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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
The Honorable Marvin H. Dukes, III, Special Circuit Court Judge

Appellate Case No. 2016-001899
Case No. 2016-CP-07-1778

A&B Associates, L.P. /Respondent,

v.

FCRE REL, LLC; and TIDELAND REALTY, INC. Defendants,

Of whom FCRE REL, LLC is the Appellant.

RECORD ON APPEAL

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Other Counsel of Record:

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SC Court of Appeals

Attorney for Plaintiff/Respondent A&B ASSOCIATES, L.P.

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

A & B ASSOCIATES, L. P.)

Plaintiff,)

vs.)

FCRE REL, LLC, and TIDELANDS
REALTY, INC.,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

SUMMONS
(JURY TRIAL DEMANDED)

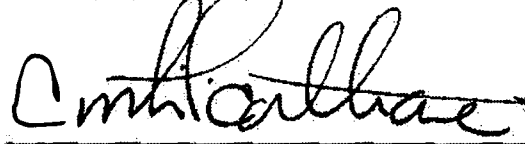
2016 AUG 15 AM 9:37
CLERK OF COURT
JESSIE A. ROSEHEAD
BEAUFORT COUNTY, S.C.

TO: FCRE REL, LLC, and TIDELANDS REALTY, INC.:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint for this case, a copy of which is herewith served upon you and to serve a copy of your Answer to the Complaint upon the subscriber, Curtis L. Coltrane, at his office, Coltrane & Wilkins, LLC, Post Office Drawer 6808, Hilton Head Island, South Carolina 29938, within thirty (30) days after the service hereof upon you, exclusive of the day of such service, and if you fail to serve your Answer the Complaint within such time, the Plaintiff will apply to the Court for the relief demanded therein, and judgment by default may be entered against you for the relief demanded in the Complaint.

COLTRANE & WILKINS, LLC

By:



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Hilton Head Island, South Carolina

This 12th Day of August, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07- <u>1778</u>
A & B ASSOCIATES, L. P.	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	(JURY TRIAL DEMANDED)
	)	
FCRE REL, LLC, and TIDELAND	)	
REALTY, INC.,	)	
	)	
Defendants.	)	

NOW COMES PLAINTIFF, A&B Associates, L.P., by its attorneys Mahany Law and Coltrane & Wilkins, LLC, and hereby brings this action against Defendants FCRE REL, LLC, and TIDELAND REALTY, INC. For its complaint, Plaintiff says:

INTRODUCTION

This case is brought to restore the Plaintiff's possession to the property that it legally owns and for damages caused by the actions of the Defendant. Plaintiff is the owner of a 96-unit residential apartment complex located in Port Royal, South Carolina. In July 2016, Defendant FCRE REL, LLC, ("FCRE") forcibly removed Plaintiff from its property after declaring a false and contrived non-monetary default on a loan made to Plaintiff. FCRE lent money to Plaintiff to refinance the property in April 2015.

On July 18, 2016, Defendant FCRE sent Plaintiff a purported Notice of Default that alleged various non-monetary defaults. However, none of the alleged defaults exist or are occurring on the property or in relation to the loan. There simply was and is no reason for Defendant to have declared any of the defaults and strip Plaintiff of possession of the Property. The alleged defaults are without basis and are non-existent. Plaintiff has not defaulted on the loan obligations in any capacity.

Plaintiff has in excess of \$1.3 million of equity in the property and has never missed any of the required loan payments. The Defendant FCRE REL, LLC, has installed the Defendant TIDELAND REALTY, INC., as a manager of the Plaintiff's real property, and the Defendant TIDELAND REALTY, INC., has, among other things, collected rents from tenants and withheld the same from the Plaintiff.

Plaintiff now brings this action to restore its lawful possession of the real and personal property, to remove Defendants and their agents from the Property, and to compensate it for the damages it has sustained as a result of it being improperly removed from its Property.

PARTIES

1. Plaintiff A&B Associates, L.P., is a Georgia limited partnership with a principal place of business at 2 Pelham Road, Savannah, Georgia 31411. A&B Associates, L.P.'s general partners are ABGP, Inc. and August Group Inc. Mr. Christopher Kettles is the owner and President of each general partner corporation and his wife, Sharan Kettles, is the secretary of both corporations.
2. Defendant FCRE REL, LLC (herein, "Defendant FCRE"), is a Delaware limited liability company with an address of 623 Fifth Avenue, 24th Floor, New York, New York 10022. FCRE is in the lending business and is believed to be wholly owned by Freedom Mortgage Corporation. FCRE and Freedom Mortgage Corporation will be referred to herein interchangeably. The Defendant FCRE REL, LLC, is not qualified to transact business in South Carolina.
3. Defendant Tideland Realty, Inc. (herein, Defendant "Tidelands"), is a corporation organized and existing under the laws of the State of South Carolina, and which maintains its principal place of business in Beaufort County, South Carolina.

JURISDICTION AND VENUE

1. This action arises under South Carolina and/or New York law governing both contract and

tort law.

2. This Court has personal jurisdiction over the Defendants, pursuant to S.C. Code Ann. § 36-2-803(1)(a)(b)(c)(d)(e) and (g)(Supp. 2016), by virtue of the fact that Defendants were and is conducting business and committing tortious acts in this County as set forth herein. Furthermore, the loan at issue was secured by real property located in this County.

3. The actions giving rise to the claims asserted herein which occurred in this County at the Real Property at issue is located in this County. Venue is appropriate pursuant to S.C. Code Ann. § 15-7-10 (Supp. 2016).

4. Pursuant to the Loan Agreement executed by both Plaintiff and Defendant FCRE, jurisdiction and venue are proper in South Carolina. Section 11.3 of the Loan Agreement provides, in relevant part that “any legal suit, action or proceeding against Lender or Borrower arising out of or relating to this Agreement may at Lender’s option be instituted in any federal or state court selected by lender located in the state of New York (or, if different, the state where the property is located).”

5. Pursuant to Section 13.1 of the Mortgage, the “any legal suit, action or proceeding against Lender or Borrower arising out of or relating to this security instrument may at Lender’s option be instituted in any federal or state court selected by Lender located in the governing law state (or, if different, the State where the real property is located).”

FACTS

1. Plaintiff’s representative, Christopher Kettles, has been continually involved with the Property in some capacity since the 1980s. Mr. Kettles previously was CFO of an entity that owned the Property in the 1980s through the 1990s. In the late 1990s, Mr. Kettles and other business partners purchased a general partnership ownership interest from a previous general partner. The

named Plaintiff owns 100% of the Real Property.

2. On April 15, 2015, Plaintiff and Defendant FCRE entered into a Loan Agreement in which Defendant agreed to lend Plaintiff the principal sum of \$3,900,000.00. The loan was used to refinance residential rental property located at 2208 Southside Boulevard, Port Royal, South Carolina 29935 (the "Real Property") that was owned by Plaintiff.

3. The Real Property is a residential apartment complex that includes 96 apartments, ranging in size from one-bedroom units to three-bedroom units. It is known as the August on Southside Apartments.

4. Numerous documents were executed in connection with the loan relationship on April 15, 2015, including a Loan Agreement, a Promissory Note, a Guaranty of Recourse Obligations and Environmental Indemnity Agreement, and a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing. Collectively, these documents will be referred to as the Loan Documents or the "loan" in general.

5. At the time the Real Property was refinanced and the Loan subject to this action was closed, the Real Property was worth in excess of \$5,200,000.00. Therefore, upon executing the Loan Documents, Plaintiff had significant equity in the Real Property.

6. Prior to the loan being refinanced, a Property Condition Report was prepared on March 25, 2015. The Property Condition Report was prepared for Defendant FCRE. The Report alleged some minor repair items were needed and estimated the repairs would cost approximately \$10,225.

7. Plaintiff repaired the items referenced in the Property Condition Report prior to the loan closing.

8. Defendant FCRE hired PNC Realty to service the loan.

9. The Promissory Note and Loan Agreement required that Plaintiff pay a Monthly Debt

Service Payment Amount, which amounted to \$18,709.24.

10. The Loan Agreement further required that Plaintiff/Borrower make monthly Reserve Fund payments for taxes, insurance, and capital expenses.

11. From the date of the April 2015 loan closing through the present, Plaintiff has never missed a required loan payment or reserve fund payment.

12. Despite the fact that all required loan and reserve payments have been timely made, Defendant FCRE declared a non-monetary default via letter on July 18, 2016.

13. Prior to declaring a default on July 18, 2016, a deposit of \$3,844.00 was made into Plaintiff's Wells Fargo bank account on July 13, 2016. Due to a "miscellaneous error," the money was not posted in the account until July 25, 2016. Defendant FCRE removed the \$3,844.00 from Plaintiff's bank account on July 27, 2016. The Loan Documents required that this bank account be used to deposit rents collected during each month. The funds were then wire transferred to Plaintiff's operating account where payments were made to satisfy the mortgage loan and any other operating expenses.

14. Defendant FCRE did not give notice, reasoning, or a basis for why it removed Plaintiff's money from Plaintiff's bank account.

15. After declaring a non-monetary default, Defendant took possession of Plaintiff's Real Property and other personal property of the Plaintiff and removed Plaintiff from the Real Property.

16. Defendant FCRE now seeks to strip Plaintiff's possession, equity, and interest in the Real Property and acquire the Real Property and Plaintiff's personal property for its own benefit at a severely reduced price.

17. Prior to taking the above actions, Defendant FCRE did not file suit seeking to enforce its claimed rights arising from any alleged default and did not seek or obtain any Court Order

authorizing its actions as described above.

A. Plaintiff Has Properly Maintained the Real Property

1. Throughout Plaintiff's ownership of the Real Property, Plaintiff has employed both an onsite apartment manager and a full time maintenance professional to maintain the Real Property.
2. From the time Defendant FCRE became associated with the Real Property in April 2015; Plaintiff has significantly improved and maintained the Property. In effect, Defendant FCRE's secured collateral is in a better position now than it was before. For example, as of February 2016, Plaintiff had already:
 - a. Established a police substation on the Real Property;
 - b. Installed motion activation lights on the Real Property;
 - c. Installed video surveillance equipment;
 - d. Replaced all pole light globes to improve lighting;
 - e. Repaired fences;
 - f. Purchased and posted signage regarding trespassing, loitering, and video surveillance equipment;
 - g. Conducted tenant surveys;
 - h. Conducted interviews with the Port Royal Police Department, Beaufort County Police Department, and Beaufort County Sheriff's Department;
 - i. Conducted interviews with zoning, planning, and licensing officials for the city of Port Royal; and
 - j. Conducted interviews with electrical and utility officials for lighting suggestions.
3. Plaintiff has also maintained, repaired, and/or improved the Real Property in other ways not listed above.
4. Although Plaintiff has made many improvements at the Real Property, due to the size of the Real Property, namely, 96 apartment units spread out over numerous different buildings, some incidents have occurred at the Real Property during Plaintiff's ownership. One such incident was a random shooting that occurred in October 2015.
5. Upon information and belief, no suspect has ever been named or apprehended in response to the October 2015 shooting and the victim has recovered.

6. Plaintiff promptly took the actions listed in paragraph 2 in response to the shooting in an effort to increase tenant safety at the Real Property and as a result tenant safety has been increased.

7. Despite the random assault that occurred in October 2015, the Real Property has been free from any material defects throughout Plaintiff's ownership and Plaintiff has always properly and promptly repaired any defects found to exist on the Real Property.

8. After Defendant FCRE declared a default, the loan servicer e-mailed the August 2016 loan payment statement to the Plaintiff. The servicer cited problems with the paper bill being sent so it emailed the bill. The loan payment bill demonstrates that the loan account was and is current. Prior to receiving the emailed bill, Plaintiff had already made the August 2016 payment despite having no access to the rental revenue from the Real Property. The payment included excess funds of over \$5,000.00. Defendant FCRE now refuses to return the excess funds to Plaintiff.

B. Defendant FCRE unlawfully removed Plaintiff from the Real Property

1. On July 18, 2016, Defendant FCRE wrote a letter to Plaintiff that was entitled "NOTICE OF EVENT OF DEFAULT." Plaintiff received this letter on July 20, 2016.

2. According to the Notice's provisions, it was provided pursuant to Section 11.6 of the Loan Agreement and Section 6.2 of the Guaranty.

3. When Plaintiff received the purported Notice of Default, the Real Property was fully occupied and sufficient rents were received on a monthly basis to make all required debt service and reserve fund payments and all of those payments had been made.

4. When Plaintiff received the purported Notice of Default, there were sufficient funds to maintain and manage the Real Property and the Real Property was being maintained and managed.

5. The Notice of Default implies that the Real Property's condition had deteriorated from

approximately November 2015 through April 15, 2016. In support of its position that the Real Property has deteriorated, Defendant FCRE stated that fencing was stained and broken, a sign had chipping paint, there were mildew stains and possible microbial growth on the side of a building, there were stains on walls next to an exterior HVAC and electric meters, and there was broken fencing around the maintenance garage and swimming pool.

6. None of the conditions set forth in the Notice of Default and listed in the preceding paragraph are material. Rather, if these conditions existed, which Plaintiff disputes, they are normal wear and tear issues affecting the Real Property.

7. Prior to receiving the Notice of Default, Plaintiff had already remedied the alleged defects set forth in the Notice of Default. Plaintiff repainted any chipped paint on signs and fences, hired a professional entity to power wash and repaint any exterior areas of concern, and repaired fencing.

8. On June 23, 2016, Plaintiff's Sharan Kettles emailed photos of the Property's buildings, patios, and balconies that Plaintiff had professionally power washed and repainted to Defendant FCRE's Mary Davenport and Nichole Kim after an inspection raised concerns about this issue. The email and photos demonstrate that Plaintiff had repaired the alleged conditions.

9. The Defendant has not declared any sort of monetary or payment default nor could it because all payments have been timely made.

10. The Notice of Default alleges multiple events of default have taken place and that three of these events of default cannot be cured by Plaintiff. Defendant did not provide any basis or support for its statement the defaults are not curable.

11. According to Defendant FCRE's Notice of Default, the three alleged events of non-curable default are:

- a. Failure of the Borrower to cause the Real Property to be maintained

in a good and safe condition and repair, as required by Section 3.4 of the Mortgage and as incorporated into Section 10.1(a)(x) of the Loan Agreement.

b. The commission or suffering of waste to the Real Property, in violation of Section 3.5 of the Mortgage, and as incorporated into Section 10.1(a)(x) of the Loan Agreement.

c. Allowing the material impairment of the value of the Property, in violation of Section 3.5 of the Mortgage, and as incorporated into Section 10.1(a)(x) of the Loan Agreement.

12. None of these three alleged defaults have taken place or occurred on or at the Real Property nor has Defendant FCRE provided any proof thereof.

13. Section 3.4 of the Mortgage provides:

MAINTENANCE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty or become damaged, worn or dilapidated or which may be affected by any Condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

14. Section 3.5 of the Mortgage provides:

WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that may in any way materially impair the value of the Property or the security of this Security Instrument. Borrower will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

15. Section 10.1(a)(x) of the Loan Agreement provides:

Each of the following events shall constitute an event of default hereunder

(an "Event of Default")" . . .

(x) a default under any agreement creating a Lien or encumbrance on the Property.

16. Putting aside the security agreement that secures this loan, no other liens or encumbrances affect the Real Property. As such, Section 10.1(a)(x) of the Loan Agreement has not been violated in any capacity and any basis for a default under that Section is inapplicable and non-existent.

17. Sections 3.4 and 3.5 of the Mortgage require Plaintiff to maintain the Real Property and prevent waste of the Real Property, which Plaintiff has done. Plaintiff promptly remedied any issues that were affecting the Real Property and has already provided a non-exhaustive list of some of the steps that Plaintiff took to maintain and prevent waste on the Real Property. Plaintiff even went so far as to repair conditions in Defendant FCRE's Property Condition Report before Defendant FCRE ever funded the Loan.

18. After Plaintiff received the Notice of Default, Defendant FCRE, without notice and without any Court Order or other process, caused the Port Royal Police Department to physically remove Plaintiff from the Property. Plaintiff's agents were told by officers of the Port Royal Police Department that the Defendant FCRE had assumed control of the Real Property.

19. Plaintiff was not provided with any reasons as to why it was being removed from the Property and has certainly never received any type of due process prior to being stripped of the possession of the Property and its other property.

20. Upon information and belief, Defendant FCRE has not taken any legal action in regard to Plaintiff's or its own interest in the Real Property and therefore, Defendant FCRE

has and had no basis for denying Plaintiff its right of possession to the Real Property.

21. Plaintiff has attempted to take back possession of its Real Property yet has been prevented from doing so by Defendant FCRE and/or Defendant FCRE's representatives.

22. Defendant has replaced Plaintiff's management company, The August Group, Inc., with a new property management company, Defendant Tideland.

23. Upon information and belief, Defendant Tideland has now occupied office space in the Plaintiff's real property, has unlawfully interfered with Plaintiff's contracts with tenants and is collecting all rental payments.

24. Plaintiff is unaware if Defendant Tideland is planning to make any of the required debt service payments.

25. Although a technical non-monetary default has been declared, Plaintiff timely paid the August 2016 loan payment despite the fact that Plaintiff is not currently receiving any of the Real Property's rents. Further, Plaintiff has been informed that the Defendant FCRE will not return excess funds to the Plaintiff, legal owner the Property, even when all operating costs and debt service payments are being made.

26. Upon information and belief, Defendant Tideland and Defendant FCRE have undertaken unnecessary remodeling projects on Plaintiff's Property. Defendants have failed to ask for Plaintiff's permission or establish a basis for undertaking the work before commencing work on the Real Property.

27. Upon information and belief, the work currently being performed by Defendants is unneeded and unnecessary and being done wholly in an attempt to cause the Plaintiff to incur additional costs to which the Defendant FCRE can then claim ownership to and add on the amount allegedly owed by the Plaintiff.

28. Upon information and belief, Defendants have made misleading and untruthful statements about Mr. Kettles and his wife to the Property's tenants, including, but not limited to, that the Plaintiff and/or the Kettles' are in bankruptcy proceedings. Upon information and belief, these statements were made following Plaintiff's removal from the Real Property.

29. Upon information and belief, Defendants have told tenants that Plaintiff and/or the Kettles have stolen rent payments and that Defendant FCRE is now the owner of the Real Property.

30. Defendant has taken possession of all of Plaintiff's files and the Kettles' personal possessions following Defendants' takeover of the Real Property.

31. Defendants have posted the Real Property's rent rolls on the Real Property, which has provided tenants with the ability to compare their rental charges with those of other tenants. Furthermore, Defendants, have provided tenants copies of the Notice of Default that was sent to Plaintiff, all in a transparent attempt to injure and intimidate the Plaintiff.

COUNT I

Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Plaintiff and Defendant FCRE were both parties to the Loan Documents, which Loan Documents constitute contracts between the parties.

3. A covenant of good faith and fair dealing and commercial reasonableness attaches to the Loan Documents executed by the parties.

4. The covenant of good faith and fair and dealing and duty to act in a commercially

reasonable manner is intended to protect the parties' reasonable expectations under the contract.

5. Plaintiff has performed all duties it was required to perform under the contract.

6. Pursuant to the Loan Documents, Defendant FCRE owed specific contractual duties to Plaintiff and was required to act in a commercially reasonable manner, including offering a right to cure certain defaults that it has failed to provide Plaintiff.

7. The Loan Agreement required Defendant FCRE to offer Plaintiff the right to cure any alleged default and Defendant FCRE's failure to offer the right to cure is a clear breach of its contractual duties.

8. Defendant FCRE has breached the terms of the Loan Documents and has also breached the covenant of good faith and fair dealing by its conduct outlined herein.

9. Defendant FCRE's breach of the Loan Documents and violations of the covenant of good faith and fair dealing was and is a direct and proximate cause of Plaintiff's injuries.

10. Plaintiff has been harmed and will be harmed by being assessed default interest, interest, costs, fees, and attorney's fees, which it would not be liable for had Defendant FCRE not breached the terms of the Loan Documents.

11. Defendant FCRE has inappropriately exercised its discretion by alleging the Real Property has deteriorated and that Plaintiff is causing waste to the Real Property without any basis for doing so.

12. Defendant FCRE further acted inappropriately and unreasonably by declaring defaults when no default(s) exist.

13. Defendant FCRE further acted improperly when it inappropriately and unreasonably exercised its alleged right to remove the Plaintiff from the Real Property with no notice, no

right to cure, and no contractual basis for the same.

14. These actions are clearly unreasonable and do not constitute good faith and fair dealing and should also be considered an improper use of discretion.

15. Defendant FCRE's breach of the contract, including the covenant of good faith and fair dealing and its failure to act in a commercially reasonable manner, along with its abuse of its discretion, deprived Plaintiff of its benefits of the contract, including but not limited to, the ability to manage and possess and collect rents from the Real Property.

16. Defendant FCRE's breach of the contract, including the covenant of good faith and fair dealing and commercial reasonableness was a direct and proximate cause of harm to the Plaintiff. Plaintiff was and continues to be harmed, including but not limited to, incurring default interest, interest, other costs and fees assessed by Defendant FCRE, and attorney's fees and costs.

COUNT II **Unjust Enrichment**

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Defendant FCRE have removed Plaintiff from the Real Property and now claims to be an owner of the Property. Defendant Tidelands now occupies the Real Property and collects rents belonging to Plaintiff.

3. Plaintiff is the proper and legal owner of the Real Property and Defendant FCRE has removed Plaintiff from the Real Property.

4. Plaintiff has significant equity in the Real Property, which Defendant FCRE now seeks to strip and take for itself.

5. Defendants have obtained benefits from Plaintiff through their wrongful conduct and continue to maintain the legal right of possession to the Real Property and rents without compensating Plaintiff.

6. Upon information and belief, Defendants have collected rental income that rightly belongs to Plaintiff and Defendants have failed to compensate Plaintiff for its retention of the rental income.

7. Defendants have been and continue to be unjustly enriched by their conduct and have failed to justly compensate Plaintiff, the owner of the Real Property, for those benefits.

8. It is inequitable for Defendants to accept and retain these benefits without paying value to Plaintiff.

9. Defendants' failure to compensate Plaintiff for these benefits has been to Plaintiff's detriment.

COUNT III **Conversion**

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Plaintiff, as the lawful owner of the Real Property, has both a possessory right and interest in the Real Property.

2. Defendants have not been authorized by Plaintiff to possess the Real Property.

3. Defendant FCRE's removal of Plaintiff from the Real Property and Defendant Tidelands' occupancy of the Real Property and collection of rents have denied Plaintiff its right to possess the Real Property and has denied Plaintiff its interest in the Real Property and the rents derived therefrom.

4. Defendants continue to possess the Real Property, continue to collect rents, and continue to exclude Plaintiff from the Real Property. Defendants have unlawfully converted the Real Property and the rents derived therefrom to their own use.

5. Defendants' actions in denying Plaintiff its right to possess the Real Property and denying Plaintiff's interest in the Real Property and the rents derived therefrom are in derogation of Plaintiff's rights. Defendants' actions constitute a wrongful taking or wrongful detention.

6. Plaintiff has been, and continues to be, damaged as a result of Defendants' actions.

7. Defendants' actions were intentional, reckless and wanton and warrant an award of punitive damages.

COUNT IV

Declaratory Action: Violation of Public Policy and Declaration of Non-Default

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Although Defendant FCRE has declared a default, it is clear that there was no basis for doing so.

3. This Court should declare that no default has occurred or is occurring at the Real Property.

4. This Court should also declare that the Loan Documents violate public policy and therefore should not be enforced.

5. Defendant FCRE has attempted to strip Plaintiff's equity in the Real Property for its own benefit without taking any legal action against Plaintiff that would allow Defendants to possess the Property and remove Plaintiff from the Real Property. Any contractual

provision that allows a Lender to seize real property prior to the Borrower having any due process rights or even the ability to be heard, in the Lender's sole and unfettered discretion, clearly violates public policy.

6. As a condition of providing the Loan, the Defendant FCRE had total control over the Loan's provisions and Plaintiff had little, if any, bargaining power.

7. Defendant FCRE has sought to minimize its risk by including provisions in the Loan Agreement that provide Defendant FCRE with near absolute immunity from suit and attempt to prohibit Plaintiff asserting any counterclaims should suit be brought against it, which allows Defendant FCRE to behave in a predatory and oppressive manner. This clearly violates public policy.

8. The Loan Agreement's provisions indicate that Defendant FCRE and its agents cannot be liable for monetary damages, which gives Defendant FCRE near absolute freedom to act as it wishes and wrongfully take Plaintiff's Real Property and other property, with little risk for doing so.

9. Defendant FCRE's inclusion of contractual terms that attempts to make it immune from liability and allow it unfettered discretion to take possession of the Real Property and other property despite the fact that no defaults have occurred and the Defendant FCRE has not proven any of the same violate the public policy of this State and therefore, the contracts cannot be enforced as written.

10. Plaintiff therefore asks that this court invalidate those portions of the Loan Documents that violate policy grounds and declare that there has been no default on the Loan.

COUNT V
Tortious Interference with Contracts

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.
2. Upon information and belief, Defendants have collected rental income that rightly belongs to Plaintiff and Defendants have failed to compensate Plaintiff for its retention of the rental income.
3. Upon information and belief, Defendants have made misleading and untruthful statements about Mr. Kettles and his wife to the Property's tenants, including, but not limited to, that the Plaintiff and/or the Kettles' are in bankruptcy proceedings. Upon information and belief, these statements were made following Plaintiff's removal from the Real Property.
4. Upon information and belief, Defendants have told tenants that Plaintiff and/or the Kettles have stolen rent payments and that Defendant FCRE is now the owner of the Real Property.
5. Defendants have posted the Real Property's rent rolls on the Real Property, which has provided tenants with the ability to compare their rental charges with those of other tenants. Furthermore, Defendants have provided tenants copies of the Notice of Default that was sent to Plaintiff, all in a transparent attempt to injure and intimidate the Plaintiff.
6. Through their actions described above, Defendants have tortiously interfered with Plaintiff's contracts with its tenants.
7. As a result of the Defendants' actions as described above, the Plaintiff has suffered actual damages in an amount to be proved at trial.

8. Defendants' actions were intentional, reckless and wanton and warrant an award of punitive damages.

COUNT VI
Accounting

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Upon information and belief, Defendants have collected rental income that rightly belongs to Plaintiff and Defendants have failed to compensate Plaintiff for its retention of the rental income.

3. Plaintiff is entitled to an Order of this Court requiring Defendants to account for all rents and other property of Plaintiff that are or have been in Defendants' possession, and requiring Defendants to deliver to Plaintiff all rents and other property of Plaintiff that are or have been in Defendants' possession.

COUNT VII
Permanent Injunction

1. The allegations contained in the preceding paragraphs are incorporated by reference as though fully set forth herein.

2. Plaintiff, as the owner of the Property, has legal right to the use, possession, enjoyment and benefits of the Property.

3. Plaintiff's legal right to the Property has been unlawfully invaded by Defendant.

4. Restoring Plaintiff's possession in the Property will ensure that the Property is adequately maintained, which is a benefit for both Plaintiff and Defendant.

5. Defendant has told the Property's tenants that it is the owner of the Property, even

without any legal basis for doing so.

6. Defendant, operating on the basis that it is the owner of the Property, may dispose of the Property, to Plaintiff's detriment.

7. Defendant has commenced work on the Property that is physically altering its condition, to Plaintiff's detriment.

8. Plaintiff has suffered, and will continue to suffer, irreparable harm if Defendant continues to possess and alter the Property and if Plaintiff is prohibited from possessing its Property.

9. Plaintiff does not have an adequate remedy at law short of this proposed injunction.

10. Defendant will not suffer any damages should an injunction be granted and there are significant equitable benefits to granting the injunction.

11. Defendant will not be harmed if an injunction is granted because all of the required loan payments have been timely made by Plaintiff and Defendant maintains its rights to foreclose if the loan documents are actually breached. Furthermore, Plaintiff has maintained and actually improved the Property's condition, which is a significant benefit to Defendant.

12. Plaintiff therefore asks this Court to use its equitable power to issue an injunction against Defendant estopping the Defendants from possessing or attempting to possess the Property short of a judicial order from this Court or any other Court with appropriate jurisdiction authorizing the same.

JURY DEMAND

1. Plaintiff hereby demands trial by jury on all issues so triable.

PRAYER FOR RELIEF

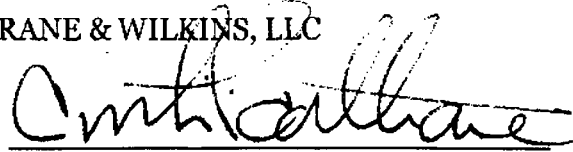
WHEREFORE, Plaintiff prays for judgment in its favor as follows:

1. awarding it damages and punitive damages against Defendants in an amount to be determined at trial;
2. the return of Plaintiff's files, possessions and money that have been misappropriated by Defendants, and awarding such other and further relief as the Court deems just and proper;
3. Plaintiff further prays for the issuance of a permanent injunction against Defendants that removes Defendants from Plaintiff's Property and prohibits Defendants from altering the Property unless and until a time when the Defendants obtains an order from a court of competent jurisdiction allowing the same; and,
4. For all other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (fax)
curtis@coltraneandwilkins.com

Christopher P. Katers
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Brian H. Mahany
(*pro hac* anticipated)
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8112 W. Bluemound Rd., Ste. 101
Wauwatosa, WI 53213
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brian@mahanylaw.com

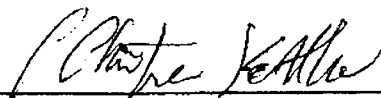
Hilton Head Island, South Carolina

This 12th Day of August, 2016.

STATE OF SOUTH CAROLINA)

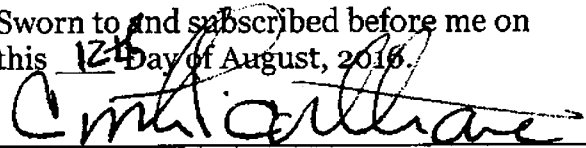
COUNTY OF BEAUFORT 2016 AUG 15 AM 9:55 VERIFICATION

PERSONALLY APPEARED before me, L. Christopher Kettles, who being duly sworn, deposes and says: that he is has authority to act on behalf of the Plaintiff and is a General Partner of the Plaintiff, in the foregoing action, that he has read the within Complaint, and that the facts are true of his own knowledge, except those matters and things therein alleged upon information and belief, and as to those, he believes them to be true.

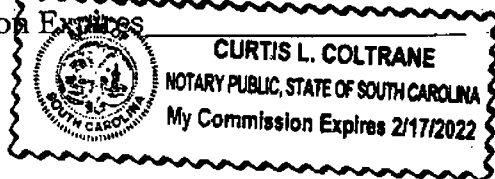


L. Christopher Kettles

Sworn to and subscribed before me on
this 12th Day of August, 2016.



Notary Public for South Carolina
My Commission Expires



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

A & B ASSOCIATES, L. P.

Plaintiff,

vs.

FCRE REL, LLC, and TIDELANDS
REALTY, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

MOTION FOR
EX PARTE TEMPORARY
RESTRAINING ORDER

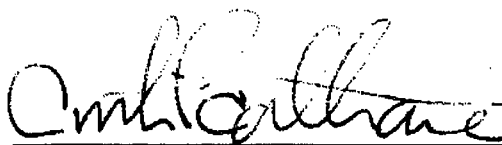
A&B Associates, L.P., by its attorneys Mahany Law and Coltrane and Wilkins, LLC, hereby request that this Court issue an *Ex Parte* Temporary Restraining Order against Defendant FCRE REL, LLC, and TIDELANDS REALTY, INC., removing Defendants from the Plaintiff's real property, requiring Defendants to return Plaintiff's personal property, preventing Defendants from altering and managing the Plaintiff's Real property, and restoring Plaintiff's possession to the property that it currently owns.

This Motion for Temporary Restraining Order is brought pursuant to SCRCP Rule 65(b) and the Order should be granted as Defendants' actions have caused, and continue to cause Plaintiff immediate and irreparable injury and loss or damage will continue to result to the Plaintiff. This Motion seeks to remove Defendants from Plaintiff's Property, seeks to restore Plaintiff's right of possession and management of the Property, and seeks to enjoin Defendants from altering the Property.

In support of this Motion, Plaintiff's Exhibit A is a verified Complaint that will be filed and served upon Defendants.

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (fax)
curtis@coltraneandwilkins.com

Christopher P. Katers
(*pro hac* anticipated)
Mahany Law
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Fx: 414.777.0776
ckaters@jlg-law.com

Brian H. Mahany
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Mahany Law
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Wauwatosa, WI 53213
Ph: 414.258.2375
Fx: 414.777.0776
brian@mahanylaw.com

Hilton Head Island, South Carolina

This 12th Day of August, 2016.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
A & B ASSOCIATES, L. P.)
Plaintiff,)
vs.)
FCRE REL, LLC, and TIDELANDS)
REALTY, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2016-CP-07-____

*EX PARTE TEMPORARY
RESTRAINING ORDER*

The undersigned, having considered Plaintiff's Verified Complaint, hereby issues this Temporary Restraining Order, pursuant to Rule 65, SCRPC, and Orders that:

1. Defendant FCRE REL, LLC, and Defendant Tideland Realty, Inc., shall immediately vacate the property known as the "August on Southside Apartments" that is owned by Plaintiff.
2. Defendant FCRE REL, LLC, and Defendant Tideland Realty, Inc., shall immediately cease from altering the property in any fashion.
3. *As of August 16th, 2016 at 3:00 PM,*
The Plaintiff is shall be restored to immediate possession of the real property described above and all of its personal property and funds, and is entitled to maintain and manage the real property as it sees fit.
4. This Temporary Restraining Order is granted without notice based on the facts set out in the Verified Complaint of the Plaintiff, and the Plaintiff's showing that:
 - (a) Plaintiff is suffering and has suffered immediate and irreparable injury because it has been removed and excluded from its own property and its personal property and funds have been seized without due process of law;

(b) it is suffering and has suffered immediate and irreparable injury in that its contractual relationships with its tenants have been interfered with;

(c) it is suffering and has suffered immediate and irreparable injury because its real property is being altered without its consent;

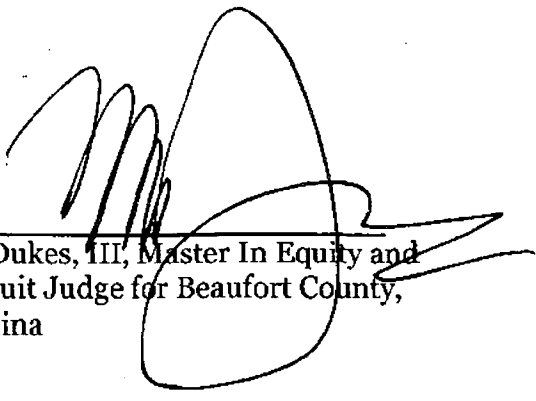
(d) it is suffering and has suffered immediate and irreparable injury because the Defendant is or has taken possession of rents from Plaintiff's tenants without due process of law, and its contracts that are secured by its real property are thus being interfered with; and,

5. A hearing is on the Plaintiff's Motion for a Temporary Injunction is hereby set for August 24th, 2016, at 3:30 o'clock, P. M., at my office, 102 Ribaut Road, Beaufort, South Carolina. 

6. This Temporary Restraining Order will expire 10 days from the date hereof, unless extended by agreement of the Parties or by Order of the Court of Common Pleas for Beaufort County, South Carolina.

7. I find that a cash bond in the amount of One Thousand (\$1,000.00) Dollars is sufficient security for this Temporary Restraining Order. The Plaintiff's Verified Complaint shows that there has been no monetary default in the payment of Plaintiff's obligations to the Defendant FCRE REL, LLC, and that there is substantial equity in the Plaintiff's property sufficient to cover any costs or damages that the Defendants may suffer in the event it shows that they were wrongfully enjoined.

This Temporary Restraining Order has been executed by the undersigned on this 15th day of August 2016 at 9:16 o'clock, A. M. 



Marvin H. Dukes, III, Master In Equity and
Special Circuit Judge for Beaufort County,
South Carolina

Beaufort, South Carolina

This 17 Day of August, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07-_____
A & B ASSOCIATES, L. P.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	AND MOTION FOR TEMPORARY
FCRE REL, LLC, and TIDELANDS	)	INJUNCTION AND NOTICE OF
REALTY, INC.,	)	HEARING
	)	
Defendants.	)	

TO: FCRE REL, LLC, and TIDELANDS REALTY, INC.:

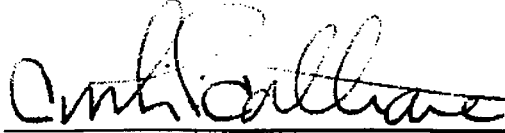
Please take notice that the Plaintiff, A & B Associates, L. P., by and through its attorneys Mahany Law and Coltrane and Wilkins, LLC, shall move before the Hon. Marvin H. Dukes, III, Master In Equity and Special Circuit Judge for Beaufort County, South Carolina, at his office located in the Beaufort County Court House, 102 Ribaut Road, Beaufort, South Carolina, at 3:30 o'clock, P. M., on August 24th, 2016, as follows:

For an Order, granting the Plaintiff a Temporary Injunction against Defendant FCRE REL, LLC, and TIDELANDS REALTY, INC., removing Defendants from the real property owned by the , preventing Defendants, from occupying, altering and managing the property, collecting rents and restoring Plaintiff's possession to the real property that it currently owns and the personal property, money, bank accounts and other property belonging to Plaintiff that Defendants have wrongfully taken possession of. This Motion for Temporary Injunction is brought pursuant to Rule 65(a), SCRCP,

In support of this Motion, Plaintiff's Exhibit A is its verified Complaint filed herein.

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane
S. C. Bar Number 1344
Post Office Box 6808
Hilton Head Island, SC 29938
(843) 785-5551
(843) 785-5552 (fax)
curtis@coltraneandwilkins.com

Christopher P. Katers
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Wauwatosa, WI 53213
Ph: 414.258.2375
Fx: 414.777.0776
brian@mahanylaw.com

Hilton Head Island, South Carolina

This 12th Day of January, 2016.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	DEFENDANT'S NOTICE OF MOTION AND MOTION TO VACATE <i>EX PARTE</i> TEMPORARY RESTRAINING ORDER
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	

TO THE ATTORNEY FOR THE PLAINTIFF: CURTIS L. COLTRANE

PLEASE TAKE NOTICE that Defendant FCRE REL, LLC (hereinafter "FCRE") will move the Court, pursuant to Rule 65(b), SCRCP, for the dissolution of the *Ex Parte* Temporary Restraining Order issued on August 15, 2016 and request that. FCRE requests that it be permitted to so move immediately upon the Plaintiff's receipt of this notice as the ends of justice require the same. In support of its motion, FCRE show the court as follows:

On April 15, 2015, FCRE and the Plaintiff entered into a Loan Agreement, Promissory Note, Guaranty of Recourse Obligations and Environmental Indemnity Agreement, and Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter "Loan Documents"). Section 4.1.16 of the Loan Agreement and Section 5.2 of the Mortgage provide that the Plaintiff has granted FCRE an irrevocable power of attorney, which may be exercised during an Event of Default, for the purpose of exercising and perfecting any all rights and remedies available under the Loan Documents, at law, and in equity. Section 10.3 of the Loan Agreement and Section 7.3 of the Mortgage allow FCRE, in an Event of Default and without notice or demand on the Plaintiff, to make, do, or perform any obligation of Plaintiff hereunder in such manner and to such extent as FCRE may deem necessary. Those sections further state that "[FCRE] is authorized to enter upon the Property" for those purposes.

Section 10.1 of the Loan Agreement sets out a list of events that each constitute an Event of Default. Included in that list is "a default under any agreement creating a Lien or encumbrance on the Property." The Mortgage is such an agreement and the Plaintiff is in default with regard to the provisions of the Mortgage as follows:

1. Failure of the Plaintiff to cause the Property to be maintained in a good and safe condition and repair as required by Section 3.4;
2. The commission and suffering of waste to the Property, in violation of Section 3.5; and
3. Allowing the material impairment of the value of the Property, in violation of Section 3.5.

The Plaintiff has failed to comply with the above-stated provisions of the Mortgage as follows:

1. Allowing stained and broken terrace fencing on both first and second floor porches;
2. Allowing paint on signage to become chipped;
3. Allowing multiple mildew stains, and possible microbial growth, to be present on the northern and eastern sides of one of the apartment buildings;
4. Allowing broken fencing around the maintenance garage and the outside of the swimming pool;
5. Allowing for the persistence of criminal activity including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;
6. Failure to provide adequate security including, but not limited to, failure to install security gates, video surveillance, or a police substation;
7. Failure to properly address plumbing problems such that the plumbing fixtures in second floor apartments leak into first floor apartments;
8. Allowing units to become infested with bed bugs;

9. Allowing units to become infested with roaches;
10. Failure to provide tenants with working kitchen appliances;
11. Installation of unsafe flooring in apartment units;
12. Failing to maintain the Property in compliance with the minimum standards of the U.S. Department of Housing and Urban Development Housing Quality Standards;
13. Failure to maintain the pool on the Property such that it complies with DHEC standards;

The plaintiff is obliged to maintain the property in a good and safe condition and repair and to refrain from the commission of waste of the Property pursuant to Sections 3.4 and 3.5 of the Mortgage. Section 4.1.12 requires the Plaintiff to continue to engage in the business of renting the Property's apartment units. As the Plaintiff has given FCRE an irrevocable power of attorney to perform the Plaintiff's obligations under the loan documents in the Event of Default and several Events of Default have occurred, all of Plaintiff's actions have been in compliance with the provisions of the Loan Documents.

As such, the Plaintiff has failed to establish immediate and irreparable injury and the likelihood that it will prevail on the merits. To the contrary, the *Ex Parte* Temporary Restraining Order, if enforced, will act to contravene the rights of the FCRE under the Loan Documents, will likely result in Plaintiff's continued abrogation to maintain the Property and prevent waste, and will severely prejudice FCRE in that the value of the Property, the security for FCRE's loan to the Plaintiff, will continue to be diminished – all causing immediate and irreparable injury to FCRE. Moreover, since the Plaintiff waited three weeks after the Notice of Default to file its motion it can hardly be said that there is any immediate injury.

In consideration of the foregoing, the *Ex Parte* Temporary Restraining Order should be vacated.

