

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South State Bank f/k/a SCBT, a South Carolina state chartered banking corporation, d/b/a First Federal, a Division of SCBT,

PLAINTIFF,

v.

Three Amigos Land Co., LLC, a South Carolina limited liability company; River City Storage, LLC, a Florida limited liability company; Ramco River City, Inc., a Michigan corporation; Liberty River City Residential, LLC, a Florida limited liability company; Ramco Jacksonville, LLC, a Michigan limited liability company; George M. Lee, III, an individual; and Paul V. Degenhart, an individual,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-40-5683

**ORDER DENYING THE DEFENDANT
PAUL V. DEGENHART'S
MOTION FOR RELIEF FROM
FOREIGN JUDGMENT**

AND

**ORDER FOR ENTRY OF JUDGMENT
AGAINST THE DEFENDANT
PAUL V. DEGENHART
ONLY**

2016 JUN 28 AM 11:40
JANETTE W. HOBBS
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This matter was before me on June 6, 2016,, to hear the Motion of the Defendant Paul V. Degenhart (the "Defendant") for Relief From Foreign Judgment. Present at the hearing were W. Cliff Moore, III, attorney for the Plaintiff, and the Defendant who appeared pro se. Mr. Degenhart is an attorney licensed to practice law in the State of South Carolina.

This is an action by South State Bank f/k/a SCBT, a South Carolina State Chartered Banking Corporation, d/b/a First Federal, a Division of SCBT (the "Bank") to domesticate an Amended Final Deficiency Judgment ("Judgment") entered against the Defendant in the State of Florida. In the underlying Florida action, the Bank foreclosed a mortgage on property located in Florida and owned by Three Amigos Land Co., LLC, a

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limited liability company of which Defendant is a member. The Bank also collected on a personal guaranty given by Defendant to secure the loan, and the Bank obtained the Judgment against Defendant for the deficiency remaining after the foreclosure sale.

The Bank filed the Judgment in Richland County, South Carolina, on September 16, 2014, along with the Affidavit of James Holden, in accordance with S.C. Code Ann. § 15-35-920. The Bank's Notice of Filing of Foreign Judgment was served on Defendant on November 24, 2014.

The Defendant filed a Motion for Relief from Foreign Judgment on December 17, 2014 ("Motion"). In the Motion the Defendant challenges the Bank's domestication of the Judgment on five grounds, contending that: (1) the Florida court lacked personal jurisdiction over Defendant; (2) the Florida court failed to interpret the Personal Guaranty under Florida law; (3) the copy of the Judgment recorded in Richland County was not authenticated; (4) the address for Plaintiff stated in the Notice of Filing is incorrect; and (5) Defendant's appeal is still pending.

The Defendant's Motion was before the Court in March of 2015, at which time the Defendant advised the Court of a pending appeal of the matter in the Florida Courts. On March 13, 2015, this Court entered an Order that stayed the domestication pending resolution of the matter pending in Florida. That stay was lifted by Court Order dated July 13, 2015. The Bank and the Defendant have attempted to resolve the matter, but those efforts have not been successful.

Based on the record before me and the arguments of counsel, I find and conclude that:

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1. "The burden of undermining the decree of a sister state rests heavily on the assailant, who can overcome the presumption of jurisdiction and validity afforded the judgment by the Full Faith and Credit Clause only by extrinsic evidence, or by the record itself." *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 504, 681 S.E.2d 575, 579 (2009).

2. In the underlying action litigated in the State of Florida, Defendant filed an Answer to the Bank's Amended Complaint and did not assert a defense based on lack of personal jurisdiction. In doing so, as a matter of law, Defendant submitted himself to the Florida court's jurisdiction and waived his right to assert a defense based on lack of personal jurisdiction. The Florida Rules of Civil Procedure, like the South Carolina Rules of Civil Procedure, provide that a party waives a defense based on personal jurisdiction by failing to present the defense in his responsive pleading. *See Fla. R. Civ. P. 1.140(h)(1); Solmo v. Friedman*, 909 So. 2d 560, 564 (Fla. Dist. Ct. App. 2005) ("It is well established that if a party takes some step in the proceedings which amounts to a submission to the court's jurisdiction, then it is deemed that the party waived his right to challenge the court's jurisdiction regardless of the party's intent not to concede jurisdiction. If a party does not challenge personal jurisdiction until after a general appearance in the case, the party has waived the right to contest personal jurisdiction.") (citations omitted).

3: Even if Defendant had not submitted himself to the jurisdiction of the Florida court, the Florida court in Duval County had jurisdiction over Defendant. The Judgment against Defendant is for the deficiency remaining after the Bank foreclosed and sold real property located in Duval County, Florida. The Defendant is responsible for the

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deficiency because he guaranteed the mortgage debt on which the Plaintiff foreclosed. "A mortgage foreclosure action is a local action and must be brought in the county where the land lies." *Hudlett v. Sanderson*, 715 So. 2d 1050, 1052 (Fla. Dist. Ct. App. 1998). Moreover, the Defendant admits in his Motion that he signed an agreement containing a forum selection clause under which Defendant consented to the jurisdiction of the State of Florida. See *Fla. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 566, 683 S.E.2d 486, 492 (2009) (holding that guarantor "waived any argument about personal jurisdiction when he agreed to the venue and service clauses in the Guaranty"); *Auto. Fin. Corp. v. Aberdeen Auto Sales, Inc.*, 2007 WL 2349627 (S.D. Ind. Aug. 15, 2007) (affirming the Indiana court's jurisdiction over an out-of-state guarantor of a debt, based forum selection clause in guaranty agreement).

4. The Florida court had personal jurisdiction over Defendant, and Defendant is not entitled to relief from the Judgment on this basis.

5. The Defendant suggests that the Florida Court improperly imposed Florida law in the underlying matter and that the documents provided that the Laws of the State of South Carolina controlled the transaction. In fact the Defendant's Personal Guaranty states, "This Guaranty is governed by the laws of South Carolina, the United States of America, and to the extent required, by the laws of the jurisdiction where the Property is located." In the matter on which the deficiency was awarded, the property encumbered by the Mortgage is located in Duval County, Florida. Therefore, to the extent the Florida court interpreted the Personal Guaranty under Florida law, such interpretation is in accordance with the terms of the Personal Guaranty. As such the Defendant's challenge based on the alleged choice of law by the Florida Court should fail.

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6. The Defendant fails to identify any specific conclusions of law made by the Florida court which required an interpretation of his Personal Guaranty. Moreover, he does not identify which provisions of the Personal Guaranty he believes were misinterpreted by the Florida courts. As a result, it is unclear to this Court which part of the Florida court's ruling Defendant believes was unfair. Defendant also does not identify any particular conflict of laws—between the law of Florida and the law of South Carolina—that resulted in an unfair result for Defendant. Finally, Defendant provides no legal authority, and this Court is not aware of any authority, supporting the Defendant's position that the Florida court's interpretation of the Personal Guaranty constitutes a violation of the Fourteenth Amendment.

7. The Plaintiff recorded an authenticated copy of the Judgment. Proof of this authentication can be seen in the photocopy that was served on Defendant, which shows, on the fourth page of the Judgment, the Official Seal of Ronnie Fussell, the Clerk of Court for Duval County, Florida, along with an attestation of the validity of the Judgment. Rule 902(1), SCRE.

8. S.C. Code Ann. § 15-35-920 does not require that a filed foreign judgment provide an address for the judgment creditor. Defendant appears to conflate the requirements in S.C. Code Ann. § 15-35-920, which pertain to the filing of a foreign judgment, with the requirements in S.C. Code Ann. § 15-35-930(B), which pertain to the contents of the Notice of Filing—a document served by a judgment creditor on its judgment debtor but not filed with the court. S.C. Code Ann. § 15-35-930(B) requires that a judgment creditor's Notice of Filing set forth an address for the judgment creditor. The Notice of Filing served by the Bank on Defendant sets forth the undersigned

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counsel's address, because the undersigned counsel serves as the Bank's agent for the purposes of domesticating and collecting the Judgment. See *Chapman-Storm Lumber Corp. v. Minnesota-S. Carolina Land & Timber Co.*, 183 S.C. 31, 190 S.E. 117, 118 (1937) ("A corporation, being a fictitious person, can never act except through servants."). As such, the Notice of Filing is proper.

