THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Circuit Case No. 2016-CP-10-4211

Appellate Case No. 2020-000278

William E. Danielson, Plaintiff

v.

Tyler Beauregard, Caroline Beauregard, and Born Capital, LLC, Defendants

Of which Born Capital, LLC is the .....Appellant

and

Of whom Caroline Beauregard is the .....Respondent

FINAL BRIEF OF APPELLANT

R. Patrick Flynn, SC Bar # 65599
Michael W. Allen, SC Bar # 101996
POPE FLYNN, LLC
P.O. Box 70
Charleston, South Carolina 29402
pflynn@popeflynn.com
mallen@popeflynn.com
Phone: (843) 790-9570
Fax: (803) 354-4899
Attorneys for Appellant

Charleston, SC

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court Err in Finding that the Relationship of Lease Guarantor and Residential Tenant in Possession Did not Constitute a Special Relationship to Establish Entitlement to Equitable Indemnity?

II. Did the Trial Court Err in Treating Two Equal Lessees Differently in Terms of Liability to Repay the Guarantor?

STATEMENT OF THE CASE

This case arises out of a lease from June 1, 2013 to May 31, 2014 ("Lease") for a rental home located at 2302 Atlantic Avenue, Sullivan's Island, South Carolina ("Property"). (R. p. 29). The Property Owner William E. Danielson ("Landlord") commenced the underlying lawsuit on August 12, 2016, seeking nine months of unpaid rent and late fees in the amount of $117,600, plus costs, interest, and attorney fees. (R. p. 24). The Landlord sued Tyler Beauregard ("Tyler") and Caroline Beauregard ("Respondent") as Tenants, and the Appellant Born Capital ("Born") as Lease Guarantor (R. p. 27).

In an effort to minimize its risk of liability, Born settled with Danielson for $80,000 on August 6, 2018. (R. p. 93). Born asserted cross claims for equitable indemnity against both Tyler and the Respondent jointly and severally to recover the $80,000 settlement plus costs, fees, and expenses. (R. p. 18). Tyler failed to respond to Born's cross claim, and an Order of Default against him was filed on September 21, 2018 with default damages to be determined at trial. (R. p. 7).

In her Answer to Born's cross claims, Respondent asserted a cross claim against Born alleging abuse of process. (R. p. 60). On May 6, 2019, Landlord dismissed his claims against Respondent in exchange for her settlement payment of $9,500. (R. p. 12).

Charleston County Master in Equity Mikell R. Scarborough (the "Trial Court") conducted the non-jury trial on October 17, 2019. By its Order dated November 27, 2019, the Trial Court

found that Tyler was liable to the Landlord in the total amount of $175,680.00, but that amount was reduced to $86,180.00 after deducting the settlement amounts Landlord received from Born and Respondent. (R. p. 10). The instant appeal does not challenge that November 17, 2019 order, and the Landlord and Tyler are not involved in this appeal.

On January 21, 2020, the Trial Court entered its Order and Judgment (hereinafter, the "Trial Court's Order" or the "Order"). (R. p. 17). That Order dismissed Respondent's cross claim for abuse of process, and granted Born's default damages against Tyler. (R. p. 22). Neither of those findings are challenged in this appeal.

Instead, this appeal exclusively relates to the Trial Court's dismissal of Born's equitable indemnity claim against Respondent, based on a finding that there was no "special relationship" between them which would satisfy the elements of that cause of action, as more fully discussed below.

BACKGROUND

Born's lease guarantee was added near the signature block in the Lease, and was handwritten in by the Landlord, stating: "[A]ll obligations of Tenants are Guaranteed by Born Capital, LLC as if Born Capital LLC were the Tenant." (R. p. 36). The Trial Court held that the Landlord would not have leased the Property to the Beauregards without Born's Guarantee. (R. p. 18).

