

83985

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No.: 2015-CP-10-02050

RECEIVED
JUL 13 2017
SC Court of Appeals

Robert Larsen and Marie Larsen,..... Appellants,

v.

Nudo Nympha, LLC, d/b/a The Southern Belle and
Gentleman's Club and Wet and Wild, Robin Robinson,
Red Dog, LLC, Vincent Destaso and Fine Housing, Inc.,..... Defendants,

Of which

Vincent Destaso and Fine Housing, Inc. are the..... Respondents.

**MOTION TO STRIKE ITEMS FROM
APPELLANTS' DESIGNATION OF MATTER
AND RELATED REFERENCES IN THEIR INITIAL BRIEF**

Pursuant to Rules 208, 209, 210 and 240, SCACR, Respondents Vincent Destaso and Fine Housing, Inc. move this Court to strike two items from Appellants' Robert Larsen and Marie Larsen's Designation of Matter ("Designation") and related references to the stricken materials in Appellants' Initial Brief. Appellants have designated and substantively relied on materials and evidence in their Initial Brief that were never presented to the Circuit Court and, therefore, must be stricken.

According to Rule 209(b), SCACR, "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." Rule 210(c), SCACR, in turn, provides that "[t]he Record shall not ... include matter which was not presented to

the lower court or tribunal.” *See also* Elam v. South Carolina DOT, 361 S.C. 9, 23-24, 602 S.E.2d 772, 780 (2004) (the “record on appeal shall not include matter which was not presented to lower court”).

The items Appellants have designated that were not submitted to the Circuit Court and, therefore, may not be included in the Record before this Court include:

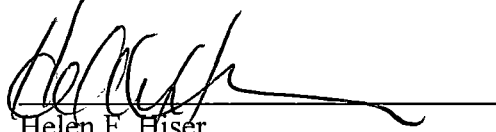
1. Exh. 1 to Anthony Fogle Deposition – Lease Agreement, and,
2. Exh. 2 to Anthony Fogle Deposition – Handmade Drawing.

While the Fogle deposition transcript was hand-delivered to the Clerk of Court following the January 24, 2017 motions hearing, (Exh. A), the two exhibits designated by Appellants were not attached to the Fogle deposition filed with the Clerk of Court. They have never been submitted to the Circuit Court. As a result, they may not be included in the Record on Appeal and must be stricken from Appellants’ Designation.

In addition, the references to the Lease on pages 5 and 6 of Appellants’ Initial Brief either must be stricken or revised to refer to the version of the Lease that was submitted as an exhibit to Respondents’ Memorandum in Support of Motion for Summary Judgment, emailed to the Court on August 2, 2016. (*See* Exh. B). An appellate brief may only reference the Record on Appeal to support alleged facts, and the Record on Appeal is limited to those items “presented to the lower court or tribunal.” State v. White, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007); *see also* Rule 208(b)(4), SCACR (an initial brief “shall contain references to the transcript, pleadings orders, exhibits, or other materials which may be properly included in the Record on Appeal”).

Finally, Respondents request that the briefing schedule, including the deadline for filing their Initial Brief and Designation of Matter, be stayed until the Court decides this Motion.

Respectfully submitted,
MCANGUS GOUDELICK & COURIE



Helen F. Hiser
S.C. Bar No.: 76124
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Vincent Destaso
and Fine Housing, Inc.*

July 12, 2017

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No exhibits were introduced

1 place were not professionals and were not trained. They
2 were the ones who mishandled the assault and resulted in
3 Mr. Larsen becoming brain damaged. Everybody has quoted
4 from the deposition and we've set out portions of the
5 deposition but I'll hand up to the Clerk and file the
6 original copy ---

7 THE COURT: --- I don't want to see the whole
8 deposition. I'll be happy to get proper excerpts from
9 you okay. Did you submit those with your memo?

10 MR. KEFALOS: I did submit them with the memo but
11 I'd like to file the original with the clerk.

12 THE COURT: That's fine if you want to file it with
13 the clerk, I mean that's fine. Take it downstairs and
14 file it.

15 MR. KEFALOS: I will. In any event Fogle's
16 testimony makes at least a question of fact whether
17 Destaso had an agent in charge of running as Fogle
18 describes the operations manager of the club and in
19 charge of security at the club.

20 It's true that Fogle wasn't being paid by Destaso
21 but Fogle owned his job to Destaso. Destaso required
22 Robin Robinson to hire Fogle, to pay Fogle, to look for
23 Destaso's interest, to manage the club for Destaso and to
24 make sure Destaso was paid and to handle security for
25 Destaso. Under those circumstances there is at least a

Helen Hiser

From: Charlotte Gay
Sent: Tuesday, August 02, 2016 5:06 PM
To: 'Caroline Crisler. Leonard'
Cc: 'george@kefaloslaw.com'; 'Susan@kefaloslaw.com'; 'tish@kefaloslaw.com'; 'dhighfield@ycrlaw.com'; 'jparker@pmped.com'; 'ana@aikenbridges.com'; 'jba@aikenbridges.com'; 'tanderson@ycrlaw.com'; 'kbarnes@ycrlaw.com'; 'DTanton@ycrlaw.com'; 'AJustman@ycrlaw.com'; 'pmorris@ycrlaw.com'; 'jmcdonald@clawsonandstaubes.com'; 'mshortridge@clawsonandstaubes.com'; Carl Edwards; Blake McKie
Subject: RE: Robert Larsen and Marie Larsen v. Nudo Nympha LLC, d/b/a The Southern (Claim No.: 10079961)
Attachments: Exhibit A.pdf; Exhibit B.pdf

Ms. Leonard,

Please see the attached exhibits to the Memorandum in Support of Motion for Summary Judgment, which were not included in my original correspondence.

