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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

Appeal from Berkeley County
Court of Common Pleas
Kristi F. Curtis, Circuit Court Judge

Case No. 2018-CP-08-00266
Case No. 2018-CP-08-01008
Appellate Tracking No.: 2019-001169

Aracelis Santos, ……Appellant,

vs.

Harris Investment Holdings, L.L.C., ……..…….. Respondent,

RECORD ON APPEAL
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ORDERS

ORDER ALLOWING WITHDRAWAL OF COUNTERCLAIMS JULY 18, 2017

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBER: 2016-CV-08-1065290
)	2017-CV-08-10600019
)	
HARRIS INVESTMENTS)	
HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	ORDER
)	
ARACELIS SANTOS,)	
)	
Defendant.)	
)	

THIS MATTER comes before the Court upon motion of the Defendant for an Order permitting the Defendant to voluntarily dismiss the above-captioned action without prejudice pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure.

Ordinarily, a plaintiff is entitled to a voluntary dismissal without prejudice as a matter of right, unless there is a showing of legal prejudice to the defendant. *Knight v. Waggoner*, 359 S.C. 492, 597 S.E.2d 894 (Ct. App. 2004). If no legal prejudice is shown, the trial judge has no discretion with respect to granting a dismissal without prejudice; but if prejudice to the other party is shown, the matter becomes one of discretion for the trial judge. *Id.* The same rules regarding voluntary dismissal of a plaintiff's claim apply to voluntary dismissal of a defendant's counterclaim. *See* Rule 41(c), SCRCP.

In determining whether or not a voluntary nonsuit is proper, the Court must first determine whether the party opposing the nonsuit can show legal prejudice. *Knight, supra*. The burden of this showing of legal prejudice lies solely on the party seeking to defeat the motion. *Id.* A showing by an opposing party that it has already been put through the time and expense of a trial does not, standing alone, constitute legal

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prejudice, nor does the mere possibility that the party may have to defend another lawsuit at a later date. *Id.*

In the *Knight* case cited previously herein, Defendant Waggoner withdrew her counterclaims during the trial itself and following a directed verdict motion by the Plaintiffs as to the Defendant's counterclaims. In the instant case, it is unequivocal that the Defendant's Motion to dismiss her counterclaims was filed on the "eve" of trial, but no trial had been scheduled as of the date of said motion being filed.

The Plaintiff's basis for opposition of the Defendant's Motion appears to be grounded primarily upon the Plaintiff's assertion that the counterclaims themselves were filed in an effort to delay or halt the underlying ejectment proceedings and that should the Court grant the Defendant's Motion, the Plaintiff would have to defend the same or similar issues in circuit court or otherwise. While the Court is certainly aware of the possibility that the Defendant files an action in circuit court, the Plaintiff has not had to participate in formal discovery within the magistrate court proceedings and the mere possibility that the Plaintiff may have to defend another lawsuit at a later date is not sufficient legal prejudice by which the Court can deny the Defendant's Motion.

Moreover, the Plaintiff notes in its brief in opposition to the Defendant's Motion that if the Defendant refiles her counterclaims in circuit court, the Defendant may be forced to re-litigate precisely the same issues in circuit court that it is litigating in this Court. The Plaintiff correctly states, however, that this would only be so "to the extent *res judicata* or collateral estoppel does not apply," thus acknowledging that the Plaintiff has legal defenses available to it in a second trial that would prevent that very occurrence. The doctrines of *res judicata* and collateral estoppel are two different concepts. *Beall v. Doe*, 281 S.C. 363315 S.E.2d 186 (Ct. App. 1984). A final judgment

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on the merits in a prior action will conclude the parties and their privies under the doctrine of *res judicata* in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. *Id.* Under the doctrine of collateral estoppel, the second action is based upon a different claim and the judgment in the first action precludes re-litigation of only those issues actually and necessarily litigated and determined in the first suit. *Id* Thus, the Plaintiff's legal defenses to any potential refiled counterclaims of the Defendant would necessarily prevent the Plaintiff from having to re-litigate any issues or claims litigated in the current action. As such, the Plaintiff has failed to meet its burden of showing legal prejudice.

Based upon the foregoing, the Defendant's motion for voluntary nonsuit of her counterclaims pursuant to Rule 41(a) is hereby granted.

IT IS SO ORDERED

The Honorable Rad S. Deaton
Berkeley County Magistrate

July 19, 2017
Charleston, South Carolina

Counsel for Plaintiff: Merrit G. Abney, Esquire
Counsel for Defendant: Thomas R. Goldstein, Esquire

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ORDER OF EJECTMENT

DECEMBER 7, 2017

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBERS: 2017-CV-08-10600019
)	2016-CV-08-10605290
)	
HARRIS INVESTMENTS)	
HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
ARACELIS SANTOS,)	
)	
Defendant.)	

THIS MATTER comes before the Court on October 11, 2017, upon the Plaintiff's Applications for Ejectment filed in the above-captioned actions. The Plaintiff (hereinafter "Harris" or "Landlord") sought to eject the Defendant (hereinafter "Santos" or "Tenant") from two units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina.

I. Findings of Fact and Conclusions of Law

A. BACKGROUND

Harris and Santos are parties to a lease dated May 22, 2014, for an 1,807 square foot shopping center unit operated as a convenience store known as "Latino Mix." [Plaintiff's Exhibit 23, Defendant's Exhibit 1], hereinafter "the First Lease." The term of the First Lease was for two (2) years, provided that in the event the "commencement date" of the First Lease was a date other than the first date of a calendar month, the term would extend for the number of days remaining in the calendar month following the commencement date. The commencement date for purposes of the First Lease was August 1, 2014.

Harris and Santos are parties to a lease dated December 2, 2015, for a 3,780 square foot shopping center unit operated as a restaurant/discotheque/night club known as "El Alamo." [Plaintiff's Exhibit 2, Defendant's Exhibit 2], hereinafter "the Second Lease." The term of the Second Lease was from December 1, 2015, until November 30, 2018.

The First Lease sets forth the "demised premises" as 5901 Loftis Road, Suite #2, 4, Hanahan, South Carolina. The Second Lease provides that the leased premises is 5901 Loftis Road, Hanahan, South Carolina. However, it is clear from the evidence presented, and undisputed by the parties, that the First Lease involves "Latino Mix" and the Second Lease involves "El Alamo." The business license for El Alamo is held in the name of Benjamin Reyna (hereinafter "Reyna").

Harris filed an Application for Ejectment and Rule to Show Cause, Case Number 2016-CV-08-10605290, on November 14, 2016, alleging that Santos had violated the terms or conditions of the Second Lease. A Rule to Vacate or Show Cause was signed by the Honorable D. Mark Stokes and served on Santos on November 17, 2016. Santos filed a Motion for Removal, Answer to Rule to Show Cause, and Counterclaims on November 28, 2016. Harris filed a Reply to Counterclaim on December 15, 2016. Harris submitted a Memorandum in Opposition to Santos's Motion to Remove on or about January 6, 2017[1]. Judge Stokes held a hearing on Santos's Motion for Removal on January 9, 2017, and ultimately issued an order on January 13, 2017, denying the Motion. On March 31, 2017, the Harris filed a Motion for Summary Judgment in Case Number 2016-CV-08-10605290. On June 14, 2017, Harris filed a Supplemental

[1] While Harris's Memorandum in Opposition to Santos's Motion to Remove was submitted to the Court on January 6, 2017, said Memorandum was not actually filed until January 13, 2016.

Memorandum in Support of Motion for Summary Judgment in Case Number 2016-CV-08-10605290.

Harris filed a second Application for Ejectment and Rule to Show Cause, Case Number 2017-CV-08-10600019, on January 5, 2017, alleging that the terms of tenancy or occupancy had ended under the First Lease and further that Santos had violated the terms or conditions of the lease. A Rule to Vacate or Show Cause was signed by the undersigned on January 6, 2017, and a constable attempted service upon Santos two (2) times, posting a copy of the Rule to Vacate or Show Cause on Santos's door. Santos's attorney acknowledged that Santos received a copy of the Rule to Vacate or Show Cause and indicated that he would be filing a response thereto.[2] Santos filed a second Motion for Removal, Answer to Rule to Show Cause, and Counterclaims on February 23, 2017. Harris filed a second Memorandum in Opposition to Santos's Motion to Remove and Reply to Counterclaim on March 3, 2017. On April 3, 2017, the Plaintiff filed a Motion for Summary Judgment in Case Number 2017-CV-08-10600019.

Following Judge Stokes' January 13, 2017, Order denying Santos' Motion for Removal as to Case Number 2016-CV-08-10605290, this Court determined that Judge Stokes' rulings became the "law of the case" for purposes of Case Number 2017-CV-08-10600019, and therefore denied Santos' Motion for Removal in the latter action. After the Court's decision, Santos moved to voluntarily dismiss her counterclaims against Harris over Harris' objection. The Court issued an Order granting Santos' Motion to voluntarily dismiss her counterclaims on July 18, 2017.

[2] On March 9, 2017, the undersigned held a pretrial hearing at which time the Court inquired of Santos's attorney as to whether there were any service issues pertaining to either matter in light of Santos's Answer which asserted an affirmative defense under South Carolina Rules of Civil Procedure (SCRCP) Rule 12(b)(2). The acknowledged to the Court that no service issues existed. As such, the Court finds that Santos voluntarily withdrew her affirmative defense under SCRCP 12(b)(2) and acquiesced to the Court having personal jurisdiction over her for both matters.

Santos waived her right to a jury trial and the matters were heard by bench trial on October 11, 2017.

B. FINANCIAL DEFAULT

Despite having not pled the issue in either Application for Ejectment, Harris alleges Santos repeatedly defaulted on her obligation under the First and Second Leases to pay rent timely for both El Alamo and Latino Mix.

Rule 15(b) of the South Carolina Rules of Civil Procedure allows for amendments of pleadings to conform to the evidence presented at trial, providing in pertinent part: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Rule 15(b), SCRCP. Dunbar v. Carlson, 341 S.C. 261, 533 S.E.2d 913 (Ct. App. 2000). The decision whether to allow the amendment of pleadings to conform to the evidence is left to the sound discretion of the trial court. Id. Amendments should be allowed if no prejudice occurs to the opposing party. Id.

Rule 15(b) covers two situations involving amendments to conform to the evidence. Id. First, if an issue not raised by the pleadings is tried by express or implied consent of the parties the court may permit amendment of the pleadings to reflect the issue. Second, if a party objects to the introduction of evidence as not being within the pleadings the court may permit amendment of the pleadings subject to a right to grant a continuance if necessary. Id. Express consent may be demonstrated by a stipulation but implied consent depends on whether the parties recognized an issue not raised by the pleadings entered the case during the trial. Id.

As was the case in Dunbar, no objection was made in this case to the evidence pertaining to financial default. As such, the second part of the rule is inapplicable. In

addition, there was no express consent. However, the Court finds that the parties tried the issue of financial default by implied consent. It appears from the evidence in the record that counsel for both Harris and Santos questioned witnesses extensively regarding the issues of Santos' alleged financial default. In fact, this issue was the basis for Harris' Motion for Summary Judgment prior to the trial which was granted in part.

Both leases in the instant case require payment of rent on a monthly basis and rent is due on the first day of each month. Failure to pay rent on or before the due date constitutes financial default. If Tenant fails to cure the default via payment of the past due rent and all late fees within 5 days of receiving notice of default, Landlord is authorized to immediately terminate the lease and oust Tenant. [Plaintiff's Exhibit 2, Defendant's Exhibits 1 and 2].

In February of 2017, Santos submitted a check dated February 4, 2017, for the monthly rental payment for El Alamo, but the check was returned due to insufficient funds. [Plaintiff's Exhibit 12]. On March 10, 2017, Harris' counsel notified Santos' counsel of the default orally and in writing. [Plaintiff's Exhibit 13]. No replacement check or any other payment for February 2017 rent was delivered within the 5-day cure period as required. [Plaintiff's Exhibit 17].

On March 20, 2017, the rent check for El Alamo was also returned due to insufficient funds. [Plaintiff's Exhibit 14]. On April 4, 2017, Harris provided notice to Santos that the March rent check was returned due to insufficient funds and stated that although Santos was already in default (due to failure to pay February rent and other breaches described in the Complaint), the failure to pay March rent constituted further financial default under the terms of the Lease. [Plaintiff's Exhibit 15]. Santos failed to

provide a replacement check or otherwise cure the breach within the 5-day cure period as required. [Plaintiff's Exhibit 17].

On May 3, 2017, counsel for Harris informed counsel for Santos that Harris had terminated the Second Lease due to Santos' failure to timely pay rent and failure to timely cure financial defaults after notice. [Plaintiff's Exhibit 17].

Santos subsequently failed to pay rent timely for August of 2017 for El Alamo. Via letter dated August 15, 2017, counsel for Harris notified Santos of this further financial default. [Plaintiff's Exhibit 18]. Santos failed to cure the defaults within the 5-day cure period as required. Santos again failed to pay rent timely for September of 2017 for El Alamo. Counsel for Harris sent a letter dated September 22, 2017, notifying Santos of this further financial default and Santos did not cure the breach within the 5-day cure period. [Plaintiff's Exhibit 19].

It is clear that Santos repeatedly failed to make timely rental payments under both the First and Second Leases. In fact, the Court previously granted partial summary judgment in that there was no issue of material fact as to whether Santos was in default for "failure to pay rent when due or demanded" and whether she received notice of the default. Mr. DeLuca testified at trial that he had no information about rent and that as far as he was aware, including whether or not there remains an unpaid balance and that Harris had sent the rent payments to held in escrow by new counsel. Nonetheless, Santos had at the time of trial caught up all back owed rent.

Having determined that Santos was in financial default, the Court must next determine whether said breach was material under the analysis set forth in Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994).

In determining whether Tenant's breach of the Lease was material, the Court must consider (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Kiriakides, supra.

Harris contends that it was deprived of the benefit of its bargain in purchasing the shopping center and assuming the Leases, having based its analysis of what it was willing to pay for the premises in part on the expectation of timely rental payments. Mr. DeLuca testified that Santos' repeated failure to make timely payments frustrated Harris' ability to manage cash flow for the shopping center. However, Mr. DeLuca admitted that he was unaware of the status of Santos' account and testified that the late rent payments remained in Harris' counsel's trust account. The Court finds that while the late rent was an inconvenience to Harris for sure, it did not rise to the level of depriving Harris of the benefit of its bargain and that the only benefit Harris reasonably could have expected was the past due rent which could be adequately compensated by damages. Santos' damages to the extent the Leases would be forfeited include the length of time remaining on the Leases. As to factor (d), the Court finds that Santos has in fact cured her default by paying all amounts past due. Finally, there is no evidence in the record that Santos' breach was willful or in bad faith. Although Santos did provide Harris with

checks that were returned for insufficient funds, nothing presented suggests that she did so purposefully.

As the Court has applied all Kiriakides factors in favor of Santos, the Court finds that forfeiture based on financial default alone in this particular case would be inequitable under the totality of the circumstances surrounding the financial breach.

C. FIRST LEASE

(1) Term of Tenancy or Occupancy Has Ended

In Case Number 2017-CV-08-10600019, Harris argues that the First Lease expired and that Harris delivered notice to Santos to vacate the premises and, as such, the ejectment should be upheld.

It is unequivocal that the term of occupancy for Santos under the First Lease ended August 1, 2016. On December 1, 2016, counsel for Harris notified Santos the term of the First Lease had expired and directed Santos to vacate the premises on or before December 31, 2016. [Plaintiff's Exhibit 24]. Santos refused to vacate and continued to occupy the premises. As indicated previously herein, it is clear from the evidence presented, and undisputed by the parties, that the First Lease involves "Latino Mix" and the Second Lease involves "El Alamo."

During the trial, Santos introduced evidence of a purported new lease agreement for Latino Mix as Defendant's Exhibit 3 (hereinafter "the Third Lease"). Whereas Harris denied ever having agreed to renew or extend the term of the First Lease, Santos argues that all negotiations pertaining to the Third Lease took place with Isabella Martinez acting as agent for Harris and that she believed the Second Lease and the Third Lease were extensions of the First Lease. Santos claims that she signed the Second Lease on December 22, 2015, and the Third Lease on August 1, 2016. The

Third Lease provided a term beginning on August 1, 2016 (the expiration date of the Second Lease), and ending on August 1, 2018. Santos argues that after she signed the Third Lease, she received text messages from Isabella Martinez explaining that the Landlord would not sign the Third Lease following a meeting with the City of Hanahan.

The Third Lease provides in Section 23 thereof, entitled "Effective Date of Lease," that "This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party." [Defendant's Exhibit 3]. It is undisputed that the Third Lease was never executed by Harris or any agent of Harris. By the express terms of the Third Lease, even if Santos signed the Third Lease and delivered it to Harris, this act merely constituted an offer to lease subject to revocation at any time prior to execution by Harris. As such, the Third Lease did not become a binding agreement as there was never an execution and delivery thereof by both parties.

Moreover, the Third Lease does not satisfy the statute of frauds because it was never signed by Harris or any agent thereof. S.C. Code Section 32-3-10(4) provides that any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (holding a lease agreement for a period greater than one year, or any modification thereof, must satisfy the statute of frauds).

Finally, the Court finds that Santos failed to exercise her option to renew the First Lease which required delivery via certified mail of written notice of her intention to renew at least one hundred eighty (180) days before the expiration of the First Lease. [Plaintiff's Exhibit 23].

The Court finds that the credible evidence in the record demonstrates that the Third Lease is ineffective and therefore the First Lease expired on August 1, 2016, leaving Santos as a month to month tenant since that date. [Plaintiff's Exhibit 23]. As such, Harris is entitled to ejectment under Case Number 2017-CV-08-10600019.

(2) Failure to Provide Evidence of Insurance Coverage

In Case Number 2017-CV-08-10600019, Harris next argues that Santos defaulted as to Sections 14 and 16 of the First Lease by failing to provide evidence of insurance coverage as demanded by Harris.

Section 14 of the First Lease provides that Santos was to carry at her own expense, public liability insurance coverage on the premises with a company qualified to transact business in South Carolina with liability limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate. Santos was to have Harris and its managing agent named as additional insureds with a certificate of such coverage from the insurer giving thirty (30) days' notice to Harris and its managing agent prior to cancellation or termination was required to be provided to Harris and its managing agent prior to Santos' possession of the premises.

Section 16 of the First Lease provides that Harris carry all-risk insurance coverage on the premises and other buildings in the shopping center and if during the term of the lease, the premises are used for any purpose or in any manner which

causes an increase in the rates of such insurance, Santos shall pay as additional rent the additional premium caused thereby upon ten (10) days written notice to Santos.

On December 21, 2016, counsel for Harris sent an email to counsel for Santos indicating that it was his understanding the insurance certificates for both Latino Mix and El Alamo were set to expire on December 30, 2016. [Plaintiff's Exhibit 9]. Counsel for Harris further indicated that Harris needed to obtain new certificates as soon as possible but no later than December 30, 2016.

Costa DeLuca, employed by Harris, testified that no insurance certificates were ever provided demonstrating that Santos maintained the public liability insurance coverage up to the limits required by the First Lease subsequent to December 30, 2016. Santos did not testify at trial and produced no evidence that insurance certificates were ever provided subsequent to the purported expiration of the initial insurance certificate on December 30, 2016.

Section 18(b) of the First Lease provides that "Lessee shall be in general default if it shall fail to keep or shall violate any other conditions, stipulations, or agreements contained" in the First Lease "on the part of the Lessee to be kept and performed." Section 18(d) provides that "In the event Lessee is in general default, it shall have a grace period of thirty (30) days to cure such default after Lessor shall have mailed, by U.S. Postal Service, Lessee written notice thereof; provided however, if Lessor shall have mailed to Lessee a notice of such default, even though the same shall have been cured and this Lease not terminated, and within twelve (12) months from the date which said notice of default has been mailed by Lessor to Lessee, Lessee shall again be in general default, the same shall be deemed an event of default without any notice or grace period."

While Harris provided Santos with a letter titled "Notice of Default and Right to Cure" on October 13, 2016, regarding liability insurance for the Second Lease, Harris did not provide Santos with notice of default pertaining to her failure to maintain insurance on the First Lease.

The purpose of a notice of default is to give the party allegedly in default an opportunity to cure the default and meet his obligation. Hammond v. Tilghman Lakes, Inc., 295 S.C. 152, 367 S.E.2d 446 (Ct. App. 1988). Forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract both as to time and content. Litchfield Co. of South Carolina, Inc., v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986).

Although counsel for Harris requested new certificates of insurance from Santos on December 21, 2016, Santos was not in default at that time as Harris admits the certificates of insurance expired December 30, 2016. The Court finds that Harris may have had grounds to send a Notice of Default to Santos on December 31, 2016, as result of Santos' potential breach of the First Lease for failing to maintain public liability insurance on the premises. However, nothing in the record evinces that Harris ever provided Santos with the opportunity to cure any such potential breach as provided for in Section 18(d) of the Lease. Whether the Court were to conclude that Santos breached the First Lease by failing to maintain public liability insurance is immaterial as the Court finds that Harris failed to comply with the Notice of Default provisions of the First Lease in giving Santos the opportunity to cure the breach.

Therefore, Harris' request to uphold the eviction of Santos based on the alleged violations of the First Lease as to liability insurance is denied.

D. SECOND LEASE

(1) Failure to Comply with Local Laws and Ordinances

In Case Number 2016CV0810605290, Harris argues first that Santos breached Section 10 of the Second Lease by failing to comply with local laws and ordinances, resulting in revocation of the business license issued by the City of Hanahan in connection with the business operated by Santos and/or Mr. Reyna on the premises. Harris argues that continuing to operate the business without a valid business license also violated the terms and conditions of the Second Lease. Harris further argues that Santos repeatedly violated the International Fire Code regarding the maximum capacity for the building located on the premises, thus violating the terms and conditions of the Second Lease.

The Second Lease prohibits Santos from using the premises for any immoral conduct or illegal activity. [Plaintiff's Exhibit 2, Section 4]. While Santos herself did not testify at trial, her sister, Arelis de Santos Gomez testified that she understood the Second Lease to require her sister to maintain the premises in compliance with local law. Ms. de Santos Gomez acknowledged that violations of local ordinances limiting building occupancy and prohibiting after-hours consumption of alcohol would constitute breaches of the Second Lease. However, she denied that she or her sister had allowed any unlawful activity on the premises.

The Second Lease further requires Santos to keep the premises "in compliance with all laws, ordinances, and requirements of any legally constituted public authority." [Plaintiff's Exhibit 2, Section 10].

At trial, Hanahan Police Chief Dennis Turner testified as to voluminous incident reports prepared by the Hanahan Police Department arising from and connected to the

operation of El Alamo from 2014 to the present day, including alleged violations of local ordinances regarding occupancy, after-hours consumption of alcohol, and selling alcohol without a license.[3] Chief Turner further testified about incident reports related to various physical altercations, including assaulting a police officer, numerous arrests related to alcohol/intoxication, possession of drugs, arrests of an employee of El Alamo for pointing and presenting a firearm on the premises, and noise violations.

While the incident reports do reflect that a substantial amount of criminal activity of third parties has occurred in and around the premises of El Alamo over the last three (3) years to which the City of Hanahan Police Department has responded, most of these incidents involve purported customers of El Alamo rather than the owners, operators, and employees thereof.

Nevertheless, several incident reports detail incidents during which officers cited El Alamo for substantially exceeding its maximum occupancy of ninety-nine (99) persons in violation of the International Fire Code as adopted by the City of Hanahan pursuant to S.C. Code Section 6-9-80. [See Plaintiff's Exhibit 27, pages 44-45, 53, 372, 380]. Officer Cliff Driggers testified that he personally participated in a count of all persons within El Alamo in 2016 in which the occupancy exceeded ninety-nine (99). Driggers further testified that he personally observed patrons of Latino Mix bringing alcohol from Latino Mix to El Alamo and that El Alamo was a "BYOB club" and that nothing was unlawful about customers bringing their own alcohol to El Alamo. It is clear from the evidence presented that Santos' establishment did on at least one occasion permit more persons that allowed by the International Fire Code as adopted by the City

[3] Plaintiff's Exhibit 27, the compilation of incident reports involving El Alamo, was admitted into evidence over Santos' hearsay objection pursuant to Rule 803(8) of the South Carolina Rules of Evidence.

of Hanahan. Thus, the Court finds that Santos violated the Code of Ordinances for the City of Hanahan constituting default under Section 10 of the Second Lease.

Moreover, several incident reports document incidents of El Alamo violating Hanahan Ordinance 4-2 which prohibits onsite consumption of alcohol after 2:00 a.m. [See Plaintiff's Exhibit 27, pages 372, 380, 402, 415, 424, 437, 444, 445, 449, 451, 473]. In addition, the reports detail at least one incident during which El Alamo sold alcohol without a license to do so. [See Plaintiff's Exhibit 27, page 432]. While Santos argues that the ordinance is being challenged in a separate Common Pleas action, Santos acknowledges that it is unnecessary for this Court to analyze that litigation to decide the issues before the Court. It is clear from the evidence presented that Santos' establishment remained open on at least one occasion during the hours prohibited by the ordinance and that during these hours patrons consumed alcoholic beverages in Santos' establishment. Thus, the Court finds that Santos violated the Code of Ordinances for the City of Hanahan constituting default under Section 10 of the Second Lease.[4]

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[4] Due to the alleged criminal activity in and around El Alamo, the Hanahan City Council unanimously voted on May 26, 2016, to revoke the business license of El Alamo. Said revocation was upheld on appeal to the Court of Common Pleas. The Circuit Court's decision to affirm the revocation is currently on appeal to the South Carolina Court of Appeals. Santos argues that Harris "concedes that both the Hanahan City ordinance and South Carolina state law provide an automatic stay for such an appeal." Although Rule 241 of the South Carolina Appellate Court Rules provides that as a general rule, the service of the notice of appeal in a civil matter acts to automatically stay matters decided in the order and to automatically stay the relief ordered in the appealed order, Rule 241 provides that there are exceptions to the general rule found in statutes, court rules, and case law. Hanahan Municipal Ordinance 10-9(b) states that a timely appeal of a business license revocation **does not effectuate a stay of city council's decision to revoke**. Despite such, El Alamo has continued to operate on the premises which Harris argues violates Hanahan City Ordinance 10-2 prohibiting operating of a business without a valid business license. The HPD incident reports evince repeated instances in which El Alamo has been cited for violations of Ordinance 10-2. [Plaintiff's Exhibit 27, pages 444, 448, 449, 451]. Nothing in the record suggests that Santos sought a temporary injunction in an effort to continue business operations during the pendency of the appeal. See Amrik Singh & SBPS, Inc. v. City of Greenville, 384 S.C. 365, 681 S.E.2d 921 (Ct. App. 2009) (Following revocation of business license, owner unsuccessfully sought a temporary injunction to continue business operations during the pendency of the appeal given the Greenville City Ordinance provided that an appeal does not stay the revocation). Nonetheless, the Court finds that no exceptions to the general rule providing for an automatic stay of the business license revocation apply in this particular case. The Court notes that if the Hanahan Municipal Ordinance's

Having determined that Santos breached the Second Lease, the Court must determine whether any notice and cure period applies to Santos' breach of the Lease and, if so, whether proper notice was given and whether Santos cured its defaults.

Mr. DeLuca testified at trial that he personally met with Mr. Reyna at El Alamo in the Fall of 2016 and warned him that violations of local ordinances and criminal activity must stop or Harris would have no choice but to take legal action. On October 13, 2016, Harris provided Santos with a Notice of Default regarding the failure to comply with Section 10 of the Second Lease involving exceeding the maximum occupancy. Nonetheless, these violations have continued well past the cure period. As such, the Court finds that Harris complied with the Notice provisions of the Second Lease.

The Court finds that Santos breached the Second Lease and Harris complied with the Notice of Default provisions therein. The Court must next determine whether said breach was material under the analysis set forth in Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994).

In determining whether Tenant's breach of the Lease was material, the Court must consider (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable

provision regarding the inapplicability of the general rule is upheld, a business would effectively be shut down regardless of whether they prevail on appeal, an application of the law that would effectively eliminate due process. As such, the Court declines to find that Santos breached the lease by continuing to operate El Alamo during the pendency of the appeal of the business license revocation.

assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Kiriakides, supra.

The Court finds that Harris' expectations that Santos will comply with all local and state ordinances are certainly reasonable. The Court concludes that the breaches as proven amounts to those that deprives Harris of the benefit it expected from the Lease itself. The violation of local ordinances, particularly those that relate to fire safety and safety of the general public significantly increases the exposure to Harris as to liability for injuries to persons on the premises and otherwise. Certainly the exposure to liability was an issue contemplated by the Second Lease as the Second Lease requires Santos to keep a minimum of $1,000,000.00/$2,000,000.00 in general liability insurance on the premises with Harris as an additional insured. Harris could not possibly be adequately compensated for Santos' failure to abide by the local ordinances.

The Court finds that that Santos' damages, if the lease is forfeited, include the length of time remaining under the lease alone. However, no testimony was offered at trial as to the potential revenues lost should Santos forfeit the lease. Arelis de Santos Gomez testified as to the amount of work, effort, and her savings that she put into the business and indicated that if put out she would have no money to pay rent as a single mother with a daughter starting college next year. However, Arelis de Santos Gomez is not the tenant of the premises associated with the Second Lease as evinced by her testimony. Aracelis Santos did not testify and presented no evidence as to the extent to which she would suffer forfeiture. The fourth factor examines the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances. Having considered all the circumstances surrounding the Second Lease and Santos' breach, the Court concludes

that Santos was given ample time within which to cure the default and, over time has failed to attempt to cure its default. This Court has no reasonable assurances that Santos will cease to allow El Alamo to remain open and serve alcoholic beverages after hours in the future.

In light of the foregoing, the Court finds Santos' repeated breaches of the lease relating to Sections 4 and 10 of the Second Lease were material and the eviction is upheld.

(2) Public Nuisance

Harris additionally argues that Santos violated the terms and conditions of the Second Lease by creating a public nuisance on the premises and that the Court should uphold the eviction as a result.

South Carolina defines a nuisance as follows:

> A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined and abated as provided in this chapter.

S.C. Code Section 15-43-10(A). "Continuous breach of the peace" means a pattern of repeated acts or conduct which either (1) directly disturbs the public peace or (2) disturbs the public peace by inciting or tending to incite violence. S.C. Code Section 15-43-10(B).

S.C. Code Section 15-43-20 provides that the Attorney General, the solicitor in the judicial district in which the alleged nuisance is kept, or any citizen of this State may

bring suit for injunction of the nuisance as to the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists. S.C. Code Section 15-43-20.

Santos argues that the procedure set forth in Title 15 is the only means by which a nuisance may be established under South Carolina law and that this Court may not determine whether the actions or inactions of El Alamo constituted a nuisance. The Court disagrees. The Court must determine whether Santos kept the premises "in compliance with laws, ordinances and requirements of any legally constituted public authority." [Plaintiff's Exhibit 2, Section 10]. The Court finds that this provision of the lease contemplates not only that a magistrate would have to determine whether Santos violated the ordinances of the City of Hanahan (which the Court finds she has), it also contemplates that a magistrate would have to determine whether Santos violated the laws of the State of South Carolina which certainly include the laws pertaining to public nuisance. While the procedure set forth in Title 15 certainly provides a means by which a Court of equity may grant an injunction as to a nuisance, nothing therein prohibits the magistrate court from determining the existence of said nuisance as a ground for ejectment. To hold otherwise would render the foregoing provision of the Second Lease, a provision common to nearly all commercial and residential leases in South Carolina, meaningless. Santos and Harris entered into a lease that requires Santos to comply with all laws of any legally constituted public authority. Whether Santos has breached said lease is necessarily determined by this Court and this Court alone. This Court cannot and will not enjoin Santos from operating her business as contemplated by the procedures regarding public nuisances as set forth in Title 15. However, if this Court determines that Santos has breached the Second Lease, the Court may uphold

Harris' application for ejectment, simply preventing Santos from operating her business **on Harris' property**.

