

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-06319

Shaw Funding, LLC, Build A
House, LLC d/b/a Multifamily
Products, Builders Design
House, LLC, Builders First
Mortgage, LLC, Builders First
Funding, LLC, Investor
Funding, LLC, Total Stone,
LLC, American Lighting Co.,
Contract Supply, LLC, Global
Solution, and MS Mechanical
Solutions, LLC,

Respondents,

RECEIVED

SEP 24 2013

SC Court of Appeals

v.

Multifamily Products, LLC,
and Paul Taylor, as a member
of Build A House, LLC and
individually,

Appellants.

RECORD ON APPEAL

Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellants

Other Counsel of Record:
D. Randle Moody, II
Joseph O. Smith
P.O. Box 10529
Greenville, SC 29603
864-349-2615
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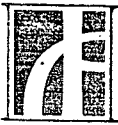
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Other Counsel of Record:
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Greenville, SC 29603
Attorney for Respondents

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Roe Cassidy
Coates & Price PA

JOSEPH O. "JOSH" SMITH
(864) 404-3140
JSMITH@ROECASSIDY.COM

October 2, 2012

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Paul Taylor
1701 Old Pendleton Road
Easley, SC 29642

Re: *Shaw Funding, LLC and Build A House, LLC v. Paul Taylor et al.*
RCCP File No.: 1056.0041

Dear Mr. Taylor:

Please find enclosed for service the following documents in the above referenced matter:

- Summons and Complaint;
- Motion and Order for Case Assignment to the Business Court;
- Plaintiff's Application for Ex Parte Temporary Restraining Order and Motion for Temporary Restraining Order; and
- Motion to Appoint a Receiver and proposed Order Appointing a Receiver.

Further, please be advised the hearing(s) on the motion for a TRO and the motion to appoint a receiver are scheduled for 2:00pm on Wednesday, October 3, 2012, before the Honorable Edward J. Miller at the Pickens County Courthouse, Pickens, South Carolina. The courthouse is located at 214 E. Main Street, Pickens, South Carolina.

With kind regards, I am,

Sincerely,

ROE CASSIDY COATES & PRICE, P.A.

Ellen S. Griffin
Paralegal to Joseph O. Smith

Enclosures: (as stated above)

1052 North Church Street
Greenville SC 29601

PO Box 10529
Greenville SC 29603

p 864 349 2600
f 864 349 0303

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House, LLC

Plaintiff(s)

vs.

Multifamily Products, LLC and Paul Taylor, as a
Member of Build A House, LLLC, Individually

Defendant(s)

Submitted By: Joseph O. Smith

Address: P.O. Box 10529, Greenville, SC 29603

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 23- 06319

SC Bar #: 77475
Telephone #: 864/349-2600
Fax #: 864/349-0303
Other:
E-mail: jsmith@roecassidy.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP- -
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: October 2, 2012

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

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

You are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

Shaw Funding, LLC and Build A
House, LLC,

C.A. NO. 2012-CP-23- 06319

Plaintiffs,

v.

SUMMONS

Multifamily Products, LLC and Paul Taylor,
as a Member of Build A House, LLC and
Individually,

Defendants.

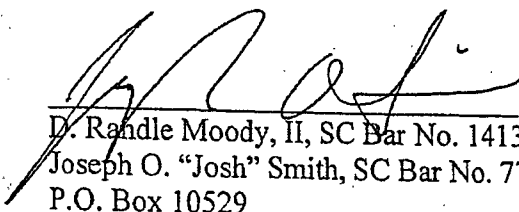
FILED
2012 OCT -2 PM 4:17
GREENVILLE
S.C.

You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, 1052 North Church Street (29601), Post Office Box 10529, Greenville, S.C. 29603, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, appear, or defend within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

(signature page to follow)

Respectfully submitted,

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody, II, SC Bar No. 14135

Joseph O. "Josh" Smith, SC Bar No. 77475

P.O. Box 10529

Greenville, South Carolina 29603

864-349-2600; 864-349-0303 Fax

RMoody@roecassidy.com

JSmith@roecassidy.com

Attorneys for Plaintiffs

Greenville, South Carolina

October 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House, LLC d/b/a Multifamily Products, Builders Design House, LLC, Builders First Mortgage, LLC, Builders First Funding, LLC, Investor Funding, LLC, Total Stone, LLC, American Lighting Co., Contract Supply, LLC, Global Solution, and MS Mechanical Solutions, LLC

Plaintiffs,

vs.

Multifamily Products, LLC, and Paul Taylor, as a member of Build a House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23- 06319

COMPLAINT
(JURY TRIAL DEMANDED)

FILED OCT 17 2012 OCT -2 PM 11:17
CLERK OF COURT
GREENVILLE CO. S.C.
JAMES L. VANDERKAM

The Plaintiffs, Shaw Funding, LLC. ("Shaw") and Build A House, LLC d/b/a Multifamily Products and Builders Design House, LLC, Builders First Mortgage, LLC, Builders First Funding, LLC, Investor Funding, LLC, Total Stone, LLC, American Lighting Co., Contract Supply, LLC, Global Solution, and MS Mechanical Solutions, LLC (*hereinafter* "BAH"), by and through their undersigned attorneys, would respectfully allege and show unto the Court as follows:

SUMMARY

1. Build A House, LLC was established as a member-managed LLC with Shaw Resources, Inc., Defendant Paul Taylor, and Ron Davis as members. Shaw Resources, Inc. subsequently transferred its membership interest to Plaintiff Shaw Funding, LLC. An

Operating Agreement governing the limited liability corporations fixed the ownership percentage at 50% for Shaw, 25% for Taylor, and 25% for Davis. BAH was formed for the purpose of providing home builders, lumber yards, and financial institutions services related to the funding of construction loans and other services. Shaw invested a substantial amount of money in BAH and currently has sizable assets tied up in the business and its projects. It is believed that Taylor has engaged in a campaign of subversive acts and self dealing contrary to the best interests of BAH and its owners and members, including Shaw. Upon information and belief, Taylor has taken numerous actions that have placed BAH in financial peril and subjected Shaw and other individuals to potential liability for BAH liabilities. Now that Defendants have taken these actions and damaged Shaw and BAH, the Plaintiffs must turn to the Court to recover the monies due to them, recoup the additional damages that Defendants inflicted upon the Plaintiffs and prevent further damage to BAH and Shaw.

PARTIES

2. Plaintiff Shaw Funding, LLC is a limited liability corporation organized and existing under the laws of South Carolina and doing business in the State. Shaw's designated office for service of process is 126 Millport Circle Suite 200, Greenville, South Carolina 29607.

3. Plaintiff Build A House, LLC is a limited liability corporation organized and existing under the laws of South Carolina. BAH's designated office for service of process is 1701 Old Pendleton Rd., Greenville County, South Carolina 29642.

4. Defendant Paul Taylor is a citizen and resident of Greenville County, South Carolina.

5. Defendant Multifamily Products, LLC is a limited liability corporation organized and existing under the laws of South Carolina. Multifamily's designated office for service of process is 508 Tracy Trail, Greenville County, South Carolina 29651.

6. Venue and jurisdiction are both proper in this Court.

7. Plaintiff is filing an application for this matter to be submitted to the Business Court for Greenville County, South Carolina.

FACTS

8. Prior to the formation of BAH, Shaw was an investor in a lumber yard financing company, Builders First.

9. On or around 2007, Builders First was in the process of winding down.

10. At this time Shaw learned that Taylor was considering adding a building supplier component to his home remodeling hard lending business.

11. BAH was formed on April 5, 2007 as a member-managed LLC, with Shaw, Taylor, and Davis acting as the sole members and for the purpose of providing home builders, lumber yards, and financial institutions services related to the funding of construction loans and other services.

12. The members of BAH entered into an Operating Agreement a copy of which is attached hereto, marked as "Exhibit A," and incorporated herein as if fully set forth in this Complaint, dated April 5, 2007 that detailed their respective ownership interests, rights, and duties among other things.

13. Under the terms of the BAH Operating Agreement, Shaw holds a 50% ownership interest in BAH, with Taylor and Ron Davis each holding a 25% ownership interest.

14. The Operating Agreement provides that "Each Member of the Company...shall also be a Manager of the Company for all purposes... [and] all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority in Interest of the Members taken at a meeting or evidenced by a written consent executed by a Majority in Interest of the Members." (Exhibit A at Sec. 3.1).

15. A "majority in interest" is defined as "a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members." (Exhibit A Sec. 2.1). Therefore, the consent of Shaw and at least one other member is necessary for all business decisions regarding the management of the business and the affairs of the company.

16. Taylor undertook directing all day-to-day functions of BAH and its projects, including being responsible for sales, accounting, operations, and financial management of the business.

17. Taylor focused his time and efforts on acquiring new projects, coordinating delivery of supplies and services, and developing relationships with vendors and suppliers.

18. Nothing of significance was approved or processed without Taylor's direct involvement.

19. The initial business model called for a large initial investment, which would be invested, grown and utilized to provide leverage to further grow the company.

20. Shaw, Davis and Taylor all made investments in the company.

21. BAH subsequently modified their business model.

22. BAH created its own building materials supply house, show room, sourcing and distribution networks and began to provide financing to remodeling contractors with the requirement that they buy building supplies from the BAH.

23. Following the housing market crash in 2008, BAH turned its focus on multifamily, mainly Housing and Urban Development ("HUD") backed multifamily construction projects.

24. HUD multifamily projects were larger investments than BAH had made before, each requiring some \$1-2 million dollars from BAH.

25. In order to make BAH a viable business, it would have to have two or more of these large HUD projects in progress at one time.

26. Around this same time, the initial investment funds were running low however none of the BAH members would commit to funding capital necessary to support 3-5 HUD projects. Therefore, BAH agreed it would evaluate a project on a case-by-case basis.

27. The HUD closing process is long and unpredictable, which created a substantial deficit in BAH operating expenses.

28. During this time, Taylor continued to tell Shaw and BAH he could obtain more investors for the company and do more HUD deals.

29. Based on Taylor's representations, BAH continued to concentrate its business on large, multifamily projects. The majority of which were HUD backed multifamily construction Projects.

30. BAH obtained a Credit Facility from Ameris Bank in the amount of \$2 million dollars to support its initial HUD projects.

31. On or about June 2010, BAH became involved and invested in a HUD backed apartment development in Indiana (*hereinafter* the "Anson Project").

32. The Anson Project resulted in a significant shortfall in working capital for BAH.

33. An action was filed on the Anson Project and the parties underwent mediation.

34. BAH is currently attempting to recover its investment to the best of its abilities through litigation.

35. Taylor has failed to make payments due to BAH counsel for the Anson Project litigation, causing Shaw to consider providing payment for the past due fees in order to prevent counsel's withdrawal.

36. Also in 2010, BAH undertook another large HUD backed apartment project in Fayetteville, North Carolina (*hereinafter* the "Astoria Project").

37. Currently, all buildings on the Astoria Project are near completion.

38. During the course of the Astoria Project Taylor represented to Shaw that BAH needed \$542,000 to take care of all outstanding liens on the Astoria Project, providing a specific list and amounts by vendor.

39. Taylor further represented that if provided, he would apply the entire amount to satisfying all liens on the Astoria Project and that Shaw would immediately receive a approximately \$211,000 repayment of the \$542,000.

40. Based on Taylor's representations, Shaw provided Taylor with the \$542,000 requested, however Taylor failed to utilize the entire amount to satisfy the outstanding liens on the Astoria Project.

41. To date, Shaw has not received any repayment of the \$542,000.

42. BAH is entitled to a "Preferred Rate of Return" on its investment in the Anson and Astoria projects at the rate of twelve (12%) percent, *per annum* until paid in full.

43. Shaw, as 50% owner of BAH, is entitled to half of the preferred returns to BAH on the proceeds generated from the Anson and Astoria projects.

44. BAH secured funding from different sources for these projects, including obtaining loans from Wells Fargo, Ameris, and AR Funding, Inc.

45. BAH obtained a Note for \$500,000 from Wells Fargo to use as working capital.

46. As security for the Note, Shaw executed a corporate guaranty and Davis, Taylor, Ronnie Shaw, and Donnie Shaw executed personal guaranties.

47. The Wells Fargo Note was also secured by certain BAH inventory and BAH owned real property, including a home known as the "Mimosa" house.

48. In June 2012, Taylor ceased making the necessary payments on behalf of BAH to keep the Wells Fargo Note current, causing the loan to default and subjecting BAH, Shaw, and others to liability for the debt.

49. As a result of Taylor allowing the Wells Fargo Note to default, Shaw was put in the position of having to make payments on behalf of BAH.

50. Taylor's continued failure to make the necessary payments on the Wells Fargo Note caused the Bank to accelerate the loan and call for the entire amount to be paid on or before October 8, 2012 to avoid subjecting the guarantors to liability for the debt. (Exhibit B).

51. BAH also had a "Purchase Order Financing Line" with Wells Fargo to finance its HUD backed projects.

52. The Wells Fargo Purchase Order had a usage/non-usage fee associated with it.

53. BAH only used the Purchase Order for a few transactions, which resulted in a non-usage fee of approximately \$51,000.

54. Both Shaw and Wells Fargo made numerous requests to Taylor for him to resolve the non-usage fee on behalf of BAH.

55. Due to Taylor's failure to timely respond to these requests, Shaw was forced to negotiate the non-usage fee with Wells Fargo and pay 100% of the settlement to the bank on behalf and for the benefit of BAH and its members, including Taylor. (See Exhibit C).

56. On or about February 2011, BAH entered into a Factoring Agreement with AR Funding, Inc.

57. On or about March 2011, BAH entered into a new a Factoring Agreement with AR Funding, Inc.

58. BAH obtained a loan of up to \$1,000,000 under these agreements with AR Funding (the "AR Funding Loan").

59. Shaw executed a corporate guaranty as security for the AR Funding Loan.

60. To satisfy BAH's obligations to AR Funding under the terms of the Factoring Agreements, Taylor, on behalf and for the benefit of BAH, was supposed to utilize certain money released by HUD to the General Contractor on the Astoria Project (Doster) to pay designated factored subcontractors.

61. Rather than make the necessary payments to BAH's designated factored subcontractors, Taylor utilized these funds for BAH overhead expenses and to pay non-factored subcontractors.

62. Several BAH subcontractor's filed liens on the Astoria project due to non-payment.

63. Taylor's actions caused several BAH subcontractors to file liens on the Astoria project, which forced Doster to utilize a portion of the project funds it received from HUD to pay the BAH subcontractors on behalf of the company Taylor failed to pay.

64. This resulted in a shortage of funds to pay AR Funding for the factored receivables.

65. Taylor represented to Shaw and BAH that he would make and/or made the necessary payments to designated factored subcontractors in order to fulfill BAH's obligations to AR Funding.

66. Taylor in fact failed to make any such payments, which caused BAH to default on the AR Funding Loan.

67. Taylor's false representations regarding the AR Funding loan has forced Shaw to make payments on it totaling \$100,000 to date.

68. Taylor's actions with regard to the AR Funding Loan subjected Shaw to potential liability for the unpaid debt, and in fact resulted in AR Funding filing an action against BAH, Shaw, and others.

69. Brad Bylenga ("Bylenga") invested in BAH and partnered with the company on several homes owned by BAH.

70. Under the terms of the deal Bylenga is an 80% owner of these homes, with Investor Funding, a BAH company, owning the remaining 20%.

71. Taylor was to oversee and manage these homes on behalf of BAH in conjunction with Bylenga.

72. Taylor failed to cooperate with Bylenga.

73. Bylenga requested Taylor to provide accounting details, copies of the leases, proof of insurance and keys to several of these houses.

74. Taylor has failed and refused to acknowledge and/or adequately respond to these requests.

75. Taylor's failure to oversee and effectively cooperate with Bylenga on behalf of BAH caused the company to lose any chance of realizing a return on its investment and potentially subjected individual members or owners of Shaw to liability for repaying Bylenga's investment.

76. BAH often did business under the trade name "Multifamily Products."

77. Upon information and belief, without notifying any BAH members, holding a meeting of BAH members or obtaining their consent, Taylor incorporated Multifamily Products, LLC (*hereinafter* "Multifamily") as a South Carolina limited liability corporation on July 2, 2012.

78. Upon information and belief, on or about this same time Taylor created a website for Multifamily which was nearly identical to BAH's site.

79. Upon information and belief, Multifamily is directly competing with BAH.

80. Upon information and belief, Taylor has improperly misappropriated certain assets of BAH to Multifamily, including moving all BAH's pending HUD projects into Multifamily.

81. Upon information and belief, Taylor plans to auction off BAH inventory and assets located at its corporate offices in Mauldin, South Carolina. (*See Exhibit D*).

82. Taylor did not notify, meet with or obtain the consent of the Majority of the Members in Interest of BAH to auction off its inventory and assets.

83. Taylor plans to sell off BAH inventory and assets despite Wells Fargo's security interest in this BAH property.

84. Since on or about early July 2012 Taylor has failed and refused to act in the best interest of BAH and its members by:

- a. Failing to respond to Shaw's demands for an accounting of BAH assets and liabilities;
- b. Denying Shaw access to the BAH corporate offices;
- c. Denying Shaw access to BAH accounting and corporate records;
- d. Utilizing BAH's trade name and creating Multifamily Products, LLC, a substantially similar company in direct competition with BAH;
- e. Creating a website for Multifamily Products, LLC that is substantially similar to that of BAH's;
- f. Taking control and possession of BAH's virtual address and server;
- g. Failing to keep the Wells Fargo Note current causing it to default;
- h. Failing to take appropriate actions to satisfy the liens on the Astoria Project;
- i. Failing to make appropriate payments to designated factored subcontractors in order to comply with the terms of the AR Funding Loan, causing it to be in default;
- j. Failing to close certain BAH bank accounts in a timely manner, despite Shaw's repeated request, causing BAH to incur additional overdraft fees and costs;
- k. Failing to provide Bylenga accounting details, copies of leases, proof of insurance, and keys to certain homes owned by Investor Funding, despite his numerous demands and requests.

85. Despite Shaw's numerous demands, Defendants have continued to act in violation of the Operating Agreement as well as the common and statutory law of the State.

86. All of the aforementioned actions of Defendants are wrongful, unauthorized, and intentional acts which have and continue to deplete the assets of BAH, deprive Shaw of its lawful ownership interest and rights, and endanger the existence of BAH as a viable company.

FIRST CAUSE OF ACTION
(Injunctive Relief Requested)

87. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

88. Taylor's actions as alleged above are in violation of the BAH the Operating Agreement, as well as the common and statutory law of the State.

89. Defendants will continue to take the actions detailed above unless the Court enjoins Defendants' unlawful and unjustified acts.

90. Shaw and BAH will suffer irreparable harm in absence of an injunction. If Defendants continue their unlawful actions absent the Court's intervention, their actions will greatly jeopardize BAH's existence by placing the business in such financial peril that it will become unsalvageable, endangering Shaw's substantial investment into BAH, causing continued damage to BAH's and Shaw's business reputation, and exposing Shaw to financial liability for corporate loans and/or investments guaranteed by the Plaintiffs and/or their owners and members

91. Plaintiffs have no other adequate remedy at law that can remedy the damage to BAH and potential loss of the business other than the Court enjoining Defendants from continuing to act in a manner that is detrimental to BAH and Shaw.

92. Shaw is likely to succeed on the merits at the trial of this case.

93. Plaintiff requests an order from the Court that the Defendants are to comply with the terms of the Operating Agreement. Shaw requests the Court issue an order enjoining Defendants from utilizing the assets, confidential, proprietary and trade secret information of BAH for the

operation of Multifamily as a competing business; continuing to operate the Multifamily website; continuing any business operations of Multifamily; misusing or otherwise misappropriating the assets of BAH; interfering with the endeavors of BAH, including ongoing projects; taking and/or transferring money out of any accounts owned, held by or in which BAH has an interest in any manner that violates the corporation's Operating Agreement; and using, selling, liquidating, or disposing of BAH corporate funds or assets of any kind.

SECOND CAUSE OF ACTION
(Breach of Operating Agreement)

94. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

95. On or about April 5, 2007, Shaw, Taylor and Davis executed an Operating Agreement for BAH for the stated purposes of "provid[ing] home builder, lumber yards, and financial institutions services related to the funding of construction loans and other services." (Exhibit A at Sec. 1.5(a)).

96. The Operating Agreement provides that "Each Member of the Company...shall also be a Manager of the Company for all purposes... [and] all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority in Interest of the Members taken at a meeting or evidenced by a written consent executed by a Majority in Interest of the Members." (Exhibit A at Sec. 3.1).

97. A "majority in interest" is defined as "a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members." (Exhibit A Sec. 2.1). Therefore, the consent of at least two of the three BAH members is necessary for all business decisions regarding the management of the business and the affairs of the company.

98. Taylor has taken actions with respect to the management and affairs of the Company without the necessary consent of a Majority in Interest of the Members, including but not limited to, incorporating Multifamily Products, LLC, misappropriating BAH's server and web address, and attempting to auction off BAH's inventory and assets.

99. The Operating Agreement also mandates that "[t]he records of the Company will be maintained at the Company's principal place of business...Appropriate records in reasonable detail will be maintained to reflect income tax information for the Members. Each Member...may inspect and make copies of the records maintained by the Company and may require an audit of the books of account maintained by the Company to be conducted by the independent accountants for the Company." (Exhibit A at Sec. 11.1).

100. Since on or about early July 2012, Taylor has denied Shaw access to the BAH office and the Company records despite Shaw's numerous requests, in further violation of the Operating Agreement.

101. Taylor's actions as detailed above violate and are therefore a breach of the Operating Agreement.

102. Shaw and BAH have been and continue to be damaged as a result of Taylor's actions in violation of the Operating Agreement.

103. Shaw and BAH are entitled to recover a damage award as a result of Taylor's breaches of the Operating Agreement.

THIRD CAUSE OF ACTION
(Conversion)

104. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

105. Taylor and Multifamily have taken monies and/or property rightfully belonging to or due to BAH and/or Shaw.

106. Taylor and/or Multifamily converted the monies and/or property for their own use.

107. Taylor's and/or Multifamily's use of the monies and/or property and conversion of the same was without permission.

108. Plaintiffs have been significantly damaged by Defendant's conversion of its property and are entitled to the damage resulting from such conversion.

FOURTH CAUSE OF ACTION
(Fraud)

109. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

110. Taylor made multiple representations to Shaw, BAH, and third parties on behalf of BAH that Taylor knew were false and/or for which he had a reckless disregard for their truth or falsity.

111. Taylor represented to Shaw and BAH that he would make and/or made the necessary payments to designated factored subcontractors on the Astoria Project in order to fulfill the company's obligations to AR Funding under the Factoring Agreements.

112. Taylor in fact failed to make such payments which caused BAH to default on its loan obligation with AR Funding.

113. Taylor's false representations regarding the AR Funding loan has resulted in an action being filed against Shaw and others, subjecting Shaw to potential liability for the debt and forcing Shaw to make payments on the AR Funding loan. To date Shaw has paid \$100,000 of the AR Funding loan.

114. Taylor also made representations to Shaw that he was pursuing additional partners for BAH, however he failed to do so.

115. In addition, Taylor represented to Shaw that BAH needed \$542,000 to take care of all outstanding liabilities and liens on the Astoria Project. Taylor further represented that if provided, he would apply the entire amount to satisfying all liens on the Astoria Project and that Shaw would immediately receive a \$211,000 repayment of the \$542,000.

116. Based on Taylor's representations, Shaw provided Taylor with the \$542,000 requested, however Taylor failed to utilize the entire amount to satisfy the outstanding liabilities and liens on the Astoria Project.

117. To date, Shaw has not received any repayment of the \$542,000.

118. Taylor's false representations regarding the \$542,000 have resulted in Shaw having to invest additional funds and expend further time and resources to satisfy outstanding liens on the Astoria Project.

119. Taylor's representations were material in that they induced Shaw to execute corporate guaranties for loans, invest and lend substantial money and time in performing services, and continue to pursue a business plan focused on HUD construction projects, under the belief that such acts were solely for the benefit of BAH when in fact Taylor sought to benefit from them.

120. Shaw did not know of the falsity of the representations, had a right to reasonably rely on these representations, and in fact relied on the representations made by Taylor.

121. Taylor profited from these actions and as a result of the false representations.

122. As a result of the false representations and Shaw's reasonable reliance upon them, Shaw and BAH have suffered consequent and proximate injury.

FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duty/Self Dealing)

123. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

124. Shaw and Taylor are owners and members of BAH.

125. As partners and owners, Taylor owed both Shaw and the corporation a fiduciary duty to exercise good faith and fair dealings and owed them the duty of loyalty and fidelity in performing his obligations and duties.

126. Taylor knowingly and intentionally breached his duties with the intention to appropriate rights belonging to the corporation or Shaw. Upon information and belief, Defendant directed and converted opportunities and monies rightfully belonging to the corporation and/or Shaw to his own personal usage or to other entities controlled by Defendant and Defendant has impaired the value of the corporation and Shaw's ownership interests.

127. As a direct and proximate result of Defendant's failure to honor his duties, the corporation lost profits, increased expenses, had its customer relations impaired, has suffered damage to its business reputation and goodwill, has had its value diminished, and has been denied future business opportunities, all to the corporation's and Shaw's damage, both actual and punitive.

128. Plaintiffs are entitled to collect all damages proximately resulting from the Defendant's wrongful conduct as an owner and are entitled to actual and punitive damages based upon the willful conduct. Plaintiffs respectfully requests the Court award the monies taken, profits

made and advantages gained by Defendants resulting from the appropriation of the corporations' business and/or assets.

SIXTH CAUSE OF ACTION
(Appointment of Receiver)

129. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

130. Defendants' actions have and will continue to endanger the corporate and personal assets of BAH, Shaw, and their owners and members.

131. Defendants are in possession of property to which BAH and/or Shaw have a right and is the subject of the present action.

132. Such property is in the possession of Defendants and the property, and/or its rents and profits, are in danger of being lost or materially injured or impaired.

133. Therefore, Plaintiffs pray that the Court appoint a receiver pursuant to S.C. Code Ann. § 15-65-10(1).

134. Defendants' actions have rendered BAH insolvent, making it unable to pay its bills and other outstanding liabilities in the normal course of business. Therefore the Court has further grounds for appointing a receiver under the circumstances pursuant to S.C. Code Ann. § 15-65-10(4).

135. Based on the facts as alleged above, it is appropriate and necessary for the Court to appoint a receiver in this matter to be given full authority to take possession and control and marshal all of:

- a. Build A House, LLC's corporate property and assets;
- b. Defendant Paul Taylor's assets; and
- c. Defendant Multifamily Product, LLC's corporate property and assets

be they real or personal, to take title and possession to all such property, and to apply such property to the satisfaction of the debt by liquidating and converting such property to money through public or private sale.

SEVENTH CAUSE OF ACTION
(Tortious Interference with Contractual Relationships)

136. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

137. The BAH Operating Agreement was a valid, binding contract between Shaw and Taylor.

138. BAH and its partners and customers have valid, binding contracts for BAH to provide construction funding services.

139. BAH and its lenders have valid, binding contracts for BAH to repay monies loaned to it for the operation of its business.

140. Upon information and belief, Defendants had knowledge of the contracts between Shaw and Taylor, BAH and its partners, customers, and lenders.