Submitted August 16, 2016.

Coppage Law Firm, LLC

By: 

Benjamin T. Coppage
Attorney for the Defendant
Post Office Box 2473
Beaufort, South Carolina 29901
Phone: 843-694-1696
Email: ben@coppagelawfirm.com

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF MARY F. DAVENPORT IN SUPPORT OF DEFENDANT'S MOTION TO VACATE <i>EX PARTE</i> TEMPORARY RESTRAINING ORDER

Personally appeared the undersigned person before a Notary Public of New York who, upon oath, deposes and declares as follows, to wit:

1. Her name is Mary F. Davenport, Executive Vice President of Defendant FCRE REL, LLC in the above-captioned action.
2. In December 2015 and July 2016 she visited the August on Southside Apartments located at 2208 Southside Boulevard, Port Royal, South Carolina (herein the "Property") and observed the presence of the following conditions:
 - a. Stained and broken terrace fencing on both first and second floor porches;
 - b. Chipped paint on signage;
 - c. The presence of multiple mildew stains, and possible microbial growth, on the northern and eastern sides of one of the apartment buildings;
 - d. Broken fencing around the maintenance garage and the outside of the swimming pool;

- e. Police reports reflecting criminal activity on the Property including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;
 - f. The absence of security including, but not limited to, security gates, video surveillance, or a police substation;
 - g. Plumbing problems including, but not limited to, plumbing fixtures in second floor apartments leak into first floor apartments;
 - h. Units infested with bed bugs;
 - i. Units infested with roaches;
 - j. Units with non-working kitchen appliances;
 - k. Unsafe flooring in apartment units;
 - l. Non-compliance with the minimum standards of the U.S. Department of Housing and Urban Development Housing Quality Standards; and
 - m. A lack of maintenance of the pool on the Property such that it failed to comply with DHEC standards.
3. Immediately following the visit to the property in December 2015, she advised representatives of the Plaintiff that the conditions on the property should be improved to comply with the provisions of the Loan Documents.
4. She received no response from the Plaintiff regarding improvements that would be made.
5. Necessary improvements to the property have not been made and the above-state conditions persist at present.

Sworn to before a Notary Public of New York
On August 16, 2016.

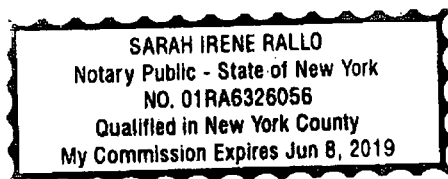
Sarah Irene Rallo

(Seal)

Notary Public of New York

My Commission Expires June 8, 2019

Mary F. Davenport
Mary F. Davenport



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF NICHOLE KIM IN SUPPORT OF DEFENDANT'S MOTION TO VACTE <i>EX PARTE</i> TEMPORARY RESTRAINING ORDER

Personally appeared the undersigned person before a Notary Public of New York who, upon oath, deposes and declares as follows, to wit:

1. Her name is Nichole Kim, Senior Vice President of Defendant FCRE REL, LLC in the above-captioned action.
2. In December 2015 she visited the August on Southside Apartments located at 2208 Southside Boulevard, Port Royal, South Carolina (herein the "Property") and observed the presence of the following conditions:
 - a. Stained and broken terrace fencing on both first and second floor porches;
 - b. Chipped paint on signage;
 - c. The presence of multiple mildew stains, and possible microbial growth, on the northern and eastern sides of one of the apartment buildings;
 - d. Police reports reflecting criminal activity on the Property including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;
 - e. The absence of security including, but not limited to, security gates, video surveillance, or a police substation;

f. A lack of maintenance of the pool on the Property such that it failed to
comply with DHEC standards.

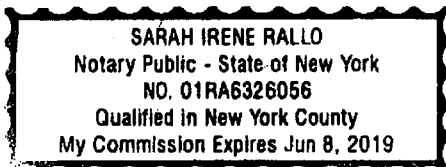
3. No improvements to the property have been made and the above-state conditions
persist at present.

Sworn to before a Notary Public of New York)
On August 16, 2016.)

Sarah Irene Rallo (Seal))

Notary Public of New York)
My Commission Expires June 8, 2019)

Nichole Kim



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01778

A&B ASSOCIATES, LP

FCRE REL, LLC, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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:

THIS CAME BEFORE ME ON DEFENDANT'S MOTION TO VACATE EX PARTE TEMPORARY RESTRAINING ORDER, FILED 8/16/2016. ATTORNEY BENJAMIN COPPAGE APPEARED FOR THE DEFENDANT AND ATTORNEY CURTIS COLTRANE WAS TELE-CONFERENCED IN FOR THE PLAINTIFF. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION. THE TEMPORARY RESTRAINING ORDER HEARING WILL GO FORWARD ON 8/24/2016 AT 3:30 P.M.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$N/A
		\$
		\$

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

3069

Judge Code

Date

2/16/10

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Aug, 2010 and a copy mailed first class or placed in the appropriate attorney's box on this 28 day of Aug, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

CURTIS L. COLTRANE

BENJAMIN COPPAGE

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

Marlene Kucak
Judicial Clerk

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	DEFENDANT'S BRIEF IN OPPOSITION
FCRE REL, LLC and TIDELAND REALTY, INC.	TO PLAINTIFF'S APPLICATION FOR A
Defendants.	TEMPORARY INJUNCTION

COMES NOW, Defendant FCRE REL, LLC (hereinafter "FCRE") and files this brief in opposition to the Plaintiff's application for a temporary injunction following this court's issuance of an *Ex Parte* Temporary Restraining Order (hereinafter "TRO"), dated August 15, 2016 and shows the court as follows:

I. Introduction

FCRE funded a mortgage loan to the Plaintiff which was secured by first lien interest on a 96-unit apartment building owned by the Plaintiff. Pursuant to the Loan Agreement executed by the parties, the Plaintiff grants FCRE its power of attorney in the event of a default to perform all those powers and duties available to the Plaintiff under the Loan Documents. Numerous egregious events of default occurred, including the Plaintiff's allowing the Property to become crime-ridden and unfit for human habitation. The Plaintiff was given several months to cure the defaults and, when it failed to do so, FCRE elected to act as the Plaintiff's attorney in fact to engage a new management company, Tideland Realty, Inc. (hereinafter "Tideland"), to manage the Property. Tideland managed the Property from July 21, 2016 to August 16, 2016 and, in that time, improved the Property and discovered additional acts and omissions of the Plaintiff that are additional defaults under the Loan Documents. Since the Plaintiff's resumption of the management of the Property, there has been continued physical waste of the Property, likely

destruction of documents in support of FCRE's counterclaims, and harassment and intimidation of tenants.

II. Statement of the Facts

FCRE is a commercial real estate lender. The Plaintiff is a Georgia Limited Partnership that owns a residential rental property located at 2208 Southside Boulevard Port Royal, South Carolina (hereinafter the "Property"). The Plaintiff's general partner is AGBP, Inc, the president of which is L. Christopher Kettles (hereinafter "Kettles"). In early 2015, the Plaintiff submitted an application for a loan to refinance the Property. In conjunction with FCRE's standard due diligence, specific documents and certification from the borrower and sponsor are required. As part of the document submission package, the Plaintiff provided a written confirmation that (1) thirteen of the apartments on the property were leased by tenants receiving housing assistance payments from the U.S. Department of Housing and Urban Development and (2) it was the Plaintiff's intention not to renew those tenants leases or to lease additional apartments to tenants receiving such governmental assistance. Upon FCRE's review of this statement, other verbal and written statements provided by the Plaintiff, and other documentation regarding the property and the Plaintiff, FCRE and Plaintiff entered into a Loan Agreement on April 15, 2016 for the provision of first mortgage financing to the Plaintiff in the amount of three million nine hundred thousand dollars (\$3,900,000.00). In connection with the funding of that loan, and in addition to the Loan Agreement, Plaintiff and FCRE also entered into a Promissory Note, Guaranty of Recourse Obligations and Environmental Indemnity Agreement, and Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and an Assignment and Subordination of Management Agreement (hereinafter collectively referred to as the "Loan Documents"). Plaintiff was represented by counsel, Bouhan Falligant LLP, Savannah, Georgia in the loan

closing matter, and therefore is considered to be knowledgeable and in agreement with the terms, conditions and covenants of the Loan Documents, as evidenced by the Plaintiff and Kettle's execution of the same.

Section 4.1.16 of the Loan Agreement and Section 5.2 of the Mortgage provide that the Plaintiff has granted FCRE an irrevocable power of attorney, which may be exercised during an Event of Default, for the purpose of exercising and perfecting any and all rights and remedies available under the Loan Documents, at law, and in equity. Section 10.3 of the Loan Agreement and Section 7.3 of the Mortgage allow FCRE, in an Event of Default and without notice or demand on the Plaintiff, to make, do, or perform any obligation of Plaintiff thereunder in such manner and to such extent as FCRE may deem necessary. Those sections further state that "[FCRE] is authorized to enter upon the Property" for those purposes. Section 10.1 of the Loan Agreement sets out a list of events that each constitute an Event of Default. Included in that list is "a default under any agreement creating a Lien or encumbrance on the Property." The Mortgage is such an agreement

On or about October 27, 2015, FCRE became aware that one of the tenants who leased an apartment at the Property had been shot while on the property. FCRE immediately contacted Kettles to inquire about the safety of the tenants and whether any measures were being taken to ensure their safety and the protection of the Property. Kettles replied that the shooting had been a random incident, that the Port Royal Police Department had saturated the Property, that the Property was one of the least crime affected complexes in Port Royal and Beaufort County, and that the Property was not located in a high-crime area. Despite these assurances, Plaintiff continued to contact Kettles and other agents of the Plaintiff regarding the safety of the Property.

The Plaintiff failed to provide proof that any action had been or was being taken to ensure the safety of the tenants and the property. So, on December 8, 2015, FCRE's Executive Vice President, Mary F. Davenport, and Senior Vice President, Nichole Kim, visited the Property and met with Sharan Kettles and Amanda Pett, agents of the company that the Plaintiff had hired to manage the Property, The August Group, Inc (hereinafter "August Group"). The on-site visit revealed that no measures had been taken to ensure the safety of the tenants or the Property. It also became obvious that the Plaintiff had allowed the condition of the Property to significantly deteriorate in the eight (8) months subsequent to the funding of the loan.

Around this time, FCRE learned that August Group did not have properly license agents, including but not limited to Sharan Kettles and Amanda Pett, under the SC Real Estate Commission regulations representing it, and as a management company was therefore not properly qualified to act as the property manager in the state of South Carolina. FCRE has since learned that Amanda Pett is the subject of South Carolina Law Enforcement Division investigations for breaches of trust and forgery arising from her dealings with the tenants on the Property and filing a false police report.

Also on December 8, 2015, Ms. Davenport, and Ms. Kim, met with Captain John Griffith of the Port Royal Police Department to discuss the safety concerns. Captain Griffith provided reports which revealed that the Property was located in a high-crime area and that a great deal of criminal activity took place on the Property. These reports further showed that the crime level at the property had not abated since FCRE's funding of the loan to the Plaintiff or since Plaintiff's contact with Kettles following the shooting.

On December 21, 2015, FCRE contacted Kettles, letting him know that the Plaintiff's failure to make the Property safe for tenants and failure to prevent the deterioration of the

property were violations of provisions of the Loan Documents. FCRE suggested steps that could be taken to avoid default under those provisions. Kettles responded by arguing that the Plaintiff had no duty to make the Property safe for tenants but that he was considering increasing security measures on the Property. In the months following that contact, FCRE repeatedly reached out to the Plaintiff to inquire as to whether measures were being taken to ensure the safety of the Property and prevent its further deterioration. The Plaintiff's few responses to these solicitations FCRE received did not indicate that any such measures were being taken but were only statements that the Plaintiff was investigating its options regarding security.

On or about May 4, 2016, FCRE obtained a report of a third party inspection of the Property which noted continued and significant physical waste and deterioration of the Property. FCRE contacted the Plaintiff and requested confirmation that the waste and deterioration had been or were being corrected. FCRE received no response from the Plaintiff.

Concerned about the state of the Property, the safety of the tenants, and the Plaintiff's ability to legally and effectively manage the Property, in May, June, and July of 2016 FCRE requested financial information pertinent to the management of the Property. Much of the information requested was provided by the Plaintiff, Kettles, and August Group. Upon FCRE's review of the same, it was discovered that the information provided was inconsistent with information provided to FCRE during the loan application process and other financial information previously provided to FCRE. Notably, it was clear that the Plaintiff never deposited the full amount of rent collected on a monthly basis into a clearing account as required by the Loan Agreement. It was also clear that the Plaintiff consistently reported collecting thousands of dollars less than the amount due from tenants according to the rent rolls submitted to FCRE. A summary of these inconsistencies is attached hereto and included herewith as Exhibit A.

As a result of the Plaintiff's (1) failure to address issues regarding the safety of the Property, (2) allowance of continued deterioration and physical waste of the Property, (3) failure to provide documentation showing that its property manager was properly licensed, (4) failure to provide financial reports, including missing, late, inaccurate, inconsistent, and misleading tenant occupancy reports, (5) failure to remedy defects, (6) failure to notify FCRE or the Plaintiff's change of place of business, and (7) permitting leases of less than twelve (12) months in duration, FCRE sent Plaintiff a "Notice of Event of Default" dated July 18, 2016 which notified the Plaintiff of the foregoing events of default and gave the Plaintiff notice that FCRE would be exercising its right, under the Loan Documents, to act under power of attorney for the Plaintiff and replace August Group as the manager of the Property with a property manager of FCRE's choosing.

On July 18 and 21, 2016, FCRE issued a letter to the Plaintiff and August Group informing August Group that its Management Agreement with the Plaintiff had been terminated, that it was necessary that a full accounting of all security deposits held by August Group be submitted to the new property manager, Tideland, and that any such security deposits held by August Group were to immediately be remitted to Tideland. On the same date, Tideland took over the management of the Property and acted as Property Manager until August 16, 2016, the date on which the TRO required Tideland to cease its management activities. During that time, agents of Tideland found the living conditions on the Property to be deplorable and began taking steps to make the property suitable for human habitation. They were met by tenants who expressed great relief that the Plaintiff's agent was no longer managing the property.

Also during the time that Tideland managed the Property, it found several instances of the Plaintiff's and the Plaintiff's agents' financial mismanagement and misappropriation of

moneys. Upon information and belief, the Plaintiff has misappropriated in excess of two hundred thousand dollars (\$200,000.00). Further investigation of these incidences led to FCRE's discovery that much of the information the Plaintiff submitted to FCRE during the loan application process were material misrepresentations of fact. Absent such representations, FCRE would have never agreed to make a loan to the Plaintiff.

Subsequent to Tideland's cessation of management of the Property pursuant to the TRO, the Plaintiff and its agents have re-entered the Property. Upon information and belief, they have caused damage and waste to the property by destroying those improvements effected by Tideland. They have also harassed several of the tenants and caused general civil unrest among the tenants on the Property. They are also acting in an improper manner in that their agents are not licensed to perform management duties in the State of South Carolina.

III. Law and Analysis

A. Plaintiff's Application for a Temporary Restraining Order

The Plaintiff has failed to meet the rigorous standards required for the issuance of a temporary injunction and, as such, its application for the same should be denied. The injunction is a drastic remedy and should be carefully considered and granted only when legal rights are invaded or legal duties wantonly neglected. Carter v. Lake City Baseball Club, Inc., 218 S.C. 255, 62 S.E.2d 470 (1950). The purpose of a temporary injunction is to preserve the status quo and avoid an irreparable loss to the aggrieved party during the litigation. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). For a temporary injunction to be issued, the moving party must show that (1) it will suffer irreparable harm if the injunction is not granted, (2) the movant has a likelihood of success on the merits, and (3) there is no adequate

remedy at law. In order to prevail, Plaintiff must show all of these elements for the issuance of an injunction. The Plaintiff will not be able to establish any of the required elements.

1. Preservation of the Status Quo

Here, the status quo can be said to be, at best, the Property's condition (or at least its condition as represented by the Plaintiff) at the time of the execution of the Loan Documents and, at worst, its condition immediately preceding Tideland's commencement of management of the Property. To return the Property to its April 15, 2015 condition – indeed, to make it fit for tenants to remain there – considerable improvements must be made to the Property. Tideland was making such improvements during its three (3) weeks as the property manager. It had remedied the most egregious impediments to habitability within the apartment units, was working to fix the structural and aesthetic deterioration of the Property, and was handling the books and financial records associated with the management of the Property in a legally compliant, competent, and professional manner.

Over the last sixteen (16) months, the Plaintiff has exhibited an inability to maintain any status quo, allowing for continual deterioration of the Property. Since April 2015, each time the Property has been inspected, whether by FCRE or a third party, it has been found in worse shape than it was before. Moreover, even in the short time since August Group has been reinstated as the manager of the property, its unlicensed agents have caused damage to the Property and harassed the tenants. As such, none of the Plaintiff's actions, past or present, indicate that it is willing or able to maintain the status quo on the Property.

2. Irreparable Harm

In order to obtain injunctive relief, the Plaintiff must show that it will suffer irreparable harm if the injunction is not granted. Plaintiff is unable to make this showing, as (i) no harm will

arise from the professional management of the Property and (ii) even if there is any harm, such harm can be compensated by appropriate legal means, leaving no need for injunctive relief. Irreparable harm means that the injunction is reasonably necessary to protect the rights of the movant pending the litigation. Smith v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995). Irreparable injury does not mean that the injury is beyond the possibility of compensation in damages. Bethel Methodist Episcopal Church v. Greenville, 211 S.C. 442, 45 S.E.2d 841 (1947). Where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction. Carter v. Lake City Baseball Club, Inc., 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950).

As stated above, the Plaintiff has shown time and again that its management of the property will result in significant loss to the property. Conversely, Tideland's management of the Property improved both the Property itself and the way in which it was managed. As it is FCRE's aim in exercising its remedies under the Loan Documents to protect the security for its loan, an argument that it and/or Tideland has caused any harm or intends to cause harm to the Plaintiff or the Property would be ludicrous. Any harm visited upon the Plaintiff would likewise harm FCRE.

3. Likelihood of Success on the Merits

Plaintiff cannot show that it is likely succeed on the merits. On the contrary, the overwhelming likelihood is that FCRE will succeed on the merits. The basis for the relief sought in the Plaintiff's complaint is its assertion that (1) there was no event of default and (2) FCRE acted unlawfully in acting as the Plaintiff's attorney in fact and installing a Tideland as the new

property manager. The existence of events of default are clear. They are set out above and will be proven more specifically and in greater detail at the hearing on this matter. It is inarguable that the Plaintiff's actions and omissions are of the type contemplated by the Loan Documents.

Plaintiff's exercise of the remedies provided in the loan documents is lawful. The construction of a clear and unambiguous contract presents a question of law for the court. United States Bank Trust Nat'l Ass'n v. Bell, 385 S.C. 364, 684 S.E.2d 199. A reviewing court is without authority to alter an unambiguous contract by construction or to make new contracts for the parties. Id. A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. Id.

In this case, Section 4.1.16 of the Loan Agreement and Section 5.2 of the Mortgage clearly provide that the Plaintiff has granted FCRE an irrevocable power of attorney, which may be exercised during an Event of Default, for the purpose of exercising and perfecting any and all rights and remedies available under the Loan Documents, at law, and in equity. Section 10.3 of the Loan Agreement and Section 7.3 of the Mortgage allow FCRE, in an Event of Default and without notice or demand on the Plaintiff, to make, do, or perform any obligation of the Plaintiff thereunder in such manner and to such extent as FCRE may deem necessary.

As there have been numerous events of default, FCRE is well within its rights under the contracts provisions to act pursuant to the power of attorney granted it by the Plaintiff and do those things necessary to maintain the property, including appointing a competent and licensed company to manage the Property. Even if the court finds that the Loan Documents' terms are unreasonable or that the Plaintiff failed to guard its rights carefully, it will be unable to interfere

with FCRE's exercise of its rights and remedies under the Loan Documents as the same are granted clearly and unambiguously.

FCRE will also be entitled to rescission of the Loan Agreement and an order requiring the Plaintiff to return the amount of the loan to FCRE based on the Plaintiff's having fraudulently induced FCRE to enter into the Loan Agreement and other Loan Documents. To establish a claim or defense of fraud in the inducement, a claimant must prove the nine elements of fraud as well as the following three elements: (1) that the alleged fraudfeasor made a false representation relating to a present or preexisting fact; (2) that the alleged fraudfeasor intended to deceive him; and (3) that he had a right to rely on the representation made to him. Darby v. Waterboggan of Myrtle Beach, Inc., 288 S.C. 579, 584, 344 S.E.2d 153, 155 (Ct. App. 1986). The elements of fraud are (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. Regions Bank v. Schmauch, 354 S.C. 648, 672, 582 S.E.2d 432, 444 (Ct. App. 2003). The Plaintiff's submission of false and misleading documentation regarding the finances of the Plaintiff, the tenants on the Property, and the condition of the Property during the loan application meet each of these elements and amount to fraud in the inducement. As such, FCRE will be entitled to rescission of the contract and a judgment against the Plaintiff equal to the amount of the loan.

4. No Adequate Remedy at Law

In addition to its failure to show irreparable harm or likelihood of success, Plaintiff is unable to show that there is no adequate remedy at law. The adequacy of a legal remedy is a

pragmatic determination based upon the certainty of fixing damages, the practicality of obtaining relief, and the efficiency of the legal remedy in the particular circumstances. Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 189 S.E.2d 305 (1972). The Plaintiff has shown, by the filing of its complaint that legal remedies are available to it. As the Plaintiff has not and will not experience harm as a result of FCRE's exercise of its rights and remedies, those remedies are practicable and efficient in this case.

In consideration of the foregoing, it is clear (1) that FCRE's exercise of rights and remedies available to it under the Loan Documents has not irreparably harmed the Plaintiff, (2) that the Plaintiff has not demonstrated a likelihood that it will succeed on the merits in this case, and (3) that adequate legal remedies are available to the Plaintiff. As such, its application for relief must be denied.

Submitted August 22, 2016.

Coppage Law Firm, LLC

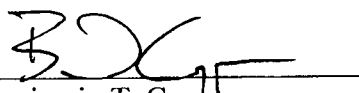
By: 
Benjamin T. Coppage
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Post Office Box 2473
Beaufort, South Carolina 29901
Phone: 843-694-1696
Email: ben@coppagelawfirm.com

Exhibit A

August on Southside Revenue Accounting			
	<u>Borrower Statement</u>	<u>Wells Fargo</u>	<u>Difference</u>
May-15	\$50,514.00	\$44,418.33	-\$6,095.67
Jun-15	\$51,571.00	\$43,636.97	-\$7,934.03
Jul-15	\$57,968.00	\$37,727.60	-\$20,240.40
Aug-15	\$47,905.00	\$30,402.29	-\$17,502.71
Sep-15	\$59,830.00	\$50,361.21	-\$9,468.79
Oct-15	\$59,496.00	\$39,147.99	-\$20,348.01
Nov-15	\$63,619.00	\$46,556.02	-\$17,062.98
Dec-15	\$67,105.00	\$51,885.69	-\$15,219.31
Jan-16	\$52,631.00	\$30,248.61	-\$22,382.39
Feb-16	\$51,110.00	\$46,016.64	-\$5,093.36
Mar-16	\$59,238.00	\$33,495.40	-\$25,742.60
Apr-16	\$57,399.00	\$39,304.27	-\$18,094.73
May-16	\$60,165.00	\$30,761.34	-\$29,403.66
Jun-16	\$65,568.00	\$42,638.88	-\$22,929.12
			-\$237,517.76

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07-1773
	)	
A & B ASSOCIATES, L. P.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM IN SUPPORT
	)	OF MOTION FOR TEMPORARY INJUNCTION
FCRE REL, LLC, and TIDELANDS	)	
REALTY, INC.,	)	
	)	
Defendant.	)	

A & B Associates, L. P., submits its memorandum in support of its Motion for Temporary Injunction.

FACTS

The facts applicable to this case are set out in the August 12, 2016, Verified Complaint.

STANDARD FOR TEMPORARY INJUNCTION

A preliminary injunction is issued to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.¹

STATUS QUO

The sole purpose of a temporary injunction is to preserve the status quo and thus avoid possible irreparable injury to a party pending litigation.² In this case, the status quo

¹ *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

² *County of Richland v. Simpkins*, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002); *Zabinski v. Bright Acres Associates, et al.*, 346 S.C. 580, 553 S.E.2d 110 (2001)

is that which existed prior to the actions of FCRE REL, detailed in the Verified Complaint. A & B Associates, L. P., was in possession of its own property, and had timely made each and every payment to FCRE REL, LLC, required under the terms and conditions of the April 15, 2015, Promissory Note and other loan documents.³

In the affidavits submitted by FCRE REL, LLC, with its Motion to Vacate the Temporary Restraining Order and in its Brief in Opposition to the Motion for Temporary Injunction, FCRE REL, LLC, does not argue or allege otherwise.⁴

If the Court does not issue the Temporary Injunction, the *status quo* will be irretrievably disrupted, and A & B Associates, L. P., will immediately be put out of business. In the short time that FCRE REL, LLC, was in possession of the property it collected rents that it has neither returned to the Plaintiff nor accounted for, has removed leases and other business records that it has not returned, purported to alter or otherwise interfere with leases between A & B Associates, L. P., and its tenants, has or claims to have performed alterations to the property not approved the owner.⁵ In addition to immediately putting A & B Associates, L. P., out of business, the likely result of failing to issue the Temporary Injunction is that FCRE REL, LLC, will use its position to manufacture a monetary default and use that in an effort to strip A & B Associates, L. P.'s equity from the property.

South Carolina follows the general rule in the United States, which is that the court

³ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraph 2 and Exhibit "A"; August 12, 2015 Verified Complaint, paragraph 11.

⁴ See: August 16, 2016, Affidavit of Mary F. Davenport; August 16, 2016, Affidavit of Nichole Kim; August 16, 2016, Motion to Vacate Temporary Restraining Order.

⁵ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraphs 6 and 7; August 12, 2016, Verified Complaint, paragraph 26, Count II, paragraph 6, Count III, paragraph 4, Count IV, paragraphs 2-6.

will balance the benefit of an injunction to the plaintiff against the inconvenience and damage to the defendant.⁶ In this case, the equities clearly favor A & B Associates, L. P. It is the owner of the property, it is the contracting party on all of the leases and it is responsible to pay the amounts due under its Promissory Note to FCRE REL, LLC. The only evidence is that the amounts due to FCRE, REL, LLC, have, in fact been paid.⁷ Thus, there is no inconvenience or damage to FCRE REL, LLC, because it has, to date, received every thing to which it is entitled, and there is no evidence that it will not continue to do so.

Preservation of the *status quo*, being that A & B Associates, L. P., remains in business, is in possession of its own real and personal property, collecting money which is its entitled to collect from its tenants, and paying the amounts due to FCRE REL, LLC, can only be maintained through the Temporary Injunction. FCRE REL, LLC, incurs no risk or damage in that circumstance, because it's loan is now current, and in the event that changes, it has all the remedies available under its loan documents and the law of South Carolina, including foreclosure and appointment of a receiver.

IRREPARABLE INJURY

Irreparable injury is shown when it is demonstrated that the injunction is reasonably necessary to protect the rights of the Plaintiff while the litigation is pending.⁸ An injunction is proper: "... if it appears that irreparable mischief will be done by

⁶ *Forest Land Co. v. Black*, 216 S.C. 255, 57 S.E.2d 420 (1950)

⁷ *See:* August 22, 2016, Affidavit of L. Christopher Kettles, paragraph 2 and Exhibit "A"; August 12, 2015 Verified Complaint, paragraph 11.

⁸ *South Carolina Civil Procedure*, James F. Flanagan, Ch. 65.

withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction."⁹

As is shown in the Verified Complaint, and additional affidavits filed by A. & B Associates, L.P., all amounts due and owing to FCRE REL, LLC, are paid.¹⁰ In spite of this, FCRE REL, LLC, has:

1. Without due process or any process, and with the aid of the Port Royal Police Department, forcibly removed A & B Associates, L. P.¹¹
2. Without due process or any process, collected money from tenants who have leases with A & B Associates, L. P., and have neither turned the money over to A & B Associates, L. P., or accounted for it, and diverted money to making improvements to the property on its own account that were not authorized by A & B Associates, L. P., and which FCRE REL, LLC, will likely fund using rents belonging to A & B Associates, L.P., which it unlawfully collected and which it has not returned to A & B Associates, L. P.¹²
3. Without due process or any process, has removed files including leases and

⁹ *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (1950); *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 417 S.E.2d 544 (1992).

¹⁰ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraph 2 and Exhibit "A"; August 12, 2015 Verified Complaint, paragraph 11.

¹¹ August 12, 2016, Verified Complaint, paragraphs 15, 18, 19 and 20.

¹² August 12, 2016, Verified Complaint, paragraph 23.

applications and has failed to return the same to A & B Associates, L. P.¹³

4. Made false and defamatory statements about A & B Associates, L. P., and its principals and agents, to tenants at "August on Southside," and likely to the Port Royal Police Department and the Beaufort County Housing Authority.¹⁴

These injuries described in the Verified Complaint and the additional affidavits will be continuous, permanent and unabated and A & B Associates, L. P., will be unable to remain in business or protect its property and personal rights from hurt or destruction, unless the Temporary Injunction issues.

Specifically, the courts of South Carolina have held that the loss of a business is irreparable harm.¹⁵

SUCCESS ON THE MERITS

A party seeking a Temporary Injunction must show a likelihood of success on the merits, which means only that a prima facie showing must be made. Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.¹⁶ The party seeking a temporary injunction is not required to demonstrate an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of

¹³ August 20, 2016, Affidavit of L. Christopher Kettles, paragraph 7;

¹⁴ See: August 12, 2016, Verified Complaint, paragraphs 28 and 29; August 19, 2016, Affidavit of Sheytoria Monique Rivers; August 19, 2016, Affidavit of Sabanio A. Norris.

¹⁵ See: *Peek v. Spartanburg Regional Healthcare System*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005), holding modified by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, *supra*.

¹⁶ See: *Peek v. Spartanburg Regional Healthcare System*, *supra*.

such a right.¹⁷

A & B Associates, L. P., has established a *prima facie* case through its Verified Complaint and additional affidavits. The Verified Complaint and additional affidavits show:

1. The amounts due and owing to FCRE REL, LLC, under the terms and conditions of the April 15, 2015, Promissory Note were paid as of the date FCRE REL, LLC unlawfully removed the Plaintiff from its property.¹⁸
2. Without due process or any process, FCRE REL, LLC, and Tideland Realty, Inc., has collected money from tenants who have leases with A & B Associates, L. P., and has neither turned the money over to A & B Associates, L. P., or accounted for it, and diverted money to making improvements to the property on its own account that were not authorized by A & B Associates, L. P., and which FCRE REL, LLC, will likely fund using rents belonging to A & B Associates, L.P., which it unlawfully collected and which it has not returned to A & B Associates, L. P.¹⁹
3. FCRE REL, LLC, and Tideland Realty, Inc., have removed leases, applications and other documents from the property of A & B Associates, L. P., and have not returned them to A & B Associates, L. P.²⁰
4. Without due process or any process, collected money from tenants who have leases

¹⁷ See: *Peek v. Spartanburg Regional Healthcare System, supra.*; *Williams v. Jones*, 92 S.C. 342, 75 S.E. 705 (1912).

¹⁸ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraph 2 and Exhibit "A"; August 12, 2015 Verified Complaint, paragraph 11.

¹⁹ See: August 12, 2016, Verified Complaint, paragraph 23.

²⁰ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraph 7.

with A & B Associates, L. P., and have neither turned the money over to A & B Associates, L. P., or accounted for it, and diverted money to making improvements to the property on its own account that were not authorized by A & B Associates, L. P., and which FCRE REL, LLC, will likely fund using rents belonging to A & B Associates, L.P., which it unlawfully collected and which it has not returned to A & B Associates, L. P.²¹

5. FCRE REL, LLC, and Tideland Realty, Inc., have made false and defamatory statements about A & B Associates, L. P., and its principals and agents, to tenants at “August on Southside,” and likely to the Port Royal Police Department and the Beaufort County Housing Authority.²²

The above evidence demonstrates the existence of a “fair question” as to the rights of A & B Associates, L. P., in this case, and makes out a *prima facie* case.

NO REMEDY AT LAW

If the Temporary Injunction is not granted, the Plaintiff will be put out of business and will lose its business. Our courts have consistently held that the loss of a business is irreparable harm that is not remedied by the existence of a claim for money damages.²³

²¹ See: August 22, 2016, Affidavit of L. Christopher Kettles, paragraphs 5 and 6; August 12, 2016 Verified Complaint,

²² See: August 12, 2016, Verified Complaint, paragraphs 28 and 29; August 19, 2016, Affidavit of Sheytoria Monique Rivers; August 19, 2016, Affidavit of Sabanio A. Norris.

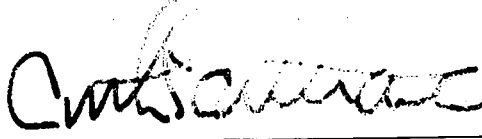
²³ See: *Peek v. Spartanburg Regional Healthcare System*, *supra*. The opinion in *Peek*, *supra*., includes the following text:

Other appellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill. *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) (“While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff’s] business.”); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) (“The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction.”); *LAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200

CONCLUSION

A & B Associates, L. P., has shown that the *status quo* will be irretrievably lost if the Temporary Injunction is not granted. It will put out of business and at risk for the loss of more an one million dollars in equity in its property. A & B Associates, L. P., has demonstrated that it will be irreparably harmed without the Temporary Injunction, that it has no adequate remedy at law, and has made out a *prima facie* case sufficient to support a Temporary Injunction.

COLTRANE & WILKINS, LLC

By: 

Curtis L. Coltrane
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(843) 785-5551
(843) 785-5552 (fax)
curtis@coltraneandwilkins.com

Timothy J. Granitz
(*pro hac* anticipated)
Mahany Law
WI State Bar No. 1067557
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Wauwatosa, WI 53213
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Fx: 414.777.0776
ckaters@jlg-law.com

(Tex.App.2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

Brian H. Mahany
(*pro hac* anticipated)
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WI State Bar No.: 1065623
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brian@mahanylaw.com

Hilton Head Island, South Carolina

This 24th Day of August, 2016.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07-1773
	)	
A & B ASSOCIATES, L. P.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MEMORANDUM REGARDING
	)	HEARINGS UNDER RULE 65, SCRPC
FCRE REL, LLC, and TIDELANDS	)	
REALTY, INC.,	)	
	)	
Defendant.	)	

Motions for Temporary Injunctions and hearings on them are governed by Rule 65, SCRPC. Rule 65(b), SCRPC, reads, in relevant part:

No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.

The filing and service of affidavits in connection with motions to be heard on affidavits is governed by Rule 6(d), SCRPC, which reads, in relevant part:

When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences.

The plain language of Rule 65(b), SCRPC, and Rule 6(d), SCRPC, sets out the procedure for a hearing on a motion for Temporary Injunction.

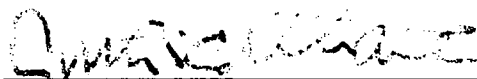
In this case, the Complaint was served along the August 15, 2016, Motion for Temporary Restraining Order and Motion for Temporary Injunction. Additional affidavits

were served by the Plaintiff on August 22, 2016. The Defendant FCRE REL, LLC, did file two affidavits on August 16, 2016, along with its Motion to Vacate the Temporary Restraining Order, but has not filed anything else for the Court's consideration in connection with this matter.

A hearing on a motion for temporary injunction is not a merits hearing. In determining whether a temporary injunction should issue, the trial judge should not consider the merits of the case, except as they may enable the trial court to determine whether a prima facie showing has been made.¹ When a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.²

COLTRANE & WILKINS, LLC

By:



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curtis@coltraneandwilkins.com

¹ *Curtis v. State*, 345 S.C. 557, 576, 549 S.E.2d 591, 601 (2001).

² *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969).

Timothy J. Granitz
(*pro hac* anticipated)
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Brian H. Mahany
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Hilton Head Island, South Carolina

This ~~21~~²⁴ Day of August, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
A & B ASSOCIATES, L. P.)
)
Plaintiff,)
)
vs.)
)
FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

Affidavit

2016 AUG 25 PM 3:13
CLERK OF COURT
JANET L. HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) SS.
COUNTY OF BEAUFORT)

Christopher Kettles, being first duly sworn on oath, states as follows:

1. I am the owner and President of each general partner corporation of Plaintiff A&B Associates, L.P. My wife, Sharan Kettles, is the secretary of both corporations.
2. Plaintiff has timely made all payments that were due on the loan, including the August 2016 payment when Defendants were in possession of, and managing, the August on Southside Apartments. Attached as Exhibit A is a true and accurate copy of the August 2016 monthly payment statement. The statement clearly shows that there is no money past due and that the loan is current. I then paid the August 2016 payment with my own funds because Defendants had possession of the Property and Plaintiff's funds.
3. After a Temporary Restraining Order (TRO) was issued in this matter, Plaintiff regained possession of its Property, the August on Southside Apartments.

4. Tenants have indicated to Plaintiff and Plaintiff's representatives that Defendant Tideland Realty, Inc. continues to have communications with tenants who reside at the August on Southside Apartments.
5. The Defendants and their representatives have failed to return Plaintiff's property, including, but not limited to, tenant leases, applications, tools (skill saw, torches, lawnmower, electric sander, air conditioning equipment, edger, nail gun, air compressor, washing machines, two refrigerators, two hammers, water leak detector, CO2 gun, and others), shoes, copies of old rent checks, a check machine, laptop computer, an office desk, a mirror, two vases, general office supplies, and others, all of which belong to Plaintiff and that which the TRO ordered the Defendants to return to Plaintiff.
6. Plaintiff and its representatives have not been provided any sort of accounting of funds that Defendants received while Defendants were managing the Property. Similarly, Defendants have failed to return any of the rental payments they accepted while they were managing the Property to Plaintiff, which the TRO required that they do.
7. Prior to being removed from the Property, Plaintiff had accepted and agreed to rent certain apartment units to tenants. Plaintiff was then removed from the Property by Defendants. Once Plaintiff regained possession following the issuance of the TRO, Plaintiff learned that the tenants failed to move in or had their leases altered by Defendants. The Defendants have not provided the Plaintiff any information as to where the missing tenants are or any information as to why new tenants did not move in.

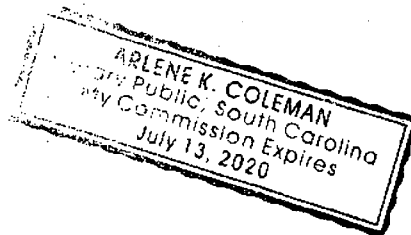
Further Affiant Sayeth Not.

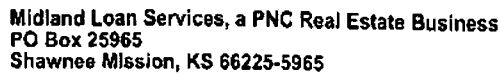
Dated at Beaufort, this 22nd day of August, 2016.

By: Christopher Kettles
Christopher Kettles

Subscribed and sworn to before
me this 22nd day of August, 2016

Arlene K. Coleman
Notary Public, State of South Carolina
My commission expires _____





Loan Number	030295305	Regular Payment:	_____
Payment Due Date	08/06/2016	Add'l Principal:	_____
Current Amounts Due	\$30,204.34	Add'l Escrow:	_____
Past Due Payment	\$0.00	Late Charge:	_____
Total Payment Due	\$30,204.34	TOTAL:	_____

Midland Loan Services, a PNC Real Estate Business
Lockbox Number 828626
P.O. Box 828626
Philadelphia, PA 19182-8626

LOAN NUMBER	INVESTOR/LOAN #	PROPERTY ADDRESS
030295305	7MW0ZL7F3P65I	2208 Southside Boulevard Port Royal SC 29935

072

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

A & B ASSOCIATES, L. P.)

Plaintiff,)

vs.)

FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778.

Affidavit

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT) SS.

Sharan Kettles, being first duly sworn on oath, states as follows:

1. I am the secretary of each general partner corporation of Plaintiff A&B Associates, L.P. My husband, Christopher Kettles, is the owner and President of both corporations.
2. After a Temporary Restraining Order (TRO) was issued in this matter, Plaintiff regained possession of its Property, the August on Southside Apartments.
3. I rented an apartment unit at the August on Southside Apartments.
4. After Plaintiff was removed from the Property, an eviction action was filed against me and an additional eviction action was filed against Plaintiff's resident apartment manager at the Property.
5. Both eviction actions were filed by Defendant Tideland Realty, Inc., which purported to be Plaintiff's agent.

2016 AUG 25 PM 3:13
CLERK OF COURT
J. S. C.

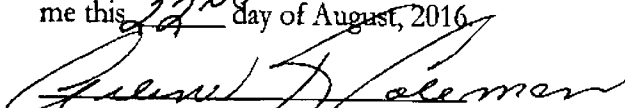
6. Both eviction actions are currently on going, even the Temporary Restraining Order (TRO) that was issued in this action removed Defendants from the Property and has prohibited from managing the Property.

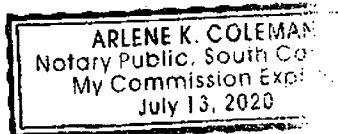
Further Affiant Sayeth Not.

Dated at Beaufort, this 22nd day of August, 2016.

By: 
Sharan Kettles

Subscribed and sworn to before
me this 22nd day of August, 2016


Notary Public, State of South Carolina
My commission expires _____



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CASE NUMBER: 2016-CP-07-1778

A & B ASSOCIATES, L. P.)

Plaintiff,)

Affidavit

vs.)

FCRE REL, LLC, and TIDELAND)

REALTY, INC.,)

Defendants.)

STATE OF SOUTH CAROLINA)

) SS.

COUNTY OF BEAUFORT)

TRACI OATES, being first duly sworn on oath, states as follows:

1. I am a resident of the August on Southside Apartments and reside in Unit 88.
2. Before Tideland Realty, Inc. began managing the Property, I did not have any problems with Plaintiff and its representatives in regard to their managing of the Property.
3. On August 18, 2016, I spoke with a representative of Tideland Realty, Inc. Before speaking with Tideland Realty, Inc., I had learned than Plaintiff and its representatives were managing the Property again.
4. In my conversation with Tideland Realty, Inc., which occurred after Plaintiff resumed management duties on the Property, we discussed my rental payment status.
5. The representative I spoke with from Tideland Realty, Inc. requested a favor of me in our conversation. The representative asked that I file a police report against Plaintiff and

2016 AUG 25 PM 3:13
CLERK OF COURT
J. S. C.

Plaintiff's representatives if I felt they were harassing me or if I saw Plaintiff and its representatives harassing anyone at the August on Southside Apartments.