Thank you,

Charlotte Gay
Legal Assistant to Blake McKie

-----Original Message-----

From: Charlotte Gay
Sent: Monday, August 01, 2016 3:07 PM
To: 'Caroline Crisler. Leonard'
Cc: 'george@kefaloslaw.com'; 'Susan@kefaloslaw.com'; 'tish@kefaloslaw.com'; 'dhighfield@ycrlaw.com'; 'jparker@pmped.com'; 'ana@aikenbridges.com'; 'jba@aikenbridges.com'; 'tanderson@ycrlaw.com'; 'kbarnes@ycrlaw.com'; 'DTanton@ycrlaw.com'; 'AJustman@ycrlaw.com'; 'pmorris@ycrlaw.com'; 'jmcdonald@clawsonandstaubes.com'; 'mshortridge@clawsonandstaubes.com'; Carl Edwards; Blake McKie
Subject: Robert Larsen and Marie Larsen v. Nudo Nympha LLC, d/b/a The Southern (Claim No.: 10079961)

Ms. Leonard,

Please see the attached correspondence from the office of Blake McKie enclosing a Memorandum in Support of Motion for Summary Judgment by Defendants Vincent Destaso and Fine Housing, Inc. for Judge Nicholson's review and filing in the above-referenced case. Please note the Motion for Summary Judgment is set for hearing on Wednesday, August 3rd.

Thank you,

Charlotte Gay
Legal Assistant to Blake McKie

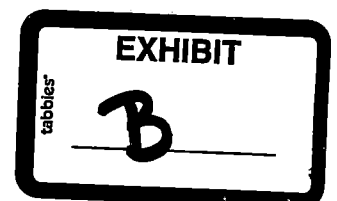


Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ROBERT LARSEN AND MARIE
LARSEN,

Plaintiffs,

vs.

NUDO NYMPHA LLC, D/B/A THE
SOUTHERN BELLE AND
GENTLEMAN'S CLUB AND WET AND
WILD, ROBIN ROBINSON AND RED
DOG LLC, VINCENT DESTASO AND
FINE HOUSING, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-2050

AFFIDAVIT OF VINCENT DESTASO

FILED
2016 JUN 22 AM 11:18
JULIE A. KRISTROM
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Vincent DeStaso, who being duly sworn
deposes and says as follows:

1. I am an individual over 18 years of age and competent to make this Affidavit.
2. I am a citizen and resident of the State of New York.
3. I am the president and sole shareholder of Fine Housing, Inc.
4. Fine Housing, Inc. has owned the subject property located at 2028 Pittsburg Avenue, South Carolina since December of 2013.
5. At the time of the subject incident, Fine Housing Inc. leased the subject property to Robin Robinson and/or RRJR, LLC for a term concluding in November of 2016.
6. Neither I nor Fine Housing, Inc. have an ownership interest in, serve as the operator of or serve as the managing agent of Nudo Nympha, LLC or Red Dog, LLC.
7. Neither I nor Fine Housing, Inc. had any involvement in the operations of the business located at the subject property.

8. Neither I nor Fine Housing, Inc. had any involvement in the hiring, firing, training, management or supervision of the employees at business located at the subject property.

9. Neither I nor Fine Housing, Inc. had any involvement in the hiring, firing, training or management or supervision of the security personnel at business located at the subject property.


10. Neither I nor Fine Housing, Inc. had any involvement in the management or supervision of the parking lot located at the subject property.

11. Neither I nor Fine Housing, Inc. had any involvement in the management or supervision of patrons of the business located at the subject property.

12. Neither I nor Fine Housing, Inc. had any involvement in the purchase and/or sales of alcohol at the business located at the subject property.

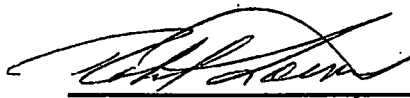
13. Neither I nor Fine Housing, Inc. had any involvement in the safety policies and/or procedures at the business located at the subject property.

FURTHER AFFIANT SAYETH NOT.

