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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-002085  
Case No. 2014-CP-10-4445

**RECEIVED**  
APR 26 2016  
SC Court of Appeals

JACOB GREENSPAN,

Appellant,

v.

BROTHERS PROPERTY CORPORATION,  
BROTHERS PROPERTY MANAGEMENT  
CORPORATION, VICTOR FULLER, Individually and  
in his official capacity, ANA REINA, Individually and  
in her official capacity, and OLIVER ROOSKENS,  
Individually and in his official capacity,

Defendants,

Of whom BROTHERS PROPERTY CORPORATION  
and BROTHERS PROPERTY MANAGEMENT  
CORPORATION are

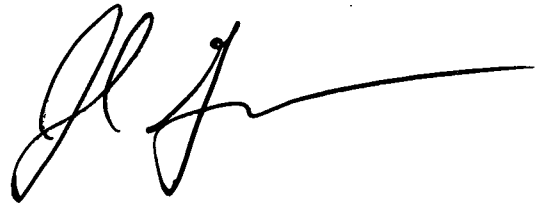
Respondents.

MOTION FOR REINSTATEMENT AND/OR MOTION FOR LEAVE TO SERVE AND FILE  
DOCUMENTS OUT OF TIME TO REMEDY DEFAULT

Appellant Jacob Greenspan, proceeding *pro se*, respectfully moves this Court for an order permitting the reinstatement of his appeal and granting leave of the Court to serve and file his initial brief and designation of matter out of time to remedy default. The grounds for this Motion are fully set forth in the attached Memorandum in Support of Appellant's Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default.

WHEREFORE, Appellant respectfully requests that the Court permit the reinstatement of this appeal and grant leave to provide Appellant with the opportunity to serve and file his initial brief and designation of matter out of time to remedy default, in addition to any other relief that this Court finds just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Greenspan', with a long horizontal flourish extending to the right.

April 25, 2016

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ATTORNEY FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
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APR 26 2015  
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JACOB GREENSPAN,

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v.

BROTHERS PROPERTY CORPORATION,  
BROTHERS PROPERTY MANAGEMENT  
CORPORATION, VICTOR FULLER, Individually and  
in his official capacity, ANA REINA, Individually and  
in her official capacity, and OLIVER ROOSKENS,  
Individually and in his official capacity,

Defendants,

Of whom BROTHERS PROPERTY CORPORATION  
and BROTHERS PROPERTY MANAGEMENT  
CORPORATION are

Respondents.

---

MEMORANDUM IN SUPPORT OF APPELLANT'S MOTION FOR REINSTATEMENT  
AND/OR MOTION FOR LEAVE TO SERVE AND FILE DOCUMENTS OUT OF TIME TO  
REMEDY DEFAULT

---

Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, SC 29412  
(843) 647-9277  
Appellant, Pro Se

Pursuant to Rule 260(a) of the South Carolina Appellate Court Rules, Appellant Jacob Greenspan, proceeding *pro se*, submits this memorandum in support of his Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default.

### INTRODUCTION

The origin of this appeal is an employment dispute. Appellant Jacob Greenspan, proceeding *pro se*, initially filed this action in the Circuit Court on July 18, 2014, against his former employers, Respondents' Brothers Property Corporation and Brothers Property Management Corporation (collectively referred to as "Brothers"), asserting twenty (20) state law causes of action stemming from his employment and the termination of his employment with Brothers.

Appellant was hired on November 30, 2009, to serve as Accounting Manager for Respondent Brothers Property Management Corporation, which does business as Charleston Harbor Resort and Marina ("Defendant CHRM" or "the Resort"), a hotel and marina facility located in Mt. Pleasant, South Carolina. On February 19, 2010, Appellant was promoted to the position of Controller for Respondent Brothers Property Management Corporation and he served in this role until the termination of his employment on June 18, 2012.

The appeal at bar was dismissed by this Court's order dated April 7, 2016, in which the Court stated that "Appellant has failed to serve and file his appellant's initial brief and designation of matter, as required by Rule 208 of the South Carolina Appellate Court Rules and the Court's order dated February 24, 2016." (Exh. A at 1.) Appellant does not dispute that he has failed to serve and file his appellant's initial brief and designation of matter, as required by Rule 208, SCACR; however, Appellant never received the Court's order dated February 24, 2016.

Appellant last corresponded with the Court of Appeals on February 8, 2016, when he filed his third Motion for Extension of Time to File his Initial Brief and Designation of Matter to be Included in the Record on Appeal and requested a new deadline of February 29, 2016. Having filed that motion under extreme financial hardship and for the purpose of using the requested time to adequately resolve his financial situation, as he discussed in the motion, and having failed to remedy his financial situation and to serve and file his initial brief and designation of matter by his requested deadline of February 29, 2016, Appellant had been awaiting the receipt of correspondence from the Court and anticipating the curative actions that would be necessary to remedy his default.

Previously, on October 14, 2015, Appellant filed a Motion for Leave of Court of Appeals to File Motion Seeking Relief Under Rule 60(B), SCRCR. Although on the longer side of response times from the Court, that motion was not ruled upon by the Court until December 10, 2015. As such, Appellant did not believe he was long overdue a response from the Court or missing any form of correspondence from the Court over the course of the seven weeks that had lapsed since the filing of his motion. Nor was Appellant being dilatory, causing undue delay, or anticipating the dismissal of his appeal.

Moreover, Appellant has exercised diligence in the handling of his legal case and in his dealings with the Courts without exception, and having already suffered the improper dismissal of his First Amended Complaint by the Circuit Court based solely upon statements made by Brothers' counsel in oral argument and the drafting of the Circuit Court's order delegated to Brothers' counsel, Appellant has no interest in jeopardizing his opportunity to have his appeal heard on its merits in order to see that this action is remanded back to the Circuit Court for further proceedings and another opportunity for his claims to be properly adjudicated on their merits.

After all, this legal action concerns matters central to Appellant's career, his livelihood, and his professional reputation. And undue delay is most certainly not in Appellant's interest.

**POINTS AND LEGAL AUTHORITIES IN SUPPORT OF MOTION FOR  
REINSTATEMENT OF APPEAL AND/OR MOTION FOR LEAVE TO SERVE AND  
FILE DOCUMENTS OUT OF TIME IN ORDER TO REMEDY DEFAULT**

**1. Appellant has always exercised diligence in the handling of his legal case and in his dealings with the Courts.**

As discussed *supra*, Appellant filed this action *pro se* in the Circuit Court on July 18, 2014, against Respondents' Brothers Property Corporation and Brothers Property Management Corporation. On October 3, 2014, Brothers' removed the action to federal court on the basis of diversity jurisdiction, while simultaneously filing a motion for an extension of time to file a responsive pleading, receiving a new deadline of October 31, 2014.

On October 29, 2014, Appellant filed his First Amended Complaint as a matter of course under Rule 15(a), FRCP, asserting nineteen (19) state law Causes of Action and naming three additional individual defendants. And on November 4, 2014, Appellant filed a Motion to Remand the action back to the Circuit Court, as the addition of one of the individual defendants defeated diversity jurisdiction.

Brothers responded on November 17, 2014, by filing both a Motion to Strike Appellant's First Amended Complaint and a Motion to Dismiss Appellant's First Amended Complaint pursuant to Rule 12(b)(6), FRCP. And on November 21, 2014, Brothers' filed a Response in Opposition to Appellant's Motion to Remand, to which Appellant replied on December 5, 2014.

On April 6, 2015, the Magistrate Judge served a Report and Recommendation in which she recommended that Brothers' Motion to Strike Appellant's First Amended Complaint be denied and that Appellant's Motion to Remand be granted.

On April 30, 2015, the Magistrate's Report and Recommendation was adopted as an Order of the District Court and this action was remanded back to the Circuit Court from which it was removed.

Additionally, the Magistrates Report and Recommendation also noted that "[t]here are two additional pending motions in this case, [Appellant's] Application To Proceed Without Prepayment Of Fees And Affidavit (Dkt. No. 17) and Brothers' Motion To Dismiss [Appellant's] First Amended Complaint (Dkt. No. 25)," and "[i]f the district court is inclined to follow this recommendation, this court recommends the remaining pending motions cannot be ruled on as this court has no jurisdiction."

On May 11, 2015, Brothers' counsel filed a complete copy of the federal court record with the Circuit Court, along with a copy of the federal docket under cover of a letter dated May 6, 2015, in which Brothers' counsel informed the Circuit Court of the need to have Brothers' Motion to Dismiss Appellant's First Amended Complaint added to the next civil non-jury motions roster. (Exh. D at 1.)

On June 15, 2015, absent any further correspondence from Brothers' counsel or the Circuit Court concerning the scheduling of a motion hearing, Appellant filed a Motion for Extension of Time to Respond to Brothers' Motion to Dismiss his First Amended Complaint, in which he requested an additional fourteen (14) days, up to and including June 29, 2015, to file a response in opposition to Brothers' motion. However, the Circuit Court never ruled upon Appellant's motion.

Rather, on June 23, 2015, eight (8) days after the filing of his motion, Appellant's Motion for Extension of Time to Respond to Brothers' Motion to Dismiss was rendered moot when it was scheduled for oral argument alongside Brothers' Motion to Dismiss on the morning of July 29, 2015, a full thirty (30) days after the June 29<sup>th</sup> deadline requested in Appellant's Motion for Extension of Time to Respond to Brothers' Motion to Dismiss.

Accordingly, Appellant chose to forgo the opportunity to appear for oral argument in support of a moot Motion for Extension of Time and to rest upon his pleadings in opposing Brothers' Motion to Dismiss his First Amended Complaint. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) (noting an issue becomes moot when a decision, if rendered, will have no practical legal effect upon the existing controversy).

**2. Appellant's First Amended Complaint Was Dismissed by The Circuit Court Pursuant to Rule 12(b)(6), SCRPC, Based Solely Upon The Oral Arguments Set Forth By Brothers' Counsel.**

On July 29, 2015, the Circuit Court heard oral argument on Brothers' Motion to Dismiss Greenspan's First Amended Complaint pursuant to Rule 12(b)(6), SCRPC. In considering a motion to dismiss under Rule 12(b)(6), a court must base its ruling solely on the allegations set forth in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, dismissal under Rule 12(b)(6) is improper. *Id.*

In commencing their argument for the dismissal of Greenspan's First Amended Complaint in its entirety, Brothers' counsel stated that "[b]ecause there are 19 Causes of Action, I'm going to say most of my arguments are set out in full in the memorandum, but I'm going to briefly go through them with you right now." (Exh. C, 5:10.)