It is a sound principle of South Carolina law that "if one maintains a place where the laws are publicly, repeatedly, persistently, and intentionally violated, then such place would become a common or public nuisance." State v. Turner, 198 S.C. 499, 18 S.E.2d 376 (1942); see also State ex rel. Hembree v. Sherald, 2010 WL 10085571 (U.P. Ct. App. 2010). A business may become a nuisance by the manner in which it is conducted, and by the conduct of the persons assembling in and around it. Turner, supra.

The evidence in the record suggests that the number of calls for service to the Hanahan Police Department for El Alamo far exceeds the number of calls for service for the three (3) other establishments in Hanahan that allow for on-premises consumption of alcohol (LG's, Buccas, and Hanahan's). Chief Turner testified that the Hanahan Police Department has been required to devote so much time to El Alamo that it hampers the HPD's ability to address criminal activity elsewhere in the city. Chief Turner further testified that the HPD is forced to address an incident at El Alamo each and every weekend and, because of the danger posed by prior incidents of violence and weapons at El Alamo, the HPD must send multiple officers to El Alamo to address the issues. Two local business owners testified regarding disruption to the surrounding areas caused by disturbances at El Alamo, particularly as to the signage for one business being destroyed by a patron of El Alamo and the disturbances to the other's customers, tenants in a mobile home park adjacent to El Alamo.

As indicated previously herein, a substantial amount of criminal activity of third parties has occurred in and around the premises of El Alamo over the last three (3)

years to which the City of Hanahan Police Department has responded, most of these incidents involving purported customers of El Alamo rather than the owners, operators, and employees thereof. However, there were many instances during which the owners, operators, and employees of El Alamo violated the municipal ordinances of the City of Hanahan and the International Fire Code.

The Court finds that the credible evidence in the record demonstrates that Santos has maintained El Alamo as a place where the laws are publicly, repeatedly, persistently, and intentionally violated, thus disturbing the public peace. While Santos asserts that the only evidence of nuisance produced by Harris consists of incident reports relating to third parties associated with El Alamo as opposed to Santos herself, it is apparent from the record that Santos has conducted her business in a manner which encourages violations of the various municipal ordinances and which attracts patrons whose conduct violates the various local and state laws. The Court finds that El Alamo became a nuisance by the manner in which it was conducted and by the conduct of the persons assembling in and around it and therefore breached the Second Lease. The Court further finds that in examining the factors as set forth in Kiriakides, said breach was material. As set forth previously herein, Harris' expectations that Santos will comply with all local and state laws are certainly reasonable. The Court concludes that the breaches as proven amount to those that deprive Harris of the benefit it expected from the Lease itself. Violations of state law, just as those involving municipal ordinances, significantly increase the exposure to Harris as to liability for injuries to persons on the premises and otherwise. Likewise, Harris could not possibly be adequately compensated for Santos' failure to abide by the laws pertaining to public nuisance. Having considered all the circumstances surrounding the Second Lease and

Santos' breach, the Court concludes that Tenant was given ample time within which to cure the default and, over time has failed to attempt to cure its default. This Court has no reasonable assurances that Santos will cease to allow El Alamo to remain open without constituting a public nuisance. As such, the eviction is upheld.

(3) Failure to Provide Evidence of Insurance Coverage

In Case Number 2016CV0810605290, Harris argues Santos breached the Second Lease by failing to provide evidence of insurance.

The Second Lease requires Santos to "keep in full force and effect" public liability insurance on the premises in which both Santos and Harris are named as the insured with a single limit of $1,000,000.00 and an aggregate of $2,000,000.00. [Plaintiff's Exhibit 2, Section 8]. The Second Lease expressly requires Santos to provide a certificate of insurance "not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease." [Plaintiff's Exhibit 2, Section 8].

Santos obtained insurance for the calendar year 2016 and provided a certificate of insurance to Harris. [Plaintiff's Exhibit 8]. Harris provided Santos with a letter titled "Notice of Default and Right to Cure" on October 13, 2016, regarding liability insurance for the Second Lease. In this letter, Harris' CFO Eric C. Coulter stated to Santos, "At this time we are requesting you increase the liability insurance to Single limit of $3,000,000.00 and an Aggregate of $6,000,000.00. Please provide an updated insurance certificate within 10 business days. Failure to provide increased insurance coverage will cause a default in the lease after October 31, 2016." [Plaintiff's Exhibit 3]. However, nothing in the Second Lease requires Santos to increase the limits of liability upon demand but rather only pay upon demand as additional rent any increase in

premiums of insurance carried by Harris on the Premises resulting from Santos' occupancy or improvements. [Plaintiff's Exhibit 2, Section 8]. No evidence was presented at trial that Harris obtained additional insurance and/or demanded an increase in rent as a result.

On December 21, 2016, counsel for Harris sent an email to counsel for Santos indicating that it was his understanding the insurance certificates for both Latino Mix and El Alamo were set to expire on December 30, 2016. [Plaintiff's Exhibit 9]. Counsel for Harris further indicated that Harris needed to obtain new certificates as soon as possible but no later than December 30, 2016.

Costa DeLuca, employed by Harris, testified that no insurance certificates were ever provided demonstrating that Santos maintained the public liability insurance coverage up to the limits required by the Second Lease subsequent to December 30, 2016. Santos did not testify at trial and produced no evidence that insurance certificates were ever provided subsequent to the purported expiration of the initial insurance certificate on December 30, 2016.

Nonetheless, while Harris has proven by the preponderance of the evidence that Santos did not provide a certificate of insurance prior to the expiration of the 2016 calendar year insurance policy, the record is devoid of any evidence that constitutes a notice of default (and right to cure) as to her failure to do so. As indicated previously herein, the purpose of a notice of default is to give the party allegedly in default an opportunity to cure the default and meet his obligation. Hammond v. Tilghman Lakes, Inc., 295 S.C. 152, 367 S.E.2d 446 (Ct. App. 1988). Forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract both as to

time and content. Litchfield Co. of South Carolina, Inc., v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986).

Although counsel for Harris requested new certificates of insurance from Santos on December 21, 2016, the Court finds that this email did not constitute written notice of default. Moreover, nothing in the record evinces that Harris ever provided Santos with the opportunity to cure any such potential breach as provided for in Section 30 of the Second Lease. The fact that Santos breached the Second Lease by failing to maintain public liability insurance is immaterial as the Court finds that Harris failed to comply with the Notice of Default provisions of the Second Lease in giving Santos the opportunity to cure the breach.

Therefore, Harris' request to uphold the eviction of Santos based on the alleged violations of the Second Lease as to liability insurance is denied.

(4) Violation of Prohibition on Third-Party Occupancy

Harris additionally alleges that Santos violated the Second Lease by allowing Reyna to operate a business on the premises. As with issues pertaining to Financial Default, Harris did not plead in its Application for Ejectment this issue. Nonetheless, the Court finds that the parties tried this issue by implied consent.

The Second Lease provides that Santos "shall not, without written consent of [Harris], in each case . . . sublet the Premises or any part thereof or permit the Premises to be occupied by other persons." [Plaintiff's Exhibit 2, Section 12].

Harris alleges that whereas Santos is the tenant under the Second Lease, she never operated a business on the premises. Harris alleges that because the business license for El Alamo was obtained and held by Reyna instead of Santos, Santos was in effect permitting the premises to be occupied by other persons. However, Reyna and

Santos' sister, Arelis de Santos Gomez, have been living in a long-term monogamous relationship and describe one another as his or her "significant other."

It is worthy to note that it is Reyna, not Santos, that summarized the concept of El Alamo to Harris as early as February 26, 2013. [Plaintiff's Exhibit 20]. Harris additionally served Reyna with its Notice of Default in October of 2016. [Plaintiff's Exhibit 4]. The Court finds that Harris impliedly consented to Reyna operating El Alamo, regardless of whether he was doing so on his own or at the direction or under the supervision of Santos. As such, the Court finds that Santos did not breach the Second Lease as to Section 12, "Assignment or Sublease."

Moreover, even if the Court would have held that Reyna's operation of El Alamo constituted a breach, the record is devoid of any evidence that Harris provided Santos with notice of default as to this section of the Second Lease and an opportunity to cure. Thus, Harris failed to comply with the Notice of Default provisions of the Second Lease in giving Santos the opportunity to cure the breach and as such, the Application for Ejectment as to this particular ground is denied.

III. Conclusion

The Court finds that while Santos breached the First and Second Leases by failing to pay rent when due or demanded, the breach was not so substantial or fundamental to justify forfeiture.

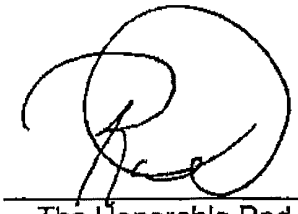
The Court further finds that Harris failed to meet its burden as to Santos' failure to provide proof of sufficient liability insurance under the First Lease. Moreover, even if Santos was in default in that regard, Santos was not given proper notice under the First Lease to cure the default. However, the Court finds that the First Lease expired, Santos became a month to month tenant as to Latino Mix, and notice was properly given

regarding Harris' intention not to renew said First Lease. As such, Application for Ejectment sought in Case Number 2017CV0810600019 is granted.

The Court finds that Harris met its burden as to Santos' failure to provide proof of sufficient liability insurance under the Second Lease. However, Santos was not given proper notice under the Second Lease to cure the default. The Court finds that Harris failed to meet its burden of proof as to Santos' violation of the Second Lease's prohibition against third-party occupancy and that even if Santos was in default thereof, Santos was not given property notice under the Lease to cure the default. Nonetheless, the Court finds that Santos failed to comply with local ordinances and created a public nuisance on the premises and that said breaches were material. As such, the Application for Ejectment sought in Case Number 2016CV0810605290 is granted.

The Clerk is directed to provide a copy of this Order to counsel for both Landlord and Tenant. All post-trial motions, including those pertaining to the request for attorney fees pursuant to either Lease, shall be filed with the Court within ten (10) days of the receipt of the within Order.

IT IS SO ORDERED.



The Honorable Rad S. Deaton
Berkeley County Magistrate

December 17, 2017
Charleston, South Carolina

Counsel for Harris: Merrit G. Abney, Esquire
Counsel for Santos: Thomas R. Goldstein, Esquire

ORDER DENYING RECONSIDERATION

FEBRUARY 2, 2018

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBER: 2017-CV-08-10600019
)	2016-CV-08-10605290
)	
HARRIS INVESTMENTS)	
HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
ARACELIS SANTOS,)	
)	
Defendant.)	

THIS MATTER comes before the Court on February 1, 2018, upon the Defendant's Motion for New Trial filed on December 15, 2018, in the above-captioned actions.

During the Court's discussion with counsel regarding the Defendant's grounds for her motion, counsel for both parties indicated that the Defendant was in the process of or had already vacated the premises used as "Latino Mix," the convenience store. Counsel agreed that the Defendant's Motion for a New Trial as to Case Number 2017-CV-08-10600019 was moot. As grounds 1(A) and 1(B) listed in the Defendant's Motion pertain only to the aforementioned case number and premises, the Court need not address this issue as the parties agree said issue is moot.

With respect to the remaining ground for a new trial, the Court finds that sufficient evidence was presented at trial to support the findings of fact and conclusions of law set forth in the Court's Order dated December 7, 2017, regarding the existence of a nuisance.

For the foregoing reasons, the Defendant's Motion for a New Trial is denied.

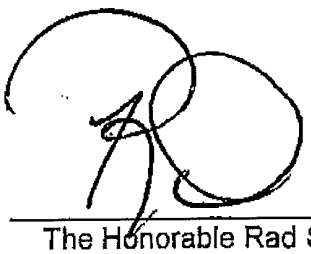
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IT IS SO ORDERED.



The Honorable Rad S. Deaton
Berkeley County Magistrate

February 2, 2018
Charleston, South Carolina

Counsel for Plaintiff: Merrit G. Abney, Esquire
Counsel for Defendant: Thomas R. Goldstein, Esquire

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ORDER ON ATTORNEY'S FEES

FEBRUARY 9, 2018

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
COUNTY OF BERKELEY)	CASE NUMBER: 2017-CV-08-10600019 2016-CV-08-10605290
HARRIS INVESTMENTS HOLDINGS, LLC,)	
Plaintiff,)	
v.)	ORDER
ARACELIS SANTOS,)	
Defendant.)	

THIS MATTER comes before the Court on February 1, 2018, upon the Plaintiff's Motion for Award of Attorney's Fees filed on December 21, 2017, in the above-captioned actions. The Defendant filed a Reply to Plaintiff's Request for Attorney's Fees on January 25, 2018.

Present at the hearing were counsel for the Plaintiff, Merritt G. Abney, and counsel for the Defendant, Thomas R. Goldstein. The Court engaged in meaningful discussions regarding the applicable law and issues raised in the Plaintiff's Motion and the Defendant's Reply.

The general rule in South Carolina is that attorney's fees are not recoverable unless authorized by contract or statute. Baron Data Systems, Inc. v. Loter, 377 S.E.2d 296, 297 S.C. 382 (1989). In awarding reasonable attorney's fees, there are six factors to be considered by the Court: 1) The Nature, Extent, and Difficulty of the Legal Services Rendered; 2) The Time and Labor Necessarily Devoted to the Case; 3) The Professional Standing of Counsel; 4) The Contingency of Compensation; 5) The fee Customarily Charged in the Locality for Similar Legal Services; and 6) The Beneficial Results Obtained. Id. See also Rule 1.5 of the S.C. Rules of Professional Conduct.

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In the instant case, the May 22, 2014, lease ("the First Lease") provides in pertinent part:

> In the event that any legal matter, dispute, action or proceeding exist [sic] or is commenced by or between Lessor and Lessee under this Lease, the prevailing party shall be reimbursed reasonable attorney fees and court cost [sic] in such matter.

First Lease, Paragraph 46.

The December 1, 2015, lease ("the Second Lease") provides as follows:

> In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

Second Lease, Paragraph 32.

The foregoing paragraphs of the respective leases clearly demonstrate that the contracts between the parties provided for reasonable attorney's fees and costs to "the prevailing party" as related to the First Lease and to the Landlord as related to the Second Lease.

The Defendant first contends that the Plaintiff is not a "prevailing party," arguing that neither the Plaintiff nor the Defendant are the prevailing party in these cases because the Defendant prevailed on many of the issues and the Plaintiff prevailed on many of the issues. A "prevailing party" is the one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention and is the one in whose favor the decision or verdict is rendered and judgment entered. Seckinger v. The Vesselm Excalibur, 483 S.E.2d 775, 326 S.C. 382 (Ct. App. 1997). A party need not be successful as to all issues in order to be found to be a prevailing party. Id. While the Plaintiff did not prevailED

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on each and every issue or claim presented in its pleadings, the Plaintiff prevailed on the ultimate issue in each action, the ejectment of the Defendant. As such, the Court finds that the Plaintiff is the prevailing party in this matter.

The Defendant next asserts that this Court is without jurisdiction to award an amount of attorney's fees in excess of the Court's general jurisdictional amount, $7,500.00, citing S.C. Code Section 22-3-10. The Defendant argues that the attorney's fee award is a "money judgment" and therefore the Court lacks jurisdiction over the above-referenced dollar amount. The magistrate's court has concurrent jurisdiction with the circuit court in contract actions for the recovery of money only, if the sum claimed does not exceed $7,500. S.C. Code 22-3-10(1); see Mosseri, Mosseri, Castro v. Austin's at the Beach, Inc., 642 S.E.2d 760, 372 S.C. 593 (Ct. App. 2007). This jurisdictional limit does not apply to "matters between landlord and tenant and the possession of land as provided in Chapters 33 through 41 of Title 27...." S.C. Code Section 22-3-10(10), Id. The Magistrate Court will retain jurisdiction in cases involving landlord and tenant and the possession of land even when any counterclaim exceeds $7,500. S.C. Code Section 22-3-10(12), Id. In cases that do not fall under S.C. Code Section 22-3-10(12) when a counterclaim is filed which if successful would exceed the civil jurisdictional amount as provided in Section 22-3-10, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit. S.C. Code Section 22-3-30, Id. Chapters 33 through 41 of title 27 of the South Carolina Code deal with creation, construction and termination of leasehold estates, ejectment of tenants, rent, undertenants of life tenants, and the Residential Landlord Tenant Act (which is not applicable to non-residential leaseholds). Mosseri, Mosseri, Castro, supra. The common theme of chapters 33 through 41 is possession of

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the property. Id. The instant cases were clearly matters between landlord (the Plaintiff) and tenant (the Defendant). The cases clearly involve the possession of land as both were initiated by the filing of an application for ejectment requesting that the Court evict the Defendant from the leased premises. Whereas the statute sets forth explicitly that the Court retains jurisdiction over counterclaims which exceed the jurisdictional limit in these matters, the statute is silent as to attorney's fees. However, the plain meaning of the statute indicates that this Court has jurisdiction over "all matters" between landlord and tenant and the possession of land. The Court finds that "all matters" includes a request for attorney's fees pursuant to a valid lease.[1]

The Nature, Extent, and Difficulty of the Legal Services Rendered

Although these matters were litigated in the magistrate court and without formal discovery, the parties' attorneys attended several hearings, including those pertaining to the Defendant's Motions for Removal, the Plaintiff's Motions for Summary Judgment, the Defendant's motion to dismiss her counterclaims, the hearing on the merits which lasted a full day with eight (8) witnesses, and the Defendant's Motion for New Trial which was heard in conjunction with the within Motion. These matters were highly contested and, as was the case in Loter, supra, were transformed from simple commercial eviction matters, if such things exist, into complex litigation. As such, the Court finds that the nature, extent, and difficulty of the legal services rendered in these matters was of such a nature that warrants an award of attorney's fees.

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[1] See also 1987 Op. Atty Gen, No. 87-10, p 45, wherein the South Carolina Attorney General opined that in matters brought pursuant to the South Carolina Residential Landlord and Tenant Act, the Magistrate Court has concurrent jurisdiction to include those cases brought pursuant to the Act where damages or attorney's fees may exceed the typical (then) $1,000.00 jurisdictional limit established by S.C. Code Section 22-3-10. The Court finds the reasoning therein to be sound and equally applicable to commercial eviction matters.

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The Time and Labor Necessarily Devoted to the Case

The Court has meticulously reviewed the time sheets provided by the as well as the Affidavit of Plaintiff's counsel in support of this Motion. The Court recognizes that these matters were time-consuming matters given the issues and contentious motions filed, briefed, and argued. The Court finds that the majority of the time and labor spent on the part of counsel for the Plaintiff and his staff was reasonable and not duplicative and thus an award of attorney's fees is warranted.

The Professional Standing of Counsel

The Court finds that based on the aforementioned Affidavit of Plaintiff's counsel, the Motion, timesheets, and conduct throughout these proceedings that counsel for both parties are experienced commercial litigators enjoying strong reputations in the legal community.

The Contingency of Compensation

This factor is inapplicable to the present cases as the fee arrangement between the Plaintiff and its counsel was not based upon a contingency fee.

The Customary Fee for Like Work

The first step in setting a reasonable fee is determining the appropriate hourly rate. See Liberty Mut. Ins. Co. v. Employee Resource Management, Inc., 176 F.Supp. 510 (D.C.S.C. 2001). The reasonableness of the attorney's hourly rate is determined by the prevailing market rates in the relevant community. Id. The court must assess the experience and skill of the prevailing parties' attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience and reputation. Id.

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The Court finds that the rates charged in these matters were reasonable in the Charleston metropolitan market for Family Court, Circuit Court or Federal Court litigation based upon counsel's extensive experience and the Court's familiarity with attorney's fees customarily charged in the legal community.

However, the Court finds that while counsel for the Plaintiff reduced his hourly rate from his customary $400.00/$450.00 per hour to $380.00 per hour, the hourly rate charged exceeds the hourly rates in the Charleston area for commercial evictions in magistrate court. Moreover, the Court finds that the hourly rate for the paralegal ($205.00) and project assistant ($115.00) exceed those of the prevailing market rates in the community.

As such, for purposes of the attorney's fees award in the present matters, the Court reduces counsel for the Plaintiff's hourly rate to $280.00 per hour, a rate the Court finds commensurate with the prevailing market rates for practitioners in the magistrate courts of the Charleston market. Additionally, the Court finds it appropriate to reduce the paralegal hourly rate to $125.00 per hour and the project assistant to $80.00 per hour.

The Beneficial Results Obtained

The Court finds that the total benefit obtained by the Plaintiff in the matters currently before the Court was the ejectment of the Defendant. While the result was not financially significant in terms of a dollar figure, the Plaintiff prevailed on the ultimate result that it sought, thus accomplishing the aims of the suit.

The Court finds that the majority of the claims upon which the Plaintiff prevailed were related substantially to the claims in which it did not. See Hensley v. Eckerhart, 461 U.S. 424 (1983) (Where the plaintiff has failed to prevail on a claim that is distinct in

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all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee. Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised). The Court concludes that the successful and unsuccessful claims in these cases arose from a "common core of facts", and it is impossible to accurately separate out counsel for the Plaintiff's work on each different issue. This is also not a case where the unsuccessful theory so drove the evidentiary hearing and as such must in fairness be apportioned. Moreover, the Court sees no obvious way to reduce the award by a percentage of successful claims versus unsuccessful claims.

The Defendant contends that the charges submitted by the Plaintiff should "shock the conscience" of the Court. While certainly this Court rarely, if ever, sees attorney's fee affidavits which demonstrate over one hundred hours spent litigating a case in magistrate court or one in which the attorney's fee request exceeds fifty thousand dollars ($50,000.00), the Court must consider the relationship of the parties and the nature of their contract in its analysis. The Plaintiff and Defendant are parties to two (2) separate commercial leases presumably entered after arms-length negotiations. While the Plaintiff corporation was likely more sophisticated than the Defendant in terms of business experience, the Defendant was aware of the contractual provision in the leases with respect to attorney's fees and the potential application thereof. In the context of the complex world of commercial real estate, regardless of the level of the court in which the case was tried, this Court cannot find that an attorney's fee request of this magnitude shocks the conscience of the Court.

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Magistrate Office

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Nevertheless, while the majority of the time and labor spent on the part of counsel for the Plaintiff in this matter was reasonable and not duplicative, the Court finds that any award of attorney's fees and costs in these matters should be reduced by some time the Court finds duplicative and the amount of costs other than "court" costs.

As such, and based upon the foregoing factors and relevant law, the Court finds that the Plaintiff is entitled to an award as follows: $34,608.00 in attorney's fees based upon 123.6 hours of time, $862.50 in fees for 6.9 hours of paralegal time, $312.00 in fees for 3.9 hours of project assistant time, and $104.73 in costs, for a total of **$35,887.23.**

IT IS SO ORDERED.

The Honorable Rad S. Deaton
Berkeley County Magistrate

February 9, 2018
Charleston, South Carolina

Counsel for Plaintiff: Merrit G. Abney, Esquire
Counsel for Defendant: Thomas R. Goldstein, Esquire

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FEB 09 2018
Goose Creek
Magistrate Office

ORDER ON APPEAL BOND

FEBRUARY 26, 2018

STATE OF SOUTH CAROLINA	)	**2016CV0810605290**
	)	CIVIL CASE NUMBER
COUNTY OF BERKELEY	)	**MAGISTRATE'S COURT**
	)	
	)	**BOND TO STAY EXECUTION**
	)	**ON APPEAL**

Harris Investment Holdings, Llc

LANDLORD

Vs

Aracelis Santos
5901 Loftis Road Suite #2, 4
Hanahan, SC 29410

TENANT(S)

TO: Circuit Court

Now comes the Tenant(s) in the above entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on **December 7, 2017**, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of **$2,852.00** per month, due on the **1st** day of each month late after the **5th** day of the month.

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejectment until this matter is heard on appeal and decided by the Circuit Court.

BOND: $59,295.23 due within 5 days of the date of this hearing and if not paid then the appeal could be dismissed.

Dated on February 26, 2018:

Tenant(s) Thomas R. Goldstein

Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

Dated on February 26, 2018

JUDGE

Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Phone: (843) 553-7080
Fax: (843) 553-7074

MV125

ORDER ON RECONSIDERATION

MARCH 7, 2018

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBER: 2016-CV-08-10605290
)	
HARRIS INVESTMENTS HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
ARACELIS SANTOS,)	
)	
Defendant.)	

THIS MATTER comes before the Court on March 7, 2018, upon the Defendant's Motion to Amend filed on March 2, 2018, in the above-captioned action.

Following the Court's decision in the underlying action and its companion case, 2017-CV-08-10600019, the Court held a hearing on February 26, 2018, to set the bond to stay the ejectment on appeal pursuant to S.C. Code Section 27-37-130. Bond was set in the amount of fifty-nine thousand two hundred ninety-five dollars and twenty-three cents ($59,295.23) and the Defendant was ordered to undertake to pay the periodic rent due under the lease. This Motion followed.

Both parties acknowledge that the Court's February 26, 2018, Bond to Stay Execution on Appeal has not been complied with.

Counsel for the Plaintiff argues that the Court cannot consider the Defendant's Motion to Amend, indicating that the statute does not provide for a reconsideration of the Bond to Stay. However, Rule 19 of the South Carolina Magistrate Court Rules provides that in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code, a motion to alter or amend a judgment shall be filed no later than five (5) days after notice of the judgment. Rule 1 of the South Carolina

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Magistrates Court Rules provides that "judgment" means the decision of the court on the case. This Court finds that its Bond to Stay Execution on Appeal is in fact a judgment and that the Defendant timely filed her Motion to Amend. As such, the Court must consider and rule upon the Defendant's Motion.

The amount of bond is a matter of sound discretion for the Court. United Dominion Realty Trust v. Wal-Mart Stores, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992).

As to the bond itself, "[a]n appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond **as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby**. . . ." S.C. Code Section 27-37-130 [emphasis added].

The Defendant first argues that S.C. Code Section 27-37-130 does not permit the Court to set the bond to stay upon the consideration of the Court's own award of attorney's fees to the prevailing party. The Court finds that it has discretion to set a bond based on all facts and circumstances surrounding the underlying action, including any damages and costs that would occur during the appeal of its decision. The Court finds it significant that the legislature included the phrase "**as in other civil cases**," in Section 27-37-130 as appeals from the magistrate court in other civil cases are governed by Rule 18 of the Magistrates Court Rules and S.C. Code Section 18-7-10. S.C. Code Section 18-7-10 provides in pertinent part:

> When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and **shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of**

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> the judgment and costs in the event that he fail to sustain such appeal. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal. . . .

S.C. Code Section 18-7-10 [emphasis added]. Thus, "in other civil cases," an appeal from the magistrate court only stays the execution of a judgment if a good and sufficient bond with surety to pay the amount of the judgment and costs is executed by the party against whom judgment was rendered "in the event that he fail[s] to sustain such appeal." In the instant matter, while the underlying request for relief was ultimately ejectment of the Defendant, a judgment for attorney's fees was entered against the Defendant pursuant to her valid commercial lease with the Plaintiff.[1] The inability of the Plaintiff to collect such a judgment during the pendency of the appeal and following the appeal's conclusion, which could be months and even years down the road, is an element of damages within the consideration of the Court. The Court finds that a bond sufficient to satisfy the judgment rendered against the Defendant is reasonable in the event that she fails to sustain her appeal. As such, the Court finds that it is well within its discretion pursuant to the obligations of S.C. Code Section 27-37-130 to set the Bond to Stay in the amount previously ordered.

In Horn v. Blackwell, 212 S.C. 480, 48 S.E.2d 322 (1948), the South Carolina Supreme Court held that the South Carolina General Assembly may lawfully require the filing of a bond under consideration as a condition precedent to the right to appeal from an order of ejectment. The Court in Blackwell reasoned that it was "not unaware of the fact that such a requirement may impose a hardship upon some tenants, but [the Court is] here dealing with the power of the General Assembly and not with the question of

[1] In its prior order regarding attorney's fees, this Court has already concluded that the magistrate court has jurisdiction over all matters between landlord and tenant, including attorney's fee provisions contained in a commercial lease regardless of whether the claim therefore exceeds the typical $7,500.00 jurisdictional limit.

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whether such power was wisely exercised." Blackwell, 48 S.E.2d 323. The Defendant argues not that the requirement of the bond itself is unconstitutional but rather that the amount of the bond itself deprives the Defendant of due process. The Court finds that while the Bond to Stay in this matter may impose a hardship upon the Defendant and be difficult to execute given her financial circumstances, the amount itself in the context of an action involving the breach of a commercial lease is not in and of itself unconstitutional. See Dominion, supra (After directing a verdict in favor of the landlord, the magistrate set an appeal bond in the amount of one hundred thousand dollars ($100,000.00)). The Defendant may pursue her appeal and obtain all due process afforded her, but to do so she must give bond as a condition precedent therefore.

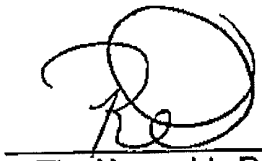
For the foregoing reasons, the Defendant's Motion to Amend is denied.

As such, the Court's previous Bond to Stay Execution on Appeal in the amount of $59,295.23 shall be posted on or before March 14, 2018.[2] The Defendant shall undertake to pay the periodic rent hereinafter due according to the lease agreement plus the aforementioned bond. Upon execution of the bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If the Defendant fails to make any rental payment within five (5) days of the due date, upon application of the Plaintiff, the stay of execution shall be lifted, the appeal by the Defendant to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant.

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[2] Intermediate Saturdays and Sundays are excluded in the computation of the five (5) days pursuant to Rule 3 of the South Carolina Magistrates Court Rules.

IT IS SO ORDERED.



The Honorable Rad S. Deaton
Berkeley County Magistrate

March 7, 2018
Goose Creek, South Carolina

Counsel for Plaintiff: Merrit G. Abney, Esquire
Counsel for Defendant: Thomas R. Goldstein, Esquire

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MAR 07 2018
Goose Creek
Magistrate Office

ORDER DENYING MOTION TO AMEND BOND

MARCH 7, 2018

STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBER: 2016-CV-08-10605290
)	
HARRIS INVESTMENTS HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
ARACELIS SANTOS,)	
)	
Defendant.)	
)	

THIS MATTER comes before the Court on March 7, 2018, upon the Defendant's Motion to Amend filed on March 2, 2018, in the above-captioned action.

Following the Court's decision in the underlying action and its companion case, 2017-CV-08-10600019, the Court held a hearing on February 26, 2018, to set the bond to stay the ejectment on appeal pursuant to S.C. Code Section 27-37-130. Bond was set in the amount of fifty-nine thousand two hundred ninety-five dollars and twenty-three cents ($59,295.23) and the Defendant was ordered to undertake to pay the periodic rent due under the lease. This Motion followed.

Both parties acknowledge that the Court's February 26, 2018, Bond to Stay Execution on Appeal has not been complied with.

Counsel for the Plaintiff argues that the Court cannot consider the Defendant's Motion to Amend, indicating that the statute does not provide for a reconsideration of the Bond to Stay. However, Rule 19 of the South Carolina Magistrate Court Rules provides that in cases involving landlords and tenants under Chapters 37 and 40, Title 27 of the South Carolina Code, a motion to alter or amend a judgment shall be filed no later than five (5) days after notice of the judgment. Rule 1 of the South Carolina

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Magistrates Court Rules provides that "judgment" means the decision of the court on the case. This Court finds that its Bond to Stay Execution on Appeal is in fact a judgment and that the Defendant timely filed her Motion to Amend. As such, the Court must consider and rule upon the Defendant's Motion.

The amount of bond is a matter of sound discretion for the Court. United Dominion Realty Trust v. Wal-Mart Stores, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992).

As to the bond itself, "[a]n appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond **as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby**. . . ." S.C. Code Section 27-37-130 [emphasis added].

