q. During 2008 are you aware of anyone
12 besides Jerry Saad that did the bookkeeping for
13 Thornwell Partners?

14 A. I don't know of anybody other than
15 Jerry Saad that did the books but that doesn't mean
16 that I know.

17 Q. Do you know anyone else in a better
18 position than Jerry Saad to discuss the financial
19 transactions that took place?

20 A. I've never met Jerry Saad, I don't
21 know.

22 Q. He's been identified by every party he
23 is a witness in this case.

24 A. Okay.

25 Q. In your discovery responses. What do

1 you anticipate Jerry Saad would testify about in
2 this case?

3 A. I have no clue. Sorry.

4 Q. But as we sit here today there's nobody
5 else that you would tell me on the stand at trial
6 disregard Jerry Saad's testimony because this is
7 the guy that has the information, correct?

8 A. I'm telling you I don't know.

9 Q. Okay.

10 A. Maybe there is somebody that I don't
11 know.

12 Q. Okay.

13 A. Maybe there's a second batch of books.
14 I don't know. I have no idea.

15 MR. BLAKE: That's all the questions I
16 deposit.

17 EXAMINATION

18 BY MS. JOHNSON:

19 Q. Sorry if anything's a little bit
20 duplicative. Sometimes hearing a question asked a
21 different way helps. Will you take a look at
22 Exhibit 11 again for me. This is the TFR from your
23 bankruptcy. - Should be a big thick --

24 A. Okay.

25 Q. And I have different page numbers on my

EXHIBIT B

COPY

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF ALFRED L. SAAD, III
AND RULE 30(b)(6) THORNWELL PARTNERS, LLC

VOLUME I NOVEMBER 5, 2013

VIRGIL "RAY" PASSAILAIGUE,
Plaintiff,

vs.

CASE NO. 2013-CP-10-1647

HENRY KUZNIK; ALFRED L. SAAD, III; PAUL D.
HOLLEN, III; AND THORNWELL PARTNERS, LLC,

Defendants.

DEPONENT: ALFRED L. SAAD, III
DATE: NOVEMBER 5, 2013
TIME: 11:11 A.M.
LOCATION: THE RICHTER FIRM
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

THE RICHTER FIRM

BY: LAWRENCE E. RICHTER, JR.

PATRICK T. NAPOLSKI, ESQ.

622 Johnnie Dodds Boulevard

Mount Pleasant, SC 29465

ON BEHALF OF THE DEFENDANT HENRY KUZNIK:

LAW OFFICE OF JOHN M. BLEECKER, JR.

BY: JOHN M. BLEECKER, JR., ESQ.

89 Broad Street

Charleston, SC 29401

ON BEHALF OF THE DEFENDANT ALFRED L. SAAD, III:

ADAMS AND REESE, LLP

BY: SHAWN BLAKE, ESQ.

1501 Main Street, 5th Floor

Columbia, SC 29202

ON BEHALF OF THE DEFENDANT PAUL D. HOLLEN, III:

THE LAW OFFICE OF L. W. COOPER, JR.

BY: LINDSAY JOHNSON, ESQ.

36 Broad Street

Charleston, SC 29401

ALSO

PRESENT: Virgil "Ray" Passailaigue

Henry Kuznik

Paul D. Hollen, III

- - -

I N D E X

EXAMINATION

By MR. RICHTER

4

By MS. JOHNSON

52

CERTIFICATE OF NCRA REGISTERED

54

PROFESSIONAL REPORTER

DEPONENT ERRATA SHEET

55

EXHIBITS

ALFRED L. SAAD, III VOLUME I 11/05/2013
Exhibit No. 1-A 33

1 ALFRED L. SAAD, III,
2 having been first duly sworn, was examined and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. RICHTER:

7 Q. Would you state your full name, please.

8 A. Alfred Louis Saad.

9 Q. And how do you spell "Saad"?

10 A. S-A-A-D.

11 Q. And your address, please?

12 A. 1030 Lawrence Street, Columbia, South
13 Carolina.

14 Q. Okay. Mr. Saad, have you ever been
15 through this deposition process previously?

16 A. Once.

17 Q. Okay. You were examined once before; is
18 that right?

19 A. Yes.

20 Q. Well, I'm required by the rules to tell
21 you that this is a deposition process. I will
22 try to pose to you narrow, direct, understandable
23 questions; and I'd ask you to listen to those.
24 And if you can answer with narrow, direct
25 responses. You have the right to explain it or

1 those two. There's Thornwell Partners. I'm
2 sorry. Thornwell Investors, LLC, you and
3 Mr. Hollen have anything to do with this
4 transaction we're talking about; or is it only
5 Thornwell Partners, LLC?

6 A. Thornwell Investors has no -- it's a
7 defunct LLC.

8 Q. And never really did anything, it sounds
9 like.

10 A. No.

11 Q. So the -- the interested party in the
12 transaction we're talking about from your side of
13 the table is who?

14 A. Partners.

15 Q. Thornwell Partners, LLC?

16 A. Right.

17 Q. Okay. Thank you.

18 Now, the -- as to the Thornwell Partners,
19 LLC, who is the manager of that entity?

20 A. I don't -- I don't recall. I think
21 it's --

22 Q. Okay. As to this -- well, as to the
23 transactions that Thornwell Partners, LLC, may
24 have been involved in over time, other than the
25 transaction that we're concerned with in this

1 litigation, was it involved in other
2 transactions?

3 A. No. Just the acquisition of this land.

4 Q. Is it fair to say that that was the
5 single business purpose?

6 A. Single business purpose, yes.

7 Q. Okay. And as to the business of
8 Thornwell Partners, LLC, is that business and its
9 activities reflected in the testimony that you
10 gave earlier when I was examining you as an
11 individual?

12 A. Yes.

13 Q. Okay. Is there anything that you would
14 add to that, anything else that we should know
15 about Thornwell Partners, LLC; or do you feel
16 like you fully summed it up?

17 A. Thornwell Partners, LLC, is also a
18 retired entity. It doesn't exist anymore.

19 Q. As of today. I mean, by now.

20 A. As of when I sold the last tract.

21 Q. So it's not in existence anymore.

22 A. No. I mean, I didn't really actually
23 sign something, whatever you do to disengage it
24 but, you know, I -- it doesn't operate anymore.

25 Q. Well, as I recall what you testified to

1 about Thornwell Partners, LLC, you agreed that it
2 made a note for a million -- I want to say
3 1,022,900 dollars or 23,900 dollars.

4 A. Yes.

5 Q. And that you paid that note in full, and
6 I think you --

7 A. Correct.

8 Q. Okay. And then I think you said you
9 didn't recall making a hundred -- that entity or
10 members of that entity --

11 A. That's correct.

12 Q. -- making the 130,000 dollar note that
13 we've been discussing here today.

14 A. That's right.

15 Q. Okay. And that you didn't recall the
16 guarantee agreement for -- for the 130,000 dollar
17 note that we've been talking about.

18 A. That's correct.

19 Q. Beyond that, was there -- was there any
20 other business transaction engaged in by -- I
21 realize you're financed. You went to a bank.
22 You told us that. That was sort of the third
23 thing you told us by Thornwell Partners, LLC.

24 Other than that, was there any other
25 business that Thornwell Partners, LLC, did?

1 A. Nothing other than this -- this million
2 dollar transaction.

3 Q. And then -- and then at the end of the
4 day, Mr. Kuznik took a part, paid for it. You
5 took a part, paid for it. And now none of it --

6 A. Exists.

7 Q. It doesn't exist anymore.

8 A. Exactly.

9 Q. Have we come full circle as to that
10 entity? Is that the history of it?

11 A. Yes.

12 Q. Anything you want to add or explain to it
13 in any way?

14 A. No.

15 Q. The same thing for your earlier
16 testimony. I didn't mean not to give you an
17 opportunity to do that. If you want to add
18 anything to your individual testimony or clarify
19 anything, you're welcome to do so.

20 A. I'm good.

21 Q. Okay. Thanks. I also forgot to tell you
22 that you have the right to read this deposition
23 and sign it, if you wish to. You also have the
24 right to waive that reading and signing. The --
25 the rule -- there will be errors -- there will be

EXHIBIT C

UNCONDITIONAL GUARANTY

November 12, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Henry Kuznik (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

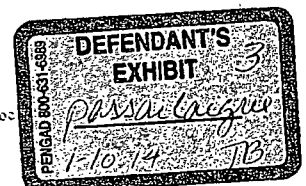
In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.



5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy Keenan
Laura Helt

Henry Kuznik (SEAL)
Henry Kuznik

UNCONDITIONAL GUARANTY

November 14, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Paul D. Hollen III (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy Keenan
Laura L. Latham

Paul D. Hollen III (SEAL)
Paul D. Hollen III

UNCONDITIONAL GUARANTY

November 7, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Alfred L. Saad (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"); and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. **EVENTS OF DEFAULT.** Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

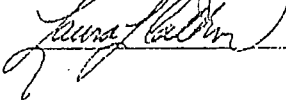
c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

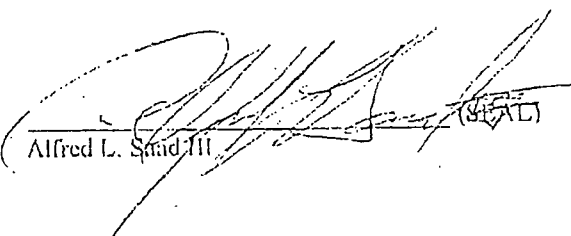

Alfred L. Sand III (SEAL)

EXHIBIT D

PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina
November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, L.L.C., a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passaniguitte Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the proceeds from the future sales of the property known as the Dassinger tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina.

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

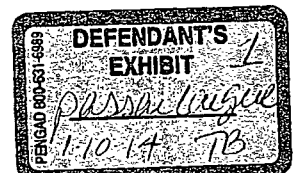
If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners, L.L.C. dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

C:\Documents and Settings\hoff5072\Desktop\Promissory Note At Paul & Henry Kuznik to Passaniguitte Homes 11-7-08.DOC

ROA000566



Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

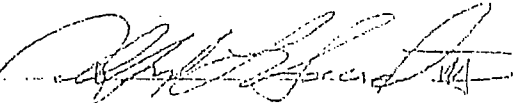
(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

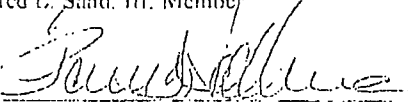
(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

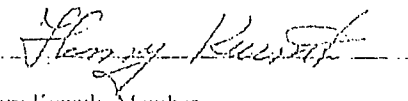
THORNWELL INVESTMENTS, LLC

By: 

Alfred L. Sand, III, Member

By: 

Paul D. Hollen III, Member

By: 

Henry Kuznik, Member

EXHIBIT E

PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina
November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passailaigue Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the net proceeds from the future sales of the property known as the Dassinger tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina.

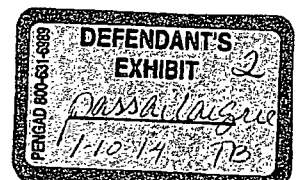
The loan period is to be 24 months. The lender grants the ~~irrevocable~~ right to one extension of 24 months, *IF PROPERTY REMAINS UNSOLD. [Signature]*

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners LLC dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further,



that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

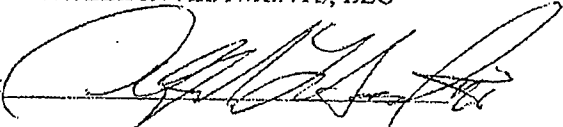
(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

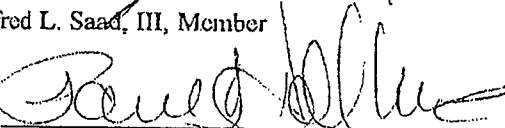
(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

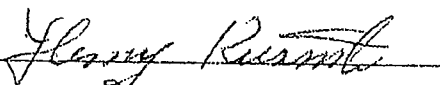
THORNWELL INVESTMENTS, LLC

By: 

Alfred L. Saad, III, Member

By: 

Paul D. Hollen III, Member

By: 

Henry Kuznik, Member

EXHIBIT F

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul
D. Hollen, III and Thornwell Partners,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-01647

**AFFIDAVIT OF
JERRY T. SAAD, CPA**

BY _____
JULIE T. SAAD, CPA
CLERK OF COURT
2014 JUN 30 PM 3:36

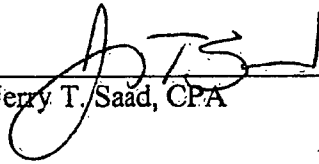
The undersigned, being first sworn, does hereby state as follows:

1. My name is Jerry T. Saad. I am over the age of 18, give this affidavit of my own free will, and possess direct personal knowledge of the matters I attest to herein.
2. I am a member of the accounting firm Saad and Manios, LLC in Greenville, South Carolina. I am a Certified Public Accountant, and I have held this designation for ___ years. I am a member in good standing of the American Institute of Certified Public Accounts as well as the South Carolina Associate of Certified Public Accountants.
3. I have been the certified public accountant for Thornwell Partners, LLC, and I have kept the financial records for that company since its inception.
4. As a summary of the various books and records for Thornwell Partners, LLC in my possession, I have prepared the attached "Exhibit A" entitled "Summary of Net Proceeds (Cash Loss) on Commerce One project."
5. As reflected in Exhibit A and as a result of the transactions surrounding the acquisition and ultimate sale of the property known as the Dassinger tract, consisting of two (2) parcels in Charleston County, South Carolina, Thornwell Partners, LLC experienced a loss of \$238,093.38.