6. I told Tideland's representative that Plaintiff and its representatives were not harassing me.

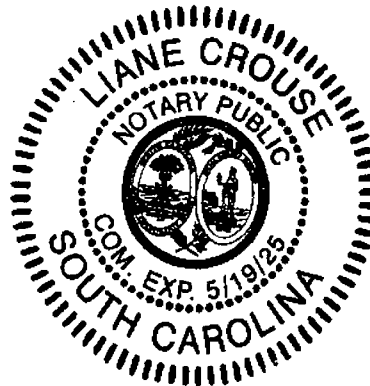
Further Affiant Sayeth Not.

Dated at Beaufort, this 20th day of August, 2016.

By: Traci Oates
Traci Oates

Subscribed and sworn to before
me this 20 day of August, 2016.

[Signature]
Notary Public, State of South Carolina
My commission expires 5/19/25



To whom this may concern im letting u know that the last landlord that was here she never told us who she was when she came in. She never let us know her name until one of us resident walks into the office.... She had a son and other residents kids out here picking up trash and doing landscaping. The in whole time when the new landlord was here she only walked around the apartment complex one time. After that all she ever did was sit in her chair. My son has falling down the stairs twice and I have ask her I she can move me to a bottom apartment because my son fell down the stairs and she basically told me no... August tenth I came and turned in my money order for my rent and she looked at me and said shey why are u paying 37 dollars for rent if your rent is only 17 dollars. What I was trying to explain to her was that since I moved out here I have been paying 37 dollars every month for rent. So she was basically telling me that Ms. Amanda has been stealing money from me. She wanted me to write a statement on Ms. Amanda but I didnt. The next day I called section eight and they told me that what ever I was paying when I first moved in thats what I needed to keep paying which is the 37 dollars every month. She also told some of tenats that section eight people was not suspose to be living out here. She said she didnt know why they approved us section eight people out here and the apartments was not right.



State of South Carolina County of Baufort
Subscribed and sworn before me on 8/23/16
(Date)

Liz Brown
(Notary Signature)

Apartments 72

Sheyloria Kins

2016 AUG 24 PM 3:38
JESSIE ANN EDSBROU
CLERK OF COURT
BAUFORT COUNTY, S.C.

C/A 2016-CP-07-1773

Acknowledgment by Individual

State of South Carolina County of Beaufort

On this 19 day of August, 20 16, before me, Yesenia Valdez
Name of Notary Public

the undersigned Notary Public, personally appeared
Sheytoreia Monique Rivers

Name of Signer(s)

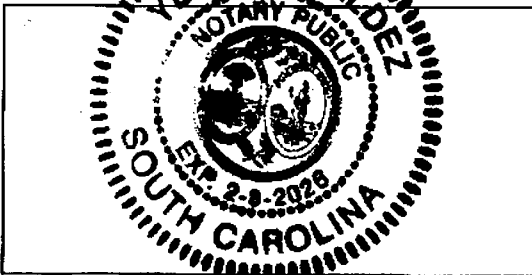
☐ Proved to me on the oath of _____

☐ Personally known to me

☒ Proved to me on the basis of satisfactory evidence SC Drivers License ID 1028101516
(Description of ID)

to be the person(s) who me(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal



Notary Seal

Yesenia Valdez
(Signature of Notary Public)

My commission expires 2/8/2026

Optional: A thumbprint is only needed if state statutes require a thumbprint.

Right Thumbprint of Signer

Top of thumb here

Description of Attached Document

Type or Title of Document

Personal handwritten statement

Document Date

8/19/16

Number of Pages

1

Signer(s) Other Than Named Above

N/A



08-19-2016

TO Whom This may Concern
+ was told that ms. Amanda
was Stealing money from her
residents by ms. Tiffany. ms.
Tiffany also told some of our
residents that section eight
people was not suppose to be
excepted in August of Southside.
When ms. Amanda was working
out there she has been doing
what she suppose to do as
a apartment manager. as for
as keeping her apartment
clean making sure all residents
apartments was good when
asked. She was doing her
job. As for as Stealing money
she has NOT been taking
any money.

Apartment 72

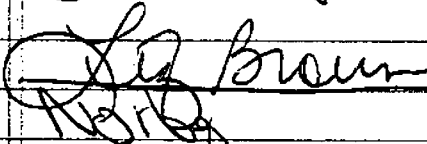
2016 AUG 25 PM 3:14
JERIN A. JOSEPH
CLERK OF COURT
STATE OF CALIFORNIA
CLERK OF COURT

Aug 19, 2016

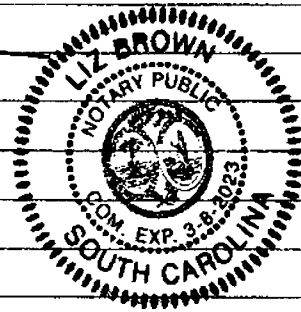
To Whom it May Concern
I was called at work on Aug 18, 2016
by James wanted me to come to
court on Wed, 29, to speak on his behalf
the judge gave him 1st Number 1199
James is insurance at Alge's Wash & Dry
He told me to come to court to speak
against Charles. He told him I was
at work & can't call him back,
John Wick
get 30

State of South Carolina
County of Beaufort
person present, Sabana A. Norris

Made oath to the above
statements on 8/19/16


Liz Brown

Commission expires: 3/8/2023



2016 AUG 25 PM 3:14
LIZ BROWN, Notary Public
Beaufort County, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07-1778
	)	
A & B ASSOCIATES, L. P.	)	
	)	
Plaintiff,	)	
	)	ORDER GRANTING TEMPORARY
vs.	)	INJUNCTION
	)	
FCRE REL, LLC, and TIDELANDS	)	
REALTY, INC.,	)	
	)	
Defendants.	)	

This matter is before the undersigned on the Plaintiff's Motion for Temporary Injunction, filed on August 15, 2016. This case was commenced by the Plaintiff on August 15, 2016. Among other things, the Plaintiff sought an *ex parte* Temporary Restraining Order, and moved for a Temporary Injunction. On August 15, 2016, following consideration of the Plaintiff's Verified Complaint, I signed a Temporary Restraining Order, and set a hearing on the Plaintiff's Motion for Temporary Injunction to commence at 3:30 P. M. on August 24, 2016.¹ On August 16, 2016, the Defendant FCRE REL, LLC, filed its Motion to Vacate the Temporary Restraining Order, supported by the Affidavits of Mary F. Davenport and Nichole Kim. On August 16, 2016, I convened at telephone conference with Counsel for the Plaintiff and Counsel for the Defendant. Following the telephone hearing, I denied the Motion to Vacate by written Order.

The Plaintiff's filed additional affidavits of L. Christopher Kettles, Sharan Kettles, Traci Oates, Sheytoria Monique Rivers and Sabanio A. Norris on August 22, 2016. The

¹ It appears that the Summons, Complaint, *Ex Parte* Temporary Restraining Order and

11:17 am
8/26/16

Defendant FCRE REL, LLC, did not file any additional affidavits.

Due to other matters, the hearing on the Plaintiff's Motion for Temporary Injunction did not commence until approximately 4:40 o'clock, P. M., on August 24, 2016. The Plaintiff was present represented by Curtis L. Coltrane. Timothy J. Granitz, of the Wisconsin Bar was also present.² The Defendant FCRE REL, LLC, was also present, represented by Benjamin T. Copping. The Defendant Tideland Realty, Inc., has not appeared in this case as yet, and did not appear at the August 24, 2016, hearing.

The Defendant FCRE REL, LLC, subpoenaed a large number of witnesses for the purpose of giving testimony at the hearing. The Plaintiff objected, based on the language of Rule 65, SCRCF and Rule 6(d) SCRCF, and for the reason that a hearing on a Motion for Temporary Injunction is not a hearing on the merits. Following discussion with counsel as to the nature of the testimony, I sustained Plaintiff's objection.

Now, having reviewed and considered the Verified Complaint and affidavits, I make the following findings related solely to the issue of whether the Temporary Injunction should issue:

1. The Plaintiff is the owner of a 96 unit residential apartment complex located in the Town of Port Royal, South Carolina.
2. FCRE REL, LLC, loaned money to the Plaintiff in connection with the property, and holds a Mortgage on Plaintiff's property. In connection with the loan, the Plaintiff also executed a promissory note, loan agreement and other documents.

Motion for Temporary Injunction were served on the Defendants on August 16, 2016.

² Mr. Granitz has sent his application to be admitted *pro hac vice* to the South Carolina Supreme Court, and awaits notification to the Beaufort County, South Carolina, Clerk of Court to file his motion to be admitted and proposed order. There was no objection by any party to Mr. Granitz's presence.

11:14 am
8/26/16
nab

3. At all times relevant to this matter, up to the present, the Plaintiff has timely paid the amounts due and owing to the Defendant FCRE REL, LLC.
4. FCRE REL, LLC, claims the existence of numerous defaults under the loan documents related to the condition of the property.
5. In July of 2016, FCRE REL, LLC, accompanied by an officer of the Port Royal Police Department, forcibly removed the Plaintiff from its property, and installed Tideland Realty, LLC, as the manager of the property. At the time that FCRE REL, LLC, took this action, it had not commenced a foreclosure or other suit, had not sought the appointment of a receiver or any other court order authorizing the actions that it took.
6. During the time that FCRE REL, LLC, was in possession of the Plaintiff's property, it collected rents from the tenants, took possession of the Plaintiff's leases, business files and personal property. Despite these actions, FCRE REL, LLC, did not apply any of the money it collected to the payment of the debt owed by the Plaintiff, and the Plaintiff's principal, L. Christopher Kettles, made the payment due in August from his personal funds.³
7. The actions of FCRE REL, LLC, put the Plaintiff out of possession of its real property, its money, its business files, its leases with tenants, and its personal property.
8. A preliminary injunction is issued to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at

³ The August 15, 2016, *Ex Parte* Temporary Restraining Order required the Defendants to, amount other things, return to the Plaintiff its money, personal property, leases and business files. As of the August 24, 2016, hearing, the Order was not complied with, and FCRE REL, LLC, remained in possession of Plaintiff's money, personal property, leases and business files.

11:14 am
08/26/16

law.⁴

9. Irreparable injury is shown when it is demonstrated that the injunction is reasonably necessary to protect the rights of the Plaintiff while the litigation is pending.⁵ An injunction is proper: “. . . if it appears that irreparable mischief will be done by withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction.”⁶ In South Carolina, the loss of a business is irreparable harm.

10. A party seeking a Temporary Injunction must show a likelihood of success on the merits, which means only that a prima facie showing must be made. Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.⁷ The party seeking a temporary injunction is not required to demonstrate an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.⁸

11. A party seeking a Temporary Injunction must show the absence of an adequate

⁴ *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

⁵ *South Carolina Civil Procedure*, James F. Flanagan, Ch. 65.

⁶ *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (1950); *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 417 S.E.2d 544 (1992).

⁷ See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.

⁸ See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.; *Williams v. Jones*, 92 S.C.

remedy at law. Our courts have held that the loss of a business is irreparable harm that is not remedied by the existence of a claim for money damages.⁹

12. I find that A & B Associates, L. P., has proved its entitlement to a Temporary Injunction because it has shown:

(a) Plaintiff has suffered and will suffer immediate and irreparable injury because it has been removed and excluded from its own property and business, and its personal property and funds have been seized without due process of law;

(b) it is suffering and has suffered immediate and irreparable injury in that its contractual relationships with its tenants have been interfered with;

(c) it is suffering and has suffered immediate and irreparable injury because its real property is being altered without its consent;

(d) it is suffering and has suffered immediate and irreparable injury because the Defendant is or has taken possession of rents from Plaintiff's tenants without due process of law, and its contracts that are secured by its real property are thus being interfered with;

342, 75 S.E. 705 (1912).

⁹ See: *Peek v. Spartanburg Regional Healthcare System*, *supra*. The opinion in *Peek*, *supra*., includes the following text:

Other appellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill. *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

- (e) in the absence of a Temporary Injunction, the *status quo* will be irretrievably lost, as the Plaintiff's business will be destroyed;
- (f) the loss of the Plaintiff's business is irreparable damage for which no legal remedy exists;
- (g) the Plaintiff has made out a *prima facie* case for the claims asserted in the Verified Complaint.

Accordingly, I hereby grant the Plaintiff's Motion for Temporary Injunction, as follows:

1. The Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit.
2. No later than 12:00 Noon, on Friday, August 26, 2016, the Plaintiff is required to have a licensed property manager in place at the property.
3. No later than 12:00 Noon, on Friday, August 26, 2016, the Defendants shall return and turn over to Plaintiff all of Plaintiff's money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles' affidavit, all money received from rents, and to return of all money removed from any of Plaintiff's bank accounts, including reserve accounts, and to provide a full accounting of all such money and any expenses Defendants have paid or incurred with Plaintiff's money.
4. Within ten days of this Order, the Plaintiff and FCRE REL, LLC, shall meet with each other at the property to discuss any maintenance issues or conditions affecting the

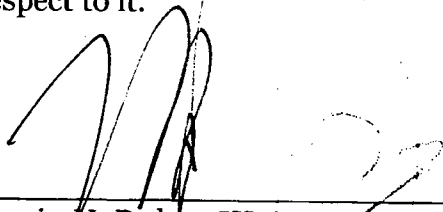
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Property. Should the Parties fail to agree on which conditions, if any, must be remedied, the Court will determine what conditions must be remedied.

5. The undersigned will hold a status conference, via telephone, after the Parties have met to discuss the conditions affecting the Property as Ordered herein.

6. The security set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order shall serve as security for this Temporary Injunction. I find the security adequate for the reasons set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order, and no party raised any issue with respect to it.

IT IS SO ORDERED.



Marvin H. Dukes, III, Master In Equity and
Special Circuit Judge for Beaufort County,
South Carolina

Beaufort, South Carolina

This 16 Day of August, 2016.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-1778

A & B Associates, L. P.

FCRE REL, LLC and TIDELAND REALTY, INC.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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
- ☐ **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: See Attached Order

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC 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

August 24, 2016
Date

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT DOCKET NO.: 2016-CP-07-1778
A & B ASSOCIATES, L.P., Plaintiff, vs. FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	DEFENDANT'S NOTICE OF MOTION AND MOTION FOR RELIEF FROM ORDER GRANTING TEMPORARY INJUNCTION

TO THE ATTORNEY FOR THE PLAINTIFF: CURTIS L. COLTRANE

PLEASE TAKE NOTICE that Defendant FCRE REL, LLC (hereinafter "FCRE") will move the court, pursuant to Rule 60(b)(5), SCRCP, for relief from the Order Granting Temporary Injunction (hereinafter "Order") in the above-captioned action issued August 26, 2016. In support of its motion, FCRE shows the court the following:

Statement of Facts

The Order states that "[n]o later than 12:00 Noon, on Friday, August 26, 2016, the Plaintiff is required to have a licensed property manager in place at the property." To date, no such property manager has been put in place. To wit, the Plaintiff has given no notice to the court or to the Defendants which reflects that it has complied with this provision of the Order. Moreover, it is the testimony of a third party witness that no licensed manager is in place at the property. Brian White, the Section 8 Housing Quality Standards Inspector for the Beaufort Housing Authority, conducted a routine inspection of the property on August 30, 2016. August 30, 2016, Affidavit of Brian White, ¶ 3. Despite visiting the property's management office and conducting a search of the property, Mr. White was unable to locate a new property manager. *Id.* at ¶ 4. Being unable to locate a property manager, Mr. White interviewed several tenants who informed him that there was no new property manager. *Id.* at ¶ 5.

Demonte Atkins, a tenant at the Property, is also witness to the absence of a licensed property manager on the Property. Last week, he temporarily vacated his apartment due to its being uninhabitable. August 30, 2016, Affidavit of Demone Atkins, ¶ 1. While he was being precluded from his use of the apartment, the former property manager, Amanda Pett, informed him that the key to his apartment was disposed of and that he could retrieve a new key from the property management office on the Property. *Id.* at ¶ 1. Mr. Atkins has visited the property management office several times since August 26, 2016 and has found there to be no property manager present. *Id.* at ¶ 3. He visited the property management office on August 30, 2016 and spoke to L. Christopher Kettles, who gave Mr. Atkins a key to Mr. Atkins apartment and advised Mr. Atkins that Sharan Kettles would be in the property management office on August 31, 2016. *Id.* at ¶ 4. Sharan Kettles is not a licensed property manager.

Law and Analysis

The purpose of a temporary injunction is to preserve the status quo and avoid an irreparable loss to the aggrieved party during the litigation. Zabinski v. Bright Acres Assocs., 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001). For a temporary injunction to be issued, the moving party must show that (1) it will suffer irreparable harm if the injunction is not granted, (2) the movant has a likelihood of success on the merits, and (3) there is no adequate remedy at law. Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). The court's issuance of a temporary injunction requiring the Plaintiff to install a licensed property manager unequivocally indicates that it was the court's finding that it was necessary for the Plaintiff to employ a licensed property manager in order to preserve the status quo and avoid irreparable loss to FCRE during the pendency of the litigation. Indeed, a temporary injunction cannot issue absent such a finding. Zabinski at 601, 121. As such, the status quo has not been preserved and FCRE continues to suffer irreparable loss.

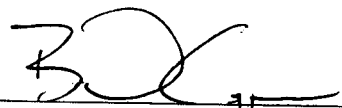
Rule 60(b)(5), SCRCP, allows for the court to relieve a party from an order when it is no longer equitable for the judgment to have prospective application. This rule restates the historical power of equity courts to modify injunctive relief in light of subsequent conditions. Saro Invs. v. Ocean Holiday Partnership, 314 S.C. 116, 441 S.E.2d 835 (S.C. Ct. App. 1994). Here, the Plaintiff's failure to comply with the Order has resulted in the loss of the status quo. In particular, there is no qualified, licensed property management, leaving the property and the tenants at immediate risk of physical and financial harm. Additionally, with the first of the month imminently approaching, there will be no one who is legally authorized to collect rent from tenants (who often pay in cash or with money orders at this property), which will cause profound loss and continued damage to FCRE. Moreover, the Plaintiff's failure to comply with the Order is further indicative of its negligence in managing the property and its disinterest in preventing waste and deterioration of the property.

It is patently inequitable for the court to compel FCRE's continued compliance with the Order when the same is not required of the Plaintiff and when the same results in injury to FCRE. In consideration of the same it is necessary that FCRE be granted relief from the provisions of the Order and that the Order be vacated.

Submitted August 31, 2016.

Coppage Law Firm, LLC

By:


Benjamin T. Coppage
Attorney for FCRE REL, LLC
Post Office Box 2473
Beaufort, South Carolina 29901
Phone: 843-694-1696
Email: ben@coppagelawfirm.com

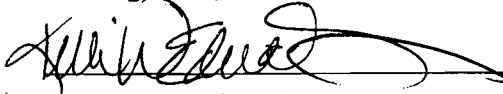
STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT DOCKET NO.: 2016-CP-07-1778
A & B ASSOCIATES, L.P., Plaintiff, vs. FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF DEMONE ATKINS IN SUPPORT OF DEFENDANT'S MOTION FOR RELIEF FROM ORDER GRANTING TEMPORARY INJUNCTION

Personally appeared the undersigned person before a Notary Public of South Carolina who, upon oath, deposes and declares as follows, to wit:

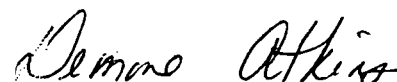
1. His name is Demone Atkins, and he has a lease for unit 93, located at August on Southside, 2208 Southside Blvd., Port Royal, South Carolina, the "Property". Due to the condition of the unit, which is and remains uninhabitable, he has been unable to reside in the unit. Furthermore, he was advised by the former management agent, Amanda Pett, that the key to his unit and his mailbox was disposed of. Therefore, he has not even had access to get into his leased unit.
2. On August 24, 2016, he was present in the Court of Common Pleas and was witness to the Order Granting Temporary Injunction requiring the Plaintiff to engage and install a licensed property manager at the Property by 12:00 Noon, on Friday August 26, 2016.
3. Since the time of the Order Grant, he has gone to the property management office at the Property multiple times to obtain a key. There has been no licensed management company on site, nor any management at all.
4. On August 30, 2016, he visited the property management office at the Property, and spoke with L. Christopher Kettles. Mr. Kettles provided him the key to his

unit. Furthermore, Mr. Kettles advised him that Sharan Kettles would be on site in the property management office at the Property all day on Wednesday, August 31, 2016.

Sworn to before a Notary Public of South Carolina)
On August 30, 2016.)

 (Seal))

Notary Public of South Carolina)
My Commission Expires 11/10/2025)


Demone Atkins

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF BRIAN WHITE

Personally appeared the undersigned person before a Notary Public of South Carolina who, upon oath, deposes and declares as follows, to wit:

1. His name is Brian White.
2. He is the Section 8 Housing Quality Standards Inspector for Beaufort Housing Authority.
3. He regularly conducts inspections of August on the Southside Apartments, located at 2208 Southside Boulevard, Port Royal, South Carolina (herein the "Property"), and conducted such an inspection on August 30, 2016.
4. While conducting that inspection he was unable to locate a property manager on the Property despite visiting the property's management office and conducting a search of the property.
5. Having located no property manager, he interviewed several of the Property's tenants who informed him that there was no property manager.
6. During the afternoon of August 26, 2016 he had a conversation with Amanda Pett, the Property's former unlicensed property manager, during which Ms. Pett made representations consistent with her continuing to act as the property manager for the Property.

Sworn to before a Notary Public of South Carolina)
On August 16, 2016.)

)
_____) (Seal))

Notary Public of South Carolina)
My Commission Expires MARCH 25, 2016)



Brian White

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	
	)	Case: 16-CP-07-1778
A&B ASSOCIATES, L.P.	)	
	)	
Plaintiff,	)	Plaintiff's Motion in Opposition to
vs.	)	Defendant's Motion for Relief From
	)	Order Granting Temporary Injunction
FCRE REL, LLC, and	)	
TIDELAND REALTY, INC.	)	
	)	
Defendants.	)	

The Parties came before this court on August 24, 2016 and following the hearing, this Court signed an Order on August 26, 2016 granting Plaintiff's Motion for Temporary Injunction. On August 31, 2016, Defendant FCRE REL, LLC filed a motion for relief from Order Granting Temporary Injunction on the sole grounds that Plaintiff did not have a licensed property manager installed at the Property. What is clear that Defendants have willfully continued to defy the Court's Orders by failing to return Plaintiff's property, including approximately \$75,000, and are still interfering with Plaintiff's ability to operate its business.

Defendant makes the categorically false statement that "[t]o date, no such property manager has been put in place." (Defendant's Motion, p. 1.) Plaintiff has in fact employed a licensed property manager at the Property. The property manager is Suzanna Rose McDonald, affiliated with Premier Island Properties, which is located at 71 Lighthouse Road, Suite 515, Hilton Head Island, SC 29928. The Property Manager was installed on August 30, 2016, after coming to an agreement with Plaintiff on August 29, 2016. Plaintiff was unable to comply with the Order's requirements that it have a licensed Property Manager in place by August 26, 2016, at 12:00 PM. However, Plaintiff put forth substantial and significant efforts in an attempt to

comply with the Court's Order as is evidenced by the Affidavits of Sharan Kettles and Christopher Kettles. In light of the Plaintiff's significant attempts to comply with the order, Plaintiff believes it would be fundamentally unfair to grant Defendant's Motion. Additionally, Defendant comes to Court with unclean hands as it has continued to defy this Court's Orders.

A. Plaintiff's Efforts to Comply with The Court's Order

On the night of August 24, 2016, Plaintiff and its representatives began their search for a licensed property manager that could be installed on the Property in an effort to timely comply with the Court's upcoming Order. As the attached affidavits of Christopher Kettles and Sharan Kettles make clear, Plaintiff made a substantial effort to timely comply with the Court's Order.

From the night of August 24, 2016 through 12:00 PM on August 26, 2016, Ms. Pett and Ms. Kettles, in attempting to locate a property manager, did the following: researched licensed property managers in the area, placed an advertisement on Craigslist, called a temporary employment agency, and contacted over ten individuals and entities that were licensed property managers. Plaintiff did not receive any responses from its Craigslist advertisement nor from the temporary employment agency. Each individual Ms. Pett spoke with declined to manage the Property and many of the people claimed it was because of this on-going litigation. On August 26, 2016, before the time to hire a licensed property manager expired, Plaintiff thought it had successfully located a willing licensed property manager in Jennifer Cerny.

Mr. Kettles spoke with Ms. Cerny on August 26, 2016. Ms. Cerny represented that she was a licensed real estate agent and could manage the Property. At this time, Plaintiff offered the position to Ms. Cerny, subject to her qualifications being accurate. On August 29, 2016, Plaintiff learned that although Ms. Cerny passed a real estate agent test and took the required course(s), she never affiliated with a broker and did not apply with the State for a license. Ms. Cerny was

unable to affiliate with a broker immediately so Plaintiff continued to look for a licensed property manager. Mr. Kettles spoke with numerous people on August 29, 2016 after realizing Ms. Cerny would not work out and he was referred to Wayne McDonald and his entity, Premier Island Properties. Plaintiff hire Premier Island Properties immediately and Premier Island Properties has been staffing and managing the Property throughout this week. Specifically, Suzanna Rose McDonald has been at the Property on both Tuesday and Wednesday of this week and she has introduced herself to many tenants. Her license number is 96036. While Ms. McDonald was out of the Property on Tuesday, Mr. Kettles spoke with Mr. White. In the conversation, Mr. White indicated he wanted to inspect an apartment.

Plaintiff has attempted to resume managing its business as the actions demonstrate. However, they have been continually hampered by Defendants' repeated defiance of this Court's Orders as outlined below.

B. Defendants' Continued Defiance of this Court's Orders

Both Defendants have continued their defiance of both the TRO and the temporary injunction in an effort to harm and damage Plaintiff. Whereas Plaintiff attempted to comply with this Court's Order, Defendant has openly disregarded both Orders and continues to do so. Yet, Defendant now comes to this Court seeking equitable relief when it clearly has unclean hands. Defendants continue to interfere with Plaintiff's business and continue to contact tenants. In the Court's Order granting the temporary injunction, Defendant was required to return all of Plaintiff's property, money, and possessions to Plaintiff by 12:00 PM on August 26, 2016. Defendant did not do so and still has not done so. In fact, Attorney Coppage did not have everything until August 29, 2016, which he verified in an email to Plaintiff's counsel. When Mr. Kettles went to Attorney Coppage's office, Defendant returned \$1,600 to Plaintiff. However,

Defendant, and/or its hired agent, Defendant Tideland Realty, Inc., admitted that it collected \$77,000 while it was in possession of the property. This means that Defendants have retained roughly 98% of Plaintiff's money. It is undisputed that the money belongs to Plaintiff.

In reviewing FCRE's use of Plaintiff's money, Plaintiff realized that FCRE paid its attorney in New York \$37,500.00. This sum is nearly one half of the funds that it had collected. This Court twice ordered that the money be returned to Plaintiff and it has not been returned. When reviewing the legal invoice that FCRE allegedly paid, the legal charges began to be incurred in December 2015 and continued through July 2016. It is the law of South Carolina that a party seeking to recover attorney's fees allegedly provided for in contract must seek an order that the fees are reasonable. No Court has ever determined this to be a reasonable fee or expense. FCRE, as it has done repeatedly, is acting outside of the legal process in trying to impose its will on Plaintiff.

Following the hearing on August 24, 2016, the Defendant's representative, Mary Davenport, stated to the representatives of the Plaintiff that she had attempted to freeze Plaintiff's bank accounts. This action was a clear violation of the TRO that had been issued, and the Court's order of August 24, 2016. After the injunction was granted, Plaintiff contacted Wells Fargo Bank to discuss its lock box account. As part of this loan relationship, the funds received by Plaintiff were deposited into an account at Wells Fargo Bank. The account is a "lock box" type account. Under the account agreement, the funds deposited into that account are then swept into an account owned by Plaintiff at SunTrust Bank. After the injunction was granted, Wells Fargo told Mr. Kettles that the sweeping instructions had been changed. The changes to the sweeping instructions were such that the money would not be swept into accounts owned by Plaintiff but rather, the funds would be swept into an account owned by Tideland Realty, Inc.

Following the Court's Temporary Injunction, Plaintiff was requested to change the instructions regarding the Wells Fargo Account so that the Plaintiff's money would be swept into the Plaintiff's SunTrust Account. In the correspondence, Defendant's lawyer advises that FCRE REL, LLC, will not do so. This is a disregard of the Court's Injunction. When Plaintiff requested Defendant change the sweeping instructions, FCRE, again acting in defiance of this Court's Orders, simply declined to do so. FCRE acknowledged the Court's Order required Defendant to return all money it collected from the rents yet indicated that because FCRE REL, LLC, contends there has been an Event of Default, Defendant has right to direct the disposition of the funds. The TRO and injunction were granted to return the situation to the status quo. This would require that the money be swept into Plaintiff's SunTrust bank account as that is what existed prior to the Defendant's removal of Plaintiff from the Property. FCRE's instructions to Wells Fargo clearly prevent this Court's Order from actually applying: namely, the status quo as it existed before Plaintiff was removed cannot be achieved. Plaintiff simply does not have access to its money based upon FCRE's actions.

The Defendants have continued to defy this Court's Orders and are continuing to interfere with Plaintiff's business. Plaintiff's substantially complied, or attempted to substantially comply, with the Court's August 26, 2016 Order as is evidenced in the affidavits attached hereto. On this basis, Plaintiff requests that the Court deny Defendant's Motion.

Dated this 19th day of September, 2016.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By:



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brian@mahanylaw.com

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NUMBER: 2016-CP-07-1778
A & B ASSOCIATES, L. P.	)	
Plaintiff,	)	
	)	Affidavit
vs.	)	
FCRE REL, LLC, and TIDELAND	)	
REALTY, INC.,	)	
<u>Defendants.</u>	)	
STATE OF GEORGIA	)	
	)	SS.
COUNTY OF CHATHAM	)	

Christopher Kettles, being first duly sworn on oath, states as follows:

1. Following the hearing on Plaintiff's motion for temporary injunction, I immediately began the process of trying to hire a licensed property manager to manage the Property.
2. I worked with Amanda Pett in trying to locate a licensed property manager.
3. I spoke with Jennifer Cerny on August 26, 2016 and August 29, 2016. On August 26, 2016, Ms. Cerny represented that she was a licensed real estate agent and could manage the Property. At this time, I offered the position to Ms. Cerny, subject to her qualifications being accurate.
4. On August 29, 2016, I learned that although Ms. Cerny passed a real estate agent test and took the required course(s), she never affiliated with a broker and did not apply with the State for a license. Ms. Cerny was unable to affiliate with a broker immediately so I continued to look for a licensed property manager.

5. After learning Ms. Cerny was not licensed, on August 29, 2016, I spoke with numerous acquaintances in the real estate industry who recommended that I speak with Mr. Wayne McDonald.
6. On August 29, 2016, I spoke with Wayne McDonald of Premier Island Properties, which is a licensed property management company. Mr. McDonald is a licensed real estate broker. He agreed to manage the Property on August 29, 2016, and his company began staffing the Property's office on August 30, 2016.
7. Premier Island Properties' Suzanna Rose McDonald was on the Property on both August 30 and 31, 2016, and I personally witnessed her introduce herself to numerous tenants. Ms. McDonald's license number is 96036.
8. On August 30, 2016, I was at the Property and spoke with Brian White. At this time, the property manager was already hired and in place but Ms. McDonald was not physically in the office at the time I spoke with Mr. White.
9. I personally went to Attorney Ben Coppage's office to retrieve Plaintiff's property. However, many of Plaintiff's possessions have not been returned, including tools, office paperwork, leases, and applications.
10. Attorney Coppage only returned \$1,600 even though he indicated \$77,000 was collected while Defendants were in possession of the Property.
11. After reviewing some of the expenses the Defendants' paid with Plaintiff's \$77,000, I noticed that the Defendants paid a legal expense in the amount of \$37,500. The legal charges reflected on the invoice covered dates dating back to December 2015 and continued through July 2016.
12. I am unable to determine at this time where a portion of the reserve account money is after it was swept out of Plaintiff's account.

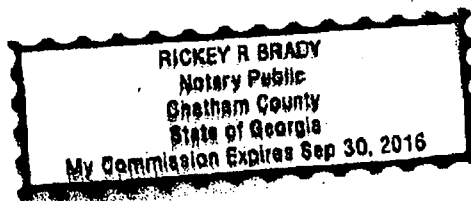
Further Affiant Sayeth Not.

Dated at Chatham, this 1st day of September, 2016.

By: Christopher Kettles
Christopher Kettles

Subscribed and sworn to before
me this 1 day of September, 2016.

Rickey R Brady
Notary Public, State of Georgia
My commission expires 9/30/16



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
A & B ASSOCIATES, L. P.)
Plaintiff,)
vs.)
FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

Affidavit

2016 SEP 15 PM 2:49
JERRI ANN DOBELLIEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) SS.

Sharan Kettles, being first duly sworn on oath, states as follows:

1. Following the hearing on Plaintiff's motion for temporary injunction, I worked with Amanda Pett to immediately began the process of trying to hire a licensed property manager to manage the Property.
2. In an effort to comply with the Order, I, along with Ms. Pett, took numerous steps to secure a licensed property manager by the August 26, 2016 deadline.
3. Ms. Pett advised me that she placed an advertisement on Craigslist seeking a licensed property manager. To date, Plaintiff has not received a reply to this posting.
4. Ms. Pett indicated she also called a temporary employment service to inquire if it had any licensed property managers as clients. However, Plaintiff has not received any response to this inquiry.

5. Ms. Pett and I spoke about all of the efforts to find a licensed property manager. Ms. Pett indicated she spoke with well over ten individuals in regard to managing the Property. Some of the individuals that Ms. Pett spoke with were:
- a. Jennifer Cerny; She indicated she was a licensed real estate agent but in fact, she was not.
 - b. Mac; He provided a name who Plaintiff was going to hire. However, her license had expired so Plaintiff did not hire this person.
 - c. Brian; Ms. Pett asked if he knew anybody who was a property manager and he indicated he would look around. Plaintiff has not heard back yet.
 - d. Mack; Ms. Pett asked if he knew anybody but he was not sure.
 - e. Bundy Appraisal; Ms. Pett and I discussed how it declined because it did not have sufficient staffing levels to manage the Property.
 - f. Carolina Realty Group; They told Ms. Pett it would did manage a property and upon learning it was the August on Southside Property, it decided it did not want to get involved.
 - g. Darlene; She told Ms. Pett she wanted to do it but then declined when she found out where the Property was located.
6. In addition to the list of individuals above, Ms. Pett and I discussed her contacts with numerous other individuals who did not wish to manage the Property due to the on-going litigation.

Further Affiant Sayeth Not.

Dated at Beaufort, this ____ day of September, 2016.

By: Sharan Kettles
Sharan Kettles

Subscribed and sworn to before
me this 15th day of September, 2016.

[Signature]
Notary Public, State of South Carolina
My commission expires 4-29-21

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-01778

A&B ASSOCIATES, LP

FCRE REL, LLC, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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
- ☐ **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:

THIS CAME BEFORE ME AS A TELE-CONFERENCE HEARING ON DEFENDANT FCRE REL, LLC'S MOTION FOR RELIEF FROM ORDER GRANTING TEMPORARY INJUNCTION, FILED 8/31/2016. CURTIS COLTRANE APPEARED FOR THE PLAINTIFF, BEN COPPAGE APPEARED FOR FCRE REL, LLC AND ASHLEY TWOMBLEY APPEARED FOR TIDELANDS REALTY, INC. AFTER HEARING FROM PARTIES I HEREBY DENY THE MOTION.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$N/A
		\$
		\$

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

3069

Judge Code

Date

9/7/16

For Clerk of Court Office Use Only

This judgment was entered on the 1 day of Sept, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 7 day of Sept, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

CURTIS L. COLTRANE

BENJAMIN T. COPPAGE

J. ASHLEY TWOMBLY

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC.	
Defendants.	ANSWER, COUNTERCLAIMS, AND THIRD-PARTY COMPLAINT
FCRE REL, LLC, Third-Party Plaintiff,	
vs.	
L. CHRISTOPHER KETTLES, Third-Party Defendant	

Defendant, FCRE REL, LLC, (hereinafter "FCRE") answers the Complaint of the Plaintiff herein and asserts counterclaims against the Plaintiff by respectfully alleging the following:

FOR A FIRST DEFENSE
(Denial)

101. Each and every allegation of the Complaint not hereinafter expressly admitted is denied.
102. Responding to the allegations of the three paragraphs following the heading "INTRODUCTION," FCRE is informed and believes that those paragraphs constitute administrative paragraphs to which no answer is required. To the extent the Court requires an answer, FCRE denies the same.
103. FCRE admits the allegations of Paragraph 1 under the heading "PARTIES".
104. FCRE responds to the allegations of Paragraph 2 under the heading "PARTIES" as follows:
 - a. FCRE admits that it is a Delaware limited liability company with an address of 623 Fifth Avenue, 24th Floor, New York, New York 10022.
 - b. FCRE admits that it is in the lending business.
 - c. FCRE denies all of the other allegations of Paragraph 2.

105. FCRE admits the allegations of Paragraph 3 under the heading "PARTIES."
106. FCRE admits the allegations of Paragraph 1 under the heading "JURISDICTION AND VENUE."
107. FCRE responds to the allegations of Paragraph 2 under the heading "JURISDICTION AND VENUE" as follows:
- a. FCRE denies that the court has personal jurisdiction over the defendants pursuant to S.C. Code Ann. §§ 36-2-803(1)(a), (b), (c), (d), (e), and (g) as no such subsections of S.C. Code Ann. § 36-2-803 exist.
 - b. FCRE admits that this court has personal jurisdiction over the Defendants by virtue of their conducting business in this County.
 - c. FCRE denies committing any tortious acts and therefore denies that this court has personal jurisdiction over it pursuant to S.C. Code Ann. §§ 36-2-803(A)(3) and (4) or any other statute.
 - d. FCRE admits that the loan at issue was secured by real property located in Beaufort County.
108. FCRE denies the allegations of Paragraph 3 under the heading "JURISDICTION AND VENUE."
109. FCRE admits the allegations of Paragraphs 4 and 5 under the heading "JURISDICTION AND VENUE."
110. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 1 under the heading "FACTS"; therefore, FCRE denies the same and demands strict proof thereof.
111. FCRE admits the allegations of Paragraphs 2, 3, and 4 under the heading "FACTS."
112. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 5 under the heading "FACTS"; therefore, FCRE denies the same and demands strict proof thereof.
113. FCRE admits the allegations of Paragraphs 6 and 7 under the heading "FACTS."
114. FCRE denies the allegations of Paragraph 8 under the heading "FACTS."
115. FCRE admits the allegations of Paragraphs 9, 10,

116. FCRE denies the allegations of Paragraphs 11 and 12 under the heading "FACTS."
117. FCRE denies the allegations of Paragraphs 13, 14, 15, 16, and 17 under the heading "FACTS."
118. FCRE denies the allegations of Paragraphs 1, 2, and 3 under the heading "A. Plaintiff has Properly Maintained the Real Property."
119. In responding to the allegations of Paragraph 4 under the heading "A. Plaintiff has Properly Maintained the Real Property," FCRE denies that Plaintiff has made many improvements at the Real Property, admits that some incidents have occurred at the Real Property during the Plaintiff's ownership, admits that one such incident was a shooting that occurred in October 2015, and denies that said shooting was a random incident.
120. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 5 under the heading "A. Plaintiff has Properly Maintained the Real Property;" therefore, FCRE denies the same and demands strict proof thereof.
121. FCRE denies the allegations of Paragraphs 6 and 7 under the heading "A. Plaintiff has Properly Maintained the Real Property."
122. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 8 under the heading "A. Plaintiff has Properly Maintained the Real Property;" therefore, FCRE denies the same and demands strict proof thereof.
123. FCRE admits the allegations of Paragraphs 1 and 2 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
124. FCRE denies the allegations of Paragraphs 3 and 4 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
125. FCRE admits the allegations of Paragraph 5 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
126. FCRE denies the allegations of Paragraphs 6, 7, 8, 9, and 10 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."

127. FCRE admits the allegations of Paragraph 11 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
128. FCRE denies the allegations of Paragraph 12 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
129. FCRE admits the allegations of Paragraphs 13, 14, and 15 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
130. FCRE denies the allegations of Paragraph 16 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
131. FCRE responds to the allegations of Paragraph 17 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property" as follows:
- a. FCRE admits that Section 3.4 and 3.5 of the Mortgage require Plaintiff to maintain and prevent waste of the Real Property.
 - b. FCRE denies that Plaintiff has maintained the Real Property or prevented waste of the Real Property.
 - c. FCRE denies that Plaintiff remedied any issues that were affecting the Real Property.
 - d. FCRE denies that Plaintiff has provided a non-exhaustive list of some of the steps that Plaintiff took to maintain and prevent waste on the Real Property.
 - e. FCRE denies the allegations of the last sentence of this Paragraph as it is not stated with clarity such that FCRE cannot determine what, if any, response it warrants.
132. FCRE denies the allegations of Paragraphs 18, 19, 20, 21, 22, and 23 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
133. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraphs 24 and 25 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property;" therefore, FCRE denies the same and demands strict proof thereof.

134. FCRE denies the allegations of Paragraphs 26, 27, 28, 29, 30, and 31 under the heading "B. Defendant FCRE unlawfully removed Plaintiff from the Real Property."
135. Responding to the allegations of Paragraph 1 under the heading "COUNT I," FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
136. FCRE admits the allegations of Paragraphs 2 and 3 under the heading "COUNT I."
137. FCRE is without sufficient knowledge or information to form a belief as to the veracity of the allegations of Paragraph 4 under the heading "COUNT I," therefore, FCRE denies the same and demands strict proof thereof.
138. FCRE denies the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 under the heading "COUNT I."
139. Responding to the allegations of Paragraph 1 under the heading "COUNT II," FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
140. FCRE denies the allegations of Paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 under the heading "COUNT II."
141. Responding to the allegations of Paragraph 1 under the heading "COUNT III," FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
142. FCRE admits the allegations of Paragraph 2 under the heading "COUNT III."
143. FCRE denies the allegations of Paragraphs 3, 4, 5, 6, and 7 under the heading "COUNT III."
144. Responding to the allegations of Paragraph 1 under the heading "COUNT IV," FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.

