THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

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SC Court of Appeals

Appellate Case No. 2017-000748

Robert William Robertson.....Appellant

v.

Huddle House, Inc. .....Respondent

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court err in finding that the tenancy of Respondent was governed by the assumption of a franchisee's Lease once the franchise expired, and not under a month-to-month tenancy under an inapplicable Collateral Assignment of Lease?

Counter Statement of issues on appeal.[1]

1. Did the trial court err in finding that Respondent had properly been assigned Fine Food's (franchisee) interest under the Lease, including the 60-month extension obtained by Fine Food?
2. Did the trial court err in finding that Respondent had properly "stepped into the shoes "of Fine Food," and thus Appellant could not evict Respondent upon 30 days' notice?
3. Did the trial court err in finding that the language in the Collateral Assignment of Lease provision, which allowed for a month-to-month tenancy, was only applicable if Respondent took assignment of the Lease as a result of a default by the franchisee, rather than simply assuming the rights that the franchisee had under the existing Lease as provided in the Franchise Agreement?[2]

II. STATEMENT OF THE CASE

Appellant initiated this action on July 11, 2016, in the Court of Common Pleas of Aiken County, to which Respondent answered on August 22, 2016. Appellant filed the

[1] To the extent that the Court finds that any of these issues were not ruled upon by the trial court, then Respondent respectfully submits them as further sustaining grounds found in the record pursuant to Rule 220(c), SCACR.

action requesting a declaratory judgement that Appellant had the right to terminate the Lease to Respondent upon 30 days' notice, and furthermore prayed for a Writ of Ejectment. Respondent's answer to the Complaint averred that Respondent had been properly assigned Fine Food's interest in the 60-month Lease pursuant to the Franchise Agreement, and that the month-to-month language in the Collateral Assignment of Lease (CAOL) was not controlling. The matter was referred by the Circuit Court to the Master-In-Equity for Aiken County, the Honorable M. Anderson Griffith, on October 10, 2016. Respondent and Appellant filed pre-hearing briefs, on November 3, 2016, and November 15, 2016, respectively.

A non-jury trial was held before the Master on November 23, 2016. The Master issued his Findings of Fact and Conclusions of Law ("Order") on February 27, 2017, and found for Respondent on all claims. Specifically the Master found that Respondent had become the assignee of franchisee/Fine Foods, LLC, (Fine Foods) under the Lease as provided in the Franchise Agreement. This included the 60-month extension of the Lease effectuated by Fine Foods prior to its decision not to renew its Franchise Agreement with Respondent. Furthermore, the Master found that the language in the CAOL was not controlling as it would be applicable only where the original tenant, Fine Foods, was found to be in default under the terms of the Lease or Franchise Agreement, and if Respondent took over the Lease as a result of that default.

Appellant timely filed his Notice of Appeal on March 24, 2017. Appellant filed a Brief of Appellant on June 5, 2017.

III. INTRODUCTION

This case concerns the right to continued tenancy of a restaurant building in Aiken, South Carolina, that has been operated as a Huddle House restaurant. Respondent Huddle House, Inc. (HHI) succeeded to the tenancy of the restaurant in July 2016. It did so when the Huddle House franchisee decided not to renew the franchise for that location. Under the terms of the Franchise Agreement, HHI became the lessee of the restaurant.

The franchisee/Fine Food had first begun operating a Huddle House restaurant at this Aiken location in May of 2011. Three years later, Bob Robertson, Appellant in this case, and husband of the owner of Fine Food, purchased the building and site on which the restaurant was located and became the Landlord. (T-9). In January 2016, the franchisee exercised its right under the Lease to extend the tenancy for an additional 60 months.[3]

But once the franchisee, owned by Appellant's wife, ceased operations at the Aiken restaurant In July 2016, and the restaurant Lease was taken over by HHI, the Appellant filed suit to have HHI evicted on 30 days' notice. Nothing in the Franchise Agreement or the Lease gave Appellant such a right to evict HHI. Instead Appellant relied on a different document where HHI had the right to take assignment of the Lease if the franchisee defaulted on the Lease or its franchise obligations. But HHI did not take over the Lease due to any default. HHI simply assumed the rights the franchisee had under the existing Lease upon the expiration of the Franchise Agreement as provided in the Franchise Agreement and the Lease.