141. Upon information and belief, Taylor and/or Multifamily has intentionally procured the breach of the BAH Operating Agreement, without justification.

142. Upon information and belief, Taylor and/or Multifamily has intentionally procured the breach of BAH's contracts with its lenders.

143. Upon information and belief, Defendants intentionally procured the breach, or inevitably will intentionally procure the breach, of BAH's agreements with its partners and customers, without justification.

144. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered and continue to suffer damages.

EIGHTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relationships)

145. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

146. Upon information and belief, Defendants have or will use BAH's confidential proprietary, and trade secret information to compete with BAH unfairly and secure business from BAH's customers.

147. Defendants have intentionally interfered with BAH's potential contractual relations with its customers and vendors.

148. Defendants' actions are for an improper purpose, are without privilege, and are occurring using improper methods.

149. Defendants' actions have injured BAH and Shaw, as it is likely that one or more contractual relationships would have developed between BAH and potential customers and/or vendors but for Defendants' tortious interference with these prospective relationships.

150. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered and continue to suffer damages.

NINTH CAUSE OF ACTION

(Violation of the South Carolina Trade Secrets Act)

151. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

152. BAH has unique, valuable, confidential and proprietary information concerning its customer lists and pricing information, and its unique methods of doing business, all of which constitute trade secrets that are protected by the South Carolina Trade Secrets Act (S.C. Code Ann. § 39-8-10 *et seq.*).

153. BAH's customer lists and pricing information, and its unique methods of doing business have independent economic value and give BAH an actual or potential competitive advantage. The information derives its value from not being generally known, and not being readily ascertainable by proper means by other persons who can obtain economic value from their disclosure or use. As such, BAH's customer lists and pricing information, and its unique methods of doing business are the subject of BAH's reasonable efforts to maintain the secrecy of the information.

154. By virtue of the nature of Taylor and BAH's relationship, Defendants' relationship with each other, and Defendants' solicitation or inevitable solicitation of BAH's customer lists and pricing information, and its unique methods of doing business, Defendants have used and disclosed or will use and disclose BAH's customer lists and pricing information, and its unique methods of doing business in violation of the Trade Secrets Act.

155. Upon information and belief, Defendants have and continue to engage in the actual or threatened misappropriation of such trade secrets. Defendants, as potential competitors of BAH, are in a position where disclosure and use of BAH's trade secrets are not just probable, but inevitable.

156. Defendants have acted maliciously, willfully, wantonly, recklessly, and with utter disregard for the rights of BAH when misappropriating the above-referenced information.

157. BAH is entitled to all relief available under the South Carolina Trade Secrets Act and common law for Defendants' actions, including injunctive relief, actual damages, cost, interests and attorneys' fees, as well as an award of exemplary damages in an amount not exceeding twice the actual damages awarded.

TENTH CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)

158. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

159. Upon information and belief, Defendants have engaged in and continue to engage in unfair methods of competition and unfair and deceptive acts or practices in the course of trade or commerce in willful violation of the South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10 *et seq.*).

160. Upon information and belief, Defendants have enticed and encouraged BAH's existing customers to utilize Multifamily for the same funding and services provided by BAH.

161. Upon information and belief, Defendants have unfairly moved all pending dealings with BAH to Multifamily, without notice to or the consent of the Majority of the Members in Interest of BAH, including Shaw.

162. Upon information and belief, Defendants actions have led or will lead existing customers of BAH to do business with Multifamily under the misconception that it is merely BAH.

163. Upon information and belief, Defendants' acts and practices impact the public interest, have been repeated, and/or have the potential of being repeated in the future.

164. As a result of such practices, BAH and Shaw have suffered and will continue to suffer irreparable damages and accordingly are entitled to actual and treble damages, plus interest, and attorneys' fees and costs.

ELEVENTH CAUSE OF ACTION
(Constructive Trust)

165. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

166. Upon information and belief, Defendants have stolen and otherwise misappropriated BAH corporate assets.

167. Upon information and belief, Taylor has stolen corporate property and taken corporate assets in violation of South Carolina law and his duties to a fellow owner.

168. The property and money which Defendants have taken should be held in a constructive trust by the Court for the benefit of the corporation.

TWELFTH CAUSE OF ACTION
(Demand for Accounting)

169. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

170. As an owner in the corporation, Shaw is entitled to an accounting and auditing of the BAH and hereby demands a full accounting and audit. Shaw also demands an accounting of the finances of Defendants to determine whether funds were improperly allocated or taken.

THIRTEENTH CAUSE OF ACTION
(Corporate Waste-Recovery for Impairment of Assets)

171. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

172. Defendant diverted the assets of BAH to himself and/or to other entities in which Defendant controlled or otherwise held interests.

173. Shaw is entitled to recover both actual and punitive damages sustained as a result of Defendants' improper actions in wasting corporate assets to the detriment and impairment of the corporation.

FOURTEENTH CAUSE OF ACTION
(Constructive Fraud)

174. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

175. Taylor made certain material representations to Shaw and others regarding his actions and intentions with regard to BAH.

176. Taylor ought to have known these representations to be false.

177. Defendant made these representations with the intent that Shaw act upon them and Taylor unjustly reaped the benefits of Shaw's substantial investment and work.

178. Shaw and others were unaware of the falsity of these representations, had a right to rely on these representations, and did in fact rely on these representations.

179. Shaw has suffered consequential and proximate harm as a result of his reliance upon Taylor's false representations and is entitled to recover damages for such harm.

FIFTEENTH CAUSE OF ACTION
(Negligent Misrepresentation)

180. Each and every allegation set forth above is incorporated herein by reference as if fully repeated herein.

181. Taylor made false representations to Shaw and others to induce Shaw to take certain actions it believed were in the best interest of BAH, including investing and lending substantial funds to and for the benefit of the corporation.

182. Defendant continued these false representations to induce Shaw to comply with Defendant's demands for the benefit of Defendants.

183. Defendant had a pecuniary interest in making the representations to Shaw and others.

184. Taylor, however, through a fiduciary relationship, owed a duty to Shaw to communicate truthful information to it.

185. Defendant breached his duty to Shaw by failing to exercise due care to ensure he communicated truthful information to it.

186. Shaw justifiably relied on Defendant's representations and suffered significant financial losses as a result.

187. Shaw has suffered damages as a result of the negligent misrepresentations by Defendant and is entitled to actual, punitive, special, consequential and all other damages available regarding Defendant's conduct.

WHEREFORE, Shaw requests:

- a. Judgment against Defendants in a sum to be determined at the trial of this case for actual, treble, and punitive damages, together with costs, including attorney's fees;
- b. An Order from the Court requiring an accounting; and
- c. An Order from the Court requiring compliance with the Operating Agreement,
- d. An Order Appointing a Receiver to be given full authority to take possession and control and marshal all of
 - i. Build A House, LLC's corporate property and assets;
 - ii. Defendant Paul Taylor's assets; and
 - iii. Defendant Multifamily Product, LLC's corporate property and assets

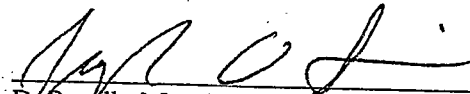
be they real or personal, to take title and possession to all such property, and to apply such property to the satisfaction of BAH debt and any judgment received in this action by liquidating and converting such property to money through public or private sale.

- e. An injunction enjoining the Defendants, pending a trial on the merits of this matter from:
- i. Continuing to operate the Multifamily website;
 - ii. Continuing any business operations of Multifamily;
 - iii. Misusing or otherwise misappropriating the assets of BAH;
 - iv. Interfering with the business endeavors of BAH, including ongoing construction projects;
 - v. Taking and/or transferring money out of any accounts owned, held by or in which BAH has an interest in any manner that violates the corporation's Operating Agreement; and
 - vi. Using, selling, liquidating, or disposing of BAH corporate funds or assets of any kind;
 - vii. Plaintiffs also respectfully request that the Court enjoin and order Defendant Taylor to provide Shaw full access to BAH corporate offices and all corporate financial information and books.; and
- f. Such other and further relief as law or equity allows or as this Court may deem just and proper.

(signature page to follow)

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.



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October 2, 2012
Greenville, South Carolina

Exhibit A

OPERATING AGREEMENT

OF

BUILD A HOUSE, LLC

(A South Carolina Limited Liability Company)

Dated: April 5, 2007

THE LLC MEMBERSHIP INTERESTS REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SOUTH CAROLINA UNIFORM SECURITIES ACT, OR SIMILAR LAWS OR ACTS OF OTHER STATES IN RELIANCE UPON EXEMPTIONS UNDER THOSE ACTS. THE SALE OR OTHER DISPOSITION OF THE MEMBERSHIP INTERESTS IS RESTRICTED AS STATED IN THIS OPERATING AGREEMENT, AND IN ANY EVENT IS PROHIBITED UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO IT AND ITS COUNSEL THAT SUCH SALE OR OTHER DISPOSITION CAN BE MADE WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES ACTS AND LAWS. BY ACQUIRING THE MEMBERSHIP INTEREST REPRESENTED BY THIS OPERATING AGREEMENT, THE MEMBER REPRESENTS THAT IT WILL NOT SELL OR OTHERWISE DISPOSE OF ITS MEMBERSHIP INTERESTS WITHOUT REGISTRATION OR OTHER COMPLIANCE WITH THE AFORESAID ACTS AND THE RULES AND REGULATIONS ISSUED THEREUNDER.

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Schedule I - Names, addresses, initial Capital Contributions, and Membership Interests of the Members

OPERATING AGREEMENT

OF

BUILD A HOUSE, LLC

This Operating Agreement of Build a House, LLC (the "**Company**"), a limited liability company organized pursuant to the South Carolina Limited Liability Company Act, is executed effective as of the date set forth on the cover page of this Agreement, by and among the Company and the Persons executing this Agreement as the Members (as defined below).

ARTICLE I - FORMATION OF THE COMPANY

1.1 Formation. The Company was formed on April 5, 2007, upon the filing with the Secretary of State of the Articles of Organization of the Company. In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree that the rights and obligations of the parties and the administration and termination of the Company shall be governed by this Agreement, the Articles of Organization and the Act.

1.2 Name. The name of the Company is as set forth on the cover page of this Agreement. The Members may change the name of the Company from time to time as they deem advisable, provided appropriate amendments to this Agreement and the Articles of Organization and necessary filings under the Act are first obtained.

1.3 Registered Office and Registered Agent. The Company's registered office within the State of South Carolina and its registered agent at such address shall be as the Members may from time to time deem necessary or advisable.

1.4 Principal Place of Business. The principal place of business of the Company within the State of South Carolina shall be at such place or places as the Members may from time to time deem necessary or advisable.

1.5 Purposes and Powers.

(a) The purpose and business of the Company shall be to provide home builders, lumber yards, and financial institutions services related to the funding of construction loans and other services and to engage in any lawful business for which limited liability companies may be organized under the Act.

(b) The Company shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Company, to the extent the same may be legally exercised by limited liability companies under the Act.

1.6 Term. The Company shall continue in existence until the close of the Company's business on the date specified in the Company's Articles of Organization, unless the Company

is earlier dissolved and its affairs wound up in accordance with the provisions of this Agreement or the Act.

1.7 Nature of Members' Interests. The interests of the Members in the Company shall be personal property for all purposes. Legal title to all Company assets shall be held in the name of the Company. Neither any Member nor a successor, representative or assign of such Member, shall have any right, title or interest in or to any Property owned by the Company or the right to partition any Property owned by the Company.

ARTICLE II - DEFINITIONS

2.1 Definitions. The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

"Act" means the South Carolina Uniform Limited Liability Company Act of 1996, as the same may be amended from time to time.

"Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts to which such Member is obligated to restore or is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Sections 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

"Affiliate" of a specified Person means: (i) any Person directly or indirectly controlling, controlled by or under common control with the specified Person; (ii) any Person owning or controlling ten percent or more of the outstanding voting securities of the specified Person; (iii) any officer, director or partner of the specified Person; or (iv) if the specified Person is an officer, director or partner, any entity for which the specified Person acts in such capacity.

"Agreement" means this Operating Agreement, as amended from time to time.

"Articles of Organization" means the Articles of Organization of the Company filed with the Secretary of State, as amended or restated from time to time.

"Buy-Sell Event" has the meaning assigned to it in Section 9.1.

"Buy-Sell Notice" has the meaning assigned to it in Section 9.2

"Capital Account" means, with respect to any Member, the capital account maintained for such Member in accordance with Section 5.5 of this Agreement.

"Capital Contribution" means all contributions of cash or property (valued for this purpose at initial Gross Asset Value) made by a Member or its predecessor in interest.

"Capital Transaction" means any transactions undertaken by the Company or by any entity in which the Company owns an interest, which, were it to generate proceeds, would produce Company Sales Proceeds or Company Refinancing Proceeds.

"Closing" has the meaning assigned to it in Section 9.6.

"Code" means the Internal Revenue Code of 1986, as amended from time to time (and any corresponding provisions of succeeding law).

"Company Cash Flow" for any period means the excess, if any, of (A) the sum of (i) all gross receipts from any source for such period, other than from Company loans, Capital Transactions and Capital Contributions, and (ii) any funds released by the Company from previously established reserves, over (B) the sum of (i) all cash expenses paid by the Company for such period (including any compensation to the Members); (ii) all amounts paid by the Company in such period on account of the amortization of the principal of any debts or liabilities of the Company (including loans from any Member); (iii) capital expenditures of the Company; and (iv) a reasonable reserve for future expenditures as provided by Section 11.2; provided, however, that the amounts referred to in (B) (i), (ii) and (iii) above shall be taken into account only to the extent not funded by Capital Contributions, loans or paid out of previously established reserves. Such term shall also include all other funds deemed available for distribution and designated as Company Cash Flow by the Members.

"Company Minimum Gain" means gain as defined in Treasury Regulations Section 1.704-2(d).

"Company Refinancing Proceeds" means (i) the cash realized from the financing or refinancing of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Section 11.2 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from such entity financing or refinancing all or any portion of such entity's assets, less the retirement of any related mortgage loans and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.2.

"Company Sales Proceeds" means (i) the cash realized from the sale, exchange, condemnation, casualty or other disposition of all or any portion of the Property or other Company assets, less the retirement of any related mortgage loans and the payment of all expenses relating to the transaction and a reasonable reserve for future expenditures as provided by Section 11.2 and (ii) the Company's allocable portion of cash realized by an entity in which the Company owns an interest from the sale, exchange, condemnation, casualty or other disposition of all or any portion of such entity's assets, less the retirement of any related mortgage loans and the payment of all expenses relating to such transaction and a reasonable reserve for future expenditures as provided by Section 11.2.

"Creditor" has the meaning assigned to it in Section 4.4.

"Depreciation" means, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal

Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Members.

"Distribution" means any money or other property distributed to a Member with respect to the Member's Membership Interest, but shall not include any payment to a Member for materials or services rendered nor any reimbursement to a Member for expenses permitted in accordance with this Agreement.

"Encumbrance" means any lien, pledge, encumbrance, collateral assignment or hypothecation.

"Fiscal Year" means an annual accounting period ending December 31 of each year during the term of the Company, unless otherwise specified by the Members.

"Gains from Capital Transactions" means the gains realized by the Company as a result of or upon any sale, exchange, condemnation or other disposition of capital assets of the Company or any entity in which the Company shall own an interest (which assets shall include Code Section 1231 assets and all real and personal property) or as a result of or upon the damage to or destruction of such capital assets.

"Gross Asset Value" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined by the contributing Member and the other Members, provided that, if the contributing Member and other Members cannot agree on the fair market value of a contributed asset, such determination shall be made by appraisal;

(b) The Gross Asset Values of all Company assets shall be adjusted to equal their respective gross fair market values, as determined by the Members, as of the following times: (i) the acquisition of an additional interest in the Company (other than upon the initial formation of the Company) by any new or existing Member in exchange for more than a de minimis Capital Contribution; (ii) the distribution by the Company to a Member of more than a de minimis amount of Company Property as consideration for an interest in the Company; and (iii) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (i) and (ii) above shall be made only if the Members reasonably determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as determined by the distributee and the other Members, provided that, if the

distributee and the other Members cannot agree on the determination of the fair market value of the distributed asset, such determination shall be made by appraisal; and

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subsection (f) of the definition of Profits and Losses herein and Section 6.10 hereof; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent the Members determine that an adjustment pursuant to subsection (b) hereof is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subsection (a), (b), or (d) hereof, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits, Gains from Capital Transactions or Losses.

"Majority in Interest" means a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members.

"Manager" means each Member of the Company in its capacity as a manager of the Company. **"Managers"** refers to such Persons as a group.

"Maximum Credit Limit" has the meaning assigned to it in Section 4.4.

"Member" means each Person designated as a member of the Company on Schedule I hereto or any other Person admitted as a member of the Company in accordance with this Agreement or the Act. **"Members"** refers to such Persons as a group.

"Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treasury Regulations Section 1.704-2(i).

"Member Nonrecourse Debt" means any nonrecourse debt (for the purposes of Treasury Regulations Section 1.1001-2) of the Company for which any Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1.752-2.

"Member Nonrecourse Deductions" means deductions as described in Treasury Regulations Section 1.704-2(i). The amount of Member Nonrecourse Deductions with respect to Member Nonrecourse Debt for any Fiscal Year equals the excess, if any, of (i) the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during such Fiscal Year, over (ii) the aggregate amount of any Distributions during that Fiscal Year to the Member that bears the economic risk of loss for such Member Nonrecourse Debt to the extent such Distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i).

"Membership Interest" means all of a Member's rights in the Company, including without limitation, the Member's share of the Profits and Losses of the Company, the right to receive distributions of the Company's assets, any right to vote and any right to participate in the management of the Company as provided in the Act and this Agreement.

"Nonrecourse Deductions" means deductions as set forth in Treasury Regulations Section 1.704-2(b)(1). The amount of Nonrecourse Deductions for a given Fiscal Year equals the excess, if any, of (i) the net increase, if any, in the amount of Company Minimum Gain during such Fiscal Year, over (ii) the aggregate amount of any Distributions during such Fiscal Year of proceeds of a Nonrecourse Liability that are allocable to an increase in Company Minimum Gain, determined according to the provisions of Treasury Regulations Section 1.704-2(h).

"Nonrecourse Liability" means any Company liability (or portion thereof) for which no Member bears the "economic risk of loss," within the meaning of Treasury Regulations Section 1.752-2.

"Person" means an individual, a trust, an estate, a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association or another entity.

"Profits" and "Losses" means, for each Fiscal Year, an amount equal to the Company's taxable income or loss for such year or period (excluding Gains from Capital Transactions), determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition of Profits and Losses (excluding Gains from Capital Transactions) shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of Profits and Losses shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or (c) of the definition of Gross Asset Value hereof, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits or Losses;

(d) Gain or loss resulting from any disposition of Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the Property disposed of, notwithstanding that the adjusted tax basis of such Property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be

taken into account Depreciation for such fiscal year or other period, computed in accordance with the definition of Depreciation;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a Distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits or Losses; and

(g) Notwithstanding any other provision of this definition of Profits and Losses, any items which are specially allocated pursuant to Sections 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11 or 6.12 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss, or deduction available to be specially allocated pursuant to Sections 6.2, 6.3, 6.7, 6.8, 6.9, 6.10, 6.11 or 6.12 hereof shall be determined by applying rules analogous to those set forth in subsections (a) through (f) above.

"**Property**" means (i) any and all property acquired by the Company, real and/or personal (including, without limitation, intangible property) and (ii) any and all of the improvements constructed on any real property.

"**Purchase Option Assignee**" has the meaning assigned to it in Section 9.4.

"**Purchasing Members**" has the meaning assigned to it in Section 9.3.

"**Secretary of State**" means the Secretary of State of South Carolina.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Tax Matters Manager**" means the Member designated by the Members as the "tax matters partner," as that term is defined in the Code.

"**Transfer**" means sell, assign, transfer, lease or otherwise dispose of property, including without limitation an interest in the Company.

"**Treasury Regulations**" means the Income Tax Regulations and Temporary Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"**Withdrawing Member**" has the meaning assigned to it in Section 9.2.

ARTICLE III - MANAGEMENT OF THE COMPANY

3.1 **Management by Members.** Each Member of the Company, by virtue of its status as a Member, shall also be a Manager of the Company for all purposes. Except as otherwise expressly provided in this Agreement, the Articles of Organization or the Act, all decisions with respect to the management of the business and affairs of the Company shall be

made by action of a Majority in Interest of the Members taken at a meeting or evidenced by a written consent executed by a Majority in Interest of the Members. Meetings of the Members may be held on such terms and after such notice as the Members may establish. The Members, acting in their capacity as Managers, shall have full and complete authority, power and discretion to manage and control the business of the Company, to make all decisions regarding those matters and to perform any and all other acts customary or incident to the management of the Company's business. The Members may elect or retain one or more assistant managers, agents or officers who may, but need not be, Members of the Company, with such titles, duties and compensation as may be designated by the Members, subject to any applicable restrictions specifically provided in this Agreement or contained in the Act. The Members may delegate responsibility for the day-to-day management of the Company to any individual Member or other Person who shall have and exercise on behalf of the Company all powers and rights necessary or convenient to carry out such management responsibilities.

3.2 Compensation and Expenses. Except as set forth below, the Members shall not receive any compensation from the Company for serving as Managers, but the Company will reimburse Members for all reasonable expenses incurred by the Members in connection with their service as Managers. Nothing contained in this Section is intended to affect the Membership Interest of the Members or the amounts that may be payable to the Members by reason of their respective Membership Interests. Paul Taylor, for his service as a Manager shall receive compensation from the Company in the form of a salary of \$120,000 per year, payable monthly, and such other employment benefits as shall be (a) offered generally to all the employees of the Company, and/or (b) approved by the Members.

3.3 Indemnification of Members for Management Services. The Company shall indemnify the Members in connection with their services as Managers of the Company to the fullest extent permitted or required by the Act, as amended from time to time, and the Company may advance expenses incurred by a Member upon the approval of the Majority in Interest of the remaining Members and the receipt by the Company of the signed statement of such Member agreeing to reimburse the Company for such advance in the event it is ultimately determined that such Member is not entitled to be indemnified by the Company against such expenses. The provisions of this Section 3.3 shall apply also to any Person to whom the Members have delegated management authority as provided in Section 3.1, whether or not such Person is a Member.

3.4 Limitation on Liability. No Member of the Company shall be liable to the Company for monetary damages for an act or omission in such Member's capacity as a Manager, except as provided in the Act for: (i) acts or omissions which a Member knew at the time of the acts or omissions were clearly in conflict with the interests of the Company; (ii) any transaction from which a Member derived an improper personal benefit; or (iii) acts or omissions occurring prior to the date this provision becomes effective. If the Act is amended to authorize further elimination of or limitations on the liability of Members as Managers, then the liability of Members of the Company shall be eliminated or limited to the fullest extent permitted by the Act as so amended. Any repeal or modification of this Section shall not adversely affect the right of protection of a Member existing at the time of such repeal or modification. The provisions of this Section 3.4 shall apply also to any Person to whom the Members have delegated management authority as provided in Section 3.1, whether or not such Person is a Member.

3.5 Liability for Return of Capital Contribution. The Members shall not be liable for the return of the Capital Contributions of the Members and upon dissolution the Members shall look solely to the assets of the Company.

ARTICLE IV - RIGHTS AND OBLIGATIONS OF MEMBERS

4.1 Names and Addresses of Members. The names, addresses and Membership Interests of the Members are as reflected in **Schedule I** attached hereto and made a part hereof, which Schedule the Company shall amend as of the effectiveness of any transfer or subsequent issuance of any Membership Interest.

4.2 Limited Liability. The Members shall not be required to make any contribution to the capital of the Company except as set forth in **Article V**, nor shall the Members in their capacity as such be bound by, or personally liable for, any expense, liability or obligation of the Company except to the extent of their interest in the Company, the obligation to return Distributions made to them under certain circumstances as required by the Act, and as set forth in **Section 4.4**. The Members shall be under no obligation to restore a deficit Capital Account upon the dissolution of the Company or the liquidation of any of their Membership Interests.

4.3 Bankruptcy or Incapacity of a Member. A Member shall cease to have any power as a Member or Manager, any voting rights or rights of approval hereunder upon such Member's bankruptcy, insolvency, dissolution, or assignment for the benefit of creditors; and the Member or successor upon the occurrence of any such event shall have only the rights, powers and privileges of a transferee enumerated in **Section 8.4**, and shall be liable for all obligations of the Member under this Agreement. In no event, however, shall a successor become a substitute Member unless the requirements of **Section 8.3** are satisfied.

4.4 Guaranty of Credit Line. The Members agree to take the steps necessary for the Company to secure from one or more creditors (collectively, the "**Creditor**") a line of credit for up to an aggregate maximum amount of fifty million dollars (\$50,000,000) (the "**Maximum Credit Limit**") in order to facilitate the Company making loans to its customers. In connection with securing this line of credit, the Members agree to provide personal guaranties in proportion to their respective Membership Interests, with such guaranties to be given to the Creditor or to any replacement Creditor obtained by the Company (but subject to the Maximum Credit Limit).

In the event that a Member makes a payment on his guaranty (a "**Paying Member**"), the Company shall immediately reimburse him, he shall be a creditor of the Company until he is reimbursed in full, and reimbursement shall not be treated as a Member Distribution. In the event that the Company does not immediately reimburse a Paying Member, the other Member shall immediately reimburse the Paying Member for their prorata portions. For purposes of the foregoing, the Members' prorata portions of the amount paid shall be in proportion to their respective Membership Interests. If a Member fails to reimburse the Paying Member within 30 days of demand, the unpaid amount shall bear interest at an interest rate equal to the prime rate of interest charged by Branch Banking and Trust Company, last published prior to the demand.

ARTICLE V - CAPITAL CONTRIBUTIONS AND LOANS

5.1 Initial Capital Contributions. Contemporaneously with the execution of this Agreement, the Members have each contributed cash to the Company in the respective amounts set forth as the initial Capital Contribution opposite their names on **Schedule I** attached hereto.

5.2 Additional Funds. In the event that the Members determine at any time (or from time to time) that additional funds are required by the Company for or in respect of its business or to pay any of its obligations, expenses, costs, liabilities or expenditures (including, without limitation, any operating deficits), then the Members may do the following

(a) agree by a Majority in Interest of the Members to make additional contributions to the capital of the Company provided that the aggregate Capital Contributions of all Members is equal to or less than one million dollars (\$1,000,000);

(b) agree by unanimous action of the Members to make additional contributions to the capital of the Company in the event the aggregate Capital Contributions of all Members is greater than one million dollars (\$1,000,000); or

(c) acting in their capacity as Managers, borrow all or part of such additional funds on behalf of the Company, with interest payable at then-prevailing rates, from one or more of the Members or from commercial banks, savings and loan associations or other commercial lending institutions (this subsection (c) is in addition to, and not in lieu of, the rights and obligations of the Members under **Section 4.4** above).

5.3 Additional Capital Contributions. If the Members determine that additional funds are required for the purposes set forth in **Section 5.2** above and that all or any portion of such additional funds should be contributed to the Company as additional Capital Contributions pursuant to the provisions and conditions of **Section 5.2**, the Members, in the absence of any written agreement between them to the contrary, shall make the necessary additional Capital Contributions to the Company in proportion to their respective Membership Interests.