By:  (L.S.)
Vincent DeStaso

SWORN TO AND SUBSCRIBED before me

this 7 day of JUNE, 2016

 (L.S.)
Notary Public for New York

My Commission Expires: 8/2/2016

ROBERT STORMS
Notary Public, State of New York
No. 01ST8113633
Qualified in Rockland County
Commission Expires August 2, 2016

Exhibit B

AMENDED AND RESTATED LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 15 day of September, 2014, by and between FINE HOUSING, INC., a New York corporation (hereinafter which has an address of 102 Lake Road, Congers, New York 10920 (hereinafter referred to as "Landlord"), RRJR, LLC and Robin M. Robinson whose address is c/o Paul Doolittle, Esquire, 210 Wingo Way, Suite 201, Mt. Pleasant, South Carolina 29464

1. DEMISE OF PREMISES

Lessor, for and in consideration of the rents herein reserved to be paid by Tenant, does hereby lease, let and demise unto Tenant those certain premises situated in the Charleston County, State of South Carolina, and more particularly described as 2028 Pittsburgh Avenue, North Charleston, Charleston County, South Carolina 29405, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with all easements, rights and appurtenances pertaining thereto and with the building and other improvements and appurtenances pertaining thereto erected and/or to be erected upon the Premises (the "Premises"). Subject to the Lease Agreement between Group Investment Company, Inc. as Landlord and Barry Clarke as Tenant dated January 8, 1999.

Tenant has been and is the occupant of the Premises as accepts the Premises in its AS-IS, WHERE-IS condition. Landlord is not responsible for any repairs or maintenance related to the Premises.

2. TERM OF LEASE

(a) Term:

The Term of this Lease shall be for a period of Three years (3) plus any portion of the first month of occupancy under this Lease in the event the occupancy does not take place on the first day of a month, commencing with the Commencement Date hereinafter provided.

3. COMMENCEMENT DATE

(a) The commencement date shall be December 1, 2013.

4. RENTAL PAYMENTS

(a) Rental during any term or extended term of this Lease shall be as follows:

(i) Base Rent:

A. Tenant shall pay to Landlord the sum of One Hundred Five Thousand & 00/100 Dollars (\$105,000) per year payable in equal monthly installments of Eight Thousand Seven Hundred Fifty and 00/100 Dollars (\$8,750.00) commencing December 1, 2013 and continuing on the first day of each month thereafter during the term of this Lease.

In the event any lease payment shall be more than five (5) days late the Tenant shall be required to pay a late payment fee equal to Five Hundred Twenty-Five & 00/100 Dollars (\$525.00).

(b) In addition to the payments reserved herein to Landlord as rent, Tenant shall pay the following:

(i) All fees for occupational licenses, and other licenses necessary in the operation of the business to be carried on in the Premises, nothing herein contained shall be deemed to indicate that the Landlord has any responsibility to pay any of the above or that he has any interest in the business of Tenant;

(ii) All charges for utility services provided to the Premises, including, but not limited to, water, gas, electric, sewer, trash hauling, cleaning/janitorial services, disposal of hazardous and medical wastes and telephone, as they from time to time shall accrue and be due and payable; and

(iii) All sales and use taxes due as a result of business conducted on the Premises, personal property taxes assessed against the personality situated thereon and all ad valorem real estate taxes, user fees and general and special assessments, common area maintenance fees or regime fees assessed against the Premises by

the Landlord, the State of South Carolina, the County of Charleston. If the lease term commences other than on the first day of a tax year, ad valorem taxes for the first and last years of the term shall be prorated.

(iv) All payments required to be paid by Tenant under 4(b) (ii) and (iii) shall be paid prior to the obligation becoming delinquent. In the event the bill for any such charge shall be sent to the Landlord, the Landlord shall be responsible to send same to the Tenant in a timely manner.

(v) Cleaning/janitorial services for the space being rented, electrical, telephone, water, sewer, cable television and internet, which shall be the sole responsibility of the Tenant.

(e) Neither Landlord nor Tenant shall pay any income, franchise or excess profits tax levied upon or assessed against the other.

5. COVENANTS OF TENANT

Tenant covenants and agrees with Landlord as follows:

(a) Tenant will pay rent as herein reserved without notice or demand on or before the first day of each and every month during the entire term of this Lease.

(b) Tenant will, throughout the term of this Lease, at their sole cost and expense, care for and maintain the Premises, including all improvements located thereon to include the interior and exterior of the buildings, the parking lot, all equipment, including heating, air conditioning and ventilation systems, electrical and plumbing systems, whether owned by Landlord or Tenant, and other improvements located upon or in the Premises, including but not limited to the structure, roof, walls-interior and exterior, doors, windows and floors and flooring and keep them in good repair and condition, free from waste or nuisance of any kind. The Premises shall not be maintained as, nor shall Tenant permit the Premises to become, a public or private nuisance and Tenant shall not maintain any nuisance upon the Premises. Tenant shall maintain throughout the

term of the Lease as recommended by a licensed mechanical contractor the heating, air conditioning and ventilation system and shall be responsible to change the filters in the system as recommended by a licensed mechanical contractor.

(c) From and after the Commencement Date, Tenant will keep the Premises free and clear of any and all mechanics' and/or materialmen's liens on account of any construction, repair, alteration or improvements which Tenant may be obligated to make or perform under this Lease and from any and all other liens arising by virtue of the conduct or alleged conduct of Tenant, and in the event that any such lien shall be asserted against or attached to the Premises, Tenant will cause the same to be removed as against the Premises by posting of the necessary bond or indemnification within fifteen (15) days from and after such time as said lien shall have attached to, or be asserted upon or against the Premises.