The Trial Court further held that Born satisfied all elements of the equitable indemnity cause of action against the Respondent except the "special relationship" element. Specifically, the Trial Court found "that Born Capital was not at fault for Danielson's damages; that Born Capital's settlement with Danielson was bona fide, with no fraud or collusion; and that its settlement was reasonable given the facts and circumstances." (R. p. 19). Additionally, the Trial Court found that

Born "satisfied the elements discussed in the *Griffin* and *Addy* cases" and confirmed that Born's damages in equitable indemnity were "in the aggregate amount of $120,213.98" (R. pp. 19-20).

The Trial Court's conclusions of law leading to its dismissal of Born's equitable indemnity claim against Respondent are as follows:

> As to the equitable indemnity claim, "for a party to recover under a theory of equitable indemnification, three things must be proven: (1) the indemnitor was liable for causing the Plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the Plaintiff's claims against it which were eventually proven to be the fault of the indemnitor." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp*., 366 S.C. 53, 63 (Ct. App. 1999); *Addy v. Bolton*, 257 S.C. 28 (1971).
>
> Based upon the evidence presented at trial and the standard set forth in *Vermeer, supra*, I find that both Tyler Beauregard and Caroline Beauregard were parties to the Rental Agreement which is the subject of this lawsuit; that Plaintiff Danielson's damages were caused by the Beauregards' failure to pay rent pursuant to the Rental Agreement; that Born Capital was not at fault for Danielson's damages; and that Born Capital was damaged by having to pay a reasonable settlement to Danielson for damages that were the fault of the Beauregards. Accordingly, I find that the elements of *Vermeer* are satisfied as to Born Capital's cross claim of equitable indemnity against Caroline Beauregard.
>
> However, the right of equitable indemnity only "exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." *Toomer v. Norfolk Southern Ry. Co*., 344 S.C. 486, 491 (Ct. App. 2001). Although there are some connections between Caroline Beauregard and Born Capital due to her husband's position with the company, I find as a matter of law that these connections do not rise to the level necessary to satisfy the "special relationship" element of an equitable indemnity claim.
>
> I find that Tyler Beauregard was an employee of Born Capital; that Caroline Beauregard was married to Tyler during the time in which they resided in the house as tenants of Danielson; that Tyler and Caroline both interacted socially with officers and employees of Born Capital; that they and their children both benefited from the salary and benefits paid by Born Capital to Tyler; that rent paid to

> Danielson was paid by Born Capital as part of Tyler's compensation; and that without Born Capital's guarantee, Danielson would not have leased the property to Tyler and Caroline Beauregard.
>
> *I find as a matter of law that the relationship between an employer and the spouse of an employee falls short of the standard of a special relationship required for liability under equitable indemnity and that the evidence in the record demonstrates clearly that the relationship between Born Capital and Caroline Beauregard is too far removed and too attenuated to constitute the special relations required by South Carolina jurisprudence*. Accordingly, Born Capital's claim for equitable indemnity against Caroline Beauregard must be dismissed.
>
> (R. pp. 20-21) (Emphasis added).

Based upon the findings of fact set forth in the Trial Court's Order above, and the legal standards set forth in the case law cited below, the Trial Court improperly characterized the relationship between Born and Respondent as "husband's employer and spouse of an employee." Instead, the relevant relationship for equitable indemnity analysis is that of "Lease Guarantor and Lessee." Had the Trial Court applied its analysis to the appropriate relationship, it would have determined that the relationship between Born and Respondent "[clearly] falls [within] the standard of a special relationship required for liability under equitable indemnity." *Id*.

The applicable case law directs the Trial Court to find that the relationship between Born and Respondent fell within the criteria of a "special relationship" for purposes of triggering an equitable indemnity obligation by Respondent, and the Trial Court's Order must be reversed on that issue.

