

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
J.C. Nicholson, Jr., Circuit Court Judge

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Circuit Court Case No. 2017-CP-10-4112
Appellate Case No.: 2018-000249

RECEIVED
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SC Court of Appeals

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Chris **Khamnei**, ..... Appellant,

v.

**Columbus Street Holdings, LLC; Roy T. Willey, IV; and Eric M. Poulin**, ..... Respondents.

~~~

THE RECORD ON APPEAL

~~~

Stefan B. Feidler  
S.C. Bar No.: 101918  
Anastopoulos Law Firm, LLC  
32 Ann Street  
Charleston, SC 29403  
(843) 614-8888

ATTORNEY FOR RESPONDENTS

April 29<sup>th</sup>, 2019

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**Pro Se Appellant**

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IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO: 2017-CP-10-4112

CHRIS KHAMNEI,

Plaintiff,

v.

COLUMBUS STREET HOLDINGS, LLC;  
ROY T. WILLEY, IV; and ERIC M.  
POULIN,

Defendants.

**ORDER GRANTING  
DEFENDANTS' MOTION FOR  
PARTIAL DISMISSAL IN PART**

FILED  
2017 DEC 14 PM 2:43  
JULIE J. HARRIS, CLERK OF COURT

This matter came before this Court by way of Defendants' Motion for Partial Dismissal.

Having thoroughly considered the motion, supporting, and opposing materials and arguments, and based on the same the Court grants Defendants' Motion in part as follows:

SUMMARY OF FACTS

Defendant Columbus Street Holdings, LLC ("LLC") is a duly registered South Carolina Limited Liability Company. Roy T. Willey and Eric M. Poulin are members of the LLC. The LLC contracted to purchase a piece of real property from the Plaintiff. However, the property was encumbered by a *lis pendens* and occupied by several squatters. An agreement was made where once the *lis pendens* was resolved and the squatters evicted, \$50,000 held in escrow would be released to Plaintiff. Plaintiff did eventually get the *lis pendens* dissolved. After doing so, Plaintiff demanded the escrow money be released. However, the LLC refused because not all of the squatters had been evicted. When the LLC refused to release the escrow money, Plaintiff filed this action, alleging breach of contract for failure to release the funds. Conversely, the LLC believes that the Plaintiff breached the contract by failing and refusing to evict the squatters and, as such, the LLC alleges it was legally justified in not releasing the escrow funds.

Plaintiff's Amended Complaint alleged two causes of action. Count one is a breach of contract cause of action and is alleged against the LLC only. Count two is a breach of contract accompanied by a fraudulent act cause of action and is alleged against the LLC and both Mr. Willey and Mr. Poulin. Defendants moved to have the second cause of action dismissed in its entirety, or in the alternative dismiss Mr. Willey and Mr. Poulin. This Court grants Defendants' Motion in part, dismissing Mr. Willey and Mr. Poulin based on the following:

### LEGAL ANALYSIS

EW  
In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). There mere violation of a contract will not support an allegation of fraud, even where it is proven that a defendant breached the contract willfully. See, Calder v. Commercial Casualty Ins. Co., 182 S.C. 240 (1936); Vann v. Nationwide Ins. Co., 257 S.C. 217 (1971). Instead, "[i]t has been consistently held that where a complaint states a cause of action for breach of contract, allegations charging the defendant with fraudulent intent or purpose in breaching the contract do not give rise to a right to recover punitive damages; that such damages are recoverable **only** where, in addition to or independently of the fraudulent intent that brought about the breach there was some fraudulent act on the part of defendant accompanying the breach." Welborn v. Dixon, 70 S.C. 108 (1904).

It is also generally recognized that "the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. S.C. Code Ann. §33-44-303(a). A member or manager is not

personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager. Id. Thus, the actions of a principal's agent are afforded a qualified privilege from liability in the absence of an officer or agent of the corporation acting on behalf of the corporation and within the scope of his employment. See Bradburn v. Colonial Stores, Inc., 273 S.C. 186, 188, 255 S.E.2d 453, 455 (1979); CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc., 357 F.3d 375, 385 (3d Cir. 2004)l see also 3A William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations, Chapter 11, XXVIII, § 1117 (West 2012) ("[A] director is not personally liable for the corporation's contractual breaches unless he or she assumed personal liability, acted in bad faith, or committed a tort in connection with the performance of the contract."). "Scope of authority" is defined as "[t]he range of reasonable power that an agent has been delegated or might foreseeably be delegated in carrying out the principal's business." Black's Law Dictionary (9th ed. 2009).

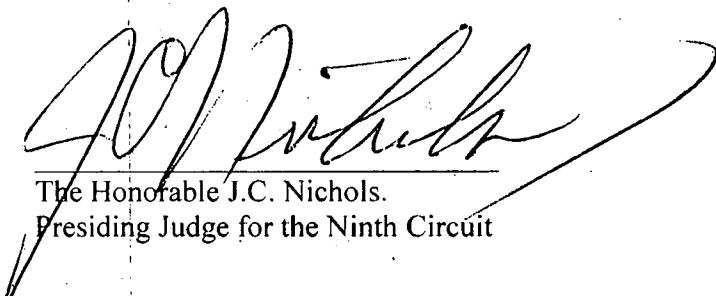
gcN  
In the case at hand, Plaintiff failed to plead facts sufficient to show that Mr. Willey and/or Mr. Poulin acted outside of the scope of their authority, and that they breached the contract accompanied by a fraudulent act. As an initial matter, the contract is between the Plaintiff and LLC, and neither Mr. Poulin nor Mr. Willey are parties to the contract. There was also no showing that the Mr. Willey and/or Mr. Poulin were acting outside the scope of their authority and not on behalf of the corporation. Finally, Plaintiff failed to show that Mr. Willey or Mr. Poulin committed fraudulent intent relating to the breach of the contract and a fraudulent act accompanied that breach. Harpe, 290 S.C. at 112, 348 S.E.2d at 374. Therefore, based on those reasons this Court dismisses Mr. Willey and Mr. Poulin.

**IT IS, THEREFORE, ORDERED** that Eric M. Poulin and Roy T. Willey, IV, are dismissed without prejudice.

The parties and the Clerk of Court are directed to amend the caption to reflect this dismissal by removing the individuals as named Defendants.

**IT IS SO ORDERED!**

This 14 of DEC, 2017  
CHARLESTON, South Carolina

  
The Honorable J.C. Nichols.  
Presiding Judge for the Ninth Circuit

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEI,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC

Defendant.

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

) Case No.: 2017-CP-10-4112  
)

SUMMONS

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2017 AUG 11 PM 1:14

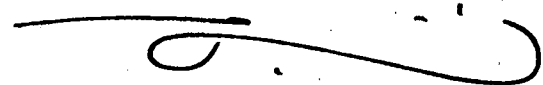
FILED

TO THE DEFENDANT ABOVE-NAMED:

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

LAW OFFICE OF  
W. WESTBROOK WILLS III

BY:

  
W. Westbrook Wills III  
S.C. Bar # 76681  
P.O. Box 822  
Folly Beach, SC 29439  
(843) 805-6300 (tel)  
wwills@wwillslaw.com

Folly Beach, South Carolina

August 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEI,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC

Defendant.

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

Case No.: 2017-CR-10-4112

**COMPLAINT**

**(Jury Trial Demanded)**

2017 AUG 11 PM 1:11  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

COMES NOW, Plaintiff Chris Khamnei and hereby states his claims for relief against Defendant Columbus Street Holdings, LLC and shows this Court as follows:

**PARTIES, VENUE, AND JURISDICTION**

1. Plaintiff Chris Khamnei ("Khamnei") is a resident of the State of Vermont, residing at 82 Overlake Park in Burlington, Chittenden County, Vermont. Khamnei is the former owner of a property in Charleston County located at 1 Drews Aly, Charleston, South Carolina 29403 (the "Property").

2. Defendant Columbus Street Holdings, LLC ("Columbus Street") is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and having a principal place of business located at 62 Columbus Street, Charleston, Charleston County, South Carolina. Columbus Street is believed to be owned by Roy Willey ("Willey") and Eric Poulin ("Poulin"). Service of the Summons and Complaint may be made on Columbus Street through its registered agent for the

service of process, Eric Poulin, at the address of its principal place of business. Columbus Street is the new owner of the Property.

3. Jurisdiction is proper in this Court. Venue is proper in this Court.

### **FACTUAL ALLEGATIONS**

4. In early March, Khamnei put the Property on the market to sell through his real estate broker Paul LeClaire ("LeClaire").

5. Khamnei was pressed to sell the property quickly, as he need to use the proceeds of the sale to cover significant new family related expenses, including the financial and personal responsibility of caring full-time for his aging mother who had recently moved from Charleston to live with his family in Vermont.

6. Around the same time, Khamnei discovered his brother, who is a Charleston resident with access to the Property, had "leased" the rooms at the Property, without Khamnei's awareness or authorization, to individuals unknown to him, and was keeping the rent proceeds for himself.

7. Travis Davis ("Davis") is friend of Khamnei's brother and one of the individuals who resided at the Property without Khamnei's authorization or knowledge. Upon information and belief, Davis and his wife were living rent-free in a unit of the Property.

8. When Khamnei's brother and Davis discovered Khamnei had put the Property on the market, they made every effort to interfere with and prevent its sale.<sup>1</sup>

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<sup>1</sup> Khamnei's brother and Travis Davis presumably wished to prevent, or delay as long as possible, the sale of the Property because Khamnei's brother was profiting from the rents and Davis and his wife were living rent-free. Their efforts to interfere with the sale of the Property included reporting a burglary in progress while LeClaire and

9. While neither Khamnei's brother nor Davis had any ownership interest in the Property whatsoever, to justify his attempts at sabotaging its sale, Khamnei's brother claimed to law enforcement and to local courts that he was the owner.

10. Davis also claimed Khamnei's brother's was the owner of the Property, and that he had given Davis what amounted to a lifetime lease for one of the unit at the Property, purportedly in exchange for some renovation work Davis claimed he performed there. No written agreement for any such lease existed.

11. On March 19, 2017, Khamnei personally served Davis with a 30-day Notice to Vacate, and in which Khamnei specifically indicated he was the record owner of the Property, and any leases made or given by his brother were without consent or authorization, and invalid.

12. In reaction to the Notice to Vacate, on March 20, filed a pro se lawsuit against Khamnei in the Court of Common Pleas for Charleston claiming, among other things, Khamnei breached a contract with him, stole his services, and engaged in self-help eviction.

13. Despite his lawsuit having nothing to do whatsoever with any claim or right to the title of the Property, upon information and belief, under direction from Khamnei's brother, Davis also filed an unauthorized lis pendens against the Property as an additional attempt to encumber the property and prevent its sale.

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potential buyers were visiting the property resulting in the buyers being held at gunpoint until LeClaire and Khamnei were able to confirm LeClaire and the buyers were authorized to be there. On a separate occasion, Davis physically threatened potential buyers who were viewing the Property with LeClaire.

14. Until that point, Khamnei lost one contract LeClaire had obtained on the house after the Police held those buyers at gunpoint, and a second group of interested investors subsequently backed out of signing a contract on the Property after Davis physically threatened them.

15. Fortunately, LeClaire was subsequently able to connect with Willey and Poulin who were interested in purchasing the Property as an investment through their company Columbus Street. Columbus Street signed a contract to purchase the Property, at a reduced price<sup>2</sup>, despite the *lis pendens* that existed against the Property.<sup>3</sup>

16. At the time Willey and Poulin signed the contract to purchase the Property, they were aware of the pending *lis pendens* and that Davis and other individuals were still residing at the Property. They were also aware that Khamnei had retained legal counsel in Charleston to ensure the removal of Davis and his *lis pendens* from the Property.

17. The parties scheduled a closing on the sale for April 21, 2017 with the understanding that, Khamnei's attorney would continue pursuing the legal recourse necessary for removing Davis by the closing date and cancelling the *lis pendens*, at Khamnei's expense.

18. When Davis still refused to vacate the Property after proper formal notice, Khamnei's attorney was required to file an ejection action with the Magistrates Court to have Davis removed.

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<sup>2</sup> To secure the contract with Columbus Street in short order, Khamnei was required to lower the asking price by thirty-three thousand dollars (\$33,000).

<sup>3</sup> Willey and Poulin are both attorneys, and upon information and belief, recognized Davis's *lis pendens* as unauthorized by law, and subject to being cancelled by the Court.

19. Davis filed a response to Khamnei's ejectment action, which required a hearing on the matter be set for a date sometime after April 21, 2017, the closing date on the sale of the Property.

20. Consequently, Columbus Street insisted the April 21st closing be rescheduled for sometime after the hearing on Khamnei's ejectment action, the date of which, at that time, was still unknown.

21. As an inducement to close on the sale of the Property by the originally scheduled April 21st date, despite the pendency of the ejectment action, Khamnei offered Willey and Poulin to reduce the price of the Property by an additional twenty-six thousand dollars (\$26,000), and to place fifty thousand dollars (\$50,000) with an escrow agent as an assurance he and his attorney would continue the legal processes they had started to ensure the remove the both Davis and the lis pendens from the property after the closing.

22. Willey and Poulin accepted Khamnei's new offer and the parties, along with their respective brokers and escrow agent reset a closing under the revised terms for the original April 21st date.

23. As regards the funds to be escrowed under the new arrangement, the parties executed an amendment to the purchase agreement ("Amendment") and a separate escrow agreement ("Escrow Agreement")(collectively the "Agreements"). *True and Accurate Copies of the Amendment and the Escrow Agreement are attached hereto as EXHIBITS "A" and "B" respectively.*

24. Under the specific terms of both the Amendment and the Escrow Agreement, Khamnei was required to deliver and deposit fifty thousand dollars (\$50,000) with the escrow agent who would hold the funds in his IOLTA account.

25. Also under the specific terms of both the Amendment and the Escrow Agreement, the parties expressly agreed the escrow agent would release the escrow funds back to Khamnei “[u]pon notification of the cancellation of the Lis Pendens and the removal of Travis Davis . . .”

26. As a further condition for release of the escrow funds, the escrow agent would be required to receive written notification from Columbus Street acknowledging the cancellation of the lis pendens and the removal of Davis, and indicating its agreement to the release of the escrow funds back to Khamnei.

27. On May 30, the Circuit Court held a hearing on Khamnei’s motion to cancel lis pendens. Counsel for Khamnei and Willey were both present at the hearing. Ruling from the bench at the conclusion of the hearing, the Court granted Khamnei’s motion and signed a form 4 order cancelling Davis’s lis pendens. *A true and accurate copy of the filed form 4 order cancelling lis pendens, filed on June 1, 2017, is attached hereto as EXHIBIT “C.”*

28. On May 18, 2017, the Magistrate Court held a hearing on Khamnei’s ejectment action. Both Willey and Poulin were present at and participated with counsel for Khamnei at the hearing.<sup>4</sup>

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<sup>4</sup> By the time the Magistrate finally held a hearing on Khamnei’s ejectment action, the parties had already closed on the sale of the Property, and Columbus Street, as the new owner, was properly substituted as the petitioner in place.

29. At the conclusion of the May 18, 2017 Magistrate hearing, the Court found for Columbus Street, and ruled from the bench that Davis was required to vacate the Property by 5:00 p.m. on June 1, 2017.

30. By 5:00 p.m. on June 1, 2017, Davis had vacated the Property. Willey and Poulin were aware that Davis was no longer present at the Property as of that date, and upon information and belief, do not dispute that Davis had vacated by the end of June 1st.

31. On June 1, 2017, Khamnei gave notice by e-mail to the escrow agent that the two conditions for the release of the \$50,000 were satisfied, and asked if the escrow agent could release the escrow funds back to him. The escrow agent responded that he was able to verify on the court website that the lis pendens had been cancelled, and that once he had received confirmation from Columbus Street that Davis had vacated the Property, he would be able to release the funds, per the agreement. *A true and accurate copy of the Khamnei's June 1, 2017 e-mail to the escrow agent is attached hereto as EXHIBIT "D."*

32. On June 2, 2017 and the escrow agent e-mailed Willey and/or Poulin to ask for their consent to release the funds but never received a response.

33. Again on June 5, 2017, the escrow agent e-mailed the parties, including Willey and/or Poulin, indicating he was following up again on his e-mail of earlier that day, and from the previous Friday, June 2, 2017. Specifically, the escrow agent indicated as follows:

I just was able to speak with Roy about confirming the cancellation of the lis pendens (which we know is cancelled through the court's website), and the removal of Travis Davis from the property, which I have confirmation from Chris Khamnei, but NOT from Columbus Street Holdings.

Roy is going to contact me today confirming this information, **upon which I will immediately release the finds from escrow.** (emphasis supplied).

*A true and accurate copy of the June 5-6, 2017 e-mail exchange is attached hereto as EXHIBIT "E."*

34. In the same e-mail exchange, the escrow agent made Columbus Street aware, through Willey and/or Poulin, that time was of the essence for the release of the funds, as Plaintiff needed them on another transaction, and had been "actively trying since June 1 to have the money released from our escrow." [See June 5, 2017 e-mail from Sean Scapellato, included in EXHIBIT "E."]

35. Furthermore, the escrow agent put Columbus Street on notice that Plaintiff would incur substantial penalties if he were not able to get the escrow funds back to him by the following day, June 6, 2017. [See id.].

