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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity

RECEIVED

OCT 23 2017

SC Court of Appeals

Case No. 2016-CP-02-01550

Robert William Robertson, ... Appellant,

V.

Huddle House, Inc., ... Respondent.

RECORD ON APPEAL

Paul Simons, Jr.
South Carolina Bar No. 76883
HULL BARRETT, PC
P.O. Box 517
Aiken, SC 29802

David E. Hudson (*pro hac vice*)
Georgia Bar No. 374450
HULL BARRETT, PC
P.O. Box 1564
Augusta, Georgia 30903-1564
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Attorneys for Respondent

Bla. Bl.
Brad A. Brodie
Smith, Massey, Brodie, Guynn & Mayes, LLC
Post Office Box 519
Aiken, SC 29802
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Attorney for Appellant

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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Robert William Robertson

Plaintiff,

vs.

Huddle House, Inc.

Defendants.

IN THE COURT of COMMON PLEAS

SECOND JUDICIAL CIRCUIT

CASE NO 2016-CP-02 - 01550

MASTER IN EQUITY ORDER

FILED

2.27.17

Robert L. White
C.C.P. & C.S.

Anita Knoepfle
Deputy Clerk

315
dsr

DATE OF HEARING: November 23, 2016

JUDGE: The Honorable M. Anderson Griffith

ATTORNEY FOR PLAINTIFF: Brad Brodie

ATTORNEY FOR DEFENDANT: Paul Simons, Jr. & David E. Hudson

Court Reporter: Alice Boni

Procedure

1. The Summons and Complaint were filed on July 11, 2016.
2. An Answer was filed on August 22, 2016.
3. An Order of Reference was filed on October 10, 2016.
4. The Defendant filed a pre-hearing brief on November 3, 2016.
5. An Order admitting David E. Hudson, Pro Hac Vice was filed on November 15, 2016.
6. The Plaintiff filed a pre-hearing brief on November 15, 2016.
7. A hearing was held on November 23, 2016. The Plaintiff was represented by his attorney, Brad Brodie. The Defendant was represented by its attorneys Paul Simons, Jr. and David E. Hudson.
8. The parties stipulated to the admission of the following documents:
 - A) Plaintiff's Exhibits A- Legal description of property.
 - B) Plaintiff's Exhibit B- Lease dated May 31, 2011 between

MAGAL

T&Z Associates, as the Landlord and Fine Food, LLC(hereinafter referred to as Fine Food) as the Tenant.

- C) Plaintiff's Exhibit C- Collateral Assignment of Lease. Fine Food, LLC is the Assignor and Huddle House, Inc.(hereinafter referred to as Huddle House) is the Assignee. Attachment 1 is a Schedule of Leases. Attachment 2 is a Consent and Agreement of Lessor (T&Z Associates).
- D) Plaintiff's Exhibit D- Deed dated June 9, 2014 recorded in the Aiken County RMC Office in BK: RB4508, PG: 1518-1519. T&Z Associates transferred the property to Robert William Robertson for \$508,000.00.
- E) The parties stipulated to the admission of the affidavit of Tyrone Counts with the attachments.
- F) The parties stipulated to the admission of the affidavit of Thomas Robertson with the attachments.

MAG 12

The Plaintiff's position is that based on the language in the Collateral Assignment of Lease, the Plaintiff can terminate the Lease with 30 day notice to the Defendant. The Plaintiff does not believe he is bound by the Franchise Agreement, which was not executed or assigned to the Plaintiff. The Plaintiff wants an order finding that the Plaintiff can evict Defendant after providing the 30 day notice.

The Defendant's position is that paragraph 29 of the Lease allows the Tenant, even without the consent of the Landlord, to assign its rights under the Lease. If Huddle House is the Tenant, no written approval is required. Further, the Defendant argues that Fine Food, the prior Tenant, provided written notice to the Plaintiff to renew the lease for 60 months. The Defendant wants an order that Huddle House is entitled to occupy the leased premises.

The Defendant believes that it took possession and assumed the rights of the Tenant under the Franchise Agreement. It does not believe that the Collateral Assignment of Lease has any application in this matter.

Robert William Robertson

The Plaintiff testified that he purchased the property from T&Z Associates in 2011. The business was already operating as a Huddle House. Fine Food was the Tenant.

The Plaintiff believes the Franchise Agreement ended in July, 2016. The business is not operating at this time. The Plaintiff has not signed any other documents with Huddle House. He believes he can evict the Defendant with thirty days notice based on the language in the Collateral Assignment of Lease. He did not sign the Franchise Agreement and does not believe that he is bound by the contract.

On cross-examination, Mr. Robertson agreed that Huddle House was still paying the rent on a monthly basis. Fine Food did remove some equipment. The Plaintiff read a portion of his deposition that is part of litigation in Georgia. In the deposition, he agreed that Fine Food had delivered the renewal notice for the sixty month renewal period and that he did receive the renewal.

At the close of the Plaintiff's case, the Plaintiff made a motion for a directed verdict. The Court denied the motion.

The parties agreed that the Defendant would submit the affidavit of Tyrone P. Counts. The affiant states that he is the Chief Operating Officer of Huddle House. On July 28, 2011, Huddle House and Fine Food executed a Franchise Agreement. The parties also executed a Collateral Assignment of Lease on July 28, 2011. Mr. Counts stated that the purpose of the Collateral Assignment was for security if Fine Food lost the use of the premises or damaged Huddle House's goodwill at the Aiken location. He believes

the Collateral Agreement allows Huddle House to take possession of the premises and cure any default.

Exhibit 3 to his affidavit is a letter dated January 26, 2016 from Huddle House to Fine Food. Huddle House requested that Fine Food exercise its right to renew the Lease for the Aiken Huddle House location. By letter dated January 29, 2016, the Plaintiff received written notice to extend the term of the Lease for an additional sixty-month term beginning on June 1, 2016.

It is his understanding that Fine Food agreed to continue operating the Aiken Huddle House until July 14, 2016. Huddle House took possession the Aiken location on July 14, 2016. Huddle House alleges that Fine Food removed much of the furniture, fixtures and equipment from the Aiken location. Huddle House has closed the location but continues to pay rent to await delivery of new furniture, fixtures and equipment.

MAG#4 Prior to re-opening, the Plaintiff's filed the summons and complaint. Again, the Plaintiff's position is that the Plaintiff has the right to terminate the lease on thirty days' notice. Mr. Counts states that Huddle House has budgeted approximately \$216,000.00 to replace equipment, purchase food and training. He believes that if the contract is terminated, Huddle House would have to invest approximately \$1,300,000.00 for construction, land and equipment for a new location. Also, the current customer base at the Aiken location generated approximately \$56,720.00 per month in sales.

Exhibit 9 to the Affidavit of Tyrone P. Counts is a letter dated June 10, 2016 from the general counsel for Huddle House to Mary Jane Robinson with Fine Food and her attorney. Huddle House advised Fine Food that it was exercising its option in the Franchise Agreement to take assignment of the Aiken location. Huddle House also provided a copy of that letter to the Plaintiff,

as Landlord, to advise him that Huddle House was taking assignment of the Lease. The letter also advised the Plaintiff that Huddle House believed the Landlord was obligated by the renewal of the Lease.

Exhibit 10 to the Affidavit of Mr. Counts is a June 13, 2016 email from the attorney for Fine Food that Huddle House would only be entitled to a month to month tenancy. The same attorney notified Huddle House that Fine Food elected not to renew the Franchise Agreement. Huddle House responded by notifying the attorney for Fine Food and the attorney for the Plaintiff that Huddle House took assignment of Fine Food's interest in the Lease that had already been renewed for the additional sixty month term. Huddle House's position was that the expiration of the Franchise Agreement triggered the right of Huddle House to take assignment of the premises. Huddle House believed that Mr. Robertson, as the Landlord, agreed, pursuant to Section 29 of the Lease, that the Tenant could assign the Lease without the Landlord's consent.

THE LEASE

- MAG#5
1. The Lease identified the Landlord as T&Z Associates. The Tenant identified Fine Food as the Tenant.
 2. The agreement was dated May 31, 2011.
 3.
 - a) Paragraph 3.1 defines the original term as three years beginning on June 1, 2011 and ending May 31, 2016.
 - b) Paragraph 3.2 states that if the Tenant is not in default, it shall have the right to renew the Lease for two additional sixty month periods.
 - c) The renewal notice must be in writing and provided not less than three months prior to the termination date.
 - d) Based on the testimony and exhibits, Fine Food provided the notice for a sixty month renewal. Based on his testimony, the Plaintiff agreed that he was notified of the renewal.

4. Paragraph 26 defines the term "Landlord" to "include first party, its representatives, assigns and successors..." "Tenant" is defined "to include" second party, its representatives, and if the Lease shall be validly assigned or sublet, shall include Tenant assignees or sublesses...."

5. Paragraph 28 states that the Lease contains the entire agreement of the parties. Any change or addition must be in writing and properly executed by the parties.

6. a) Paragraph 29 is entitled "Rights of Huddle House" Both the Landlord and the Tenant acknowledged that a Huddle House restaurant would be operated at that location. The parties agreed that Huddle House had certain rights pursuant to the Franchise Agreement.

b) The Landlord also agreed that the Tenant, without the consent of the Landlord could sublease or assign its interest under the Lease. If the assignment was to Huddle House, the written approval of Huddle House was not required.

MAG 6

7. Paragraph 37 states that the Lease is contingent upon the following:

a) Huddle House entering a Franchise Agreement with Lessee (Fine Food). All parties agreed that there was a Franchise Agreement.

b) The Landlord was to enter into Huddle House's Collateral Assignment of Lease. The Lease expressly states that the form provided Huddle House with the ability to lease the property from the Landlord if the conditions outlined in the agreement occur. If those two conditions were not met, the Tenant could declare the Lease "null, void and of no force and effect".

c) Attachment 2 to the Collateral Assignment of Lease is entitled "Consent and Agreement of Lessor." The Landlord,

T&Z Associates executed the document.

COLLATERAL ASSIGNMENT OF LEASE

1. This is an agreement that identifies Fine Food as the Assignor and Huddle House as the Assignee.
2. By the terms of the agreement, the Assignor assigned and transferred to the Assignee "all of Assignor's right, title and interest as tenant in, to and under those certain leases, identified on Attachment 1". The third paragraph describes that upon default the Assignor (Fine Food) under the Lease or Franchise Agreement, the Assignee (Huddle House) has authority to take possession of the property.

MAG #7

This agreement expressly states that it "is for collateral purposes only...." The document does contain the language that, "Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to have assumed any obligation of Assignor, except for the payment of the monthly payments of the monthly rental payments set forth in the Lease during such period of occupancy by Assignee." This document was signed by Fine Food and Huddle House.

Attachment 2 to this document is identified as "Consent and Agreement of Lessor" T&Z Associates, the owner of the real estate now owned by the Plaintiff, consented to the Collateral Assignment and that the Assignee (Huddle House) would be recognized as the Tenant under the terms of the Lease. The document discusses default by assignor (Fine Food). In this matter, there was no default by the terms of the Lease or Franchise Agreement.

FRANCHISE AGREEMENT

1. The Franchise Agreement was signed by Huddle House and Fine Food. Huddle House is identified as the "Company". Fine Food is identified as the "Operator".
2. The initial term in paragraph 3 ended on May 31, 2016. This

agreement contains language for two sixty-month renewal terms.

3. Paragraph 3(c) states that the Operator must exercise a right to renew the Franchise Agreement not less than six months or more than twelve months prior to the expiration date of the initial term of the agreement. The notice must be in writing. If the Operator does not exercise the renewal option, the Company can exercise its options pursuant to paragraph 15 of the Franchise Agreement.

4. Paragraph 15(b) provides the following:

"Due to the unique nature of the Huddle House System, there may be certain locations that Company believes are irreplaceable, and vital to the Huddle House System, resulting from development and growth patterns or otherwise, and which locations Company believes must remain as Huddle House units. If, upon termination or expiration of the Agreement, Company in good faith believes the Premises are vital to the Huddle House System, and if the Premises will not otherwise remain a Huddle House Unit (e.g., by way of renewal or transfer to a new franchise owner), and if Company is willing to acquire such Premises for fair market value, then Company, its successors and assigns, or its nominee shall have the right, at its option, upon notice to Operator within thirty (30) days after termination or expiration of this Agreement to state its preliminary intent to purchase for cash, or upon such terms as agreed upon, Operator's interest in the Premises at fair market value. If Company and Operator have not agreed upon a fair market value within the thirty (30) day period and cannot, by mutual agreement within seven (7) days of the expiration of such period, appoint an appraiser to determine fair market value, Company, within fourteen (14) days thereafter, shall notify Operator of the

MAG #8

names of two appraisers or firms having the capacity to perform or engage others to perform appraisals of the Premises. Operator shall select, within seven (7) days after such notification by Company, one of such appraisers or firms to be responsible for determining fair market value; otherwise, Company shall select one such appraiser or firm to be responsible for determining fair market value and such appraiser's or firm's decision shall be binding. Each party shall divide equally the cost of any appraiser or firm. Within ten (10) days after Company has been notified of the fair market value, Company may exercise its option to purchase by notice to Operator, with closing to be no sooner than fifteen (15) days from the date Company exercises its option and no later than (90) days thereafter; otherwise such option shall expire".

MAG#9

CONCLUSIONS OF LAW

The Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this Court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

"The primary concern of the court interpreting a contract is to give effect to the intent of the parties." *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 769 S.E.2d 237 (2015) "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." *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (2014).

The Lease was executed by T&Z Associates and Fine Food.

Although Huddle House did not sign the Lease, the Landlord did acknowledge that the property would be used as a "restaurant franchised by Huddle House. The Landlord also agreed that the Tenant, "may at any time with or without the consent of the Landlord, sublease, assign or encumber, its interest, rights, privileges and obligations arising out of this Lease Contract, to any other person or persons, provided Tenant obtains the written approval of Huddle House its successors and assigns, for such subleasing or assignment. In the event that Huddle House is the Tenant hereunder, such written approval shall not be required."

Paragraph 37 of the Lease makes the Lease contingent upon the execution of the Franchise Agreement and the Landlord entering Huddle House's standard Collateral Assignment of Lease. The Landlord (T&Z Associates) executed the form. The parties stipulated to the submission of the Lease and the Collateral Assignment of Lease.

MAG-110 Paragraph 15 (b) of the Franchise Agreement provides a method for Huddle House, upon termination or expiration of the Agreement to assume the operator's interest. In this matter, the operator is Fine Food. The Operator had already obtained a sixty month extension on the lease.

The Collateral Assignment of Lease discusses what happens if the Assignor (Fine Food) defaults on the terms of the Lease or the Franchise Agreement. Based on the evidence submitted, there was no default by Fine Food. It simply decided to not request the extension or renewal of the Franchise Agreement. The letter dated June 10, 2016 (Exhibit 9 to the Affidavit of Tyrone P. Counts) advised Fine Food that Huddle House was exercising the option in the Franchise Agreement to take assignment of the Aiken location. The Plaintiff was also provided with a copy of this letter. The letter does reference Paragraph 29 of the Lease and the Collateral

Assignment of Lease. However, as stated above, there was no default of the Lease or the Franchise Agreement.

Fine Foods provided Huddle House with written notification that it would not exercise its right to renew the Franchise Agreement. Thomas Robertson, the Franchise Area Director for Huddle House met Mrs. Robertson on July 14, 2016. She turned the keys over to him for the Aiken location.

CONCLUSION

1. The Court has subject matter jurisdiction over this proceeding and personal jurisdiction over the parties. Venue of this action is proper in Aiken County and this Court and all persons entitled to be served and/or provided notice of these proceedings have been served and/or provided such notice or have otherwise appeared in this action.

2. In paragraph 29 of the Lease, the Landlord acknowledged the property was a restaurant franchised by Huddle House. The Landlord also agreed that the Tenant could assign the Lease, without the Landlord's consent. In this matter, those rights were assigned to Huddle House.

3. Fine Foods obtained a sixty month extension of the Lease from the Plaintiff/Landlord.

4. The Franchise Agreement provides a method for Huddle House to assume the Operator's interest. Fine Foods did not renew the Franchise Agreement after the expiration date. Huddle House has assumed operation of the Aiken location. This occurred after the sixty month extension was obtained.

5. While the Plaintiff is correct about the language in the Collateral Assignment of Lease, a review of the entire document established the intent of the parties was that this document deals with a Tenant that defaults on the Lease or Franchise Agreement. In this case, there was no default.

6. Rental payments have continued to be paid to the Landlord. There were no claims of default by the Tenant, Huddle House or the plaintiff.

7. Huddle House exercised its rights under the Franchise Agreement and not as a result of the default under the Collateral Assignment of Lease.

8. The Plaintiff is not entitled to evict Huddle House from the Aiken location based on the testimony, exhibits and a review of the documents. Huddle House is entitled to assume the rights of the former Tenant based on the language of the Lease, the Franchise Agreement, and the sixty month extension.

MAG #12 AND IT IS SO ORDERED.

M.A. Griffith
M. Anderson Griffith
Master-in- Equity for Aiken County

Aiken, South Carolina

February 27, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0201550

Robert William Robertson

Huddle House Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
SEE ORDER	SEE ORDER	SEE ORDER

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

M.A. Griffith
M. Anderson Griffith/Master In Equity

3076
Judge Code

2/27/2017

Date 2 27 17

For Clerk of Court Office Use Only

FILED 2 27 17
Robert L. White
Clerk of Court
Anita Knappe
Deputy Clerk

227-17
This judgment was entered on 2.27.17, and a copy mailed first class or placed in the appropriate attorney's box on 2.27.17, to attorneys of record or to parties (when appearing pro se) as follows:

Bradley A. Brodie PO Box 519 Aiken, SC 29802-0519

Paul Knapp Simons Jr. Hull Barrett, PC 111 Park Avenue,
SW Aiken, SC 29801

ME

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Robert J. Haultby AMJ

Court Reporter

- Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ROBERT WILLIAM ROBERTSON,

Plaintiff,

v.

HUDDLE HOUSE, INC.,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-02-01550

**CONSENT ORDER OF REFERENCE
TO MASTER-IN-EQUITY WITH
FINALITY**

This matter comes before me from the Motion of Paul Simons, Jr., attorney for Defendant Huddle House, Inc., with the consent of Plaintiff Robert William Robertson, for an Order referring this matter to the Master-In-Equity pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, to conduct a non-jury trial and order a final judgment with all power and authority that a circuit judge sitting without a jury would possess.

IT IS THUS ORDERED, ADJUDGED AND DECREED that this action be referred to The Honorable M. Anderson Griffith, Master-In-Equity for ^{Aiken}~~Barnwell~~ County, to hear all motions, take testimony, make findings and facts and conclusions of law, and enter final judgment as to all matters that may arise in those proceedings with any appeal therefrom being directly to the South Carolina Supreme Court or South Carolina Court of Appeals as is appropriate under South Carolina Code §14-11-85.

FILED

10.10.16

Liz Godard
C.C.P. & G.S.
Amie 305
Deputy Clerk

00997375.doc-1

1

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

OCT 11 2016

Liz Godard
C.C.P. & G. A., Aiken County, S.C.