STANDARD OF REVIEW

As set forth in *Walterboro Community Hospital v. Meacher*, 392 S.C. 479, 709 S.E.2d 71 (Ct. App. 2011): "Equitable indemnity is an action in equity. *See Verenes v. Alvanos*, 387 S.C. 11, 18 n. 6, 690 S.E.2d 771, 774 n. 6 (2010) (noting a cause of action for equitable indemnity is

necessarily equitable in nature); *Loyola Fed. Sav. Bank v. Thomasson Props*., 318 S.C. 92, 93, 456 S.E.2d 423, 424 (Ct.App.1995) (same)." *Meacher*, 392 S.C. at 484, 709 S.E.2d at 73.

The *Meacher* court continued: "'In an action in equity tried by a judge alone, the appellate court may find facts in accordance with its view of the preponderance of the evidence.' *Goldman v. RBC, Inc*., 369 S.C. 462, 465, 632 S.E.2d 850, 851 (2006). 'However, this broad scope of review does not require the appellate court to disregard the findings made below.'" *Meacher*, 392 S.C. at 484, 709 S.E.2d at 73.

In this appeal, the Appellant Born Capital's challenge of the Trial Court's Order is limited to its finding that equitable indemnity was not available to Born because there was no special relationship between Born, as the Lease Guarantor, and Respondent, who was the lessee of the rental home which was the subject of the guaranteed lease. The appropriate standard of review is, therefore, a *de novo* analysis of the Trial Court's findings regarding the nature and sufficiency of that relationship.

In its Order, (R. p. 21) the Trial Court acknowledged only that there were "some connections" between Respondent and Born. Following that statement, the Trial Court nonetheless proceeded to list connections which far exceeded many connections between other indemnitors and indemnitees that were recognized in equitable indemnity. *See, e.g*., *Fountain v. Fred's, Inc.*, *infra*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020) (recognizing retail tenant's relationship with a land developer's general contractor).

Indeed, the Trial Court proceeded to recognize that the Respondent's reliance on rent paid by Born; reliance on household income provided by Born; regular social interactions with officers and employees of Born; and that but for Born's lease guarantee, Respondent would have been unable to rent the residence in the first instance. (R. p. 21). These substantial connections,

combined with the foreseeability of guarantor's payment of rent after Respondent abandoned the Lease, clearly establish that Respondent and Born had a special relationship sufficient to justify Respondent's liability in equitable indemnity. *Toomer v. Norfolk Southern Ry. Co*., 344 S.C. 486, 491 (Ct. App. 2001). The Trial Court's Order must be reversed because it disregarded this special relationship and failed to properly order equitable indemnity in favor of Born.

ARGUMENT

I. The Lower Court Erred in Finding that the Relationship of Lease Guarantor and Lessee Did not Constitute a Special Relationship Under the Equitable Indemnity Analysis

South Carolina law recognizes various legal duties between parties in a wide range of relationships. On one end of the spectrum, there are persons who are unknown to each other, without any personal or significant connection prior to a chance encounter, yet the courts have recognized that the circumstances invoke a legal duty by one in favor the another. S*ee e.g.*, *Hancock v. Mid-South Mgt., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (incidental contact creates a duty between invitors and invitees without any prior connections between them); *Wallace v. Owens-Illinois, Inc*., 300 S.C. 518, 389 S.E.2d 155 (Ct. App. 1989) (establishing a duty between a manufacturer of a defective product and an unsuspecting user of that product, despite total absence of prior connections between them). The law recognizes that legal duties can exist between virtual strangers, based only upon the foreseeability of a connection.

At the other end of the spectrum are parties whose formal engagements give rise to the strongest of legal bonds, including fiduciary obligations demanding the highest level of care and duty. *See, e.g. Spence v. Wingate*, 395 S.C. 148, 716 S.E.2d 920 (2111) (attorneys); *Turpin v. Lowther,* 404 S.C. 581, 745 S.E.2d 397 (Ct. App. 2013) (personal representatives).