36. Subsequently, Willey responded that Columbus Street would not give the escrow agent permission to release the funds, claiming the Addendum and the Escrow Agreement conditioned the release of the funds on Columbus Street obtaining title insurance for the Property, and the removal of the remainder of the tenants.

37. Prior to Columbus Street's June 6, 2017 e-mail response refusing to consent to the release of the escrow funds, Columbus Street had never indicated for certain that it even sought the removal of anyone besides Travis Davis.

38. Furthermore, upon information and belief, prior to the closing of the sale of the Property on April 21, 2017, and Plaintiff placing funds with the escrow agent,

Columbus Street had offered at least some of the remaining tenants at the Property the opportunity to sign leases and remain as tenants at the Property.

39. On June 7, 2017, Columbus Street having refused to release the \$50,000 in escrow, Khamnei defaulted on another loan he had taken, in part, to fund the Escrow Agreement, which default resulted in a penalty to him of fifteen thousand dollars (\$15,000).

40. As of the date of filing this lawsuit, Columbus Street has still not provided its written consent to the escrow agent to release the \$50,000 back to Khamnei, who has now been without those critical funds for over two months.

**FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)**

41. Plaintiff realleges and incorporates the allegations of paragraphs 1-39 of the Complaint as if fully set forth herein.

42. Plaintiff and Columbus Street entered into a series of written agreements related to the sale and closing of the Property, including the Addendum and the Escrow Agreement, and an agreement between the parties wherein Plaintiff agreed to reduce the sales price of the Property by twenty six thousand dollars (\$26,000) in consideration of Columbus Streets agreement to close the sale by a specified date, and release the escrow funds upon satisfaction of the agreed upon conditions, which the parties expressly acknowledged was expected to occur by May 31, 2017.

43. Plaintiff fully performed under the terms of the Agreements, including satisfying the two conditions required under the parties' agreement for the release of the escrow funds.

44. Columbus Street breached the Agreements by failing and refusing to consent to the release of the escrow funds back to Khamnei's upon and despite Khamnei's satisfaction of the two conditions precedents according to the specific terms of the parties' written agreements.

45. Columbus Street remains in breach of the Agreements, as it persists in its failure and refusal to provide the escrow agent the written consent required for the release of the escrow funds back to Khamnei.

46. Columbus Street has breached, and continues to breach, the Agreements willfully, and with conscious indifference to Plaintiff's pressing need for the funds, and his rights under the Agreements to their release.

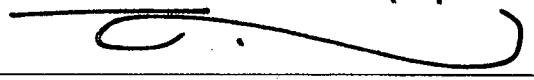
47. Additionally, as a result of Columbus Street's breach, Plaintiff has been deprived the benefit of an expeditious finalization of the sale, closing, and release of escrow funds, for which he gave specific consideration.

48. As a direct and proximate result of Columbus Street's failure and refusal to release the escrow funds, in breach of the Agreements, Plaintiff has suffered actual consequential, and incidental damages in an amount to be proven at trial, but no less than ninety-one thousand dollars (\$91,000).

49. As a direct or proximate result of Columbus Street's on-going breach of the Agreements, Plaintiff continues to be further damaged in an amount to be demonstrated at trial.

**WHEREFORE**, Plaintiff prays for a trial by jury, judgment against Columbus Street for Plaintiff's actual, consequential, and incidental damages, interest at the legal rate, cost of litigation, and for any and all other further relief the Court finds just and proper.

LAW OFFICE OF  
W. WESTBROOK WILLS III

BY: 

W. Westbrook Wills III  
S.C. Bar # 76681  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
wwills@wwillslaw.com

Folly Beach, South Carolina

August 10, 2017



## ADDENDUM/AMENDMENT TO

PLAINTIFF'S  
EXHIBIT

A

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [ ☐ OFFER OR ☐ COUNTEROFFER ] OR☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: \_\_\_\_\_COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: \_\_\_\_\_

Further described or commonly known as:

Address 1 Drews Aly Unit # \_\_\_\_\_City Charleston State of South CarolinaOther \_\_\_\_\_ TMS 459-05-01-057

The undersigned Parties hereby agree as follows: Parties agree to change the contract sales price to Two Hundred Thousand Dollars (\$200,000.00). Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis and release of the lis pendens on the property (2017LP100240). Seller agrees to continue to pursue, retain attorney, and fund the eviction of Tenant Davis and dismissal of the lis pendens. Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens. Closing date will remain April 21, 2017.

**EXPIRATION OF OFFER:** When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at ☐ AM ☐ PM on \_\_\_\_\_ unless accepted or counter offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

DocuSigned by: Chris Khamnei Date: 4/14/2017 Time: \_\_\_\_\_

DocuSigned by: Columbus Street Holdings LLC Date: 4/14/2017 Time: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

DocuSigned by: Chris Khamnei Date: \_\_\_\_\_ Time: \_\_\_\_\_

DocuSigned by: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_

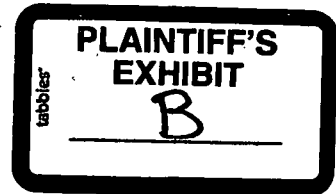
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04/15/17  
9:43AM EDT

SELLER HAVE READ THIS PAGE



4/20/17

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this \_\_\_\_ day of April 2017, by and among Chris Khamnei (hereinafter referred to collectively as "Client"); Columbus Street Holdings, LLC; and Cobb, Dill, & Hammett Law Firm, LLC, a South Carolina Limited Liability Company (hereinafter referred to as "Escrow Agent").

### W I T N E S S E T H:

WHEREAS, The contract price for the 1 Drews Aly, Charleston, SC 29403 (hereinafter referred to as "Property") has been reduced from 226,000.00 to 200,000.00;

WHEREAS, the price adjustment has been executed as an inducement to close on or before April 21, 2017;

WHEREAS, the Client has the right and has agreed to escrow funds for the purpose of evicting any and all tenants subsequent to the sale of this property, in particular the tenant Travis Davis;

WHEREAS, the Client has agreed to escrow funds for the purpose of canceling the Lis Pendens (2017-LP-10-0240), which is expected to be canceled and removed from the docket before May 31, 2017;

WHEREAS, the Client has agreed to escrow \$50,000.00 as consideration for the above-referenced actions;

WHEREAS, the Client has agreed to pay Escrow Agent \$250.00 for its escrow services;

NOW, THEREFORE, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Client agrees to sell and Columbus Street Holdings, LLC agrees to purchase the Property with the knowledge that the Lis Pendens is still filed and that tenants are still occupying the Property;
2. Client shall deliver and deposit with Escrow Agent the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) dollars for the purposes outlined *supra*, representing the Escrow Funds as required by this Escrow Agreement. The Escrow Agent agrees to deposit said funds in its IOLTA account and to hold and disburse said funds as hereinafter provided.
3. Client's United States Taxpayer Identification Number is 068-62-3049.
4. Upon notification of the cancellation of the Lis Pendens and the removal of Travis Davis, the Parties have agreed to disburse the funds in the following manner:
  - a. The balance of all moneys shall be returned to the Client.
5. Upon written notification from the Client and Columbus Street Holdings, LLC that they have agreed as to the disbursement of the above remaining Escrow Funds, Escrow Agent shall deliver to the appropriate parties the appropriate amounts as disclosed by said written notification.

6. The parties hereto covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall be released and not be liable for any loss, costs or damage which it may incur as a result of serving as Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence.

Accordingly, Escrow Agent shall not incur any liability, whatsoever, with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in the Escrow Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Escrow Agreement.

Client and Columbus Street Holdings, LLC hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including without limitation, reasonable costs of investigation and attorneys fees, costs and disbursements which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder. The Escrow Agent shall be entitled to be indemnified by Client and Columbus Street Holdings, LLC for all amounts, to include all attorney's fees and costs, at the rate of \$325.00 per an hour, for any action required by the Escrow Agent other than disbursing the Escrow Funds by consent under Paragraph #5 above. Said amounts shall be paid by Client, to Escrow Agent, upon demand and invoice (which shall be evidenced by the HUD-1 closing statement), in advance of the Escrow Agent being required to disburse the funds as set forth in this Agreement.

In an event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Escrow Agreement, together with such legal pleading as it deems appropriate, with Client and Columbus Street Holdings, LLC being responsible for any and all attorney's fees, costs, damages and expenses incurred by the Escrow Agent in doing so, with the same being paid by Client and Columbus Street Holdings, LLC to Escrow Agent, upon invoice of the Escrow Agent, at the rate of \$325.00 per an hour.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and its seal to be affixed thereto as of the day and year first above written.

**[Rest of this page left intentionally blank]**

SELLER:

Chris Khamnei

By: Chris Khamnei by [Signature] authorized signatory

Title: Client.

PURCHASER:

Columbus Street Holdings, LLC

By: [Signature]

Title: Member

By: [Signature]

Title: Member

ESCROW AGENT:

Cobb, Dill, & Hammett, LLC

By: [Signature]

Sean A. Scapellato, Esq.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-10-1414

PLAINTIFF'S  
EXHIBIT

C

Travis Davis  
PLAINTIFF(S)

2017 JUN -1 PM 4:47

Chris Khamnei, Cyrus Kamini, and Paul LeClaire

DEFENDANT(S)

Submitted by: The Court.

JULIE J. ARMSTRONG  
CLERK OF COURT

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

DISPOSITION TYPE (CHECK ONE)

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

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

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: On May 26, 2017, this Court heard oral arguments on the following motions: (1) Defendant Chris Khamnei's emergency motion to cancel lis pendens (filed 4/5/17), (2) Defendant LeClaire's Motion to Dismiss (filed 4/20/17), and (3) defendant Chris Khamnei's Motion to Dismiss (filed 4/28/17). It is hereby ORDERED: (1) Defendant Chris Khamnei's emergency motion to cancel lis pendens is GRANTED; (2) Defendant LeClaire's Motion to Dismiss is GRANTED, and (3) defendant Chris Khamnei's Motion to Dismiss is DENIED. Plaintiff's Motion for Injunction (filed 3/20/17) was withdrawn.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of<br>(List name(s) below)                                                              | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A.                                                                                                      |                                          | \$                                                          |
| If applicable, describe the property, including tax map information and address, referenced in the order: |                                          |                                                             |

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

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

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

Circuit Court Judge

2134  
Judge Code

6/1/17  
Date

SCRPC Form 4C (02/2017)

Page 1 of 4

**For Clerk of Court Office Use Only**

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

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**CLERK OF COURT**

**Court Reporter:**

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

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

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

SCRCP Form 4C (02/2017)

Page 2 of 4



From: Chris Khamnei [chriskhamnei@gmail.com](mailto:chriskhamnei@gmail.com)  
Subject: Re: POA for 1 Drews Aly  
Date: June 1, 2017 at 7:54 AM  
To: Sean A. Scapellato, Esq. [sscapellato@cdhlawfirm.com](mailto:sscapellato@cdhlawfirm.com), W. Westbrook Wills III [wwills@wwillslaw.com](mailto:wwills@wwillslaw.com)

Good morning.

Can we confirm today that Travis Davis is gone from 1 Drew's Ct, confirm that the list pendants has been dissolved/canceled, and wire the escrow funds to me immediately.

Thank you much,  
Chris

Sent from my iPhone

On May 30, 2017, at 6:09 PM, Sean A. Scapellato, Esq. <[sscapellato@cdhlawfirm.com](mailto:sscapellato@cdhlawfirm.com)> wrote:

Great news. Happy to hear. I will await the final verification that Mr. Davis has vacated the property. Once we have that, I will release the escrow per your instructions.

Keep me in the loop. Hope you're doing well.  
sean

Sean A. Scapellato, Esq.  
**Cobb Dill & Hammett, LLC**  
Attorneys at Law  
300 West Coleman Blvd., Suite 106  
Mt. Pleasant, SC 29464  
O: 843-936-6680  
F: 843-353-2583  
E: [sscapellato@CDHLawFirm.com](mailto:sscapellato@CDHLawFirm.com)  
[www.CDHLawFirm.com](http://www.CDHLawFirm.com)

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On Tue, May 30, 2017 at 5:28 PM, Chris Khamnei <[chriskhamnei@gmail.com](mailto:chriskhamnei@gmail.com)> wrote:  
Hi Sean.

Lis Pendens on Drews court is cancelled. Travis Davis has been legally ejected and if not gone by June 1 then the sheriff will remove him. Therefore, the escrow is satisfied. On June 1 can you send me the escrow funds of \$50,000. I will send you different wiring instructions before then.

Sent from my iPhone

On Apr 22, 2017, at 9:47 AM, Sean A. Scapellato, Esq. <[sscapellato@cdhlawfirm.com](mailto:sscapellato@cdhlawfirm.com)> wrote:

It was my pleasure. Very glad I could help. Have a great weekend.

On Sat, Apr 22, 2017 at 5:59 AM Chris Khamnei <[chris@rentinv.com](mailto:chris@rentinv.com)> wrote:  
Sean,

A tremendous thank you for facilitating this transaction.

Sincerely,  
Chris

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate



From: **Roy T. Willey IV** roytwilleyiv@gmail.com  
Subject: Re: 1 Drews Aly escrow funds  
Date: June 6, 2017 at 8:56 AM  
To: Chris Khamnei chris@rentinvvt.com  
Cc: Paul LeClaire leclaireteam@gmail.com, Sean A. Scapellato, Esq. sscapellato@cdhlawfirm.com, Eric Poulin eric@akimlawfirm.com, W. Westbrook Wills III wwills@wwillslaw.com, Leslie Turner leslie@handsomeproperties.com

Chris and Paul,

First, Chris we are truly not trying to jam you up, just get the benefit of the bargain. Hope you understand that.

However, the last sentence / requirement clearly reads that the "Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens." The only way we can ensure we have clear title is to be able to obtain title insurance. Or if seller wanted to go through the Courts to obtain official clear title that is another avenue, but title insurance is certainly going to be faster as we are already working with the bank. Appraisal is set to be done today.

Second, the actual Escrow Agreement also requires removal of all "tenants." The three people upstairs had initially agreed to go but are still there so we are going to have to work through the process three more times most likely. One has already hired a lawyer despite our giving them a generous six weeks to move on.

What we can do is as follows:

- 1.) Since most of the conditions are met, release \$15k now so you can meet your debt and the other \$35k upon securing the title insurance / removal of tenants; OR
- 2.) Release \$40k to you now and have Escrow Agent release the other \$10k back to Columbus Street Holdings to deal with our costs on these outstanding issues.

What we cannot do is release the full \$50k with only some of the conditions being met. Again, not trying to jam you up on your other deal so hope you will realize we are trying to do what we can while not sacrificing the benefits of our original deal.

Just let us know which of the above two options you prefer and we will confirm in writing to escrow agent.

Thanks,

Roy

On Tue, Jun 6, 2017 at 8:53 AM, Chris Khamnei <chris@rentinvvt.com> wrote:

Paul,

Thank you for clearing that up. When I read the addendum signed at closing, I was actually surprised that it said "any and all tenants." I know only that Travis Davis was being asked to leave.

I hope all is good.

Chris

---

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate  
199 South Union Street #0  
Burlington, VT 05401  
802.222.6080 (Main Line)  
802.222.6081 (Fax Line)  
802.222.6090 (Maintenance)  
802.222.6091 (Landlord)  
chris@rentinvvt.com  
www.RentInVT.com

On Tue, Jun 6, 2017 at 8:33 AM, Paul LeClaire <leclaireteam@gmail.com> wrote:

Chris,

Please see the attached addendum stipulating the conditions to release the \$50,000 of escrow money.  
Which are the following:

1. Remove lis pendens case.
2. To evict and remove Travis Davis from the property

Both of these conditions have been met so the escrow money should be released immediately.

Please see the conditions below:

The undersigned Parties hereby agree as follows: Parties agree to change the contract sales price to Two Hundred Thousand Dollars (\$200,000.00). Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis and release of the lis pendens on the property (2017LP100240). Seller agrees to continue to pursue, retain attorney, and fund the eviction of Tenant Davis and dismissal of the lis pendens. Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens. Closing date will remain April 21, 2017.

Best regards,

Paul LeClaire

**"Your Trusted Real Estate Advisor"**  
CRS, ABR, Realtor of Distinction  
East Cooper Top Producer  
Keller Williams Realty  
1180 Sam Rittenberg Blvd. Suite 105  
Charleston, SC 29407

Paul: 843-557-4549  
Beth: 843-270-3049  
fax: 843-416-1875  
email: leclaireteam@gmail.com  
website: LeClaireHomeTeam.com

**Referrals are greatly appreciated and are the Life Blood of our Business.**  
**Please contact us if you or someone you know needs our help Selling a House or Buying a Home. All clients will be handled with urgency and care.**

On Tue, Jun 6, 2017 at 6:31 AM, Chris Khamnei <[chris@rentinvt.com](mailto:chris@rentinvt.com)> wrote:  
Hello All,

I reviewed the addendum to hold \$50,000 in escrow. There were two unambiguous conditions. The first was to cancel the Lis Pendens with the specific identifying number. That has been done. The second was to remove any and all tenants...specifically Travis Davis.