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[3] Order of February 27, 2017, p. 10. ("Order").

The Master-in-Equity correctly interpreted the various documents and concluded that Appellant's attempt to evict HHI on 30 days' notice was not in compliance with the applicable Franchise Agreement and Lease.[4]

IV. STATEMENT OF FACTS

A. Fine Food Leased the Aiken Premises in May 2011.

As alleged in the Complaint in this case, Fine Food, LLC ("Fine Food") and T&Z Associates were parties to a May 31, 2011, lease (the "Lease"). Under it T&Z Associates leased to Fine Food the land, building, equipment, fixtures, signs, furnishings, and other improvements located at 3600 Richland Avenue West, Aiken, South Carolina. On the leased premises, Fine Food operated a franchised Huddle House restaurant (the "Aiken HH"). Compl. Ex. B ¶ 1. The term of the Lease was 60 months, with the term commencing on June 1, 2011. Compl. Ex. B. ¶ 3.1. The Lease also granted Fine Food the option to renew and extend the term of the Lease for two additional 60 month periods upon the same terms stated in the Lease. Compl. Ex. B. ¶ 3.2. To exercise that right, Fine Food was obligated to notify the Landlord of its election to exercise the right to renew and extend not less than three months prior to the end of the initial term. *Id.* This occurred in January 2016, and the Lease was extended for 60 months in June 2016.[5]

B. The Lease is Binding on Landlord's Successors and Assigns and Tenant Could Assign the Original Lease to HHI Without Landlord's Consent.

Paragraph 26 of the Lease defines Landlord to include T&Z Associates, "its representatives, assignees and successors entitled to the premises." Compl. Ex. B

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[4] Order, pp. 11-12.

[5] Order, p. 4, p. 5, 3(d).

¶ 26. Moreover, under Paragraph 27 of the Lease, "[i]f Landlord or any subsequent owner of the Premises, sells the Premises, said sale shall be made subject to the terms and conditions of this Lease." Compl. Ex. B ¶ 27. In Paragraph 36, Landlord covenanted that Tenant "shall at all times during the Lease Term and during any extension or renewal term, peaceably and quietly enjoy the Premises without any disturbance from Landlord." Compl. Ex. B ¶ 36.

The Lease also expressly reserves certain rights to HHI. Paragraph 29 of the Lease, entitled "Rights of Huddle House, Inc." provides that "Landlord and Tenant acknowledge that the Premises will be used for the operation of a restaurant franchised by Huddle House, Inc." Compl. Ex. B ¶ 29. In that Paragraph, Landlord also expressly agreed that (*Id.*)

> Tenant may at any time with or without the consent of Landlord, sublease, assign or encumber its interest, rights, privilege and obligations arising out of this Lease Contract, to any other person or persons, provided Tenant obtains written approval of Huddle House, Inc. . . . for such subleasing or assignment. In the event that Huddle House, Inc. is the Tenant hereunder, such written approval shall not be required.

Thus, HHI was able to become the tenant without prior approval of the Landlord.[6]

C. A Separate Collateral Assignment of the Lease Gave Remedies to HHI if the Franchisee Defaulted.

The Lease also provided that it was contingent upon "Landlord entering into HHI's standard form of Collateral Assignment of Lease, providing HHI with the ability to lease the Premises directly from Landlord upon the occurrence of certain events more

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[6] Order, p. 6, ¶ 6(b).

fully set forth in the Collateral Assignment of Lease." Compl. Ex. B ¶ 37.b (emphasis added).