Anita Knoepfle
Deputy Clerk

SO ORDERED, this 10 day of October, 2016.

Edward A. Thompson
Clerk of Court
Second Judicial Circuit

WE MOVE:

Hull, Barrett, PC

Paul Simons, Jr.
Paul Simons, Jr.
Attorneys for Defendant Huddle House, Inc.

WE CONSENT:

Smith, Massey, Brodie, Gynn & Mayes, P.A.

Brad Brodie
Brad Brodie *By Paul Simons, w/ express permission*
Attorneys for Plaintiff Robert William Robertson

RECEIVED OF
THE SUM OF

Paul Simons, Jr.
\$ 50.00

AS THE ORIGINAL DEPOSIT IN
THIS CASE. A REFERENCE HAS
BEEN SCHEDULED FOR

November 23, 2016 @ 10:00 A.M.

M. Anderson
CLERK, AIKEN CO.
DATE *October 10, 2016*

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

ROBERT WILLIAM ROBERTSON

☐ Plaintiff

v.

Huddle House, Inc.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2016-CP-02-01550

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Bar No. Address: phone: fax: e-mail: other:	Defendant's Attorney: Paul Simons, Jr., Bar No. 76883 Address: 111 Park Avenue, SW phone: 803-648-4213 fax: e-mail: psimons@hullbaret.com other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant <u>September 29, 2016</u> Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE FILED <u>10.10.16</u> CODE: <u>100</u> Date: <u>10/10/16</u> Date Filed: <u>10/10/16</u>
CLERK'S VERIFICATION Collected by: <u>CK#9937</u> ☒ MOTION FEE COLLECTED: <u>CK#9937</u>	

SCCA/233 (11-03)
00998175-1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0201550

Robert William Robertson

Huddle House Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

10/11/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on 10-11-16, and a copy mailed first class or placed in the appropriate attorney's box on 10-11-16, to attorneys of record or to parties (when appearing pro se) as follows:

Bradley A. Brodie PO Box 519 Aiken, SC 29802-0519

Paul Knapp Simons Jr. Hull Barrett, PC 111 Park Avenue,
SW Aiken, SC 29801

MIE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Handwritten signature]

Court Reporter

[Handwritten signature]
Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Robert William Robertson,)
)
Plaintiffs,)
)
v.)
)
Huddle House, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2016-CP-02-01550

ORDER ADMITTING DAVID E.
HUDSON *PRO HAC VICE*

This matter is before the Court pursuant to the Verified Application for Admission *Pro Hac Vice* of David E. Hudson. It appearing to the Court that the requirements stated in Rule 404 of the South Carolina Appellate Court Rules for admission *pro hac vice* have been satisfied,

IT IS HEREBY ORDERED that David E. Hudson is admitted *pro hac vice* to represent Huddle House, Inc., in the above captioned matter.

This 15th day of November, 2016.

M.A. Griffith
Presiding Judge / *Master-in-Equity*
Second Judicial Circuit Aiken County

FILED

11.15.16

David E. Hudson
Clerk of Court
Amended
11/15/16

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Robert Williams Robertson

Plaintiff,

vs.

Huddle House, Inc.

Defendant.

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

CASE NO.: 2016-CP-02-01550

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Brad A. Brodie, Bar No. _____ Address: P.O. Box 519 Aiken, SC 29802 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Paul Simons, Jr., Bar No. 076883 Address: 111 Park Avenue, SW, Aiken, SC 29801 Phone: 803-648-4213 Fax _____ E-mail: psimons@hullbarrett.com Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Estimated Time Needed: _____	
Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant		Date submitted: 11/15/2016	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: FILED 11.15.16	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____		Clerk of Court: [Signature] 430	
☒ MOTION FEE COLLECTED: \$ 1000			
☐ CONTESTED - AMOUNT DUE: \$ _____			

**VERIFIED APPLICATION FOR ADMISSION *PRO HAC VICE*
IN THE STATE OF SOUTH CAROLINA**

Robert William Robertson

2016-CP-02-01550

Court of Common Pleas, Second
Judicial Circuit, Aiken County
Court

Plaintiff

Case No.

vs.

Huddle House, Inc.,

Mailing Address of Court: Post Office Box 583, Aiken, South
Carolina 29802-0583

Defendant

RECEIVED

NOV - 7 2016

S.C. SUPREME COURT

Comes now David E. Hudson, applicant herein, and respectfully represents the following:

1. Applicant resides at:

4 Highgate Circle

Street Address

Augusta

City

706-733-1405

Telephone

Richmond

County

GA

State

30909

Zip Code

2. Applicant is an attorney and a member of the law firm of (or practices law under the name of) Hull

Barrett, P.C., with offices at, at

801 Broad Street, Suite 700

Street Address

Augusta

City

706-722-4481

Telephone

Richmond

County

GA

State

706-722-9779

Fax Number

30901

Zip Code

3. Applicant has been retained personally or as a member of the above named law firm by Huddle House, Inc. to provide legal representation in connection with the above case now pending before the above named court of the State of South Carolina.

4. Since January of 1972, applicant has been, and presently is, a member in good standing of the bar of the highest court of the ~~State of South Carolina~~ State of Georgia where applicant regularly practices law. Attached is a certificate of good standing.

5. Applicant has been admitted to practice before the following courts: (List all of the following courts applicant has been admitted to practice before: United States District Courts; United States Circuit Courts of Appeals; the Supreme Court of the United States; and courts of other states or the District of Columbia.)

Court:

Date Admitted:

See Exhibit A, attached.

01014957.doc

Applicant is presently a member in good standing of the bars of those courts listed above, except as listed below:
(List any court named in the preceding paragraph that applicant is no longer admitted to practice before.)

N/A

6. Applicant presently is not subject to any suspension or disbarment proceedings, and has not been formally notified of any complaints pending before a disciplinary agency, except as provided below (give particulars, e.g., jurisdiction, court, date):

N/A

7. Applicant never has had any application for admission *pro hac vice* in this or any other jurisdiction denied or any *pro hac vice* admission revoked, except as provided below (give particulars, e.g., date, court, docket number, judge, circumstances; attach a copy of any order of denial or revocation):

N/A

8. Applicant never has had any certificate or privilege to appear and practice before any administrative body suspended or revoked, except as provided below (give particulars, e.g., date, administrative body, date of suspension and reinstatement):

N/A

9. Local counsel of record associated with applicant in this case is Paul K. Simons, of the Hull Barrett law firm, which has offices at:

111 Park Ave., SW

Street Address

Aiken

Aiken

SC

29801

County

City

State

Zip Code

803-648-4213

Telephone

If applicable list all other firms/attorneys you are associated with in this matter

None

10. Applicant has previously filed an application to appear *pro hac vice* in the following South Carolina cases (give case name and status of litigation, date of application, local counsel of record in each case, and state whether application is pending or was granted).

Bobby L. Davis v. Marion Star and Mullins Enterprise, et al., Marion County Court of Common Pleas, Case No. 98-CP-33-372 (1998). Local counsel - Tim Moses. Petition granted. Case concluded.

Tom Anderson v. The Augusta Chronicle and Morris Communications, Inc., Aiken County Court of Common Pleas, Case No. 98-CP-02-337 (1998-2005). Local counsel - Jim Holley. Petition granted. Case concluded.

Ex Parte South Carolina Press Association, 281 S. C. 52 (1984).

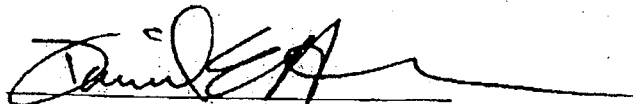
Tom Anderson v. The Augusta Chronicle, et al., 365 S. C. 589 (2005).

01014957.doc

11. Applicant agrees to comply with the applicable statutes, laws and rules of the State of South Carolina and will familiarize him/herself with and comply with the South Carolina Rules of Professional Conduct. Applicant consents to the jurisdiction of the South Carolina courts and Commission on Lawyer Conduct.

12. Applicant respectfully requests to be admitted to practice in the above named court for this case only.

DATED this 17th day of October, 2016.

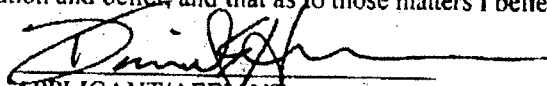

APPLICANT

VERIFICATION

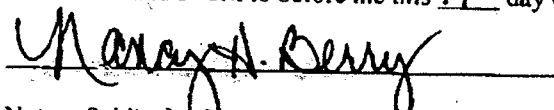
STATE OF Georgia)

COUNTY OF Richmond)

I, David E. Hudson, do hereby swear or affirm under penalty of perjury that I am the applicant in the above styled matter; that I have read the foregoing application and know the contents thereof; and that the contents are true of my own knowledge, except as to those matters stated on information and belief, and that as to those matters I believe them to be true.


APPLICANT/AFFIANT

Subscribed and sworn to before me this 17th day of October, 2016.


Notary Public for the State of Georgia

My Commission Expires October 30, 2018

LOCAL COUNSEL CONSENT

I hereby consent, as local counsel of record, to the association of applicant in this cause pursuant to Rules Governing Admission *Pro Hac Vice* to the South Carolina Bar.

DATED this 19th day of October, 2016.


LOCAL COUNSEL OF RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this application upon the South Carolina Supreme Court by mail addressed to: South Carolina Supreme Court Office of Bar Admissions, PO Box 11330, Columbia, SC 29211, accompanied by payment of the \$250 filing fee payable to the South Carolina Supreme Court on this 15th day of November, 2016.


APPLICANT/AFFIANT

Other Courts to which David E. Hudson is admitted:

<u>COURT:</u>	<u>FULL ADDRESS:</u>	<u>DATE OF ADMISSION</u>
U. S. District Court, Southern District of Georgia	U. S. Courthouse Room 306 125 Bull Street Savannah, GA 31401	April 15, 1975
U. S. District Court Northern District of Georgia	Federal Building Room 352 18 Greenville Street Newnan, GA 30263	July 26, 1972
U. S. Court of Appeals Atlanta, GA 30334 For the Fifth Circuit	47 Trinity Avenue Suite 501 Atlanta, GA 30334	August 15, 1975
U. S. Court of Appeals For the Eleventh Circuit	56 Forsyth Street, N.W. Atlanta, GA 30303	October 1, 1981
U. S. Court of Appeals For the Second Circuit	Thurgood Marshall U.S. Courthouse 40 Foley Square New York, NY 10007	April 25, 1991
U. S. Supreme Court	1 1st Street N.E. Washington, DC 20543	Est. 1983
U. S. District Court of Colorado	Alfred A. Arraj United States Courthouse, Room A105 901 19th Street Denver, CO 80294-3589	June 18, 2009
U. S. District Court Middle District of Georgia	475 Mulberry Street Macon, GA 31201	November 20, 1997
U. S. Court of Appeals for the Eighth Circuit	Thomas F. Eagleton Courthouse 111 South 10th Street St. Louis, MO. 63102	June 4, 1997
United States Court of Claims	Howard T. Markey National Courts Building 717 Madison Place, NW Washington, DC 20439	October 22, 1992

HUGH P. THOMPSON, CHIEF JUSTICE
P. HARRIS HINES, PRESIDING JUSTICE
ROBERT BENHAM
CAROL W. HUNSTEIN
HAROLD D. MELTON
DAVID E. NAHMIA
KEITH R. BLACKWELL
JUSTICES

Supreme Court
State of Georgia
STATE JUDICIAL BUILDING
Atlanta 30334

THERÈSE S. BARNES, CLERK
JEAN RUSSELL, REPORTER

October 12, 2016

I hereby certify that David E. Hudson, Esq., was admitted on the 13th day of March, 1972, as a member of the bar of the Supreme Court of Georgia, the highest court of this State; and, since that date he has been and is now a member of this bar in good standing, as appears from the records and files in this office.



Witness my signature and the seal of this Court
hereto affixed the day and year first above written.

Therese S. Barnes, Clerk



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-0384

November 9, 2016

Clerk of Court
Aiken County
P.O. Box 583
Aiken, SC 29802

RE: Robert William Robertson v. Huddle House, Inc.,
Civil Action No.:2016-CP-02-01550

Dear Clerk of Court:

I certify that the Office of Bar Admissions has received a verified application requesting David E. Hudson be admitted *pro hac vice* in the above case. The \$250 filing fee for the applicant has been paid.

Yours truly,

Dayle B. Watts/st

Deputy Clerk for Bar Admissions

GBW/st

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP0201550**

Robert William Robertson

Huddle House Inc

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

11/15/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on **11-15-16**, and a copy mailed first class or placed in the appropriate attorney's box on **11-15-16**, to attorneys of record or to parties (when appearing pro se) as follows:

Bradley A. Brodie PO Box 519 Aiken, SC 29802-0519

Paul Knapp Simons Jr. Hull Barrett, PC 111 Park Avenue,
SW Aiken, SC 29801
MIE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Robert William Robertson

Plaintiff(s)

vs.

Huddle House, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 02- 01550

COPY
ORIGINAL FILED

JUL 11 2016

Submitted By: Brad A. Brodie
Address: P.O. Box 519
Aiken, SC 29802

SC Bar #: 8632

Telephone #: (803) 643-4110

Fax #: (803) 643-8449

Other:

E-mail: brodielawfirm@gmail.com

AIKEN COUNTY
CLERK OF COURT

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☒ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | | |

Submitting Party Signature: BRAD

Date: July 11, 2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Robert William Robertson,)
)
Plaintiff,)
)
vs.)
)
Huddle House, Inc.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO. 2016-CP-02- 01550

SUMMONS

C O P Y
ORIGINAL FILED

JUL 11 2016

AIKEN COUNTY
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgement by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

BRAD A. BRODIE

Brad A. Brodie, ID # 8632
Smith, Massey, Brodie, Guynn & Mayes, LLC
P.O. Box 519
Aiken, SC 29802
Tel: (803) 643-4110
Fax: (803) 643-8140

Attorneys for Plaintiffs

July 11, 2016

Aiken, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Robert William Robertson,)
)
Plaintiff,)
)
vs.)
)
Huddle House, Inc.)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO. 2016-CP-02- 01550

COMPLAINT

(Declaratory Judgment and Ejectment)

C O P Y
ORIGINAL FILED
4th JUL 11 2016
AIKEN COUNTY
CLERK OF COURT

NOW COMES THE PLAINTIFF, complaining of the above named Defendant, and would respectfully show unto this Honorable Court as follows:

1. Plaintiff Robert William Robertson is a citizen and resident of Georgia.
2. Defendant Huddle House, Inc. is a Georgia corporation operating in South Carolina.
3. The property which is the subject of this action is situated in the County of Aiken, State of South Carolina (the "Premises"), with a legal description attached hereto and incorporated herein as Exhibit A.
4. This Court has personal and subject matter jurisdiction over Defendant Huddle House, Inc.
5. Plaintiff is the sole owner of the property described on Exhibit A, and the Plaintiff was assigned a lease entered into by T & Z Associates and Fine Food, LLC dated May 31, 2011 (hereinafter "Lease") whereby the parties thereto agreed that in consideration of the lease payments provided in this Lease, Landlord T & Z Associates would lease to Tenant Fine Food,

LLC said Premises, the real property, building (including all equipment, fixtures, signs, and furnishings located therein) and other improvements located at 3600 Richland Avenue, West, Aiken, South Carolina 29801. A copy of said Lease is attached hereto and incorporated herein as Exhibit B.

6. Fine Food, LLC and Defendant Huddle House, Inc. executed a Collateral Assignment of Lease (hereinafter "Assignment"). This Assignment was executed by Fine Food, LLC, Defendant Huddle House, Inc., and the previous Landlord, T & Z Associates. A copy of said Assignment is attached hereto and incorporated herein as Exhibit C.

7. The Assignment from Fine Food, LLC to Defendant Huddle House, Inc. clearly states that the Lease is being collaterally assigned only on a month to month basis. T & Z Partnership, the prior Landlord consent to the Assignment.

8. The Plaintiff is informed and believes that Defendant Huddle House, Inc.'s rights are as a month to month tenant due to the terms of the Assignment which governs the relationship between the Plaintiff and Defendant Huddle House, Inc. Specifically the Assignment contains language which expressly states "Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to have assumed any obligations by Assignor, except for the payment of the monthly rental payments set forth in the Lease during such period of occupancy by Assignee".

9. Plaintiff relied upon the terms of the Assignment in deciding to purchase the property.

10. The Assignment is not ambiguous as it clearly states that Defendant Huddle House would only assume the Lease on a month to month basis.

11. The Lease should be enforced by the Court according to its plain meaning.
12. The Lease was prepared by Defendant Huddle House, Inc., and, thus, should be strictly construed against Defendant Huddle House, Inc.
13. Under South Carolina law, Plaintiff may terminate a month to month tenancy by providing the appropriate notice of termination to the tenant.
14. Plaintiff hereby gives 30 days NOTICE to Defendant Huddle House, Inc. that Plaintiff is terminating the Lease attached hereto as Exhibit B, and requests that Defendant Huddle House, Inc. vacate the premises in accordance with the terms of the Lease.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment)

15. Plaintiff realleges the above allegations as if repeated verbatim herein.
16. Plaintiff requests that the Court review this matter and issue its order declaring that the Assignment to Defendant Huddle House, Inc. only creates a month-to-month tenancy and therefore is terminable by Plaintiff with 30 days notice.

FOR A SECOND CAUSE OF ACTION

(Ejectment)

17. Plaintiff realleges the above allegations as if repeated verbatim herein.
18. Plaintiff, as sole owner of the property described on Exhibit A requests that Defendant Huddle House, Inc. vacate the Plaintiff's property, and leave it in good condition, after a 30 day Notice period which was provided herein.

WHEREFORE, Plaintiff prays for a Declaratory Judgment that the Assignment creates a month-to-month tenancy with the Defendant Huddle House, Inc. and for an Order of the Court ejecting Defendant Huddle House, Inc. from the Plaintiff's property. Plaintiff requests that should the Defendant fail or refuse to move then the Sheriff of Aiken County be ordered and directed to eject and remove the occupants from the subject premises, and put the Plaintiff in full, quiet and peaceable possession of said property without delay, and for such other and further relief as the Court deems just and proper.

July 11, 2016

Aiken, South Carolina

Respectfully Submitted,



Brad A. Brodie, ID # 8632

Smith, Massey, Brodie, Guynn & Mayes, LLC

P.O. Box 519

Aiken, SC 29802

Tel: (803) 643-4110

Fax: (803) 643-8140

Attorneys for Plaintiffs

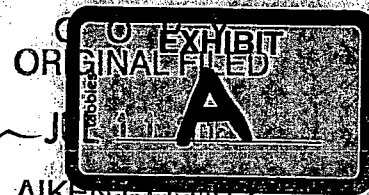


EXHIBIT "A"

AIKEN COUNTY
CLERK OF COURT

All that certain piece, parcel or lot of land, situate, lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less

This being the same proeperty conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1989 and recorded Janaury 5, 1990 in Deed Book 1145 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina

Tax Parcel No. 20-094-01-004

LEASE

WITNESSETH:

2. Option to Purchase Premises.

- 2.1 *Grant.* Landlord grants Tenant the option to purchase the Premises at any time during the Lease Term (as defined below) and any extended term. Tenant must exercise this option, if at all, by written notice, which must state a closing date no more than one hundred twenty (120) days after the date of such notice. This option may be assigned apart from this Lease.