6. The phrase "net proceeds" as it is commonly used in accounting terms, is the amount of proceeds received from a sale after subtracting the costs necessary to accomplish and complete the transaction.

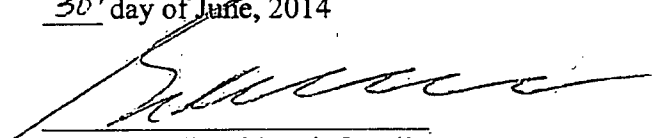
7. As a result of Thornwell Partners, LLC experiencing a loss of \$238,093.38 on the sale of the Dassinger tract, Thornwell Partners, LLC realized no net proceeds from the transaction.

Further affiant sayeth naught.



Jerry T. Saad, CPA

Sworn to before me this
30th day of June, 2014



Notary Public of South Carolina
My commission expires 7/2/2018

**EXHIBIT A
AFFIDAVIT OF JERRY T. SAAD, CPA**

SUMMARY OF NET PROCEEDS (CASH LOSS) ON COMMERCE ONE PROJECT

<u>Proceeds / Values From Sales / Transfer of Properties</u>		
Commerce Three - 3 acres		400,000.00
Al Saad	15 acres	2,250,000.00
Henry Kuznik	22 acres	3,300,300.00
Total Proceeds / Values From Sales / Transfer of Properties		5,950,300.00
<u>Summary of Commerce One Project Costs</u>		
Land costs - Paid Dasingers		2,635,525.55
Land costs - Paid Passailaigue		1,022,900.00
Site Development Plans		271,593.72
Sewer Installation		194,855.32
Property Taxes		145,157.47
Loan and Closing Costs		456,281.99
Interest Expense		1,303,944.62
Professional Fees		152,403.20
Fees Permits Postage Bank Charges Etc...		5,731.51
Total Costs Paid thru Thornwell Partners LLC		6,188,393.38
<u>Net Proceeds (Cash Loss) on Commerce One Project</u>		(238,093.38)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul D.
Hollen, III and Thornwell Partners, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-~~1~~1647

CERTIFICATE OF SERVICE

JULIE J. AUSTIN
CLERK OF COURT

2014 SEP -5 PM 2:30

FILED

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on **September 4, 2014**, she did cause to have served by electronic mail and FedEx Overnight Delivery with postage prepaid and return address clearly indicated, copies of the **Defendants Alfred L. Saad, III and Thornwell Partners, LLC's Memorandum in Support of Motion for Summary Judgment**, in the above-captioned case, to the following:

John M. Bleeker, Jr., Esq. (john@jblawfirm.com)
89 Broad Street
P.O Box 148
Charleston SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq. (lwc@lwcooper.com)
Law Offices of LW Cooper Jr.
36 Broad St.
Charleston SC 29401
Attorney for Defendant Paul D. Hollen, III

Patrick T. Napski, Esq. (patrick@richterfirm.com)
Lawrence E. Richter, Jr., Esq. (lrichter@richterfirm.com)
622 Johnnie Dodds Blvd.
Mt. Pleasant SC 29464
Attorneys for Plaintiff



Amy Snodgrass, Paralegal
Rogers Lewis Jackson Mann & Quinn, LLC

September 4, 2014

ROGERS ♦ LEWIS

— ROGERS LEWIS JACKSON MANN & QUINN, LLC —

Amy M. Snodgrass, Paralegal
asnodgrass@rogerslewis.com

September 4, 2014

Via FedEx Overnight

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St., Ste 106
Charleston, SC 29401-2210

Re: Virgil "Ray" Passailaigue v. Henry Kuznik, et al.
CA #: 2013-CP-10-01647

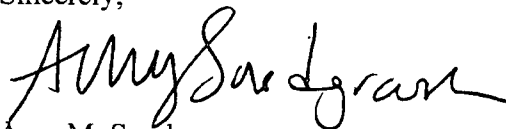
Dear Ms. Armstrong:

Please find enclosed for filing the original and one copy of a Memorandum in Support of Defendants Alfred L. Saad, III and Thornwell Partners, LLC's Motion for Summary Judgment with a Certificate of Service in the above-referenced action. Please file the original and return a clocked-copy to me in the self-addressed, postage-paid envelope provided.

By copy of this letter, I am serving all counsel of record and providing an electronic copy to Judge Dennis.

With kind regards, I am

Sincerely,



Amy M. Snodgrass
Paralegal for Shaun C. Blake, Esq.

Enclosures

cc: John M. Bleeker, Jr., Esq. (via FedEx and email)
Lindsey W. Cooper, Jr., Esq. (via FedEx and email)
Patrick T. Napolski, Esq. (via FedEx and email)
Lawrence E. Richter, Jr., Esq. (via FedEx and email)
The Honorable Judge Dennis (via email only)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul
D. Hollen, III, and Thornwell Partners,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-1647

**PLAINTIFF'S RESPONSE TO
DEFENDANTS' MOTIONS FOR SUMMARY
JUDGMENT AND DEFENDANTS
ALFRED L. SAAD, III AND
THORNWELL PARTNERS, LLC'S
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT**

Plaintiff Virgil "Ray" Passailaigue ("Passailaigue"), by and through his undersigned attorneys, responds to Alfred L. Saad, III ("Saad") and Thornwell Partners, LLC's motion for summary judgment and memorandum in support of summary judgment. As of the date of filing this Response, Defendants Henry Kuznik ("Kuznik") and Paul D. Hollen, III ("Hollen") have yet to submit a memorandum in support of their motions for summary judgment, thus this response shall serve as a response to Kuznik and Hollen's motions for summary judgment as well.

BACKGROUND

This action arises out of the acts and omissions of Defendants Henry Kuznik, Alfred L. Saad, III, Paul D. Hollen, III and Thornwell Partners, LLC related to their business dealings with Plaintiff Virgil "Ray" Passailaigue.

Defendants executed a Promissory Note in favor of Plaintiff in exchange for Plaintiff's membership interest in Defendant Thornwell Partners, LLC. In addition to the Promissory Note, Defendants Kuznik, Saad, and Hollen each executed an Unconditional Guarantee guaranteeing the payment of the Promissory Note. Defendants have breached their obligations under both the Promissory Note and Unconditional Guarantee.

RELEVANT FACTS

On or about February 16, 2006, Plaintiff obtained a contract from William and Maxine Dassinger to develop a parcel of property in North Charleston, South Carolina. About that same time, Plaintiff also obtained a contract from Harold and Loraine Dassinger to develop a parcel of property in North Charleston, South Carolina. [Ex. A, Affidavit of Pl.]. Together these properties are known as the "Dassinger Tract."

Defendants Kuznik, Saad, and Hollen then entered into an agreement to purchase the aforementioned contracts from Plaintiff. [Ex. B, Hollen Dep. 8:18-9:19].¹ The parties agreed to a purchase price of \$1 million. [Ex. B, Hollen Dep. 8:24-9:2]. On or about April 11, 2007, Plaintiff received a Promissory Note in the amount of \$1,022,900.00 from Thornwell Partners, LLC in exchange for his assignment of the contract of the aforementioned parcels of land in North Charleston, South Carolina. [Ex. D, Pl. Dep. 22:11-23:5].

Thornwell Partners, LLC paid the \$1,022,900.00 Promissory Note in four separate installments, the final installment being paid on November 7, 2008 in the amount of \$262,900.00. [Ex. A, Affidavit of Pl.].

In approximately May 2008, Defendant Hollen approached Plaintiff informing him that Plaintiff was a financial liability to Thornwell Partners, LLC and that Thornwell Partners, LLC would purchase his membership interest in order for Thonwell Partners, LLC to obtain additional financing on the North Charleston parcels. [Ex. A, Affidavit of Pl.].

On November 7, 2008, in exchange for his interest in Thornwell Partners, LLC, Defendants Kuznik, Saad, and Hollen, executed a Promissory Note in the amount of

¹ Kuznik, Saad, Hollen and Passailaigue were members of Thornwell Partners, LLC which was created for the single purpose of acquiring the contract on the Dassingers' property. [Ex. C, Saad Dep. 48:22-49:6].

\$130,000.00. [Ex. E, Promissory Note].² In addition, the members of Thornwell Partners, LLC, Kuznik, Saad, and Hollen, each signed an Unconditional Guarantee guaranteeing payment of the Promissory Note. [Ex. F, Unconditional Guarantees].

Defendants have breached their obligations under the Promissory Notes and Unconditional Guarantees.

STANDARD OF REVIEW

To grant a motion for summary judgment, the court must be convinced that the moving party has been able to “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) S.C.R. Civ. P. Accordingly, to prevail on a motion for summary judgment, the movant must demonstrate that: (1) that there is no genuine issue as to any material fact; and (2) that he is entitled to judgment as a matter of law. As to the first of these determinations, a fact is deemed “material” if proof of its existence or nonexistence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). In passing upon a motion for summary judgment, the Court must view the facts in a light most favorable to the non-moving party and to construe all inferences against the movant. United State v. Diebold, 369 U.S. 654, 82 S. Ct. 993 (1962). The judge is not to weigh the evidence, but rather to determine if there is a genuine issue of fact for trial. Anderson 477 U.S. 242, 249 (1986).

² Defendants Hollen, Saad, and Kuznik each identified their signatures on the subject Promissory Note. [Ex. B, Hollen Dep. 12:23-13:4], [Ex. C, Saad Dep. 19:16-25], [Ex. G, Kuznik Dep. 10:16-11:6]

ARGUMENT

I. SUMMARY JUDGMENT IS INAPPROPRIATE AS THERE ARE QUESTIONS OF FACT AS TO WHETHER DEFENDANTS HAVE MET THEIR OBLIGATIONS UNDER THE PROMISSORY NOTE AND UNCONDITIONAL GUARANTEES.

Defendants Saad and Thornwell Partners, LLC argue in their memorandum that there were no “net” proceeds on the sale of the Dassinger Tract and thus Plaintiff is unable to recover the amount owed to him under the Promissory Note.³ However, Defendants’ analysis is flawed for several reasons as explained more fully below.

In his deposition, Defendant Saad testified that both he and Defendant Kuznik ultimately sold the Dassinger Tracts. Defendant Saad testified in relevant part as follows:

Q. All right. What is happening with the property that was involved in the transaction we’re talking about?

A. Well, I’ve sold my piece, which was -- well, back up a second.

We -- we all owned the land together. Ray got out at some point. Paul got out at some point. Henry and I ended up with the land. We struggled with it for four or five years. I sold -- ultimately sold mine for about 300,000 dollars less than I had in it; and I think Henry did the same, sold his about the same time or shortly thereafter.

[Ex. C, Saad Dep. 15:7-19].

...

Q. How about the land? What has happened with it?

A. Well, as I said, we sold both tracts.

Q. Who did you sell yours to?

A. Trucking company. Averitt Trucking.

Q. Okay. Do you know who Mr. Kuznik sold his part to?

³ This is the same argument Defendants Kuznik and Hollen base their motions for summary judgment.

A. No, I don't know.

[Ex. C, Saad Dep. 16:17-23].

In addition, Henry Kuznik testified during his deposition as to his sale of the portion of the Dassinger Tract he acquired as follows:

Q. What happened to the land that was the subject of this transaction?

A. I mean, the -- the bank being pressuring us to pay that loan off, and they said they would foreclose.

Q. So is your answer that the land was foreclosed upon?

A. No. But they would foreclose if we don't pay at least couple million dollars down, and I haven't had the money; and Mr. Saad didn't have the money. So I went and mortgaged two dealerships, which I had to get flood insurance, appraisals, and was lot of cost involved; and paid then the 2 million dollars to the bank.

Q. And did you, then, end up owning the property?

A. No, sir. I only -- I been on the original mortgage on it, and what we did was split the property. The Highway Department took approximately 5 -- 5 -- between 5 and acres because the right-of-way of the road. We didn't get anything paid for it. Zero.

Q. The Highway Department took the property and did not pay you for it?

A. Right. They did not pay us for it, and the they more or less said the benefits exceed the damages. And so we, then, split up the property. I took the 21 acres; and Mr. Saad took the 16 acres, I mean. But prior to it we paid 400,000 dollars to the bank to release 3 acres, which we built a building on it.

So then we just 16 acres left on the one side and approximately 21 on the other, and so I stayed on -- on -- on both parcels. My name was on it, and so then we -- we had negotiating for a long time. We finally sold both parcels; but we had to invest the infrastructure, which was very close to a million dollars plus all the interest we pad. So we both lost money.

Q. When you say "we both," you're referring to yourself and who else?

A. Haad.

Q. Paul Hollen?

A. No, no.

Q. Mr. Saad?

A. Saad.

Q. You call him Haad?

A. Yeah.

[Ex. G, Kuznik Dep. 16:1-17:23].