Consistent with this requirement of the Lease, and as alleged in the Complaint, HHI and Fine Food entered into a Collateral Assignment of Lease dated July 28, 2011, (the "CAOL"). Compl. Ex. C. By its terms, the CAOL assigned Fine Food's rights under the Lease to HHI "for collateral purposes only." Compl. Ex. C at 1. The CAOL makes clear that:

> [E]xcept as specified herein, [HHI] shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment of Lease unless [HHI] shall take possession of the Premises demised by the Lease pursuant to the terms hereof and shall assume the obligations of [Fine Food] thereunder. Any possession of the Premises by [HHI] shall be deemed to be under a month-to-month tenancy and [HHI] shall not be deemed to have assumed any obligations of [Fine Food], except for the payment of the monthly rental payments set forth in the Lease during such period of occupancy by [HHI]."

Id. The CAOL expressly describes the circumstance upon which HHI could take possession of the leased premises under the CAOL:

> Upon a default by [Fine Food] under the Lease or under the Franchise Agreement for a Huddle House Unit between [Fine Food] and [HHI] (the "Franchise Agreement") . . . , [HHI] shall have the right and is hereby empowered to take possession of the Premises demised by the Lease, expel [Fine Food] therefrom, and, in such event, [Fine Food] shall have no further right, title or interest in the Lease. (emphasis added).

Id. The CAOL also obligated Fine Food to exercise any option to renew the Lease during the term of the Franchise Agreement between HHI and Fine Food governing the operation of the Aiken HH (the "Franchise Agreement"). "[Fine Food] agrees that it shall elect and exercise all options to extend the term or renew the Lease...." *Id.*

D. The Franchise Agreement Allowed HHI to Assume the Lease When Tenant's Franchise Ended.

Other than on default, the CAOL did not address any other right of HHI to an assignment of the Lease, including an assignment upon expiration of the Franchise Agreement. Instead, it is the Franchise Agreement that sets forth HHI's rights with respect to the Lease upon termination or expiration of the Franchise Agreement. Section 3(c) of the Franchise Agreement between HHI and Fine Food provided that "[i]n the event that [Fine Food] does not elect to exercise its option to renew [the Franchise Agreement], [HHI] may elect to exercise its options, if the Premises are owned or leased by [Fine Food], under the terms and conditions of Paragraph 15 [of the Franchise Agreement.][7] Paragraph 15(b) of the Franchise Agreement provided that:

> If, upon termination or expiration of the Franchise Agreement, [HHI] in good faith believes that the Premises are vital to the Huddle House System, and if the Premises will not otherwise remain a Huddle House unit (e.g., by renewal or transfer to a new franchise owner), and if HHI is willing to acquire such Premises for fair market value, then HHI . . . shall have the right, at its option, upon notice to [Fine Food] within thirty (30) days after termination or expiration . . . to state its preliminary intent to purchase for cash, or upon such other terms as agreed upon, [Fine Food's] interest in the Premises for fair market value.[8]

Under the Franchise Agreement, the initial term of the Franchise extended to May 31, 2016. § 3(a). Fine Food had the option under the Franchise Agreement to renew the franchised business for two additional terms of 60 months. § 3(b). Fine Food chose not to do so and surrendered the premises to HHI. (Order, p. 4).

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7 Affidavit of Counts ("Counts Aff.") Ex. 1 (Franchise Agreement) § 3(c).

8 Affidavit of Counts ("Counts Aff.") Ex. 1 (Franchise Agreement) ¶ 15(b).

E. When Robertson Acquired Landlord's Interest, He was Bound to The Lease Extension Terms.

On or about June 2014, Appellant purchased the land and building of the Aiken HHI operated by Fine Food from T&Z Associates.[9] Pursuant to the terms of the Lease and as alleged in the Complaint, Appellant took assignment of the Lease and became the Landlord for the restaurant.