2.2. **Conditions.** This option is conditioned upon Tenant not being in default of the payment of Rent either at the time of its exercise of this option or the time of closing of the purchase transaction.

2.3 **Purchase Price.** At closing, the purchase price will be payable in cash or certified funds in the amount of \$508,650.00 (until May 31, 2013), which amount represents the total amount of the costs of construction of the improvements on the Premises, plus ten (10%) of said amount, plus \$100,000.00. Beginning on June 1, 2013, and throughout the duration of the Lease Term, the purchase price shall be established by the mutual agreement of Landlord and Tenant.

2.4. **Closing.** At closing, Landlord will convey a marketable title to the Premises to Tenant by general warranty deed, subject only to those exceptions or matters of record as are acceptable to Tenant.

3. **Term.**

3.1. **Initial Term.** Except as hereinafter provided, Tenant takes and accepts the Premises from Landlord upon the terms and conditions herein contained, and in their present condition and as suited for the use intended by Tenant, to have and to hold the same for the Lease Term, unless this Lease terminates earlier. The term of this Lease shall be five (5) years commencing on June 1, 2011, and ending at 11:59 p.m. on May 31, 2016, unless earlier terminated pursuant to this Lease (the "Lease Term").

3.2. **Renewal Terms.** If Tenant is not in default hereunder, it shall have the right to renew and extend this Lease for two (2) additional sixty (60) month periods, upon the same terms and conditions as herein stated. Written notice of Tenant's election to exercise this option shall be given to

Landlord not less than three (3) months prior to the date of termination provided or the date of termination of any renewal and extended period hereof.

3.3. Option to Extend Term. So long as Tenant is not in default under Paragraph 17 of this Lease, at the time of exercise of this Option, Tenant shall have the option to extend the Lease Term for an additional period of ten (10) years on such terms, covenants, and conditions as the parties may agree. Tenant shall exercise its option to extend the Lease Term by giving Landlord written notice at least ninety (90) days but not more than two hundred seventy (270) days prior to expiration of the initial Lease Term.

4. Rent.

4.1 The rent ("Rent") for this Lease shall be as follows:

\$4,200.00 for years one through five;

\$4,410.00 for years six through ten; and

\$4,640.00 for years eleven through fifteen

payable as hereinafter described. Tenant shall pay to Landlord, promptly on the first day of each month in advance during the Term, without notice, demand, abatement, deduction or set-off in lawful money of the United States of America, at the office of Landlord or to such other person and/or place as Landlord may have from time to time designated in writing, the rent as established by this Section 4.1.

4.2 In addition to the Base Rent, during years six through fifteen of the Term (if extended by Tenant per Section 3.2), Tenant will pay to Landlord Percentage Rent equal to three percent and one-half (3.5%) of the amount of Tenant's Gross Sales which exceed \$48,000.00 per month. Beginning within ten (10) days after the month in which the Lease Term commences and continuing within ten (10) days after each month during the Lease Term and extension thereof, Tenant will furnish to Landlord a

- 3 -

statement of Gross Sales during the preceding month and Tenant will pay to Landlord the amount of Percentage Rent due under this Paragraph 4.2 for the preceding month. The term *Gross Sales* means the actual sales price of all food and beverage sold at the restaurant located on the Premises, less (i) any sales or excise tax collected and paid to any governmental agency or authority; (ii) cash refunds to customers on transactions previously included in Gross Sales, and (iii) receipts from cigarette machines, jukeboxes, video games, or any other vending machines. There will be no Percentage Rent payable to Tenant during the first five (5) years of the Lease Term.

4.3 No payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent or additional charges shall be deemed to be other than a payment on account, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or as provided by law.

5. Utility Bills and Services. Tenant shall pay all utility bills, including but not limited to electric, water, natural gas, telephone and trash pick-up and all other charges for services rendered to the leased Premises and any other charges incurred or caused by the operations of Tenant or used by Tenant in connection therewith. Landlord, upon request of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

6. Use of Premises. Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass.

7. Repairs by Landlord. Landlord agrees to keep in good repair the roof, foundations, and exterior walls of the Premises and underground utility and sewer pipes, interior and exterior structural components, driveways and parking areas. Tenant shall promptly report in writing to the Landlord any defective condition known to it which Landlord is required to repair.

8. **Maintenance and Repairs by Tenant.** Except as provided in Paragraph 7 above, Tenant shall keep and maintain, at its expense, the Premises.

9. **Taxes.** Tenant will pay all real property taxes levied or assessed against the Premises during the Lease Term. Tenant will pay all taxes upon, measured by, or reasonably attributable to the operation of Tenant's business or the costs or value of Tenant's equipment, furniture, fixtures, and any other personal property located in the Premises. Nothing contained in this Lease shall require the Tenant to pay any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income, profits or revenue tax or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this Lease. At its sole cost and expense, and without right of contribution or offset from or against Landlord, Tenant shall have the right to contest by appropriate legal proceedings any real estate taxes, assessments, valuations or other charges imposed against the Premises, including the right to seek a reduction in the assessed valuation of the Premises.

10. **Insurance.** Tenant shall, at its expense, procure and maintain throughout the time that Lease is in force, the following insurance:

- (a) Comprehensive General Liability Insurance with combined single occurrence limit of not less than One Million Dollars (\$1,000,000.00).
- (b) Fire, and Extended Coverage Insurance covering the Premises and all leasehold improvements in the Premises and equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time in, on, or upon the Premises. This insurance will be in an amount not less than the full replacement costs without deduction for depreciation.

Tenant shall furnish Landlord with certificates of such insurance naming Landlord as an additional insured. Each policy shall include a clause whereby the insurance company agrees to provide Landlord with

at least thirty (30) days notice prior to cancellation of said policy. Tenant shall pay promptly, when due, all premiums owed for insurance and to furnish receipts or satisfactory evidence of payment to Landlord upon request. Tenant further agrees to comply with all terms of said policies, including notification of the carrier of losses.

In the event of non-payment of premiums by Tenant, Landlord may, at Landlord's option, have the right to make said premium payments in the amount determined by Landlord, but in no event to maintain the policies in force for a period greater than the remaining term of the Lease. The premiums so paid by the Landlord shall become additional rent immediately due and owing from the Tenant to Landlord.

All insurance required by this Lease shall be secured by Tenant through such agent and/or companies as Tenant may select which shall be licensed with the State of Georgia Insurance Commissioner to do business within the State of Georgia and which company shall be acceptable to Landlord.

11. **Destruction of or Damage to Premises.** If Premises are damaged or destroyed by storm, fire, lightning, earthquake, or other casualty, then at the option of Landlord (a) this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date or (b) Landlord will repair, rebuild and furnish the Premises as soon as practicable to substantially the same condition in which the Premises were immediately prior to such destruction. During the period of damage or destruction, the Rent shall abate in such proportion as Tenant's use of the Premises for its business has been impaired or destroyed. The rent abatement will end with the completion by the Landlord of such work, repair, or reconstruction as Landlord is obligated to do.

12. **Indemnification.** Tenant agrees to indemnify and save harmless the Landlord against all claims for damages to persons or property by reason of Tenant's negligent use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs. Landlord agrees to indemnify and save harmless Tenant against all claims for damages to persons

or property due to the sole negligence of Landlord and due to structural failure of the roof, walls, columns, beams or floor slab; provided however, that such structural failure is not the direct result of Tenant's activities or those of its employees, agents, invitees, licensees, or assignees; and further provided that Tenant has promptly notified Landlord of such defect or structural failure, if known to Tenant, as provided under Paragraph 7 of this Lease.

13. **Compliance with Laws.** Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any public authority, and at its expense shall comply with all laws and requirements of any public authorities which shall, in respect to the Premises or the use and occupation thereof, or the abatement of any nuisance, impose any violation, order or duty on Landlord or Tenant, arising from (a) Tenant's use of the premises, (b) the manner of conduct of Tenant's business or operation of its installations, equipment or other property therein, (c) any cause or condition created by or at the instance of Tenant, other than by the manner of Landlord's performance of any work for or on behalf of Tenant, or (d) breach of any of Tenant's obligations hereunder.

14. **Eminent Domain.** If the whole of the leased Premises or such portion thereof as Tenant determines will make the Premises unusable for the operation of a restaurant, be condemned by any legally constituted authority for any public use or purpose, then in either of said events, at the option of Tenant, the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemnor. It is further understood and agreed that neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of the Lease as herein provided.

15. Assignment, Subletting, Mortgaging. Tenant shall not (a) assign or otherwise transfer this Lease or the term and estate hereby granted; (b) sublet the Premises or any part thereof or allow same to be used, occupied or utilized by anyone other than Tenant, or (c) mortgage, pledge or encumber this Lease or the Premises or any part thereof in any manner by reason of any act or omission on the part of the Tenant, without in each instance providing at least thirty (30) days prior written notice to Landlord.

16. Surrender of Premises. At the termination of this Lease, Tenant shall surrender the Premises and the keys thereto to Landlord in the same condition as at the commencement of the Lease Term, natural wear and tear excepted. Landlord shall have the right to require Tenant to remove any fixtures and equipment installed by Tenant upon the expiration or termination of this Lease. Tenant may, only if not in default under this Lease, prior to the expiration of this Lease, or any extension thereof, remove such equipment which Tenant has installed in the Premises. In the event of termination of this Lease for any reason, Landlord and Tenant do hereby covenant and agree that they shall immediately discontinue or cause to be discontinued, then use of all trade names, trademarks, signs, advertising structures and other forms of advertising indicative of "HUDDLE HOUSE" or the business or products thereof at the Premises and will make or cause to be made such changes in signs, building, advertising structures, including the complete removal or partial removal of any sign faces and advertising structures and the painting in a different color or any any building mansard and advertising as Huddle House, Inc. may reasonably direct, effectively to distinguish the same from its former appearance and from other Huddle House places of business, and if the Landlord and Tenant shall, upon request by Huddle House, Inc., fail or omit to make or cause to be made such changes, then Huddle House, Inc. or its authorized agents shall have the right to enter upon the Premises without being deemed guilty of trespass or any other tort, to make or cause to be made such changes at the expense of Landlord and Tenant which expenses Landlord and Tenant agree to pay on demand.

17. **Default and Termination:** In the event that Tenant (a) fails to pay any or all portion of any sum due from Tenant hereunder or pursuant to any Exhibit hereto within thirty (30) days after its scheduled due date; (b) fails to cease all conduct prohibited hereby within ten (10) days after receipt of written notice from Landlord; or (c) fails to take action in accordance with the provisions of written notice from Landlord to remedy Tenant's failure to perform any of the terms, covenants and conditions hereof; or (d) if Tenant is adjudicated bankrupt, or if a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal and all rental payments due hereunder have not been paid within said time period; or (e) if whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; or if Tenant makes an assignment for benefit of creditors; or if Tenant's effects should be levied upon or attached under process against Tenant, and not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof; or if Tenant is otherwise in breach of Tenant's obligation hereunder and shall not have cured same within thirty (30) days following written notice from Landlord, then Tenant shall be in default hereunder and Landlord may, at its option and without further notice to Tenant, terminate Tenant's right to possession of the Premises and without terminating this Lease re-enter and resume possession of the Premises and/or declare this Lease terminated, and may thereupon in either event remove all persons and property from the Premises, with or without resort to process of any court, either by force or otherwise. In no event shall Landlord's termination of this Lease and/or Tenant's right to possession of the Premises abrogate Tenant's agreement to pay rent and additional charges due hereunder for the full term hereof. Following re-entry of the Premises by Landlord, Tenant shall continue to pay all such rent and additional charges as same become due under the terms of this Lease, together with all other expenses

incurred by Landlord in regaining possession until such time, if any, as Landlord relets same and the Premises are occupied by such successor, it being understood that Landlord shall attempt to mitigate Tenant's damages by making reasonable efforts to relet Premises. Upon reletting, sums received from such new lessee by Landlord shall be applied first to the payment of costs incident to reletting; any excess shall then be applied to any indebtedness to Landlord from Tenant other than rent; and any excess shall then be applied to the payment of rent due and unpaid. The balance, if any, shall be applied against the deficiency between all amounts received hereunder and sums to be received by Landlord on reletting, which deficiency Tenant shall pay to Landlord in full, within five (5) days of notice of same from Landlord. Tenant shall have no right to any proceeds of reletting that remain following the application of same in the manner set forth hereinabove. In addition to any other remedies set forth above, all sums due under this Lease not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid.

18. Mortgagee's Rights. Tenant's rights shall be subject to any bona fide Mortgage or Deed to Secure Debt which is now, or may hereinafter be, placed upon the Premises by Landlord so long as the holder of said mortgage or deed to secure debt executes a nondisturbance agreement acceptable to Tenant which provides that the holder will not disturb Tenant's possession of the Premises so long as the Tenant is not in default under the terms of this Lease.

19. No Estate In Land. This contract shall create the relationship of Landlord and Tenant between the parties hereto. No estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except in accordance with Paragraph 15.

20. Holding Over. If Tenant remains in possession of the Premises after the expiration of the term hereof, without a new written lease or written extension of this Lease as provided herein, (a) Tenant shall be deemed a Tenant-at-Sufferance, (b) Tenant shall continue to pay the Rent and additional

- 10 -

charges provided in this Lease, and (c) there shall be no renewal or extension of this Lease by operation of law.

21. **Rights Cumulative.** All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restricted to those given by law.

22. **Notices.** Any notice, statement, demand, consent, approval or other communication required or permitted to be given pursuant to this Lease or pursuant to any applicable law or requirement for public authority shall be in writing and shall be deemed to have been properly given, rendered or made when hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid and deposited with the United States Postal Service, properly addressed to the parties at the addresses set forth at the beginning of this Lease.

Tenant hereby designates and appoints as its agent to receive notice of all dispossession or distraint proceedings the person in charge of or occupying the Premises at the time such notice is given, or, if there is no such person, then such service of notice may be made by attaching it to the main entrance of the Premises.

23. **Severability.** If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby, unless the total rent payable hereunder is thereby decreased, in which event Landlord may terminate this Lease.

24. **Waiver of Rights.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance with the terms and conditions hereof, and no custom or practice of the parties at variance with the terms hereof, constitute a waiver of Landlord's right to demand exact

compliance with the terms hereof, and no custom or practice of the parties at variance with the terms hereof, constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

25. **Time of Essence.** Time is of the essence of this Agreement.

26. **Definitions.** As used herein, the term "Landlord" shall include first party, its representatives, assigns and successors entitled to premises. "Tenant" shall include second party, its representatives, and if this Lease shall be validly assigned or sublet, shall also include Tenant assignees or sublessees, as to premises covered by such assignment or sublease. "Landlord" and "Tenant", include male and female, singular and plural, corporation, partnership or individual as may be applicable to the parties.

27. **Sale of Premises.** If 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. If Landlord sells the Premises, its liability for the performance of its agreements in this Lease will end on the date of the sale of the Premises and Tenant will look solely to the purchaser for the performance of those agreements.

28. **Entire Agreement.** This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not contained herein shall be of any force or effect. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to writing and properly executed by both parties. This Lease shall be governed by the laws of the State of South Carolina.

29. **Rights of Huddle House, Inc.** Landlord and Tenant acknowledge that the Premises will be used for the operation of a restaurant franchised by Huddle House, Inc. The parties agree that representatives of Huddle House, Inc. shall have the right to enter the Premises in accordance with any franchise agreement and to take any actions necessary to protect the trademarks, service marks, associated logos and symbols owned by Huddle House, Inc. Landlord and Tenant each agree to execute such further agreements or documents which may be requested by Huddle House, Inc. for the operation

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

30. **Trademarks.** Landlord disclaims, repudiates, and denies any ownership, right, title or interest in and to any logos, service marks or trademarks of Huddle House, Inc.

31. **Prohibition of Competitive Use.** Landlord shall not use or permit any other person or business enterprise to use any portion of the structure, development or project of which the Premises is a part, for any of the same uses and purposes for which Premises is leased to Tenant. This prohibition of competitive use includes, without being limited to, the display or offering for sale at wholesale or retail of any food or beverage or any of the same or similar goods to be displayed or sold by Tenant in the ordinary course of the use of the Premises as herein contemplated.

32. **Leasehold Improvements.** Tenant may, from time to time, make or cause to be made such leasehold improvements to Premises as Tenant deems necessary, useful or appropriate to the use which it intends to make of the Premises, subject to Landlord's prior approval, which shall not be unreasonably withheld.

33. **Signs.** Landlord does hereby generally consent to the erection by Tenant of a sign or signs on the Premises and the exact locations of same being left to the discretion of Tenant. Landlord does hereby specifically consent to the placing of a sign or signs on the building on the Premises, the exact locations of same being left to the discretion of Tenant, subject to municipal regulations and zoning.

34. Short Form Lease. Landlord agrees to execute a short form lease as may be desired by Tenant subsequent to the execution of this lease for the purpose of recording the short form lease rather than this lengthy document.

35. Environmental Representations and Warranties. With respect to the following environmental matters, Landlord represents and warrant to Tenant as follows:

a. Landlord has not received or is not aware of any current or previous owner of the Premises receiving a summons, citation, notice, letter or other communication, written or oral, from any federal or state environmental agency or other public agency concerning intentional or unintentional actions or omissions on the part of Landlord or previous owners which resulted in the release onto or into the soil, surface water or ground water of the Premises of Hazardous Materials (as that term is hereinafter defined), or has been subject to or threatened with any governmental or citizen enforcement action with respect to the Premises, or any facilities or operations thereon.

b. The term "Hazardous Material" as used herein shall be materials defined as hazardous waste or substances under the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. Sec. 9601 *et. seq.*, Resource Conservation and Recovery Act, 42 U.S.C. 6903 *et seq.*, or the Georgia Hazardous Waste Management Act, O.C.G.A. Sec. 12-8-60 *et. seq.*

c. To the best of Landlord's knowledge, the Premises are free from Hazardous Materials and does not constitute an environmental hazard of any type under and does not violate any local, state or federal environmental law or regulation; and, there is no proceeding filed in any court with respect thereto, and no lien has been imposed on the Premises by any governmental agency in connection with the presence on or nearby the Premises of any Hazardous Materials.

d. To the best of Landlord's knowledge, there are within or upon the Premises no landfills, injection wells, underground storage areas or tanks or other man-made facilities which may have accommodated Hazardous Materials. Neither Landlord nor any third parties, to the best of Landlord's knowledge, have otherwise dumped, discharged, buried or otherwise placed waste or Hazardous Materials on the Premises, including the soil, surface water and ground water. To the best of Landlord's knowledge, there are no buried tanks, storage vessels, drums or containers located on the Premises. To the best of Landlord's knowledge, there is no evidence of leaking, spillage or accidental release of any Hazardous Materials onto or into the Premises.

36. **Covenant of Quiet Enjoyment.** Tenant, upon payment of the rent herein reserved and the performance of all of the terms of this Lease, 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 or from any other person or entity claiming through Landlord.