Thus, as is evidenced by both Saad and Kuznik's testimony, each part of the Dassinger Tract they controlled was eventually sold. Both parties apparently received less from these sales as they would have liked or originally intended.

Although each of the Defendants base their motion for summary judgment at least partially on the "net" proceeds argument as the term is found in the Promissory Note, the Promissory Note is not the only document involved in this matter. The Unconditional Guarantees signed by Kuznik, Saad, and Hollen, state in relevant part as follows:

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due the punctual payment of all principal, interest and any other amounts due or to become due whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of

Borrower to Lender being hereinafter collectively - termed "Obligations of Borrower").

The Unconditional Guarantees go on to state that the, "Guarantee is and shall remain an unconditional and continuing guaranty of payment[.]" Finally, the Unconditional Guarantees lists the following, among others, as "Events of Default":

- a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or
- b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with the Guarantee Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or finished; or
- e) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

Defendants Hollen, Saad, and Kuznik each identified their signatures on the subject Unconditional Guarantees. [Ex. B, Hollen Dep. 19:24-20:8], [Ex. C, Saad Dep. 21:20-24], [Ex. G, Kuznik Dep. 15:5-9]. As mentioned *supra*, these same Defendants also identified each of their signatures on the subject Promissory Note.

Summary judgment is inappropriate at this time as there are questions of fact as to whether Defendants have satisfied their obligations under the Promissory Note and the Unconditional Guarantees. Specifically, there are questions of fact as to whether Defendants represented to Plaintiff that the Promissory Note was given to him in exchange for his membership interest in Thornwell Partners, LLC. Plaintiff testified as to the same as follows:

Q. And tell us about how that figure - - how you got that figure, the 130,000 dollars. Why do you claim that figure?

A. I was approached by Mr. Hollen because we were - - as a partnership we were running out of money and we needed to get another loan set up from a bank out of Columbia I was told.

Q. When you say we, you mean Thornwell Partners?

A. Yes. And what I was told was that because of my financial instability that I was a detriment and they could not move forward getting a loan to have more money to pay expenses. And so I said, just - -

[Ex. D, Pl. Dep. 27:21-28:9].

...

Q. Okay. And so you were told you were a financial liability to Thornwell?

A. That we could not borrow money if I was involved.

[Ex. D, Pl. Dep. 28:19-22].

...

Q. And you received all your money and now you're claiming 130,000 dollars from the entity. Explain that.

A. The 130,000 dollars was to get me out of the partnership so they could move forward with the loan and I - - that's what it was for.

[Ex. D, Pl. Dep. 30:8-13].

If the representations made to Plaintiff regarding the need for him to exit the LLC as well as representations as to the purchase of Plaintiff's membership were false, then the same would be considered an "Event of Default" under the Unconditional Guarantee and Defendants would be obligated to perform under the requirements of the Promissory Note and Unconditional Guarantee. It appears from the overall testimony of Defendants, that they deny remembering the

conversations and agreements the same way as Plaintiff. Thus, this creates a significant question to be determined by the trier of fact.

In addition, the Unconditional Guarantees state that a "material adverse change in the financial position of Guarantor" would be considered an "Event of Default" as well.

It appears from the some of the Defendants' testimony that there has been a material adverse change in their financial position, none of which is the fault of Plaintiff, thus triggering an "Event of Default." Specifically, Defendants claim that because they suffered a financial loss on the Dassinger Tracts, they should not have to pay Plaintiff. Defendants not receiving what they had anticipated in no way should influence the payment due Plaintiff.

Because questions of fact remain as to Defendants' obligations under the subject Promissory Note and Unconditional Guarantees, summary judgment is inappropriate.

II. PLAINTIFF'S DEPOSITION TESTIMONY CREATES A QUESTION OF FACT AS TO WHETHER HE WAS A THIRD-PARTY BENEFICIARY TO THE SUBJECT PROMISSORY NOTES AND UNCONDITIONAL GUARANTEES

Plaintiff's testimony as to what transpired between him and Defendants Kuznik, Saad, and Hollen creates a question of fact as to whether Plaintiff was a third-party beneficiary to the Promissory Note and Unconditional Guarantees.

"A third-party beneficiary is a party that the contracting parties intend to directly benefit." Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) (citing Touchberry v. City of Florence, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988)). Traditional principles of state law allow contracts to be enforced by or against nonparties to contract though assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel. See Arthur Andersen LLP v. Carlisle, 556 U.S. 624, 631, 129 S. Ct. 1896, 1902 (2009). Generally, third person not in privity of contract

with contracting parties has no right to enforce contract; however, when contract is made for benefit of third person, that person may enforce contract if contracting parties intended to create direct, rather than incidental or consequential, benefit to such third person. See R.J. Griffin & Co. v. Beach Club II Homeowners Ass'n, 384 F.3d 157, 163 (4th Cir. 2004).

During Plaintiff's deposition, he points to several instances in which a trier of fact may determine that Plaintiff was intended to be a third-party beneficiary under the aforementioned agreements. The below testimony demonstrates that Plaintiff was to benefit directly from the subject Promissory Note and Unconditional Guarantees. Plaintiff testified as follows:

Q. You were paid - - you were paid the full amount of the - -

A. 1,022,900.

Q. 1,022,00. And that payment if I'm correct, I think that payment was on November 7 - -

A. Correct.

Q. - - 2008?

A. That is correct.

Q. Okay. But on that date why would you have any further membership if you were paid the full amount?

A. It was for the assignment of the contract. And in order to get me out of the partnership 100 percent to not have any claims or anything, I accepted. We talked at the Harbour Club, we went to the Harbour Club, the four of us, and sat down and talked and they laid it out for me. And then subsequently Mr. Hollen by e-mail sent me over the personal guarantee and the promissory note for the 130,000 dollars. And if memory serves me correct, this 262,900 dollars was my final installment on 1,022,900.

Q. That's correct. Okay.

A. And we talked about it at the Harbour - - we talked about it was at the Harbour Club that in order for me to get out of the partnership 100 percent, I would - - they didn't have 130,000

dollars between them and we talked about it and they agreed that they would pay me 130,000 dollars. And that e-mail came from Mr. Hollen to me saying here is your personal guarantee which I required and here's your note signed by everyone. That's where it came from.

Q. Now, when you went to the Harbour Club, I'm assuming that you're talking about Mr. Saad was present?

A. Yes, sir, he was.

Q. And Mr. Hollen was present?

A. He was there and Mr. Kuznik.

[Ex. D, Pl. Dep. 31:7-33:2].

Despite Defendant Saad and Thornwell Partners, LLC's argument that Plaintiff is not a third-party beneficiary, Plaintiff's testimony demonstrates otherwise as it is apparent Defendants sat down with Plaintiff and stuck up a deal in order to purchase his membership interest in Thornwell Partners, LLC. It is clear from the above testimony that Defendants intended that Plaintiff Passailaigue benefit from the agreement that he part with his membership interest in Thornwell Partners, LLC.

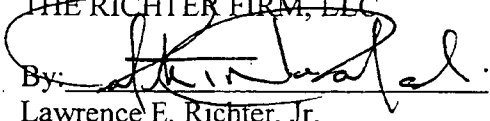
Thus, there is a question of fact as to whether Plaintiff was a third-party beneficiary to the Promissory Note and Unconditional Guarantees, and as such, summary judgment is appropriate at this time.

CONCLUSION

For the foregoing reasons, Plaintiff requests the Defendants Henry Kuznik, Paul D. Hollen, III, Alfred L. Saad, III, and Thornwell Partners, LLC's motions for summary judgment be dismissed.

[Signature page to follow]

THE RICHTER FIRM, LLC

By: 

Lawrence E. Richter, Jr.
Patrick T. Napolski
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
P: (843) 849-6000
F: (843) 881-1400

ATTORNEYS FOR VIRGIL "RAY"
PASSAILAIGUE

Dated: September 8, 2014
Mt. Pleasant, South Carolina

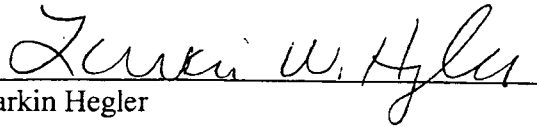
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Plaintiff's Response to Defendants' Motions for Summary Judgment and Defendants Alfred L. Saad, III and Thornwell Partners, LLC's Memorandum in Support of Summary Judgment* was served on the attorneys listed below by delivering a copy of the same via U.S. mail, first class, postage prepaid to the following addresses:

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
89 Broad St.
P.O. Box 148
Charleston, SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq.
Law Offices of LW Cooper, Jr.
36 Broad St.
Charleston, SC 29401
Attorney for Defendant Paul D. Hollen, III

Shaun C. Blake, Esq.
Rogers, Lewis, Jackson, Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29201
*Attorney for Defendants Alfred L. Saad, III and
Thornwell Partners, LLC*


Larkin Hegler

September 8, 2014

Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
_____)

**AFFIDAVIT OF
VIRGIL "RAY" PASSAILAIGUE**

PERSONALLY APPEARED BEFORE ME, Virgil "Ray" Passailaigue, who first being duly sworn, swears and deposes as follows:

1. I am an adult and am competent in all ways to give this Affidavit. I am giving this Affidavit based upon my own personal knowledge and understanding of the matters contained herein, except for those made on information and belief, and as to those I am informed and believe them to be true.

2. My name is Virgil "Ray" Passailaigue and I am a former member of Thornwell Partners, LLC, a South Carolina Limited Liability Company created to develop property in North Charleston, South Carolina.

3. While a member of Thornwell Partners, LLC, the other partners were Paul D. Hollen, III, Alfred L. Saad, III, and Henry Kuznik.

4. On or about February 16, 2006, I obtained a contract from William and Maxine Dassinger to develop a 17 acre tract known as the Dassinger Tract (TMS No.:395-00-00-001) in North Charleston, South Carolina and from Harold E. and Loraine R. Dassinger a 28.3 acre tract also known as Dassinger Tract (TMS No. 395-00-00-003), (hereinafter "subject property").

5. On or about April 11, 2007, I received a \$1,022,900.00 promissory note from Thornwell Partners, LLC in exchange for my assignment on the contract I obtained for the subject property.

6. Over the course of approximately the next eight (8) months, the above promissory note was paid in full. The final payment was made on November 7, 2008 by check number 034188.

7. In May 2008, Paul D. Hollen, III informed me that Thornwell Partners, LLC was running out of money and Thornwell Partners was looking to obtain a loan from a bank in Columbia, SC, but that I was a financial liability to Thornwell Partners, LLC.

8. On or about, November 7, 2008 I met with Paul D. Hollen, III, Alfred L. Saad, III, and Henry Kuznik (the other members of Thornwell Partners, LLC) at the Harbor Club in Charleston, South Carolina to discuss my membership in Thornwell Partners, LLC.

9. During the meeting at the Harbor Club, the members of Thornwell Partners, LLC told me that in order to get me out of Thornwell Partners, LLC, they would pay me \$130,000.00. However, they did not have \$130,000.00 at that time, but would give me a promissory note, as well as a personal guarantee from each and every member guaranteeing payment of the \$130,000.00.



10. A copy of the promissory note for \$130,000.00 and personal guarantee signed by each member of Thornwell Partners, LLC and given to me is attached to this affidavit.

11. As of the date of signing this affidavit, I have not received any money from Thornwell Partners, LLC, Paul D. Hollen, III, Alfred L. Saad, III, or Henry Kuznik.

FURTHER AFFIANT SAYETH NOT!

Virgil Ray Passailaigue

Virgil Ray Passailaigue

SWORN TO AND SUBSCRIBED BEFORE ME

this 29th day of August, 2014

Michelle Stett

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 12/4/22

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY
DEPOSITION OF PAUL D. HOLLEN, III
VOLUME I SEPTEMBER 23, 2013

VIRGIL "RAY" PASSAILAIGUE,

Plaintiff,

vs.

CASE NO. 2013-CP-10-1647

HENRY KUZNIK; ALFRED L. SAAD, III; PAUL D.
HOLLEN, III; AND THORNWELL PARTNERS, LLC,
Defendants.

DEPONENT: PAUL D. HOLLEN, III

DATE: SEPTEMBER 23, 2013

TIME: 10:17 A.M.

LOCATION: THE RICHTER FIRM, LLC
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER

CLARK & ASSOCIATES, INC.

P.O. BOX 73129

CHARLESTON, SC 29415

843-762-6294

office@clark-associates.com

WWW.CLARK-ASSOCIATES.COM



1 Q. Okay. Do you have any criminal
2 background?

3 A. No.

4 Q. Any history of litigation? Have you been
5 involved in other lawsuits?

6 A. I was involved in a lawsuit after
7 Hurricane Hugo involving USAA insurance.

8 Q. Property damage issue?

9 A. (Nods head.)

10 Q. Yeah. I understand. A lot of folks
11 were.

12 MR. RICHTER: Let me just go off the
13 record.

14 (Off-the-record discussion.)

15 MR. RICHTER: Let's go back on the
16 record, please.

17 BY MR. RICHTER:

18 Q. Mr. Hollen, I wonder if you could tell
19 us, please, the nature of your business
20 relationships, first, with Ray Passailaigue.