The Defendant first argues that S.C. Code Section 27-37-130 does not permit the Court to set the bond to stay upon the consideration of the Court's own award of attorney's fees to the prevailing party. The Court finds that it has discretion to set a bond based on all facts and circumstances surrounding the underlying action, including any damages and costs that would occur during the appeal of its decision. The Court finds it significant that the legislature included the phrase "**as in other civil cases**," in Section 27-37-130 as appeals from the magistrate court in other civil cases are governed by Rule 18 of the Magistrates Court Rules and S.C. Code Section 18-7-10. S.C. Code Section 18-7-10 provides in pertinent part:

> When a judgment is rendered by a magistrates court, by the governing body of a county or by any other inferior court or jurisdiction, save the probate court, the appeal shall be to the circuit court of the county wherein the judgment was rendered and **shall amount to a supersedeas if the party against whom judgment is rendered shall execute a good and sufficient bond with surety to pay the amount of**

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Magistrate Office

> **the judgment and costs in the event that he fail to sustain such appeal**. And in all cases in which such bond with surety shall be filed no executions shall issue until the termination of such appeal. . . .

S.C. Code Section 18-7-10 [emphasis added]. Thus, "in other civil cases," an appeal from the magistrate court only stays the execution of a judgment if a good and sufficient bond with surety **to pay the amount of the judgment and costs** is executed by the party against whom judgment was rendered "in the event that he fail[s] to sustain such appeal." In the instant matter, while the underlying request for relief was ultimately ejectment of the Defendant, a judgment for attorney's fees was entered against the Defendant pursuant to her valid commercial lease with the Plaintiff.[1] The inability of the Plaintiff to collect such a judgment during the pendency of the appeal and following the appeal's conclusion, which could be months and even years down the road, is an element of damages within the consideration of the Court. The Court finds that a bond sufficient to satisfy the judgment rendered against the Defendant is reasonable in the event that she fails to sustain her appeal. As such, the Court finds that it is well within its discretion pursuant to the obligations of S.C. Code Section 27-37-130 to set the Bond to Stay in the amount previously ordered.

In Horn v. Blackwell, 212 S.C. 480, 48 S.E.2d 322 (1948), the South Carolina Supreme Court held that the South Carolina General Assembly may lawfully require the filing of a bond under consideration as a condition precedent to the right to appeal from an order of ejectment. The Court in Blackwell reasoned that it was "not unaware of the fact that such a requirement may impose a hardship upon some tenants, but [the Court is] here dealing with the power of the General Assembly and not with the question of

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[1] In its prior order regarding attorney's fees, this Court has already concluded that the magistrate court has jurisdiction over all matters between landlord and tenant, including attorney's fee provisions contained in a commercial lease regardless of whether the claim therefore exceeds the typical $7,500.00 jurisdictional limit.

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MAR 07 2018
Goose Creek
Magistrate Office

whether such power was wisely exercised." Blackwell, 48 S.E.2d 323. The Defendant argues not that the requirement of the bond itself is unconstitutional but rather that the amount of the bond itself deprives the Defendant of due process. The Court finds that while the Bond to Stay in this matter may impose a hardship upon the Defendant and be difficult to execute given her financial circumstances, the amount itself in the context of an action involving the breach of a commercial lease is not in and of itself unconstitutional. See Dominion, supra (After directing a verdict in favor of the landlord, the magistrate set an appeal bond in the amount of one hundred thousand dollars ($100,000.00)). The Defendant may pursue her appeal and obtain all due process afforded her, but to do so she must give bond as a condition precedent therefore.

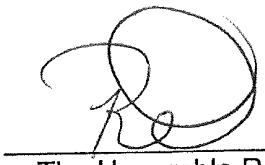
For the foregoing reasons, the Defendant's Motion to Amend is denied.

As such, the Court's previous Bond to Stay Execution on Appeal in the amount of $59,295.23 shall be posted on or before March 14, 2018.[2] The Defendant shall undertake to pay the periodic rent hereinafter due according to the lease agreement plus the aforementioned bond. Upon execution of the bond, execution on the judgment of ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If the Defendant fails to make any rental payment within five (5) days of the due date, upon application of the Plaintiff, the stay of execution shall be lifted, the appeal by the Defendant to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant.

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MAR 07 2018
Goose Creek
Magistrate Office

[2] Intermediate Saturdays and Sundays are excluded in the computation of the five (5) days pursuant to Rule 3 of the South Carolina Magistrates Court Rules.

IT IS SO ORDERED.



The Honorable Rad S. Deaton
Berkeley County Magistrate

March 7, 2018
Goose Creek, South Carolina

Counsel for Plaintiff: Merrit G. Abney, Esquire
Counsel for Defendant: Thomas R. Goldstein, Esquire

FILED
MAR 07 2018
Goose Creek
Magistrate Office

ORDER OF REMAND
APRIL 9, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	
	)	Magistrate Court Case Nos.:
	)	2016-CV-08-10600019
	)	2017-CV-08-10605290
Harris Investment Holdings, LLC,	)	
	)	
Respondent,	)	Circuit Court Appeal Case No.:
	)	2018-CP-08-0026
v.	)	
	)	
Aracelis Santos,	)	**ORDER**
	)	
Appellant.	)	
	)	

FILED
2018 APR -9 PM 1:27
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter came before this Court on March 14, 2018, on defendant's motion to vacate or modify a Magistrate's Court Order dated February 26, 2018, in which the Magistrate's Court required defendant to post a bond in the amount of $59,285.00 as a condition of appealing an Order of Ejectment filed January 7, 2018. South Carolina Code § 27-37-130 provides: "An appeal in an ejectment case will not stay ejectment unless at the time of appealing the tenant shall give an appeal bond as in other civil cases for an amount to be fixed by the magistrate and conditioned for the payment of all costs and damages which the landlord may sustain thereby." The appellant/defendant occupies a portion of the landlord's commercial building located at 5901 Loftis Road in Hanahan, South Carolina (the "Property"). (The defendant leased two spaces from Harris Investment Holdings, L.L.C., but during the litigation, surrendered the premises known as "Latino Mix," to the landlord, thus ending the dispute in Case No.: 2016-CV-08-10600019. The present action arises out of a dispute for the property being occupied and operated as "El Alamo."

After a non-jury trial, the Magistrate entered a written order on January 7, 2018. After the trial court denied a timely filed motion for reconsideration and new trial, the defendant appealed this Order on February 8, 2018.

Thereafter, the landlord moved for an entry of attorney's fees and costs in the amount of $54,340.58. After a hearing on the matter, the trial court awarded $35,887.23 in attorney's fees and costs. The defendant timely appealed this Order on March 6, 2018. On February 26, 2018, the Magistrate set an appeal bond pursuant to § 27-37-130, S. C. Code, which required the appellant do two things as a condition of appeal: (1) pay rent on time, and (2) post a bond in the amount of $59,295.23. The defendant asked the Magistrate to reconsider this amount, which the trial court denied by Order filed March 7, 2018, and on March 12, 2018, the appellant filed a second amended notice of appeal and a motion for stay, seeking to modify or vacate so much of the bond requirement as required payment of $59,295.23 as a condition of appeal.

The record is not clear how the trial court arrived at the figure of $59,295.23 as a condition of seeking judicial review. The appellant/tenant asserts that the entire award represents a "bond" to secure payment of attorney's fees to the landlord's lawyer. The respondent/landlord concedes that at least a part of the bond is intended to secure his attorney's fees. One thing that is clear is that the Order under review is not clear as to how the trial judge arrived at the figure of $59,295.23 as a condition of appellant seeking judicial review. The award of attorney's fees is—unless overturned by a reviewing court later—an unsatisfied money judgment.

Based on a review of the pleadings, the record, applicable case law, arguments of counsel, it is hereby ORDERED that the issue of an appeal bond, if any, is remanded to the trial court for redetermination in light of the decision here, and it is further ORDERED that the trial court can apply whatever factors it thinks are pertinent to establishing an appeal bond, or no appeal bond, but it may not consider unpaid attorney's fees in calculating such bond.

IT IS SO ORDERED.



~~March~~ 4/4, 2018

Roger M. Young, Sr., Presiding Judge
Ninth Judicial Circuit

ORDER ON APPEAL BOND

MAY 7, 2018

STATE OF SOUTH CAROLINA	)	**2016CV0810605290** **2017CV0810600019**
	)	CIVIL CASE NUMBER
COUNTY OF BERKELEY	)	**MAGISTRATE'S COURT**
	)	
	)	**BOND TO STAY EXECUTION**
	)	**ON APPEAL**

Harris Investment Holdings, Llc

LANDLORD

Vs

Aracelis Santos
5901 Loftis Road Suite#2, 4
Hanahan, SC 29410

TENANT(S)

TO: Circuit Court

Now comes the Tenant(s) in the above entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on **December 7, 2017**, by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of **$2,852.00 per month**, due on the **1st day** of each month and late after the **5th day** of the month.

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejectment until this matter is heard on appeal and decided by the Circuit Court.

BOND: $7,500.00 must be paid within 5 days and the rent in the amount of $2,852.00 is due on the 1st day of each month and late after the 5th day.

Dated on May 7, 2018:

Tenant(s) Thomas R. Goldstein

Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

Dated on May 7, 2018

JUDGE RAD S. DEATON

Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Phone: (843) 553-7080
Fax: (843) 553-7074

MV125

ORDER ON APPEAL BOND

MAY 17, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
)
)

2016CV0810605290
2017CV0810600019
CIVIL CASE NUMBERS
MAGISTRATE'S COURT

AMENDED BOND TO STAY EXECUTION ON APPEAL

Harris Investment Holdings, Llc

LANDLORD

Vs

Aracelis Santos
5901 Loftis Road Suite#2, 4
Hanahan, SC 29410

TENANT(S)

TO: Circuit Court

Now comes the Tenant(s) in the above entitled action and respectfully shows the Court that a Judgment of Execution was issued against the Tenant(s) and for the Landlord on **December 7, 2017,** by the Magistrate. Tenant(s) has appealed the Judgment to the Circuit Court.

Pursuant to the findings of the Magistrate, the Tenant(s) is obligated to pay rent in the amount of **$2,852.00** per **month,** due on the **1st** day of each **month.**

Tenant(s) hereby undertakes to pay the periodic rent hereinafter due according to the aforesaid findings of the Court and moves the Circuit Court to stay execution on the Judgment for Ejectment until this matter is heard on appeal and decided by the Circuit Court.

AMENDED BOND: Having considered the Motion to Alter and Amend filed by the Defendant, the Plaintiff's response thereto, as well as the new communication from counsel, the Court finds it that it is appropriate to amend the bond to $5,500.00. The $5,500.00 BOND shall be paid within five (5) days. Rent shall continue to be due and owing in the amount of $2,852.00, and shall be paid on the 1st day of each month and late after the 5th day.

Dated on May 17, 2018:

by previous signature dated May 7, 2018
Tenant(s)

Upon execution of the above bond, execution on the Judgment of Ejectment is hereby stayed until the action is heard on appeal and decided by the Circuit Court. If Tenant(s) fails to make any rental payment within five days of the due date, upon application of the Landlord, the stay of execution shall dissolve, the appeal by the Tenant(s) to the Circuit Court on issues dealing with possession must be dismissed and the Sheriff may dispossess the Tenant(s).

Dated on May 17, 2018

JUDGE

Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
Phone: (843) 553-7080
Fax: (843) 553-7074

MV125

CONSENT ORDER SEVERING APPEAL
OCTOBER 2, 2018

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Aracelis Santos, Appellant/Plaintiff, vs. Harris Investment Holdings, LLC, Respondent/Defendant.	)	Case No. 2018-CP-08-1008 Case No. 2018-CP-08-00266 ORDER

FILED
2018 OCT -2 PM 12:44
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court on the civil appeals from the Magistrate Court filed by Appellant/Plaintiff Aracelis Santos in the above-titled actions and motions to dismiss the appeals filed by Respondent/Defendant Harris Investment Holdings, LLC ("HIH"). Following a conference between counsel and the Court, the parties agreed on the record to proceed with respect to these motions as outlined below, and the Court adopts this agreement as the order of the Court.[1]

BACKGROUND

HIH filed eviction actions seeking to eject Santos from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. A consolidated bench trial was held before the Magistrate on October 11, 2017.

Following trial, the Magistrate issued an order dated December 7, 2017, in which it granted HIH's applications for ejectment with respect to both Latino Mix and El Alamo. Santos filed a motion for a new trial, which the Court denied via written order dated February 2, 2018.

[1] This Court signed a duplicate Order on August 17, 2018. The Original Order was send to the Berkeley County Clerk of Courts office via Regular U.S. Mail. The Berkeley Clerk of Courts Office has contacted this Court that they never received the August 17, 2018 Order.

SCANNED

On February 2, 2018, the Court issued a writ of ejectment with respect to El Alamo.[2] On February 8, 2018, Santos filed a Notice of Appeal of the Magistrate Court's orders to this Court in Case No. 2018-CP-08-0026 (the "First Appeal").

In the meantime, following a hearing on February 26, 2018, the Magistrate set an appeal bond in the amount of $59,295.23. Santos filed a motion for reconsideration of the bond amount, which the Magistrate denied via written order dated March 7, 2018.

Thereafter, Santos moved the Circuit Court in the First Appeal to vacate the bond requirement, upon which the Circuit Court determined the inclusion of any amount awarded to HIH for attorneys' fees in the bond was improper. Via order issued on April 9, 2018, this Court remanded the issue of the bond to the Magistrate for re-calculation in light of this Court's ruling. The First Appeal did not terminate and the action remains pending in this Court.

#2 PMB

After the Magistrate re-calculated the bond, Santos filed a second civil action in this Court (Case No. 2018-CP-08-1008, the "Second Appeal"), in which she also sought to appeal the Magistrate's order of ejectment and subsequent order and, in addition, to assert various tort claims against HIH.

ORDER OF THE COURT WITH CONSENT OF THE PARTIES

1. Santos will dismiss the Second Appeal without prejudice, and HIH will withdraw its Motion to Dismiss the Second Appeal without prejudice.

2. Santos is granted leave to amend the First Appeal in order to state that she also seeks review of any further orders of the Magistrate Court entered after the filing date of the First Appeal.

3. Santos will order a transcription of the audio recordings from Magistrate Court proceedings in this matter to provide this Court will a complete record for appellate review.

[2] Santos vacated the Latino Mix premises voluntarily prior to the Court's ruling on the motion for a new trial.

4. The hearing on the First Appeal and HIH's motion to dismiss the First Appeal is continued, and shall not be rescheduled for hearing until the transcript referenced in item #3 above has been prepared and filed with the Court.

AND IT IS SO ORDERED.

Sept. 30, 2018
Walterboro, S.C.

Perry M. Buckner III
Circuit Court Judge

State of South Carolina
The Circuit Court of the Fourteenth Judicial Circuit

PERRY M. BUCKNER
JUDGE

101 HAMPTON STREET
POST OFFICE DRAWER 470
WALTERBORO, SOUTH CAROLINA 29488-0470
TELEPHONE: (843) 549-7878
FAX: (843) 549-9878
E-MAIL: pbuckner@sccourts.org

October 1, 2018

SENT VIA REGULAR MAIL
Jackie Williams
Clerk of Court
300 California Dr. #B
Monks Corner, South Carolina 29461

Dear Ms. Williams:

Enclosed you will please find an original Order signed by Judge Buckner. Please file this Order in your office, and serve copies on all counsel of record.

Thank you for your attention to this matter and please do not hesitate to contact our office if you have any questions or concerns.

Sincerely,

David A. Nasrollahi
Law Clerk to the Honorable Perry M. Buckner, III

Enclosures: Orders for 2018CP0801008/2018CP0800026
cc:

ORDER DISMISSING CASE FOR IMPROPER JOINDER OF CLAIMS

JUNE 6, 2019

ELECTRONICALLY FILED - 2019 Jun 06 11:49 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
Aracelis Santos,	)	Case No. 2018-CP-08-01008
Appellant/Plaintiff,	)	
vs.	)	**ORDER OF DISMISSAL WITHOUT PREJUDICE**
Harris Investment Holdings, LLC,	)	
Respondent/Defendant.	)	

This matter comes before me on motion of the Respondent/Defendant, Harris Investment Holdings, LLC, (hereinafter "HIH") for an order dismissing this case without prejudice. For the reasons set forth below, the motion is granted.

HIH filed eviction actions in the magistrate's court seeking to eject Aracelis Santos from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. A consolidated bench trial was held before the magistrate on October 11, 2017.

Following trial, the magistrate's court issued an order dated December 7, 2017, in which it granted HIH's applications for ejectment with respect to both Latino Mix and El Alamo. Santos filed a motion for a new trial, which the court denied via written order dated February 2, 2018. On February 2, 2018, the court issued a writ of ejectment with respect to El Alamo.[1] On February 8, 2018, Santos filed a Notice of Appeal of the magistrate court's orders to this Court in Case No. 2018-CP-08-0026 (the "First Appeal").

[1] Santos vacated the Latino Mix premises voluntarily prior to the magistrate court's ruling on the motion for a new trial.

ELECTRONICALLY FILED - 2019 Jun 06 11:49 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

In the meantime, following a hearing on February 26, 2018, the magistrate set an appeal bond in the amount of $59,295.23. Santos filed a motion for reconsideration of the bond amount, which the magistrate denied via written order dated March 7, 2018.

Thereafter, Santos moved this Court in the First Appeal to vacate the bond requirement, upon which the Court determined the inclusion of any amount awarded to HIH for attorneys' fees in the bond was improper. Via order issued on April 9, 2018, this Court remanded "the issue of the bond" to the magistrate's court for re-calculation. Meanwhile, the First Appeal remained pending in this Court.

After the magistrate re-calculated the bond, on June 1, 2018, Santos filed a second civil action in this Court (Case No. 2018-CP-08-1008, the "Second Appeal"), in which she again sought to appeal the magistrate's order of ejectment and related orders and, in addition, to assert various tort claims against HIH. HIH moved to dismiss the Second Appeal on several grounds, including that the combination of a civil appeal with new tort claims was procedurally improper.

Following a hearing on HIH's motion to dismiss, the Court issued an order dated October 2, 2018 (the "Order"), to which Santos consented, requiring her to dismiss the Second Appeal. Despite repeated demands from counsel for HIH, Santos has not complied with the Order as evidenced by the fact that this action remains pending. At the hearing on the instant motion, Santos argued that the Order was intended only to require her to amend her pleading in this action to delete the claim for civil appeal, and she insisted she has complied with the Order. But the plain language of the Order, to which Santos consented, expressly requires *dismissal of the action* without prejudice. Santos plainly has not complied with this requirement.[2]

[2] Moreover, the Court notes that, contrary to her counsel's statements at the hearing, Santos did not seek to amend her complaint in this action until March 19, 2019, and she did so then for the purpose of attempting to add additional parties to this action.

Because Santos has failed to comply with the Order to which she consented, HIH is entitled to an order dismissing this action without prejudice. It is hereby ORDERED that this action is dismissed without prejudice.

AND IT IS SO ORDERED.

Kristi F. Curtis
Circuit Court Judge

June ___, 2019

ELECTRONICALLY FILED - 2019 Jun 06 11:49 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

ELECTRONICALLY FILED - 2019 Jun 06 11:49 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

Berkeley Common Pleas

Case Caption: Aracelis Santos VS Harris Investment Holdings, Llc

Case Number: 2018CP0801008

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

ORDER AFFIRMING ATTORNEY'S FEES JUNE 6, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800266

Aracelis Santos
PLAINTIFF(S)

Harris Investment Holdings, LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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:

The magistrate court judge's award of attorney fees is affirmed. All other issues in this appeal are now moot as the subject property has been demolished.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/06/2019 .

Magistrate Court Goose Creek

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jun 06 11:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

ORDER DENYING RECONSIDERATION
JUNE 18, 2019

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0800266

Aracelis Santos
PLAINTIFF(S)

Harris Investment Holdings, LLC
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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:

Plaintiff Aracelis Santos' Motion for Reconsideration is DENIED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2019 .

Magistrate Court Goose Creek

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jun 18 4:04 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

ELECTRONICALLY FILED - 2019 Jun 18 4:04 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266



Berkeley Common Pleas

Case Caption: Aracelis Santos VS Harris Investment Holdings, LLC

Case Number: 2018CP0800266

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP0801008

Aracelis Santos
PLAINTIFF(S)

Harris Investment Holdings, Llc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

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

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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:

Plaintiff Aracelis Santos' Motion for Reconsideration is DENIED.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/18/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Jun 18 4:03 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

ELECTRONICALLY FILED - 2019 Jun 18 4:03 PM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008



Berkeley Common Pleas

Case Caption: Aracelis Santos VS Harris Investment Holdings, Llc

Case Number: 2018CP0801008

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

ORDER AFFIRMING BUSINESS LICENSE REVOCATION

NOVEMBER 15, 2016

(*REYNA V. TOWN OF HANAHAN*

2016-CP-08-1261)

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	APPEAL FROM HANAHAN CITY COUNCIL IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2016-CP-08-1261
BENJAMIN REYNA, d/b/a EL ALAMO RESTAURANT, Appellant, vs. THE TOWN OF HANAHAN, Respondent.	)	**ORDER AFFIRMING DECISION OF HANAHAN CITY COUNCIL**

FILED
16 NOV 15 PM 3:04
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

Date of Hearing: **August 30, 2016**
Presiding Judge: **Dale E. Van Slambrook**
Attorneys for Appellant: **Thomas R. Goldstein**
Attorneys for Respondent: **Stafford J. McQuillin III**
Court Reporter: **Karen V. Anderson**

This matter came before the Court as an appeal from Hanahan City Council's decision to revoke Appellant's business license. The City of Hanahan's ("the City") revocation hearing was held on May 26, 2016. Appellant filed his appeal on June 3, 2016. On June 29, 2016, the Clerk for Hanahan City Council filed the Original Record[1] ("Record") from Hanahan City Council's hearing with the Berkeley County Clerk of Court. Appellant has made no objection to the record. This Court held a hearing on August 30, 2016, to hear appellate arguments. Notice of the hearing was duly given to all interested persons. For the reasons set forth below, the Court hereby affirms the decision of Hanahan City Council.

[1] The May 26, 2016 revocation hearing was recorded by a court reporter that was requested by Appellant. The Record includes transcribed testimony from the hearing as well as numerous exhibits. The City of Hanahan obtained the Original Record from counsel for Appellant prior to filing it with the Berkeley County Clerk of Court.

APPLICABLE STANDARD

"When the city council of a municipality has acted after considering all of the facts, [the] court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion." *Amrik*, 384 S.C. at 590, 681 S.E.2d at 299 (quoting *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App. 2005)). "[I]n reviewing the discretionary decision of a legislative body, our courts have been hesitant to substitute their judgment for that of elected representatives." *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 922 (citing *McSherry v. Spartanburg C'ty Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 434 (2007)). *See also, City of Greenville v. Bozeman*, 254 S.C. 306, 315, 175 S.E.2d 211, 215 (1970) ("the Courts will not interfere with the exercise of discretionary powers by a municipal body except in cases of fraud or clear abuse of power"); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (affirming a municipality's decisions so long as calibrated for public good, morals, and general welfare of municipality and citizens); *Sloan v. Greenville Cty*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) ("Discretionary decisions of a legislative body should not be upset on appeal unless they are arbitrary, unreasonable, in obvious abuse of discretion or in excess of lawfully delegated power.").

FINDINGS OF FACT

1. Appellant Benjamin Reyna held the business license (license No. 9692) for El Alamo ("the Night Club"). Appellant operates a "Late Hour, Adult Night Club," which stays open several nights a week until 5:00 a.m.

2. Citizens, neighboring businesses and patrons of the Night Club complained to the City about frequent criminal activity associated with the Night Club.

3. Due to citizen complaints and frequent criminal activity associated with the Night Club, it was determined that Appellant's business license should be brought before Hanahan City Council to determine whether the license should be revoked.

4. On April 8, 2016, City officials delivered a revocation hearing notice to Appellant. The hearing was originally scheduled for April 30, 2016. However, on April 14, 2016, attorney Thomas Rode contacted the City and indicated that he represented Appellant and requested that the hearing be rescheduled due to scheduling conflicts.

5. Counsel for the City, Stafford J. McQuillin III, worked with Mr. Rode to find a suitable date for all parties and counsel involved in the matter.

6. After finding an agreeable date on April 25, 2016, the City served Appellant's counsel with a Citation/Notice of Suspension and Hearing for Revocation of Business License ("Citation/Notice"). The Citation/Notice was made part of the Record and is attached to this Order as **Exhibit A**.

7. The Citation/Notice is detailed and provided Appellant with actual notice of the revocation hearing sufficient to permit Appellant to attend the hearing and present his views. Despite the Citation/Notice, Appellant did not attend the hearing or call any witnesses; instead, Appellant sent only his lawyer and a court reporter. Specifically, the Citation/Notice provided Appellant's counsel with the following pertinent information regarding the hearing:

> As you know, El Alamo and Latino Mix's business licenses are being presented for revocation before Hanahan City Council. **The revocation hearing for your client's licenses will be held on May 26, 2016 at 6:30 pm in Council Chambers at 1255 Yeamans Hall Road, Hanahan, South Carolina 29410.** The purpose of the hearing is to determine whether your client's business licenses should be revoked pursuant to Section 10-9 of the Code of Ordinances of City of Hanahan, which states:
>
> **Sec. 10-9. - Council may revoke or refuse to issue license.**

(a) Council may, after citation to the proposed licensee and hearing thereon, refuse to issue a license or may revoke a license of any person whenever, in its judgment, the public welfare makes such action necessary.

(b) Decision of council shall be final unless appealed to a court of competent jurisdiction within ten days after the date of the council's decision.

(c) No license to carry on any business in violation of the city's zoning ordinance shall be issued to any person.

At the hearing, City Council will hear testimony and be presented with evidence to determine the following: (1) whether your clients' licenses were mistakenly or improperly issued or issued contrary to law; (2) whether your clients have breached any condition upon which the licenses were issued; (3) whether your clients obtained the licenses through a fraud, misrepresentation, a false or misleading statement, evasion or suppression of a material fact in their license applications; (4) whether your clients have been convicted of an offense under a law or ordinance regulating the businesses, a crime involving moral turpitude, or an unlawful sale of merchandise or prohibited goods; and/or (5) whether your clients or its customers have engaged in unlawful activities or a nuisance related to the business. After examining each of the above issues, City Council will make a determination as to whether the public welfare makes revocation of the licenses necessary.

Your clients' business licenses are being considered for revocation because a preliminary determination has been made that (1) the businesses are in breach of the conditions upon which the business licenses were issued; (2) the operation of your clients' businesses constitutes a nuisance; (3) your clients have failed to comply with sections of the business license ordinance; and (4) your clients and its customers have engaged in unlawful activities related to the business. More specifically, El Alamo is operating under conditions that were not presented and approved under the preliminary zoning review on March 4, 2013. Additionally, Latino Mix's business operations are outside the scope of the approved business license because it subleased space to an additional business and is operating under conditions that were not presented at the preliminary zoning review on March 17, 2014. Finally, your clients' business operations constitute a nuisance. Specifically, the nuisance is due to numerous citations issued and repeated criminal activity associated with the businesses' operations, including but not limited to weapons incidents, possession and sale of narcotics, assault, physical domestic violence, theft, public intoxication, physical disturbances, verbal disturbances, and noise disturbances.

Due to the City's preliminary findings, your clients' licenses are being temporarily suspended until the revocation hearing is completed. No licenses will

be re-issued during the suspension period; however, your clients' may still conduct business during this probationary, suspension period.

If you have any questions or concerns with the information contained in this Citation and Notice, please direct all communications to Stafford J. McQuillin III, Esq., who has been retained by the City to assist with this matter.

8. Prior to City Council's Revocation Hearing on May 26, 2016, ("revocation hearing") counsel for Appellant requested that the City provide a Spanish interpreter for the revocation hearing. Per Appellant's request, the City, at a cost to taxpayers, provided a Spanish interpreter at the revocation hearing; however, the record reveals that neither Appellant (who was not present at the revocation hearing) nor his counsel utilized the interpreter's services.

9. In addition to Appellant's request to reschedule the hearing and request to provide a Spanish interpreter, Appellant also sent 22 voluminous Freedom of Information Act Requests to the City and its various divisions. Despite the overbroad and voluminous nature of the requests, the City coordinated with its various divisions, searched for, prepared and produced all approximately 542 pages of documents as well as 911 calls and dash cam video in an expedited manner to Appellant's counsel in advance of the hearing.

10. The City complied with Appellant's pre-hearing demands, and the hearing was held on May 26, 2016.

11. At the Revocation Hearing, Appellant's counsel made another request to delay and reschedule the duly noticed hearing citing the need for more time to prepare. Counsel for the City argued that Appellant was not entitled to an "elongated pseudo-criminal trial" and publically discussed a Fourth Circuit Court of Appeals decision discussing due process in the context of a business license, which held "due process does not require that in every instance of a deprivation of property . . . a full-blown evidentiary hearing." *Richardson v. Town of Eastover*, 922 F.2d 1152, 1160 (4th Cir. 1991). After hearing arguments from Appellant and

the City's counsel, City Council voted to proceed with the Revocation Hearing on the agreed upon, rescheduled date of May 26, 2016.

12. At the hearing, the City and Appellant were each provided with ninety minutes to call and cross-examine witnesses and present arguments and evidence to City Council. The City provided Appellant with additional time to present. (Record, p. 155, "I believe you gave us more time to present, and I appreciate that.") The entire hearing, including City Council's ultimate decision to revoke Appellant's license, was transcribed by a court reporter requested by Appellant. Appellant's counsel, Christopher Romeo, Esq., ordered and obtained an original and one copy of the hearing transcript following the hearing. A copy of Appellant's order and invoice from the court reporter is attached to this Order as **Exhibit B**.

13. The City and Appellant submitted various previously exchanged exhibits at the revocation hearing, which are included in the Record.

14. The City called the following witnesses in this order: (1) City of Hanahan Chief of Police, Dennis Turner; (2) Detective Cliff Driggers, Hanahan Police Department; (3) Chief Deputy Sherriff, Mike Cochran, Berkeley County Sherriff's Office, formerly Chief of Police for the City of Hanahan; (4) Hanahan Resident Ron Newman; (5) Hanahan Resident Chad Chinners; (6) Maria Carval, patron Night Club; and (7) Hanahan Business License Official for the City of Hanahan, Joy Krutek.

15. The City of Hanahan Chief of Police Dennis Turner went through numerous incidents reports arising from and connected to the operation El Alamo from 2014 to 2016. These incidents included, *inter alia*: (1) numerous physical altercations; (2) numerous alcohol/intoxication arrests; (3) numerous drug arrests; (3) arrests of Night Club employee for pointing and presenting fire arm on premises; (4) reports of employee assaulting patron; (5) and

noise violations. All of the indent reports discussed by the Chief of Police were previously provided to Appellant's counsel in advance of the revocation hearing, submitted as exhibits, and made part of this Record.

16. The Chief of police, provided the following pertinent testimony:

> Since 2014 the El Alamo had proved to be a nuisance because of the criminal activity arising from and associated with the business. It is clear that the business has knowingly promoted overconsumption of alcohol, intoxication, and other criminal activities on the premises.
>
> The license holder for El Alamo, Mr. Reyna, is well aware of the criminal activity associated with the business. In the past numerous officers have discussed the criminal activity with him. I have -- Officer Reyes -- I will put point out Officer Reyes is fluent -- or Detective Reyes now is fluent in Spanish and also Sergeant Lanphear among others.
>
> Mr. Reyna has also witnessed several of the arrests that have taken place at this location. However, the criminal activity has not stopped. For these reasons I have great concern for the safety of not only the residents who live near the establishment but also the safety of the patrons who visit the establishment.

(Record, pp. 30-32)

17. The Chief of Police also discussed an incident that occurred on May 22, 2016, which occurred after Appellant received the Citation/Notice and during the probationary license suspicion period discussed in the Notice/Citation. On May 22, 2016, at approximately 6 a.m., an intoxicated patron of Night Club assaulted a Hanahan Police Officer. After the arrest, the individual signed a statement indicating that he "went to El Alamo at 2:30 a.m. in the morning, left the El Alamo at 5:00 a.m. . . . [w]hile at El Alamo – I drank Model and Corona beers." (Record, p. 73) The May 22, 2016 Incident Report and Statement are part of the Record.