9. The Defendant's Motion for Relief from Foreign Judgment should be denied.

IT IS THEREFORE ORDERED THAT the Defendant's Motion for Relief from Foreign Judgment is denied and the Judgment shall be enforced in the State of South Carolina in the same manner as a judgment of the State of South Carolina.

IT IS FURTHER ORDERED THAT the Clerk of Court for Richland County, South Carolina enter the Judgment on its indexes against the Defendant Paul V. Degenhart.

AND IT IS SO ORDERED.

Dated: 6-20, 2016



D. Craig Brown, Circuit Court Judge

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INDEX OF WITNESSES

(Court Reporter's Note: There was no direct or cross examination of any witnesses.)

INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence.)

1 (The following proceedings are reported on
2 June 6, 2016.)

3 THE COURT: The next matter on here is South
4 State Bank v. Three Amigos. Anyone here on that matter?

5 MR. MOORE: Yes, Your Honor. Cliff Moore for
6 South State Bank.

7 MR. DEGENHART: My name is Paul Degenhart,
8 Your Honor.

9 THE COURT: Yes, sir. I believe this is
10 defendant's motion; is that correct?

11 MR. DEGENHART: It is, Your Honor.

12 THE COURT: I'm happy to hear from you, sir.

13 MR. DEGENHART: Thank you, Your Honor. May I
14 approach?

15 THE COURT: Yes, sir.

16 MR. DEGENHART: I received from Mr. Moore a
17 supplemental memorandum on this case late last week and
18 in view of that put together this reply.

19 THE COURT: All right.

20 (Hands to Court.)

21 MR. DEGENHART: The basic issue in this
22 matter, this was a loan on a piece of property in
23 Jacksonville, Florida. It was a loan from a South
24 Carolina state bank to a South Carolina limited
25 liability company.

1 The loan was actually governed by a loan
2 commitment, which is attached to this memorandum as
3 Exhibit 3. That loan commitment provides on page 1 of
4 the loan commitment how the deficiency -- if there was a
5 deficiency -- would be apportioned.

6 On the last page of the loan commitment in the
7 paragraph at the top provides, "That this commitment and
8 all provisions hereto shall survive the closing," and
9 goes on to say, "That the commitment shall be
10 interpreted, construed, and enforced according to the
11 laws of the State of South Carolina."

12 What happened was there was a foreclosure on
13 the property in the State of Florida, absolutely
14 ignored. But what happened then was that the deficiency
15 matter was heard in the State of Florida.

16 We believe that based on the fact that this
17 was a South Carolina loan -- all negotiations took place
18 in South Carolina, all parties were in South Carolina,
19 all documents were in South Carolina, all accounts were
20 in South Carolina, all witnesses were in South Carolina.

21 The underlying documents, starting with the
22 loan commitment and carrying forward to the promissory
23 note, which states in Article 15 on page 5, "That the
24 note shall be governed and construed in accordance with
25 the laws of the State of South Carolina."

1 The mortgage, which is Exhibit 5, states on
2 page 21, Article 4.5, "That the lien and security
3 interest shall be governed and construed in accordance
4 with the laws of the State of South Carolina, but all
5 other provisions shall be governed and construed in
6 accordance with the internal laws of the State of South
7 Carolina."

8 The guaranty -- and there were several -- but
9 the primary guaranty in this case also states, "That the
10 guaranty shall be construed in accordance with the laws
11 of the State of South Carolina." None of that occurred.

12 So we don't believe that the State of Florida
13 had any interest in hearing this case or had any
14 ultimately in personam or subject matter jurisdiction
15 over this matter.

16 The plaintiff will argue that because an
17 answer was filed in the State of Florida that that
18 answer subjected the defendants to jurisdiction in the
19 State of Florida; however, the answer was filed with
20 respect to the foreclosure matter.

21 Then plaintiff further argues that I
22 personally was the managing member of the limited
23 liability company. But there is an attachment,
24 Number 2, Exhibit 2, Your Honor, to this that shows I
25 wasn't the managing member of the limited liability

1 company.

2 Plaintiff then argues that: Well, there was a
3 forum selection clause contained in the loan documents.
4 That's true, Your Honor; however, in the State of
5 Florida, a forum selection clause is not effective
6 unless and until the plaintiff can show that the
7 defendant had minimum contacts to the jurisdictional
8 state, in this case Florida.

9 In my case particularly, Your Honor, I own no
10 property, had no employees, had no contacts that would
11 have subjected me to personal jurisdiction in the State
12 of Florida.

13 That case is governed by numerous -- that
14 matter is governed by numerous case law citations from
15 the State of Florida, which clearly states that the
16 forum selection clause cannot operate as the sole basis
17 for jurisdiction.

18 There must be an independent basis and the
19 enforceability has to rely only upon upon minimum
20 contacts with the State of Florida. In this case there
21 were none. So our position is that the State of Florida
22 never had either in personam -- or more particularly --
23 subject matter jurisdiction in this case.

24 The Supreme Court has held that if subject
25 matter jurisdiction doesn't exist, no -- nothing can

1 create it. No agreement, nothing. It simply does not
2 exist. That law, that case law, is upheld both in the
3 states of Florida and South Carolina.

4 THE COURT: Is that case in the citation --

5 MR. DEGENHART: It is --

6 THE COURT: Hold on a minute.

7 MR. DEGENHART: I'm sorry.

8 THE COURT: You can't talk when I'm talking.

9 The court reporter can't take it down when both of us
10 are talking.

11 MR. DEGENHART: I apologize.

12 THE COURT: Is that case and citation of such
13 case that you are referring to within your memo that you
14 just had handed up here?

15 MR. DEGENHART: Yes, Your Honor, it is. This
16 then becomes a technical matter, and that is whether or
17 not the filed judgment in the State of South Carolina
18 comported with the laws of South Carolina which require
19 that a foreign judgment -- that the authentication of a
20 foreign judgment -- be signed by a circuit court judge
21 and the Clerk of Court.

22 In this case the judgment that was filed, the
23 authentication of the judgment, did not have the
24 signature of both a circuit court judge and the Clerk of
25 Court. It merely was filed as a true and correct copy

1 by the Clerk of Court only.

2 So for all of those reasons, the defendant in
3 this matter has moved that the judgment in the State of
4 Florida, which cannot exist because you can raise
5 particularly subject matter jurisdiction at any time,
6 that it should not be given full faith and credit in the
7 State of South Carolina. That is all set forth in the
8 memorandum and attachments here, Your Honor.

9 THE COURT: All right. Very well. Thank you,
10 sir.

11 Yes, sir, Mr. Moore.

12 MR. MOORE: Yes, Your Honor. The memorandum
13 that we filed last week was just an updated memorandum
14 when we filed this a year ago when we were before the
15 Court.

16 It was suggested that there was an appeal
17 pending and there was a stay. That stay has been lifted
18 by order that was entered in this matter back in July.
19 So really the content of what we submitted to the Court
20 last week was no different than what we had submitted
21 before.

22 Our argument is fully contained in there. I
23 think the relevant things for Your Honor's consideration
24 are that this was a foreclosure action. We had an LLC
25 that was formed -- with some South Carolina

1 individuals -- who brought the property, the LLC brought
2 the property in Florida and financed it with a South
3 Carolina bank.

4 There was a foreclosure action that was filed,
5 and Mr. Degenhart was named as a party to that
6 foreclosure action by virtue of a guaranty. The
7 guaranty that is attached to the pleadings and on which
8 judgment was entered is attached to our argument.

9 It specifically provides not only that the
10 guaranty is governed by the laws of South Carolina and
11 the United States of America, it also says it's governed
12 by the laws of the jurisdiction where the property is
13 located, which in this case would be the State of
14 Florida.

15 Mr. Degenhart appeared in that action. I
16 don't know if Your Honor understands this, but
17 Mr. Degenhart is an attorney, licensed to practice law
18 in South Carolina.

19 He appeared in the matter in Florida pro se,
20 filed an answer but did not raise jurisdiction of any
21 type, in personam, subject matter, nothing. He asserted
22 affirmative defenses, and his answer is attached
23 there. He lost. He appealed that loss. He asked for a
24 reconsideration of the Court's affirmation of the
25 appeal.