145. FCRE denies the allegations of Paragraphs 2, 3, 4, 5, 6, 7, 8, and 9 under the heading "COUNT IV."
146. Responding to the allegations of Paragraph 10 under the heading "COUNT IV." FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE denies the same.
147. Responding to the allegations of Paragraph 1 under the heading "COUNT V." FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
148. FCRE denies the allegations of Paragraphs 2, 3, 4, 5, 6, 7, and 8 under the heading "COUNT V."
149. Responding to the allegations of Paragraph 1 under the heading "COUNT VI." FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
150. FCRE denies the allegations of Paragraphs 2 and 3 under the heading "COUNT VI."
151. Responding to the allegations of Paragraph 1 under the heading "COUNT VII." FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE admits the same.
152. FCRE admits the allegations of Paragraph 2 of under the heading "COUNT VII." inasmuch as the stated rights are subject to the provisions of the Loan Documents.
153. FCRE denies the allegations of Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, and 11 under the heading "COUNT VII."
154. Responding to the allegations of Paragraph 1 under the heading "COUNT VII." FCRE is informed and believes that said paragraph constitutes an administrative paragraph to which no answer is required. To the extent the Court requires an answer, FCRE denies the same.

FOR A SECOND DEFENSE
(Failure to Join a Party Under Rule 19)

201. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
202. L. Christopher Kettles (hereinafter Kettles) is a non-party who should be joined so that all parties necessary for a just adjudication are before the court.
203. Kettles wholly owns ABGP, Inc., which is the general partner of the Plaintiff, with a 1% member interest.
204. On April 15, 2015, Kettles executed a Guaranty of Recourse Obligations and Environmental Indemnity Agreement (hereinafter "Guaranty") under which Kettles agreed to unconditionally guarantee payment and performance of the Plaintiff for all of those obligations and liabilities of the Plaintiff to FCRE for which FCRE has recourse against the Plaintiff pursuant to the Loan Documents, referenced *infra*.
205. The Guaranty requires Kettles to pay the amount due on those obligations immediately upon demand by the Lender.
206. Kettles is subject to service of process and his joinder will not deprive the court of jurisdiction over the subject matter of this action.
207. In Kettles absence, complete relief cannot be accorded among those already named parties.

FOR A THIRD DEFENSE
(Waiver)

301. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
302. To the extent that the Plaintiff has or had any legal right in the real and personal property and contractual relationships referenced in its Complaint, Plaintiff has voluntarily relinquished those rights.
303. Plaintiff has voluntarily relinquished the alleged legal rights referenced in its Complaint by waiving the same upon execution of the Loan Documents, described *infra*.

304. Plaintiff has voluntarily relinquished the alleged legal rights referenced in its Complaint by acting in a manner inconsistent with its having those rights.

FOR A FOURTH DEFENSE
(Fraud)

401. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
402. If FCRE owes or owed any duty to the Plaintiff to act or refrain from acting in any way, the same was brought about by FCRE's good faith reliance on false representations made by the Plaintiff.

FOR A FIFTH DEFENSE
(Existence of a Contract - As to the Plaintiff's Cause of Action for Unjust Enrichment)

501. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
502. The allegations of the Plaintiffs' Complaint have their basis in the contractual relationship between the Plaintiff and FCRE.
503. Actions for unjust enrichment are based on the absence of a contract.
504. Relief under the theory of unjust enrichment is not available as the Plaintiff's action is based on the existence of a contract.

FOR A SIXTH DEFENSE
(Equitable Estoppel)

601. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
602. The Plaintiff knowingly and willfully entered into a contractual relationship by which the Plaintiff consented to FCRE's taking certain actions.
603. By entering into this relationship without intending to honor the provisions by which it is governed, the Plaintiff's conduct amounted to a false representation or concealment of material facts made with the intention or expectation that its conduct would be acted upon by FCRE.

604. Conversely, upon entering the contractual relationship, FCRE lacked knowledge of the truth as to the Plaintiff conduct and relied upon that conduct to its prejudice.

605. Having made such representations, the Plaintiff is now barred from asserting any cause of action contradicting those representations.

FOR A SEVENTH DEFENSE

(Right of Possession and Authorization - As to the Plaintiff's Cause of Action for Conversion)

701. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.

702. If FCRE was ever in control or possession of any property in which the Plaintiff had an interest, the Plaintiff is barred from asserting a claim for conversion as the Plaintiff had granted FCRE the right to possess the property or had authorized FCRE to control or possess the property by executing the Loan Documents, described *infra*.

FCRE'S COUNTERCLAIMS AGAINST THE PLAINTIFF

STATEMENT OF FACTS

801. Plaintiff is a Georgia Limited Partnership.

802. ABGP, Inc. is Plaintiff's general partner.

803. ABGP, Inc. is wholly owned by Kettles.

804. Plaintiff is the owner of August on Southside, a ninety-six (96) unit apartment complex located at 2208 Southside Boulevard, Port Royal, South Carolina (hereinafter the "Real Property"), which is more specifically described in Exhibit A, hereto.

805. Defendant FCRE REL, LLC (hereinafter "Defendant") is a commercial real estate lender.

806. On February 18, 2015, the Plaintiff executed a Loan Application with FCRE which outlined the process governing the Plaintiff's submittal of information to FCRE for FCRE's due diligence review of whether a loan to the Plaintiff could be approved by its credit committee and funded.

807. Between February 18, 2015 and April 15, 2015, FCRE performed its customary due diligence procedures.
808. During the due diligence process, on April 7, 2015, the Plaintiff provided documentation to FCRE which reflected that thirteen of the tenants at the Real Property received Housing Assistance Payments through the United States Department of Housing and Urban Development.
809. At the same time, the Plaintiff assured FCRE that it received seven thousand three hundred forty-seven dollars (\$7,347.00) from the Beaufort Housing Authority (hereinafter "BHA") each month as payment toward those tenants' rent and two thousand one hundred four dollars (\$2,104.00) from the tenants themselves for a total collection of nine thousand four hundred fifty-one dollars (\$9,451.00).
810. The Plaintiff assured FCRE that BHA was unwilling to pay market rental rates, that the leases for the tenants who received governmental assistance would not be renewed, and that the Plaintiff had no immediate plans to rent to new tenants who received governmental assistance.
811. FCRE based its decision to fund a loan to the Plaintiff, in part, on the Plaintiff's representations regarding tenants who received governmental assistance.
812. FCRE later discovered that as of the date of the certification from Plaintiff, April 7, 2015, there were twenty-two (22) tenants receiving governmental assistance, that the leases for the tenants who received governmental assistance were renewed, and that the Plaintiff continued to offer leases to new tenants who received governmental assistance.
813. During the due diligence process, in April 2015, Plaintiff provided a Certified Rent Roll to FCRE which purportedly showed all of the apartments that were being leased at the time and the people to whom they were being leased.
814. This Certified Rent Roll did not contain any reference to Ashley Thomas, the tenant occupying Unit 2. Upon later discovery by FCRE, Ashley Thomas was a tenant under the BHA program. Rental payments were made to the Plaintiff for this tenant on April 1, 2015. Therefore, the tenant should have been identified and listed on the Certified Rent Roll. In reviewing the diligence

information provided by the Plaintiff, it was noted that the Plaintiff confirmed in an email on April 5, 2015 that Ashley Thomas was evicted on March 8, 2015 and attached a copy of the Writ of Ejection issued by the Beaufort County Magistrate's Court. Therefore, the rental payment accepted by the Plaintiff on April 1, 2015 for a tenant that had been evicted on March 8, 2015 was improper. A review of all the rental payments made to the Plaintiff by the BHA from April 2015 to July 2016 evidences that two additional payments were made to the Plaintiff for this tenant, Ashley Thomas, on May 1, 2015 and May 28, 2015.

- 815. This Certified Rent Roll showed that Unit 61 was leased by someone named Shantae Parker.
- 816. FCRE based its decision to fund a loan to the Plaintiff, in part, on the veracity of the Certified Rent Roll provided by the Plaintiff.
- 817. From April 2015 to June 2016, the Plaintiff provided rent rolls to FCRE which purported to show that Unit 61 was occupied by various tenants.
- 818. FCRE later discovered that Unit 61 was rendered uninhabitable by a fire that took place in February 2015 and that Unit 61 had not been occupied since that time.
- 819. During the due diligence process, FCRE engaged a third party to perform an appraisal of the real property.
- 820. The aforementioned assurances regarding tenants, the Certified Rent Rolls, historic financial Income and Expense Statements, and a [then] Current Budget were among various property operating information provided to the appraiser which was, in turn, used by the appraiser to evaluate the value of the Real Property.
- 821. FCRE based its decision to fund a loan to the Plaintiff, in large part, on the appraised value of the Real Property.
- 822. It is unknown what the appraised value of the Real Property would have been had the Plaintiff provided complete and accurate information to the appraiser.
- 823. During the due diligence process, on or about April 14, 2015, FCRE received a Property Condition Report prepared by Velocity Consulting, Inc. (hereinafter "Velocity") which stated that the Real Property was observed to be in good

condition, based on (1) a physical site inspection which included access to the common spaces, mechanical areas of the buildings and ten apartments, (2) a capital improvement budget submitted by the Plaintiff to which purportedly listed a number of capital improvements that were completed on the Real Property, and (3) interviews with the property managers Amanda Pett and Sharan Kettles during which Amanda Pett assured Velocity that she had no knowledge of mold problems on the Real Property.

- 824. FCRE based its decision to fund a loan to the Plaintiff, in part, on Velocity's report that the Real Property was in good condition.
- 825. FCRE later discovered that the Plaintiff had intentionally shown Velocity areas of the Real Property that did not reflect the general poor condition of the Real Property with the intent to mislead Velocity such that Velocity would report that the Real Property was in good condition.
- 826. FCRE later discovered that many of the capital improvements listed on the budget submitted to Velocity had not actually been made.
- 827. FCRE later discovered that there were substantial mold problems on the Real Property at the time Amanda Pett claimed to have no knowledge of the same and that said problems would have been discovered by any property manager not acting with gross negligence in the execution of the duties of her employment.
- 828. On April 15, 2015, Plaintiff and FCRE entered into a (1) Loan Agreement, (2) Promissory Note, (3) Guaranty of Recourse Obligations and Environmental Indemnity Agreement, (4) Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and (5) Assignment and Subordination of Management Agreement (hereinafter collectively referred to as the "Loan Documents") to effect the funding of a loan from FCRE to Plaintiff in the principal amount of three million nine hundred thousand dollars (\$3,900,000.00).
- 829. On or about July 6, 2015, FCRE was advised by its loan servicer, Midland Loan Services (hereinafter "Midland") that Plaintiff did not make the required monthly payment. FCRE contacted Plaintiff regarding the fact that the second

loan payment had not been made in a timely manner. Plaintiff advised that the payment was mailed on July 5, 2015 by regular mail. The payment was subsequently received on July 7, 2015. Plaintiff was advised that the payment needed to be received on or before the sixth of the month due date. As a courtesy, the system generated late charge fee was authorized by FCRE to be reversed.

830. On or about September 6, 2015 FCRE was again advised by Midland that the Plaintiff did not make the required monthly payment. FCRE again contacted the Plaintiff regarding the fact that the fourth loan payment had not been made in a timely manner. Plaintiff did not remit the payment until September 14, 2015. Therefore, Plaintiff's assertions that all payments have been timely made is false. Additionally, on or about January 29, 2016, Plaintiff contacted Midland and requested the due date be changed. Midland advised Plaintiff that this could not be done without FCRE's approval. This continues to support FCRE's claims that Plaintiff never intended to fulfill its contractual obligations under the Loan Documents.
831. On or about October 27, 2015, FCRE became aware of a shooting that had taken place on the Real Property earlier that month.
832. On or about October 27, 2015, FCRE contacted Kettles regarding the incident and Kettles assured FCRE that the shooting was an isolated incident and that the Real Property was one of the least crime-affected apartment complexes in Beaufort County.
833. In the ensuing months, FCRE continued to contact Kettles and other agents of the Plaintiff regarding the safety of the Property, but Kettles failed to provide proof that any action had been or was being taken to ensure the safety of the tenants and the property.
834. On or about December 8, 2015, FCRE's Executive Vice President, Mary F. Davenport, and Senior Vice President, Nichole Kim, visited the Property and met with Sharan Kettles and Amanda Pett, agents of the company that the Plaintiff had hired to manage the Property, The August Group, Inc. (hereinafter "August Group").

835. This on-site visit revealed that no measures had been taken to ensure the safety of the tenants or the Real Property and obviated the fact that the Plaintiff had allowed the condition of the Property to significantly deteriorate in the eight (8) months subsequent to the funding of the loan.
836. On or about December 8, 2015, Ms. Davenport and Ms. Kim, met with Captain John Griffith of the Port Royal Police Department who provided reports which revealed that the Real Property was located in a high-crime area and that a great deal of criminal activity took place on the Real Property.
837. The reports provided by Captain Griffith further showed that the crime level at the property had not abated since FCRE's funding of the loan to the Plaintiff or since FCRE's contact with Kettles following the aforementioned shooting.
838. On or about December 8, 2015, FCRE learned that August Group did not have properly licensed agents, including but not limited to Sharan Kettles and Amanda Pett, under the SC Real Estate Commission regulations representing it, and as a management company was therefore not properly qualified to act as the property manager in the state of South Carolina.
839. On or about December 21, 2015, FCRE contacted Kettles, letting him know that the Plaintiff's failure to make the Real Property safe for tenants and failure to prevent the deterioration of the Real Property were violations of provisions of the Loan Documents and suggested steps that could be taken to cure those violations.
840. On or about December 21, 2015, FCRE contacted Kettles requesting he provide verification in the form of a valid State of South Carolina Property Manager in Charge license for both Sharan Kettles and Amanda Pett. Further, FCRE advised that if such licenses were not active and in full force, then immediate arrangements must be made to remedy, else third party managers with the appropriate licensing needed to be engaged.
841. Kettles responded by stating that the Plaintiff had no duty to make the Property safe for tenants but that he was considering increasing security measures on the Property. Kettles further responded that upon reading the management requirements in South Carolina law, there is an exception for owner managers.

Kettles further stated they had used this exception for the past 35 years in managing the Real Property. As the owner exemption specifically states in order to qualify for this exemption “(1) the sale, lease or rental of real estate by an unlicensed owner of real estate who own any interest in the real estate if the interest being sold, leased, or rented is identical to the owner’s legal interest.” The Plaintiff owns 100% of the Real Property. August Group owns a 51% interest in the Plaintiff, therefore these interests are not identical and do not meet the exception rule.

842. In the months following that contact, FCRE repeatedly reached out to the Plaintiff to inquire as to whether measures were being taken to ensure the safety of the Real Property and prevent its further deterioration and the status on licensed property management.
843. The Plaintiff’s few responses to these solicitations FCRE received did not indicate that any such measures were being taken but were only statements that the Plaintiff was investigating its options regarding security. No response was provided as to the licensed property management matter.
844. On or about May 4, 2016, after obtaining a report of a third party inspection of the Real Property which noted continued and significant physical waste and deterioration of the Property, FCRE contacted the Plaintiff and requested confirmation that the waste and deterioration had been or were being corrected.
845. FCRE received no response to its request from the Plaintiff.
846. In May, June, and July of 2016 FCRE requested financial information pertinent to the management of the Property, much of which was provided by the Plaintiff, Kettles, and August Group.
847. Upon FCRE’s review of the information provided, it was discovered that the information was inconsistent with information provided to FCRE during the loan application process and other financial information previously provided to FCRE.
848. Since April 2015, the Plaintiff has never deposited the full amount of rent collected on a monthly basis into a clearing account as required by the Loan Agreement. To wit, it has failed to deposit approximately two hundred thirty-

seven thousand five hundred dollars (\$237,500.00) of collected rents to the clearing account.

849. Since April 2015, Plaintiff has consistently reported collecting thousands of dollars less than the amount due from tenants according to rent rolls the Plaintiff submitted to FCRE.

850. As a result of the Plaintiff's (1) failure to address issues regarding the safety of the Property, (2) allowance of continued deterioration and physical waste of the Property, (3) failure to provide documentation showing that its property manager was properly licensed, (4) failure to provide financial reports, including missing, late, inaccurate, inconsistent, and misleading tenant occupancy reports, (5) failure to remedy defects, (6) failure to notify FCRE or the Plaintiff's change of place of business, and (7) permitting leases of less than twelve (12) months in duration, FCRE sent Plaintiff a "Notice of Event of Default" dated July 18, 2016 which notified the Plaintiff of the foregoing events of default and gave the Plaintiff notice that FCRE would be exercising its right, under the Loan Documents, to replace August Group as the manager of the Property with a property manager of FCRE's choosing.

851. On July 18, 2016, pursuant to Sections VII and 10.2(c) of the Loan Agreement and the provisions of the Assignment of Management Agreement and Subordination of Management Fees, FCRE terminated the Management Agreement in place with August Group and replaced August Group as property Manager with Defendant Tideland Realty, Inc. (hereinafter "Tideland").

852. The Plaintiff has failed to cause the Real Property to be maintained in a good and safe condition and repair, has committed and suffered waste to the Real Property, and has allowed the value of the Real Property to be materially impaired as it has committed the following acts and omissions:

- A. Allowing for the excessive growth of mold on the interiors and exteriors of buildings;
- B. Allowing the interiors and exteriors of buildings to become and remain filthy;

- C. Improperly installing building materials;
- D. Failure to maintain HVAC systems, resulting in the malfunction and breakdown of the same;
- E. Improper installation and repair of plumbing, causing the plumbing systems to leak and cause water damage;
- F. Using boric acid and other harsh chemicals in the Real Property's plumbing systems, causing the plumbing systems to leak and cause water damage, as well as promote the growth of mold;
- G. Use of unlicensed, non-bonded, and unqualified individuals who were ineffective in making necessary repairs;
- H. Allowing stained and broken terrace fencing on both first and second floor porches and otherwise allowing porches to reach a significant state of disrepair;
- I. Allowing paint on signage to become chipped;
- J. Allowing multiple mildew stains, and possible microbial growth, to be present on the northern and eastern sides of one of the apartment buildings;
- K. Allowing broken fencing around the maintenance garage and the outside of the swimming pool;
- L. Allowing wood rot and deterioration on the unit porches, in particular the porches on the second story which present a safety risk to all tenants.
- M. Allowing tenants to reside in units where no bathroom facilities were available for extended periods of time, in violation of S.C. Code Ann. § 27-40-440.

- N. Allowing for the persistence of criminal activity including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;
 - O. Failure to provide adequate security including, but not limited to, failure to install security gates, video surveillance, or a police substation;
 - P. Failure to properly address plumbing problems such that the plumbing fixtures in second floor apartments leak into first floor apartments;
 - Q. Allowing units to become infested with bed bugs;
 - R. Allowing units to become infested with roaches;
 - S. Failure to provide tenants with working kitchen appliances;
 - T. Installation of unsafe flooring in apartment units;
 - U. Failing to maintain the Property in compliance with the minimum standards of the U.S. Department of Housing and Urban Development Housing Quality Standards.
 - V. Failure to maintain the pool on the Property such that it complies with DHEC standards
853. Between April 15, 2015 and August 24, 2016, the Plaintiff received and failed to comply with one hundred thirty-eight (138) notices of defects on the Real Property from the Beaufort Housing Authority for which the Plaintiff was responsible which would need to be remedied to become compliant with the United States Department of Housing and Urban Development's standard of habitability for those tenants receiving government assistance.

854. The Plaintiff attempted to interfere with Beaufort Housing Authority's execution of its duties by filing untrue complaints about Beaufort Housing Authority inspectors.
855. Numerous deposits made to the clearing account were not amounts actually received from rents but from other sources in an attempt to give the appearance that the total amounts received from rent were being deposited into the clearing account.
856. On several occasions, checks were made payable to various parties, including tenants, non-tenants and service providers. The checks were then endorsed "to August on Southside" or "AOS" by someone not the party to whom the checks were made payable, but purporting to be that party, and then deposited into the clearing account.
857. A check to Amanda Pett from a law firm for seven thousand three hundred sixty-three dollars and fifty-four cents (\$7,363.54) was endorsed to August on Southside and deposited into the clearing account.
858. Ten (10) checks made payable to Amanda Pett from August Personnel, Inc. totaling nine thousand five hundred ninety-three dollars and four cents (\$9,593.04) were deposited in the clearing account.
859. Two (2) checks made payable to Amanda Pett from Kettles's personal account totaling one thousand four hundred dollars (\$1,400.00) were deposited in the clearing account.
860. In total, there were thirty-two (32) checks amounting to twenty-five thousand four hundred fifty-one dollars and fifty-eight cents (\$25,451.58) which were

laundered funds running through the Plaintiff and Kettles's various accounts at SunTrust Bank.

861. Eleven (11) checks, totaling twelve thousand six hundred thirty-six dollars and sixty cents (\$12,636.60), submitted to the Plaintiff for security deposits and one year's advance rent, which should have been held in escrow, were deposited into the clearing account and then swept to the Plaintiff's operating account.

862. The Plaintiff unilaterally changed the terms of tenants' leases without the tenants' knowledge and to the tenants' detriment.

863. The Plaintiff has forged the signature of at least one tenant on a lease.

864. Unlicensed property managers hired by the Plaintiff have unduly and maliciously threatened and intimidated tenants by, among other things, filing false eviction notices.

865. The Plaintiff regularly requested that tenants pay their rent in cash contrary to the provisions of its own Lease Agreements.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure)**

901. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.

902. On April 15, 2015, for value received, the Plaintiff executed and delivered to FCRE a Promissory Note (hereinafter "Note") in the principal sum of three million nine-hundred thousand dollars (\$3,900,000.00).

903. To secure the payment of the Note and debt, and in accordance with the terms and conditions thereof, on April 15, 2015, the Plaintiff executed and delivered to FCRE a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter "Mortgage") covering the Real Property, which

was recorded on April 29, 2015 in Deed Book 3395, Page 1895 in the Office of the Register of Deeds for Beaufort County, South Carolina.

904. The Mortgage evidences and secures the repayment of money advanced by FCRE to the Plaintiff and constitutes a first lien on the Real Property.

905. In executing and delivering the Loan Documents, the Plaintiff covenanted and agreed that all sums owing FCRE would become immediately due and payable and that the Mortgage would be foreclosed upon the Plaintiff's default in any of the terms, conditions, or covenants of the Loan Documents.

906. The loan is in default by virtue of the following:

a. Section 10.1 of the Loan Agreement sets out a list of events that each constitute an Event of Default. Included in that list is "a default under any agreement creating a Lien or encumbrance on the Property." The Mortgage is such an agreement and the Plaintiff is in default with regard to the provisions of the Mortgage as follows: (1) Failure of the Plaintiff to cause the Property to be maintained in a good and safe condition and repair as required by Section 3.4; (2) The commission and suffering of waste to the Property, in violation of Section 3.5; and (3) Allowing the material impairment of the value of the Property, in violation of Section 3.5. The Plaintiff has failed to comply with the above-stated provisions of the Mortgage as follows:

- 1) Allowing for the excessive growth of mold on the interiors and exteriors of buildings;
- 2) Allowing the interiors and exteriors of buildings to become and remain filthy;
- 3) Improperly installing building materials;
- 4) Failure to maintain HVAC systems, resulting in the malfunction and breakdown of the same;
- 5) Improper installation and repair of plumbing, causing the plumbing systems to leak and cause water damage;

- 6) Using boric acid and other harsh chemicals in the Real Property's plumbing systems, causing the plumbing systems to leak and cause water damage;
- 7) Use of unlicensed, non-bonded, and unqualified individuals who were ineffective in making necessary repairs;
- 8) Allowing stained and broken terrace fencing on both first and second floor porches and otherwise allowing porches to reach a significant state of disrepair;
- 9) Allowing paint on signage to become chipped;
- 10) Allowing multiple mildew stains, and possible microbial growth, to be present on the northern and eastern sides of one of the apartment buildings;
- 11) Allowing broken fencing around the maintenance garage and the outside of the swimming pool;
- 12) Allowing wood rot and deterioration on the unit porches, in particular the porches on the second story which present a safety risk to all tenants.
- 13) Allowing tenants to reside in units where no bathroom facilities were available for extended periods of time, in violation of S.C. Code Ann. § 27-40-440.
- 14) Allowing for the persistence of criminal activity including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;

- 15) Failure to provide adequate security including, but not limited to, failure to install security gates, video surveillance, or a police substation;
 - 16) Failure to properly address plumbing problems such that the plumbing fixtures in second floor apartments leak into first floor apartments;
 - 17) Allowing units to become infested with bed bugs;
 - 18) Allowing units to become infested with roaches;
 - 19) Failure to provide tenants with working kitchen appliances;
 - 20) Installation of unsafe flooring in apartment units;
 - 21) Failing to maintain the Property in compliance with the minimum standards of the U.S. Department of Housing and Urban Development Housing Quality Standards; AND
 - 22) Failure to maintain the pool on the Property such that it complies with DHEC standards
- b. Section 2.6 of the Loan Agreement requires the Plaintiff to deposit into the Clearing Account within two (2) Business Days after receipt all amounts received by Borrower or Manager constituting Rents. The Plaintiff has failed to comply with this provision as:
- 1) Since April 2015, the Plaintiff has never deposited the full amount of rent collected on a monthly basis into the clearing account. To wit, it has failed to deposit approximately two hundred thirty-seven thousand five hundred dollars (\$237,500.00) of collected rents to the clearing account;
 - 2) Numerous deposits made to the clearing account were not amounts actually received from rents but from other sources in an attempt to

give the appearance that the total amounts received from rent were being deposited into the clearing account;

- 3) On several occasions, checks were made payable to various parties, including tenants, non-tenants and service providers. The checks were then endorsed "to August on Southside" or "AOS" by someone not the party to whom the checks were made payable, but purporting to be that party, and then deposited into the clearing account;
 - 4) A check to Amanda Pett from a law firm for seven thousand three hundred sixty-three dollars and fifty-four cents (\$7,363.54) was endorsed to August on Southside and deposited into the clearing account;
 - 5) Two (2) checks made payable to Amanda Pett from Kettles's personal account totaling one thousand four hundred dollars (\$1,400.00) were deposited in the clearing account; and
 - 6) Eleven (11) checks, totaling twelve thousand six hundred thirty-six dollars and sixty cents (\$12,636.60), submitted to the Plaintiff for security deposits and one year's advance rent, which should have been held in escrow, were deposited into the clearing account and then swept to the Plaintiff's operating account.
- c. Section 3.1.17 of the Loan Agreement requires that all permits and approvals, including, without limitation, certificates of occupancy required by any Governmental Authority for the use, occupancy and operation of the Property in the manner in which the Property is currently being used, occupied and operated have been obtained and are in full force and effect. The Plaintiff has failed to comply with this provision as it has continuously employed unlicensed property managers, specifically Amanda Pett and Sharan Kettles.
- d. Section 4.1.1. of the Loan Agreement requires the Plaintiff to do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence, rights, licenses, permits and franchises and comply with all Legal Requirements applicable to it and the Property. The Plaintiff has failed to

comply with this provision as it has failed to employ a licensed property manager and has involved itself in criminal activity including, but not limited to, money laundering, forgery, escrow fraud, and public housing fraud.

- e. The Plaintiff submitted fraudulent statements in the loan application and in preparation for closing of the loan, including falsification of a certified rent roll.
 - f. The Plaintiff accepted federal housing funds as rent for tenants not in occupancy.
 - g. The Plaintiff submitted false financial reports and rent rolls.
907. FCRE elects to and does declare the entire balance of the Debt due and payable, and that there is due on the Note and Mortgage, as of September 5, 2016, the principal sum of three million eight hundred seventeen thousand eight hundred sixty-nine dollars and nine cents (\$3,817,869.09,) together with interest thereon from July 18, 2016, advances, late charges, the costs and disbursements of this action, including attorney's fees, and any other amounts constituting the Debt pursuant to the Loan Documents.
908. Pursuant to the provisions of the Loan Documents, no notice of right to cure is required.
909. In order to protect the value of the Real Property, and to prevent Plaintiff from causing further deterioration to the Real Property or causing further economic or physical injury to tenants of the Real Property during the pendency of this matter, a qualified, independent, impartial receiver is required.

FOR A SECOND CAUSE OF ACTION
(Appointment of a Receiver)

1001. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1002. By virtue of FCRE's first lien on the Real Property as set out, *supra*, FCRE has a right to the Real Property.
1003. The Real Property is in possession of the Plaintiff, an adverse party.
1004. The Real Property and its rents and profits are in danger of being lost or materially injured or impaired due to the mismanagement and waste of the Real Property.

1005. As a result of this danger, it is necessary that a receiver be appointed to preserve the Real Property pursuant to the provisions of S.C. Code Ann. § 15-65-10, *et seq.* so that it may be properly distributed at the end of the case.

FOR A THIRD CAUSE OF ACTION
(Fraud in the Inducement)

1101. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1102. During FCRE's due diligence process, on April 7, 2015, the Plaintiff provided documentation to FCRE which reflected that thirteen of the tenants on the Real Property received Housing Assistance Payments through the United States Department of Housing and Urban Development.
1103. At the same time, the Plaintiff assured FCRE that it received seven thousand three hundred forty-seven dollars (\$7,347.00) from the Beaufort Housing Authority (hereinafter "BHA") each month as payment toward those tenants rent and two thousand one hundred four dollars (\$2,104.00) from the tenants themselves for a total collection of nine thousand four hundred fifty-one dollars (\$9,451.00).
1104. The Plaintiff assured that FCRE that BHA was unwilling to pay market rental rates, that the leases for the tenants who received governmental assistance would not be renewed, and that the Plaintiff had no immediate plans to rent to new tenants who received governmental assistance.
1105. FCRE later discovered that there were twenty-two (22) tenants receiving governmental assistance, that the leases for the tenants who received governmental assistance were renewed, and that the Plaintiff continued to offer leases to new tenants who received governmental assistance and, as such, the above-referenced representations of the Plaintiff were false.
1106. The Plaintiff knowingly made these false representations.
1107. The Plaintiff made the false representations with the intent that FCRE act upon them by funding a loan to FCRE.
1108. FCRE had no way of knowing that the Plaintiff's representations were false.

1109. FCRE relied on the Plaintiff's representations as true and based its decision to fund a loan to the Plaintiff, in part, on the Plaintiff's representations regarding tenants who received governmental assistance.
1110. FCRE has suffered injury due to its reliance on the Plaintiff's false representations.

FOR A FOURTH CAUSE OF ACTION
(Fraud in the Inducement)

1201. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1202. During the due diligence process, in April 2015, Plaintiff provided a Certified Rent Roll to FCRE which purportedly showed all of the apartments that were being leased at the time and the people to whom they were being leased.
1203. This Certified Rent Roll showed that Unit 61 was leased by someone named Shantae Parker.
1204. FCRE later discovered that Unit 61 was rendered uninhabitable by a fire that took place in February 2015 and that Unit 61 had not been occupied since that time and, as such, the above-referenced representations of the Plaintiff were false.
1205. The Plaintiff knowingly made these false representations.
1206. The Plaintiff made the false representations with the intent that FCRE act upon them by funding a loan to FCRE.
1207. FCRE had no way of knowing that the Plaintiff's representations were false.
1208. FCRE relied on the Plaintiff's representations as true and based its decision to fund a loan to the Plaintiff, in part, on the Plaintiff's representations regarding tenants who received governmental assistance.
1209. FCRE has suffered injury due to its reliance on the Plaintiff's false representations.

FOR A FIFTH CAUSE OF ACTION
(Fraud in the Inducement)

- 1301. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
- 1302. During the due diligence process, FCRE engaged a third party to perform an appraisal of the real property.
- 1303. The aforementioned assurances regarding tenants, the Certified Rent Rolls, historic financial Income and Expense Statements, and a then Current Budget were among various property operating information provided to the appraiser which was, in turn, used by the appraiser to evaluate the value of the Real Property.
- 1304. The appraisal, having been procured by the submission of false and misleading information, constitutes a false statement of the Plaintiff to FCRE.
- 1305. The Plaintiff knowingly made these false representations.
- 1306. The Plaintiff made the false representations with the intent that FCRE act upon them by funding a loan to FCRE.
- 1307. FCRE had no way of knowing that the Plaintiff's representations were false.
- 1308. FCRE based its decision to fund a loan to the Plaintiff, in large part, on the appraised value of the Real Property.
- 1309. It is unknown what the appraised value of the Real Property would have been had the Plaintiff provided complete and accurate information to the appraiser.
- 1310. FCRE has suffered injury due to its reliance on the Plaintiff's false representations.

FOR A SIXTH CAUSE OF ACTION
(Fraud in the Inducement)

- 1401. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
- 1402. During the due diligence process, on or about April 14, 2015, FCRE received a Property Condition Report prepared by Velocity Consulting, Inc. (hereinafter "Velocity") which stated that the Real Property was observed to be in good

condition, based on (1) a physical site inspection which included access to the common spaces, mechanical areas of the buildings and ten apartments, (2) a capital improvement budget submitted by the Plaintiff to which purportedly listed a number of capital improvements that were completed on the Real Property, and (3) interviews with the property managers Amanda Pett and Sharan Kettles during which Amanda Pett assured Velocity that she had no knowledge of mold problems on the Real Property.

- 1403. FCRE based its decision to fund a loan to the Plaintiff, in part, on Velocity's report that the Real Property was in good condition.
- 1404. FCRE later discovered that the Plaintiff had intentionally shown Velocity areas of the Real Property that did not reflect the general poor condition of the Real Property with the intent to mislead Velocity such that Velocity would report that the Real Property was in good condition, that many of the capital improvements listed on the budget submitted to Velocity had not actually been made, that there were substantial mold problems on the Real Property at the time Amanda Pett claimed to have no knowledge of the same and that said problems would have been discovered by any property manager not acting with gross negligence in the execution of the duties of her employment and, as such, the above-referenced representations of the Plaintiff were false.
- 1405. The Plaintiff knowingly made these false representations.
- 1406. The Plaintiff made the false representations with the intent that FCRE act upon them by funding a loan to FCRE.
- 1407. FCRE had no way of knowing that the Plaintiff's representations were false.
- 1408. FCRE based its decision to fund a loan to the Plaintiff, in part, on the Plaintiff's representation that the Property was in good condition.
- 1409. FCRE has suffered injury due to its reliance on the Plaintiff's false representations.

**FOR A SEVENTH CAUSE OF ACTION
(Fraud)**

- 1501. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.

1502. Following a shooting at the Real Property in October 2015, Kettles assured FCRE that the shooting was an isolated incident and that the Real Property was one of the least crime-affected apartment complexes in Beaufort County.
1503. This constitutes a false representation as the shooting was not an isolated incident the Real Property is one of the most crime-affected apartment complexes in Beaufort County.
1504. The Plaintiff knowingly made this false representation.
1505. The Plaintiff made the false representations with the intent that FCRE make no further inquiry regarding the safety or management of the Real Property.
1506. FCRE based its decision not to exercise remedies available to it under the Loan Documents or take legal action against the Plaintiff as a result of its reliance on the Plaintiff's false representation.
1507. FCRE has suffered injury due to its reliance on the Plaintiff's false representations.

**FOR AN EIGHTH CAUSE OF ACTION
(Breach of Contract)**

1601. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1602. Each of the acts and omissions as set out in Paragraph 906, *supra*, and its sub-parts constitutes a breach of the Loan Agreement.
1603. FCRE has suffered due to each and every one of the breaches of the terms of the Loan Agreement.

**FOR A NINTH CAUSE OF ACTION
(Quantum Meruit)**

1701. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1702. FCRE conferred a benefit upon by the Plaintiff by funding a three million nine hundred thousand dollar (\$3,900,000.00) loan to the Plaintiff.
1703. The Plaintiff has realized that benefit.

1704. As the Plaintiff was able to realize the benefit of the proceeds of the loan by perpetrating a fraud upon FCRE, the Plaintiff has retained the benefit of the loan proceeds under conditions that make it unjust to retain the same without paying its value.

FCRE THIRD-PARTY COMPLAINT COUNTERCLAIMS AGAINST KETTLES

FOR A FIRST CAUSE OF ACTION

(Breach of Guaranty)

1801. FCRE repeats and reiterates the foregoing paragraphs as though fully restated herein verbatim.
1802. As a material inducement for FCRE to fund the loan to the Plaintiff, L. Christopher Kettles (hereinafter "Kettles" or "Guarantor") delivered to FCRE a Guaranty of Recourse Obligations and Environmental Indemnity Agreement (hereinafter "Guaranty") on April 15, 2015.
1803. The Guaranty provides, among other things, that "Guarantor hereby irrevocably and unconditionally guarantees to Lender and its successors and assigns the payment and performance of the Guaranteed Obligations as and when the same shall be due and payable, whether by lapse of time, by acceleration of maturity or otherwise. Guarantor hereby irrevocably and unconditionally covenants and agrees that it is liable for the Guaranteed Obligations as a primary obligor.
1804. Guaranteed Obligations are those obligation or liabilities of the Plaintiff to FCRE for which FCRE has recourse against the Plaintiff.
1805. Due to the Plaintiff's default and the acceleration of the Debt, as set out above, Kettles is personally liable to FCRE for the full amount of the Debt.

PRAYER:

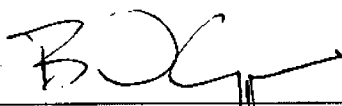
WHEREFORE, FCRE prays the Court to inquire into the facts and matters alleged herein and to grant the following relief, to wit:

- A. To dismiss the Plaintiff's Complaint with prejudice;
- B. To appoint a receiver of the Real Property, to arrange for proper management of the Real Property and to collect and apply rents from tenants of the Real Property, pending the outcome of this matter;

- C. To determine that the Plaintiff is obligated to FCRE in the amount of three million nine-hundred thousand dollars (\$3,900,000.00), plus interest and any other amounts constituting the Debt as set out in the Loan Documents accruing from the date of the filing of this Answer until judgment;
- D. To determine that FCRE is entitled to punitive damages as a result of the Plaintiff's fraudulent acts;
- E. To conduct a judicial sale of the real property described above pursuant to the foreclosure action sought by FCRE;
- F. From the proceeds of the foreclosure sale, pay the amounts due to FCRE, as set forth above;
- G. In the event that the sale of the real property does not pay for the total debt due BHA, to grant a judgment against Kettles which may be executed against other assets owned by him; and
- H. To grant FCRE such other and further relief as may be appropriate and proper.

Respectfully submitted,

Coppage Law Firm, LLC

By: 

Benjamin T. Coppage

SC Bar No. 100055

Attorney for FCRE REL, LLC

Post Office Box 2473

Beaufort, South Carolina 29901

Telephone: 843-694-1696

E-Mail: ben@coppagelawfirm.com

September 6, 2016
Beaufort, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

A&B ASSOCIATES, L.P.)

Plaintiff,)

vs.)

FCRE REL, LLC, and)
TIDELAND REALTY, INC.)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case: 2016-CP-07-1778

Plaintiff's Motion for Contempt For
Defendant FCRE REL LLC'S Failure
To Follow Court Orders

2016 SEP 13 PM 1:20
BENJAMIN T. COPPAGE
CLERK OF COURT
BEAUFORT COUNTY, S.C.

TO: FCRE REL, LLC, AND ITS COUNSEL BENJAMIN T. COPPAGE:

Please take notice that the Plaintiff, by and through its undersigned attorney shall move, before the Hon. Marvin H. Dukes, III, at his office in the Beaufort County Courthouse, at 10:00 o'clock, A. M., or at such other time and place as the Court may direct, as follows:

For an Order finding that FCRE REL, LLC, is in willful contempt of the August 26, 2016, Temporary Injunction, based on the following:

On August 15, 2016, Plaintiff filed a verified Complaint, motion for temporary injunction, and requested that the Court enter an *ex parte* Temporary Restraining Order after Defendant, FCRE REL, LLC, forcibly removed Plaintiff from the Real Property that Plaintiff owned, and among other things, seized the Plaintiff's bank accounts and business records. This Court granted a Temporary Restraining Order on August 15, 2016, and set a hearing on Plaintiff's Motion for Temporary Injunction. The Hearing on Plaintiff's Motion for Temporary Injunction was held on August 24, 2016. Plaintiff's Motion was granted by the Court on August 24, 2016, and a written Order granting the Temporary Injunction was signed on August 26, 2016.

Copies of the August 15, 2016 Temporary Restraining Order and the August 26, 2016, Order Granting Temporary Injunction are attached to the affidavit of Curtis Coltrane. (Coltrane Aff., No. 2.) Among other things, the two Orders required FCRE REL, LLC, to return the Plaintiff's money that had been seized by FCRE REL, LLC. The Court's direction to FCRE REL, LLC, was that it return all money that had not been used by FCRE REL, LLC, for maintenance and repair to the Plaintiff's real property, and to account for any money not returned to show compliance with the Orders.

On August 31, 2016, Defendant FCRE filed a motion for relief from the Order Granting Temporary Injunction on the grounds that Plaintiff did not have a licensed property manager installed at the Property as it was required to do as referenced in the August 26, 2016 Order. The court heard FCRE REL, LLC's motion for relief on September 1, 2016, and denied the motion. In the hearing on the motion of FCRE REL, LLC, the Court again directed that FCRE REL, LLC, to return all of the Plaintiff's money that had not been used by FCRE REL, LLC, for maintenance and repair to the Plaintiff's real property, and to account for any money not returned to show compliance with the Orders.

On Tuesday, September 7, 2016, the attorney for FCRE REL, LLC, advised Plaintiff's Counsel that FCRE REL, LLC, had no intention of complying with the Court's orders and returning the Plaintiff's money, or taking actions ordered by the Court with respect to the Plaintiff's bank accounts.

Based upon FCRE's willful failures to comply with the Court's Orders of both August 15, 2016, and August 26, 2016, Plaintiff now brings this Motion for Contempt.