18. Detective Cliff Driggers with the Hanahan Police Department provided City Council with statistical data that compared events and incidents from 2014 to May of 2016 for the Night Club and other establishments within the City that allow for on-premises consumption

of alcohol. In addition to the Night Club, the City has three other establishments that allow for on-premises consumption of alcoholic beverages (LG's, Buccas, and Hanahan's). Detective Driggers indicated that the Night Club had a total of forty-four arrests from 2014 to May of 2016 and that the other three establishments combined had a total of only two arrests. The following is a summary of the comparative data presented by Detective Driggers to City Council:

Incident	Alamo	Hanahan's	LG's	Bucca's
Disturbance	30	1	10	4
Assaults	7	0	0	1
Narcotics	10	0	0	0
Weapons	2	0	0	0
Disorderly	21	1	1	2
Resisting	5	0	0	0
ABC	2	0	0	0
Minors/Fake ID	6	0	0	0
Agg. Assaults	1	0	0	0
Prop. Crimes	9	0	3	0
Reports	49	0	12	2

(Record, pp. 92-93)

19. Ron Newman, a resident of Hanahan that owns a business and property adjacent to the Night Club, provided the following testimony:

> I'm adjacent to the property that we're talking about over there.I have a mobile home park.I have a lot of children that live there and I'm personally proud of it, but I'm not proud of my tenants being disturbed.I don't like them cutting through, tearing the fence down, and walking through and urinating and throwing beer bottles as they leave the property and go through the fence. I don't like that.

> But the noise -- I don't know how many complaints I've had about the noise and the fighting.I am fearful, ladies and gentlemen. I am fearful for my residents.
>
> I think everybody ought to have a chance to run a good business, but I don't thinkthere's anything good about this except somebody making money.I can stand here and talk about this all day long and y'all can talk about it all day long but when it gets down to it I'm being abused. Other Citizens are being abused.
>
> I ask you gentleman and lady -- ladies, I ask y'all to do something about this.We can't have some of our Citizens bekilled.Although they live over there in thetrailer park they don't want to be killed, you know.They want to have restful sleep. Whenever this starts disrupting my customers and I start losing business because of that then something's got to change.It's like thepossum and the raccoon up there fighting in the tree.You've got to shoot up there amongst them because one of them needs some relief.I'm the one that needs the relief just like all the Citizens in Hanahan.

(Record, pp. 98-99)

20. Chad Chinners, a resident of Hanahan who owns a business across the street from the Night Club, provided the following testimony:

> Now, as a business owner I own Blackwood True Value.I'm a partner.The mostdirect contact I've had with it is they – a customer of [the Night Club] ran into the sign and causedabout $12,000 in damage.It wasn't a big concern of mine.I mean, it happened.There's property damage, but it could have been anyone.
>
> It could have been that someone got killed in that incident.My warehouse managerwitnessed the incident.It happened about 5:00 a.m. on a Sunday morning.I got a call at about 5:30 and he directly witnessed them coming out of that parking lot.

(Record, pp. 100-101)

21. The next witness was Maria Carval, who testified that she was attacked with a pistol while a patron at the Night Club. Ms. Carval (through a Spanish interpreter) provided the following pertinent testimony:

> Interpreter Aldrich: Her name is MariaCarval and she's was one of the victims in this incident where she was at the bar and a man attacked her with a pistol, threatened her with apistol.

> She asked for help and nobody [from the Night Club] wanted tocall the police or tell her anything.So she said, you know, how is it possible that you're not going to call the police or I'm not going to get any help on this.She said she was a nervous wreck.She isnow receiving help from a psychiatrist and counselors because she's just not well after that incident. So she is getting help at West Ashleyfrom the mental health department.She is also going to MUSC.So she gets therapy every Monday from 9:00 to 11:00.

(Record, pp. 102-103)

22. Appellant's counsel presented arguments before City Council, including arguments that a limited number of incident reports were unrelated to El Alamo. Appellant was not present, and did not call any witnesses at the hearing.

23. After both sides presented at the hearing, City Council unanimously voted to revoke the business license of El Alamo. Specifically, Councilman Dan Owens made the following motion, which was unanimously approved, 6-0, by City Council:

> After careful consideration of all of the facts presented by both sides at this hearing – and thank you both – I move that we revoke the license of El Alamo/Benjamin Reyna (license No. 9692) pursuant to Hanahan City Ordinance Section 10-9. The public welfare makes this revocation necessary due to the fact that the operation of El Alamo's business creates a nuisance attributable to the frequent and persistent suspected criminal activity associated with the operation of the business including repeated acts of unlawful possession or sale of controlled substances, multiple intoxication and alcohol incidents, and continuous breach of the peace.

(Record, pp. 157-158)

24. City Council's ruling was transcribed by the court reporter requested by Appellant, as was the rest of the hearing.

CONCLUSIONS OF LAW

1. The City provided Appellant with sufficient notice and an opportunity to be heard.

Appellant was afforded due process, including notice and an opportunity to be heard. In *Richardson v. Town of Eastover*, 922 F.2d 1152, 1160 (4th Cir. 1991), the Fourth Circuit

discussed due process requirements in the context of a municipality's revocation of a business license. In *Richardson*, the Town of Eastover refused to renew Mr. Richardson's business license. "The ordinance, on which the council relied in refusing to renew Richardson's license, provides that the license may be withheld when an occupation would be detrimental to the 'security, welfare, convenience, health, peace, or good government of the town.' *Richardson v. Town of Eastover*, 922 F.2d 1152, 1157–58 (4th Cir. 1991). "The concededly broad ordinance grants Eastover significant discretion in determining whether to withhold or not to renew licenses." *Id.* In discussing due process, the Court held:

> Due process, at a minimum, requires that a person be given notice of impending action and afforded a hearing. The nature of the notice and the quality of the hearing are determined by the competing interests involved. Thus, when the property interest that is subject to the deprivation is of minor value, fairness requires a less formal hearing.

Richardson v. Town of Eastover, 922 F.2d 1152, 1159 (4th Cir. 1991) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 865 (1950); *Goss v. Lopez*, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed.2d 725 (1975)). When applying the due process requirements in the context of revoking a business license, the Court held:

> Here, the value of any property interest that a licensee receives from Eastover is diminished by the broad right given by South Carolina to the Town of Eastover to regulate licenses under S.C. Code Ann. § 5-7-30 (Law. Co-op. 1989 Supp.), and the broad discretion reserved by the Town of Eastover in its ordinances to revoke or refuse licenses. The ordinance of Eastover provides that a business license may be revoked or refused if operation of the business would be detrimental to the "security, welfare, convenience, health, peace, or good government of the town." A license that is issued subject to conditions which permit its revocation on such a broad range of contingencies as is contained in the Eastover ordinance is less valuable than one that is subject to revocation only on a stringent showing of cause.
>
> The minimal value, therefore, of the property interest that Richardson held in the license from Eastover is a factor to be considered in determining the quality of notice and the formality of any hearing that is required by due process.

Id. at 1159–60.

The City's ordinance at issue in this appeal is undistinguishable from the ordinance involved in Town of Eastover appeal. Specifically, the City's ordinance regulating business licenses states, "[c]ouncil may, after citation[2] to the proposed licensee and hearing thereon, refuse to issue a license or may revoke a license of any person whenever, in its judgment, the public welfare makes such action necessary." The ordinance of Eastover provides that a business license may be revoked or refused if operation of the business would be detrimental to the "security, welfare, convenience, health, peace, or good government of the town." Thus, applying the law of *Richardson* to this appeal, this Court concludes that Appellant's property interest holds "minimal value" when determining the quality of notice and the formality of any hearing that is required by due process.

A. The City's Notice/Citation fulfilled the requirements of due process.

In *Richardson*, the Fourth Circuit held that "informal" notice was sufficient in the context of a business license. Specifically, the mayor of Eastover orally advised Richardson prior to the meeting that the town council intended to discuss the issue of closing the nightclubs on Main Street. *Id.* at 1160. Although the mayor did not invite Richardson to the meeting on his own initiative, he did so when Richardson called the mayor after the renewal of his license had been refused. *Id.* Pursuant to this "informal notice of the meeting," Richardson appeared at the meeting. *Id.* During the period thereafter and before the vote by the town council, Richardson was "informally notified" of two more meetings during which he had the opportunity to present his views on the issue, and he did so. *Id.* Finally, about a month before Richardson was required to close the Apollo Club, he received written notice. *Id.* The Fourth Circuit held, "[s]ince

Richardson received actual notice, he can claim no prejudice or even unfairness for its having been informal." *Id.*

Here, the City's Citation/Notice was written and formal. The Citation/Notice was detailed and provided Appellant with actual notice of the revocation hearing sufficient to permit Appellant and his counsel to attend the hearing and present Appellant's views. Indeed, Appellant's counsel attended the hearing and presented arguments on his client's behalf. When considering the "minimal value" of property interest involved and the formal, written and detailed Notice/Citation, this Court concludes that the City's Notice/Citation fulfilled the requirements of due process.

B. The City's hearing fulfilled the requirements of due process.

"On the issue of a hearing, due process does not require that in every instance of a deprivation of property, however insignificant, a full-blown evidentiary hearing must be conducted before an impartial tribunal." *Id.* "A hearing need only be provided 'at a meaningful time and in a meaningful manner' in the context of all the circumstances." *Id.* (*quoting Armstrong v. Manzo,* 380 U.S. 545, 552, (1965)). The *Mathews* case explains that three factors should be considered in determining the nature and timing of a hearing.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S.319, 335 (1976).

---

[2] The City provided Appellant with the required citation on April 25, 2016, when it served the "Citation/Notice of Suspension and Hearing for Revocation of Business License" on Appellant's Counsel. (Exh. A)

After considering the *Mathews* factors and applying the factors in the context of a business license revocation, the Fourth Circuit held, "Richardson may have had a property interest at stake, *i.e.*, his business license, but the risk that the procedures used could result in an erroneous deprivation of his interest was minimal." *Richardson* at 1160. "Moreover, the probable value of a more formal hearing cannot be supported." *Id.* at 1161. The Fourth Circuit held the following under the third factor of the *Matthews*:

> The circumstances relevant to the third *Mathews* factor-the government's interest and the additional burdens that a more formal process would entail-also weigh against Richardson. The government of Eastover had a legitimate interest in "cleaning up" Main Street. It was properly reacting to complaints of shootings, drug use, fights, and noise. Moreover, Eastover is a small town, and its ability to provide formal hearings is limited. The town council meets only once a month, in the evening, and the council members have other full-time professions.

Id.

When applying *Richardson* and the *Matthews* factors to the case at bar, this Court concludes that that the City's hearing fulfilled the requirements of due process in light of the Appellant's "minimal" property interest. Indeed, Appellant was provided with a formal hearing that lasted more than three hours. The City also provided Appellant's counsel with more time to present arguments. (Record, p. 155, "I believe you gave us more time to present, and I appreciate that"). At the hearing, Appellant's counsel was also provided the opportunity to present evidence and call and cross-examines witnesses. In this appeal, Appellant's counsel does not complaint about the hearing itself; rather, Appellant complains that the city did not issue a "written order" to review for error. Because the entire hearing was transcribed and provided to Appellant's counsel, this Court concludes that Appellant's argument is immaterial and

disingenuous.[3] Based on the foregoing, this Court concludes that the City complied with due process, and provided Appellant with sufficient notice and an opportunity to be heard.

II. The Record contains ample evidence supporting City Council's decision to revoke the business license of Appellant.

In addition to the City fulfilling the requirements of due process, the record is replete with evidence and testimony supporting the City's decision to revoke Appellant's business license. Citizens, neighboring businesses and a patron of the Night Club all complained to the City at the revocation hearing about the criminal activity associated with the Night Club. The Hanahan Police department also went through voluminous incident reports connected to the operations of the Night Club and provided comparative statistical data relating to events and incidents from 2014 to May of 2016 for the Night Club and other establishments within the City that allow for on-premises consumption of alcohol. Based on the evidence and testimony in the Record, this Court concludes that the decision of City Council was sound, reasonable, and supported by abundant evidence and testimony.

For the reasons set forth above, the Court hereby affirms the decision of Hanahan City Council.

AND IT IS SO ORDERED.

November 15 2016

Honorable Dale E. Van Slambrook
Berkeley County ~~Master-in-Equity~~ SPECIAL CIRCUIT CT. JUDGE

[3] Appellant also cites to *City of Columbia v. Abbott*, 269 S.C. 504, 507, 238 S.E.2d 177, 179 (1977) and argues that the City was required to issue a written order. *Abbott* is distinguishable because the City of Columbia's ordinance expressly required a written order. Specifically, the City of Columbia ordinance stated, "City Council . . . shall issue a written finding of fact and an order to carry out its finding." The City of Hanahan Ordinance has no such requirement.

ORDER DENYING RECONSIDERATION

JANUARY 23, 2017

(*REYNA V. TOWN OF HANAHAN*

2016-CP-08-1261)

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	APPEAL FROM HANAHAN CITY COUNCIL IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2016-CP-08-1261
BENJAMIN REYNA, d/b/a EL ALAMO RESTAURANT, Appellant, vs. THE TOWN OF HANAHAN, Respondent.	)	**ORDER DENYING APPELLANT'S MOTION TO RECONSIDER**

FILED
17 JAN 23 PM 4:28
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter came before the Court on Appellant's Motion to Reconsider ("Motion"). Specifically, Appellant moved for the Court to reconsider its Order Affirming the Decision of Hanahan City Council. For the reasons stated herein, Appellant's Motion is denied.

1. The Court noted Appellant's absence from the hearing to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be needless.

This Court's Order affirming the decision of Hanahan City Council ("Order") finds that Appellant was not present at the hearing. (Order, Findings of Fact, ¶¶ 7-8 and 22) However, contrary to Appellant's arguments, this Court did not use Appellant's absence from the revocation hearing as a supporting ground for affirming the decision of Hanahan City Council. Indeed, the decision of Hanahan City Council was affirmed because "the decision of City Council was sound, reasonable, and supported by abundant evidence and testimony." (Order, p. 15)

This Court noted Appellant's absence from the hearing to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be needless. For example, prior to City Council's Revocation Hearing on May 26,

2016, ("revocation hearing") counsel for Appellant requested that the City provide a Spanish interpreter for the revocation hearing. Per Appellant's request, the City provided a Spanish interpreter at the revocation hearing; however, neither Appellant (who was not present at the revocation hearing) nor his counsel utilized the interpreter's services. Thus, this Court did not use Appellant's absence from the revocation hearing as a supporting ground for affirming the decision of Hanahan City Council; instead, the Court discussed Appellant's absence in its factual findings to demonstrate that the City complied with Appellant's requests, despite the fact that some of Appellant's demands on the City proved to be unnecessary.

2. The Court applied the appropriate standard and reached the correct conclusion based on the evidence and testimony contained in the underlying record.

This Court's Order and underlying record contains ample evidence that since 2014 Appellant's night club had proved to be a nuisance because of the unlawful activity arising from and associated with the business. Appellant's Motion claims that "[w]ith one exception, all of the evidence consisted of testimony of bad acts of unknown persons who the speaker assumes were patrons of appellant" and that "the evidence of bad conduct surrounding appellant's operation involves third parties." However, Appellant's arguments are not supported by the underlying record. For example, the Court's Order notes incidents from the record involving Appellant and his employees, including "reports of employee assaulting patron" and "arrest of Night Club employee for pointing and presenting fire arm on premises." (Order, Findings of Fact, ¶15) Additionally, MariaCarval, a victim in an incident where she was attacked by another patron with a pistol while at Appellant's night club, provided testimony at the revocation hearing regarding the attack and Appellant's refusal to provide any assistance. (Order, Findings of Fact, ¶ 21). Based on the evidence contained in the voluminous record, the Court did not err in

affirming the decision of Hanahan City Counsel. The Court carefully examined the record and applied the appropriate standard. "When the city council of a municipality has acted after considering all of the facts, [the] court should not disturb the finding unless such action is arbitrary, unreasonable, or an obvious abuse of its discretion." *Amrik*, 384 S.C. at 590, 681 S.E.2d at 299 (quoting *Gay v. City of Beaufort*, 364 S.C. 252, 254, 612 S.E.2d 467, 468 (Ct. App. 2005)). "[I]n reviewing the discretionary decision of a legislative body, our courts have been hesitant to substitute their judgment for that of elected representatives." *Amrik Singh & SBPS, Inc. v. City of Greenville*, 384 S.C. 365, 370, 681 S.E.2d 921, 922 (citing *McSherry v. Spartanburg C'ty Council*, 371 S.C. 586, 590, 641 S.E.2d 431, 434 (2007)). *See also, City of Greenville v. Bozeman*, 254 S.C. 306, 315, 175 S.E.2d 211, 215 (1970) ("the Courts will not interfere with the exercise of discretionary powers by a municipal body except in cases of fraud or clear abuse of power"); *Bob Jones Univ., Inc. v. City of Greenville*, 243 S.C. 351, 360, 133 S.E.2d 843, 847 (1963) (affirming a municipality's decisions so long as calibrated for public good, morals, and general welfare of municipality and citizens); *Sloan v. Greenville Cty*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) ("Discretionary decisions of a legislative body should not be upset on appeal unless they are arbitrary, unreasonable, in obvious abuse of discretion or in excess of lawfully delegated power.").

For the reasons set forth above, the Court denies Appellant's Motion to Reconsider.

AND IT IS SO ORDERED.

January 20, 2017

Honorable Dale E. Van Slambrook
Berkeley County Master-in-Equity

PLEADINGS

Harris Investment Holdings, LLC.

October 13, 2016

Aracelis Santos
28 Lighthouse Dr.
Goose Creek, SC 29445

RE: NOTICE OF DEFAULT & RIGHT TO CURE

Arcelis:

Please be advised you are in DEFAULT of your lease of 5901 Loftis Rd signed on December 12, 2015.

Section 10 Regulations and Sanitation: The lease requires you to remain in compliance with federal, state, and local laws and ordinances. On October 2, 2016, you were issued a citation for an unsafe number of patron in your restaurant or club. The citation makes reference to **191 patrons** in the building at the time of the citation. The **maximum occupancy of the space is 99 for patron and employees** as determined by the state fire marshals.

This matter is of great concern to us, and if you are cited for an unsafe building due to over occupancy in the future, it will be grounds for immediate eviction under South Carolina law.

Section 8 Liability Insurance: At this time we are requesting you increase the liability insurance to Single limit of $3,000,000.00 and an Aggregate of $6,000,000.00. Please provide an updated insurance certificate within 10 business days. Failure to provide increased insurance coverage will cause a default in the lease after October 31, 2016.

Sincerely yours,

Eric C. Coulter, CFO

Received By:_____, Date:_____

2650 Holcomb Bridge Rd, Suite 630, Alpharetta, GA 30022

STATE OF SOUTH CAROLINA	)	**2016CV0810605290**
	)	CIVIL CASE NUMBER
COUNTY OF BERKELEY	)	MAGISTRATE'S COURT
	)	**RULE TO VACATE OR SHOW CAUSE**

Harris Investment Holdings, Llc

PLAINTIFF(S)

Vs

Aracelis Santos
5901 Loftis Road
Hanahan, SC 29410

DEFENDANT(S)

Upon the application of the Plaintiff(s) listed above, which states:
THE TERMS OR CONDITIONS OF THE LEASE HAVE BEEN VIOLATED. Tenant violated Section 10 of the lease by failing to comply with local laws and ordinances, resulting in revocation of the business license issued by the City of Hanahan in connection with the business operated by Tenant (or with her consent) on teh Premises. Tenant further violatted Section 10 by continuing to operate the business without a valid business license. Tenant violated Section 10 of the lease by repeatedly violating the International Fire Coade, adopted by the City of Hanahan, regarding the maximum capacity for the building located on teh Premises. Tenant violated Section 8 of the lease by failing to provide evidence of increased insurance coverage as demanded by Landlord pursuant to Section 15 of the lease and the Notice of Default. Tenant violated the Lease by creating a nuisance and threat or others as determined by the City of Hanahan in revoking the business license for the business operqted by Tenant (or with her consent) on teh Premises. Accoding to the City, Tenant has naintained and utilized the Premises in a manner that poses an unreasonable risk to others.

You the defendant(s) or lessee(s) of the premises located at the address listed above, **and all others,** are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 or contact the

Goose Creek Magistrate
303-B North Goose Creek Blvd.
Goose Creek, SC 29445
(843) 553-7080

within ten (10) days excluding date of service, for the purpose of showing why you and all occupants should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Monday, November 14, 2016

JUDGE, Goose Creek Magistrate

Personally appeared before me, the undersigned deponent, being duly sworn, says that he attempted to serve the Rule to Vacate or Show Cause on Aracelis Santos on the following dates/times:

DATE	TIME	INITIALS
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

DATE OF SERVICE _____

TIME OF SERVICE _____

SETTLED/DATE _____

VACANT/DATE _____

PERSON SERVED & RELATIONSHIP IF NOT DEFENDANT:

_____

Sworn to and subscribed before me
This _____ day of _____, 20____.

NOTARY PUBLIC OR JUDGE **SIGNATURE OF SERVER**

N_____ I DEPOSITED IN THE UNITED STATES MAIL IN AN ENVELOPE ADDRESSED TO THE DEFENDANT(S) ABOVE WITH FIRST CLASS POSTAGE AFFIXED THERETO, A COPY OF THIS DOCUMENT.

_____
MAGISTRATE'S CLERK

MV204

2017CV0810600019

CIVIL CASE NUMBER

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
IN THE MAGISTRATE'S COURT
)
Harris Investment Holdings, LLC,)
PLAINTIFF,)
)
vs.)
)
Aracelis Santos,)
DEFENDANT.)

AFFIDAVIT AND APPLICATION OF EJECTMENT AND RULE TO SHOW CAUSE

Harris Investment Holdings, LLC ("Landlord"), plaintiff in this action, is the lessor of the premises within the jurisdiction of the Berkeley County Magistrate's County, which is described as:

5901 Loftis Road, Hanahan, South Carolina, Suite #2, 4 (the "Premises")..

Defendant Aracelis Santos d/b/a "Latino Mix" ("Tenant") is a tenant-lessee with regard to the above-described premises, as evidenced by the following documents attached hereto as Exhibit A:

Lease Agreement dated May 22, 2014 (the "Lease")

Grounds for this ejectment are one or more of the following:

☐ The tenant fails or refuses to pay the rent when due or when demanded; or
☒ The term of tenancy or occupancy has ended; or
☒ The terms or conditions of the lease have been violated as follows:

The term of the Lease ended on August 1, 2016. Via letter dated December 1, 2016 (Exhibit B), Landlord directed Tenant to vacate the Premises no later than December 30, 2016. Tenant has refused to surrender and vacate the Premises in violation of Section 43 Lease.

Tenant violated Sections 14 & 16 of the Lease by failing to provide evidence of insurance coverage as demanded by Landlord.

Sworn to before me)
this 5th day of January , 2017)
)
Magistrate or Notary Public for South Carolina)
)
My Commission expires 9/14/19)

Merritt G. Abney
Nelson Mullins Riley & Scarborough LLP
P.O. Box 1806
Charleston SC 29402
(843) 534-4221
Attorney for Plaintiff

FILED
JAN 06 2017
Goose Creek Magistrate Office

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BERKLEY	)	Case No.: 2016-CV-08-10605290
	)	
Harris Investment Holdings, LLC,	)	
	)	**MOTION FOR REMOVAL**
	)	**ANSWER TO RULE TO VACATE**
vs.	)	**OR TO SHOW CAUSE**
	)	**COUNTERCLAIMS**
Aracelis Santos,	)	**(Jury Trial Demanded)**
	)	
Defendant.	)	
	)	

The Defendant, Aracelis Santos, answering the Rule to Vacate or to Show Cause alleges and shows as follows:

FOR A FIRST DEFENSE BY WAY OF MOTION FOR REMOVAL

The defendant moves for an Order of removal on the ground that defendant demands trial by jury and, as set forth more fully below, asserts counterclaims in an amount in excess of $10,000.00.

FOR A SECOND DEFENSE
(Qualified General Denial)

1. The defendant denies each and every allegation of the of the Rule to Vacate or to Show Cause not otherwise explained, qualified, or admitted below.

2. The defendant denies that it violated section 10 of the lease and shows further that tenant has complied with all local laws and ordinances.

3. The defendant denies that its business license issued by the City of Hanahan has been revoked because the administrative revocation is on appeal and being judicially reviewed, and therefore the enforcement is automatically stayed by operation of law.

4. The defendant denies that it repeatedly violated the International Fire Code adopted by the City of Hanahan regarding maximum capacity for the building currently under lease by the tenant, and, as set forth more fully below, shows that the plaintiff is engaged in an unlawful conspiracy with the Town of Hanahan to misuse civil process to prevent the judicial review of defendant's business license.

5. The defendant denies that it violated Section 8 of the lease by failing to provide evidence of increased insurance coverage and denies that increased insurance coverage is required.

6. The defendant denies that it violated Section 15 of the lease and demands strict proof thereof.

7. The defendant denies that it is in receipt of a Notice of Default.

8. The defendant denies that it has created a nuisance and threat to others as determined by the City of Hanahan, and, as shown more fully below, shows that the present action is an unlawful combination to abuse the process of the Court to thwart the defendant's constitutionally protected rights.

9. The defendant denies that the it has maintained and utilized the premises in a manner that poses an unreasonable risk to others.

FOR A THIRD DEFENSE
(Abuse of process)

10. The defendant repeats the above allegations as if set forth here verbatim.

11. The City of Hanahan revoked the defendant's business license administratively, which the appellant is now seeking judicial review.

12. The appellant's application for judicial review automatically stays operation of the revocation by operation of law.

13. The City of Hanahan has refused to accept the automatic stay provisions of South Carolina law (and its own ordinance), and induced the plaintiff to bring this ejectment action in violation of the defendant's rights.

14. The City of Hanahan threatened the plaintiff with retaliation if it did not instate this ejectment action, and therefore the plaintiff instituted this ejectment action, asserting pretext reasons for termination of the lease.

15. The institution of this ejectment action is for an ulterior purpose—to prevent the defendant's appeal of the business license revocation—and not an action brought to enforce an alleged violation of the lease. The plaintiff never provided notice of any default or right to cure as required by South Carolina law.

16. The institution of this ejectment action is a willful act in the use of the process of ejectment that is not proper in the regular conduct of the proceedings because the action is not to address any real violation of the lease, but is brought to prevent the defendant from access to the Court.

17. The defendant is entitled to trial by jury and for a judgment against the plaintiff for both actual and punitive damages in an amount to be calculated by the trier of fact. The defendant believes the damages are in excess of the jurisdictional limit of the Magistrate's Court.

FOR A FOURTH DEFENSE BY WAY OF COUNTERCLAIM
(Civil Conspiracy)

18. The defendant repeats the above allegations as if set forth here verbatim.

19. The plaintiff has entered into an unlawful combination with the Town of Hanahan designed to prevent the defendant from having her day in Court and driving her out of business in order to injure the defendant by achieving an extra-judicial resolution of the pending business license appeal thus denying the defendant access to the Court.

20. The plaintiff's ejectment action is undertaken with an unlawful motive and has caused the defendant special damages in the form of attorney's fees in defending an action brought in bad faith.

FOR A FIFTH DEFENSE BY WAY OF COUNTERCLAIM
(42 U.S.C.A. § 1983)

21. The defendant repeats the above allegations as if set forth here verbatim.

22. The defendant is a member of a minority racial group.

23. Both the Town of Hanahan's efforts to revoke the business license and this action are brought because the plaintiff and its conspirator have targeted the defendant because the business is minority owned and serves a minority clientele.

24. A private party is subject to an action under 42 U.S.C.A. § 1983 when it conspires with a governmental entity to deprive a defendant of her civil rights under color of law. *Dennis v. Sparks* 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980): "As the Court of Appeals correctly understood our cases to hold, to act 'under color of' state law for § 1983 purposes does not require that the defendant by an officer of the State. It is

enough that he is a willful participant in the joint action with the State or its agents." This ejectment action is being brought as proxy for the police department of the City of Hanahan. (The defendant already has a violation of civil rights action pending against the City of Hanahan in the Berkeley County Court of Common Pleas. The defendant will seek to consolidate this case with that.)

25. The defendant is entitled to a judgment against the plaintiff for both actual and punitive damages in an amount calculated by the trier of fact, and in addition is entitled to an award of attorney's fees as provided by 42 U.S.C.A. § 1988 and/or . § 15-77-300 of the South Carolina Code.

WHEREFORE, having fully set forth her motion for removal because the defendant's counterclaims seek amounts in excess of the jurisdiction of the Municipal Court (and because a related action is already pending in the Berkeley County Court of Common Pleas) and her answer and counterclaims to rule to vacate and rule to show cause, the defendant prays that the Court inquire into the matters herein, and

A) Remove the case to the Berkeley County Court of Common Pleas;

B) Grant the defendant a trial by jury;

C) Enter judgment against the landlord for both actual and punitive damages for violation of the defendant's right to quiet enjoyment under its lease as violated by the plaintiff's abuse of process, civil conspiracy, and deprivation of civil rights;

D) For costs of this action; and

E) For such other and further relief as the Court deems just and proper.

November 21, 2016

Thomas R. Goldstein, S. C. Bar# 2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, SC 29415-1121
843-554-4291; 843-554-5566 fax
ATTORNEY FOR DEFENDANT

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF THE FOREGOING PLEADING HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING BY FIRST CLASS MAIL, POSTAGE PREPAID THIS 21ST DAY OF NOVEMBER, 2016.

BY:

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT FOR BERKELEY COUNTY
	)	
COUNTY OF BERKELEY	)	Case No.: 2017-CV-08-10600019 Case No.: 2016-CV-08-10605290
Harris Investment Corporation,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR CONTNUANCE & DISMISSAL OF COUNTERCLAIMS WITHOUT PREJUDICE
	)	
Arelis Santos,	)	
	)	
Defendant.	)	
	)	

Defendants move for a Continuance on two grounds:

Rule 601

Rule 601 provides for the priority of cases called for trial. Plaintiff's counsel is required to be before Judge Nicholson in the court of Common Pleas at the same time this case is scheduled for trial. Even though the Common Pleas appearance is a motion hearing as opposed to a trial, Rule 601 makes no distinction. Moreover, prior to filing this motion, plaintiff's counsel requested the Common Pleas matter be moved; however, the Clerk of Common Pleas informs counsel if the motion is rescheduled, it will have to be carried over to September, which will make that application to the Court meaningless and deprive the plaintiff in that case the opportunity to be heard.

More importantly, the case cannot go forward on June 5th until the Court issues a ruling on defendant's request to withdraw her counterclaims under Rule 41(a). Until recently, defendant's counsel assumed the defendant's counterclaims were dismissed without prejudice as a matter of right. (The law on this issue is set forth below.) However, after consulting with opposing counsel in preparation for trial, the defendant now understands that the plaintiff "vigorously" opposes withdrawal of the counterclaims. The defendant mistakenly believed the withdrawal was not controversial since the legal issue has been settled by a well-developed body of law. In 1986, the South Carolina Court of Appeals analyzed this issue, just as South Carolina was in the process of adopting the *Federal Rules of Civil Procedure*. In *Prime Medical Corp. v. First Medical Corp.*, 291 S.C. 294, 353 S.E.2d 294, Ct. App. 1986) *cert. den.* May 20, 1987, the Court held:

Rule 41(a)(2) of the *Federal Rules of Civil Procedure* is identical to Circuit Court Rule 45(2). Under the federal rule, the district court has discretion in deciding a motion for a voluntary dismissal without prejudice, and it will permit a dismissal without prejudice unless the defendant will suffer substantial prejudice if the motion is allowed. See 5 J. MOORE, J. LUCAS, AND J. WICKER, MOORE'S FEDERAL PRACTICE § 41.05 at 41-62, 63 (2d ed. 1986) (where substantial prejudice is lacking, the district court should exercise its discretion by granting the motion for a voluntary [291 S.C. 300] dismissal without prejudice, citing *Burgess v. Atlantic Coast Line R. Co.*, 39 F.R.D. 588 (D.S.C.1966) and *Eaddy v. Little*, 234 F.Supp. 377 (E.D.S.C.1964)).

