

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE FLORENCE COUNTY COURT OF COMMON PLEAS

2015-CP-21-02153
(Appellate Case No. 2017-001814)

RECEIVED

FEB 20 2018

SC Court of Appeals

CRJ Trust Company, LLC, Appellant

v.

S&S Sterling Properties LLC and Shakil Kahn, Respondents.

RECORD ON APPEAL

ROBERT M. COOK II
P.O. Box 3575
Batesburg-Leesville, SC 29070
(803) 317-2171 (phone)
(803) 317-2175 (fax)
robcook1965@yahoo.com

Attorney for the Appellants

Other Counsel of Record:

Louis D. Nettles
Folkens Law Firm, PA
P.O. Box 6139
Florence, SC 29502
(843) 665-0100

Attorney for the Respondents

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(843) 665-0100

Attorney for the Respondents

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-21-2153

RECEIVED

AUG 30 2017

SC Court of Appeals

CRJ TRUST CO. LLC,)
)
Plaintiff,)

ORDER ON MOTION FOR
JUDGEMENT ON THE PLEADINGS

vs.)

S&S STERLING PROPERTIES)
)
LLC AND SHAKIL KAHN)
)
Defendants.)

2017 MAR 21 PM 1:32
DORIS POULSON OHARA
COPP GS
FLORENCE COUNTY, SC

FILED

This motion by Defendant Shakil Kahn for judgement on the pleading ~~and~~ signing him from the suit came before this Court at the Non-Jury Term on February 27, 2017.

This is a suit on a note. The note is incorporated into the complaint. The note is signed by Defendant Kahn in a representative capacity as a manager of the defendant limited liability company. Plaintiff argues that language in the note binds members of the Limited Liability Company. The very basis of contract law is the existence of an agreement. That is what law student are taught as a meeting of the minds. There is no evidence before the Court of a meeting of the minds between Mr. Kahn and the Plaintiff.

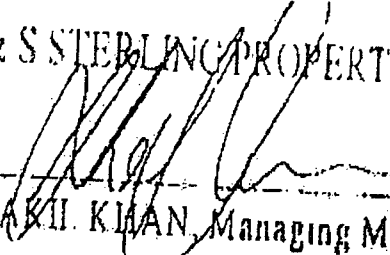
This lawsuit is governed by the South Carolina Uniform Commercial Code and by Chapter 3 of Title 36 of the South Carolina Code. This is the Uniform Commercial Code as adopted by South Carolina. The note meets the definition of Negotiable Instrument contained in Section 36-3-104¹ as it contains the following language.

¹ SECTION 36-3-104. Negotiable instrument.

CERTIFIED: A TRUE COPY
Doris Poulson Ohara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

the undersigned ("Borrower") promises to pay to the order of CRJ TRUST COMPANY, LLC, ... at the office of the Lender ... (\$140,000.00) ... together with interest ... Said principal and interest shall be payable... in the amounts specified below... all principal, together with any accrued and unpaid interest, hereunder shall be payable on June 1, 2014.

The note contains one signature, that of S&S STERLING PROPERTIES, LLC and appears as follows:

S & S STERLING PROPERTIES, LLC
BY 
SHAKI KHAN, Managing Member

It is clear that Mr. Kahn signed this as representative of S&S. Section 36-3-402 provides that a representative signs on behalf of a represented person, the representative is not liable on the instrument.² Because Mr. Kahn's signature does not show an agreement to bind him, there is no

(a) Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

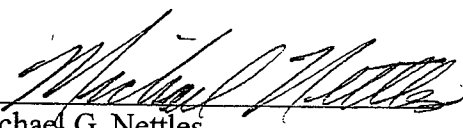
² SECTION 36-3-402: Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

agreement between Kahn and Plaintiff. The only contract before the Court is between Plaintiff and S&S STERLING PROPERTIES, LLC.

It is unambiguously clear from the Complaint that Mr. Kahn signed this negotiable instrument as representative of S&S Sterling, LLC and under South Carolina Law only S&S is liable on the note. Mr. Kahn is entitled to judgment on the pleadings dismissing him from the complaint, and it is ordered that the Complaint be dismissed as to Shakil Kahn, and it is

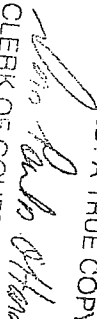
SO ORDERED.


Michael G. Nettles
Circuit Judge

March 21, 2017

2017 MAR 21 PM 1:32
DORIS PAULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

8/10/17

C. Balles

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
)
)

2015CP2102153
CASE NUMBER

IN THE COURT OF COMMON PLEAS

ORDER

Crj Trust Co
PLAINTIFF(S)

Vs

S&S Sterling Properties
DEFENDANT(S)

2017 AUG -7 PM 1:40
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

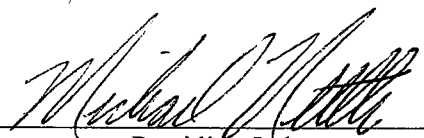
I. **IT IS ORDERED** that the below MOTION(S) be struck from the active Motion Roster for the following reason:

- 1. Plaintiff(s) Motion to Reconsider heard on July 18, 2017.
- 2. Defendant(s) Motion - heard on .
- 3. Ruling for the above Motion to Reconsider is hereby denied.
- 4. Other -

II. **IT IS ORDERED** that the within entitled CASE/MOTION(S)/RULE BE:

- 1. Transferred to the Jury/Non-Jury Roster.
- 2. Referred to Special Referee.
- 3. Continued upon request of Plaintiff and/or Defendant beyond the term.
Reason for Continuance:
- 4. Other -

Florence, South Carolina
Monday, July 31, 2017


Presiding Judge

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

FILED IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2015 FEB 23 CASE NUMBER: 2015-CP-32-

CRJ TRUST CO., LLC.

PLAINTIFF,

vs.

S&S STERLING PROPERTIES, LLC,
AND SHAKIL KHAN,

DEFENDANTS.

FILED
2015 FEB 23
CLERK OF COURT

2015 CP 3200659

COMPLAINT
(Action on Verified Account)
(Non-jury)

The Plaintiff, CRJ Trust Co, LLC, complaining of the Defendants captioned above, would show as follows:

1. That the Plaintiff is a limited liability company organized and existing under the laws of the state of South Carolina, with its principal place of business in Lexington County, South Carolina.
2. That the Defendant Shakil Khan is upon information and belief a citizen and resident of Florence County, South Carolina, and he is the manager and member of the Defendant S&S Sterling Properties, LLC.
3. That the Defendant S&S Sterling Properties, LLC, upon information and belief, is a limited liability company organized under the laws of the state of South Carolina, located in Florence County, South Carolina, and which does business and holds contracts throughout the state of South Carolina, including Lexington County.
4. That on or about July 1, 2007, the Defendants executed a promissory note in favor of the Plaintiff in the principal amount of \$140,000.00 to draw interest at the contract rate of 5.75% per annum with all principal and accrued interest to be paid in full no later than June 1, 2014, per

1
5 

the terms of that promissory note, a copy of which is attached hereto as Exhibit A and incorporated by reference herein.

5. That the terms of that promissory note also provide for a default interest rate of 18% per annum, a 5% late payment penalty, and for an award of attorney's fees and costs should legal collection action be required; further that promissory note was personally guaranteed by the Defendant Shakil Khan as a member of the Defendant LLC per the terms of that promissory note.

6. That as of February 17, 2015, there exists a balance owed of at least \$137,200.36 to the Plaintiff by the Defendants, which includes the unpaid principal amount and accrued interest as of that date; that additional interest shall accrue after that date at the per diem rate of \$64.33, less any payments (if any) made by the Defendants subsequent to the demand letter dated November 4, 2015.

7. That the Plaintiff has made multiple demands upon the Defendants for payment of this debt in full, but has not been successful and the contractual full payment default date of June 1, 2014, has passed without payment in full by the Defendants as required by the terms of the promissory note.

8. That the Plaintiff has satisfied all conditions precedent for the collection of this debt and the Defendants, upon information and belief, are entitled to no setoff, credit, or otherwise entitled to any reduction in the amount claimed, and the terms of the promissory note expressly disclaim any right of the Defendants to assert any offset, credit or other reduction in the amount owed the Plaintiff under the promissory note, other than by way of payments made.

9. That the terms of the promissory note provide for a knowing and intentional express and written waiver of jury trial by the Defendants and also a consent by the Defendants to venue within the general jurisdiction of the Court of Common Pleas of the State of South Carolina; further, that venue in Lexington County is appropriate as the most substantial part of the acts or omissions

giving rise to this cause of action occurred within Lexington County as contemplated by S.C. Code Section 15-7-30(c)(2) and (E)(2).