37. **Lease Contingent.** This Lease is contingent on:

a. Huddle House, Inc. ("HHI") entering into a Franchise Agreement with Lessee to operate a Huddle House® restaurant at the Premises.

b. 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 fully set forth in the Collateral Assignment of Lease.

In the event that the conditions set forth in this paragraph are not met, the Tenant may declare this Lease null, void and of no force and effect between the parties hereto.

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

Signed, sealed and delivered
in the presence of:

x Brenda Summers
Witness

LANDLORD:

T&Z Associates,
a South Carolina general partnership

By: [Signature] (L.S.)

By: President (L.S.)

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

TENANT:

Fine Foods, LLC

By: Mr. Jamie S. Rolan (L.S.)

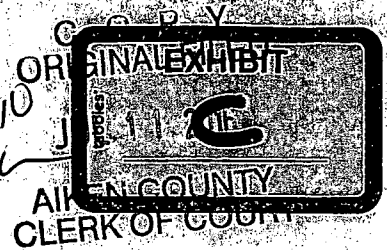
As its: President

EXHIBIT 1

All that certain piece, parcel or lot of land, situate, lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less.

This being the same property conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1989 and recorded January 5, 1990 in Deed Book 1145 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina.

Tax Parcel No. 20-094-01-004.



COLLATERAL ASSIGNMENT OF LEASE

FOR VALUE RECEIVED, the undersigned, FINE FOOD, LLC, a Georgia limited liability company, ("Assignor") hereby assigns, transfers and sets over unto HUDDLE HOUSE, INC., a Georgia corporation ("Assignee") all of Assignor's right, title and interest as tenant in, to and under those certain leases, identified on Attachment 1 attached hereto, (the "Leases") respecting premises commonly known as 3602 Richland Avenue, Aiken, Aiken County, South Carolina 29801 ("Premises") said Premises being more particularly described on Exhibit "A", attached hereto. This Agreement is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment of Lease unless Assignee shall take possession of the Premises demised by the Lease pursuant to the terms hereof and shall assume the obligations of Assignor thereunder. Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to have assumed any obligations of Assignor, except for the payment of the monthly rental payments set forth in the Lease during such period of occupancy by Assignee.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein and that Assignor has not previously, and is not obligated to, assign or transfer any of its interest in the Lease or the Premises demised thereby.

Upon a default by Assignor under the Lease or under the Franchise Agreement for a Huddle House Unit between Assignee and Assignor (the "Franchise Agreement"), or in the event of a default by Assignor under any document or instrument securing said Franchise Agreement, Assignee shall have the right and is hereby empowered to take possession of the Premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor shall have no further right, title or interest in the Lease.

Assignor agrees it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Through the term of the Franchise Agreement and renewals thereto, if any, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that said option must be exercised, unless Assignee otherwise agrees in writing. Upon failure of Assignee to otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as stated herein, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal.

EXHIBIT "A"

All that certain piece, parcel or lot of land, situate, lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less

This being the same property conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1989 and recorded January 5, 1990 in Deed Book 1145 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina

Tax Parcel No. 20-094-01-004

IN WITNESS WHEREOF Assignor has signed, sealed and delivered the within Collateral Assignment of Leases this the 28th day of July, 2011.

ASSIGNOR

FINE FOOD, LLC, a Georgia limited liability company

BY: Mary Jane Robertson
MARY JANE ROBERTSON, Member

ASSIGNEE

HUDDLE HOUSE, INC.,
a Georgia corporation

BY: Thomas P. Cossuto
THOMAS P. COSSUTO, Chief Financial Officer

ATTEST: Claudia Koeppel Levitas
CLAUDIA KOEPPEL LEVITAS, Secretary

{CORPORATE SEAL}

ATTACHMENT 1
SCHEDULE OF LEASES

1. Lease dated May 31, 2011 by and between T & Z ASSOCIATES, a South Carolina corporation, as Lessor and FINE FOOD, LLC, as Lessee.

ATTACHMENT 2
CONSENT AND AGREEMENT OF LESSOR

The undersigned Lessor under the aforescribed Lease hereby:

(a) Agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;

(b) Agrees that Assignee shall have the right, but shall not be obligated, to cure any default by Assignor under the Lease within thirty (30) days after delivery by Lessor of written notice thereof in accordance with paragraph (a) above;

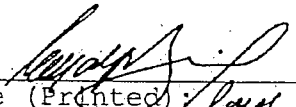
(c) Consents to the foregoing Collateral Assignment and agrees that if Assignee (or an affiliate of Assignee designated by Assignee) shall take possession of the Premises demised by the Lease and confirms to Lessor the assumption of the Lease by Assignee (or, if applicable, an affiliate of Assignee) as tenant thereunder, Lessor shall recognize Assignee (or, if applicable, an affiliate of Assignee) as tenant under the Lease; and

(d) Agrees that Assignee (or Assignee's designated affiliate) without the consent of Lessor may further assign or sublet the Lease to a person, firm or corporation who is a Huddle House franchise owner, or to an affiliate of Assignee.

IN WITNESS WHEREOF Lessor and Assignee has signed, sealed and delivered the within Collateral Assignment of Leases this the 27 day of July, 2011.

LESSOR

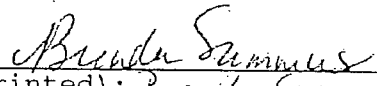
T & Z ASSOCIATES, a South Carolina
corporation *Partnership*

BY: 

Name (Printed): Royal J. Robbins Jr

Title: Partner

ROYAL J. ROBBINS, JR., President

ATTEST: 

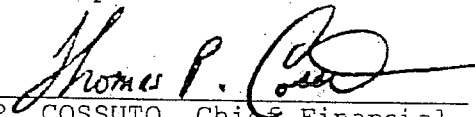
Name (Printed): Brenda Summers

Title: _____

(CORPORATE SEAL)

ASSIGNEE

HUDDLE HOUSE, INC.,
a Georgia corporation

BY: 

THOMAS P. COSSUTO, Chief Financial
Officer

ATTEST: 

CLAUDIA KOEPPLE LEVITAS, Secretary

{CORPORATE SEAL}

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Robert William Robertson,)
Plaintiff,)
vs.)
Huddle House, Inc.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2016-CP-02-01550

ANSWER AND AFFIRMATIVE DEFENSES

COPY
ORIGINAL FILED
AUG 22 2016 *Lab*

AIKEN COUNTY
CLERK OF COURT

NOW COMES THE DEFENDANT, Huddle House, Inc., by and through undersigned counsel, and for its answer and affirmative defenses to the Complaint of Plaintiff Robert William Robertson states as follows:

1. Defendant admits the allegations of paragraph 1 of the Complaint.
2. Defendant admits that it is a Georgia corporation and admits that it is registered to do business in South Carolina and denies the remaining allegations of paragraph 2 of the Complaint.
3. Defendant admits the allegations of paragraph 3 of the Complaint.
4. To the extent that paragraph 4 of the Complaint states a legal conclusion, no response by Defendant is required.
5. Defendant admits that Exhibit B to the Complaint is a true and correct copy of the lease between T&Z Associates and Fine Food, LLC dated May 31, 2011 that was assigned to Plaintiff (the "Lease"), asserts that the Lease speaks for itself, and denies the allegations contained in paragraph 5 of the Complaint to the extent they are inconsistent with the express terms of the Lease. Defendant is without knowledge or information sufficient to form a belief as

COPY

to the truth of the remaining allegations of paragraph 5 of the Complaint and, on that basis, denies those allegations.

6. Defendant admits that Exhibit C to the Complaint is a true and correct copy of a Collateral Assignment of Lease between Fine Food, LLC and Defendant (the "Collateral Assignment"), asserts that the Collateral Assignment speaks for itself, and denies the allegations contained in paragraph 6 of the Complaint to the extent they are inconsistent with the express terms of the Collateral Assignment, and denies the remaining allegations of paragraph 6 of the Complaint.

7. Defendant asserts that the Lease and the Collateral Assignment speak for themselves, denies the allegations contained in paragraph 7 of the Complaint to the extent they are inconsistent with the express terms of the Lease and Collateral Assignment, and denies the remaining allegations of paragraph 7 of the Complaint.

8. Defendant asserts that the Lease and the Collateral Assignment speak for themselves, denies the allegations contained in paragraph 8 of the Complaint to the extent they are inconsistent with the express terms of the Lease and Collateral Assignment, and denies the remaining allegations of paragraph 8 of the Complaint.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 9 of the Complaint and, on that basis, denies those allegations.

10. Defendant asserts that the Lease and the Collateral Assignment speak for themselves, denies the allegations contained in paragraph 10 of the Complaint to the extent they are inconsistent with the express terms of the Lease and Collateral Assignment, and denies the remaining allegations of paragraph 10 of the Complaint.

11. To the extent that paragraph 11 of the Complaint states a legal conclusion, no response by Defendant is required. To the extent Paragraph 11 contains any factual allegations, Defendant asserts that the Lease speaks for itself, and asserts that the plain meaning of the Lease is contrary to the meaning that Plaintiff has attached to the Lease.

12. To the extent that paragraph 12 of the Complaint states a legal conclusion, no response by Defendant is required. To the extent Paragraph 12 contains any factual allegations, Defendant denies those allegations.

13. To the extent that paragraph 13 of the Complaint states a legal conclusion, no response by Defendant is required. To the extent Paragraph 13 contains any factual allegations, Defendant asserts that the Lease speaks for itself, denies the allegations contained in paragraph 13 of the Complaint to the extent they are inconsistent with the express terms of the Lease, and denies the remaining allegations of paragraph 13 of the Complaint.

14. To the extent that paragraph 14 of the Complaint states a legal conclusion or serves as notice to Defendant, no response by Defendant is required. To the extent Paragraph 14 contains any factual allegations, Defendant asserts that the Lease speaks for itself, denies the allegations contained in paragraph 14 of the Complaint to the extent they are inconsistent with the express terms of the Lease, and denies the remaining allegations of paragraph 14 of the Complaint.

15. Defendant incorporates its responses to paragraphs 1 to 14 above as if fully set forth herein.

16. The allegations of paragraph 16 of the Complaint are in the nature of a prayer for relief, to which no response by Defendant is required. To the extent a response is required,

Defendant denies the allegations of paragraph 16 of the Complaint and denies that Plaintiff is entitled to any of the relief requested.

17. Defendant incorporates its responses to paragraphs 1 to 16 above as if fully set forth herein.

18. The allegations of paragraph 18 of the Complaint are in the nature of a prayer for relief, to which no response by Defendant is required. To the extent a response is required, Defendant denies the allegations of paragraph 18 of the Complaint and denies that Plaintiff is entitled to any of the relief requested.

The remaining allegations of the Complaint are in the nature of a prayer for relief, to which no response by Defendant is required. To the extent a response is required, Defendant denies the remaining allegations of the Complaint and denies that Plaintiff is entitled to any of the relief requested.

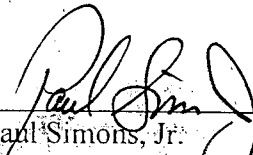
AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted.
2. The cause of action and claims for relief asserted in the Complaint are barred by the terms of the Lease.
3. The cause of action and claims for relief asserted in the Complaint are the subject of a pending action between the same parties involving the same claims in the Superior Court for Columbia County, Georgia.
4. The cause of action and claims for relief asserted in the Complaint are barred by the equitable doctrine of waiver.
5. The cause of action and claims for relief asserted in the Complaint are barred by the equitable doctrine of estoppel.

6. The ability of Plaintiff to cause the eviction of Defendant on thirty days' notice was argued in the Superior Court of Columbia County on August 17, 2016, and is awaiting the ruling of the Court.

PRAYER FOR RELIEF

WHEREFORE, Defendant demands entry of judgment in its favor against the Plaintiff denying Plaintiff's prayer for a Declaratory and an Order of ejectment; awarding HHI its costs in defending these claims; including its reasonable attorneys' fees incurred; and for such other and further relief as the Court may deem appropriate.



Paul Simons, Jr.
South Carolina Bar No. 76883
HULL BARRETT, PC
P.O. Box 517
Aiken, SC 29802

David E. Hudson (*to be admitted pro hac vice*)
HULL BARRETT, PC

P.O. Box 1564
Augusta, Georgia 30903-1564
Tel: (706) 722-4481
Fax: (706) 722-9779

August 22, 2016

Attorneys for Huddle House, Inc.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-02-01550

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6.

BY:

Title: Chief Executive Officer

Notary Public

8-13-2019



STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Robert William Robertson,)

Plaintiff,)

vs.)

Huddle House, Inc.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2016-CP-02-01550

CERTIFICATE OF SERVICE

COPY
ORIGINAL FILED

AUG 22 2016

AIKEN COUNTY
CLERK OF COURT

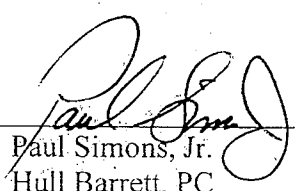
I, the undersigned, do hereby certify that on August 22nd, 2016, a copy of the following document in the above-captioned action:

1. Answer and Affirmative Defenses

was sent via U.S. Mail to the following recipient:

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

By: _____


Paul Simons, Jr.
Hull Barrett, PC
P.O. Box 517
Aiken, SC 29802

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

COUNTY OF AIKEN

ROBERT WILLIAM ROBERTSON,

Plaintiff,

-VS-

HUDDLE HOUSE, INC.,

Defendant.

CASE NO.:
2016-CP-02-01550

BEFORE: Honorable Anderson Griffith
DATE: Wednesday, November 23, 2016
LOCATION: Aiken County Courthouse
109 Park Avenue
Aiken, South Carolina
BEGINNING AT: 10:14 a.m.

APPEARANCES

Brad Brodie, Esq.
Smith, Massey, Brodie, Guynn & Mayes
210 Colony Parkway
Aiken, South Carolina 29802
REPRESENTING THE PLAINTIFF

David E. Hudson, Esq.
Hull Barrett
801 Broad Street, Suite 700
Augusta, Georgia
REPRESENTING THE DEFENDANT

ALSO PRESENT:

Paul K. Simon, Esq.
Hull Barrett
111 Park Avenue
Aiken, South Carolina 29801
REPRESENTING THE DEFENDANT

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REDIRECT EXAMINATION BY MR. BRODIE	19

EXHIBITS

NUMBER

DESCRIPTION

PAGE

Plaintiff's Exhibit A	Legal Description (1 page)	Premarked
Plaintiff's Exhibit B	Lease (16 pages)	Premarked
Plaintiff's Exhibit C	Collateral Assignment of Lease (7 pages)	Premarked
Plaintiff's Exhibit D	Deed to Real Estate (7 pages)	Premarked

LEGEND OF THE TRANSCRIPT

dashes [--]	intentional or purposeful interruption
[ph]	denotes phonetically written
[*]	As spoken

PROCEEDINGS

THE COURT: All right. Court reporter, you ready?

COURT REPORTER: Yes, sir.

THE COURT: All right. We're here on the case of Robert William Robertson versus Huddle House, Inc., 2016-CP-02-01550. Plaintiff is represented by Paul Simons, Jr., and David E. Hudson who are present. And the Defendant's represented by -- I'm sorry I got those names reversed. Plaintiff is represented by Brad A. Brodie. The Defendant is represented by Mr. Simons and Mr. Hudson. And you're here on a scheduled hearing this morning. Are there any preliminary matters from the Plaintiff for the Court to hear?

MR. BRODIE: Yes, Your Honor. Brad Brodie for Plaintiff Robert Robertson. Just a couple of things I guess to -- before we get started. Basically, you know, we filed a summons and complaint, served it by mail. Then we filed a proof of service. Paul Simmons filed an answer, we received, you know, it's a declaratory judgment action and for ejectment and Paul and I previously met and agreed to stipulate to a lot of things being, you know, admitted into evidence without any further authentication to speed things along. So we've got four exhibits that, you know, we would propose to just admit into evidence. Exhibit A, B, C and D.

MR. HUDSON: No objection, Your Honor.

THE COURT: Okay.

MR. BRODIE: And they may have some other exhibits. And we, also, stipulated to -- also, stipulated to the affidavit of Tyrone Counts and a couple of other attachments which would normally be hearsay, Your Honor, but we didn't feel like that, you know, that it mattered in the -- we feel the case is driven by the documents and not by what other people are, you know, saying and so forth.

THE COURT: Affidavit of Tyrone Counts?

MR. HUDSON: Yes, and, also, one of Mr. Robertson. Not -- not the Plaintiff Robertson, but Thomas Robertson. Those are two affidavits from the Defendant.

MR. BRODIE: And he -- he provided that to me yesterday and I have no objection to that either. I read over that.

THE COURT: It's stipulated to admission on those.

MR. BRODIE: So it's -- it's, Your Honor, that's -- there's -- it's really we're asking the Court to interpret a lease and an assignment of lease, collateral assignment of lease. And for a court order, you know, that -- determining that the -- the possession by Huddle House is as a month-to-month tenant and that, you know, we can terminate the lease and eject them from the property. Also, there's -- there's other litigation going on between these parties in Georgia, but this is just specifically dealing with this piece of real estate. I believe that's all, Your Honor.

Robert W. Robertson - Direct Examination
by Mr. Brodie

THE COURT: All right. Any preliminary matters from the Defendants?

MR. HUDSON: Your Honor, I submitted a provoc leasing application. I think it's always been accomplished and I appreciate the opportunity to appear on behalf of Huddle House. I've been working with them in the Georgia case so I knew more about it and so Paul is helping me in this part of it.

THE COURT: And Plaintiffs on witnesses, are we just I think one?

MR. BRODIE: Yes, Your Honor.

THE COURT: Okay. And given the affidavits submitted, any witnesses from Defendants?

MR. HUDSON: No, Your Honor.

THE COURT: All right. Nothing else then. We'll be ready to proceed. Plaintiff may call his first witness.

MR. BRODIE: Plaintiff calls Robert Robertson.

THE COURT: Sir, come right up here. Raise your right-hand for me and sit up here please.

(Whereupon, the witness was duly sworn)

WITNESS: Yes, sir.

THE COURT: Have a seat.

DIRECT EXAMINATION

BY MR. BRODIE:

Q. Please state your full name.

A. Robert W. Robertson.

Q. And what's your address?

A. 4508 -- excuse me. 2548 Cahaba Creek Court, Evans, Georgia 30809.

Q. And how long have you lived in this area?

A. I've lived in Evans my whole life.

Q. Your whole life. And what -- what business are you in, Robert?

A. I have restaurants, convenience store and I'm just starting up a ice water for Plant Vogel plant.

Q. What is your dealing on this property in Aiken? What's your involvement with the property in Aiken?

A. I own it or I purchased the property.

Q. I'm going to show you what's been marked -- what's been admitted into evidence as Plaintiff's Exhibit A. Is that the legal description for the property you purchased?

A. Can I get my glasses?

THE COURT: That's fine.

Q. Yes, sir. You probably don't know what a legal description is, but --

A. Yeah.

Q. That's the property you -- you purchased?

A. Yes, sir.

Q. And what year did you purchase it?

A. I've lost track of time now.

Q. 2011, does that sound right?

A. That sounds right.

Q. From T&Z Associates?

A. Yes, sir.

Q. All right. And thereafter a Huddle House was opened?

A. Yes. It was an existing Huddle House with a previous franchisee. My wife purchased the franchise from that franchisee. He's passed away now.