(d) Tenant will during the term of this Lease and at its own expense, carry:

(i) Combined comprehensive general liability insurance of not less than \$1,000,000.00 for each incident and \$2,000,000.00 in the aggregate or such other amount as Landlord may from time to time notify Tenant of. The policy shall cover accident or damage in or about the Premises, the sidewalk in front thereof, parking area, entranceways and all other portions of the building thereon and shall name Landlord and any holder of any mortgage on the Premises as an additional named insured thereunder. The policy shall further contain a provision that it may not be cancelled giving ten (10) days prior written notice of such cancellation to Landlord, and shall be with an insurance company approved by Landlord, which approval shall not be unreasonably withheld. A copy of the policy or certificate of insurance shall be delivered to Landlord promptly at the commencement date hereof and a copy of any renewal or replacement policy shall be delivered to Landlord no later than five (5) days prior to the commencement date of such policy. The policy shall include Dram Shop coverage at the same levels as stated above.

(ii) Fire and extended coverage insurance on the contents, including fixtures within the completed improvements on the Premises and all fixture and other personal property located on the

premises to the full replacement value, which policy shall provide that it shall not be cancelled without first giving ten (10) days prior written notice to Landlord and the holder of any mortgage on the Premises of such cancellation. The insurance shall be with an insurance company licensed to do business in the State of South Carolina and approved by Landlord, which approval shall not be unreasonably withheld, and a copy of the policy or certificate of insurance shall be delivered to Landlord at the Commencement Date hereof and a copy of any renewal or replacement policy shall be delivered to Landlord no later than five (5) days prior to the Commencement Date of such policy. In the event of a casualty which results in the payment of proceeds under any such policy, the proceeds shall be paid to Landlord for the uses hereinafter described. In the event Landlord determines to provide the insurance required hereunder, Tenant shall reimburse Landlord for its share of the costs of the insurance as part of the CAM charges.

(iv) Tenant does hereby indemnify Landlord and agrees to save it harmless from and against any and all claims, actions, damages, liability and expense (including attorney's fees) in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Premises which are caused wholly or in part by any act or omission of Tenant, its agents, guests, business invitees, contractors, employees, servants or sub-Tenants.

(v) At no cost to the Landlord, Tenants shall cause Landlord, any mortgagee holding a mortgage on the premises and any management company hired by Landlord, to be named as an additional insured or loss payee, as appropriate, on all policies of insurance required under the terms of this Lease.

(e) Tenant will comply with all lawful requirements of all municipal, county, state and federal authorities and agencies having jurisdiction over the Premises respecting the manner in which Tenant uses the Premises.

(f) Tenant shall use the Premises for bar, convenience store and gentlemen's club and specifically related services, including sale of products related to the services provided by Tenant

only and directly related business purposes only unless agreed to otherwise by Landlord in writing.

(g) Tenant shall fully comply with all requirements of all rules and regulations placed in force by the Landlord.

6. COVENANTS OF LANDLORD

Landlord hereby warrants, represents and covenants to Tenant as follows:

(a) Quiet Enjoyment. Upon Tenant's paying the rent and observing and performing all of the terms, covenants, and conditions on Tenant's part to be observed and performed, Tenant may peaceably and quietly have, hold, occupy and enjoy the Premises and all the appurtenances thereto without hindrances or molestation; provided, however, that Landlord and Landlord's agents may examine the Premises at any reasonable time to inspect the premises, upon giving the Tenant 24 hours advance notice, except in the case of an emergency in which case no notice shall be necessary. Any inspection done hereunder shall be carried out in manner that, if possible, will not interfere with Tenant or its business operations.

(b) Landlord shall not be responsible to maintain or repair any portion of the Premises or any improvements thereon which are the sole responsibility of the Tenant.

(b) Utility Lines. To the best knowledge of Landlord, water lines, sewer lines, electric lines, and telephone lines are available at the Premises. Any electrical requirements in excess of those presently available to the premises shall be installed at the sole expense of the Tenant.

(c) Tenant's Signs and Future Improvements. Tenant shall have the right to install and maintain on the Premises its standard signs advertising Tenant's business, as revised from time to time, providing such signs comply with applicable ordinances and restrictive covenants. All such signs shall be considered Tenant's trade fixtures.

7. DESTRUCTION OF BUILDINGS

In the event of damage to or destruction of the Premises by fire or other casualty, the Tenant at its sole expense and in conjunction with the applicable insurance proceeds, shall promptly restore the leased property as nearly as possible to its condition prior to such damage or destruction. All insurance proceeds shall be paid over to the Landlord who shall pay the contractor who is repairing the damage or constructing the building(s) on the property based on the extent of construction completed as certified by the architect supervising the repairs or replacement. If the insurance proceeds are insufficient to pay the full cost of repair or restoration, Tenant shall pay the deficiency. In the event the cost of repair or replacement is in excess of the insurance proceeds, Tenant shall be responsible to pay the excess costs before Landlord shall be required to make payments from the insurance proceeds. If at any time within six (6) months prior to the end of the term of this Lease, the leased property is completely destroyed or so damaged by fire or other casualty covered by insurance as to render it unfit for use for its intended purpose, and repair or restoration is not economically feasible, the Tenant or the Landlord may terminate this Lease on notice of at least ten (10) days and no more than thirty (30) days. In the event the Lease is terminated as allowed hereunder, the Landlord shall be entitled to retain the insurance proceeds and use the proceeds as it may determine in its sole discretion. For as long as the Lease has not been terminated, the rental shall not be abated.