10. That the Plaintiff requests a joint and several award of actual damages against the Defendants in the amount of at least \$137,200.36 reflecting the amount due as of February 17, 2015, plus accrued interest at the default rate since that date at the per diem rate of \$64.33, reasonable attorney fees and costs as provided by the terms of the agreement between the parties, to include the filing fee and service of process costs, less credit to be given to the Defendants (if any) for any payments made subsequent to the demand letter sent to Defendants by Plaintiff's counsel dated November 4, 2014, a copy of which is attached hereto as Exhibit B and incorporated by reference herein.

WHEREFORE, having fully complained against the Defendants by way of this Complaint, the Plaintiff prays for the relief requested in the Complaint to include a joint and several judgment against both Defendants that includes actual damages, accrued default rate interest, attorney's fees and awardable costs, and such further and other relief as this Court may direct.

THE ROBERT COOK LAW FIRM, LLC

BY: *Robert M. Cook II*
ROBERT M. COOK II
P.O. Box 3575
Leesville, South Carolina 29070
(803) 317-2171 (phone)
(803) 317-2175 (fax)
robcook1965@yahoo.com

ATTORNEY FOR THE PLAINTIFF

February 18, 2015

FILED
2015 FEB 23 P 2:35
CLERK OF COURT
LEXINGTON COUNTY, SC

PROMISSORY NOTE

\$140,000.00

SOUTH CAROLINA

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of CRJ TRUST COMPANY, LLC, organized and existing under the laws of the State of South Carolina, ("**Lender**"), at the office of the Lender at or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE HUNDRED FORTY NO/100 DOLLARS (\$140,00.00)(the "**Loan Amount**"), together with interest thereon on the principal amount from time to time outstanding based on a 365-day year at an annual rate prior to maturity or default of 5.75% Said principal and interest shall be payable in lawful money of the United States, on the dates and in the amounts specified below, to wit:

Payments of interest only shall be due and payable monthly (in the sum of \$670.83, based on the current principal balance), with the initial interest payment being due and payable on July 1, 2007 and such payments continuing on the 1st day of each month thereafter, until June 1, 2014. Commencing on August 1, 2007, payments of principal and interest based on an 30 year amortization shall be due and payable monthly (in the sum of \$140,000.00 based on the current principal balance) and such payments shall continue on the 1st day of each month thereafter. Notwithstanding the foregoing, all principal, together with any accrued and unpaid interest, hereunder shall be payable on June 1, 2014.

Borrower and all endorsers, sureties, guarantors and any other persons liable or to become liable with respect to the loan evidenced by this Note (the "**Loan**") are each included in the term "**Obligors**" as used in this Note.

In the event that state documentary stamp taxes in excess of those affixed hereto are determined by Lender to be owed to the State of South Carolina, the undersigned Borrower agrees to hold Lender harmless from and against any and all cost involved in paying the additional documentary stamps and any penalties or interest required to be paid thereon, and the undersigned Borrower agrees to pay to Lender the full amount paid by the Lender to the State of South Carolina for additional documentary stamps, penalties, costs and interest.

4085

Borrower shall pay to Lender a late charge of five percent (5%) of any payment not received by Lender within ten (10) days of its due date.

The Borrower may prepay any principal hereunder, in whole or in part without any penalty for such prepayment.

Upon the transfer of any interest in the Property encumbered by the Mortgage (the "**Property**") or any interest in the Borrower, the full outstanding principal sum and all accrued interest, prepayment penalty and other sums shall be paid in full. In the event of an anticipated sale of the Property by Borrower, Borrower may request the consent of Lender to the assumption of the loan by the prospective buyer, which consent may be denied or conditioned in the Lender's sole discretion. If a requested assumption of the loan by a disinterested third party not related to Borrower, or holder of interest in Borrower, in an arms

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Exhibit A

length transaction for full value is made and denied by Lender during the period commencing the sixth year after the date of this Promissory Note, through the tenth year after the date hereof, the Prepayment Penalty set forth above shall not be applicable to a payoff of the loan made as part of the sale of the Property to that buyer (and that buyer only).

The Note holder's failure to collect a prepayment penalty at the time a prepayment is received shall not be deemed a waiver of such penalty and any such penalty calculated in accordance with this section shall be payable upon demand.

Borrower shall pay all amounts owing under this Note in full when due without set-off, counterclaim, deduction or withholding for any reason whatsoever. If any payment falls due on a day other than a day on which Lender is open for business (a "Business Day"), then such payment shall instead be made on the next succeeding Business Day, and interest shall accrue accordingly.

If default be made in the payment of any sums payable pursuant to the terms of this Note, or if default or other event causing the acceleration of this Note occur under the Mortgage and Security Agreement (the "Mortgage") securing this Note, or any other instrument or document executed in connection with the Loan (this Note, the Mortgage, and all such instruments and documents, including, without limitation, any guaranties, agreements, mortgages, security agreements, assignments and other documents securing this Note, are referred to in this Note as the ("Loan Documents") (such defaults hereinafter referred to as an "Event of Default"), then or at any time thereafter at the option of Lender, the whole of the principal sum then remaining unpaid hereunder, together with all interest accrued thereon and all other sums owing under the Loan Documents, shall immediately become due and payable without notice and Lender shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note or any other Loan Document, all of which shall be cumulative and may be exercised successively or concurrently. Upon the occurrence and during the continuation of any Event of Default, Lender, at its option, may at any time declare any or all other liabilities of any Obligor to Lender immediately due and payable (notwithstanding any contrary provisions thereof) without demand or notice of any kind. In addition, Lender shall have the right to set off any and all sums owed to any Obligor by Lender in any capacity (whether or not then due) against the Loan and/or against any other liabilities of any Obligor to Lender.

From, and after an Event of Default, and regardless of whether the Lender also elects to accelerate the maturity of this Note, the entire principal remaining unpaid hereunder shall bear an augmented annual interest rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest applicable lawful rate. Failure by Lender to exercise any and all rights or remedies Lender may be entitled to in the event of any such default, shall not constitute a waiver of the right to exercise such rights or remedies in the event of any subsequent default, whether of the same or different nature. No waiver of any right or remedy by Lender shall be effective unless made in writing and signed by Lender, nor shall any waiver on one occasion apply to any future occasion.

In no event shall any agreed or actual exaction charged, reserved or taken as an advance or forbearance by Lender as consideration for the Loan exceed the limits (if any)

imposed or provided by the law applicable from time to time to the Loan for the use or detention of money or for forbearance in seeking its collection, and Lender hereby waives any right to demand such excess. During any time that the Loan bears interest at the maximum, lawful rate (by application of the default provisions of this Note), interest shall be computed on the basis of a three hundred sixty five (365) day year and charged on the basis of actual days elapsed.

Obligors hereby severally: (a) waive demand, presentment, protest, notice of dishonor, suit against or joinder of any other person, and all other requirements necessary to charge or hold any Obligor liable with respect to the Loan; (b) waive any right to immunity from any such action or proceeding and waive any immunity or exemption of any property, wherever located, from garnishment, levy, execution, seizure or attachment prior to or in execution of judgment, or sale under execution or other process for the collection of debts; (c) waive any right to interpose any set-off or non-compulsory counterclaim, or to plead laches or any statute of limitations as a defense in any such action or proceeding and waive (to the extent lawfully waivable) all provisions and requirements of law for the benefit of any Obligor now or hereafter in force; (d) submit to the jurisdiction of the state and federal courts in the State of South Carolina for purposes of any such action or proceeding; (e) agree that the venue of any such action or proceeding may be had in Florence South Carolina (in addition to any county in which any collateral for the Loan is located), and waive any claim that the same is an inconvenient forum; and (f) agree that the death or mental or physical incapacity of any Obligor who is a natural person, or the dissolution or merger or consolidation or termination of the existence of any Obligor that is a business entity (or if any person controlling such Obligor shall take any action authorizing or leading to the same), shall, at Lender's option, which option may be exercised then or at any time thereafter, result in the Loan being then due and payable in full. No provision of this Note shall limit Lender's right to serve legal process in any other manner permitted by law or to bring any such action or proceeding any other competent jurisdiction. Obligors hereby severally consent and agree that, at any time and from time to time without notice, (i) Lender and the owner(s) of any collateral then securing the Loan may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (ii) Lender and any person(s) then primarily liable for the Loan may agree to renew, extend or compromise the Loan in whole or in part or to modify the terms of the Loan in any respect whatsoever; no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification shall release or affect in any way the liability of any Obligor, and Obligors hereby severally waive any and all defenses and claims whatsoever based thereon. Until Lender receives all sums due under this Note and all other Loan Documents in immediately available funds, no Obligor shall be released from liability with respect to the Loan unless Lender expressly releases such Obligor in a writing signed by Lender, and Lender's release of any Obligor(s) shall not release any other person liable with respect to the Loan.