Both the Supreme Court, applying Rule 41(a)(2) of the new rules, and this court, applying Circuit Court Rule 45(2), have recently reasserted the rule set forth in *Gulledge* that "a plaintiff is entitled to a voluntary nonsuit without prejudice as a matter of right, unless there is a showing of legal prejudice to the Defendant." *Moore v. Berkeley County*, 290 S.C. 43, 44, 348 S.E.2d 174, 175 (1986), quoting *Marlow* [Page 297] *v. Marlow*, 284 S.C. 155, 325 S.E.2d 703 (Ct.App.1984). The showing of legal prejudice must be made by the defendant. See *Walker v. Jones*, 269 S.C. 19, 21, 235 S.E.2d 810, 810 (1977) ("The party opposing the motion for [a] voluntary nonsuit without prejudice must show prejudice (i.e., 'legal' prejudice) to successfully defeat the motion.").

Here, the defendant asserted counterclaims as part of a request to remove the case to circuit court. After the court declined defendant's request for removal, the parties appeared before the Court at a status conference and discussed defendant's request for voluntary non-suit. The defendant assumed at that time the defendant had no objection for the obvious reason that the plaintiff cannot demonstrate the legal prejudice necessary to defeat a request. "Pursuant to our standard of review, the determination of this case hinges on Appellants' showing at trial, or lack thereof, of legal prejudice that would result from the granting of Respondent's motion. If no showing of legal prejudice is made before the trial judge, the judge must grant a motion for voluntary dismissal. *Moore*, 290 S.C. at 44, 348 S.E.2d at 175. The burden of this showing of legal prejudice lies solely on the party seeking to defeat the motion. See *Prime Med. Corp. v. First Med. Corp.*, 291 S.C. 296, 300, 353 S.E.2d 294, 297 (Ct. App. 1987)." *Knight v. Waggoner*, 359 S.C. 492, 597 S.E.2d 894 (Ct. App. 2004)

Not only does the plaintiff fail to identify any legal prejudice, but also the defendant continues to pay rent to the plaintiff during the pendency of this case, so the plaintiff is suffering no financial prejudice. "Legal prejudice" of course means an inability to defend the case, which is not an issue here. The plaintiff can identify no "legal prejudice" by the defendant's withdrawal of her claims, and, as long as the defendant pays rent, no financial prejudice. (Of course, the plaintiff's aggressiveness toward the defendant, who is paying rent, makes the defendant's case for her that she is being singled out for elimination because the plaintiff is succumbing to the City of Hanahan's threats to harm the plaintiff if it does not throw out the defendant.)

Since it appears that the defendant's request to withdraw counterclaims is unsettled—due to plaintiff's hyper aggressiveness in the face of settled law—the parties now do not know what

issues are or are not before the Court going forward with a trial on June 5th because the parties need a ruling from the Court in order to know before the moment of trial what the issues are in this case. The procedure in Magistrate's Court may be relaxed, but it is not that relaxed: "Trials should be conducted in an informal manner and the South Carolina Rules of Evidence shall apply, but shall be relaxed in the interest of justice." Rule 13. Moreover, if the parties were going forward on the defendant's counterclaims, the trial of these cases would take a week, not a day, because they involve many legal issues and many potential witnesses.

Conclusion

The plaintiff's 11th hour objection to a voluntary dismissal is a legal strategy to limit the plaintiff's exposure and to prevent the defendant from bringing her claims in a forum of her choice. The plaintiff does not and cannot identify any legal prejudice caused by the withdrawal, and suffers no prejudice because it might have to face these claims in the Court of Common Pleas. Rather, the plaintiff objects to dismissal only because by doing so, it prevents the defendant from having an opportunity to conduct discovery on serious claims. The plaintiff seeks to hide behind the lack of discovery in Magistrate's Court to prevent the defendant from having access to information that is damaging to the plaintiff's claim and denying the defendant the opportunity to hold the plaintiff accountable for its acts.

For either or both of these reasons, the case cannot go forward on the 5th, and prior to the case being called, the defendant is entitled to know whether she is or is not permitted to withdraw her counterclaims as allowed by the *Rules of Civil Procedure*.

Respectfully submitted

June 5, 2017

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RULE 11 CERTIFICATE

I certify that prior to filing this motion, I consulted with opposing counsel who objects to the relief requested.

June 5, 2017

Thomas R. Goldstein, S. C. Bar No.: 2186

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 5th day of June 17

BY:

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BERKELEY	)	Case No.: 2017-CV-08-10600019
		Case No.: 2016-CV-08-10605290
Harris Investment Holdings, LLC,	)	
	)	
	)	
vs.	)	**MOTION FOR NEW TRIAL**
	)	Rule 19
Aracelis Santos,	)	
	)	
Defendant.	)	
	)	

FILED
DEC 15 2017
Goose Creek Magistrate Office

To: Merritt C. Abney, Counsel for the Plaintiff, Harris Investment Holdings, L.L.C.

Please take notice that pursuant to *Magistrate Court Rule* 19, the defendant, above named, will move, ten days after notice hereof, or as soon thereafter as counsel may be heard for a new trial on the following issues:

1.

The parties' negotiations around the third lease constituted an evidence of intent to renew.

The Court finds that the "third lease" is not in force because the landlord did not sign it. This finding is not supported by the evidence for two reasons:

A.

The evidence shows that the landlord refused to acknowledge defendant's extension by refusing to sign the "third lease" due to pressure from the Town and this inequitable conduct should not be permitted to serve as a basis for asserting the statute of frauds

The defendant testified that the plaintiff's agent, Isabella Martinez (whom the plaintiff did not call as a witness) presented the "third lease" in response to the defendant's intent to exercise her right of renewal under the leases. The Martinez voice mail (Exhibit 7) and test messages (Exhibits 4 and 5) make clear that the she presented the lease to the defendant—an offer, in this case an offer to renew, which the defendant accepted by affixing her signature to the third lease. The testimony clearly showed that the only reason the plaintiff did not sign the lease was because the City of

Hanahan brought pressure upon it to throw the defendant off the premises. While the Court articulates a correct statement of law regarding the Statute of Frauds, the Statute of Frauds is inapplicable in this case because it was the landlord responding to defendant's right to renew by producing the third lease. In other words, the evidence shows the defendant demanded her right to renew; the landlord responded by providing the third lease, which the defendant signed. Thus, the requirement for a writing is fulfilled by the existence of the "first" and "second leases." Moreover, the evidence shows that the **only** reason the landlord did not sign the "renewal" or "third lease," is because of the pressure the Town brought to bear on the landlord to get rid of the defendant. Both the plaintiff and the plaintiff's witnesses from the City of Hanahan were nonplussed over their admissions that they got together and coordinated a joint effort to eliminate the defendant. By any definition of equity, this is inequitable conduct, and the inequitable conduct is a bar to asserting the statute of frauds because the plaintiff refused to sign only because of its illegal combination with the City to interfere in defendant's contract.

In *Springob v. University of South Carolina*, 407 S.C. 490, 757 S.E.2d, 384 (2014), the Supreme Court allowed the equitable estoppel to defeat a claim for ejectment even though the parties **had no written contract**. (They had a sales brochure making promises of "premium seating" for Gamecock basketball games in exchange for set fees.) Here, the parties have two written contracts—the first and second leases—and it is undeniable that the "third lease" is nothing more than an extension of the "first" and "second lease" as Ms. Martinez's voice mail and text messages show.

"[T]he doctrine of estoppel may be invoked to prevent a party from asserting the statute of frauds." *Collins Music Co. v. Cook*, 281 S.C. 580, 583, 316 S.E.2d 418, 420 (Ct. App. 1984) (citing *Florence Printing Co. v. Parnell*, 178 S.C. 119, 127, 182 S.E. 313, 316 (1935)). The party asserting estoppel "must show that he has suffered a definite, substantial, detrimental change of position in reliance on the contract, and that no remedy except enforcement of the bargain is adequate to restore his former position." *Id.* "It is not sufficient to show merely that he has lost an expected benefit under the contract." *Id.* "Before the estoppel doctrine can be

invoked, however, there must be competent proof of the existence of the oral contract." *Atl. Wholesale Co. v. Solondz*, 283 S.C. 36, 40, 320 S.E.2d 720, 723 (Ct. App. 1984) (quotations and citations omitted).

Taking the evidence in the light most favorable to the Appellants, we find there is proof of an oral contract between the parties. Certainly, it is undisputed that there is an agreement for performance over the initial five-year period, and the University so concedes. Appellants' affidavits create a fact question as to the existence of an oral contract beyond year five. Indeed, Appellants' affidavits state they were induced to purchase the special seating under an oral promise that they would not have to pay a fee separate from the Gamecock Club membership and the face value of season tickets beyond year five. This is sufficient to create an issue of material fact as to whether Appellants suffered a definite, substantial, and detrimental change in reliance on these purported oral representations. Thus, we find that the trial court erred in granting summary judgment in favor of the University

Even if the first and second leases were not sufficient to satisfy the statute of frauds, and even if the plaintiff's inequitable conduct in conspiring with the City of Hanahan to interfere in defendant's contract were not enough to take this case out of the statute of frauds, there are cases from as far back as 1887 and 1934 holding that the best evidence part performance (and no one can deny that the first and second leases are part performance), which takes the matter out of the statute of frauds is "actual possession." "Actual possession is the most satisfactory evidence of part performance. *Kennemore v. Kennemore,* 26 S.C. 251, 1 S.E. 81 (1887); *Bolt v. Sullivan*, 173 S.C. 24, 174 S.E. 491 (1934)

B.
The first and second leases provide the tenant has the option to renew

The leases provide a right of renewal as follows:

> **51)** **RENEWAL OPTIONS** – Lessee is granted the option, provided it is not in default of any of the provisions and conditions of this Lease, to renew the Lease for Two (2) additional terms of Two (2) years. The said renewal option shall be on the same terms and conditions as this Lease.

It is undisputed that the defendant contacted the plaintiff's agent, Isabell Martinez, who the parties agree was the agent who prepared and executed the first and second leases. The option to renew does not require the landlord's signature; it is a right that belongs to the tenant under the terms and

conditions of the second and third lease. Leaving aside the testimony and the other evidence (text messages and voice mail message, Exhibits 4, 5, and 7), logic requires that the Court find the third lease to be a renewal of the first and second leases because there is no other explanation for the plaintiff's agent transmitting the third lease to the defendant and then retrieving it once the defendant signed it. If the defendant had not exercised her option, there was no reason for Isabel Martinez to prepare, transmit, and retrieve the third lease.

2.

There is no evidence in the record to support the Court's finding of nuisance

As may be seen by the attached, updated summary of citations, there is not much of a record to support a finding of nuisance. For example, the Court gives great weight to the fact that the City contends El Alamo's lawful maximum occupancy is 99. However, and the Court can either take judicial knowledge of this fact because the City of Hanahan adopts the International Building Code, or if the Court has any question about the this fact, it can reopen the record to receive correct information. The International Building Code allows occupancy to be calculated on the number of inches of ingress and egress from an enclosed area to the outside. The City has wrongfully calculated El Alamo's occupancy rate based on one door. In fact, and this is not disputed by anyone, El Alamo has four doors that communicate from the inside of the building to the outside. Thus, under the application of the International Building Code, the lawful occupancy rate for El Alamo is 720 or greater, not 99:

The maximum occupancy of a room or building is primarily determined by the available exits, with each exit accommodating only a certain number of people before bottlenecking occurs. The other key component in determining the max occupancy of a building or room is the intended use of the space, whether it's, for instance, a restaurant with tables and chairs or a more open event space.

More specifically, the International Building Code (IBC) provides an international standard for calculating the maximum occupancy for an area. The IBC defines an exit, or a means of egress,

as "A continuous and unobstructed path of vertical or horizontal egress travel from any occupied portion of the building or structure to a *public way*." (2009 International Building Code, p 218)

In the United States, the National Fire Prevention Association (NFPA) also forbids an exit from leading occupants through a kitchen or storage room on their way out of the building.

To determine the maximum number of people who are able to safely be in a room or building, the IBC recommends a certain number of inches of doorway per occupant. Exits that consist of a stairway need to have 0.3 inches of doorway per person, **and all other exits need 0.2 inches of doorway per person**. So, a function hall that has a maximum occupancy of 1,000 people and an exit that consisted of a corridor without stairs will need 200 inches of doorway. With doorways at around 36 inches in width—wider than the Americans with Disabilities Act requires in the United States—that function hall would need approximately six such doors.

Here it is undisputed that El Alamo has four doors, each 36" in width. Thus, under the International Building Code, the calculation is: 36" x 4 = 144". 144/0.2 = 720 maximum occupancy. More interesting is the fact—again undisputed and a matter of which the Court can take judicial knowledge—is that the City's Ordinance, § 8-244 provides the mechanism for the Town to enforce the International Building Code:

All buildings or structures which are unsafe, unsanitary, or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment, are severally in contemplation of this section, unsafe buildings. All unsafe buildings are hereby declared illegal and shall be abated by repair and rehabilitation or by demolition in accordance with the following procedure:

(1)

Whenever the inspector shall find any building or structure or portion thereof to be unsafe, he shall, in accordance with established procedure for legal notices, give the owner, agent, or person in control of the building or structure written notice stating the defects thereof. This notice shall require the owner within a stated time either to complete specified repairs or improvements, or to demolish and remove the building or structure or portion thereof.

(2)

If necessary, the notice shall also require the building, structure or portion thereof to be vacated forthwith and not reoccupied until the specified repairs and improvements are completed, inspected and approved by the inspector. The inspector shall cause to be posted at each entrance to the building a notice stating:

"THIS BUILDING IS UNSAFE AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING OFFICIAL."

This notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person or his agents, or other servants, to remove the notice without written permission of the inspector, or for any person to enter the building except for the purpose of making the required repairs or of demolishing same.

(3)

The owner, agent or person in control shall have the right, except in cases of emergency, to appeal from the decision of the inspector, as provided hereinafter, and to appear before the board of examiners and review at a specified time and place to show cause why he should not comply with the notice.

(4)

In case the owner, agent, or person in control cannot be found within the stated time limit, or, if the owner, agent or person in control shall fail, neglect, or refuse to comply with notice to repair, rehabilitate, or to demolish and remove the building or structure or portion thereof, the inspector, after having ascertained the cost, shall cause the building or structure or portion thereof, to be demolished, secured, or required to remain vacant.

(5)

The decision of the inspector shall be final in cases of emergency which, in his opinion, involve imminent danger to human life or health. He shall promptly cause any building, structure, or portion thereof to be made safe or cause its removal. For this purpose, he may at once enter any structure or land on which it stands, or abutting land or structures, which any assistance and at any cost as he may deem necessary. He may order the vacation of adjacent structures and may require the protection of the public by appropriate fence or other means as may be necessary, and for this purpose may close a public or private way.

(6)

Costs incurred under this section shall be charged to the owner of the premises involved and shall be collected in the manner provided by law.

(Code 1983, § 5-1-120; Ord. of 7-14-1975)

Instead of following the procedure required by this ordinance, the Town, conspiring with the landlord, seeks to perpetrate a fraud on the Court by asserting an occupancy rate it knows is false.

As for the other evidence of nuisance, it is clear that the incidents and arrests are pretext created by the City of Hanahan to create the illusion of a nuisance. (See attached Table of Citations.) For example—and this is just but one, but it is representative. To go through all the

alleged bad acts would require a brief of 500 pages. On January 7, 2017, the City of Hanahan arrested Arelis Santos for the charge of "Interfering with a City Employee." (A video of this arrest is attached to this motion. It is shocking.) The Municipal Court dismissed this arrest because the South Carolina Supreme Court invalidated the ordinance "Interfering with a City Employee in 1970. *Town of Honea Path v. Flynn*, 255 S.C. 32, 176 S.E.2d 564 (1970) Not only did the Town arrest Ms. Santos for a charge that does not exist, but also, it goes down as another example of "nuisance" cited by the landlord. (The City even included the defendant's own police report concerning the theft of his air conditioning units as evidence of "nuisance," which is like citing a shooting victim for littering because he is bleeding on the sidewalk.[1]) Moreover, as the Court points out in the Order under review, a certain level of control is necessary in order to hold a tenant liable for nuisance, yet virtually all of the evidence produced at trial involves third parties not under the control of the defendant. The evidence in this case fails to establish any unlawful acts by the defendant at this juncture.

Based on the foregoing, the defendant respectfully prays for an Order of the Court amending or altering its December 7th Order to vacate its findings of default based on alleged nuisance or failure to exercise her right to renew under the first and second leases.

Respectfully submitted,

December 15, 2017

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Attorneys for defendant

[1] Defendant's counsel has experienced such discrimination. On arrival at the office on a Monday morning, the undersigned discovered unknown persons dumped debris behind the office. Shortly thereafter, the City of North Charleston officer served a notice of code violation on the undersigned because of the criminal acts of unknown third parties.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	FOR BERKELEY COUNTY
COUNTY OF BERKELEY	)	2016cv0810605290
	)	2017cv0810600019
	)	
Harris Investment Holdings, LLC,	)	
	)	
	)	**PLAINTIFF'S MOTION FOR AWARD OF ATTORNEY'S FEES AND COSTS**
PLAINTIFF,	)	
vs.	)	
	)	
Aracelis Santos,	)	
	)	
DEFENDANT.	)	
	)	

Harris Investment Holdings, LLC ("HIH") hereby moves for an order requiring the defendant, Aracelis Santos ("Santos") to pay HIH's attorney's fees and costs incurred in connection with these ejectment actions pursuant to the express terms of the governing leases.

BACKGROUND

The plaintiff Harris Investment Holdings, LLC ("Harris" or "Landlord") filed the above-captioned actions seeking to eject the defendant, Aracelis Santos ("Santos" or "Tenant") from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. Harris alleged Santos breached the leases for these properties in several respects and that the lease for Latino Mix of the units has expired according to its terms. The parties waived their right to a jury trial, and an a consolidated bench trial was held on October 11, 2017. Harris was represented by Merritt G. Abney, Esq., and Santos was represented by Thomas R. Goldstein, Esq.

Via a written order dated December 7, 2017, the Court concluded that Harris carried its burden to show material breaches of the lease for El Alamo and that the lease for Latino Mix had expired according to its terms. (12.7.2017 Trial Order.) The Court ordered Santos ejected from

both units. (Id.) The Order further provided that any post-trial motions, including any motions for recovery of attorneys' fees and costs, must be filed within 10 days of receipt of the Order. (Id.) HIH received the Order via email from the Clerk of Court on December 13, 2017. (See 12.13.2017 Email from Connie Mills, attached as **Exhibit A**.)

Harris now seeks $54,340.58 in fees and legal expenses incurred by its outside counsel, Nelson Mullins Riley & Scarborough, LLP ("Nelson Mullins"), in connection with these actions. The primary attorney who worked on this case at Nelson Mullins is Merritt G. Abney. Mr. Abney is a 2003 graduate of Vanderbilt University Law School, and is a Partner at Nelson Mullins with 14 years of commercial litigation experience. Mr. Abney's rate for these actions was $380 per hour. Additional information regarding the background, experience, and rates charged by Mr. Abney are detailed in the Affidavit of Merritt G. Abney, attached hereto as **Exhibit B**. The role of other professionals and staff who assisted in the case, and their hourly rates, are also described in Mr. Abney's Affidavit, and the invoices attached thereto.

The invoices that Nelson Mullins submitted to Harris throughout this litigation–all of which were in fact paid by Harris–are attached to Mr. Abney's Affidavit at **Exhibit B-1**. These invoices contain detailed time entries which describe the work performed by Nelson Mullins throughout this matter.

DISCUSSION

I. THE COURT SHOULD AWARD HARRIS ALL OF THE FEES AND COSTS INCURRED BY NELSON MULLINS.

The Leases permit Harris to recover its litigation fees and expenses, including reasonable attorney's fees, in connection with any action to enforce the terms of the Leases. Specifically, the El Alamo Lease provides as follows:

> **32) ATTORNEY'S FEE.** In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

[Pls. Ex. 2, Sec. 32]. Harris successfully enforced the terms of the El Alamo Lease in an effort to eject Santos and retake possession of El Alamo. Harris is therefore entitled to recover "all costs, including reasonable attorney's fees," incurred in connection with the El Alamo Action.

Similarly, the Latino Mix Lease states as follows:

> **46) ATTORNEYS FEE** - In the event that any legal matter, dispute, action or proceeding exist arts commenced by or between lessor and Lessee under this Lease, the prevailing party shall be reimbursed reasonable attorney fees and court cost in such matter. If either party hereto without fault is made a party team litigation instituted by or against any other party to this Lease, such other party shall indemnify and hold harmless Lessor or Lessee, as the case may be, against all costs and expenses, including reasonable attorney's fees incurred in connection therewith.

[Pls. Ex. 23, Sec. 46.]. Harris is the prevailing party in an action commenced under the Latino Mix Lease, and therefore Harris is entitled to recover its reasonable attorney's fees and costs in connection with the Latino Mix action.

In addition, the amount of attorney's fees and costs requested by Harris is reasonable under the circumstances of this case. The Court considers six factors in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Seabrook Island Property Owners' Ass'n v. Berger*, 365 S.C. 234, 239, 616 S.E.2d 431, 434-45 (2005). These factors strongly support the Court awarding Harris the full amount claimed for fees and expenses incurred by Nelson Mullins.

1. Nature, Extent & Difficulty of Legal Services Rendered

These actions entailed much more than a simple ejectment for failure to pay rent. Although Santos did repeatedly fail to pay rent, Harris sought to evict Santos, in part, due to repeated violations of law and non-compliance with local ordinances and on the basis she created a public nuisance on the premises. Proving Harris' entitlement to ejectment on that basis required extensive review and analysis of police records, and preparation and coordination of several witnesses for trial. These cases have lasted for more than a year, due in large part to Santos' repeated efforts to delay the trial. The parties engaged in significant motions practice, including Santos' motions for removal to circuit court and to dismiss her own counterclaims, and Plaintiffs' motions for summary judgment, the latter of which was granted in part. And the actions culminated in a day-long trial at which eight witnesses testified. The record in these cases therefore establishes the actions raised a number of difficult legal issues and a large volume of evidence, and the cases extended over a lengthy period of time, such that this factor supports the amount of fees claimed by Harris.

2. The Time and Labor Expended

This factor also supports an award of the full amount of fees and costs incurred by Nelson Mullins. This was a time-consuming and labor-intensive case, as reflected in the detailed time records maintained by Nelson Mullins. The invoices, which are attached to the Affidavit of Mr. Abney as Exhibit 1, show the time and labor expended by Nelson Mullins in these matters. By way of example, and not limitation, Nelson Mullins prepared complaints and replies to counterclaims in both actions; prepared motions for summary judgment and opposed several motions filed by Santos; attended several pre-trial conferences and motions hearings; reviewed and prepared hundreds of pages of police reports and other documents for use at trial; prepared

six witnesses for trial (some, on multiple occasions due to Santos' request for a continuance on the eve of the initial trial). All of Nelson Mullins' work was imminently reasonable and necessary to Harris' prosecution of these matters.

In addition, as set forth in the Affidavit of Mr. Abney, Nelson Mullins staffed this case leanly – virtually all of the legal work on Harris' behalf was performed by Mr. Abney – and managed the tasks in an efficient manner. Abney Aff. at ¶¶ 13-14.

This factor strongly favors a full award of the attorney's fees and costs incurred by Nelson Mullins.

3. Professional Standing of the Attorneys

This factor also favors an award of the full amount requested. Mr. Abney is an experienced commercial litigator and enjoys a strong reputation in the community, as does the entire firm of Nelson Mullins. *See* Abney Aff. at ¶ 3.

4. Contingency of Compensation

This factor does not apply because Nelson Mullins did not handle this engagement on a contingency fee arrangement.

5. The Customary Fee For Like Work

Nelson Mullins' rates, as charged in this case, are reasonable and within this market for similar work by attorneys and other professionals with a similar background, experience, and expertise. The Affidavit of Mr. Abney demonstrates that the fees charged by Nelson Mullins were actually below his standard rates charged for similar work. Abney Aff. at ¶¶ 9-12. Moreover, Mr. Abney's Affidavit demonstrates that the rates charged were agreed to by Harris, and that Harris in fact paid the fees. (*Id.*) at ¶¶ 9-10. This is strong evidence that Nelson Mullins' rates charged in this case were accepted in the marketplace.

Additionally, the South Carolina Supreme Court nearly ten years ago awarded attorneys' fees pursuant to a fee-shifting statute under the lodestar methodology in an amount far in excess of the highest rate sought by Harris in this case. *See Layman v. State*, 376 S.C. 434, 459, 658 S.E.2d 320, 333 (2008) (awarding fees based upon a rate of $600 per hour for lead counsel and $200-$250 per hour for associates).

6. Beneficial Results Obtained

This factor strongly supports the amount of fees claimed. Harris was successful in ejecting Santos from both units and obtained a complete victory in this matter. All of the relief sought by Harris in its pleadings was awarded by the Court. The result obtained is the most important factor in the reasonable fee calculation. *Brodziak v. Runyan,* 145 F.3d 194, 196 (4th Cir. 1998). The United States Supreme Court has stated that "where a [litigant] has obtained excellent results, his attorney should receive a fully compensable fee. Normally, this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). Given the outcome of this case, there is no question that this factor strongly supports an award of the full amount of fees requested.

CONCLUSION

For all of the above reasons, Harris respectfully requests the Court award it attorney's fees and costs as reflected in the invoices submitted by Nelson Mullins.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Charleston, South Carolina

December 20, 2017

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, counsel for Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS FEES

Counsel Served:

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2344 Cosgrove Avenue
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Administrative Assistant

December 20, 2017

EXHIBIT A

Merritt Abney

From: Connie Mills <connie.mills@berkeleycountysc.gov>
Sent: Wednesday, December 13, 2017 11:47 AM
To: Merritt Abney; Thomas Goldstein
Subject: Order: 2016CV0810605290 and 2017CV0810600019: Harris Investments Holdings, LLC vs. Aracelis Santos
Attachments: SKMBT_22317121312440.pdf

Please see the attached order for the following cases 2016CV0810605290 and 2017CV0810600019. If there are any questions you can contact me via email or you can call me at one of the below numbers. If you would like for me to send you one via US MAIL, please let me know.

Respectfully,
Connie C. Mills
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STATE OF SOUTH CAROLINA)	IN THE MAGISTRATE COURT
)	
COUNTY OF BERKELEY)	CASE NUMBERS: 2017-CV-08-10600019
)	2016-CV-08-10605290
)	
HARRIS INVESTMENTS)	
HOLDINGS, LLC,)	
)	
Plaintiff,)	
)	
v.)	**ORDER**
)	
ARACELIS SANTOS,)	
)	
Defendant.)	
)	

THIS MATTER comes before the Court on October 11, 2017, upon the Plaintiff's Applications for Ejectment filed in the above-captioned actions. The Plaintiff (hereinafter "Harris" or "Landlord") sought to eject the Defendant (hereinafter "Santos" or "Tenant") from two units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina.

I. Findings of Fact and Conclusions of Law

A. BACKGROUND

Harris and Santos are parties to a lease dated May 22, 2014, for an 1,807 square foot shopping center unit operated as a convenience store known as "Latino Mix." [Plaintiff's Exhibit 23, Defendant's Exhibit 1], hereinafter "the First Lease." The term of the First Lease was for two (2) years, provided that in the event the "commencement date" of the First Lease was a date other than the first date of a calendar month, the term would extend for the number of days remaining in the calendar month following the commencement date. The commencement date for purposes of the First Lease was August 1, 2014.

Harris and Santos are parties to a lease dated December 2, 2015, for a 3,780 square foot shopping center unit operated as a restaurant/discotheque/night club known as "El Alamo." [Plaintiff's Exhibit 2, Defendant's Exhibit 2], hereinafter "the Second Lease." The term of the Second Lease was from December 1, 2015, until November 30, 2018.

The First Lease sets forth the "demised premises" as 5901 Loftis Road, Suite #2, 4, Hanahan, South Carolina. The Second Lease provides that the leased premises is 5901 Loftis Road, Hanahan, South Carolina. However, it is clear from the evidence presented, and undisputed by the parties, that the First Lease involves "Latino Mix" and the Second Lease involves "El Alamo." The business license for El Alamo is held in the name of Benjamin Reyna (hereinafter "Reyna").

Harris filed an Application for Ejectment and Rule to Show Cause, Case Number 2016-CV-08-10605290, on November 14, 2016, alleging that Santos had violated the terms or conditions of the Second Lease. A Rule to Vacate or Show Cause was signed by the Honorable D. Mark Stokes and served on Santos on November 17, 2016. Santos filed a Motion for Removal, Answer to Rule to Show Cause, and Counterclaims on November 28, 2016. Harris filed a Reply to Counterclaim on December 15, 2016. Harris submitted a Memorandum in Opposition to Santos's Motion to Remove on or about January 6, 2017[1]. Judge Stokes held a hearing on Santos's Motion for Removal on January 9, 2017, and ultimately issued an order on January 13, 2017, denying the Motion. On March 31, 2017, the Harris filed a Motion for Summary Judgment in Case Number 2016-CV-08-10605290. On June 14, 2017, Harris filed a Supplemental

[1] While Harris's Memorandum in Opposition to Santos's Motion to Remove was submitted to the Court on January 6, 2017, said Memorandum was not actually filed until January 13, 2016.

Memorandum in Support of Motion for Summary Judgment in Case Number 2016-CV-08-10605290.

Harris filed a second Application for Ejectment and Rule to Show Cause, Case Number 2017-CV-08-10600019, on January 5, 2017, alleging that the terms of tenancy or occupancy had ended under the First Lease and further that Santos had violated the terms or conditions of the lease. A Rule to Vacate or Show Cause was signed by the undersigned on January 6, 2017, and a constable attempted service upon Santos two (2) times, posting a copy of the Rule to Vacate or Show Cause on Santos's door. Santos's attorney acknowledged that Santos received a copy of the Rule to Vacate or Show Cause and indicated that he would be filing a response thereto.[2] Santos filed a second Motion for Removal, Answer to Rule to Show Cause, and Counterclaims on February 23, 2017. Harris filed a second Memorandum in Opposition to Santos's Motion to Remove and Reply to Counterclaim on March 3, 2017. On April 3, 2017, the Plaintiff filed a Motion for Summary Judgment in Case Number 2017-CV-08-10600019.

Following Judge Stokes' January 13, 2017, Order denying Santos' Motion for Removal as to Case Number 2016-CV-08-10605290, this Court determined that Judge Stokes' rulings became the "law of the case" for purposes of Case Number 2017-CV-08-10600019, and therefore denied Santos' Motion for Removal in the latter action. After the Court's decision, Santos moved to voluntarily dismiss her counterclaims against Harris over Harris' objection. The Court issued an Order granting Santos' Motion to voluntarily dismiss her counterclaims on July 18, 2017.

[2] On March 9, 2017, the undersigned held a pretrial hearing at which time the Court inquired of Santos's attorney as to whether there were any service issues pertaining to either matter in light of Santos's Answer which asserted an affirmative defense under South Carolina Rules of Civil Procedure (SCRCP) Rule 12(b)(2). The acknowledged to the Court that no service issues existed. As such, the Court finds that Santos voluntarily withdrew her affirmative defense under SCRCP 12(b)(2) and acquiesced to the Court having personal jurisdiction over her for both matters.

Santos waived her right to a jury trial and the matters were heard by bench trial on October 11, 2017.

B. FINANCIAL DEFAULT

Despite having not pled the issue in either Application for Ejectment, Harris alleges Santos repeatedly defaulted on her obligation under the First and Second Leases to pay rent timely for both El Alamo and Latino Mix.

Rule 15(b) of the South Carolina Rules of Civil Procedure allows for amendments of pleadings to conform to the evidence presented at trial, providing in pertinent part: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Rule 15(b), SCRCP. Dunbar v. Carlson, 341 S.C. 261, 533 S.E.2d 913 (Ct. App. 2000). The decision whether to allow the amendment of pleadings to conform to the evidence is left to the sound discretion of the trial court. Id. Amendments should be allowed if no prejudice occurs to the opposing party. Id.