8. CONDEMNATION

If any part of the Premises shall be taken or condemned for a public or quasi-public use, and the part thereof which remains is suitable for the use of the Premises by Tenant, this Lease shall, as to the part so taken, terminate as of the date title shall vest in the condemnor and the rent payable hereunder shall be adjusted so that the Tenant shall be required to pay for the remainder

of the term only such portion of such rent as the value of the part remaining after the condemnation bears to the value of the entire Premises at the date of condemnation. If all of the Premises are condemned or taken or so much thereof that the aforesaid use by Tenant of the Premises shall be substantially impaired, this Lease shall thereupon terminate, the rent and other charges shall be adjusted as of the date of termination. All compensation awarded or negotiated upon any such condemnation shall belong to and be paid to Landlord, except for any portion of the award due Tenant for relocation expenses.

9. MUTUAL COVENANTS

Landlord and Tenant hereby mutually covenant and agree as follows:

(a) Tenant's Trade Fixtures. Tenant shall be entitled to install such furniture, fixtures and equipment in or upon the Premises, all of which furniture, fixtures and equipment shall be deemed Tenant's trade fixtures and shall not be deemed incorporated into or a part of the Premises no matter how affixed or installed. Upon the expiration of the lease term, Tenant may, if it is not in default hereunder at that time, remove from the Premises all of such trade fixtures and other personal property belonging to Tenant. Tenant agrees to repair any damage to the interior or exterior of the Premises caused by the removal of such trade fixtures. The term "damage" as used herein shall include the repair or restoration of any indication the trade fixtures were removed. Tenant may finance or refinance the purchase price of all or any part of the aforementioned furniture, fixtures and equipment and in connection therewith may grant security interests in and liens upon such items, provided that Tenant may not grant or place any liens upon the realty comprising the Premises or Tenant's interest therein. Tenant may not install any fixture in the Premises in a fashion that will adversely affect the structural integrity of the premises. Any agreement entered into with any party financing a fixture on the Premises shall provide that in the

event the third party finds it necessary to remove the said fixture from the property, the third party shall be responsible to make any repairs to the premises made necessary by the removal of the fixture in the same fashion as provided for herein to be made by the Tenant.

(b) Waiver of Subrogation. Each party hereby waives any and every claim which arises or may arise in its favor and against the other party hereto during the term of this Lease or any renewal or extension thereof for any and all loss of, or damage to, any of its property located within or upon, or constituting a part of, the Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies, to the extent that such loss or damage is recoverable under said insurance policies. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of or damage to property of the parties hereto. Inasmuch as the above mutual waivers will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party hereto hereby agrees immediately to give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waives, and to have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverage by reason of said waivers. Nothing contained herein shall preclude the parties from naming both Tenant and Landlord as named insureds as their interests may appear under such insurance policies so as to avoid the possibility of liability by way of subrogation as referred to above; provided, however, that Landlord shall nevertheless be the named loss payee thereunder.

(c) Declaration of Lease. Landlord and Tenant hereby agree, at the request of either, to make and execute a declaration of Lease in recordable form so as to give public notice of the

execution of this Lease and a statement therein as to the Commencement Date of the term of this Lease. All recording fees, documentary stamps or taxes relating to this Lease or its recording shall be borne by Tenant. The parties agree this Lease may not be recorded.

(d) Subordination, Non-Disturbance and Attornment. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any mortgage or mortgages now or hereafter placed on the property or any part thereof by Landlord provided that each or all of such mortgages shall contain a provision to the effect that so long as Tenant is not in default under this Lease, or any renewal thereof, no foreclosure of the lien of said mortgage or any other proceeding relating thereto shall divest, impair, modify, abrogate, or otherwise adversely affect any interest or right whatsoever of Tenant under this Lease. Provided in the event the property in which the Premises are contained are sold, Seller shall be relieved of any obligation to Tenant under the Lease and Purchaser shall be responsible for all obligations of Landlord under the Lease upon closing of the sale.

(e) Estoppel Certificate. Upon request of Landlord, Tenant shall provide an Estoppel Certificate acknowledging the date of this Lease, the commencement date of the Lease, amount of rental due, the defaults, if any, under the Lease by Landlord and such other information that may be reasonably requested. Such certificate shall be furnished within five (5) days of the date is it requested. Failure to provide the certificate shall be a default under the terms of the Lease entitling the Landlord the all remedies hereinafter set forth.