And upon the conclusion of Brothers' counsels' oral argument, the court stated, "Well, from what you said, I'm going to grant your motion. I will ask you to prepare an order" (Exh. C, 12:10) "[a]nd submit it to me through my law clerk" (Exh. C, 12:13). "And the order should reflect he failed to appear after notice and did not challenge the motion." (Exh. C, 12:19.)

The Circuit Court announced its decision to grant Brothers' Motion to Dismiss Greenspan's First Amended Complaint in its entirety pursuant to Rule 12(b)(6), SCRCPP, based solely upon the oral arguments set forth by Brothers' counsel. It is well established that a court cannot consider statements of fact appearing only in argument of counsel. *E.g. McManus v. Bank of Greenwood*, 171 S.C. 84, 89, 171 S.E. 473, 475 (1933); *S.C. Dept. of Transp. v. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct. App. 2003); *Sessions v. Withers*, 327 S.C. 409, 488 S.E.2d 888 (Ct. App. 1997); *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991); *Gilmore v. Ivey*, 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).

Moreover, the court disregarded the fact that Appellant filed a Motion for Extension of Time to Respond to Brothers' Motion to Dismiss in addition to the particular date of Appellant's requested deadline in that motion, and focused on the erroneous argument that Appellant never responded to Brothers' Motion to Dismiss his First Amended Complaint in concluding that Appellant failed to challenge Brothers' motion. *See* Exh. C, 3:10 – 4:17.

What's more, the Circuit Court delegated the drafting of the order to Brothers' counsel without notice to Appellant and without ever conducting an independent review of Greenspan's First Amended Complaint or Brothers' Motion to Dismiss Greenspan's First Amended Complaint. *See* Exh. C, 4:18-5:9 (showing that the Circuit Court was unaware if it had a copy of Appellant's First Amended Complaint or Brothers' Motion to Dismiss).

"The manner in which the opinion of the District Judge was prepared in this case cannot be approved. There is authority for the submission to the court of proposed

findings of fact and conclusions of law by the attorneys for the opposing parties in a case, and the adoption of such of the proposed findings and conclusions as the judge may find to be proper. In South Carolina, we are told, under a practice that prevails widely in the trial courts of the state, the opinion is frequently prepared at the request of the judge by the attorney for the successful party. But there is no authority in the federal courts that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function and when it occurs without notice to the opposing side, as in this case, it amounts to a denial of due process. In either event, a reversal of the judgment and a remand for further proceedings would be justified.” (quoting *Chicopee Manufacturing Corp. v. Kendall Company*, 288 F.2d 719 (4th Cir. 1961))(internal citations omitted).

Additionally, the Supreme Court has stated that “[w]e, too, have criticized courts for their verbatim adoption of findings of fact prepared by prevailing parties, particularly when those findings have taken the form of conclusory statements unsupported by citation to the record. We are also aware of the potential for overreaching and exaggeration on the part of attorneys preparing findings of fact when they have already been informed that the judge has decided in their favor.” (quoting *Anderson v. Bessemer City*, 470 U.S. 564, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985))(internal citations omitted).

On August 24, 2015, the Circuit Court entered an order granting Brothers’ Motion to Dismiss Appellant’s First Amended Complaint “in its entirety and with prejudice on the basis that each cause of action fails to state a claim for which relief may be granted.” (Exh. B, 1-2.)

Appellant received notice of the Circuit Court’s order on August 31, 2015, and then following his review of the order, Appellant served and filed his Notice of Appeal on September 29, 2015.

On October 14, 2015, after filing his Notice of Appeal, Appellant filed a Motion for Leave of Court of Appeals to File Motion Seeking Relief Under Rule 60(b), SCRCF, in which he stated that the Circuit Court’s order “is merely a recitation, often verbatim, of the facts as set forth within [Brothers’] Motion to Dismiss and the arguments contained therein” (Exh. E, 1-2),

and argued that “the Circuit Court’s order was controlled by an error of law in that the Circuit Court failed to apply the appropriate standard of review required under Rule 12(b)(6), SCRCF, by presuming that all statements made within [Brothers’] Motion to Dismiss were truthful, factually accurate, and representative of the pleadings provided within [Appellant’s] First Amended Complaint, and by adopting the corresponding arguments and legal conclusions set forth within [Brothers’] Motion to Dismiss as its own” (Exh. E, 2).

More specifically, Appellant stated that “[Brothers’] Motion to Dismiss neither accurately represents the factual allegations made within [Appellant’s] First Amended Complaint, nor disputes any of the factual allegations made within [Appellant’s] First Amended Complaint” (Exh. E, 2); that “the arguments and legal conclusions set forth within [Brothers’] Motion to Dismiss are predominantly baseless and without any merit” (Exh. E, 2); and that “the Circuit Court failed to identify any conflicting facts or to resolve any doubts altogether” (Exh. E, 2).

In summary, Appellant argued that “the Circuit Court failed to properly exercise its function to find the facts and apply the law thereto” (Exh. E, 2), and that “the Circuit Court’s failure to properly exercise its duties resulted in the issuance of an order that is not representative of the factual allegations made by [Appellant] within his First Amended Complaint and one in which the Circuit Court’s factual conclusions are without evidentiary support” (Exh. E, 2).

Accordingly, Appellant sought leave from this Court during the pendency of his appeal for the purpose of “affording him the opportunity to address the overlooked factual allegations made within his First Amended Complaint and allowing the Circuit Court to correct its error in the interest of judicial economy.” (Exh. E, 2-3.) Nevertheless, Appellant’s Motion for Leave was denied by this Court on December 10, 2015.

Following the filing of Appellant’s Motion for Leave of Court of Appeals to File

Motion Seeking Relief Under Rule 60(b), SCRPC, the transcript of the July 29<sup>th</sup> proceedings was furnished to Appellant under cover of a letter dated October 21, 2015. The transcript of the July 29<sup>th</sup> proceedings reveals that Brothers' counsel inaccurately presented and/or intentionally misrepresented a substantial amount of material facts and information to the Circuit Court, including, but not limited to, the factual allegations set forth in Greenspan's First Amended Complaint. For the sake of brevity, Appellant has decided against providing the Court with specific examples within this motion, as he has done so within his initial brief. Nonetheless, the transcript of the July 29<sup>th</sup> proceedings demonstrates the significant prejudice and denial of due process suffered by Appellant with regards to this action and most definitely would have swayed this Court's ruling on Appellant's Motion for Leave in his favor, providing him with a fair opportunity to have his claims adjudicated on their merits and not on legal technicalities.

WHEREFORE, Appellant respectfully requests that the Court permit the reinstatement of this appeal and grant leave to provide Appellant with the opportunity to serve and file his initial brief and designation of matter out of time to remedy default, in addition to any other relief that this Court finds just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'JG', with a long horizontal line extending to the right.

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Charleston, SC 29412  
(843) 647-9277  
Appellant, Pro Se

April 25, 2016

Other Counsel of Record:  
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Phone: 864-232-7000  
Fax: 864-235-1381

ATTORNEY FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

# **Exhibit A**

# The South Carolina Court of Appeals

Jacob Greenspan, Appellant,

v.

Brothers Property Corporation, Brothers Property Management Corporation, Victor Fuller, Individually and in his official capacity, Ana Reina, Individually and in her official capacity, and Oliver Rooskens, Individually and in his official capacity, Defendants,

Of Whom Brothers Property Corporation and Brothers Property Management Corporation are Respondents.

Appellate Case No. 2015-002085

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## ORDER

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Appellant has failed to serve and file his appellant's initial brief and designation of matter, as required by Rule 208 of the South Carolina Appellate Court Rules and the Court's order dated February 24, 2016. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

*V. Claire Allen, Deputy*  
CLERK

Columbia, South Carolina

cc:

Jacob Greenspan

John William Sulau, Esquire

Ellison Ford McCoy, Esquire

**FILED**

4/7/2016 AD

# **Exhibit B**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 JACOB GREENSPAN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BROTHERS PROPERTY )  
 CORPORATION, BROTHERS )  
 PROPERTY MANAGEMENT )  
 CORPORATION, VICTOR FULLER, )  
 Individually and in his official capacity, )  
 ANA REINA, Individually and in her )  
 official capacity, and OLIVER ROOSKENS, )  
 Individually and in his official capacity, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-10-4445

**FILED**  
 2015 AUG 24 AM 9:20  
 JUDGE J. L. HARRIS  
 CLERK OF COURT

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

This matter is before the Court on the Motion to Dismiss Plaintiff's First Amended Complaint pursuant to South Carolina Rule of Civil Procedure 12(b)(6) filed by Defendants Brothers Property Corporation and Brothers Property Management Corporation (Brothers).<sup>1</sup> On June 23, 2015, the Clerk of Court provided notice to Plaintiff of the hearing on Brothers' motion by letter to the address Plaintiff listed on the pleadings in this case. Additionally, Brothers' counsel notified Plaintiff of the hearing on Brothers' motion by letter dated June 23, 2015 sent to the address Plaintiff listed on the pleadings in this case. Nevertheless, Plaintiff did not appear for oral argument. The Court heard oral argument on this motion from Brothers on July 28, 2015.

Having heard Brothers' oral argument and considered the filings, I hereby grant Defendants' motion to dismiss Plaintiff's First Amended Complaint in its entirety and with

<sup>1</sup> Only Brothers Property Corporation and Brothers Property Management Corporation (collectively, "Brothers") have been served with process in this case.

*Handwritten initials: JSL P1*

prejudice on the basis that each cause of action fails to state a claim for which relief may be granted.

### STANDARD OF REVIEW

Rule 12(b)(6) of the South Carolina Rules of Civil Procedure provides that a cause of action should be dismissed if the plaintiff fails to allege facts that would entitle him to any relief. *Pylar v. Burns*, 373 S.C. 637 (S.C. 2007); *Toussaint v. Ham*, 292 S.C. 415 (S.C. 1987). A plaintiff has the burden of pleading sufficient facts to establish each element of his cause of action. *Moore v. City of Columbia*, 284 S.C. 278 (S.C. Ct. App. 1985). In considering a Rule 12(b)(6) motion, the court only considers the factual allegations in a plaintiff's complaint. *Spence v. Spence*, 368 S.C. 106 (S.C. 2006).