Between these two ends of the spectrum lies the "special relationship" between those people who have a connection which leads to a duty of equitable indemnity, defined as follows:

> Courts have traditionally allowed equitable indemnity in cases of imputed fault or where some special relationship exists between the first and second parties. According to the principles of equity, the right exists "whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join."
>
> *Toomer v. Norfolk S. Ry*., 344 S.C. 486, 490-91, 544 S.E.2d 634, 636 (Ct. App. 2001) (footnotes omitted); *quoting Stuck*, 279 S.C. at 24, 301 S.E.2d at 553.

Over the years, the South Carolina Supreme Court and Court of Appeals have recognized numerous relationships between people and entities upon which a duty of equitable indemnity could be recognized. *See*, *Fountain v. Fred's, Inc.*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020) (Retail Tenant and Developer's General Contractor); *McCoy v. Greenwave Enters., Inc.*, 408 S.C. 355, 357–58, 361, 759 S.E.2d 136, 137, 139 (2014) (Seller and Purchaser of contaminated property where Seller failed to disclose contamination); *First Gen. Servs. v. Miller*, 314 S.C. 439, 443, 445 S.E.2d 446, 448 (1994) (General Contractor and Subcontractor); *Town of Winnsboro v. Wiedeman-Singleton, Inc*., 303 S.C. 52, 57, 398 S.E.2d 500, 503 (Ct. App. 1990) (General Contractor and Subcontractor); *Griffin v. Van Norman*, 302 S.C. 520, 397 S.E.2d 378 (Ct.App.1990) (Seller of residence and Exterminator); *Stuck v. Pioneer Logging Machinery, Inc*., 279 S.C. 22, 301 S.E.2d 552 (1983) (Seller and Purchaser of defective vehicle); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971) (Landlord and General Contractor).

In *Atlantic Coast Line R.R. v. Whetstone*, 243 S.C. 61, 132 S.E.2d 172 (1963) the Supreme Court examined the relationship between the Railroad and an unrelated contractor that erected scaffolding which injured a third party by being too close to a track. In that instance, both were

joint tortfeasors and neither had the right of indemnity for that reason. However, the Supreme Court, by *dictum*, specifically preserved the notion that equitable indemnity could be invoked by an employer whose employee's wrongful act caused the employer's liability. *Id.* at 71, 132 S.E.2d at 176, citing *Jenkins v. Southern Ry. Co*., 130 S.C. 180, 125 S.E. 912 (1924).

In *Jenkins*, the Court noted that the employer Southern Railway "was held liable, not because he committed the act, for it is clear that he neither committed it, participated in, or ratified it; he is held liable, not negligent or willful, because the servant committed it while about the master's business." *Id*. at 180, 125 S.E. at 915.

Of course, our courts have not left the door open wide for every relationship to qualify for equitable indemnity, and have instead analyzed the connection between the indemnitor and the indemnitee in the nature of a foreseeability analysis. For example, in *Rock Hill Telephone Co. v. Globe Communications*, 363 S.C. 385, 611 S.E.2d 235 (2005), the telephone company engaged an independent contractor to install telephone lines along a highway. In turn, that independent contractor engaged its own independent subcontractor to actually perform the line installation. The Supreme Court rejected the telephone company's claim for equitable indemnity, implicitly finding that a duty to equitably indemnify by the remote subcontractor was not foreseeable. In his dissent, Justice Pleicones noted that the telephone company "had absolutely nothing to do with the selection of [the subcontractor]." *Id*. at 394, 611 S.E.2d at 239 (Pleicones, J., dissenting).

Interestingly, Justice Pleicones took an entirely different approach to the notion of fairness in that instance, by stating that the more attenuated the connection, the greater the need for equitable indemnity. *Rock Hill Telephone*, 363 S.C. at 394, 611 S.E.2d at 239. Of course, that approach was contrary to the majority's requirement of at least some minimal connection in order to support equitable indemnity. Indeed, Justice Pleicones' position in that instance went against

the overwhelming weight of authority in South Carolina which relies upon foreseeability as an element establishing legal duties. That dissent did not sway the majority because the use of foreseeability as an analytical tool dominates the jurisprudence of torts, and now equitable indemnity, in South Carolina. *See, e.g., Young v. Tide Craft, Inc*., 270 S.C. 453, 242 S.E.2d 671 (1978).