10. SURRENDER AND HOLDOVER RENT

Unless agreed otherwise in writing or as set forth herein Tenant shall surrender the Premises to the Landlord at the termination of this Lease in at least as good condition as it was at the commencement of the Lease, normal wear and tear accepted. In the absence of any written

agreement to the contrary, if Tenant should remain in occupancy of the premises after the expiration of the Lease term, it shall so remain as a Tenant from month-to-month and all provisions of this Lease applicable to such tenancy shall remain in full force and effect. Provided, Tenant must give thirty (30) days written notice of intent to vacate the premises. And provided further, in the event Tenant remains in the Premises beyond the termination date of this Lease, the rental during any such holdover period shall be equal to One Hundred Fifty (150%) percent of the amount of rent payable during the most recent term of the Lease.

11. DEFAULT BY TENANT

(a) The following events shall be considered events of default by Tenant hereunder:

(i) Tenant shall fail to pay any installment of rent when due or to become due or to comply with any term, provision, or covenant of this Lease and shall not cure such failure within ten (10) days after written notice thereof to Tenant as to any monetary default and failure to cure any nonmonetary default within thirty (30) days after written notice thereof to Tenant, provided Landlord shall not be required to send written notice to Tenant regarding the failure to pay rent, taxes or other governmental assessments or provide required insurance coverage; or

(ii) Tenant shall become insolvent, or shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; provided, however, neither bankruptcy, insolvency, and assignment for the benefit of creditors nor the appointment of a receiver shall affect this Lease or permit its termination, so long as the part of the Tenant to be performed shall be performed by Tenant or any permitted sub-Tenant or Assignee.

(iii) A receiver shall be appointed for or all substantially all of Tenant's assets; or

(iv) Tenant shall abandon or vacate the Premises and such abandonment or vacation shall continue for a periods of more than ten (10) days.

(v) Tenant fails to comply with any obligations under the any rules placed in force by the Landlord.

(vi) Tenant defaults on the obligations under the lease from Landlord for the property at 2347 Sol Legare Road, Charleston, South Carolina 29412.

(b) Upon the occurrence of any such event of default, Landlord shall have the option to pursue, after giving the required notice, any one or more of the following remedies:

(i) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy which it may have for possession or arrearages in rent or rent for the remainder of the lease term, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, by force if necessary, without being liable for prosecution or any claim of damages therefor; and Tenant agrees to pay Landlord on demand the amount of all loss and damage which Landlord may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise. It is understood the termination of the Lease and removal of Tenant from occupancy of the Premises shall not affect Tenant's obligations to fulfill all of their obligations under the Lease.

(ii) Enter upon and take possession of the Premises without terminating this Lease and expel or remove Tenant and any other person who may be occupying said premises or any part thereof, without being liable for prosecution or any claim for damages therefor, and relet the Premises and receive the rent therefor; and Tenant agrees to pay to Landlord on demand any deficiency that may arise by reason of such reletting.

(iii) Enter upon the Premises without being liable for prosecution or any claim for damages therefor, and do whatever Tenant is obligated to do under the terms of this Lease, and Tenant agrees to reimburse Landlord on demand for any expense which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action.

(iv) Acceptance of possession of the Premises by Landlord from Tenant shall not constitute an acceptance of a surrender of the

Premises as such unless Landlord shall specifically acknowledge the same in writing.

(c) Except as otherwise provided by statute or rule of law, pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided for herein or any other remedies provided by law, all of which may be enforced cumulatively, nor shall pursuit of any remedy provided for herein constitute a forfeiture or waiver of any rent due to Landlord hereunder or of any damages accruing to Landlord by reason of the violation of any of the terms, provisions and covenants herein contained. Failure by Landlord to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default, or of any other violation or breach of any of the terms, provisions and covenants herein contained.

(d) Security. As security for Tenant's performance under this Lease, Tenant grants to Landlord a lien on all furniture, fixtures, equipment and inventory maintained by Tenant for use of the Tenant in operation of the business conducted in the Premises. Landlord is authorized to file with the office in the State where the Tenant is organized or if an individual, in the office of South Carolina a UCC form 1, Financing Statement perfecting the security interest granted hereby. Such lien shall be subordinate to any purchase money lien granted with regard to the acquisition of any specific security.

12. CONSTRUCTION AND ALTERATION OF BUILDING

(a) Tenant at Tenant's sole cost and expense, shall have the right to make such improvements to the Premises and are necessary, provided any such improvements must first be consented to in writing by Landlord, which consent shall not be unreasonably withheld, so long as the structural integrity of the building is not compromised or the economic value diminished.

Tenant shall not permit any Mechanic's liens to be placed upon Landlord's building, and shall notify all its Contractors and Subcontractors that they shall look solely to Tenant for all costs and expenses of repairs or alterations. Tenant shall be responsible to comply with all necessary Governmental permits or other approvals for any alterations or repairs. Tenant shall include in any contract in enters into to upfit the Premises neither a provision the contractor nor any of its subcontractors or material suppliers shall be allowed to file mechanics liens on the Premises. All such improvements shall become the property of Landlord at the termination of this Lease.