### FACTUAL BACKGROUND

The relevant factual allegations set forth in the First Amended Complaint are as follows: Plaintiff is a former employee of Defendant Brothers Property Management Corporation, which is doing business as Charleston Harbor Resort and Marina, a hotel, restaurant, and marina facility located in Mt. Pleasant, South Carolina. Plaintiff was terminated from his position in June 2012. In his First Amended Complaint, Plaintiff asserts 19 causes of action stemming from his employment and termination. Specifically, Plaintiff asserts the following claims: (1) Negligent Hiring, Retention, and Supervision; (2) Negligence/Gross Negligence; (3) Fraud in the Inducement; (4) Breach of Fiduciary Duty; (5) Fraudulent Concealment; (6) Breach of Oral Contract; (7) Breach of Contract Accompanied By Fraudulent Act; (8) Breach of Fiduciary Duty; (9) Breach of Fiduciary Duty; (10) Fraudulent Concealment; (11) Fraud/Fraud Concealment; (12) Violation of the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* (the "Payment of Wages Act"); (13) Quantum Meruit; (14)

Breach of Fiduciary Duty; (15) Defamation; (16) Intentional Interference with Contractual Relations; (17) Wrongful Discharge in Violation of Public Policy; (18) Wrongful Discharge in Breach of Contract; and (19) Intentional Infliction of Emotional Distress.

## ANALYSIS

### 1. Multiple Causes of Action Are Barred by South Carolina's Workers' Compensation Act.

Plaintiff's First, Second, and Nineteenth Causes of Action are barred by the exclusivity provision of South Carolina's Workers' Compensation Act (the "Act") and must be dismissed as a matter of law. The Act provides the exclusive remedy against an employer for an employee who sustains work-related injuries. *Fuller v. Blanchard*, 358 S.C. 536 (S.C. Ct. App. 2004); *see also Strickland v. Galloway*, 348 S.C. 644, 646 (S.C. Ct. App. 2002) ("In circumstances in which the [ ] Act covers an employee's work-related accident, the Act provides the exclusive remedy against the employer."). This exclusive remedy doctrine provides that an employer receives immunity from wrongful actions committed by an employee conducting the employer's business, and the South Carolina Workers' Compensation Commission has exclusive original jurisdiction over such claims. *Sabb v. S.C. State Univ.*, 350 S.C. 416, 422 (S.C. 2002). The exclusivity provision of the Act is jurisdictional and bars all common law actions against an employer where an employee's personal injury comes within the scope of the Act. S.C. Code Ann. §§ 42-1-10, 42-1-540, 42-1-160; *Sturgis v. Safe Passage, Inc.*, Civil Action No. 2000-CP-46-1092, 18 IER Cases 1170, 1172 (S.C. Com. Pl. 2002) (holding that exclusivity under the Act divests the court of subject matter jurisdiction).

The South Carolina Supreme Court has specifically held that a "claim of negligence for failure to exercise reasonable care in selection, retention, and supervision of co-employee[s] is covered by the [Workers' Compensation] Act." *Sabb*, 350 S.C. at 422. *See also*

*Stokes v. First Nat'l Bank*, 306 S.C. 46 (S.C. 1991) (mental injury arising from non-physical stress is within the Act). Claims for intentional infliction of emotional distress are similarly barred by the Act. See *Dickert v. Metro. Life Ins. Co.*, 311 S.C. 218 (S.C. 1993); *Loges v. Mack Trucks, Inc.*, 308 S.C. 134, 137 (S.C. 1992) (dismissing claim for intentional infliction of emotional distress stemming from harassment by co-employee). See also *Powell v. Vulcan Materials Co.*, 299 S.C. 325 (S.C. 1989) (recognizing that there is no justification for distinguishing between mental disorders resulting from physical injuries and mental disorders brought about by emotional stimuli or stressors which are incident to unusual and extraordinary conditions in employment). Notably, all the complained-of tortious conduct, purportedly committed by Rooskens, is alleged to have occurred within “the course and scope of his employment.” (Am. Compl. ¶ 13.) As such, Plaintiff’s First, Second and Nineteenth Causes of Action are barred by the Act’s exclusivity provision and must be dismissed.

**2. Several of Plaintiff’s Claims Are Time-Barred.**

Plaintiff filed his initial Complaint in this case on July 18, 2014. Because the causes of action asserted in Plaintiff’s First Amended Complaint are the same as those asserted in his initial Complaint, the claims asserted in the First Amended Complaint relate back to July 18, 2014, the date on which the initial Complaint was filed. S.C. R. Civ. P. 15(c). Because the allegations Plaintiff sets forth in support of his Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Fifteenth Causes of Action demonstrate on their face that these claims are time-barred, these causes of action must be dismissed with prejudice. Plaintiff’s Twelfth Cause of Action for Violation of the Payment of Wages Act is also time-barred to the extent it seeks relief for actions that allegedly occurred prior to July 18, 2011.

In support of his Third, Fifth, and Seventh Causes of Action, Plaintiff alleges that Brothers engaged in fraudulent conduct on February 19, 2010, December 27, 2010, and December 2010 through January 2011, respectively. (Am. Compl. ¶¶ 144-54; 161-68; 174-79.) There can be no dispute that these claims are beyond South Carolina's three-year statute of limitations for fraud claims. See S.C. Code Ann. § 15-3-530(5); *Graham v. Welch*, 404 S.C. 235 (S.C. Ct. App. 2013). As such, these claims must be dismissed.

Similarly, Plaintiff alleges in his Fourth and Eighth Causes of Action that in 2010 Brothers breached a fiduciary duty owed to him. (Am. Compl. ¶¶ 155-60; 180-85.) These claims are clearly beyond South Carolina's three-year statute of limitations for breach of fiduciary duty claims and must be dismissed as a matter of law. See S.C. Code Ann. § 15-3-530(5); *Graham*, 404 S.C. at 235.

In support of his Sixth Cause of Action, Plaintiff alleges that in 2010, he entered into an oral contract with Brothers. (Am. Compl. ¶ 170.) Plaintiff claims that Brothers breached this oral contract in 2011. (*Id.* at ¶ 172.) Because South Carolina's statute of limitations for breach of contract claims is three years, see S.C. Code Ann. § 15-3-530(1), this claim is time-barred and must be dismissed.

Plaintiff alleges in support of his Fifteenth Cause of Action that Brothers defamed him between June 13 and June 17, 2012. (Am. Compl. ¶ 233.) South Carolina's statute of limitations for defamation claims is two years. S.C. Code Ann. § 15-3-550; *Jones v. City of Folly Beach*, 326 S.C. 360, 368 (S.C. Ct. App. 1997); *Evans v. Rite Aid Corp.*, 317 S.C. 154, 158 n.3 (S.C. Ct. App. 1994). Accordingly, this claim fails as a matter of law and must be dismissed.

Finally, in his Twelfth Cause of Action, Plaintiff alleges that Brothers violated the Payment of Wages Act by, among other alleged actions: (1) failing in 2010 to pay him the

Handwritten signature and initials, possibly "D. J. 5", written in black ink.

“considerable bonus” he was promised; and (2) failing to pay him a salary of \$65,000 beginning in January 2011 according to the terms of the alleged oral contract between the parties. (Am. Compl. ¶ 215-16.) The statute of limitations for violations of the Payment of Wages Act is three years. S.C. Code Ann. § 41-10-80. Therefore, Plaintiff’s Twelfth Cause of Action must be dismissed to the extent he seeks recovery for alleged violations that occurred prior to July 18, 2011.

**3. Plaintiff’s Breach of Contract Claim Based on His Termination Fails as a Matter of Law.**

Plaintiff has failed to allege facts that could plausibly show that he was employed on a basis that was anything other than at-will, and therefore his Eighteenth Cause of Action must be dismissed. South Carolina strictly adheres to the employment-at-will doctrine, which provides that an at-will employee may be terminated “at any time, for any reason or for no reason at all.” *Small v. Springs Indus., Inc.*, 300 S.C. 481, 484 (S.C. 1990). “In South Carolina, employment at-will is presumed absent the creation of a specific contract of employment. An at-will employee may be terminated at any time for any reason or for no reason, with or without cause.” *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 614 (S.C. 2011) (citing *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 310 (S.C. 2010)). An employee without a contract for a stated period of time is presumptively considered an at-will employee. *Cape v. Greenville Cnty. Sch. Dist.*, 365 S.C. 316, 319 (S.C. 2005). “The termination of an at-will employee normally does not give rise to a cause of action for breach of contract.” *Prescott v. Farmers Tel. Co-op.*, 335 S.C. 330, 334-35 (S.C. 1999). Moreover, it is axiomatic that a party must plead each of the elements of the allegedly breached contract before he may recover for breach of contract. *Rabon v. State Fin. Corp.*, 203 S.C. 183, 185 (S.C. 1943). “The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Roberts v. Gaskins*, 327 S.C. 478, 483 (S.C. Ct.

*Pat*  
*pb*

App. 1997) (citing *Carolina Amusement Co. v. Conn. Nat. Life Ins. Co.*, 313 S.C. 215 (S.C. Ct. App. 1993)).

Plaintiff's allegations do not overcome the presumption of at-will employment. Here, Plaintiff has not alleged that his employment was limited in duration, nor are there any allegations that support the limitation of the Brothers' right to terminate Plaintiff's employment. In particular, there is nothing contained in the disciplinary action notice issued to Plaintiff that limits Brothers' right to terminate Plaintiff's employment for other reasons, despite Plaintiff's conclusory assertions to the contrary. As Plaintiff has not set forth a facially-plausible claim that the parties entered into a contract that would alter the presumption of at-will employment, Plaintiff's breach of contract claim premised upon his termination cannot proceed. Moreover, Plaintiff offers nothing more than conclusory statements that "Plaintiff was issued a valid and enforceable express unilateral employment contract" on January 20, 2012 to establish that a contract between the parties existed. (Am. Compl. ¶ 263.) Plaintiff fails to plead any of the material elements of the purported employment contract upon which he is suing, as required by South Carolina law. *See Rabon*, 203 S.C. at 185. Accordingly, Plaintiff's Eighteenth Cause of Action cannot be sustained.