Rule 15(b) covers two situations involving amendments to conform to the evidence. Id. First, if an issue not raised by the pleadings is tried by express or implied consent of the parties the court may permit amendment of the pleadings to reflect the issue. Second, if a party objects to the introduction of evidence as not being within the pleadings the court may permit amendment of the pleadings subject to a right to grant a continuance if necessary. Id. Express consent may be demonstrated by a stipulation but implied consent depends on whether the parties recognized an issue not raised by the pleadings entered the case during the trial. Id.

As was the case in Dunbar, no objection was made in this case to the evidence pertaining to financial default. As such, the second part of the rule is inapplicable. In

addition, there was no express consent. However, the Court finds that the parties tried the issue of financial default by implied consent. It appears from the evidence in the record that counsel for both Harris and Santos questioned witnesses extensively regarding the issues of Santos' alleged financial default. In fact, this issue was the basis for Harris' Motion for Summary Judgment prior to the trial which was granted in part.

Both leases in the instant case require payment of rent on a monthly basis and rent is due on the first day of each month. Failure to pay rent on or before the due date constitutes financial default. If Tenant fails to cure the default via payment of the past due rent and all late fees within 5 days of receiving notice of default, Landlord is authorized to immediately terminate the lease and oust Tenant. [Plaintiff's Exhibit 2, Defendant's Exhibits 1 and 2].

In February of 2017, Santos submitted a check dated February 4, 2017, for the monthly rental payment for El Alamo, but the check was returned due to insufficient funds. [Plaintiff's Exhibit 12]. On March 10, 2017, Harris' counsel notified Santos' counsel of the default orally and in writing. [Plaintiff's Exhibit 13]. No replacement check or any other payment for February 2017 rent was delivered within the 5-day cure period as required. [Plaintiff's Exhibit 17].

On March 20, 2017, the rent check for El Alamo was also returned due to insufficient funds. [Plaintiff's Exhibit 14]. On April 4, 2017, Harris provided notice to Santos that the March rent check was returned due to insufficient funds and stated that although Santos was already in default (due to failure to pay February rent and other breaches described in the Complaint), the failure to pay March rent constituted further financial default under the terms of the Lease. [Plaintiff's Exhibit 15]. Santos failed to

provide a replacement check or otherwise cure the breach within the 5-day cure period as required. [Plaintiff's Exhibit 17].

On May 3, 2017, counsel for Harris informed counsel for Santos that Harris had terminated the Second Lease due to Santos' failure to timely pay rent and failure to timely cure financial defaults after notice. [Plaintiff's Exhibit 17].

Santos subsequently failed to pay rent timely for August of 2017 for El Alamo. Via letter dated August 15, 2017, counsel for Harris notified Santos of this further financial default. [Plaintiff's Exhibit 18]. Santos failed to cure the defaults within the 5-day cure period as required. Santos again failed to pay rent timely for September of 2017 for El Alamo. Counsel for Harris sent a letter dated September 22, 2017, notifying Santos of this further financial default and Santos did not cure the breach within the 5-day cure period. [Plaintiff's Exhibit 19].

It is clear that Santos repeatedly failed to make timely rental payments under both the First and Second Leases. In fact, the Court previously granted partial summary judgment in that there was no issue of material fact as to whether Santos was in default for "failure to pay rent when due or demanded" and whether she received notice of the default. Mr. DeLuca testified at trial that he had no information about rent and that as far as he was aware, including whether or not there remains an unpaid balance and that Harris had sent the rent payments to held in escrow by new counsel. Nonetheless, Santos had at the time of trial caught up all back owed rent.

Having determined that Santos was in financial default, the Court must next determine whether said breach was material under the analysis set forth in Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994).

In determining whether Tenant's breach of the Lease was material, the Court must consider (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Kiriakides, supra.

Harris contends that it was deprived of the benefit of its bargain in purchasing the shopping center and assuming the Leases, having based its analysis of what it was willing to pay for the premises in part on the expectation of timely rental payments. Mr. DeLuca testified that Santos' repeated failure to make timely payments frustrated Harris' ability to manage cash flow for the shopping center. However, Mr. DeLuca admitted that he was unaware of the status of Santos' account and testified that the late rent payments remained in Harris' counsel's trust account. The Court finds that while the late rent was an inconvenience to Harris for sure, it did not rise to the level of depriving Harris of the benefit of its bargain and that the only benefit Harris reasonably could have expected was the past due rent which could be adequately compensated by damages. Santos' damages to the extent the Leases would be forfeited include the length of time remaining on the Leases. As to factor (d), the Court finds that Santos has in fact cured her default by paying all amounts past due. Finally, there is no evidence in the record that Santos' breach was willful or in bad faith. Although Santos did provide Harris with

checks that were returned for insufficient funds, nothing presented suggests that she did so purposefully.

As the Court has applied all Kiriakides factors in favor of Santos, the Court finds that forfeiture based on financial default alone in this particular case would be inequitable under the totality of the circumstances surrounding the financial breach.

C. FIRST LEASE

(1) Term of Tenancy or Occupancy Has Ended

In Case Number 2017-CV-08-10600019, Harris argues that the First Lease expired and that Harris delivered notice to Santos to vacate the premises and, as such, the ejectment should be upheld.

It is unequivocal that the term of occupancy for Santos under the First Lease ended August 1, 2016. On December 1, 2016, counsel for Harris notified Santos the term of the First Lease had expired and directed Santos to vacate the premises on or before December 31, 2016. [Plaintiff's Exhibit 24]. Santos refused to vacate and continued to occupy the premises. As indicated previously herein, it is clear from the evidence presented, and undisputed by the parties, that the First Lease involves "Latino Mix" and the Second Lease involves "El Alamo."

During the trial, Santos introduced evidence of a purported new lease agreement for Latino Mix as Defendant's Exhibit 3 (hereinafter "the Third Lease"). Whereas Harris denied ever having agreed to renew or extend the term of the First Lease, Santos argues that all negotiations pertaining to the Third Lease took place with Isabella Martinez acting as agent for Harris and that she believed the Second Lease and the Third Lease were extensions of the First Lease. Santos claims that she signed the Second Lease on December 22, 2015, and the Third Lease on August 1, 2016. The

Third Lease provided a term beginning on August 1, 2016 (the expiration date of the Second Lease), and ending on August 1, 2018. Santos argues that after she signed the Third Lease, she received text messages from Isabella Martinez explaining that the Landlord would not sign the Third Lease following a meeting with the City of Hanahan.

The Third Lease provides in Section 23 thereof, entitled "Effective Date of Lease," that "This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party." [Defendant's Exhibit 3]. It is undisputed that the Third Lease was never executed by Harris or any agent of Harris. By the express terms of the Third Lease, even if Santos signed the Third Lease and delivered it to Harris, this act merely constituted an offer to lease subject to revocation at any time prior to execution by Harris. As such, the Third Lease did not become a binding agreement as there was never an execution and delivery thereof by both parties.

Moreover, the Third Lease does not satisfy the statute of frauds because it was never signed by Harris or any agent thereof. S.C. Code Section 32-3-10(4) provides that any contract for an interest in land or any agreement that is not to be performed within one year must be in writing and signed by the party against whom it is seeking to be enforced. Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989) (holding a lease agreement for a period greater than one year, or any modification thereof, must satisfy the statute of frauds).

Finally, the Court finds that Santos failed to exercise her option to renew the First Lease which required delivery via certified mail of written notice of her intention to renew at least one hundred eighty (180) days before the expiration of the First Lease. [Plaintiff's Exhibit 23].

The Court finds that the credible evidence in the record demonstrates that the Third Lease is ineffective and therefore the First Lease expired on August 1, 2016, leaving Santos as a month to month tenant since that date. [Plaintiff's Exhibit 23]. As such, Harris is entitled to ejectment under Case Number 2017-CV-08-10600019.

(2) Failure to Provide Evidence of Insurance Coverage

In Case Number 2017-CV-08-10600019, Harris next argues that Santos defaulted as to Sections 14 and 16 of the First Lease by failing to provide evidence of insurance coverage as demanded by Harris.

Section 14 of the First Lease provides that Santos was to carry at her own expense, public liability insurance coverage on the premises with a company qualified to transact business in South Carolina with liability limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate. Santos was to have Harris and its managing agent named as additional insureds with a certificate of such coverage from the insurer giving thirty (30) days' notice to Harris and its managing agent prior to cancellation or termination was required to be provided to Harris and its managing agent prior to Santos' possession of the premises.

Section 16 of the First Lease provides that Harris carry all-risk insurance coverage on the premises and other buildings in the shopping center and if during the term of the lease, the premises are used for any purpose or in any manner which

causes an increase in the rates of such insurance, Santos shall pay as additional rent the additional premium caused thereby upon ten (10) days written notice to Santos.

On December 21, 2016, counsel for Harris sent an email to counsel for Santos indicating that it was his understanding the insurance certificates for both Latino Mix and El Alamo were set to expire on December 30, 2016. [Plaintiff's Exhibit 9]. Counsel for Harris further indicated that Harris needed to obtain new certificates as soon as possible but no later than December 30, 2016.

Costa DeLuca, employed by Harris, testified that no insurance certificates were ever provided demonstrating that Santos maintained the public liability insurance coverage up to the limits required by the First Lease subsequent to December 30, 2016. Santos did not testify at trial and produced no evidence that insurance certificates were ever provided subsequent to the purported expiration of the initial insurance certificate on December 30, 2016.

Section 18(b) of the First Lease provides that "Lessee shall be in general default if it shall fail to keep or shall violate any other conditions, stipulations, or agreements contained" in the First Lease "on the part of the Lessee to be kept and performed." Section 18(d) provides that "In the event Lessee is in general default, it shall have a grace period of thirty (30) days to cure such default after Lessor shall have mailed, by U.S. Postal Service, Lessee written notice thereof; provided however, if Lessor shall have mailed to Lessee a notice of such default, even though the same shall have been cured and this Lease not terminated, and within twelve (12) months from the date which said notice of default has been mailed by Lessor to Lessee, Lessee shall again be in general default, the same shall be deemed an event of default without any notice or grace period."

While Harris provided Santos with a letter titled "Notice of Default and Right to Cure" on October 13, 2016, regarding liability insurance for the Second Lease, Harris did not provide Santos with notice of default pertaining to her failure to maintain insurance on the First Lease.

The purpose of a notice of default is to give the party allegedly in default an opportunity to cure the default and meet his obligation. Hammond v. Tilghman Lakes, Inc., 295 S.C. 152, 367 S.E.2d 446 (Ct. App. 1988). Forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract both as to time and content. Litchfield Co. of South Carolina, Inc., v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986).

Although counsel for Harris requested new certificates of insurance from Santos on December 21, 2016, Santos was not in default at that time as Harris admits the certificates of insurance expired December 30, 2016. The Court finds that Harris may have had grounds to send a Notice of Default to Santos on December 31, 2016, as result of Santos' potential breach of the First Lease for failing to maintain public liability insurance on the premises. However, nothing in the record evinces that Harris ever provided Santos with the opportunity to cure any such potential breach as provided for in Section 18(d) of the Lease. Whether the Court were to conclude that Santos breached the First Lease by failing to maintain public liability insurance is immaterial as the Court finds that Harris failed to comply with the Notice of Default provisions of the First Lease in giving Santos the opportunity to cure the breach.

Therefore, Harris' request to uphold the eviction of Santos based on the alleged violations of the First Lease as to liability insurance is denied.

D. SECOND LEASE

(1) Failure to Comply with Local Laws and Ordinances

In Case Number 2016CV0810605290, Harris argues first that Santos breached Section 10 of the Second Lease by failing to comply with local laws and ordinances, resulting in revocation of the business license issued by the City of Hanahan in connection with the business operated by Santos and/or Mr. Reyna on the premises. Harris argues that continuing to operate the business without a valid business license also violated the terms and conditions of the Second Lease. Harris further argues that Santos repeatedly violated the International Fire Code regarding the maximum capacity for the building located on the premises, thus violating the terms and conditions of the Second Lease.

The Second Lease prohibits Santos from using the premises for any immoral conduct or illegal activity. [Plaintiff's Exhibit 2, Section 4]. While Santos herself did not testify at trial, her sister, Arelis de Santos Gomez testified that she understood the Second Lease to require her sister to maintain the premises in compliance with local law. Ms. de Santos Gomez acknowledged that violations of local ordinances limiting building occupancy and prohibiting after-hours consumption of alcohol would constitute breaches of the Second Lease. However, she denied that she or her sister had allowed any unlawful activity on the premises.

The Second Lease further requires Santos to keep the premises "in compliance with all laws, ordinances, and requirements of any legally constituted public authority." [Plaintiff's Exhibit 2, Section 10].

At trial, Hanahan Police Chief Dennis Turner testified as to voluminous incident reports prepared by the Hanahan Police Department arising from and connected to the

operation of El Alamo from 2014 to the present day, including alleged violations of local ordinances regarding occupancy, after-hours consumption of alcohol, and selling alcohol without a license.[3] Chief Turner further testified about incident reports related to various physical altercations, including assaulting a police officer, numerous arrests related to alcohol/intoxication, possession of drugs, arrests of an employee of El Alamo for pointing and presenting a firearm on the premises, and noise violations.

While the incident reports do reflect that a substantial amount of criminal activity of third parties has occurred in and around the premises of El Alamo over the last three (3) years to which the City of Hanahan Police Department has responded, most of these incidents involve purported customers of El Alamo rather than the owners, operators, and employees thereof.

Nevertheless, several incident reports detail incidents during which officers cited El Alamo for substantially exceeding its maximum occupancy of ninety-nine (99) persons in violation of the International Fire Code as adopted by the City of Hanahan pursuant to S.C. Code Section 6-9-80. [See Plaintiff's Exhibit 27, pages 44-45, 53, 372, 380]. Officer Cliff Driggers testified that he personally participated in a count of all persons within El Alamo in 2016 in which the occupancy exceeded ninety-nine (99). Driggers further testified that he personally observed patrons of Latino Mix bringing alcohol from Latino Mix to El Alamo and that El Alamo was a "BYOB club" and that nothing was unlawful about customers bringing their own alcohol to El Alamo. It is clear from the evidence presented that Santos' establishment did on at least one occasion permit more persons that allowed by the International Fire Code as adopted by the City

[3] Plaintiff's Exhibit 27, the compilation of incident reports involving El Alamo, was admitted into evidence over Santos' hearsay objection pursuant to Rule 803(8) of the South Carolina Rules of Evidence.

of Hanahan. Thus, the Court finds that Santos violated the Code of Ordinances for the City of Hanahan constituting default under Section 10 of the Second Lease.

Moreover, several incident reports document incidents of El Alamo violating Hanahan Ordinance 4-2 which prohibits onsite consumption of alcohol after 2:00 a.m. [See Plaintiff's Exhibit 27, pages 372, 380, 402, 415, 424, 437, 444, 445, 449, 451, 473]. In addition, the reports detail at least one incident during which El Alamo sold alcohol without a license to do so. [See Plaintiff's Exhibit 27, page 432]. While Santos argues that the ordinance is being challenged in a separate Common Pleas action, Santos acknowledges that it is unnecessary for this Court to analyze that litigation to decide the issues before the Court. It is clear from the evidence presented that Santos' establishment remained open on at least one occasion during the hours prohibited by the ordinance and that during these hours patrons consumed alcoholic beverages in Santos' establishment. Thus, the Court finds that Santos violated the Code of Ordinances for the City of Hanahan constituting default under Section 10 of the Second Lease.[4]

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[4] Due to the alleged criminal activity in and around El Alamo, the Hanahan City Council unanimously voted on May 26, 2016, to revoke the business license of El Alamo. Said revocation was upheld on appeal to the Court of Common Pleas. The Circuit Court's decision to affirm the revocation is currently on appeal to the South Carolina Court of Appeals. Santos argues that Harris "concedes that both the Hanahan City ordinance and South Carolina state law provide an automatic stay for such an appeal." Although Rule 241 of the South Carolina Appellate Court Rules provides that as a general rule, the service of the notice of appeal in a civil matter acts to automatically stay matters decided in the order and to automatically stay the relief ordered in the appealed order, Rule 241 provides that there are exceptions to the general rule found in statutes, court rules, and case law. Hanahan Municipal Ordinance 10-9(b) states that a timely appeal of a business license revocation **does not effectuate a stay of city council's decision to revoke**. Despite such, El Alamo has continued to operate on the premises which Harris argues violates Hanahan City Ordinance 10-2 prohibiting operating of a business without a valid business license. The HPD incident reports evince repeated instances in which El Alamo has been cited for violations of Ordinance 10-2. [Plaintiff's Exhibit 27, pages 444, 448, 449, 451]. Nothing in the record suggests that Santos sought a temporary injunction in an effort to continue business operations during the pendency of the appeal. See Amrik Singh & SBPS, Inc. v. City of Greenville, 384 S.C. 365, 681 S.E.2d 921 (Ct. App. 2009) (Following revocation of business license, owner unsuccessfully sought a temporary injunction to continue business operations during the pendency of the appeal given the Greenville City Ordinance provided that an appeal does not stay the revocation). Nonetheless, the Court finds that no exceptions to the general rule providing for an automatic stay of the business license revocation apply in this particular case. The Court notes that if the Hanahan Municipal Ordinance's

Having determined that Santos breached the Second Lease, the Court must determine whether any notice and cure period applies to Santos' breach of the Lease and, if so, whether proper notice was given and whether Santos cured its defaults.

Mr. DeLuca testified at trial that he personally met with Mr. Reyna at El Alamo in the Fall of 2016 and warned him that violations of local ordinances and criminal activity must stop or Harris would have no choice but to take legal action. On October 13, 2016, Harris provided Santos with a Notice of Default regarding the failure to comply with Section 10 of the Second Lease involving exceeding the maximum occupancy. Nonetheless, these violations have continued well past the cure period. As such, the Court finds that Harris complied with the Notice provisions of the Second Lease.

The Court finds that Santos breached the Second Lease and Harris complied with the Notice of Default provisions therein. The Court must next determine whether said breach was material under the analysis set forth in Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994).

In determining whether Tenant's breach of the Lease was material, the Court must consider (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable

provision regarding the inapplicability of the general rule is upheld, a business would effectively be shut down regardless of whether they prevail on appeal, an application of the law that would effectively eliminate due process. As such, the Court declines to find that Santos breached the lease by continuing to operate El Alamo during the pendency of the appeal of the business license revocation.

assurances; (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Kiriakides, supra.

The Court finds that Harris' expectations that Santos will comply with all local and state ordinances are certainly reasonable. The Court concludes that the breaches as proven amounts to those that deprives Harris of the benefit it expected from the Lease itself. The violation of local ordinances, particularly those that relate to fire safety and safety of the general public significantly increases the exposure to Harris as to liability for injuries to persons on the premises and otherwise. Certainly the exposure to liability was an issue contemplated by the Second Lease as the Second Lease requires Santos to keep a minimum of $1,000,000.00/$2,000,000.00 in general liability insurance on the premises with Harris as an additional insured. Harris could not possibly be adequately compensated for Santos' failure to abide by the local ordinances.

The Court finds that that Santos' damages, if the lease is forfeited, include the length of time remaining under the lease alone. However, no testimony was offered at trial as to the potential revenues lost should Santos forfeit the lease. Arelis de Santos Gomez testified as to the amount of work, effort, and her savings that she put into the business and indicated that if put out she would have no money to pay rent as a single mother with a daughter starting college next year. However, Arelis de Santos Gomez is not the tenant of the premises associated with the Second Lease as evinced by her testimony. Aracelis Santos did not testify and presented no evidence as to the extent to which she would suffer forfeiture. The fourth factor examines the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances. Having considered all the circumstances surrounding the Second Lease and Santos' breach, the Court concludes

that Santos was given ample time within which to cure the default and, over time has failed to attempt to cure its default. This Court has no reasonable assurances that Santos will cease to allow El Alamo to remain open and serve alcoholic beverages after hours in the future.

In light of the foregoing, the Court finds Santos' repeated breaches of the lease relating to Sections 4 and 10 of the Second Lease were material and the eviction is upheld.

(2) Public Nuisance

Harris additionally argues that Santos violated the terms and conditions of the Second Lease by creating a public nuisance on the premises and that the Court should uphold the eviction as a result.

South Carolina defines a nuisance as follows:

> A person who erects, establishes, continues, maintains, uses, owns, occupies, leases, or releases any building or other place used for the purposes of lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace in this State is guilty of a nuisance; and the building, place, or the ground itself in or upon which the lewdness, assignation, prostitution, repeated acts of unlawful possession or sale of controlled substances, or continuous breach of the peace is conducted, permitted, carried on, continued, or exists and the furniture, fixtures, musical instruments, and movable property used in conducting or maintaining the nuisance also are declared a nuisance and shall be enjoined and abated as provided in this chapter.

S.C. Code Section 15-43-10(A). "Continuous breach of the peace" means a pattern of repeated acts or conduct which either (1) directly disturbs the public peace or (2) disturbs the public peace by inciting or tending to incite violence. S.C. Code Section 15-43-10(B).

S.C. Code Section 15-43-20 provides that the Attorney General, the solicitor in the judicial district in which the alleged nuisance is kept, or any citizen of this State may

bring suit for injunction of the nuisance as to the person conducting or maintaining the nuisance and the owner or agent of the building or ground upon which the nuisance exists. S.C. Code Section 15-43-20.

Santos argues that the procedure set forth in Title 15 is the only means by which a nuisance may be established under South Carolina law and that this Court may not determine whether the actions or inactions of El Alamo constituted a nuisance. The Court disagrees. The Court must determine whether Santos kept the premises "in compliance with laws, ordinances and requirements of **any** legally constituted public authority." [Plaintiff's Exhibit 2, Section 10]. The Court finds that this provision of the lease contemplates not only that a magistrate would have to determine whether Santos violated the ordinances of the City of Hanahan (which the Court finds she has), it also contemplates that a magistrate would have to determine whether Santos violated the laws of the State of South Carolina which certainly include the laws pertaining to public nuisance. While the procedure set forth in Title 15 certainly provides a means by which a Court of equity may grant an injunction as to a nuisance, nothing therein prohibits the magistrate court from determining the existence of said nuisance as a ground for ejectment. To hold otherwise would render the foregoing provision of the Second Lease, a provision common to nearly all commercial and residential leases in South Carolina, meaningless. Santos and Harris entered into a lease that requires Santos to comply with all laws of any legally constituted public authority. Whether Santos has breached said lease is necessarily determined by this Court and this Court alone. This Court cannot and will not enjoin Santos from operating her business as contemplated by the procedures regarding public nuisances as set forth in Title 15. However, if this Court determines that Santos has breached the Second Lease, the Court may uphold

Harris' application for ejectment, simply preventing Santos from operating her business **on Harris' property**.

It is a sound principle of South Carolina law that "if one maintains a place where the laws are publicly, repeatedly, persistently, and intentionally violated, then such place would become a common or public nuisance." State v. Turner, 198 S.C. 499, 18 S.E.2d 376 (1942); see also State ex rel. Hembree v. Sherald, 2010 WL 10085571 (U.P. Ct. App. 2010). A business may become a nuisance by the manner in which it is conducted, and by the conduct of the persons assembling in and around it. Turner, supra.

The evidence in the record suggests that the number of calls for service to the Hanahan Police Department for El Alamo far exceeds the number of calls for service for the three (3) other establishments in Hanahan that allow for on-premises consumption of alcohol (LG's, Buccas, and Hanahan's). Chief Turner testified that the Hanahan Police Department has been required to devote so much time to El Alamo that it hampers the HPD's ability to address criminal activity elsewhere in the city. Chief Turner further testified that the HPD is forced to address an incident at El Alamo each and every weekend and, because of the danger posed by prior incidents of violence and weapons at El Alamo, the HPD must send multiple officers to El Alamo to address the issues. Two local business owners testified regarding disruption to the surrounding areas caused by disturbances at El Alamo, particularly as to the signage for one business being destroyed by a patron of El Alamo and the disturbances to the other's customers, tenants in a mobile home park adjacent to El Alamo.

As indicated previously herein, a substantial amount of criminal activity of third parties has occurred in and around the premises of El Alamo over the last three (3)

years to which the City of Hanahan Police Department has responded, most of these incidents involving purported customers of El Alamo rather than the owners, operators, and employees thereof. However, there were many instances during which the owners, operators, and employees of El Alamo violated the municipal ordinances of the City of Hanahan and the International Fire Code.

The Court finds that the credible evidence in the record demonstrates that Santos has maintained El Alamo as a place where the laws are publicly, repeatedly, persistently, and intentionally violated, thus disturbing the public peace. While Santos asserts that the only evidence of nuisance produced by Harris consists of incident reports relating to third parties associated with El Alamo as opposed to Santos herself, it is apparent from the record that Santos has conducted her business in a manner which encourages violations of the various municipal ordinances and which attracts patrons whose conduct violates the various local and state laws. The Court finds that El Alamo became a nuisance by the manner in which it was conducted and by the conduct of the persons assembling in and around it and therefore breached the Second Lease. The Court further finds that in examining the factors as set forth in Kiriakides, said breach was material. As set forth previously herein, Harris' expectations that Santos will comply with all local and state laws are certainly reasonable. The Court concludes that the breaches as proven amount to those that deprive Harris of the benefit it expected from the Lease itself. Violations of state law, just as those involving municipal ordinances, significantly increase the exposure to Harris as to liability for injuries to persons on the premises and otherwise. Likewise, Harris could not possibly be adequately compensated for Santos' failure to abide by the laws pertaining to public nuisance. Having considered all the circumstances surrounding the Second Lease and

Santos' breach, the Court concludes that Tenant was given ample time within which to cure the default and, over time has failed to attempt to cure its default. This Court has no reasonable assurances that Santos will cease to allow El Alamo to remain open without constituting a public nuisance. As such, the eviction is upheld.

(3) Failure to Provide Evidence of Insurance Coverage

In Case Number 2016CV0810605290, Harris argues Santos breached the Second Lease by failing to provide evidence of insurance.

The Second Lease requires Santos to "keep in full force and effect" public liability insurance on the premises in which both Santos and Harris are named as the insured with a single limit of $1,000,000.00 and an aggregate of $2,000,000.00. [Plaintiff's Exhibit 2, Section 8]. The Second Lease expressly requires Santos to provide a certificate of insurance "not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease." [Plaintiff's Exhibit 2, Section 8].

Santos obtained insurance for the calendar year 2016 and provided a certificate of insurance to Harris. [Plaintiff's Exhibit 8]. Harris provided Santos with a letter titled "Notice of Default and Right to Cure" on October 13, 2016, regarding liability insurance for the Second Lease. In this letter, Harris' CFO Eric C. Coulter stated to Santos, "At this time we are requesting you increase the liability insurance to Single limit of $3,000,000.00 and an Aggregate of $6,000,000.00. Please provide an updated insurance certificate within 10 business days. Failure to provide increased insurance coverage will cause a default in the lease after October 31, 2016." [Plaintiff's Exhibit 3]. However, nothing in the Second Lease requires Santos to increase the limits of liability upon demand but rather only pay upon demand as additional rent any increase in

premiums of insurance carried by Harris on the Premises resulting from Santos' occupancy or improvements. [Plaintiff's Exhibit 2, Section 8]. No evidence was presented at trial that Harris obtained additional insurance and/or demanded an increase in rent as a result.

On December 21, 2016, counsel for Harris sent an email to counsel for Santos indicating that it was his understanding the insurance certificates for both Latino Mix and El Alamo were set to expire on December 30, 2016. [Plaintiff's Exhibit 9]. Counsel for Harris further indicated that Harris needed to obtain new certificates as soon as possible but no later than December 30, 2016.

Costa DeLuca, employed by Harris, testified that no insurance certificates were ever provided demonstrating that Santos maintained the public liability insurance coverage up to the limits required by the Second Lease subsequent to December 30, 2016. Santos did not testify at trial and produced no evidence that insurance certificates were ever provided subsequent to the purported expiration of the initial insurance certificate on December 30, 2016.

Nonetheless, while Harris has proven by the preponderance of the evidence that Santos did not provide a certificate of insurance prior to the expiration of the 2016 calendar year insurance policy, the record is devoid of any evidence that constitutes a notice of default (and right to cure) as to her failure to do so. As indicated previously herein, the purpose of a notice of default is to give the party allegedly in default an opportunity to cure the default and meet his obligation. Hammond v. Tilghman Lakes, Inc., 295 S.C. 152, 367 S.E.2d 446 (Ct. App. 1988). Forfeiture provisions of a lease are strictly construed and when a forfeiture depends upon giving a written notice of default, it must appear that the notice was given in strict compliance with the contract both as to

time and content. Litchfield Co. of South Carolina, Inc., v. Kiriakides, 290 S.C. 220, 349 S.E.2d 344 (Ct. App. 1986).

Although counsel for Harris requested new certificates of insurance from Santos on December 21, 2016, the Court finds that this email did not constitute written notice of default. Moreover, nothing in the record evinces that Harris ever provided Santos with the opportunity to cure any such potential breach as provided for in Section 30 of the Second Lease. The fact that Santos breached the Second Lease by failing to maintain public liability insurance is immaterial as the Court finds that Harris failed to comply with the Notice of Default provisions of the Second Lease in giving Santos the opportunity to cure the breach.

Therefore, Harris' request to uphold the eviction of Santos based on the alleged violations of the Second Lease as to liability insurance is denied.

(4) Violation of Prohibition on Third-Party Occupancy

Harris additionally alleges that Santos violated the Second Lease by allowing Reyna to operate a business on the premises. As with issues pertaining to Financial Default, Harris did not plead in its Application for Ejectment this issue. Nonetheless, the Court finds that the parties tried this issue by implied consent.

The Second Lease provides that Santos "shall not, without written consent of [Harris], in each case . . . sublet the Premises or any part thereof or permit the Premises to be occupied by other persons." [Plaintiff's Exhibit 2, Section 12].

Harris alleges that whereas Santos is the tenant under the Second Lease, she never operated a business on the premises. Harris alleges that because the business license for El Alamo was obtained and held by Reyna instead of Santos, Santos was in effect permitting the premises to be occupied by other persons. However, Reyna and

Santos' sister, Arelis de Santos Gomez, have been living in a long-term monogamous relationship and describe one another as his or her "significant other."

It is worthy to note that it is Reyna, not Santos, that summarized the concept of El Alamo to Harris as early as February 26, 2013. [Plaintiff's Exhibit 20]. Harris additionally served Reyna with its Notice of Default in October of 2016. [Plaintiff's Exhibit 4]. The Court finds that Harris impliedly consented to Reyna operating El Alamo, regardless of whether he was doing so on his own or at the direction or under the supervision of Santos. As such, the Court finds that Santos did not breach the Second Lease as to Section 12, "Assignment or Sublease."

Moreover, even if the Court would have held that Reyna's operation of El Alamo constituted a breach, the record is devoid of any evidence that Harris provided Santos with notice of default as to this section of the Second Lease and an opportunity to cure. Thus, Harris failed to comply with the Notice of Default provisions of the Second Lease in giving Santos the opportunity to cure the breach and as such, the Application for Ejectment as to this particular ground is denied.

III. Conclusion

The Court finds that while Santos breached the First and Second Leases by failing to pay rent when due or demanded, the breach was not so substantial or fundamental to justify forfeiture.

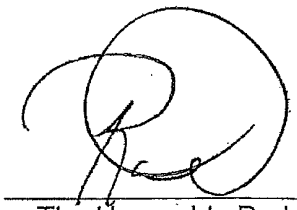
The Court further finds that Harris failed to meet its burden as to Santos' failure to provide proof of sufficient liability insurance under the First Lease. Moreover, even if Santos was in default in that regard, Santos was not given proper notice under the First Lease to cure the default. However, the Court finds that the First Lease expired, Santos became a month to month tenant as to Latino Mix, and notice was properly given

regarding Harris' intention not to renew said First Lease. As such, Application for Ejectment sought in Case Number 2017CV0810600019 is granted.

The Court finds that Harris met its burden as to Santos' failure to provide proof of sufficient liability insurance under the Second Lease. However, Santos was not given proper notice under the Second Lease to cure the default. The Court finds that Harris failed to meet its burden of proof as to Santos' violation of the Second Lease's prohibition against third-party occupancy and that even if Santos was in default thereof, Santos was not given property notice under the Lease to cure the default. Nonetheless, the Court finds that Santos failed to comply with local ordinances and created a public nuisance on the premises and that said breaches were material. As such, the Application for Ejectment sought in Case Number 2016CV0810605290 is granted.