Q. And the deed I believe shows you paid \$508,000?

A. Yes, sir.

Q. From T&Z Associates? That's Exhibiting B.

A. Yes, sir.

Q. Okay. All right. So it was an existing Huddle House and then you took ownership of it subject to the lease that was --

A. Yes, sir.

Q. -- already in existence? Which is shown -- which is Exhibit B that you have there, correct?

A. Yes.

Q. And -- and you took -- you took ownership subject to the collateral assignment lease attached as Exhibit C; isn't that correct?

A. Yes.

Q. Now, you didn't -- you didn't execute any of these -- any of those Exhibits, Exhibit B or C. You just -- that was your

predecessor in title?

A. Yes.

Q. All right. But your -- but the tenant Fine Foods, LLC, are -- the owner of that is your wife Jane Robertson, correct?

A. Yes.

Q. Okay. So you were just the -- the landlord and she was the tenant?

A. Yes.

Q. Okay. And then the store operated for many years I suppose five years is that -- is that right?

A. Well, up until July of this past year.

Q. July of 2016?

A. Of '16, yes.

Q. All right. Thereafter, I guess the franchise agreement was terminated? Or you -- there's no -- there's no existing franchise agreement between your wife and Huddle House at this point?

A. Correct.

Q. That terminated on or about July was it?

A. Yes.

Q. All right. And then what's the condition of the property right now? What's going on right now?

A. Well, my wife had just spent roughly 200,000 two, two and a half years ago on remodeling up to the current specs for Huddle House. And when she opted not to go through with

this agreement because she felt like she's getting back in bed with the devil I reckon, she -- she decided -- she told Huddle House she wasn't gonna renew. So then she -- they offered her 40,000 for her 200 roughly thousand dollar investment she had just put in with the new looks on the walls and anyhow, new equipment, new booths. So she opted not to so she removed the stuff from the -- from the premises. Huddle House came took over and then that's when I served them this based on the month-to-month.

Q. Let's talk about that. In that Exhibit C, turn to Exhibit C. Okay. I know it's a page or two long, but read the portion of it for the Court about the month-to-month tenancy.

A. Any possession of the premises by signee shall be deemed to be under a month-to-month tenancy.

THE COURT: What page is that on please?

MR. BRODIE: That is page one of the collateral assignment Exhibit C. It's the bottom of the first paragraph.

THE COURT: Okay.

Q. Now, continue on. Read that from any possession all the way to the end of that sentence.

A. Okay. Any possession of the premises by signee shall be deemed to be under a month-to-month tenancy and assignee shall not be deemed to have assumed any obligation of

assignor except for the payment of the monthly rental payments sent forth in the lease during such period of occupancy by assignee.

Q. All right. And above that isn't it true that the assignee is described as Huddle House, Inc.?

A. Yes.

Q. A Georgia Corporation?

A. Yes, Sir.

Q. So what does that mean to you?

A. That means to me if they went in and ruined the business and -- or they could -- as a landlord tell me next month they're gone. They're out of here and I -- and I'd be stuck, but it, also, tells me I've got the right to give them a month-to-month lease.

Q. Have you signed -- have you signed any other document with Huddle House, Inc. concerning this location other -- that you're aware of?

A. Not that I'm aware of.

Q. The Defendant had -- had in their pleadings or affidavit had said that Fine Food gave you written notice that they were going to renew the lease for 60 months commencing June 1, 2016, and that was attached to the -- it's attached to an affidavit -- to Counts affidavit. It was -- do you recall that?

A. Yes.

Q. And did any written document get executed by you?

A. Not to my knowledge.

Q. And your wife didn't actually extend the lease, did she?

A. No. She decided against it.

Q. Because?

A. The litigation we have going forward just bad business partnership.

Q. And you have -- there's an extensive business relationship in Georgia, isn't there?

A. Yes.

Q. Between your wife and Huddle House?

A. Absolutely.

Q. I mean a long -- how many -- how many restaurants did she own over there?

A. Fourteen.

Q. And how many does she operate now?

A. Well, there's 14 not just in Georgia. They were in -- a lot -- the majority is in South Carolina.

Q. Okay.

A. So, but she's got five now.

Q. She's down to five?

A. Uh-huh (affirmative).

Q. And there's some sort of litigation back-and-forth that I don't know a whole lot about?

A. Yes, sir.

Q. That I guess Mr. Hudson and/or other lawyers are working on?

A. They got obtained.

Q. And who is the owner of Huddle House, Inc., now?

A. I'll be honest with you I -- I'm trying to remember. I don't know because I actually was a franchisee in '93, of Huddle House. Since then the original owner Ms. Sparks has sold out and I think we've been through three or four different ones. The last three I think are New York equity groups purchased and they bring in a whole new team. So we've seen a lot of people come and go at Huddle House.

Q. And so what were the -- what were the -- what was really aggravating your wife about this?

MR. HUDSON: Your Honor, I'm gonna object to the hearsay I did not hear it before. It didn't seem to be relevant, but it's now both hearsay and irrelevant what his wife -- what he says he thinks his wife thought about it.

THE COURT: And I'll sustain the objection as far as what his wife issues were. She's not gonna --

MR. BRODIE: Yeah. I hear ya.

Q. So is the condition of the building, it's currently unoccupied?

A. It's unoccupied since they'd taken over. I've looked, they've got a sign saying that it's closed due to -- I've got some pictures here I took on my phone that like I said due to future new construction which being -- it's their --

it's their new look. I don't know what more they've got to do. My wife had spent the money to redo it so. And the grass is high and the weeds is up. Leaves is all over. I mean it's...

Q. Turning back -- turn back to the lease which is Exhibit B. I want you to read paragraph 20. I just want to go through a couple of the pertinent paragraphs for the Court. Page ten.

A. Okay.

Q. Please read that paragraph 20.

A. Twenty?

Q. Yeah.

A. Holding over?

Q. Yeah.

A. If tenant remains in possession of the premises after the expiration of the term hereof, without a new written lease or written extension of the lease as provided herein tenant shall be deemed a tenant at sufferance. Tenant shall continue to pay the rent and additional charges provided in the lease. And there shall be no renewal or extension of this lease by operation of law.

Q. And you testified you haven't signed a written extension of the lease?

A. Yes.

Q. All right. Then I want you to read paragraph 28 for the

Court on page 12.

A. Entire agreement. This lease contains the entire agreement of the parties hereto and no representations, inducements, promises or agreements oral or otherwise between the parties not contained herein shall be of any force or effect. No subsequent authorization, amendment, change or addition to this lease shall be binding upon landlord and tenant unless reduced to writing and proper -- and properly executed by both parties. This lease shall be governed by the laws of the state of South Carolina.

Q. In conjunction with that they have attached -- well, there was a subsequent document done. That collateral assignment of the lease. It wasn't signed by you, but it was signed by your predecessor in title. But they've attached a franchise agreement to their -- to Tyrone Counts affidavit and you never signed that, did you at all? I mean --

A. No.

Q. -- you're not a party to that whatsoever?

A. No.

Q. And it's your contention that doesn't bind you at all to anything?

A. Right. Yes.

Q. And you're relying solely on the lease of this assignment of the lease?

A. Yes.

Q. And you want them out of your building?

A. Yes.

Q. So that you can either -- what --- what do you intend to do with it or do you know?

A. Hadn't decided yet. Probably make a restaurant out of it.

MR. BRODIE: Your Honor, I believe that's all, Your Honor.

MR. HUDSON: A few questions.

THE COURT: Okay. Cross-examination.

CROSS-EXAMINATION

BY MR. HUDSON:

Q. Mr. Robertson, is Huddle House still paying you the monthly rent?

A. Yes.

Q. Was it \$4200 a month?

A. Some -- that -- that sounds about right.

Q. Okay. And since your wife took a lot of equipment and fixtures out of the restaurant it's got to be renovated before it can be operated, isn't that right?

A. Well, as far as the construction part, they say construction I -- I just don't consider putting booths in they're -- they're -- they come preassembled.

Q. Well, it's gonna require booths. It's gonna require equipment. It's gonna require cooking equipment and so forth before it can be opened again, isn't that right?

A. Yes, sir.

Q. And it wouldn't make sense for them to spend that money doing all of those things if you think you have the right to kick them out in 30 days, would it?

A. That's right.

Q. Okay. Now, do you remember giving testimony in the case in Augusta in the Evans, in the Columbia County Superior Court, the case of Huddle House versus Mary Jane Enterprises and against you Robert Robertson? Do you remember giving a deposition under oath in that case?

A. I do.

Q. And I'm gonna give you a copy of it. And you can see on the front page -- if you look on the front page this is a -- supposed to be a transcript of the testimony you gave. And it lists the day of the testimony as -- maybe you can see it. Tell us the day you gave that testimony. You see it there?

A. Tuesday, 24th day of May.

Q. Of this year, 2016?

A. Yes.

Q. About four or five months ago, is that right?

A. Yes.

Q. And do you remember you swore to tell the truth in that deposition?

A. Yes, sir.

Q. Okay. Now, let me ask you this, who is Mr. Hayden Pace?

A. That's my wife's attorney.

Q. Okay. And if you will please turn to page 326 of your deposition. Right there in the last.

A. Okay.

Q. And you see at the top of the page these questions were asked to you by Mr. Pace, that's your wife's lawyer, is that right?

A. Yes.

Q. And at line ten he said, Mr. Reed asked you specifically in reference to the lease, which is Plaintiff's Exhibit 34, he asked whether that lease -- whether you had received a notice of renewal from my client Fine Food, L.L.C., and I

believe you testified that you had not. And it was your contention that the lease was going to naturally expire on May 31 of this year. Then he asked you isn't it true that you received a notice from me dated January 29, 2016, by hand-delivery of a renewal on behalf of Fine Foods extending the term of that lease for an additional 60 month period beginning June the first, does that refresh your memory? And what did you answer?

A. Yes.

Q. So, now, you did receive a notice from Mr. Pace, your wife's lawyer saying that she was renewing the lease; isn't that correct?

A. Yes.

Q. Okay.

MR. HUDSON: That's all I have for him, Your Honor.

MR. BRODIE: Just a --

THE COURT: Go ahead. Redirect.

REDIRECT EXAMINATION

BY MR. BRODIE:

Q. Mr. Robinson, subsequent to that was there anything ever executed between you and your wife extending the lease ever as we contend is required under the lease?

A. No.

Q. And your contention is regardless of that any possession by Huddle House, Inc. is on a month-to-month basis?

A. That -- that's the way I read this.

Q. Regardless?

A. Uh-huh (affirmative). Yes.

Q. Any possession?

A. Any possession.

Q. Okay.

A. They -- they wrote this list.

Q. That's right.

MR. BRODIE: Nothing further, Your Honor.

THE COURT: Anything else?

MR. HUDSON: Yes, Your Honor. On behalf of the --
Defendant --

THE COURT: Well, for this witness?

MR. HUDSON: Oh, no. I'm sorry, Your Honor.

THE COURT: That's all right. You can have a seat.

Thank you, sir.

WITNESS: Thank you.

THE COURT: Any Exhibits you need to leave up here.

MR. BRODIE: Yes, Your Honor.

THE COURT: Thank you. All right. Plaintiff's next witness?

MR. BRODIE: Your Honor, that's all our witnesses.

THE COURT: Any motions?

MR. BRODIE: I mean I can make a motion for directed verdict, Your Honor, that it's clear that based upon the --

the lease and the assignment of lease that we're entitled to terminate the lease because it's a Huddle House is in possession of it on a month-to-month basis. It was their document that, you know, that they had drafted and they had every opportunity to modify that language, but, you know, they did it I believe to protect themselves with -- you know, they can get out in a month. And -- and under that language the landlord can kick them out in a month. And there's been no other document executed by my client and, you know, we believe they're stuck with that language and it's clear that, you know, that it's a month-to-month. They're in possession under a month-to-month basis and that

we're entitled to terminate. And that's why we're here. We did this in an expedited fashion because the building is sitting empty. You know, if they want to maybe come in and repair it, but the building is sitting empty and that's why we did a DJ action and we expedited all this for both parties sake. They have been paying the rent, but our contention is this is a month-to-month lease at this point. Nothing else has been executed and we'd ask you to direct a verdict in our favor for, you know, that it's a -- declared a month-to-month tenancy and then eject them out with 30 days notice. That's all.

THE COURT: All right. Well, I'd have to consider that in light of most favorable to the opposed party and I hadn't heard from them yet. I'll hold off on making -- I'll let you renew that at the end of the evidence if you wish to. Any motions from the defense?

MR. HUDSON: Your Honor, I'd like to present argument on the evidence that we have in the record for -- in the record before the Court. And then make our motion after we -- after you've heard this argument.

THE COURT: Okay.

MR. HUDSON: I've provided a copy of this to Mr. Brodie. Let me give it to the Court. This is -- this shows an argument I'm going to make and it certainly helped me and perhaps the Court can follow along in this way. Your Honor,

these facts that I'm gonna talk about are undisputed really. The lease, the base lease was executed on May 31, 2011. And it was executed by T&Z as the owner landlord and Find Food which is a company owned by Mr. Robertson's wife Jane. And what they've overlooked are some key provisions in that lease. It states in the first bullet point that a Huddle House Restaurant is to be operated there. It had an initial 60 month term and then it has an option to renew for two additional 60 month terms and after that ten more years. And I've put the paragraphs of the lease -- the lease itself these perfect provisions are in tab one if you -- if you want to look at them later or now. And then the important point, Your Honor, is this fourth bullet point. The

landlord agreed to the assignment of the lease without the landlords consent at any time. It doesn't take any writing signed by the landlord. He gets no say in it. And I highlighted in yellow the actual language. Paragraph 29. Landlord and tenant acknowledge that the premises will be used for the operation of a franchise restaurant by Huddle House, Inc. Landlord does hereby agree that the tenant may at any time with or without the consent of the landlord sublease or sign its interest, its rights, its privilege, and obligation arising out of this lease contract to any other person or persons provided the tenant obtains a written approval of Huddle House. Not of the landlord, but

of Huddle House. And then it says in the event that Huddle House is -- becomes a tenant hereunder such written approval shall not be required. So the landlord doesn't have any say on the assignment. He just gets notice and it's automatic. And then the last bullet point about the lease references paragraph 27. All of the lease terms are binding on the subsequent purchase of the property. So when the Plaintiff Mr. Robertson bought the property he bought it subject to all the terms of this lease. Then going to the other facts Mr. Robertson bought this property three years later on May 14, 2014, and that's shown by his Plaintiff's Exhibit D. That was the date that he bought it. In January of 2016, Huddle House requested that Fine Food exercise the right to renew the lease. Then on the next page Fine Food gave written notice to Bob Robertson of the election to renew the lease for 60 -- 60 months. And that's shown by Exhibit 4 to the Counts affidavit. That's a letter from Ms. Robertson's lawyer. In this Mr. Robertson just talked about today. He said, yeah, I got that notice. That's all it took to renew the lease. He didn't have to sign it. He didn't have to approve it. He got notice and the lease automatically renewed. Then through March and May there was negotiation letters back and forth as to whether or not Mrs. Robertson the owner of Fine Food would renew. And, finally, if you look down at June 14, 2016, her lawyer gave notice that Ms.

Robertson would not renew or extend the franchise and wanted to know when she could hand it over. And on July 14, 2016, Mrs. Robertson the owner of that Fine Food, the tenant surrendered the restaurant keys and possession of the restaurant to Huddle House. So, Huddle House is in possession of the restaurant, but it suspended its upgrade and repairs because it wouldn't make sense to spend all that money now and be kicked out in 30 days. Your Honor, if you'll go to page four this lawsuit comes down to your interpretation of two documents. One is the franchise agreement, which we've attached as tab two, and one is a collateral assignment of lease which is tab three. May have overlooked the franchise agreement. This is the agreement

between Ms. Robertson the owner of Fine Foods and Huddle House. In 3C it says in the event that operator does not elect to exercise its option to renew the company may elect to exercise its options. And if the premises are owned or leased by the operator, and these premises were leased by Ms. Robertson's company, it may exercise the options under terms and conditions of paragraph 15 below. And we've highlighted paragraph 15B and Huddle House had the option upon expiration of termination to succeed to the lease that Ms. Robertson and her company Fine Foods had with the landlord. That, Your Honor, we contend is the operative agreement. She let the franchise expire. Huddle House

exercised its option under the franchise agreement to step in and -- as the lessee and to operate the restaurant. Now, that brings up the document that the Plaintiff relies on. It's called a collateral assignment of lease and it's attached as tab three. To understand the assignment of lease, Your Honor, you have to go to the second paragraph that we've highlighted there on page four. It says upon a default by the assignor, and that's the franchisee, that would be Ms. Robertson's company, if she defaults under the lease or under the franchise agreement or in the event of default by the assigned or under any other document then Huddle House, the assignee, shall have the right and is hereby empowered to take possession of the premises demised by the lease. So this collateral assignment of lease is something that operates if there's been a default by the tenant, Fine Foods, Ms. Robertson. That's when it triggers. And then you go up to the first paragraph and it says that -- it talks about the assignee taking possession of the premises demised by the lease pursuant to the terms hereof. You'll see paragraph five it says pursuant to the terms hereof. That shall be deemed a month-to-month tenancy. Well, the reason that doesn't apply, Your Honor, Mrs. Robertson never defaulted. Her company never was declared in default. She just let the franchise expire. So this collateral assignment of lease for the 30-day, month-to-

month tenancy never went into operation. It only applies, according to this second paragraph, upon a default by the assignee. She never defaulted. She just let the franchise agreement expire by its terms. And when that happens what happens to the lease is governed by the franchise agreement which is tab two attached to this. And you can have -- you'll have it to look at and see. And when it just expires by its own terms then Huddle House has the right to step in and assume the lease. If she owned the property they'd have to pay her for it. In this case she didn't own the property she just had a tenancy and Huddle House picked it up and is assuming all of her obligations by paying the -- paying the rent. And so that's -- that's why Huddle House is entitled

to stay on the premises for the term of this renewal and maybe in the future if they want to renew, again. The last thing I want to say is in my time, Your Honor, is on page five. We've highlighted some of the provisions of contract law that apply. Written contracts are to be construed by the Court. The Bluffton Town Center case, then the cases say the purposes of contract instruction rules are to ascertain the intention of the parties from the contents of the entire document and not from any particular vision within the contract. That's the Koon case and going down to the DOT case, ascertain and give effect the intention of the parties. Construction of a clear and unambiguous contract

presents a question of law for the Court and the Court must be -- construe it according to the terms the parties have used, taken and understood in a plain and ordinary popular sense. And so, Your Honor, in all due respect to the Plaintiff that the collateral assignment of lease as you will see from the plain language of that short document only applied if there was a default by the tenant. Ms. Robertson's company never defaulted. She just let the franchise expire. And under the franchise agreement, which we've attached as tab two, under the franchise agreement Huddle House has exercised its option to take over the lease which had been extended once Ms. Robertson's lawyer gave notice to Mr. Robertson. And that's why, Your Honor, Huddle House is entitled to continue to occupy the premises, pay the lease amount and then come in and renovate it and get it operating, again. Unless the Court has any questions of the Defendants that's our position.