In a letter dated January 29, 2016, Fine Food provided Appellant/Landlord written notice of its election to extend the Lease for an additional sixty (60) month period commencing June 1, 2016. Counts Aff. Ex. 3. Appellant/Landlord, during his testimony in this action, acknowledged that the Lease had been renewed, and the trial court so found. (T-18-19, Order, pp. 4, 5). Moreover, since HHI was the assignee of the Lease, the Lease provided that the Landlord's consent was not required for the assignment to be effective. Lease, ¶ 29.

F. Fine Food Decided Not to Renew the Franchise Agreement.

Following earlier discussions on whether Fine Food would renew the Aiken franchise, counsel for Fine Food notified counsel for HHI on March 18, 2016, that Mrs. Robertson, owner of Fine Food, had "indicated to me that she intends to renew Aiken (subject to removal of the liquidated damages provision)" from the terms of the Franchise Renewal Agreement. Counts Aff. Ex. 4. In an email dated March 28, 2016, counsel for Fine Food requested that HHI provide the Aiken Franchise Renewal Agreement so that he could provide it to Fine Food for execution. Counts Aff. Ex. 5. That same day, HHI sent the Aiken renewal franchise agreement to Fine Food via FedEx. Counts Aff. Ex. 6.

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[9] Master In Equity Order ("Order"), p. 2, ¶ D.

Notwithstanding her counsel's prior representations, on May 23, 2016, Mrs. Robertson met with HHI and advised that she was unwilling for Fine Food to renew the Aiken Franchise Agreement, and would prefer instead to enter into a temporary extension of the Franchise Agreement, in light of the ongoing litigation between the parties.[10] Counts Aff. ¶ 9. In an email dated May 26, 2016, HHI notified counsel for Fine Food that HHI would agree to enter into a temporary extension of the Franchise Agreement as Fine Food had requested. Counts Aff. Ex. 7. HHI did not receive a response to that email. Counts Aff. ¶ 10. Fine Food continued to operate the Aiken HH after the Franchise Agreement expired on May 31, 2016. Counts Aff. ¶ 10.

In a letter dated June 10, 2016, HHI notified Fine Food that the Franchise Agreement had expired, but that HHI remained willing to enter into a temporary extension of that Agreement. Counts Aff. Ex. 8. HHI also notified Fine Food that, in the event Fine Food chose not to extend the Franchise Agreement, HHI would be exercising is right to assume the Lease pursuant Section 15 of the Franchise Agreement. *Id.* HHI proposed permitting Fine Food to continue operating the Aiken HH until July 31, 2016, to allow for an orderly turnover of the location. *Id.* HHI copied counsel for Appellant/Landlord on its June 10, 2016 letter. *Id.*

By email dated June 13, 2016, counsel for Mrs. Robertson and her entities advised HHI that Fine Food would not be renewing or extending the Franchise Agreement and would be sending a formal notice of non-renewal. Counts Aff. Ex. 9. By letter dated June 14, 2016, Fine Food confirmed to HHI that it would not be renewing or extending the Franchise Agreement. Counts Aff. Ex. 10.

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[10] Separate litigation on other issues in Civil Action No. 2015CV0667, Superior Court, Columbia County, GA.

By letter dated June 22, 2016, to counsel for Mrs. Robertson and her entities, and to counsel for Appellant/Landlord, HHI's counsel reaffirmed that HHI would take assignment of the Lease for the full 60-month renewal term. *Id.* at Ex. 11. HHI also requested that Landlord confirm whether he accepted or disputed HHI's position on the Lease. *Id.* HHI reiterated a desire to have Fine Food turn over the location to HHI on July 31, 2016. *Id.* Neither Landlord nor his counsel responded to the letter regarding Landlord's position on the Lease. Counts Aff. ¶ 14.