Obligors jointly and severally agree to pay all filing fees and similar charges and all costs incurred by Lender in collecting, enforcing or securing or attempting to collect or secure the Loan, including attorneys' fees, whether or not involving litigation and/or appellate, administrative or bankruptcy proceedings. Obligors jointly and severally agree to pay any documentary stamp taxes, intangible taxes or other taxes (except for federal or South Carolina franchise or income taxes based on Lender's net income) which may now or

hereafter apply to this Note or the Loan or any security therefor, and Obligors jointly and severally agree to indemnify and hold Lender harmless from and against any liability, costs, attorneys' fees, penalties, interest or expenses relating to any such taxes, as and when the same may be incurred. Obligors jointly and severally agree to pay on demand, and to indemnify and hold Lender harmless from and against, any and all present or future taxes, levies, imposts, deductions, charges and withholdings imposed in connection with the Loan by the laws or governmental authorities of any jurisdiction other than the State of South Carolina or the United States of America, and all payments to Lender under this Note shall be made free and clear thereof and without deduction therefor.

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina, except that federal law shall govern to the extent that it may permit Lender to charge, from time to time, interest on the Loan at a rate higher than may be permissible under applicable South Carolina law.

Any provision of this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent that Obligors may lawfully waive any law that would otherwise invalidate any provision of this Note, each of them hereby waives the same, to the end that this Note shall be valid and binding and enforceable against each of them in accordance with all its terms.

If this Note is signed by more than one person, then the term "**Borrower**" as used in this Note shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Note are made by and shall be binding upon each and every undersigned person, jointly and severally. The term "**Lender**" shall be deemed to include any subsequent holder(s) of this Note. Whenever used in this Note, the term "**person**" means any individual, firm, corporation, trust or other organization or association or other enterprise or any governmental or political subdivision, agency, department or instrumentality thereof. Whenever used in this Note, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders, all as may be appropriate.

Time shall be of the essence with respect to the terms of this Note. This Note can not be changed or modified orally. Lender shall have the right unilaterally to correct patent errors or omissions in this Note or any other Loan Document. Except as otherwise required by law or by the provisions of this Note or any other Loan Document, payments received by Lender hereunder shall be applied first against expenses and indemnities, next against interest accrued on the Loan, and next in reduction of the outstanding principal balance of the Loan, except that from, and after any default under this Note, Lender may apply such payments in any order of priority determined by Lender in its exclusive judgment. Borrower shall receive immediate credit on payments if made in immediately available funds; otherwise, said payments shall be credited after clearance. If any payment required to be made pursuant to this Note is not received on the due date, Lender shall have the right, at its election, to charge any of Borrower's accounts at Lender with the amount of such payment. Except as otherwise

Exhibit A

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required by the provisions of this Note or any other Loan Document, any notice required to be given to any Obligor shall be deemed sufficient if made personally or if mailed, postage prepaid, to such Obligor's address as it appears in this Note (or, if none appears, to any address for such Obligor then registered in Lender's records). Lender may grant participation in all or any portion of, and may assign all or any part of Lender's rights under, this Note. Lender may disclose to any such participant or assignee any and all information held by or known to Lender at any time with respect to any Obligor. If Borrower or any other Obligor is a partnership and/or limited liability company, then all general partners or members thereof shall be liable jointly and severally for all obligations under this Note and for all other covenants, agreements, undertakings and obligations of Borrower in connection with the Loan, notwithstanding any contrary provision of the partnership laws of the State of South Carolina. All of the terms of this Note shall inure to the benefit of Lender and its successors and assigns and shall be binding upon each and every one of Obligors and their respective heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally.

This note is subject to a setoff agreement between the parties, wherein a maker of said note has the right to setoff any payment and/or payments to Obligee on said note pursuant to any damages and/or expenses either reasonable or otherwise incurred by Obligor where said expenses were not reasonably foreseen and were not reasonably foreseen by Obligor during the first three years of said note.

The may encumber real and personal property located in Florence, South Carolina, and is intended to be recorded amongst the Public Records of said County.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT BORROWER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF BORROWER.

WITNESS the due execution hereof as of the date first above written.


S & S STEERLING PROPERTIES, LLC
BY: 
SHAKIL KHAN, Managing Member

Exhibit A

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The Robert Cook Law Firm, LLC

P.O. BOX 3575
BATESBURG-LEESVILLE, SOUTH CAROLINA 29070

Phone: (803) 317-2171
Fax: (803) 317-2175
robcook1965@yahoo.com

November 4, 2014

VIA CERTIFIED MAIL AND REGULAR U.S. MAIL

S&S Sterling Properties, LLC
Attn: Shakil Khan
25-37 14st
Astoria, NY 11102

S&S Sterling Properties, LLC
Attn: Shakil Khan
1100 S. Mayfair Terrace
Florence, SC 29501

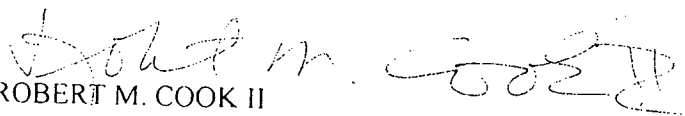
Re: 2007 note from S&S Sterling Properties, LLC in amount of \$140,000.00

Dear Mr. Khan:

Chad Bolles/CRJ Trust Co., LLC, requested that I contact you with regard to the above note of yours that is both seriously delinquent in payment and well past its June 1, 2014, maturity date. At this point that note is being called in as being immediately due and payable and the default interest rate of 18% shall apply as of this date. As an accommodation to you, my client is willing to accept the figure of \$130,445.71 as being the amount now due, although the actual amount due is substantially higher. The figure of \$130,445.71 is based upon an amortization schedule that assumes the 57 payments of \$817 that you made were actually timely made, which of course they were not. This compromise figure of \$130,445.71 shall remain open to you for twenty (20) days from the date of this letter. Should this debt not be paid in full by that date, then the full amount actually due including contractual finance charges, late payment fees and collection costs/attorney's fees shall be sought by my client in court or otherwise. We look forward to your prompt payment of this very reasonable compromise figure.

Please note that this communication is an attempt to collect a debt. Unless you dispute the validity of this debt, or any portion of this debt, within thirty (30) days after written receipt of this notice, the debt will be assumed to be valid. Also, if you notify me in writing within thirty (30) days that this debt, or any portion thereof, is disputed, I will obtain verification of the debt and a copy of such verification will be mailed to you. If you send me a written request within thirty (30) days of receipt of this notice, I will provide you with the name and address of the original creditor, if different from the current creditor.

Very truly yours,


ROBERT M. COOK II
The Robert Cook Law Firm, LLC

RMC/ppd

cc: Chad Bolles

13

Exhibit B

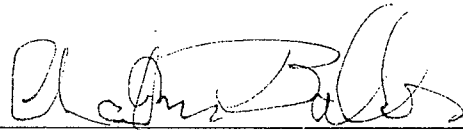
STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

VERIFICATION

PERSONALLY appeared before me Chadbourn Bolles, authorized agent for the Plaintiff herein, who, being duly sworn deposes and says: That he is the authorized agent of the Plaintiff in the foregoing action; that he has read the within Complaint and knows the allegations contained therein to be true except as to those allegations which may alleged to be upon information and belief, and as to those, he believes them to be true.

SWORN to before me this

18th day of February, 2015



Chadbourn Bolles
CRJ Trust Co., LLC

Patricia A. Owen (seal)
Notary Public for South Carolina
My Commission Expires: 11/8/23

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

CASE NO. 2015-CP-21-2153

CRJ TRUST CO. LLC,)

Plaintiff,)

vs.)

ANSWER

S&S STERLING PROPERTIES)

LLC AND SHAKIL KAHN)

Defendants.)