1 That matter was filed in the State of Florida.
2 It has been fully litigated. What Mr. Degenhart is
3 raising is a choice of laws provision. There is
4 nothing, anything, that has been submitted to the Court
5 that this is decided under the laws of the State of
6 Florida.

7 He has not shown where the laws of the State
8 of South Carolina or any laws would have given a
9 different result than what was entered down in the State
10 of Florida.

11 The property was sold. The proceeds of the
12 sale were not sufficient to satisfy the debt, and there
13 is still an obligation. That obligation is reflected by
14 that judgment.

15 What he is arguing is that there was no
16 jurisdiction over him in the State of Florida. That
17 matter was raised, I believe, on appeal and has been
18 fully litigated down in the State of Florida.

19 This matter needs to move forward. We think
20 that there was jurisdiction, and we think that these
21 matters have already been litigated. We ask that the
22 Court look at the authenticated judgment we have from
23 the State of Florida.

24 Under our rules of evidence, it has been
25 authenticated. It's under seal by the Clerk of Court.

1 The judgment is signed by the judge that she
2 authenticates.

3 So I think all the qualifications of our
4 statute have been met, and this judgment should be given
5 full faith and credit. Thank you, Your Honor.

6 THE COURT: I will take a look at it. I had
7 an opportunity to review what you submitted last week
8 forwarded to my law clerk via e-mail. I will take a
9 look at what Mr. Degenhart has submitted, and I will let
10 you all know.

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Richland County, South Carolina, on the 6th day of June, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 5, 2016

s/L. Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON
PLEAS

COUNTY OF RICHLAND)

FOR THE FIFTH JUDICIAL
CIRCUIT

CASE NO: 2014-CP-40-5683

South State Bank f/k/a SCBT,)
a South Carolina state chartered)
banking corporation, d/b/a First)
Federal, a Division of SCBT,)

Plaintiff,)

vs.)

Three Amigos Land Co., LLC)
a South Carolina limited liability)
company; River City Storage, LLC)
a Florida Limited liability company)
Ramco River City, Inc., a)
Michigan corporation; Liberty)
River City Residential, LLC a)
Florida limited liability company,)
Ramco Jacksonville, LLC, a)
Michigan limited liability company)
George M. Lee, III, an individual;)
and Paul V. Degenhart, an)
individual,)

Defendants.)

RICHLAND COUNTY
FILED
2015 JUN -3 PM 3:14
JEANNETTE W. HOBRIE
C.C.P. & G.S.

**REPLY TO AMENDED MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION FOR RELIEF FROM FOREIGN JUDGMENT**

TO: South State Bank, Plaintiff:

Defendant Paul V. Degenhart (sometimes referred to as "the Defendant")

Replies to Defendant's Amended Memorandum in Opposition to Plaintiff's Motion to dismiss the Foreign Judgment filed against him, and in support thereof, would show as follows:

Defendant argues:

1. Defendant was not subject to section 48.193 of the Florida Statutes dealing with Jurisdiction (long arm statute);
2. The Florida court failed to interpret the Personal Guaranty under South Carolina law [wrongly stated by the Plaintiff to be under Florida Law];
3. The copy of the Judgment recorded in Richland County was not authenticated;
4. The address for Plaintiff stated in the notice of filing is incorrect; and
5. The State of Florida never had subject matter jurisdiction over this matter.

Defendant was not subject to section 48.193 of the Florida Statutes dealing with Jurisdiction (long arm statute)

Plaintiff argues that:

- a. Defendant was subject to The Florida court's jurisdiction because he made an appearance in the case. Defendant does not deny that he made an appearance in the case with respect to the foreclosure but avers that should not rise to the level of conferring personal jurisdiction over him with respect to any alleged deficiency.

Plaintiff then asserts that even if Defendant had not submitted himself the jurisdiction of the Florida court the Florida court had jurisdiction because the foreclosure was local and Defendant signed an agreement containing a

forum selection clause. Plaintiff attempts to back up this assertion by citing South Carolina and Indiana case law. This case law however is inapplicable because the validity and effect of a foreign judgment must be determined by the laws of the state that rendered the judgment. Hamilton v. Patterson, 236 S.C 487, 492, 115 S.E. 2d 68,70 (1960); Purdie v. Smalls, 293 S.C. 216, 220,359 S.E. 2d 306,308 (Ct. App. 1987). Thus, with respect to jurisdiction only the laws of the State of Florida apply. In McRae v. J.D./M.D., Inc., 511 So.2d 540 (Fla. 1987), the Florida Supreme Court held that a forum selection clause in the contract designating Florida as the forum cannot operate as the sole basis for a Florida court to exercise personal jurisdiction... There must be an independent basis under section 48.193, and there must otherwise be minimum contacts, for the Florida Court to exercise jurisdiction. It is only after the Florida Court has in personam jurisdiction... that... The enforceability of a forum selection clause comes into play." Defendant, in fact, had no minimum contacts with the state of Florida.(Exhibit 1 – Affidavit of Paul V Degenhart).

- b. Lender then argues that Defendant should be subject to jurisdiction in the State of Florida because he was the managing member of Three Amigos Land Co., LLC ("Borrower"). Not only is this argument defective because it misstates the facts (Defendant was not the managing member- see attached Section 3.1 excerpt from the Operating Agreement of the Borrower- Exhibit 2) it is defective legally because there is no statute or case law which makes a member of a

limited liability company subject to the jurisdiction of any court, solely because of membership in the LLC.

The Florida court failed to interpret the Personal Guaranty under South Carolina law [wrongly stated by the Plaintiff to be under Florida Law]

Contrary to the Plaintiff's assertion Defendant asserts that the provisions of the Personal guarantee were entirely misinterpreted by the Florida Court. The terms of the individual guarantee which were not modifiable were set forth in the December 1, 2006 Commitment letter and stated that this Defendant's liability was limited to 25%. (Exhibit 3- Page 1). The construction of the guarantee by the Florida Court in effect made the liability joint and several and not limited as contemplated in the Commitment Letter. Most significantly, the commitment letter states that **"this commitment and all terms and provisions hereto shall survive the closing of this loan and shall not be merged into any of the loan documents"**. (Exhibit 3 – page 5). Further, the Promissory Note under which the liability, if any, accrues clearly states in Section 15 that this Note shall be governed and construed under and in accordance with the laws of the State of South Carolina. (Exhibit 4- Section 15 page 5). That the Mortgage should be construed under Florida law as to the security interest in the property is not contested. However, the mortgage does not create a liability in favor of the Lender. It merely creates a security interest in the collateral supporting the loan. All other provisions of the mortgage shall be

governed and construed in accordance with the internal laws of the State of South Carolina. (Exhibit 5 section 4.5 page 21).

The copy of the Judgment recorded in Richland County was not authenticated

This matter should be dismissed because the judgment filed with the Court was not properly authenticated as required by section 15-35-920 (A) of the South Carolina Code Ann.

Section 15 – 35 – 920(A) requires that a copy of the foreign judgment authenticated in accordance with an act of Congress or the statutes of this state may be filed in the office of the clerk of court... **To have been effective the authenticating instrument attached to a copy of the Judgment should have been signed by both the Clerk of Court and a Circuit Court Judge of the originating County.** It is not. The final judgment from the Circuit Court of the Fourth Judicial Circuit in and for Duval County, Florida filed in this matter is merely a “true and correct copy”. (Exhibit 6). As such, it does not comply with the filing requirements of the South Carolina Code and should be rejected.

The address for Plaintiff stated in the notice of filing is incorrect

Plaintiff merely argues that it used its counsel's address as a servant of the legal entity. That address however is not consistent with the requirements of section 15 – 35 – 930 (B) which requires that the notice “must set forth the name and the address of the judgment creditor, his

attorney...” Clearly the notice provided in this case is noncompliant. (See attached Exhibit 8 which shows that the legal address of the Plaintiff is 520 Gervais Street, Columbia, SC 29201).

Lack of Subject Matter Jurisdiction.

Defendant further argues that Florida court lacked Subject Matter Jurisdiction which argument may be raised at any time including for the first time on appeal. See State v. Funderburk, 259 S.C. 256, 261, 191 S.E.2d. 520, 522 (1972) (stating “the acts of a court with respect to a matter as to which it has no jurisdiction are void”).