13. MISCELLANEOUS PROVISIONS

(a) Notices, Demands and Other Instruments. All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof shall be in writing and shall be deemed to have been properly given if sent in some method that provided proof of delivery, addressed to the parties herein at the addresses shown on the first page hereof.

Tenant designates Paul Doolittle and their agent for service of any notices required to be given hereunder to Tenant. Such designation shall not be revoked without Tenant designating another person as their agent to receive notices. The designee shall at all times be an attorney licensed to practice law in South Carolina and who maintains an office in Tri County Area of Charleston, South Carolina.

Copies of all notices to be sent to Landlord shall be copied to Altman & Coker, LLC, 575 King Street, Suite A, Charleston, South Carolina 29403, Attention Charles S. Altman, Esquire.

(b) Binding Effect. All of the covenants, conditions and obligations herein contained shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto to the same extent as if each successor and assign were in each case named as a

party to this Lease. This Lease may not be changed, modified or discharged, except in writing signed by both Landlord and Tenant.

(c) Separability. Each and every covenant and agreement contained in this Lease shall for all purposes be construed to be a separate and independent covenant and agreement, and the breach of any covenant or agreement contained herein by either party shall in no way or manner discharge or relieve the other party from its obligation to perform each and every covenant and agreement herein.

(d) Headings and Terms. The headings of the various paragraphs of this Lease have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions hereof. The term "person" when used in this Lease, shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, combination, organization or any other person or entity.

(e) Relationship of the Parties. It is the express intention of the parties that this agreement shall not be construed as creating any relationship hereunder other than that of Tenant and Landlord and no other relationships such as one of partnership, joint venture, or otherwise shall arise by reason hereof.

(f) Time of Essence. Time is of the essence of this agreement and of every part hereof.

(g) Partial Invalidity. If any covenant, term, or condition of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(h) Force Majeure. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, such party shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, any delays caused by strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other similar causes which are beyond the control of such party.

(i) Indemnification

(1) Tenant does hereby agree to indemnify Landlord and agrees to save Landlord harmless from and against any and all claims, actions, damages, liability and expense (including attorneys' fees) in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Premises which are caused wholly or in part by any act or omission of Tenant, its agents, guests, business invitees, contractors, employees servants or subtenants.

(2) Landlord does hereby agree to indemnify Tenant and agrees to save Tenant harmless from and against any and all claims, actions, damages, liability and expense (including attorneys' fees) in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the Premises which are caused wholly by any act or omission of Landlord, its agents, guests, business invitees, contractors, employees or servants.

(j) Legal Fees and Expenses. In the event any matters arise as a result of which Landlord retains the services of an attorney to protect its interest, in addition to any other affirmative relief obtain on behalf of the Landlord, Landlord shall be entitled to receive the reasonable attorneys' fees incurred in protecting its interest.

(k) This writing constitutes the entire Agreement between the parties, with the exception of the Agreement dated September 15, 2014 related to the resolution of certain issues between the parties and shall not be altered or amended except by writing executed by all parties.

16. ASSIGNMENT AND SUBLETTING

a. Tenant may not assign this Lease or let or underlet the whole or any part of the Premises without the written consent of the Landlord, which consent may be withheld for any or no reason. Notwithstanding any assignment or subletting, Tenant shall remain fully liable on the Lease and shall not be released from performing any of the terms, covenants and conditions of this Lease. The sale or transfer of any of the stock or interest in Tenant shall not be considered an assignment of the Tenants' rights hereunder and such sale or transfer shall be subject to Landlord's approval, and that nothing herein shall be construed to prohibit Tenant's right to franchise its operation without the consent of Landlord.

b. In the event of Landlord sells the Premises and assigns its interest in this Lease, Landlord shall be relieved of any obligations with regard to its obligations under the Lease from the date of the assignment.

17. OPTION TO PURCHASE

Tenant shall have the right to purchase the Premises on the terms and conditions as set forth in the Settlement Agreement entered into between the parties on September 15, 2014 which Agreement is attached hereto as Exhibit A.

18. CONSTRUCTION OF LEASE

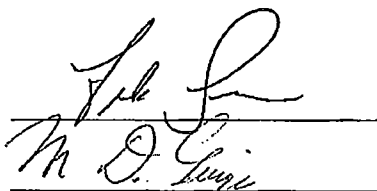
Words of any gender used in this Lease shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires. Wherever used herein, the words "Landlord" and "Tenant" shall be deemed to include the heirs, personal representatives, successors, subtenants, and assigns of both parties, unless the context excludes such construction.

19. SECURITY DEPOSIT

On the effective date of this Lease, Tenant shall deposit with Landlord Twenty Four Thousand and 00/100 Dollars (\$24,000.00) for a security deposit, which will be returned to Tenant upon the termination of the Lease if Tenant is not in violation of any terms and conditions of the Lease at the time of termination.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.


WITNESSES



As to Landlord

LANDLORD:

FINE HOUSING, INC.

By: 

Vincent DeStaso, President

TENANT:

RRJR, LLC

By: _____
Robin Robinson, Authorized Member

As to Tenant

Robin Robinson

The undersigned who are related to the Tenant as employees or personal relationship and who acknowledge they benefit from the within Lease, Personally Guaranty performance by Tenant of all of Tenant's obligations under the Lease as of the effective date of the Lease.