G. HHI Took Over the Aiken Restaurant and Landlord Sued for Eviction on Thirty Days' Notice.

In an email dated June 27, 2016, counsel for Fine Food notified counsel for HHI that Fine Food did not wish to continue operating the Aiken HH until July 31, 2016, and would instead be closing the location on June 30, 2016. Counts Aff. Ex. 12. Subsequently, Fine Food agreed to continue operating the restaurant until July 14, 2016. Counts Aff. ¶ 15.

HHI took possession of the restaurant on July 14, 2016. Counts Aff. ¶ 15 . Upon learning of Fine Food's decision not to renew the Franchise Agreement and upon taking possession of the premises, HHI closed the unit to perform repairs and renovations; had begun to order replacement furniture and equipment that Fine Food removed upon vacating the Aiken restaurant; had undertaken to have licenses, permits, and utilities transferred to HHI; and had begun the process for hiring employees to operate the Aiken Huddle House once HHI was able to reopen the unit. Counts Aff. ¶ 16.[11]

On July 11, 2016, Landlord filed the Complaint in this case seeking a declaration that HHI's tenancy was on a month-to-month basis and that he had the right to

[11] These activities have been stayed by HHI pending resolution of this case. *Id.*

terminate the Lease on 30 days' notice. Counts Aff. ¶ 17; Compl. ¶¶ 8, 10, 13. In the Complaint, Landlord provided HHI with 30 days' notice that he was terminating the Lease, and prayed that HHI be evicted. *Id.* ¶ 14. The Complaint was served on July 12, 2016 by certified mail on HHI's registered agent in South Carolina. Counts Aff. ¶ 17. HHI received the Complaint from the agent on July 22, 2016. Counts Aff. ¶ 17.

When Appellant filed this eviction action, HHI was current in making the rent payments and continues to be current.[12]

V. ARGUMENT AND CITATIONS OF AUTHORITY

Standard of review.

"Declaratory judgment actions are neither legal nor equitable, and therefore, the standard of review depends on the nature of the underlying issues." *Judy v. Martin*, 381 S.C. 455, 458 (2009) (*citing Doe v. South Carolina Medical Malpractice Liability Joint Underwriting*, 347 S.C. 642, 645 (2001)). "An action to construe a contract is an action at law reviewable under an 'any evidence' standard." *Nichols Holding, LLC v. Divine Capital Grp., LLC*, 416 S.C. 327, 335 (Ct. App. 2016) (*quoting Pruitt v. South Carolina Medical Malpractice Liability Joint Underwriting Association*, 343 S.C. 335, 339 (2001)). "An appellate court's 'scope of review for a case heard by a Master-in-Equity who enters a final judgement is the same as that for review of a case heard by a circuit court without a jury.'" *Mellen v. Lane*, 377 S.C. 261, 275 (Ct. App. 2008) (*quoting Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237 (1989)). "'In an action at law tried without a jury, an appellate court's cope of review extends merely to the correction of errors at law.' 'The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings.'" *Miller Construction Company, LLC*

[12] Order, p. 4.

v. PC Construction of Greenwood, Inc., 418 S.C. 186, 195 (Ct. App. 2016) (*quoting Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600 (2009)).

The trial court did not err in finding that Respondent's tenancy was governed by the Lease and Franchise Agreement, and that the Collateral Assignment of Lease was inapplicable.

The controlling issue in this case is straightforward. Did HHI step into the shoes of its franchisee and become a tenant under the Lease that had been extended already for 60 months? Or did HHI become a tenant under the CAOL because of a default by its franchisee? The Master-In-Equity held that HHI became a tenant under the Lease and Franchise Agreement, and there is nothing in the record that contradicts those findings by the trial court.