Yesterday, the first claim was that the buyers needed to verify the title was clean. The second claim was that the buyers wanted to obtain title insurance first. Third, was that all the tenants have NOT been removed. It was clear to me as the seller, through Paul Leclair and my attorney Westbrook Wills that the buyers wanted to keep the other tenants. I have been told nothing otherwise until yesterday when I stressed the urgency that I have been waiting for the escrow release for five days.

The reason for reducing the price nearly \$70K was to get money as soon as possible. Officially, for the record, if I do NOT have the escrow funds wired to me today then I will suffer \$15,000 in damages because I will NOT be able to pay a specific debt requiring this money. If you would like other tenants removed then I will remove them. However, I fulfilled the escrow requirement as first laid out and I will need the money wired to me today.

Thank you for your understanding,  
Chris

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate

199 South Union Street #0  
Burlington, VT 05401  
802.222.6080 (Main Line)  
802.222.6081 (Fax Line)  
802.222.6090 (Maintenance)  
802.222.6091 (Landlord)  
chris@rentinvt.com  
www.RentInVT.com

On Mon, Jun 5, 2017 at 2:49 PM, Sean A. Scapellato, Esq. <[sscapellato@cdhlawfirm.com](mailto:sscapellato@cdhlawfirm.com)> wrote:  
Following up again from my email this morning and from last Friday.

I just was able to speak with Roy about confirming the cancelation of the lis pendens (which we know is canceled through the court's website), and the removal of Travis Davis from the property, which I have confirmation from Chris Khamnei, but NOT from Columbus Street Holdings.

Roy is going to contact me today confirming this information, upon which I will immediately release the funds from escrow. Roy, if you can let me know something by 4PM, 4:30PM latest, I can get the wire out today.

Mr. Khamnei wanted me to convey the urgency of the release. These funds are needed on another transaction, and he's been actively trying since June 1 to have the money released from our escrow. He will incur substantial penalties if I can't get these funds to him by tomorrow.

Thanks for helping out.

Sean A. Scapellato, Esq.  
**Cobb Dill & Hammett, LLC**  
Attorneys at Law  
300 West Coleman Blvd., Suite 106  
Mt. Pleasant, SC 29464  
O: 843-936-6680  
F: 843-353-2583  
E: [sscapellato@CDHLawFirm.com](mailto:sscapellato@CDHLawFirm.com)  
[www.CDHLawFirm.com](http://www.CDHLawFirm.com)

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEI,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC, ROY T. WILLEY IV, and ERIC M.  
POULIN, individually,

Defendants.

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

) Case No.: 2017-CP-10-4112

) **AMENDED COMPLAINT**

) **(Jury Trial Demanded)**

FILED  
2017 SEP -5 PM 1:25  
JULIE J. ARISTIDE  
CLERK OF COURT  
RY 6

COMES NOW, Plaintiff Chris Khamnei and hereby states his claims for relief against Defendants Columbus Street Holdings, LLC, Roy T. Willey IV, and Eric M. Poulin, and shows this Court as follows:

**PARTIES, VENUE, AND JURISDICTION**

1. Plaintiff Chris Khamnei ("Khamnei") is a resident of the State of Vermont, residing at 82 Overlake Park in Burlington, Chittenden County, Vermont. Khamnei is the former owner of a property in Charleston County located at 1 Drews Aly, Charleston, South Carolina 29403 (the "Property").

2. Defendant Columbus Street Holdings, LLC ("Columbus Street") is a South Carolina limited liability company organized and existing under the laws of the State of South Carolina, and having a principal place of business located at 62 Columbus Street, Charleston, Charleston County, South Carolina. Columbus Street is believed to be owned by Roy Willey ("Willey") and Eric Poulin ("Poulin"). Service of the Summons and Complaint may be made on Columbus Street through its registered agent for the

service of process, Poulin, at the address of its principal place of business. Columbus Street is the new owner of the Property.

3. Willey is a Charleston attorney, a resident of Charleston, Charleston County, South Carolina, and an owner of Columbus Street. Willey may be served with process at his residence located at 52 Gibbs Street in Charleston, Charleston County, South Carolina 29401.

4. Poulin is a Charleston Attorney, a resident of Charleston, Charleston County, South Carolina, and an owner of Columbus Street. Poulin may be served with process at his residence located at 161 Moultrie Street, Charleston, Charleston County, South Carolina 29403.

5. Jurisdiction is proper in this Court. Venue is proper in this Court.

#### **FACTUAL ALLEGATIONS**

6. In early March, Khamnei put the Property on the market to sell through his real estate broker Paul LeClaire ("LeClaire").

7. Khamnei was pressed to sell the property quickly, as he need to use the proceeds of the sale to cover significant new family related expenses, including the financial and personal responsibility of caring full-time for his aging mother who had recently moved from Charleston to live with his family in Vermont.

8. Around the same time, Khamnei discovered his brother, who is a Charleston resident with access to the Property, had "leased" the rooms at the Property, without Khamnei's awareness or authorization, to individuals unknown to him, and was keeping the rent proceeds for himself.

9. Travis Davis ("Davis") is friend of Khamnei's brother and one of the individuals who resided at the Property without Khamnei's authorization or knowledge. Upon information and belief, Davis and his wife were living rent-free in a unit of the Property.

10. When Khamnei's brother and Davis discovered Khamnei had put the Property on the market, they made every effort to interfere with and prevent its sale.<sup>1</sup>

11. While neither Khamnei's brother nor Davis had any ownership interest in the Property whatsoever, to justify his attempts at sabotaging its sale, Khamnei's brother claimed to law enforcement and to local courts that he was the owner.

12. Davis also claimed Khamnei's brother's was the owner of the Property, and that he had given Davis what amounted to a lifetime lease for one of the unit at the Property, purportedly in exchange for some renovation work Davis claimed he performed there. No written agreement for any such lease existed.

13. On March 19, 2017, Khamnei personally served Davis with a 30-day Notice to Vacate, and in which Khamnei specifically indicated he was the record owner of the Property, and any leases made or given by his brother were without consent or authorization, and invalid.

14. In reaction to the Notice to Vacate, on March 20, filed a pro se lawsuit against Khamnei in the Court of Common Pleas for Charleston claiming, among other

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<sup>1</sup> Khamnei's brother and Travis Davis presumably wished to prevent, or delay as long as possible, the sale of the Property because Khamnei's brother was profiting from the rents and Davis and his wife were living rent-free. Their efforts to interfere with the sale of the Property included reporting a burglary in progress while LeClaire and potential buyers were visiting the property resulting in the buyers being held at gunpoint until LeClaire and Khamnei were able to confirm LeClaire and the buyers were authorized to be there. On a separate occasion, Davis physically threatened potential buyers who were viewing the Property with LeClaire.

things, Khamnei breached a contract with him, stole his services, and engaged in self-help eviction.

15. Despite his lawsuit having nothing to do whatsoever with any claim or right to the title of the Property, upon information and belief, under direction from Khamnei's brother, Davis also filed an unauthorized *lis pendens* against the Property as an additional attempt to encumber the property and prevent its sale.

16. Until that point, Khamnei lost one contract LeClaire had obtained on the house after the Police held those buyers at gunpoint, and a second group of interested investors subsequently backed out of signing a contract on the Property after Davis physically threatened them.

17. Fortunately, LeClaire was subsequently able to connect with Willey and Poulin who were interested in purchasing the Property as an investment through their company Columbus Street. Columbus Street signed a contract to purchase the Property, at a reduced price<sup>2</sup>, despite the *lis pendens* that existed against the Property.<sup>3</sup>

18. At the time Willey and Poulin signed the contract to purchase the Property, they were aware of the pending *lis pendens* and that Davis and other individuals were still residing at the Property. They were also aware that Khamnei had retained legal counsel in Charleston to ensure the removal of Davis and his *lis pendens* from the Property.

19. The parties scheduled a closing on the sale for April 21, 2017 with the understanding that, Khamnei's attorney would continue pursuing the legal recourse

---

<sup>2</sup> To secure the contract with Columbus Street in short order, Khamnei was required to lower the asking price by thirty-three thousand dollars (\$33,000).

<sup>3</sup> Willey and Poulin are both attorneys, and upon information and belief, recognized Davis's *lis pendens* as unauthorized by law, and subject to being cancelled by the Court.

necessary for removing Davis by the closing date and cancelling the lis pendens, at Khamnei's expense.

20. When Davis still refused to vacate the Property after proper formal notice, Khamnei's attorney was required to file an ejectment action with the Magistrates Court to have Davis removed.

21. Davis filed a response to Khamnei's ejectment action, which required a hearing on the matter be set for a date sometime after April 21, 2017, the closing date on the sale of the Property.

22. Consequently, Columbus Street insisted the April 21st closing be rescheduled for sometime after the hearing on Khamnei's ejectment action, the date of which, at that time, was still unknown.

23. As an inducement to close on the sale of the Property by the originally scheduled April 21st date, despite the pendency of the ejectment action, Khamnei offered Willey and Poulin to reduce the price of the Property by an additional twenty-six thousand dollars (\$26,000), and to place fifty thousand dollars (\$50,000) with an escrow agent as an assurance he and his attorney would continue the legal processes they had started to ensure the remove the both Davis and the lis pendens from the property after the closing.

24. Willey and Poulin accepted Khamnei's new offer and the parties, along with their respective brokers and escrow agent reset a closing under the revised terms for the original April 21st date.

25. As regards the funds to be escrowed under the new arrangement, the parties executed an amendment to the purchase agreement (“Amendment”) and a separate escrow agreement (“Escrow Agreement”)(collectively the “Agreements”). *True and Accurate Copies of the Amendment and the Escrow Agreement are attached hereto as EXHIBITS “A” and “B” respectively.*

26. Under the specific terms of both the Amendment and the Escrow Agreement, Khamnei was required to deliver and deposit fifty thousand dollars (\$50,000) with the escrow agent who would hold the funds in his IOLTA account.

27. Also under the specific terms of both the Amendment and the Escrow Agreement, the parties expressly agreed the escrow agent would release the escrow funds back to Khamnei “[u]pon notification of the cancellation of the Lis Pendens and the removal of Travis Davis . . .”

28. As a further condition for release of the escrow funds, the escrow agent would be required to receive written notification from Columbus Street acknowledging the cancellation of the lis pendens and the removal of Davis, and indicating it’s agreement to the release of the escrow funds back to Khamnei.

29. On May 30, the Circuit Court held a hearing on Khamnei’s motion to cancel lis pendens. Counsel for Khamnei and Willey were both present at the hearing. Ruling from the bench at the conclusion of the hearing, the Court granted Khamnei’s motion and signed a form 4 order cancelling Davis’s lis pendens. *A true and accurate copy of the filed form 4 order cancelling lis pendens, filed on June 1, 2017, is attached hereto as EXHIBIT “C.”*

30. On May 18, 2017, the Magistrate Court held a hearing on Khamnei's ejectment action. Both Willey and Poulin were present at and participated with counsel for Khamnei at the hearing.<sup>4</sup>

31. At the conclusion of the May 18, 2017 Magistrate hearing, the Court found for Columbus Street, and ruled from the bench that Davis was required to vacate the Property by 5:00 p.m. on June 1, 2017.

32. By 5:00 p.m. on June 1, 2017, Davis had vacated the Property. Willey and Poulin were aware that Davis was no longer present at the Property as of that date, and upon information and belief, do not dispute that Davis had vacated by the end of June 1st.

33. On June 1, 2017, Khamnei gave notice by e-mail to the escrow agent that the two conditions for the release of the \$50,000 were satisfied, and asked if the escrow agent could release the escrow funds back to him. The escrow agent responded that he was able to verify on the court website that the lis pendens had been cancelled, and that once he had received confirmation from Columbus Street that Davis had vacated the Property, he would be able to release the funds, per the agreement. *A true and accurate copy of the Khamnei's June 1, 2017 e-mail to the escrow agent is attached hereto as EXHIBIT "D."*

34. On June 2, 2017 and the escrow agent e-mailed Willey and/or Poulin to ask for their consent to release the funds but never received a response.

35. Again on June 5, 2017, the escrow agent e-mailed the parties, including Willey and/or Poulin, indicating he was following up again on his e-mail of earlier that

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<sup>4</sup> By the time the Magistrate finally held a hearing on Khamnei's ejectment action, the parties had already closed on the sale of the Property, and Columbus Street, as the new owner, was properly substituted as the petitioner in place.

day, and from the previous Friday, June 2, 2017. Specifically, the escrow agent indicated as follows:

I just was able to speak with Roy about confirming the cancellation of the lis pendens (which we know is cancelled through the court's website), and the removal of Travis Davis from the property, which I have confirmation from Chris Khamnei, but NOT from Columbus Street Holdings.

Roy is going to contact me today confirming this information, **upon which I will immediately release the funds from escrow.** (emphasis supplied)

*A true and accurate copy of the June 5-6, 2017 e-mail exchange is attached hereto as EXHIBIT "E."*

36. In the same e-mail exchange, the escrow agent made Columbus Street aware, through Willey and/or Poulin, that time was of the essence for the release of the funds, as Plaintiff needed them on another transaction, and had been "actively trying since June 1 to have the money released from our escrow." [See June 5, 2017 e-mail from Sean Scapellato, included in EXHIBIT "E."]

37. Furthermore, the escrow agent put Columbus Street on notice that Plaintiff would incur substantial penalties if he were not able to get the escrow funds back to him by the following day, June 6, 2017. [See *id.*].

38. Subsequently, Willey responded that Columbus Street would not give the escrow agent permission to release the funds, claiming the Addendum and the Escrow Agreement conditioned the release of the funds on Columbus Street obtaining title insurance for the Property, and the removal of the remainder of the tenants.

39. Prior to Columbus Street's June 6, 2017 e-mail response refusing to consent to the release of the escrow funds, Columbus Street had never indicated for certain that it even sought the removal of anyone besides Travis Davis.

40. Furthermore, upon information and belief, prior to the closing of the sale of the Property on April 21, 2017, and Plaintiff placing funds with the escrow agent, Columbus Street had offered at least some of the remaining tenants at the Property the opportunity to sign leases and remain as tenants at the Property.

41. Knowing that Khamnei was under financial pressure and had urgent need for the release of the escrow funds to pay another obligation, Willey and Poulin, on behalf of Columbus Street, indicated they would only release the funds if Khamnei would pay them \$10,000.

42. At the time Willey and Poulin refused to release the escrow funds unless Khamnei paid them \$10,000, Willey and Poulin knew that Khamnei risked being be penalized \$15,000 if he were to default on the other obligation, for which all parties knew Khamnei intended to use the funds in escrow to satisfy.

43. Upon information and belief, Willey and Poulin calculated their demand believing Khamnei would have no choice but to choose the lesser of the two losses and pay them \$10,000, rather than lose \$15,000 as a penalty for defaulting on the other obligation.

44. On June 7, 2017, Columbus Street having refused to release the \$50,000 in escrow, Khamnei defaulted on another loan he had taken, in part, to fund the Escrow

Agreement, which default resulted in a penalty to him of fifteen thousand dollars (\$15,000).

45. As of the date of filing this lawsuit, Columbus Street has still not provided its written consent to the escrow agent to release the \$50,000 back to Khamnei, who has now been without those critical funds for over two months.

**FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)  
(Columbus Street Holdings, LLC)**

46. Plaintiff realleges and incorporates the allegations of paragraphs 1-39 of the Complaint as if fully set forth herein.

47. Plaintiff and Columbus Street entered into a series of written agreements related to the sale and closing of the Property, including the Addendum and the Escrow Agreement, and an agreement between the parties wherein Plaintiff agreed to reduce the sales price of the Property by twenty six thousand dollars (\$26,000) in consideration of Columbus Streets agreement to close the sale by a specified date, and release the escrow funds upon satisfaction of the agreed upon conditions, which the parties expressly acknowledged was expected to occur by May 31, 2017.

48. Plaintiff fully performed under the terms of the Agreements, including satisfying the two conditions required under the parties' agreement for the release of the escrow funds.

49. Columbus Street breached the Agreements by failing and refusing to consent to the release of the escrow funds back to Khamnei's upon and despite Khamnei's

satisfaction of the two conditions precedents according to the specific terms of the parties' written agreements.

50. Columbus Street remains in breach of the Agreements, as it persists in its failure and refusal to provide the escrow agent the written consent required for the release of the escrow funds back to Khamnei.

51. Columbus Street has breached, and continues to breach, the Agreements willfully, and with conscious indifference to Plaintiff's pressing need for the funds, and his rights under the Agreements to their release.

52. Additionally, as a result of Columbus Street's breach, Plaintiff has been deprived the benefit of an expeditious finalization of the sale, closing, and release of escrow funds, for which he gave specific consideration.

53. As a direct and proximate result of Columbus Street's failure and refusal to release the escrow funds, in breach of the Agreements, Plaintiff has suffered actual consequential, and incidental damages in an amount to be proven at trial, but no less than ninety-one thousand dollars (\$91,000).

54. As a direct or proximate result of Columbus Street's on-going breach of the Agreements, Plaintiff continues to be further damaged in an amount to be demonstrated at trial.

**FOR A SECOND CAUSE OF ACTION  
(Breach of Contract Accompanied by a Fraudulent Act)  
(All Defendants)**

55. Plaintiff realleges and incorporates the allegations of paragraphs 1-54 of the Complaint as if fully set forth herein.