LEGAL STANDARD

As Plaintiff is bringing this Motion, it bears the burden of proof. As will be described below and in the accompanied affidavits, it has met its burden. "Contempt results from the willful disobedience of a court order. Before a court finds a person in contempt, the record must clearly and specifically reflect the contemptuous conduct. In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. The burden then shifts to the respondent to establish his defense and inability to comply with the order." *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986); *State ex rel. Love v. Howell*, 285 S.C. 53, 328 S.E.2d 77 (1985).

The power to punish for contempt is inherent in all courts and is essential to preservation of order in judicial proceedings. *Browning v. Browning*, 366 S.C. 255, 621 S.E.2d 389 (Ct.App. 2005). Those who commit offenses calculated to obstruct, degrade, and undermine the administration of justice are subject to the court's inherent authority to levy contempt, and this power cannot be abridged. *State ex rel. McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979).

The determination of contempt ordinarily rests within the sound discretion of the trial judge. *State v. Bevilacqua*, 316 S.C. 122, 447 S.E.2d 213 (Ct.App.1994). Contempt is an extreme measure and the power to find an individual in contempt is not to be lightly asserted. *Id.* at 128, 447 S.E.2d at 216. Contempt results from the willful disobedience of a court order and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. *Id.* at 129, 447 S.E.2d at 217. A willful act is an act "done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose

either to disobey or disregard the law. *Ex parte Kent*, 379 S.C. 633, 666 S.E.2d 921 (Ct. App. 2008).

FCRE'S Repeated Willful Disobedience of This Court's August 15, 2016, and August 26, 2016 Orders

The Temporary Restraining Order provided that as of August 16, 2016 at 3:00 PM, the "Plaintiff is entitled to immediate possession of the real property described above and all of its personal property and funds." (Temporary Restraining Order, No. 3.) Before the TRO could take effect, FCRE filed a Motion to Vacate the TRO on August 16, 2016. The Court denied FCRE's Motion to Vacate on August 16, 2016, after it held a telephonic hearing. The TRO then took effect as previously ordered.

Following August 16, 2016, Plaintiff was able to regain possession of the Real Property. However, FCRE failed to return any of Plaintiff's money to it prior to the hearing on Plaintiff's Motion for Temporary Injunction. (Affidavit of Christopher Kettles, No. 1.) Furthermore, FCRE failed to return substantial amounts of Plaintiff's personal property to it, including tools, office equipment, and general business papers. (Kettles Aff., No. 1.) Plaintiff's counsel repeatedly communicated with FCRE's counsel regarding the failure to return the money and property and requested that FCRE return the possessions and property. (Coltrane Aff., No. 3.) However, FCRE continued to fail to return the money and much of Plaintiff's possessions back to Plaintiff. Therefore, FCRE clearly violated the Court's TRO and Temporary Injunction.

On August 24, 2016, the Court heard and granted Plaintiff's Motion for Temporary Injunction. The Order, dated August 26, 2016, provides that "[d]uring the time that FCRE . . . was in possession of the Plaintiff's property, it collected rents from the tenants, took possession of the Plaintiff's leases, business files and personal property. Despite these actions, FCRE . . . did

not apply any of the money it collected to the payment of the debt owed by the Plaintiff, and the Plaintiff's principal, L. Christopher Kettles, made the payment due in August from his personal funds. The actions of FCRE REL, LLC . . . put the Plaintiff out of possession of its real property, its money, its business files, its leases with tenants, and its personal property." (Temporary Injunction, Findings Nos. 6-7.) The Court also found that Plaintiff was entitled to a Temporary Injunction because it had shown that it has suffered and will suffer immediate and irreparable injury because its property, its personal property and funds and bank accounts were seized without any due process of law, its contractual relationships with its tenants were interfered with, and because its real property was altered without its consent.

The Court Ordered that "[t]he Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit." (Order, p. 1., No. 1.) Additionally, by 12:00 PM on August 26, 2016, the "Defendants shall return and turn over to Plaintiff all of Plaintiff's money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles' affidavit, all money received from rents, and to return of all money removed from any of Plaintiff's bank accounts, including reserve accounts, and to provide a full accounting of all such money and any expenses Defendants have paid or incurred with Plaintiff's money." (Order, p. 8, No. 3.) The court stressed the fact that the injunction was to be a "reset" meaning that the relationship was supposed to be as it was prior to FCRE REL, LLC, declaring any alleged non-monetary defaults. FCRE REL, LLC, has willfully disregarded the Court's Orders and continues to do so as of the time of the filing of this motion.

First, FCRE REL, LLC, failed to return all of Plaintiff's property, money, and possessions to Plaintiff by 12:00 PM on August 26, 2016. In fact, Defendant still has not done so despite repeated requests from Plaintiff's counsel to do so. (Coltrane Aff., No. 4.) Defendant's counsel indicated he had the last of the property and possessions ready to return to Plaintiff on August 29, 2016. (Coltrane Aff., No. 4.) Had Defendant actually followed through on this, this Motion would not be needed. However, upon retrieving the possessions from Defendant's Counsel, Plaintiff realized that a substantial amount of money, business files, tools, and other possessions, as were ordered to be returned, were not going to be returned to Plaintiff.

Most alarming, FCRE REL, LLC, returned only \$1,600.00 to Plaintiff, even though it collected approximately \$77,000 while it was in possession of the Plaintiff's property, both in the form of the rental payments it collected and from its withdrawal of *all* of Plaintiff's funds from Plaintiff's reserve accounts. This means that FCRE REL, LLC, has retained roughly 98% of Plaintiff's money, even though it was ordered twice to return the money by this Court.¹

FCRE REL, LLC's accounting of Plaintiff's money, shows that FCRE REL, LLC, paid its attorney \$37,500.00 with nearly half of the funds that it had collected. The invoice that FCRE REL, LLC, paid, shows the legal charges began to be incurred in December 2015 and continued through July 2016. Plaintiff also is unsure why FCRE REL, LLC, would wait until it controlled all of Plaintiff's money to make this payment, especially after the charges had been incurred in the distant past.

¹ At both the hearing on the Temporary Injunction, and in the telephone conference on FCRE REL, LLC's Motion for Relief from the Temporary Injunction, the Court stated that any of Plaintiff's funds that were actually used for the improvement of the Plaintiff's Real Property did not have to be returned, but that FCRE REL, LLC, was required to account for any such funds.

This Court has twice ordered that the money be returned to Plaintiff and it has not been returned. FCRE REL, LLC, has willfully disregarded the Court's Orders to return Plaintiff's money to it. FCRE REL, LLC, is acting in such a manner that it is attempting to force a payment default from Plaintiff, knowing that Plaintiff has already made every debt service payment that has been required. Although normal maintenance expenses incurred while Defendants were in possession of the Plaintiff's property could have been expected and accepted by Plaintiff as a valid use of the collected funds, FCRE REL, LLC's purported use of the funds constitutes a misappropriation of the funds and is an intentional disregard of the Court's Orders.

FCRE REL, LLC's attorney has stated in Court proceedings that FCRE REL, LLC, was doing what it needed to do to make sure the debt service payments are made. However, FCRE REL, LLC's accounting shows that the one thing it did not do with the Plaintiff's money was to apply it to the debt service.

FCRE REL, LLC's Mary F. Davenport has been interfering with Plaintiff's business and bank accounts, which is a clear violation of both Orders that allow the Plaintiff to manage its business as it sees fit. On August 24, 2016, following the hearing at which the Court granted the Plaintiff's Motion For Temporary Injunction, Mary F. Davenport stated to the Plaintiff that she had attempted to freeze Plaintiff's bank accounts.² This action was a clear violation of the TRO and the Temporary Injunction as she was attempting to change the *status quo* and was interfering with Plaintiff's ability to manage its business. FCRE REL, LLC, failed to bring Ms. Davenport's actions to the Court's attention at the August 24, 2016, hearing. At the time of the hearing, Plaintiff was unaware of Ms. Davenport's actions.

² The actions of Ms. Davenport would have occurred while the Temporary Restraining Order was in effect.

After the temporary injunction was granted and after Ms. Davenport revealed what she had done, Plaintiff contacted Wells Fargo Bank to discuss its lock box bank account. As part of this loan relationship, the funds received by Plaintiff were to be deposited into an account at Wells Fargo Bank. The account is a “lock box” type account. Under the account agreement, the funds deposited into that account are then swept into an account owned by Plaintiff at SunTrust Bank. After the injunction was granted, Wells Fargo told Mr. Kettles that the sweeping instructions were changed. (Kettles Aff., No. 6.) The changes to the sweeping instructions were such that the money would not be swept into accounts owned by Plaintiff but rather, the funds would be swept into an account owned by FCRE REL, LLC. (Id.) As of the date of the filing of the motion, the instructions of Wells Fargo Bank have not been changed by FCRE REL, LLC. This is an additional willful disregard of the Temporary Injunction.

Following the telephone hearing on September 1, 2016, Plaintiff requested that FCRE REL, LLC, among other things, change the sweeping instructions. FCRE REL, LLC’s attorney advised the Plaintiff on September 7, 2016, that FCRE REL, LLC, would not do so. FCRE REL LLC’s, attorney acknowledged the Court’s Order required Defendant to return all money and return the banks accounts to the state that existed prior to the actions taken by FCRE REL, LLC, This Court had made it clear to FCRE REL, LLC, that it was granting the injunction and subsequently denying FCRE’s Motion to Vacate in order to preserve the *status quo* as it was before FCRE declared a default. As such, all of FCRE’s actions violate the TRO and Temporary Injunction. Furthermore, all of these actions have been done to interfere with Plaintiff’s business and are an attempt to force a monetary default. Again, this constitutes willful disregard of this Court’s Orders, and contempt of the Court in general.

The TRO and injunction were granted to return the situation to the *status quo*. This would require that the money be swept into Plaintiff's SunTrust bank account as that is what existed prior to the Defendant's removal of Plaintiff from the Property. FCRE's instructions to Wells Fargo clearly prevent this Court's Order from actually applying: namely, the *status quo* as it existed before FCRE declared non-monetary defaults and before Plaintiff was removed cannot be achieved. Plaintiff simply does not have access to its money based upon FCRE's actions. Defendants continue to not return Plaintiff's money to it.

Next, FCRE has now recently charged default interest to Plaintiff. (Kettles Aff., No. 7.) The timing of when FCRE charged Plaintiff the default interest should cause concern for this Court. After the Temporary Injunction was granted and on the day FCRE's Motion to Vacate was to be heard, FCRE directed the loan servicer to issue a new billing statement to Plaintiff. FCRE likely did this because it knew that Plaintiff did not have its funds as it was withholding them and even if some money was deposited into Plaintiff's Wells Fargo Account, Defendant had already changed the sweeping instructions so that Plaintiff could never have the money it legally owned. In further disobedience to this Court, FCRE included default interest on this new billing statement. The default interest was allegedly calculated from the original declaration of default on July 18, 2016. No monetary payments have been missed.

This court told Defendant's counsel the Temporary Injunction was granted to reset the relationship to before the time when FCRE declared its non-monetary defaults. Now Plaintiff has had to make two monthly debt payments with the Kettles' personal funds, even though FCRE has collected sufficient sums to make the debt payments. Plaintiff has even paid the default interest under protest in a timely manner. (Kettles Aff., No. 7.) This Court should also be mindful that although Defendant's Counsel has indicated FCRE is doing what it needs to do to

make sure the debt is properly serviced, FCRE's hired agent chose to not make the required debt payment, even though it had more than double the amount of funds available to make the required debt service payment for August 2016.

Lastly, both FCRE and Tideland Realty, Inc., have continued to contact tenants at the Real Property, which interferes with Plaintiff's business and the ability for Plaintiff to operate its business as it sees fit. This again violates the Court's Orders. All of these actions are a disregard of the Court's Orders and statements and should also be considered acts of bad faith. The egregious conduct of FCRE and its representatives warrants that sanctions be imposed against it.

1. FCRE REL, LLC, is in contempt of the Temporary Injunction. It has willfully failed to do that which was ordered by the Court, and has stated that it will not comply with the Court's Order.

2. Because FCRE REL, LLC, has willfully disregarded both the Temporary Restraining Order, and has made clear its intention to continue to do so, further orders or the imposition of fines will likely meet the same disregard that FCRE REL, LLC, has shown to date.

3. For the continued willful contempt, the Plaintiff's urges the Court:

To Order FCRE REL, LLC, to fully comply with the Temporary Injunction and to return all of the Plaintiff's property and money, including the \$56,774.92 detailed on Exhibit "C" to Coltrane Affidavit, and the \$25,532.76 paid under protest by the Plaintiff to FCRE REL, LLC, for "default interest", that FCRE REL, LLC, return the status of Plaintiff's bank accounts, including the Wells Fargo account to the state that existed prior to FCRE REL, LLC's actions, within 24 hours, and that on FCRE REL, LLC's failure to do so, that the Court:

- (a) Strike FCRE REL, LLC's Answer, Counterclaims, and Third-Party Complaint as a sanction for its repeated willful disregard of the Court's Orders. FCRE REL, LLC's continued and willful disregard of this Court's Orders warrant that its pleadings should be stricken.
- (b) Find that FCRE REL, LLC, is in default and grant Plaintiff a default judgment. The Court should then hold a damages hearing to determine Plaintiff's damages.
- (c) Order that FCRE REL, LLC, pay the Plaintiff's reasonable attorney's fees incurred as a result of FCRE REL, LLC's contempt.
- (d) To impose such other or further sanctions as the Court may deem just and proper.

Respectfully Submitted:

COLTRANE & WILKINS, LLC

By:



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brian@mahanylaw.com

Hilton Head Island, South Carolina

This 9th Day of September, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
A & B ASSOCIATES, L. P.)
)
)
Plaintiff,)
)
)
vs.)
)
FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2016-CP-07-1778

Affidavit of Curtis L. Coltrane

2016 SEP 13 PM 1:21
JEROME ROSEBEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Curtis L. Coltrane, being first duly sworn on oath, states as follows:

1. I am an attorney representing the Plaintiff in this matter.
2. True and accurate copies of this Court's signed Temporary Restraining Order and Temporary Injunction are attached hereto as Exhibits "A" and "B."
3. After the Court signed the Temporary Restraining Order and up to and including the time of the temporary injunction hearing on August 24, 2016, I communicated with Defendant FCRE REL, LLC's counsel in an attempt to retrieve Plaintiff's property and possessions as the TRO required that FCRE return those items to Plaintiff. On August 17, 2016, I also sent an email to Attorney Coppage requesting that leases and applications were missing from the office at the Real Property and those needed to be returned. My co-counsel, Brian Mahany, also sent a letter outlining what items were not returned to Defendant's counsel on August 19, 2016.
4. Following this Court's granting of the Temporary Injunction, I contacted Defendant's counsel to discuss the return of Plaintiff's possessions, including money, bank account funds, and business files. Counsel for FCRE REL, LLC, advised that the Plaintiff's property could be retrieved at his office. Plaintiff's representative went to the office and did retrieve

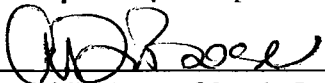
what was there, but he has advised me that many of its possessions, including significant amounts of money, were not included in the material.

5. Following a telephone hearing on FCRE REL, LLC's Motion for Relief from the Temporary Injunction on September 1, 2016, I sent correspondence to Benjamin T. Coppage advising of the amount of Plaintiff's funds that were required to be returned under the terms of the Temporary Injunction and the direction of the Court, to be returned, and advising of the other actions that FCRE REL, LLC, would have to take to return matters to the status quo as it existed prior to FCRE REL, LLC's seizure of the Plaintiff's property in July of 2016. A copy of the correspondence is attached hereto as Exhibit "C".
6. On Tuesday, September 7, 2016, Benjamin T. Coppage advised me the FCRE REL, LLC, would not return the Plaintiff's money, and would not otherwise comply with the requirements of the Temporary Injunction.

Further Affiant Sayeth Not.

By: 
Curtis L. Coltrane

Subscribed and sworn to before
me this 9th day of September, 2016.


Notary Public, State of South Carolina
My commission expires:

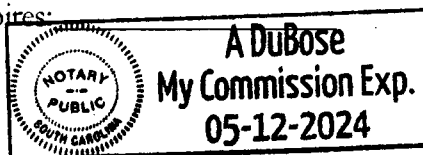


EXHIBIT "A" TO AFFIDAVIT OF CURTIS L. COLTRANE

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

CASE NUMBER: 2016-CP-07-_____

A & B ASSOCIATES, L. P.

Plaintiff,

vs.

EX PARTE TEMPORARY
RESTRAINING ORDER

FCRE REL, LLC, and TIDELANDS
REALTY, INC.,

Defendants.

The undersigned, having considered Plaintiff's Verified Complaint, hereby issues this Temporary Restraining Order, pursuant to Rule 65, SCRPC, and Orders that:

1. Defendant FCRE REL, LLC, and Defendant Tideland Realty, Inc., shall immediately vacate the property known as the "August on Southside Apartments" that is owned by Plaintiff.

2. Defendant FCRE REL, LLC, and Defendant Tideland Realty, Inc., shall immediately cease from altering the property in any fashion.

3. *As of August 16th, 2016 at 3:00 PM,*
The Plaintiff shall be restored to immediate possession of the real property described above and all of its personal property and funds, and is entitled to maintain and manage the real property as it sees fit.

4. This Temporary Restraining Order is granted without notice based on the facts set out in the Verified Complaint of the Plaintiff, and the Plaintiff's showing that:

(a) Plaintiff is suffering and has suffered immediate and irreparable injury because it has been removed and excluded from its own property and its personal property and funds have been seized without due process of law;

(b) it is suffering and has suffered immediate and irreparable injury in that its contractual relationships with its tenants have been interfered with;

(c) it is suffering and has suffered immediate and irreparable injury because its real property is being altered without its consent;

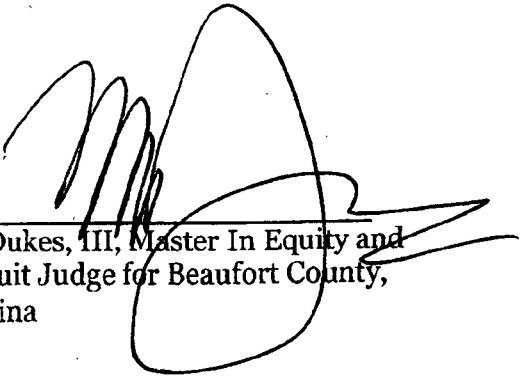
(d) it is suffering and has suffered immediate and irreparable injury because the Defendant is or has taken possession of rents from Plaintiff's tenants without due process of law, and its contracts that are secured by its real property are thus being interfered with; and,

5. A hearing is on the Plaintiff's Motion for a Temporary Injunction is hereby set for August 27th, 2016, at 3:30 o'clock, P. M., at my office, 102 Ribaut Road, Beaufort, South Carolina. 4

6. This Temporary Restraining Order will expire 10 days from the date hereof, unless extended by agreement of the Parties or by Order of the Court of Common Pleas for Beaufort County, South Carolina.

7. I find that a cash bond in the amount of One Thousand (\$1,000.00) Dollars is sufficient security for this Temporary Restraining Order. The Plaintiff's Verified Complaint shows that there has been no monetary default in the payment of Plaintiff's obligations to the Defendant FCRE REL, LLC, and that there is substantial equity in the Plaintiff's property sufficient to cover any costs or damages that the Defendants may suffer in the event it shows that they were wrongfully enjoined.

This Temporary Restraining Order has been executed by the undersigned on this 15th day of August 2016 at 9:16 o'clock, A. M. 12



Marvin H. Dukes, III, Master In Equity and
Special Circuit Judge for Beaufort County,
South Carolina

Beaufort, South Carolina

This 16 Day of August, 2016.

EXHIBIT "B" TO AFFIDAVIT OF CURTIS L. COLTRANE

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-1778

A & B Associates, L. P.

FCRE REL, LLC and TIDELAND REALTY, INC.
PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **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
- ☐ **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: See Attached Order

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

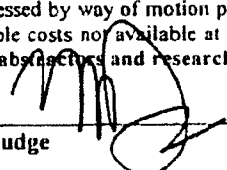
INFORMATION FOR THE PUBLIC INDEX

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 

3069
Judge Code

August 26 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
A & B ASSOCIATES, L. P.)
)
Plaintiff,)
)
vs.)
)
FCRE REL, LLC, and TIDELANDS)
REALTY, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2016-CP-07-1778

ORDER GRANTING TEMPORARY
INJUNCTION

This matter is before the undersigned on the Plaintiff's Motion for Temporary Injunction, filed on August 15, 2016. This case was commenced by the Plaintiff on August 15, 2016. Among other things, the Plaintiff sought an *ex parte* Temporary Restraining Order, and moved for a Temporary Injunction. On August 15, 2016, following consideration of the Plaintiff's Verified Complaint, I signed a Temporary Restraining Order, and set a hearing on the Plaintiff's Motion for Temporary Injunction to commence at 3:30 P. M. on August 24, 2016.¹ On August 16, 2016, the Defendant FCRE REL, LLC, filed its Motion to Vacate the Temporary Restraining Order, supported by the Affidavits of Mary F. Davenport and Nichole Kim. On August 16, 2016, I convened at telephone conference with Counsel for the Plaintiff and Counsel for the Defendant. Following the telephone hearing, I denied the Motion to Vacate by written Order.

The Plaintiff's filed additional affidavits of L. Christopher Kettles, Sharan Kettles, Traci Oates, Sheytoria Monique Rivers and Sabanio A. Norris on August 22, 2016. The

¹ It appears that the Summons, Complaint, *Ex Parte* Temporary Restraining Order and

11:14 am
8/26/16

Defendant FCRE REL, LLC, did not file any additional affidavits.

Due to other matters, the hearing on the Plaintiff's Motion for Temporary Injunction did not commence until approximately 4:40 o'clock, P. M., on August 24, 2016. The Plaintiff was present represented by Curtis L. Coltrane. Timothy J. Granitz, of the Wisconsin Bar was also present.² The Defendant FCRE REL, LLC, was also present, represented by Benjamin T. Coppage. The Defendant Tideland Realty, Inc., has not appeared in this case as yet, and did not appear at the August 24, 2016, hearing.

The Defendant FCRE REL, LLC, subpoenaed a large number of witnesses for the purpose of giving testimony at the hearing. The Plaintiff objected, based on the language of Rule 65, SCRPC and Rule 6(d) SCRPC, and for the reason that a hearing on a Motion for Temporary Injunction is not a hearing on the merits. Following discussion with counsel as to the nature of the testimony, I sustained Plaintiff's objection.

Now, having reviewed and considered the Verified Complaint and affidavits, I make the following findings related solely to the issue of whether the Temporary Injunction should issue:

1. The Plaintiff is the owner of a 96 unit residential apartment complex located in the Town of Port Royal, South Carolina.
2. FCRE REL, LLC, loaned money to the Plaintiff in connection with the property, and holds a Mortgage on Plaintiff's property. In connection with the loan, the Plaintiff also executed a promissory note, loan agreement and other documents.

Motion for Temporary Injunction were served on the Defendants on August 16, 2016.

² Mr. Granitz has sent his application to be admitted *pro hac vice* to the South Carolina Supreme Court, and awaits notification to the Beaufort County, South Carolina, Clerk of Court to file his motion to be admitted and proposed order. There was no objection by any party to Mr. Granitz's presence.

11:14 am
8/26/16

3. At all times relevant to this matter, up to the present, the Plaintiff has timely paid the amounts due and owing to the Defendant FCRE REL, LLC.
4. FCRE REL, LLC, claims the existence of numerous defaults under the loan documents related to the condition of the property.
5. In July of 2016, FCRE REL, LLC, accompanied by an officer of the Port Royal Police Department, forcibly removed the Plaintiff from its property, and installed Tideland Realty, LLC, as the manager of the property. At the time that FCRE REL, LLC, took this action, it had not commenced a foreclosure or other suit, had not sought the appointment of a receiver or any other court order authorizing the actions that it took.
6. During the time that FCRE REL, LLC, was in possession of the Plaintiff's property, it collected rents from the tenants, took possession of the Plaintiff's leases, business files and personal property. Despite these actions, FCRE REL, LLC, did not apply any of the money it collected to the payment of the debt owed by the Plaintiff, and the Plaintiff's principal, L. Christopher Kettles, made the payment due in August from his personal funds.³
7. The actions of FCRE REL, LLC, put the Plaintiff out of possession of its real property, its money, its business files, its leases with tenants, and its personal property.
8. A preliminary injunction is issued to preserve the *status quo ante*, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at

³ The August 15, 2016, *Ex Parte* Temporary Restraining Order required the Defendants to, amount other things, return to the Plaintiff its money, personal property, leases and business files. As of the August 24, 2016, hearing, the Order was not complied with, and FCRE REL, LLC, remained in possession of Plaintiff's money, personal property, leases and business files.

law.⁴

9. Irreparable injury is shown when it is demonstrated that the injunction is reasonably necessary to protect the rights of the Plaintiff while the litigation is pending.⁵ An injunction is proper: "... if it appears that irreparable mischief will be done by withholding the process, or where the damages that will result to the complainants are incapable of being adequately measured, or where the mischief is such, from its continuous and permanent character, that it must occasion constantly recurring grievances, which cannot be otherwise prevented, a court of equity ought to interfere by injunction to stay the wrong and protect the complainants' property and personal rights from hurt or destruction."⁶ In South Carolina, the loss of a business is irreparable harm.

10. A party seeking a Temporary Injunction must show a likelihood of success on the merits, which means only that a prima facie showing must be made. Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits.⁷ The party seeking a temporary injunction is not required to demonstrate an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.⁸

11. A party seeking a Temporary Injunction must show the absence of an adequate

⁴ *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).

⁵ *South Carolina Civil Procedure*, James F. Flanagan, Ch. 65.

⁶ *Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 62 S.E.2d 470 (1950); *Charleston Joint Venture v. McPherson*, 308 S.C. 145, 417 S.E.2d 544 (1992).

⁷ See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.

⁸ See: *Peek v. Spartanburg Regional Healthcare System*, *infra*.; *Williams v. Jones*, 92 S.C.

remedy at law. Our courts have held that the loss of a business is irreparable harm that is not remedied by the existence of a claim for money damages.⁹

12. I find that A & B Associates, L. P., has proved its entitlement to a Temporary Injunction because it has shown:

(a) Plaintiff has suffered and will suffer immediate and irreparable injury because it has been removed and excluded from its own property and business, and its personal property and funds have been seized without due process of law;

(b) it is suffering and has suffered immediate and irreparable injury in that its contractual relationships with its tenants have been interfered with;

(c) it is suffering and has suffered immediate and irreparable injury because its real property is being altered without its consent;

(d) it is suffering and has suffered immediate and irreparable injury because the Defendant is or has taken possession of rents from Plaintiff's tenants without due process of law, and its contracts that are secured by its real property are thus being interfered with;

342, 75 S.E. 705 (1912).

⁹ See: *Peek v. Spartanburg Regional Healthcare System*, *supra*. The opinion in *Peek*, *supra*., includes the following text:

Other appellate courts have upheld injunctive relief to prevent the loss of a business or business goodwill. *District of Columbia v. E. Trans-Waste of Md., Inc.*, 758 A.2d 1, 15 (D.C.2000) ("While economic loss does not, in and of itself, constitute irreparable harm, such harm will be found if economic loss threatens the very existence of [plaintiff's] business."); *Campbell Inns, Inc. v. Banholzer, Turnure & Co.*, 148 Vt. 1, 527 A.2d 1142, 1146 (1987) ("The potential loss of a business satisfies the irreparable harm requirement for the issuance of an injunction."); *IAC, Ltd. v. Bell Helicopter Textron, Inc.*, 160 S.W.3d 191, 200 (Tex.App.2005) ("Loss of business goodwill or loss that is not easily calculated in pecuniary terms is sufficient to show irreparable injury for purposes of obtaining a temporary injunction.").

(e) in the absence of a Temporary Injunction, the *status quo* will be irretrievably lost, as the Plaintiff's business will be destroyed;

(f) the loss of the Plaintiff's business is irreparable damage for which no legal remedy exists;

(g) the Plaintiff has made out a *prima facie* case for the claims asserted in the Verified Complaint.

Accordingly, I hereby grant the Plaintiff's Motion for Temporary Injunction, as follows:

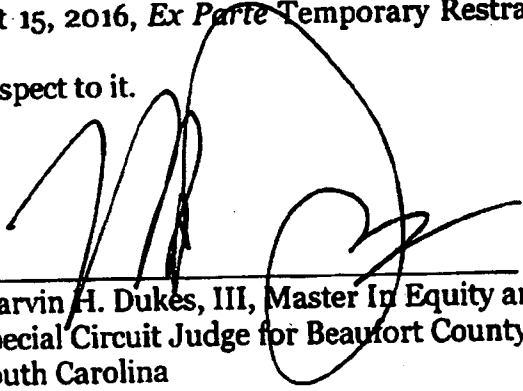
1. The Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit.
2. No later than 12:00 Noon, on Friday, August 26, 2016, the Plaintiff is required to have a licensed property manager in place at the property.
3. No later than 12:00 Noon, on Friday, August 26, 2016, the Defendants shall return and turn over to Plaintiff all of Plaintiff's money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles' affidavit, all money received from rents, and to return of all money removed from any of Plaintiff's bank accounts, including reserve accounts, and to provide a full accounting of all such money and any expenses Defendants have paid or incurred with Plaintiff's money.
4. Within ten days of this Order, the Plaintiff and FCRE REL, LLC, shall meet with each other at the property to discuss any maintenance issues or conditions affecting the

Property. Should the Parties fail to agree on which conditions, if any, must be remedied, the Court will determine what conditions must be remedied.

5. The undersigned will hold a status conference, via telephone, after the Parties have met to discuss the conditions affecting the Property as Ordered herein.

6. The security set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order shall serve as security for this Temporary Injunction. I find the security adequate for the reasons set out in the August 15, 2016, *Ex Parte* Temporary Restraining Order, and no party raised any issue with respect to it.

IT IS SO ORDERED.



Marvin H. Dukes, III, Master In Equity and
Special Circuit Judge for Beaufort County,
South Carolina

Beaufort, South Carolina

This 16 Day of August, 2016.

EXHIBIT "C" TO AFFIDAVIT OF CURTIS L. COLTRANE

COLTRANE & WILKINS, LLC
ATTORNEYS AT LAW

POST OFFICE BOX 6808
HILTON HEAD ISLAND, SC 29938
(843) 785-5551
(843) 785-5552 (FAX)

Curtis L. Coltrane
E-Mail: curtis@coltraneandwilkins.com
Certified Circuit Court Mediator
Certified Circuit Court Arbitrator
Certified Federal Court Mediator

Curtis L. Coltrane*
John W. Wilkins
*Also Member Virginia Bar

September 1, 2016

Benjamin T. Coppage, Esq.
COPPAGE LAW FIRM, LLC
612 North Street
Beaufort, SC 29902

Via E-mail to ben@coppagelawfirm.com

RE: A & B Associates, L. P. v. FCRE REL, LLC, et al.

Dear Ben:

My client's review of the "Quick Books" accounting data related to what is believed to be a Tideland Realty, Inc., account, that was delivered to my client on Tuesday reveals the following:

Deposits into the Tideland account appear to total \$77,099.13.

\$54,275.00 From tenants
\$22,424.13 from reserves
\$400.00 from unit 52 Security Deposit Transfer

Payments out of the account total \$88,297.39. My client has, thus far, been unable to sort out the discrepancy between the deposits and payments, although the refund to A & B Associates, L. P., and the account error of July 13, 2016, of \$3,844.00, which is money belonging to A & B Associates, L. P., or the overpayment in August in the amount of \$5,669.89, appear to get it close.

Benjamin T. Coppage, Esq.
September 1, 2016
Page 2 of 3

Legal	\$37,500.00
Eagle Electric	\$921.00
Lowes	\$13,172.44
Tiffany Stanek	\$178.00
Palmetto Carpet	\$285.00
Patty's pool	\$1,1131.24
Travelers Ins. (W/C)	\$329.50
Beaufort Pest Control	\$500.00
Whitmore Plumbing	\$7,503.45
Henry Winn	\$260.00
Ricky's HVAC	\$14,765.00
Carribean Landscaping	\$800.00
SCE&G	\$230.73
Jeff Stanek	\$960.00
Tideland Realty	\$9,761.03

While A & B Associates, L. P., may dispute that all of the work and expenses listed above were actually needed, the materials produced did provide back up showing that the money to Eagle Electric, Lowes, Tiffany Stanek, Palmetto Carpet, Patty's Pool, Traveler's Insurance, Beaufort Pest Control, Whitmore Plumbing, Henry Winn, Ricky's HVAC, Carribean Landscaping, SCE & G and Jeff Stanek was actually spent on the August on Southside property.

The payments to Meister, Seigle & Fein and to Tideland Realty, Inc., are not funds spent on the August on Southside property.

Also, the "Quick Books" account material does not show the account error of July 13, 2016, of \$3,844.00, which is money belonging to A & B Associates, L. P., or the overpayment in the amount of \$5,669.89, made on or about August 5, 2016.

The amount that should be returned, under Judge Dukes' Orders and his direction of September 1, 2016, is \$56,774.92.

Further, A & B Associates, L. P., received the attached payment notice which \$25,532.76 in "Default Interest." A & B Associates, L. P., also received the attached default notice. Again, pursuant to Judge Dukes' Orders and his direction of September 1, 2016, the claim for default interest and the default notice must be rescinded.

Finally, the Wells Fargo account must be returned to the status that existed prior to the action FCRE REL, LLC, to change it, meaning that funds deposited into the Wells Fargo account will sweep to the A & B Associates, L. P., account at SunTrust Bank.

Benjamin T. Coppage, Esq.
September 1, 2016
Page 3 of 3

Due to the fact that A & B Associates, L. P., has a payment due to FCRE REL, LLC, at this time, these matters must be accomplished immediately. Please advise as to your client's intentions.

My client is still compiling the list of personal property, documents and other items, and I will correspond regarding that as soon as I have it in hand.

I thank you for your assistance with this, and look forward to hearing from you soon.
I am,

Sincerely,

COLTRANE & WILKINS, LLC

Curtis L. Coltrane

CLC/bms

cc: L. Christopher Kettles
Brian H. Mahany, Esq.
Timothy J. Granitz, Esq.
Enc.: As Stated

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
A & B ASSOCIATES, L. P.)
)
Plaintiff,)
)
)
vs.)
)
FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

Affidavit

2016 SEP 15 PM 2:47
JEREMY R. BOBBLEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

STATE OF GEORGIA)
) SS.
COUNTY OF CHATHAM)

Christopher Kettles, being first duly sworn on oath, states as follows:

1. After the Court signed the Temporary Restraining Order and up to and including the time of the temporary injunction hearing, Defendant did not return to Plaintiff any of its money or its possessions, despite the TRO being in effect. The following items have not been returned to Plaintiff, including, but not limited to, tenant leases, applications, tools (skill saw, shop vacuum, torches, lawnmower, electric sander, air conditioning equipment, edger, nail gun, air compressor, washing machines, two refrigerators, two hammers, water leak detector, CO2 gun, and others), shoes, copies of old rent checks, a check machine, laptop computer, an office desk, a mirror, two vases, general office supplies, and others, all of which belong to Plaintiff and that which the TRO ordered the Defendants to return to Plaintiff
2. After the hearing of August 24, 2016, and the Court granted the temporary injunction, I personally went to Attorney Ben Coppage's office to retrieve Plaintiff's property. However, many of Plaintiff's possessions were not, and still have not been returned, including tools,

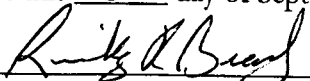
office paperwork, leases, and applications. The list of items in paragraph one have still not been returned to Plaintiff.

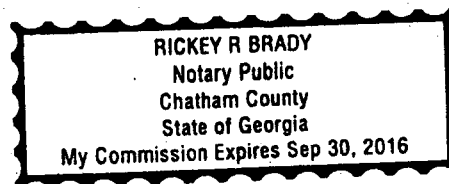
3. Attorney Copping only returned \$1,600 even though he indicated \$77,000 was collected while Defendants were in possession of the Property.
4. After reviewing some of the expenses the Defendants' paid with Plaintiff's \$77,000, I noticed that the Defendants paid a legal expense in the amount of \$37,500. The legal charges reflected on the invoice covered dates dating back to December 2015 and continued through July 2016.
5. I am unable to determine at this time where a portion of the reserve account money is after it was swept out of Plaintiff's account.
6. After the temporary injunction hearing, I contacted Wells Fargo Bank to determine the status of Plaintiff's bank accounts. I then learned that FCRE's Mary Davenport requested that Wells Fargo change the sweeping instructions on the lock box bank account sometime after the TRO was granted and before the motion for temporary injunction was granted. The sweeping instructions were changed so that the money in the account would be swept into an account owned and/or operated by FCRE.
7. On September 6, 2016, I paid the September 2016 debt service payments with funds from both my personal account. I paid the full amount due as the billing statement required, including default interest. I paid the default interest under protest. A true and accurate copy of the billing statement I received for the September 2016 debt service payment is attached hereto as Exhibit A.

Further Affiant Sayeth Not.

By: 
Christopher Kettles

Subscribed and sworn to before
me this 8 day of September, 2016.


Notary Public, State of Georgia
My commission expires 9/30/16



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
A & B ASSOCIATES, L. P.)
Plaintiff,)
vs.)
FCRE REL, LLC, and TIDELAND)
REALTY, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

Affidavit

2016 SEP 15 PM 2:49
JEREMY AMBROSIO
BEAUFORT COUNTY S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) SS.

Sharan Kettles, being first duly sworn on oath, states as follows:

1. Following the hearing on Plaintiff's motion for temporary injunction, I worked with Amanda Pett to immediately began the process of trying to hire a licensed property manager to manage the Property.
2. In an effort to comply with the Order, I, along with Ms. Pett, took numerous steps to secure a licensed property manager by the August 26, 2016 deadline.
3. Ms. Pett advised me that she placed an advertisement on Craigslist seeking a licensed property manager. To date, Plaintiff has not received a reply to this posting.
4. Ms. Pett indicated she also called a temporary employment service to inquire if it had any licensed property managers as clients. However, Plaintiff has not received any response to this inquiry.

5. Ms. Pett and I spoke about all of the efforts to find a licensed property manager. Ms. Pett indicated she spoke with well over ten individuals in regard to managing the Property. Some of the individuals that Ms. Pett spoke with were:
- a. Jennifer Cerny; She indicated she was a licensed real estate agent but in fact, she was not.
 - b. Mac; He provided a name who Plaintiff was going to hire. However, her license had expired so Plaintiff did not hire this person.
 - c. Brian; Ms. Pett asked if he knew anybody who was a property manager and he indicated he would look around. Plaintiff has not heard back yet.
 - d. Mack; Ms. Pett asked if he knew anybody but he was not sure.
 - e. Bundy Appraisal; Ms. Pett and I discussed how it declined because it did not have sufficient staffing levels to manage the Property.
 - f. Carolina Realty Group; They told Ms. Pett it would did manage a property and upon learning it was the August on Southside Property, it decided it did not want to get involved.
 - g. Darlene; She told Ms. Pett she wanted to do it but then declined when she found out where the Property was located.
6. In addition to the list of individuals above, Ms. Pett and I discussed her contacts with numerous other individuals who did not wish to manage the Property due to the on-going litigation.

Further Affiant Sayeth Not.

Dated at Beaufort, this ____ day of September, 2016.

By: Sharan Kettles
Sharan Kettles

Subscribed and sworn to before
me this 1st day of September, 2016.

[Signature]
Notary Public, State of South Carolina
My commission expires 9-29-24

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CASE NUMBER: 2016-CP-07-1778

A & B ASSOCIATES, L. P.)

Plaintiff,)

Affidavit

vs.)

FCRE REL, LLC, and TIDELAND
REALTY, INC.,)

Defendants.)

STATE OF WISCONSIN)

) SS.

COUNTY OF MILWAUKEE)

2016 SEP 22 PM 2:56
CLERK OF COURT
JUDICIAL BRANCH 1
SOUTH CAROLINA

Timothy J. Granitz, being first duly sworn on oath, states as follows:

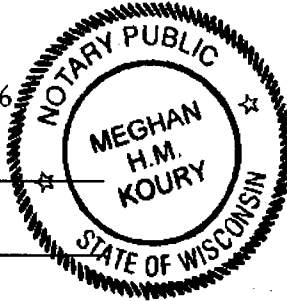
1. I am an attorney representing the Plaintiff in this matter and this Affidavit is made in support of Plaintiff's request for an award of attorney's fees as requested in its Motion for Contempt.
2. Attached to this affidavit is a true and accurate copy of our Law Firm's legal expenses that Plaintiff has incurred since August 26, 2016.
3. The billings have all been incurred in an effort to enforce the granted Temporary Injunction, were incurred in responding to Defendant FCRE REL, LLC's Motion for Relief from Order Granting Temporary Injunction, and were incurred in preparing Plaintiff's Motion for Contempt.

Further Affiant Sayeth Not.

By: Timothy J. Granitz
Timothy J. Granitz

Subscribed and sworn to before
me this 15 day of September, 2016.