Appellant argues that HHI became a tenant under the CAOL which allows eviction upon 30 days' notice by the Landlord. The Master-In-Equity correctly found that HHI did not become the tenant because of default by the franchisee (Fine Food). HHI did not exercise the right under the CAOL to take possession of the leasehold in order to address or cure any default by Fine Food under the Franchise Agreement or the Lease.[13] Appellant does not assert on appeal any facts to show that the trial court's findings were erroneous. And even if Appellant asserted that the trial court committed error on the facts, where an action is tried without a jury, "the judge's findings of fact will not be disturbed on appeal unless there is no evidentiary support for the judge's findings." *Gooldy v. Storage Ctr.*, 415 S. C. 287, 294 (Ct. App. 2015).

"A lease agreement is a contract, and an action to construe a contract is an action at law.... When reviewing a master-in-equity's judgment made in an action at law, the appellate court will not disturb the master's findings of fact unless the findings

[13] Order, p. 7.

are found to be without evidence reasonably supporting them." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S. C. 554, 562 (Ct. App. 2015). In this appeal there is no challenge to the master's findings. And if there was, the challenge would be groundless under the above case authority.

Appellant does assert in his brief that the Master-In-Equity erroneously construed the contracts. He cites *State Farm Fire & Cas. Co. v. Breazell*, 324 S. C. 228, 231 (1996), for the unremarkable proposition that insurance contracts are to be given their "plain, ordinary and popular meaning."

The Master-In-Equity cited two cases underlying his construction of the agreements in the present case. *N. Am. Rescue Prods., Inc. v. Richardson*, 411 S. C. 371, 378 (2015), holds as follows:

> The primary concern of the court interpreting a contract is to give effect to the intent of the parties. The best evidence of the parties' intent is the contract's plain language. The question of whether a contract is ambiguous is a question of law. A contract is ambiguous when it is capable of more than one meaning or when its meaning is unclear. If a contract's language is unambiguous, the plain language will determine the contract's force and effect. A contract must be read as a whole document so that one party may not create ambiguity by pointing out a single sentence or clause.

The trial court also cited *Watson v. Underwood*, 407 S. C. 443, 454-55 (2014):

> The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that

> intention, the court looks to the language of the contract. Generally, the construction of contracts is a question of law for the court. *Watson v. Underwood*, 407 S. C. 443, 454-55 (2014) (citations and punctuation omitted).

Equally applicable is this Court's opinion regarding contract construction in *Gary v. Askew*, 417 S. C. 232, 248 (Ct. App. 2016):

> The purpose of the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision from within the contract. [A] contract is interpreted according to the terms the parties have used, and the terms are to be taken and understood in their plain, ordinary and popular sense. It is fundamental that in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and when possible, all of the language used should be given a reasonable meaning. A court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully.

These cases mandate that courts should construe contracts to carry out the intent of the parties and to give meaning to the words they actually used. Huddle House exercised its right to replace Fine Food as the operator of the Aiken Huddle House restaurant when Fine Food did not renew its Franchise Agreement for that restaurant. It

had that right under the Franchise Agreement when Fine Food made the decision to stop operating the restaurant. At that time Fine Food had extended the lease for an additional 60 months. Accordingly, as long as HHI continues to pay the rent, and it has, and otherwise complies with the tenant's obligations, it is entitled to occupy the premises for the duration of the Lease.

Appellant's argument relies on the irrelevant CAOL that would come into play only if a franchisee defaulted and HHI took possession under those circumstances. The CAOL is plain and clear that it is activated only when HHI takes possession as a result of a default under the Lease or the Franchise Agreement. That never took place. Fine Food's decision not to renew the Franchise Agreement was not a default of that Agreement or of the Lease. Instead, HHI merely assumed the Lease as provided in the Franchise Agreement when the franchisee decided, in the normal course of business, not to continue operating the Aiken restaurant.

The CAOL does not speak at all to the rights of HHI in the event of assignment of the Lease by the tenant. "If a contract's language is unambiguous, the plain language will determine the contract's force and effect." *Id.* (*citing Lee v. University of South Carolina*, 407 S.C. 512, 517-18 (2014)). The language of the CAOL is perfectly plain and the CAOL is simply not applicable to an assignment of the tenant's interest in the Lease. The trial Court did not err in so holding.