The Florida Court lacked subject matter jurisdiction under authority of Florida Rules of Civil Procedure, Rule 1.140 (B) (1) and 1.540 (b) McGee v. Biggs, 974 So. 2d 524, 526, (Fla. 4th DCA 2008), Citing Strommen v. Strommen, 927 So. 2d 176 (Fla. 2d DCA 2006) and shows that:

1. The Florida Court lacked subject matter jurisdiction to proceed. Subject matter jurisdiction was never been established on the record. The jurisdictional question can be raised at any time and can never be time barred. De Claire v. Yohanan, 453 So. 2d 375 (Fla. 1984).
2. Subject matter jurisdiction is confirmed on a court by the state constitution and applicable statutes. Subject matter jurisdiction may not be conferred upon the court by the consent of the parties, and the lack of subject matter jurisdiction may be raised for the first time on appeal. See Walker v. Garrison, 610 So. 2d 716, 718 (Fla. 4th DCA 1992); Florida Export Tobacco Co. v. Department of Revenue, 510 So. 2d 936, 943 (Fla. 1st

DCA), review denied, 519So. 2d 986 (Fla. 1987); See also Parker v. Parker, 553 So.2d 309, 311 (Fla.1st DCA 1989). See also State v. Brown, 351 S.C. 522, 570 S.E. 2d 559 (Ct. App. 2002). Subject matter jurisdiction "concerns the power of the trial court to deal with a class of cases to which a particular case belongs." Cunningham v. Standard Guar. Ins. Co., 630 So.2d 179, 181 (Fla.1994) (citing Lovett v. Lovett, 93 Fla. 611, 112 So. 768 (1927)).

3. In this case it is not contested that the Florida Circuit Court had the right to foreclose on the property. What is contested is the fact that the Florida court had any in personam or subject matter jurisdiction for the purposes of determining a deficiency, if any, an amount due under the Promissory Note, if any, and the enforcement of the Personal guarantee.
4. Further, subject matter jurisdiction cannot be waived by consent or agreement thus any purported agreement waiving subject matter jurisdiction is ineffective. Williams v. Starnes, 522 So. 2d 469,471 (Fla. 2d DCA). The parties cannot agree to jurisdiction over subject matter jurisdiction when none exists. Cunningham. 630 So.2d at 181).
See also – The question of [subject matter] jurisdiction cannot be waived by any act or admission of the parties, for the very obvious reason that the parties have no power to invest any tribunal with jurisdiction of a subject over which the law is not conferred jurisdiction upon such tribunal. Hence the common expression, 'Consent cannot conferred jurisdiction.' State v. Douglas, 245 S.C. 83, 138S.E.2d 845 (1964).

The pertinent facts are as follows:

The loan was made in South Carolina;

The promissory note which governed the transaction was executed in South Carolina and in Section 15 called for the application of South Carolina Law. (See Exhibit No. 4);

All negotiations took place in South Carolina;

The lender was a South Carolina based legal entity and was never qualified to do business in the State of Florida;

The Borrower was a South Carolina legal entity;

The final guarantors were South Carolina residents;

The guarantee of Defendant in Section 14 provided that it shall be governed and construed in accordance with the internal laws of the State of South Carolina. (See Exhibit No.7). To the extent that any other guarantees were signed but did not conform to the requirements set forth in the Commitment Letter then such guarantee should be considered to be ambiguous and strictly construed against the drafting party which was in all cases the lender.

All payments were made in South Carolina;

All accounts of both lender and borrower were maintained in South Carolina;

All documents were prepared in South Carolina by counsel representing the Lender;

All documents were executed in South Carolina;

All documents were maintained in South Carolina;

All witnesses were domiciled in South Carolina; (See Exhibit No.1- Affidavit of Paul V. Degenhart).

The loan commitment which governed this transaction and was dated December 1, 2006 and which stated in part **“this commitment and all terms and provisions hereto shall survive the closing of the loan and shall not be merged into any of the loan documents”** anticipated enforcing all agreements pursuant to the laws of the State of South Carolina. (Exhibit No. 2- First paragraph on Page 5). Even the mortgage, in Section 4.5, which governed the enforcement of the liens and security interests under Florida law is clear that all other provisions of that mortgage shall be governed by the laws of the State of South Carolina. (See Exhibit No. 5).

The Supreme Court has made it perfectly clear that in this type of situation the state which seeks to subject the nonresident to its judicial jurisdiction must have a definite interest in the litigation... There must be a rational nexus between the fundamental events giving rise to the cause of action and the forum state which gives that state sufficient interest in the litigation before it may constitutionally compel litigants defend in a foreign forum. Curtis Publishing Co. v. Birdsong, 360 F.2d 344(5th Cir. 1966). The State of Florida has absolutely no interest in this litigation. Without subject matter jurisdiction a judgment is void N.W.T. v. L.H.D. (In re D.N.H.W.) 955 So. 2d 1236, 1238 (Fla. 2d DCA 2007).

By finding that a Florida Court had no subject matter jurisdiction the lender's position is not compromised because all it had to do was to bring an action in the State of South Carolina. For the reasons set forth above this matter should be dismissed for lack of subject matter jurisdiction and the judgment held to be void.

WHEREFORE, Defendant Paul V. Degenhart respectfully requests the Court inquire into the matters contained in the Motion and grant the Motion and issue an order removing the Judgment from the Judgment Record with prejudice; and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Paul V. Degenhart, Pro Se
2131 Park St.
Columbia, SC 29201
803-771-6050
803-771-7006 Fax

June 6, 2016
Columbia, SC

EX 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-40-5683

South State Bank f/k/a SCBT,)
a South Carolina state chartered)
banking corporation, d/b/a First)
Federal, a Division of SCBT,)

Plaintiff,)

vs.)

Affidavit

Three Amigos Land Co., LLC)
a South Carolina limited liability)
company; River City Storage, LLC)
a Florida Limited liability company)
Ramco River City, Inc., a)
Michigan corporation; Liberty)
River City Residential, LLC a)
Florida limited liability company,)
Ramco Jacksonville, LLC, a)
Michigan limited liability company)
George M. Lee, III, an individual;)
and Paul V. Degenhart, an)
individual,)

Defendants.)
)
)
)
_____)

RICHLAND COUNTY
FILED
2016 JUN -3 PM 3:14
JEANNETTE W. MOSBRIDE
C.C.P. & G.S.

AFFIDAVIT OF PAUL DEGENHART

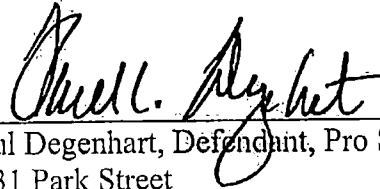
Personally before the undersigned officer, who is duly authorized to administer oaths,
appeared Paul Degenhart who, upon being duly sworn, deposes and says as follows:

1. I am Paul Degenhart, and I am a resident of the County of Richland and the State of
South Carolina.

2. The loan in this case was made to Three Amigos Land Co., LLC a South Carolina limited liability company.
3. None of the members of Three Amigos Land Co., LLC was a Florida resident.
4. The initial lender was First Savers Bank a South Carolina entity.
5. That loan was taken over by Plantation Federal Savings and Loan, a South Carolina entity.
6. The holder of the loan is now alleged to be South State Bank, formerly known as First Federal; both are South Carolina entities.
7. None of the lenders was a Florida entity conducting business in the State of Florida.
8. All negotiations took place in South Carolina.
9. All accounts were maintained in South Carolina.
10. All payments were made in South Carolina.
11. All correspondence with respect to the loan was limited to the State of South Carolina.
12. All documents were executed in South Carolina.
13. South Carolina law was to apply to all transactions.
14. None of the contracts in this case required any action on the loan to be performed in the State of Florida.
15. I have received no revenue for services provided in the State of Florida.
16. I own no real property in the State of Florida.
17. I conducted no business in the State of Florida.
18. I have never had an office in the State of Florida.
19. I have never had any employees in the State of Florida.

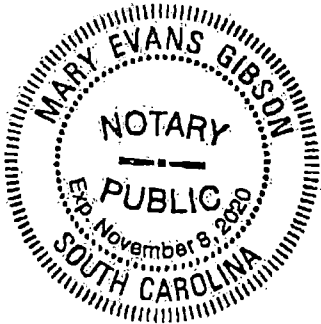
20. My only involvement with this transaction was to be a several guarantor of a loan made by a South Carolina entity to a South Carolina entity.