**4. Plaintiff Cannot Maintain His Claim for Violation of the Payment of Wages Act.**

To the extent that Plaintiff's Twelfth Cause of Action for Violation of the Payment of Wages Act is not time-barred, as discussed *supra* at 4, this claim fails as a matter of law. The Payment of Wages Act permits Plaintiff to recover in a civil action "all wages due" but unpaid by Brothers. S.C. Code Ann. § 41-10-50 (Supp. 2012); S.C. Code Ann. § 41-10-80(C) (Supp. 2012). The Payment of Wages Act defines "wages" as follows:

[A]ll amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or

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commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

S.C. Code Ann. § 41-10-10(2) (Supp. 2012). In other words, the Payment of Wages Act “defines ‘wages’ as ‘all amounts . . . which are due to an employee under any . . . **employer policy or employment contract.**’” *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 195 n.4 (S.C. Ct. App. 1995) (quoting § 41-10-10(2)) (emphasis added). Accordingly, in order to state a claim under the Payment of Wages Act, Plaintiff must show the existence of a valid employer policy or contract, and the wages sought must be “due” under the terms of that policy or contract.

In this case, there are no allegations to support Plaintiff’s assertion that Brothers withheld any bonus compensation from him in contravention of an employer policy or employment contract. Indeed, Plaintiff does not allege that he was promised a bonus in 2011. (Am. Compl. ¶ 26). Rather, he alleges only that there was a “legitimate expectation” that he “would be provided with year-end bonuses,” and claims that the \$3,750 bonus he received was not “determined in accordance with the factors represented to Plaintiff.” (Am. Compl. ¶¶ 24, 216.) According to the First Amended Complaint, bonuses were to be determined based upon the relative success of Brothers’ business with consideration for the employee’s position with Brothers. (*Id.* ¶ 24.) Absolutely nothing about the “factors” presented to Plaintiff suggests that any bonus that was discussed with Plaintiff was anything other than a discretionary bonus, which clearly falls outside the scope of the Payment of Wages Act. As Plaintiff has not pled the material elements of a contract, or identified any non-discretionary policy entitling him to a bonus at the end of 2011 (or at any other point in his employment), he cannot state a claim for relief under the Payment of Wages Act.

Finally, to the extent Plaintiff's Twelfth Cause of Action seeks recovery for a violation of the notice requirements of the Payment of Wages Act, a review of the statutory text makes clear that such a claim is untenable. The Payment of Wages Act explicitly provides that enforcement of its notice provisions are the exclusive province of the South Carolina Department of Labor, Licensing, and Regulation. See S.C. Code Ann. § 41-10-80(A); (D). The only provision setting forth a private right of action is S.C. Code Ann. § 41-10-80(C), which does not permit the recovery of penalties, and is expressly limited to recovery for certain violations of §§ 41-10-40 and 41-10-50. Permitting a private party to collect damages for notice violations in a civil action without any of the administrative review procedures set forth in the Payment of Wages Act would contravene the intent of the Legislature as plainly set forth in the statute. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436 (S.C. 1995) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.") (citing *Miller v. Doe*, 312 S.C. 444, 447 (S.C. 1994)). Accordingly, Plaintiff has not stated (and cannot state) a valid claim for relief for the alleged violation of the notice requirements of the Payment of Wages Act. Therefore, Plaintiff's Twelfth Cause of Action must be dismissed.

**5. Plaintiff's Cause of Action for Intentional Interference with Contractual Relations Cannot Be Sustained.**

Plaintiff's Sixteenth Cause of Action for Intentional Interference with Contractual Relations is premised on Plaintiff's legally untenable argument that Brothers interfered with its own contract. To prevail on this claim, Plaintiff must prove: (1) the existence of a contract; (2) Brothers' knowledge of the contract; (3) Brothers' intentional procurement of the contract's breach; (4) absence of justification; and (5) damages resulting therefrom. *DeBerry v. McCain*,

275 S.C. 569, 574 (S.C. 1981) (setting forth elements of tortious interference with contractual relations). See also *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 368 S.C. 410, 420-21 n.1 (S.C. 2006) (Toal, C.J., dissenting) (explaining that a cause of action for “intentional interference with contract” requires proof of the same elements as a cause of action for tortious interference with contractual relations). Even if Plaintiff could show the existence of a contract, it is axiomatic that Brothers cannot interfere with their own contract. See *McManus v. MCI Commc'ns Corp.*, 748 A.2d 949, 958 (D.C. 2000) (“[A]n employer cannot interfere with its own contract.”). Plaintiff alleges that Brothers are parties to the employment contract upon which his Sixteenth Cause of Action is based. (Am. Compl. ¶¶ 243-251.) As such, Brothers cannot interfere with its own contract, and this cause of action must be dismissed.

**6. Plaintiff's Quantum Meruit Claim Fails As a Matter of Law.**

Quantum meruit is an equitable doctrine that allows recovery for unjust enrichment. *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261 (S.C. 1994). To recover under this theory, Plaintiff must establish: “(1) benefit conferred by [the] plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying it value.” *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 8-9 (S.C. 2000). Plaintiff rests his claim upon his allegation that Brothers were unjustly enriched when they failed to “pay the fair or equitable value for the services performed by Plaintiff.” (Am. Compl. ¶ 224.) Plaintiff, however, cannot establish any “unjust enrichment” by Brothers resulting from his mere performance of his job duties. Here, it is undisputed that throughout his at-will employment, Plaintiff earned and was paid a salary. Moreover, Plaintiff readily acknowledges that he received a bonus at the end of 2010 and 2011. (*Id.* ¶¶ 35, 75.) Thus, Brothers were not unjustly enriched

by Plaintiff's provision of his services. As Plaintiff has not alleged that he conferred any benefit on Brothers for which he was not compensated, his Thirteenth Cause of Action for Quantum Meruit fails as a matter of law.

**7. Plaintiff's Breach of Fiduciary Duty Claims Fail As a Matter of Law.**

Plaintiff has alleged four separate claims for breach of fiduciary duty against Brothers stemming from four discrete events that occurred during his employment. Specifically, Plaintiff challenges the following:

- **FOURTH CAUSE OF ACTION:** Rooskens' actions surrounding the year-end bonus he received in December 2010 (Am. Compl. ¶¶ 155-160);
- **EIGHTH CAUSE OF ACTION:** Rooskens' alleged repudiation of his "oral employment contract" in December 2010 (Am. Compl. ¶¶ 180 – 185);
- **NINTH CAUSE OF ACTION:** Rooskens' actions surrounding the year-end bonus he received in December 2011 (Am. Compl. ¶¶ 186-191); and
- **FOURTEENTH CAUSE OF ACTION:** Rooskens' efforts to secure the termination of his employment between June 13, 2012 and June 17, 2012 (Am. Compl. ¶¶ 226-231).

As discussed *supra*, Plaintiff's Fourth and Eighth causes of action are time-barred. In addition, Plaintiff has failed to plead that he and Brothers entered into a confidential relationship, and therefore his Ninth and Fourteenth causes of action also fail as a matter of law.<sup>2</sup>

"A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Moore v. Benson*, 390 S.C. 153, 163 (S.C. Ct. App. 2010). That "special confidence" simply does not exist in the employer-employee relationship.

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<sup>2</sup> As discussed *supra* at 3-4, Plaintiff's Fourth and Eighth Causes of Action are also time-barred.

Plaintiff alleges in conclusory fashion that he and Rooskens owed fiduciary duties to Brothers, and because each of them owed fiduciary duties to Brothers, they also owed fiduciary duties to each other. (Am. Compl. ¶ 18.) In essence, Plaintiff contends that if two employees of a common employer each owe a fiduciary duty to the employer, then those coworkers automatically owe a fiduciary duty to each other personally. There is simply no basis for the position that Plaintiff and/or Rooskens owed a fiduciary duty to Brothers by virtue of their employment. Moreover, the Court is unaware of any authority that would support the imposition of a fiduciary duty between two employees simply because they are employed by a common employer. Such a result contravenes the very concept of fiduciaries and must be rejected.

Moreover, as discussed *supra*, Plaintiff was an at-will employee. It is well settled that at-will employment is generally terminable by either party at any time, for any reason, or for no reason at all. *See Johnson v. First Carolina Fin. Corp.*, 305 S.C. 556, 559 (S.C. Ct. App. 1991). To hold that a fiduciary relationship existed between Brothers and its at-will employee would be inconsistent with the concepts of the fiduciary duty and employment at-will; after all, an employer cannot terminate an employee for no reason, yet simultaneously act “with due regard to the interests” of the employee. *See Moore*, 390 S.C. at 163. Plaintiff has failed to plead facts that could plausibly show that a fiduciary relationship existed between Brothers and him. As a result, Plaintiff’s Ninth and Fourteenth causes of action must be dismissed.

**8. Plaintiff Has Failed to Plead Facts Sufficient to Sustain His Fraud Claims.**

Plaintiff has alleged several fraud-based causes of action. As discussed *supra*, Plaintiff’s Third, Fifth, and Seventh causes of action are time barred. Plaintiff’s Tenth and Eleventh causes of action also fail as a matter of law. Specifically, Plaintiff’s Tenth, and Eleventh Causes of Action are based on Plaintiff’s claim that Rooskens fraudulently concealed

material information concerning employee bonuses. (*Id.* at ¶¶192-211.) The primary basis for these claims is Rooskens' allegedly made repeated misrepresentations to Plaintiff in an effort to induce Plaintiff's performance or to serve his own personal financial interests. Notably, Plaintiff makes no factual allegations against Brothers in support of any of these claims. Rather, Plaintiff seeks to hold Brothers liable for Rooskens' alleged fraudulent acts. As discussed below, each of these claims fails as a matter of law.

a. Plaintiff Has Not Alleged Facts Sufficient To State All The Elements of His Fraud Claims.

In the instant case, even if Plaintiff's allegations are accepted as true, the First Amended Complaint does not contain factual allegations that could plausibly entitle him to relief for any of his fraud-based causes of action. Rule 9(b) of the South Carolina Rules of Civil Procedure requires that a party state with particularity the circumstances constituting fraud. Under South Carolina law, "[f]raud is an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right." *Regions Bank v. Schmauch*, 354 S.C. 648, 672 (S.C. Ct. App. 2003). A plaintiff asserting a fraud claim must allege specific facts that could plausibly establish the following nine distinct elements: (1) a representation; (2) falsity of the representation; (3) materiality of the representation; (4) either knowledge of the falsity or reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury as a result of the reliance. *Id.*

Plaintiff's First Amended Complaint lacks any factual allegations necessary to establish many of the elements of fraud under South Carolina law. For example, Plaintiff does not allege facts showing that any representation was made by Rooskens to Plaintiff with

knowledge of the falsity or a reckless disregard of its truth. Similarly, there are no facts showing that anyone intended for Plaintiff to act upon the alleged representations or that Plaintiff in fact relied upon the alleged representations to his detriment. In fact, the First Amended Complaint suggests that Plaintiff did not rely on any of Rooskens representations concerning his bonuses as demonstrated by Plaintiff's repeated objections regarding these bonuses throughout his employment. (See, e.g., Am. Compl. ¶¶ 38-39.) In sum, Plaintiff has failed to plead facts to establish any of his fraud claims against Brothers. Thus, his Tenth and Eleventh Causes of Action must be dismissed with prejudice.

b. There Is No Fiduciary Relationship To Support Fraudulent Concealment.