56. Plaintiff and Columbus Street entered into a series of written agreements related to the sale and closing of the Property, including the Addendum and the Escrow Agreement, and an agreement between the parties wherein Plaintiff agreed to reduce the sales price of the Property by twenty six thousand dollars (\$26,000) in consideration of Columbus Streets agreement to close the sale by a specified date, and release the escrow funds upon satisfaction of the agreed upon conditions, which the parties expressly acknowledged was expected to occur by May 31, 2017.

57. Plaintiff fully performed under the terms of the Agreements, including satisfying the two conditions required under the parties' agreement for the release of the escrow funds.

58. Columbus Street breached the Agreements by failing and refusing to consent to the release of the escrow funds back to Khamnei's upon and despite Khamnei's satisfaction of the two conditions precedents according to the specific terms of the parties' written agreements.

59. Columbus Street has breached, and continues to breach, the Agreements willfully, and with conscious indifference to Plaintiff's pressing need for the funds, and his rights under the Agreements to their release.

60. Knowing of Plaintiff's financial urgency in obtaining the release of the escrow funds, Willey and Poulin, on behalf of Columbus Street, intentionally breached the Agreements with Plaintiff to force Plaintiff into the position of having to choose whether to pay Columbus Street \$10,000, or lose \$15,000 as a penalty for defaulting on Plaintiff's other obligation.

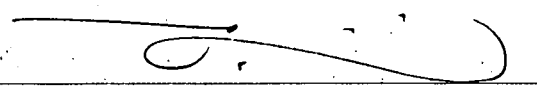
61. Columbus Street's and Willey and Poulin's intentional breach of the Agreements with Plaintiff in order to wrongfully gain financial advantage and extort money from Plaintiff constitutes dishonesty in fact and unfair dealing.

62. As a direct and proximate result of Columbus Street's and Willey and Poulin's failure and refusal to release the escrow funds, in breach of the Agreements, Plaintiff has suffered actual consequential, and incidental damages in an amount to be proven at trial, but no less than ninety-one thousand dollars (\$91,000).

63. Plaintiff is additionally entitled to punitive damages against Defendants.

**WHEREFORE**, Plaintiff prays for a trial by jury, judgment against Columbus Street for Plaintiff's actual, consequential, and incidental damages, interest at the legal rate, cost of litigation, judgment against Columbus Street and Willey and Poulin, individually, for actual, consequential, and punitive damages, and for any and all other further relief the Court finds just and proper.

LAW OFFICE OF  
W. WESTBROOK WILLS III

BY: 

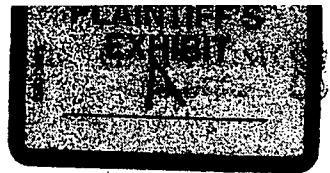
W. Westbrook Wills III  
S.C. Bar # 76681  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
wwills@wwillslaw.com

Folly Beach, South Carolina

September 5, 2017



## ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [ ☐ OFFER OR ☐ COUNTEROFFER ] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: \_\_\_\_\_

COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: \_\_\_\_\_

Further described or commonly known as: \_\_\_\_\_

Address \_\_\_\_\_ 1 Drews Aly \_\_\_\_\_ Unit # \_\_\_\_\_

City \_\_\_\_\_ Charleston \_\_\_\_\_ State of South Carolina

Other \_\_\_\_\_ TMS \_\_\_\_\_ 459-05-01-057

The undersigned Parties hereby agree as follows: Parties agree to change the contract sales price to Two Hundred Thousand Dollars (\$200,000.00). Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis and release of the lis pendens on the property (2017LP100240). Seller agrees to continue to pursue, retain attorney, and fund the eviction of Tenant Davis and dismissal of the lis pendens. Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens. Closing date will remain April 21, 2017.

**EXPIRATION OF OFFER:** When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at \_\_\_\_\_ ☐ AM ☐ PM on \_\_\_\_\_ unless accepted or counter offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: \_\_\_\_\_ Date: 4/14/2017 Time: \_\_\_\_\_

BUYER: \_\_\_\_\_ Date: 4/14/2017 Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

SELLER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

SELLER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

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4/20/17

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT made and entered into this \_\_\_\_ day of April 2017, by and among Chris Khamnei (hereinafter referred to collectively as "Client"); Columbus Street Holdings, LLC; and Cobb, Dill, & Hammett Law Firm, LLC, a South Carolina Limited Liability Company (hereinafter referred to as "Escrow Agent").

### WITNESSETH:

WHEREAS, The contract price for the 1 Drews Aly, Charleston, SC 29403 (hereinafter referred to as "Property") has been reduced from 226,000.00 to 200,000.00;

WHEREAS, the price adjustment has been executed as an inducement to close on or before April 21, 2017;

WHEREAS, the Client has the right and has agreed to escrow funds for the purpose of evicting any and all tenants subsequent to the sale of this property, in particular the tenant Travis Davis;

WHEREAS, the Client has agreed to escrow funds for the purpose of canceling the Lis Pendens (2017-LP-10-0240), which is expected to be canceled and removed from the docket before May 31, 2017;

WHEREAS, the Client has agreed to escrow \$50,000.00 as consideration for the above-referenced actions;

WHEREAS, the Client has agreed to pay Escrow Agent \$250.00 for its escrow services;

NOW, THEREFORE, in consideration of the premises and of good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. Client agrees to sell and Columbus Street Holdings, LLC agrees to purchase the Property with the knowledge that the Lis Pendens is still filed and that tenants are still occupying the Property;
2. Client shall deliver and deposit with Escrow Agent the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) dollars for the purposes outlined *supra*, representing the Escrow Funds as required by this Escrow Agreement. The Escrow Agent agrees to deposit said funds in its IOLTA account and to hold and disburse said funds as hereinafter provided.
3. Client's United States Taxpayer Identification Number is 068-62-3049.
4. Upon notification of the cancellation of the Lis Pendens and the removal of Travis Davis, the Parties have agreed to disburse the funds in the following manner:
  - a. The balance of all moneys shall be returned to the Client.
5. Upon written notification from the Client and Columbus Street Holdings, LLC that they have agreed as to the disbursement of the above remaining Escrow Funds, Escrow Agent shall deliver to the appropriate parties the appropriate amounts as disclosed by said written notification.

6. The parties hereto covenant and agree that in performing any of its duties under this Agreement, Escrow Agent shall be released and not be liable for any loss, costs or damage which it may incur as a result of serving as Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence.

Accordingly, Escrow Agent shall not incur any liability, whatsoever, with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in the Escrow Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Escrow Agreement.

Client and Columbus Street Holdings, LLC hereby agree to indemnify and hold harmless the Escrow Agent against any and all losses, claims, damages, liabilities and expenses, including without limitation, reasonable costs of investigation and attorneys fees, costs and disbursements which may be imposed upon or incurred by Escrow Agent in connection with its serving as Escrow Agent hereunder. The Escrow Agent shall be entitled to be indemnified by Client and Columbus Street Holdings, LLC for all amounts, to include all attorney's fees and costs, at the rate of \$325.00 per an hour, for any action required by the Escrow Agent other than disbursing the Escrow Funds by consent under Paragraph #5 above. Said amounts shall be paid by Client, to Escrow Agent, upon demand and invoice (which shall be evidenced by the HUD-1 closing statement), in advance of the Escrow Agent being required to disburse the funds as set forth in this Agreement.

In an event of a dispute between any of the parties hereto sufficient in the sole discretion of Escrow Agent to justify its doing so, Escrow Agent shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Escrow Agreement, together with such legal pleading as it deems appropriate, with Client and Columbus Street Holdings, LLC being responsible for any and all attorney's fees, costs, damages and expenses incurred by the Escrow Agent in doing so, with the same being paid by Client and Columbus Street Holdings, LLC to Escrow Agent, upon invoice of the Escrow Agent, at the rate of \$325.00 per an hour.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed and its seal to be affixed thereto as of the day and year first above written.

**[Rest of this page left intentionally blank]**

SELLER:

Chris Khamnei

By: Chris Khamnei by [Signature] authorized signatory

Title: Client.

PURCHASER:

Columbus Street Holdings, LLC.

By: [Signature]

Title: Member

By: [Signature]

Title: Member

ESCROW AGENT:

Cobb, Dill, & Hammett, LLC

By: [Signature]

Sean A. Scapellato, Esq.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-10-1414



Travis Davis  
PLAINTIFF(S)

2017 JUN -1 PM 4:47  
DEFENDANT(S)

Chris Khamnei, Cyrus Kamini, and Paul LeClaire

Submitted by: The Court.

JULIE J. ARMSTRONG  
CLERK OF COURT

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

DISPOSITION TYPE (CHECK ONE)

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

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

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: On May 26, 2017, this Court heard oral arguments on the following motions: (1) Defendant Chris Khamnei's emergency motion to cancel lis pendens (filed 4/5/17), (2) Defendant LeClaire's Motion to Dismiss (filed 4/20/17), and (3) defendant Chris Khamnei's Motion to Dismiss (filed 4/28/17). It is hereby ORDERED: (1) Defendant Chris Khamnei's emergency motion to cancel lis pendens is GRANTED; (2) Defendant LeClaire's Motion to Dismiss is GRANTED, and (3) defendant Chris Khamnei's Motion to Dismiss is DENIED. Plaintiff's Motion for Injunction (filed 3/20/17) was withdrawn.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| N/A.                                         |                                          | \$                                                          |

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

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

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

Circuit Court Judge

SCRPC Form 4C (02/2017)

2134

Judge Code

6/1/17

Date

Page 1 of 4

**For Clerk of Court Office Use Only**

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

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

## CLERK OF COURT

**Court Reporter:**

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

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

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

SCRCP Form 4C (02/2017)

Page 2 of 4



From: Chris Khamnei <chrisxhamnei@gmail.com>  
Subject: Re: POA for 1 Drews Aly  
Date: June 1, 2017 at 7:54 AM  
To: Sean A. Scapellato, Esq. <sscapellato@cdhlawfirm.com>, W. Westbrook Wills III <wwills@wwillslaw.com>

Good morning.

Can we confirm today that Travis Davis is gone from 1 Drew's Ct, confirm that the list pendants has been dissolved/canceled, and wire the escrow funds to me immediately.

Thank you much,  
Chris

Sent from my iPhone

On May 30, 2017, at 6:09 PM, Sean A. Scapellato, Esq. <sscapellato@cdhlawfirm.com> wrote:

Great news. Happy to hear. I will await the final verification that Mr. Davis has vacated the property. Once we have that, I will release the escrow per your instructions.

Keep me in the loop. Hope you're doing well.  
sean

Sean A. Scapellato, Esq.  
**Cobb Dill & Hammett, LLC**  
Attorneys at Law  
300 West Coleman Blvd., Suite 106  
Mt. Pleasant, SC 29464  
O: 843-936-6680  
F: 843-353-2583  
E: [sscapellato@CDHLawFirm.com](mailto:sscapellato@CDHLawFirm.com)  
[www.CDHLawFirm.com](http://www.CDHLawFirm.com)

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On Tue, May 30, 2017 at 5:28 PM, Chris Khamnei <chrisxhamnei@gmail.com> wrote:  
Hi Sean.

Lis Pendens on Drews court is cancelled. Travis Davis has been legally ejected and if not gone by June 1 then the sheriff will remove him. Therefore, the escrow is satisfied. On June 1 can you send me the escrow funds of \$50,000. I will send you different wiring instructions before then.

Sent from my iPhone

On Apr 22, 2017, at 9:47 AM, Sean A. Scapellato, Esq. <sscapellato@cdhlawfirm.com> wrote:

It was my pleasure. Very glad I could help. Have a great weekend.

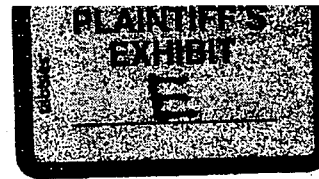
On Sat, Apr 22, 2017 at 5:59 AM Chris Khamnei <chris@rentinyt.com> wrote:  
Sean,

A tremendous thank you for facilitating this transaction.

Sincerely,  
Chris

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate

**From:** Roy T. Willey IV roytwilleyiv@gmail.com  
**Subject:** Re: 1 Drews Aly escrow funds  
**Date:** June 6, 2017 at 8:56 AM  
**To:** Chris Khamnei chris@rentinvt.com  
**Cc:** Paul LeClaire leclaireteam@gmail.com, Sean A. Scapellato, Esq. sscapellato@cdhlawfirm.com, Eric Poulin eric@akimlawfirm.com, W. Westbrook Wills III wwills@wwillslaw.com, Leslie Turner leslie@handsomeproperties.com



Chris and Paul,

First, Chris we are truly not trying to jam you up, just get the benefit of the bargain. Hope you understand that.

However, the last sentence / requirement clearly reads that the "Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens." The only way we can ensure we have clear title is to be able to obtain title insurance. Or if seller wanted to go through the Courts to obtain official clear title that is another avenue, but title insurance is certainly going to be faster as we are already working with the bank. Appraisal is set to be done today.

Second, the actual Escrow Agreement also requires removal of all "tenants." The three people upstairs had initially agreed to go but are still there so we are going to have to work through the process three more times most likely. One has already hired a lawyer despite our giving them a generous six weeks to move on.

What we can do is as follows:

- 1.) Since most of the conditions are met, release \$15k now so you can meet your debt and the other \$35k upon securing the title insurance / removal of tenants; OR
- 2.) Release \$40k to you now and have Escrow Agent release the other \$10k back to Columbus Street Holdings to deal with our costs on these outstanding issues.

What we cannot do is release the full \$50k with only some of the conditions being met. Again, not trying to jam you up on your other deal so hope you will realize we are trying to do what we can while not sacrificing the benefits of our original deal.

Just let us know which of the above two options you prefer and we will confirm in writing to escrow agent.

Thanks,

Roy

On Tue, Jun 6, 2017 at 8:53 AM, Chris Khamnei <chris@rentinvt.com> wrote:  
Paul,

Thank you for clearing that up. When I read the addendum signed at closing, I was actually surprised that it said "any and all tenants." I know only that Travis Davis was being asked to leave.

I hope all is good.  
Chris

---

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate  
199 South Union Street #0  
Burlington, VT 05401  
802.222.6080 (Main Line)  
802.222.6081 (Fax Line)  
802.222.6090 (Maintenance)  
802.222.6091 (Landlord)  
chris@rentinvt.com  
www.RentInVT.com

On Tue, Jun 6, 2017 at 8:33 AM, Paul LeClaire <leclaireteam@gmail.com> wrote:  
Chris,

Please see the attached addendum stipulating the conditions to release the \$50,000 of escrow money.  
Which are the following:

1. Remove lis pendens case.
2. To evict and remove Travis Davis from the property

Both of these conditions have been met so the escrow money should be released immediately.

Please see the conditions below:

The undersigned Parties hereby agree as follows: Parties agree to change the contract sales price to Two Hundred Thousand Dollars (\$200,000.00). Seller agrees to keep Fifty Thousand Dollars (\$50,000.00) in escrow with Buyer's closing attorney (Weeks and Irvine), pending the successful eviction of tenant Travis Davis and release of the lis pendens on the property (2017LP100240). Seller agrees to continue to pursue, retain attorney, and fund the eviction of Tenant Davis and dismissal of the lis pendens. Seller agrees to provide clear title to the property with Warranty Deed after dismissal of lis pendens. Closing date will remain April 21, 2017.

Best regards,

Paul LeClaire

*"Your Trusted Real Estate Advisor"*  
CRS, ABR, Realtor of Distinction  
East Cooper Top Producer  
Keller Williams Realty  
1180 Sam Rittenberg Blvd. Suite 105  
Charleston, SC 29407

Paul: 843-557-4549  
Beth: 843-270-3049  
fax: 843-416-1875  
email: [leclaireteam@gmail.com](mailto:leclaireteam@gmail.com)  
website: [LeClaireHomeTeam.com](http://LeClaireHomeTeam.com)

*Referrals are greatly appreciated and are the Life Blood of our Business.*

*Please contact us if you or someone you know needs our help Selling a House or Buying a Home. All clients will be handled with urgency and care.*

On Tue, Jun 6, 2017 at 6:31 AM, Chris Khamnei <[chris@rentinvt.com](mailto:chris@rentinvt.com)> wrote:

Hello All,

I reviewed the addendum to hold \$50,000 in escrow. There were two unambiguous conditions. The first was to cancel the Lis Pendens with the specific identifying number. That has been done. The second was to remove any and all tenants...specifically Travis Davis.

Yesterday, the first claim was that the buyers needed to verify the title was clean. The second claim was that the buyers wanted to obtain title insurance first. Third, was that all the tenants have NOT been removed. It was clear to me as the seller, through Paul Leclair and my attorney Westbrook Willis that the buyers wanted to keep the other tenants. I have been told nothing otherwise until yesterday when I stressed the urgency that I have been waiting for the escrow release for five days.

The reason for reducing the price nearly \$70K was to get money as soon as possible. Officially, for the record, if I do NOT have the escrow funds wired to me today then I will suffer \$15,000 in damages because I will NOT be able to pay a specific debt requiring this money. If you would like other tenants removed then I will remove them. However, I fulfilled the escrow requirement as first laid out and I will need the money wired to me today.