The Defendant Shakil Kahn answering the Complaint would allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, modified or explained is denied.
2. The allegations of ¶s 1 and 3 of the Complaint are admitted.
3. The allegations of ¶ 4 of the Complaint alleging that S&S executed the promissory note in the principal amount of \$140,000.00 to draw interest at the contract rate of 5.75% per annum with all principal and accrued interest to be paid in full no later than June 1, 2014 is admitted the remaining allegations of ¶4 are denied.
4. This Defendant would admit so much of the allegations of ¶ 5 of the Complaint.
5. So much of the allegations of ¶ 6 of the Complaint alleging there is some amount owed on the note, is admitted but this defendant denies the amount owed and alleges that this defendant has not been properly credited with its payments.

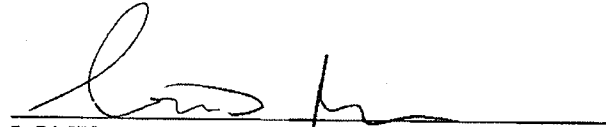
6. This Defendant denies the allegations ¶ 7 and alleges that the parties have attempted to negotiate their differences but that the negotiations have been unavailing.

7. The allegations of ¶ 8 are denied.

8. The allegations of ¶ 9 are admitted.

9. The allegations of ¶ 10 are denied.

WHEREFORE, these Defendant having fully answered the Complaint asks that the same be dismissed.



LOUIS D. NETTLES
Folkens Law Firm, P.A.
601 West Evans Street
Post Office Box 6139
Florence, South Carolina 29502
(843) 665-0100
Attorney for Defendants

Florence, South Carolina
August 6, 2015

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

CASE NO. 2015-CP-21-2153

CRJ TRUST CO. LLC,)

Plaintiff,)

vs.)

ANSWER

S&S STERLING PROPERTIES)

LLC AND SHAKIL KAHN)

Defendants.)

The Defendant S&S Sterling Properties LLC answering the Complaint would allege as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter admitted, modified or explained is denied.
2. The allegations of ¶s 1 and 3 of the Complaint are admitted.
3. The allegations of ¶ 4 of the Complaint alleging that S&S executed the promissory note in the principal amount of \$140,000.00 to draw interest at the contract rate of 5.75% per annum with all principal and accrued interest to be paid in full no later than June 1, 2014 is admitted, the remaining allegations of ¶4 are denied.
4. This Defendant would admit so much of the allegations of ¶ 5 of the Complaint.
5. So much of the allegations of ¶ 6 of the Complaint that there is some amount owed on the note, is admitted but this defendant denies the amount owed and alleges that this

defendant has not been properly credited with its payments.

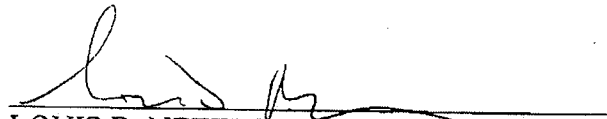
6. This Defendant denies the allegations ¶ 7 and alleges that the parties have attempted to negotiate their differences but that the negotiations have been unavailing.

7. The allegations of ¶ 8 are denied.

8. The allegations of ¶ 9 are admitted.

9. The allegations of ¶ 10 are denied.

WHEREFORE, these Defendant having fully answered the Complaint asks that the same be dismissed.



LOUIS D. NETTLES
Folkens Law Firm, P.A.
601 West Evans Street
Post Office Box 6139
Florence, South Carolina 29502
(843) 665-0100
Attorney for Defendants

Florence, South Carolina
August 6, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-21-2153

CRJ TRUST CO. LLC,)
)
Plaintiff,)

vs.)

MOTION FOR JUDGEMENT ON THE PLEADINGS

S&S STERLING PROPERTIES)
LLC AND SHAKIL KAHN)
)
Defendants.)

The Defendant Shakil Kahn moves for judgement on the pleading dismissing him from the suit. This motion is on the ground that the complaint fails to state a claim against him. the same be dismissed.

Respectfully submitted,



LOUIS D. NETTLES
Folkens Law Firm, P.A.
601 West Evans Street
Post Office Box 6139
Florence, South Carolina 29502
(843) 665-0100
Attorney for Defendants

Florence, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2015-CP-21-2153

CRJ TRUST CO., LLC,)
)
PLAINTIFF,)

vs.)

S&S STERLING PROPERTIES, LLC,)
AND SHAKIL KHAN,)

DEFENDANTS.)

NOTICE OF MOTION
AND MOTION TO RECONSIDER

FILED
2017 APR - 4 PM 12:00
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

TO: THE HONORABLE MICHAEL G. NETTLES, CIRCUIT COURT JUDGE; LOUIS D. NETTLES, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the plaintiff, by and through its undersigned counsel, will move before the Honorable Michael G. Nettles of the Florence County Court of Common Pleas ten (10) days after service hereof at 10 a.m., at the Florence County Courthouse, or at such other time and place as the court may direct, for an order reconsidering and/or amending or altering the order dated March 21, 2017, of which written notice was received by the undersigned counsel for the plaintiff on March 25, 2017. The grounds for this motion are that the order of March 21st does not even mention or address several arguments presented by plaintiff's counsel in opposition to the defendants' motion for judgment on the pleading. This motion is based Rule 59(e) SCRCP, and such other law and procedure as may be applicable to motions of this nature. Specifically, the plaintiff asks the court to consider and rule upon the following:

1. That the answer of each defendant admits that the individual defendant is personally liable per the terms of the promissory note (paragraph 4 of each answer).

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

1
[Signature]
20

2. That neither defendant asserted by way of their answers any affirmative defenses related to avoidance of the individual defendant's personal liability per the terms of the promissory note.
3. That the terms of the promissory note provide on page 5 (Exhibit A to the Verified Complaint) that "If Borrower of any other Obligor is a partnership and/or limited liability company, then all general partners or members thereof shall be jointly and severally liable for all obligations under this Note" The court's order of May 21st limits itself only to a brief discussion of a certain part of the UCC (S.C. Code Section 36-3-402) regarding signatures by representatives without discussing the effect of 36-1-302 which expressly provides that the parties to such an instrument may, as was done in the present case, vary the application of the UCC so as to provide for the personal liability of the individual per the terms of that promissory note.

Per Rule 11, SCRCP, there is no duty to communicate with opposing counsel about this motion as such communication would serve no useful purpose given the nature of this motion as one seeking reconsideration of an order dismissing a party. This motion will be supported by the pleadings and files in the matter, together with such argument and other evidence as the court may permit.

THE ROBERT COOK LAW FIRM, LLC
P.O. Box 3575
Batesburg-Leesville, South Carolina 29070
(803) 317-2171 (phone)
(803) 317-2175 (fax)
robcook1965@yahoo.com

BY: Robert M. Cook II
ROBERT M. COOK II
Attorney for the Plaintiff

April 3, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-21-2153

CRJ TRUST CO. LLC,)
)
Plaintiff,)
)
vs.)
)
S&S STERLING PROPERTIES)
LLC AN D SHAKIL KAHN)
)
Defendants.)
_____)

MEMORANDUM ON
MOTION FOR JUDGEMENT ON THE PLEADINGS

The Defendant Shakil Kahn has moved for judgement on the pleading dismissing him from the suit.

This is a suit on a note. The note is incorporated into the complaint. This lawsuit is governed by the South Carolina Uniform Commercial Code and by Chapter 3 of Title 36 of the South Carolina Code. This is the Uniform Commercial Code as adopted by South Carolina. The note meets the definition of Negotiable Instrument contained in Section 36-3-104¹.

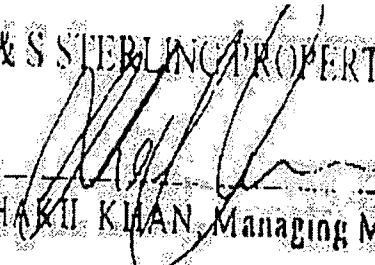
the undersigned ("Borrower") promises to pay to the order of CRJ TRUST COMPANY, LLC , ... at the office of the Lender ... (\$140,000.00) ... together with interest ... Said

¹ SECTION 36-3-104. Negotiable instrument.

- (a) Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:
 - (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
 - (2) is payable on demand or at a definite time; and
 - (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

principal and interest shall be payable... in the amounts specified below... all principal, together with any accrued and unpaid interest, hereunder shall be payable on June 1, 2014.