Even if Plaintiff met the threshold pleading standard with respect to his fraud claims, his Tenth, and Eleventh Causes of Action for Fraudulent Concealment must be dismissed. "Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 481-82 (S.C. 1972). Accordingly, a plaintiff asserting a claim for fraudulent concealment must demonstrate that a fiduciary relationship existed between the party who allegedly concealed the information at issue and the plaintiff. See, e.g., *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 335 (S.C. Ct. App. 2002). As discussed *supra*, the existence of an employment relationship, standing alone, does not constitute a fiduciary relationship. Because Plaintiff does not allege that Brothers owed him a fiduciary duty and Plaintiff's theory that he and Mr. Rooskens owed fiduciary duties to each other has no legal support, Plaintiff's Tenth and Eleventh Causes of Action for fraudulent concealment cannot proceed.

9. Plaintiff's Wrongful Discharge in Violation of Public Policy Claim Is Fatally Flawed.

*OLL*  
*P19*

As discussed *supra*, South Carolina recognizes the doctrine of employment at-will. *See, e.g., Prescott*, 335 S.C. at 330. The South Carolina Supreme Court has created certain narrow exceptions to the at-will employment doctrine, including an exception when the discharge of an employee violates “a clear mandate of public policy.” *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 225 (S.C. 1985). “The determination of what constitutes public policy is a question of law for the courts to decide.” *Barron v. Labor Finders of S.C.*, 393 S.C. 609, 617 (S.C. 2011).

The Court finds the South Carolina Supreme Court’s decision in *Barron*, 393 S.C. at 609, particularly persuasive. In *Barron*, the plaintiff complained internally to her employer that she was not being paid all wages that were due to her based on her agreement with her employer, which she alleged was a violation of the South Carolina Payment of Wages Act. *Id.* at 612. However, there was no evidence that the plaintiff filed a complaint with an outside government agency or threatened to do so. *Id.* at 618. The plaintiff was terminated eight or nine days after making her internal complaint, and subsequently filed a lawsuit against her employer in which she asserted a cause of action for wrongful termination in violation of public policy. *Id.* at 613.

The South Carolina Supreme Court affirmed the trial court’s grant of summary judgment in favor of the employer. *Id.* at 618. While the court did not foreclose the possibility that a claim for wrongful termination in violation of public policy may exist when an employee is terminated for instituting a claim with an external government agency, there was no violation in *Barron* because the plaintiff only complained internally to management. *Id.*

Here, Plaintiff claims that he was terminated for his:

[C]ontinued complaints of, opposition to, and efforts to prevent  
Rooskens’ repeated disregard for Plaintiff’s duties and obligations

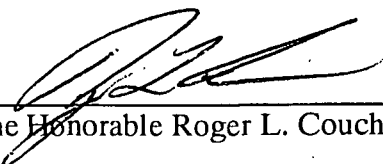
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as Controller for Defendant CHRM for the purpose of engaging in fraudulent and oppressive pay practices, and other improprieties, and further, in protection of Rooskens' personal interests . . . for the purpose of procuring improper personal financial gains.

(Am. Compl. ¶ 257.) Plaintiff identifies S.C. Code Ann. § 41-10-10 and 41-1-110 as the source of the clear mandate of public policy upon which his wrongful termination claim is based. Plaintiff lists a number of internal complaints made to Rooskens throughout his employment upon which he bases his claim. (See, e.g., Am. Compl. ¶ 82 (complaint regarding a deduction taken from an employees' bonus check); ¶ 84 (complaint disputing disciplinary action taken against Plaintiff); ¶ 105 (complaints about numerous perceived slights that occurred in the workplace). Notably, each of these complaints was made internally, and according to Plaintiff's allegations, he never addressed his concerns with anyone other than Rooskens. There is no basis for extending the narrow public policy exception to at-will employment to the instant situation, where an employee alleges only that he made internal complaints stemming from numerous disagreements with a co-worker. See *Barron*, 393 S.C. at 617-18. Accordingly, Plaintiff's Seventeenth Cause of Action must be dismissed.

**WHEREFORE**, for the foregoing reasons, this Court hereby grants Defendants' Motion to Dismiss and dismisses Plaintiff's First Amended Complaint in its entirety with prejudice.

**IT IS SO ORDERED**

  
The Honorable Roger L. Couch

August 17, 2015

# **Exhibit C**

1 STATE OF SOUTH CAROLINA )  
 2 )  
 3 COUNTY OF CHARLESTON )  
 4 )  
 5 JACOB GREENSPAN, )  
 6 )  
 7 Plaintiff, )  
 8 )  
 9 vs. )  
 10 )  
 11 BROTHERS PROPERTY CORPORATION, )  
 12 BROTHERS PROPERTY MANAGEMENT )  
 13 CORPORATION, ET AL, )  
 14 )  
 15 Defendants. )  
 16 )  
 17 )  
 18 )  
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 22 )  
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 25 )

) Court of Common Pleas  
 ) Case No. 2014-CP-10-4445

**RECEIVED**  
 NOV 02 2015  
 SC Court of Appeals

) Transcript of Record

) DATE: July 29, 2015

11 B E F O R E:

12 The Honorable Roger L. Couch

14 A P P E A R A N C E:

15 WENDY L. FURHANG  
 16 Attorney for the Defendant

18 Karen V. Andersen, RMR, CRR, CSR  
 19 Circuit Court Reporter

1 THE COURT: It looks like you are --

2 MS. FURHANG: I'm Wendy Furhang with Jackson Lewis.  
3 I'm representing Brothers Property Corporation.

4 THE COURT: You are here for the defendants?

5 MS. FURHANG: For the defendants.

6 THE COURT: Have you heard from the plaintiff's  
7 attorney?

8 MS. FURHANG: He's represented pro se.

9 THE COURT: Oh, he's pro se. I see.

10 Ma'am, step outside into the lobby and call the name  
11 of Jacob Greenspan and see if he may be lurking outside the  
12 courtroom.

13 THE BAILIFF: There's no response, Your Honor.

14 THE COURT: All right. The clerk verified that  
15 Mr. Greenspan was noticed at the proper address. All right.  
16 Then I'm going to allow you to proceed on your motion, I  
17 believe, which is a motion to dismiss the amended complaint.

18 MS. FURHANG: Yes, Your Honor. We filed -- this  
19 case has a little bit of a long history in that this was  
20 filed by Mr. Greenspan initially about a year ago. The case  
21 was removed to federal court.

22 THE COURT: Oh, wow.

23 MS. FURHANG: And after -- and we filed a motion to  
24 dismiss at that time. After the motion to dismiss was filed  
25 and removed, Mr. Greenspan amended the complaint to add three

1 individual defendants, one of whom was a nondiverse  
2 defendant. And we heard -- kind of argued about that in  
3 federal court and were ultimately remanded.

4 THE COURT: So Mr. Greenspan has been appearing for  
5 hearings up until now?

6 MS. FURHANG: He didn't appear for any hearings, but  
7 he did file a motion to remand in federal court and did  
8 that.

9 THE COURT: I see. Okay.

10 MS. FURHANG: The case was remanded back in  
11 April/May time period of this year. In May, we sent the  
12 Court and provided a copy to Mr. Greenspan the entire federal  
13 court record as we are required to do.

14 THE COURT: Okay.

15 MS. FURHANG: Following that -- which I know he  
16 received that -- he filed a motion for an extension of time  
17 to respond to our motion to dismiss. He never responded to  
18 it.

19 THE COURT: That's the motion that is also pending  
20 today?

21 MS. FURHANG: Yeah, correct, his motion. In the  
22 motion, I believe he asked until June 29th to respond to our  
23 motion to dismiss.

24 THE COURT: So that passed.

25 MS. FURHANG: That has clearly passed. The motion

1 is also pending in federal court since October of last year.  
2 So he has not responded to it to date.

3 THE COURT: I see.

4 MS. FURHANG: I personally sent him a notice  
5 notifying him of the date of the hearing.

6 THE COURT: Today's hearing?

7 MS. FURHANG: Today's hearing, which I will be happy  
8 to hand up.

9 THE COURT: If you want to mark it as an exhibit, it  
10 might be helpful later on if there's a motion to reopen.

11 THE COURT: So your representations to the Court is  
12 that this was mailed to him on June 23rd?

13 MS. FURHANG: Correct, U.S. Mail.

14 THE COURT: I'm going to ask you have it marked as  
15 an exhibit.

16 (Defendant's Exh. 1, Notice of 7/29/15 Hearing, was  
17 marked for identification.)

18 THE COURT: Well, I will hear you on your motion to  
19 dismiss.

20 MS. FURHANG: Do you have a copy of the memorandum  
21 that we filed?

22 THE COURT: We will check and see. Was it filed  
23 with the clerk's office?

24 MS. FURHANG: Yes, sir. And I have another copy if  
25 you don't have it.

1 THE COURT: I probably do. Just give me a minute  
2 here.

3 MS. FURHANG: There were a lot of documents filed  
4 when the record was moved back.

5 THE COURT: This is the complaint?

6 MS. FURHANG: The complaint is 61 pages, yes, sir.

7 THE COURT: Wow. Okay. I may not have that memo,  
8 so if you want to pass that up.

9 Yes, ma'am, you may proceed.

10 MS. FURHANG: Because there are 19 causes of action,  
11 I'm going to say most of my arguments are set out in full in  
12 the memorandum, but I'm going to briefly go through them with  
13 you right now. So just to give you a little bit of a  
14 background, this is an employment case. Mr. Greenspan is a  
15 former employee of Brothers Property Management Corporation,  
16 which is doing business as Charleston Harbor Resort and  
17 Marina in Mount Pleasant. He was hired initially as an  
18 accounting manager and was promoted to the position of  
19 controller. He was ultimately terminated in June of 2012 for  
20 attendance issues.