5.4 No Interest on Capital Contributions. No interest shall be paid on any contribution to the capital of the Company.

5.5 Capital Accounts. A Capital Account shall be established for each Member and shall be credited with each Member's initial and any additional Capital Contributions. All contributions of Property to the Company by a Member shall be valued and credited to the Member's Capital Account at such Property's Gross Asset Value on the date of contribution. All Distributions of Property to a Member by the Company shall be valued and debited against such Member's Capital Account at such Property's Gross Asset Value on the date of Distribution. Each Member's Capital Account shall at all times be determined and maintained pursuant to the principles of this **Section 5.5** and Treasury Regulations **Section 1.704-1(b)(2)(iv)**. Each Member's Capital Account shall be increased in accordance with such Regulations by:

(a) The amount of Profits allocated, and the amount of items of income and gain specially allocated, to the Member pursuant to this Agreement; and

(b) The amount of any Company liabilities assumed by the Member or which are secured by any Company property distributed to such Member.

Each Member's Capital Account shall be decreased in accordance with such Regulations by:

(c) The amount of Losses allocated, and the amount of items of deduction and loss specially allocated, to the Member pursuant to this Agreement;

(d) The amount of Company Cash Flow distributed to the Member pursuant to this Agreement; and

(e) The amount of any liabilities of the Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

In addition, each Member's Capital Account shall be subject to such other adjustments as may be required in order to comply with the capital account maintenance requirements of Section 704(b) of the Code.

In the event that the Members shall determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed Property or that are assumed by the Company or the Members), are computed in order to comply with such Treasury Regulations, the Members may make such modification, provided that it is not likely to have a material effect on the amounts distributable to any Member upon dissolution of the Company. The Members also shall (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(g) and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Treasury Regulations Section 1.704-1(b).

ARTICLE VI - ALLOCATIONS, ELECTIONS AND REPORTS

6.1 Profits and Losses.

(a) Except as otherwise provided herein, the Profits and Losses of the Company for a Fiscal Year shall be allocated among the Members in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Year to equal the excess (which may be negative) of: (i) the hypothetical Distribution, if any, that such Member would receive if, on the last day of the Fiscal Year, (A) all Company assets were sold for cash equal to their Gross Asset Value, taking into account any adjustments thereto for such Fiscal Year, (B) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Liability, to the Gross Asset Value of the assets securing such liability), and (C) the net proceeds (after satisfaction of liabilities) and all other cash on hand were distributed in full pursuant to Section 7.2; over (ii) the sum of (X) the amount, if any, which such Member is unconditionally obligated to contribute to the capital of the Company, (Y) such Member's share of Company Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(g), and (Z) such Member's share of Member Minimum Gain determined pursuant to Treasury Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described above.

(b) Losses allocated pursuant to this Section 6.1 shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to this Section 6.1, the limitation set forth in this Section 6.1 shall be applied on a Member by Member basis so as to allocate the maximum possible Losses to each Member under Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations.

6.2 Nonrecourse Deductions. Nonrecourse Deductions shall be allocated among the Members in accordance with their respective Membership Interests.

6.3 Member Nonrecourse Deductions. Any Member Nonrecourse Deductions shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

6.4 Allocations Between Transferor and Transferee. In the event of the Transfer of all or any part of a Member's Membership Interest (in accordance with the provisions of this Agreement) at any time other than at the end of a Fiscal Year or the admission of a new Member (in accordance with the terms of this Agreement), the Transferring Member or new Member's share of the Company's income, gain, loss, deductions and credits, as computed both for accounting purposes and for federal income tax purposes, shall be allocated between the transferor Member and the transferee Member, or the new Member and the other Members, as the case may be, in the same ratio as the number of days in such Fiscal Year before and after the date of the Transfer or admission; provided, however, that if there has been a sale or other disposition of the assets of the Company (or any part thereof) during such Fiscal Year, then upon the mutual agreement of all the Members (excluding the new Member and the transferring Member), the Company shall treat the periods before and after the date of the Transfer or admission as separate Fiscal Years and allocate the Company's net income, gain, net loss, deductions and credits for each of such deemed separate Fiscal Years. Notwithstanding the foregoing, the Company's "allocable cash basis items," as that term is used in Section 706(d)(2)(B) of the Code, shall be allocated as required by Section 706(d)(2) of the Code and the Treasury Regulations thereunder.

6.5 Contributed Property and Book-Ups. In accordance with Code Section 704(c) and the Treasury Regulations thereunder, as well as Treasury Regulations Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss, and deduction with respect to any property contributed (or deemed contributed) to the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of the property to the Company for federal income tax purposes and its Gross Asset Value at the date of contribution (or deemed contribution). If the Gross Asset Value of any Company asset is adjusted as provided herein, subsequent allocations of income, gain, loss, and deduction with respect to the asset shall, solely for tax purposes, take account of any variation between the adjusted basis of the asset for federal income tax purposes and its Gross Asset Value in the manner required under Code Section 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Managers in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 6.5 are solely for purposes of federal and state taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or

share of Profits, Losses, other items or Distributions pursuant to any provision of this Agreement.

6.6 Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704-2(f) and 1.704-2(j)(2). This Section 6.6 is intended to comply with the minimum gain chargeback requirement in Treasury Regulation 1.704-2(f) and shall be interpreted consistently therewith.

6.7 Member Minimum Gain Chargeback. If there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt, as defined in Treasury Regulations Section 1.704-2(i)(4), during any Fiscal Year, each Member who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704-2(i)(4) and (5). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Section 1.704-2(i)(4). This Section 6.7 is intended to comply with the Member Minimum Gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

6.8 Qualified Income Offset. If any Member unexpectedly receives an adjustment, allocation or distribution as described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4) through (6) which causes or increases a deficit capital account balance in such Member's Capital Account (as determined in accordance with such Regulations), items of Company income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 6.8 shall be made if and only to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article VI have been tentatively made as if this Section 6.8 were not in the Agreement. This provision is intended to be a "qualified income offset," as defined in Treasury Regulation Section 1.704-1(b)(2)(ii)(d), such Regulations being specifically incorporated herein by reference.

6.9 Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Company Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore and (ii) the amount such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 6.9 shall be made if and only to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations

provided for in this Article VI have been tentatively made as if this Section 6.9 and Section 6.10 hereof were not in this Agreement.

6.10 Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a Distribution to a Member in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Members to whom the liquidating distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

6.11 Curative Allocations. The allocations set forth in Sections 6.1(b), 6.2, 6.3, 6.6, 6.7, 6.8, 6.9, 6.10 hereof (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 6.11. Therefore, notwithstanding any other provision of this Article VI (other than the Regulatory Allocations), the Members shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 6.1(a). In exercising their discretion under this Section 6.11, the Members shall take into account future Regulatory Allocations under Sections 6.6 and 6.7 that, although not yet made, are likely to offset other Regulatory Allocations previously made under Sections 6.2 and 6.3.

6.12 Compliance with Treasury Regulations. The above provisions of this Article VI notwithstanding, it is specifically understood that the Members may make such elections, tax allocations and adjustments, including amendments to this Agreement, as the Members deem necessary or appropriate to maintain to the greatest extent possible the validity of the tax allocations set forth in this Agreement, particularly with regard to Treasury Regulations under Code Section 704(b).

6.13 Tax Withholding. The Company shall be authorized to pay, on behalf of any Member, any amounts to any federal, state or local taxing authority, as may be necessary for the Company to comply with tax withholding provisions of the Code or the South Carolina Code or other income tax or revenue laws of any taxing authority. To the extent the Company pays any such amounts that it may be required to pay on behalf of a Member, such amounts shall be treated as a cash Distribution to such Member and shall reduce the amount otherwise distributable to such Member.

ARTICLE VII - DISTRIBUTIONS

7.1 Company Cash Flow. The Company Cash Flow for each Fiscal Year, to the extent available, shall be distributed to the Members at such times as are determined a Majority in Interest of the Members.

7.2 Tax Obligations. The Members shall exercise best efforts to make sufficient Distributions to enable any Member to meet the Member's federal or state income tax obligations resulting from the Member's ownership of the Membership Interest. All such distributions shall be made in accordance with the Members' respective Membership Interests.

7.3 Distributions in Liquidation. Upon liquidation of the Company, all of the Property shall be sold as provided in **Section 10.3** and Profits and Losses allocated accordingly. Proceeds from the liquidation of the Company shall be distributed in accordance with the provisions of **Section 10.3**.

7.4 Limitation Upon Distributions. No Distribution shall be declared and paid if payment of such Distribution would cause the Company to violate any limitation on Distributions provided in the Act.

ARTICLE VIII - TRANSFER OF INTERESTS AND ADMISSION OF MEMBERS

8.1 Restrictions on Transfer. Without the prior written consent of a Majority in Interest of the Members (which consent may be given or withheld in their sole discretion), (i) no Member may voluntarily or involuntarily Transfer, or create or suffer to exist any Encumbrance against, all or any part of such Member's record or beneficial interest in the Company and (ii) no Person may be admitted to the Company as a Member. Except for withdrawals in connection with a Transfer of a Membership Interest permitted by this Agreement, no Member may withdraw from the Company without the consent of a Majority in Interest of the Members.

8.2 Conditions Precedent to Transfers. Notwithstanding **Section 8.1**, no purported Transfer or Encumbrance otherwise complying with **Section 8.1** will be effective or allowed until the transferor and the proposed transferee furnish to the Company the instruments and assurances the Members may request, including without limitation, if requested, an opinion of counsel satisfactory to the Company that the interest in the Company being Transferred or Encumbered has been registered or is exempt from registration under the Securities Act, and applicable state securities laws. Further, and notwithstanding **Section 8.1**, no Transfer or Encumbrance will be effective or allowed (a) if it would result in the "termination" of the Company under **Section 708** of the Code unless all of the Members give their prior written consent to the Transfer or Encumbrance, or (b) if such transfer would violate any term or condition of an agreement between the Company and a Creditor.

8.3 Substituted Members. No assignee or transferee of a Membership Interest shall be admitted as a substituted Member of the Company unless, in addition to compliance with the conditions set forth in **Sections 8.1** and **8.2**, all of the following conditions are satisfied:

(a) The assignee has executed and delivered all documents deemed appropriate by the Company to reflect the assignee's admission to the Company and its agreement to be bound by this Agreement; and

(b) Payment has been made to the Company of all costs and expenses of admitting any such transferee or assignee as a substituted Member.

8.4 Rights of Transferee. Unless admitted to the Company in accordance with Section 8.3, the transferee of a Membership Interest or a part thereof shall not be entitled to any of the rights, powers or privileges of its predecessor in interest, except that it shall be entitled to receive and be credited or debited with its proportionate share of Profits, Losses, Gains from Capital Transactions, Company Cash Flow, Company Sales Proceeds, Company Refinancing Proceeds and Distributions in liquidation.

8.5 Transfers to Family Members. Notwithstanding any provision to the contrary, any Member may freely transfer all or any portion of their Membership Interest to the following parties and types of parties: (i) spouse, sibling, parent, parent-in-law, child, child-in-law, grandchild, great-grandchild (or in the case of Shaw Resources, Inc., a spouse, sibling, parent, parent-in-law, child, child-in-law, grandchild, great-grandchild of Jack Shaw; or (ii) a trust, family partnership, or similar estate planning entity in which the beneficiaries are such spouse, sibling, parent, parent-in-law, child, child-in-law, grandchild, great-grandchild; provided the Member making such transfer retains the sole decision-making authority in such entity or instrument (e.g., as sole Trustee, Manager, General Partner, etc.), provided the transfer to such party or parties shall be subject to conditions set forth in Section 8.2 and 8.3 above.

8.6 Death or Legal Incompetence of Ron Davis or Paul Taylor. Notwithstanding any provision to the contrary, following the death or the declaration of legal incompetence of Ron Davis, Paul Taylor shall have the option (exercisable in his sole discretion at any time within ninety (90) days following such death or declaration) to purchase the Membership Interest held by the estate or conservatorship of Ron Davis, provided that the transfer shall be subject to the conditions set forth in Section 8.3 above. Notwithstanding any provision to the contrary, following the death or the declaration of legal incompetence of Paul Taylor, Ron Davis shall have the option (exercisable in his sole discretion at any time within ninety (90) days following such death or declaration) to purchase the Membership Interest held by the estate or conservatorship of Paul Taylor, provided that the transfer shall be subject to the conditions set forth in Section 8.3 above. Any transfer of a Membership Interest pursuant to this Section 8.6 shall be valued in accordance with any agreement signed by Paul Taylor and Ron Davis and applicable to their rights under this Section 8.6. If no such agreement exists, or if the provisions of such agreement has expired by their express terms or otherwise do not provide an applicable valuation of the applicable Membership interest, then the value of the applicable membership interest shall be determined pursuant to Section 9.5 of this Agreement. The transfer of the applicable Membership Interest and payment of the applicable value shall be in accordance with Section 9.6 except that the purchase price may be paid at the option of the buyer with a promissory note providing for equal monthly payments of principal and interest over a period of five (5) years with an interest rate equal to the Wall Street Journal Prime Rate of interest then effective as of the date of death or declaration of legal incompetence of the seller. In the event a Membership Interest is transferred pursuant to this Section 8.6, the buyer and the Company shall use reasonable efforts to have the seller released from any guaranty the seller has entered into pursuant to Section 4.4.

ARTICLE IX - BUY-SELL

9.1 Buy-Sell. Each of the following events shall constitute a "*Buy-Sell Event*" under this Agreement:

- (a) The death, declaration of legal incompetence or dissolution and winding-up of a Member;

- (b) A judicial determination of the insolvency of any Member;
- (c) Any filing of a petition or suit under the bankruptcy laws by or against a Member that is not dismissed within sixty (60) days;
- (d) Any purported voluntary or involuntary Transfer or Encumbrance of all or any part of a Member's Membership Interest in a manner not expressly permitted by this Agreement;
- (e) Any material breach of this Agreement by a Member which is not cured within ten (10) days after written notice of such breach is given to the Member by the Company; or
- (f) Any withdrawal by a Member from the Company other than as may be expressly permitted by this Agreement.

9.2 Buy-Sell Notice. Upon the occurrence of a Buy-Sell Event, the Member to whom such event has occurred (the "**Withdrawing Member**"), or its executor, administrator or other legal representative in the event of death or declaration of legal incompetency, shall give notice of the Buy-Sell Event (the "**Buy-Sell Notice**") to the other Members within ten (10) days after its occurrence. If the Withdrawing Member fails to give the Buy-Sell Notice, any other Member (other than a Withdrawing Member) may give the notice at any time thereafter and by so doing commence the buy-sell procedure provided for in this Article IX.

9.3 Member's Purchase Option. Upon the occurrence of a Buy-Sell Event, each of the Members, except the Withdrawing Member and any other Withdrawing Member, shall have an option to purchase (the "**Purchase Option**") the Withdrawing Member's Membership Interest at Closing on the terms and conditions set forth in this Article IX. This right will be allocated among the Members who elect to purchase (the "**Purchasing Members**") in the proportion they mutually agree upon, or, in the absence of agreement, in the ratio that each of the Purchasing Member's Membership Interest bears to the aggregate Membership Interests of all Purchasing Members. The Purchasing Members must give notice of their election to exercise their Purchase Option to the Withdrawing Member and all other Members within thirty (30) days following delivery of the Buy-Sell Notice.

9.4 Assignment of Purchase Option. If, at the occurrence of a Buy-Sell Event, there exist only two (2) then-current Members (including the Withdrawing Member), the Member that is not withdrawing shall have the option during the thirty (30) day period set forth in **Section 9.3** to assign its Purchase Option to any Person other than the Withdrawing Member (the "**Purchase Option Assignee**") by notifying the Withdrawing Member and the Company of such assignment in writing. After delivery of such notice, the Purchase Option Assignee shall have the option to purchase the Withdrawing Member's Membership Interest on the same terms and conditions as would apply to the Member from which the Purchase Option was assigned; provided, however, that the Purchase Option Assignee shall not have the rights of assignment set forth in this **Section 9.4**. Notwithstanding any other provision of **Article VIII** or this **Article IX**, any Purchase Option Assignee which exercises its Purchase Option, as provided herein, (i) shall only have those rights as specified in **Section 8.4** above; (ii) shall not be admitted as a substitute Member without full compliance with **Section 8.3**; and (iii) shall be subject to the Buy-Sell restrictions imposed under this **Article IX**. In the event the Purchase Option Assignee does not exercise the Purchase Option, the Purchase Option Assignee shall have no further rights under this Agreement.

9.5 Valuation. Unless a price is agreed to in writing by the purchaser(s) and seller, the purchase price for the Withdrawing Member's Membership Interest shall be determined by a single appraisal made by an appraiser who is agreed upon by the purchaser(s) and the seller within twenty (20) days of the receipt of a Buy-Sell Notice, which appraisal shall be final. If the parties cannot agree on a single appraiser within such initial twenty (20) day period, the purchase price for the Withdrawing Member's Membership Interest shall be determined by three appraisers, one selected by the purchaser(s) as a group, one selected by the seller and the third selected by the other two appraisers. The purchaser(s) and the seller shall have ten (10) days after the initial period, i.e., until the thirtieth (30th) day after the receipt of a Buy-Sell Notice, to appoint their respective appraisers, and if either fails to so appoint an appraiser, he shall be deemed to have designated the appraiser selected by the other as the single appraiser. The appraiser or appraisers shall make their determination within forty-five (45) days of their appointment. The value determined by a majority of the appraisers (or the sole appraiser) will be final. The costs of appraisal shall be borne equally between the purchaser(s) as a group and the seller. The purchase price to be paid for the Withdrawing Member's Membership Interest will be

reduced by the amount of any Distributions made by the Company to the Withdrawing Member from the date the Buy-Sell Event occurred with respect to the Withdrawing Member to the Closing.

9.6 Closing. The closing (the "**Closing**") of the purchase of any Membership Interest pursuant to this Article IX shall take place on the date agreed upon by the purchaser(s) and seller, but not later than ninety (90) days after the occurrence of the Buy-Sell Event. The purchase price for the Membership Interest being purchased will be payable in full in cash at Closing. The purchase price will bear interest from the date of the occurrence of the Buy-Sell Event until the Closing at an interest rate equal to the prime rate of interest charged by Branch Banking and Trust Company, last published prior to the occurrence of the Buy-Sell Event. Upon tender of the purchase price, the Withdrawing Member shall execute and deliver such assignments and other instruments as may be reasonably necessary to evidence and carry out the transfer of its Membership Interest to the purchaser(s). If upon such tender, the Withdrawing Member shall fail or refuse to deliver such assignment and other instruments, his Membership Interest shall nevertheless be transferred on the books of the Company, and he shall have no other or further interest in the Company. In connection with the sale of any Membership Interest under this Article IX, unless otherwise agreed by the purchaser(s) and seller, the purchaser(s) will assume the seller's allocable portion of Company obligations to the extent related to the transferred interest as well as the seller's individual obligations to the extent related to the transferred interest, other than income tax liabilities of the seller. Notwithstanding any other provision of Article VIII or this Article IX, any transferee, assignee or purchaser of a Member's interest, as provided herein, shall only have those rights as specified in Section 8.4 above, and shall not be admitted as a substitute Member without full compliance with Section 8.3.

9.7 Effect of the Rule Against Perpetuities. Notwithstanding any other provision of this Agreement, all options and rights to purchase or sell created by this Agreement shall expire on the later of (a) twenty-one (21) years after the death of the last remaining child, living as of the date of this Agreement, of any Member who is a member of the Company at the time of its organization, or (b) twenty-one (21) years after the death of the last to die of the individual Members who are members of the Company at the time of its organization.

9.8 Effect on Withdrawing Member's Interest. (i) From the date of the occurrence of the Buy-Sell Event to the date of the transfer of the Withdrawing Member's Membership Interest under this Article IX, the Membership Interest represented by the Withdrawing Member's Membership Interest will be excluded from any calculation of aggregate Membership Interests for purposes of any approval required of Members under this Agreement. (ii) Without limiting the generality of any other provision of this Agreement, upon the exercise of the Purchase Option, the Withdrawing Member, without further action, will have no rights in the Company or against the Company or any Member other than the right to receive payment for its Membership Interest in accordance with this Article IX.

9.9 Failure to Exercise Purchase Option. In the event the Members or Purchase Option Assignee, if any, do not exercise their Purchase Options, the Withdrawing Member or its executor, administrator or other legal representative in the event of death or declaration of legal incompetency, may transfer its economic rights in the Membership Interest of the Withdrawing Member to any Person; provided, however, that any transferee of the Withdrawing Member's Membership Interest, as provided herein, (i) shall only have those rights as specified in Section 8.4; (ii) shall not be admitted as a substitute Member without full compliance with Section 8.3; and (iii) shall be subject to the Buy-Sell restrictions imposed under this Article IX.

9.10 Effectiveness of Section 8.6. Sections 9.1 through and including 9.9 shall not affect or in any way limit or diminish the rights granted to Paul Taylor and Ron Davis in Section 8.6 above. In the event of the death or declaration of legal incompetence of either Paul Taylor or Ron Davis, no Buy-Sell Event for purposes of Article IX shall be deemed to have occurred until and unless the party having the purchase option under Section 8.6 either declines in writing to exercise his purchase option or fails to exercise his purchase option as provided by Section 8.6. If the party having the purchase option under Section 8.6 either declines in writing to exercise his purchase option or fails to exercise his purchase option as provided by Section 8.6, then at that time a Buy-Sell Event shall be deemed to have occurred, and the provisions of Article IX shall become operative and effective thereto.

ARTICLE X - DISSOLUTION AND LIQUIDATION OF THE COMPANY

10.1 Dissolution Events. The Company will be dissolved upon the happening of any of the following events:

- (a) All or substantially all of the assets of the Company are sold, exchanged or otherwise transferred (unless the Members have elected to continue the business of the Company pursuant to **Section 10.2** hereof);
- (b) All Members sign a document stating their election to dissolve the Company;
- (c) The expiration of the term of the Company (as set forth in **Section 1.6**);
- (d) Upon the happening of the death, bankruptcy or any other event of withdrawal (as defined in the Act) with respect to any Member, unless there is at least one remaining Member and the business of the Company is continued by the written consent of a Majority in Interest of the remaining Members within ninety (90) days of the action by or affecting the withdrawing Member; or
- (e) The entry of a decree of judicial dissolution or the issuance of a certificate for administrative dissolution under the Act.

10.2 Continuation. Upon the occurrence of any of the events described in **Section 10.1(e)** above with respect to any of the Members, the business of the Company will be continued if within ninety (90) calendar days after the occurrence of such event a Majority in Interest of the remaining Members elects to continue the business of the Company. If the Members fail to continue the Company's business as provided in this Section, the Company will be liquidated pursuant to **Section 10.3**.

10.3 Liquidation. Upon the happening of any of the events specified in **Section 10.1** and, if applicable, the failure of the Members to continue the business of the Company as permitted by **Section 10.2**, the Members, or any liquidating trustee elected by a Majority in Interest of the Members, will commence as promptly as practicable to wind up the Company's affairs unless the Members or the liquidating trustee (either, the "Liquidator") determines that an immediate liquidation of Company assets would cause undue loss to the Company, in which event the liquidation may be deferred for a time determined by the Liquidator to be appropriate. Assets of the Company may be liquidated or distributed in kind, as the Liquidator determines to be appropriate. The Members will continue to share Company Cash Flow, Profits and Losses during the period of liquidation in the manner set forth in **Articles VI and VII** of this Agreement. The proceeds from liquidation of the Company, including repayment of any debts of Members to the Company, and any Company assets that are not sold in connection with the liquidation will be applied in the following order of priority:

- (a) To payment of the debts and satisfaction of the other obligations of the Company, including without limitation debts and obligations to Members;
- (b) To the establishment of any reserves deemed appropriate by the Liquidator for any liabilities or obligations of the Company, which reserves will be held for the purpose of paying liabilities or obligations and, at the expiration of a period the

Liquidator deems appropriate, will be distributed in the manner provided in Section 10.3(c); and thereafter

(c) To the payment to the Members of the positive balances in their respective Capital Accounts, pro rata, in proportion to the positive balances in those Capital Accounts after giving effect to all allocations under Article VI and all Distributions under Article VII for all prior periods, including the period during which the process of liquidation occurs.

10.4 Articles of Termination. Upon the dissolution and commencement of the winding up of the Company, the Members shall cause Articles of Termination to be executed on behalf of the Company and filed with the Secretary of State, and the Members shall execute, acknowledge and file any and all other instruments necessary or appropriate to reflect the dissolution of the Company.

ARTICLE XI - MISCELLANEOUS

11.1 Records. The records of the Company will be maintained at the Company's principal place of business or at any other place the Members select, provided the Company keeps at its principal place of business the records required by the Act to be maintained there. Appropriate records in reasonable detail will be maintained to reflect income tax information for the Members. Each Member, at its expense, may inspect and make copies of the records maintained by the Company and may require an audit of the books of account maintained by the Company to be conducted by the independent accountants for the Company.

11.2 Reserves. The Members may cause the Company to create reasonable reserve accounts to be used exclusively to fund Company operating deficits and for any other valid Company purpose. The Members shall in their sole discretion determine the amount of payments to such reserve accounts.

11.3 Notices. Any notice or other communication required by this Agreement must be in writing. Notices and other communications will be deemed to have been given when delivered by hand or dispatched by means of electronic facsimile transmission or nationally recognized air courier, or on the third business day after being deposited in the United States mail, postage prepaid. In each case, notice hereunder shall be addressed to the Member to whom the notice is intended to be given at its address set forth on Schedule I to this Agreement or, in the case of the Company, to its principal place of business. A Member may change its notice address by notice in writing to the Company and to each other Member given in accordance with this Section 11.3.

11.4 Amendments. This Agreement and the Articles of Organization may be amended only by the written consent of a Majority in Interest of the Members; provided, however, that any provision of this Agreement requiring the consent, approval or action of more than a Majority in Interest of the Members (or any provision of the Articles of Organization effecting any such provision of this Agreement) may be amended or waived only by a written action signed by the Members holding the required percentage of Membership Interests.

11.5 Additional Documents. Each party hereto agrees to execute and acknowledge all documents and writings which the Members may deem necessary or expedient in the creation of the Company and the achievement of its purposes, including but not limited to the Articles of Organization and any amendments or cancellation thereof.

11.6 Representations of Members. Each Member represents and warrants to the Company and every other Member that it (i) is fully aware of, and is capable of bearing, the risks relating to an investment in the Company; (ii) understands that its interest in the Company has not been registered under the Securities Act or the securities law of any jurisdiction in reliance upon exemptions contained in those laws; and (iii) has acquired its interest in the Company for its own account, with the intention of holding the interest for investment and without any intention of participating directly or indirectly in any redistribution or resale of any portion of the interest in violation of the Securities Act or any applicable law.

11.7 Survival of Rights. Except as provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

11.8 Interpretation and Governing Law. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa. The masculine gender shall include the feminine and neuter. The Article and Section headings or titles shall not define, limit, extend or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina without giving effect to the conflicts of laws provisions thereof.