The Clerk is directed to provide a copy of this Order to counsel for both Landlord and Tenant. All post-trial motions, including those pertaining to the request for attorney fees pursuant to either Lease, shall be filed with the Court within ten (10) days of the receipt of the within Order.

IT IS SO ORDERED.



The Honorable Rad S. Deaton
Berkeley County Magistrate

December 7, 2017
Charleston, South Carolina

Counsel for Harris: Merrit G. Abney, Esquire
Counsel for Santos: Thomas R. Goldstein, Esquire

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	FOR BERKELEY COUNTY
COUNTY OF BERKELEY	)	2016cv0810605290
	)	2017cv0810600019
	)	
Harris Investment Holdings, LLC,	)	
	)	**AFFIDAVIT OF**
	)	**MERRITT G. ABNEY, ESQ.**
	)	**IN SUPPORT OF PLAINTFF'S MOTION**
	)	**FOR AWARD OF ATTORNEY'S FEES**
PLAINTIFF,	)	
vs.	)	
	)	
Aracelis Santos,	)	
	)	
DEFENDANT.	)	
	)	

Personally appeared before me, Merritt G. Abney, being duly sworn, deposes and says that:

1. My name is Merritt G. Abney. I am over twenty-one years of age and competent in all respects to testify about the matters herein. The matters alleged herein are based on my personal knowledge.

2. I was the lead attorney for the plaintiff in this matter, and I am familiar with the terms of my firm's engagement on this matter, the work performed, and the results obtained.

3. I am a partner with the firm of Nelson, Mullins, Riley, & Scarborough, LLP in Charleston, South Carolina. The firm originated in Columbia, South Carolina and enjoys and excellent reputation among the South Carolina legal community.

4. I am a member of the South Carolina Bar and admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Fourth Circuit, and the United States District Court for the District of South Carolina.

5. I have over 14 years of experience as a commercial litigator. During this time, I have been involved in the litigation of many commercial and business disputes in South Carolina state and federal courts, including numerous landlord-tenant disputes similar to the present one.

6. I hold a Bachelor of Arts in English, cum laude, with high honors, from Davidson College, where I was a member of Phi Beta Kappa. In 2003, I earned a Juris Doctor from the Vanderbilt University Law School, where I was named to the Order of the Coif.

7. Members of Nelson Mullins' legal support staff also have assisted in the defense of this case, primarily my paralegal, Lauren Lynch.

8. Ms. Lynch holds a Bachelor's degree in Accounting from State University of West Georgia and Paralegal Certificate from Trident Technical College. She has worked in the legal field for approximately 20 years, including the last 11 years as a commercial litigation paralegal at Nelson Mullins.

9. The billing rates charged for each of the attorneys and legal professionals who had more than *di minimus* involvement in the representation of Harris in this matter are set forth below and the firm's invoices to Harris, which describe in detail the tasks performed by each individual, are attached hereto as **Exhibit B-1**.

Merritt Abney	Partner	$380
Lauren Lynch	Paralegal	$205
Gianna Alphonso	Project Assistant	$115

10. Harris agreed to pay and did pay the above rates for work performed on this matter.

11. Based upon my experience and my understanding of these hourly rates, these rates are reasonable in comparison to those rates charged by similarly qualified attorneys and support staff in South Carolina for commercial and business litigation, including commercial landlord-tenant disputes of this nature.

12. Our firm is able to obtain similar or higher rates than the rates above from other clients for work performed by the same professionals and staff on similar matters. I regularly charge clients $400-450/hour for representation on commercial matters.

13. I avoided duplicative work on this matter and delegated certain tasks to those individuals who could most efficiently execute them.

14. Our firm often staffs cases with multiple attorneys. In this case, however, virtually all of the legal work on Harris' behalf was performed either by myself or Ms. Lynch.

15. The non-fee expenses incurred by Nelson Mullins in connection with this case are reflected in the invoices. They included charges for court fees, postage, long-distance phone calls, legal research, transcription, and copying costs, all of which were necessary and are customarily associated with commercial litigation.

16. Based upon my experience as a commercial litigator, the amount of time spent performing the various tasks and the costs detailed in the invoices were reasonable and necessary to an effective prosecution of these ejectment actions. Indeed, the total amount of fees and costs is comparable to or less than that our firm has billed and collected for matters of similar size and nature within South Carolina.

I SOLEMNLY AFFIRM under penalties of perjury that the foregoing statements are true and accurate to the best of my knowledge, information and belief.

Merritt G. Abney

SWORN to and subscribed before me
this 20th day of December, 2017.

Notary Public for _____
My commission expires: 14th April 2027

EXHIBIT B-1

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

December 5, 2016
Invoice 1726701 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 11/30/16

11/02/16	Review correspondence and lease documents and conference with Mac McQuillen re: history concerning El Alamo. M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00
11/03/16	Prepare for and participate in call with client. M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
11/04/16	Analyze transcript assist Attorney Abney. L.M. LYNCH	0.20 hrs.	195.00/hr	$39.00
11/10/16	Call with McMcQuillen re: status of order affirming revocation of business license and eviction; work on eviction pleading. M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
11/11/16	Review/analyze transcript from business license revocation hearing and draft application for eviction. M.G. ABNEY	2.00 hrs.	380.00/hr	$760.00
11/14/16	Call with Mac McQuillen and finalize eviction complaint. M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
11/14/16	Gather exhibits for Ejection Application filed 11/14. T.A. SHIELDS	0.90 hrs.	110.00/hr	$99.00
11/16/16	Call with City attorney re: status of eviction and related issues; follow up with Magistrate's office on service; review procedure for service if unable to locate Santos; analyze client liability for nuisance if eviction denied. M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
11/16/16	Email and telephone call with Berkeley County Magistrate's office regarding status of eviction and service of same. L.M. LYNCH	0.10 hrs.	195.00/hr	$19.50
11/22/16	Follow up on status of eviction and update client. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
11/28/16	Review answer and counterclaim of tenant. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00

11/29/16	Review counterclaims and forward to client with comment; analyze whether defendant is entitled to removal to circuit court. M.G. ABNEY	0.70 hrs.	380.00/hr	$266.00
11/30/16	Call with client re: counterclaims and strategy. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
11/30/16	Review Latino Mix lease and prepare notice to vacate premises. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00

Total Fees for Legal Services $3,197.50

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	8.00	380.00	3,040.00
L.M. LYNCH	0.30	195.00	58.50
T.A. SHIELDS	0.90	110.00	99.00
TOTAL	9.20	$347.55	$3,197.50

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

11/11/2016	VENDOR: A. William Roberts, Jr. & Asso INVOICE#: 111116-20766-0207 DATE: 11/11/2016 - 11/11/16 - Fee for Expedited State of SC, City of Hanahan Revocation Hearing Transcript	510.15
11/14/2016	Courier charge	35.00
11/14/2016	VENDOR: Berkeley County Magistrate INVOICE#: 111416-20766-0947 DATE: 11/14/2016 - 11/14/16 - Filing fee for Ejectment Application.	40.00

Total Charges for Other Services Provided/Expenses Incurred $585.15

DISBURSEMENT SUMMARY

Description	Dollars
Court Reporters	510.15
Courier - In	35.00
Filing Fee	40.00
TOTAL	$585.15

Net current billing for this invoice $3,782.65

GRAND TOTAL $3,782.65

REMITTANCE COPY
Please Return With Your Payment To:

ATTN: Accounts Receivable
Nelson Mullins Riley & Scarborough LLP
Post Office Drawer 11009
Columbia, South Carolina 29211
Telephone (803) 799-2000
accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 11/30/16
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$3,197.50	
Charges for Other Services Provided/Expenses Incurred	585.15	
Net current billing for this invoice		**$3,782.65**
GRAND TOTAL		**$3,782.65**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

January 4, 2017
Invoice 1733725 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 12/31/16

12/01/16	Draft letter to Tommy Goldstein; work on reply to counterclaims in eviction action; review correspondence from tenant and confer with client re: same.			
	M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00
12/02/16	Communicate with court and counsel for city re: hearing in eviction case.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
12/06/16	Correspondence from Tommy Goldstein; prepare reply to counterclaims; call with client; call to Tommy Goldstein.			
	M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
12/13/16	Call with Tommy Goldstein and update to client re: same; contact court re: summons for bench trial; revise and finalize reply to counterclaim and arrange for filing and service of same.			
	M.G. ABNEY	1.50 hrs.	380.00/hr	$570.00
12/14/16	Call with client re: resolution strategy; call to Mac McQuillen.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
12/15/16	Call with client and follow up on demand to vacate for Latino Mix; review recent police reports and impact on eviction application.			
	M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
12/21/16	Prepare correspondence to Magistrate re: upcoming hearing; call with Mac McQuillin re: settlement negotiations and status of license revocation; work on response to motion for removal.			
	M.G. ABNEY	1.10 hrs.	380.00/hr	$418.00
12/28/16	Correspondence with all counsel and court re: settlement discussions and Reyna request for restraining order against police department.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
12/30/16	Call with Mac McQuillin re: additional fire code citations and review of citation documents; correspondence with court clarifying issues for decision at upcoming hearing.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
12/31/16	Work on memorandum in opposition to defendant's motion for removal; research and analyze whether decision denying motion to remove is immediately appealable to circuit court.			
	M.G. ABNEY	2.50 hrs.	380.00/hr	$950.00

Total Fees for Legal Services **$3,686.00**

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	9.70	380.00	3,686.00
TOTAL	9.70	$380.00	$3,686.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

12/01/2016	Postage	0.46
12/12/2016	Postage	0.67
12/12/2016	Postage	1.09
12/12/2016	Postage	1.36

Total Charges for Other Services Provided/Expenses Incurred **$3.58**

DISBURSEMENT SUMMARY

Description	Dollars
Postage	3.58
TOTAL	$3.58

Net current billing for this invoice $3,689.58

GRAND TOTAL **$3,689.58**

REMITTANCE COPY
Please Return With Your Payment To:

ATTN: Accounts Receivable
Nelson Mullins Riley & Scarborough LLP
Post Office Drawer 11009
Columbia, South Carolina 29211
Telephone (803) 799-2000
accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 12/31/16
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$3,686.00	
Charges for Other Services Provided/Expenses Incurred	3.58	
Net current billing for this invoice		**$3,689.58**
GRAND TOTAL		**$3,689.58**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

February 23, 2017
Invoice 1745171 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 01/31/17

01/02/17	Research and draft memorandum in opposition to motion for removal. M.G. ABNEY	2.50 hrs.	380.00/hr	$950.00
01/03/17	Revise and finalize response to motion to remove and prepare for hearing on same. M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
01/05/17	Revise and finalize eviction complaint for Latino Mix and response to motion to remove and arrange for filing and service of same; call with Mac McQuillin re: Latino Mix filing and upcoming hearing. M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00
01/06/17	Telephone call with Charleston County Magistrate's Clerk; prepare package filing Affidavit and Application of Ejectment and Rule to Show Cause to assist Attorney Abney. L.M. LYNCH	0.30 hrs.	205.00/hr	$61.50
01/09/17	Prepare for and attend hearing in Goose Creek on motion for removal to circuit court; call with Mac McQuillin re: same; update client on motion hearing and next steps. M.G. ABNEY	3.10 hrs.	380.00/hr	$1,178.00
01/11/17	Review ruling on motion to remove and begin work on proposed order re: same. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
01/12/17	Call with McMQuillin re: motion hearing and status of license revocation. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
01/13/17	Prepare proposed order denying motion to remove and submit to magistrate judge for consideration. M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
01/17/17	Follow up with constable's office on service in Latino Mix matter. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
01/27/17	Calls and correspondence with Magistrate's Court and opposing counsel re: service and hearing; review executed order denying motion to remove; update client on status. M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00

Total Fees for Legal Services $3,747.50

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	9.70	380.00	3,686.00
L.M. LYNCH	0.30	205.00	61.50
TOTAL	10.00	$374.75	$3,747.50

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

12/29/2016	Postage	0.92
01/05/2017	VENDOR: Berkeley County Magistrate INVOICE#: 010517-20766-1158 DATE: 1/5/2017 - 01/05/17 - Filing fee for Ejectment Application.	40.00
01/05/2017	Postage	0.67
01/06/2017	Courier charge	35.00
01/12/2017	VENDOR: Abney, Merritt G. INVOICE#: 1580737501120203 DATE: 1/9/2017 - Mileage 01/09/17 Mileage for Hearing at the Berkeley County Magistrates Court, Goose Creek Div. (CHS/GC) 18.70 miles	10.01
Total Charges for Other Services Provided/Expenses Incurred		**$86.60**

DISBURSEMENT SUMMARY

Description	Dollars
Courier - In	35.00
Filing Fee	40.00
Postage	1.59
Travel	10.01
TOTAL	$86.60

Net current billing for this invoice	$3,834.10
GRAND TOTAL	**$3,834.10**

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Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 01/31/17

Fees for Professional Services	$3,747.50	
Charges for Other Services Provided/Expenses Incurred	86.60	
Net current billing for this invoice		**$3,834.10**
GRAND TOTAL		**$3,834.10**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

March 2, 2017
Invoice 1746984 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 02/28/17

02/01/17	Follow up with constable regarding service in Latino Mix action.			
	M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
02/03/17	Call with counsel for Hanahan and review order denying motion to reconsider and finding El Alamo a nuisance; follow up with court clerk on service.			
	M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
02/13/17	Work on order of ejectment for Latino Mix.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
02/23/17	Correspondence with opposing counsel and court regarding reason for separate actions and upcoming hearing.			
	M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
02/24/17	Correspondence with opposing counsel.			
	M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
02/27/17	Call with Tommy Goldstein; correspondence with client.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
02/28/17	Prepare reply to counterclaims and opposition to removal petition in Latino Mix case.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00

Total Fees for Legal Services $988.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	2.60	380.00	988.00
TOTAL	2.60	$380.00	$988.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

02/23/2017	Postage	0.67
Total Charges for Other Services Provided/Expenses Incurred $0.67		

DISBURSEMENT SUMMARY

Description	Dollars
Postage	0.67
TOTAL	$0.67

Net current billing for this invoice $988.67

ACCOUNTS RECEIVABLE RECAP

Original Invoice Number	Invoice Date	A/R Amt	
1745171	02/23/2017	$3,834.10	
		A/R BALANCE	$3,834.10

GRAND TOTAL **$4,822.77**

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2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 02/28/17
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$988.00	
Charges for Other Services Provided/Expenses Incurred	0.67	
Net current billing for this invoice		**$988.67**

ACCOUNTS RECEIVABLE RECAP

Invoice Number	Invoice Date	Invoice Amount	A/R Balance
1745171	02/23/2017	$3,834.10	$3,834.10

Total Accounts Receivable **$3,834.10**

GRAND TOTAL **$4,822.77**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

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1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

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Attorneys and Counselors at Law
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Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

April 5, 2017
Invoice 1754888 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 03/31/17

03/08/17	Calls with counsel for Hanahan and prepare for pre-trial conference.			
	M.G. ABNEY	1.50 hrs.	380.00/hr	$570.00
03/09/17	Prepare for and attend pre-trial and motions hearing before Judge Deaton in Berkeley County; calls with counsel for Hanahan re: results of same and develop next steps.			
	M.G. ABNEY	3.50 hrs.	380.00/hr	$1,330.00
03/10/17	Call with client and correspondence to Tommy Goldstein re: potential resolution; work on motions for summary judgment.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
03/13/17	Correspondence with Tommy Goldstein.			
	M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
03/16/17	Work on motions for summary judgment.			
	M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
03/17/17	Work on motion for summary judgment; review Rule 11 letter from Mac McQuillen to Goldstein.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
03/20/17	Work on motions for summary judgment.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
03/21/17	Conference call with counsel for Hanahan re: SLED investigation and strategy for eviction.			
	M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
03/22/17	Correspondence and call with client re: SLED investigation and summary judgment.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
03/29/17	Update to client.			
	M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
03/31/17	Prepare motions for summary judgment and arrange for filing and service of same.			
	M.G. ABNEY	2.60 hrs.	380.00/hr	$988.00

Total Fees for Legal Services $3,952.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	10.40	380.00	3,952.00
TOTAL	10.40	$380.00	$3,952.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

03/01/2017	Postage	0.88
03/01/2017	Postage	1.82
03/18/2017	VENDOR: Abney, Merritt G. INVOICE#: 1687732803180203 DATE: 3/16/2017 - Mileage 03/09/17 Pre-Trial Hearing at Goose Creek Magistrate Court (CHS/GC/CHS) 37.44 miles	20.03
03/31/2017	Postage	1.61
03/31/2017	Postage	7.20
03/31/2017	Postage	7.80
03/31/2017	Postage	7.20
Total Charges for Other Services Provided/Expenses Incurred		**$46.54**

DISBURSEMENT SUMMARY

Description	Dollars
Postage	26.51
Travel	20.03
TOTAL	$46.54

Net current billing for this invoice $3,998.54

GRAND TOTAL **$3,998.54**

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ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 03/31/17
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$3,952.00	
Charges for Other Services Provided/Expenses Incurred	46.54	
Net current billing for this invoice		**$3,998.54**
GRAND TOTAL		**$3,998.54**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
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Scarborough, LLP
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PO Box 1798
Sumter, SC 29151-1798
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Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

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Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

May 2, 2017
Invoice 1761392 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 04/30/17

04/03/17	Calls and correspondence with client re: case status and strategy; review Latino Mix for other arguments to support eviction in light of renewal of lease; prepare responses and objections to written discovery requests.			
	M.G. ABNEY	1.50 hrs.	380.00/hr	$570.00
04/04/17	Review police report and work on motion for expedited hearing.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
04/13/17	Communicate with court and call to Tommy Goldstein.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
04/19/17	Call with Mac McQuillin re: status of settlement and strategy; analyze ways to streamline trial to lessen cost to client.			
	M.G. ABNEY	0.70 hrs.	380.00/hr	$266.00
04/27/17	Communicate with court and opposing counsel re: trial date; call with counsel for Town re: witness list and trial preparation.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00

Total Fees for Legal Services $1,102.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	2.90	380.00	1,102.00
TOTAL	2.90	$380.00	$1,102.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

04/04/2017	Postage	6.56
04/04/2017	Postage	0.46

Total Charges for Other Services Provided/Expenses Incurred $7.02

DISBURSEMENT SUMMARY

Description	Dollars
Postage	7.02
TOTAL	$7.02

Net current billing for this invoice	$1,109.02
GRAND TOTAL	**$1,109.02**

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2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 04/30/17
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$1,102.00	
Charges for Other Services Provided/Expenses Incurred	7.02	
Net current billing for this invoice		**$1,109.02**
GRAND TOTAL		**$1,109.02**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
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Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

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Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

June 8, 2017
Invoice 1770637 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 05/31/17

04/28/17	Update client on trial status and review notice of ISF for rent check.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
05/03/17	Draft correspondence to Goldstein re: return of rent check and Latino Mix default.			
	M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
05/08/17	Call to tenant's counsel re: trial prep issues.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
05/10/17	Review correspondence from tenant's counsel and consider implications of counterclaim dismissal.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
05/16/17	Prepare for and participate in conference call with client re: response to Goldstein letter and preparation for trial; call to Tommy Goldstein.			
	M.G. ABNEY	1.10 hrs.	380.00/hr	$418.00
05/17/17	Analyze potential arguments for cross-default of Latino Mix lease; prepare trial exhibits; communicate with Tommy Goldstein re: dismissal of counterclaim and potential for resolution.			
	M.G. ABNEY	1.10 hrs.	380.00/hr	$418.00
05/18/17	Call with Tommy Goldstein re: potential resolutions and trial; prepare for eviction trial.			
	M.G. ABNEY	0.70 hrs.	380.00/hr	$266.00
05/19/17	Review status of business license revocation proceeding; trial preparation; correspondence with Tommy Goldstein re: demand to vacate.			
	M.G. ABNEY	0.80 hrs.	380.00/hr	$304.00
05/24/17	Call with Mac McQuillin re: trial preparation; correspondence to Tommy Goldstein; work on summary judgment arguments.			
	M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00
05/25/17	Work on trial plan and prepare witness list and exhibits; confer with Mac McQuillin re: procuring police officer and town official witnesses for trial.			
	M.G. ABNEY	1.50 hrs.	380.00/hr	$570.00
05/26/17	Work on trial examination outlines for various witnesses; compile trial exhibit list; research admissibility of police reports into evidence; work on demonstrative re: statistical evidence concerning incidents at El Alamo.			

	M.G. ABNEY	4.60 hrs.	380.00/hr	$1,748.00
05/29/17	Work on witness examination outlines for trial.			
	M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
05/30/17	Prepare DeLuca examination outline and prepare for trial prep session with client witness.			
	M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
05/31/17	Trial preparation session with Costa DeLuca; work on witness examination outlines; prepare exhibits for trial; correspondence with witnesses and counsel for Hanahan.			
	M.G. ABNEY	5.10 hrs.	380.00/hr	$1,938.00

Total Fees for Legal Services $7,144.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	18.80	380.00	7,144.00
TOTAL	18.80	$380.00	$7,144.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

05/03/2017	Postage	13.12
Total Charges for Other Services Provided/Expenses Incurred $13.12		

DISBURSEMENT SUMMARY

Description	Dollars
Postage	13.12
TOTAL	$13.12

TOTAL FOR THIS INVOICE $7,157.12

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Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 05/31/17
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$7,144.00	
Charges for Other Services Provided/Expenses Incurred	13.12	
TOTAL FOR THIS INVOICE		**$7,157.12**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
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Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
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(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

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Nelson Mullins

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Attorneys and Counselors at Law
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Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

July 7, 2017
Invoice 1777747 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 06/30/17

06/01/17	Coordinate City witnesses for trial prep; call with Mac McQuillen; work on witness examination outlines; correspondence to court re: summary judgment motions and trial logistics; review draft jury charges.			
	M.G. ABNEY	1.10 hrs.	380.00/hr	$418.00
06/02/17	Oppose Goldstein request for continuance; calls and correspondence with trial witnesses re: preparation for trial; call with Mac MQuillin.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
06/05/17	Call with client re: continuance and strategy; prepare Chief Turner and Joy Krutek as witnesses for trial; coordinate collection of incident reports for use as trial exhibits; confer with Mac McQuillin re: witness prep.			
	M.G. ABNEY	2.00 hrs.	380.00/hr	$760.00
06/06/17	Call with counsel for City re: status of state court action for conspiracy.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
06/07/17	Work on response to motion to dismiss counterclaim without prejudice.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
06/08/17	Work on memorandum in opposition to motion to dismiss; correspondence with court and client re: rescheduled trial date; calls with witnesses Ron Newman and Chad Chinners re: trial prep.			
	M.G. ABNEY	1.10 hrs.	380.00/hr	$418.00
06/09/17	Analyze whether counterclaim is permissive or compulsory; work on response to motion to dismiss.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
06/12/17	Correspondence with court and opposing counsel; respond to objections filed by Santos' counsel.			
	M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
06/13/17	Finalize and arrange for filing of memorandum in opposition to motion to dismiss counterclaims; prepare for and participate in conference call with opposing counsel and Judge Deaton; prepare and file supplemental summary judgment memorandum; correspondence to Court re: results of conference call and supplemental brief; update client re: same.			
	M.G. ABNEY	3.50 hrs.	380.00/hr	$1,330.00

06/26/17	Follow up with Court on trial scheduling. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
06/30/17	Correspond with court and client re: trial scheduling. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00

Total Fees for Legal Services $3,838.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	10.10	380.00	3,838.00
TOTAL	10.10	$380.00	$3,838.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

06/01/2017	Courier charge	35.00
06/08/2017	Courier charge	35.00
06/13/2017	Postage	1.61
06/13/2017	Postage	0.67
06/13/2017	Postage	7.20
06/14/2017	Postage	7.20
06/14/2017	Postage	7.80

Total Charges for Other Services Provided/Expenses Incurred $94.48

DISBURSEMENT SUMMARY

Description	Dollars
Courier - In	70.00
Postage	24.48
TOTAL	$94.48

TOTAL FOR THIS INVOICE $3,932.48

REMITTANCE COPY
Please Return With Your Payment To:

ATTN: Accounts Receivable
Nelson Mullins Riley & Scarborough LLP
Post Office Drawer 11009
Columbia, South Carolina 29211
Telephone (803) 799-2000
accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 06/30/17

Fees for Professional Services	$3,838.00	
Charges for Other Services Provided/Expenses Incurred	94.48	
TOTAL FOR THIS INVOICE		**$3,932.48**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT
Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

August 2, 2017
Invoice 1783712 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 07/31/17

07/06/17	Follow up on pending motions. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
07/07/17	Follow up with City on production of incident reports. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
07/10/17	Communicate with Court re: effort to reschedule trial date. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
07/19/17	Review/analyze order on motion to dismiss counterclaim. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
07/20/17	Conference call with Court and Tommy Goldstein re: status of motions and trial schedule. M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
07/21/17	Draft correspondence to client re: conference call with Court and Tommy Goldstein and next steps; call with client re: same; conference with Mac McQuillin. M.G. ABNEY	0.70 hrs.	380.00/hr	$266.00
07/26/17	Correspondence with court re: status of summary judgment rulings. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00

Total Fees for Legal Services $760.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	2.00	380.00	760.00
TOTAL	2.00	$380.00	$760.00

TOTAL FOR THIS INVOICE $760.00

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Columbia, South Carolina 29211
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accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 07/31/17

Fees for Professional Services	$760.00	
Charges for Other Services Provided/Expenses Incurred	0.00	
TOTAL FOR THIS INVOICE		**$760.00**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
NBSC a division of Synovus Bank
PO Box 1798
Sumter, SC 29151-1798
ABA/Routing Number: 053200666
Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

September 5, 2017
Invoice 1790582 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 08/31/17

08/09/17	Review and analyze correspondence from court re: summary judgment rulings; correspond with client; correspondence to Mac McQuillen.			
	M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
08/10/17	Call with client re: Judge Deaton's ruling; call and correspondence to opposing counsel; call with Mac McQuillen re: trial preparation; draft letter to court and opposing counsel re: reconsideration of summary judgment ruling and trial prep issues.			
	M.G. ABNEY	3.00 hrs.	380.00/hr	$1,140.00
08/15/17	Correspondence with client and prepare additional default letter to Goldstein.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
08/15/17	Organize exhibits from May 26, 2016 hearing and subsequent incident reports.			
	L.M. LYNCH	0.20 hrs.	205.00/hr	$41.00
08/17/17	Work on affidavits and supplement to summary judgment motion.			
	M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
08/18/17	Draft supplemental summary judgment motions; review settlement proposal from Goldstein and forward to client with comment; confer with counsel for Town.			
	M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
08/22/17	Call with client; correspondence to opposing counsel; correspondence to the Court regarding summary judgment and trial.			
	M.G. ABNEY	1.00 hrs.	380.00/hr	$380.00
08/23/17	Correspondence with opposing counsel and the court re: trial logistics.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
08/29/17	Confer with client and correspond with court.			
	M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00

Total Fees for Legal Services $2,435.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	6.30	380.00	2,394.00
L.M. LYNCH	0.20	205.00	41.00
TOTAL	6.50	$374.62	$2,435.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

08/15/2017	VENDOR: Hanahan Police Department INVOICE#: 081517-20766-1237 DATE: 8/15/2017 - 08/15/17 - Fee for document search, copying docs to disc and courier charges re: 5901 Loftis Road, Hanahan, SC; police records.	75.00
08/15/2017	Postage	13.12
08/18/2017	Postage	1.82
08/18/2017	Postage	0.88
08/29/2017	VENDOR: Eric S. Sojourner- Petty Cash; INVOICE#: 082817; DATE: 8/29/2017 - postage	0.40
Total Charges for Other Services Provided/Expenses Incurred		**$91.22**

DISBURSEMENT SUMMARY

Description	Dollars
Outside Services	75.40
Postage	15.82
TOTAL	$91.22

TOTAL FOR THIS INVOICE **$2,526.22**

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Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 08/31/17

Fees for Professional Services	$2,435.00	
Charges for Other Services Provided/Expenses Incurred	91.22	
TOTAL FOR THIS INVOICE		**$2,526.22**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT
Code FICOUS44 use ABA 061100606)

Automated Clearing House (ACH) Transfer

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Beneficiary Account: 1002720611

Wire Reference Field: Note the NMRS Invoice and Matter Number

Nelson Mullins

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Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

October 3, 2017
Invoice 1797783 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 09/30/17

09/07/17	Calls and correspondence with opposing counsel, court and client re: mode of trial and scheduling; coordinate witness appearances. M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
09/22/17	Default notice to Santos; correspondence with counsel for Town re: trial issues. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
09/26/17	PRepare for trial and coordinate witness preparation sessions with department witnesses. M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
09/28/17	Contact trial witnesses and work on trial preparation. M.G. ABNEY	0.50 hrs.	380.00/hr	$190.00
09/30/17	Prepare for bench trial. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00

Total Fees for Legal Services $760.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	2.00	380.00	760.00
TOTAL	2.00	$380.00	$760.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

09/12/2017	VENDOR: ProLegal Discovery Solutions, Inc.; INVOICE#: CHS147851; DATE: 9/12/2017 - copy charges out	194.84
09/22/2017	Postage	13.12

Total Charges for Other Services Provided/Expenses Incurred $207.96

DISBURSEMENT SUMMARY

Description	Dollars
CopyOut	194.84
Postage	13.12
TOTAL	$207.96

TOTAL FOR THIS INVOICE $967.96

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Telephone (803) 799-2000
accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
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2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 09/30/17

Fees for Professional Services	$760.00	
Charges for Other Services Provided/Expenses Incurred	207.96	
TOTAL FOR THIS INVOICE		**$967.96**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire And ACH Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank (formerly NBSC, a division of Synovus Bank)
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44, use ABA 061100606).

Wire Reference Field: Note the Nelson Mullins Invoice and Matter Number.