The note contains one signature, that of S&S STERLING PROPERTIES, LLC and appears as follows:

S & S STERLING PROPERTIES, LLC
BY 
SHAKTI KHAN, Managing Member

It is clear that Mr. Kahn signed this as representative of S&S. Section 36-3-402 provides that a representative signs on behalf of a represented person, the representative is not liable on the instrument.²

So it is unambiguously clear from the Complaint that Mr. Kahn signed this negotiable instrument as representative of S&S Sterling, LLC and under South Carolina Law only S&S is liable on the note. Mr. Kahn is entitled to judgment on the pleadings dismissing him from the complaint.

² SECTION 36-3-402. Signature by representative.

(a) If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

Respectfully submitted,



LOUIS D. NETTLES
Folkens Law Firm, P.A.
601 West Evans Street
Post Office Box 6139
Florence, South Carolina 29502
(843) 665-0100
Attorney for Defendants

Florence, South Carolina
August 25, 2016

STATE OF SOUTH CAROLINA)	
)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	2015-CP-21-2153
)	
)	
)	
CRJ Trust Company, LLC))
)	
vs.)	TRANSCRIPT OF RECORD
)	
S&S Sterling Properties, LLC))
and Shakil Khan)	
DEFENDANT)	February 27, 2017
		Florence, SC

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

A P P E A R A N C E S:

ROBERT M. COOK, II, ESQ.
Attorney for the Plaintiff

LOUIS D. NETTLES, ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

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(WHEREUPON, no witnesses were called.)

1 THE COURT: The next case is CRJ Trust Company
2 vs. S&S Sterling Properties, Robert Merrel Cook, II and
3 Louis Nettles.

4 MR. COOK: May it please the Court, I'm Robert
5 Cook and I represent the plaintiff in this matter.

6 THE COURT: Yes.

7 MR. COOK: Your Honor, this is an action on a
8 promissory note. I believe trial would take a couple of
9 hours at most. There's basically two issues as I
10 understand it. One is the liability of the individual
11 defendant as a guarantor and also the proper allocation of
12 some of the payments made. Mr. Nettles I believe on
13 Friday filed a motion for a judgment on the pleadings
14 which would need to be heard. I am scheduled to be in
15 common pleas court in Richland County this afternoon and
16 would ask the Court to consider perhaps scheduling this
17 trial either tomorrow or Wednesday, but I don't know what
18 the Court's preference is on that.

19 THE COURT: Let's hear what Mr. Nettles has to
20 say about all that.

21 MR. NETTLES: Your Honor please we haven't (sic)
22 announced any motion for judgment on the pleadings, that's
23 the individual defendant. Once that's resolved, this
24 probably be resolved by submitting an order to the Court
25 without necessity of a trial.

1 THE COURT: What do you have to say about that?

2 MR. COOK: Well, that may very well be. I think
3 the most contentious issue has been the individual
4 defendants liability, so it's possible that those dominoes
5 may fall once that's ruled on, Your Honor.

6 THE COURT: All right. Would you all like to do
7 that today or would you like to do it in the morning?

8 MR. COOK: I'm glad to do that today, Your
9 Honor, other than needing to be Columbia later on.

10 THE COURT: No time like the present, let's hear
11 it.

12 MR. COOK: Your Honor, if I may grab my file?

13 THE COURT: Yes.

14 (WHEREUPON, a pause in the proceedings.)

15 MR. NETTLES: Your Honor, please, this is -- I'm
16 not sure Your Honor has a copy of the motion. This is my
17 motion with judgment on the pleadings. If you look at the
18 complaint in this case, the complainant incorporates the
19 note on which they're suing. The note was not signed by
20 Mr. Kahn, but rather signed by him as a representative of
21 S&S Sterling Properties, LLC. I think the law is
22 abundantly clear that unless -- if he signs in a
23 representative capacity, he's not liable on the note. And
24 that's the nature of our motion because the note is before
25 the Court. The note does not contain Mr. Kahn's signature /

1 in his individual capacity. We ask ---

2 THE COURT: There are certain circumstances
3 where he could be held liable. What would that be?

4 MR. NETTLES: Well, not in this -- you know,
5 there may be situations where they could pierce the
6 corporate veil or something like that, but that be after a
7 judgment is taken against S&S and that kind of thing, but
8 this is a suit on a note. Mr. Kahn has not signed the
9 note except he signed as ---

10 THE COURT: As the managing member.

11 MR. NETTLES: Right. And that doesn't make him,
12 liable on it. If the judgment was enforceable against him
13 that would be a different issue.

14 THE COURT: All right. What do you have to say
15 about that, Mr. Cook?

16 MR. COOK: May it please the Court, a couple of
17 things. Your Honor, I believe the note is attached to the
18 complaint as an exhibit. The last page of that note which
19 is also the signature page, Your Honor, indicates in that
20 top paragraph and if I may read -- it appears to be about
21 the seventh or eighth line down. If borrower or any other
22 obliger is a partnership and or limited liability company,
23 then all general partners are members thereof shall be
24 liable jointly and severally for all obligations under this
25 note and for all covenants, agreements and undertakings

1 and obligations of the borrower in connection to the loan
2 and then, Your Honor, can see the rest of that. If absent
3 that language, I believe Mr. Nettles argument would have
4 some merit, but the complaint states that his liability --
5 and this is in paragraph five of the complaint is based
6 upon the terms of the note. And the terms mean that it
7 contains a provision that if it is a limited liability
8 company that the members are liable, so the note itself
9 provides for the liability.

10 Mr. Nettles he hasn't mentioned it, but I
11 understood previously that he was referring to a
12 particular section of the Uniform Commercial Code, but,
13 Your Honor, I would submit that another section provides
14 that parties can contract outside of the provisions of the
15 Uniform Commercial Code. And that's South Carolina Code
16 Section 36-1-302, which is entitled variation by agreement
17 which says that the terms of the UCC maybe varied by
18 agreement and that's what you have here, but you got to
19 document that that states that there is personal liability
20 for the members of the LLC. That's the basis of the claim
21 that he has personal liability.

22 In addition, Your Honor, since this is a motion
23 for judgment on the pleadings, Mr. Nettles had filed two
24 answers. One on behalf of the limited liability company
25 and one on behalf of the individual defendant. And if you

1 look at his paragraph four both of those answers, it
2 states this defendant would admit so much of the
3 allegations of paragraph five of the complaint period.
4 Paragraph five of the complaint is the paragraph of the
5 complaint that states that Mr. Kahn is individually liable
6 per the terms of the note. I'm not exactly sure what that
7 paragraph or that answer means, but it's clearly not a
8 denial. So in the terms of this particular motion, I
9 think it can be defeated on that basis alone as well as
10 the fact that there's no affirmative defense raised in the
11 answer, but even if you got past all that, the note itself
12 provides for the liability of Mr. Kahn.

13 THE COURT: I've just located the promissory
14 note. Where was the language that you're talking about?

15 MR. COOK: It's on the signature page, page
16 five.

17 THE COURT: All right.

18 MR. COOK: At the top of page five is a fairly
19 large paragraph that runs on from the previous page and
20 one, two, three, four, five, six, seven lines down there's
21 a sentence that begins if borrower or any other obliger.
22 Do you see that, Your Honor?

23 THE COURT: And it's on which page?

24 MR. COOK: It's page five of the note, which is
25 the page that Shakil Khan signed.

1 THE COURT: All right.

2 MR. COOK: If you count that top paragraph, if
3 you count down, I believe it's seven lines one, two,
4 three, four, five, six, seven.

5 THE COURT: All right.

6 MR. COOK: The first full sentence there begins
7 if borrower or any other obliger, that's the sentence that
8 provides if it's a limited liability company which this
9 is, that the member is also liable.

10 THE COURT: What do you have to say about that,
11 Mr. Nettles?

12 MR. NETTLES: Your Honor, please, it's
13 fundamental that in order to be held to a contract, you
14 have to agree to it. You have to sign it. Mr. Kahn has
15 not signed the agreement. The S&S. Properties signed it.
16 The law is clear citing the law in the brief that somebody
17 signs in a representative capacity, they're not
18 responsible for it. They're not a party to the agreement.
19 You can't hold somebody to an agreement they're not a
20 party to it.

21 THE COURT: It sounds like what he saying is
22 that in his capacity as the managing member of the LLC,
23 he's agreeing to the terms which says that everybody is
24 individually liable.

25 MR. NETTLES: Again, that binds the LLC not

1 Mr. Kahn.

2 THE COURT: Yes, sir.

3 MR. COOK: Your Honor, I would submit that that
4 language is clear and it indicates that if there's an LLC,
5 that it's the borrower and in this case there was. That
6 the general partners are members thereof are jointly and
7 severely liable. And even in the capacity that he signed,
8 Kahn is a managing member. So it's clear that he is a
9 member of the LLC. The terms of the note provide that
10 he's personally liable.