MR. BRODIE: All right. Your Honor, I just have a couple, in response to that.

THE COURT: Okay.

MR. BRODIE: And we hear what he's saying, but under -- which the paragraph 28 which I have read, the entire agreement was is this lease not the franchise agreement. We're not bound by one syllable of it as far as I'm concerned. Not a -- not a piece of it, whatsoever. There's

nothing ever signed by my client binding us to any part of that. And then the -- under, like you said, under the law the plain and popular use of the language in this collateral assignment, you know, our position -- it doesn't required default for this to take effect. These are the terms of the agreement that were signed by the landlord and the tenant. And it clearly says any -- it says any possession of the premises by the assignee shall be deemed to be under a month-to-month tenancy. And that, that's what it says. That is the language they used and -- and they drafted this. They drafted this document. Their corporate lawyers, whatever, way back when and made everybody sign it and they're stuck with it. And they could have easily put

another term in there, another paragraph saying, but, you know, unless we take possession under the franchise agreement. Well, that's not what they said. They said any possession is under a month-to-month tenancy. And so they're -- our position is we're -- they're stuck with the lease. We can't look at franchise agreement as far as we're concerned. And then they're stuck with this language and there was no written extension. There was just a letter from a lawyer. There was no written extension between Fine Food and my client at all. And even if there was Huddle House, when they're in possession, it's a month-to-month tenancy. That's the way we read it. And that's our

argument and our closing as well.

THE COURT: What is the Plaintiff's contention on what would have to be submitted for an extension?

MR. BRODIE: Their contention is all they had to do was send that letter, that letter from the lawyer. That's their contention.

THE COURT: Right. What's the --

MR. BRODIE: Oh, what's our contention?

THE COURT: Yeah.

MR. BRODIE: Our contention is that it require a written document signed by the parties extending it. And even if they did once they took possession they're stuck with a month-to-month tenancy, you know, under that signed lease. And they did it for their protection so they can just go in there and if they were on the other side they'd just show up and send us a letter saying, hey, we're moving out in 30 days. That's what they'd do. I mean they just for whatever reason they put that language in there and they're stuck with it. They -- they could have easily craft, you know, crafted it a little differently just like we do deeds. You know, if you put -- make one joint tenancy you've got to put certain language or if you do tenants in common and they messed up or -- or -- or they messed up or that's what they intended at the time, but it says any possession. And to me that means whether it was under --

under the lease, the franchise agreement or for whatever reason that -- that's what it says. The plain meaning to me is that they go -- we're entitled to --

MR. HUDSON: Your Honor, if you'd look at tab one that

the bottom of page 2 you see section 3.2 renewal of terms?

THE COURT: Yes, sir.

MR. HUDSON: And it says the tenant's not in default that you have the right to extend for two additional 60 day periods. And then look at the next line. Written notice of tenants election to exercise his option shall be given to

the landlord not less than three months prior to the termination provided or to date of termination of any

renewal or extended period hereof. So Plaintiff's argument that he had to sign something agreeing to the renewal is just wrong. The lease says it renewed upon getting written

notice of the renewal which he admitted today that he had received from his wife's lawyer. So that argument about the agreement not being in writing is just not correct because

here it is in -- it is in the lease agreement that he took over when he bought the property subject to this lease. And then this 30-day period see in that collateral

assignment of lease doesn't even apply unless there's been a default. And that's clear on the fact of the document and we hope the Court will construe that and say that collateral

assignment of lease is really not applicable in this situation. What is applicable here is the franchise agreement. And the landlord doesn't get any say so. He agreed in paragraph 29 of the lease that the tenant had the right without his agreement to sign the lease for anyone he chooses. And she assigned it to the Huddle House. So those are the issues we're giving, Your Honor. And I think you've got to read the franchise agreement provisions and then read the collateral assignment of the lease and decide which one -- which one applies.

THE COURT: All right. Anything else from Plaintiff?

MR. BRODIE: Your Honor, we're both smart lawyers here and so are you and there are conflicting provisions and it's not clear -- it's not clear and that the provisions he said -- those other provisions that require things in writing. This lease wasn't exactly, you know, as good as maybe it should have been. It's -- there are conflicting provisions and we believe our interpretation is correct of -- of the document. And that's it. I mean it's -- it's not -- I believe they're just stuck with that language in the collateral assignment and there is no written, you know, there wasn't a written extension and he's not bound by that franchise agreement. That -- that's it. The same things were said a couple of times over. It's -- it's up to your -- your interpretation.

THE COURT: All right. Well, based on what's been submitted any motions that have been made or pending and I realize some of those arguments, some may be considered in a motion. I'm going to decline any motions at this point because I'm gonna have to, obviously, this is a document driven case, I'm gonna have to review those documents and then the parties arguments and reach a decision on that. So to the extent that the Plaintiff made a directed verdict I would deny that at this time and consider the evidence that's been submitted. I will take in defense of what's been provided as more of an argument rather than a motion; is that correct?

MR. HUDSON: Well, I guess it's an argument to deny their request to declaratory judgment --

THE COURT: Yeah.

MR. HUDSON: -- and asking you to interpret the lease so that the Huddle House may stay there.

THE COURT: Okay. And I agree that's -- on both sides that's what I've gotta do. I've got to interpret the language in there and each argument and decide the result on declaratory judgment. I realize the quicker the better in this matter given the positions of the parties and so I'll try and move fairly promptly on this and -- and get a decision for the parties after I review all the documents. All right. Anything else from Plaintiff?

MR. BRODIE: Have a Happy Thanksgiving.

THE COURT: Same to y'all. Anything else from Defendant?

MR. HUDSON: Same to you, Your Honor.

THE COURT: All right. That will conclude the hearing then. Thank you.

*

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(Whereupon, the hearing concluded at 10:55 a.m.)

CERTIFICATE

STATE OF SOUTH CAROLINA

I hereby certify that the foregoing transcript consisting of page number 1 through 33 is a true and correct transcript of the proceedings held before me; that said proceeding was reported by method of voice writing.

I further certify that I am not kin or counsel to the parties in the case, am not in the regular employ of counsel or said parties, nor am I otherwise interested in the results of said case.

In Witness whereof, I have hereunto set my hand this
3rd Day of May, 2017.



Valerie T. McFarland, CVR, CCR
Notary Public for South Carolina
My Commission Expires: September 17, 2020

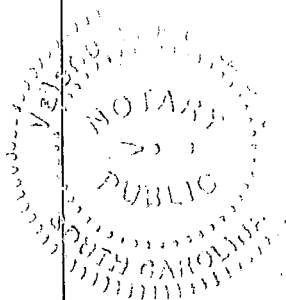


Exhibit A

2016CPO201550

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Aiken County
CLERK OF COURT

EXHIBIT "A"

All that certain piece, parcel or lot of land, situate, lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1962, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less

This being the same property conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1989 and recorded January 5, 1990 in Deed Book 1145 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina

Tax Parcel No. 20-094-01-004

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Exhibit B

This document was received by the Clerk of Court for the County of Aiken, South Carolina, on 05/27/2011 at 10:00 AM. The fee for this filing was \$15.00. The fee for this filing was \$15.00. The fee for this filing was \$15.00.

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

LEASE

THIS AGREEMENT OF LEASE, made as of the 21st day of May, 2011, by and between T&Z Associates, a South Carolina general partnership, whose address is 121 Greenville Street, S.W., Aiken, South Carolina 29801, (hereinafter called "Landlord") and Fine Food, LLC, a Georgia limited liability company, whose address is 2548 Cahaba Creek Court, Evans, Georgia 30809 (hereinafter called "Tenant").

WITNESSETH:

1. Premises. The Landlord, for and in consideration of the rents, covenants, agreements, and stipulations hereinafter mentioned, and contained, to be paid, kept and performed by Tenant, has leased and rented, and by these presents does lease and rent unto the said Tenant, and said Tenant hereby agrees to lease and hire upon the terms and conditions the real property, building (including all equipment, fixtures, signs and furnishings located therein) and other improvements known under the present system of numbering in the City of Aiken, South Carolina as 3600 Richland Avenue, West, Aiken, South Carolina 29801 and more particularly shown and described on Exhibit 1 attached hereto and made a part hereof (the "Premises").
2. Option to Purchase Premises.
 - 2.1 Grant. Landlord grants Tenant the option to purchase the Premises at any time during the Lease Term (as defined below) and any extended term. Tenant must exercise this option, if at all, by written notice, which must state a closing date no more than one hundred twenty (120) days after the date of such notice. This option may be assigned apart from this Lease.

2.2. Conditions. This option is conditioned upon Tenant not being in default of the payment of Rent either at the time of its exercise of this option or the time of closing of the purchase transaction.

2.3. Purchase Price. At closing, the purchase price will be payable in cash or certified funds in the amount of \$508,650.00 (until May 31, 2013), which amount represents the total amount of the costs of construction of the improvements on the Premises, plus ten (10%) of said amount, plus \$100,000.00. Beginning on June 1, 2013, and throughout the duration of the Lease Term, the purchase price shall be established by the mutual agreement of Landlord and Tenant.

2.4. Closing. At closing, Landlord will convey a marketable title to the Premises to Tenant by general warranty deed, subject only to those exceptions or matters of record as are acceptable to Tenant.

3. Term

3.1. Initial Term. Except as hereinafter provided, Tenant takes and accepts the Premises from Landlord upon the terms and conditions herein contained, and in their present condition and as suited for the use intended by Tenant, to have and to hold the same for the Lease Term, unless this Lease terminates earlier. The term of this Lease shall be five (5) years commencing on June 1, 2011, and ending at 11:59 p.m. on May 31, 2016, unless earlier terminated pursuant to this Lease (the "Lease Term").

3.2. Renewal Terms. If Tenant is not in default hereunder, it shall have the right to renew and extend this Lease for two (2) additional sixty (60) month periods, upon the same terms and conditions as herein stated. Written notice of Tenant's election to exercise this option shall be given to

Landlord not less than three (3) months prior to the date of termination provided or the date of termination of any renewal and extended period hereof.

3.3: Option to Extend Term. So long as Tenant is not in default under Paragraph 17 of this Lease, at the time of exercise of this Option, Tenant shall have the option to extend the Lease Term for an additional period of ten (10) years on such terms, covenants, and conditions as the parties may agree. Tenant shall exercise its option to extend the Lease Term by giving Landlord written notice at least ninety (90) days but not more than two hundred seventy (270) days prior to expiration of the initial Lease Term.

4. Rent.

4.1 The rent ("Rent") for this Lease shall be as follows:

\$4,200.00 for years one through five;

\$4,410.00 for years six through ten; and

\$4,640.00 for years eleven through fifteen

payable as hereinafter described. Tenant shall pay to Landlord, promptly on the first day of each month in advance during the Term, without notice, demand, abatement, deduction or set-off in lawful money of the United States of America, at the office of Landlord or to such other person and/or place as Landlord may have from time to time designated in writing, the rent as established by this Section 4.1.

4.2 In addition to the Base Rent, during years six through fifteen of the Term (if extended by Tenant per Section 3.2), Tenant will pay to Landlord Percentage Rent equal to three percent and one-half (3.5%) of the amount of Tenant's Gross Sales which exceed \$48,000.00 per month. Beginning within ten (10) days after the month in which the Lease Term commences and continuing within ten (10) days after each month during the Lease Term and extension thereof, Tenant will furnish to Landlord a

- 3 -

statement of Gross Sales during the preceding month and Tenant will pay to Landlord the amount of Percentage Rent due under this Paragraph 4.2 for the preceding month. The term *Gross Sales* means the actual sales price of all food and beverage sold at the restaurant located on the Premises, less (i) any sales or excise tax collected and paid to any governmental agency or authority; (ii) cash refunds to customers on transactions previously included in Gross Sales, and (iii) receipts from cigarette machines, jukeboxes, video games, or any other vending machines. There will be no Percentage Rent payable to Tenant during the first five (5) years of the Lease Term.

4.3 No payment by Tenant or receipt by Landlord of a lesser amount than the correct Rent or additional charges shall be deemed to be other than a payment on account, nor shall any endorsement of statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or as provided by law.

5. Utility Bills and Services. Tenant shall pay all utility bills, including but not limited to electric, water, natural gas, telephone and trash pick-up and all other charges for services rendered to the leased Premises and any other charges incurred or caused by the operations of Tenant or used by Tenant in connection therewith. Landlord, upon request of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

6. Use of Premises. Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass.

7. Repairs by Landlord. Landlord agrees to keep in good repair the roof, foundations, and exterior walls of the Premises and underground utility and sewer pipes, interior and exterior structural components, driveways and parking areas. Tenant shall promptly report in writing to the Landlord any defective condition known to it which Landlord is required to repair.

- 4 -

8. Maintenance and Repairs by Tenant. Except as provided in Paragraph 7 above, Tenant shall keep and maintain, at its expense, the Premises.

9. Taxes. Tenant will pay all real property taxes levied or assessed against the Premises during the Lease Term. Tenant will pay all taxes upon, measured by, or reasonably attributable to the operation of Tenant's business or the costs or value of Tenant's equipment, furniture, fixtures, and any other personal property located in the Premises. Nothing contained in this Lease shall require the Tenant to pay any franchise, corporate, estate, inheritance, succession, capital levy or transfer tax of the Landlord or any income, profits or revenue tax or any other tax, assessment, charge or levy upon the rent payable by the Tenant under this Lease. At its sole cost and expense, and without right of contribution or offset from or against Landlord, Tenant shall have the right to contest by appropriate legal proceedings any real estate taxes, assessments, valuations or other charges imposed against the Premises, including the right to seek a reduction in the assessed valuation of the Premises.

10. Insurance. Tenant shall, at its expense, procure and maintain throughout the time that Lease is in force, the following insurance:

- (a) Comprehensive General Liability Insurance with combined single occurrence limit of not less than One Million Dollars (\$1,000,000.00).
- (b) Fire, and Extended Coverage Insurance covering the Premises and all leasehold improvements in the Premises and equipment, trade fixtures, appliances, furniture, furnishings, and personal property from time to time in, on, or upon the Premises. This insurance will be in an amount not less than the full replacement costs without deduction for depreciation.

Tenant shall furnish Landlord with certificates of such insurance naming Landlord as an additional insured. Each policy shall include a clause whereby the insurance company agrees to provide Landlord with

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at least thirty (30) days notice prior to cancellation of said policy. Tenant shall pay promptly, when due, all premiums owed for insurance and to furnish receipts or satisfactory evidence of payment to Landlord upon request. Tenant further agrees to comply with all terms of said policies, including notification of the carrier of losses.

In the event of non-payment of premiums by Tenant, Landlord may, at Landlord's option, have the right to make said premium payments in the amount determined by Landlord, but in no event to maintain the policies in force for a period greater than the remaining term of the Lease. The premiums so paid by the Landlord shall become additional rent immediately due and owing from the Tenant to Landlord.

All insurance required by this Lease shall be secured by Tenant through such agent and/or companies as Tenant may select which shall be licensed with the State of Georgia Insurance Commissioner to do business within the State of Georgia and which company shall be acceptable to Landlord.

11. Destruction of or Damage to Premises. If Premises are damaged or destroyed by storm, fire, lightning, earthquake, or other casualty, then at the option of Landlord (a) this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between Landlord and Tenant as of that date or (b) Landlord will repair, rebuild and furnish the Premises as soon as practicable to substantially the same condition in which the Premises were immediately prior to such destruction. During the period of damage or destruction, the Rent shall abate in such proportion as Tenant's use of the Premises for its business has been impaired or destroyed. The rent abatement will end with the completion by the Landlord of such work, repair, or reconstruction as Landlord is obligated to do.

12. Indemnification. Tenant agrees to indemnify and save harmless the Landlord against all claims for damages to persons or property by reason of Tenant's negligent use or occupancy of the Premises, and all expenses incurred by Landlord because thereof, including attorney's fees and court costs. Landlord agrees to indemnify and save harmless Tenant against all claims for damages to persons

or property due to the sole negligence of Landlord and due to structural failure of the roof, walls, columns, beams or floor slab; provided however, that such structural failure is not the direct result of Tenant's activities or those of its employees, agents, invitees, licensees, or assignees; and further provided that Tenant has promptly notified Landlord of such defect or structural failure, if known to Tenant, as provided under Paragraph 7 of this Lease.

13. Compliance with Laws. Tenant shall give prompt notice to Landlord of any notice it receives of the violation of any law or requirement of any public authority, and at its expense shall comply with all laws and requirements of any public authorities which shall, in respect to the Premises or the use and occupation thereof, or the abatement of any nuisance, impose any violation, order or duty on Landlord or Tenant, arising from (a) Tenant's use of the premises, (b) the manner of conduct of Tenant's business or operation of its installations, equipment or other property therein, (c) any cause or condition created by or at the instance of Tenant, other than by the manner of Landlord's performance of any work for or on behalf of Tenant, or (d) breach of any of Tenant's obligations hereunder.

14. Eminent Domain. If the whole of the leased Premises or such portion thereof as Tenant determines will make the Premises unusable for the operation of a restaurant, be condemned by any legally constituted authority for any public use or purpose, then in either of said events, at the option of Tenant, the term hereby granted shall cease from the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of said date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover compensation and damage caused by condemnation from the condemnor. It is further understood and agreed that neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority notwithstanding the termination of the Lease as herein provided.

15. Assignment, Subletting, Mortgaging. Tenant shall not (a) assign or otherwise transfer this Lease of the term and estate hereby granted; (b) sublet the Premises or any part thereof or allow same to be used, occupied or utilized by anyone other than Tenant, or (c) mortgage, pledge or encumber this Lease or the Premises or any part thereof in any manner by reason of any act or omission on the part of the Tenant, without in each instance providing at least thirty (30) days prior written notice to Landlord.

16. Surrender of Premises. At the termination of this Lease, Tenant shall surrender the Premises and the keys thereto to Landlord in the same condition as at the commencement of the Lease Term, natural wear and tear excepted. Landlord shall have the right to require Tenant to remove any fixtures and equipment installed by Tenant upon the expiration or termination of this Lease. Tenant may, only if not in default under this Lease, prior to the expiration of this Lease, or any extension thereof, remove such equipment which Tenant has installed in the Premises. In the event of termination of this Lease for any reason, Landlord and Tenant do hereby covenant and agree that they shall immediately discontinue or cause to be discontinued, then use of all trade names, trademarks, signs, advertising structures and other forms of advertising indicative of "HUDDLE HOUSE" or the business or products thereof at the Premises and will make or cause to be made such changes in signs, building, advertising structures, including the complete removal or partial removal of any sign faces and advertising structures and the painting in a different color or any any building mansard and advertising as Huddle House, Inc. may reasonably direct, effectively to distinguish the same from its former appearance and from other Huddle House places of business, and if the Landlord and Tenant shall, upon request by Huddle House, Inc., fail or omit to make or cause to be made such changes, then Huddle House, Inc. or its authorized agents shall have the right to enter upon the Premises without being deemed guilty of trespass or any other tort, to make or cause to be made such changes at the expense of Landlord and Tenant which expenses Landlord and Tenant agree to pay on demand.