21 A. I, along with a partner, purchased from
22 Ray a contract to acquire two parcels of land in
23 North Charleston.

24 Q. Okay. Do you recall what the
25 consideration was to Mr. Passailaigue?

1 A. The -- to the best of my recollection, we
2 purchased the contracts for 1 million dollars.

3 Q. And was your intent to develop that
4 property?

5 A. Yes.

6 Q. Okay. When I say "your," I guess the
7 collective y'all's intent.

8 A. Right.

9 Q. And did Mr. Passailaigue have the
10 property under contract at the time that you came
11 in to purchase it?

12 A. I believe that's correct.

13 Q. And was some group, then, formed up or to
14 be formed up to go forth with this real estate
15 development?

16 A. Yes.

17 Q. And could you tell us the makeup of that
18 group, please?

19 A. It was myself, Mr. Kuznik, and Al Saad.

20 Q. Okay. And was Ray Passailaigue a member
21 of that group with y'all?

22 A. Not initially. He made a decision that
23 he wanted to be part of the partnership and
24 basically financed his portion or our portion of
25 the purchase price.

1 Q. Thank you. Do you remember -- are the
2 signatures the same three persons' signatures who
3 you testified about as to Exhibit No. 1?

4 A. They appear to be the same, yes.

5 Q. And one of those is yours?

6 A. Correct.

7 Q. Okay. Do you recall whether two was a
8 first draft or first round of No. 1 and was
9 succeeded by No. 1 as being the operative note in
10 this transaction?

11 A. Do I know that for sure? No.

12 Q. Well, if you don't know --

13 A. It appears to be, yes.

14 Q. That's fine. I started to say earlier,
15 people -- it's okay to say "I don't know" or "I
16 don't remember." Witnesses sometimes struggle a
17 lot if they can't say that; and you certainly can
18 if that's, you know, if that's your answer.

19 Okay. Now I'm going to hand you what's
20 been marked as Plaintiff's No. 3 in order,
21 please.

22 (Plaintiff's Exhibit No. 3 was marked
23 for identification.)

24 Q. Okay. Let me ask you if you recognize
25 that document, please.

1 A. It's -- it's a guaranty that appears to
2 have my signature on it.

3 Q. Okay. And what's the date on it?

4 A. It's the 14th of November, 2008.

5 Q. And is this a guaranty, an unconditional
6 guaranty, of the 130,000 dollar loan, excuse me,
7 manifested by the Exhibit No. 1?

8 A. That appears to be the case.

9 Q. Okay. Thank you. Now, only your
10 signature appears on the document before you;
11 isn't that correct?

12 A. That's right.

13 Q. And do you remember whether each member
14 of the entity, that you and Mr. Kuznik and
15 Mr. Saad gave individually a guaranty to -- to
16 Mr. Passailaigue?

17 A. I've seen documents to that effect, but I
18 have no real recollection of ever actually having
19 done it; but I've seen the documents.

20 Q. Okay. I'm going to ask you about the
21 witnesses on this guaranty agreement.

22 A. Uh-huh.

23 Q. Can you tell me who they are, please?

24 A. Wendy Keenan and Laura Calhoun. They are
25 employees at Southcoast Community Bank.

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 DEPOSITION OF ALFRED L. SAAD, III
5 AND RULE 30(b)(6) THORNWELL PARTNERS, LLC
6 VOLUME I NOVEMBER 5, 2013
7 VIRGIL "RAY" PASSAILAIGUE,
8 Plaintiff,
9 vs. CASE NO. 2013-CP-10-1647
10 HENRY KUZNIK; ALFRED L. SAAD, III; PAUL D.
11 HOLLEN, III; AND THORNWELL PARTNERS, LLC,
12 Defendants.

13 DEPONENT: ALFRED L. SAAD, III
14 DATE: NOVEMBER 5, 2013
15 TIME: 11:11 A.M.
16 LOCATION: THE RICHTER FIRM
17 MOUNT PLEASANT, SOUTH CAROLINA
18 REPORTED BY: RONDA K. BLANTON, RPR
19 NCRA REGISTERED PROFESSIONAL
20 REPORTER
21 CLARK & ASSOCIATES, INC.
22 P.O. BOX 73129
23 CHARLESTON, SC 29415
24 843-762-6294
25 office@clark-associates.com
 WWW.CLARK-ASSOCIATES.COM



1 Q. -- that conversion?

2 A. Didn't make any money.

3 Q. Well, if you're running short, I have a
4 bunch of condominiums.

5 A. No. I -- I've learned my lesson. I'm
6 done.

7 Q. All right. What is happening with the
8 property that was involved in the transaction
9 we're talking about?

10 A. Well, I've sold my piece, which was --
11 well, back up a second.

12 We -- we all owned the land together.
13 Ray got out at some point. Paul got out at some
14 point. Henry and I ended up with the land. We
15 struggled with it for four or five years. I
16 sold -- ultimately sold mine for about 300,000
17 dollars less than I had in it; and I think Henry
18 did the same, sold his about the same time or
19 shortly thereafter.

20 Q. Y'all subdivided the land and divided it
21 amongst the members, the investors?

22 A. No. We -- at the end of the deal, Henry
23 and I were the only ones left in the deal; and we
24 had a 4.2 million dollar bank loan, and the bank
25 was pressing us to pay it off.

1 So Henry took the 21 acres to the right
2 of the road and -- and got a loan on his own, and
3 I retained the 15 or 16 acres to the left; and
4 the bank loan, which was my relationship anyway
5 with TD Bank, which is Carolina First. And I
6 ended up with that piece.

7 Q. Okay. But with the reduced obligation
8 because, I take it, Mr. Kuznik's money
9 satisfied --

10 A. Yes, and I reduced the amount of land as
11 well.

12 Q. Yes. I understand. Okay. And then do
13 you -- did you say you don't remember who you
14 sold it to? No. You said you don't remember who
15 you bought the condos --

16 A. Yeah, the condos. I don't remember that.

17 Q. How about this land? What has happened
18 with it?

19 A. Well, as I said, we sold both tracts.

20 Q. Who did you sell yours to?

21 A. Trucking company. Averitt Trucking.

22 Q. Okay. Do you know who Mr. Kuznik sold
23 his part to?

24 A. No, I don't know.

25 Q. Okay. We got off on a little bit of a

1 it'll just be a little faster. Let me slide an
2 original over to you, please, ask you to identify
3 it and identify whether that's your signature on
4 the last page.

5 A. (Complies with request.) Can I look at
6 the rest of it?

7 MR. BLEECKER: You going to keep them
8 in the same order as we did the --

9 MR. RICHTER: I will. I'm handing them
10 to him in the same order; but if y'all can
11 stipulate we'll use the same documents, we'll be
12 in the same order.

13 MR. BLEECKER: Same number?

14 MR. RICHTER: Yeah.

15 A. What was your question?

16 Q. Do you recognize that as being a
17 promissory note for 130,000 dollars in
18 Mr. Passailaigue's -- Passailaigue Homes' benefit
19 or behalf made by, among others, you. Is that
20 your original signature on the back page? Then
21 I'm going to do the same with guarantee
22 agreements.

23 A. Well, I can tell you that that looks like
24 my signature. I don't -- but I don't remember
25 signing this paper.

1 MR. NAPOLSKI: It's a color photo.

2 Q. It's a color photocopy, yes.

3 A. I was just questioning it.

4 Q. I'm sorry. I didn't hear what you said.

5 MR. BLEECKER: Do you have the original
6 documents?

7 MR. RICHTER: Yeah. I assume we do.

8 MR. NAPOLSKI: This was the original
9 one we received from our client.

10 MR. RICHTER: Okay. There's -- I don't
11 know the answer to that, but I'll find out and
12 let you know.

13 MR. BLEECKER: Okay.

14 A. Well, if you had an original document,
15 wouldn't the paper be indented as opposed to a
16 Xerox?

17 Q. It should. Probably would be.
18 Handwriting experts tell you all those things.

19 A. What was your question on this?

20 Q. Just if you'll identify what this is,
21 please, and shows your signature on it, on the
22 last page.

23 A. It's an unconditional guarantee. It
24 appears to be my signature.

25 Q. Okay. And it bears the date November 7.

1 those two. There's Thornwell Partners. I'm
2 sorry. Thornwell Investors, LLC, you and
3 Mr. Hollen have anything to do with this
4 transaction we're talking about; or is it only
5 Thornwell Partners, LLC?

6 A. Thornwell Investors has no -- it's a
7 defunct LLC.

8 Q. And never really did anything, it sounds
9 like.

10 A. No.

11 Q. So the -- the interested party in the
12 transaction we're talking about from your side of
13 the table is who?

14 A. Partners.

15 Q. Thornwell Partners, LLC?

16 A. Right.

17 Q. Okay. Thank you.

18 Now, the -- as to the Thornwell Partners,
19 LLC, who is the manager of that entity?

20 A. I don't -- I don't recall. I think
21 it's --

22 Q. Okay. As to this -- well, as to the
23 transactions that Thornwell Partners, LLC, may
24 have been involved in over time, other than the
25 transaction that we're concerned with in this

1 litigation, was it involved in other
2 transactions?

3 A. No. Just the acquisition of this land.

4 Q. Is it fair to say that that was the
5 single business purpose?

6 A. Single business purpose, yes.

7 Q. Okay. And as to the business of
8 Thornwell Partners, LLC, is that business and its
9 activities reflected in the testimony that you
10 gave earlier when I was examining you as an
11 individual?

12 A. Yes.

13 Q. Okay. Is there anything that you would
14 add to that, anything else that we should know
15 about Thornwell Partners, LLC; or do you feel
16 like you fully summed it up?

17 A. Thornwell Partners, LLC, is also a
18 retired entity. It doesn't exist anymore.

19 Q. As of today. I mean, by now.

20 A. As of when I sold the last tract.

21 Q. So it's not in existence anymore.

22 A. No. I mean, I didn't really actually
23 sign something, whatever you do to disengage it
24 but, you know, I -- it doesn't operate anymore.

25 Q. Well, as I recall what you testified to

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON

VIRGIL "RAY" PASSAILAIGUE,

Plaintiff,

vs.

CASE NO. 2013-CP-10-1647

HENRY KUZNIK, ALFRED L. SAAD, III, PAUL D. HOLLEN,
III and THORNWELL PARTNERS, LLC,

Defendants.

DEPOSITION OF: VIRGIL R. PASSAILAIGUE

DATE: January 10, 2014

TIME: 10:09 AM

LOCATION: Law Offices of
The Richter Firm, LLC
622 Johnnie Dodds Boulevard
Mount Pleasant, SC

TAKEN BY: Counsel for the Defendant
Henry Kuznik

REPORTED BY: TERRI L. BRUSSEAU, RPR,
CERTIFIED REALTIME REPORTER

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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EXHIBIT

D

1 that correct?

2 A. That's correct.

3 Q. Were you present at that closing?

4 A. I don't believe I was.

5 Q. Okay. Who was the attorney that
6 handled that closing, do you know?

7 A. I do not remember.

8 Q. Did you receive any money on your -- at
9 the time of the closing?

10 A. I don't believe I did.

11 Q. You received a note for 1,022,900
12 dollars?

13 A. Yes, sir.

14 Q. Was that note paid?

15 A. Yes, sir, it was.

16 Q. And was -- how was it paid?

17 A. It was paid out over the next year or
18 so. It was -- there were several payments made.

19 Q. But they were timely payments made to
20 you?

21 A. Basically, yes.

22 Q. And you've been fully paid?

23 A. Yes.

24 Q. 1 million --

25 A. 22,000 -- I've been paid on that, yes.

1 Q. And that payment was for the assignment
2 of the contract?

3 A. That's correct.

4 Q. With the Dassingers?

5 A. Yes.

6 Q. Now, the parties that acquired the
7 property I believe were Thornwell Partners, LLC.
8 Do you know -- are you familiar with that?

9 A. Yes.

10 Q. Okay.

11 (DFT. EXH. 6, Amended And Restated
12 Operating Agreement Of Thornwell Partners, LLC, was
13 marked for identification.)

14 BY MR. BLEEKER:

15 Q. I'm going to show you what has been
16 marked Defendant's Exhibit Number 6 and ask you if
17 you are familiar with this instrument.

18 A. This appears to be the Amended and
19 Restated Operating Agreement of Thornwell Partners,
20 LLC.

21 Q. All right. Have you seen this
22 instrument before?

23 A. I think I have.

24 Q. Okay. I'll ask you to turn to Page --
25 well, you can turn to the last page. Have you

1 you?

2 A. Yes, sir.

3 Q. And so you received that --

4 A. Yes, sir.

5 Q. -- 1,022,000 --

6 A. 900 dollars, yes, sir.

7 Q. -- for your interest. That was your

8 27.84 percent interest in the partnership?

9 A. Yes, according to this, that's what it
10 says.

11 Q. Okay. Did you object to it saying
12 anything else? Did you raise that question at all?

13 A. Honestly, I didn't read it.

14 Q. Okay. But you never called the
15 accountant and said, that's not correct?

16 A. Did not.

17 Q. Now, your note -- your suit is for
18 130,000 dollars based on that note which was
19 Exhibit 1 or Exhibit 2, either one --

20 A. Yes, sir.

21 Q. -- right? And tell us about how that
22 figure -- how you got that figure, the 130,000
23 dollars. Why do you claim that figure?