Nor can the Appellant/Landlord succeed on the argument that he was not bound by the assignment of the Lease to HHI. "An assignment is a conveyance of the lessee's entire interest in the demised premises without retaining any reversionary interest in the leasehold." *Hilton Head Air Serv., Inc. v. Beaufort County*, 308 S.C. 450, 456-57, (Ct.

App. 1992). Parties in South Carolina may contract over whether a lease may be assignable by one or either party. *See Dobyns v. S.C. Dep't of Parks, Recreation & Tourism*, 325 S.C. 97, 102, (1997). Here Paragraph 29 of the Lease could not have been more explicit that Fine Food was completely free to assign its interest in the Lease to HHI without the consent of the landlord. When Appellant took assignment of T&Z's interest in the property and Lease and became the landlord, he was charged with knowledge of the terms of the Lease and its proper legal construction. *City of Greenville v. Washington American League Baseball Club*, 205 S.C. 495 (1945); *accord Samuel U. Diminich v. 2001 Enterprises, Inc.*, 292 S.C. 141, 145, fn. 1 (Ct. App. 1987). Appellant cannot now complain that when HHI properly exercised its option to become assignee of Fine Food, it was not also binding on him. Instead Appellant must take the Lease as he found it.

VI. CONCLUSION

Huddle House, Inc. stepped into the shoes of its former franchisee under a lease that had recently been renewed for 60 months. The trial court correctly found that the lease extension was binding on the Landlord. It further found that the Landlord had no right to obtain eviction on 30 days' notice under a separate agreement that gave occupancy rights to Huddle House, Inc. in the event that its franchisee defaulted.

In the present case, HHI did not take possession of the leased premises based on a default. The franchisee simply chose not to extend the Franchise Agreement, and that provided HHI the option to take over the restaurant and assume the Lease as provided in the Franchise Agreement. Appellant asserts no error in the factual findings

by the trial court. The trial court's construction of the agreements complied fully with the principles of contract interpretation. The judgment below should be affirmed.

Respectfully submitted this 30th day of June, 2017.

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June 30, 2017

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

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v.

Huddle House, Inc. ..... Respondent

CERTIFICATE OF SERVICE BY MAIL OF DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL AND INITIAL BRIEF OF RESPONDENT

I, Paul Simons, Jr., Attorney for Respondent, Huddle House, Inc., certify that I have caused the Designation of Matter to be Included in the Record on Appeal and Brief of Respondent to be served on counsel for the Appellants by depositing a copy of it in the United States Mail, postage prepaid on June 30, 2017, upon the counsel and parties addressed as follows:

Brad A. Brodie
Smith, Massey, Brodie, Guynn & Mayes, LLC
P.O. Box 519
Aiken, SC 29802

By: _____
Paul Simons, Jr.
Hull Barrett, PC
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June 30, 2017

HB

HULL BARRETT

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- LICENSED IN GEORGIA AND SOUTH CAROLINA

PSIMONS@HULLBARRETT.COM

June 30, 2017

SENT VIA FEDERAL EXPRESS 803-734-1890

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Robert William Robertson v. Huddle House, Inc.
Appellate Case No.: 2017-000748

Dear Ms. Kitchings:

Enclosed please find the original and two copies of Brief of Respondent, Designation of Matter To Be Included In The Record On Appeal By Respondent Huddle House, Inc., and Certificate of Service By Mail Of Designation of Matter To Be Included In The Record On Appeal And Brief Of Respondent regarding the above-referenced matter. Please file the originals and return clocked copies to me in the provided postage-paid envelope.

By copy of this letter, as evidenced on the attached Proof of Service, I am serving Appellant through his attorney of record.

If you have any questions or comments, please feel free to contact me.

Sincerely,

Paul K. Simons, Jr.

Enclosures
10557-001
cc: Brad Brodie, Esq.

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