11 MR. NETTLES: To be personally liable, he would
12 have to agree to that. He's not agreed to that.

13 MR. COOK: Your Honor, I believe the presumption
14 would be that he agreed to every term in that note by
15 signing it. There's no other legal conclusion that could
16 be drawn.

17 MR. NETTLES: Except that Mr. Kahn did not sign
18 it. S&S Properties, LLC signed it. Your Honor, the UCC
19 says if the form of the signature shows unambiguously that
20 the signature is made on behalf of the represented person,
21 who's identified in the instrument represented, it's not
22 liable on the instrument.

23 THE COURT: So you would indicate that he could
24 sign that on behalf of the LLC, but there should be
25 another line where he would sign individually?

1 MR. NETTLES: If they were -- if you were trying
2 to establish that Mr. Kahn agreed to this, he would have
3 to sign it in his individual capacity. He is not a party
4 to this note. He can't be liable.

5 MR. COOK: Your Honor, may I respond to that?

6 THE COURT: Yes.

7 MR. COOK: I mean, the terms of the note
8 indicate otherwise. The provision of the UCC that I
9 preferred to 36-1-302 indicates you can -- what
10 Mr. Nettles is relying upon a section of the UCC that says
11 this is what happens if you sign us a representative
12 party. And he's right insofar as that it says that, but
13 another part of the UCC says you can bury that. I mean,
14 it doesn't interfere with the parties ability to contract.
15 What did they the contract for? But it's only one way to
16 tell, it's the terms of the note. The note provides that
17 a manager of the LLC is personally liable. And, Your
18 Honor, I'm going to go back to the nature of this motion,
19 it's one for judgment on the pleadings. The answer
20 doesn't deny that the gentleman is personally liable.

21 THE COURT: What do you have to say about that?

22 MR. NETTLES: The complaint says Mr. Kahn's
23 signature is on there and it is, but he signed in a
24 representative capacity. He is not a party to this note.
25 I mean, it's fundamental. You have to have an agreement

1 before you can have a contract. There's no evidence that
2 Mr. Kahn agreed to be responsible on the note. The LLC
3 did not him.

4 THE COURT: Okay. Under these circumstances,
5 I'm going to find that he's not individually liable and
6 that however had there been a line specifically where he
7 would sign individually, I think it would be different. I
8 might be wrong, but I'm sure if I am, you'll correct me.

9 MR. COOK: Well, Your Honor, if that's the case
10 then, may I request a formal order?

11 THE COURT: Yes.

12 MR. NETTLES: I recommend that we allow him to
13 draft an order finding judgment against the LLC and we'll
14 look at it.

15 MR. COOK: Your Honor, I would ask that the --
16 if that's the case, then will you continue this case
17 because you just dismissed a party that we consider vital
18 to the case and as a result, I think our appellate rights
19 would be immediate. So rather ---

20 THE COURT: No question about that.

21 MR. COOK: Yes, sir.

22 MR. NETTLES: Your Honor, can ---

23 THE COURT: Why don't you draft an order
24 setting forth my ruling and then we'll move forward from
25 there.

1 MR. NETTLES: We'll do that, Your Honor.

2 THE COURT: Very good.

3 MR. COOK: And, Your Honor, just -- if I may,
4 and I don't want -- if you'll indulge me. With regard to
5 the pleadings themselves, I'm not sure that I understand
6 the basis of the ruling with regard to that because the
7 pleadings themselves don't indicate that there's -- that
8 this is anything other than admitted.

9 MR. NETTLES: We'll treat that in the order.

10 THE COURT: Very good.

11 MR. COOK: All right. Thank you, Your Honor.

12 END OF REQUESTED TRANSCRIPT

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State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2015-CP-21-02153
)	
CRJ Trust Co., LLC,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
S&S Sterling Properties, LLC,)	
)	
Defendant.)	
)	

July 18, 2017
 Florence, South Carolina

B E F O R E:

The Honorable Michael G. Nettles, Judge

A P P E A R A N C E S:

Robert Cook II, Esquire
 Attorney for the Plaintiff

Louis David Nettles, Esquire
 Attorney for the (Former) Defendant Khalil Khan

Krystal J. Smith
 Court Reporter

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I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
Motion to Reconsider.....	4
Ruling.....	9
Court Reporter Certification.....	10

1 JULY 18, 2017

2 (WHEREUPON, the proceedings began at 2:17 p.m.)

3 THE COURT: All right. The next case is CRJ Trust
4 Company, LLC versus S&S Sterling Properties, LLC, Civil Action
5 2015-CP-21-2153. This is a motion to reconsider. I'd be glad
6 to hear -- hear from you.

7 MR. COOK: May it please the Court, Your Honor.

8 THE COURT: Yes.

9 MR. COOK: My name is Robert Cook and I represent the
10 plaintiff, who has requested reconsideration of your prior
11 order.

12 Your Honor, we're requesting reconsideration of an order
13 that you executed not quite four months ago on March 21st. The
14 basis -- the substance of that order is that you dismissed the
15 individual defendant from this action on a note. That
16 gentleman's name is Shakil Khan and the -- the way that the
17 dismissal was requested of you is by way of a motion for
18 judgment on the pleadings, which I think is significant for
19 our request that you reconsider.

20 We have basically three reasons why we've requested that
21 you reconsider that order. First of all, Your Honor, this
22 involves a note for -- in the amount of \$140,000 that was
23 entered back -- I want to say back in 2007 I believe. The
24 complaint attached the note as an exhibit and was incorporated
25 by reference into the complaint.

1 And the note that was signed by Mr. Khan and admittedly
2 signed by him with a designation, managing member, indicates
3 that if the borrower or any other obligor is a partnership
4 and/or a limited liability company -- it's clear this a
5 limited liability company -- then all general partners or
6 members thereof shall be liable jointly and severally for all
7 obligations under this note and for all other covenants,
8 agreements, undertakings, and obligations of the borrower.
9 And then it goes on to some stuff that's not relevant.

10 And there's no question that the note itself, which is
11 attached, indicates that he's a member. So so far as that
12 language goes, then -- and because he signed it as a member,
13 the note itself obligates him to be personally liable and that
14 was the basis that we had for bringing him in as a defendant.

15 The motion to dismiss for judgment -- the motion for
16 judgment on the pleadings to dismiss Mr. Khan was based upon
17 one section out of the UCC, which was -- I think it was
18 Section -- I think it was 36-3-104, if I'm not mistaken, which
19 basically says that if you sign -- just because you sign in a
20 representative capacity does not make you personally liable.

21 And I don't -- I don't disagree with that. I believe
22 that if the note had not contained the language that I just
23 read to Your Honor -- in other words, had the note been
24 \$140,000 obligation of the LLC with none -- with none of that
25 language about being personally liable and then Mr. Khan had

1 signed it as the member of the LLC, I think the statutory
2 language relied upon by Mr. Khan would make more sense. It
3 might very well apply to him.

4 But what is significant is this particular note contains
5 other language, and the UCC provides -- and I believe I handed
6 a copy of this up to Your Honor at the previous hearing -- in
7 Section 36-1-302 that it can be varied by agreement. In other
8 words, the parties can contract outside of the limitation that
9 -- that Mr. Nettles relies upon to have his client dismissed.

10 And that's what they did. In fact, the way your order of
11 March is styled, it says that there was no evidence of a
12 meeting of the minds of the parties that Mr. Khan be
13 personally liable. Well, in this particular case -- I mean
14 there have been no depositions taken. No affidavits were
15 submitted.

16 The best evidence of what the meeting of the minds of
17 these parties was is the note itself, and the note contains
18 language that states that if somebody who is a member of the
19 LLC signs it, that they're personally liable. I mean that is
20 exactly what we rely upon to state that he should be held
21 personally liable is that language.

22 In my motion to reconsider, I've -- that's the third
23 issue that I raised is that portion of the UCC that says you
24 can contract out of that and that, just because he signed as a
25 member, he can also be personally liable if the note says a

1 member would be personally liable.

2 The two other object -- or the two other questions that
3 we wanted you, Judge, to consider were this. The nature of
4 the motion was a motion for judgment on the pleadings. In the
5 -- I think it's paragraph 5 of the complaint states Mr. Khan
6 is personally liable, and the defendants each filed an
7 individual answer. There are two answers, one for each
8 defendant.