24 A. I was approached by Mr. Hollen because
25 we were -- as a partnership we were running out of

1 money and we needed to get another loan set up from
2 a bank out of Columbia I was told.

3 Q. When you say we, you mean Thornwell
4 Partners?

5 A. Yes. And what I was told was that
6 because of my financial instability that I was a
7 detriment and they could not move forward getting a
8 loan to have more money to pay expenses. And so I
9 said, just --

10 Q. When was -- do you have a date, a time
11 frame for when you were approached by Mr. Hollen?

12 A. I do not. It was -- it was sometime
13 prior to the personal guarantee and the promissory
14 note for 130,000 dollars.

15 Q. Let's look back. The promissory note
16 is dated 2008, is that correct? November 7, 2008?
17 It was before that date?

18 A. Yes, sir, it was.

19 Q. Okay. And so you were told you were a
20 financial liability to Thornwell?

21 A. That we could not borrow money if I was
22 involved.

23 Q. Were you expecting to receive any money
24 from Thornwell Partners?

25 A. Our hope was that we would develop

1 Q. And you were paid exactly that sum?

2 A. That is correct.

3 Q. So at that point you --

4 A. For the assignment of the contract.

5 Q. Did you have any other investment in
6 Thornwell?

7 A. Did not.

8 Q. And you received all your money and now
9 you're claiming 130,000 dollars from the entity.
10 Explain that.

11 A. The 130,000 dollars was to get me out
12 of the partnership so they could move forward with
13 the loan and I -- that's what it was for.

14 Q. Weren't you already out of it though?

15 A. I'm sorry?

16 Q. Weren't you already out of it when you
17 received your final payment on that note?

18 A. No, sir, I was not.

19 Q. But you claim to be a member of the --
20 we call it the partnership but it really is a
21 limited liability company?

22 A. LLC.

23 Q. You were a -- you claimed the
24 membership interest but had no investment in it, is
25 that correct?

1 A. You might have to restate the question,
2 I'm sorry. I got confused.

3 Q. Your interest in the Thornwell
4 Partners, LLC was an investment of 1,022,900
5 dollars, is that correct?

6 A. Yes.

7 Q. And you were paid that full amount, is
8 that correct? You were paid that before this note
9 is dated or exactly the last payment was made to
10 you on the date of this November 7 note, November
11 7, 2008?

12 A. In order to get me out of the
13 partnership.

14 Q. You were paid -- you were paid the full
15 amount of the --

16 A. 1,022,900.

17 Q. 1,022,000. And that payment if I'm
18 correct, I think that payment was on November 7 --

19 A. Correct.

20 Q. -- 2008?

21 A. That is correct.

22 Q. Okay. But on that date why would you
23 have any further membership if you were paid the
24 full amount?

25 A. It was for the assignment of the

1 Q. And Mr. Hollen was present?

2 A. He was there and Mr. Kuznik.

3 Q. Did you feel you were owed anything?

4 Did you believe you were owed anything at all after
5 you had been -- when you were fully paid on that?

6 A. I wasn't fully paid at the time we had
7 the conversation.

8 Q. Okay. But there was one payment due to
9 you, is that correct? I'm not trying to lead you
10 or mislead you in any way but you were not fully
11 paid but you received all your payment before
12 November 7th or on November 7th, 2008?

13 A. That's when the check was issued. I
14 assume it was issued. Was it given to me at that
15 time? I do not remember.

16 Q. Well, we agree that you were fully
17 paid?

18 A. On the 1,022,900, absolutely.

19 Q. And why would you -- please answer me
20 if you will why did you think you were owed any
21 money at all other than that 1,022,900 dollars?

22 A. Because at the time I was still in the
23 partnership or the LLC.

24 Q. The LLC?

25 A. Um-hum.



PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina
November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passailaigue Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the net proceeds from the future sales of the property known as the Dassinger tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina.

The loan period is to be 24 months. The lender grants the irrevocable right to one extension of 24 months, *IF PROPERTY REMAINS UNSOLD SINCE* *RR*

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners LLC dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further,



that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

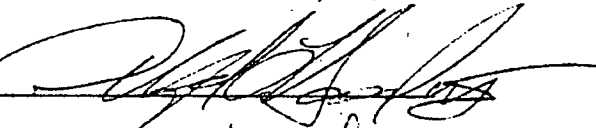
(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

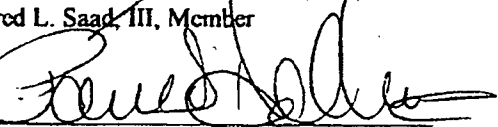
(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

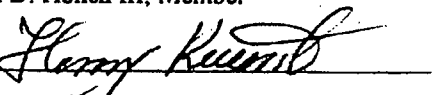
THORNWELL INVESTMENTS, LLC

By: 

Alfred L. Saad, III, Member

By: 

Paul D. Hollen III, Member

By: 

Henry Kuznik, Member



PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina
November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, L.L.C., a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passaiaigue Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the proceeds from the future sales of the property known as the Dassinger tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina.

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate; whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

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This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners LLC dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note, waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

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(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

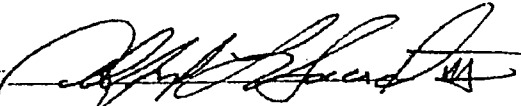
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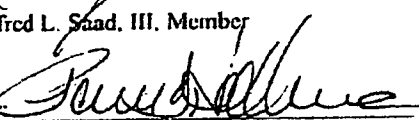
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THORNWELL INVESTMENTS, LLC

By: 

Alfred L. Saad, III, Member

By: 

Paul D. Hollen III, Member

By: 

Henry Kuznik, Member



UNCONDITIONAL GUARANTY

November 14, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Paul D. Hollen III (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.
2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.
3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.
4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. **EVENTS OF DEFAULT.** Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

e) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy Keenan
Laura J. Holton

Paul D. Holton III (SEAL)



UNCONDITIONAL GUARANTY

November 7, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Henry Kuznik (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined.

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

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5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

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b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. **REMEDIES UPON DEFAULT.** Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

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Witnesses:

Wendy Keenan
Jana Plath

Henry Kuznik (SEAL)
Henry Kuznik



UNCONDITIONAL GUARANTY

November 7, 2008

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WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Alfred L. Saad (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

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b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

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Witnesses:

Wendy Kegan
James Kegan

Alfred L. Sand III (SEAL)

Deposition of Henry Kuznik

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY
DEPOSITION OF HENRY KUZNIK
VOLUME I SEPTEMBER 23, 2013

VIRGIL "RAY" PASSAILAIGUE,

Plaintiff,

vs.

CASE NO. 2013-CP-10-1647

HENRY KUZNIK; ALFRED L. SAAD, III; PAUL D.
HOLLEN, III; AND THORNWELL PARTNERS, LLC,
Defendants.

DEPONENT: HENRY KUZNIK

DATE: SEPTEMBER 23, 2013

TIME: 11:51 A.M.

LOCATION: THE RICHTER FIRM, LLC
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL
REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 73129
CHARLESTON, SC 29415
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM



1 A. No, that I can recall.

2 Q. All right. Have you -- as you sat here
3 this morning, did you hear Mr. Hollen's
4 testimony?

5 A. Yes.

6 Q. Is there anything about his testimony
7 that you disagree with?

8 A. No. I didn't hear everything. It was a
9 little -- I have little hearing problem so I
10 didn't hear everything what he said but I -- I
11 would say 90 percent, and I agree with that.

12 Q. Okay. Did you hear him testify that
13 exhibit -- well, let me just ask you. I'm going
14 to show you exhibit number --

15 MR. BLEECKER: We got copies over here.

16 Q. Yeah. It's Exhibit No. 2 to Mr. Hollen's
17 deposition, which I'll represent to you -- to you
18 is here entitled "Promissory Note" in the amount
19 of 130,000 dollars. Do you see that?

20 A. Yes, I see that.

21 Q. And could you turn -- well, could you
22 tell us the date on that, please?

23 A. November the 7th, '08.

24 Q. And could you turn to the back page,
25 please.

1 Q. Thank you. And can you read the
2 witnesses' names?

3 A. Wendy Keenan and Laura something.
4 Calhoun. Calhoun.

5 Q. Okay. Let me hand you Exhibit 4, please,
6 to Mr. Hollen's deposition and ask you is the
7 only guarantor signature on this page, is it just
8 one; and is it yours, Mr. Kuznik?

9 A. It does look like mine, yes.

10 Q. Okay. Thank you. And as to Exhibit 5,
11 if you can tell me, please, does that appear to
12 be Mr. Saad's signature --

13 MR. BARKER: Object to the form.

14 Q. -- on the last page of that document?

15 A. I am not familiar with his signature
16 either.

17 Q. Okay. Thank you.

18 Now, I'd like to ask you, please, what --
19 do you admit that other than 1,022,900 dollars,
20 other than that, no money was paid to Mr. -- or
21 for -- on behalf of Mr. Passailaigue?

22 A. Yes. I think he got paid, you know,
23 million -- over million dollars. He was the only
24 gentleman who made some money. We all lost some
25 money.

1 Q. What happened to the land that was the
2 subject of this transaction?

3 A. I mean, the -- the bank being pressuring
4 us to pay that loan off, and they said they would
5 foreclose.

6 Q. So is your answer that the land was
7 foreclosed upon?

8 A. No. But they would foreclose if we don't
9 pay at least couple million dollars down, and I
10 haven't had the money; and Mr. Saad didn't have
11 the money. So I went and mortgaged two
12 dealerships, which I had to get flood insurance,
13 appraisals, and was lot of cost involved; and
14 paid then the 2 million dollars to the bank.

15 Q. And did you, then, end up owning the
16 property?

17 A. No, sir. I only -- I been on the
18 original mortgage on it, and what we did was
19 split up the property. The Highway Department
20 took approximately 5 -- 5 -- between 5 and 6
21 acres because the right-of-way of the road. We
22 didn't get anything paid for it. Zero.

23 Q. The Highway Department took the property
24 and did not pay you for it?

25 A. Right. They did not pay us for it, and

1 the they more or less said the benefits exceed
2 the damages. And so we, then, split up the
3 property. I took the 21 acres; and Mr. Saad took
4 the 16 acres, I mean. But prior to it we paid
5 400,000 dollars to the bank to release 3 acres,
6 which we built a building on it.

7 So then was just 16 acres left on the one
8 side and approximately 21 on the other, and so I
9 stayed on -- on -- on both parcels. My name was
10 on it, and so then we -- we had negotiating for a
11 long time. We finally sold both parcels; but we
12 had to invest the infrastructure, which was very
13 close to a million dollars plus all the interest
14 we paid. So we both lost money.

15 Q. When you say "we both," you're referring
16 to yourself and who else?

17 A. Haad.

18 Q. Paul Hollen?

19 A. No, no.

20 Q. Mr. Saad?

21 A. Saad.

22 Q. You call him Haad?

23 A. Yeah.

24 Q. All right. Thank you.

25 What bank are you referring to as you

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III,
Paul D. Hollen, III, and Thornwell
Partners, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-1647

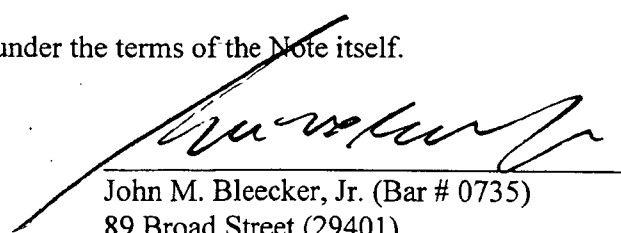
DEFENDANT HENRY KUZNIK'S
REPLY TO PLAINTIFF'S RESPONSE
TO DEFENDANT'S MOTIONS FOR
SUMMARY JUDGMENT AND
THORNWELL PARTNERS, LLC'S
MEMORANDUM IN SUPPORT OF
SUMMARY JUDGMENT

FILED
2014 SEP -9 PM 2:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Henry Kuznik, for his Reply to Plaintiff's Response to Defendant's Motions for Summary Judgment and Thornwell Partners, LLC's Memorandum in Support of Summary Judgment, joins fully with the Memorandum in Support of Alfred L. Saad, III and Thornwell Partners, LLC's Motion for Summary Judgment and would additional show to the court that not a scintilla of evidence in the pleadings or Plaintiff's Response to Defendants' Motions for Summary Judgment that there were any "Net Proceeds" from future sales to trigger any obligations under the Note which is the subject matter of this action and as the underlying Note is not triggered, the Guaranties are of no force and effect as they would only be effective if there was an obligation to make payment under the terms of the Note itself.