Thank you for your understanding,  
Chris

Chris C. Khamnei, Ph.D.  
Green Mountain Real Estate

199 South Union Street #0  
Burlington, VT 05401  
802.222.6080 (Main Line)  
802.222.6081 (Fax Line)  
802.222.6090 (Maintenance)  
802.222.6091 (Landlord)  
chris@rentinvt.com  
www.RentInVT.com

On Mon, Jun 5, 2017 at 2:49 PM, Sean A. Scapellato, Esq. <[sscapellato@cdhlawfirm.com](mailto:sscapellato@cdhlawfirm.com)> wrote:  
Following up again from my email this morning and from last Friday.

I just was able to speak with Roy about confirming the cancelation of the lis pendens (which we know is canceled through the court's website), and the removal of Travis Davis from the property, which I have confirmation from Chris Khamnei, but NOT from Columbus Street Holdings.

Roy is going to contact me today confirming this information, upon which I will immediately release the funds from escrow. Roy, if you can let me know something by 4PM, 4:30PM latest, I can get the wire out today.

Mr. Khamnei wanted me to convey the urgency of the release. These funds are needed on another transaction, and he's been actively trying since June 1 to have the money released from our escrow. He will incur substantial penalties if I can't get these funds to him by tomorrow.

Thanks for helping out.

Sean A. Scapellato, Esq.  
**Cobb Dill & Hammett, LLC**  
Attorneys at Law  
300 West Coleman Blvd., Suite 106  
Mt. Pleasant, SC 29464  
O: 843-936-6680  
F: 843-353-2583  
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IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO: 2017-CP-10-4112

CHRIS KHAMNEI,

Plaintiff(s),

v.

COLUMBUS STREET HOLDINGS, LLC;  
ROY T. WILLEY, IV; and ERIC M.  
POULIN,

Defendant(s).

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR PARTIAL  
DISMISSAL**

FILED  
2017 SEP 13 PM 12:51  
JULIE J. ARMSTRONG  
CLERK OF COURT

**TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD:**

YOU WILL PLEASE TAKE NOTICE that the Defendants, by and through undersigned counsel, will move before the presiding judge within ten (10) days of the service of this Motion, or at such time as counsel may be heard, for an Order dismissing the individual defendants and the Plaintiff's second cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

**Brief Summary**

At its core, this is a simple breach of contract action. Defendant Columbus Street Holdings, LLC is a duly registered South Carolina Limited Liability Company. Defendants Willey and Poulin are members of the LLC. The LLC contracted to purchase a piece of real property from the Plaintiff. However, the property was encumbered by a *lis pendens* and occupied by several squatters. Originally, the parties had agreed not to close the sale until the *lis pendens* was dissolved and the squatters were evicted. However, Plaintiff needed to close quickly because he needed the money. As such, the contract was modified such that the sale closed early, but \$50,000 of the purchase price was to be held in escrow until the *lis pendens* was

dissolved and the squatters evicted. Plaintiff was to be responsible for remedying these issues.

Once the *lis pendens* was dissolved and the squatters evicted by Plaintiff, the escrow money was to be delivered to the Plaintiff.

Plaintiff did eventually get the *lis pendens* dissolved. After doing so, Plaintiff demanded the escrow money be released. However, Defendants refused because not all of the squatters had been evicted. When Defendants refused to release the escrow money, Plaintiff filed this action, alleging breach of contract for failure to release the funds. Conversely, Defendants believe that the Plaintiff breached the contract by failing and refusing to evict the squatters and, as such, Defendants allege they were legally justified in not releasing the escrow funds.

Plaintiff's Complaint alleges two causes of action. Count one is a simple breach of contract cause of action and is alleged against the LLC only. Count two is a breach of contract accompanied by a fraudulent act cause of action and is alleged against both the LLC and the individual defendants. Defendants now move to have the individual defendants and the second cause of action dismissed.

### **Argument**

Breach of contract accompanied by a fraudulent act requires proof of 3 elements:

- (1) A breach of contract;
- (2) Fraudulent intent relating to the breach; and
- (3) A fraudulent act accompanying the breach.

-Harper v. Ethridge, 220 S.C. 112(1986)

#### **I. Plaintiffs Complaint (2<sup>nd</sup> Cause of Action) Fails to Plead the Second and Third Elements of a Breach of Contract Accompanied By a Fraudulent Act.**

It is true that Plaintiff's Complaint adequately pleads a breach of contract allegation.<sup>1</sup>

However, a simple breach of contract, standing on its own, is not enough to recover on the

---

<sup>1</sup> Although this allegation is denied by Defendants.

second cause of action. See, Calder v. Commercial Casualty Ins. Co., 182 S.C. 240 (1936)(Holding that a mere violation of a contract will not support an allegation of fraud). See, also, Patterson v. Capital Life & Health Ins. Co., 228 S.C. 297 (1955)(Holding punitive damages are not recoverable for the mere refusal to pay a debt). Indeed, the cause of action does not survive even if it is proven that a defendant breached the contract willfully. Vann v. Nationwide Ins. Co., 257 S.C. 217 (1971). Instead, “[i]t has been consistently held that where a complaint states a cause of action for breach of contract, allegations charging the defendant with fraudulent intent or purpose in breaching the contract do not give rise to a right to recover punitive damages; that such damages are recoverable **only** where, in addition to or independently of the fraudulent intent that brought about the breach there was some fraudulent act on the part of defendant accompanying the breach.” Welborn v. Dixon, 70 S.C. 108 (1904).

Here, Plaintiff does not even allege any fraudulent intent on behalf of Defendants. Nonetheless, even if the same existed, Plaintiff has not alleged, and cannot point to or prove, any specific fraudulent act. Instead, this is a simple contract dispute between two parties. This case can and should be appropriately litigated under the first cause of action for breach of contract and Plaintiff’s second cause of action for breach of contract accompanied by a fraudulent act should be dismissed.

## **II. Even if Plaintiff’s Second Cause of Action Survives Against the LLC, the Individual Defendants Should Be Dismissed.**

Because the individual defendants are only named in the second cause of action, dismissal of the same as urged above would necessarily dismiss the individual defendants. However, even if the Court were to allow the second cause of action to proceed against the LLC, the individual defendants should still be dismissed.

As noted above, Columbus Street Holdings, LLC is a duly organized and registered limited liability company in good standing with the Secretary of State's office. The individual defendants are merely members of the LLC. The contracts alleged to have been breached were entered into exclusively between Plaintiff and the LLC. Neither individual defendant signed any personal guarantee, or otherwise undertook to form any agreement or contract in their personal capacities. The contract was for the sale of real property. The property was purchased using funds from the LLC's separate operating account and is deeded to the LLC. Plaintiff has failed to allege anywhere in the Complaint that the LLC is not operated in accordance with appropriate corporate formalities, and has failed to plead or advance any theory of "alter ego" or "piercing the corporate veil." Moreover, as noted above, a key element to the cause of action for breach of contract accompanied by a fraudulent act is that the defendant must have actually breached a contract. Tellingly, in his first cause of action for breach of contract, Plaintiff does not even name the individual Defendants. This is because the individual Defendants were not a party to the contract that was allegedly breached. Without a breach, there can be no cause of action for fraudulent intent. As such, the individual Defendants must be dismissed.

**WHEREFORE**, Plaintiff prays for an Order dismissing the individual defendants and dismissing Plaintiff's second cause of action pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, and for such other relief as the Court deems just and proper.

**Rule 11 Certification**

The undersigned would show that Rule 11 imposes no duty of consultation with respect to a Motion to Dismiss.

[signature on following page]

Respectfully Submitted,

**ANASTOPOULO LAW FIRM, LLC**

**CERTIFICATE OF SERVICE**  
THE UNDERSIGNED HEREBY CERTIFIES  
THAT (S)HE SERVED A COPY OF THE  
PLEADING OR FOREGOING PAPERS ON  
ALL COUNSEL OF RECORD THIS 7<sup>th</sup>  
DAY OF September, 2017

Stefan B. Feidler

Stefan B. Feidler  
S.C. Bar No.: 101918  
Anastopoulos Law Firm, LLC  
62 Columbus Street  
Charleston, SC 29403  
(843) 614-8888

**ATTORNEYS FOR THE DEFENDANTS**

Dated at Charleston, SC

This 7<sup>th</sup> day of Sept., 2017.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEI,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC, ROY T. WILLEY IV, and ERIC M.  
POULIN, individually,

Defendants.

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

) Case No.: 2017-CP-10-4112

) **PLAINTIFF'S MEMORANDUM**  
) **IN OPPOSITION TO**  
) **DEFENDANTS' MOTION FOR**  
) **PARTIAL DISMISSAL**

FILED  
2017 NOV 15 AM 10:23  
JULIE J. ARMSTRONG  
CLERK OF COURT

COMES NOW, Plaintiff Chris Khamnei ("Plaintiff" or "Khamnei") and hereby submits his Memorandum in Opposition to Defendants' Motion for Partial Dismissal showing this Court as follows:

INTRODUCTION

Plaintiff entered into certain contracts with Defendant Columbus Street Holdings, LLC ("Columbus Street"), through its sole members Roy T. Willie ("Willie") and Eric M. Poulin ("Poulin"), related to the sale of a property located in Charleston County, including a sales agreement and separate escrow agreement ("Agreements"). Other unrelated, urgent financial obligations required Plaintiff to close the sale of the property and receive the proceeds by a certain date to save a situation of default situation and significant penalties. The parties to the contract, and Willie and Poulin, were aware of Plaintiff's need to close the sale by a specified date, and Plaintiff gave specific separate consideration under the Agreements to close by that date, including lowering the sales

price of the property by \$26,000 and escrowing \$50,000 pending the ejection of a certain hold-over, non-rent paying tenant who made a crude attempt at delaying his ejection by filing an unauthorized *lis pendens*<sup>1</sup>. The terms of the escrow agreement are clear as to the conditions to be satisfied by Plaintiff for Columbus Street, through Willie and Poulin, to authorize the release of the escrow funds to Plaintiff. However, despite the clear language of the escrow agreement, when Plaintiff satisfied the agreed conditions and the escrow agent asked Willie and Poulin to release the funds to Plaintiff so he could pay his other urgent financial obligations, Willie and Poulin refused to authorize the release. As a basis for their refusal to release the funds, Willie and Poulin invented some additional condition that was never a part of any discussions between the parties, much less a term of the escrow agreement, and which would have been arguably impossible for Plaintiff to ever satisfy.

With full knowledge that Plaintiff gave, and Defendants accepted, separate specific consideration in the deal to close by the specified date, Willie and Poulin acted in a dishonest and unfair manner by, themselves, putting Plaintiff in a situation of economic duress by threatening to breach the escrow agreement unless Plaintiff paid them an additional \$10,000, which Willie and Poulin told Plaintiff was a better option than the \$15,000 penalty Plaintiff would suffer as a result of defaulting on his other financial obligation because Defendants refused to release the escrow funds. Such a move involves, without any doubt, a tortious intent essentially to extort money from Plaintiff.

---

<sup>1</sup> The hold-over tenant filed a *lis pendens* on the property at issue in connection with a complaint he filed against Plaintiff in this case for defamation and self-help ejection, among other baseless claims which had no bearing on the title to the property.

Plaintiff's complaint alleges a cause of action for breach of contract against Columbus Street, as it was the entity, which was the party to the Agreements, and a second cause of action against Columbus Street and Willie and Poulin, individually, for breach of contract accompanied by a fraudulent act. Willie and Poulin have moved to dismiss the latter against them individually claiming they are shielded from individual liability since only their LLC is a party to the Agreements, and that Plaintiff's Complaint fails to sufficiently plead a cause of action for breach of contract accompanied by a fraudulent act. Neither is the case, and this Court should deny their motion for partial dismissal.

#### DISCUSSION

"A ruling on a motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the factual allegations set forth in the complaint, and the court must consider all well-pled allegations as true." Fabian v. Lindsay, 410 S.C. 475, 481, 765 S.E.2d 132, 136 (2014) (quoting Disabato v. S.C. Ass'n of Sch. Adm'rs, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2013)). If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Clearwater Tr. v. Bunting, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006). "Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." Hotel & Motel Holdings, LLC v. BJC Enterprises.

LLC, 414 S.C. 635, 650, 780 S.E.2d 263, 271 (Ct. App. 2015); Spence v. Spence, 368 S.C. 106, 116–17, 628 S.E.2d 869, 874 (2006).

An action for breach of contract accompanied by a fraudulent act is an *action ex contractu*, not *ex delicto*, Cain v. United Insurance Company of America, 232 S.C. 397, 102 S.E.2d 360; Ross v. American Income Life Insurance Company, 232 S.C. 433, 102 S.E.2d 743; however, it partakes of elements of both contract and tort. Lister v. NationsBank of Delaware, N.A., 329 S.C. 133, 141–42, 494 S.E.2d 449, 454 (Ct. App. 1997).

To establish a claim for breach of contract accompanied by a fraudulent act, a party must show: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Conner v. City of Forest Acres, 348 S.C. 454, 465–66, 560 S.E.2d 606, 612 (2002).

“Fraudulent act” is broadly defined as “any act characterized by dishonesty in fact or unfair dealing.” Id. at 466, 560 S.E.2d at 612. “‘Fraud,’ in this sense, ‘assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence.’ ” Id. (quoting Sullivan v. Calhoun, 117 S.C. 137, 139, 108 S.E. 189, 189 (1921)).

Breach of contract accompanied by a fraudulent act requires fraudulent intent relating to the breaching of the contract and not merely to its making, and such proof may

or may not involve false representations. Ball v. Canadian Am. Exp. Co., 314 S.C. 272, 276, 442 S.E.2d 620, 623 (Ct. App. 1994). Fraudulent intent is normally a factual question proved by circumstances surrounding the breach.” Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 54, 336 S.E.2d 502, 503–04 (Ct. App. 1985). “The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character.” D.R. Horton, Inc. v. Wescott Land Co., LLC, 398 S.C. 528, 555–56, 730 S.E.2d 340, 354 (Ct. App. 2012), aff’d in part as modified, vacated in part, 410 S.C. 319, 764 S.E.2d 701 (2014)(citing id. at 54, 336 S.E.2d at 504.))

In all of the decided cases in this State on this subject [breach of contract accompanied by a fraudulent act] the underlying principle of law is that there must be proof of some fraudulent act, other than the mere receiving of the money, either in the inception of the contract or in its nonfulfillment and fraudulent breach. For example, in a case where, after the contract was entered into to work a crop on halves, and after the cropper had been induced to labor to make it, he was run off the premises by the landlord, who gathered the crop, and refused to settle with the cropper, it is clear that the subsequent taking of the crop was a fraudulent act accompanying the breach with fraudulent intent to cheat and defraud. Sullivan v. Calhoun, 117 S.C. 137, 108 S.E. 189; Ford v. Ball, 178 S.C. 111, 182 S.E. 319; Moody v. Stem, 51 S.E.2d 163 (S.C. 1948).

Furthermore, the comments to S.C. Code Ann § 33-44-303 provide, “[a] member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. A member or manager is responsible for acts or omissions to the extent those acts or omissions would be actionable in ... tort against the member or manager if that person were acting in an individual capacity.” S.C. Code Ann. § 33-44-303 cmt. South Carolina has

interpreted this statute to create liability in LLC members, individually, if their individual conduct was the basis for the offending act or omission on the part of the company. See generally, 16 Jade St., LLC v. R. Design Const. Co., 398 S.C. 338, 347, 728 S.E.2d 448, 453 (2012), opinion withdrawn and superseded on other grounds on reh'g sub nom. 16 Jade St., LLC v. R. Design Const. Co., LLC, 405 S.C. 384, 747 S.E.2d 770 (2013).

This interpretation is also consistent with the law in South Carolina regarding piercing the corporate veil. “Generally, a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons.” Hunting v. Elders 359 S.C. 217, 597 S.E.2d 803 (S.C. App. 2004), rehearing denied, certiorari granted, certiorari dismissed.

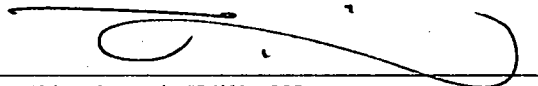
Plaintiff's Complaint alleges just those aspects of Willie and Poulin's conduct on behalf of Columbus Street in intentionally creating a breach of the contract for the purpose of then extorting additional money from Plaintiff. The allegations of Plaintiff's Complaint, taken in the light most favorable to Plaintiff, and for the purpose of surviving a 12(b)(6) motion to dismiss, are not only sufficient with regard to his cause of action against all defendants for breach of contract accompanied by a fraudulent act, but also state facts sufficient to make out a cause of action for piercing the corporate veil. See Pilkington v. McBain, 274 S.C. 312, 315, 262 S.E.2d 916, 918 (1980)(the complaint must be liberally construed in favor of the pleader and left standing if the allegations, however uncertain, fairly constitute a cause of action for damages).

Because Plaintiff's Complaint alleges facts sufficient to support a cause of action for breach of contract accompanied by a fraudulent act, and alleges facts sufficient to implicate Willie and Poulin's individual tortious conduct and actions as agents of their LLC, partial dismissal of Plaintiff's claims against them individually is not appropriate at this time, and Plaintiff respectfully requests this Court deny Defendants' motion for that relief.

Respectfully submitted,

LAW OFFICE OF  
W. WESTBROOK WILLS III

BY:

  
\_\_\_\_\_  
W. Westbrook Wills III  
S.C. Bar # 76681  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
wwills@wwillslaw.com

Folly Beach, South Carolina

November 15, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEL,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC, ROY T. WILLEY IV, and ERIC M.  
POULIN, individually,

Defendants.