Meghan Koury
Notary Public, State of Wisconsin
My commission expires: 12/31/18



Mahany Law
PO Box 511328
Milwaukee, WI 53203
Phone: 414-258-2375, Fax: 414 777-0776

Invoice submitted to:
Kettles, Christopher

Invoice # 11032

Invoice Date: 09/15/16 Terms: COD Services Thru: 09/15/16

Date	By	Type	Service Summary	Hours/Qty	Rate	Amount
In Reference To: General (Professional Services)						
08/29/16	TG	Meeting	Discuss case status with Attorney Mahany and attention to emails	0.30	400.00	\$120.00
08/30/16	TG	Draft	Draft Letter to NY firm requiring return of money; review production from Port Royal; discuss production with Attorney Coltrane and clients; draft email expanding on production to Port Royal Pd	1.20	400.00	\$480.00
08/30/16	BM	Phone Call	tel conf w clients and local counsel	0.50	450.00	\$225.00
08/31/16	TG	Draft	Review FCRE's motion to vacate; begin drafting brief in opposition	2.20	400.00	\$880.00
09/01/16	TG	Brief	Finalize brief and affidavits in opposition; multiple discussions with client and Attorney Coltrane and Mahany; appear by phone for court hearing	4.20	400.00	\$1,680.00
09/02/16	TG	Review	Discuss case status with Attorney Mahany and Coltrane	0.50	400.00	\$200.00
09/03/16	BM	Correspondence	receipt, review and respond to opposing counsel letter	0.50	450.00	\$225.00
09/05/16	BM	Correspondence	receipt, review and reply to opposing counsel letter, review documents from opposing counsel	0.90	450.00	\$405.00
09/06/16	TG	Correspondence	Correspondence with clients and Attorney Coltrane regarding default interest and reserve accounts; discussion regarding September loan billing statements; discussion regarding missing property and funds	0.80	400.00	\$320.00
09/06/16	TG	Brief	Draft motion for contempt and supporting affidavits; review TRO and Temporary Injunctions	3.90	400.00	\$1,560.00
09/07/16	TG	Brief	Correspondence with client and Attorneys Coltrane and Mahany; finalize contempt motion and affidavits; review correspondence from FCRE regarding missing property and funds	1.40	400.00	\$560.00
09/08/16	BM	Review	review motion, correspond client, review changes, review client emails (NO CHARGE .2 hrs)	0.70	450.00	\$315.00

Date	By	Type	Service Summary	Hours/Qty	Rate	Amount
09/12/16	BM	Other	review emails and respond to same	0.40	450.00	\$180.00
09/12/16	TG	Correspondence	Emails with client and Attorney Coltrane; discuss contempt issues and missing funds with Attorney Mahany	0.30	400.00	\$120.00
09/13/16	TG	Review	Review proposed letter to opposing counsel regarding missing property and funds; emails regarding application of payments and multiple September loan statements	0.60	400.00	\$240.00
09/14/16	BM	Review	review draft from Tim (NO CHARGE)	0.30	450.00NC	\$0.00
09/15/16	TG	Review	Review contempt motion for hearing on Friday; discussion with Attorney Coltrane and Mahany; phone call with Attorney Mahany and Mr. Kettles regarding contempt hearing	0.80	400.00	\$320.00
09/15/16	BM	Other	tel conf with client, review revised pleadings, respond to Curtis questions	0.50	450.00	\$225.00
				Total Hours:		20.00
				Total Labor:		\$8,055.00
				Total Invoice Amount:		\$8,055.00
				Total Amount Due:		\$8,055.00

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

A & B ASSOCIATES, L. P.

Plaintiff,

vs.

FCRE REL, LLC, and TIDELANDS
REALTY, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

AFFIDAVIT OF ATTORNEY'S FEES

Personally appeared before me, Curtis L. Coltrane, who, being duly sworn, states
as follows:

1. He is the attorney for A & B Associates, L.P., in the above captioned matter.
2. He is a partner in the law firm of Coltrane & Wilkins, LLC. The law firm of Coltrane & Wilkins, LLC, handles litigation matters on an hourly basis, and the applicable hourly rates for this case are:

a.	Paralegals	\$	85.00
b.	Associates	\$	150.00
c.	Partners	\$	300.00

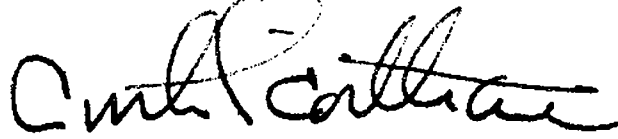
3. He was admitted to the South Carolina Bar on April 28, 1982, and was in private practice until June 1, 2003, at which time he became Master In Equity for Beaufort County, South Carolina. On March 16, 2007, he resigned from the bench and served as Assistant Town Manager for Community Development for The Town of Hilton Head Island, South Carolina, until September 17, 2010, at which time he returned to the private practice of law. He has an "AV" rating with Martindale-Hubbell. He has prosecuted foreclosures and other collection matters in Jasper County, South Carolina,

throughout the course of his private practice, and presided over the trial of numerous foreclosures as Master In Equity.

4. A & B Associates, L.P. has incurred expenses of Seventy Six and 36/100 (\$76.36) Dollars; and attorney's fees of Six Thousand Two Hundred Eighty Four and 00/100 (\$6,284.00) Dollars for work related to compliance with the Order for Temporary Injunction dated August 26, 2016. The time and expense reports recorded for this work are attached hereto as Exhibit "A".

COLTRANE & WILKINS, LLC

By:



Curtis L. Coltrane

Sworn to and Subscribed before me
on this 15th Day of September 2016.



Notary Public for South Carolina
My Commission Expires:



Coltrane & Wilkins LLC - Time Entry

Date Start: 8/15/2016 | Date End: 9/15/2016 | Clients: A&B Associates | Projects: Lender Liability Claim | Users: | Client Type: All | Project Type: All | Location: All | Group By: Project

Date	Client	User	Activity	Description	Billable Time	Total Time	Hourly Rate	Billable Amt
Lender Liability Claim								
08/25/2016	A&B Associates	Curtis Coltrane	Review Materials	Review and Revise proposed correspondence to U. S. Attorney. Draft proposed Order for Temporary Injunction. E-mails to Brian Mahany, Tim Granitz, L. Christopher Kettles and Sharan Kettles.	2.50	2.50	\$300.00/hr	\$750.00
08/26/2016	A&B Associates	Curtis Coltrane	E-mail from	E-mails from and to Angela Childers at Beaufort Housing Authority. E-mail to L. Christopher Kettles. E-mails from and to Heather McLeod at Judge Dukes' Office regarding order. E-mail to Kettles, Mahaney, Granitz and Christopher Katers. E-mails from and to Benjamin T. Coppage regarding delivery of materials from FCRE to A & B. Emails from and to Tim Granitz regarding status of US Attorney letter and other matters. Telephone conferences with L. Christopher Kettles. Review of loan documents regarding Wells Fargo Account E-mails to L. Christopher Kettles and Sharan Kettles regarding bank agreement.	2.30	2.30	\$300.00/hr	\$690.00
08/29/2016	A&B Associates	Amanda DuBose	Preparation	Prepare dictated letter to Coppage; prepare dictated letter to Clerk of Court, copy and mail	0.80	0.80	\$85.00/hr	\$68.00
08/29/2016	A&B Associates	Curtis Coltrane	Telephone Conversation	Telephone conference with L. Christopher Kettles. E-mails to L. Christopher Kettles and Sharan Kettles regarding account information. Draft proposed correspondence to Benjamin T. Coppage. E-mails to L. Christopher Kettles and Tim Granitz.	0.70	0.70	\$300.00/hr	\$210.00
08/30/2016	A&B Associates	Curtis Coltrane	Telephone Conversation	E-mails to and from L. Christopher Kettles regarding eviction issue. Telephone conference with L. Christopher Kettles. E-mail to Benjamin Coppage.	0.80	0.80	\$300.00/hr	\$240.00
08/30/2016	A&B Associates	Curtis Coltrane	Telephone Conversation	Conference call with Brian Mahany, Tim Granitz, L. Christopher Kettles and Sharan Kettles.	0.80	0.80	\$300.00/hr	\$240.00
08/31/2016	A&B Associates	Curtis Coltrane	Review Materials	Review materials from Benjamin Coppage. E-mails to and from Heather H. McLeod at Judge Dukes' Office. E-mails to and from Tim Granitz, L. Christopher Kettles and Sharan Kettles.	0.70	0.70	\$300.00/hr	\$210.00
09/01/2016	A&B Associates	Curtis Coltrane	Telephone call to	Telephone conference with Tim Granitz. E-mails to and from Tim Granitz, L. Christopher Kettles and Sharan Kettles. Telephone conference with Sharan Kettles. Telephone conference with L. Christopher Kettles. Review and revise affidavits and brief from Tim Granitz. Telephone conference call with Hon. Marvin H. Dukes, Benjamin Coppage, J. Ashley Twombly and Tim Grantiz. Telephone conference with Tim Grantiz and Brian Mahany. E-mail to L. Christopher Kettles and Sharan Kettles.	2.50	2.50	\$300.00/hr	\$750.00
09/01/2016	A&B Associates	Curtis Coltrane	Correspondence	Correspondence to Benjamin T. Coppage. Telephone conference with L. Christopher Kettles.	0.60	0.60	\$300.00/hr	\$180.00
09/02/2016	A&B Associates	Curtis Coltrane	Telephone call from	Telephone conference with Tim Granitz and Chris Katers regarding September payment to FCRE.	0.20	0.20	\$300.00/hr	\$60.00
09/06/2016	A&B Associates	Curtis Coltrane	E-mail to	E-mail to Benjamin Coppage regarding FCRE compliance with Temporary Injunction. Telephone Call from Benjamin Coppage regarding FCRE refusal to comply with Temporary Injunction. E-mails to Clients, Mahany, Granitz and Katers regarding Coppage telephone conference.	0.60	0.60	\$300.00/hr	\$180.00
09/07/2016	A&B Associates	Curtis Coltrane	E-mail to	E-mails from and to Sharan Kettles regarding information from Tidelandis. E-mail to J. Ashley Twombly regarding information from Tidelandis.	0.20	0.20	\$300.00/hr	\$60.00
09/08/2016	A&B Associates	Amanda DuBose	Preparation	prepare certificate of service and letter to clerk serving Order, copy and mail	0.30	0.30	\$85.00/hr	\$25.50
09/08/2016	A&B Associates	Curtis Coltrane	Drafting Documents	Revisions to Motion for Contempt. E-mails from and to Chris Kettles and Tim Granitz. Research on additional points for contempt motion.	0.80	0.80	\$300.00/hr	\$240.00
09/09/2016	A&B Associates	Curtis Coltrane	E-mail to	Emails and telephone conference with Tim Granitz re: additional affidavits. Email to Heather McLeod. Email to Benjamin Coppage.	0.60	0.60	\$300.00/hr	\$180.00

09/09/2016	A&B Associates	Amanda DuBose	Preparation	review and edit Motion for Contempt, prepare certificate of service and cover letter to clerk, copy, scan and mail	0.40	0.40	\$85.00/hr	\$34.00
09/09/2016	A&B Associates	Curtis Coltrane	Drafting Documents	Finalize Motion for Contempt and Affidavit. E-mails to and from Heather R. McLeod regarding Motion for Contempt. E-mails from and to Sharan S. Kettles regarding events at August on Southside. Telephone conference with Sharan S. Kettles.	0.90	0.90	\$300.00/hr	\$270.00
09/12/2016	A&B Associates	Curtis Coltrane	E-mail from	E-mails from and to L. Christopher Kettles regarding leases and other personal property.	0.20	0.20	\$300.00/hr	\$60.00
09/12/2016	A&B Associates	Amanda DuBose	Preparation	prepare certificate of service for Kettles affidavit, letter to clerk, copy and mail	0.30	0.30	\$85.00/hr	\$25.50
09/12/2016	A&B Associates	Amanda DuBose	Preparation	prepare certificate of service for S. Kettles and C. Kettles affidavits, letter to clerk, copy and mail	0.30	0.30	\$85.00/hr	\$25.50
09/13/2016	A&B Associates	Arlene Coleman	Correspondence	E-mails from and to L. Christopher Kettles and Sharan S. Kettles. Correspondence to Benjamin T. Copping.	0.80	0.80	\$85.00/hr	\$68.00
09/13/2016	A&B Associates	Curtis Coltrane	Drafting Documents	E-mails from and to L. Christopher Kettles regarding conversation with PNC employee. Email the L. Christopher Kettles, Brian Mahany and Tim Granitz regarding pro hac vice orders and notice of appeal. Draft proposed supplemental affidavit for L. Christopher Kettles.	1.30	1.30	\$300.00/hr	\$390.00
09/14/2016	A&B Associates	Amanda DuBose	Preparation	prepare certificate of service and letter to clerk, scan copy and mail.	0.30	0.30	\$85.00/hr	\$25.50
09/14/2016	A&B Associates	Curtis Coltrane	Conference	Conference with L. Christopher Kettles regarding affidavit and hearing.	0.30	0.30	\$300.00/hr	\$90.00
09/14/2016	A&B Associates	Arlene Coleman	E-mail to	E-mail to Benjamin Copping. E-mail to L. Christopher Kettles, Sharan Kettles, Brian Mahany and Tim Granitz.	0.20	0.20	\$85.00/hr	\$17.00
09/14/2016	A&B Associates	Curtis Coltrane	E-mail from	E-mail from and to Tim Granitz regarding Contempt hearing on Friday.	0.20	0.20	\$300.00/hr	\$60.00
09/15/2016	A&B Associates	Amanda DuBose	Preparation	Prepare Affidavit of Attorneys Fees.	1.00	1.00	\$85.00/hr	\$85.00
09/16/2016	A&B Associates	Curtis Coltrane	Attend Hearing	Travel to and from Beaufort and attend Contempt Hearing	3.50	3.50	\$300.00/hr	\$1,050.00
Totals For Lender Liability Claim					24.10	24.10		\$6,284.00
Grand Total					24.10	24.10		\$6,284.00

Coltrane & Wilkins LLC - Expense Report

Date Start: 8/24/2016 | Date End: 9/15/2016 | Clients: A&B Associates | Projects: Lender Liability Claim | Users:

Expense Date	Client	Project	User	Expense Type	Status	Cost	Bill Price
A&B Associates							
09/08/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Mailing/Postage	Ready For Billing	\$1.86	\$1.86
09/08/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Printing/Copying	Ready For Billing	\$2.25	\$2.25
09/09/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Printing/Copying	Ready For Billing	\$16.05	\$16.05
09/09/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Filing Fee	Ready For Billing	\$25.00	\$25.00
09/09/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Mailing/Postage	Ready For Billing	\$10.06	\$10.06
09/12/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Mailing/Postage	Ready For Billing	\$2.07	\$2.07
09/12/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Printing/Copying	Ready For Billing	\$3.50	\$3.50
09/12/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Printing/Copying	Ready For Billing	\$5.50	\$5.50
09/12/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Mailing/Postage	Ready For Billing	\$2.91	\$2.91
09/14/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Mailing/Postage	Ready For Billing	\$2.91	\$2.91
09/14/2016	A&B Associates	Lender Liability Claim	Amanda DuBose	Printing/Copying	Ready For Billing	\$4.25	\$4.25
Totals Billable Amounts for A&B Associates						\$76.36	\$76.36
Grand Total						\$76.36	\$76.36

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	DEFENDANT FCRE REL, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT

Statement of Facts and Procedural History

FCRE REL, LLC, a Delaware limited liability company, (hereinafter "FCRE") is a commercial real estate lender. FCRE is in the business of originating loans for Commercial Mortgage-Backed Securities (hereinafter "CMBS") transactions. As is universal in the CMBS market, such loans require borrowers to give the lender certain irrevocable rights and remedies, all of which are designed to offer multiple layers of protection for the lender. Plaintiff is a Georgia Limited Partnership that owns a residential rental property located at 2208 Southside Boulevard Port Royal, South Carolina (hereinafter the "Real Property"). In early 2015, Plaintiff submitted an application for a loan to refinance the Real Property. FCRE and Plaintiff entered into a Loan Agreement on April 15, 2015 for the provision of first mortgage financing to Plaintiff in the amount of three million nine hundred thousand dollars (\$3,900,000.00). In connection with the funding of that loan, and in addition to the Loan Agreement, Plaintiff and FCRE also entered into a Promissory Note, Guaranty of Recourse Obligations and Environmental Indemnity Agreement, and Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, and an Assignment of Management Agreement and Subordination of Management Fees (hereinafter collectively referred to as the "Loan Documents"). Plaintiff was represented by experienced counsel related to all aspects of the transaction and all of the Loan Documents.

The Assignment of Management Agreement and Subordination of Management Fees (hereinafter "Management Assignment") unconditionally transferred, set over, and assigned to FCRE all of Plaintiff's right, title and interest in and to a Management Agreement with The August Group, Inc. (hereinafter "August Group") under which Plaintiff employed August Group to exclusively rent, lease, operate and manage the Real Property. Management Assignment, ¶ 1. The Management Assignment provided that, upon an event of default by Plaintiff under any of the Loan Documents, FCRE would be entitled to terminate the Management Agreement and require August Group to transfer its responsibility for the management of the Real Property to a management company selected by FCRE. Management Assignment, ¶ 4.

In executing the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (hereinafter "Mortgage"), Plaintiff absolutely and unconditionally assigned to FCRE all of Plaintiff's right, title, and interest to do all other things which Plaintiff or any lessor was or may become entitled to do under the Leases or the Lease Guaranties. Mortgage, Section 1.2(e). Plaintiff also granted FCRE an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity. Mortgage, Section 5.2. These same provisions were contained in loan documents executed by Plaintiff in connection with at least one previous mortgage loan. (Davenport Aff.) Plaintiff granted FCRE the ability, under an event of default, to do those things necessary to protect the Real Property, including entry upon the Real Property. Mortgage, Section 7.3. Even in the absence of an event of default, Plaintiff gave FCRE the right to enter on the Real Property "without liability for trespass, damages or otherwise and exclude [Plaintiff] and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and [Plaintiff] agree[d] to surrender possession of the [Real] Property and of such books, records and accounts to Lender upon demand, and thereupon [FCRE] may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the

[Real] Property and conduct the business thereon; (ii) complete any construction on the [Real] Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the [Real] Property; (iv) exercise all rights and powers of [Plaintiff] with respect to the Property, whether in the name of [Plaintiff] or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the [Real] Property and every part thereof; (v) require [Plaintiff] to pay monthly in advance to [FCRE], or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the [Real] Property as may be occupied by [Plaintiff]; [and] (vi) require [Plaintiff] to vacate and surrender possession of the [Real] Property to [FCRE]. . .” Mortgage, Section 7.1(h).

In Section 1.2 of the Mortgage, Plaintiff absolutely and unconditionally assigned all of its right, title and interest in and to all current and future Leases and Rents and all rights, powers, privileges, options and other benefits of Plaintiff as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all rents payable or receivable under the Leases. Pursuant to Section 7.1(h) of the Mortgage, that license was immediately and automatically revoked upon Plaintiff’s default under the provisions of the Loan Documents. Under that section, with or without an event of default, FCRE is immediately entitled to possession of all rents and sums due under or arising from the Real Property and may “apply the receipts from the [Real] Property to the payment of the Debt, in such order, priority and proportions as [FCRE] shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys’ fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the [Real] Property, as well as just and reasonable compensation for the services of [FCRE], its counsel, agents and employees.” The “Debt,” as referred to in the foregoing sentence, is defined as “the outstanding principal amount of the Loan together with all interest accrued

and unpaid thereon and all other sums . . . owing to [FCRE] in respect of the Loan under the Note, this Agreement, the Mortgage or any other Loan Document.” Loan Agreement, Section 1.1.

The Loan Agreement grants FCRE the right to perform any act as may be appropriate to cause all the material terms, covenants and condition of the Management Agreement to be performed and observed. Loan Agreement, Section 7.1. Plaintiff granted an irrevocable power of attorney to FCRE to exercise and perfect any and all rights and remedies available to FCRE under the Loan Documents and at law and equity, including without limitation such rights and remedies available to FCRE pursuant to Sections 10.2, 10.3, and 10.4 of the Loan Agreement. Loan Agreement, Section 4.1.16. Section 10.3 of the Loan Agreement provides that FCRE is authorized to enter upon the Real Property make, do or perform any obligation of Plaintiff under the Loan Agreement.

The Loan Agreement also requires the establishment of a clearing account. Loan Agreement, Section 2.6. Section 2.6 of the Loan Agreement states that “Borrower shall establish and maintain a segregated Eligible Account (the “Clearing Account”) with the Clearing Bank in trust for the benefit of Lender, which Clearing Account shall be under the sole dominion and control of Lender.” It also states that “during any Cash Management Period, Lender shall cause the Clearing Bank to transfer to the Deposit Account in immediately available funds by federal wire transfer all amounts on deposit in the Clearing Account once every Business Day.” A Cash Management Period is “the period commencing with a Lockbox Trigger Event and terminating upon the applicable Lockbox Trigger Event Cure, if any.” Loan Agreement, Section 1.1. An event of default is a Lockbox Trigger Event. Id.

Also in the Loan Agreement, the parties agreed that, for so long as any Event of Default occurs and continues, the outstanding principal balance of the Loan shall accrue interest at the Default Rate, calculated from the date such payment was due without regard to any grace or cure periods. Loan Agreement, Section 2.2.2.

Between October 2015 and July 2016, FCRE became aware of several events of default under the Loan Documents and, during that time, FCRE contacted Plaintiff numerous times to

discuss the events of default and the necessity of their being remedied. (Davenport Aff.) On July 18, 2016, sent Plaintiff a "Notice of Event of Default" which notified the Plaintiff of the events of default and gave the Plaintiff notice that FCRE would be exercising the rights and remedies to which Plaintiff expressly and specifically agreed when Plaintiff executed the Loan Documents. On July 18 and 21, 2016, FCRE issued a letter to the Plaintiff and August Group informing August Group that its Management Agreement with the Plaintiff had been terminated, that it was necessary that a full accounting of all security deposits held by August Group be submitted to the new property manager, Tideland Realty, Inc. (hereinafter "Tideland"), and that any such security deposits held by August Group were to immediately be remitted to Tideland. Due to the occurrence and continuance of events of default, the outstanding principal balance of the Loan has accrued interest at the Default Rate since July 18, 2016 and amounts in the Wells Fargo clearing account no longer transfer to Plaintiff's operating account.

On July 21, 2016, Tideland took over the management of the Real Property and acted as Property Manager until August 16, 2016. During that time, Tideland applied rents and receipts from the Real Property to the Debt, including expenses incurred in connection with operating and managing the Real Property. (Rankin Aff.)

Also during that time, a review of the accounting records associated with the Real Property revealed what appeared to be fraudulent checks that were issued from Plaintiff's SunTrust operating account to numerous parties, endorsed to August Group, and deposited into the Wells Fargo clearing account. Further investigation revealed what appeared to be other suspicious activity related to the use of both the SunTrust and Wells Fargo accounts. FCRE notified Wells Fargo and SunTrust on August 3, 2016 and August 24, 2016, respectively, of the suspicious activity. (Davenport Aff.) No further reports have been made to either bank since the stated dates.

Id. There have been no attempts to “freeze” any of Plaintiff’s bank accounts and there have been no statements by FCRE that such attempts have been made. (Davenport Aff.)

On August 15, 2016, Plaintiff filed a Verified Complaint and Motion for Ex Parte Temporary Restraining Order. The motion was granted and the court issued an *Ex Parte* Temporary Restraining Order which required the Defendants to cease any alteration of the Real Property and the restoration of Plaintiff’s possession of the Real Property on August 16, 2016 at 3:00 p.m. On August 16, 2016 at 3:00 p.m., Tideland vacated the Real Property and no representative of Tideland or FCRE has returned to the Real Property since. (Rankin Aff., Davenport Aff.)

Following a hearing on August 24, 2016, the court issued an Order Granting Temporary Injunction (hereinafter “Order”) which required the parties to take particular actions and refrain from others with regard to August on Southside Apartments, located at 2208 Southside Boulevard, Port Royal, South Carolina (hereinafter the “Real Property”). The provisions of the Order which applied to Defendant FCRE REL, LLC (hereinafter “FCRE”) were set out in items 1 and 3 of page 6 of the Order. Item 1 provides that:

The Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit.

Item 3 provides that:

No later than 12:00 Noon, on Friday, August 26, 2016, the Defendants shall return and turn over to Plaintiff all of Plaintiff’s money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles affidavit, all money received from rents, and to return all money removed from any of Plaintiff’s bank accounts, including reserve accounts, and to provide a full accounting of all such money and or expenses Defendants have paid or incurred with Plaintiff’s money.

On Friday, August 26, 2016, counsel for FCRE made all of the items addressed in the foregoing provisions available at his office (with the exception of several receipt books which, due to a shipping error were not available until August 29, 2016.) L. Christopher Kettles retrieved these items on August 30, 2016 and acknowledged his receipt of them. (Coppage Aff.) Those items retrieved by Kettles were the only items belonging to Plaintiff in either Defendants' possession. (Rankin Aff.)

Plaintiff's Motion for Contempt was filed on September 9, 2016. Despite, FCRE's having fully complied with the requirements of the Order, Plaintiff asserts that FCRE has and continues to willfully disregard the Order. On September 14, 2016, Plaintiff's counsel emailed a letter to FCRE's counsel which alleged that several items of personal property were not returned. Letter from Curis L. Coltrane, Attorney for Plaintiff (September 14, 2016). Contrary to Plaintiff's claims, each of the items listed in the letter were either returned to Plaintiff or were never in FCRE's possession. (Rankin Aff., Coppage Aff.)

Law and Analysis

Contempt results from willful disobedience of a court order, and, before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002). A willful act is defined as one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law. Id. In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. Brasington v. Shannon, 288 S.C. 183, 341 S.E.2d 130 (1986). The burden then shifts to the respondent to establish his defense and inability to comply with the order.

Here, Plaintiff has failed to show facts establishing FCRE's noncompliance with the Order. Pursuant to the provisions of the Order and the Loan Documents, when read together as they must be, FCRE has not deprived Plaintiff of possession, hindered Plaintiff's possession, or interfered with Plaintiff's possession of its Real Property, money, business files, leases, or personal property. FCRE has allowed Plaintiff to maintain and manage its property free from any hindrance or interference. Plaintiff has turned over all of the money associated with the Real Property, despite its not being Plaintiff's money, and has provided Plaintiff with an accounting of expenses paid or incurred.

The affidavits submitted herewith clearly reflect that Plaintiff has been returned to the possession of its real and personal property. While there is little ambiguity regarding the meaning of real property, personal property, files, etc., the Order, when read alone, is unclear as to what money is "Plaintiff's money." The Order must be read in conjunction with the Loan Documents in order to ascertain the meaning of the term and to properly comply with the Order. As stated above, Plaintiff absolutely and unconditionally assigned all of its right, title and interest in and to all current and future Leases and Rents and all rights, powers, privileges, options and other benefits of Plaintiff as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all rents payable or receivable under the Leases. Mortgage, Section 1.2. Since the execution of the Mortgage, rents have at no time been "Plaintiff's money" or in any way belonged to Plaintiff. The Loan Documents were specifically designed to ensure that the funds were not "Plaintiff's money." Plaintiff has only enjoyed a revocable license to collect, receive, use and enjoy rents. Mortgage, Section 1.2. Pursuant to Section 7.1(h) of the Mortgage, that license was immediately and automatically revoked upon Plaintiff's default under the provisions of the Loan Documents. As such, none of the money at issue is "Plaintiff's money."

Plaintiff's motion states that "bank accounts were seized" by FCRE". Plaintiff has not provided any documentation of seizure of any bank accounts. In fact, all bank accounts of Plaintiff or its affiliates which are known to FCRE remain in full control of such parties. (Davenport Aff.)

Plaintiff's motion states that FCRE has contacted tenants after the date of the Order. Plaintiff has not provided any evidence of such contact. In fact, FCRE has not contacted or communicated by any means with tenants of the Real Property. (Davenport Aff.)

Plaintiff's motion also claims that FCRE should be held in contempt as a result of Plaintiff's being charged the default interest rate. It is clear that the Order does not conclude that no event of default has taken place nor does it bar FCRE in any way from exercising remedies available to it during an event of default. As such, this claim should be disregarded.

Should the court be inclined to find that any of the money now or formerly held or in control of the Defendants is or was "Plaintiff's money" or if the court is inclined to insert or infer new provisions that were not included in the Order, then the court must determine that the Order is ambiguous. An order is ambiguous when its terms are reasonably susceptible to more than one interpretation. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 242, 672 S.E.2d 799, 803 (Ct. App. 2009). Here, the terms of the Order are clear if their interpretation is confined to the text of the Order as read in conjunction with the Loan Documents. Failure to interpret the Order as such would lead to the Order's terms being susceptible to any number of interpretations. It follows that, since one may not be convicted of contempt for violating a court order which fails to tell him in definite terms what he must do, FCRE cannot be held in contempt here. County of Greenville v. Mann, 347 S.C. 427, 556 S.E.2d 383 (2001).

Moreover, Rule 65(d), SCRCP requires a detailed recitation of the reasons for the issuance of an injunction, and the acts sought to be enjoined. Specificity is necessary to give notice of the acts barred by the injunction as well as for effective judicial review. Flanagan, James F., South

Carolina Civil Procedure § 65.F (3d ed. 2014). An injunction issued without notice cannot be enforced. Thornton v. Alford, 274 S.C. 1, 260 S.E.2d 179 (1979). So, if the court finds that Plaintiff is entitled to receive money from FCRE, it will have necessarily found that the Order does not include a detailed recitation of the acts to be enjoined, that no notice has been given, and that the Order cannot be enforced.

While FCRE maintains that there has been no contempt, if the Court disagrees it may only impose sanctions that coerce FCRE into compliance or compensate Plaintiff for what the court perceives to be an actual loss. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 567 S.E.2d 514 (Ct. App. 2002). Plaintiff's request that pleadings be stricken and that FCRE be found in default are improper. Those sanctions are available only in the context of a party's failure to obey an order to provide or permit discovery pursuant to Rule 37(b)(2)(C), SCRCP. Davis v. Parkview Apts., 409 S.C. 266, 762 S.E.2d 535 (2014).

Finally, Plaintiff's unclean hands bar it from seeking a contempt order. No person shall be permitted to acquire a right of action from their own unlawful act and that one who participates in an unlawful act cannot recover damages for the consequence of that act. Wachovia Bank, N.A. v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010). The doctrine of unclean hands precludes a plaintiff from recovering if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Straight v. Goss, 383 S.C. 180, 678 S.E.2d 443 (Ct. App. 2009). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. Wachovia v. Coffey, *supra*. The Order required Plaintiff to "[n]o later than 12:00 Noon, on Friday, August 26, 2016 . . . have a licensed property manager in place at the Property." To date, no such property manager is in place. Exhibit A, (White Affidavit) It would be patently unfair for the court to allow Plaintiff to recover while it has failed to comply with the order.

In consideration of the foregoing, FCRE requests that Plaintiff's motion be dismissed.

EXHIBIT A
(South Carolina Real Estate Commission Property Manager Search for Alison Mealing)

South Carolina Department of Labor, Licensing and Regulation

Professional Licensing Boards | Board Member Lookup

Main Menu : **Real Estate Commission**

Note: All fields are not required for searching

Last / Office name:	Mealing	First name:	Alison
License number:		City:	
		State Abbreviation:	
		License Type:	All

To perform a lookup retype the characters in the box to the right

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685



Find

Your search returned: 0 record(s).

Search Tip:

You do not have to enter complete names.
For example, "J" and "Smith" will search for records
with a last name of "Smith" and a first name beginning
with "J."

Questions / Contact Information

Roderick T. Atkinson
Administrator

Beau Tiller, Education Manager

Phone: (803) 896-4400
Fax: (803) 896-4427
PO Box 11847
Columbia, S.C. 29211-1847

South Carolina Department of Labor, Licensing & Regulation

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC.	AFFIDAVIT OF MARY F. DAVENPORT IN SUPPORT OF DEFENDANT FCRE REL, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT
Defendants.	

Personally appeared the undersigned person before a Notary Public of New York who, upon oath, deposes and declares as follows, to wit:

1. Her name is Mary F. Davenport, Executive Vice President of Defendant FCRE REL, LLC (herein "FCRE") in the above-captioned action.
2. She is intimately familiar with the details of this action and the relationship of the parties resulting from the funding of a loan from FCRE to Plaintiff on April 15, 2016.
3. Between October 2015 and July 2016, FCRE became aware of several events of default under the Loan Documents and, during that time, FCRE contacted Plaintiff numerous times to discuss the events of default and the necessity of their being remedied.
4. She is aware of Plaintiff's numerous instances of ongoing default under the Loan Documents (as that term is defined in FCRE's Response) which include, without limitation, the following:
 - a. Allowing for the excessive growth of mold on the interiors and exteriors of buildings;

- b. Allowing the interiors and exteriors of buildings to become and remain filthy;
- c. Improperly installing building materials;
- d. Failure to maintain HVAC systems, resulting in the malfunction and breakdown of the same;
- e. Improper installation and repair of plumbing, causing the plumbing systems to leak and cause water damage;
- f. Using boric acid and other harsh chemicals in the Real Property's plumbing systems, causing the plumbing systems to leak and cause water damage;
- g. Use of unlicensed, non-bonded, and unqualified individuals who were ineffective in making necessary repairs;
- h. Allowing stained and broken terrace fencing on both first and second floor porches and otherwise allowing porches to reach a significant state of disrepair;
- i. Allowing paint on signage to become chipped;
- j. Allowing multiple mildew stains, and possible microbial growth, to be present on the northern and eastern sides of one of the apartment buildings;
- k. Allowing broken fencing around the maintenance garage and the outside of the swimming pool;
- l. Allowing wood rot and deterioration on the unit porches, in particular the porches on the second story which present a safety risk to all tenants.

- m. Allowing tenants to reside in units where no bathroom facilities were available for extended periods of time, in violation of S.C. Code Ann. § 27-40-440.
 - n. Allowing for the persistence of criminal activity including, but not limited to, assault, motor vehicle theft, burglary, property defenses, and domestic disturbances;
 - o. Failure to provide adequate security including, but not limited to, failure to install security gates, video surveillance, or a police substation;
 - p. Failure to properly address plumbing problems such that the plumbing fixtures in second floor apartments leak into first floor apartments;
 - q. Allowing units to become infested with bed bugs;
 - r. Allowing units to become infested with roaches;
 - s. Failure to provide tenants with working kitchen appliances;
 - t. Installation of unsafe flooring in apartment units;
 - u. Failing to maintain the Property in compliance with the minimum standards of the U.S. Department of Housing and Urban Development Housing Quality Standards; and
 - v. Failure to maintain the pool on the Property such that it complies with DHEC standards.
5. Plaintiff is very familiar with Loan Documents extremely similar to, if not identical to, those governing the loan FCRE funded for Plaintiff as he executed and was bound by such documents, as shown in Exhibits A and B, hereto, on December 28, 1999 and November 4, 2010.

6. FCRE's internal review of Plaintiff's accounting records associated with the Real Property revealed what appeared to be fraudulent checks that were issued from Plaintiff's SunTrust operating account to numerous parties, endorsed to "August on Southside" or "AOS", and deposited into the Wells Fargo clearing account.
7. Further investigation revealed what appeared to be other suspicious activity related to the use of both the SunTrust and Wells Fargo accounts.
8. On August 3, 2016, and acting solely in her capacity as executive vice president of FCRE, she contacted Wells Fargo by email advising them that FCRE had suspicions regarding the deposits made to the clearing account dating back to the opening of the account in April 2015.
9. On August 24, 2016, and acting solely in her capacity as executive vice president of FCRE, she contacted Tim McMillen, the Vice President - Regional Security Lead, Corporate Security at SunTrust Bank to report the suspicious activity.
10. She understands such reporting to be compulsory pursuant to the provisions of the Bank Secrecy Act of 1970.
11. She has made no attempt to "freeze" any of Plaintiff's bank accounts.
12. She has made no statements that she has attempted to "freeze" any of Plaintiff's bank accounts or that she has caused them to be frozen.
13. Neither she nor any representative, agent, or employee of FCRE has been physically present on the Real Property (as that term is defined in Plaintiff's Response) since August 16, 2016.
14. Neither she nor any representative, agent, or employee of FCRE has contacted or attempted to contact any tenant of the Real Property since August 16, 2016.

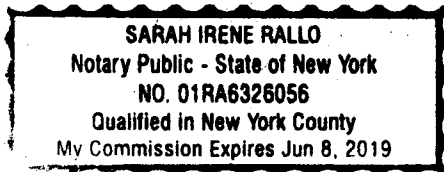
Sworn to before a Notary Public of New York
On September 14, 2016.

Sarah Irene Rallo (Seal)

Notary Public of New York

My Commission Expires June 8, 2019

Mary F. Davenport
Mary F. Davenport



STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF BRIAN WHITE IN SUPPORT OF DEFENDANT FCRE REL, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT.

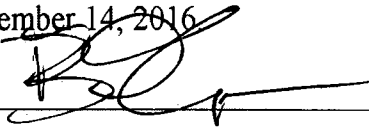
Personally appeared the undersigned person before a Notary Public of South Carolina who, upon oath, deposes and declares as follows, to wit:

1. His name is Brian White.
2. He is the Section 8 Housing Quality Standards Inspector for Beaufort Housing Authority.
3. He regularly conducts inspections of August on the Southside Apartments, located at 2208 Southside Boulevard, Port Royal, South Carolina (herein the "Real Property"), and has conducted such inspections of the Real Property on August 30, 2016 and September 8.
4. While conducting the inspection on August 30, 2016 he was unable to locate a licensed property manager on the Real Property despite visiting the Real Property's management office and conducting a search of the Real Property.
5. On August 30, 2016, having located no property manager, he interviewed several of the Real Property's tenants who informed him that there was no property manager.
6. During the afternoon of August 26, 2016 he had a conversation with Amanda Pett, the Real Property's former unlicensed property manager, during which Ms.

Pett made representations consistent with her continuing to act as the property manager for the Real Property.

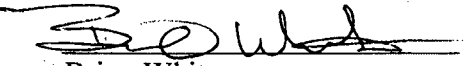
7. While conducting the inspection on September 8, 2016, he met Alison Mealing, who claimed to be the property manager.

Sworn to before a Notary Public of South Carolina)
On September 14, 2016)

 (Seal))

Notary Public of South Carolina)

My Commission Expires March 26, 2016)


Brian White

Submitted September 15, 2016.

Coppage Law Firm, LLC

By: 
Benjamin T. Coppage
Attorney for FCRE REL, LLC
Post Office Box 2473
Beaufort, South Carolina 29901
Phone: 843-694-1696
Email: ben@coppagelawfirm.com

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC. Defendants.	AFFIDAVIT OF JAMI RANKIN IN SUPPORT OF DEFENDANT FCRE REL, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT

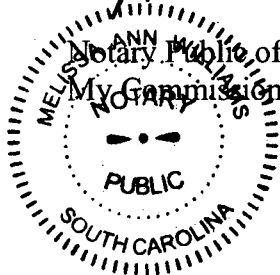
Personally appeared the undersigned person before a Notary Public of South Carolina who, upon oath, deposes and declares as follows, to wit:

1. Her name is Jami Rankin and she is employed by as a realtor and property manager by Defendant Tideland Realty, Inc. (herein "Tideland") in the above-captioned action.
2. She, in her capacity as an employee of Tideland, served as property manager of the Real Property (as that term is defined in FCRE's response) from July 21, 2016 to August 16, 2016.
3. During that time, Tideland applied rents and receipts from the Real Property to the Debt (as that term is defined by the Loan Documents), including expenses incurred in connection with operating and managing the Real Property as shown in Exhibit A, hereto.
4. On August 16, 2016 at 3:00 p.m., Tideland vacated the Real Property and no representative of Tideland or FCRE has returned to the Real Property since.
5. Neither she nor any representative, agent, or employee of Tideland has been physically present on the Real Property (as that term is defined in Plaintiff's Response) since August 16, 2016.

6. Neither she nor any representative, agent, or employee of Tideland has contacted or attempted to contact any tenant of the Real Property since August 16, 2016.
7. Tenants of the Real Property have contacted Tideland numerous times to express concern about Plaintiff's possession of the premises.
8. On receipt of such calls Tideland informs the tenant that Tideland is no longer the property manager and that no advice or guidance can be rendered.
9. Pursuant to the Order Granting Temporary Injunction, Tideland returned all of Plaintiff's business files, leases, personal property, applications, paperwork, and tools in Tidelands possession to Plaintiff by delivering the same to Benjamin T. Coppage on August 24, 2016 to be held for pickup by a representative of Plaintiff.
10. She has reviewed a letter from Curtis L. Coltrane to Benjamin T. Coppage dated September 13, 2016 which alleges that information is missing from files returned to and that personal property belonging to Plaintiff has not been returned.
11. The contents of the files which Plaintiff alleges are missing were all in the files when I delivered them to Benjamin T. Coppage on August 24, 2016.
12. None of the personal property referenced in the letter was removed from the Real Property and was never in the possession of Tideland or FCRE.

Sworn to before a Notary Public of South Carolina)
On September 15, 2016.)

Melina Williams (Seal))



Notary Public of South Carolina, Commission Expires)
My Commission Expires January 28, 2018)

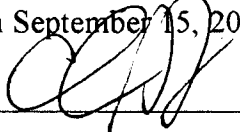
Jani Rankin
Jani Rankin

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	FOURTEENTH JUDICIAL CIRCUIT
A & B ASSOCIATES, L.P., Plaintiff,	DOCKET NO.: 2016-CP-07-1778
vs.	
FCRE REL, LLC and TIDELAND REALTY, INC.	AFFIDAVIT OF BENJAMIN T. COPPAGE IN SUPPORT OF DEFENDANT FCRE REL, LLC'S RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT
Defendants.	

Personally appeared the undersigned person before a Notary Public of South Carolina who, upon oath, deposes and declares as follows, to wit:

1. His name is Benjamin T. Coppage and his is the attorney of record for Defendant FCRE REL, LLC (herein "FCRE") in the above-captioned action.
2. Jami Rankin of Defendant Tideland Realty, Inc. delivered personal property to be turned over to Plaintiff to him at his office at 612 North Street, Beaufort, South Carolina on August 24, 2016.
3. He did not remove any of the personal property or alter it in any way while it was in his possession.
4. Plaintiff's representative, L. Christopher Kettles, retrieved the personal property on Tuesday, August 30, 2016.
5. On Tuesday, September 7, 2016, during a telephone call, he told Curtis L. Coltrane, attorney for Plaintiff that it did not appear that FCRE would be remitting any additional money to Plaintiff or taking additional action with regard to any bank accounts. He made no representations regarding FCRE's intentions during the conversation.

Sworn to before a Notary Public of South Carolina)
On September 15, 2016.)

)
_____) (Seal))

Notary Public of South Carolina)
My Commission Expires May 13, 2018)



Benjamin T. Coppage

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
A & B ASSOCIATES, L. P.)
)
Plaintiff,)
)
vs.)
)
FCRE REL, LLC, and TIDELANDS)
REALTY, INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2016-CP-07-1778

AFFIDAVIT OF
ALISON E. PLANK MEALING

2016 SEP 22 PM 2:56
CLERK OF COURT

Personally appeared before me, Alison E. Plank Mealing, who, being duly sworn,
states:

1. My name is Alison E. Plank Mealing.
2. I hold a South Carolina Property Manager In Charge License, License Number 79562.

THE AFFIANT FURTHER SAITH NAUGHT.