FURTHER AFFIANT SAYETH NOT.



Paul Degenhart, Defendant, Pro Se
2131 Park Street
Columbia, SC 29201
803-771-6050

Sworn to and Subscribed before me
Mary Evans A. a Notary Public in
and for the State of South Carolina
this 3rd day of June 2016.



EX 2

OPERATING AGREEMENT OF

Three Amigos Land Co., LLC

The Member Agrees As Follows:

This Operating Agreement for Three Amigos Land Co., LLC is hereby adopted and agreed to effective November 6, 2006 by the members of the LLC. The initial members of this LLC are: George M. Lee, III, Paul V. Degenhart and William J. Degenhart.

SECTION I - ORGANIZATION OF THE LIMITED LIABILITY COMPANY

Section 1.1 Formation.

The LLC has been organized as a South Carolina Limited Liability Company by filing the Articles of Organization with the South Carolina Secretary of State. The LLC has also been qualified to do business in the State of Florida.

Section 1.2 Name.

The name of the LLC is Three Amigos Land Co., LLC and Three Amigos Land Co., LLC shall conduct its business in this name.

Section 1.3 Registered Office and Agent.

The LLC's initial office and agent are specified in the Articles of Organization. If the members elect to change either the office or agent (or if the agent resigns), the members agree that they will promptly file the name of the new agent or office with the Secretary of State.

Section 1.4 Principal Office.

Section 33-44-211 requires all South Carolina LLCs to annually report the location of their current principal office (which is not required to be in South Carolina). The initial principal office of the LLC is 2131 Park Street, Columbia, SC 29201.

Section 1.5 Designated Office.

Section 33-44-108(a)(1) requires the LLC to also maintain a designated office in South Carolina. The LLC agrees as is required by Section 33-44-109 to notify the Secretary of State of any change of this office. The street address of the LLC's initial designated office in South Carolina is: 2131 Park Street, Columbia, SC 29201.

vote, such act is void ab initio. The member attempting the transfer remains the member and the purported substitute obtains no rights whatsoever.

Section 2.4 A Member May Not Assign His Financial Rights Without the Consent of the Other Members.

A member may voluntarily assign or pledge his distributional interest (his financial rights) to another person or entity upon the affirmative vote of ~~sixty six and 2/3 thirds percent (66 2/3%)~~. The assignment or pledge of such distributional interest is effective as to the LLC when reflected upon the books and records of the LLC. An assignment or pledge of all or any portion of a member's distributional is not deemed an event of dissociation and the LLC shall not dissolve. An assignee or pledgee does not become a substituted member unless the procedures and requirements of Section 2.3 have been specifically complied with. If a member attempts to pledge or assign any or all of his financial rights in the LLC to another person without the above required vote, such act is void ab initio. The member attempting an assignment or pledge retains all such rights and the purported assignee or pledgee obtains no rights whatsoever.

SECTION III - MANAGEMENT & CONTROL OF THE LLC

Section 3.1 Management by Member.

This LLC shall be member run. The Member shall have the full power and authority to manage the affairs of this business, to make all decisions, and to take all actions for the LLC unless otherwise stated herein. The initial members shall be George M. Lee, III, Paul V. Degenhart and William J. Degenhart.

Section 3.2 Votes of Members.

Each member of this LLC shall be entitled to vote based on his percentage ownership of the Membership Interests in the LLC.

Section 3.3 Place of Meeting.

All meetings of the members shall be held at the principal office of the LLC. Members may participate in such meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participate in a meeting as provided here shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.4 Conduct of Meetings.



December 1, 2006

Three Amigos Land Company, LLC
 c/o George Lee
 Professional Realty, Inc.
 8910 Two Notch Road, Suite 302
 Columbia, South Carolina 29223

Re: \$1.80MM Development Loan to Three Amigos Land Company, LLC

Dear Gentlemen:

This letter constitutes the commitment of First Savers Bank (the "Bank") to make a loan (the "Loan") to the borrower described below (the "Borrower") under the following terms and conditions:

General Terms.

Borrower	Three Amigos Land Company, LLC
Guarantor	The Loan will be unconditionally guaranteed by George Lee, William Degenhart, and Paul Degenhart. Notwithstanding the above, the above-mentioned guarantors liability under the loan will be limited to the following percentages: George Lee 50% William Degenhart 25% Paul Degenhart 25%
Loan Amount	\$1,800,000
Type of Loan	Development
Purpose of Loan	Provide funds for the purchase and 3.79 acres of land located at the intersection of Highway 17 and Airport Road in Jacksonville, Florida. Borrower intends to develop this parcel into three retail out-parcels.
Collateral	The Loan will be secured by a title-insured, first real estate mortgage on the property described in the Purpose of Loan above. Assignment of all Rents, Leases, and Profits.
Interest Rate	30-day LIBOR Base Rate plus 2.50%

Fees and Expenses Borrower shall pay Bank a commitment fee of \$9,000.00 at the closing of the loan.

Borrower also shall pay all costs and expenses incident to the Loan. The foregoing shall be paid by Borrower even if the Loan does not close. The Bank designates Lindsey Smith as its counsel.

Payment Terms Interest only for twenty three (23) months. One final payment of all principal plus any accrued but unpaid interest shall be due and payable upon the maturity

of the loan, 24 months from the loan closing.

Loan Value to An appraisal will be ordered by the Bank and must be found acceptable to the Bank prior to the Loan closing. The loan amount shall not exceed 75% of the appraised value.

Loan Advances Bank will make Loan Advances based upon completed construction and installation only. All construction draws will include a draw request in form and substance satisfactory to Bank. Advances will be made on a pro-rata basis in accordance with the percentage of completion. Borrower shall use Loan proceeds only for construction purposes. All advances shall be made in accordance with the terms and conditions of a loan agreement. Borrower shall only be entitled to one advance per calendar month.

Reporting Requirements And Operating Covenants.

Financial Reporting The Borrower and Guarantors shall provide the Bank with annual financial statements and tax returns.

Loan Documentation And Other Closing Requirements.

Loan Documentation The Loan and Bank's liens and security interests in the Collateral shall be evidenced by this commitment letter, and also shall be evidenced and supported by such additional loan documents ("Loan Documents") as Bank and its counsel deem necessary, including a promissory note from Borrower to Bank in the face amount of the Loan. The Loan Documents shall be in form and contain substantive content satisfactory to Bank and its counsel. All Loan Documents must be executed and delivered to Bank, and if required by Bank's counsel, filed or recorded, at or before closing.

Authority Documents Borrower shall furnish to Bank a certified copy of its organizational documents, together with resolutions approving the Loan, and a certified certificate of authority from Borrower's state of organization, all of which shall be current, in effect as of closing and otherwise satisfactory to Bank and its counsel.

Counsel's Opinion A written opinion shall be furnished at, and effective as of, closing by Borrower's independent counsel and the opinion shall be in form and substance satisfactory to Bank and its counsel.

Insurance	Borrower shall provide to Bank at closing evidence satisfactory to Bank that the following insurance is in effect as of closing: builders risk and general liability insurance. The insurance shall be in amounts, with companies and on terms acceptable to Bank; it shall show Bank as a mortgagee or loss payee, as instructed by Bank; and it shall be continuously maintained in force by Borrower until the Loan is repaid in full.
Banking Relationship	The Bank requests that the Borrower maintain its primary deposit accounts with the Bank.
Additional Requirements	Borrower and Guarantor shall satisfy all such other terms and conditions as Bank and its counsel deem necessary to ensure the proper documentation of the Loan, the perfection of the liens and security interests in the Collateral and compliance with all laws and regulations applicable to Bank, Borrower, and Guarantor relative to the Loan. The additional requirements shall include, without limitation, those set forth in <u>Attachment 1</u> .

Miscellaneous.