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

) Case No.: 2017-CP-10-4112

) **PLAINTIFF'S NOTICE OF MOTION**  
) **AND MOTION TO RECONSIDER,**  
) **ALTER, OR AMEND ORDER**  
) **GRANTING PARTIAL DISMISSAL**

TO: STEFAN B. FEIDLER, ESQ., ATTORNEY FOR DEFENDANTS:

PLEASE TAKE NOTICE, that pursuant to SCRCP, rule 59(e), Plaintiff Chris Khamnei ("Plaintiff" or "Khamnei"), will move within 10 days, or as soon as may be heard, for the Court to reconsider, or alternatively to alter and amend its December 14, 2017 Order Granting Defendants' Motion for Partial Dismissal ("Order") in the above-captioned case on the following grounds:

1. the Order, as prepared and submitted by counsel for Defendants, over Plaintiff's objections, includes findings of fact related to the terms of the contract between the parties, which the Court did not make, and could not have made, in ruling on a 12(b)(6) motion to dismiss;
2. the Court's dismissal of the individual Defendants on the basis that Plaintiff failed to plead facts sufficient to show they acted outside of their authority as LLC directors, and that LLC directors are shielded from liability for the debts and

obligations of the company, is inconsistent with the allegations on the face of Plaintiff's Amended Complaint, and contrary to South Carolina case law regarding director liability for torts they participate in committing in a representative capacity on behalf of a company;

3. the Order, as prepared and submitted by counsel for Defendants, over Plaintiff's objections, lacks necessary specificity with regard to the Court's finding that Plaintiff failed to show the individual Defendants committed a breach of contract with fraudulent intent or accompanied by a fraudulent act.

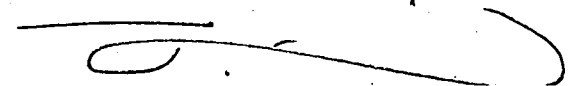
This motion is based on the pleadings and memoranda filed in the case, Defendants' proposed Order Granting Defendants' Motion for Partial Dismissal, the Order, the applicable Rules of Court, and Plaintiff's memorandum of law supporting this motion, to be submitted prior to the hearing of this motion, and other such matters as may be properly presented to the Court.

Plaintiff requests a hearing on this motion.

Respectfully submitted,

LAW OFFICE OF  
W. WESTBROOK WILLS III

BY:



W. Westbrook Wills III  
S.C. Bar # 76681  
P.O. Box 822  
Folly Beach, SC 29439  
Tel. (843) 805-6300  
wwills@wwillslaw.com

Folly Beach, South Carolina

December 26, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CHRIS KHAMNEI,

Plaintiff,

-vs-

COLUMBUS STREET HOLDINGS,  
LLC, ROY T. WILLEY IV, and ERIC M.  
POULIN, individually,

Defendants.

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

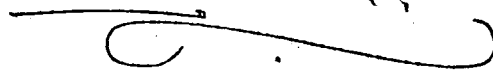
) Case No.: 2017-CP-10-4112

) **CERTIFICATE OF SERVICE**

FILED  
2017 DEC 28 PM 2:53  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

I, the undersigned, attorney for Chris Khamnei do hereby certify that I have served all parties in this action with a copy of the foregoing *Plaintiff's Notice of Motion and Motion to Reconsider, Alter, or Amend Order Granting Partial Dismissal* by e-mail and by mailing a copy of same by US Mail, with sufficient postage to the following address:

Stefan B. Feidler, Esq.  
Anastopuolo Law Firm, LLC  
32 Ann Street, Unit B  
Charleston, SC 29403



W. Westbrook Wills III

This 26th day of December 2017.



# AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Columbus Street Holdings, LLC

("Buyer"), and

Seller(s), Chris Khamnei

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.  
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.  
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD  
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to cause this Contract to be binding on all Parties.  
 (E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.  
 (F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.  
 (G) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

## 2. PURCHASE PRICE: \$ 226,000.00

Payable by transfer of Good Funds via ☐ Finance or ☐ a combination of Finance and Cash USD or ☒ Cash USD.

Verification of Cash available for Closing is ☒ attached ☐ not attached ☐ to be Delivered before \_\_\_\_\_

The sale of Buyer's real property ☐ is ☒ is not a contingency for Purchase and terms ☐ are ☒ are not attached.

3. **PROPERTY:** Seller will sell and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, and lease issues prior to signing Contract. Leasing issues and items see Adjustments (e.g. tenants, rents, deposits, documents, alarm systems, satellite equipment, roll carts).

Address 1 Drews Aly Unit # \_\_\_\_\_

City Charleston State of South Carolina

Zip 29403 County of \_\_\_\_\_

Lot \_\_\_\_\_ Block \_\_\_\_\_ Section/Phase \_\_\_\_\_ Subdivision \_\_\_\_\_

Other \_\_\_\_\_ Tax Map 459-05-01-057

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):  
all appliances currently located in proper

DS DS OK  
EF RTW  
 03/23/17  
 12:47PM EDT

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before April 12, 2017 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, DS DS OK  
EP RTW  
 03/23/17  
 12:47PM EDT

Seller agrees to convey marketable title with a properly recorded  
 ] BUYER SELLER SELLER HAVE READ THIS PAGE

FORM 310 PAGE 1 of 8

general warranty deed free of encumbrances and liens except as herein stated; and in name(s): Columbus Street Holdings, LLC

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

**5. EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ - accompanies this offer and \$ 5,000.00 will be paid within 2 Business Days after Effective Date and Earnest Money is in the form of ☐ check ☒ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Handsome Properties as Escrow Agent to deposit and hold and disburse earnest money according to the terms of this Contract, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request.

**THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT OR AS AGREED UPON IN THIS CONTRACT. UNLESS OTHERWISE AGREED UPON IN WRITING, THE PARTIES AGREE THAT THE ESCROW AGENT SHALL DISBURSE THE EARNEST MONEY TO THE BUYER UNLESS THERE IS A DISPUTE. PARTIES AGREE THAT A DISPUTE IS DEFINED SOLELY TO MEAN ONLY THAT THE SELLER OR SELLER'S ATTORNEY HAS FILED A LEGAL ACTION TO DETERMINE DISTRIBUTION OF THE EARNEST MONEY WITH A COURT OF COMPETENT JURISDICTION AND SERVED THE LEGAL ACTION'S SUMMONS AND COMPLAINT UPON THE ESCROW AGENT NO LATER THAN 30 BUSINESS DAYS AFTER THIS CONTRACT'S STATED CLOSING DATE. FIVE YEARS AFTER CLOSING DATE, ESCROW AGENT MAY DISBURSE EARNEST MONEY TO SOUTH CAROLINA TREASURER AS UNCLAIMED PROPERTY. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR, NONPREVAILING PARTY AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ zero SHALL BE PAID TO THE ESCROW AGENT AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.**

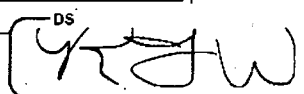
**6. TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, flood, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

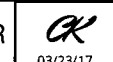
At Closing, Seller will pay Buyer's transaction costs not to exceed \$ N/A OR N/A % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (e.g. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☐ Seller's or ☐ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

**7. FINANCE:** Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other N/A purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts DS minimum DS num N/A % of the Purchase Price or Appraised Value

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whichever is lower ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within N/A Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval that contains no unreasonable credit, income, or asset conditions within N/A Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice and Earnest Money shall be returned to the Buyer.

Lender (may change): N/A ☐ FHA ☐ VA ☐ Conventional ☐ Seller  
☐ Other N/A. An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms  
☐ are ☐ are not attached.

## 8. REPAIR PROCEDURE:

**Parties agree upon Repair Procedure unless a Due Diligence Addendum is agreed upon and part of this Contract.**

(A) All Repair Procedure Inspections shall be completed by N/A. In the event repairs are necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies **no later than 2 Business Days after the Repair Procedure Inspection date mentioned above**. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances.

(B) No later than N/A Business Days after the date of the Delivered Notice of the Repair Requests, Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). **If the Seller agrees to make all the Seller Paid Repairs, the Parties agree to proceed under Contract.** The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not agree to make all the Seller Paid Repairs, the Buyer shall within **2 Business Days** choose any of the following options: (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice and receive their Earnest Money. **IF BUYER FAILS TO ACCEPT, RENEGOTIATE, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 BUSINESS DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.** The obligations of the Seller for repairs terminate upon Closing.

**IF A DUE DILIGENCE ADDENDUM IS SIGNED, DATED AND TIMED BY ALL PARTIES; THE PARTIES AGREE THAT THE LANGUAGE IN THE DUE DILIGENCE ADDENDUM SHALL REPLACE THE REPAIR PROCEDURE LANGUAGE IN THIS SECTION AND THE PARTIES AGREE THAT THIS TRANSACTION SHALL BE CONDUCTED IN ACCORDANCE WITH THE DUE DILIGENCE ADDENDUM WHICH GRANTS THE BUYER A UNILATERAL RIGHT TO INSPECT THE PROPERTY AND TERMINATE FOR ANY REASON WITH WRITTEN NOTICE AND PAYMENT OF A FEE IN A PERIOD.**

**9. INSPECTION/REINSPECTION RIGHTS:** Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

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**Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:**

☒ **Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections**

**Other** \_\_\_\_\_ ☐ **see attached.**

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

#### 10. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer.

☒ This Contract is **not** contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

**11. WOOD INFESTATION REPORT:** If the Property to be sold has been previously occupied, this Contract is contingent upon the ☒ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☒ Buyer ☐ Seller and Delivery to Closing of a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than 10 calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with an infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller whereupon the Earnest Money will be returned to Buyer. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

**12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE:** Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands determined, and appropriate insurance (e.g. flood, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, hazard, liability) for the property prior to signing Contract.

**13. SURVIVAL:** If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

**14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"):** Parties agree that a Home Warranty ordered by N/A with at least twelve months of coverage after Closing. Date ☐ will ☒ will not be provided by Closing and \$ N/A will be paid by N/A to the Home Warranty Company. Buyer to provide DS Deficit and Seller to provide DS Proposed HWC and type of HWC: N/A

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**15. FIRE OR CASUALTY OR INJURY:** In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

**16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:**

☒ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☐ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

**17. LEAD BASED PAINT/LEAD HAZARDS:** If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property Issues per their needs.

**18. SEX OFFENDER/CRIMINAL INFORMATION:** Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

**19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

**20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX:** Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

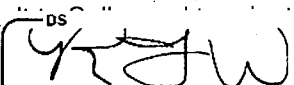
**21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE):** Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

**22. ADJUSTMENTS:** Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available. This section survives Closing. Buyer is solely responsible for minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

**23. DEFAULT:**

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

(i) Deliver Notice of Default to Seller, and

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- (ii) Pursue any remedies available to Buyer at law or equity; and  
 (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer prevails in any action against Seller.  
 (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:  
 (i) Deliver Notice of Default to Buyer and terminate Contract; and  
 (ii) Pursue any remedies available to Seller at law or equity; and  
 (iii) Recover attorneys' fees and all other direct costs of litigation if Seller prevails in any action against Buyer.  
 (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.  
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

**24. MEDIATION:** Mediation is an alternative dispute resolution system and may help avoid potentially expensive and lengthy litigation. The mediation participants voluntarily decide their settlement with the mediator facilitating their decisions and documentation of the settlement. Mediation is not binding arbitration. The mediator does not decide the outcome. The mediation participants make their own decisions include reaching or not reaching a settlement. Any dispute, claim, breach, or services issues relating to this Contract shall be submitted to mediation in accordance with the Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS® (info@SCREALTORS.org 1-803-772-5206). Disputes include representations made by any Party, Broker, person or entity in connection with the sale, purchase, financing, condition or any other aspect of the Property, including without limitation allegations of concealment, misrepresentation, negligence or fraud. Any agreement signed by the Parties pursuant to mediation is binding. This mediation clause shall survive the Closing. The following matters are excluded from mediation herein: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of an interpleader action or other action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

**25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE):** Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

**26. BROKER DISCLAIMER:** Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

**27. BROKERS COMPENSATION:** Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

**28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS:** There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract. If any documents are attached as addenda,

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amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here: **Property to be purchased in As-Is condition. Buyer will not request any repairs to be made by Seller.**

**29. NOTICE AND DELIVERY:** Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

**30. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.**

Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

**31. EXPIRATION OF OFFER:** When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 9:00 ☒ AM ☐ PM on March 18, 2017 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline:

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within \_\_\_\_\_ Business Days.

Parties shall in \_\_\_\_\_ DocuSigned by: Eric Poulin changes in this Contract and initial all pages.

BUYER: \_\_\_\_\_ 12735288FC0B48F... DocuSigned by: \_\_\_\_\_ 3/17/2017 Time: \_\_\_\_\_  
Columbus Street Ho. \_\_\_\_\_  
BUYER: \_\_\_\_\_ 34365075693E412... DocuSigned by: \_\_\_\_\_ 3/17/2017 Time: \_\_\_\_\_  
Columbus Street Holdings LLC \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

NOTICE ADDRESS/EMAIL/FAX: leslie@handsomeproperties.com

SELLER: Chris Khamnei dotloop verified 03/23/17 12:47PM EDT YUPR-QZCD-VLLX-SLFO Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Chris Khamnei

SELLER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

NOTICE ADDRESS/EMAIL/FAX: \_\_\_\_\_

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Record on Appeal for Chris C. Khamnei v. Columbus Street Holdings -- Page 73 of 97

**TRANSACTIONAL INFORMATION:**

ESCROW AGENT ACKNOWLEDGEMENT SIGNATURE: \_\_\_\_\_

ESCROW AGENT NAME (BROKER IN CHARGE/OTHER): Handsome Properties

DESCRIBE ESCROW AGENCY (BROKERAGE/LAW FIRM/OTHER): \_\_\_\_\_

ESCROW AGENT CONTACT INFO: \_\_\_\_\_

LICENSEE: Leslie Turner SC LICENSE # 82983 EXPIRES 06/30/2018BROKER IN CHARGE: Debbie Fisher SC LICENSE # \_\_\_\_\_ EXPIRES 06/30/2017BROKERAGE COMPANY NAME: Handsome PropertiesINVOLVED AS: ☒ BUYER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ BUYER DESIGNATED AGENT\*  
☐ CUSTOMER REPRESENTATIVE ☐ TRANSACTION BROKERAGEMEMBERS OF CTAR ASSOCIATION/BOARD OF REALTORS®NOTICE ADDRESS: 285 Meeting Street, Charleston, SC 29401NOTICE EMAIL/FAX: leslie@handsomeproperties.comMOBILE PHONE: (843) 367-3722 OFFICE PHONE: (843) 727-6460

OTHER: \_\_\_\_\_

LICENSEE: Paul LeClaire SC LICENSE # 55775 EXPIRES 6/30/18BROKER IN CHARGE: Maggie Crosby-Leblanc SC LICENSE # 64424 EXPIRES 6/30/18BROKERAGE COMPANY NAME: Keller WilliamsINVOLVED AS: ☒ SELLER AGENT ☐ SELLER SUBAGENT ☐ DUAL AGENT ☐ SELLER DESIGNATED AGENT\*  
☐ CUSTOMER REPRESENTATIVE ☐ TRANSACTION BROKERAGEMEMBERS OF CTAR ASSOCIATION/BOARD OF REALTORS®NOTICE ADDRESS: 1180 Sam Rittenberg Blvd Suite 105, Charleston SC 29407NOTICE EMAIL/FAX: leclaireteam@gmail.comMOBILE PHONE: 843-557-4549 OFFICE PHONE: 843-737-6780

OTHER: \_\_\_\_\_

**\*DESIGNATED AGENCY - THE BROKER-IN-CHARGE AND ALL ASSOCIATED LICENSEES, EXCEPT THE AGENTS, ARE DUAL AGENTS.**DS  
EP

BUYER

DS  
YR JW

SELLER

03/23/17  
12:47PM EDT

SELLER HAVE READ THIS PAGE

FORM 310 PAGE 8 of 8



## DUE DILIGENCE ADDENDUM

HANDSOME  
Properties

The Parties agree as follows in reference to the Agreement to Buy and Sell Real Estate for the Property known as:

Address 1 Drews Aly Unit # DS  
 City Charleston SC Zip 29403 County DS  
 Lot DS Block RTW Section/Phase OK Subdivision 03/23/17 12:47PM EDT

The DUE DILIGENCE PERIOD ends no later than X Business Days after the original Effective Date unless the Parties agree in writing to extend the DUE DILIGENCE PERIOD. Parties agree to extend the Due Dilligence Period to April March 29, 2017

During the Due Diligence Period, Seller agrees Buyer may choose any of the following:

- (1) Conduct/obtain Inspections
- (2) Deliver Repairs Request(s) Notice to Seller
- (3) Proceed under amended Contract
- (4) Proceed under As Is Contract
- (5) Terminate Contract by Delivering "Notice of Termination" and "Termination Fee" to Seller

**TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ 1.00 USD Good Funds.**

Termination Fee paid to Seller by payment or, by release to Seller an appropriate amount of Earnest Money or, by a combination of payment to Seller and an appropriate amount of Earnest Money (Escrow Agent shall timely disburse upon Buyer timely signing any required Earnest Money disbursement agreement for payment of the Termination Fee). If Seller receives the Delivered Notice of Termination and the full Delivered Termination Fee during the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination and all of the Termination Fee to Seller prior to the end of the Due Diligence Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

**SHOULD BUYER FAIL TO REACH A NEW/AMENDED CONTRACT OR TERMINATE THE CONTRACT: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract.**

IN WITNESS WHEREOF, Eric Poulin Contract has been duly executed by the Parties.