Anthony Fogler

Daniel DeHaven

Dated: _____, 2014

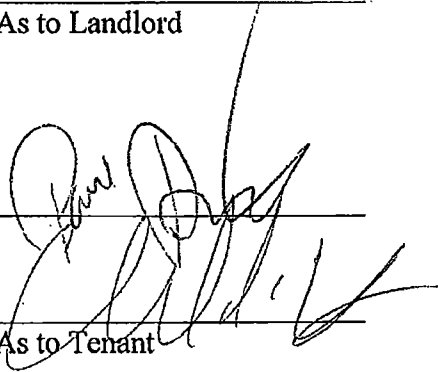
Dated: _____, 2014

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IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

WITNESSES

As to Landlord



As to Tenant

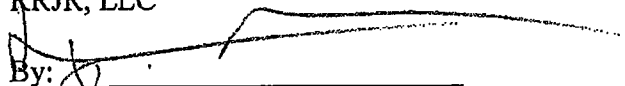
LANDLORD:


FINE HOUSING, INC.

By: _____
Vincent DeStaso, President

TENANT:

RRJR, LLC


By: 
Robin Robinson, Authorized Member


Robin Robinson

The undersigned who are related to the Tenant as employees or personal relationship and who acknowledge they benefit from the within Lease, Personally Guaranty performance by Tenant of all of Tenant's obligations under the Lease as of the effective date of the Lease.

_____ Anthony Fogler

Dated: _____, 2014


Daniel DeHaven

Dated: 9/15, 2014

EXHIBIT A

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located in North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Fine Housing, Inc., by deed of RRJR, LLC, dated December 2, 2013, and recorded December 9, 2013, in the RMC Office for Charleston County, South Carolina, in Book 0377 at Page 843.

TMS No. 466-16-00-011

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

RECEIVED

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

JUL 13 2017

SC Court of Appeals

Case No.: 2015-CP-10-02050

Robert Larsen and Marie Larsen,..... Appellants,

v.

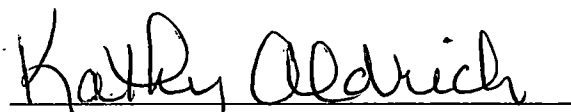
Nudo Nympha, LLC, d/b/a The Southern Belle and
Gentleman's Club and Wet and Wild, Robin Robinson,
Red Dog, LLC, Vincent Destaso and Fine Housing, Inc.,..... Defendants,

Of which
Vincent Destaso and Fine Housing, Inc. are the..... Respondents.

PROOF OF SERVICE

I certify that on the 12th day of July 2017, I served the Respondents' **Motion to Strike Items from Appellants' Designation of Matter and Related References in their Initial Brief** on Robert Larsen and Marie Larsen by depositing a copy of it in the United States Mail, postage prepaid, addressed to their attorney of record:

John E. Parker, Esq.
William F. Barnes, III, Esq.
PETERS, MURDAUGH, PARKER, ELTZROTH & DETRICK
P.O. Box 457
Hampton, SC 29924


Kathy Aldrich
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

July 12, 2017

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Robert Larsen and Marie Larsen vs. Nudo Nympha LLC, d/b/a The Southern Belle and Gentleman's Club and Wet and Wild, Robin Robinson, Red Dog LLC, Vincent Destaso and Fine Housing, Inc.
Civil Action No.: 2015-CP-10-02050 (Charleston)
Date of Incident: January 11, 2014
Carrier Claim No.: 10079961
MGC File No.: 20785.15008
Appeal No.: 2017-000988

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Motion to Strike Items from Appellants' Designation of Matter and Related References in their Initial Brief, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

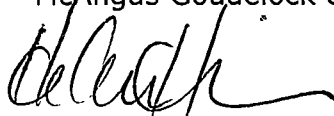
If you have any questions, please do not hesitate to contact me.

RECEIVED

JUL 13 2017

SC Court of Appeals

Very truly yours,
McAngus Goudelock & Courie, LLC



Helen F. Hiser

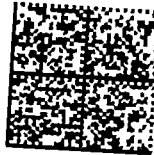
Enclosures

cc: John E. Parker, Esquire
William F. Barnes, III, Esquire

P

07/12/2017
From 29464

US POSTAGE PAID
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Flat Rate Envelope



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PRIORITY MAIL 2-DAY™

Charleston Runner
McAngus Gaudelock & Courie
735 Johnnie Dodds Blvd
Mt. Pleasant SC 29464

Delivery Date 07/12/2017

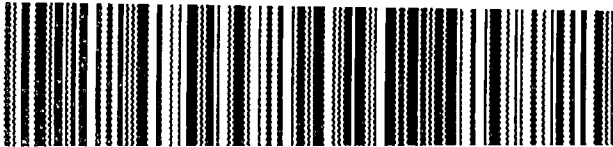
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
PO Box 11829
Columbia SC 29211-1629

USPS TRACKING #



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JUL 13 2017

SC Court of Appeals