11.9 Severability. If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase or word to Persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

11.10 Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature pages and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

11.11 Tax Matters Manager. For purposes of this Agreement, the Members may designate one Member as the Tax Matters Manager.

11.12 Creditors Not Benefited. Nothing in this Agreement is intended to benefit any creditor of the Company or of any Member. No creditor of the Company or of any Member will be entitled to require the Members to solicit or accept any loan or additional capital contribution for the Company or to enforce any right which the Company or any Member may have against a Member, whether arising under this Agreement or otherwise.

[Signatures on Following Page]

Executed as of the day and year first above written.

THE COMPANY:

By: Paul Taylor
Paul Taylor, Member

THE MEMBERS:

Paul Taylor
Paul Taylor
Ron Davis
Ron Davis

Shaw Resources, Inc.
By: [Signature]
Name: _____
Title: _____

SCHEDULE I

<u>Name and Address of Members</u>	<u>Initial Capital Contribution</u>	<u>Membership Interest</u>
Paul Taylor 1701 Old Pendleton Road Easley, SC 29642	\$____.00	25.0%
Ron Davis 1701 Old Pendleton Road Easley, SC 29642	\$____.00	25.0%
Shaw Resources, Inc. 126 Millport Circle Greenville, SC 29607	\$____.00	50.0%
	\$____.00	100.0%

Exhibit B



Parker Poe

Robert C. Byrd

Partner

Telephone: 843.727.2665

Direct Fax: 843.727.2680

bobbybyrd@parkerpoe.com

Charlotte, NC

Columbia, SC

Myrtle Beach, SC

Raleigh, NC

Spartanburg, SC

September 21, 2012

Builders Design House, LLC
300 South Main Street
Mauldin, SC 29662

Ronald Lee Davis
1703 Old Pendleton Road
Easley, SC 29642

Shaw Funding, LLC
126 Millport Circle, Suite 200
Greenville, SC 29601

BuildersFirst Funding, LLC
300 South Main Street
Mauldin, SC 29662

William Paul Taylor
1701 Old Pendleton Road
Easley, SC 29642

William R. Shaw
605 Scarborough Drive
Greer, SC 29650

Build A House, LLC
300 South Main Street
Mauldin, SC 29662

W. Donald Shaw
6 Rubaiyat Court
Greer, SC 29550

RE: Loan (the "Loan") from Wells Fargo Bank, N.A., evidenced by that certain Promissory Note by Builders Design House LLC (the "Borrower"), dated March 23, 2011, in the original principal amount of \$200,000.00, which is secured by that certain Security Agreement dated October 12, 2010, and Deed of Trust and Assignment of Rents dated October 12, 2010, on certain property in Durham County, NC, and personally guaranteed by Shaw Funding, LLC, Ronald Lee Davis, BuildersFirst Funding, LLC, William Paul Taylor, William R. Shaw, W. Donald Shaw, and Build A House, LLC

Dear Sirs:

This firm represents Wells Fargo Bank, N.A. ("Wells Fargo"), as successor by merger to Wachovia Bank, National Association, in connection with the above-referenced Loan. Please be advised that the Loan is in default for failure to make payments in accordance with the terms and conditions thereof, specifically including without limitation the failure to make the July 2012 payment and all subsequent monthly payments. As a result, Wells Fargo has accelerated the balance of the Loan, which is now immediately due and payable in full.

September 21, 2012
Page 2

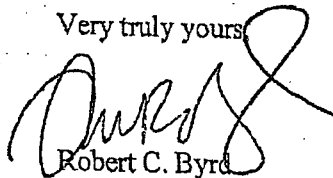
The amount due on the Loan as of September 19, 2012, exclusive of costs and legal fees, is \$162,771.93 which represents: (1) unpaid principal in the amount of \$160,000.00; (2) accrued and unpaid interest in the amount of \$2,303.33; and (3) late fees in the amount of \$468.60. Interest continues to accrue on the Loan after September 19, 2012 at the rate of \$22.22 per day.

Unless the aforesaid total amount, together with additional interest through the date of payment, and all legal fees and costs, is received in this office, in certified funds, by no later than 5:00 p.m. on Monday, October 8, 2012, Wells Fargo shall have the right to pursue all available legal and equitable remedies to collect all amounts due under the Loan.

Any partial payment(s) that may be made or received on account of the Loan shall not constitute an agreement to waive demand for full payment of all amounts due under the Loan. Nothing contained in this letter constitutes a waiver of, or any agreement to forbear from exercising, any rights and remedies under the Loan documents, at law or in equity, which such rights and remedies are expressly reserved.

Please give this matter your immediate attention.

Very truly yours,



Robert C. Byrd

cc: Wells Fargo Bank, N.A.

Exhibit C

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (the "Agreement") is made as of the 7th day of June, 2012, and is among WELLS FARGO BANK, NATIONAL ASSOCIATION, (the "Contractor"), BUILDERS DESIGN HOUSE, LLC, a South Carolina limited liability company (the "Distributor") and RONALD DAVIS, WILLIAM PAUL TAYLOR, WALDO DONALD SHAW, WILLIAM RONALD SHAW and SHAW FUNDING LLC, (the "Guarantors"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in that certain Master Purchase Order Assignment Agreement dated April 26, 2011 (the "Assignment Agreement") between the Contractor and the Distributor.

WITNESSETH:

WHEREAS, the Contractor and the Distributor are parties to the Assignment Agreement;

WHEREAS, the Contractor and the Distributor desire to terminate the Assignment Agreement, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing recitals, and of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Termination of Assignment Agreement

Effective upon receipt of a payment in good funds from the Distributor to the Contractor of \$7,500 on or before June 7, 2012 (the "Payment Amount") the Assignment Agreement is hereby terminated; provided, however, that paragraphs 13, 14, and 17 of the Assignment Agreement shall survive such termination.

2. Release of Liens.

Upon receipt of the Payment Amount, the Contractor agrees to terminate all of its security interests in the assets of the Distributor and the Security Agreement and Financing Statement given by Contractor in connection with the Assignment Agreement and authorizes the Distributor to file any documents to reflect such termination.

3. Releases.

a) Effective upon timely receipt of the Payment Amount, the Contractor hereby releases and forever discharges Guarantors, Distributor, and its shareholders, directors, officers, employees, representatives, agents and successors from all claims, demands, actions, causes of action, suits, debts or obligations of any kind whatsoever, whether in equity or at law, known or unknown, accrued or unaccrued, arising from or related to the Assignment Agreement and the termination thereof, except for the continuing obligations of the parties under paragraphs 13, 14, and 17 of the Assignment Agreement.

b) The Distributor and Guarantors hereby release and forever discharge Contractor,

and its shareholders, directors, officers, employees, representatives, agents and successors from all claims, demands, actions, causes of action, suits, debts or obligations of any kind whatsoever, whether in equity or at law, known or unknown, accrued or unaccrued, arising from or related to the Assignment Agreement and the termination thereof.

4. Indemnification.

Each of the parties shall indemnify and hold the other harmless from, and reimburse the other for, any loss, fee, cost, expense, damage, liability or claim (including, without limitation, reasonable attorney's fees and costs) arising out of, based upon, or resulting from its breach of or failure to perform any of its covenants or agreements contained in this Agreement to be performed on or after the date hereof.

5. Miscellaneous.

(a) This Agreement contains the entire understanding of the parties in connection with the transactions contemplated hereby.

(b) If any of the provisions set forth in this Agreement shall be held by a court of competent jurisdiction to be invalid, void or unenforceable in whole or in part, the remaining provisions shall continue in full force and effect.

(c) This Agreement shall not be assigned by either party hereto without the prior written consent of the other. This Agreement is binding upon and shall inure to the benefit of each of the parties and their respective successors and permitted assigns.

(d) Time is of the essence under this Agreement.

(e) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(f) This Agreement may be executed in two (2) or more counterparts and it shall not be necessary that the signature of all parties be contained on any one counterpart. Each counterpart shall be deemed an original but all of which together shall constitute one and the same instrument. An executed facsimile of this Agreement shall be deemed to be a valid and binding agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**WELLS FARGO BANK
NATIONAL ASSOCIATION**

By: _____
Its: _____

BULDERS DESIGN HOUSE, LLC

By: _____
Its: _____

RONALD DAVIS

WILLIAM PAUL TAYLOR

W. Donald Shaw
WALDO DONALD SHAW

William Ronald Shaw
WILLIAM RONALD SHAW

SHAW FUNDING LLC

By: W. Donald Shaw
Its: MEMBER

Builders Design House, LLC termination agreement dated June 7, 2012

Our

Facebook social plugin



Click on any image to view larger.

Business Liquidation Auction

Contents of Build A House

Saturday, Oct.27th 10am

Preview: Friday, Oct.26th 2-6pm and Saturday, Oct.27th 9am

Auction Location:

300 S. Main St. Mauldin, SC 29662

* Online Bidding will be available on Select Machinery

Partial List: Marmo Elettromeccanica Bristol Edge Polishing Machine- Model 2001, Marmo Elettromeccanica Florida 3600 Bridge Saw-Model 2000, TCM FG25 Forklift, 1998 Ford F800 Truck, 1999 Dodge Ram 3500 Truck, Security System, Phone System, Office Equipment & Furniture inc. Conference Tables, Executive Chairs, Desks, Credenzas, Drafting Tables, Filing Cabinets, Printers, Shelving and more, Bathroom Sink Cabinets w/sinks, 150' of Pallet racking (12-15' high), Atlas Corpeo GX18FF Air Compressor, Central Pneumatic Air Compressor, Ellis Mitre Band Saw, Lincoln Mig Welder, Door Jig, Paint Sprayers, Pressure Washer, Dock plate, 6 Air Hose Reels, 100s of New Progress Lighting Fixtures, New Cabinets- Assembled & Unassembled, Bathroom Toilets, Toilet Seats, Sinks and Accessories, Fluorescent Bulbs, Elite Can Lights, Fan Kits, (4) Texas Gas Furnaces, Range Hoods, Metal & Wood Doors & Door Frames, Marble Slabs, Rolling Stairs, Industrial Fans, Store Displays for Marble, Stone and Fixtures and More...

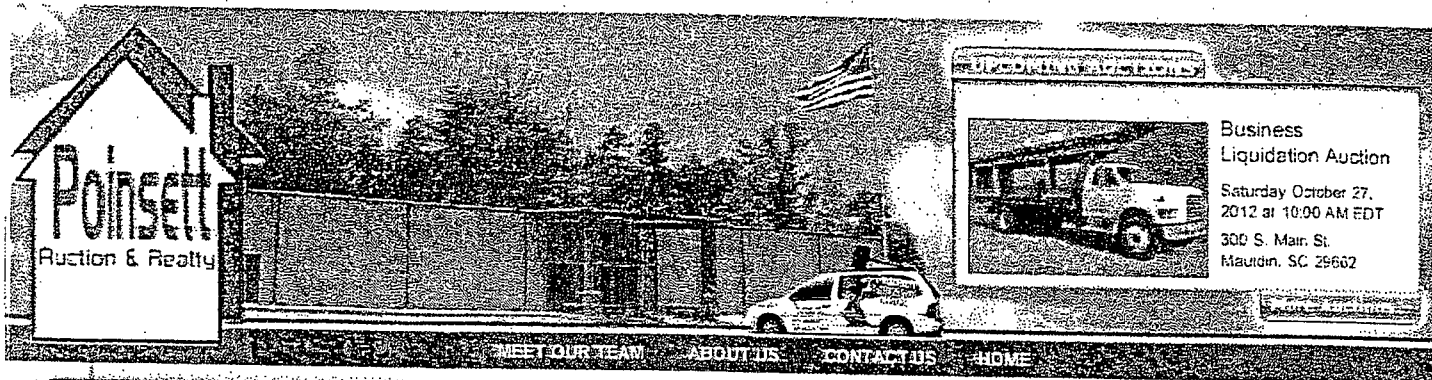
More Details Coming Soon...



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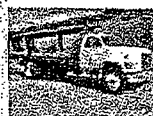
Exhibit D



AUCTION DETAIL

BUSINESS LIQUIDATION AUCTION

[Details](#)
[Directions/Map](#)
[Contact](#)
[Email Auction](#)
[Print](#)
[View All Auctions](#)



Contents of Build A House
 Stone Cutting & Polishing Machinery, Forklift, 2 Trucks,
 100s of New Lighting fixtures, New Cabinets, Home
 Building Supplies & more, Office Furniture & Equipment
 and More..

Live On-Site Auction

Begins: Saturday, October 27, 2012 at 10:00 AM EDT

Location: 300 S. Main St., Mauldin, SC 29662

Photo Galleries [4]

SHARE

Inspection

Begins: Friday, October 26, 2012 at 2:00 PM EDT

Ends: Friday, October 26, 2012 at 6:00 PM EDT

Location: 300 S. Main St., Mauldin, SC 29662

Details



HOME

AUCTION CALENDAR

SERVICES OFFERED

SENIOR RELOCATION

WHY CHOOSE AUCTIONS

REAL ESTATE FOR SALE

TESTIMONIALS

NEWS & EVENTS

FAQS & TERMINOLOGY

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PLAINTIFFS' VERIFICATION

12-06319

I, Waldo Donald Shaw, have reviewed the Complaint to be filed in the case of *Shaw Funding, LLC, Build A House, LLC d/b/a Multifamily Products et al. v. Multifamily Products, LLC and Paul Taylor, as a member of Build A House and individually*. I fully understand and agree that the facts and allegations contained in the Complaint are true and accurate to the best of my knowledge.

10.2.12
Date

Waldo Donald Shaw
Waldo Donald Shaw

FILED OCT -2 PM 4:17
CLERK OF COURT
SEATTLE CO WA
2012 OCT 2 PM 4:17

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House, LLC

☒ Plaintiff

v.

Multifamily Products, LLC, Paul Taylor, As A

Member Of Build A House And Individually,

☐ Defendant.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

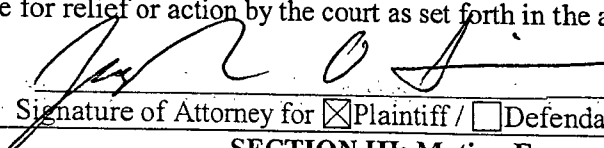
IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-23-6319

2012 OCT -2 P 4: 15

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Joseph O. Smith, Bar No. 77475 Address: Post Office Box 10529 Greenville, SC 29603 phone: 864-349-2600 fax: 864-349-0303 e-mail: jsmith@roecassidy.com other:		Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Plaintiff's Application for Ex Parte Temporary Restraining Order and Motion for Temporary Injunction Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 2, 2012 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: Date Filed:			

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

COUNTY OF GREENVILLE
Shaw Funding, LLC, et al.

MOTION AND ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT

vs.
Multifamily Products, LLC et,

Plaintiff

PILOT PROGRAM

Defendant.

CASE NO. 2012-CP-23- 06319

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

** Plaintiffs are currently unaware who, if anyone, represents Ds. Ds have been mailed copies of this Request.*

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.).

- ☒ Title 33—South Carolina Business Corporation Act of 1988;
- ☐ Title 35—South Carolina Uniform Securities Act of 2005;
- ☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
- ☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
- ☒ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
- ☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
- ☐ Other Appropriate Matter determined by the Chief Justice.

3. Insert name and contact information of moving party or parties:

Party:	Shaw Funding, LLC, et al	Party:	
Name:	Joseph O. Smith	Name:	
Address:	P.O. Box 10529 Greenville, SC 29603	Address:	
Phone:	864/349-2600	Fax:	864/349-0303
Email:	jsmith@roecassidy.com	Email:	
Signature:	<i>[Signature]</i>	Signature:	
Date:	10/2/12	Date:	

4. Indicate whether the non-moving party or parties ☐ consents, ☐ does not oppose, ☐ opposes; ☒ position on assignment is unknown.

Recommendation of the Business Court Judge:

☐ Recommends

☐ Declines to Recommend

Signature of Business Court Judge

Date

Assignment to the Business Court Pilot Program for
DENIED.

County is hereby ☐ ORDERED ☐

It is further ☐ ORDERED ☐ DENIED that exclusive jurisdiction over this case be assigned to the Honorable to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Jean Hoefer Toal, Chief Justice

This day of
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiffs,

vs.

Multifamily Products, LLC, and
Paul Taylor, as a member of Build a
House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23-_____

BUSINESS COURT APPLICATION

PLAINTIFFS' APPLICATION FOR BUSINESS COURT

1. Procedural Summary:

This action was commenced by the Plaintiffs on October 2, 2012, with the filing of a Complaint against Defendants Multifamily Products, LLC and Paul Taylor, as a member of Build a House, LLC and individually. D. Randle Moody, II and Joseph O. Smith of Roe Cassidy Coates & Price, P.A. represent the Plaintiffs. At this time Plaintiffs do not know who, if anyone, represents Defendants.

2. Summary of Claims in the Complaint:

This case centers around various acts of corporate malfeasance by the Defendants and the alleged damages resulting from those actions.

Build A House, LLC d/b/a Multifamily Products ("BAH") was established as a member-managed LLC with Shaw Resources, Inc., Defendant Paul Taylor, and Ron Davis as members. Shaw Resources, Inc. subsequently transferred its membership interest to Plaintiff Shaw Funding, LLC. The remaining named Plaintiffs are all companies related to or otherwise affiliated with BAH. An Operating Agreement

governing BAH fixed the ownership percentage at 50% for Shaw, 25% for Taylor, and 25% for Davis. Shaw invested a substantial amount of money in BAH and currently has sizable assets tied up in the business and its projects.

BAH was formed for the purpose of providing home builders, lumber yards, and financial institutions services related to the funding of construction loans and other services. The company later shifted focus and began to provide financing to large government backed multifamily construction projects. As part of the business model, BAH required those it financed to buy building materials from the BAH supply house. Taylor directed the day-to-day functions of BAH and its projects. He was responsible for sales, accounting, operations, and financial management of the company. Taylor focused on acquiring new projects, coordinating supply and delivery channels and developing relationships with vendors and suppliers.

It is believed that Taylor has engaged in a campaign of subversive acts and self dealing contrary to the best interests of BAH and its owners and members, including Shaw.

Specifically, Plaintiffs allege that Taylor has and continues to deny Shaw access to BAH's corporate offices, accounting and corporate records and failed to respond to Shaw's requests for an accounting of company assets and liabilities all in contravention of the Operating Agreement. The Plaintiffs further allege that Taylor mismanaged and misappropriated BAH company assets, failed to keep numerous BAH loans current, and caused the company to default on those obligations. Shaw and BAH also allege, Taylor misappropriated BAH's trade name, confidential, proprietary, and trade secret information, to create and establish Multifamily Products, LLC – a company in direct competition with BAH. Finally, Shaw and BAH recently became aware that Taylor plans to auction off BAH inventory and assets without the authority to do so and despite creditors' having security interests in those same assets.

Taylor's actions have placed BAH in financial peril and subjected Shaw and other individuals to potential liability for BAH debts.

The Complaint sets forth fifteen causes of action arising out of the dispute among the parties. Plaintiff alleges they are entitled to relief for (1) Injunctive Relief; (2) Breach of Contract-Operating Agreement; (3) Conversion; (4) Fraud; (5) Breach of Fiduciary Duty/Self-Dealing; (6) Appointment of a Receiver; (7) Tortious Interference with Contractual Relationships; (8) Tortious Interference with Prospective Contractual Relationships; (9) Violation of the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 *et seq.*; (10) Violation of the South Carolina Unfair Trade Practice Act, S.C. Code Ann. § 39-5-10 *et seq.*; (11) Constructive Trust; (12) Demand for Accounting; (13) Corporate Waste – Recovery for Impairment of Assets; (14) Constructive Fraud; and (15) Negligent Misrepresentation. The Plaintiffs petition the Court for monetary damages, injunctive relief, and for appointment of a Receiver.

3. Jurisdictional Issues:

Plaintiff Shaw Funding, LLC is a South Carolina limited liability corporation doing business and headquartered in the County of Greenville, State of South Carolina.

Build A House, LLC ("BAH") is a South Carolina limited liability corporation with its headquarters in Greenville and does business throughout this and other states. The remaining named Plaintiffs are all companies associated with BAH.

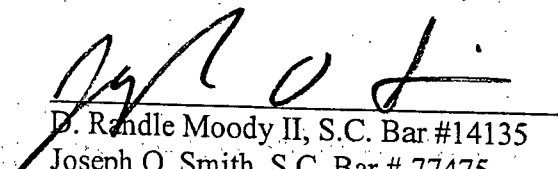
Defendant, Paul Taylor is a citizen and resident of Greenville County, South Carolina.

Upon information and belief, Defendant Multifamily Products, LLC is a South Carolina limited liability corporation doing business and headquartered in the County of Greenville, State of South Carolina.

Therefore, Plaintiffs Shaw request that this matter be assigned to the Business Court Program.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody II, S.C. Bar #14135
Joseph O. Smith, S.C. Bar # 77475
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600
(864)-349-0303 fax
RMoody@roecassidy.com
JSmith@roecassidy.com
Attorneys for Plaintiffs

October 2, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiffs,

vs.

Multifamily Products, LLC, and
Paul Taylor, as a member of Build a
House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

2012 OCT -2 P 4: 15
C.A. No.: 2012-CP-23-6319

**PLAINTIFFS' APPLICATION FOR
EX PARTE TEMPORARY
RESTRAINING ORDER AND
MOTION FOR TEMPORARY
INJUNCTION**

COMES NOW, the Plaintiffs, by and through their undersigned attorneys, and respectfully moves this honorable Court as follows:

Plaintiffs apply to the Court, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, for a Temporary Restraining Order, and moves the Court for issuance of a Temporary Injunction enjoining the Defendants, Paul Taylor ("Taylor") and Multifamily Products, LLC ("Multifamily"), pending a trial on the merits of this matter, from:

1. Utilizing the assets, confidential, proprietary and trade secret information of Build A House, LLC d/b/a Multifamily Products ("BAH") for the operation of Multifamily as a competing business.
2. Continuing to operate the Multifamily website.

3. Continuing any business operations of Multifamily.
4. Misusing or otherwise misappropriating the assets of BAH.
5. Interfering with the business endeavors of BAH, including ongoing construction projects.
6. Taking and/or transferring money out of any accounts owned, held by or in which BAH has an interest in any manner that violates the corporation's Operating Agreement; and
7. Using, selling, liquidating, or disposing of in any manner BAH corporate funds or assets of any kind.
8. Plaintiffs also respectfully request that the Court enjoin and order Defendant Taylor to provide Shaw full access to BAH corporate offices and all corporate financial information and books.

Plaintiffs make this motion on the following grounds:

1. Plaintiffs will suffer irreparable harm in absence of an injunction. If Defendants continue their unlawful actions absent this Court's intervention, their actions greatly jeopardize BAH's existence by placing the business in a dire financial state such that it will become unsalvageable, endangering Shaw's substantial investment into BAH, causing continued damage to BAH's and Shaw's business reputation and goodwill with its customers, potential customers, vendors, and business partners, and exposing BAH and Shaw to financial liability for corporate loans and/or investments guaranteed by the Plaintiffs and/or their owners and members. (See Exhibit A- Affidavit of Waldo Donald Shaw).
2. Plaintiffs have no other adequate remedy at law that can remedy the loss or potential loss of the BAH business, or damage to BAH's and Shaw's business reputation and goodwill other than the Court enjoining Defendants from continuing to operate a competing business utilizing

BAH assets, confidential, proprietary and trade secret information and taking other actions in contravention of the BAH Operating Agreement and Taylor's duties and obligations to BAH.

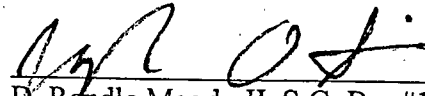
3. Plaintiff will likely succeed on the merits of this case at trial. Plaintiffs have made a prima facie showing adequate to support one or more of its claims against the Defendants. Plaintiffs believe Taylor has established Multifamily Products, LLC, a competing business, utilizing BAH assets, proprietary and trade secret information. Taylor has also failed in fulfilling his fiduciary obligations to BAH and Shaw, and has undertaken a continued pattern of action to the detriment and harm of BAH, its members and owners, all in violation of the BAH Operating Agreement and his fiduciary duties to the company as an owner, member, and manager. Taylor's unilateral actions did not receive member approval and have placed the corporation in a dire financial state. The Defendants have no viable defense to their actions making it likely that Plaintiffs will succeed on the merits at the trial of this case.

Plaintiffs make this Motion pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and requests that this Court consider any affidavits, memoranda, or other filings submitted in support of this Motion and supplemented at the hearings. In the pleadings, and other submissions, Plaintiffs have pled and demonstrated the necessary facts to obtain an injunction.

(signature page to follow)

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody II, S.C. Bar #14135

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

RMoody@roecassidy.com

JSmith@roecassidy.com

Attorneys for Plaintiffs

October 2, 2012
Greenville, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor,
as a member of Build a House, LLC and
individually,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23-6319

AFFIDAVIT OF WALDO DONALD SHAW

Personally appeared before me Waldo Donald Shaw, who, being duly sworn, deposes and states as follows:

1. I am member of Shaw Funding, LLC, one of the Plaintiffs in the captioned case.
2. Shaw Funding is in the business of investing and lending.
3. I have personal knowledge of the facts stated in this affidavit and the information stated herein is true and accurate to the best of my knowledge.
4. I have personal knowledge of the facts alleged in the Complaint, have carefully reviewed those allegations, and verify them to be true and accurate to the best of my knowledge.
5. Shaw Funding is a 50% owner and member of Build A House, LLC d/b/a Multifamily Products ("BAH").

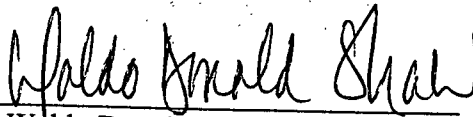
6. Defendant Paul Taylor is a 25% owner and member of BAH.
7. Ron Davis is a 25% owner and member of BAH.
8. The BAH Operating Agreement mandates that "all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority in Interest of the Members taken at a meeting or evidenced by written consent." (Operating Agreement Sec. 3.1).
9. The BAH Operating Agreement defines "majority in interest" as "a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members." (Operating Agreement Sec. 2.1).
10. Under the terms of the Operating Agreement, it is necessary to obtain Shaw's and at least one other member's consent in order to make decisions with respect to the management of BAH and its affairs.
11. BAH acquired several funding sources for its business activities, including a \$2 million dollar Letter of Credit from Ameris Bank, a \$500,000 Note from Wells Fargo, a Wells Fargo Purchase Order Financing Line, and a \$1,000,000 loan from AR Funding, Inc.
12. Shaw executed corporate guaranties for these loans.
13. Several individuals, including myself and Ronnie Shaw, executed personal guaranties on one or more of these loans.
14. As alleged in the Complaint, Taylor has failed and refused to act in the best interests of BAH and its members.
15. Taylor has failed to respond to Shaw's numerous demands for an accounting of BAH assets and liabilities.