Alison E. Plank Mealing
Alison E. Plank Mealing

Sworn to Before me on this
16th Day of September, 2016.

Kristi Compton
Notary Public for South Carolina
My Commission Expires: May 15, 2024



Kristi Compton
NOTARY PUBLIC
State of South Carolina
My Commission Expires
May 15, 2024

BCD 1134005

State of South Carolina
Department of Labor, Licensing and Regulations
Real Estate Commission

OFFICE CODE:
REO.17983 OFC

LICENSE NO:
79562

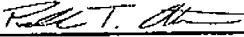
THIS PERSON LISTED BELOW HAS BEEN DULY LICENSED BY THE
SOUTH CAROLINA REAL ESTATE COMMISSION

AS A PROPERTY MANAGER IN CHARGE

ALISON E PLANK MEALING
AMERICAN MANAGEMENT OF SC LLC
PO BOX 1162
BEAUFORT SC 29901

Expires 06/30/2018

POCKET CARD



Administrator

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

A & B ASSOCIATES, L. P.)
)
Plaintiff,)
)
vs.)
)
FCRE REL, LLC, and TIDELANDS)
REALTY, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

ORDER GRANTING PLAINTIFF'S
MOTION FOR CONTEMPT

This matter is before the undersigned on the Plaintiff's Motion for Contempt, which was filed on September 9, 2016. This case was commenced by the Plaintiff on August 15, 2016. Among other things, the Plaintiff sought an *ex parte* Temporary Restraining Order, and moved for a Temporary Injunction. On August 15, 2016, following consideration of the Plaintiff's Verified Complaint, I signed a Temporary Restraining Order, and set a hearing on the Plaintiff's Motion for Temporary Injunction to commence at 3:30 P. M., on August 24, 2016.

The hearing on the Plaintiff's Motion for Temporary Injunction did not commence until approximately 4:40 o'clock, P. M., on August 24, 2016. At the hearing on Plaintiff's Motion for Temporary Injunction, having reviewed and considered the Verified Complaint and affidavits, the Court made various findings and granted Plaintiff's Motion for Temporary Injunction. An Order granting the Temporary Injunction was signed on August 26, 2016. Thereafter, Defendant FCRE REL, LLC, sought relief from the Temporary Injunction, and following a hearing, FCRE REL, LLC's



Motion for Relief was denied on September 1, 2016. On September 1, 2016, FCRE REL, LLC, filed its Answer, Counterclaims and Third-Party Complaint.

The Temporary Injunction ordered, in part, that:

1. The Plaintiff shall have possession of its real property described above and all of its money, business files, leases, and personal property without hindrance or interference from the Defendants, and the Plaintiff is entitled to maintain and manage its property as it sees fit.

...

3. No later than 12:00 Noon, on Friday, August 26, 2016, the Defendants shall return and turn over to Plaintiff all of Plaintiff's money, including, but not limited to, all leases, applications, paperwork, files, tools as referenced in Christopher Kettles' affidavit, all money received from rents, and to return of all money removed from any of Plaintiff's bank accounts, including reserve accounts, and to provide a full accounting of all such money and any expenses Defendants have paid or incurred with Plaintiff's money.

On September 8, 2016, A & B Associates, L. P., filed its Motion for Contempt, alleging that FCRE REL, LLC, willfully failed to comply with both the Temporary Restraining Order and the Temporary Injunction. The Court set a hearing on Plaintiff's Motion for September 16, 2016. In support of its Motion, Plaintiff filed the affidavits of L. Christopher Kettles and Curtis Coltrane. Plaintiff's Motion for Contempt and supporting affidavits alleged among other things, that FCRE REL, LLC failed to return to Plaintiff rental income, reserve account funds, and personal property to Plaintiff. A & B Associates, L. P., also alleged that FCRE REL, LLC continued to interfere with Plaintiff's business and had altered sweeping instructions on Plaintiff's bank accounts, and had imposed a claim of default interest on the loan.

After filing its Motion for Contempt, Plaintiff filed additional affidavits from Curtis L. Coltrane and Timothy J. Granitz that included an accounting of their respective firm's legal billings that Plaintiff incurred from August 26, 2016 through the

A handwritten signature in black ink, appearing to be a stylized 'M' followed by a long horizontal stroke.

morning of September 15, 2016. The legal billings were incurred by Plaintiff in an effort to enforce the Temporary Injunction, were incurred in responding to Defendant FCRE REL, LLC's Motion for Relief from Order Granting Temporary Injunction, and were incurred in preparing Plaintiff's Motion for Contempt.

Defendant FCRE REL, LLC filed a brief in opposition to Plaintiff's Motion for Contempt on September 15, 2016. Attached to the brief were the affidavits of Mary Davenport, Jami Rankin, Benjamin Coppage, and Brian White. Defendant FCRE REL, LLC's responsive brief alleged that it had complied with the Court's Orders and that Plaintiff has unclean hands. Prior to the hearing on September 16, 2016, Plaintiff served an affidavit of Alison E. Plank Mealing on Counsel for FCRE REL, LLC, and Tideland Realty, Inc.¹

On September 16, 2016, I heard Plaintiff's Motion for Contempt. After reviewing the Motion, Reply, and several affidavits, and after hearing and considering the arguments of counsel, I found, and confirm by this Order, that FCRE REL, LLC has violated, and continued to violate, the Temporary Injunction. I further found, and confirm by this Order, that FCRE REL, LLC's violation of the Temporary Injunction was willful. I therefore granted Plaintiff's Motion for Contempt.

Specifically, FCRE REL, LLC has violated the Temporary Injunction by:

1. Failing to return to Plaintiff all of the rental money FCRE REL, LLC, or its agent, collected while it was in control and possession of Plaintiff's Real Property;

¹ The claim of "unclean hands" was based on FCRE REL, LLC's claim that A & B Associates, L. P., failed to have a licensed property manager. The Affidavit of Brian White included a statement that Mr. White had met Alison Mealing at the property and that she identified herself as the property manager. FCRE REL, LLC, asserted that Alison Mealing was not a licensed property manager. In her affidavit, Ms. Mealing confirmed that she holds a "Property Manager In Charge" license and attached a copy of it to her affidavit. The claim of FCRE REL, LLC, as to the "unclean hands" is unfounded, and is denied.



2. Failing to return to Plaintiff all of the money that was swept from any reserve accounts that Plaintiff owned or had an interest in;
3. Failing to return to Plaintiff any overpayment funds that Plaintiff made on the August 2016 debt service payment;
4. Charging default interest against Plaintiff; and,
5. Changing the sweeping instructions on Plaintiff's Wells Fargo bank account such that the money in the account would sweep into an account owned or controlled by FCRE REL, LLC.

The Court reiterated, as it has done so previously in this matter, that its intention was to re-establish the status quo that existed prior to the time that FCRE REL, LLC, declared a default and removed A & B Associates, L. P., from its property. I believe that it was clear that the Orders are and were designed to place the parties in the position that they were in prior to Defendant FCRE REL, LLC's declaration of non-monetary default on or about July 18, 2016.²

In its Motion for Contempt, A & B Associates, L. P., the Plaintiff sought the attorney's fees incurred by in the course of attempting to secure compliance with the Temporary Injunction. In a civil contempt proceeding, a contemnor may be required to

² In its Reply and at the September 16, 2016, Hearing, FCRE REL, LLC, argued that the language in the Temporary Injunction requiring it to return the Plaintiff's money was open to interpretation. FCRE REL, LLC, argued that the effect of the loan documents was that all of the money collected by the Plaintiff from rents was, in fact, FCRE REL, LLC's money, and thus, there was nothing to return to the Plaintiff. This position is contrary to the plain language of the Temporary Injunction, which was clear as to what was required of FCRE REL, LLC.



reimburse a complainant for the costs incurred in enforcing the court's order, including reasonable attorney's fees.³

In this case, the attorneys for A & B Associates, L. P., Curtis L. Coltrane and Timothy J. Granitz submitted affidavits detailing the attorney's fees incurred by A & B Associates, L. P., in connection with their effort to achieve compliance with the Temporary Injunction. The affidavits included statements of the attorneys' time and a description of what was done.

With respect to the claim for attorney's fees, I have considered the six factors set out in *Baron Data Systems v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989), as follows:

(a) The nature, difficulty and extent of the legal services rendered: This case involves a dispute over a note and mortgage in the face amount of Three Million Nine Hundred Thousand and no/100 (\$3,900,000.00) Dollars. The facts that have been presented in the course of the hearings on the Motion for Temporary Restraining Order, Motion for Temporary Injunction, the Motions for Relief from both of them filed by FCRE REL, LLC, show that this is an unusual case with complex issues.

(b) The time and labor devoted to the case. The affidavit of fees set out in detail the amount of time spent by counsel in prosecuting this case. No evidence was presented to show that the time was not actually spent, or that the amounts of time spent were unreasonable.⁴

(c) The professional standing of counsel. Curtis L. Coltrane has been a member of the South Carolina Bar for 34 years. He has tried many foreclosure cases as well as other types of cases. He is experienced with real estate and title matters. His professional standing with the bar is good. The *pro hac vice* applications, which are of record, of Timothy J. Grantiz shows that he is a member in good standing of the Wisconsin Bar, and that Brian H. Mahany is a member of numerous bar associations, and that each has qualified for admission *pro hac vice* in South Carolina, and have qualified elsewhere.

³ See: *Cannon v. Georgia Attorney General's Office, et al.*, 397 S.C. 541, 725 S.E.2d 698 (2012).

⁴ The attorneys for A & B Associates, L. P., were offered for cross examination, and FCRE REL, LLC, declined to do so.



(d) The contingency of compensation. This case was not a contingency fee matter.

(d) The fee customarily charged in the locality for similar services. The rates charged by the attorneys are as follows:

(a)	Paralegals	\$	85.00 Per Hour
(b)	Timothy J. Granitz	\$	400.00 Per Hour
(c)	Curtis L. Coltrane	\$	300.00 Per Hour
(D)	Brian H. Mahany	\$	450.00 Per Hour

These rates are in line with those charged by law firms in Beaufort County, South Carolina, for this type of service.

(e) The beneficial results obtained. The attorneys have been successful, in the face of a vigorous defense, in their efforts in this case on the matters presented thus far.

Based on the foregoing, I find that the attorney's fees in the sum of Fourteen Thousand Three Hundred Thirty Nine and no/100 (\$14,339.00) Dollars is a reasonable amount to allow for attorney's fees incurred by A & B Associates, L. P., in connection with this matter.

CONCLUSION

Now, therefore, based on the forgoing findings and conclusions:

IT IS ORDERED:

1. FCRE REL, LLC is ordered to return to Plaintiff the sum of Fifty Six Thousand Seven Hundred Seventy Four and 94/100 (\$56,774.92) Dollars, being the funds either collected by FCRE REL, LLC, or removed from its accounts, and the overpayment made to FCRE REL, LLC, with the August, 2016, payment.⁵

⁵ This amount is exclusive of the money that FCRE REL, LLC's accounting showed it had spent making improvements to the Plaintiff's property. No ruling is made with respect to those funds, and those funds have not been ordered to be returned at this time.



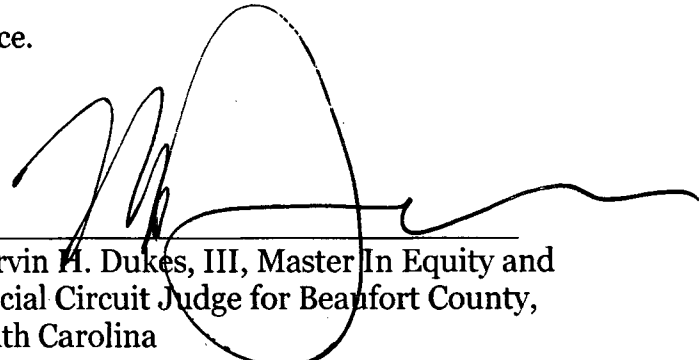
2. Defendant FCRE REL, LLC is ordered to return all default interest that was charged to Plaintiff and that which was paid by Plaintiff, in the amount of Twenty Five Thousand Five Hundred Thirty Two and 76/100 (\$25,532.76) Dollars;
3. Defendant FCRE REL, LLC is ordered to pay Plaintiff's attorney fees that Plaintiff has incurred as a result of its willful and contemptuous conduct. The amount of the Attorney fees awarded to Plaintiff are as set forth in the Affidavits of Timothy Granitz and Curtis Coltrane, in the total amount of Fourteen Thousand Three Hundred Thirty Nine and no/100 (\$14,339.00) Dollars.
4. FCRE REL, LLC, has proposed, and the Court has accepted, a proposal for the handling of funds remaining in the Wells Fargo bank account (Account #4246161459), as follows: (1) the Wells Fargo bank account (Account #4246161459) will be closed effective September 23, 2016; (2) FCRE REL, LLC, shall direct Wells Fargo to deliver the sum of Fifteen thousand seven hundred forty five Dollars (\$15,745) (representing a September rent payment by the Beaufort Housing Authority) to counsel for A & B Associates, L.P.; (3) Any remaining amounts in the DACA after customary and usual Bank fees and the minimum balance requirement shall be delivered to counsel for A & B Associates, L.P. (4) A & B Associates, L. P. shall deposit rent payments into its own operating account, until further Order of this Court; (5) FCRE REL, LLC, shall notify the Beaufort Housing Authority that until further Order of the Court, it shall deliver any payments for rent related to August on Southside directly to A & B Associates, L. P.; and (6) neither the closure of the Wells Fargo bank account as of September 23, 2016, nor the failure of the Borrower to make any deposits into



that account, or any DACA account, after September 23, 2016 will be asserted as an Event of Default under the Loan Documents. The foregoing is incorporated in this Order.

At the hearing on September 16, 2016, I ordered from the bench that FCRE REL, LLC would pay a fine to the Beaufort County, South Carolina, Clerk of Court, in the amount \$10,000.00 per calendar day, which fine is to begin accruing at 5:00, o'clock, P. M., on September 16, 2016, and continuing thereafter until the Order was complied with. FCRE REL, LLC, made diligent efforts to comply with the Court's order of September 16, 2016, and has done so. This Court has the inherent ability to change a verbal ruling from the bench when it makes a written order. *E.G., McComb v. Conard*, 715 S.E.2d 662, 394 S.C. 416 (S.C. Ct. App. 2011) ("*Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly. Because it was an oral ruling, the family court was fully within its rights to change its decision in the written order.*") As a result, the ruling related to the imposition of a fine is rescinded. It now appears that FCRE REL, LLC, has moved to comply as quickly as possible. In light of that, I hereby rescind the portion of the ruling related to the imposition of a fine for non-compliance.

IT IS SO ORDERED.



Marvin H. Dukes, III, Master In Equity and
Special Circuit Judge for Beaufort County,
South Carolina

Beaufort, South Carolina

This 23 Day of September, 2016.

1 IN THE COURT OF COMMON PLEAS
2 STATE OF SOUTH CAROLINA
3 COUNTY OF BEAUFORT
4 CIVIL ACTION NO.: 2016-CP-07-1778

5 A&B ASSOCIATES, L.P.,

6 Plaintiff,

7 vs.

8 FCRE REL, LLC, and
9 TIDELANDS REALTY, INC.,

10 Defendants.

11 -----/

12
13 HEARING

14 Before The Honorable Marvin H. Dukes, III
15 Master-in-Equity
16 Courtroom 2
17 Beaufort County Courthouse
18 102 Ribaut Road
19 Beaufort, South Carolina

20 August 25, 2016

21 4:45 p.m.

1 APPEARANCES OF COUNSEL

2 FOR THE PLAINTIFF:

3 CURTIS L. COLTRANE, ESQUIRE
Coltrane & Wilkins, LLC
4 Two Park Lane, Suite 200
Hilton Head, South Carolina 29928
5 (843)785.5551
curtis@coltraneandwilkins.com

6 TIMOTHY J. GRANITZ, ESQUIRE
7 (Pro Hac Vice)
Mahany Law
8 8112 West Bluemound Road, Suite 101
Wauwatosa, Wisconsin 53213
9 (414)777.0778
tgranitz@mahanylaw.com

10 FOR THE DEFENDANT:

11 BENJAMIN T. COPPAGE, ESQUIRE
12 Coppage Law Firm
612 North Street
13 Beaufort, South Carolina 29902
(843)694.1696

14 ---

15 INDEX

16
17 REPORTER'S CERTIFICATE ----- 27

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6 Eagle Claw Drive, Hilton Head, SC 29926
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1 THE COURT: We're here in
2 2016-CP-07-1778. This is A&B Associates
3 versus FCRE, REL, LLC, and Tidelands Realty.
4 This matter comes before me pursuant to a
5 Summons and Complaint heretofore filed
6 August 15th, 2016, and the Order which was
7 granted I believe that same day.

8 Thereafter, Mr. Coppage filed a motion
9 to set that Order aside which was denied,
10 and we moved on to today's hearing which was
11 previously set.

12 I have the court file, which includes
13 the Summons and Complaint and the Order and
14 associated documents. It also includes
15 defendant's brief in opposition to
16 plaintiff's application for a temporary
17 injunction.

18 If anything else has been filed, it has
19 not yet made it to this file. Is there
20 anything else I'm supposed to have in front
21 of me?

22 MR. COLTRANE: There has been, Your

23 Honor. Today, I filed a memorandum in
24 support of the plaintiff's motion for a
25 temporary injunction, a memorandum regarding

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1 Rule 65, which is what we're here under.

2 There have been additional affidavits
3 filed by the plaintiff that were filed on
4 Monday pursuant to Rule 6(d).

5 There is an affidavit that I received
6 today, which I regard somewhat as a reply to
7 some of the things set out in the affidavits
8 filed by FCRE, LLC.

9 THE COURT: I don't know if I have any
10 of those things, but again, everything is
11 delayed now that they scan everything.

12 MR. COLTRANE: Yes, Your Honor.

13 What I do have -- wait a minute, my
14 file has been juggled around here -- I have
15 the memorandum regarding Rule 65 and the
16 brief I have, which I will hand to Ms. Saxon
17 to pass to you.

18 THE COURT: Thank you very much.

19 MR. COLTRANE: And I have the
20 additional affidavit of a Sheloria Rivers
21 and a copy of that as well.

22 THE COURT: These have all been
23 previously filed, it looks like?
24 MR. COLTRANE: Yes, Your Honor.
25 And then I have affidavits of a Sharon

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1 Kettles, Christopher Kettles, a Sebenio
2 Norris, and a Shetoria Rivers. These were
3 previously delivered via email to
4 Mr. Coppage on Monday, which I will hand up.
5 These are copies of them. The originals
6 have been sent for filing via mail to the
7 clerk on Monday.

8 And seated with me, Your Honor, is
9 Mr. Tim Granitz. He is a lawyer from
10 Wisconsin who actually associated me on this
11 case. As of yesterday, I sent his
12 application for admission pro hac vice to
13 the Supreme Court. I haven't gotten a
14 letter back from them yet, but that process
15 is underway, and so he is seated with me
16 now, unless Your Honor has some objection to
17 that.

18 THE COURT: No objection unless
19 Mr. Coppage has some objection to that.

20 MR. COPPAGE: I have none.
21 THE COURT: Mr. Coppage, I thought I
22 saw, maybe it didn't get filed, but some
23 other document that someone dropped by on
24 your behalf. You've been in court so much
25 this week, maybe I'm thinking of a whole

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1 other case, but was there not a notebook --

2 MR. COPPAGE: I dropped off -- after
3 filing the brief, I dropped off a final copy
4 of that with your office so that you
5 wouldn't have to wait for the clerk of court
6 to come over, so that might be what you're
7 thinking about. I just walked one over.

8 THE COURT: That's what I was thinking
9 about, and it's not here. Do you have
10 another copy?

11 MR. COPPAGE: Do you not have the brief
12 in opposition to this motion?

13 THE COURT: I have the one filed
14 August 22nd. Is that the one? I thought I
15 saw one that had --

16 MR. COPPAGE: August 22nd?

17 THE COURT: Is that the right one?

18 MR. COPPAGE: That's it, yes, sir.

19 THE COURT: Does that look familiar? I
20 can't -- I think it's August 22nd. It's
21 hard to read. At 4:33 p.m., is that the
22 same one?

23 MR. COPPAGE: That's sounds right.

24 THE COURT: I've got that one.

25 I thought I saw some other document,

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1 though. I'm probably confusing it with some
2 other one. All right. Then I have I guess
3 a complete package. Okay.
4 So this is plaintiff's case essentially
5 to continue or to grant the temporary
6 injunction, right? So, Mr. Coltrane, I'm
7 happy to hear from you, sir.

8 MR. COLTRANE: If Your Honor please,
9 first as a procedural matter, following Your
10 Honor's ruling of last week, a number of
11 people have received subpoenas. As you can
12 see, we have an assembled crowd here today.

13 Motions for temporary injunctions are
14 governed by Rule 65, and Rule 65 states that
15 the motions for temporary injunctions are
16 heard based on affidavits or a verified

17 complaint. And Rule 6(d) then says that
18 where a motion is to be heard, thusly, that
19 the opposing party should file affidavits
20 two days ahead of the hearing, and reply
21 affidavits can be filed after that.

22 In fact, FCRE did file two affidavits
23 last week which are of record.

24 A motion for a temporary injunction is
25 not a hearing on the merits. It is a

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8

1 hearing for the court to determine whether
2 or not the moving party has made a prima
3 facie case as to the three elements for a
4 temporary injunction, that being irreparable
5 injury, lack of legal remedy and likelihood
6 of success on the merits.

7 What you have before you in the form of
8 the affidavits that have been filed is
9 sufficient for Your Honor to do that.

10 Again, the law in this state is clear that
11 when ruling on a motion for a temporary
12 injunction, the merits of the case are
13 really not at issue except as someone may
14 find them necessary to deal with the other
15 things that must be proved with respect to a

16 temporary injunction. Thus, I think that
17 the -- you know, frankly, I think what
18 you've got in front of you is what the rules
19 require and dictate that the motion be
20 decided on. And, well, I believe that's
21 where we are.

22 THE COURT: Mr. Coppage, I'm happy to
23 hear from you on that issue, sir.

24 MR. COPPAGE: I beg the court's
25 indulgence for just a moment.

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1 Your Honor, with respect to a motion
2 for a temporary restraining order,
3 Mr. Coltrane is certainly right that it is a
4 hearing on the affidavits.

5 That's not the case, however, in the
6 ten-day hearing following the issuance of
7 the temporary restraining order.

8 During this hearing, testimony,
9 in-person testimony, is allowed, and has
10 actually been encouraged when it's a
11 contentious case like this one is today, so
12 I would object to his assertion that you're
13 not able to hear testimony today.

14 THE COURT: Let me ask you this,
15 Mr. Coppage. Of course I've heard from both
16 of you already in this case because we've
17 had at least the one meeting with the three
18 of us. I think maybe Mr. Coltrane was on
19 the phone at that point. I'm trying to
20 remember. It's been a long week.

21 MR. COLTRANE: Yes, Your Honor.

22 THE COURT: But the issue as I recall,
23 and maybe there's more to it than this, is
24 whether or not there's been a material
25 breach that would permit the lender -- allow

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1 them to come in and do what they've done. I
2 guess not what they've allegedly done; I
3 think there's no question but that they came
4 in and took over the management office.

5 What are all these witnesses going to
6 tell me with regard to a material breach in
7 the loan documents?

8 MR. COPPAGE: That would be the crux of
9 it, Your Honor. I'd start out by saying of
10 course we're here on those elements that
11 Mr. Coltrane just now said, that irreparable
12 harm to the plaintiff, there not being a

13 legal remedy available and likelihood of
14 success on the merits.

15 All the witnesses would go to both
16 there not being any irreparable harm, no
17 harm of any kind, and that there is very
18 little likelihood for their success on the
19 merits.

20 Most of these folks are going to
21 testify to the conditions on the property to
22 show that those material breaches did exist.
23 They were there. Some of them are tenants.
24 Some of them are property managers. Some of
25 them are police officers who have been very

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1 closely involved with all this on the
2 Southside Apartments, which is the property
3 we're talking about today, and have
4 witnessed firsthand the deplorable,
5 deplorable conditions that the tenants there
6 have been subjected to, and the physical
7 waste, the deterioration, just the very poor
8 treatment of the people on the property that
9 is precluded by the loan documents and which
10 does constitute a breach of them. And it

11 goes to the likelihood of -- or there not
12 being a likelihood of A&B's success on the
13 merits.

14 THE COURT: And that's the problem.
15 Ordinarily, a case like this would have been
16 brought by the lender, and they would have
17 asked for a receiver, and they would have
18 gone through all the things that we see in
19 every case. The sort of upside down,
20 backwards part of this is, is that the
21 self-help issue here is unique in my
22 experience.

23 MR. COPPAGE: Well, and further on
24 that, Your Honor, we have two very
25 competent, two very understanding parties of

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1 what they were getting into, what kind of
2 contract they were signing. Both had very
3 good counsel advising them. Both of them
4 worked together in making this contract.

5 There's really no reason that this
6 contract can be set aside. They are very
7 aware of what the contract said. There was
8 certainty meeting of the minds. They agreed
9 to be bound by what the contract said.

10 There's been a breach of it, and now FCRE
11 has the ability to exercise the remedies
12 that are set out in that contract.

13 THE COURT: Who determines if there's a
14 breach? I mean, it's a unilateral decision
15 you're saying under the contract.

16 MR. COPPAGE: It is. But it is very
17 clear in this situation, Your Honor.

18 THE COURT: Any thoughts, Mr. Coltrane?

19 MR. COLTRANE: As Your Honor is aware
20 from the conversations that the court has
21 had with Mr. Coppage and from the documents
22 that have been filed, the one thing that
23 Mr. Coppage did not tell you a single
24 witness would testify to is that a payment
25 has ever been missed.

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1 And indeed, the affidavit before Your
2 Honor shows that FCRE was in possession of
3 the property, they collected rents, they
4 were ordered to return it a week ago, they
5 haven't done that yet, nor have they
6 accounted for it.

7 And the effect of what they did was to

8 put A&B Associates out of business. They
9 threw them out of their own property, took
10 over their property, took over their leases
11 and took their money. And the courts in
12 this state have been clear that the loss of
13 your business is an irreparable harm,
14 irrespective of whether or not there might
15 be a claim for money damages.

16 And what you have here is a series of
17 immaterial breaches related to the things
18 set out in their affidavits, you know, the
19 sign's dirty, there's a hole in the fence,
20 complaints from tenants about this, that and
21 the other thing, all of the things that in
22 your own experience in your position here
23 you would recognize as run-of-the-mill
24 things that happen in an apartment complex.

25 But as of right now, the loan that was

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1 made here is current. There's no doubt
2 about it.

3 THE COURT: Ma'am, I'm going to have to
4 ask y'all to be quiet or leave, okay? Can
5 y'all do that for me? Thanks.

6 Go ahead, Mr. Coltrane.

7 MR. COLTRANE: And if you don't
8 continue the Order, my client will be put
9 out of business, period. That's what will
10 happen. That is irreparable harm in this
11 state. That means that there is no adequate
12 remedy at law.

13 And with respect to the claim regarding
14 your likelihood of success on the merits, I
15 don't have to prove I can succeed. I only
16 have to prove that there is a fair question
17 about what has happened here.

18 And as Your Honor has heard, without
19 filing a lawsuit, without seeking a motion
20 for a receiver, FCRE showed up at the rental
21 office on my client's property in the
22 company of a police officer, the police
23 chief of the town of Port Royal, and told
24 them to get out.

25 The basis for that state action remains

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1 unexplained. The basis for that state
2 action in the face of what is undeniably a
3 civil claim remains unexplained. But the
4 effect of it until Your Honor's Order of

5 last week was to put my people out of
6 business in a situation where the only
7 evidence you've got, and based on what we
8 heard five minutes ago the only evidence
9 you're going to get, is the loan's current.

10 And they're in possession of somewhere
11 between 50- and \$100,000 of his money.

12 THE COURT: I mean, sort of what
13 bothers me a little bit this is I think
14 we're probably all familiar with the line of
15 cases that say a bond for title doesn't
16 really work in South Carolina. I mean,
17 there are lots of bonds for title, and you
18 still have to foreclose. I mean, those
19 bonds for title all say some things like,
20 you know, if you miss a payment, the
21 property goes back to the renter. And
22 Magistrates Court actually enforced that for
23 a while, and then they caught on to the fact
24 that the law of South Carolina doesn't allow
25 that. And I can't remember the name of the

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1 case, but the main case in that with regard
2 to those bond for titles made it clear that
3 if a party has an equitable interest in real

4 property, that self-help of this type isn't
5 really permitted. It's not equitable.

6 And so, Mr. Coppage, what was your
7 client's intent? Were they ever going to
8 file a lawsuit? Were they -- what was their
9 -- what was their end game?

10 MR. COPPAGE: Your Honor, to answer
11 that and to answer Mr. Coltrane's
12 allegations, NCRE's intent here was under
13 the contract they are allowed the
14 Power-of-Attorney to not go in, not ruin a
15 business, not take over the business, not
16 exclude A&B itself from the property, but to
17 help remedy the situation, help to secure
18 that piece of property that they have loaned
19 this money on.

20 Now, the situation is exactly opposite
21 what Mr. Coltrane is describing here. This
22 is a property which was -- A&B applied for a
23 loan here April of 2015. The appraisal at
24 that time was I want to say five million
25 something dollars.

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1 Ms. Davenport here of FCRE visited the

2 property in December of 2015, saw that the
3 property had already appreciably declined in
4 value, the place was basically falling
5 apart, and kept trying to keep up with A&B,
6 asked them what they're doing to come -- to
7 make sure that they're in line with the loan
8 documents, the requirements of those loan
9 documents, the requirements that there not
10 be physical waste, deterioration, that
11 people be kept safe on the property.

12 A&B refused to do anything and
13 continued to let the property become
14 devalued. In addition, A&B kept on that
15 property a property manager who did a
16 horrible job, who really aided to the
17 devaluation of the security for their loan,
18 who wasn't even licensed by the South
19 Carolina Real Estate Commission.

20 And at this point, A&B is looking at a
21 property that if things aren't kept up, if
22 things are allowed to keep going the way
23 they've been going for the last year
24 and-a-half, nobody's going to live here.
25 Nobody will rent an apartment in these

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1 conditions.

2 There are holes in the in the floor you
3 can see straight through to the apartment
4 below. There's mold in almost every
5 apartment. There are doors that have big
6 holes in them where you can go right in and
7 out. The list goes on and on and on. These
8 are terrible, terrible conditions.

9 If these fixes aren't made, which from
10 A&B's posture and what they've done over the
11 last year and-a-half, there is no indication
12 that there'll ever be made, if that's
13 allowed to go on, this property is going to
14 be worthless. FCRE will have lent them a
15 large amount of money and have nothing
16 securing that.

17 What FCRE has done is seen how bad that
18 situation is, how severe a breach of the
19 loan documents there's been, and they have
20 come in and done those things that needed to
21 be done it make it habitable. They have put
22 garbage cans around the property, and I'm
23 speaking about FCRE done through its
24 property manager Tidelands Realty. They've
25 put garbage cans around the property. The

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1 property manager has been working seven days
2 a week, often ten hours a day, just trying
3 to get it so that these people weren't
4 living in roach infested, moldy apartments
5 where they're worried about the safety of
6 themselves, their children, not only from
7 the environmental factors going on in those
8 apartments, but from the crime in the
9 neighborhood that A&B has allowed to
10 persist.

11 THE COURT: Well, let me say this. I
12 mean, crime is bad, terrible. It would be a
13 terrible way to live. You know, the
14 conditions you've described, it's no way to
15 live. I agree with all that.

16 It's the self-help that created this
17 problem, though. I mean, this is not a
18 unique problem. I mean, borrowers
19 constantly violate the provisions of the
20 lending documents that say keep properties
21 up. The lender comes in, files a lawsuit,
22 seeks a receiver -- you know, if everything
23 that you're saying is true, a receiver would
24 have been granted in a minute -- and do it
25 that way.

1 It's the self-help that created this
2 problem, and I guess I'm trying to figure
3 out what to do about it now.

4 MR. COLTRANE: If I might respond to
5 one thing, Your Honor.

6 THE COURT: Yes, sir.

7 MR. COLTRANE: Mr. Coppage said that
8 the loan documents have this irrevocable
9 Power-of-Attorney and there's some text in
10 there that suggests that, and what he said
11 was, is, "but they haven't used that to
12 exclude A&B from the property." Well,
13 that's exactly what they did. They showed
14 up with the police and threw them out. And
15 so the notion that what is going on here is
16 not going to destroy the business of A&B is
17 simply untrue by the actions they have
18 already taken.

19 And again, despite the litany of
20 complaints and problems, the one thing he
21 didn't say was that the loan has been
22 unpaid. And what else -- and I'd like to
23 add one thing. You know, what the lender is
24 entitled to is to get paid back. And as of

25 today, that has happened each and every

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1 month.

2 THE COURT: I mean, the lender, you'd
3 admit, Mr. Coltrane, does have a vested
4 interest, a contractual interest, in keeping
5 the collateral up. I mean, that's in all
6 those loan documents. I mean, that --

7 MR. COLTRANE: Well, it does. But I
8 would also suggest to Your Honor that I am
9 unaware of any situation in this state where
10 a person has been put out of their property
11 in the absence of a monetary default. I
12 mean, there might be other problems too, but
13 in the absence of the monetary default, you
14 don't destroy someone's business.

15 THE COURT: No, I agree.

16 MR. COLTRANE: I mean, if there's a
17 monetary default, you know, game over, but
18 -- but there's not.

19 THE COURT: The usual method is a
20 receiver to solve a problem like this,
21 assuming there is a problem. I understand
22 you assert there's no problem.

23 MR. COPPAGE: And if I may, Your Honor.

24 THE COURT: Yes, sir.

25 MR. COPPAGE: And, Your Honor, in those

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1 cases, I feel like they're a good bit
2 different from this because we don't have
3 those contractual provisions that allow for
4 the lender's appointment of a property
5 manager, not to take over the property, not
6 to ruin the business, but just the
7 appointment of a property manager. There,
8 we've got immaterial breaches in which
9 something needs to be done obviously, but
10 there's not a contract provision to say
11 exactly what it is that has to happen.

12 Here, we have that. And as I stated
13 earlier, FCRE and A&B knew exactly what they
14 were getting into.

15 THE COURT: Well, I mean every
16 commercial -- of course, I've dealt with a
17 lot of commercial foreclosures, and every
18 commercial lease ever written in South
19 Carolina has an assignment of rents
20 provision, it has a receiver. I mean, they
21 all have that. They all have the same

22 language. I mean, it's written by the
23 lender in favor of the lender. I don't
24 blame them. They pay good money to good
25 lawyers to do that, but, you know, some of

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1 it is simply unconscionable in South
2 Carolina, and they don't try to pursue it.
3 And that's why we just don't see self-help.
4 I mean, we see a motion, and again, look for
5 a receiver; if all this is true and there's
6 wasting of the collateral, done, there
7 should be a receiver. But that's not what
8 I've got today.

9 And what I've got today is no action
10 whatsoever filed by the lender. And I don't
11 know if the position now of the defendant is
12 that they didn't do this, but I thought it
13 was an undisputed position that the police
14 department of the town of Port Royal came
15 and assisted in taking the property manager
16 and -- taking her out and installing their
17 own property manager, and then not just
18 using that property manager to run the
19 place, but actually taking the money that

20 came in and not turning it over to the
21 owner. You know, that's -- that's
22 worrisome.
23 And I don't know if -- we've' been here
24 for a while. Y'all have been here a lot
25 longer than I have, and I apologize.

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1 Well, you were involved in the previous
2 case as well, Mr. Coppage. Have you and
3 counsel had an opportunity to talk and see
4 if there's any middle ground here today?

5 MR. COPPAGE: Not yet, Your Honor.

6 THE COURT: Why don't we take a
7 five-minute break and talk for a minute.
8 Maybe I can talk to counsel back here so
9 this crowd doesn't have to leave.

10 We'll be off the record for a second.

11 (Whereupon, a break was
12 taken.)

13 THE COURT: Back on the record in
14 16-CP-07-1778, A&B Associates, L.P., versus
15 FCRE, REL, et al.

16 First things first, Mr. Coltrane has
17 brought up the issue of the live testimony.
18 And think I'm going to grant his petition to

19 not hear this or deal with the live
20 testimony. If all of you were to come up
21 and testify, we'd be here until 1 o'clock in
22 the morning, I'm sure.

23 However, I understand your concerns,
24 and I've listened to your concerns, and I've
25 discussed your concerns with the attorneys

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1 and I'm going to handle this as follows.

2 I'm going conditionally grant the
3 temporary restraining order that
4 Mr. Coltrane's client has sought.

5 I'm going to order that the plaintiff
6 have a licensed property manager in place by
7 noon this coming Friday.

8 I'm going to order the defendant to
9 return by noon Friday any of the money
10 collected, any of the reserve account money,
11 the books, the records, the leases, the
12 files, the personal property, and also to
13 account for any monies spent during the time
14 that they had the books, records and the
15 checkbook and the capital account or the
16 reserve account, rather.

17 With regard to all of your concerns,
18 I'm ordering the parties to meet, either
19 individually or through their
20 representatives, within ten days to discuss
21 the concerns that brought most of you here
22 today. And my hope is that they'll be able
23 to come up with some sort of a list or a
24 triage or something to take care of the most
25 serious problems first and come up with a

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1 way that the parties can work together to
2 resolve some of these problems.
3 I'm going to have a telephone
4 conference with counsel after that ten-day
5 meeting, and then I'll decide what to do if
6 any further action is necessary at that
7 point.

8 Mr. Coltrane, can I ask you to draft
9 that order for me, please?

10 MR. COLTRANE: Yes, Your Honor.

11 THE COURT: Okay. Any questions,
12 Mr. Coppage?

13 MR. COPPAGE: No, Your Honor.

14 THE COURT: Anything else from counsel?

15 MR. COLTRANE: Nothing, Your Honor.

16 THE COURT: All right. Thank you all
17 for coming. I know you didn't get a chance
18 to testify but your being here helped the
19 situation, so thank you all very much.

20 (Whereupon, the hearing
21 was concluded at
22 5:45 p.m.)
23
24
25

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27

1 CERTIFICATE

2

3

4

5 STATE OF SOUTH CAROLINA:

6 BEAUFORT COUNTY:

7

8

9 I, Theresa D. Saxon, Court Reporter and
10 Notary Public in and for the above county and
11 state, do hereby certify that this is a true and
12 correct transcript of the proceedings in this
13 matter at the time and place herein-before set

14 forth.

15

16

17 I am not of counsel to either party,

18 nor interested in the event of this cause.

19

20

21

Theresa D. Saxon

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1	State of South Carolina	}	Court of Common Pleas 14th Judicial Circuit No.: 2016-CP-07-1778
2	County of Beaufort		
3			
4	A & B Associates, L.P.,	}	HEARING
5	Plaintiff,		
6	vs.		
7	FCRE REL, LLC, and		
8	Tidelands Realty, Inc.,		
9	Defendants.		September 16, 2016

10

11 Hearing reported by Deborah S. Thomas,

12 Certified Verbatim Reporter and Notary Public in and

13 for the State of South Carolina; said hearing held

14 before the Honorable Marvin H. Dukes, III, Beaufort

15 County Master in Equity and Special Circuit Court

16 Judge in accordance with the South Carolina Rules of

17 Civil Procedure, at the Beaufort County Courthouse,

18 102 Ribaut Road, Room 212, Beaufort, South Carolina,

19 on September 16, 2016, at the hour of 11:33 a.m.

20

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EXHIBIT INDEX

Exhibits:

Marked at Page

(None were proffered)

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: Good morning. We are
4 here on 2016-CP-07-1778. This is A & B Associates
5 versus FCRE REL, LLC and Tidelands Realty. This is
6 Plaintiff's motion for contempt. Mr. Coltrane,
7 happy to hear from you, sir.

8 MR. COLTRANE: If Your Honor please,
9 on the 15th of July, 2016, Your Honor issued a
10 temporary restraining order which required, among
11 other things, for the Defendant FCRE REL, LLC, to
12 return money to A & B Associates, LLC, that had been
13 removed from reserve bank accounts into which
14 FCRE -- which A & B had deposited money and to also
15 return other funds swept from a wells Fargo account
16 into which A & B had deposited money -- excuse me.
17 The first time they had -- to return that certain
18 money to them.

19 Subsequently Your Honor set a hearing on
20 August the 24th -- excuse me. It was August the
21 15th. I apologize. And there was money that had
22 been collected by -- let me start over.

23 On August 15th Your Honor issued a
24 temporary restraining order. The basis for the
25 temporary restraining order was that the Defendant

6

1 FCRE, LLC, had appeared at the property of A & B
2 Associates, which is an apartment complex in the
3 Town of Port Royal in the company of the police
4 chief for the Town of Port Royal and had ordered the
5 Plaintiff off of its own property.

6 Thereafter it collected money from tenants
7 with whom A & B Associates had leases. And it also
8 cleared money from reserve accounts that A & B
9 Associates held. And the reserve accounts were for
10 the purpose of paying taxes and insurance payments
11 on the property.

12 FCRE, LLC, holds a mortgage on the
13 property and had, under its interpretation of its
14 loan documents, declared a default based not on any
15 failure to pay but rather on claims related to the
16 condition of the property which have been and
17 continue to be asserted are things such as chipped
18 paint on a sign and similar matters.

19 Your Honor ordered that FCRE, LLC, return
20 the money that had been taken to A & B. It had
21 become apparent and is now undisputed that FCRE had
22 collected in excess of \$77,000 of the money
23 belonging to A & B and had done things such as pay

9-16-16 FCRE Hearing
24 an attorney in New York \$47,500. Had paid Tideland
25 Realty, whom it had installed after -- without any

1 due process removing my client from its property
2 9,500 or so dollars.

3 That it had taken money of approximately
4 \$22,000 out of the reserve accounts. And that it
5 had not paid the mortgage payment that was due on
6 August 1. The undisputed evidence is that
7 Mr. Kettles's company or Mr. Kettles rather paid
8 that from his own personal funds.

9 And subsequently Your Honor held a --
10 well, immediately following the issuance of the
11 temporary restraining order there was a hearing held
12 via telephone at the instance of FCRE seeking relief
13 from the temporary restraining order which Your
14 Honor denied.