21 THE COURT: For what?

22 MS. FURHANG: Attendance issues.

23 THE COURT: Thank you. Go ahead.

24 MS. FURHANG: His lawsuit was filed in July of 2014,  
25 so over two years after his termination had expired. And

1 that's relevant for the purposes -- for our purposes because  
2 there are a lot of statute of limitations issues with the  
3 claims that he's brought. So there's 19 causes of action. I  
4 tried to group them here for our purposes as best as I can  
5 with regards to our defenses.

6 The first, second, and nineteenth causes of action  
7 are for negligence, negligent retention, negligent hiring,  
8 negligent supervision, as well as intentional infliction of  
9 emotional distress. All of these claims are barred by the  
10 workers' compensation exclusivity. The cases are very clear  
11 on this point. The individual that -- the only exception to  
12 that deals with alter egos of the company. The individual  
13 that's alleged to have performed the tortious conduct here  
14 is -- was by no means an alter ego of the company. There's  
15 no allegations in the complaint that would support that. So  
16 it's our position that those claims should all be dismissed.

17 THE COURT: All right.

18 MS. FURHANG: The 15th cause of action is for  
19 defamation. The defamation is alleged to have occurred in  
20 June of 2012. He filed his complaint in July of 2014 and,  
21 therefore, the statute of limitations on that claim has  
22 run.

23 THE COURT: Okay.

24 MS. FURHANG: The 6th and 12th causes of action  
25 relate to an oral contract that plaintiff alleges that he was

1 a party to. According to plaintiff -- and I'm accepting for  
 2 the purposes of this his factual allegations -- the general  
 3 manager of the resort at the time that he was promoted to the  
 4 position of controller promised him that he would receive a  
 5 raise to \$65,000 in salary in 2011 and would also receive a  
 6 considerable bonus in 2010.. He is claiming breach of  
 7 contract in relation to that promise. It is, of course, our  
 8 position that that is not a contract.. But more importantly,  
 9 even if we accepted there is a contract, there's a statute of  
 10 limitations.. He clearly knew in January 2011, according to  
 11 the complaint, that he was not getting that raise and he was  
 12 not receiving a considerable bonus.

13 So the three-year statute of limitations would have  
 14 already run for those claims. He also has a payment of wages  
 15 act claim.

16 THE COURT: A what?

17 MS. FURHANG: South Carolina Payment of Wages Act  
 18 claim on that same underlying contract.

19 THE COURT: For the bonus?

20 MS. FURHANG: For the bonus and the salary increase.  
 21 Again, statute of limitations for three years has run by the  
 22 time that he filed this claim.

23 The next would be the 18th cause of action. This is  
 24 a written contract that he purports to have been a party to.  
 25 And this is actually an exhibit to his complaint, which it's

1 Exhibit C. I'm not sure if you have it.

2 THE COURT: Well, I've got the book that looked like  
3 a complaint. Is that what you are talking about?

4 MS. FURHANG: It is. It's at the back of the book.  
5 I'm just not sure how everything got filed when it came in.  
6 And it might be easier for me to show it to you. This is his  
7 written contract he received, which is a written warning he  
8 received regarding his attendance.

9 THE COURT: All right.

10 MS. FURHANG: It's not a contract. There's just no  
11 terms. There's no -- it's not a contract. I don't know what  
12 else to say about it.

13 THE COURT: Well, on the face of it, I would agree  
14 with you.

15 MS. FURHANG: Yeah, there's an indefinite term. He  
16 hasn't established any other terms. He has never set forth  
17 that he was ever promised any duration.

18 THE COURT: It's a notice?

19 MS. FURHANG: It's a warning that he received prior  
20 to his termination. So that's his 18th cause of action.

21 His 16th cause of action is an interference with a  
22 contract claim. It is axiomatic that Brothers can't  
23 interfere with their own contract. So if this is a contract,  
24 we can't interfere with it.

25 THE COURT: Talking about this contract?

1 MS. FURHANG: Right, that contract be interfered  
2 with.

3 The 13th cause of action is for quantum meruit. I  
4 will say, I had to go back to the textbooks because I haven't  
5 seen this in my practice.

6 THE COURT: Having been a master in equity, I've  
7 seen it.

8 MS. FURHANG: You've seen it. I do not see it in  
9 the employment context very much. So he is alleging that he  
10 was -- let's see -- his salary did not provide fair and  
11 equitable value for the services he was providing. As set  
12 forth in our position in the memorandum, we would defer you  
13 to that. But, essentially, when you are being paid a salary,  
14 an employee cannot then claim that they are not receiving  
15 fair value for their services.

16 THE COURT: He did not work under a written  
17 contract?

18 MS. FURHANG: He did not work under a written  
19 contract.

20 THE COURT: Go ahead.

21 MS. FURHANG: He has several, four actually, breach  
22 of fiduciary duty claims. Several -- two of them are barred  
23 by the three-year statute of limitations. These are -- these  
24 relate back to what we discussed before, the failure to  
25 receive the salary and the bonus at the end of 2010. Again,

1 there's a three-year statute of limitations that would apply  
2 to those specific claims. But more importantly, there is  
3 not -- there is no case law to support the fact that an  
4 employer/employee relationship -- that there's a fiduciary  
5 relationship there. There just is not a confidential  
6 relationship.

7 Plaintiff is trying to allege -- he doesn't even  
8 allege that he had a fiduciary relationship with my client,  
9 the corporation. He alleges that he had a fiduciary  
10 relationship with the general manager, and that somehow that  
11 fiduciary relationship is imputed to us. And so we've --  
12 it's very strange. And I know it's difficult to follow. But  
13 there's no allegations that -- even that any confidential  
14 relationship was established between him and the general  
15 manager or him and the company to support a breach of  
16 fiduciary duty.

17 Then he has five -- I think four or five -- fraud  
18 claims. Three of the claims, the seventh cause of action and  
19 fifth cause of action and the third cause of action are  
20 barred by the statute of limitations, three years for the  
21 statute. These all relate to this failure to pay the bonus  
22 back in 2010, 2011.

23 He also has -- three of the fraud claims are  
24 fraudulent concealment specifically, which in order to have a  
25 fraudulent concealment claim, you have to have this fiduciary

1 relationship, which there's no -- he's got no allegations to  
2 support that there was a fiduciary relationship to support a  
3 fraudulent concealment claim.

4 And then we set forth in the memo that he just  
5 hasn't met the particularly standard under Rule 9B with  
6 respect to his allegations of fraud.

7 One more claim. This is a wrongful termination in  
8 violation of public policy claim.

9 THE COURT: Oh, really?

10 MS. FURHANG: Yes. He alleges that he made a lot of  
11 internal complaints to the general manager of the resort  
12 related to just about everything that ever happened to him in  
13 his employment. However, what he's relying on specifically  
14 for purposes of his wrongful termination claim is the South  
15 Carolina Payment of Wages Act. That's what he points to.  
16 However, all of the allegations in the complaint are solely  
17 limited to internal complaints about his wages, complaining  
18 that he didn't get the bonus or the salary increase. There's  
19 no right of other complaints.

20 And the South Carolina, the Barron decision, Barron  
21 vs. Labor Finders, is directly on point on this. It's a  
22 South Carolina Supreme Court decision from 2011 where an  
23 individual had made internal complaints about their wages to  
24 their employer, to their supervisor, and the Supreme Court  
25 held that that was -- that that does not entitle you to a

1 wrongful termination violation of public policy claim because  
2 that person did not avail themselves of the protections of  
3 the South Carolina Wage Payment Act. They've got to do more  
4 than just complain to their employer, because the act  
5 contemplates that you will file a complaint with the  
6 Department of Labor. And there are no allegations to support  
7 that.

8 THE COURT: Is that all of them?

9 MS. FURHANG: That's all of them, I think.

10 THE COURT: Well, from what you said, I'm going to  
11 grant your motion. I will ask you to prepare an order.

12 MS. FURHANG: Yes, sir.

13 THE COURT: And submit it to me through my law  
14 clerk.

15 MS. FURHANG: Can you give me that e-mail address  
16 one more time please?

17 THE COURT: Rcouchlc@sccourts.org.

18 MS. FURHANG: Thank you, Your Honor.

19 THE COURT: And this is your copy of your memo you  
20 handed to me. Thank you very much. And the order should  
21 reflect he failed to appear after notice and did not  
22 challenge the motion.

23 MS. FURHANG: We have one other little complication  
24 I want to just bring up to you, is that he has named these  
25 three individual defendants, but has not served any of them.

1 So I'm not representing them. No one is representing them.

2 I suppose it's not going to be dismissed with respect to

3 them?

4 THE COURT: No, it won't end the case then. Your

5 order will not end the case.

6 MS. FURHANG: Okay. Thank you.

7 (Whereupon, proceedings are adjourned..)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 15th day of October, 2015, at Charleston, Charleston County, South Carolina.

  
Karen V. Andersen  
Registered Merit Reporter  
Certified Realtime Reporter  
My Commission expires:  
September 14, 2016

**Jackson Lewis**  
Attorneys at Law

Representing Management Exclusively in Workplace Law and Related Litigation

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CHICAGO, IL  
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CLEVELAND, OH  
DALLAS, TX  
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MILWAUKEE, WI  
MINNEAPOLIS, MN  
MORRISTOWN, NJ

NAPA, CA  
NEW ORLEANS, LA  
NEW YORK, NY  
NORFOLK, VA  
OMAHA, NE  
ORANGE COUNTY, CA  
ORLANDO, FL  
OVERLAND PARK, KS  
PHILADELPHIA, PA  
PHOENIX, AZ  
PITTSBURGH, PA  
PORTLAND, OR  
PORTSMOUTH, NH  
PROVIDENCE, RI

RALEIGH-DURHAM, NC  
RAPID CITY, SD  
RICHMOND, VA  
SACRAMENTO, CA  
SAINT LOUIS, MO  
SAN DIEGO, CA  
SAN FRANCISCO, CA  
SAN JUAN, PR  
SEATTLE, WA  
STAMFORD, CT  
TAMPA, FL  
WASHINGTON, DC REGION  
WHITE PLAINS, NY

June 23, 2015

Jacob Greenspan  
550 Harbor Cove Lane  
Apt. 15H  
Charleston, SC 29412

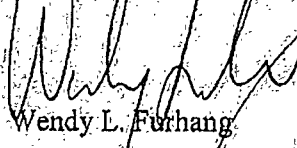
Re: Jacob Greenspan v. Brothers Property  
Corporation, Brothers Property  
Management Corporation, et al.  
Civil Action No.: 2014-CP-1004445

Dear Mr. Greenspan:

In the event that you have not already received notice from the Court, enclosed please find a copy of the notices setting Plaintiff's Motion for Extension of Time to Respond to Defendants' Motion to Dismiss and Defendants' Motion to Dismiss Plaintiff's First Amended Complaint for a hearing on July 29, 2015 at 09:30 a.m. This hearing will be held at the Charleston County Courthouse before Judge Roger L. Couch.