17. Default and Termination. In the event that Tenant (a) fails to pay any or all portion of any sum due from Tenant hereunder or pursuant to any Exhibit hereto within thirty (30) days after its scheduled due date; (b) fails to cease all conduct prohibited hereby within ten (10) days after receipt of written notice from Landlord; or (c) fails to take action in accordance with the provisions of written notice from Landlord to remedy Tenant's failure to perform any of the terms, covenants and conditions hereof; or (d) if Tenant is adjudicated bankrupt, or if a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after written notice from Landlord to Tenant to obtain such removal and all rental payments due hereunder have not been paid within said time period; or (e) if whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under any present or future law, whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred; or if Tenant makes an assignment for benefit of creditors; or if Tenant's effects should be levied upon or attached under process against Tenant, and not satisfied or dissolved within thirty (30) days after written notice from Landlord to Tenant to obtain satisfaction thereof; or if Tenant is otherwise in breach of Tenant's obligation hereunder and shall not have cured same within thirty (30) days following written notice from Landlord, then Tenant shall be in default hereunder and Landlord may, at its option and without further notice to Tenant, terminate Tenant's right to possession of the Premises and without terminating this Lease re-enter and resume possession of the Premises and/or declare this Lease terminated, and may thereupon in either event remove all persons and property from the Premises, with or without resort to process of any court, either by force or otherwise. In no event shall Landlord's termination of this Lease and/or Tenant's right to possession of the Premises abrogate Tenant's agreement to pay rent and additional charges due hereunder for the full term hereof. Following re-entry of the Premises by Landlord, Tenant shall continue to pay all such rent and additional charges as same become due under the terms of this Lease, together with all other expenses

- 9 -

incurred by Landlord in regaining possession until such time, if any, as Landlord relets same and the Premises are occupied by such successor, it being understood that Landlord shall attempt to mitigate Tenant's damages by making reasonable efforts to relet Premises. Upon reletting, sums received from such new lessee by Landlord shall be applied first to the payment of costs incident to reletting; any excess shall then be applied to any indebtedness to Landlord from Tenant other than rent; and any excess shall then be applied to the payment of rent due and unpaid. The balance, if any, shall be applied against the deficiency between all amounts received hereunder and sums to be received by Landlord on reletting, which deficiency Tenant shall pay to Landlord in full, within five (5) days of notice of same from Landlord. Tenant shall have no right to any proceeds of reletting that remain following the application of same in the manner set forth hereinabove. In addition to any other remedies set forth above, all sums due under this Lease not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the due date until paid.

18. Mortgagee's Rights. Tenant's rights shall be subject to any bona fide Mortgage or Deed to Secure Debt which is now, or may hereinafter be, placed upon the Premises by Landlord so long as the holder of said mortgage or deed to secure debt executes a non-disturbance agreement acceptable to Tenant which provides that the holder will not disturb Tenant's possession of the Premises so long as the Tenant is not in default under the terms of this Lease.

19. No Estate In Land. This contract shall create the relationship of Landlord and Tenant between the parties hereto. No estate shall pass out of Landlord. Tenant has only a usufruct, not subject to levy and sale, and not assignable by Tenant except in accordance with Paragraph 15.

20. Holding Over. If Tenant remains in possession of the Premises after the expiration of the term hereof, without a new written lease or written extension of this Lease as provided herein, (a) Tenant shall be deemed a Tenant-at-Sufferance, (b) Tenant shall continue to pay the Rent and additional

charges provided in this Lease, and (c) there shall be no renewal or extension of this Lease by operation of law.

21. Rights Cumulative. All rights, powers and privileges conferred hereunder upon the parties hereto shall be cumulative, but not restricted to those given by law.

22. Notices. Any notice, statement, demand, consent, approval or other communication required or permitted to be given pursuant to this Lease or pursuant to any applicable law or requirement for public authority shall be in writing and shall be deemed to have been properly given, rendered or made when hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid and deposited with the United States Postal Service, properly addressed to the parties at the addresses set forth at the beginning of this Lease.

Tenant hereby designates and appoints as its agent to receive notice of all dispossession or distraint proceedings the person in charge of or occupying the Premises at the time such notice is given, or, if there is no such person, then such service of notice may be made by attaching it to the main entrance of the Premises.

23. Severability. If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during its term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby, unless the total rent payable hereunder is thereby decreased, in which event Landlord may terminate this Lease.

24. Waiver of Rights. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon strict compliance with the terms and conditions hereof, and no custom or practice of the parties at variance with the terms hereof, constitute a waiver of Landlord's right to demand exact

compliance with the terms hereof, and no custom or practice of the parties at variance with the terms hereof, constitute a waiver of Landlord's right to demand exact compliance with the terms hereof.

25. **Time of Essence.** Time is of the essence of this Agreement.

26. **Definitions.** As used herein, the term "Landlord" shall include first party, its representatives, assigns and successors entitled to premises. "Tenant" shall include second party, its representatives, and if this Lease shall be validly assigned or sublet, shall also include Tenant, assignees or sublessees, as to premises covered by such assignment or sublease. "Landlord" and "Tenant", include male and female, singular and plural, corporation, partnership or individual as may be applicable to the parties.

27. **Sale of Premises.** If 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. If Landlord sells the Premises, its liability for the performance of its agreements in this Lease will end on the date of the sale of the Premises and Tenant will look solely to the purchaser for the performance of those agreements.

28. **Entire Agreement.** This Lease contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not contained herein shall be of any force or effect. No subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to writing and properly executed by both parties. This Lease shall be governed by the laws of the State of South Carolina.

29. **Rights of Huddle House, Inc.** Landlord and Tenant acknowledge that the Premises will be used for the operation of a restaurant franchised by Huddle House, Inc. The parties agree that representatives of Huddle House, Inc. shall have the right to enter the Premises in accordance with any franchise agreement and to take any actions necessary to protect the trademarks, service marks, associated logos and symbols owned by Huddle House, Inc. Landlord and Tenant each agree to execute such further agreements or documents which may be requested by Huddle House, Inc. for the operation

- 12 -

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

30. Trademarks. Landlord disclaims, repudiates, and denies any ownership, right, title or interest in and to any logos, service marks or trademarks of Huddle House, Inc.

31. Prohibition of Competitive Use. Landlord shall not use or permit any other person or business enterprise to use any portion of the structure, development or project of which the Premises is a part, for any of the same uses and purposes for which Premises is leased to Tenant. This prohibition of competitive use includes, without being limited to, the display or offering for sale at wholesale or retail of any food or beverage or any of the same or similar goods to be displayed or sold by Tenant in the ordinary course of the use of the Premises as herein contemplated.

32. Leasehold Improvements. Tenant may, from time to time, make or cause to be made such leasehold improvements to Premises as Tenant deems necessary, useful or appropriate to the use which it intends to make of the Premises, subject to Landlord's prior approval, which shall not be unreasonably withheld.

33. Signs. Landlord does hereby generally consent to the erection by Tenant of a sign or signs on the Premises and the exact locations of same being left to the discretion of Tenant. Landlord does hereby specifically consent to the placing of a sign or signs on the building on the Premises, the exact locations of same being left to the discretion of Tenant, subject to municipal regulations and zoning.

34. Short Form Lease. Landlord agrees to execute a short form lease as may be desired by Tenant subsequent to the execution of this lease for the purpose of recording the short form lease rather than this lengthy document.

35. Environmental Representations and Warranties. With respect to the following environmental matters, Landlord represents and warrant to Tenant as follows:

a. Landlord has not received or is not aware of any current or previous owner of the Premises receiving a summons, citation, notice, letter or other communication, written or oral, from any federal or state environmental agency or other public agency concerning intentional or unintentional actions or omissions on the part of Landlord or previous owners which resulted in the release onto or into the soil, surface water or ground water of the Premises of Hazardous Materials (as that term is hereinafter defined), or has been subject to or threatened with any governmental or citizen enforcement action with respect to the Premises, or any facilities or operations thereon.

b. The term "Hazardous Material" as used herein shall be materials defined as hazardous waste or substances under the Comprehensive Environmental Response, Compensation and Liability Act, 41 U.S.C. Sec. 9601 *et seq.*, Resource Conservation and Recovery Act, 42 U.S.C. 6903 *et seq.*, or the Georgia Hazardous Waste Management Act, O.C.G.A. Sec. 12-8-60 *et seq.*

c. To the best of Landlord's knowledge, the Premises are free from Hazardous Materials and does not constitute an environmental hazard of any type under and does not violate any local, state or federal environmental law or regulation; and, there is no proceeding filed in any court with respect thereto, and no lien has been imposed on the Premises by any governmental agency in connection with the presence on or nearby the Premises of any Hazardous Materials.

d. To the best of Landlord's knowledge, there are within or upon the Premises no landfills, injection wells, underground storage areas or tanks or other man-made facilities which may have accommodated Hazardous Materials. Neither Landlord nor any third parties, to the best of Landlord's knowledge, have otherwise dumped, discharged, buried or otherwise placed waste or Hazardous Materials on the Premises, including the soil, surface water and ground water. To the best of Landlord's knowledge, there are no buried tanks, storage vessels, drums or containers located on the Premises. To the best of Landlord's knowledge, there is no evidence of leaking, spillage or accidental release of any Hazardous Materials onto or into the Premises.

36. Covenant of Quiet Enjoyment. Tenant, upon payment of the rent herein reserved and the performance of all of the terms of this Lease, 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 or from any other person or entity claiming through Landlord.

37. Lease Contingent. This Lease is contingent on:

a. Huddle House, Inc. ("HHI") entering into a Franchise Agreement with Lessee to operate a Huddle House® restaurant at the Premises.

b. 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 fully set forth in the Collateral Assignment of Lease.

In the event that the conditions set forth in this paragraph are not met, the Tenant may declare this Lease null, void and of no force and effect between the parties hereto.

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

Signed, sealed and delivered
in the presence of:

x Brenda Summers
Witness

LANDLORD:

T&Z Associates,
a South Carolina general partnership

By: [Signature] (L.S.)

By: President (L.S.)

Signed, sealed and delivered
in the presence of:

[Signature]
Witness

TENANT:

Fine Foods, LLC

By: Mr. James J. Rolin (L.S.)

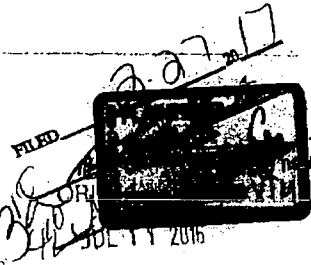
As its: President

EXHIBIT 1

All that certain piece, parcel or lot of land, situate; lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 70, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less.

This being the same property conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1985 and recorded January 5, 1990 in Deed Book 1165 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina.

Tax Parcel No. 20-054-01-004.

COLLATERAL ASSIGNMENT OF LEASEAIKEN COUNTY
CLERK OF COURT

FOR VALUE RECEIVED, the undersigned, PINE FOOD, a Georgia limited liability company, ("Assignor") hereby assigns, transfers and sets over unto Huddle House, INC., a Georgia corporation ("Assignee") all of Assignor's right, title and interest as tenant in, to and under those certain leases, identified on Attachment 1 attached hereto, (the "Leases") respecting premises commonly known as 3602 Richland Avenue, Aiken, Aiken County, South Carolina 29801 ("Premises") said Premises being more particularly described on Exhibit "A", attached hereto. This Agreement is for collateral purposes only and except as specified herein, Assignee shall have no liability or obligation of any kind whatsoever arising from or in connection with this Assignment of Lease unless Assignee shall take possession of the Premises demised by the Lease pursuant to the terms hereof and shall assume the obligations of Assignor thereunder. Any possession of the Premises by Assignee shall be deemed to be under a month-to-month tenancy and Assignee shall not be deemed to have assumed any obligations of Assignor, except for the payment of the monthly rental payments set forth in the Lease during such period of occupancy by Assignee.

Assignor represents and warrants to Assignee that it has full power and authority to so assign the Lease and its interest therein and that Assignor has not previously, and is not obligated to, assign or transfer any of its interest in the Lease or the Premises demised thereby.

Upon a default by Assignor under the Lease or under the Franchise Agreement for a Huddle House Unit between Assignee and Assignor (the "Franchise Agreement"), or in the event of a default by Assignor under any document or instrument securing said Franchise Agreement, Assignee shall have the right and is hereby empowered to take possession of the Premises demised by the Lease, expel Assignor therefrom, and, in such event, Assignor shall have no further right, title or interest in the Lease.

Assignor agrees it will not suffer or permit any surrender, termination, amendment or modification of the Lease without the prior written consent of Assignee. Through the term of the Franchise Agreement and renewals thereto, if any, Assignor agrees that it shall elect and exercise all options to extend the term of or renew the Lease not less than thirty (30) days prior to the last day that said option must be exercised, unless Assignee otherwise agrees in writing. Upon failure of Assignee to otherwise agree in writing, and upon failure of Assignor to so elect to extend or renew the Lease as stated herein, Assignor hereby appoints Assignee as its true and lawful attorney-in-fact to exercise such extension or renewal options in the name, place and stead of Assignor for the sole purpose of effecting such extension or renewal.

EXHIBIT "A"

All that certain piece, parcel or lot of land, situate, lying and being just West of the City of Aiken, in Aiken County, South Carolina, containing 0.433 acre as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982, and recorded in Misc. Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 167.6 feet. Said lot being triangular in shape and all measurements being more or less

This being the same proeprty conveyed to Royal J. Robbins, Jr. by deed of Bush Field Aircraft Company dated December 29, 1989 and recorded Janaury 5, 1990 in Deed Book 1145 at Page 272, records of the R.M.C. Office for Aiken County, South Carolina

Tax Parcel No. 20-094-01-004

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IN WITNESS WHEREOF Assignor has signed, sealed and delivered
the within Collateral Assignment of Leases this the 28th day of
July, 2011.

ASSIGNOR

FINE FOOD, LLC, a Georgia limited
liability company

BY: Mary Jane Robertson
MARY JANE ROBERTSON, Member

ASSIGNEE

HUDDLE HOUSE, INC.,
a Georgia corporation

BY: Thomas P. Cossuto
THOMAS P. COSSUTO, Chief Financial
Officer

ATTEST: Claudia Koepfel Levitas
CLAUDIA KOEPPPEL LEVITAS, Secretary

(CORPORATE SEAL)

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ATTACHMENT 2
CONSENT AND AGREEMENT OF LESSOR

The undersigned Lessor under the afordescribed Lease hereby:

(a) Agrees to notify Assignee in writing of and upon the failure of Assignor to cure any default by Assignor under the Lease;

(b) Agrees that Assignee shall have the right, but shall not be obligated, to cure any default by Assignor under the Lease within thirty (30) days after delivery by Lessor of written notice thereof in accordance with paragraph (a) above;

(c) Consents to the foregoing Collateral Assignment and agrees that if Assignee (or an affiliate of Assignee designated by Assignee) shall take possession of the Premises demised by the Lease and confirms to Lessor the assumption of the Lease by Assignee (or, if applicable, an affiliate of Assignee) as tenant thereunder, Lessor shall recognize Assignee (or, if applicable, an affiliate of Assignee) as tenant under the Lease; and

(d) Agrees that Assignee (or Assignee's designated affiliate) without the consent of Lessor may further assign or sublet the Lease to a person, firm or corporation who is a Huddle House franchise owner, or to an affiliate of Assignee.

IN WITNESS WHEREOF Lessor and Assignee has signed, sealed and delivered the within Collateral Assignment of Leases this the 27 day of July, 2011.

LESSOR

T & Z ASSOCIATES, a South Carolina
corporation *Partnership*

BY: *Royal J. Robbins, Jr.*
Name (Printed): Royal J. Robbins, Jr.
Title: President
ROYAL J. ROBBINS, JR., President

ATTEST: *Brenda Summers*
Name (Printed): Brenda Summers
Title: _____

(CORPORATE SEAL)

ATTACHMENT 1
SCHEDULE OF LEASES

1. Lease dated May 31, 2011 by and between T & Z ASSOCIATES, a South Carolina corporation, as Lessor and FINE FOOD, LLC, as Lessee.

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ASSIGNEE

HUDDLE HOUSE, INC.,
a Georgia corporation

BY: Thomas P. Cossuto
THOMAS P. COSSUTO, Chief Financial
Officer

ATTEST: Claudia Koppel Levitas
CLAUDIA KOPPEL LEVITAS, Secretary

(CORPORATE SEAL)

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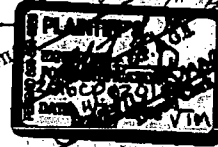
Aiken County - NOT AN OFFICIAL COPY

AIKEN COUNTY ASSESSOR

Tax Map:

087-19-09-003

Date: 08/12/2014



2014011814

DEED

RECORDING FEES

\$10.00

STATE TAX

\$1320.80

COUNTY TAX

\$558.80

PRESENTED & RECORDED:

06-09-2014 10:00 AM

JUDITH WARNER

REGISTER OF DEEDS & CLERK

AIKEN COUNTY, SC

BY: LYNNE STEPHENSON DEPUTY

BK: RB 4508

PG: 1518 - 1519

Filing Fee \$10.00

Arthur W. Rich, P.A./pls

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

DEED TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that T&Z Associates, a South Carolina General Partnership In the State of South Carolina for and in consideration of the sum of Five Hundred Eight Thousand and 00/100 (\$508,000.00) Dollars, paid to Grantor (hereinafter whether singular or plural, the "Grantor") by Robert William Robertson, hereinafter whether singular or plural, the "Grantee", whose mailing address is 465 Columbia Industrial Blvd, Evans GA 30809 In the State of South Carolina, receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, Robert William Robertson his heirs and assigns, the following described real property, to wit:

Legal Description:

ALL that certain piece, parcel, or lot of land, with improvements thereon, situate, lying, and being just West of the City of Aiken, in the County of Aiken, State of South Carolina, containing 0.433 acres as shown on a plat made by Jones & Murph, R.L.S., dated September 1, 1982 and recorded in Map Book 369 at Page 152, records of the R.M.C. Office for Aiken County, South Carolina, and bounded and measuring as follows: NORTHEAST by right of way of South Carolina Highway S2-895, 237.8 feet; SOUTH by right of way of U.S. Highway No. 1 and 78, 242.8 feet; and WEST by Town House Motel, 187.6 feet. Said lot being triangular in shape and all measurements being more or less.

This being the same property conveyed to T&Z Associates, a South Carolina General Partnership by deed of Royal J Robbins and S. Taylor Garnett, dated June 27, 1996 and recorded on July 1st, 1996 in Title Book 1814 at Page 282, records of Aiken County.

TPN: 087-19-09-003

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

To Have And To Hold all and singular the premises before mentioned unto the said Grantee, His/Her/Their Heirs, and Assigns, or Its Successors and Assigns, forever.