16. Taylor has denied Shaw access to the BAH corporate office, accounting and corporate records.
17. I believe that Taylor has utilized BAH's trade name and created Multifamily Products, LLC, a substantially similar company in direct competition with BAH.
18. Taylor has misused BAH corporate funds by failing to:
 - a. Make necessary payments on a \$500,000 Note with Wells Fargo causing it to go into default;
 - b. Clear liens on a BAH project in North Carolina (the Astoria Project) with the \$542,000 given to Taylor for the sole and express purpose of clearing those liens;
 - c. Make necessary payments to BAH designated factored subcontractors on the Astoria Project causing BAH to default on its loan obligations with AR Funding, Inc.;
19. Taylor has failed to
 - a. Respond to Shaw's requests for an accounting and access to BAH's corporate office and books;
 - b. Respond to Brad Bylenga's requests for an accounting, keys, leases and proof of insurance on houses invested in by Bylenga and BAH; and
 - c. Timely close a BAH bank account despite repeated demands to do so, causing BAH to incur overdraft and service fees on a Wells Fargo Purchase Order Financing Line.
20. BAH often does business under the trade name "Multifamily Products."
21. Multifamily Products, LLC, the other named Defendant in this action, was incorporated as a South Carolina limited liability corporation on July 2, 2012.
22. Shaw was not notified of the intent to utilize BAH's trade name to incorporate a separate corporate entity.

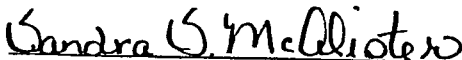
23. Shaw did not give its consent to utilize BAH's trade name to incorporate a separate corporate entity.
24. Multifamily Products, LLC appears to have the same business model as BAH and is a direct competitor of BAH.
25. I believe that Taylor has utilized and misappropriated BAH property, assets, inventory and trade secrets to incorporate, establish, and run Multifamily Products, LLC.
26. In addition, it has come to my attention that Taylor plans to auction BAH assets and inventory in a business liquidation auction set for October 27, 2012.
27. Taylor did not notify Shaw of his plans to auction or liquidate BAH assets.
28. Taylor did not receive Shaw's consent to auction or liquidate BAH assets.
29. Taylor does not have the right or authority to auction or liquidate these or any other BAH assets without Shaw's consent.
30. Wells Fargo has a priority security interest in the BAH assets Taylor plans to auction on October 27th.
31. Defendants' actions have and will continue to endanger the corporate and personal assets of BAH and Shaw, and its owners and members.
32. Defendants' actions have greatly jeopardized the existence of BAH by placing it in a dire financial state.
33. As far as Plaintiffs can determine, due to Taylor's refusal to allow access to BAH corporate and accounting records, BAH assets are insufficient to meet its liabilities.
34. BAH is unable to make necessary payments on its liabilities when they become due in the normal course of business.

35. Shaw has been forced to make numerous payments on behalf of BAH due to BAH's lack of assets to pay liabilities when they become due in the normal course of business.
36. Should Taylor continue to misuse and misappropriate BAH assets, he will cause further damage to BAH's and Shaw's business reputation and goodwill.
37. I believe that Taylor and Multifamily have caused BAH to lose customers by shifting all pending BAH projects into Multifamily.
38. The continued operation of Multifamily Products, LLC by Taylor will likely cause BAH to lose potential customers and business partners.
39. A monetary award cannot adequately remedy the loss of the BAH business, or damage to BAH's and Shaw's business reputation and goodwill that have and will continue to result from Defendants' actions.
40. I certify and acknowledge that I am signing this affidavit under oath and under penalty of perjury.

FURTHER AFFIANT SAYETH NOT.


Waldo Donald Shaw

SWORN to before me this 1st
day of October, 2012


Notary Public for South Carolina
My commission expires: 6/19/16

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House,
LLC,

Plaintiffs,

vs.

Multifamily Products, LLC, and
Paul Taylor, as a member of Build a
House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

2012 CNr. 2012-EP-23-6319

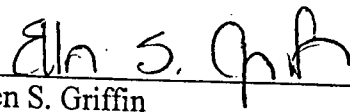
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Plaintiff's Application For *Ex Parte* Temporary Restraining Order and Motion for Temporary Injunction was served upon the Defendants in the above-entitled action this 2nd day of October, 2012, by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

Paul Taylor
1701 Old Pendleton Road
Easley, SC 29642

Fran Powell
Registered Agent
Multifamily Products, LLC
508 Tracy Trail
Greer, SC 29651

ROE CASSIDY COATES & PRICE, P.A.



Ellen S. Griffin
Paralegal to Joseph O. Smith

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House, LLC
☒ Plaintiff

v.

Multifamily Products, LLC, Paul Taylor, As A
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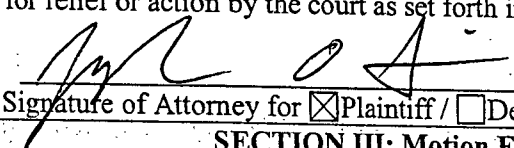
IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-23-06319

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

2012 OCT - 2 P 4: 13

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Plaintiff's Attorney: Joseph O. Smith, Bar No. 77475 Address: Post Office Box 10529 Greenville, SC 29603 phone: 864-349-2600 fax: 864-349-0303 e-mail: jsmith@roccassidy.com other:	Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion To Appoint a Reciever Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant October 2, 2012 Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____	

☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House,
LLC,

Plaintiffs,

vs.

Multifamily Products, LLC, and
Paul Taylor, as a member of Build a
House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23- 06319

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Appoint a Receiver was served upon the Defendants in the above-entitled action this 2nd day of October, 2012, by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows:

Paul Taylor
1701 Old Pendleton Road
Easley, SC 29642

Fran Powell
Registered Agent
Multifamily Products, LLC
508 Tracy Trail
Greer, SC 29651

ROE CASSIDY COATES & PRICE, P.A.

Ellen S. Griffin
Ellen S. Griffin
Paralegal to Joseph O. Smith

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House, LLC d/b/a Multifamily Products, Builders Design House, LLC, Builders First Mortgage, LLC, Builders First Funding, LLC, Investor Funding, LLC, Total Stone, LLC, American Lighting Co., Contract Supply, LLC, Global Solution, and MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor, as a member of Build a House, LLC and individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23- 06319

MOTION TO APPOINT A RECEIVER

TO THE DEFENDANTS MULTIFAMILY PRODUCTS, LLC, AND PAUL TAYLOR:

Plaintiffs by and through their undersigned counsel, move this court to appoint a Receiver in this matter pursuant to S.C. Code Ann. §§15-65-10(1), (4) and/or (5) upon the following grounds:

1. Shaw Funding, LLC ("Shaw") is a member and 50% owner of Build A House, LLC d/b/a Multifamily Products ("BAH").
2. Defendant Paul Taylor is a member and 25% owner of BAH.
3. Ron Davis owns the remaining 25% of BAH.
4. Shaw, Taylor and Davis are all parties to the BAH Operating Agreement, executed April 5, 2007.

5. Under the terms of the BAH Operating Agreement, "all decisions with respect to the management of the business and affairs of the Company" require an action or the written consent of the majority in interest of the members. (BAH Operating Agreement Sec. 3.1). Therefore, Shaw's participation or written consent is necessary for all decisions regarding the management of BAH and its affairs.

6. As more specifically alleged in the Complaint, Defendants' have and continue to take actions in contravention of Shaw's and BAH's rights to the corporate property and assets of BAH, including but not limited to:

- a. Utilizing BAH's trade name "Multifamily Products" and incorporating and establishing Multifamily Products, LLC, a business in direct competition with BAH, without notice to or the consent of the other BAH members.
- b. Misappropriating BAH's web address and server for Multifamily Product, LLC's site.
- c. Failing to respond to Shaw's demands for an accounting of BAH assets and liabilities;
- d. Denying Shaw access to the BAH corporate offices;
- e. Denying Shaw access to BAH accounting and corporate records;
- f. Failing to keep certain loan agreements current causing BAH to default;
- g. Failing to take appropriate actions to satisfy all the BAH related liens on a BAH project (the Astoria Project);
- h. Failing to make appropriate payments to designated factored subcontractors in order to comply with the terms of the AR Funding Loan, causing it to be in default;

- i. Failing to close certain BAH bank accounts in a timely manner, despite Shaw's repeated request, causing BAH to incur additional overdraft fees and costs;
- j. Failing to provide Brad Bylenga accounting details, copies of leases, proof of insurance, and keys to certain homes owned by BAH/Investor Funding and Bylenga, despite his numerous demands and requests.
- k. Planning an auction of BAH inventory from its corporate office and warehouse to occur October 27, 2012 without notice to or the consent of Shaw or Davis.

(See Exhibit A – Affidavit of Waldo Donald Shaw).

7. Defendants' actions have and will continue to endanger the corporate and personal assets of Shaw, BAH, and its owners and members.

8. BAH and Shaw have a right to property which is the subject of this action and is in the possession and/or control of Defendants Paul Taylor and/or Multifamily Products, LLC.

9. Defendants' actions as alleged in the Complaint have caused the property, its rents and/or profits to be in danger of being lost or materially injured or impaired.

10. Appointment of a receiver to take possession and control of the property at issue is necessary in order to avoid the complete loss and/or further endangerment and degradation of the property.

11. Furthermore, upon information and belief Defendants' actions have placed BAH in a state of insolvency or in imminent danger of insolvency.

12. Appointment of a Receiver to take possession and control of BAH and its corporate assets is necessary to prevent Defendants from causing further harm to BAH and its members, including Shaw, and safeguard the Plaintiffs' property that is the subject of this action and has been has been misappropriated and/or converted by Defendants.

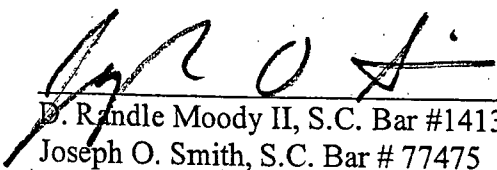
WHEREFORE, the Plaintiffs respectfully request that the Court appoint a Receiver to:

- a) Be given full authority to take possession and control and marshal all of Build A House, LLC's corporate property and assets;
- b) Be given full authority to take possession of and marshal all of Defendant Multifamily Products, LLC's assets,

be they real or personal, to take title and possession to all such property, and to return any such property or assets determined to be those of BAH and apply such remaining property to the satisfaction of the debt created by Defendants' actions as alleged in the Complaint by liquidating and converting such property to money through public or private sale.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.



D. Randle Moody II, S.C. Bar #14135

Joseph O. Smith, S.C. Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

RMoody@roecassidy.com

JSmith@roecassidy.com

Attorneys for Plaintiffs

October 2, 2012
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor,
as a member of Build a House, LLC and
individually,

Defendants.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23-_____

**AFFIDAVIT OF
WALDO DONALD SHAW**

Personally appeared before me Waldo Donald Shaw, who, being duly sworn, deposes and
states as follows:

1. I am member of Shaw Funding, LLC, one of the Plaintiffs in the captioned case.
2. Shaw Funding is in the business of investing and lending.
3. I have personal knowledge of the facts stated in this affidavit and the information stated
herein is true and accurate to the best of my knowledge.
4. I have personal knowledge of the facts alleged in the Complaint, have carefully
reviewed those allegations and verify them to be true and accurate to the best of my
knowledge.
5. Shaw Funding is a 50% owner and member of Build A House, LLC. (BAH).
6. Defendant Paul Taylor is a 25% owner and member of BAH.

7. Ron Davis is a 25% owner and member of BAH.
8. The BAH Operating Agreement mandates that "all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority in Interest of the Members taken at a meeting or evidenced by written consent." (Operating Agreement Sec. 3.1).
9. The BAH Operating Agreement defines "majority in interest" as "a combination of any Members who, in the aggregate, own more than fifty percent of the Membership Interests of all Members." (Operating Agreement Sec. 2.1).
10. Under the terms of the Operating Agreement, it is necessary to obtain Shaw's and at least one other member's consent in order to make decisions with respect to the management of BAH and its affairs.
11. BAH acquired several funding sources for its business activities, including a \$2 million Credit Facility from Ameris Bank, a \$500,000 Note from Wells Fargo, a Wells Fargo Purchase Order Financing Line, and a \$1,000,000 loan from AR Funding, Inc. and Carolina First in the name of Shaw Resources, Inc. for the benefit of BAH.
12. Shaw executed corporate guaranties for these loans.
13. Several individuals, including myself and Ronnie Shaw, executed personal guaranties on one or more of these loans.
14. The property that is the subject of this action includes BAH as a business entity, its corporate assets, inventory, and rights to profits and returns on investment generated by BAH's business activities.
15. Shaw, as a 50% owner and member of BAH, has a right to the property that is the subject of this action.

16. Taylor and/or Multifamily Products, LLC has taken control and is in possession of the property that is the subject of this action.
17. Taylor has taken numerous actions that have damaged, devalued, and endangered BAH assets.
18. Taylor has misused BAH corporate funds by failing to:
 - a. Make necessary payments on a \$500,000 Note with Wells Fargo causing it to go into default;
 - b. Clear liens on a BAH project in North Carolina (the Astoria Project) with the \$542,000 given to Taylor for the sole and express purpose of clearing those liens;
 - c. Make necessary payments to BAH designated factored subcontractors on the Astoria Project causing BAH to default on its loan obligations with AR Funding, Inc.;
19. Taylor has failed to
 - a. Respond to Shaw's requests for an accounting and access to BAH's corporate office and books;
 - b. Respond to Brad Bylenga's requests for an accounting, keys, leases and proof of insurance on houses invested in by Bylenga and BAH; and
 - c. Timely close a BAH bank account despite repeated demands to do so, causing BAH to incur overdraft and service fees on a Wells Fargo Purchase Order Financing Line.
20. BAH often does business under the trade name "Multifamily Products."
21. Multifamily Products, LLC, the other named Defendant in this action, was incorporated as a South Carolina limited liability corporation on July 2, 2012.
22. Shaw was not notified of the intent to utilize BAH's trade name to incorporate a separate corporate entity.

23. Shaw did not give its consent to utilize BAH's trade name to incorporate a separate corporate entity.
24. Multifamily Products, LLC appears to have the same business model as BAH and is a direct competitor of BAH.
25. I believe that Taylor has utilized and misappropriated BAH property, assets, inventory and trade secrets to incorporate, establish, and run Multifamily Products, LLC.
26. In addition, it has come to my attention that Taylor plans to auction BAH assets and inventory in a business liquidation auction set for October 27, 2012.
27. Taylor did not notify Shaw of his plans to auction or liquidate BAH assets.
28. Taylor did not receive Shaw's consent to auction or liquidate BAH assets.
29. Taylor does not have the right or authority to auction or liquidate these or any other BAH assets without Shaw's consent.
30. Wells Fargo has a priority security interest in the BAH assets Taylor plans to auction on October 27th.
31. Defendants' actions have and will continue to endanger the corporate and personal assets of BAH and Shaw, and its owners and members.
32. Taylor's actions have put BAH in a state of insolvency.
33. As far as Plaintiffs can determine, due to Taylor's refusal to allow access to BAH corporate and accounting records, BAH assets are insufficient to meet its liabilities.
34. BAH is unable to make necessary payments on its liabilities when they become due in the normal course of business.
35. Shaw has been forced to make numerous payments on behalf of BAH due to BAH's lack of assets to pay liabilities when they become due in the normal course of business.

36. While I believe Taylor's actions have placed BAH in a state of insolvency, they have at the least, placed BAH in imminent danger of insolvency.
37. Appointment of a Receiver to take control and possession of all BAH corporate property and assets is necessary to protect the remaining corporate assets from further degradation, misappropriation, or misuse to the detriment of BAH and Shaw as an owner and member.
38. Appointment of a Receiver to take control and possession of Defendant Multifamily Products, LLC property and assets is necessary to prevent Multifamily and Taylor from further utilizing BAH's misappropriated assets and trade secrets to Defendants' benefit and to the detriment of BAH and Shaw.
39. I certify and acknowledge that I am signing this affidavit under oath and under penalty of perjury.

FURTHER AFFIANT SAYETH NOT.

Waldo Donald Shaw
Waldo Donald Shaw

SWORN to before me this 1st
day of October, 2012

Sandra V. McClinton
Notary Public for South Carolina
My commission expires: 6/19/16

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC and Build A House, LLC

☒ Plaintiff

v.

Multifamily Products, LLC, Paul Taylor, As A
Member Of Build A House And Individually,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMMER

2012 OCT -2 P 4:11

CASE NO.
2012-CP-23-6319

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Joseph O. Smith, Bar No. 77475 Address: Post Office Box 10529 Greenville, SC 29603 phone: 864-349-2600 fax: 864-349-0303 e-mail: jsmith@roecassidy.com other:		Defendant's Attorney: , Bar No. Address: phone: fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Plaintiff's Application for Ex Parte Temporary Restraining Order and Motion for Temporary Injunction Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. October 2, 2012 Date submitted Signature of Attorney for ☒ Plaintiff / ☐ Defendant			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: <u>D. Jones</u> Date Filed:			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor,
as a member of Build a House, LLC and
individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23- 0639

**ORDER GRANTING
TEMPORARY RESTRAINING
ORDER**

This matter came before the Court on October 3, 2012 pursuant to Plaintiffs' Application for *Ex Parte* Temporary Restraining Order and Motion for Temporary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. A hearing was held in open court with counsel for Plaintiffs present. Based on that hearing, Plaintiffs' Motion, and supporting evidence, it appears to the Court that there is just cause to grant the Temporary Restraining Order sought by the Plaintiffs.

The evidence presented to the Court, including the Affidavit of Waldo Donald Shaw, sufficiently establish that Plaintiffs will suffer irreparable harm in absence of an injunction. Specifically, Plaintiffs have presented sufficient evidence to demonstrate that Defendants' alleged actions have placed Build A House, LLC in a dire financial state, and have and continue to cause

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damage to the business reputation and goodwill. ("When the failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied.") *Palmetto Builders and Designers, Inc. v. UniReal, Inc.*, 342 F.Supp.2d 468, 473 (D.S.C. 2004) citing *Multi-Channel T.V. Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994). Plaintiffs have further demonstrated that they have no adequate remedy at law that can remedy the loss or potential loss of the Build A House, LLC business or damage to its business reputation and goodwill. Finally, Plaintiffs have presented evidence sufficient to make a *prima facie* showing that they will likely succeed on the merits of this case at trial on one or more of its claims. *Transcon Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 481, 167 S.E.2d 313, 315 (1969) ("It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a prima facie showing has been made.").

Therefore, based on the foregoing, it appears to the Court that Plaintiffs' Application for *Ex Parte* Temporary Restraining Order should be **GRANTED** and it is **ORDERED** that Defendants shall be temporarily restrained from:

1. Utilizing the assets, confidential, proprietary and trade secret information of Build A House, LLC d/b/a Multifamily Products ("BAH") for the operation of Multifamily Products, LLC as a competing business;
2. Continuing to operate the Multifamily Family, LLC website.
3. Continuing any business operations of Multifamily Family, LLC;
4. Misusing or otherwise misappropriating the assets of Build A House, LLC;
5. Interfering with the business endeavors of Build A House, LLC including ongoing construction projects;

6. Taking and/or transferring money out of any accounts owned, held by or in which Build A House, LLC has an interest in any manner that violates the corporation's Operating Agreement; and

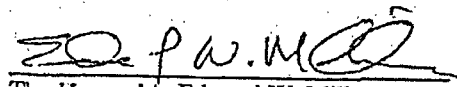
7. Using, selling, liquidating, or disposing of in any manner Build A House, LLC's corporate funds or assets of any kind.

It is further ordered that Defendant Taylor provide Shaw full access to Build A House, LLC's corporate offices and all corporate financial information and books.

Plaintiffs shall obtain and post a security bond in the amount of Five Thousand 00/100 (\$5,000.00) Dollars.

IT IS SO ORDERED.

Date: 10/4/12


The Honorable Edward W. Miller

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
LLC d/b/a Multifamily Products, Builders
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor,
as a member of Build a House, LLC and
individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-23- 00319

ORDER APPOINTING
RECEIVER

FILED OCT 10 2012
CLERK OF COURT
JANET L. HARRIS
JAN 10 2013

This matter came before the Court on October 3, 2012 pursuant to Plaintiffs' Motion to Appoint a Receiver pursuant to S.C. Code Ann. §§ 15-65-10(1), (4) and/or (5). A hearing was held in open court with counsel for Plaintiffs present. Based on that hearing, Plaintiffs' Motion, and supporting evidence, it appears to the Court that there is just cause to grant Plaintiffs' Motion.

The appointment of a receiver is within the discretion of the circuit judge. *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224 (1989). S.C. Code Ann. § 15-65-10(1) allows the Court to appoint a receiver "[b]efore judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired." It appears from the evidence

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presented to the Court, including Plaintiffs' Motion, allegations in the Complaint, and the Affidavit of Waldo Donald Shaw that the Plaintiffs have an apparent right to property which is the subject of this action and in Defendants' possession, and the property, or its profits, are in danger of being lost or materially injured or impaired should a receiver not take possession and control.

In addition S.C. Code Ann. § 15-65-10(4) allows the Court to appoint a receiver "[w]hen a corporation has been dissolved, is insolvent or in imminent danger of insolvency." The Court finds, based on the evidence presented to it, including Plaintiff's Motion, oral arguments, allegations in the Complaint and accompanying exhibits, and the Affidavit of Waldo Donald Shaw, that Defendants' alleged actions appear to have placed BAH in a state of insolvency, or at the least, in imminent danger of insolvency. *In re Maplecroft Mills*, 218 F. 659 (W.D.S.C. 1914) *rev on other grounds* 226 F. 415 (4th Cir. 1915) ("Imminent danger of insolvency" as used in subdivision (4) of this section [former Code 1962 § 10-2301] means danger of insolvency from the standpoint of preserving the assets of the involved corporation.).

Therefore, based on the foregoing, it appears to the Court that Plaintiffs' Motion to Appoint a Receiver should be GRANTED and it is ORDERED that R. Brent Sanders of Carolina Consulting & Holdings, LLC be appointed as an independent third party receiver for Build A House, LLC. Mr. Sanders shall act as a receiver for Build A House, LLC on a temporary basis. He shall act as a receiver for Build A House, LLC until all parties have an opportunity to appear before this Court, at which time the Court may revisit the issue upon application of a party to determine whether Mr. Sanders' services will be necessary going forward. R. Brent Sanders shall be appointed to:

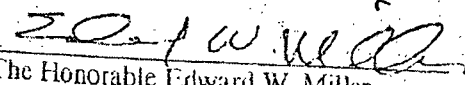
- a) Have full authority to immediately take possession and control and marshal all of Build A House, LLC's corporate property and assets; and

b) Have full authority to take possession of and marshal all of Defendant Multifamily Product, LLC's corporate property and assets

be they real or personal, to take title and possession to all such property, and to return any such property or assets determined to be those of Build A House, LLC to the company and apply such remaining property to the satisfaction of the debt created by Defendants' actions as alleged in the Complaint by liquidating and converting such property to money through public or private sale.

IT IS SO ORDERED.

Date: 10/4/12


The Honorable Edward W. Miller

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Shaw Funding, LLC, Build A House,)
LLC d/b/a Multifamily Products,)
Buildings Design House, LLC,)
Builders First Funding, LLC, Investor)
Fundings, LLC, Total Stone, LLC,)
American Lighting Co., Contract)
Supply, LLC, Global Solution, and)
MS Mechanical Solutions, LLC)

2012-CP-39-06319

OCTOBER 3, 2012

TRANSCRIPT OF RECORD

PLAINTIFF,

-vs-

Multifamily Products, LLC, and Paul)
Taylor, as a member of Build A)
House, LLC and individually)

DEFENDANT.)

BEFORE:

THE HONORABLE EDWARD MILLER, JUDGE

APPEARANCES:

D. RANDLE MOODY, II, ESQUIRE
JOSH SMITH, ESQUIRE
ATTORNEYS FOR THE PLAINTIFFS

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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EXHIBITS

(NONE)

October 3, 2012

(WHEREUPON, court convened with all parties present and the following proceedings were had.)

MR. MOODY: Judge, Randy Moody and Josh Smith on behalf of Plaintiffs, Shaw Funding, Build A House, and several other corporate Plaintiffs versus Multifamily Products, LLC.

Judge, this is a case where we filed a Complaint yesterday. We will be seeking business court treatment. But there are two matters that need expeditious treatment. We filed a motion for a temporary restraining order, as well as a motion for receiver. There are some rather lengthy and convoluted facts involved here.

But basically what we have is we're going to -- Build A House is an entity that is involved in construction financing. They recently have been involved in some HUD projects in which the contractors committed to buy from Build A House. And we have two large projects that are outstanding. One that is referred to as an Anson project. There is independent litigation on that being handled by Nelson Mullins. It's a project, I think, in the Midwest.

And then there is one project that is open and is in jeopardy if we don't get some action because return

1 of the investment and some liens are outstanding that
2 need to be dealt with in order for the HUD process to
3 be completed, because we think the project is almost
4 done. And that is a Multifamily unit up near
5 Fayetteville, I think, near the military base.

6 The difficulty we have is fifty percent of the
7 ownership is Shaw Funding, LLC, that is Donnie and
8 Ronnie Shaw, and twenty-five percent of the ownership
9 is Paul Taylor and twenty-five percent of the ownership
10 is a Mr. Ron Davis. We believe that Mr. Davis is very
11 ill with a brain tumor and communication with him has
12 not, has not been reciprocated.

13 Mr. Taylor, who was largely handling the day-to-
14 day operations of Build A House has gone dark on us
15 since July 4th. We have asked numerous times for
16 information, accounting records, etcetera, and we get
17 nothing in return. Or if we get something, it takes a
18 long time and it takes ten to twelve efforts.

19 The problem we have from a corporate standpoint
20 right now is that the contractors and subcontractors
21 are directly contacting Donnie Shaw and Ronnie Shaw
22 asking for money. And we can't get the records. We
23 can't get anything. And we are finding out,
24 unfortunately through contractors and others, that Mr.
25 Taylor has placed the assets, which Wells Fargo has a

1 first lien on, up for auction at the end of this month.

2 And we've been able to find the auction listing and
3 we've provided that to Your Honor, as well.

4 So what we're coming to Court to ask for is that
5 this Court order us access to the extend that Mr.
6 Taylor has taken the assets and formed a company called
7 Multifamily, which was one of our trade name companies.
8 We believe he's transferred everything over to this new
9 company and operating pretty much Build A House as his
10 own entity. So we have all kinds of corporate
11 malfeasance issues that we're trying to deal with.

12 And our difficulty is its newness. We have
13 infused a lot of money into this operation, five
14 hundred and forty-two thousand dollars this spring to
15 pay off some liens and seem suppliers. We are learning
16 that those suppliers that Mr. Taylor said he would pay
17 off weren't necessary paid off in that order. We have
18 been factoring receivables, Build A House has, through
19 A.R. Funding, which is an entity that the Shaws have an
20 ownership interest in.

21 And we are now told that Mr. Taylor has not paid
22 A.R. Funding to the tune of four hundred eighty-five
23 thousand dollars. So the money that he received for
24 the invoices has gone somewhere and we don't know where
25 it is. Shaw Funding, in order to partially satisfy

1 that, put in a hundred thousand dollars for A.R.
2 Funding recently, where there are liens on the Astoria
3 project to the tune of sixty-two thousand dollars, or
4 somewhere in that vicinity. We are working with the
5 general contractor, that being Shaw Funding, the fifty
6 percent member, in order to get some kind of assurances
7 to get those liens satisfied so the product [verbatim]
8 doesn't go under and we don't lose our return on
9 investment.