Conditions Precedent	The obligations of Bank to close are subject to the satisfaction of all of the terms and conditions of this commitment letter and the Loan Documents in a manner satisfactory to Bank and its counsel. Without limiting the foregoing, but in furtherance thereof, a condition precedent to closing is Borrower demonstrating to Bank that the Collateral does not present environmental risks or liabilities that are unacceptable to Bank.
Borrower Certification	The acceptance of this commitment shall constitute a certification by the person executing the acceptance that all material matters relating to Borrower and Guarantor have been disclosed to Bank and that there has been no material, adverse change in Borrower, to include its financial condition and operating condition, or Guarantor.
No Change	The obligation of Bank to make the Loan is conditioned upon there being no material adverse changes in the financial or operating condition of Borrower or Guarantor.
Non-Assignability	This commitment is for the sole benefit of Borrower and no other Person shall have any rights under this commitment against Bank, including any bankruptcy trustee or debtor in possession. This commitment may not be assigned without the prior written consent of Bank.

This commitment and all terms and provisions hereto shall survive the closing of the loan and shall not be merged into any of the loan documents. This commitment shall be interpreted, construed and enforced according the Laws of the State of South Carolina. All expenses incident to the making, closing and enforcement of the loan, including, without limitation, attorney fees, insurance premiums, shall be paid by the Borrower. If this commitment is acceptable, please indicate by signing in the space provided of this commitment and return to us no later than December 8, 2006. The bank will have no obligation to fund the loan if the loan does not close prior to January 1, 2007.

It is our pleasure to assist you in the project and should you have any questions, please feel free to contact me at (864) 286-2270.

Sincerely,

William M. Aiken, III Randy Bell
 Director of Real Estate Banking Senior Vice President
 Plantation Financial Corporation First Savers Bank

ACCEPTED AND AGREED TO THIS 14 Day of December 2006

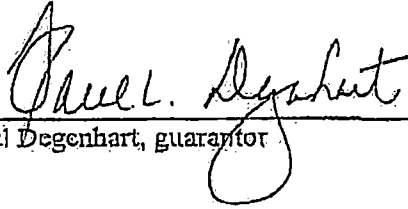
AS BORROWER FOR Three Amigos Land Company, LLC

By: [Signature]
 George Lee, Manager

AS GUARANTOR

[Signature]
 George Lee, guarantor

[Signature]
 William Degenhart, guarantor



Paul Degenhart, guarantor

ATTACHMENT I
(Additional Requirements)

Title Insurance: A standard ALTA title insurance commitment, insuring the Bank's second lien position, together with copies of all exceptions to title except general utility easements and other easements, which are shown and referenced by recordation information on the survey is to be provided, prior to closing, by a company licensed to do business in South Carolina and acceptable to the Bank. After closing, a final title insurance policy is to be issued in accordance with the title commitment and be otherwise satisfactory to us.

Survey: A survey prepared and certified by a Florida registered land surveyor showing the location of all property lines and any and all setbacks and sidelines, all existing or proposed buildings, and all streets, roads, rights of way, easements, encroachments and related matters. Unless Bank agrees otherwise in writing, the survey shall be performed to then current ALTA standards, shall be so certified by the surveyor, shall be in recordable form and shall be otherwise sufficient for title insurance to be issued without any survey exception.

Flood Determination: A flood insurance policy in the amount of the Loan if the improved portion of the property (or any part thereof) is located in a flood hazard area. To determine if any portion of the improvements are in a flood hazard area, an independent flood insurance determination shall be made by the Bank or its representatives or agents. If the improvements or any portion thereof is located in a flood area, the Bank at its sole option may terminate this commitment. If, after closing, the Property (or any part thereof) is remapped and the improvements are determined to be located in a flood hazard area, the Borrower shall be required to obtain and maintain a flood insurance policy in accordance with the provisions of this paragraph.

Access: Evidence of reasonable means of ingress and egress to and from the Collateral that consists of real property.

Zoning: Written evidence from the appropriate authorities that the Collateral that consists of real property and its intended use are in compliance with all applicable zoning ordinances and land use laws and regulations.

Utilities: Evidence acceptable to Bank of the on-site availability of all utility services necessary for the operation of Borrower's business.

Architect's Certificate: A statement from the architect of record that plans and specifications comply with all building codes and other applicable laws, including, without limitation, the Americans With Disabilities Act and Fair Housing Act, when applicable. Further, the statement should certify that the

PROMISSORY NOTE

\$1,800,000.00

December 22, 2006

1. BORROWER'S PROMISE TO PAY. FOR VALUE RECEIVED, the undersigned **THREE AMIGOS LAND CO., LLC**, a South Carolina limited liability company (the "Borrower"), whose address is 8910 Two Notch Road, Suite 302, Columbia, South Carolina 29223, hereby promises to pay to the order of **FIRST SAVERS BANK** (the "Lender") at its office at 501 Roper Mountain Road, Greenville, South Carolina 29615, or such other place as the Lender may designate in writing, in lawful money of the United States, the principal sum of up to **One Million Eight Hundred Thousand and no/100 (\$1,800,000.00) Dollars**, together with interest thereon as of and from the dates of disbursement thereof computed at the rate set forth hereinafter, which principal and interest shall be payable in accordance with the terms set forth hereinafter.

2. TERM OF NOTE. This term of this Note shall commence on the date hereof and shall extend until December 10, 2008 (the "Maturity Date"), upon which date the entire outstanding unpaid principal and interest, if not sooner paid, shall become due and payable in full.

3. INTEREST. Interest shall accrue and be computed upon the daily outstanding principal balance at the LIBOR Rate (defined hereinafter) plus a margin in excess of the LIBOR Rate (the "Margin") of two hundred fifty (250) basis points. Interest shall be calculated hereunder on the basis of a 360-day year and the actual number of days elapsed in an Interest Period (defined hereinafter). The interest rate shall remain fixed during each Interest Period throughout the term of this Note. As used in this Note, the following terms shall have the following meanings:

"Business Day" shall mean, with respect to Interest Periods applicable to the LIBOR Rate, a day on which the Lender is open for business and on which dealings in U.S. Dollar deposits are carried on in the London Inter-Bank Market.

"Interest Period" shall mean a period of one (1) month, provided that (i) the initial Interest Period may be less than one month, depending on the initial funding date, and (ii) no Interest Period shall extend beyond the Maturity Date.

"Interest Rate Determination Date" shall mean the date of this Note and the first Business Day of each calendar month thereafter.

"LIBOR Rate" shall mean that rate per annum effective on any Interest Rate Determination Date which is equal to the quotient of:

- (a) the rate per annum equal to the offered rate for deposits in U.S. Dollars for a one (1) month period, which rate appears on that page of Bloomberg reporting service, or such similar service as

the right to institute any proceedings on this Note, the Loan Documents, or any other collateral or guarantees given to secure the same, without limitation, for the purpose of collecting the indebtedness due hereunder and thereunder, and the Borrower agrees to pay all reasonable costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees.

12. DEFAULT INTEREST RATE. Any unpaid balance due hereunder shall continue to bear interest after default, after this Note matures, and/or after the unpaid balance has been reduced to judgment, at a rate equivalent to five (5%) percent in excess of the rate then payable hereunder; provided, however, that if such increased rate of interest may not be collected from the Borrower under applicable law, then the unpaid balance then due hereunder shall bear interest at the maximum increased rate of interest, if any, which may be collected from the Borrower under applicable law.

13. REMEDIES CUMULATIVE. The remedies provided herein and in the Loan Documents shall be cumulative and none is exclusive of any other remedy, right or power. Each right, power and remedy may be exercised separately, concurrently or consecutively at the sole option of the Lender and shall be in addition to any other right, power or remedy provided in this Note, or in any Loan Document, or now or hereafter existing at law, in equity, or by statute; and may be pursued successively or concurrently against the Borrower, the Guarantors, and/or any collateral securing this Note or any Loan Documents. Any delay or failure by the Lender to exercise any right, power or remedy conferred hereunder upon occurrence of any event of default shall not constitute a waiver of such right, power or remedy or preclude its future exercise or that of any other right, power or remedy in the event of any subsequent default, whether of the same or different nature.

14. WAIVERS. The Borrower, for itself, its legal representatives, successors and assigns, respectively, expressly waives presentment, demand, protest, notice of dishonor, notice of protest, notice of non-payment, and notice of maturity. The Borrower, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Note.

15. GOVERNING LAW. This Note shall be governed and construed under and in accordance with the laws of the State of South Carolina.