And the Grantors herein hereby binds himself/herself, themselves and His/Her/Their Heirs and

Book 4508 Page 1518

Assigns, or itself and its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, His/Her/Their Heirs and Assigns, or its Successors and Assigns, against himself/herself/themselves, or it and its Successors and Assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS THE EXECUTION HEREOF BY GRANTOR this 14th day of May in the year of our Lord two thousand fourteen and in the two hundred thirty-eight year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
In the Presence of:

Oleg Suarez Alvarez
Witness #1

Witness #2

T&Z Associates, a South Carolina
General Partnership

S. Taylor Garnett
By: S. Taylor Garnett - Partner

Royal J. Robbins, Jr.
By: Royal J. Robbins, Jr. - Partner

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PROBATE

PERSONALLY appeared before me, the undersigned witness, and made oath that (s)he saw the within-named Grantor sign, seal and as Grantor's act and deed, deliver the within written Deed and that (s)he with the other subscribing witness hereto, witnessed the execution thereof.

SWORN to before me this 14th
day of May 2014

Arthur W. Roberson (LS)
NOTARY PUBLIC OF SOUTH CAROLINA
My Commission Expires: 3/12/23

Commissioned by Arthur W. Roberson, P.A., 205 Barnwell Avenue, NW Aiken, SC 29801/ole Roberson 514 R.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Robert William Robertson,

Plaintiff,

vs.

Huddle House, Inc.,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) CASE NO.: 2016-CP-02-01550
)

) **HUDDLE HOUSE, INC. PRE-HEARING BRIEF**
) **AND REQUESTS FOR RELIEF**
)

FILED

11-3 20 10:50
SY

Shadell Park
Deputy Clerk

NOW COMES THE DEFENDANT, Huddle House, Inc. (HHI) and submits this brief in support of its request for a declaration and order that HHI is entitled to occupy the leased premises for the Aiken, South Carolina, Huddle House restaurant. HHI seeks preliminary and permanent injunctive relief to enforce the Court's declaration. In support, HHI also files the affidavit of Mr. Tyrone P. Counts, and Exhibits 1-2 to this brief and request for relief.

I. FACTUAL BACKGROUND

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

As alleged in the Complaint Bob Robertson filed in this case, Fine Food, LLC ("Fine Food") and T&Z Associates were parties to a May 31, 2011, lease (the "Lease") under which T&Z Associates leased the land, building, equipment, fixtures, signs, furnishings, and other improvements located at 3600 Richland Avenue West, Aiken, South Carolina, and at which Fine Food operated a franchised HUDDLE HOUSE restaurant (the "Aiken HH"). Compl. Ex. B ¶ 1. The term of the Lease was sixty 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 sixty 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 term. *Id.*

B. The Lease is Binding on Landlord's Successors and Assigns and Tenant May Assign the 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 ¶ 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.

C. Landlord Agreed to Collateral Assignment of the Lease to HHI if Tenant Defaults.

In addition, the Lease provides that it is 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 fully set forth in the Collateral Assignment of Lease." Compl. Ex. B ¶ 37.b (emphasis added).

Consistent with the terms 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"). Aiken Compl. Ex. C. By its terms, the CAOL assigns 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 for in the Lease during such period of occupancy by [HHI]."

Id. The CAOL expressly describes the circumstance upon which HHI could take assignment 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.

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"). *Id.* This made it clear that a renewal of the Lease was a different matter from a temporary occupancy that might arise under the CAOL.

D. The Franchise Agreement Allows HHI to Assume the Lease When Tenant's Franchise Ends.

The CAOL does not address any other right of HHI to an assignment of the Lease, including an assignment upon expiration of the Franchise Agreement. Instead, the Franchise Agreement itself 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 provides that "[i]n the event that [Fine Food] does not elect to exercise its option to renew [the term of 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.] Affidavit of Counts ("Counts Aff.") Ex. 1 (Franchise Agreement) § 3(c). Paragraph 15(b) of the Franchise Agreement provides 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.

Id. Ex. 1 § 15(b). Under the Franchise Agreement, the initial term of the Agreement extended to May 31, 2016. *Id.* Ex. 1. § 3(a). Fine Food had the option under the Franchise Agreement to renew the franchised business for two additional terms of sixty months. *Id.* Ex. 1 § 3(b).

E. Robertson Acquired Landlord's Interest and Agreed to Lease Extension.

On or about May 14, 2014, Bob Robertson purchased the land and building of the Aiken HH operated by Fine Food (the "Premises") from T&Z Associates. Tr. of Deposition of Robert Robertson at 211:25 – 213:14 (attached as Ex. 2). Pursuant to the terms of the Lease and as alleged in the Complaint, Bob Robertson took assignment of the Lease and became the Landlord for the Premises. *Id.* at 216:18 – 217:7. Even though the Lease obligated Fine Food to pay \$4,200 each month as rent, Fine Food began paying Bob Robertson \$5,150 each month to cover Mr. Robertson's monthly payments on the note he executed in connection with the purchase of the Premises. Tr. of Deposition of Mary Jane Robertson at 115:4 – 115:13, 115:20 – 117:21 (attached as Ex. 1); Tr. of Deposition of Bob Robertson at 217:24 – 218:12 (attached as Ex. 2).

In a letter dated January 26, 2016, HHI requested that Fine Food exercise its right to renew the Lease, as Fine Food was obligated to do under the terms of the CAOL. Counts Aff. Ex. 2. In a letter dated January 29, 2016, Fine Food provided Bob Robertson written notice of its election to extend the Lease for an additional sixty (60) month period commencing June 1, 2016. Counts Aff. Ex. 3. Mr. Robertson, during his deposition in this action, acknowledged that the Lease had been renewed. Tr. of Deposition of Robert Robertson at 326:3 – 326:22.

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

In an email dated March 18, 2016, counsel for Fine Food notified counsel for HHI that Janie Robertson had "indicated to me that she intends to renew Aiken (subject to removal of the liquidated damages provision)" from the terms of the renewal agreement. Counts Aff. Ex. 4. In an email dated March 28, 2016, counsel for Fine Food requested that HHI provide the Aiken renewal franchise 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.

Notwithstanding her counsel's prior representations, on May 23, 2016, Janie Robertson met with HHI and advised that she was unwilling to enter the Aiken renewal 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. 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 its 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 Bob Robertson on its June 10, 2016 letter. *Id.*

By email dated June 13, 2016, counsel for Janie 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. In that email, he also indicated his belief that if HHI assumed the Lease, HHI's tenancy after assumption would be on a month-to-month basis rather than for the sixty month renewal term. *Id.* 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.

By letter dated June 22, 2016, to counsel for Janie Robertson and her entities and counsel for Bob Robertson, counsel for HHI explained why HHI's tenancy after assuming the Lease would not be month-to-month. Counts Aff. Ex. 11. In that letter, HHI's counsel reaffirmed that HHI would take assignment of the Lease for its full sixty month renewal term paying the rent due under the Lease (as opposed to the inflated amount Fine Food had been paying to Mr. Robertson). *Id.* HHI also requested that Bob Robertson 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 Bob Robertson nor his counsel responded to the letter regarding Mr. Robertson's position on the Lease. Counts Aff. ¶ 14.

G. HHI Took Over the Aiken HH and Robertson Has Threatened Eviction.

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 taking possession of the premises, HHI has closed the unit to perform repairs and renovations; had begun to order replacement furniture and equipment that Fine Food removed upon vacating the Aiken HH; has undertaken having licenses, permits, and utilities transferred to HHI; and had begun the process for hiring employees to operate the Aiken HH once HHI is able to reopen the unit. Counts Aff. ¶ 16. These activities have been stayed by HHI pending resolution of this case.

On July 11, 2016, Bob Robertson 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 terminate the Lease on thirty days' notice. Counts Aff. ¶ 17; Aiken Compl. ¶¶ 8, 10, 13. In the Complaint, Bob Robertson provided HHI with thirty days' notice that he was terminating the Lease. *Id.* ¶ 14. Rather than contacting HHI's counsel about agreeing to accept service (or to notify HHI of the filing of its action) Bob Robertson's South Carolina counsel served the Complaint on June 12, 2016 by certified mail on HHI's registered agent in South Carolina. Counts Aff. ¶ 17. HHI's registered agent received the Complaint on July 22, 2016. Counts Aff. ¶ 17.

II. ARGUMENT AND AUTHORITIES

H. HHI Is Likely To Succeed on the Merits of Its Claim for Declaratory Relief

In construing and interpreting a lease or other contract, "a court must first look at the language of the contract to determine the intentions of the parties." *Bluffton Towne Center, LLC v. Gilleland-Prince*, 412 S.C. 554, 569 (S.C. Ct. App. 2015) (internal

quotation marks omitted). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." *Id.* (quoting *Progressive Max Ins. Co. v. Floating Caps, Inc.*, 405 S.C. 35, 46 (2013)). "The lease must be construed as a whole and different provisions dealing with the same subject matter are to be read together." *Skull Creek Club Ltd. Partnership v. Cook and Book, Inc.*, 313 S.C. 283, 286 (S.C. Ct. App. 1993). However, "where the lease admits of two constructions, either of which is reasonable, the one more favorable to the lessee must be adopted." *Id.*

Here, the Lease is unambiguous. Paragraph 29 of the Lease expressly authorizes Fine Food to assign the Lease with or without the Landlord's consent. There is nothing in that paragraph – or anywhere else in the Lease – that provides that any term of the Lease changes upon assignment pursuant to Paragraph 29. As was its right under the Franchise Agreement, HHI took assignment of the Lease from Fine Food upon expiration of the Franchise Agreement; Fine Food did not challenge that right and has turned over possession of the Premises to HHI. As a result, HHI has assumed the Lease and has all of the rights as the Tenant under the Lease. Because Fine Food exercised its right to renew the Lease for an additional sixty month term beginning June 1, 2016 in a timely fashion – a fact Bob Robertson has acknowledged (Tr. of Deposition of Robert Robertson at 326:3 – 326:22 (Ex. 2)) – the term of the Lease as assumed by HHI runs until May 31, 2021, and HHI has an option to renew and extend the Lease for one additional sixty month term. Moreover, HHI is obligated to pay rent as set forth in the Lease.

The CAOL, on which Mr. Robertson relies, is also unambiguous. Mr. Robertson relies on a single sentence of the CAOL to contend that he may terminate the assigned Lease on thirty-days' written notice: "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 for in the Lease during such period of occupancy by [HHI]." CAOL at 1; Compl. ¶ 8. There is a critical problem with Mr. Robertson's construction: it ignores the remainder of the CAOL, which reveals that it does not govern the assignment of the Lease at issue here.

By the terms of the CAOL, HHI may only take assignment of the Lease from Fine Food in the event that Fine Food is in default of the Lease or the Franchise Agreement. CAOL at 1; see, e.g., *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 213 (S.C. Ct. App. 1997) ("Although the Collateral Assignment does contain language assigning the Bank all of the right, title and interest of Sellers to the [note, mortgage, guaranty and certain leases], later language clarifies the nature of the assignment . . . as long as the Sellers do not default [on their obligations] to the Bank and comply with the terms of the Collateral Assignment."). The CAOL served as a security measure: it afforded HHI the right to obtain possession of the Premises under circumstances where HHI wanted to maintain operation of the Aiken HH but Fine Food had no willingness or contractual obligation to assign the Premise to HHI to take over operation of the Aiken HH. Counts Aff. ¶ 3. For example, if Fine Food were in danger of losing the Premises due to a default under the Lease, the CAOL authorized HHI to take possession of the Premises to cure that default and ensure continued operation of the Aiken HH. *Id.* Similarly, if a

default under the Franchise Agreement would result in damage to HHI's brand and customer goodwill – a citation for food contamination, for example – HHI would have the ability to take possession of the restaurant to remedy that issue. *Id.* The CAOL was not intended to – and by its express terms does not – apply to circumstances in which Fine Food might voluntarily assign the lease to HHI, either as part of a sale of its interest in the Aiken HH or pursuant to its contractual obligations upon expiration of the Franchise Agreement and HHI's exercise of its right to assignment. *Id.*

Mr. Robertson cites to the language in the CAOL that “any possession of the Premises by HHI” is on a month-to-month basis. Compl. ¶ 8. However, that interpretation ignores the fact that any possession under the CAOL could only occur if it was the result of Fine Food's default under the Lease or Franchise Agreement. Under those circumstances – HHI taking over on essentially an emergency basis – it makes economic sense for HHI to only bind itself on a month-to-month basis until it had an opportunity to assess whether to continue operations. Counts Aff. ¶ 3. In contrast, in the context of a sale or exercise of the option to take assignment upon expiration of the Franchise Agreement, it makes no economic sense for HHI to take assignment of anything less than the full Lease term. *Id.* Indeed, HHI demanded that Fine Food exercise the right to renew the Lease in January 2016 prior to knowing whether or not Fine Food would renew the Franchise Agreement and four months prior to the expiration of the Franchise Agreement because it knew at that time it wanted the Aiken HH to continue in operation, either as a franchised location or operated by HHI. Counts Aff. ¶ 4 & Ex. 2.

As set forth above, HHI did not take possession of the Premises because Fine Food had defaulted on the Lease or the Franchise Agreement. Instead, HHI took possession after expiration of the Franchise Agreement through the exercise of its right under that Agreement to take assignment of Fine Food's interest in the Premises. As a result, the assignment of the Lease was accomplished through Paragraph 29 of the Lease – which does not require consent from Mr. Robertson – rather than under the CAOL on which Mr. Robertson relies. Therefore, HHI has assumed the Lease and its remaining term under Paragraph 29 of the Lease. Contrary to Mr. Robertson's contention, the term of the Lease runs until May 31, 2021, and is not a month-to-month tenancy.

In sum, the Lease and CAOL are unambiguous. Mr. Robertson's reliance on one sentence from the CAOL to assert that HHI has a month-to-month tenancy does not give meaning to the remainder of the CAOL and is inconsistent with Paragraph 29 of the Lease and HHI's rights under the Franchise Agreement. Accordingly, HHI is likely to succeed on the merits of its claim for a declaration that Mr. Robertson may not terminate the Lease without cause, that Mr. Robertson is bound by the terms of the Lease as assigned to HHI, and that the current renewal term of the lease runs to May 31, 2021.

B. HHI is entitled to Declaratory and Injunctive Relief

HHI is in a position of great uncertainty. To reopen the Aiken restaurant, it must invest approximately \$216,000 to renovate and equip the Aiken Huddle House. If it is not able to open the current location and had to seek a location somewhere else, it would cost, as Mr. Counts' affidavit points out, an expenditure of \$1,300,000 for land,

building, equipment, supplies and staffing. Moreover, HHI would lose its established sales at the current location that generated approximately \$56,720 in monthly sales as it did over its last year of operation. Counts Aff. ¶ 18. HHI has paid and is still paying monthly rent to the landlord, insurance, taxes and maintenance costs, but is unable to reopen the restaurant due to Robertson's threat of eviction.

It is under these circumstances that S. C. Code Ann. § 15-53-30 provides that "Any person interested under a...written contract or other writing constituting a contract...may have determined any question of construction or validity arising under the instrument...contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." And then it is provided S. C. Code § 15-53-40, that a contract "may be construed either before or after there has been a breach thereof." The declaratory judgment statutes also provide that "further relief based on a declaratory judgment or decree may be granted whenever necessary or proper." S. C. Code Ann. 15-53-120. Finally, the chapter on declaratory judgment is "remedial" and should be "liberally construed and administered." S. C. Code Ann. § 15-53-130.

HHI also requests that the Court enjoin Mr. Robertson from seeking to terminate the lease on 30 days' notice. To obtain an injunction, "a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. *County of Richland v. Simkins*, 348 S. C. 664, 669 (Ct. Apps. 2002). Whether to grant an injunction is in the "sound discretion of the trial court." *Id.*

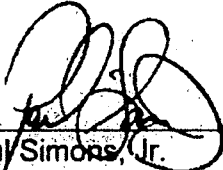
In the facts before this Court, it is clear that Mr. Robertson is not entitled to terminate the lease on the Aiken Huddle House property on thirty days' notice. However, because Huddle House would have to risk over \$200,000 to bring the

restaurant back to operation, only to have those sums made worthless if an eviction could take place in thirty days, HHI faces the risk of irreparable harm. Money expended to renovate the restaurant could not be recovered if the landlord could bring about an eviction in thirty days. And as with other real estate rights, the right of possession is one for which there is no adequate remedy at law. This is because Huddle House, Inc. could spend over \$200,000, then lose the restaurant site altogether, and not be able to recover its expenditures, or the cost of a new location, or the loss of business from Mr. Robertson, the landlord.

Accordingly, the Court should declare that Huddle House's lease of the Aiken site is not terminable on thirty days' notice at the discretion of the landlord, and the landlord should be enjoined from using the thirty day eviction language in the COAL to deny HHI the occupancy of the restaurant premises.

III. CONCLUSION

HHI moves the Court to issue such orders as are necessary to prevent Defendant Robertson from evicting HHI from the Aiken Huddle House restaurant.



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October 31, 2016

Attorneys for Huddle House, Inc.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Robert William Robertson,)

Plaintiff,)

vs.)

Huddle House, Inc.,)

Defendant.)

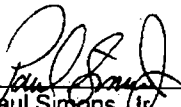
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NO.: 2016-CP-02-01550

**SUPPLEMENTAL DOCUMENT SUPPORTING
THE HUDDLE HOUSE, INC. PRE-HEARING
BRIEF AND REQUESTS FOR RELIEF**

NOW COMES Huddle House, Inc. and files the following document in support of
its Pre-Hearing Brief and Requests for Relief.

1. Affidavit and Exhibit of Thomas Robertson.

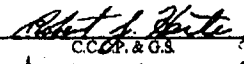

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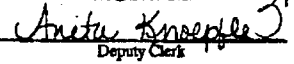
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Attorneys for Huddle House, Inc.

November 21, 2016

FILED


CCOP. & G.S.

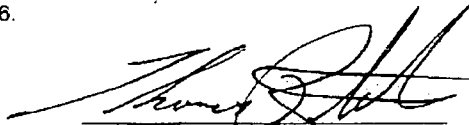

Deputy Clerk

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6. Since that date, Huddle House has assumed the obligations of lessee at that location.

FURTHER AFFIANT SAYETH NOT.

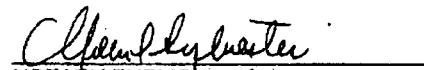
This 18th day of November, 2016.


THOMAS ROBERTSON

COUNTY OF Conyers -)
STATE OF GA.)

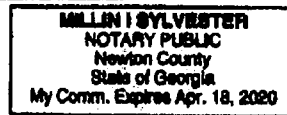
PERSONALLY APPEARED BEFORE me, a notary public, duly qualified to administer oaths, THOMAS ROBERTSON, and, after being duly sworn, deposes and states on oath that the facts set forth in the foregoing Affidavit are true and correct to the best of his knowledge, information and belief.

This 21 day of NOV., 2016.


NOTARY PUBLIC
STATE OF Georgia

My commission expires:

April 18, 2020



Aiken Huddle House #381

Janie Robertson on 7/14 [illegible]
Building in [illegible] [illegible]
POS keys, Janie also [illegible]
drink machine and [illegible]
with Huddle House [illegible]
washed. Also the [illegible]
owns it. In addition [illegible]
The storage building [illegible]
They own it.

The undersigned hereby certifies that the Record on Appeal contains all material to be included by any of the parties and not any other material.

Blair

Brad A. Brodie

Smith, Massey, Brodie, Guynn & Mayes, LLC

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Attorney for Appellant

October 16, 2017

RECEIVED

OCT 23 2017

SC Court of Appeals