

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

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NO. 2016.CP-07-1778

SEP 14 2016

SC Court of Appeals

A & B Associates, L.P.

FCRE REL, LLC and TIDELAND REALTY, INC.  
PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- 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; See Attached Order

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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)
		\$
		\$
		\$

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.

Circuit Court Judge

Judge Code

3069

August 21 2016

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF BEAUFORT )  
 )  
 A & B ASSOCIATES, L. P. )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 FCRE REL, LLC, and TIDELANDS )  
 REALTY, INC., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE NUMBER: 2016-CP-07-1778

ORDER GRANTING TEMPORARY  
 INJUNCTION

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 SC Court of Appeals

This matter is before the undersigned on the Plaintiff's Motion for Temporary Injunction, filed on August 15, 2016. This case was commenced by the Plaintiff on August 15, 2016. Among other things, the Plaintiff sought an *ex parte* Temporary Restraining Order, and moved for a Temporary Injunction. On August 15, 2016, following consideration of the Plaintiff's Verified Complaint, I signed a Temporary Restraining Order, and set a hearing on the Plaintiff's Motion for Temporary Injunction to commence at 3:30 P. M. on August 24, 2016.<sup>1</sup> On August 16, 2016, the Defendant FCRE REL, LLC, filed its Motion to Vacate the Temporary Restraining Order, supported by the Affidavits of Mary F. Davenport and Nichole Kim. On August 16, 2016, I convened a telephone conference with Counsel for the Plaintiff and Counsel for the Defendant. Following the telephone hearing, I denied the Motion to Vacate by written Order.

The Plaintiff's filed additional affidavits of L. Christopher Kettles, Sharan Kettles, Traci Oates, Sheytoria Monique Rivers and Sabanio A. Norris on August 22, 2016. The

<sup>1</sup> It appears that the Summons, Complaint, *Ex-Parte* Temporary Restraining Order and

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Defendant FCRE REL, LLC, did not file any additional affidavits.

Due to other matters, the hearing on the Plaintiff's Motion for Temporary Injunction did not commence until approximately 4:40 o'clock, P. M., on August 24, 2016. The Plaintiff was present represented by Curtis L. Coltrane. Timothy J. Granitz, of the Wisconsin Bar was also present.<sup>2</sup> The Defendant FCRE REL, LLC, was also present, represented by Benjamin T. Coppage. The Defendant Tideland Realty, Inc., has not appeared in this case as yet, and did not appear at the August 24, 2016, hearing.

The Defendant FCRE REL, LLC, subpoenaed a large number of witnesses for the purpose of giving testimony at the hearing. The Plaintiff objected, based on the language of Rule 65, SCRPC and Rule 6(d) SCRPC, and for the reason that a hearing on a Motion for Temporary Injunction is not a hearing on the merits. Following discussion with counsel as to the nature of the testimony, I sustained Plaintiff's objection.

Now, having reviewed and considered the Verified Complaint and affidavits, I make the following findings related solely to the issue of whether the Temporary Injunction should issue:

1. The Plaintiff is the owner of a 96 unit residential apartment complex located in the Town of Port Royal, South Carolina.
2. FCRE REL, LLC, loaned money to the Plaintiff in connection with the property, and holds a Mortgage on Plaintiff's property. In connection with the loan, the Plaintiff also executed a promissory note, loan agreement and other documents.

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Motion for Temporary Injunction were served on the Defendants on August 16, 2016.

<sup>2</sup> Mr. Granitz has sent his application to be admitted *pro hac vice* to the South Carolina Supreme Court, and awaits notification to the Beaufort County, South Carolina, Clerk of Court to file his motion to be admitted and proposed order. There was no objection by any party to Mr. Granitz's presence.

3. At all times relevant to this matter, up to the present, the Plaintiff has timely paid the amounts due and owing to the Defendant FCRE REL, LLC.
4. FCRE REL, LLC, claims the existence of numerous defaults under the loan documents related to the condition of the property.
5. In July of 2016, FCRE REL, LLC, accompanied by an officer of the Port Royal Police Department, forcibly removed the Plaintiff from its property, and installed Tideland Realty, LLC, as the manager of the property. At the time that FCRE REL, LLC, took this action, it had not commenced a foreclosure or other suit, had not sought the appointment of a receiver or any other court order authorizing the actions that it took.
6. During the time that FCRE REL, LLC, was in possession of the Plaintiff's property, it collected rents from the tenants, took possession of the Plaintiff's leases, business files and personal property. Despite these actions, FCRE REL, LLC, did not apply any of the money it collected to the payment of the debt owed by the Plaintiff, and the Plaintiff's principal, L. Christopher Kettles, made the payment due in August from his personal funds.<sup>3</sup>
7. The actions of FCRE REL, LLC, put the Plaintiff out of possession of its real property, its money, its business files, its leases with tenants, and its personal property.
8. A preliminary injunction is issued to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at