The issue in the present appeal is how to determine whether the relationship between Born and Respondent is sufficient to meet this "special relationship" standard. In South Carolina, our courts have invariably answered questions of this nature by looking to the foreseeability of the consequences of one's actions. The majority in *Rock Hill Telephone* held that there was no right of equitable indemnity because the attenuated relationship would not allow the remote subcontractor to foresee an equitable indemnity obligation in favor of the telephone company.

In the instant case, however, Respondent's numerous and significant connections with Born plainly give rise to a foreseeable duty to indemnify the guarantor when the Respondent abandoned that residential lease. The damages suffered by Born were a foreseeable and natural consequence of Respondent's abandonment of the lease.

> A reading of any of the host of decisions in this State clearly discloses that the touchstone of proximate cause in South Carolina is foreseeability. . . . The standard by which foreseeability is determined is that of looking to the "natural and probable consequences" of the complained of act. . . . While it is not necessary that the actor must have contemplated or could have anticipated the particular event which occurred, . . . liability cannot rest on mere possibilities. The actor cannot be charged with "that which is unpredictable or that which could not be expected to happen." . . .

Young v. Tide Craft, Inc., *supra*, 270 S.C. at 462-63, 242 S.E.2d at 675-76 (citations omitted); *see also*, *Hancock v. Mid-South Mgt., Inc.*, *supra,* 381 S.C. 326, 673 S.E.2d 801 (2009) (foreseeability creates a duty between invitors and invitees without any prior connections between them); *Wallace*

v. Owens-Illinois, Inc., *supra,* 300 S.C. 518, 389 S.E.2d 155 (Ct. App. 1989) (foreseeability establishes a duty between a manufacturer of a defective product and an unsuspecting user of that product, despite total absence of prior connections between them).

The Trial Court missed the mark in characterizing the relevant relationship between Born and Respondent as a "relationship between an employer and the spouse of an employee" when the Court found that relationship "falls short of the standard of a special relationship required for liability under equitable indemnity." (R. p. 21). Instead, the relevant relationship is that of Lease Guarantor and Lessee. Born guaranteed payment of the lease for the Respondent's home, and a lessee's abandonment of that lease predictably, thus foreseeably, resulted in the guarantor's payment to the Landlord. Respondent's liability for equitable indemnity in this instance does not "rest on mere possibilities. The [Respondent must] be charged with 'that which is [predictable] or that which [could be] expected to happen.'" *Young v. Tide Craft, Inc*., *supra*, 270 S.C. at 462-63, 242 S.E.2d at 675-76.

Of course, the fact that Respondent's husband was employed by Born, and that Born thus provided the funds for the livelihood of Respondent's family (R. p. 21) is important information which supports the various connections which the Trial Court recognized in its Order. (R. pp. 20-21). Those connections add weight to the strength of the relationship, which was far closer than, for example, the attenuated relationship of the remote subcontractor in *Rock Hill Telephone*, *supra,* 363 S.C. at 385, 611 S.E.2d at 235.

Moreover, the Trial Court also recognized that the rent on the Respondent's home was actually paid by Born as part of that family's income, which further supports the close and supporting nature of the relationship (R. p. 21). In fact, the payment of rent for the Respondent makes her relationship with Born analogous to the direct relationship between a general contractor

and subcontractor, in which the subcontractor directly relies on financial support by the general contractor. *See, e.g., First Gen. Servs. v. Miller*, 314 S.C. 439, 443, 445 S.E.2d 446, 448 (1994) (recognizing a special relationship exists between a General Contractor and Subcontractor); *Town of Winnsboro v. Wiedeman-Singleton, Inc*., 303 S.C. 52, 57, 398 S.E.2d 500, 503 (Ct. App. 1990).