10 And Judge, just to -- lots of things going on.
11 Lots of facts. We have an affidavit from Mr. Shaw,
12 Donnie Shaw, that is attached under page -- under tab
13 five that's a multi-page affidavit that lays out all
14 the facts.

15 But just from a global overview, we believe that
16 if action is not taken and Mr. Taylor is able to
17 abscond with our assets, our trade secrets -- he's
18 taken our server. He's taken all kinds of things and
19 pretty much locked us out from information. If he's
20 able to take that to Multifamily and we're not able to
21 intervene to preserve what is outstanding ... We
22 believe there's three million dollars out there between
23 Anson and Astoria and we've independently tried to
24 preserve that. But when people say, you owe us 'x'
25 number of dollars, we have no ability to know what

1 Build A House has already paid.

2 So we need the Court to help us order the
3 information and preferably we think Build A House is on
4 the verge of insolvency, if it isn't already, and it
5 certainly will be if we can't preserve what we have
6 outstanding. That we have a receiver that's able to go
7 in and get this thing cleaned up, to close it, preserve
8 what's out there, etcetera.

9 The three million dollars, just so that the Court
10 is aware, consists of some preferred returns on
11 preferred interest on two of the -- on the Anson and
12 Astoria jobs. The lawsuit on the Anson job is -- has
13 about 1.6 million that's out there. The lawsuit is
14 existing. Judge Hill recently heard something about a
15 venue issue last week on that. Nelson Mullins is
16 representing Build A House for that.

17 Unfortunately, we received -- at least my folks
18 received -- a letter recently from Nelson Mullins
19 saying they hadn't been paid anything and unless they
20 get paid something they're not going to be able to
21 continue the lawsuit. So that's an issue. Which we
22 were told that they had been paid a substantial
23 retainer. So that turns out not to be true. So my
24 folks have to do something or a receiver has to do
25 something to ensure that that litigation proceeds to

1 protect that return on investment.

2 We were told there's nine hundred to -- or eight
3 hundred and something thousand dollars of inventory
4 this spring and now we find out that Mr. Taylor or
5 someone has put that up for auction. That's not
6 contemplated by the operating group. We're fifty
7 percent and it requires a majority action. So anything
8 they do has to be approved by us under Section three of
9 the operating agreement.

10 And then lastly, there is a CD at Amerus Bank that
11 has six hundred and thirty thousand dollars on it. And
12 we have to get these jobs completed and closed in order
13 that the CD is able to come back to us and to protect
14 that amount of money. So there's seem real substantial
15 money that's out there that we need some action on.

16 And Mr. Taylor is not responding.

17 I would add that benefits renewal was coming up.
18 Mr. Taylor wouldn't even respond for benefits renewal
19 and he said, basically, that the employees had been let
20 go and it's not operating. So all this is kind of news
21 to us. And I apologize to the Court that we don't have
22 a lot of information. But we've been burning the
23 midnight oil trying to get as much information as we
24 can just to show the dire situation that we're in.

25 Wells Fargo wants their hundred and sixty thousand

1 dollar note paid off on the 8th of this month. It's in
2 default. A.R. Funding has sued over the four hundred
3 and eighty-five thousand dollars. And as I mentioned,
4 you know, we put in five hundred and forty-two thousand
5 dollars into this company this spring. So lots of
6 money outstanding. Mr. Taylor is not responding. It
7 looks like he's moved on to a new company and a new
8 venture, and he's leaving us holding the bag, because
9 we have guarantees both corporately and on some
10 situations we have personal guarantees.

11 So our folks want to protect what is out there
12 because Wells Fargo is looking to us. And A.R. Funding
13 ---

14 THE COURT: Is Taylor on it individually,
15 too, or not?

16 MR. MOODY: There is -- he is on it -- let me
17 verify that. He is on it with Wells Fargo, with the
18 personal guarantee for the one sixty, and also with
19 A.R. Funding personally.

20 THE COURT: Who's his lawyer? Do you know?

21 MR. MOODY: We don't know, Judge. That's a
22 good question. I would say Womble Carlisle represented
23 Build A House. And they would be standing before you,
24 but for on August the 13th, Womble Carlisle sent a
25 cease and desist letter to Mr. Taylor, which is

1 basically, you know, we represent Build A House, Shaw
2 Funding. You've taken off with all this stuff. Cease
3 and desist. It was like a trade secret violation. You
4 can't have another company. You're violating your
5 fiduciary duties. And we have not seen the response,
6 but Womble Carlisle notified Shaw Funding that Mr.
7 Taylor would claim a conflict as to their
8 representation because, apparently, Build A House had
9 paid some Womble Carlisle invoices. So the B string
10 comes in, being Randy Moody, to try to assist Build A
11 House.

12 THE COURT: Well, let me ask you this. You
13 say that there are two projects that are ongoing?

14 MR. MOODY: The Anson project in the Midwest
15 is largely completed, but there's seem litigation over
16 that project and the money that is -- is it being held
17 in trust? Is there a receiver there? There's a final
18 draw issue of 1.6 million that's in litigation,
19 unfortunately. So that's kind of hung up and that's
20 what Nelson Mullins is dealing with. Assuming ---

21 THE COURT: On behalf of?

22 MR. MOODY: Build A House. Assuming they get
23 paid ---

24 THE COURT: Is that the same Build A House
25 that you're suing?

1 MR. MOODY: We are, we are suing ---

2 THE COURT: Because I'm trying to assimilate
3 all this. You said that your folks had Build A House;
4 that this guy Taylor is ---

5 MR. MOODY: He's a twenty-five percent member
6 of Build A House, but he's also formed this company,
7 and it's very confusing. Multifamily Products, LLC,
8 was formed in July of this year.

9 MR. SMITH: July 2nd of this year it was
10 incorporated. Build A House ---

11 MR. MOODY: We didn't know -- see, Build A
12 House had several different companies underneath it,
13 Judge, and those are the plaintiffs. Multifamily was
14 one of our trade companies under Build A House. So
15 he's taken the server and everything. He's
16 incorporated and not told us. And we're the fifty
17 percent owners. I mean, they can't do this without a
18 majority. So it's bad ---

19 THE COURT: He's taken it, but what is he
20 doing with it?

21 MR. MOODY: Well, is that in these notebooks?
22 All right. We have printed out on the face sheet of
23 your notebook and I'll pass up mine.

24 THE COURT: No, wait a minute.

25 MR. MOODY: He's doing the same thing we did.

1 We had a unique business model where we would -- before
2 the housing construction crush happened, we were
3 financing home builders, renovations ---

4 THE COURT: Okay. So is there another
5 specific project that's cooking in the oven right now?

6 MR. MOODY: The Astoria project is the one in
7 jeopardy. That's the military base. And part of what
8 we're alleging, we believe that the pending projects
9 that were cooking for Build A House, we believe he's
10 taken them to Multifamily and he won't tell us. That's
11 part of our problem.

12 THE COURT: All right. So he was the, he was
13 the operating officer?

14 MR. MOODY: He was the day-to-day guy. All
15 the members could operate as managers, but he was the
16 day-to-day guy. And so we ---

17 THE COURT: Well, what -- so if we stop this,
18 if I grant your TRO, what happens to the Astoria
19 project?

20 MR. MOODY: It would give our folks a little
21 bit of assurance that they could come off the hip to
22 pay Nelson Mullins on the Anson deal. That Astoria
23 project, we would prefer to have a receiver appointed.
24 We have one lined up that can ---

25 THE COURT: Well, here's my point. You want

1 me to stop it; right?

2 MR. MOODY: I want you ---

3 THE COURT: You want me to shut him down?

4 MR. MOODY: I want you to stop him from
5 taking what he's taken, and I want the Court to order
6 him to give us the accounting information so that we
7 can undergird the Astoria project to ensure who needs
8 to be paid and who rightfully deserves to be paid, with
9 the people that are yelling. Because we don't know
10 what has been paid to some people, and they're saying,
11 pay us this money. The Wells Fargo note is, you know,
12 it's the 3rd and that's due on the 8th.

13 THE COURT: Yeah. Here's what I'm asking.
14 You want me to shut down the Astoria project with this
15 TRO?

16 MR. MOODY: No, Your Honor. I'm not asking
17 you to shut down the Astoria project.

18 THE COURT: What exactly are you asking me to
19 do with that?

20 MR. MOODY: Do you have the Order? We have a
21 proposed Order, Judge.

22 THE COURT: Well, I -- yeah.

23 MR. MOODY: What we're asking is to preserve
24 and to have someone that takes action to preserve the
25 investment that we have in there so it's not lost. We

1 don't want the Astoria project shut down. We just want
2 it completed. And in fact, Judge, we have lien
3 releases that we provided, that our folks -- will
4 satisfy those liens in order for the project to close.

5 THE COURT: I'm not fully up to speed on the
6 facts. This guy Taylor, is he running the Astoria
7 project?

8 MR. MOODY: Not anymore. It was -- we were
9 -- there's a general contractor that runs the Astoria
10 project. And we were supposed to satisfy some
11 subcontractors, and Mr. Taylor did not. So the
12 contractor is calling us now to get that done. And if
13 we don't get those liens satisfied, we will be sued,
14 because Mr. Taylor should have satisfied those liens.

15 THE COURT: And he took the computer with all
16 the ---

17 MR. MOODY: Yes, Your Honor.

18 THE COURT: --- records?

19 MR. MOODY: We've been able to track him
20 down. It looks like he has relocated Multifamily
21 Solutions into a -- one of the things that Build A
22 House also did is they had residential properties that
23 they were renovating. And we think he is now occupying
24 one of those and running Multifamily out of it.

25 So for purposes of the injunction and the

1 irreparable harm, ---

2 THE COURT: Yeah.

3 MR. MOODY: --- we have all kinds of issues,
4 Judge. I'll try to summarize those the best I can,
5 briefly. Where is that, Josh? Is it under five?

6 The irreparable harm issue is, number one, the
7 Shaws and the fact that they are members of Build A
8 House. Their reputation is from construction,
9 commercial real estate, and etcetera. And concerned
10 about the business reputation and goodwill of both the
11 Shaws and Build A House, because the trade name is
12 being destroyed. We have -- we're in danger of the
13 permanent loss of customers. They've jeopardized the
14 existence of Build A House by placing the business in
15 dire financial states, that's almost unsalvageable,
16 continued loss and misappropriation of our customers
17 and potential customers.

18 The inventory that is out there, we were told
19 there was eight to nine hundred thousand dollars of
20 inventory. Now it's been placed up for auction on the
21 27th of October. He can't do that. Shouldn't be able
22 to do that. But if he auctions it, we lose that
23 position.

24 The Amerus facility of six hundred and thirty
25 thousand dollars on that CD is at risk. The preferred

1 return of two hundred thousand dollars per Anson and
2 Astoria is at risk.

3 ~~These are things that money and a lawsuit and~~
4 regular monetary damages can't fix for us. And equity
5 in the Court is what we have to rely on to intervene.

6 THE COURT: All right. What kind of security
7 are you -- post a bond?

8 MR. MOODY: Your Honor, we're aware that the
9 Supreme Court says a bond is required whenever equity
10 intervenes.

11 THE COURT: So how do I -- how am I going to
12 determine the amount of appropriate bond?

13 MR. MOODY: I think the last time the Supreme
14 Court spoke on that, it's within the discretion of the
15 Court. And the factors that we would ask the Court to
16 consider is the fact that we will be infusing
17 additional capital in order to preserve what is out
18 there, such that there can be a return that all members
19 will ---

20 THE COURT: What are the potential losses if
21 you guys are wrong about this?

22 MR. MOODY: To Mr. Taylor?

23 THE COURT: Yeah.

24 MR. MOODY: Can't imagine what his loss would
25 be, because he's already gone.

1 THE COURT: Have you not heard the story
2 about Abraham Lincoln argued one side of a case in the
3 morning and the other side in the afternoon? What
4 would you claim if you were representing him? Come on.

5 MR. MOODY: I wouldn't represent Mr. Taylor
6 on this one, Judge. I like to represent the winning
7 side.

8 But, you know, that is a very good question. I
9 don't know what I would claim if I were representing
10 him. But I'm sure it's a story that I can't imagine
11 without having that discussion with him, because ---

12 THE COURT: Well, and here's my other
13 problem, is I will not be available next week, and the
14 following week I'm going to be in York.

15 MR. MOODY: Okay.

16 THE COURT: So I don't know how -- you know,
17 we've got ten days to get the -- it's going to expire
18 in ten days and, you know, he's entitled to a ---

19 MR. MOODY: Certainly, to a hearing.

20 THE COURT: Yeah.

21 MR. MOODY: That's something that we can
22 address. We just have the issue of -- I'm not sure if
23 we have a couple of weeks to wait to see if we can get
24 equity.

25 THE COURT: I'm going to grant your TRO

1 because it doesn't look like it -- it's not suspending
2 any business.

3 MR. MOODY: It's actually preserving
4 business, Your Honor. That was my concern, as well.

5 This Court can't suspend the business. What we're
6 asking this Court to do is to make him give us
7 accounting information, such that we're able to double-
8 check the information that we're receiving from third
9 parties. And also, we're asking him to stop stealing
10 from us, obviously.

11 THE COURT: Turn over the computer; right?

12 MR. MOODY: We'd like our server back. That
13 would be great, so that we can get answers.

14 THE COURT: Is that included in your Order?

15 MR. MOODY: I believe it is. Do you have the
16 Order?

17 MR. SMITH: The Order has not included with
18 the Motion. Let me find the right tab for you.

19 MR. MOODY: It's behind tab five, right
20 before tab six, Judge.

21 MR. SMITH: I've got a proposed Order in
22 there. And the summation of it is at the bottom.

23 THE COURT: Well, where are the corporate
24 offices? And all corporate financial information ...
25 I think it's in there. That's where it would be

1 located.

2 MR. MOODY: The corporate offices were
3 located in Mauldin. We've been trying to discuss with
4 the landlord. They have seen some activity of
5 inventory, granite, being taken in and out. But it
6 does not appear to be an operating entity at that
7 location. And we think he's moved it to this home that
8 I mentioned previously. Where is it?

9 It's a house near Riverfalls Golf Course, as best
10 we can tell.

11 THE COURT: Okay. All right. Well, I'll
12 sign it, but you need to post a security bond of five
13 thousand dollars. Okay? Do you want to amend your
14 Order to get ---

15 MR. MOODY: We'll get that amended and sent
16 to Your Honor electronically, this afternoon.

17 THE COURT: Now, you talked about a receiver,
18 but that's -- you're not here today for that; are you?

19 MR. MOODY: Well, in light of the fact that
20 you may not be available for a couple of weeks, it
21 would be great if we could talk about a receiver. Just
22 briefly. It's the same facts, Judge.

23 THE COURT: Yeah.

24 MR. MOODY: And it's really an emergency
25 situation of -- like I said, we're trying to preserve

1 so that we can make sure that we are -- although we're
2 on the edge of insolvency, or are already insolvent,
3 just to mitigate the damages. Mr. Smith can address
4 the receiver issues. The Statute is pretty clear about
5 we're in a dire situation. And this Court can grant a
6 receivership both in Court or out of Court. The
7 Statute grants you that authority to do so.

8 THE COURT: Yeah. What's the Statute number?
9 Do you have it?

10 MR. SMITH: It's 15-65-10. It's been
11 included with what we handed up to the Court, behind
12 tab number seven, I believe. Yes. And we moved under
13 subsection one and four, and five is kind of a catch-
14 all there.

15 Subsection one, as the Court can see, the
16 Plaintiff has a right to property that's subject to
17 litigation.

18 THE COURT: What are you going to ask the
19 receiver to do?

20 MR. SMITH: I have a proposed Order in here,
21 as well, for the receivership that we can look at
22 exactly what we want the receiver to do.

23 We ask essentially two things of the receiver.
24 That they be granted by the Court to have the full

1 authority to immediately take possession and control of
2 all Build A House's corporate assets and property. And
3 have full authority to take possession and control of
4 Defendant Multi Product, LLC's assets and properties,
5 because we believe those are Build A House assets and
6 property, as well, that have been shifted over by Paul
7 Taylor.

8 And our people at Shaw have spoken to and arranged
9 for Brent Sanders at Carolina Consulting and Holdings,
10 LLC, he's a CPA. We included it on the sheet, I
11 believe it's in the back pocket of your binder. It's
12 just a little breakdown of his information, his rates,
13 all that good stuff that we thought the Court might
14 want to know about.

15 THE COURT: Well, what is -- what are your
16 client's connections with Brent Sanders? Your clients
17 are losing control of the company, too. They've got
18 fifty percent. They're giving up their fifty percent.

19 MR. MOODY: As far as Brent Sanders'
20 connections with the Shaws, Brent Sanders formerly
21 worked as -- he does tax return work for Shaw Resources
22 currently, as a CPA. He worked for Jack Shaw back in
23 the eighties. He has served as the CFO at Nalley
24 Construction. And currently he does some tax return
25 work for them. So it's arm's length, but there is a

1 past relationship there.

2 THE COURT: Well, I really don't like doing
3 it without the other side having notice and ... But
4 temporarily appoint him and the assets be turned over
5 to him to be a third party. You know, so it's a third
6 party. I don't think Mr. Taylor could get too upset if
7 it's an independent third party.

8 And then whether or not the -- and it'll be on a
9 temporary basis. And then once the other side has an
10 opportunity to come in and -- they're entitled to due
11 process to make a determination of whether or not
12 that's the appropriate course to take.

13 MR. MOODY: Thank you, Your Honor. That's
14 more than fair. We appreciate that. As I said, we
15 just want to be in a position of preserving and not ---

16 THE COURT: Who is going to run the thing --
17 you know, basically all the members are out. Is this
18 guy capable of running the ---

19 MR. MOODY: He is capable of running ...

20 THE COURT: Okay.

21 MR. MOODY: You know, we obviously appreciate
22 the Court for the TRO so that we can get the
23 information. That's a big step. Because we all have
24 an interest in ---

25 THE COURT: Let me just ask you this. Why is

1 he -- why has he gone off the reservation, so to speak?

2 MR. MOODY: I wish he would tell us why he

3 ~~went off the reservation. We just can't get that~~

4 response, other than he's -- it looks like he wants to

5 have his own deal. Because he's -- it's a very unique

6 business model. And apparently he's copied it and

7 trying to use it for his own.

8 THE COURT: Okay.

9 MR. MOODY: And that's the mischievous that
10 concerns us.

11 THE COURT: Okay.

12 MR. MOODY: And leaving us holding the bag.

13 THE COURT: Well, he's got at least twenty-
14 five percent of the bag; doesn't he?

15 MR. MOODY: It's whether you can satisfy the
16 bag, is the question, unfortunately.

17 THE COURT: Yeah.

18 MR. MOODY: Thank you, Judge.

19 THE COURT: Y'all going to get me some ---

20 MR. MOODY: We'll have that to you and your
21 clerk this afternoon.

22 THE COURT: All right.

23 MR. SMITH: We'll email it to your clerk if
24 that works.

25 THE COURT: All right.

1

MR. SMITH: Thanks, Judge.

2

3

~~[END OF REQUESTED TRANSCRIPT OF RECORD]~~

CERTIFICATE OF REPORTER

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I, the undersigned Danette P. Hanks, Official
Court Reporter for the Thirteenth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript
of record of all the proceedings had and evidence
introduced in the trial/hearing of the captioned case,
relative to appeal, in the Circuit Court for Pickens
County, South Carolina, on the 3rd day of October,
2012.

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

January 6, 2013

Susan Danette Hanks

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF COMMON PLEAS
2012-CP-23-06319

SHAW FUNDING, LLC, BUILD A
HOUSE, LLC D/B/A/
MULTI-FAMILY PRODUCTS,
BUILDERS DESIGN HOUSE, LLC,
BUILDERS FIRST MORTGAGE, LLC,
BUILDERS FIRST FUNDING, LLC,
INVESTOR FUNDING, LLC,
TOTAL STONE, LLC, AMERICAN
LIGHTING CO., CONTRACT SUPPLY,
LLC, GLOBAL SOLUTION, AND MS
MECHANICAL SOLUTIONS, LLC
PLAINTIFFS,

vs.

MULTI-FAMILY PRODUCTS, LLC,
PAUL TAYLOR, AS A MEMBER OF
BUILD A HOUSE, LLC AND
INDIVIDUALLY
DEFENDANTS.

TRANSCRIPT OF RECORD

COPY

November 29, 2012
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

D. RANDLE MOODY, II, ESQ.
Attorney for the Plaintiffs

RANDALL S. HILLER, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

1
2 THE COURT: Apparently, there's something else that's
3 not on my docket.

4 What have y'all got?

5 MR. HILLER: Your Honor, before they unpack, I want
6 to talk about the fact that this isn't on your docket.

7 THE COURT: Well, no, I'm just teasing you. It
8 was -- I think we worked directly through my office to get
9 this set. This is a -- is that what you --

10 MR. HILLER: Well, no. What I'm -- what I want to
11 talk about --

12 THE COURT: Oh, okay.

13 MR. HILLER: -- is this fact that they -- I received
14 an e-mail last week saying they had worked through your
15 office to get this set to hear their motions. And, of
16 course, it's my position they have no motions pending.
17 They filed motions, orders were issued. Those orders have
18 been appealed. There's -- you know, we've -- I mean, the
19 appeal has been docketed since October the 23rd.

20 And, of course, it would be my position that there's
21 nothing that can happen from their perspective on those
22 orders or the motions that preceded those orders pursuant
23 to Rule 205. They can't be modified. And, I mean, the
24 Court has no jurisdiction to modify them. And I have got
25 a number of cases to that effect. The most recent

1 being --

2 THE COURT: Okay. Well, that's what we need to --
3 205 is what you're talking about?

4 MR. HILLER: Yes, sir.

5 THE COURT: All right.

6 MR. HILLER: I'd be happy to hand up these cases.

7 THE COURT: Oh, let's -- I mean, I know.

8 MR. MOODY: I'd be happy to address it, Judge.

9 THE COURT: Okay.

10 MR. MOODY: You may recall that this is a case we
11 filed for a TRO injunction and, also, an emergency
12 receiver, based upon the fact -- and I would add, Judge,
13 we have a lot of people here today that are interested in
14 this case. Mr. Bobby Burton represents Wells Fargo, which
15 is one of the banks. Mr. Brent Sanders is here. He is
16 the receiver that you appointed. And Mr. Brad
17 Bylenga [phonetic] is one of the interested partners in
18 the houses. I know -- this is the big HUD project to
19 build a house, and the fact that an auction was scheduled.
20 We have Mr. Shaw -- Mr. Donnie Shaw and Mr. Ken Rollins
21 here as well.

22 This -- what precipitated our filing of the complaint
23 in the emergency order request, you may or may not recall,
24 is that Wells Fargo had sent a letter to us, basically,
25 saying they were foreclosing a note, and that it would be

1 effective on October the 8th. I think we came before you
2 on October the 3rd. We did our best to get notice to
3 everyone --

4 MR. HILLER: No, they didn't, Your Honor. They
5 didn't.

6 They served him on the day of the hearing. And all
7 of this, you know, is the problem with having an ex parte
8 order in the first place, specifically, when the statute
9 prohibits an ex parte order for the appointment of a
10 receiver.

11 And so they had presented nothing but falsehoods to
12 the Court, which we tried to reply to. And despite the
13 fact that we were entitled to a hearing within 10 days of
14 the date that the temporary restraining order was issued,
15 we weren't given that opportunity. We appealed the
16 orders. The orders are appealed. They are appealed.
17 And, in this particular case, at least, with regard to the
18 appointment of a receiver, it is stayed. The receiver has
19 no authority and hasn't had any authority since the date
20 the order was -- I mean, the appeal was filed.

21 And pursuant to Rule 205, you don't have the
22 authority to modify an order, or enter a new one, or do
23 anything. Because it would be affecting the order that's
24 under appeal. So they made their bed. And I responded to
25 it appropriately. And, now, they're going to have to live

1 with it.

2 All of this talk about what they say -- and, of
3 course, we did file a response to the pleadings. We filed
4 an affidavit in response to theirs. And we've never, to
5 this date, had an opportunity to have a hearing. Because
6 we appealed the orders. The orders are appealed. The
7 hearing is no longer an opportunity. And so, you know, I
8 don't know -- I'm not here to -- prepared to or want to
9 have to go into those issues that we didn't get an
10 opportunity to go into before the order was entered.

11 So we've got motions pending. They're scheduled for,
12 I think, next week or the week after. Those are pending
13 motions. And we can argue some of those issues at that
14 time, specifically, the fact that the receiver has
15 continued to attempt to exercise control, despite the fact
16 that the orders are stayed, presumed at the instruction
17 of Mr. Moody, even though he theoretically works for the
18 Court.

19 But what they've done is they've killed this
20 business. There's no question about that. It's not going
21 forward. It has no opportunity to survive. The vast
22 majority of its assets are tied up in a lawsuit that's,
23 also, pending here, which Nelson Mullins is handling.
24 They can't handle it because they have nobody to tell them
25 what to do. Instead, they have to send an e-mail out to

1 every single member. And they've opened the door for the
2 Defendants in that case, who have now filed motions to,
3 again, dismiss the case or revisit their earlier motion to
4 dismiss just because of the appointment of the receiver.

5 So it's a disaster, but it is what it is. And,
6 legally, there's no opportunity for them to reargue a
7 motion or relitigate that issue.

8 MR. MOODY: Your Honor, may I be heard --

9 THE COURT: Yes.

10 MR. MOODY: -- since Mr. Hiller interrupted me?

11 THE COURT: Oh, don't start all that.

12 MR. MOODY: I disagree with everything he said, just
13 for the record.

14 THE COURT: Okay.

15 MR. MOODY: You may recall that the issue of the
16 receiver was an emergency situation. And the statute,
17 specifically, allows for when it's made to appear that
18 delay would work injustice, a shorter time can be done.
19 And, Your Honor, you did it on a temporary basis just to
20 be able to protect the return on investment and collateral
21 that was out there.

22 The receiver is here today. The Court can hear from
23 him. The receiver wrote you a letter earlier this month.
24 And Mr. Hiller, unfortunately, has represented my people,
25 and is involved with Nelson Mullins in Indiana. So I'm

1 not so sure -- I'm not sure why he's even here. Because
2 it appears like there is an actual conflict for him to be
3 representing Mr. Taylor.

4 THE COURT: Well, let's -- hang on.

5 MR. MOODY: Can I address the appeal issue? Because
6 I think --

7 THE COURT: Okay.

8 MR. MOODY: -- that's what Mr. Hiller has dug his
9 heels into.

10 THE COURT: Okay.

11 MR. MOODY: He, actually, sent the rule to the
12 receiver. And in Rule 241, it has the general rule that,
13 you know, generally, civil actions are stayed. But once
14 you read on, in Subsection B, it talks about the
15 exceptions. And since one of them was a TRO, you can't
16 appeal a TRO. Rule 241(b)(8), specifically, says, An
17 appeal from an order granting an injunction or temporary
18 restraining order. That's not appealable.

19 So, you know, I guess it's creating work that I'll
20 have to file a motion to dismiss with the appeals court
21 that you can't appeal a TRO or an injunction. That just
22 doesn't happen. And Mr. Hiller sent the rule,
23 specifically, to the receiver.