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<sup>3</sup> The August 15, 2016, *Ex Parte* Temporary Restraining Order required the Defendants to, amount other things, return to the Plaintiff its money, personal property, leases and business files. As of the August 24, 2016, hearing, the Order was not complied with, and FCRE REL, LLC, remained in possession of Plaintiff's money, personal property, leases and business files.

law.<sup>4</sup>

9. Irreparable injury is shown when it is demonstrated that the injunction is reasonably necessary to protect the rights of the Plaintiff while the litigation is pending.<sup>5</sup> An injunction is proper: “. . . if it appears that irreparable mischief will be done by withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction.”<sup>6</sup> In South Carolina, the loss of a business is irreparable harm.

10. A party seeking a Temporary Injunction must show a likelihood of success on the merits, which means only that a prima facie showing must be made. Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.<sup>7</sup> The party seeking a temporary injunction is not required to demonstrate an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.<sup>8</sup>

11. A party seeking a Temporary Injunction must show the absence of an adequate

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<sup>4</sup> *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

<sup>5</sup> *South Carolina Civil Procedure*, James F. Flanagan, Ch. 65.

<sup>6</sup> *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (1950); *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 417 S.E.2d 544 (1992).

<sup>7</sup> See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.

<sup>8</sup> See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.; *Williams v. Jones*, 92 S.C.

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remedy at law. Our courts have held that the loss of a business is irreparable harm that is not remedied by the existence of a claim for money damages.<sup>9</sup>

12. I find that A & B Associates, L. P., has proved its entitlement to a Temporary Injunction because it has shown:

(a) Plaintiff has suffered and will suffer immediate and irreparable injury because it has been removed and excluded from its own property and business, and its personal property and funds have been seized without due process of law;

(b) it is suffering and has suffered immediate and irreparable injury in that its contractual relationships with its tenants have been interfered with;

(c) it is suffering and has suffered immediate and irreparable injury because its real property is being altered without its consent;

(d) it is suffering and has suffered immediate and irreparable injury because the Defendant is or has taken possession of rents from Plaintiff's tenants without due process of law, and its contracts that are secured by its real property are thus being interfered with;

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342, 75 S.E. 705 (1912).

<sup>9</sup> See: *Peek v. Spartanburg Regional Healthcare System, supra*. The opinion in *Peek, supra*, includes the following text:

Other appellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill. *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

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(e) in the absence of a Temporary Injunction, the *status quo* will be irretrievably lost, as the Plaintiff's business will be destroyed;

(f) the loss of the Plaintiff's business is irreparable damage for which no legal remedy exists;

(g) the Plaintiff has made out a *prima facie* case for the claims asserted in the Verified Complaint.

Accordingly, I hereby grant the Plaintiff's Motion for Temporary Injunction, as follows:

1. The Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit.

2. No later than 12:00 Noon, on Friday, August 26, 2016, the Plaintiff is required to have a licensed property manager in place at the property.

3. No later than 12:00 Noon, on Friday, August 26, 2016, the Defendants shall return and turn over to Plaintiff all of Plaintiff's money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles' affidavit, all money received from rents, and to return of all money removed from any of Plaintiff's bank accounts, including reserve accounts, and to provide a full accounting of all such money and any expenses Defendants have paid or incurred with Plaintiff's money.

4. Within ten days of this Order, the Plaintiff and FCRE REL, LLC, shall meet with each other at the property to discuss any maintenance issues or conditions affecting the

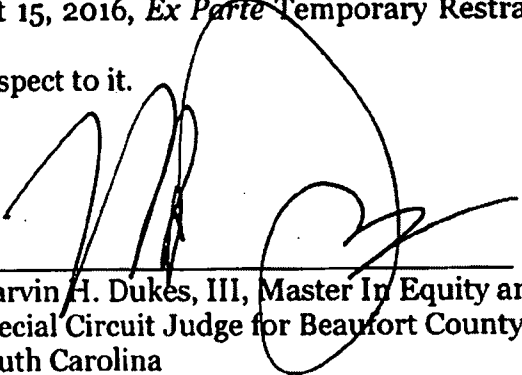
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Property. Should the Parties fail to agree on which conditions, if any, must be remedied, the Court will determine what conditions must be remedied.

5. The undersigned will hold a status conference, via telephone, after the Parties have met to discuss the conditions affecting the Property as Ordered herein.

6. The security set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order shall serve as security for this Temporary Injunction. I find the security adequate for the reasons set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order, and no party raised any issue with respect to it.

IT IS SO ORDERED.



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Marvin H. Dukes, III, Master In Equity and  
Special Circuit Judge for Beaufort County,  
South Carolina

Beaufort, South Carolina

This 16 Day of August, 2016.

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