At this point in Equitable Indemnity Jurisprudence in South Carolina, there is no bright-line test of what relationships have sufficient connections upon which a duty of equitable indemnity may attach. The present case presents an opportunity to advance this jurisprudence by examining the foreseeability of that duty by an equitable indemnitor. Respondent had a financial and personal relationship with Born, and more importantly Respondent was a party to a lease that was guaranteed by Born. The foreseeability analysis in this instance is direct: a wrongful abandonment of that lease would cause the guarantor to be liable for the remaining lease payments. But for the absence of prior case law recognizing this as a special relationship, the Trial Court would have properly found Respondent liable in equitable indemnity.

The relationship of a lease guarantor and a lessee is an ideal application for equitable indemnity, and even more so in the present case because of the additional connections between the guarantor and the lessee as the Trial Court recognized. (R. pp. 20-21). The Trial Court's dismissal of Born's equitable indemnity claim works a forfeiture on Born in the amount of its $80,000 settlement with Landlord plus its costs, expenses, and attorney fees, because the Trial Court confirmed that the lessee was at fault and that Born had no fault. (R. pp. 20-21).

The Trial Court established that (1) [Respondent] was liable for causing the [Landlord's] damages; (2) [Born was] exonerated from any liability for those damages; and (3) [Born] suffered damages as a result of the [Landlord's] claims against [Born] which were eventually proven to be the fault of [Respondent]." (R. pp. 20-21); *see Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307. For

these reasons, the Trial Court's Order must be reversed to the extent it failed to recognize this special relationship and failed to grant equitable indemnity to the Appellant Born Capital.

II. The Trial Court Erred in Treating Two Equal Lessees Differently in Terms of Liability to Repay the Guarantor

The Trial Court found that "Caroline Beauregard is considered a party to the lease [of their rental home on Sullivan's Island] pursuant to S.C. Code Sec. 27-40-320." (R. p. 17). The lease makes no distinction between the liability of Respondent Caroline Beauregard and her then-husband Tyler Beauregard as lessees. (R. p. 29).

Nonetheless, the Trial Court improperly distinguished those two equal lessees by finding that the husband was liable to Born Capital in equitable indemnity, but the wife was not. The duties of the landlord, lessees, and the guarantor were set forth in the lease. (R. pp. 29-36). As the Trial Court recognized, the lease "provided for the recovery of actual damages and attorney's fees if a proceeding had to be brought based on the Tenants' nonpayment of rent. The remedy after termination included damages for reasonable attorney's fees, collection costs, and court costs. The Rental Agreement provided that 'all obligations of Tenants are Guaranteed by Born Capital, LLC as if Born Capital LLC were the Tenant.'" (R. p. 18). The Trial Court erred when it injected itself into the intent of the language of the lease by making the husband's duty to pay rent superior to that of the wife. This improper rewriting of the lease terms created inequity in that it arbitrarily restricted the enforcement provisions of the lease, and the Court improperly dismissed Born's equitable indemnity claim against Respondent on that basis.

In *Fountain v. Fred's, Inc.*, *supra,* 429 S.C. at 547, 839 S.E.2d at 482 (Ct. App. 2020), the Court of Appeals held that "[e]quitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not." *quoting Vermeer*, 336 S.C. at 63, 518 S.E.2d at 307.

The Court continued: "If the second party is also at fault, he comes to court without equity and has no right to indemnity." *Id*. Applying that holding to the instant case, it can be concluded that "for [Born] to recover under a theory of equitable indemnification, three things must be proven: (1) [Respondent] was liable for causing the [Landlord's] damages; (2) [Born was] exonerated from any liability for those damages; and (3) [Born] suffered damages as a result of the [Landlord's] claims against [Born] which were eventually proven to be the fault of [Respondent]." *Id*.