3/17/2017

BUYER: 12735288FC0B49F... Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Columbus Street Holdings LLC

WITNESS: DocuSigned by: Date: \_\_\_\_\_ Time: \_\_\_\_\_  
YRZKJW

BUYER: 34385075893E412... Date: 3/17/2017 Time: \_\_\_\_\_  
Columbus Street Holdings LLC

WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

SELLER: Chris Khamnei dotloop verified 03/23/17 12:47PM EDT WYZD-ZDEB-GGUP-SQLJ Date: \_\_\_\_\_ Time: \_\_\_\_\_  
Chris Khamnei

WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

SELLER: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

WITNESS: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

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DS BUYER EP DS SELLER YRZKJW SELLER HAVE READ THIS PAGE  
 FORM 311 PAGE 1 of 1

Handsome Properties, 285 Meeting Street Charleston, SC 29401  
 Leslie Turner

Produced with zipForm® by zipLogix 18070 Fifteen Mile Road, Fraser, Michigan 48026 www.zipLogix.com

Phone: 8437276460

Fax: 000-000-0000

1 Drews Alley



**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS ADDENDUM FOR AGREEMENT TO BUY AND SELL REAL ESTATE**

Property Address: 1 Drews Aly Charleston, 29403

**Lead Warning Statement**

Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure (initial)**

☒ (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

☒ (b) Records and reports available to the seller (check one below):

☐ Seller has provided the buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

☒ Records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

(initial)

copies of all information listed above.

the pamphlet Protect Your Family from Lead in Your Home.

below):

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

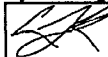
☒ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Agent's Acknowledgment (initial)**

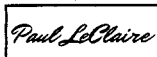
☒ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**Certification of Accuracy**

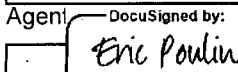
The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

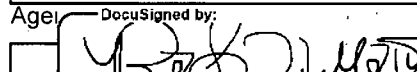
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02/24/17 9:37AM EST  
NWPS-WDXL-19VV-7J82  
Seller \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Seller \_\_\_\_\_ Date \_\_\_\_\_

 dotloop verified  
02/24/17 9:09AM EST  
VX28-TTMM-NTNO-PYDC  
Agent \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Agent \_\_\_\_\_ Date \_\_\_\_\_

DocuSigned by:  
 Eric Poulin  
12735288FC0B49F... 3/17/2017  
Buyer \_\_\_\_\_ Date \_\_\_\_\_

DocuSigned by:  
 34365075693E412...  
3/17/2017  
Buyer \_\_\_\_\_ Date \_\_\_\_\_



**STATE OF SOUTH CAROLINA  
RESIDENTIAL PROPERTY CONDITION  
DISCLOSURE STATEMENT**



The South Carolina Code of Laws (Title 27, Chapter 50, Article 1) requires that an owner of residential real property (single family dwelling unit or a single transaction involving transfer of four dwelling units or less) shall provide to a purchaser this completed and signed disclosure statement prior to forming a real estate contract. This disclosure must be provided in connection with any sale, exchange, installment land sale, and lease with an option to purchase contract. This disclosure statement is not required in connection with transactions listed and exempted by South Carolina Code Section § 27-50-30.

Owners should answer the questions fully, honestly, and appropriately by attaching documents, checking a box for each check box question, and writing in the blanks on this disclosure statement.

If a question is answered "yes" or asks for a description, then owner must explain or describe the issue or attach a descriptive report from an engineer, contractor, pest control operator, expert, or public agency. If owner attaches a report, owner shall not be liable for inaccurate or incomplete information in the report unless owner was grossly negligent in obtaining or transmitting the information. If owner fails to check "yes" or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation and may owe the purchaser actual damages, court costs, and attorney fees. If a question is answered "no" for any question, the owner is stating that owner has no actual knowledge of any problem.

If a question is answered "no representation" for any question, owner is stating that owner is making no representation regarding the conditions or characteristics of the property, but owner still may have a duty to disclose information that is known or should have been known.

If a question is answered and subsequently new information is obtained or something changes to render the owner's answer incorrect, inaccurate, or misleading (example: roof begins to leak), owner must promptly correct the disclosure. In some situations, the owner may notify the purchaser of the correction. In some situations, the owner may correct or repair the issue.

If owner is assisted in the sale of property by a real estate licensee, owner remains solely responsible for completing and delivering this disclosure statement to the purchaser. The real estate licensee must disclose material facts about the property if the real estate licensee knows or reasonably should have known about the issue, regardless of owner responses on this disclosure. Owner is solely responsible to complete this disclosure as truthfully and fully as possible. Owner and purchasers are solely responsible to consult with their attorneys regarding any disclosure issues. By signing below, owners acknowledge their duties and that failure to disclose known material information about the property may result in owner liability.

Owner must provide the completed disclosure statement to the purchaser prior to the time the owner and purchaser sign a real estate contract unless the real estate contract states otherwise. Owner should provide a signed copy to the purchaser and keep a copy signed by the purchaser.

A real estate contract, not this disclosure, controls what property transfers from owner to purchaser.

**Property Address (including unit # or identifier)** 1 Drews Aly

Charleston, SC 29403

|               |                                            |                 |  |                                                |
|---------------|--------------------------------------------|-----------------|--|------------------------------------------------|
| <b>Owner:</b> | <br><small>02/24/17<br/>9:39AM EST</small> | <b>Purchase</b> |  | t of a copy of this page which is page 1 of 5. |
|---------------|--------------------------------------------|-----------------|--|------------------------------------------------|

**REV: 7/2013**

**Apply this question below and the three answer choices to the numbered issues (1-14) on this disclosure.**

**As owner, do you have any actual knowledge of any problem(s)\* concerning?**

\*Problem includes present defects, malfunctions, damages, conditions, or characteristics.

### **I. WATER SUPPLY AND SANITARY SEWAGE DISPOSAL SYSTEM**

|                                                              | Yes                      | No                       | No Representation                   |
|--------------------------------------------------------------|--------------------------|--------------------------|-------------------------------------|
| 1. Water supply .....                                        | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. Water quality .....                                       | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Water pressure .....                                      | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. Sanitary sewage disposal system for any waste water ..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

A. Describe water supply ☐ County ☒ City ☐ Private ☐ Corporate ☐ Community ☐ Well ☐ Other \_\_\_\_\_

B. Describe water disposal ☐ Septic ☒ Sewer ☐ Private ☐ Corporate ☐ Government ☐ Other \_\_\_\_\_

C. Describe water pipes ☐ PEX ☒ Copper ☒ PVC/CPVC ☐ Polybutylene ☐ Steel ☐ Other/Unknown \_\_\_\_\_

### **II. ROOF, CHIMNEYS, FLOORS, FOUNDATION, BASEMENT, AND OTHER STRUCTURAL COMPONENTS AND MODIFICATIONS OF THESE STRUCTURAL COMPONENTS**

|                                                                                                                                                                                                                                                                                                    | Yes                      | No                       | No Representation                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|-------------------------------------|
| 5. Roof system .....                                                                                                                                                                                                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Gutter system .....                                                                                                                                                                                                                                                                             | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 7. Foundation, slab, fireplaces, chimneys, wood stoves, floors, basement, windows, driveway, storm windows/screens, doors, ceilings, interior walls, exterior walls, sheds, attached garage, carport, patio, deck, walkways, fencing, or other structural components including modifications ..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

A. Approximate year that current roof covering was installed or modified: \_\_\_\_\_. Approximate year structure was built: 1910

B. During your ownership, describe any known roof system leaks and repairs: \_\_\_\_\_

### **III. PLUMBING, ELECTRICAL, HEATING, COOLING, AND OTHER MECHANICAL SYSTEMS**

|                                                                                                            | Yes                      | No                       | No Representation                   |
|------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|-------------------------------------|
| 8. Plumbing system (pipes, fixtures, water heater, disposal, softener, plumbing components) .....          | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Electrical system (wiring, panel, fixtures, A/V wiring, outlets, switches, electrical components) ..... | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 10. Appliances (range, stove, ovens, dishwasher, refrigerator, washer, dryer, other appliances) .....      | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 11. Built-in systems and fixtures (fans, irrigation, pool, security, lighting, A/V, other) .....           | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Mechanical systems (pumps, garage door opener, filtration, energy equipment, safety, other) .....      | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Heating system(s) (HVAC components) .....                                                              | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. Cooling system(s) (HVAC components) .....                                                              | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Owner:

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9:39AM EST

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of a copy of this page which is page 2 of 5.

- A. Describe Cooling System ☒ Central ☐ Ductless ☐ Heat Pump ☐ Window ☐ Other \_\_\_\_\_
- B. Describe Heating System ☐ Central ☐ Ductless ☒ Heat Pump ☐ Furnace ☐ Other \_\_\_\_\_
- C. Describe HVAC Power ☐ Oil ☐ Gas ☒ Electric ☐ Solar ☐ Other \_\_\_\_\_
- D. Describe HVAC system approximate age and any other HVAC system(s): \_\_\_\_\_

**IV. PRESENT OR PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS OR DRY ROT OR FUNGUS, THE DAMAGE FROM WHICH HAS NOT BEEN REPAIRED**

A. Describe any known present wood problems caused by termites, insects, wood destroying organisms, dry rot or fungus: \_\_\_\_\_

B. Describe any termite/pest treatment, coverage to property, name of provider, and termite bond (if any): \_\_\_\_\_

C. Describe any known present pest infestations: \_\_\_\_\_

**V. THE ZONING LAWS, RESTRICTIVE COVENANTS, BUILDING CODES, AND OTHER LAND USE RESTRICTIONS AFFECTING THE REAL PROPERTY, ANY ENCROACHMENTS OF THE REAL PROPERTY FROM OR TO ADJACENT REAL PROPERTY, AND NOTICE FROM A GOVERNMENTAL AGENCY AFFECTING THIS REAL PROPERTY**

**Apply this question below and the three answer choices to the numbered issues (15-23) on this disclosure.**

**As owner, do you have any actual knowledge or notice concerning the following:**

|                                                                                                                                                                                              | Yes                                 | No                       | No Representation                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------|-------------------------------------|
| 15. Violations or variances of the following: zoning laws, restrictive covenants, building codes, permits or other land use restrictions affecting the real property .....                   | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 16. Easements (access, conservation, utility, other), party walls, shared private driveway, private roads, released mineral rights, or encroachments from or to adjacent real property ..... | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Legal actions, claims, foreclosures, bankruptcies, tenancies, judgments, tax liens, other liens, insurance issues, or governmental actions that could affect title to the property ..... | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 18. Room additions or structural changes to the property during your ownership .....                                                                                                         | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 19. Problems caused by fire, smoke, or water to the property during your ownership .....                                                                                                     | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 20. Drainage, soil stability, atmosphere, or underground problems affecting the property .....                                                                                               | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 21. Erosion or erosion control affecting the property .....                                                                                                                                  | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 22. Flood hazards, wetlands, or flood hazard designations affecting the property .....                                                                                                       | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| 23. Flood insurance covering the property .....                                                                                                                                              | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |

A. Describe any green energy, recycling, sustainability or disability features for the property: \_\_\_\_\_

B. Describe any Department of Motor Vehicles titled manufactured housing on the property: \_\_\_\_\_

Owner:

02/24/17  
9:39AM EST

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[Signature]

of a copy of this page which is page 3 of 5.

**VI. BURIED, UNBURIED, OR COVERED PRESENCE OF THE FOLLOWING: LEAD BASED PAINT, LEAD HAZARDS, ASBESTOS, RADON GAS, METHANE GAS, STORAGE TANKS, HAZARDOUS MATERIALS, TOXIC MATERIALS, OR ENVIRONMENTAL CONTAMINATION**

A. Describe any known property environmental contamination problems from construction, repair, cleaning, furnishing, intrusion, operating, toxic mold, methamphetamine production, lead based paint, lead hazards, asbestos, radon gas, methane gas, formaldehyde, corrosion-causing sheetrock, storage tanks, hazardous materials, toxic materials, environmental contamination, or other: \_\_\_\_\_

**VII. EXISTENCE OF A RENTAL, RENTAL MANAGEMENT, VACATION RENTAL, OR OTHER LEASE CONTRACT ANTICIPATED TO BE IN PLACE ON THE PROPERTY AT THE TIME OF CLOSING**

A. Describe the lease terms and any leasing problems, if any: \_\_\_\_\_

B. State the name and contact information for any property management company involved (if any): \_\_\_\_\_

C. Describe known outstanding charges owed by tenant for gas, electric, water, sewer, and garbage: \_\_\_\_\_

**VIII. THE EXISTENCE OF A METER CONSERVATION CHARGE, AS PERMITTED BY SECTION 58-37-50 THAT APPLIES TO ELECTRICITY OR NATURAL GAS SERVICE TO THE PROPERTY**

A. Describe any utility company financed or leased property on the real property: \_\_\_\_\_

B. Describe known delinquent charges for real property's gas, electric, water, sewer, and garbage: \_\_\_\_\_

**IX. PLEASE USE THE SPACE BELOW FOR "YES" ANSWER EXPLANATIONS AND ATTACH ANY ADDITIONAL SHEETS OR RELEVANT DOCUMENTS AS NEEDED**

Owner:

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This disclosure does not limit the obligation of the purchaser to inspect the property and improvements which are the subject of the real estate contract. Purchaser is solely responsible for conducting their own off site conditions and psychologically affected property inspections prior to entering into a real estate contract. The real estate licensees (acting as listing or selling agents, or other) have no duty to inspect the on site or off site conditions of the property and improvements. Purchasers should review all applicable documents (covenants, conditions, restrictions, bylaws, deeds, and similar documents) prior to entering into any legal agreements including any contract. The South Carolina Code of Laws describes the Residential Property Condition Disclosure Statement requirements and exemptions at § 27-50-10 (and following) which can be read online ([www.scstatehouse.gov](http://www.scstatehouse.gov) or other websites).

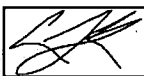
**Current status of property or factors which may affect the closing:**

☐ Owner occupied    ☐ Short sale    ☐ Bankruptcy    ☐ Vacant (How long vacant?) \_\_\_\_\_  
☒ Leased    ☐ Foreclosure    ☐ Estate    ☐ Other: \_\_\_\_\_

**A Residential Property Condition Disclosure Statement Addendum ☐ is ☒ is not completed and attached. This addendum should be attached if the property is subject to covenants, conditions, restrictions, bylaws, rules, or is a condominium.**

**Owner acknowledges having read, completed, and received a copy of this Residential Property Condition Disclosure Statement before signing and that all information is true and correct as of the date signed.**

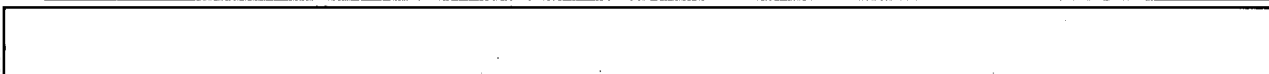
Owner Signature:



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02/24/17 9:39AM EST  
HOMB-EHZF-QWZY-JPAA

Owner Printed Name: Chris Khamnei

Owner Signature:

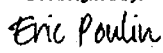


Owner Printed Name: \_\_\_\_\_

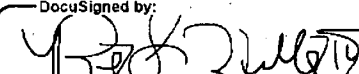
**Purchaser acknowledges prior to signing this disclosure:**

- Receipt of a copy of this disclosure
- Purchaser has examined disclosure
- Purchaser had time and opportunity for legal counsel
- This disclosure is not a warranty by the real estate licensees
- This disclosure is not a substitute for obtaining inspections of on site and off site conditions
- This disclosure is not a warranty by the owner
- Representations are made by the owner and not by the owner's agents or subagents
- Purchasers have sole responsibility for obtaining inspection reports from licensed home inspectors, surveyors, engineers, or other qualified professionals

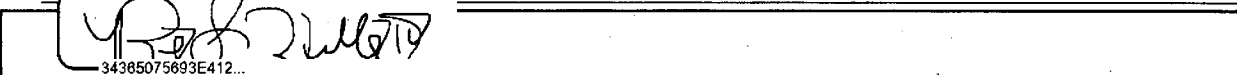
Purchaser Signature:

DocuSigned by:  
  
12735288FC0B49F...

Purchaser Printed Name:

DocuSigned by:  
  
34385075693E412...