Date:

September 9, 2014


John M. Bleecker, Jr. (Bar # 0735)

89 Broad Street (29401)

Post Office Box 148

Charleston, South Carolina 29402

(843)577-4352

(843)722-1119 - facsimile

john@jblawfirm.com

Attorney for Defendant Henry Kuznik

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,
Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III,
Paul D. Hollen, III, and Thornwell
Partners, LLC,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-16472

CERTIFICATE OF SERVICE

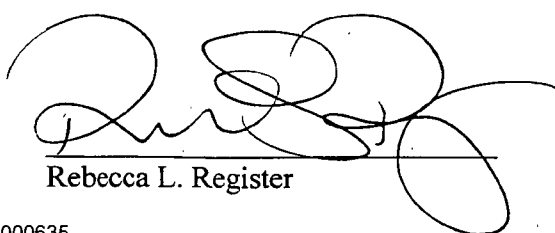
FILED
14 SEP -9 PM 2:08
JULIE J. ARTHUR
CLERK OF COURT

I, Rebecca L. Register, the undersigned employee of the Law Office of John M. Bleecker, Jr., LLC, hereby certify that on this 9th day of September, 2014, a true and correct copy of the Defendant Henry Kuznik's Reply to Plaintiff's Response to Defendant's Motions for Summary Judgment and Thornwell Partners, LLC's Memorandum in Support of Summary Judgment was served by depositing a copy of same, enclosed in a first class, postpaid envelope and properly addressed to the following parties, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Shaun Blake, Esq.
Rogers Lewis Jackson Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29211
*Attorney for the Defendants Alfred L. Saad, III and
Thornwell Partners, LLC*

Lindsey Cooper, Jr., Esq.
The Law Offices of L.W. Cooper, Jr., LLC
36 Broad Street
Charleston, SC 29401
Attorney for Defendant Paul D. Hollen, III

Patrick T. Napolski, Esq.
Lawrence E. Richter, Jr., Esq.
The Richter Firm, LLC
622 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464
Attorney for the Plaintiff


Rebecca L. Register

ROA000635

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Virgil "Ray" Passailaigue)

Plaintiff,)

vs.)

Henry Kuznik, Alfred L. Saad, III, Paul D.
Hollen, III, and Thornwell Partners, LLC)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-1647

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Patrick T. Napolski, Bar No. 100966

Address:

The Richter Firm, LLC, 622 Johnnie Dodds
Blvd., Mt. Pleasant, SC 29464

Phone: 843-849-6000 Fax 843-881-1400

E-mail: Patrick@Richterfirm.com Other: _____

Defendant's Attorney:

John M. Bleecker, Jr., Esq., Bar No. _____

Address:

The Law Office of John Bleecker, P.O. Box 148,
Charleston, SC 29402

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend

Estimated Time Needed: 15 min.

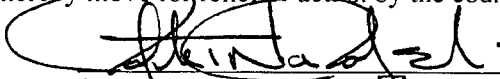
Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☒ Plaintiff / ☐ Defendant

September 29, 2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 2500**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

SCCA 233 (11/2003)

ROA000637

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul
D. Hollen, III, and Thornwell Partners,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-1647

**PLAINTIFF'S MOTION TO ALTER OR
AMEND ORDER GRANTING
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 SEP 29 PM 2:55

FILED

TO: JOHN M. BLEECKER, JR., ESQ., ATTORNEY FOR DEFENDANT HENRY KUZNIK, LINDSEY W. COOPER, JR., ESQ., ATTORNEY FOR DEFENDANT PAUL D. HOLLEN, III, AND SHAUN C. BLAKE, ESQ., ATTORNEY FOR DEFENDANTS ALFRED L. SAAD, III, AND THORNWELL PARTNERS, LLC

PLEASE TAKE NOTICE that Plaintiff Virgil "Ray" Passailaigue by and through his undersigned attorneys, hereby moves this Honorable Court pursuant to SCRCP 52 and 59(e) for an Order altering and/or amending the Order of the Honorable R. Markley Dennis, Jr., granting Defendants Henry Kuznik, Paul D. Hollen, III, Alfred L. Saad, III and Thornwell Partners, LLC's motions for summary judgment. Defendants' motions were heard on September 10, 2014, and Plaintiff Passailaigue received notice of this Court's Order granting Defendants' motions on September 24, 2014. Plaintiff respectfully requests that this Honorable Court reconsider its order as material facts exist as to the following:

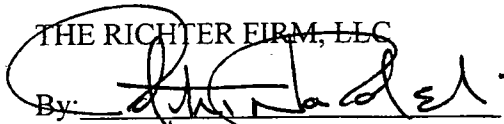
1. The definition of "net proceeds" as used in the subject Promissory Note;
2. The lack of any requirement that a profit be realized by Defendants before being required to pay Plaintiff under the terms of the subject Promissory Note;

3. Plaintiff and Defendants' intent that the subject promissory note be used to buy out Plaintiff's membership interest in Thornwell Partners, LLC;
4. Plaintiff was the intended third-party beneficiary of the subject Promissory Note;
5. The subject Promissory Note was executed for Plaintiff's benefit;
6. One or more "Events of Default" occurred as defined in the subject Unconditional Guaranties signed by the Defendants, thus requiring that they abide by the terms of the subject Promissory Note.

Based upon the foregoing, as well as the documents, arguments and analysis presented during the September 10, 2014 hearing, Plaintiff respectfully requests that this Honorable Court reconsider, alter, and/or amend its Order granting Henry Kuznik, Paul D. Hollen, III, Alfred L. Saad, III and Thornwell Partners, LLC's motions for summary judgment and further prays for an Order amending the September 16, 2014 Order granting Defendants' motions for summary judgment, and for such other relief as this Court deems necessary and proper.

This motion is supported by the South Carolina Rules of Civil Procedure and common law, SCRCP Rules 52 and 59, and the controlling law, the pleading, deposition testimony, documents in the record, documents of public record, and memoranda, affidavits, or other supporting material as permitted under the South Carolina Rules of Civil Procedure and will be supplemented by a memorandum of law prior to the hearing of this matter, and any oral arguments the Court wishes to consider.

Respectfully submitted,

THE RICHTER FIRM, LLC
By: 
Lawrence E. Richter, Jr.
Patrick T. Napski
622 Johnnie Dodds Blvd.

2013-CP-10-1647

Mt. Pleasant, SC 29464
P: (843) 849-6000
F: (843) 881-1400

ATTORNEYS FOR PLAINTIFF
PASSAILAIGUE

Dated: September 29, 2014
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Plaintiff's Notice of Motion and Motion to Alter or Amend Order Granting Defendants' Motions for Summary Judgment* was served on the attorneys or parties listed below by delivering a copy of the same via U.S. mail, first class, postage prepaid to the following addresses:

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
89 Broad St.
P.O. Box 148
Charleston, SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq.
Law Offices of LW Cooper, Jr.
36 Broad St.
Charleston, SC 29401
Attorney for Defendant Paul D. Hollen, III

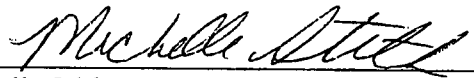
Shaun C. Blake, Esq.
Rogers, Lewis, Jackson, Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29201
*Attorney for Defendants Alfred L. Saad, III and
Thornwell Partners, LLC*

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2014 SEP 29 PM 3:54

FILED



Michelle Stith

September 29, 2014
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-10-1647

Virgil "Ray" Passailaigue,)
Plaintiff,)
v.)
Henry Kuznik, Alfred L. Saad, III,)
Paul D. Hollen, III, and Thornwell)
Partners, LLC)
Defendants.)

AFFIDAVIT OF HENRY KUZNIK

FILED
2014 JUN 30 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Now comes Henry Kuznik who being duly sworn says:

1. My name is Henry Kuznik and I am a resident of Charleston County, South Carolina.
2. That on or about April 1, 2007, I became a member of Thornwell Partners, LLC (herein "LLC").
3. At that time the other members of the LLC were Paul D. Hollen, III, Alfred L. Saad, III and Virgil "Ray" Passailaigue (herein "Passailaigue").
4. That Thornwell Partners, LLC was created to develop an approximately forty five (45) acre tract on the new Commerce Parkway in the City of North Charleston (herein "Property").
5. That on April 1, 2007, the LLC granted Passailaigue a Note in the amount of One Million Twenty Two Thousand Nine Hundred Dollars (\$1,022,900.00) as a finder's fee for obtaining the contract for the Property and as I am informed and believe, as full compensation of his membership percentage.
6. That payments were made to Passailaigue in four installments, on February 29, 2008

(\$260,000.00), May 17, 2008 (\$250,000.00), May 21, 2008 (\$250,000.00) with the final installment being paid on November 7, 2008 in the amount of \$262,900.00. These four installments fully satisfied the only obligation I recall ever being due and owing to Passailaigue.

7. That Passailaigue upon receipt of the full amount of One Million Twenty Two Thousand Nine Hundred Dollars (\$1,022,900.00) had received the full value of his membership percentage as stated in the Operating Agreement dated April 20, 2007 and there was no further membership percentage in the LLC to my knowledge or according to the K-1 records as prepared by the accountant for the LLC.

8. That I do not recall having signed the Note (herein "Note) or any Personal Guaranty upon which Passailaigue is seeking relief in the amount of One Hundred Thirty Thousand Dollars (\$130,000.00).

9. Regardless of my position that I have no recollection of having executed such Note or Personal Guaranty, that the terms of the Note specifically provide for payment from the "Net proceeds" from sales of the Property.

10. That TD Bank, N.A., the lender holding the development mortgage loan on the Property owned by the LLC and referenced in the Note, refused to grant any further extensions on the loan without a substantial payoff of the existing debt obligation.

11. That defendant, Paul Hollen, withdrew from the LLC on or about October 11, 2011 leaving myself and defendant Alfred L. Saad, III as the remaining members of the LLC.

12. That in order to avoid a default of the development loan with TD Bank and accomplish the "refinance" of the development loan on the Property, it was divided into three separate parcels of 21.672 acres, 14.787 acres and 3.84 acres.

13. To save the LLC from default, I was able to obtain a personal loan from Harbor National Bank for the debt restructuring (which was essentially a refinance) by putting up as additional collateral my two separate, unrelated parcels (103 Old Trolley Rd. and 2125 Savannah Hwy.). That in order for my lender, Harbor National Bank, to issue the personal loan, I was required to place the 21.672 acre parcel in my sole name.

14. I assumed the bulk of the existing debt in the amount of Two Million Dollars (\$2,000,000.00). Harbor National Bank provided me a personal loan of Two Million Dollars to pay down the development loan and thereby avoided the LLC being declared in default by TD Bank. With the assumption and pay down on the TD Bank loan, I was able to obtain a partial release on the 21.672 acre parcel. I further provided Two Hundred Thousand (\$200,000.00) in cash as did Defendant Alfred L. Saad, III to TD Bank for the partial release from TD Bank for the 3.084 acre parcel.

15. That I paid Thirty Five Thousand Two Hundred Twenty Eight Dollars (\$35,228.00) in closing costs for the assumption of the debt as well as an additional Fourteen Thousand Three Hundred Thirty One & 69/100 Dollars (\$14,331.69) per month for a total of One Hundred Seventy One Thousand Nine Hundred Eighty and 28/100 (\$171,980.28) in interest payments on the Harbor

National Bank debt between December, 2011 and November, 2012 at which time the 21+ acre parcel was sold to Millard Refrigeration.

16. That the sales price for that transfer was Three Million Three Hundred Thousand Three Hundred Dollars (\$3,300,300.00) which One Million was used to pay down the Harbor National Loan and obtain the release of the 103 Old Trolley Rd property from the loan. The remaining costs for the transaction were Two Hundred Seventeen Thousand Eight Hundred Sixty Five and 23/100 Dollars (\$217,865.23).

17. Following the sale of the 21+ acre parcel tract I continued to pay the balance of the loan due Harbor National Bank until such time as I used my personal funds to satisfy the remaining One Million Dollar (\$1,000,000.00) obligation.

18. That since I have become a member of the LLC, Thornwell Partners, LLC has expended a total of Six Million One Hundred Eighty Eight Thousand Three Ninety Three and 38/100 Dollars (\$6,188,393.38) in development costs as shown on the Summary of Net Proceeds (Cash Loss) as prepared by Jerry Saad, the CPA for Thornwell Partners, LLC. In addition to that sum, I have expended in excess of Four Hundred Twenty Five Thousand Seventy Three and 51/100 Dollars (\$425,073.51) through November, 2012 in development costs, loans to other members and the LLC, bank charges, interest charges, professional and legal fees.

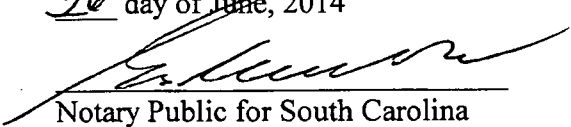
19. That there have been no net proceeds from the sales of the property and that I have personally expended my personal funds without a return of any net proceeds from the LLC

an incurred a substantial personal loss.

Further your deponent sayeth naught.


Henry Kuznik

Sworn to before me this
26th day of June, 2014


Notary Public for South Carolina
My Commission Expires: 7-21-2018

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Virgil "Ray" Passailaigue,

Plaintiff,

v.

Henry Kuznik, Alfred L. Saad, III, Paul
D. Hollen, III and Thornwell Partners,
LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-01647

**AFFIDAVIT OF
JERRY T. SAAD, CPA**

FILED
2014 JUN 30 PM 3:34
JULIE J. HINSTRONG
CLERK OF COURT
BY _____

The undersigned, being first sworn, does hereby state as follows:

1. My name is Jerry T. Saad. I am over the age of 18, give this affidavit of my own free will, and possess direct personal knowledge of the matters I attest to herein.