Very truly yours,

JACKSON LEWIS P.C.



Wendy L. Furhang

WLF/kj  
Enclosures



**Ludlow Jones, Krystina (Greenville)**

---

**From:** cpas@charlestoncounty.org  
**Sent:** Tuesday, June 23, 2015 9:22 AM  
**To:** Furhang, Wendy L. (Greenville)  
**Subject:** Motion "MENLGT-Motion/Extension of Time to Respond by plaintiff, crt/srv" for Case "2014CP1004445-Jacob Greenspan VS Brothers Property Corporation" was added to a Motions Roster for 7/29/2015 at 9:30 AM

MOTIONS ARE SCHEDULED IN COURTROOM 3E WITH JUDGE COUCH PRESIDING.

ALL REQUESTS FOR CONTINUANCES MUST BE MADE BEFORE 5PM ON WEDNESDAY, JULY 22ND

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:

[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)

**Ludlow-Jones, Krystina (Greenville)**

---

**From:** cpas@charlestoncounty.org  
**Sent:** Tuesday, June 23, 2015 9:22 AM  
**To:** Furhang, Wendy L. (Greenville)  
**Subject:** Motion "MDISMS:Motion/Dismiss/Amended Complaint by defendant, crt/srv" for Case "2014CP1004445-Jacob Greenspan VS Brothers Property Corporation" was added to a Motions Roster for 7/29/2015 at 9:30 AM

MOTIONS ARE SCHEDULED IN COURTROOM 3E WITH JUDGE COUCH PRESIDING.

ALL REQUESTS FOR CONTINUANCES MUST BE MADE BEFORE 5PM ON WEDNESDAY, JULY 22ND.

IF YOU HAVE QUESTIONS PLEASE CONTACT CAROLINE LEONARD AT:  
[cleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org).

# **Exhibit D**

Representing Management Exclusively in Workplace Law and Related Litigation

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BALTIMORE, MD	INDIANAPOLIS, IN	OMAHA, NE	SAINT LOUIS, MO
BIRMINGHAM, AL	JACKSONVILLE, FL	ORANGE COUNTY, CA	SAN DIEGO, CA
BOSTON, MA	LAS VEGAS, NV	ORLANDO, FL	SAN FRANCISCO, CA
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DENVER, CO	MINNEAPOLIS, MN	PORTSMOUTH, NH	WHITE PLAINS, NY
DETROIT, MI	MORRISTOWN, NJ	PROVIDENCE, RI	

May 6, 2015

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad Street, Suite 106  
Charleston, SC 29401-2258

FILED  
2015 MAY 11 PM 3:32  
JULIE J. ARMSTRONG  
CLERK OF COURT

Re: Jacob Greenspan v. Brothers Property Corporation and Brothers Property Management Corporation  
C.A. No. 2014-CP-10-4445

Dear Ms. Armstrong:

As you are aware, this case was removed to United States District Court on October 3, 2014. On, April 30, 2015, The Honorable Richard M. Gergel issued an order (ECF Doc. No. 37) remanding this case back to the South Carolina Court of Common Pleas. Pursuant to the order, enclosed please find a complete copy of the federal docket associated with this matter.

Please note that Defendant filed a Motion to Dismiss Plaintiff's First Amended Complaint (ECF Doc. No. 25), which is enclosed herewith. This motion was never resolved in district court, and thus needs to be added to the next civil non-jury motions roster with the Court of Common Pleas. Please let me know if you need anything further from me to process this request.

Thank you for your assistance in this regard.

JACKSON LEWIS P.C.

Wendy L. Fuzhang

WLF/amm  
Enclosures

cc: Mr. Jacob Greenspan

*ATTORNEY TO BE NOTICED***Wendy L Furhang**

(See above for address)

*LEAD ATTORNEY**ATTORNEY TO BE NOTICED***Defendant****Victor Fuller***Individually and in his official capacity***Defendant****Ana Reina***Individually and in her official capacity***Defendant****Oliver Rooskens***Individually and in his official capacity*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
10/03/2014	<u>1</u>	NOTICE OF REMOVAL from Charleston County Court of Common Pleas, case number 2014-CP-10-4445. (Filing fee \$ 400 receipt number 0420-5576192), filed by Brothers Property Corporation, Brothers Property Management Corporation. (Attachments: # <u>1</u> State Court Documents)(ssam, ) (Entered: 10/03/2014)
10/03/2014	<u>3</u>	Local Rule 26.01 Answers to Interrogatories by Brothers Property Corporation, Brothers Property Management Corporation.(ssam, ) (Entered: 10/03/2014)
10/03/2014	<u>5</u>	MOTION for Extension of Time to File Answer by Brothers Property Corporation, Brothers Property Management Corporation. Response to Motion due by 10/20/2014. No proposed order.Motions referred to Wallace W Dixon. (Furhang, Wendy) (Main Document 5 replaced with corrected document provided by filing user on 10/6/2014) (ssam, ). (Entered: 10/03/2014)
10/10/2014	<u>6</u>	<b>TEXT ORDER granting <u>5</u> Motion for Extension of Time to Answer. All Defendants to file answer by 10/31/14. Entered at direction of Magistrate Judge Wallace W Dixon on 10/10/14.(nrum, )</b> (Entered: 10/10/2014)
10/10/2014	<u>7</u>	***DOCUMENT MAILED 6 Order on Motion for Extension of Time to Answer placed in U.S. Mail to Jacob Greenspan (ssam, ) (Entered: 10/10/2014)
10/14/2014	<u>8</u>	NOTICE and Acknowledgment of receipt of Notice of Removal by Clerk of Court for Charleston County. (Attachments: # <u>1</u> State Court Documents) (Furhang, Wendy) (Entered: 10/14/2014)
10/28/2014	<u>11</u>	<b>ORDER directing plaintiff to notify Clerk in writing of any address change. Answers to Rule 26.01 Interrogatories and Answers to the Court's Special Interrogatories due by 11/21/2014. Signed by Magistrate Judge Wallace W Dixon on 10/28/2014. (ssam, )</b> (Entered: 10/28/2014)

10/28/2014	<u>12</u>	***DOCUMENT MAILED <u>11</u> Order to Notify of Address Change, Set Deadlines with required documents placed in U.S. Mail to Jacob Greenspan (ssam, ) (Entered: 10/28/2014)
10/29/2014	<u>14</u>	AMENDED COMPLAINT against Brothers Property Corporation, Brothers Property Management Corporation, Victor Fuller, Ana Reina, Oliver Rooskens, filed by Jacob Greenspan.(ssam, ) Modified to add additional attachments <u>23</u> on 11/7/2014 (ssam, ). (Entered: 10/30/2014)
10/30/2014	<u>16</u>	Local Rule 26.01 Answers to Interrogatories by Jacob Greenspan.(ssam, ) (Entered: 10/30/2014)
10/30/2014	<u>17</u>	MOTION for Leave to Proceed in forma pauperis (Restricted Access) by Jacob Greenspan. Response to Motion due by 11/17/2014. Motions referred to Wallace W Dixon.(ssam, ) (Entered: 10/30/2014)
11/04/2014	<u>20</u>	ANSWER to Court's Special Interrogatories by Jacob Greenspan.(ssam, ) (Entered: 11/04/2014).
11/04/2014	<u>21</u>	MOTION to Remand to State Court by Jacob Greenspan. Response to Motion due by 11/21/2014. Motions referred to Wallace W Dixon.(ssam, ) (Entered: 11/04/2014)
11/07/2014	<u>23</u>	Additional Attachments to Main Document <u>14</u> Amended Complaint. First attachment description: Exhibits A-D. (ssam, ) (Entered: 11/07/2014)
11/17/2014	<u>24</u>	MOTION to Strike <u>14</u> Amended Complaint by Brothers Property Corporation, Brothers Property Management Corporation. Response to Motion due by 12/4/2014. No proposed order.Motions referred to Wallace W Dixon.(Furhang, Wendy) (Entered: 11/17/2014)
11/17/2014	<u>25</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Brothers Property Corporation, Brothers Property Management Corporation. Response to Motion due by 12/4/2014. (Attachments: # <u>1</u> Memo in Support)No proposed order.Motions referred to Wallace W Dixon.(Furhang, Wendy) (Entered: 11/17/2014)
11/18/2014	<u>26</u>	<b>ROSEBORO ORDER directing clerk to forward summary judgment explanation to the opposing party and directing that party to respond in 34 days. Response due to <u>25</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by 12/22/2014. Signed by Magistrate Judge Wallace W Dixon on 11/18/2014. (ssam, )</b> (Entered: 11/18/2014)
11/18/2014	<u>27</u>	***DOCUMENT MAILED <u>26</u> Roseboro Order placed in U.S. Mail to Jacob Greenspan (ssam, ) (Entered: 11/18/2014)
11/21/2014	<u>28</u>	RESPONSE in Opposition re <u>21</u> MOTION to Remand to State Court Response filed by Brothers Property Corporation, Brothers Property Management Corporation.Reply to Response to Motion due by 12/4/2014 (Furhang, Wendy) (Entered: 11/21/2014)
12/05/2014	<u>29</u>	REPLY to Response to Motion re <u>21</u> MOTION to Remand to State Court. Response filed by Jacob Greenspan. (Attachments: # <u>1</u> Supporting Document) (ssam, ) (Entered: 12/05/2014)