Purchaser Signature:



Purchaser Printed Name: \_\_\_\_\_

1 STATE OF SOUTH CAROLINA ) IN THE CIRCUIT COURT  
COUNTY OF CHARLESTON ) 2017-CP-10-4112  
2 )  
CHRIS KHAMNEI, )  
3 )  
PLAINTIFF, ) DEFENDANTS' MOTION  
4 ) FOR PARTIAL DISMISSAL  
vs. ) HEARING  
5 )  
COLUMBUS STREET HOLDINGS, LLC, ) TRANSCRIPT OF RECORD  
6 )  
DEFENDANT. )  
7 \_\_\_\_\_ )  
8  
9

Friday, November 17, 2017  
Charleston, South Carolina

10  
11  
12 B E F O R E:

13 The Honorable J.C. Nicholson, Jr..  
14

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

16 W. Westbrook Wills, III, Esquire  
Attorney for Plaintiff  
17

Stefan Bjorn Feidler, Esquire  
18 Attorney for Defendant  
19  
20  
21  
22

Maria Dempsey, RPR  
23 Official Court Reporter  
Charleston County Family Court  
24 Ninth Judicial Circuit  
Charleston, South Carolina  
25

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E X H I B I T S

(No Exhibits Proffered.)

1 MR. FEIDLER: Columbus Street Holdings, LLC; Eric  
2 Poulin, and Roy Willey.

3 THE COURT: Okay. Who's here for the plaintiff?  
4 Anybody?

5 MR. WILLS: Your Honor, Brook Wills for the plaintiff.

6 THE COURT: All right. What is it, a motion for  
7 dismissal?

8 MR. FEIDLER: Yes, Your Honor, this is defendant's  
9 motion for a partial dismissal. We are moving to dismiss  
10 the second cause of action in the amended complaint, which  
11 is a breach of contract of the company by a fraudulent act.  
12 That second cause of action was brought against not only the  
13 holdings company, but also Mr. Poulin and Mr. Willey and  
14 members of that LLC. Your Honor, a little background facts  
15 to get you oriented with the case.

16 THE COURT: All right. The cause of action, breach of  
17 contract with fraudulent intent.

18 MR. FEIDLER: No, Your Honor, a company by a fraudulent  
19 act.

20 THE COURT: A company by fraudulent act.

21 MR. FEIDLER: Yes, Your Honor.

22 THE COURT: Breach of contract, okay.

23 MR. FEIDLER: Yes, Your Honor.

24 THE COURT: Against Mr. Willey and who?

25 MR. FEIDLER: It's against the holding company, the

1 LLC, and also Mr. Eric Poulin, who I have with me today,  
2 Your Honor, and Mr. Roy Willey; it's members of the LLC.

3 THE COURT: Of them personally?

4 MR. FEIDLER: Yes, sir, the individuals.

5 THE COURT: So you're asking for the individuals to be  
6 dismissed?

7 MR. FEIDLER: I'm asking for the individuals to be  
8 dismissed, as well as the LLC, Your Honor.

9 THE COURT: Okay. I'll be glad to hear you.

10 MR. FEIDLER: Yes, Your Honor. Thank you. Now, Your  
11 Honor, brief background facts. This is a case involving the  
12 purchase of a building that had multiple units. The  
13 plaintiff obviously was selling that. The holding company  
14 was the only member contract to buy that building.

15 THE COURT: That's Columbus Street Holdings?

16 MR. FEIDLER: Yes, Your Honor, that's Columbus Street  
17 Holdings.

18 THE COURT: Did the contract -- did the transaction go  
19 through?

20 MR. FEIDLER: It did not, Your Honor.

21 THE COURT: Okay.

22 MR. FEIDLER: And it did not, because there was  
23 multiple squatters, including the plaintiff's brother, who  
24 had drug addicts, there was a couple law enforcement that  
25 there were called, basically because of whatever's going on

1 with multiple squatters. So the brother of the actual  
2 plaintiff was leasing or letting squatters basically stay at  
3 this building, and he's claimed he had no idea about it  
4 until about 30 days after he decided to sell it. But part  
5 of the deal, Your Honor, was that we had the original date  
6 to have it --

7 THE COURT: Who is Khamnei, who is he?

8 MR. FEIDLER: Chris Khamnei, Your Honor.

9 THE COURT: Khamnei, who is he and what's he having to  
10 do with this transaction?

11 MR. FEIDLER: He was the seller, Your Honor.

12 THE COURT: He was the seller?

13 MR. FEIDLER: And the LLC was the purchaser.

14 THE COURT: Okay.

15 MR. FEIDLER: Mr. Willey, Mr. Poulin were not involved  
16 in this transaction at all, other than being members of the  
17 LLC. So, Your Honor, the plaintiff, the seller, had some  
18 personal finance obligations that he had to meet before the  
19 date of the original closing, so the LLC agreed, the buyer  
20 agreed to push that a little bit up forward. That way, they  
21 could get him whatever money he needed for some separate  
22 obligations that he had going on.

23 Part of that deal, Your Honor, was to put \$50,000 in  
24 escrow. Part of that escrow agreement was to deal with a  
25 lis pendens, and also to evict every -- basically every

1 squatter that was in there, Your Honor. Now, they dealt  
2 with the lis pendens, but they did not have every squatter,  
3 every person that was in there, in that building, they did  
4 not have them evicted. That was clearly in the contract,  
5 Your Honor.

6 Now, plaintiff files this cause of action, filed a  
7 complaint. Thirty days or so later filed an amended  
8 complaint adding the second cause of actions we are here to  
9 dismiss, Your Honor.

10 THE COURT: What was the first cause of action?

11 MR. FEIDLER: Breach of contract of the LLC alone.

12 THE COURT: Okay. Go ahead.

13 MR. FEIDLER: And nowhere in the contract or in the  
14 complaint or amended complaint does the plaintiff ever  
15 allege that Mr. Poulin or Mr. Willey breached the contract,  
16 because obviously they're not, they're not -- I guess  
17 they're not part of the contract, the LLC is, and they're  
18 members. So, Your Honor, we go to that, is the day of  
19 the -- the day that they're supposed to do the closing, and  
20 find out that these people have not been evicted, there are  
21 still people in there, still squatters in there.

22 So we get to that point, Your Honor, and the  
23 plaintiff says that, you know, everything's been fulfilled,  
24 lis pendens has been lifted, and then says, you know, I  
25 would like that \$50,000 escrow transferred over to us. We

1 essentially say, no, we still have to evict all these  
2 people, but we'll work with you on this, Your Honor. We  
3 say, we'll do this, we'll do this, here's your options,  
4 we're trying to work with you, you need the money for other  
5 obligations.

6 So we send an email, we give them two options to  
7 either, we say, we can give you the \$15,000, which you need  
8 it, not \$50,000, now it's \$15,000 for your other financial  
9 obligations, that way you can deal with that, and we'll keep  
10 the other 35 in escrow until you evict all these people.  
11 Second option that we can do is, we'll just give you \$40,000  
12 of that \$50,000, and then we'll just keep \$10,000, because  
13 we still have to evict all these people. We have to go  
14 through those proceedings, this is going to be costly to get  
15 all of those people out, Your Honor. Instead, I believe the  
16 plaintiff essentially has said that that was a breach of  
17 contract, hence, why we're here today, Your Honor.

18 So we are asking, Your Honor, not only to dismiss  
19 this against the individual members of LLC, who are  
20 protected under the LLC, but also against the LLC itself.  
21 We did file a counterclaim against them eight days after  
22 receiving this complaint against my clients, and we also  
23 asserted that they breached a contract. It's a simple  
24 breach of contract, Your Honor. There's no fraud intent,  
25 there's no fraudulent act on any of the members of the LLC,

1 Your Honor. So I would ask that all three of the defendants  
2 be dismissed from the second cause of action, and at worst,  
3 or at best, at least the two members of the LLC, who are  
4 protected by these corporate formalities, Your Honor.

5 THE COURT: Okay. Thank you very much.

6 Yes, sir.

7 MR. WILLIS: Your Honor, thank you. Of course, when  
8 we're looking at a motion to dismiss a 12(b)(6), we're  
9 looking at merely the allegations in the complaint, not  
10 putting those -- putting them yet to the test, but whether  
11 the complaint itself alleges the causes of action necessary.  
12 The facts here, of course, the breach of contract with a  
13 fraudulent act involved has elements of breach of contract.  
14 It also has elements of torts in it. Importantly, the facts  
15 that have been recited here are only mildly accurate, but as  
16 they relate to our cause of action for breach of contract  
17 accompanied by a fraudulent act, as we've alleged in the  
18 complaint, there was a deal for the house, there were  
19 individuals that were in it. There was a closing date by  
20 which this --

21 THE COURT: Who was the contract for sale with?

22 MR. WILLIS: The contract to sell was with the LLC.

23 THE COURT: All right.

24 MR. WILLIS: The members of the LLC are the individual  
25 defendants here. The individual defendants, as alleged in

1 our complaint, acted tortiously in breaching the contract,  
2 to the extent of an --

3 THE COURT: But they were acting on behalf of the LLC,  
4 were they not?

5 MR. WILLIS: Your Honor --

6 THE COURT: Were they not?

7 MR. WILLIS: In a contract, in a contract action, if  
8 you're acting on behalf of the LLC as an agent, you are not  
9 liable, but in a tort, the tortfeasor is in addition to  
10 acting as an agent, which puts liability on the entity. A  
11 tortfeasor is always responsible for his own torts.

12 THE COURT: I mean, any time you have an LLC, and you  
13 want to say, well, in tort, I'm going to sue the  
14 individuals, I mean, that's -- and that completely defeats  
15 the purpose of the LLC, the corporation.

16 MR. WILLIS: Well, Your Honor --

17 THE COURT: And you're trying to tell me under tort,  
18 you can sue the individuals?

19 MR. WILLIS: That's correct, Your Honor.

20 THE COURT: Even though they're members of the LLC and  
21 speaking on behalf of the LLC? I mean, otherwise, anybody  
22 that speaks on behalf of a corporation, you could sue them.  
23 Who else can speak? I know the Supreme Court said the  
24 corporation of people, but they still can't talk until  
25 somebody stands to speak on their behalf.

1 MR. WILLIS: That's exactly right, Your Honor.

2 THE COURT: So, because someone speaks on their behalf,  
3 you think you can sue them?

4 MR. WILLIS: If their action is tortious, not if it's a  
5 breach of contract, but if their action is tortious, the  
6 liability shields --

7 THE COURT: Well, tortious, but they got to be acting  
8 outside the scope of the corporation; do they not?

9 MR. WILLIS: It is outside of the scope of the  
10 corporation.

11 THE COURT: Pardon?

12 MR. WILLIS: It is, yes, Your Honor, and if I can  
13 read --

14 THE COURT: So please tell me how they were acting  
15 outside of the corporation.

16 MR. WILLIS: Because it is outside --

17 THE COURT: As individuals.

18 MR. WILLIS: Okay.

19 THE COURT: Other than speaking on behalf of the  
20 corporation.

21 MR. WILLIS: They acted in a manner that -- well, let me  
22 put it this way. You cannot act in the regular course of  
23 your business by extorting money with using tortious conduct  
24 within your business, managing it, then that is outside of  
25 the ordinary course of your business. And it provides for

1 that in the Limited Liability Company Act at 33-44-303, and  
2 it says, a member or a manager is responsible for acts or  
3 omissions to the extent that act or omission would be  
4 actionable in tort against the member or manager if he were  
5 acting in an individual capacity. This is different from  
6 contract, Your Honor.

7 THE COURT: I understand, but show me in your complaint  
8 where you factually allege that they were acting outside the  
9 LLC in this real estate transaction, please, in what  
10 paragraph? You got so many paragraphs, I'm not going to  
11 read them all.

12 MR. WILLS: Yes, Your Honor, it's 60 and 61,  
13 specifically.

14 THE COURT: 60 and 61?

15 MR. WILLS: Yes, Your Honor.

16 THE COURT: Okay. Let me look at that.

17 So those are two paragraphs that you say where they  
18 were acting outside the corporation; is that correct?

19 Anywhere else you can point me to, other than  
20 Paragraph 60 on Page 12, Paragraph 61 on Page 13?

21 MR. WILLS: And Your Honor, those are the two  
22 paragraphs, but what I will specify or clarify, here it says  
23 they're acting on behalf of the company. So my point is not  
24 whether they're acting on behalf of the company.

25 THE COURT: My next question, you said in the paragraph

1 they acted on behalf of the company.

2 MR. WILLIS: Correct, but my point to the Court here is  
3 that irrespective of whether they're purporting to act on  
4 behalf of the company, if they're acting tortiously as  
5 agents of the company, the limited liability shield that is  
6 provided for in the Uniform Limited Liability Company Act is  
7 to protect other members from tortious conduct of one of the  
8 members within a company who is acting tortiously. That  
9 person is always liable for his own torts.

10 The other members are shielded from vicarious  
11 liability by virtue, because you're not -- the Limited  
12 Liability Act specifically states that in members --

13 THE COURT: Show me how in the statute, where under  
14 your facts scenario of Paragraphs 60 and 61, that it would  
15 be outside the LLC.

16 MR. WILLIS: Their tortious act makes it also a  
17 responsibility.

18 THE COURT: What in the statute gives you that right to  
19 sue them individually, based upon the facts laid out in 60  
20 and 61?

21 MR. WILLIS: Okay. And that goes to one of these  
22 factual questions, Your Honor, that --

23 THE COURT: Well, tell me, in the statute, what gives  
24 you the right to sue them based on the facts in 60 and 61.

25 MR. WILLIS: The fact that he extorted money is part of

1 the breach.

2 THE COURT: Well, it doesn't say extort.

3 MR. WILLIS: Yes, Your Honor, it's 61, it does.

4 THE COURT: Where does it say extort?

5 MR. WILLIS: In Paragraph 61. Columbus intentionally  
6 breached the agreements with plaintiff in order to  
7 wrongfully gain a financial advantage and extort money.

8 THE COURT: Fine. Okay.

9 MR. WILLIS: So the extortion part would be the tortious  
10 conduct. It goes along with the breach, the act of  
11 breaching the contract, which was intentional. And as  
12 alleged in the contract, according to the provisions under  
13 the Uniform Limited Liability Act, that allows for torsion  
14 conduct to be charged against an individual, as alleged in  
15 the complaint. Whether or not we win or not, that's a  
16 different question, but what's alleged in the complaint,  
17 that there are facts specific enough to go there.

18 I'll also add that there are also facts that are  
19 alleged, even though we haven't said it particularly, but  
20 there are facts alleged within this complaint that would  
21 give rise to being able to pierce the corporate veil, just  
22 for what Your Honor recognized earlier as being active -- as  
23 conduct outside of the ordinary course of the business,  
24 which would be extortion.

25 We have not pled specifically to breach the

1 corporate veil, but if we -- if the pleadings are to be  
2 construed liberally at this point, which they are to be, and  
3 then we pled facts sufficient to create that cause of  
4 action. And lastly, of course, if the court were to  
5 dismiss, then we have the opportunity to sue them  
6 individually in another lawsuit, and we think it should be  
7 combined with all the same facts and circumstances, that  
8 they ought to be together.

9 THE COURT: Okay. Thank you very much. All right.  
10 The motion granted as to the individuals denied as to the  
11 LLC. The facts in Paragraphs 60 and 61, in this Court's  
12 opinion, did not amount to the facts giving rise that buyers  
13 acted outside the corporation, nor in compliance with  
14 anything in the LLC statute. However, I will give him  
15 relief to refile a motion with the Court to reinstate the  
16 parties, if during discovery they come up with any  
17 sufficient facts to establish a tortious act outside of the  
18 confines of acting on behalf of the LLC during the discovery  
19 process; he's at liberty to make a motion to add them back.  
20 Okay.

21 MR. FEIDLER: Thank you very much, Your Honor.

22 THE COURT: Proposed order, please?

23 MR. FEIDLER: Yes, Your Honor, I'll submit that.

24 (END OF TRANSCRIPT OF RECORD.)

25

CERTIFICATE OF REPORTER

State of South Carolina     )  
                                          )  
County of Charleston         )

I, Maria Dempsey, Official Court Reporter for the Ninth  
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 evidence  
introduced in the trial of the captioned case, relative to  
appeal, in the Circuit Court for Charleston County, South  
Carolina, on the 11th day of November 2017.

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

May 25, 2018

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Maria Dempsey, RPR  
Official Court Reporter  
Charleston County Circuit Court  
Ninth Judicial Circuit  
Charleston, South Carolina

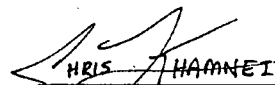
## CERTIFICATE OF THE RECORD ON APPEAL

Appellant has included the following to comprise the Record on Appeal:

1. Purchase and Sales Agreement dated March 17<sup>th</sup>, 2017.
2. Original Summons and Complaint dated August 10<sup>th</sup>, 2017;
3. Amended Summons and Complaint dated September 5<sup>th</sup>, 2017;
4. Defendant's Notice of Motion and Motion for Partial Dismissal dated September 13<sup>th</sup>, 2017;
5. Plaintiff's Memorandum in Opposition To Defendants' Motion For Partial Dismissal dated November 15<sup>th</sup>, 2017.
6. The full Transcript of Proceedings dated November 17<sup>th</sup>, 2017;
7. Order Granting Defendant's Motion for Partial Dismissal in Part dated Dec. 14<sup>th</sup>, 2017.
8. Plaintiff's Notice of Motion and Motion to Reconsider, Alter or Amend Order Granting Partial Dismissal dated December 17<sup>th</sup>, 2017.

I certify, to the best of my ability *pro se*, that the Record on Appeal (comprised of documents identified in the Designation of the Matter) contains no material which is irrelevant to this appeal.

Dated April 29<sup>th</sup>, 2019,



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