2. I am a member of the accounting firm Saad and Manios, LLC in Greenville, South Carolina. I am a Certified Public Accountant, and I have held this designation for __ years. I am a member in good standing of the American Institute of Certified Public Accounts as well as the South Carolina Associate of Certified Public Accountants.

3. I have been the certified public accountant for Thornwell Partners, LLC, and I have kept the financial records for that company since its inception.

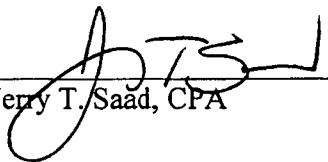
4. As a summary of the various books and records for Thornwell Partners, LLC in my possession, I have prepared the attached "Exhibit A" entitled "Summary of Net Proceeds (Cash Loss) on Commerce One project."

5. As reflected in Exhibit A and as a result of the transactions surrounding the acquisition and ultimate sale of the property known as the Dassinger tract, consisting of two (2) parcels in Charleston County, South Carolina, Thornwell Partners, LLC experienced a loss of \$238,093.38.

6. The phrase "net proceeds" as it is commonly used in accounting terms, is the amount of proceeds received from a sale after subtracting the costs necessary to accomplish and complete the transaction.

7. As a result of Thornwell Partners, LLC experiencing a loss of \$238,093.38 on the sale of the Dassinger tract, Thornwell Partners, LLC realized no net proceeds from the transaction.

Further affiant sayeth naught.


Jerry T. Saad, CPA

Sworn to before me this
30th day of June, 2014

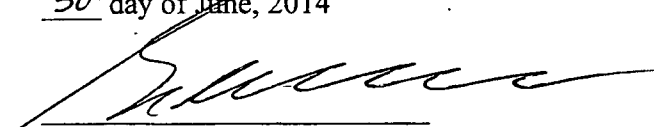

Notary Public of South Carolina
My commission expires 7/21/2018

EXHIBIT A
AFFIDAVIT OF JERRY T. SAAD, CPA

SUMMARY OF NET PROCEEDS (CASH LOSS) ON COMMERCE ONE PROJECT

<u>Proceeds / Values From Sales / Transfer of Properties</u>		
Commerce Three - 3 acres		400,000.00
Al Saad	15 acres	2,250,000.00
Henry Kuznik	22 acres	3,300,300.00
Total Proceeds / Values From Sales / Transfer of Properties		5,950,300.00
<u>Summary of Commerce One Project Costs</u>		
Land costs - Paid Dasingers		2,635,525.55
Land costs - Paid Passailaigue		1,022,900.00
Site Development Plans		271,593.72
Sewer Installation		194,855.32
Property Taxes		145,157.47
Loan and Closing Costs		456,281.99
Interest Expense		1,303,944.62
Professional Fees		152,403.20
Fees Permits Postage Bank Charges Etc...		5,731.51
Total Costs Paid thru Thornwell Partners LLC		6,188,393.38
<u>Net Proceeds (Cash Loss) on Commerce One Project</u>		(238,093.38)

PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina

November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passailaigue Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the proceeds from the future sales of the property known as the Dassinger tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners LLC dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further, that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

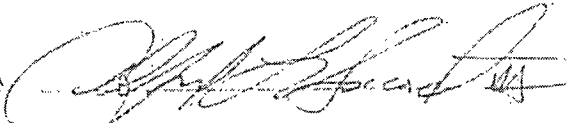
(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

... THORNWELL INVESTMENTS, LLC .

By 

Alfred L. Shad, III, Member

By 

Paul D. Hollen, III, Member

By 

Henry Kuznik, Member

PROMISSORY NOTE

\$130,000.00

Charleston, South Carolina

November 7, 2008

FOR VALUE RECEIVED, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), promises to pay to the order of Passailaigue Homes, a South Carolina Corporation (the "Lender") the principal sum of \$130,000.00. This sum is to be repaid in its entirety from the net proceeds from the future sales of the property known as the Dassing tract and consisting of two parcels further identified as Lot A 17 acres TMS No. 395-00-00-001 and Lot B 28.15 acres TMS No. 395-00-00-003, Charleston County, South Carolina.

The loan period is to be 24 months. The lender grants the irrevocable right to one extension of 24 months, *IF Borrower remains in good standing* 

All installments of principal are payable in lawful money of the United States of America, which shall be legal tender in payment of all debts and dues, public and private, at the time of payment; and in the event of (a) failure to pay this Note in full on the Maturity Date, or (b) default in the payment of any other installment of interest or principal or any other sum payable pursuant to the terms of this Note or any lien document securing this Note, not cured within ten (10) days after written notice from Lender, or (c) an "Event of Default" as such term is defined in the Loan Agreement executed of even date between Borrower and Lender (the "Loan Agreement"), then or at any time thereafter, at the option of Lender, the whole of the principal sum then remaining unpaid hereunder together with all interest accrued thereon, shall immediately become due and payable without further notice, and the lien given to secure the payment of this Note may be foreclosed. From and after the maturity of this Note either according to its terms or as the result of a declaration of maturity, the entire principal remaining unpaid hereunder shall bear interest at a rate of three (3%) percent per annum above the rate otherwise in effect hereunder (the "Default Rate"), or the highest applicable lawful rate, whichever is the lesser; provided that there shall be no automatic reduction to the highest lawful rate as to Borrower or any endorser or guarantor barred by law from availing itself in any action or proceeding of the defense of usury, or Borrower or any endorser or guarantor barred or exempted from the operation of any law limiting the amount of interest that may be paid for the loan or use of money, or in the event this transaction, because of its amount or purpose or for any other reason is exempt from the operation of any statute limiting the amount of interest that may be paid for the loan or use of money. Failure to exercise such option or any other rights Lender may in the event of any such default be entitled to, shall not constitute a waiver of the right to exercise such option or any other rights in the event of any subsequent default, whether of the same or different nature.

If this Note is placed in the hands of an attorney for collection or is collected through any legal proceedings, Borrower promises to pay all expenses of collection and reasonable attorney's fees incurred by Lender.

This Note is secured by the partnership interests held by Paul D. Hollen III, Alfred L. Saad and Henry Kuznik as defined in the Second Amended and Restated Operating Agreement of Thornwell Partners LLC dated November 7, 2008.

Borrower and all endorsers, guarantors and all persons liable or to become liable on this Note waive presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note, and consent to any and all renewals and extensions of the time of payment hereof, and agree, further,

that at any time and from time to time without notice, the terms of payment herein may be modified without in anywise affecting the liability of any party to this instrument or any person liable with respect to any indebtedness evidenced hereby.

Lender is not required to rely on the collateral for the payment of the Note in the event of default by the maker, but may proceed directly against the maker, endorsers, or guarantors, if any, in such manner as it deems desirable. None of the rights and remedies of Lender hereunder is to be waived or affected by failure or delay to exercise them. All remedies conferred on Lender by this Note or any other instrument or agreement shall be cumulative, and none is exclusive. Such remedies may be exercised concurrently or consecutively at Lender's option.

Borrower shall have the option of prepaying the principal amount due under this Note in whole or in part without penalty.

This Note shall be governed as to validity, interpretation, construction, effect, and in all other respects by the laws and decisions of the State of South Carolina.

Wherever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note or portion thereof shall be prohibited by or be invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note may be assigned by Lender with or without recourse.

Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Note or any instrument securing this Note, whether initiated by Lender, Borrower or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue.

WAIVER OF JURY TRIAL. BY THE EXECUTION HEREOF, BORROWER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY HEREBY AGREES THAT:

(A) NEITHER BORROWER NOR LENDER, NOR ANY ASSIGNEE, SUCCESSOR, HEIR, OR LEGAL REPRESENTATIVE OF BORROWER OR LENDER, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, OR ANY OTHER LITIGATION PROCEDURE ARISING FROM OR BASED UPON THIS NOTE, THE LOAN AGREEMENT (IF ANY) OR ANY OF THE LOAN DOCUMENTS EVIDENCING, SECURING, OR RELATING TO THE LOAN EVIDENCED HEREBY, OR TO THE DEALINGS OR RELATIONSHIP BETWEEN OR AMONG THE PARTIES HERETO;

(B) NEITHER BORROWER NOR LENDER WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED;

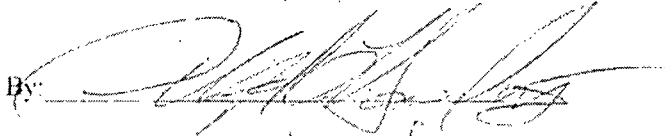
(C) THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS;

(D) NEITHER BORROWER NOR LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES; AND

(E) THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN EVIDENCED BY THIS NOTE.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

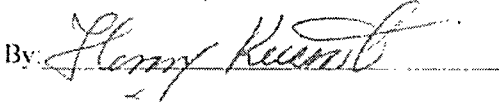
THORNWELL INVESTMENTS, LLC

By: 

Alfred I. Saad, III, Member

By: 

Paul D. Hollen III, Member

By: 

Henry Kuznik, Member

UNCONDITIONAL GUARANTY

November 22, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Henry Kuznik (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy Keenan
Laura Felt

Henry Kuznik (SEAL)
Henry Kuznik

UNCONDITIONAL GUARANTY

November 7, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Alfred L. Saad (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor)

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy K. Kneen
Laura K. Kneen

Alfred L. Staid III (SAL)

UNCONDITIONAL GUARANTY

November 14, 2008

WHEREAS, THORNWELL PARTNERS, LLC, a South Carolina limited liability company (the "Borrower"), has borrowed the sum of up to \$130,000.00 from Passailaigue Homes, a South Carolina corporation (the "Lender") pursuant to a promissory note from Borrower to Lender dated of even date herewith (the "Note"); and

WHEREAS, Lender is unwilling to make the loan to Borrower evidenced by the Note unless it receives an unconditional and continuing joint and several guaranty from Paul D. Hollen III (hereinafter collectively termed "Guarantor"), covering all "Obligations of Borrower" as hereinafter defined;

NOW, THEREFORE, in consideration of the premises and of other good and valuable consideration, Guarantor (jointly and severally, if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of all principal, interest and any other amounts due or to become due, whether by acceleration or otherwise, under the Note, or the Loan Agreement and the performance of any and all obligations of Borrower under the Loan Agreement, the Note, and all other documents executed by Borrower securing or relating to the Note (the Note, the Loan Agreement, and all such other documents are sometimes referred to collectively herein as the "Loan Documents"), and including all renewals, extensions and/or modifications thereof, plus all interest, costs and reasonable attorneys' fees of Lender (all of such liabilities and obligations of Borrower to Lender being hereinafter collectively termed "Obligations of Borrower").

This Guaranty is in addition to and is not intended to supersede any prior existing Guaranty of Guarantor.

In order to implement the foregoing and as additional inducements to Lender, Guarantor further covenants and agrees as follows:

1. This Guaranty is and shall remain an unconditional and continuing guaranty of payment and not of collection, shall remain in full force and effect irrespective of any interruption(s) in the business or other dealings and relations of Borrower and Lender and shall apply to and guarantee the due and punctual payment of all Obligations of Borrower due by Borrower to Lender.

2. TIME IS OF THE ESSENCE HEREOF. Any notice to Guarantor shall be sufficiently given if mailed to the address of Guarantor shown below.

3. This Guaranty Agreement constitutes the entire agreement between the parties, and no waivers or modifications shall be valid unless they are reduced to writing, duly executed by the party to be charged thereby, and expressly approved in writing by an officer of Lender actually involved in the transactions being guaranteed hereby.

4. Guarantor agrees that Guarantor's liability hereunder shall not be diminished by any failure on the part of Lender to perfect (by filing, recording or otherwise) any security interest it may have in any property securing this Unconditional Guaranty Agreement and/or the Obligations of Borrower secured hereby and hereunder.

5. If Borrower is an organization, this Guaranty covers all Obligations of Borrower purporting to be created or undertaken on behalf of such organization by any officer, partner, manager or agent of such organization, without regard to the actual authority of any such officer, partner, manager or agent, whether or not corporate resolutions, proper or otherwise, are given by any corporate Borrower to Lender, and/or whether or not such purported organizations are legally chartered or organized.

6. This Unconditional Guaranty Agreement shall be binding upon Guarantor, and the heirs, executors, administrators, successors and assigns of Guarantor; and it shall inure to the benefit of, and be enforceable by, Lender and its successors, transferees and assigns. It further shall be deemed to have been made under and shall be governed by the Laws of the State of South Carolina in all respects, including matters of construction, validity and performance.

7. No waiver by Lender of any default by Guarantor or Borrower shall operate as a waiver of any other default or of the same default on a future occasion. If more than one person has signed this Guaranty Agreement, such parties are jointly and severally obligated hereunder. The term "Guarantor," as used herein, shall (if signed by more than one person) mean the "Guarantors and each of them." If any Guarantor shall be a partnership, the obligations, liabilities and agreements on the part of such Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals composing the partnership. Further, the term "Guarantor" shall include in such event any altered or successor partnerships, it being also understood that the predecessor partnership and its partners shall not thereby be released from any obligations or liabilities hereunder. Lender, or any other holder hereof, may correct patent errors in this Agreement.