16. CONSENT TO JURISDICTION. The Borrower, by its execution hereof, agrees that any action or proceeding which the Lender may initiate with respect to this Note and/or any Loan Document shall, at the Lender's sole option, be brought in and subject to the jurisdiction of any state or federal court of competent jurisdiction of the State of South Carolina or of the State of Florida, to which jurisdictions the Borrower, by its execution hereof, hereby irrevocably consents. The Borrower irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

EXHIBIT 5

Doc # 2007002398, OR BK 13732 Page 1288,
Number Pages: 23
Filed & Recorded 01/03/2007 at 12:27 PM,
JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY
RECORDING \$197.00 MORTGAGE DOC ST \$6300.00
INTANGIBLE TAX \$3600.00

MORTGAGE, SECURITY AGREEMENT, AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT, AND FIXTURE FINANCING STATEMENT (the "Mortgage") is executed and granted this 22 day of December, 2006, by **THREE AMIGOS LAND CO., LLC**, a South Carolina limited liability company (the "Mortgagor"), whose address is 8910 Two Notch Road, Suite 302, Columbia, South Carolina 29223, in favor of **FIRST SAVERS BANK** (the "Mortgagee"), whose address is 501 Roper Mountain Road, Greenville, South Carolina 29615.

THIS MORTGAGE COVERS GOODS WHICH ARE OR ARE TO BECOME FIXTURES, IS EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING AND IS TO BE FILED IN THE REAL ESTATE RECORDS.

23

ARTICLE ONE GRANT OF MORTGAGE AND SECURITY INTEREST

1.1 **GRANT.** In order to secure and enforce the payment, performance and observance of the Obligations set forth hereinafter, and for and in consideration thereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor does hereby execute and deliver this Mortgage to the Mortgagee and does hereby grant, bargain, hypothecate, mortgage, sell, transfer, convey, assign, warrant and confirm unto the Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in and to the Property identified hereinafter, together with and including a first security interest in that portion of the Property comprising the Collateral (as defined hereinafter), TO HAVE AND TO HOLD the Property, all parts thereof, and all

4.5 GOVERNING LAW. The provisions of this Mortgage regarding the creation, perfection, priority and enforcement of the liens and security interests herein granted shall be governed by and construed under the laws of the State of Florida. All other provisions of this Mortgage shall be governed and construed in accordance with the internal laws of the State of South Carolina, without regard to any choice of law or conflict of law doctrines recognized therein.

4.6 CONSENT TO JURISDICTION. The Mortgagor, by its execution hereof, agrees that any action or proceeding which the Mortgagee may initiate under or with respect to this Mortgage shall, at the Mortgagee's sole option, be brought in and subject to the jurisdiction of any state or federal court of competent jurisdiction sitting in the County of Duval, State of Florida, to which jurisdiction the Mortgagor, by its execution hereof, hereby irrevocably consents. The Mortgagor irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of the Mortgagee to serve process in any manner permitted by law nor shall limit the right of the Mortgagee to bring proceedings against the Mortgagor and/or any other party to any other Loan Documents in the courts of any other jurisdiction.

4.7 HEIRS, SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. It is expressly recognized and agreed by the Mortgagor that the Mortgagee may assign this Mortgage and the Loan Documents, or interests therein, to other persons, firms or entities and that, in such event, all provisions of this Mortgage and the Loan Documents shall continue in full force and effect notwithstanding such assignments.

4.8 CAPTIONS. The headings and captions in this Mortgage are included only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Mortgage or the intent of any other provision hereof.

4.9 WAIVER OF JURY TRIAL. THE MORTGAGOR AND THE MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED UPON THIS MORTGAGE OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE NOTE, THIS MORTGAGE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE EXTENDING CREDIT TO THE MORTGAGOR.

IN, WITNESS WHEREOF, this Mortgage, Security Agreement and Fixture Financing Statement has been duly executed by the Mortgagor as of the date first written above.

THREE AMIGOS LAND CO., LLC, a South Carolina limited liability company

By: Paul V. Degenhart (Seal)

Its: MEMBER

Signed, Sealed and Delivered
In the Presence Of:

[Signature]
(Witness)

Roberta L. Bosman
(Witness)

STATE OF South Carolina

COUNTY OF Richland

The foregoing instrument was acknowledged before me this 20th day of December, 2006, by Paul V. Degenhart, the duly authorized member of Three Amigos Land Co., LLC, a South Carolina limited liability company. He is personally known to me or produced P/K as identification.

Roberta L. Bosman
(Signature)

Roberta L. Bosman
(Print Name)

Notary Public, State and County aforesaid
My commission expires: July 11, 2011

IN THE CIRCUIT COURT OF THE
FOURTH JUDICIAL CIRCUIT IN AND
FOR DUVAL COUNTY, FLORIDA

SCBT, a South Carolina state-chartered
banking corporation, d/b/a FIRST FEDERAL,
a Division of SCBT,

Plaintiff,

vs.

CASE NO. 16-2011-CA-9521 XXXX-MA

DIVISION FC-D

THREE AMIGOS LAND CO., LLC,
a South Carolina limited liability company;
RIVER CITY STORAGE, LLC, a Florida
limited liability company; RAMCO RIVER
CITY, INC., a Michigan corporation;
LIBERTY RIVER CITY RESIDENTIAL,
LLC, a Florida limited liability company;
RAMCO JACKSONVILLE, LLC,
a Michigan limited liability company;
GEORGE M. LEE, III, an individual;
and PAUL V. DEGENHART, an individual,

Defendants.

FILED 03/04/2014 RONNIE FUSSELL

AMENDED
FINAL JUDGMENT FOR DEFICIENCY

THIS MATTER was tried before the Court for determination of a deficiency, if any,
against the Defendants, THREE AMIGOS LAND CO., LLC, a South Carolina limited liability
company ("Three Amigos"), GEORGE M. LEE, III, an individual ("Lee"), and PAUL V.
DEGENHART, an individual ("Degenhart"). Based upon the evidence, the Court finds as
follows:

1. SCBT, a South Carolina state-chartered banking corporation, d/b/a FIRST
FEDERAL, a Division of SCBT ("Plaintiff" or "SCBT"), obtained a Partial Summary Final
Judgment for Damages and Foreclosure against Three Amigos ("Partial Summary Final
Judgment"). The Partial Summary Final Judgment reserved ruling on attorneys' fees, as well



as for damages for deficiency against the Borrower Three Amigos and on the guaranties against the Defendants Lee and Degenhart.

2. The property which was the subject of the foreclosure (the "Property") was sold on April 16, 2013, and Plaintiff was the successful bidder. The Clerk issued a Certificate of Title on April 30, 2013, transferring title to the Property to the Plaintiff herein.

3. Plaintiff is the holder the Partial Summary Final Judgment.

4. Plaintiff is the current owner of the Property.

5. The Plaintiff has not received any payment on the Partial Summary Final Judgment.

6. The Plaintiff is the holder of the Guaranty of George M. Lee, III, dated January 3, 2011.

7. Plaintiff is the holder of the Guaranty of Paul V. Degenhart, dated March 1, 2011.

8. As of the date of the Foreclosure Sale (April 16, 2013), the Court finds the Property had a fair-market value of \$1,540,000.

9. SCBT is entitled to a deficiency judgment based on the difference between the Foreclosure Judgment with interest to the date of the Foreclosure Sale, and the fair-market value of the Property as of the time of the Foreclosure Sale. *Municipal Savings & Loan Corp. v. Florentino*, 512 So.2d 228 (Fla. 3d DCA 1987).

It is, therefore,

ORDERED and ADJUDGED as follows:

1. Plaintiff SCBT, a South Carolina state-chartered banking corporation, d/b/a FIRST FEDERAL, a Division of SCBT, shall have and recover from the Defendant THREE

AMIGOS LAND CO., LLC, GEORGE M. LEE, III, and PAUL V. DEGENHART, the following:

Partial Summary Final Judgment Amount	\$1,958,073.04
Interest on Partial Summary Final Judgment @4.75% to Date of Sale (3/12/13-4/16/13)	<u>8,918.70</u>
Total Amount Due as of Foreclosure Sale.....	1,966,991.74
Less Fair Market Value at Date of Foreclosure Sale.....	(1,540,000.00)
Interest @ 4.75% from Sale Date to Trial (on net deficiency after deducting value of Property) 4/17/13-1/9/14.....	14,837.19
Attorneys' Fees.....	<u>71,912.50</u>
Total	\$513,741.43

for which let execution issue.