The Trial Court recognized that Born satisfied each of those elements when it made the following conclusions of law:

> Based upon the evidence presented at trial and the standard set forth in *Vermeer, supra*, I find that both Tyler Beauregard and Caroline Beauregard were parties to the Rental Agreement which is the subject of this lawsuit; that Plaintiff Danielson's damages were caused by the Beauregards' failure to pay rent pursuant to the Rental Agreement; that Born Capital was not at fault for Danielson's damages; and that Born Capital was damaged by having to pay a reasonable settlement to Danielson for damages that were the fault of the Beauregards. Accordingly, I find that the elements of *Vermeer* are satisfied as to Born Capital's cross claim of equitable indemnity against Caroline Beauregard.
>
> (R. pp. 20-21).

Further, the Trial Court found that Born proved its damages for equitable indemnity when it held the Respondent's husband and co-leaseholder liable for the same issues claimed against Respondent:

> I find that, as a matter of law, Born Capital's settlement payment of $80,000.00 to Danielson was reasonable given the facts and circumstances. The evidence and testimony showed that the attorneys fees and costs incurred by Born Capital was $34,213.98,

> and I find this amount to be reasonable given the nature of the representation and circumstances of this matter. Further, the uncontroverted testimony was that Born Capital incurred $6,000.00 of expenses relating to the claims asserted by Born Capital in this lawsuit, and I find such additional expenses as reasonable and necessary under the circumstances. Accordingly, I find that Tyler Beauregard is liable to Born Capital in the aggregate amount of $120,213.98, which amount shall accrue interest at the applicable Judgment Rate until satisfied.
>
> (R. pp. 19-20).

The Trial Court was without justification in treating the Respondent differently from her co-equal lessee husband in deciding that her husband would be liable to Born, but that Respondent had no such duty. The basis of Born's guarantee was that each lessee was liable under the lease and South Carolina law, thus allowing Born to pursue each lessee in the event of their default and Born's payment under the guarantee. Born made good on its promise to guarantee the lease following the Beauregards' wrongful abandonment, and it is improper to change its right of indemnity against lessees by arbitrarily modifying the language of the lease.

For this reason, the Trial Court's dismissal of the equitable indemnity claim against Respondent must be reversed, with instructions to find that Respondent is liable to Born in the amount of $120,213.98, as those damages were established in the language of the Trial Court Order against Tyler Beauregard. (R. p. 20).

CONCLUSION

For the foregoing reasons, the dismissal of Appellant Born Capital's equitable indemnity claim against the Respondent Caroline Beauregard must be reversed, and the Trial Court must be

instructed to enter judgment in favor of Appellant and against the Respondent in the amount of $120,213.98, with interest at the Judgment Rate accruing until the judgment is satisfied in full.

Respectfully Submitted,

POPE FLYNN, LLC

R. Patrick Flynn, SC Bar # 65599
Michael W. Allen, SC Bar # 101996
P.O. Box 70
Charleston, South Carolina 29402
pflynn@popeflynn.com
mallen@popeflynn.com
Phone: (843) 790-9570
Fax: (803) 354-4899
Attorneys for Appellant

Charleston, South Carolina

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CERTIFICATE OF COUNSEL

R. Patrick Flynn, SC Bar # 65599
Michael W. Allen, SC Bar # 101996
POPE FLYNN, LLC
P.O. Box 70
Charleston, South Carolina 29402
pflynn@popeflynn.com
mallen@popeflynn.com
Phone: (843) 790-9570
Fax: (803) 354-4899
Attorneys for Appellant

The undersigned certifies that the foregoing Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

Respectfully Submitted,

POPE FLYNN, LLC

R. Patrick Flynn, SC Bar # 65599
Michael W. Allen, SC Bar # 101996
P.O. Box 70
Charleston, South Carolina 29402
pflynn@popeflynn.com
mallen@popeflynn.com
Phone: (843) 790-9570;
Fax: (803) 354-4899

Attorneys for Appellant

Charleston, South Carolina

September 28, 2020