8. EVENTS OF DEFAULT. Guarantor shall be in default under this Guaranty Agreement upon the happening of any of the following events, circumstances or conditions, namely:

a) Failure of Guarantor to pay its obligations hereunder immediately upon demand after a default in the payment of the Obligations of Borrower or in the payment or performance of any other obligations or of any covenant, warranty or liability contained or referred to herein, or contained or referred to in the Loan Agreement, the Mortgage or any other Loan Document; or

b) Any warranty, representation or statement made or furnished to Lender by or on behalf of Guarantor in connection with this Guaranty Agreement or to induce Lender to extend credit or otherwise deal with either Borrower or Guarantor proving to have been false in any material respect when made or furnished; or

c) Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver for any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding under any State or Federal Bankruptcy or Insolvency Laws by or against any Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor); or

d) The assertion or making of any seizure, vesting or intervention by or under authority of any government by which the management of Guarantor or Borrower is displaced or their authority in the conduct of their business(es) is curtailed; or

c) Material adverse change in the financial position of Guarantor (unless Lender, in its reasonable discretion, accepts a substitute guarantor).

9. REMEDIES UPON DEFAULT. Upon the occurrence of any of the foregoing events, circumstances, or conditions of default, all of the obligations evidenced herein or guaranteed hereby shall immediately be due and payable without notice. Further, Lender shall then have all of the rights and remedies granted hereunder, and all of the rights and remedies of a secured party and/or holder-in-due-course under the South Carolina Uniform Commercial Code and/or under other Laws of South Carolina.

10. Any provision hereof to the contrary notwithstanding, to the extent Guarantor is determined to be an "insider" as such term is used in the United States Bankruptcy Code or cases thereunder, Guarantor waives any right (whether established by contract or statute or otherwise available at law or in equity) to reimbursement, indemnity, subrogation, contribution or other such claim against Lender, Borrower or any other guarantor or any other person primarily or secondarily liable for any Obligations of Borrower with respect to any disbursement or payment made by Guarantor under or in connection with this Guaranty or otherwise.

11. Guarantor submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Guarantor agrees that any action concerning this Agreement or the debts guaranteed hereby, whether initiated by Lender, Borrower, Guarantor or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Guarantor waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Guarantor further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to Guarantor at Guarantor's address set forth below or any new address of which Lender has been notified by Guarantor in writing.

Witnesses:

Wendy Keenan
Laura Helton

Paul D. Hollen III

(SEAL)

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-1647

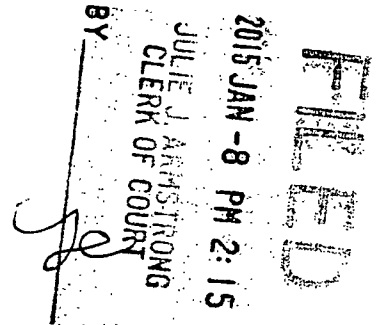
Virgil "Ray" Passailaigue

Appellant

v.

Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents.

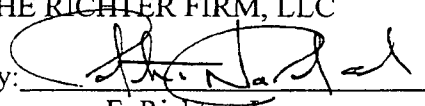


NOTICE OF APPEAL

Virgil "Ray" Passailaigue appeals the judgment of the Honorable R. Markley Dennis, Jr. dated September 11, 2014 (Exhibit A) and filed September 16, 2014 and the Order denying Plaintiff's Motion to Alter or Amend dated December 8, 2014 (Exhibit B) and filed December 9, 2014. Written notice of entry of the Order denying Plaintiff's Motion to Alter or Amend was received on December 12, 2014.

January 7, 2015

THE RICHTER FIRM, LLC

By: 

Lawrence E. Richter, Jr.

Patrick T. Napski

622 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

P: (843) 849-6000

F: (843) 881-1400

Other Counsel of Record:

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
89 Broad St.
P.O. Box 148
Charleston, SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq.
Law Offices of LW Cooper, Jr.
36 Broad St.
Charleston, SC 29401
Attorney for Defendant Paul D. Hollen, III

Shaun C. Blake, Esq.
Rogers, Lewis, Jackson, Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29201
*Attorney for Defendants Alfred L. Saad, III and
Thornwell Partners, LLC*

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-1647

Virgil Passailaigue

2014 SEP 16 PM 2:31

Henry Kuznik

PLAINTIFF(S)

JULIE J. ARTSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY 1

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED-AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: All 3 motions for Summary Judgment by Defendant, filed on 6/30/2014, 7/1/2014, and 7/2/2014, are GRANTED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

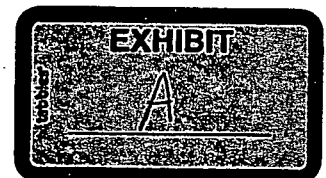
Virgil Passailaigue
Circuit Court Judge

2060

Judge Code

9/11/2014

Date



IN THE COURT OF COMMON PLEAS
Case No. 2013-CP-10-1647

PLAINTIFF,

DEFENDANT.

ORDER

FILED
2014 DEC -9 PM 4:27
JULIE ARMSTRONG
CLERK OF COURT
BY _____

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

December 8, 2014

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2013-CP-10-1647

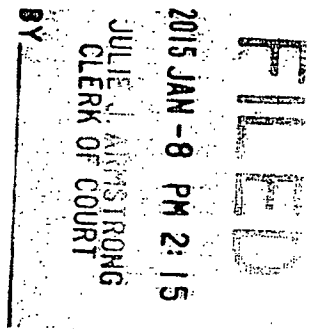
Virgil "Ray" Passailaiuge

Appellant.

v.

Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents,



PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Henry Kuznik, Alfred L. Saad, III, Paul D. Hollen, and Thornwell Partners, LLC by depositing a copy of it in the United States Mail, postage prepaid, on January 7, 2015, addressed to each of their attorneys of record as follows:

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
89 Broad St.
P.O. Box 148
Charleston, SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq.
Law Offices of LW Cooper, Jr.
36 Broad St.
Charleston, SC 29401
Attorney for Defendant Paul D. Hollen, III

Shaun C. Blake, Esq.
Rogers, Lewis, Jackson, Mann & Quinn, LLC
PO Box 11803
Columbia, SC 29201
*Attorney for Defendants Alfred L. Saad, III and
Thornwell Partners, LLC*

Dated: 1/7, 2015
Mt. Pleasant, South Carolina

THE RICHTER FIRM, LLC

By: 

Lawrence E. Richter, Jr.

Patrick T. Napski

622 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

P: (843) 849-6000

F: (843) 881-1400

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

Lawrence E. Richter, Jr.
Alice Anne Richter Lehrman
Aaron E. Edwards
Patrick T. Napolski*

Telephone: (843) 849-6000
Telefax: (843) 881-1400

*Also licensed in IL

January 7, 2015

Via U.S. Mail

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
Charleston Judicial Center
100 Broad St., Ste. 106
Charleston, SC 29401

Re: Virgil "Ray" Passailaigue v. Henry Kuznik, Alfred L. Saad, III, Paul D.
Hollen, III, and Thornwell Partners, LLC
Case No.: 2013-CP-10-1647

Dear Madam Clerk,

Please find enclosed a copy of the Notice of Appeal mailed to the South Carolina Court of Appeals with regards to the above-referenced matter. Please file one copy and return the other four (4) file-stamped copies to our office in the enclosed, self-addressed, stamped envelope. By copy of this letter to John M. Bleecker, Jr., Lindsey W. Cooper, Jr., and Shaun C. Blake, attorneys for the Respondents, I am serving them with a copy of the same.

If you have any questions or require additional information, please do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Patrick T. Napolski

Enclosures

cc: John M. Bleecker, Jr., Esq.
Lindsey W. Cooper, Jr., Esq.
Shaun C. Blake, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
JUN 15 2015
SC Court of Appeals

Case No. 2013-CP-10-1647
Appellate Case No. 2015-000044

Virgil "Ray" Passailaigue

Appellant,

v.

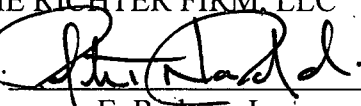
Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.

THE RICHTER FIRM, LLC

By: 

Lawrence E. Richter, Jr.

Patrick T. Napolski

622 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

P: (843) 849-6000

Attorneys for Appellant

Dated: 6/10, 2015
Mt. Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

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SC Court of Appeals

Case No. 2013-CP-10-1647
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Virgil "Ray" Passailaigue

Appellant,

v.

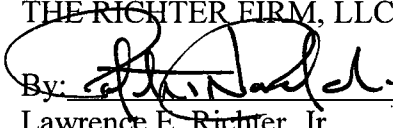
Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents,

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal complies with the Supreme Court Order dated August 13, 2007 regarding personal identifiers and sensitive information.

THE RICHTER FIRM, LLC

By: 

Lawrence E. Richter, Jr.

Patrick T. Napski

622 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

P: (843) 849-6000

Attorneys for Appellant

Dated: 6/10, 2015
Mt. Pleasant, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

JUN 15 2015

R. Markley Dennis, Jr., Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-10-1647
Appellate Case No. 2015-000044

Virgil "Ray" Passailaigue

Appellant,

v.

Henry Kuznik, Alfred L. Saad,
III, Paul D. Hollen, III, and
Thornwell Partners, LLC

Respondents,

PROOF OF SERVICE

I certify that I have served the Record on Appeal, Certificate of Counsel, Certificate of Compliance, and Proof of Service by depositing a copy of it in the United State Mail, postage prepaid, on 6/12/15, addressed to the attorneys of record, as follows:

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
89 Broad St.
P.O. Box 148
Charleston, SC 29402
Attorney for Defendant Henry Kuznik

Lindsey W. Cooper, Jr., Esq.
Law Offices of LW Cooper, Jr.
36 Broad St.
Charleston, SC 29401

Attorney for Defendant Paul D. Hollen, III

Shaun C. Blake, Esq.

Rogers, Lewis, Jackson, Mann & Quinn, LLC

PO Box 11803

Columbia, SC 29201

Attorney for Defendants Alfred L. Saad, III and

Thornwell Partners, LLC

THE RICHTER FIRM, LLC

By: *Michelle Stith*

Michelle Stith on behalf of:

Lawrence E. Richter, Jr.

Patrick T. Napolski

622 Johnnie Dodds Blvd.

Mt. Pleasant, SC 29464

P: (843) 849-6000

Attorneys for Appellant

Dated: *June 12*, 2015
Mt. Pleasant, South Carolina

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

Lawrence E. Richter, Jr.
Alice Anne Richter Lehrman
Aaron E. Edwards
Patrick T. Napolski*

Telephone: (843) 849-6000
Telefax: (843) 881-1400

*Also licensed in IL

June 12, 2015

Via U.S. Mail

John M. Bleecker, Jr., Esq.
Law Office of John M. Bleecker, Jr.
P.O. Box 148
Charleston, SC 29402

Lindsey W. Cooper, Jr., Esq.
The Law Offices of L.W. Cooper, Jr., LLC
36 Broad St.
Charleston, SC 29401

Shaun C. Blake, Esq.
Rogers, Lewis, Jackson, Mann & Quinn, LLC
P.O. Box 11803
Columbia, SC 29201

Re: Virgil "Ray" Passailaigue v. Henry Kuznik, et al.
Case No.: 2013-CP-10-01647
Appellate Case No.: 2015-000044

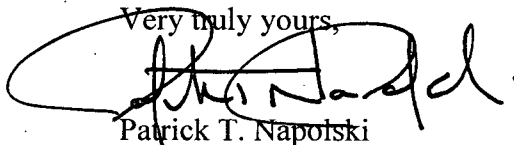
Dear Counselors,

Enclosed please find a copy of the Record of Appeal in the above referenced matter as well as a copy of the Proof of Service. The Proof of Service has also been sent to the Court of Appeals.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Patrick T. Napolski

RECEIVED

JUN 15 2015

SC Court of Appeals

THE RICHTER FIRM, LLC

Attorneys & Counselors at Law
622 Johnnie Dodds Boulevard
Mount Pleasant, South Carolina 29464

Lawrence E. Richter, Jr.
Alice Anne Richter Lehrman
Aaron E. Edwards
Patrick T. Napolski*

Telephone: (843) 849-6000
Telefax: (843) 881-1400

*Also licensed in IL

June 12, 2015

RECEIVED
JUN 15 2015
SC Court of Appeals

Via U.S. Mail

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

Re: Virgil "Ray" Passailaigue v. Henry Kuznik, et al.
Case No.: 2013-CP-10-01647
Appellate Case No.: 2015-000044

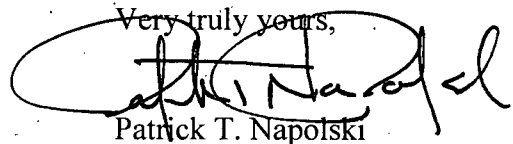
Dear Madam Clerk,

Enclosed please find the Proof of Service of the Record on Appeal in the above captioned matter.

If you have any questions, please do not hesitate to contact me.

With kindest regards, I am,

Very truly yours,



Patrick T. Napolski