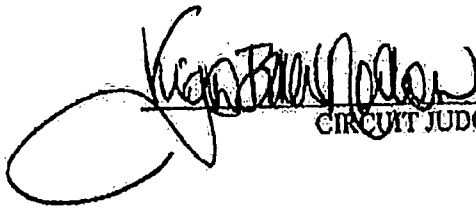
2. With respect to the award of attorneys' fees in paragraph 1 above, the Court finds that 181.2 hours of attorneys' time is a reasonable amount of time to spend on this matter and \$71,912.50 is a reasonable fee for the services rendered, and that accordingly the amount awarded is reasonable upon consideration of the time and labor required, the requisite skill to perform the legal services properly, the fee customarily charged for similar matters, the amount involved, the results obtained, and the awards in similar cases.

3. The Defendants, THREE AMIGOS LAND CO., LLC, GEORGE M. LEE, III, and PAUL V. DEGENHART complete, under oath, Florida Rules of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments and serve it on the Plaintiff's attorneys within forty-five (45) days from the date of this Final Judgment for Deficiency unless the Final Judgment for Deficiency is satisfied or post-judgment discovery is stayed.

[Remainder of page intentionally left blank.]

4. Plaintiff's address is: SCBT, d/b/a First Federal, a Division of SCBT, Attn: Randy L. Burge, 4331 Robert M. Grissom Parkway, Myrtle Beach, SC 29578.

DONE AND ORDERED in Chambers, in Duval County, Florida, this 27 day of February, 2014.


CIRCUIT JUDGE

Copies to:

E. Robert Meek, Esq.
Foley & Lardner LLP
One Independent Drive, Suite 1300
Jacksonville, Florida 32202-5017

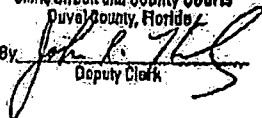
Harrison W. Poole, Esq.
Poole & Poole, P.A.
P.O. Box 1280
Fernandina Beach, FL 32035

Paul V. Degenhart, *Pro Se*
2131 Park Street
Columbia, SC 29201

STATE OF FLORIDA -
DUVAL COUNTY
I, UNDERSIGNED, Clerk of the Circuit & County Courts, Duval County, Florida, DO HEREBY CERTIFY the within and foregoing, consisting of 4 pages, is a true and correct copy of the original as it appears written and filed in the office of the Clerk of Circuit & County Courts of Duval County, Florida.

WITNESS my hand and seal of Clerk of Circuit & County Courts of Jacksonville, Florida, this the 11 day of Aug, A.D., 20 14.

RONNIE FUSSELL
Clerk, Circuit and County Courts
Duval County, Florida

By: 
Deputy Clerk

GUARANTY AGREEMENT

GUARANTOR: PAUL V. DEGENHART

BORROWER: THREE AMIGOS LAND COMPANY, LLC

THIS GUARANTY AGREEMENT is made and granted by the undersigned **PAUL V. DEGENHART** (the "Guarantor"), whose address is 2131 Park Street, Columbia, SC 29201, in order to induce **FIRST SAVERS BANK** (the "Lender"), whose address is 501 Roper Mountain Road, Greenville, South Carolina 29615, to extend certain credit to or for the benefit of **THREE AMIGOS LAND CO., LLC**, a South Carolina limited liability company (the "Borrower"), and is given in consideration of the benefits flowing to the Guarantor therefrom (which the Guarantor hereby acknowledges and agrees constitute fair and adequate consideration for this Guaranty). In consideration of the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby covenants and agrees as follows:

1) **GUARANTY OF OBLIGATIONS.** Subject to the Limitations on Guaranty set forth hereinafter, the Guarantor irrevocably, unconditionally and absolutely guarantees to the Lender, its successors and assigns, the punctual payment and performance as and when due of the following-described indebtedness, liabilities, obligations and duties (collectively, the "Obligations"):

(a) All monies now or hereafter owed to the Lender that are evidenced by that certain Promissory Note from the Borrower to the Lender of even date in the original maximum principal sum of One Million Eight Hundred Thousand and No/100 (\$1,800,000.00) Dollars (the "Note"), including without limitation, all principal, interest, late charges, prepayment charges, other charges, attorneys' fees, costs and expenses whatsoever actually incurred, becoming due to the Lender pursuant to the Note and any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for, the Note and any other indebtedness, liabilities, duties and obligations whatsoever now or hereafter evidenced by or pursuant to the Note, whether direct, indirect or contingent.

(b) All performance under and/or compliance with all terms, conditions, covenants, representations, warranties and provisions set forth in the Note and all Loan Documents (as defined in the Note) to be performed by or complied with on the part of the Borrower or any other guarantors thereof or parties thereunder, including without limitation, any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for any of the foregoing.

(c) All installation and construction through completion of all Improvements (as defined in the Loan Agreement) to be installed and constructed upon the Property (as defined in the Loan Agreement) pursuant to and in compliance with the Construction Documents and all applicable Governmental Requirements (as said terms are defined in the Loan Agreement).

13) ENTIRE AGREEMENT. This Guaranty contains the entire agreement and understanding between the Guarantor and the Lender with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether oral or written.

14) GOVERNING LAW. This Guaranty shall be governed and construed in accordance with the internal laws of the State of South Carolina, without regard to any choice of law or conflict of law provisions which might apply the law of another jurisdiction.

15) CONSENT TO JURISDICTION. The Guarantor, by its execution hereof, agrees that any action or proceeding which the Lender may initiate with respect to this Guaranty shall, at the Lender's sole option, be brought in and subject to the jurisdiction of any state or federal court of competent jurisdiction of the State of South Carolina or the State of Florida, to which jurisdictions the Guarantor, by its execution hereof, hereby irrevocably consents. Notwithstanding the foregoing, however, the Guarantor additionally acknowledges and agrees that the Lender may initiate any action upon or for the enforcement of this Guaranty in conjunction with or as a part of any action which the Lender shall initiate upon or for the enforcement of the Mortgage, Security Agreement, and Fixture Financing Statement from the Borrower to the Lender. The Guarantor irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in either such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

16) NOTICE. All notices made or required hereunder shall be in writing. The Effective Date of Notice shall be the date upon which such notice shall have been personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or the date of postmark when deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event, to the Lender or the Guarantor at the address set forth hereinafter, or at such other addresses as may hereafter be designated in writing.

17) LIMITATIONS ON GUARANTY. Notwithstanding anything contained in this Guaranty or in any other Loan Document to the contrary, the liability of the Guarantor hereunder shall be limited to the principal sum of Four Hundred Fifty Thousand and no/100 (\$450,000.00) Dollars, plus any and all outstanding unpaid interest due to the Lender under the Note, plus any loss, liability or damage to or sustained by the Lender arising at any time during the pendency of this Guaranty from the following:

(a) any fraudulent or material misrepresentation by the Borrower or the Guarantor in connection with the execution, delivery, contents, or performance of the Loan Documents;

(b) the misappropriation by the Borrower or the Guarantor of any insurance or condemnation proceeds attributable to any such collateral;

(c) the misappropriation by the Borrower or the Guarantor of any rentals assigned to the Lender following written notification by the Lender to the Borrower of the occurrence of an Event of Default under the Loan Documents;

(d) the intentional violation by the Borrower or the Guarantor of any representations, covenants or agreements contained in the Loan Documents with respect to environmental matters;

(e) the violation by the Borrower, following the occurrence of an Event of Default, of any indemnification obligations contained in the Loan Documents which arise out of any matters enumerated in subsections (a) through (f) of this paragraph;

(f) the violation by the Borrower, following the occurrence of an Event of Default, of any prohibitions contained in the Loan Documents against transfer of the Borrower's property identified in the Note, or of any interests in the Borrower; and

(g) all court costs and reasonable attorneys' fees incurred by the Lender in connection with any claims asserted by or against the Lender on account of this Guaranty.

Executed as of the 20 day of December, 2006

Witnesses:

Anna Orlean
Rebata R. Bosman

Paul V. Degenhart
PAUL V. DEGENHART