15 During that conversation again it was
16 noted that there has been no monetary default, that
17 the funds of A & B Associates had been removed and
18 had not been returned. On August 24 there was a
19 hearing held before Your Honor related to a motion
20 for a temporary injunction. At that hearing Your
21 Honor in clear terms required FCRE REL to return to
22 A & B Associates any money that it had removed
23 and/or collected that it could not document that it
24 had spent on the improvement of the August on
25 Southside property.

1 Your Honor also ordered that the claimed
2 default be rescinded and that the situation be

3 returned to the status quo as it existed prior to
4 the actions of FCRE REL, LLC, in removing my client
5 from the property.

6 Following that there was yet another
7 telephone hearing at the instance of FCRE REL, LLC,
8 claiming that the temporary injunction order should
9 be removed based on its claim of contempt by A & B
10 Associates due to their inability to immediately
11 install a licensed property manager.

12 Your Honor heard that, found that there
13 was no willful contempt, and ordered the parties to
14 go forward. The fact that the money that had been
15 taken by FCRE, LLC, had yet to be returned was
16 discussed. Your Honor said, there is no motion for
17 contempt on that before me. I'll deal with that
18 when there is one. But Your Honor did reiterate to
19 the parties on the telephone that your intention and
20 your order was that the matter be returned to the
21 status quo as it had existed prior to the actions in
22 late July of FCRE, LLC, in taking control of the
23 Plaintiff's property and in seizing the funds that
24 are the Plaintiff's property.

25 Subsequently, I corresponded with Mr.

9

1 Coppage and detailed -- they provided us an
2 accounting of the money that was collected and
3 spent. There is some discrepancies there, but that
4 is not material to this hearing. And as it turned
5 out there was \$56,000 or \$57,000 that were not used
6 to improve the property.

7 I don't believe there is any dispute about
Page 7

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8 that because it comes from the accounting provided
9 by FCRE REL. Mr. Coppage on the following Tuesday,
10 which I believe was -- correspondence is attached to
11 the motion -- September 1, 2016, detailed what was
12 shown as having been removed from A & B, what was
13 shown as having been spent on the property and other
14 things. And as I mentioned, excuse me, I misstated.
15 The legal bill to -- was \$37,500, not \$47,500.

16 The amount to Tidelands was \$9,761.03.
17 There was an overpayment made on the August 1
18 payment in the amount of \$5,669.89. And then there
19 was a claimed error whereby the bank removed \$3,844
20 from the account. It all came to about \$5,600 which
21 is detailed in the letter.

22 Mr. Coppage advised he would discuss that
23 with his client. And the following Tuesday, which
24 was the day after labor day, he advised me that he
25 had discussed it with his client and that FCRE REL, 10

1 LLC, would not return any money to A & B Associates
2 based on its own interpretation of its loan
3 documents.

4 I would note that at that time there was
5 none of the matters asserted in the motion now
6 expressing some confusion as to what Your Honor had
7 ordered. It was unequivocal that they simply
8 refused to do it.

9 I have read the documentation, the
10 motion -- rather the return provided by Mr. Coppage,
11 and I would state simply again all they are doing is
12 continuing to rely on the terms of their likely

13 unconscionable loan documents and simply refusing to
14 address the fact that they had been under an order
15 now for more than 30 days to do these things. And
16 that they have not done them.

17 You know, the contempt is -- yeah, there
18 is no other way to look at this other than to
19 suggest that it is willful. They have been told to
20 do it. They have been told to do it on three
21 separate occasions in my presence with Your Honor
22 and Mr. Coppage. And the answer is simply that they
23 will not do it.

24 I would note there are -- one thing
25 asserted in Mr. Coppage's affidavit, he claims that 11

1 there is no licensed property manager on site. That
2 is not true. The individual identified in his
3 affidavits and in his brief as being a licensed
4 property manager indeed holds a property manager in
5 charge license, you know. So that, if nothing else,
6 is wrong, and provides no basis for Your Honor to
7 suggest that A & B Associates has done anything at
8 all.

9 I mean, as of this time -- the other thing
10 that happened was is following Your Honor's
11 direction that the matter be returned to the status
12 quo as it existed prior to the actions of late July,
13 a billing statement was sent out shown on
14 Mr. Kettles's affidavit where, among other things,
15 \$25,000 in default interest was charged. That money
16 has been paid.

17 Once again, Your Honor, the monetary
Page 9

18 default does not exist. They are now in possession
19 of nearly \$80,000 of money that by Your Honor's
20 previous orders they should not be in possession of.
21 And the only statement that we have received is that
22 they believe their loan documents allow them to do
23 the things they have done and therefore they are not
24 going to return anything.

25 And based on that, I believe the record

12

1 establishes that there is a contempt, there is a
2 willful contempt. The Plaintiff is entitled to
3 relief from the willful contempt. I mean, there is
4 no one here for Your Honor to incarcerate in order
5 to enforce the Court's orders. I have suggested
6 that the Court give them one more chance. And that
7 on their failure to do so that Your Honor strike
8 their pleadings, enter a default, and set a damages
9 hearing.

10 I mean, I -- you know, again, they are 30
11 days in contempt. There is no state of facts set
12 out in Mr. Coppage's affidavit that would indicate
13 that the contempt is anything other than willful and
14 is simply not doing it. They are refusing to do it.

15 And based on that, you know, something
16 needs to be done because Mr. Kettles has now made --
17 been required to make from his own funds nearly
18 \$90,000 in payments and, you know, what is happening
19 here should be apparent which is that they believe
20 that through their refusal to comply with the
21 Court's orders that they can eventually generate a
22 monetary default. whether or not that would be

23 effective to get them anywhere or not I don't know
24 given the facts of this case, but what has happened
25 is that through their, Number One, initial actions 13

1 and then through their subsequent refusal to comply
2 with the Court's order they have increased the
3 financial pressure to the point that it will cause a
4 problem.

5 And that is precisely what Your Honor has
6 advised everyone his order was designed to prevent.
7 And what you have is an entity and likely an
8 individual who simply have decided that they will
9 not comply and that they will continue to not comply
10 until they can create a problem that Mr. Kettles and
11 his company will be unable to solve.

12 The law is clear that in order to
13 enforce -- that one seeking the ability to enforce
14 an order by contempt is also entitled to their
15 attorneys fees. We have filed affidavits of
16 attorneys fees both for me and Mr. -- for
17 Mr. Granitz and I. Mr. Granitz and me. And those
18 have been provided to Mr. Coppage and to Mr.
19 Twombly.

20 Following receipt of the brief yesterday
21 and the affidavit from Mr. White regarding the
22 property manager, I did provide an -- I did get an
23 affidavit from the property manager this morning
24 that says -- it's very brief. It simply says, my
25 name is Allison Mealing. I have a property manager 14

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1 in charge license number of 79562. And a copy of
2 the license is attached to it.

3 I don't want to beat this to death,
4 although I already have, but Your Honor --

5 JUDGE DUKES: Just to be clear, you
6 don't seek any relief against Tidelands. This is
7 solely against --

8 MR. COLTRANE: This is solely against
9 FCRE which has been in control of everything thus
10 far. Certainly is in control of the money.

11 JUDGE DUKES: All right. Mr.
12 Coppage, happy to hear from you, sir.

13 MR. COPPAGE: Thank you, Your Honor.
14 This all comes out of a loan funded from FCRE to A &
15 B Associates which was originated on April 15th,
16 2015. It was no doubt a complex transaction. It's
17 a large apartment complex of 96 units.

18 The loan was for \$3.9 million. There were
19 various loan documents executed during that
20 transaction. However, to say it is complex is not
21 to say that it is somehow violative of equity, that
22 it --

23 JUDGE DUKES: Let me ask you this
24 though.

25 MR. COPPAGE: Certainly.

15

1 JUDGE DUKES: Complicated, not
2 complicated, simple, it doesn't matter. I thought
3 we had a court order that said, look, we've got a
4 dispute here. Let's hit reset. Let's put
5 everything right back where it was. Standard issue

6 restraining order, injunctions, put it all back.

7 And at least I'm being told by Mr.
8 Coltrane that that hasn't happened. Are you
9 asserting that your client has set everything back
10 or not?

11 MR. COPPAGE: I am. I'm asserting
12 that they have set everything back and have complied
13 with the order.

14 JUDGE DUKES: So you are saying the
15 money is in the -- maybe we need to go -- obviously
16 we've got a dispute of facts. Mr. Coltrane says
17 that money was taken from an account. An account
18 was changed. You are saying that didn't happen or
19 it's been restored or what?

20 MR. COPPAGE: It bears an
21 explanation. And I'll certainly get to that.

22 JUDGE DUKES: All right. Go ahead.

23 MR. COLTRANE: Well, I mean, if Your
24 Honor please, if you read Mr. Kettles's affidavit,
25 he spoke to wells Fargo in the last 48 hours, was

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1 told that based on the instructions of FCRE they
2 were not allowed to talk to him. And that the wells
3 Fargo lock box account had been changed so that any
4 money in it sweeps to an account owned by FCRE.

5 I mean, they haven't returned the \$37,500
6 that they paid to the New York lawyer. They haven't
7 returned the \$9,700 that they paid to Tidelands.
8 The \$22,000 that was removed from the reserve
9 accounts is not back. They -- you know, they
10 collected \$25,000 of default interest that they

11 haven't returned.

12 So -- and that is all established by the
13 affidavits. I mean, so --

14 JUDGE DUKES: All right. Well,
15 that's, I guess, the part, Mr. Coppage, I was trying
16 to get to is have they -- are you saying they have
17 done these things? That Mr. Coltrane is in error
18 when he says they haven't returned this money or --

19 MR. COPPAGE: No, Mr. Coltrane is not
20 incorrect about the facts, however the -- as to what
21 has actually happened. However, I believe that his
22 characterization of what is the Plaintiff's money is
23 in error.

24 Now, back to the loan documents that were
25 signed. One of the things was an assignment of

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1 rents which Mr. -- or A & B, the Plaintiff, assigned
2 all rents, profits, any money coming out of the real
3 property to FCRE which -- and, in turn, FCRE allowed
4 a license to the Plaintiff to enjoy those, but that
5 license could be revoked at any time.

6 So any rents, profits coming from that
7 real property are not and have never been the money
8 of the Plaintiff as the term is used in the order.
9 And upon the event of default, that license was
10 revoked. And the Plaintiff no longer enjoyed that
11 license. It just went back to --

12 JUDGE DUKES: All right. But let me
13 -- let's go back for a second because I understand
14 they have an interpretation of the paperwork which
15 may or may not be unconscionable. We haven't gotten

16 there, yet. But the purpose of the series of orders
17 and motions that we've had before this were
18 essentially to put the parties in the same position
19 they were before your client came in and put their
20 people out and changed all of these accounts and all
21 of that. Okay?

22 And before that happened they weren't
23 taking the rent. They were -- the rent was
24 remaining with the Plaintiff. And this is confusing
25 Plaintiff and Defendant because ordinarily I'm

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1 dealing with them reversed in a situation like this,
2 but we all know how this started.

3 And so I guess my question is are you
4 saying that they -- it sounds like you are saying
5 they are not complying with the record, but they
6 have some reason why they are not complying? Is
7 that what you are saying? I guess I'm --

8 MR. COPPAGE: That's correct. And we
9 can certainly talk about the purpose and what may
10 have been intended, but from the reading of the
11 order and any ambiguity created in the order and if
12 there is any ambiguity relying on these documents
13 that these two parties signed, the conclusion, and I
14 certainly think a fair conclusion, that my client
15 has come to is that all of the money that Mr.
16 Coltrane is now talking about is not Plaintiff's
17 money.

18 As the order says, it is FCRE's money and
19 it can be applied to the debt owed by the Plaintiff
20 in any manner that FCRE chooses.

21 JUDGE DUKES: That is a very unusual
22 mortgage. Let's see. What else, Mr. Coppage, do
23 you have?

24 MR. COPPAGE: And again, just we are
25 certainly relying on the order. And really the two 19

1 actions you require in that order are -- aside from
2 business files, are to return Plaintiff's money.
3 And without further explanation of what Plaintiff's
4 money is or is not --

5 JUDGE DUKES: Let me make sure we are
6 clear. Before your client came in in their
7 self-help remedy and arrived with the police chief
8 and all of that, the money that we are talking about
9 was in the possession of A & B Associates?

10 MR. COPPAGE: The money we are
11 talking about, some of it was in a Wells Fargo
12 clearing account which the loan documents require.
13 When the Plaintiff receives rents from the tenants,
14 all of those rents go into a clearing account which
15 is under the control of the lender, FCRE.

16 If there is no reason to keep that account
17 from sweeping back to the Plaintiff, then it sweeps
18 back I think every day. Once there becomes a
19 reason --

20 MR. COLTRANE: Wait. And that was
21 the status quo.

22 JUDGE DUKES: Okay. Go ahead.

23 MR. COPPAGE: Once there becomes a
24 reason for it not to sweep, those remain in the
25 clearing account and they become FCRE's money and 20

1 can either stay there or be swept to a deposit
2 account belonging to FCRE and applied to the debt
3 which is exactly what was done here.

4 And the other money that is at issue was
5 money collected by Tidelands for rent.

6 JUDGE DUKES: Where is that money?

7 MR. COPPAGE: That was also either
8 applied to the debt or was used for the maintenance
9 and repair of the property.

10 JUDGE DUKES: All right. Now, I know
11 we had spoken about -- there was a concern I think
12 all around about making sure that some of the issues
13 that -- I think some tenants showed up that day.
14 And the lender had some concerns. And I asked the
15 parties to get together I think within 10 days and
16 try to come up with a list of some things that may
17 or may not need to be done. And maybe we could talk
18 about it further. And no one has ever asked me to
19 get together with them to talk about it further. Is
20 it safe to assume that you all have not been able to
21 get together on the list?

22 MR. COLTRANE: We made that request.
23 And FCRE has refused to do so.

24 MR. COPPAGE: We've talked about it
25 and haven't come to a decision about how to get

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1 together. It's both parties that have not come to a
2 decision about how to do it.

3 MR. COLTRANE: No, Your Honor. Mr.
4 Coppage suggested he would go down and meet with

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5 someone and decide what needed to be done. And, you
6 know, we asked -- told him -- reminded him of the
7 deadline and have gotten the same stiff arm we've
8 gotten on returning the money.

9 JUDGE DUKES: All right. Anything
10 else from anyone?

11 MR. COPPAGE: Just a moment, Your
12 Honor, if you will. Just again, I haven't really
13 addressed the law, but it does require that the
14 contemnor be found to have acted willfully which
15 means with a bad purpose either to disregard or
16 disobey the law.

17 Given the wording of the order I think
18 that certainly hasn't been shown here. And to
19 address Mr. Coltrane's request for sanctions, I
20 believe his request that some of the pleadings be
21 stricken is misplaced. That is a sanction that is
22 appropriate for failure to comply with discovery,
23 not here.

24 As I find it, if we are -- if the Court
25 were to find FCRE in civil contempt, the only

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1 sanction they can impose is compliance to compensate
2 A & B that is an actual loss of A & B, not
3 additional fines or striking any pleadings.
4 Again --

5 JUDGE DUKES: I'm not so sure about
6 that. I know it's been done in other cases. Again,
7 I would be happy to hear from both counsel maybe in
8 post-trial memos about that, but I think for willful
9 contempt striking the pleadings is available. I

10 think there are a number of sanctions available, but
11 anyway, go ahead.

12 MR. COPPAGE: And finally the issue
13 of the Plaintiff coming to court with unclean hands.
14 It does appear that they have now complied with the
15 Court's order, but it does sound like it took over
16 two weeks for them to do so. So having not complied
17 with the Court's order itself, it would certainly be
18 inequitable for the Plaintiff to now ask that FCRE
19 be held in contempt when they have violated the
20 order as well. And at the same time FCRE's
21 contempt, if there was any, which of course we argue
22 there is not, has only arisen because of their
23 understanding of the text of the order.

24 JUDGE DUKES: Now, the text of the
25 order is Paragraph 3, Page 6 of 7, I believe. Is 23

1 that the one we are talking about?

2 MR. COPPAGE: One and three, yes,
3 sir.

4 JUDGE DUKES: So no later than noon,
5 Friday August 26th, the Defendant shall return and
6 turn over to Plaintiff all of Plaintiff's money
7 including but not limited to all leases,
8 applications, paperwork, files, tools as referenced
9 in Christopher Kelly's affidavit, all money received
10 from rents, and to return all money removed from any
11 of Plaintiff's Bank accounts, including reserve
12 accounts, and provide a full accounting of all such
13 moneys, any expenses Defendants have paid or
14 incurred with Plaintiff's money.

15 Has there been any sort of accounting
16 done?

17 MR. COPPAGE: There has, Your Honor.

18 MR. COLTRANE: Yes, Your Honor. The
19 accounting is set out in my letter which is the last
20 exhibit to my motion. It shows based on what
21 Mr. Kettles was able to find the amount of money
22 removed and on Page 2 of it it shows the materials
23 given back which were a series of bills. I mean, of
24 the \$77,000 they gave him \$1,600 back.

25 And there is, as I've pointed out, there 24

1 is a series of things showing work that apparently
2 was done on the building. And Your Honor said that
3 didn't count so we didn't claim it, but there is a
4 bill of \$37,500 paid to a law firm in New York and
5 \$9,761.03 paid to Tidelands Realty.

6 There was an overpayment of the August 1
7 payment of \$5,669.89. And there was an additional
8 \$3,844 that the records of FCRE showed that it took
9 out of their account. I mean, so the total came to
10 roughly -- well, it came to exactly 56,774.92. I
11 mean, so that is what their accounting showed.

12 And as Your Honor will recall, you know,
13 we discussed the -- there was a claim that they had
14 done work on the buildings. You said, okay, if
15 they've done work on the buildings, they have done
16 work on the buildings. No claim is made for that.

17 JUDGE DUKES: Right.

18 MR. COLTRANE: There is also the
19 \$25,000 in default interest.

20 JUDGE DUKES: What is that about, Mr.
21 Coppage, \$25,000 in default interest? Any idea.

22 MR. COPPAGE: It's just --

23 MR. COLTRANE: Well, following your
24 order, they sent him a bill that included \$25,000 in
25 default interest. You know, again, Your Honor told 25

1 them the matter was set back to what existed prior
2 to their claim of default. And indirect
3 contravention of that they sent them a bill for
4 default interest that is attached to Mr. Kettles's
5 affidavit.

6 MR. COPPAGE: Your Honor, I don't
7 believe that is correct. I believe the order gives
8 them the instructions listed in those Paragraphs 1
9 and 3 on Page 6. It does not rescind the event of
10 default. It doesn't find that there was no event of
11 default. It does not preclude FCRE from exercising
12 any of its rights under the loan documents.

13 MR. COLTRANE: I would argue that
14 based on not only the language of the order, but
15 what Your Honor said in the phone conversations with
16 Mr. Coppage that is precisely what it did. And the
17 effort to parse what is otherwise pretty plain
18 language to suggest that Your Honor didn't order
19 what Your Honor plainly ordered is --

20 JUDGE DUKES: Mr. Coppage, I know you
21 are here representing your client and doing the best
22 job you can based on the situation as it is handed
23 to you. Let me ask you -- Mr. Twombly, you don't
24 have anything to add, do you?

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MR. TWOMBLEY: Well, I just had a

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1 question.

2 JUDGE DUKES: Yeah, go ahead.

3 MR. TWOMBLEY: The account that this
4 money was in appears it was established according to
5 the loan documents. It says it shall be under the
6 sole dominion and control of the lender. So, I
7 mean, it seems like the account was established for
8 the sole purpose of so the borrower wouldn't have
9 the money. So, you know, it's kind of a roadblock
10 so the money does not get to the borrower.

11 JUDGE DUKES: I think Mr. Coltrane's
12 concern with it is if it were still operating in the
13 manner it were operating before whatever the date
14 was that it was changed it would be in compliance,
15 but there was a modification to which direction the
16 broom went in the sweep part I think. Is that my
17 understanding, Mr. Coltrane?

18 MR. COLTRANE: Yes, Your Honor. As
19 of today it sweeps to an account controlled by FCRE,
20 not A & B.

21 JUDGE DUKES: Yeah.

22 MR. TWOMBLEY: The only other point I
23 had or just a question was -- again, I wasn't here
24 for any of this. I'm coming to the game late, but
25 in this order it appears to me that there at least

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1 was some expectation that some of the money would
2 have been spent on expenses of the Defendants. That

3 is what it says. That in addition to returning the
4 money, that -- to provide a full accounting of all
5 such money and expenses Defendants have paid or
6 incurred with Plaintiff's money.

7 So arguably there was a reasonable
8 expectation that some of the money that had been,
9 you know, taken control of would have been used or
10 spent in some way towards the property. And
11 arguably --

12 JUDGE DUKES: Well, that is true. As
13 a matter of fact, there was a lengthy discussion
14 probably on the record, and as you said you weren't
15 here, about if they had to fix a railing or a smoke
16 detector or paint or something like that. And as a
17 matter of fact, I understand there is some -- that
18 is not an issue today. I mean, I think you are
19 right. And again that is -- but thank you for
20 pointing that out.

21 Yes, Mr. Coppage, were you getting ready
22 to say something?

23 MR. COPPAGE: I was not.

24 JUDGE DUKES: Okay. So thank you for
25 that, Mr. Twombly. But, yeah, we've spoken about

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1 this and this has been the subject of a number of
2 hearings. And I think at each hearing I restated,
3 and I thought the understanding was crystal clear,
4 the idea here was to reset this, put everything back
5 exactly as it was prior to the Defendant asserting a
6 default and coming in and taking over.

7 I can't imagine if one were to piece the

8 records together, and these have all been on the
9 record, and look at these orders that anybody could
10 have any other idea. And so I think the Defendant
11 is in willful contempt here.

12 I'm going to order them one more time.
13 And if the order needs to be more specific, I don't
14 see that it does, but the idea here is to put
15 everything back the way it was. And I'm talking
16 about how things sweep, putting money back, putting
17 everything back the way it was prior to this
18 happening.

19 I'm going to -- until that happens, I'm
20 going to fine the Defendant \$10,000 a day starting
21 this afternoon at 5:00 o'clock. And at 5:00 o'clock
22 every day thereafter until it's done. I'm going to
23 award the -- what are the attorneys fees? I haven't
24 seen the attorneys fees.

25 MR. COPPAGE: Your Honor, I'm sorry 29

1 to interrupt, but is that per business day or
2 calendar day?

3 JUDGE DUKES: Calendar day. They
4 should hurry and try to get it done this afternoon
5 if they can.

6 MR. COLTRANE: Mine are \$6,284. Mr.
7 Granitz is a little more than that. \$8,055.

8 JUDGE DUKES: Okay. Mr. Coppage, do
9 you have any desire to cross examine either
10 Mr. Granitz or Mr. Coltrane with regard to the
11 attorneys fees they've sought in this matter?

12 MR. COPPAGE: I don't, Your Honor.

9-16-16 FCRE Hearing

13 JUDGE DUKES: Okay. Well, then I
14 will grant attorneys fees in favor of the Plaintiff
15 in this matter as well. Mr. Coltrane, can you draft
16 an order for me, please?

17 MR. COLTRANE: Your Honor, I can.

18 JUDGE DUKES: All right. Anything
19 else for this record?

20 MR. COLTRANE: Nothing from the
21 Plaintiff, Your Honor.

22 MR. COPPAGE: Nothing from FCRE.

23 JUDGE DUKES: Thank you very much.

24 That will conclude the record.

25 (Whereupon, the hearing was concluded ³⁰

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1 at 12:07 p.m.)

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1 Certificate of Reporter

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I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of A & B Associates vs. FCRE REL, et al, on the 16th day of September, 2016: and that the foregoing 30 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to Mr. Douglas M. Muller, Moore & Van Allen, PLLC, Post Office Box 22828, Charleston, SC 29413-2828.

In witness whereof I set my hand and seal this 21st day of September, 2016.

My Commission
expires 1/4/18

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

9-16-16 FCRE Hearing

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STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

A & B ASSOCIATES, L. P.)

Plaintiff,)

vs.)

FCRE REL, LLC, and TIDELANDS)

REALTY, INC.,)

Defendants.)

FCRE REL, LLC,)

Third-Party Plaintiff)

L. CHRISTOPHER KETTLES,)

Third-Party Defendant)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2016-CP-07-1778

REPLY TO COUNTERCLAIMS AND
ANSWER TO THIRD-PARTY
COMPLAINT

2016 OCT 13 PM 3:54
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

A&B Associates, L.P., (hereinafter "Plaintiff"), replies to the Counterclaims of FCRE REL, LLC (hereinafter "Defendant"), and L. Christopher Kettles, (hereinafter "Kettles") answers the Third-Party Complaint of Defendant and allege as follows:

BY WAY OF A FIRST REPLY

1. Each and every allegation of the Counterclaim and Third-Party Complaint of the Defendants is denied, unless hereinafter admitted, qualified or explained.
2. The allegations of Paragraphs 101, 102, 103, 104, 105 and 106 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 101, 102, 103, 104, 105, and 106 is deemed to require a response, the same is denied.

3. In response to the allegations of Paragraph 107(a) of the Answer, Counterclaim and Third-Party Complaint, Plaintiff and Kettles allege that, in addition to the other grounds, upon which personal jurisdiction is based, personal jurisdiction is also based on S.C. Code Ann. §36-23-803(A)(1)(2)(3)(4)(5) & (7)(Supp. 2016). The remaining allegations of Paragraph 107 include no allegation of fact requiring any response from Plaintiff or Kettles. To the extent any of the remaining allegations of Paragraph 107 are deemed to require a response, the same are denied.

4. The allegations of Paragraphs 108 through and including 201, of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 108 through and including 201 is deemed to require a response, the same is denied.

5. In response to the allegations of Paragraph 202 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles affirmatively allege ABGP, Inc., is a separate legal entity from L. Christopher Kettles, and that Kettles' ownership of stock in ABGP, Inc. provides no basis for any claim asserted by Defendant. Plaintiff affirmatively alleges that Defendant has no factual or legal basis to assert any claim under the loan documents, including the Guaranty of Recourse Obligations and Environmental Indemnity Agreement, and no factual or legal basis to join Kettles as a party to this lawsuit. All other or further allegations of Paragraph 202 are denied.

6. Plaintiff and Kettles admit the allegations of Paragraph 203 of the Answer, Counterclaims and Third Party Complaint of Defendant.

7. In response to the allegations of Paragraph 204 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiffs and Kettles admit only that Kettles executed

a "Guaranty of Recourse Obligations and Environmental Indemnity Agreement" on or about April 15, 2015. Any other allegations of Paragraph 204 are denied.

8. Plaintiff and Kettles deny the allegations of Paragraph 205 of the Answer, Counterclaims and Third Party Complaint.

9. The allegations of Paragraph 206 of the Answer, Counterclaims and Third Party Complaint set out legal conclusions requiring no response from Plaintiff or Kettles. To the extent any allegations of Paragraph 206 is deemed to require a response, the same is denied.

10. Plaintiff and Kettles deny the allegations of Paragraph 207 of the Answer, Counterclaim and Third Party Complaint.

11. The allegations of Paragraphs 301 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 301 is deemed to require a response, the same is denied.

12. Plaintiff and Kettles deny the allegations of Paragraph 302 of the Answer, Counterclaim and Third Party Complaint.

13. Plaintiff and Kettles deny the allegations of Paragraph 303 of the Answer, Counterclaim and Third Party Complaint.

14. Plaintiff and Kettles deny the allegations of Paragraph 304 of the Answer, Counterclaim and Third Party Complaint.

15. The allegations of Paragraphs 401 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 401 is deemed to require a response, the same

is denied.

16. Plaintiff and Kettles deny the allegations of Paragraph 402 of the Answer, Counterclaim and Third Party Complaint.

17. The allegations of Paragraphs 501 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 501 is deemed to require a response, the same is denied.

18. The allegations of Paragraph 502, 503 and 504 of the Answer, Counterclaims and Third Party Complaint set out legal conclusions requiring no response from Plaintiff or Kettles. To the extent any allegations of Paragraph 502, 503 and 504 is deemed to require a response, the same is denied.

19. The allegations of Paragraphs 601 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 601 is deemed to require a response, the same is denied.

20. In response to the allegations of Paragraph 602 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiffs and Kettles deny that they consented to Defendant taking the unlawful and tortious actions described in the Complaint, or that they consented to Defendant's breaches of its contract as described in the Complaint and herein. Any other or further allegation of Paragraph 602 is denied.

21. Plaintiff and Kettles deny the allegations of Paragraph 603, 604 and 605 of the Answer, Counterclaim and Third Party Complaint.

22. The allegations of Paragraphs 701 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraphs 601 is deemed to require a response, the same is denied.

23. Plaintiff and Kettles deny the allegations of Paragraph 702 of the Answer, Counterclaim and Third Party Complaint.

24. Plaintiff and Kettles admit the allegations of Paragraph 801, 802, 803, 804 and 805 of the Answer, Counterclaims and Third Party Complaint of Defendant.

25. In response to the allegations of Paragraph 806 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiffs and Kettles admit that Plaintiff executed a loan application on or about February 18, 2015. Any other or further allegation of Paragraph 806 is denied.

26. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 807 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

27. In response to the allegations of Paragraph 808 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided accurate information to Defendant concerning tenants at August on Southside who received housing assistance payments. Any other or further allegation of Paragraph 808 is denied.

28. Plaintiff and Kettles deny the allegations of Paragraph 809 of the Answer, Counterclaim and Third Party Complaint.

29. In response to the allegations of Paragraph 810 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided accurate information

that the Beaufort Housing Authority did not pay market rents at one point in time. Any other or further allegation of Paragraph 810 is denied.

30. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 811 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

31. Plaintiff and Kettles deny the allegations of Paragraph 812 of the Answer, Counterclaim and Third Party Complaint.

32. In response to the allegations of Paragraph 813 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided an accurate rent roll to Defendant. Any other or further allegation of Paragraph 813 is denied.

33. In response to the allegations of Paragraph 814 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that a tenant, Ashley Thomas, was evicted from August on Southside. Any other or further allegation of Paragraph 814 is denied.

34. Plaintiff and Kettles deny the allegations of Paragraph 815 of the Answer, Counterclaim and Third Party Complaint.

35. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 816 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

36. Plaintiff and Kettles deny the allegations of Paragraph 817 of the Answer, Counterclaim and Third Party Complaint.

37. Plaintiff and Kettles deny the allegations of Paragraph 818 of the Answer, Counterclaim and Third Party Complaint..

38. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 819 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

39. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 820 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

40. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 821 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

41. Plaintiff and Kettles deny the allegations of Paragraph 822 of the Answer, Counterclaim and Third Party Complaint.

42. In response to the allegations of Paragraph 823 of the Answer, Counterclaims and Third Party Complaint, Plaintiff admits that a contractor of Defendant prepared a Property Condition Report on or about April 14, 2015. Any other or further allegation of Paragraph 823 is denied.

43. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 824 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

44. Plaintiff and Kettles deny the allegations of Paragraphs 825, 826 and 827 of the Answer, Counterclaim and Third Party Complaint.

45. In response to the allegations of Paragraph 828 of the Answer, Counterclaim and Third Party Complaint of the Defendant, Plaintiff and Kettles admit that certain documents were executed and delivered by them on or about April 15, 2015 in connection with the

transaction described in the original documents. Any other or further allegation of Paragraph 828 is denied, and any allegation inconsistent with the original documents is denied.

45. In response to the allegations of Paragraph 829 of the Answer, Counterclaim and Third Party Complaint of the Defendant, Plaintiff admits that one payment was posted by Plaintiff on July 5, 2015 but was not received by Defendant until July 7, 2015 and that Defendant neither claimed any breach or imposed any penalty on Plaintiff as a result thereof. Any other or further allegation of Paragraph 829 is denied.

46. Plaintiff and Kettles deny the allegations of Paragraph 830 of the Answer, Counterclaim and Third Party Complaint.

47. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 831 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

48. Plaintiff and Kettles deny the allegations of Paragraph 832 and 833 of the Answer, Counterclaim and Third Party Complaint.

49. In response to the allegations of Paragraph 834 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that representatives of Defendant appeared at August on Southside on or about December 8, 2015. Any other or further allegation of Paragraph 834 is denied.

50. Plaintiff and Kettles deny the allegations of Paragraph 835, 836, 837 and 838 of the Answer, Counterclaim and Third Party Complaint.

51. In response to the allegations of Paragraph 839 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that Defendant contacted

Plaintiff on or about December 21, 2015. Any other or further allegation of Paragraph 839 is denied.

52. Plaintiff and Kettles deny the allegations of Paragraph 840 through and including 845 of the Answer, Counterclaim and Third Party Complaint.

53. In response to the allegations of Paragraph 846 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits only that Defendant made requests for information and that such requests were responded to. Any other or further allegation of Paragraph 846 is denied.

54. Plaintiff and Kettles deny the allegations of Paragraph 847 through and including 850 of the Answer, Counterclaim and Third Party Complaint.

55. In response to the allegations of Paragraph 851 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles deny the allegations and affirmatively allege that on or about July 18, 2016, Defendant unlawfully removed Plaintiff's management company from its property with the unlawful aid of the Town of Port Royal Police Department. Any other or further allegation of Paragraph 851 is denied.

56. Plaintiff and Kettles deny the allegations of Paragraph 852 and each sub part of Paragraph 852 of the Answer, Counterclaim and Third Party Complaint.

57. In response to the allegations of Paragraph 853 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that it received some notices of deficiencies from the Beaufort Housing Authority. Any other or further allegation of Paragraph 853 is denied.

58. Plaintiff and Kettles deny the allegations of Paragraph 854 and 855 of the Answer, Counterclaim and Third Party Complaint.

59. In response to the allegations of Paragraph 856 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that checks endorsed to "August on Southside" were deposited into the clearing account. Any other or further allegation of Paragraph 856 is denied.

60. Plaintiff and Kettles admit the allegations of Paragraphs 857, 858, and 859 of the Answer, Counterclaims and Third Party Complaint of Defendant.

61. Plaintiff and Kettles deny the allegations of Paragraphs 860 through and including 865 of the Answer, Counterclaim and Third Party Complaint.

62. The allegations of Paragraph 901 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 901 is deemed to require a response, the same is denied.

63. In response to the allegations of Paragraph 902 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that Plaintiff executed and delivered a written Promissory Note on or about April 15, 2015. Any other or further allegation of Paragraph 902 is denied.

64. In response to the allegations of Paragraph 903 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff and Kettles admit that Plaintiff executed and delivered a written Mortgage on or about April 15, 2015. Any other or further allegation of Paragraph 903 is denied.

65. The allegations of Paragraphs 904 and 905 of the Answer, Counterclaims and Third Party Complaint set out legal conclusions requiring no response from Plaintiff or Kettles. To the extent any allegations of Paragraphs 904 and 905 are deemed to require a response,

the same are denied.

66. Plaintiff and Kettles deny the allegations of Paragraph 906 and each sub part of Paragraph 906 of the Answer, Counterclaim and Third Party Complaint.

67. Plaintiff and Kettles deny the allegations of Paragraphs 907, 908 and 909 of the Answer, Counterclaim and Third Party Complaint.

68. The allegations of Paragraph 1001 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1001 is deemed to require a response, the same is denied.

69. The allegations of Paragraph 1002 of the Answer, Counterclaims and Third Party Complaint set out legal conclusions requiring no response from Plaintiff or Kettles. To the extent any allegations of Paragraph 1002 is deemed to require a response, the same is denied.

70. Plaintiff and Kettles deny the allegations of Paragraphs 1003, 1004 and 1005 of the Answer, Counterclaim and Third Party Complaint.

71. The allegations of Paragraph 1101 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1101 is deemed to require a response, the same is denied.

72. In response to the allegations of Paragraph 1102 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided accurate information to Defendant concerning tenants at August on Southside who received housing assistance payments. Any other or further allegation of Paragraph 1102 is denied.

73. Plaintiff and Kettles deny the allegations of Paragraphs 1103 of the Answer, Counterclaim and Third Party Complaint.

74. In response to the allegations of Paragraph 1104 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided accurate information that the Beaufort Housing Authority did not pay market rents at one point in time. Any other or further allegation of Paragraph 1104 is denied.

75. Plaintiff and Kettles deny the allegations of Paragraphs 1105 through and including 1110 of the Answer, Counterclaim and Third Party Complaint.

76. The allegations of Paragraph 1201 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1201 is deemed to require a response, the same is denied.

77. In response to the allegations of Paragraph 1202 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiff admits that it provided an accurate rent roll to Defendant. Any other or further allegation of Paragraph 1202 is denied.

78. Plaintiff and Kettles deny the allegations of Paragraphs 1203 through and including 1209 of the Answer, Counterclaim and Third Party Complaint.

79. The allegations of Paragraph 1301 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1301 is deemed to require a response, the same is denied.

80. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 1302 of the Answer, Counterclaims and Third Party Complaint of

Defendant and therefore deny the same.

81. Plaintiff and Kettles deny the allegations of Paragraphs 1303 through and including 1307 of the Answer, Counterclaim and Third Party Complaint.

82. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 1308 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

83. Plaintiff and Kettles deny the allegations of Paragraphs 1309 and 1310 of the Answer, Counterclaim and Third Party Complaint.

84. The allegations of Paragraph 1401 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1401 is deemed to require a response, the same is denied.

85. In response to the allegations of Paragraph 1402 of the Answer, Counterclaims and Third Party Complaint, Plaintiff admits that a contractor of Defendant prepared a Property Condition Report on or about April 14, 2015. Any other or further allegation of Paragraph 1402 is denied.

86. Plaintiff and Kettles are without sufficient information to admit or deny the allegation of Paragraph 1403 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

87. Plaintiff and Kettles deny the allegations of Paragraphs 1404 through and including 1407 of the Answer, Counterclaim and Third Party Complaint.

88. Plaintiff and Kettles are without sufficient information to admit or deny the

allegation of Paragraph 1408 of the Answer, Counterclaims and Third Party Complaint of Defendant and therefore deny the same.

89. Plaintiff and Kettles deny the allegations of Paragraph 1409 of the Answer, Counterclaim and Third Party Complaint.

90. The allegations of Paragraph 1501 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1501 is deemed to require a response, the same is denied.

91. Plaintiff and Kettles deny the allegations of Paragraphs 1502 through and including 1507 of the Answer, Counterclaim and Third Party Complaint.

92. The allegations of Paragraph 1601 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1601 is deemed to require a response, the same is denied.

93. Plaintiff and Kettles deny the allegations of Paragraphs 1602 and 1603 of the Answer, Counterclaim and Third Party Complaint.

94. The allegations of Paragraph 1701 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1701 is deemed to require a response, the same is denied.

95. Plaintiff and Kettles deny the allegations of Paragraphs 1702 and 1703 of the Answer, Counterclaim and Third Party Complaint and affirmatively allege that Defendant has

asserted counterclaims based on an express contract (the validity of the claims is denied) and as a matter of law cannot assert a claim in Quantum Meruit.

96. Plaintiff and Kettles deny the allegations of Paragraph 1704 of the Answer, Counterclaim and Third Party Complaint.

97. The allegations of Paragraph 1801 of the Answer, Counterclaim and Third Party Complaint include no allegations of fact requiring a response from Plaintiff or Kettles. To the extent that any allegation of Paragraph 1801 is deemed to require a response, the same is denied.

98. In response to the allegations of Paragraph 1802 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiffs and Kettles admit only that Kettles executed a "Guaranty of Recourse Obligations and Environmental Indemnity Agreement" on or about April 15, 2015. Any other allegations of Paragraph 1802 are denied.

99. In response to the allegations of Paragraph 1803 of the Answer, Counterclaims and Third Party Complaint of Defendant, Plaintiffs and Kettles deny any allegation inconsistent with the terms of the original document.

100. The allegations of Paragraph 1804 of the Answer, Counterclaims and Third Party Complaint set out legal conclusions requiring no response from Plaintiff or Kettles. To the extent any allegations of Paragraph 1804 is deemed to require a response, the same is denied.

101. Plaintiff and Kettles deny the allegations of Paragraph 1805 of the Answer, Counterclaim and Third Party Complaint.

BY WAY OF A FIRST AFFIRMATIVE DEFENSE

102. Each and every allegation of Paragraphs 1 through 101 is re-alleged, as if fully

repeated herein.

103. FCRE REL, LLC (hereinafter "Defendant"), by and through its actions as alleged in the Complaint for this action, has unclean hands.

104. Because Defendant has unclean hands, it is barred from the equitable remedy of foreclosure, and any other remedy it seeks in this action.

BY WAY OF A FIRST AFFIRMATIVE DEFENSE

105. Each and every allegation of Paragraphs 1 through 101 is re-alleged, as if fully repeated herein.

106. The Loan Documents which Defendant seeks to enforce include terms that are unconscionable and violative of the public policy of South Carolina.

107. Defendant, by and through its actions as alleged in the Complaint for this action, has taken actions founded on its unconscionable documents which have damaged the Plaintiff, all as set forth in the Complaint.

108. The unconscionable terms or documents relied on by Defendant are unenforceable, and the actions taken by Defendant in reliance thereon have damaged Plaintiff, as set forth in the Complaint

BY WAY OF A FIRST AFFIRMATIVE DEFENSE

109. Each and every allegation of Paragraphs 1 through 101 is re-alleged, as if fully repeated herein.

110. Defendant and Kettles reallege each and every allegation set out in the Complaint for this action.

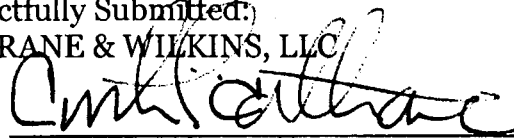
CONCLUSION AND PRAYER FOR RELIEF

Wherefore, having fully replied to the Answer, Counterclaims and Third Party Complaint of FCRE REL, LLC, the A&B Associates, L.P. and L. Christopher Kettles pray that this Honorable Court inquire into the matters set forth herein, and that it enter Judgment in favor of A&B Associates, L.P. and L. Christopher Kettles as follows:

- a) Dismissing the Answer, Counterclaims and Third Party Complaint of FCRE REL, LLC, with costs;
- b) For the relief demanded in the Complaint for this action; and
- c) For all other and further relief as this Honorable Court may deem just and proper.

Respectfully Submitted:
COLTRANE & WILKINS, LLC

By:



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Hilton Head Island, South Carolina

This 4th day of October, 2016.