24 More pertinent to this case is the fact in 241(b)(2),
25 it says, Judgments directing the assignment or delivery of

1 documents or personal property as provided by South
2 Carolina Code 18-9-150. Well, that's what Your Honor did.
3 You had a temporary receiver to gather up the information,
4 gather up the personal property. Mr. Taylor had scheduled
5 an auction without notifying -- you know, he's a 25
6 percent owner. He had scheduled an auction and didn't
7 tell the 50 percent owners, didn't tell the bank, who has
8 this security interest in the matter. And Townes Johnson,
9 who represents AR funding, which is owed \$485,000, is
10 going to appear as well.

11 So we've talked -- I have talked with all of these
12 folks. And they want the receiver in place, because more
13 has happened to protect everyone and protect this -- what
14 he says is a dead company over the last four to six weeks
15 since this Court appointed a receiver than has happened in
16 months.

17 So we're prepared to -- Mr. Bylenga [phonetic] can
18 talk about that since April, he's not received anything
19 from Mr. Taylor. I think the bank can tell the Court what
20 they would like to see happen. Mr. Shaw can testify about
21 the affidavits that Your Honor considered for both the TRO
22 and the receiver.

23 But, most importantly, we have the receiver, who can
24 report to the Court about what he has been able to do.
25 And he can, also, report to the Court that Mr. Taylor, you

1 know, has interfered with what this Court ordered him to
2 do by taking the position that an appeal has stayed what
3 this Court said. But until -- as 241 says, those are
4 exceptions to the general stay. So what Mr. Taylor has to
5 do is come to this Court and ask for a supersedeas bond to
6 protect us and protect the company for the waste that he
7 has been engaging in, and the fact that he's wasted the
8 potential returns of investment.

9 So from a stay standpoint, Judge, our position is
10 this hasn't been stayed. This Court has not issued a
11 supersedeas bond. The statute, specifically, says that
12 it's an exception.

13 And in 18-9-150, which talks about the delivery of
14 documents or personal property -- there's an old case in
15 1890 that says where an appeal without bond is taken by an
16 executor from an order appointing a receiver of the
17 personal property of the estate, it does not operate to
18 stay the execution of the order. If somebody could appeal
19 the appointment of a receiver immediately and it would
20 stay, a receiver can never do what the Court asks it to
21 do. It just puts everybody in purgatory.

22 So that's our position, that his appeal is not a
23 stay.

24 THE COURT: Okay.

25 MR. HILLER: May I address that, Judge?

1 THE COURT: Yes.

2 MR. HILLER: Because, I mean, the appointment of a
3 receiver is not listed as an exception in the automatic
4 stay. And you won't find a case in South Carolina in 1890
5 or -- obviously, 1890 probably preceded our Rule 241. But
6 it is not an exception.

7 This action and your order doesn't have anything to
8 do with Chapter 18. It, specifically, references Title 15
9 in your order. And it's an appointment of a receiver
10 pursuant to Title 15 where that statute allowing the
11 appointment of a receiver is contained. There's no such
12 provision in there for an emergency, other than to shorten
13 the time. There was -- but never less than four days.

14 And so it is their obligation, if they want a
15 supersedeas, to make that motion, or if they believe that
16 the appeal was improperly filed to make that motion. But,
17 in the meantime, the order stays. And, of course, whether
18 or not it stayed from your perspective, that doesn't
19 change the fact that right now there's a pending appeal.
20 And, under 205, they can't reargue. And you can't do
21 anything to modify it.

22 So they've sat, again, on their hands. And, of
23 course, you know, I'm not -- I don't want to get into the
24 merits, Your Honor, but we did file an affidavit. We
25 attached numerous supporting documents. Most of them

1 being communication back and forth between these people
2 pointing out as early as March that with their -- the
3 Plaintiffs are saying, we're done. We're not going to put
4 in any more money. We don't care if you can't pay your
5 bills.

6 We -- you know, my client or -- and let me go back to
7 the -- and briefly address the issue with regards to
8 whether a conflict is -- I have filed a motion to dismiss
9 their claim on behalf of BAH, which is the LLC which the
10 Shaws own 50 percent. Mr. Taylor owns 25 percent. And
11 Mr. Davis, who's sitting back here, owns 25 percent.
12 Because they just took it upon themselves to name them as
13 a Plaintiff. But they didn't allege any of the necessary
14 elements to show that they were entitled to bring a
15 derivative action on that behalf. And there's a motion to
16 dismiss pending, I believe, and scheduled within the next
17 two weeks on that where we have taken the position that we
18 should act as the entity [phonetic].

19 But, you know, he says we're hiding this auction. It
20 wasn't hidden. There's e-mails in there about it.
21 There's e-mails to their attorney -- their mutual attorney
22 at Nelson Mullins telling them that the inventory was
23 going to be auctioned off in order to pay those legal fees
24 to go forth with the Anson litigation in Indiana. It was
25 advertised on the website and in the newspaper. My client

1 has been -- or Mr. Taylor and Mr. Davis have been the
2 hands-on operating people for a company that they have
3 over \$3 million in hard money invested in for five years.

4 And the other side, the people that sat quiet the
5 whole time and stuck their heads in the sand in July --
6 and I've got all the affidavits -- I mean, all the e-mails
7 from them attached to Mr. Taylor's affidavit, basically,
8 saying you won't get another dime out of us. We don't
9 care what happens. And, in fact, an e-mail from Mr.
10 Rollins saying why are we going to -- want to spend a
11 million dollars to try to recover a million dollars.

12 So they walked away from it. My client was doing the
13 best he could to continue to try to maximize the value of
14 the remaining assets, and has continued to do that for the
15 course. Now that this litigation has been filed, like I
16 said, all it did was open the door for all of these other
17 opportunities to make it much, much more difficult, if not
18 impossible, to, actually, realize that benefit.

19 This auction that they complain about, it went ahead
20 and happened. The receiver thought it was a good idea,
21 too, and had the auction. Because there's no need for
22 them to have a 30,000 square foot warehouse filled with
23 inventory when they don't have any ongoing jobs. All they
24 have left are the properties they own, which the majority
25 of which are producing an income adequate to support the

1 debt. They've got debt. Every single debt of this
2 company that was personally guaranteed by the Shaws was
3 personally guaranteed by my clients. They've got the same
4 dog in the same fight all the way down the line.

5 So despite my saying I didn't want to get into the
6 merits, I have. But, clearly, under Rule 205, this
7 hearing is unnecessary, inappropriate, and the Court lacks
8 any jurisdiction to either extend, modify, or change that
9 order.

10 THE COURT: And that would be your argument with
11 respect to the order appointing the receiver?

12 MR. HILLER: Yes, sir.

13 THE COURT: What's your argument with --

14 MR. HILLER: I don't really care --

15 THE COURT: What is your argument with respect to the
16 temporary restraining order that's been filed?

17 MR. HILLER: Well, it wouldn't -- Your Honor, my
18 reading of the rule is that it was mandatory to include in
19 that order that it expired within 10 days of its own
20 volition, unless a hearing was held. That's what the rule
21 requires. It says it right in there. It should have been
22 in the order. But we don't care.

23 There's no business. I mean, all this is winding up.
24 I mean, from the standpoint of enjoining Mr. Taylor and
25 Mr. Davis from trying to go out and generate new business,

1 that's not going to happen.

2 MR. MOODY: Judge, what we want to enjoin him from is
3 stealing it. Because he formed another company. And we
4 still have a server missing. So that's a lot of what's
5 going on there.

6 But, as to the jurisdictional issue, I think
7 Mr. Burton, who's Wells Fargo's counsel -- I mentioned
8 that 1890 case. Incidentally, in that 1890 case, the
9 Court, specifically, says, The order appointing a
10 receiver, certainly, directed a "delivery of documents and
11 personal property."

12 And it's funny how the law works. 18-9-150 talks
13 about the delivery of documents and personal property. So
14 that is a specific exception. The appointment of a
15 receiver is not appealable. It just does not effect an
16 automatic stay. He has to go get a supersedeas bond. He
17 can't say I appeal and then have his client telling the
18 world that your order has been rescinded. He has told
19 everybody.

20 MR. HILLER: No. I have told him that the order was
21 stayed. And I never --

22 MR. MOODY: Randy, I said your client --

23 MR. HILLER: -- and I never used the word --

24 MR. MOODY: -- I said your client --

25 MR. HILLER: -- appoint or rescinded. I said the

1 order is stayed --

2 MR. MOODY: Well --

3 MR. HILLER: -- I said it is stayed. And Mr. Moody --

4 MR. MOODY: -- that's not right --

5 THE COURT: Wait, wait. One at a time.

6 MR. HILLER: Your Honor, it's not an exception. It's
7 not listed as an exception.

8 THE COURT: Well, 241(b) says, A list of some, but
9 not all of the exceptions to the general rule. And so
10 your position is since it's not listed -- that the
11 receivership is not listed in here and that it's not
12 included. But that is not an exclusive list.

13 MR. HILLER: Well, but it's for the Supreme Court --
14 I mean, it's for the Court of Appeals to decide at this
15 point whether I'm right or wrong on the stay. I mean,
16 they want to come back and reargue their motion that they
17 argued without us being here in October. So -- but it's
18 appealed.

19 They've got -- you know, I don't know why they're
20 sitting on their hands. They -- I guess so that Mr. Moody
21 can write letters claiming that I'm saying that it's
22 rescinded. I just write letters back saying I said it's
23 stayed. He's got options. He can file a motion to
24 dismiss with the Court of Appeals. He can file a motion
25 for supersedeas with the Court of Appeals to set aside the

1 automatic stay, or he could argue that it's not
2 automatically stayed. But they've got to hear it. It's
3 got to be in Columbia at this point. Because 205 has
4 given them exclusive jurisdiction over every issue raised
5 in the appeal. And those two orders were attached and
6 appealed. So there's nothing to prevent him from doing
7 that, nothing.

8 MR. MOODY: Judge, Mr. Hiller is an effective
9 advocate and he can argue anything, but the rule is very
10 clear. It says in 241(b), The delivery of documents and
11 personal property. I have a Supreme Court case that I
12 handed up to Your Honor. It says, The order appointing a
13 receiver, certainly, directed at delivery of documents and
14 personal property. That's Subsection B of 241.

15 And, you know, he talks about this second order. You
16 can't appeal a TRO and an injunction. That's --

17 MR. HILLER: Well, he's had a month to file a
18 motion --

19 MR. MOODY: It doesn't --

20 THE COURT: Wait a minute.

21 MR. MOODY: You can't appeal it --

22 MR. HILLER: You've had a month --

23 THE COURT: All right. That's enough.

24 I'll tell you this. Both of you are right in part,
25 and both wrong in part in my view. You're -- I think that

1 the Court of Appeals has to decide whether or not there is
2 a legitimate appellate issue. I can't decide that. And
3 I'll tell you this.

4 Mr. Hiller, to your client, if you're wrong, and they
5 find that this is not an appealable issue and they violate
6 the order of the Court that I've issued, then they're
7 going to be subject to whatever appropriate -- I don't
8 want to say sanctions, but whatever appropriate --

9 MR. HILLER: But that cuts both ways, doesn't it,
10 Your Honor?

11 THE COURT: Well --

12 MR. HILLER: If it was issued improperly and --

13 THE COURT: Yes. But I'm just telling you I've
14 got --

15 MR. HILLER: Well --

16 THE COURT: Wait a minute, Mr. Hiller.

17 I've got orders that I've issued. You've appealed
18 from them.

19 MR. HILLER: Yes, sir.

20 THE COURT: If we find out that your appeal is
21 inappropriate and your clients have violated the terms of
22 the orders, they're going to have to face up to that. It
23 is conversely true that if -- and I don't know what -- I
24 haven't issued an order against these guys. But if you've
25 got some motion filed with respect to some sort of

1 improper pleading, then that will have to be dealt with.

2 But I'm just -- what I'm telling you is, yes, the
3 appellate court needs to make a determination whether or
4 not they've got exclusive jurisdiction. But if there's
5 violation of the underlying orders and it's found that it
6 was an inappropriate appeal, then that will be dealt with.

7 So I would think in the interest of good sense that
8 everyone would think long term in this case. That's my
9 position. And I think you all do need to get a ruling --
10 emergency ruling on the issue of the appeal. And if you
11 win and we find out things have been mishandled or
12 misappropriated in some fashion, there will be
13 consequences. Okay.

14 MR. HILLER: We're fully prepared to go forward on
15 that basis, Your Honor.

16 MR. MOODY: Judge, just from a standpoint of time and
17 the urgency that we're talking -- we're talking about
18 federal projects. The receiver did write you a letter
19 about how should he proceed. And he's here today.

20 THE COURT: Yes, I know. And I got his letter. And
21 I didn't feel it was appropriate for me to respond to it
22 based on the nature of the status of the case.

23 MR. MOODY: Is it possible that you can hear from him
24 today so that we can preserve that for the record?

25 MR. HILLER: Well, I have a motion on that, I

1 believe, that is scheduled for next week on the fact that
2 he's continuing to act as the receiver.

3 THE COURT: Well, I'll tell you this, he does answer
4 to the Court.

5 MR. HILLER: He's supposed to.

6 THE COURT: Yes.

7 And he -- I'm sure he's aware of that. And, you
8 know, I don't want to make some sort of advisory statement
9 up here. But I would think that everybody involved would
10 be cognizant of the pitfalls of not conducting their
11 affairs appropriate with, perhaps, what's been the orders
12 I've signed. And, you know, I'm not exactly -- I think,
13 perhaps, that he should suspend his --

14 Well, we're going to hear that next week; right?

15 MR. MOODY: Mr. Hiller has filed a rule to show cause
16 against the receiver is what he's talking about. Our
17 motion for injunction and motion for receiver
18 has been out there since October.

19 And the receiver that you appointed was on a
20 temporary basis until the other party could -- other side
21 could be here. So what Mr. Hiller is trying to do is to
22 delay everything today so that he can put the receiver up
23 on a rule to show cause.

24 MR. HILLER: I filed it before they asked the Court
25 to set this. And I saw nothing, other than an e-mail

1 about that.

2 Your Honor, your law clerk is well aware that I tried
3 to communicate about this matter immediately after the
4 entry of the order. I filed a motion to modify or amend
5 the order immediately after the entry of the order. I
6 requested priority on the docket for the motion hearing,
7 as allowed by the rules, immediately after the order.

8 THE COURT: Well, let me ask you this --

9 MR. HILLER: None of that was responded to. And I
10 filed an appeal. It's my position that once that appeal
11 was filed as it has been here throughout that he was --
12 that the receiver --

13 THE COURT: What's your rule about?

14 MR. HILLER: Sir?

15 THE COURT: What's the rule about?

16 MR. HILLER: Well, he continues to represent himself
17 as the receiver. And I want him to stop, pending a
18 resolution of the appeal. Everybody is in limbo right
19 now.

20 We aren't concerned about what's going to be --
21 what's going to happen as a result of the calendar.
22 They've got the receiver here. But he's not going to say
23 one word that would support any of their allegations of
24 money getting taken out of the company improperly, not one
25 word about that. You know, all -- we know --

1 THE COURT: What is your objection to having an
2 independent receiver?

3 MR. HILLER: Because he doesn't know how to do it,
4 you know. I mean, he doesn't know how to -- I mean, I'm
5 not saying he's incompetent in some way.

6 But this is a very specific business type
7 opportunity. They're -- they were in the business of
8 loaning money. And as a condition of loaning money -- of
9 course, construction projects -- that the people who
10 borrowed the money had to buy their building products from
11 them, much like Stock Building Supply always used to do
12 or -- in other words, that was the nature of the business.
13 That's why they had a warehouse and they had inventory.
14 And, of course, they made money on the loan, and they made
15 money on the sale of the profits. So they got both
16 towards their total margin.

17 The minute that a receiver starts contacting -- or
18 contacted any of their receivables, any of their
19 construction people, or whoever, there's no chance of
20 getting paid, you know. I mean, there's no chance that
21 they're going to pay. You're going to have to sue them
22 for it, you know, no matter how small \$12,000, \$20,000,
23 \$30,000. Maybe the big ones might still go ahead and pay.

24 But, you know, there's -- like I said, there's a
25 million and a half dollars tied up in the lawsuit that's

1 going on that Nelson Mullins is handling on behalf of this
2 crowd. Brad Rustin is the lead attorney on that. And he
3 has to send an e-mail to everybody, you know, to try to
4 get an answer so that something can get done.

5 It -- I know you didn't have to -- haven't had the
6 benefit of seeing the materials we've filed. But all the
7 things -- every single word in their complaint that
8 they're acting like they were shocked and surprised by
9 when they asked for this emergency hearing in October is
10 contained within e-mails back and forth between Mr. Taylor
11 and the Shaws back in March, you know, March, April, May,
12 June, July. I've included all those e-mails back and
13 forth, here is where our cash position is, here is who
14 owes us money, here's what we can't pay. Rollins, the
15 chief financial officer for Shaw, did a weekly spreadsheet
16 of the cash flows. He did it weekly showing that --

17 THE COURT: Well, let me ask you this --

18 MR. HILLER: But --

19 THE COURT: Hang on.

20 MR. HILLER: I'm sorry.

21 THE COURT: And so the business went south because of
22 what?

23 MR. HILLER: The money tied up in Indiana.

24 THE COURT: Well --

25 MR. HILLER: I mean, you know, they --

1 THE COURT: -- everybody involved in the case wants
2 to get the money flowing again; right?

3 MR. HILLER: Absolutely.

4 THE COURT: Well, then what's the problem with asking
5 this gentleman to oversee the conduct of the business?

6 I mean, I --

7 MR. HILLER: He's not overseeing it. He's running it.

8 And, you know, frankly, I don't think he's qualified
9 to run the litigation -- they acted -- they made a big
10 deal out of this auction. Mr. Taylor sends e-mails to
11 Mr. Rollins saying, I'm going to shut the building down.
12 We don't need 30,000 square feet. And then he sends an
13 e-mail to their attorney who's representing all of them,
14 Mr. Rustin, and says, I'm going to auction off all the
15 inventory so that we can pay your bill, and the bill of
16 the attorneys in Indiana.

17 And then they send affidavits here saying, We didn't
18 even know anything about the auction. Well, that's what
19 he was doing. He was trying to keep going forward with
20 the limited resources available, and collect what he could
21 from the remaining receivables. There's been no money
22 taken out of the business. It's been to keep the business
23 alive long enough to recover these -- or to try to
24 maximize the recovery of the assets.

25 THE COURT: All right. But let me just ask you this.

1 Assuming what you're telling me is true and Mr. Moody's
2 clients don't believe that --

3 MR. HILLER: My --

4 THE COURT: Hang on.

5 What's wrong with having an independent overseer
6 watch what's going on?

7 Because you're going to end up -- you're going to
8 have to respond to it at some point anyway. So why not go
9 ahead and do it now.

10 MR. HILLER: Part of my counterclaim was to wind up
11 the business and do an accounting. We've got no problem
12 with that, you know. I mean, it's going to happen.

13 THE COURT: What's wrong with letting the receiver do
14 his job?

15 MR. HILLER: We don't mind being transparent, but
16 that's not what a receiver does. He makes decisions. And
17 so transparency is not the issue. It's decision making,
18 that's the issue.

19 THE COURT: We'll just take a short break, and we'll
20 be right back.

21 (WHEREUPON, a break was taken.)

22 THE COURT: I want to just report -- and I think your
23 attorneys will report to the clients that there was -- I
24 think it was a productive in-chambers meeting. And
25 nothing was resolved, but ideas were bounced around,

1 floated around. And I think this is -- all the parties
2 involved are sophisticated and what I like to call big boy
3 businessmen. This is a -- it's an unhappy circumstance
4 any time a business has a dispute that ends up in court.
5 And it needs some positive objective reflection on the
6 part of everybody concerned to try and find the most
7 favorable resolution of the conflict.

8 So I'm not sure what I was hearing today. But I'm
9 going to continue this case for resolution of the issues
10 until I -- I don't know when the next hearing date is.

11 Now, let me ask you this. There's been an
12 application to put it into business court.

13 MR. MOODY: Yes, Your Honor.

14 THE COURT: Mr. Hiller, I don't know if you've
15 discussed that with your client. It is not approved in
16 the business court. But you might discuss --

17 MR. HILLER: We wouldn't have any objection to that,
18 Your Honor.

19 THE COURT: Okay. That gives us a lot more
20 flexibility. But, in any event, I've sort of treated it
21 like a business court case to begin with.

22 So unless there's anything else, I hope that -- I
23 would just urge the parties to step back, take a deep
24 breath, look for the most advantageous resolution of the
25 matter for everybody involved.

1 So, having said that, you know, just let me know when
2 we need to meet again.

3 The receiver has a question.

4 Yes, sir.

5 THE RECEIVER: Being the independent person in the
6 room, when I walk out, Mr. Hiller is going to tell me not
7 to do anything because I don't have any authority. And
8 he's going to tell me to go, go, go.

9 THE COURT: No. Neither one of them are going to do
10 that.

11 THE RECEIVER: Okay.

12 THE COURT: One of the things we discussed in the
13 back was exactly how the case should proceed vis-à-vis the
14 receiver. I would ask you not to -- you know, just step
15 back for a little bit. Do not take an active role at this
16 time.

17 THE RECEIVER: I have for about three weeks now.

18 THE COURT: Okay. Well, just maintain your status
19 quo and some -- you know, we'll get back with you on
20 whether it's me or the attorneys. That's one of the
21 things we discussed in the back. They need to talk to
22 their clients. And we're trying to come to a good place
23 to be with respect to how this case moves forward.

24 Thank y'all very much.

25 *****END OF TRANSCRIPT OF RECORD*****

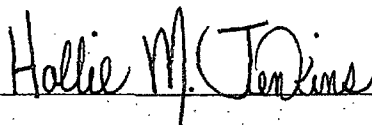
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 29th day of November, 2013.

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

March 28, 2013

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2012-CP-23-06319

SHAW FUNDING, LLC, BUILD A
HOUSE, LLC D/B/A/
MULTI-FAMILY PRODUCTS,
BUILDERS DESIGN HOUSE, LLC,
BUILDERS FIRST MORTGAGE, LLC,
BUILDERS FIRST FUNDING, LLC,
INVESTOR FUNDING, LLC,
TOTAL STONE, LLC, AMERICAN
LIGHTING CO., CONTRACT SUPPLY,
LLC, GLOBAL SOLUTION, AND MS
MECHANICAL SOLUTIONS, LLC
PLAINTIFFS,

vs.)

MULTI-FAMILY PRODUCTS, LLC,
PAUL TAYLOR, AS A MEMBER OF
BUILD A HOUSE, LLC AND
INDIVIDUALLY
DEFENDANTS.

TRANSCRIPT OF RECORD

COPY

March 5, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

D. RANDLE MOODY, II, ESQ.
Attorney for the Plaintiffs

RANDALL S. HILLER, ESQ.
Attorney for the Defendants

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: Shaw Funding v. Multifamily Products.

All right. Here we go.

MR. MOODY: Judge, we're here today in the matter you've heard before. You saw us in October. And you saw us again on November 29th, for the motion for receiver and the temporary injunction. You just kind of held that in abeyance to give the parties an opportunity to work through some things. Mr. Hiller has a motion to dismiss, as well as a motion for sanctions against the receiver.

Just from an issue of housekeeping, these -- at least, our two motions are large motions. And for the time allotted today, I don't think we can put on everything. But I would like to give an update to the Court as to where we are, and the fact that we are reasserting our motion for receiver. And from a timing standpoint, we would ask that out of our two motions that that would be given priority. If we need to punt the injunction down the road, we can do so.

THE COURT: All right.

MR. HILLER: Your Honor, I'd like to address that housekeeping issue.

THE COURT: Okay.

MR. HILLER: My motion is for -- my motion to dismiss and my motion -- or rule to show cause against the alleged

1 receiver has been set for about 30 days.

2 I took the position back in November, as the Court
3 may or may not recall, and I take the position again
4 today, that these motions, their motions have been heard.
5 You issued an order on both of them. Those orders have
6 been appealed. I've already filed a brief. The
7 transcript makes good reading when you have an ex parte
8 order. However, back in November, it was my position that
9 we can't hear those again. That's for the Court of
10 Appeals.

11 Somehow, Mr. Moody and Mr. Smith managed to convince
12 Mr. Lopez to add these to the roster on Friday. But
13 they've been heard. There's an order. It's appealed. No
14 further action can happen on those motions, not to mention
15 the fact, you know, I didn't have -- even if you were
16 inclined to hear them, I don't have adequate notice to
17 address those.

18 Although, as I said, as we discussed back in
19 November, there's no opportunity to redo that. Those
20 orders have been heard, decided, and appealed. And the
21 initial brief has been filed in that appeal.

22 So the only things that were properly set for hearing
23 today are my two motions.

24 MR. MOODY: Your Honor, I'd like to address that on
25 the record.

1 THE COURT: Okay.

2 MR. MOODY: In October, you heard these motions on a
3 temporary basis because the status of the organizations
4 were in jeopardy of insolvency. We provided this Court
5 with a number of exhibits, exhibits from third parties,
6 including Wells Fargo, which that issue remains unresolved
7 today, issues regarding corporate authority, which we have
8 concerns about. We've raised this issue. And,
9 unfortunately, I'm hearing that it's been raised in other
10 proceedings about Mr. Hiller representing Paul Taylor, as
11 well as representing the company. And it's causing all
12 kinds of difficulties.

13 The issue you heard in October was on a temporary
14 basis. Our motions were for permanent motions. And you
15 told us that when Mr. Taylor and others were represented,
16 we would come back and hear that.

17 So I respect Mr. Hiller very much. But here we go
18 again. We heard the same thing in November. We addressed
19 the issue of 241, and the fact that the appointment of a
20 receiver under 241(b) is not something that is stayed by
21 an appeal. What is happening, in my view, is the other
22 side continues to obstruct, delay, and buy time because
23 time is their friend.

24 We need the Court's intervention for several reasons.
25 We have Wells Fargo pressing on us for a payment of a

1 certain amount. The money is sitting in an auction
2 account that can be made and paid. I have communicated to
3 Randy Hiller on several occasions about here is the
4 payments that we need to make. And Mr. Hiller and I get
5 along famously, lawyer to lawyer. Our clients, however,
6 do not see eye to eye on how this should be wound down.
7 But I have communications from Mr. Hiller in early January
8 that says, I don't see any way that these parties will
9 work something out. We just need to go back to court.

10 So from a scheduling standpoint, this is a business
11 court matter. And, as you know more than I, we have tried
12 to work to find a term for business court, and it has been
13 elusive. But we need to have these matters established as
14 to the receiver. I've offered to punt on the injunction
15 on down the road so that can be heard again.

16 But we have two very -- well, three very pressing
17 issues for matter of update. And this Court asked us to
18 see if we can work things out. And we've sent proposals
19 to say, let's make these payments to preserve.

20 Wells Fargo is calling my client every day. They
21 call me a lot, because the loan is mature. You may recall
22 in November, they sent counsel to the hearing because they
23 said they want a receiver.