9 In both of those, there's no denial of the liability of
10 Mr. Khan with regard to that particular paragraph. It looks
11 -- honestly, it looked like it kind of got cut off the
12 language of the answer, but there's not a denial. It
13 basically just says we admit that paragraph in so far as, and
14 it kind of stops. But there is no affirmative defense raised
15 in either one of those answers stating that this particular
16 section of the UCC precludes Mr. Khan's liability or anything
17 else that would constitute an avoidance of his personal
18 liability.

19 So for those reasons, we ask that you reconsider your
20 order dismissing Mr. Khan because the pleadings themselves
21 don't justify the decision that you reached, Your Honor. They
22 just don't.

23 And the -- the -- the law is that under the UCC you can
24 contract out of that -- that language that was relied upon in
25 your order and, in fact, that's exactly what they did or at

1 least at the stage of making a decision on judgment on the
2 pleadings.

3 I don't think it's -- you know, the order states
4 basically it's clear there was no meeting of the minds. The
5 contract says otherwise, Your Honor, and we would ask that you
6 reconsider your order on that basis and find that you should
7 have denied the motion for judgment on the pleadings.

8 And obviously, my reason for bringing this is twofold.
9 One is to kind of -- to hopefully present more effectively the
10 arguments that I presented previously and also to preserve
11 those for purposes of appeal, should that be something that my
12 client wishes to engage in.

13 And hopefully, I've done that today. So, Your Honor,
14 that's -- that's the basis of our argument.

15 THE COURT: Very good. Let's hear what Mr. Nettles has
16 to say about that.

17 MR. NETTLES: Your Honor, I had some time to consider
18 this over time and I'm trying to boil it down into the
19 briefest possible points. My point being that there's nothing
20 magic in the signature. You're not obligated to a contract by
21 signing it. The signature is evidence of an agreement.

22 In this case -- and the law makes it clear what's the
23 significance of a signature signing in a representative
24 capacity and the law is that's a signature of the LLC, not the
25 individual.

1 In this case, there's nothing in here showing that Mr.
2 Khan personally agreed to this. You simply have a note signed
3 by the LLC through the general manager and --

4 THE COURT: Do you think that --

5 MR. NETTLES: -- there's no agreement of Mr. Khan's.

6 THE COURT: Do you think it would be different if --
7 typically, these banks quite often will have, like, a
8 guaranteed form. Obviously, if he were to sign that
9 personally on a guaranteed form, it would be different than
10 him signing on a -- in a representative capacity.

11 MR. NETTLES: Abso -- absolutely.

12 THE COURT: Well, let's see here. Mr. Cook, you might be
13 one hundred percent right, but I anticipate we'll probably
14 find out. But I -- I think that the ruling is correct given
15 all of the facts and circumstances and the pleadings.

16 But good luck to you.

17 MR. COOK: Well, Your Honor, with all candor, I always --
18 always walk with trepidation whenever I make a motion like
19 this. I appreciate your --

20 THE COURT: I hope when --

21 MR. COOK: -- your graciousness with regard to the
22 ruling. Thank you.

23 THE COURT: Very good. Thank you.

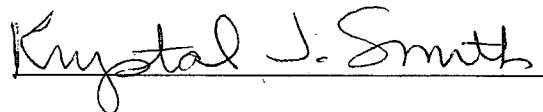
24 MR. NETTLES: Thank you, Your Honor.

25 (WHEREUPON, the proceedings ended at 2:26 p.m.)

1 State of South Carolina)
2) Certificate
3 County of Florence)--
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 9, constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 Common Pleas for Florence County, South Carolina, on the 18th
13 day of July, 2017.

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

16
17 

18 Court Reporter

19
20 Florence, South Carolina

21 September 11, 2017

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$.75 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO:

KRYSTAL J. SMITH, COURT REPORTER
12TH CIRCUIT AT LARGE
P.O. BOX 13563
FLORENCE SC 29504

PROMISSORY NOTE

\$140,000.00

SOUTH CAROLINA

FOR VALUE RECEIVED, the undersigned ("**Borrower**") promises to pay to the order of CRJ TRUST COMPANY, LLC, organized and existing under the laws of the State of South Carolina, ("**Lender**"), at the office of the Lender at or at such other place as the holder hereof may from time to time designate in writing, the principal sum of ONE HUNDRED FORTY NO/100 DOLLARS (\$140,00.00)(the "**Loan Amount**"), together with interest thereon on the principal amount from time to time outstanding based on a 365-day year at an annual rate prior to maturity or default of 5.75% Said principal and interest shall be payable in lawful money of the United States, on the dates and in the amounts specified below, to wit:

Payments of interest only shall be due and payable monthly (in the sum of \$670.83, based on the current principal balance), with the initial interest payment being due and payable on July 1, 2007 and such payments continuing on the 1st day of each month thereafter, until June 1, 2014. Commencing on August 1, 2007, payments of principal and interest based on an 30 year amortization shall be due and payable monthly (in the sum of \$140,000.00 based on the current principal balance) and such payments shall continue on the 1st day of each month thereafter. Notwithstanding the foregoing, all principal, together with any accrued and unpaid interest, hereunder shall be payable on June 1, 2014.

Borrower and all endorsers, sureties, guarantors and any other persons liable or to become liable with respect to the loan evidenced by this Note (the "**Loan**") are each included in the term "**Obligors**" as used in this Note.

In the event that state documentary stamp taxes in excess of those affixed hereto are determined by Lender to be owed to the State of South Carolina, the undersigned Borrower agrees to hold Lender harmless from and against any and all cost involved in paying the additional documentary stamps and any penalties or interest required to be paid thereon, and the undersigned Borrower agrees to pay to Lender the full amount paid by the Lender to the State of South Carolina for additional documentary stamps, penalties, costs and interest.

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Borrower shall pay to Lender a late charge of five percent (5%) of any payment not received by Lender within ten (10) days of its due date.

The Borrower may prepay any principal hereunder, in whole or in part without any penalty for such prepayment.

Upon the transfer of any interest in the Property encumbered by the Mortgage (the "**Property**") or any interest in the Borrower, the full outstanding principal sum and all accrued interest, prepayment penalty and other sums shall be paid in full. In the event of an anticipated sale of the Property by Borrower, Borrower may request the consent of Lender to the assumption of the loan by the prospective buyer, which consent may be denied or conditioned in the Lender's sole discretion. If a requested assumption of the loan by a disinterested third party not related to Borrower, or holder of interest in Borrower, in an arms

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length transaction for full value is made and denied by Lender during the period commencing the sixth year after the date of this Promissory Note, through the tenth year after the date hereof, the Prepayment Penalty set forth above shall not be applicable to a payoff of the loan made as part of the sale of the Property to that buyer (and that buyer only).

The Note holder's failure to collect a prepayment penalty at the time a prepayment is received shall not be deemed a waiver of such penalty and any such penalty calculated in accordance with this section shall be payable upon demand.

Borrower shall pay all amounts owing under this Note in full when due without set-off, counterclaim, deduction or withholding for any reason whatsoever. If any payment falls due on a day other than a day on which Lender is open for business (a "Business Day"), then such payment shall instead be made on the next succeeding Business Day, and interest shall accrue accordingly.

If default be made in the payment of any sums payable pursuant to the terms of this Note, or if default or other event causing the acceleration of this Note occur under the Mortgage and Security Agreement (the "Mortgage") securing this Note, or any other instrument or document executed in connection with the Loan (this Note, the Mortgage, and all such instruments and documents, including, without limitation, any guaranties, agreements, mortgages, security agreements, assignments and other documents securing this Note, are referred to in this Note as the ("Loan Documents") (such defaults hereinafter referred to as an "Event of Default"), then or at any time thereafter at the option of Lender, the whole of the principal sum then remaining unpaid hereunder, together with all interest accrued thereon and all other sums owing under the Loan Documents, shall immediately become due and payable without notice and Lender shall be entitled to pursue any and all rights and remedies provided by applicable law and/or under the terms of this Note or any other Loan Document, all of which shall be cumulative and may be exercised successively or concurrently. Upon the occurrence and during the continuation of any Event of Default, Lender, at its option, may at any time declare any or all other liabilities of any Obligor to Lender immediately due and payable (notwithstanding any contrary provisions thereof) without demand or notice of any kind. In addition, Lender shall have the right to set off any and all sums owed to any Obligor by Lender in any capacity (whether or not then due) against the Loan and/or against any other liabilities of any Obligor to Lender.