01/07/2015	30	Case Reassigned to Magistrate Judge Mary Gordon Baker. Magistrate Judge Wallace W Dixon no longer assigned to the case. Motions referred to Magistrate Judge Mary Gordon Baker.(suro, ) (Entered: 01/07/2015)
01/07/2015	31	NOTICE OF CHANGE OF CASE NUMBER to 2:14-cv-03875-RMG-MGB. Please use the new case number on all future filings. Plaintiff is advised to continue mailing all pleadings to: Clerk of Court, U.S. District Court, P.O. Box 835, Charleston, SC 29402. NOTICE and 30 Case Reassigned mailed to pro se plaintiff this date. (ssam, ) (Entered: 01/07/2015)
04/06/2015	<u>32</u>	<b>REPORT AND RECOMMENDATION of Magistrate Judge Mary Gordon Baker. It is RECOMMENDED that Brothers' Motion to Strike Plaintiff's First Amended Complaint (Dkt. No. <u>24</u> ) be DENIED. It is RECOMMENDED that Plaintiff's Motion For Remand (Dkt. No. <u>21</u> ) be GRANTED. Objections to R&amp;R due by 4/23/2015. Signed by Magistrate Judge Mary Gordon Baker on 4/6/2015. (ssam, ) (Entered: 04/06/2015)</b>
04/06/2015	33	***DOCUMENT MAILED <u>32</u> REPORT AND RECOMMENDATION re <u>21</u> MOTION to Remand to State Court filed by Jacob Greenspan, <u>24</u> MOTION to Strike <u>14</u> Amended Complaint filed by Brothers Property Corporation, Brothers Property Management Corporation placed in U.S. Mail to Jacob Greenspan (ssam, ) (Entered: 04/06/2015)
04/23/2015	<u>34</u>	OBJECTION to <u>32</u> Report and Recommendation by Brothers Property Corporation, Brothers Property Management Corporation.Reply to Objections due by 5/12/2015 (Furhang, Wendy) (Entered: 04/23/2015)
04/30/2015	<u>35</u>	<b>ORDER adopting <u>32</u> Report and Recommendation of Magistrate Judge Mary Gordon Baker; denying <u>24</u> Motion to Strike; granting <u>21</u> Motion to Remand to State Court. Clerk's Notice: Attorneys are responsible for supplementing the State Record with all documents filed in Federal Court. Signed by Honorable Richard M Gergel on 4/29/2015.(ssam, ) (Entered: 04/30/2015)</b>
04/30/2015	36	***DOCUMENT MAILED <u>35</u> Order on Motion to Remand to State Court, Order on Motion to Strike, Order on Report and Recommendation placed in U.S. Mail to Jacob Greenspan (ssam, ) (Entered: 04/30/2015)
04/30/2015	<u>37</u>	***DOCUMENT E-MAILED <u>35</u> Order on Motion to Remand to State Court, Order on Motion to Strike, Order on Report and Recommendation to Charleston County Court of Common Pleas at jarmstrong@charlestoncounty.org (ssam, ) (Entered: 04/30/2015)

PACER Service Center			
Transaction Receipt			
05/06/2015 16:56:02			
PACER Login:	j10098:2572607:3938018	Client Code:	
Description:	Docket Report	Search Criteria:	2:14-cv-03875-RMG

<b>Billable Pages:</b>	3	<b>Cost:</b>	0.30
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# **Exhibit E**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

---

Case No. 2014-CP-10-4445

---

Jacob Greenspan,

Plaintiff/Appellant,

v.

Brothers Property  
Corporation; Brothers  
Property Management  
Corporation; Victor Fuller,  
Individually, and in his  
official capacity; Ana Reina,  
Individually, and in her  
official capacity; and Oliver  
Rooskens, Individually, and in  
his official capacity.

Defendants/Respondents.

---

MOTION FOR LEAVE OF COURT OF APPEALS TO FILE MOTION  
SEEKING RELIEF UNDER RULE 60(B), SCRPC

---

Jacob Greenspan, proceeding pro se, respectfully moves for leave of the Court to file a motion with the Circuit Court seeking relief under Rule 60(b), SCRPC, from the order of the Honorable Roger L. Couch dated August 24, 2015, in which the Circuit Court granted Defendants' Motion to Dismiss Plaintiff's First Amended Complaint pursuant to Rule 12(b)(6), SCRPC, and dismissed Plaintiff's First Amended Complaint in its entirety with prejudice.

With all due respect, Plaintiff contends that the Circuit Court's order was issued in an abuse of discretion in that it is merely a recitation, often verbatim, of the facts as set forth within

Defendants' Motion to Dismiss and the arguments contained therein.

Plaintiff contends that the Circuit Court's order was controlled by an error of law in that the Circuit Court failed to apply the appropriate standard of review required under Rule 12(b)(6), SCRCF, by presuming that all statements made within Defendants' Motion to Dismiss were truthful, factually accurate, and representative of the pleadings provided within Plaintiff's First Amended Complaint, and by adopting the corresponding arguments and legal conclusions set forth within Defendants' Motion to Dismiss as its own. Thus, Plaintiff contends that the Circuit Court failed to properly exercise its function to find the facts and apply the law thereto.

Moreover, Plaintiff contends that Defendants' Motion to Dismiss neither accurately represents the factual allegations made within Plaintiff's First Amended Complaint, nor disputes any of the factual allegations made within Plaintiff's First Amended Complaint. As such, Plaintiff contends that the arguments and legal conclusions set forth within Defendants' Motion to Dismiss are predominantly baseless and without any merit.

Furthermore, Plaintiff contends that the Circuit Court failed to identify any conflicting facts or to resolve any doubts altogether, and that the Circuit Court's failure to properly exercise its duties resulted in the issuance of an order that is not representative of the factual allegations made by Plaintiff within his First Amended Complaint and one in which the Circuit Court's factual conclusions are without evidentiary support.

Accordingly, Plaintiff contends that the Circuit Court's order was taken against him by mistake, inadvertence, surprise or excusable neglect, and that relief is appropriate under Rule 60(b)(1), SCRCF, on the grounds that the order was controlled by an error of law and based upon factual conclusions that are without evidentiary support.

WHEREFORE, Plaintiff respectfully requests that the Court grant leave during the

pendency of his appeal in order to file a motion with the Circuit Court seeking relief under Rule 60(b), SCRCP, affording him the opportunity to address the overlooked factual allegations made within his First Amended Complaint and allowing the Circuit Court to correct its error in the interest of judicial economy.



October 14, 2015

Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, South Carolina 29412  
(843) 647-9277  
Appellant, Pro Se

Other Counsel of Record:

Wendy L. Furhang (Fed. I.D. No. 9851)

Email: [furhangw@jacksonlewis.com](mailto:furhangw@jacksonlewis.com)

John W. Sulau (Fed. I.D. No. 11613)

Email: [John.Sulau@jacksonlewis.com](mailto:John.Sulau@jacksonlewis.com)

JACKSON LEWIS P.C.

15 South Main Street, Suite 700

Greenville, SC 29601

Phone: 864-232-7000

Fax: 864-235-1381

ATTORNEYS FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No. 2015-002085  
Case No. 2014-CP-10-4445

**RECEIVED**

APR 26 2016

SC Court of Appeals

JACOB GREENSPAN,

Appellant,

v.

BROTHERS PROPERTY CORPORATION,  
BROTHERS PROPERTY MANAGEMENT  
CORPORATION, VICTOR FULLER, Individually and  
in his official capacity, ANA REINA, Individually and  
in her official capacity, and OLIVER ROOSKENS,  
Individually and in his official capacity,

Defendants,

Of whom BROTHERS PROPERTY CORPORATION  
and BROTHERS PROPERTY MANAGEMENT  
CORPORATION are

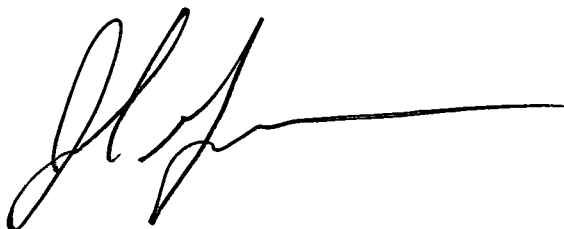
Respondents.

PROOF OF SERVICE

I certify that I have served Appellant's MOTION FOR REINSTATEMENT OF APPEAL AND/OR MOTION FOR LEAVE TO SERVE AND FILE DOCUMENTS OUT OF TIME IN ORDER TO REMEDY DEFAULT on BROTHERS PROPERTY CORPORATION and BROTHERS PROPERTY MANAGEMENT CORPORATION by way of the United States Postal Service, Certified Mail, on April 25, 2016, addressed to the attorney of record, John W. Sulau, JACKSON LEWIS P.C., 15 South Main St., Suite 700, Greenville, SC 29601.

[SIGNATURE BLOCK NEXT PAGE]

April 25, 2016

A handwritten signature in black ink, appearing to read 'J. Greenspan', with a long horizontal line extending to the right.

Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, SC 29412  
(843) 647-9277  
Appellant, Pro Se

Other Counsel of Record:  
John W. Sulau (Fed. I.D. No. 11613)  
John.Sulau@jacksonlewis.com

JACKSON LEWIS P.C.  
15 South Main Street, Suite 700  
Greenville, SC 29601  
Phone: 864-232-7000  
Fax: 864-235-1381

ATTORNEY FOR BROTHERS PROPERTY  
CORPORATION AND BROTHERS PROPERTY  
MANAGEMENT CORPORATION

April 25, 2016

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

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APR 26 2016  
SC Court of Appeals

RE: Jacob Greenspan, Plaintiff/Appellant, v. Brothers Property Corporation; Brothers Property Management Corporation, Victor Fuller, Individually, and in his official capacity; Ana Reina, Individually, and in her official capacity; and Oliver Rooskens, Individually, and in his official capacity. Defendants. Of whom Brothers Property Corporation, and Brothers Property Management Corporation are Respondents.  
Appellate Case No. 2015-002085

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default and the attached Memorandum in response to the order dated April 7, 2016, in which the above case was dismissed. Also enclosed are the following:

- (1) Proof of service of Appellant's Motion for Reinstatement and/or Motion for Leave to Serve and File Documents Out of Time to Remedy Default and the attached Memorandum on Respondents on April 25, 2016.
- (2) Six (6) additional copies of Appellant's motion.
- (3) The filing fee of \$25.

Sincerely,



Jacob Greenspan  
550 Harbor Cove Lane, #15H  
Charleston, South Carolina 29412  
(843) 647-9277  
Appellant, Pro Se

cc: John W. Sulau  
JACKSON LEWIS P.C.  
15 South Main Street, Suite 700  
Greenville, SC 29601  
Phone: 864-232-7000  
Attorney for Appellees'

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