24 They sent a letter to Randy Hiller and I on January
25 19th, saying that if something is not done by February

1 1st, we will institute our own action. I have the letter.
2 And part of the letter said this continued impasse
3 regarding the receiver is unacceptable in the bank's eyes.
4 We have correspondence from Mr. Hiller that, basically,
5 says, you know, his client is not going to pay any more
6 attention or time to this.

7 So we're in a position where we have to come to the
8 Court and reassert the fact that we need a receiver
9 appointed. And I have multiple letters to show the
10 communications to the Court to show that we have tried a
11 good faith effort, the lawyers have. But there's not an
12 agreement that can be struck with our clients.

13 So Wells Fargo is number one. If we don't get a
14 receiver, they're going to come into court asking for a
15 receiver themselves. And it's just wasteful to have
16 another receiver.

17 Number two, there is a case involving the Indiana HUD
18 project. I don't know if the Court recalls, but this
19 company did HUD projects, primarily one in North Carolina
20 and one in Indiana. Mr. Hiller's client, Paul Taylor, and
21 Mr. Hiller working on that case engaged the firm of Nelson
22 Mullins. And many of our colleagues from Nelson Mullins
23 are here today for other matters.

24 But Nelson Mullins has been working on the Indiana
25 case. And it's my understanding, although I may be

1 incorrect, that there is a case proceeding through court.
2 There may be a business court application in that matter.
3 But Judge Welmaker had a hearing about a -- what was going
4 on and a mediation has been ordered by Judge Welmaker to
5 occur by the first week of April, somewhere in that time
6 frame.

7 There are outstanding legal bills that need to be
8 paid. These are legal bills that Paul Taylor hired Nelson
9 Mullins to do. And we have asked Mr. Taylor to approve a
10 payment to Nelson Mullins of a certain amount, and we
11 cannot get that kind of agreement.

12 The third matter is an issue involving the North
13 Carolina HUD project. There is a substantial amount of
14 money, in addition to the Indiana project -- there may be
15 \$1.6 million tied up there, or whatever that litigation
16 says. There is a North Carolina project called Astoria.
17 And we are working and have been trying to work on the
18 certification process. We are winding that process up.

19 So they have worked together on that, even though
20 it's not been timely. And there needs to be an approval
21 of a CPA firm, who has sent an engagement letter to the
22 business for \$8,000 so that they can do the certification
23 for the HUD project. Now, Mr. Hiller and I spoke about
24 this last week. He said, Randy, send it to me and, you
25 know, we'll get that done.

1 So those are the three pressing items. And we would
2 reiterate and ask this Court, we have since November
3 attempted to work together to come to agreements on
4 things. We've worked diligently on that. Our client,
5 Shaw Funding, continues to have issues about the fact that
6 we can't get all the financials, and that is a very
7 difficult issue. But this whole arrangement we have right
8 now of mutual agreement is a great concept only when you
9 can get a mutual agreement. There are motivating factors
10 about upside, and how parties can get an upside that
11 corrupt the process and don't make it such that it's
12 tenable to continue.

13 So we would ask the Court to appoint the receiver.
14 We've had the motion pending since October. This Court
15 put one on on a temporary basis. And, you know, we've
16 given it the old college try for over four months, it
17 seems like. And we just need some relief for a receiver
18 to come in and be able to wrap up and wind down this
19 company, which would allow the receiver to deal with
20 attorneys directly, authorize payments. Because Wells
21 Fargo has to be paid. Nelson Mullins needs to be paid,
22 such that they can get to the mediation and make an
23 assessment of a recovery there.

24 And we, obviously, for the HUD project in North
25 Carolina, need the CPA's to be engaged such that they can

1 certify that process and we can get referred payments,
2 release of lines of credits, and returns there. So
3 there's money that's there. We need an independent party
4 to assist these folks in realizing the maximum return and
5 minimizing the liabilities for all parties, instead of
6 individualized selfish review.

7 Judge, we have the same notebooks that we had before
8 for the receiver. I'd be happy to address that. Donny
9 Shaw's affidavit is attached. As a point of update, I
10 would like to provide the Court with the communications to
11 show, at least, from a timeline where we've been and what
12 we've tried to accomplish, if I can pass those up.

13 MR. HILLER: Your Honor, are you going to make a
14 decision on whether you're going to deal with this on
15 short notice, and the fact that it's under appeal?
16 Because I'm not prepared to address the specifics of this
17 communications today.

18 I got notice of this hearing on Friday, Steve, of
19 these being added, Thursday or Friday.

20 MR. MOODY: This is merely a continuation of where we
21 were in November, Judge.

22 MR. HILLER: It's a continuation from a legal
23 standpoint. Mr. Moody tells you these orders were
24 temporary. Well, you know, they forgot to put that in the
25 orders they handed up for you to sign.

1 And he tells you that my clients aren't involved.
2 And he argued to you back in October when he was the only
3 one there that he wanted you to appoint a temporary
4 receiver, or appoint a receiver so that his people would
5 go ahead and come off the hip and pay Nelson Mullins.
6 Well, they had a receiver. They had them for two and a
7 half -- two months. Did they come off the hip? They
8 didn't pay them a dime. He told you back in October --

9 THE COURT: Well, that was the temporary receiver
10 that you --

11 MR. HILLER: But that wasn't a -- it wasn't
12 temporary. It was permanent is what the order is, as well
13 as the TRO was permanent. It didn't even contain language
14 saying that it was going to expire in 10 days. You told
15 them you were going to be out of town and you couldn't
16 sign it. And they talked you into it.

17 They put up a \$5,000 bond. And Mr. Moody told you
18 that he didn't think my client had -- you asked him, what
19 does my client stand to lose. My client has got \$3.5
20 million invested in this company hard money that they're
21 well aware of. We did file an affidavit in anticipation
22 that we might, actually, get a hearing in this case.

23 We set forth documentation from the Plaintiffs to my
24 clients telling them -- I mean, explaining how they were
25 doing all the cash flow analysis. They were in the

1 business once a week every Tuesday to go through the books
2 and go through the records.

3 Their plan, Your Honor, since the date that this
4 so-called receiver was appointed is to just pay the light
5 bill until the money runs out and then close the doors.
6 We have made numerous proposals to them to resolve this
7 matter between the members so that they could go forward
8 and try to salvage some of this equity. A month would go
9 by, no response, yeah, nah, a counter offer. They want to
10 just grab a little bit every now and then and throw it at
11 a problem to buy a little more time without any kind of
12 long-range plan as to whether that's viable.

13 This Nelson Mullins payment, those guys work hard.
14 They deserve to be paid. But what they want to do is pay
15 them a little bit, half their bill, and then hope the case
16 settles. They've got -- there's no plan for what happens
17 if it doesn't settle as to how it's going to go forward
18 after that.

19 It's the same with Wells Fargo. Wells Fargo has got
20 a house as security. Let them have it, you know. We have
21 proposed putting it up for sale since July and, yet, we
22 never get a response, never get an answer on that.

23 The \$8,000 for the Astoria -- see, here is the
24 problem, Your Honor, and here is why a receiver doesn't
25 work, and won't work in this case. Mr. Taylor is the

1 managing member of the entity, Build A House. He is
2 designated in there to receive an annual salary. He's the
3 only member. He runs -- they can't do anything without
4 Mr. Taylor. They can't pursue the Anson litigation. They
5 can't pursue the Astoria cost certification. He's the
6 only one that knows what to do. He's the one that's
7 answering all the interrogatories, all the requests for
8 production, and producing all the documents. He's the
9 only person that has a possible plan to try to keep this
10 company solvent long enough to resolve these things. And
11 having to deal with the other side, the other 50 percent
12 that was just the money people, they just got lines of
13 credit and they didn't have any day-to-day operational
14 involvement with the business.

15 The only way -- the only chance -- I mean, this
16 system of sending an e-mail saying we want to throw a bone
17 to Wachovia to buy us another 90 days is just going to buy
18 us another 90 days and then get foreclosed on. Something
19 needs to be done. I mean, decisions need to be made,
20 which can't be made under this system. And we talked
21 about that in November.

22 It can't be a -- everybody has got to agree.
23 Everybody has to sit down and agree on every single item
24 that's going on here. It won't work. It hasn't worked.
25 I mean, you know, all they've done is sat here since the

1 day they filed this action on October the 3rd at 4:00
2 something in the afternoon until today. All they've done
3 is just stood still and gotten rid of most of what little
4 liquidity they had just to, actually, incur more debt, you
5 know.

6 Because Mr. Rustin is here on behalf of Nelson
7 Mullins and was lead attorney for that Anson litigation.
8 They brought up 75,000 or 80,000 probably due now, most of
9 which has happened in the months we've been just sitting
10 here twiddling our thumbs.

11 There never should have been a receiver appointed.
12 There's no need for a receiver. And, in fact, if my
13 client walked away, there's no chance of recovery for
14 Anson or Astoria, none.

15 And with regards to Mr. Taylor and Mr. Davis, who are
16 the other two members, and the fact that -- I've always
17 represented Build A House, the entity, in all their
18 litigation matters for the past four or five years. I
19 wrote Mr. Moody when he raised the potential conflict of
20 interest issue, and provided him with the only
21 correspondence, the only communication I have ever had
22 with the other members, Shaw, which was, I believe, in
23 July. And it was an e-mail saying we're -- their other
24 company, AR Funding, had sued their company, BAH, which
25 they were half owner of.

1 And he sent me an e-mail saying, well, we're 50
2 percent owners, what should we do, or what are you going
3 to do? And I responded back to him and said, I'm not
4 involved in your internal disputes. You need to settle
5 those over there. I'm representing Build A House.

6 Now, I invited him, at that time, if he wanted to
7 bring an action, or file a motion, or make any kind of
8 claim alleging a conflict of interest, go ahead and do so.
9 Although, I felt like, under the rules, that this was an
10 internal matter of a dispute between members, which does
11 not disqualify the attorney that had represented the
12 entity.

13 And, of course, the reason for my motion to dismiss,
14 which is the true reason I was here this morning, is
15 because they have brought a claim. And they've included
16 BAH, the entity, as the Plaintiff. But they have not
17 included any of the allegations that are required by
18 Section 33-44-1103 in order to bring a derivative action.

19 And, in fact, if you, actually, read the complaint,
20 you'll see that it's nothing more than a dispute between
21 members alleging improprieties, and accounting, and
22 disillusion, which they're free to bring individually. I
23 have no problem with that. I've just asked the Court --
24 because we did in our counterclaim bring the appropriate
25 derivative pleadings to just dismiss BAH as a Plaintiff,

1 because they did not meet that obligation and allow our
2 counterclaim to continue as the derivative action.

3 But, Your Honor, I mean, I would say that where we
4 are today is the best argument or the best reason for why
5 there is no such thing in South Carolina for the ex parte
6 appointment of a receiver, you know. Because if you would
7 have had the other side of the facts, if you would have
8 had an opportunity -- if we had had an opportunity to
9 present to you how intimately involved they were in the
10 financial side like the dollars and cents going in and out
11 of this company -- and you can see it from the affidavit
12 that's contained in the file, because we include their
13 e-mails, their spreadsheets.

14 Mr. Rollins, the CFO for Shaw, he was doing the cash
15 flow sheets every week. Once a week, cash flow, here is
16 what's coming in, and here is what's owed, here's what's
17 going out. But they come to court and file affidavits and
18 Mr. Moody stands up and tells you they don't know what's
19 going on, and they're surprised that there's no money, and
20 they're saying Mr. Taylor didn't do this, and Mr. Taylor
21 didn't do that. They were the ones that were doing it.
22 They had the purse strings. And they knew what the debt
23 was. And they knew what the situation was.

24 And this company -- and then this whole thing about
25 stealing business opportunities. Do you know how much

1 business they've tried to do since then? Zero, none, nil.
2 There's nothing -- they had bailed on that back in March
3 of last year. They said, we're done, we're not putting in
4 any more. We don't want to do any more deals. All those
5 e-mails are in there as well.

6 And Mr. Taylor had written them saying, I'm shutting
7 it down. I'm trying to get out of the lease. I'm going
8 to sell -- I mean, in other words, he was winding it down
9 when they brought this action. And he -- but he was doing
10 it in a way to try to retain as much value as possible.

11 They have agreed on a few things. They have resolved
12 their issue with Mr. Bylenga [phonetic]. They've
13 transferred -- or are in the process of transferring
14 property to him in satisfaction of about -- I don't
15 know -- \$2 million worth of debt.

16 But there are other issues that need resolving. And,
17 you know, it's back to the same situation as Mr. Rustin
18 and I faced in the Anson litigation. Here is the house
19 that was owned that burned down. And a claim needs to be
20 made. The insurance company has turned it down. But who
21 wants to do it? Do we know who's running the show, and
22 possibly whether we're going to get paid to do it?

23 MR. MOODY: Your Honor, and that -- Mr. Hiller is
24 making all the points as to why a receiver is necessary.
25 And he says he's not prepared. And we've listened to 10

1 or 15 minutes of venting or a rant. And if his man will
2 not agree, we can never move the ball on.

3 Now --

4 MR. HILLER: No, no --

5 MR. MOODY: And from an evidence standpoint, I
6 disagree with a lot of his characterizations. And one of
7 the things that, frankly, offends me as a lawyer is the
8 fact that he said we passed up an order that didn't have
9 the reference to a temporary hearing.

10 So there's an order appointing a receiver filed
11 October 9, 2012. And on Page 2, where it talks about the
12 order being granted -- and it is an order -- it says,
13 Mr. Sanders shall act as a receiver for Build A House,
14 LLC, on a temporary basis. So I marked that up as,
15 perhaps, Mr. Hiller just missed it, or forgot that he read
16 it at some point. So we have never tried to mislead
17 anyone, much less this Court, regarding this matter. So I
18 do take offense to that and I do need to clarify that --

19 THE COURT: Well, okay --

20 MR. MOODY: -- for purposes of the record.

21 THE COURT: The two of you can't get along.

22 So why isn't the receiver good, Randy?

23 MR. HILLER: Your Honor, there -- what's he -- he's
24 got -- what's he going to do?

25 THE COURT: I mean, you've told me that you think the

1 company needs to be wound down.

2 MR. HILLER: It does.

3 THE COURT: Okay. They don't think you can do it,
4 and you don't think they can do it. So that's the whole
5 idea behind a receiver is to put somebody in the middle
6 who's neutral and impartial to lead the two opposing sides
7 down the path that they both want to go down.

8 So what's the problem with it?

9 MR. HILLER: Well, the problem is that it's the
10 nature of the business and the circumstances it found
11 itself in at the time that this dispute arose, you know.
12 And that is that they owe a million six to -- well,
13 between 800 and a million six is tied up in a lawsuit in
14 Indiana. And --

15 THE COURT: Rustin is going to get all that money
16 back.

17 MR. HILLER: Well, not without Mr. Taylor.

18 THE COURT: Well --

19 MR. HILLER: And likewise Astoria.

20 THE COURT: What I'm hearing is that while your
21 client, Mr. Taylor, wants to do this, if he's not the one
22 doing it, then he's going to turn and walk away.

23 Is that what I'm hearing?

24 MR. HILLER: Well, Your Honor, he has to earn a
25 living.

1 THE COURT: I'm not putting him out of business.

2 MR. HILLER: I would suggest to you that those things
3 are sufficiently complex where they're pretty much a
4 full-time job, at least, for the next six months.

5 THE COURT: What things are you referring to?

6 MR. HILLER: The litigation.

7 THE COURT: Okay.

8 MR. HILLER: And the Astoria certification.

9 THE COURT: So how would the appointment of the
10 receiver negate that?

11 MR. HILLER: Here is the problem --

12 MR. MOODY: Your Honor, can I --

13 MR. HILLER: May I finish?

14 THE COURT: Just wait a minute.

15 MR. HILLER: Well, one of the things that they came
16 screaming into court about was that Mr. Taylor was going
17 to auction the -- as a managing member, he was going to
18 auction the remaining assets that were in the warehouse
19 facility in Mauldin for which they were paying tons of
20 money and weren't going forward with any business. Well,
21 you know, they were claiming he shouldn't be doing that.
22 Well, they didn't -- you know, I mean, the temporary
23 receiver did it any way. So it was a good idea.

24 And there is a little pot of money left from that
25 that's being held by the auction company. It's a little

1 over \$100,000 at this point. Because we've spent some by
2 agreement.

3 When Mr. Moody says, well, we need to make a down
4 payment on the \$100,000 legal bill with \$50,000, that's
5 half the money. They want to make a down payment on -- or
6 pay \$50,000 towards this Wells Fargo loan that, again, is
7 secured by a property that nobody has made any effort to
8 sell. The receiver didn't make any effort to sell it.
9 Nobody did anything. Nobody has tried to do anything.

10 And then, yet, they want us to -- so they want to use
11 up the rest of that money just to buy them 90 days, 30
12 days in the litigation still owing \$50,000 to Nelson
13 Mullins. I can't remember the last time I was paid. And
14 I'm co-counsel on that case. And nobody is asking to chip
15 a little of that off for me. But --

16 THE COURT: Well, if you're not asking for it, who's
17 going to volunteer it?

18 MR. HILLER: Well, no, what I'm trying to do is --
19 here is the problem, there's no future. I mean, you know,
20 in other words, what are they doing? There's no plan for
21 what happens after that, you know. If there was a half a
22 million dollars sitting there, we could say here is your
23 100, keep going on with the litigation. We know we're
24 good for the next six months to finish this thing out, the
25 same with Wells Fargo, the same with Astoria.

1 In other words, all they're doing is just buying a
2 little time. And when that time runs out, there won't be
3 anything.

4 THE COURT: What's the alternative?

5 MR. HILLER: Put Mr. Taylor back in there and let him
6 finish. Judge, you heard one side of the facts of this
7 case.

8 THE COURT: I think I've heard both of them by now,
9 have I not? What else can you tell me? Your guy is the
10 operational guru --

11 MR. HILLER: He was.

12 THE COURT: -- of this entity.

13 MR. HILLER: He was, yes.

14 THE COURT: Mr. Moody's clients are the money.

15 MR. HILLER: Well, they have equal investments in the
16 business.

17 THE COURT: Okay.

18 MR. HILLER: Exactly equal. And, you know, they
19 claimed when they first came to court that they didn't
20 know. But, in fact, Mr. Rollins, who's the CFO of Shaw,
21 did an annual reconciliation of what each person's
22 investment -- each side's investment and loans to the
23 company were. And it was equal at \$3.5 million apiece,
24 \$1.5 million in equity, and \$1.7 in loans from each side,
25 each of the 50 percent partners.

1 THE COURT: Well, let me ask you this. The last time
2 we met, I think I asked for you to -- if you had a problem
3 with the temporary receiver --

4 MR. HILLER: I did.

5 THE COURT: -- who that person is.

6 MR. HILLER: He's sitting back here --

7 THE COURT: I know that. But what is your -- do you
8 think he's not qualified? Do you think --

9 MR. HILLER: Well, he's connected. I mean, he works
10 for them, or did. And then --

11 THE COURT: Okay.

12 MR. HILLER: -- when you shut him down, he gave them
13 everything. He gave them everything, everything he had.
14 He gave it to them.

15 THE COURT: Well, let's do this. You come up with
16 three names, and you come up with three names. And if you
17 find one on there -- and list them in order of preference.
18 And if you match up on one, go with them. If not, I'll do
19 my scientific throw a dart at the list on the wall.

20 How is that?

21 MR. HILLER: I think it's --

22 THE COURT: Not what you want.

23 MR. HILLER: I --

24 MR. MOODY: We will accept that, Your Honor.

25 THE COURT: Okay. Well, let's do that.

1 MR. HILLER: Well, I'm not going to say I like it,
2 Judge.

3 THE COURT: No, I know you're not. I have yet to
4 hear you in anything say you like it.

5 MR. HILLER: No, I don't. I don't like anything
6 about it.

7 THE COURT: Well, then that -- but that's going to be
8 the order of the Court.

9 MR. MOODY: Judge --

10 MR. HILLER: What about my motion to dismiss?

11 THE COURT: Denied. Okay. Without prejudice. Let's
12 get -- let's move the thing forward.

13 It hasn't done anything; right?

14 MR. HILLER: Well, you know, at this point, Judge,
15 you know, our claims against the wrongful appointment of
16 the receiver might be the only chance my client -- I mean,
17 this litigation might be the only chance my client has
18 anything to recover. But, I mean, we need to address who
19 the proper parties are. And they need to file any motions
20 they're going to file with regards to -- because I asked
21 them back in December, I think, to -- if they thought I
22 had a conflict, they needed to do something about it --

23 MR. MOODY: Your Honor, we'll prepare a proposed
24 order and try to get an agreement with Mr. Hiller about
25 the receiver's powers.

1 And I was optimistic that Mr. Hiller could
2 communicate with his client such that it never
3 necessitated a formal motion for us on the
4 disqualification due to conflict. But if that's what he
5 wants, we might have to --

6 THE COURT: Well, let's --

7 MR. MOODY: We want to work it out and let the
8 receiver take it over.

9 THE COURT: Okay.

10 MR. HILLER: Well, this lawsuit is not going away no
11 matter what.

12 THE COURT: I'm sorry?

13 MR. HILLER: I said, this lawsuit is not going away.

14 THE COURT: All right. Sounds good.

15 MR. MOODY: Thank you, Judge.

16 THE COURT: Thank you.

17 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 5th day of March, 2013.

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

June 3, 2013

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2012CP2306319

2013 APR 26 AM 11:07
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL C. BUCKENSHNER

Shaw Funding LLC vs. Multifamily Products LLC

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; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Appointing Reciever in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to dajones@greenvillecounty.org.

If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter: _____

PRESIDING JUDGE -

Joseph Owen Smith Roe Cassidy Coates & Price,
P.A. 1052 North Church Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Randall Scott Hiller Randall S. Hiller, P.A. 850-B
Wade Hampton Blvd. Greenville, SC 29609

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Shaw Funding, LLC, Build A House,
Design House, LLC, Builders First
Mortgage, LLC, Builders First Funding,
LLC, Investor Funding, LLC, Total Stone,
LLC, American Lighting Co., Contract
Supply, LLC, Global Solution, and
MS Mechanical Solutions, LLC

Plaintiff(s),

vs.

Multifamily Products, LLC, Paul Taylor,
as a member of Build a House, LLC and
individually,

Defendant(s).

IN THE COURT OF COMMON PLEAS
BUSINESS COURT

C.A. No.: 2012-CP-23-06319

**ORDER APPOINTING
RECEIVER**

2012 APR 26 AM 9:32
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
BRIAN P. WILKINSON

This matter came before the Court on March 5, 2012 pursuant to Plaintiffs' Motion to Appoint a Receiver pursuant to S.C. Code Ann. §§ 15-65-10(1), (4) and/or (5). A hearing was held in open court with counsel for all parties present. Based on that hearing, Plaintiffs' Motion, and supporting evidence, it appears to the Court that there is just cause to grant Plaintiffs' Motion.

The appointment of a receiver is within the discretion of the circuit judge. *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224 (1989). S.C. Code Ann. § 15-65-10(1) allows the Court to appoint a receiver "[b]efore judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired." It appears from the evidence presented to the Court, including Plaintiffs' Motion, allegations in the Complaint, and the Affidavit

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of Waldo Donald Shaw that the Plaintiffs have an apparent right to property which is the subject of this action and in Defendants' possession, and the property, or its profits, are in danger of being lost or materially injured or impaired should a receiver not take possession and control.

In addition S.C. Code Ann. § 15-65-10(4) allows the Court to appoint a receiver "[w]hen a corporation has been dissolved, is insolvent or in imminent danger of insolvency." The Court finds, based on the evidence presented to it, including Plaintiff's Motion, oral arguments, allegations in the Complaint and accompanying exhibits, and the Affidavit of Waldo Donald Shaw, that Defendants' alleged actions appear to have placed BAH in a state of insolvency, or at the least, in imminent danger of insolvency. *In re Maplecroft Mills*, 218 F. 659 (W.D.S.C. 1914) *rev on other grounds* 226 F. 415 (4thCir. 1915) ("Imminent danger of insolvency" as used in subdivision (4) of this section [former Code 1962 § 10-2301] means danger of insolvency from the standpoint of preserving the assets of the involved corporation.).

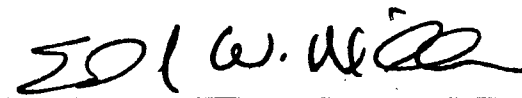
Therefore, based on the foregoing, it appears to the Court that Plaintiffs' Motion to Appoint a Receiver should be **GRANTED** and it is **ORDERED** that John F. A. is appointed as an independent third party Receiver for Build a House, LLC and all its related entities, including those listed in Attachment A to this Order (*hereinafter collectively* "BAH"). Said Receiver shall have the following powers and authority:

- a) Have full authority to immediately take possession and control of all of BAH's corporate property, inventory, and assets of whatever kind;
- b) Have full authority to take possession of and control of all of Defendant Multifamily Products, LLC's corporate property, inventory, and assets of whatever kind;
- c) Have the sole and exclusive right, power and authority to act on behalf of BAH;

- d) Have the sole and exclusive right, power and authority to marshal and control all BAH's assets, accounts, corporate dealings and actions;
- e) Have the sole and exclusive right and power to receive property and money on behalf and/or for the benefit of BAH;
- f) Make any payments on behalf of BAH as the Receiver deems reasonable and necessary to carry out his or her duties as Court appointed Receiver;
- g) Make any and all payments to professionals as necessary in the discretion of the Receiver;
- h) Take any and all actions the Receiver deems reasonably necessary to be in the best interests of BAH;
- i) Take any and all actions the Receiver deems reasonably necessary to protect and/or preserve BAH's assets, mitigate and minimize any damage to BAH, and exact the best return on investment possible for BAH;
- j) Establish bank account(s) in the name of BAH to carry out his or her duties as the Court appointed Receiver; and
- k) Take any and all actions the Receiver deems reasonably necessary to carry out his or her duties as the Court appointed Receiver for BAH.

IT IS SO ORDERED.

Date: 4/26/13

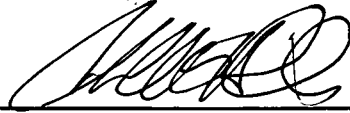

The Honorable Edward W. Miller

Greenville, South Carolina

Certificate of Counsel

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

August 13, 2013



Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, South Carolina 29609
(864) 232-0026
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2012-CP-23-06319

Shaw Funding, LLC, Build A
House, LLC d/b/a Multifamily
Products, Builders Design House,
LLC, Builders First Mortgage,
LLC, Builders First Funding,
LLC, Investor Funding, LLC,
Total Stone, LLC, American
Lighting Co.,
Contract Supply, LLC, Global
Solution, and MS Mechanical
Solutions, LLC,

Respondents,

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SC Court of Appeals

v.

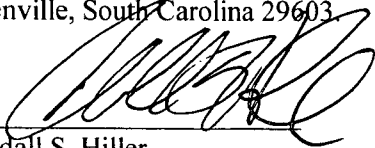
Multifamily Products, LLC, and
Paul Taylor, as a member of
Build A House, LLC and
individually,

Appellants.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Shaw Funding, et al by depositing a copy of it in the United States Mail, postage prepaid, on August 14, 2013, addressed to his attorney of record, D. Randle Moody, II, Esq., Post Office Box 10529, Greenville, South Carolina 29603.

August 14, 2013


Randall S. Hiller
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
Attorney for Appellants