From, and after an Event of Default, and regardless of whether the Lender also elects to accelerate the maturity of this Note, the entire principal remaining unpaid hereunder shall bear an augmented annual interest rate equal to the lesser of (i) eighteen percent (18%) per annum, or (ii) the highest applicable lawful rate. Failure by Lender ~~to~~ exercise any and all rights or remedies Lender may be entitled to in the event of any such default, shall not constitute a waiver of the right to exercise such rights or remedies in the event of any subsequent default, whether of the same or different nature. No waiver of any right or remedy by Lender shall be effective unless made in writing and signed by Lender, nor shall any waiver on one occasion apply to any future occasion.

In no event shall any agreed or actual exaction charged, reserved or taken as an advance or forbearance by Lender as consideration for the Loan exceed the limits (if any)

imposed or provided by the law applicable from time to time to the Loan for the use or detention of money or for forbearance in seeking its collection, and Lender hereby waives any right to demand such excess. During any time that the Loan bears interest at the maximum, lawful rate (by application of the default provisions of this Note), interest shall be computed on the basis of a three hundred sixty five (365) day year and charged on the basis of actual days elapsed.

Obligors hereby severally: (a) waive demand, presentment, protest, notice of dishonor, suit against or joinder of any other person, and all other requirements necessary to charge or hold any Obligor liable with respect to the Loan; (b) waive any right to immunity from any such action or proceeding and waive any immunity or exemption of any property, wherever located, from garnishment, levy, execution, seizure or attachment prior to or in execution of judgment, or sale under execution or other process for the collection of debts; (c) waive any right to interpose any set-off or non-compulsory counterclaim, or to plead laches or any statute of limitations as a defense in any such action or proceeding and waive (to the extent lawfully waivable) all provisions and requirements of law for the benefit of any Obligor now or hereafter in force; (d) submit to the jurisdiction of the state and federal courts in the State of South Carolina for purposes of any such action or proceeding; (e) agree that the venue of any such action or proceeding may be had in Florence South Carolina (in addition to any county in which any collateral for the Loan is located), and waive any claim that the same is an inconvenient forum; and (f) agree that the death or mental or physical incapacity of any Obligor who is a natural person, or the dissolution or merger or consolidation or termination of the existence of any Obligor that is a business entity (or if any person controlling such Obligor shall take any action authorizing or leading to the same), shall, at Lender's option, which option may be exercised then or at any time thereafter, result in the Loan being then due and payable in full. No provision of this Note shall limit Lender's right to serve legal process in any other manner permitted by law or to bring any such action or proceeding any other competent jurisdiction. Obligors hereby severally consent and agree that, at any time and from time to time without notice, (i) Lender and the owner(s) of any collateral then securing the Loan may agree to release, increase, change, substitute or exchange all or any part of such collateral, and (ii) Lender and any person(s) then primarily liable for the Loan may agree to renew, extend or compromise the Loan in whole or in part or to modify the terms of the Loan in any respect whatsoever; no such release, increase, change, substitution, exchange, renewal, extension, compromise or modification shall release or affect in any way the liability of any Obligor, and Obligors hereby severally waive any and all defenses and claims whatsoever based thereon. Until Lender receives all sums due under this Note and all other Loan Documents in immediately available funds, no Obligor shall be released from liability with respect to the Loan unless Lender expressly releases such Obligor in a writing signed by Lender, and Lender's release of any Obligor(s) shall not release any other person liable with respect to the Loan.

— Obligors jointly and severally agree to pay all filing fees and similar charges and all costs incurred by Lender in collecting, enforcing or securing or attempting to collect or secure the Loan, including attorneys' fees, whether or not involving litigation and/or appellate, administrative or bankruptcy proceedings. Obligors jointly and severally agree to pay any documentary stamp taxes, intangible taxes or other taxes (except for federal or South Carolina franchise or income taxes based on Lender's net income) which may now or

hereafter apply to this Note or the Loan or any security therefor, and Obligors jointly and severally agree to indemnify and hold Lender harmless from and against any liability, costs, attorneys' fees, penalties, interest or expenses relating to any such taxes, as and when the same may be incurred. Obligors jointly and severally agree to pay on demand, and to indemnify and hold Lender harmless from and against, any and all present or future taxes, levies, imposts, deductions, charges and withholdings imposed in connection with the Loan by the laws or governmental authorities of any jurisdiction other than the State of South Carolina or the United States of America, and all payments to Lender under this Note shall be made free and clear thereof and without deduction therefrom.

This Note shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina, except that federal law shall govern to the extent that it may permit Lender to charge, from time to time, interest on the Loan at a rate higher than may be permissible under applicable South Carolina law.

Any provision of this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent that Obligors may lawfully waive any law that would otherwise invalidate any provision of this Note, each of them hereby waives the same, to the end that this Note shall be valid and binding and enforceable against each of them in accordance with all its terms.

If this Note is signed by more than one person, then the term "**Borrower**" as used in this Note shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Note are made by and shall be binding upon each and every undersigned person, jointly and severally. The term "**Lender**" shall be deemed to include any subsequent holder(s) of this Note. Whenever used in this Note, the term "**person**" means any individual, firm, corporation, trust or other organization or association or other enterprise or any governmental or political subdivision, agency, department or instrumentality thereof. Whenever used in this Note, words in the singular include the plural, words in the plural include the singular, and pronouns of any gender include the other genders, all as may be appropriate.

Time shall be of the essence with respect to the terms of this Note. This Note can not be changed or modified orally. Lender shall have the right unilaterally to correct patent errors or omissions in this Note or any other Loan Document. Except as otherwise required by law or by the provisions of this Note or any other Loan Document, payments received by Lender hereunder shall be applied first against expenses and indemnities, next against interest accrued on the Loan, and next in reduction of the outstanding principal balance of the Loan, except that from, and after any default under this Note, Lender may apply such payments in any order of priority determined by Lender in its exclusive judgment. Borrower shall receive immediate credit on payments if made in immediately available funds; otherwise, said payments shall be credited after clearance. If any payment required to be made pursuant to this Note is not received on the due date, Lender shall have the right, at its election, to charge any of Borrower's accounts at Lender with the amount of such payment. Except as otherwise

required by the provisions of this Note or any other Loan Document, any notice required to be given to any Obligor shall be deemed sufficient if made personally or if mailed, postage prepaid, to such Obligor's address as it appears in this Note (or, if none appears, to any address for such Obligor then registered in Lender's records). Lender may grant participation in all or any portion of, and may assign all or any part of Lender's rights under, this Note. Lender may disclose to any such participant or assignee any and all information held by or known to Lender at any time with respect to any Obligor. If Borrower or any other Obligor is a partnership and/or limited liability company, then all general partners or members thereof shall be liable jointly and severally for all obligations under this Note and for all other covenants, agreements, undertakings and obligations of Borrower in connection with the Loan, notwithstanding any contrary provision of the partnership laws of the State of South Carolina. All of the terms of this Note shall inure to the benefit of Lender and its successors and assigns and shall be binding upon each and every one of Obligors and their respective heirs, executors, administrators, personal representatives, successors and assigns, jointly and severally.

This note is subject to a setoff agreement between the parties, wherein a maker of said note has the right to setoff any payment and/or payments to Oblige on said note pursuant to any damages and/or expenses either reasonable or otherwise incurred by Obligor where said expenses were not reasonably foreseen and were not reasonably foreseen by Obligor during the first three years of said note.

The may encumber real and personal property located in Florence, South Carolina, and is intended to be recorded amongst the Public Records of said County.

BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT BORROWER MAY HAVE TO TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF BORROWER.

WITNESS the due execution hereof as of the date first above written.

S & S STERLING PROPERTIES, LLC

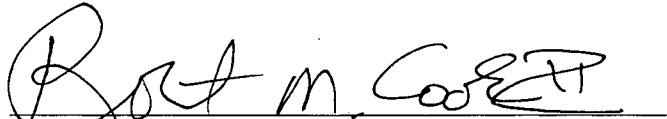
BY: 

SHAKIL KHAN, Managing Member

CERTIFICATE OF COUNSEL

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

THE ROBERT COOK LAW FIRM, LLC



ROBERT M. COOK II

P.O. Box 3575

Batesburg-Leesville, SC 29070

(803) 317-2171 (phone)

(803) 317-2175 (fax)

robcook1965@yahoo.com

ATTORNEY FOR THE APPELLANT

February 1, 2018

RECEIVED

FEB 20 2018

SC Court of Appeals