NELSON MULLINS

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
Tax ID No. 57-0215445
Post Office Box 11070 / Columbia, South Carolina 29211
Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

November 2, 2017
Invoice 1805549 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 10/31/17

10/02/17	Work on trial outlines and exhibits; confer with client and witnesses re: trial prep sessions; review selected portions of prior hearing transcript.			
	M.G. ABNEY	2.20 hrs.	380.00/hr	$836.00
10/02/17	Analyze and prepare trial exhibits and related materials to assist Attorney Abney.			
	L.M. LYNCH	1.20 hrs.	205.00/hr	$246.00
10/03/17	Call with Ron Newman re: trial appearance; prepare for prep session with police witnesses; work on examination outlines for Turner, Driggers and Kruteck; confer with Paralegal Lynch re: exhibit binders.			
	M.G. ABNEY	2.50 hrs.	380.00/hr	$950.00
10/03/17	Analyze and organize documents produced by Hanahan Police Department to assist Attorney Abney in preparation for trial; revise potential trial exhibits.			
	L.M. LYNCH	1.40 hrs.	205.00/hr	$287.00
10/03/17	Communicate with Charleston ProLegal RE: the Creation of Binders to be used as Exhibits in an upcoming Magistrate Court Case.			
	G. ALFONSO	0.50 hrs.	115.00/hr	$57.50
10/04/17	Prepare for and conduct trial prep session with police department witnesses; call with Robin Jackson re: trial preparation issues; work on/revise outlines for witness examinations; revise trial exhibits.			
	M.G. ABNEY	2.60 hrs.	380.00/hr	$988.00
10/04/17	Detailed review and analysis of police reports from 2016 and 2017 to prepare materials for witness preparation and potential exhibits for trial.			
	E. SHEETS	2.50 hrs.	90.00/hr	$225.00
10/04/17	Analyze additional police records to assist Attorney Abney in preparation for trial.			
	L.M. LYNCH	1.10 hrs.	205.00/hr	$225.50
10/05/17	Prepare for and conduct trial prep session with client witness; revise witness outline for client witness; communicate with Chief Turner re: trial materials; follow up with citizen witnesses.			
	M.G. ABNEY	4.50 hrs.	380.00/hr	$1,710.00
10/05/17	Revise trial exhibits and organize related materials in preparation for trial.			
	L.M. LYNCH	0.50 hrs.	205.00/hr	$102.50

10/06/17	Finalize outline for DeLuca and send to client with comment; call with client re: same and trial procedure. M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00
10/08/17	Review police reports in preparation for trial. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
10/09/17	Prepare for trial; work on revisions to witness outlines; review law on admissibility of police reports; prepare legal arguments for nuisance issue; prepare pocket briefs for legal arguments. M.G. ABNEY	3.80 hrs.	380.00/hr	$1,444.00
10/10/17	Finalize outlines for trial; call with Chief Turner; call with Robin Jackson; review and prepare analysis re: comparison of incidents at various nightclubs; review Hanahan alcohol ordinance and revise outlines for Turner and Driggers accordingly; review case law re: admissibility of public records. M.G. ABNEY	3.30 hrs.	380.00/hr	$1,254.00
10/10/17	Analyze and prepare additional exhibits for trial; telephone calls with witnesses confirming trial attendance and logistics; finalize trial materials. L.M. LYNCH	2.10 hrs.	205.00/hr	$430.50
10/11/17	Conduct Santos trial and confer with client following same. M.G. ABNEY	8.10 hrs.	380.00/hr	$3,078.00
10/12/17	Conference call with client re: debrief from trial; analyze listing agreement and whether to do supplemental submission of evidence. M.G. ABNEY	0.60 hrs.	380.00/hr	$228.00
10/17/17	Work on proposed bench trial order. M.G. ABNEY	1.80 hrs.	380.00/hr	$684.00
10/18/17	Call with client re: what to do about monthly rent checks. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
10/19/17	Work on proposed trial order for eviction. M.G. ABNEY	4.40 hrs.	380.00/hr	$1,672.00
10/20/17	Call with client and communication with counsel for City re: Isabel Martinez issue. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
10/23/17	Work on proposed trial order with evidentiary citations; confer with counsel for City: trial and latest incident; analyze whether to file motion to supplement trial record; review correspondence and incident reports from weekend incident involving attempted murder charge. M.G. ABNEY	5.20 hrs.	380.00/hr	$1,976.00
10/24/17	Work on proposed order to Judge Deaton; research eviction case law in connection with proposed order; draft motion to supplement record and supporting affidavits; confer with client re: same; correspond with Chief Turner re: affidavit. M.G. ABNEY	5.10 hrs.	380.00/hr	$1,938.00
10/25/17	Finalize and arrange for filing and service of motion to supplement trial record; finalize proposed trial order and writs of assistance; correspondence to Judge Deaton re: proposed order and recent incident at El Alamo. M.G. ABNEY	1.20 hrs.	380.00/hr	$456.00

10/30/17	Call with counsel for City re: latest incident at El Alamo. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
10/31/17	Call with Robin Jackson re: status of discrimination suit and recent incidents at El Alamo. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00

Total Fees for Legal Services $19,738.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	47.80	380.00	18,164.00
E. SHEETS	2.50	90.00	225.00
L.M. LYNCH	6.30	205.00	1,291.50
G. ALFONSO	0.50	115.00	57.50
TOTAL	57.10	$345.67	$19,738.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

10/05/2017	Courier charge	35.00
10/06/2017	Courier charge	35.00
10/10/2017	VENDOR: Chad Chinners INVOICE#: 101017-28072-1227 DATE: 10/10/2017 - 10/10/17 - Witness fee check re: 10/11/17 Berkeley County Magistrates Bench Trial.	34.19
10/10/2017	VENDOR: Ronald P. Newman INVOICE#: 101017-20766-1230 DATE: 10/10/2017 - 10/10/17 - Witness fee check re: 10/11/17 Berkeley County Magistrates Bench Trial.	30.54
10/12/2017	VENDOR: ProLegal Discovery Solutions, Inc. INVOICE#: CHS148320 DATE: 10/5/2017 - 10/05/17 - Invoice# CHS148320	49.20
10/12/2017	VENDOR: ProLegal Discovery Solutions, Inc. INVOICE#: CHS148287 DATE: 10/3/2017 - 10/03/17 - Invoice# CHS148287	151.25
10/12/2017	VENDOR: ProLegal Discovery Solutions, Inc. INVOICE#: CHS148371 DATE: 10/10/2017 - 10/10/17 - Invoice# CHS148371	239.58
10/13/2017	VENDOR: Abney, Merritt G. INVOICE#: 2053960010130203 DATE: 10/12/2017 - Mileage 10/11/17 Roundtrip mileage in connection with Bench Trial. (CHS/GC/CHS) 37.4 miles	20.01
10/18/2017	Postage	1.40
10/25/2017	Postage	1.61

Total Charges for Other Services Provided/Expenses Incurred $597.78

DISBURSEMENT SUMMARY

Description	Dollars
CopyOut	440.03
Courier - In	70.00
Postage	3.01
Travel	20.01
Witness fees	64.73
TOTAL	$597.78

TOTAL FOR THIS INVOICE $20,335.78

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Nelson Mullins Riley & Scarborough LLP
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Telephone (803) 799-2000
accounts.receivable@nelsonmullins.com

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507 For Services Through 10/31/17
Name of Matter: v. Santos, Aracelis, et al.

Fees for Professional Services	$19,738.00	
Charges for Other Services Provided/Expenses Incurred	597.78	
TOTAL FOR THIS INVOICE		**$20,335.78**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire And ACH Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank (formerly NBSC, a division of Synovus Bank)
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
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Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44, use ABA 061100606).

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NELSON MULLINS

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Tel: 803.799.2000

Harris Ventures, Inc.
ATTN: Eric Coulter
2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

December 6, 2017
Invoice 1814277 Page 1

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 11/30/17

11/03/17	Call with client and arrange for affidavit by Chief Turner. M.G. ABNEY	0.30 hrs.	380.00/hr	$114.00
11/13/17	Correspondence with counsel for Chapman. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00
11/15/17	Prepare affidavit for Eric Coulter re: November rent missed. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
11/16/17	Prepare motion to supplement record and correspond with Judge Deaton re: same. M.G. ABNEY	0.40 hrs.	380.00/hr	$152.00
11/20/17	Correspondence with counsel for Hanahan. M.G. ABNEY	0.10 hrs.	380.00/hr	$38.00
11/21/17	Correspondence with client and counsel for Hanahan. M.G. ABNEY	0.20 hrs.	380.00/hr	$76.00

Total Fees for Legal Services $494.00

BILLING SUMMARY

	Hours	Rate/Hr	Dollars
M.G. ABNEY	1.30	380.00	494.00
TOTAL	1.30	$380.00	$494.00

CHARGES FOR OTHER SERVICES PROVIDED/EXPENSES INCURRED

10/25/2017	Courier charge	35.00
11/03/2017	Courier charge	35.00
11/03/2017	VENDOR: TransUnion Risk and Alternative INVOICE#: 368139-110117 DATE: 11/1/2017 - 11/01/17 - TLO Online Research October 2017	5.00
11/06/2017	Postage	0.67
11/06/2017	Postage	1.34
11/06/2017	Postage	1.82
11/16/2017	Postage	1.86

Total Charges for Other Services Provided/Expenses Incurred $80.69

DISBURSEMENT SUMMARY

Description	Dollars
Courier - In	70.00
Outside Services	5.00
Postage	5.69
TOTAL	$80.69

TOTAL FOR THIS INVOICE $574.69

REMITTANCE COPY
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Columbia, South Carolina 29211
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accounts.receivable@nelsonmullins.com

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2650 Holcomb Bridge Road
Suite #630
Alpharetta, GA 30022

Our Matter # 20766/01507
Name of Matter: v. Santos, Aracelis, et al.

For Services Through 11/30/17

Fees for Professional Services	$494.00	
Charges for Other Services Provided/Expenses Incurred	80.69	
TOTAL FOR THIS INVOICE		**$574.69**

Terms of Payment: Balance due within thirty days of invoice date

ELECTRONIC PAYMENT INSTRUCTIONS

Domestic Wire And ACH Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank (formerly NBSC, a division of Synovus Bank)
1148 Broadway
Columbus, GA 31901
ABA/Routing Number: 061100606
Beneficiary Account: 1002720611

Foreign Wire (USD) Transfer

Beneficiary:
Nelson Mullins Riley &
Scarborough, LLP
1320 Main Street
Columbia, SC 29201
Beneficiary Bank:
Synovus Bank
Birmingham, Alabama, USA
SWIFT Code: FICOUS44
Beneficiary Account: 1002720611
(Only if required, in addition to SWIFT Code FICOUS44, use ABA 061100606).

Wire Reference Field: Note the Nelson Mullins Invoice and Matter Number.

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF BERKELEY	)	Case No.: 2017-CV-08-10600019
		Case No.: 2016-CV-08-10605290
Harris Investment Holdings, LLC,	)	
	)	
	)	
vs.	)	**REPLY TO PLAINTIFF'S**
	)	**REQUEST FOR ATTORNEY'S FEES**
Aracelis Santos,	)	
	)	
Defendant.	)	
	)	

The plaintiff is not entitled to an award of attorney's fees.

1.

The plaintiff is not a prevailing party

¶ 46 of the lease provides:

> In the event that any legal matter, dispute, action or proceeding exist or is commenced by or between Lessor and Lessee under this Lease, the prevailing party shall be reimbursed **reasonable** attorney fees and court costs in such matter. (emphasis added)

As the Order in this case demonstrates, neither the plaintiff nor the defendant were a "prevailing party." The defendant prevailed on the many of the issues; the plaintiff prevailed on one; therefore, neither is a "prevailing party."

2.

The Magistrate's Court jurisdictional limit is $7,500.00

Even if the plaintiff were the sole prevailing party in this litigation, the Magistrate Court does not have jurisdiction to grant money judgments of $56,000.00. See § 22-3-10, S. C. Code, Ann.

3.

The Claim for $56,000.00 is not Reasonable.

A.

The fee is not commensurate with the work performed.

This case involved a non-jury trial of less than a day, no discovery and no depositions. No law firm can justify allocating the resources of $700.00 an hour to a small claims court case. When applied to the time spent in trial, the Nelson Mullins application approaches $10,000.00 an hour.

B.
The charges are shocking and unethical

Many cases discuss various legal theories that "shock the conscience of the court." If the plaintiff's application for $56,000.00 in attorney's fees does not shock the conscience of the court, then the Court's conscience is unshockable. Leaving aside the too evident observation that this case involved no discovery, the application to this Court exhibits sufficient chutzpah to assert that the law firm, Nelson Mullens "enjoys and [*sic.*] excellent reputation among the South Carolina legal community."

First, not only is there no evidence in this record to support this self-serving assertion, but also the fact that the law firm askes for an award of $56,000.00 in attorney's fees for handling a Small Claims Court case commenced by a one-page pleading supplied by the Court,[1] is powerful evidence that the firm's self-serving assertion of its excellent reputation is subject to being questioned.

Second, the law firm's conduct in this case does not support its assertion of possessing "an excellent reputation." First, the plaintiff took several dilatory and wasteful positions, such as arguing that the defendant could not dismiss a claim without prejudice even though the well-developed case law is clear on this legal issue.

Third, for $700.00 an hour, a fair-minded assessment of the firm's conduct must conclude that the law firm would evaluate its evidence and submit only that evidence reasonably believed to be relevant. The law firm did not do this; instead, it indiscriminately copied every document the City of Hanahan identified as being related to El Alamo, and because defendant's counsel had no preview of

[1] The bill submitted to the Court claims two lawyers spent 3.5 hours for a total of $1,330.00 to prepare the "complaint" for eviction. The "complaint" is a one-page blue form prepared by the Clerk's office.

the evidence until the call of the case, plaintiff's counsel then cluttered the record with every page even though over half of them have nothing to do with this case.

Fourth, and most shocking of all, plaintiff's counsel called an unapologetic racist to the stand. This fourth act deserves its own separate analysis.

At trial, the law firm with the "excellent reputation" called Ronald Newman to the stand for its dramatic closing witness. Mr. Newman testified that he travelled to his property—a mobile home park—from an adjoining city. Mr. Newman's mobile home park is located across the shopping center and not particularly near El Alamo.[2] Mr. Newman's astonishing testimony was that he discovered what he believed to be human excrement in his mobile home park and then testified that based on nothing more than his powers of observation and his knowledge of the type of people who frequent El Alamo, *i.e.* Hispanic, that he concluded the excrement originated from someone related to El Alamo.

In evaluating the irrational testimony of Mr. Newman, there are two ways, and only two ways, to analyze this openly racist testimony. Either counsel knew what his witness was going to say and put him up anyway, or plaintiff's counsel was as surprised and shocked by Newman's testimony as was everyone else in the courtroom. If it is the former, then counsel should be sanctioned, for even though lawyers no longer vouch for their witnesses as we did prior to 1995,[3] there is no excuse for using the courtroom as a platform to publish irrational racism. In fact, if counsel knew Mr. Newman's testimony in advance, he was under an affirmative duty **not to call him**:

Rule 3.3 CANDOR TOWARD THE TRIBUNAL

---

[2] Since there was no discovery, the defendant had no idea Mr. Newman was a witness. However, it is an undeniable fact that a large wooden privacy fence separates his mobile home park from the plaintiff's shopping center.

[3] The credibility of a witness may be attacked by any party, including the party calling the witness. Rule 607, *S. C. Rules of Evidence.*

(a) A lawyer shall not knowingly:

. . .

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

Here, the shocking and offensive nature of Mr. Newman's testimony was apparent to everyone in the courtroom. His undisguised racism was apparent, and as Justice Potter Stewart said in a different context: "I know it when I see it." Following Newman's testimony, plaintiff's counsel made no effort to disavow him or ask that his testimony be struck from the record.

Finally, there is the plaintiff's claim itself: $56,000.00. That amount is *res ipsa loquitur* evidence, especially when, as discussed above, the firm billed $1,330.00 for a form provided by the Clerk of Court's office. However, by any standard identified by Rule 1.5 the law firm cannot justify such fees as "reasonable" as required by both the lease and the law. Not only does the lease require that the attorney's fees be "reasonable," but the rules governing the conduct of lawyer require the same thing. See Rule 1.5: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." There is nothing "novel" or "difficult" about a non-jury Magistrate's Court Rule to Show Cause for ejectment. The Court supplies the pleading, and the rules do not permit discovery. In fact, the South Carolina judicial web site informs applicants in Magistrate's Court that "Employees of the magistrate court will help you file your claim in writing and will explain to you how your case will proceed through trial. You are not required to hire an attorney unless you so desire."

In these circumstances, the fee claimed by the firm is so out of touch with normal fees that the disparity is obvious. To illustrate the disproportionate of the Nelson Mullins claim, the defendant incurred fees at less than 5% of what Nelson Mullens claims it charged in this case. As the evidence

demonstrated there is no sum of money involved in the dispute because the plaintiff's representative, Costa Deluca, testified, and the Court found, the defendant paid her rent, albeit not on time, and the plaintiff made no effort to cash the checks or seek late fees to which it was entitled under the lease. In fact, the plaintiff's representative testified he had no information on whether there was an arrearage or where the rent payments were. Based, in part, on this testimony, the Court found that the defendant was not in breach of the lease, and therefore the plaintiff was not the prevailing party on this issue. In fact, a close examination of the plaintiff's attorney's bill reveals that the plaintiff's real purpose in bringing the action was to act as an adjunct to the City of Hanahan's efforts to revoke the defendant's business license.

Some additional discussion is necessary addressing Nelson Mullens' unsupported, self-serving assertion that its reputation is "excellent." There is some case law that casts doubt on this assertion. Leaving aside the fact that running up a tab of $56,000.00 in a Magistrate Court's non-jury trial is reprehensible, the case law identifies some well-publicized incidents of Nelson Mullins misconduct. For example, in *Bates v. Michelin North America*, 1:09-cv-03280-AT, a district court judge in Georgia entered an extensive Order detailing misconduct of Nelson Mullins:

> On September 19, 2011, the Court conducted a full day evidentiary hearing on Plaintiff's second request for sanctions, Extensive argument was heard, and the parties submitted additional exhibits including hundreds of pages of documents produced by Michelin after Plaintiffs filed their second sanctions request. Michelin's national discovery counsel Ms. Helm [Elizabeth C. "Kate" Helm] took the stand as the sole witness at the hearing to testify in Michelin's defense and to accept personal responsibility for all the alleged discovery "errors."

In that case, the district court entered an issue preclusion sanction and costs, and the parties settled the case for an undisclosed sum prior to trial.

Closer to home, the law firm of Nelson Mullins drove Judge G. Ross Anderson to the point of frustration in *Sanders v. Cim Industrial Machines*, 64 F.3d 659 (4th Cir. 1995), causing Judge

Anderson to issue severe sanctions. The Fourth Circuit reversed the sanctions as too severe, but left no doubt about its view of the manner in which Nelson Mullins operated:

> Although the manner in which the defendants and their attorneys conducted discovery is not commendable, there is insufficient evidence of intentional misconduct to warrant the district court's rather severe remarks.

In summary, both plaintiff's counsel and defendant's counsel began life as English majors, and thus both are familiar with Nathaniel Hawthorne's proscription of imputing the sins of a predecessor to a successor. However, no impartial evaluator of the plaintiff's claim in this case can conclude that such an exorbitant amount of attorney's fees is warranted in this Magistrate Court case. Neither law nor equity can justify an award so untethered to the realities of this case or survive the application of the statutory factors identified by Rule 1.5. When the founding fathers set up the basic framework of our government, they paused long enough to provide for the establishment of an independent judiciary and soundly jettisoned the ancient English common law system of loser pays, because in America, the doors to the courthouse are open to all citizens. See *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975):

> In 1853, congress undertook to standardize the costs allowable in federal litigation. In support of the proposed legislation, it was asserted that there was great diversity in practice among the courts and that losing litigants were being unfairly saddled with exorbitant fees for the victor's attorney.

As the United States Supreme Court noted in *Alyeska*, the Senate Report on the matter of the English "loser pays" system, recorded at 32d Cong. 2d Sess. 207 (1853), contained the remarks of Senator Bradbury who explained the reason why the American congress rejected the British system of "loser pays."

> The abuses that have grown up in the taxation of attorneys' fees which the losing party has been compelled to pay in civil suits, have been a matter of serious complaint The papers before the committee show that in some cases those costs have been swelled to an amount exceedingly oppressive to suitors, and altogether disproportionate to the magnitude and importance of the causes in which they are taxed, or the labor bestowed.
> *Alyeska* at page 1619

In response, the Constitution rejected the "loser pays" of the English common law. This case makes concrete the theoretical concerns of the Founding Fathers. For this reason, enshrined in our Constitution is the VIII Amendment, which prohibits "excessive fines." An award of $56,000.00 in this Magistrate's Court case is tantamount to an "excessive fine" because none of the factors mandated by Rule 1.5 justify the excessive fee claimed in this case. The firm's assertion that it deserves such a disproportionate fee brings discredit to the legal profession.

Respectfully submitted,

January 17, 2018

Thomas R. Goldstein, S. C. Bar No. 2186
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Attorneys for defendant.

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☑ depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
☐ handing counsel a copy thereof
☐ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 22nd day of January, 2018

BY

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
Magistrate's Court

Honorable Rad S. Deaton, Magistrate Court Judge

Case No.: 2016-CV-08-10600019
Case No.: 2016-CV-08-10605290

Harris Investment Holdings, LLC..... Respondent,

vs.

Aracelis Santos.....Appellant.

NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad S. Deaton dated December 7, 2017, and the Order Denying Motion for Reconsideration dated February 2, 2018, and received by counsel February 5, 2018.

February 8, 2018

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
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Attorneys for Appellants

Other counsel of record:
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151 Meeting Street, Sixth Floor
Charleston, S.C. 29401
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

FILED
18 MAR -9 PM 2:17
BERKLEY COUNTY, S.C.

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

AMENDED NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated November 15, 2016, and January 23, 2017, and received by counsel on March 3, 2017 (previously filed) and the Order on attorney's fees dated February 9, 2018, received by counsel on February 26, 2018.

March 6, 2018

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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

FILED
2018 MAR 12 AM 9:26
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

SECOND AMENDED NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated March 7, 2018, (in addition to the prior Orders dated November 15, 2017, January 23, 2018, and February 26, 2018, previously appealed), and received by counsel on March 8, 2018

March 9, 2018

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
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Attorneys for Respondent

FILED
MAR 12 2018
Goose Creek Magistrate Office

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEREKLEY	)	Case No.: 2018-CP-08-0266

Aracelis Santos, ...Appellant,

-vs.-

Harris Investment Holdings, L.L.C., ...Respondent.

FILED
18 AUG 13 PM 3:27
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

THIRD AMENDED APPEAL

The appellant shows unto the Honorable Court as follows:

1. The appellant is a citizen of the County of Berkeley and rents a commercial building from the defendant, commonly referred to as 5901 Loftis Road in the City of Hanahan, County of Berkeley.

2. The respondent is a corporation organized and existing pursuant to the laws of the state of Florida, but doing business in Berkeley County and owns the real estate commonly referred to as 5901 Loftis Road in the City of Hanahan. The parcel of real estate is the subject of this appeal and action. The respondent acquired the property in 2015, from Francon, L.L.C., and at the time of the respondent's acquisition of the property, the appellant occupied the property pursuant to a lease given by the respondent's predecessor in title, Francon, L.L.C.

TRG

3. On or about November 14, 2016, the respondent commenced an ejectment action in the Magistrate's Court for Berkeley County, seeking a writ of ejectment on several grounds.

4. On November 15, 2017, following a bench trial, the Magistrate entered an Order of ejectment on the ground that the appellant constituted a nuisance. The Magistrate found for the tenant/defendant on the other alleged grounds of ejectment. Thereafter, the Magistrate denied the plaintiff's/appellant's motion for reconsideration by written Order dated February 2, 2018.

5. On February 8, 2018, The appellant filed and served an appeal of the Order of ejectment on several grounds as set forth in the appellant's notice of appeal, and thereafter filed an amended notice of appeal and a second amended notice of appeal, which stated in part: Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated March 7, 2018, (in addition to the prior Orders dated November 15, 2017, January 23, 2018, and February 26, 2018, previously appealed), and received by counsel on March 8, 2018.

6. After appellant appealed the Orders by the several notices of appeals, the respondent requested that the Magistrate Court set an appeal bond as a condition of appeal.

7. On February 26, 2018, the Magistrate Court entered an Order, requiring the appellant to post an appeal bond in the amount of $59,295.23 as a condition of seeking an appeal.

8. After the appellant timely appealed, amended appeal, the final Order , the Berkeley County Court of Common Pleas took up the appellant's appeal of the Order setting bond on March 14, 2018, and after considering the arguments of counsel and legal authorities, the circuit court entered an Order on May 7, 2018, remanding the case back to the Magistrate's Court for a re-determination of the appeal bond set by the Magistrate on February 26, 2018. The Magistrate heard the remanded case on May 7, 2018, and entered an Order dated May 17, 2018, setting the appeal bond at $7,500.00. On May 10, 2018, the appellant filed a motion for reconsideration, and thereafter, the Magistrate entered the final Order in this case on May 17, 2018, setting the appeal bond at $5,500.00. Appellant's counsel received this final Order on May 21, 2018.

9. The appellant posted the cash bond of $5,500.00 with the Magistrate's Court.

10. Following the entry of the final on May 17, 2018, and the appellant's compliance with its terms, the case is now ripe to be heard on the merits of the appeal.

11. The plaintiff/appellant repeats the above allegations as if set forth here *verbatim*, and sets forth the following grounds for appeal:

12. The respondent brought a writ of ejectment, making several claims, including a claim that the plaintiff failed to pay rent, failed to keep the property insured, and created a nuisance.

13. After a non-jury trial on the merits, the Magistrate found for the appellant (tenant) on all causes of action except for the respondent's (landlord's) allegation of

nuisance, and the Magistrate found that the respondent proved by a preponderance of the evidence that the appellant created a nuisance and ordered ejectment.

14. Following the trial on the merits, the Magistrate also entered a written Order on February 9, 2018, awarding the defendant/respondent $35,887.23 in attorney's fees.

15. As set forth above, the appellant timely appealed the various orders at case No.: 2018-CP-08-00026, which the circuit court remanded to Magistrate Court for re-determination of the appeal bond. Those previous notices of appeals are incorporated in the previously filed appeals and are not being attached here again. They are of record in the previously filed appeal as Exhibit 1 and are incorporated here by reference.

16. At the bench trial held on November 15, 2017, the respondent called the following witnesses:

Costa DeLuca—representative of landlord

Dennis Turner—Chief of Hanahan Police

Cliff Driggers—Hanahan Police Officer

Joy Krutek—Hanahan Business License Official

Chad Channers—Business Owner

Ronald Newman—Business Owner

The only evidence produced by the respondent of nuisance is comprised of numerous police visits to the business. These visits are controlled by the Town of Hanahan, usually under the guise of "compliance checks," and are pretextual to create the impression of a nuisance by initiating police calls, often under the guise of

"compliance check," as evidence of nuisance. The Magistrate admitted the police incident reports, over appellant's objection, not to prove the truth of the matters contained within them, but to document the number of police calls to 5901 Loftis Road. The police reports themselves are rank hearsay, often double or triple hearsay, which the Magistrate stated he was not relying upon in reaching a decision.

17. The admission of the police incident reports is clearly erroneous because the evidence contained within them is unsupported and constitutes hearsay and double hearsay. On the one hand, the Magistrate stated he was admitting the police reports for the limited purpose of documenting the number of calls to the plaintiff's/appellant's location, but on the other hand relied upon the unsupported allegations as evidence of nuisance. The only convictions of appellant to date are minimal zoning violations (summarized for the Court's convenience in the table below). These convictions arise out of a dispute between the parties over the legality of the City of Hanahan's consumption ordinance.

(Revised August 9, 2018)

DATE	DEFENDANT	CHARGE
Hanahan Municipal Court		
(1) August 20, 2016	Benjamin F. Reyna	After Hours Consumption
Ticket No. 4102P0213362—Officer Dodd		
Consolidated Bench Trial—Tried December 14, 2017		
(2) October 1, 2016	Benjamin F. Reyna	After Hours Consumption
Ticket No. 2007—Officer Dodd		
Consolidated Bench Trial—Tried December 14, 2017		

(3) October 2, 2016 Benjamin F. Reyna After Hours Consumption
2008—Officer Dodd

Consolidated Bench Trial—Tried December 14, 2017

(4) October 2, 2016 Benjamin F. Reyna Public Nuisance
Ticket No. 2009

Consolidated Bench Trial—dismissed
(Nuisance = Violation of § 4-2)

(5) October 2, 2016 Benjamin F. Reyna Disorderly House
Ticket No. 2010

Jury Trial—dismissed

(6) October 2, 2016 Benjamin F. Reyna Unsafe Building
(Occupancy)
Ticket No. 2011

Case re-opened, No contest plea Feb. 16, 2018 $50.00 fine

(7) October 23, 2016 Aracelis Santos Gomez Assault & Battery 3d
degree
Ticket No. 52737GT

Dismissed

(8) October 29, 2016 Benjamin F. Reyna After Hours Consumption
Ticket No. 2012

Consolidated Bench Trial—trial in absence—on appeal (same as

(9) November 5, 2016 Nicole Lynn Franz After Hours Consumption
4102P0213823—Officer Dodd

Consolidated Bench Trial

(10) November 5, 2016 Agustin Torres-Sanchez After Horus Consumption
4102P0213825—Officer Dodd

Consolidated Bench Trial (?)

(11) November 5, 2016 Guillermina Anastacio- After Hours Consumption
4102)0213828—Officer Dodd Eleuterio

Consolidated Bench Trial (?)

(12) November 5, 2016 Angela Hernandez After Hours Consumption
4102P0213829—Officer Dodd
No Contest Plea Feb. 16, 2018. $50.00 fine

(13) November 5, 2016 Arelia Santos Gomez After Hours Consumption
4102P0213830—Officer Dodd
Consolidated Bench Trial

(14) November 5, 2016 Cruz Torres After Hours Consumption
4102P0213824—Officer Dodd
Consolidated Bench Trial (?)

(15) November 5, 2016 Juan Balderas After Hours Consumption
(No ticket number)—Officer Dodd
Consolidated Bench Trial

(16) November 5, 2016 Gisel Gonzales Cruz After Hours Consumption
4102P0213827—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(17) November 6, 2016 Arelis Santos Gomez Unlicensed Sales
4102P0213834
Deferred Prosecution for 90 days from Feb. 160, 2018

(18) November 11, 2016 Arelis Santos Gomez After hours Consumption
Ticket No. 4102P0213835—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(19) November 16, 2016 Benjamin F. Reyna Disorderly Conduct
Ticket No. 52738GT
Dismissed by Court Order

(20) November 16, 2016 Benjamin F. Reyna After Hours Consumption
Ticket No. 52739GT
Dismissed by Court Order

(21) November 26, 2016 Brandon Leroy Washington-Brown After Hours Consumption
Ticket No. 4102P0214311—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(22) December 10, 2016 Leroy Washington-Brown Operating w/o license
Ticket No. 4102P0214334
Dismissed

(23) December 10, 2016 Leroy Washington-Brown After Hours Consumption
4102P0214335—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(24) December 10, 2016 Leroy Washington-Brown Noise Ordinance
4102P0214336
Chief Turner reviewing

(25) December 24, 2016 Anthony Dale Foster After Hours Consumption
4102P0214347—Officer Dodd
Consolidated Bench Trial—dismissed

(26) January 7, 2017 Arelis D. Santos Gomez After Hours Consumption
4102P0214411—Officer Dodd
Consolidated Bench Trial

(27) January 7, 2017 Arelis D. Santos Gomez Operating w/o business license
4102P0214412—Officer Dodd
Dismissed

(28) January 7, 2017 Arelis D. Santos Gomez Interfering with City employees
4102P0214413—Officer Dodd
Dismissed by Court Order (Judge Stokes)

(29-42)
January 7, 2017

3400	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3.1
3401	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3
3402	Arelis D. Santos Gomez	2015 IFC, 609.3.3.1
3403	Arelis D. Santos Gomez	2015 IFC, 509.1
3404	Arelis D. Santos Gomez	2015 IFC, 901.6

3405	Arelis D. Santos Gomez	2015 IFC; 315.3.3
3406	Arelis D. Santos Gomez	2015 IFC, 605.1
3407	Arelis D. Santos Gomez	2015 IFC, 605.3
3408	Arelis D. Santos Gomez	2015 IFC, 605.4
3409	Arelis D. Santos Gomez	2015 IFC, 605.5
3410	Arelis D. Santos Gomez	2015 IFC, 605.6
3411	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.1
3412	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.3.2.2
3413	Arelis D. Santos Gomez	2015 IFC, 110.1.1
3414	Arelis D. Santos Gomez	2015 IFC, 111.1

29-42: Dismissed

(43)
November 6, 2016 — Lance Grimes — Disorderly conduct
Ticket No. 4102P0210213836

Dismissed

(44) — Evodio Hernandez Santos — Unlawful use of 911
Ticket No. unknown

Chief Turner reviewing—Clerk's Office says convicted

(45) — Arelis Santos Gomez — Assault & Battery
3d degree
Ticket No. 52737 GT

Dismissed. (Same as No. 7)

(46) — Arelis Santos Gomez — Unlawful Consumption Ordinance 4-2
September 3, 2017
Ticket No. 4102P0216292

No Contest Plea Feb. 16, 18 $50.00 fine

(47)
November 23, 17 — Arelis Santos Gomez — Unlawful Consumption Ordinance 4-2
Ticket 2251

Consolidated Bench Trial

Moncks Corner—S.L.E.D. Tickets

(48) March 20, 2017 Ticket No. 26437 DB	Anthony Dale Foster **No Contest Plea, fine $50.00**	Unlawful sale of beer/and Operating w/o a permit
(49) March 20, 2017 Ticket No. 26438 DB	Arelis Santos Gomez **Dismissed**	Unlawful sale of beer/and Operating w/o a permit
(50) October 2, 2017 Ticket No. 86689 EF	Arelis Santos Gomez **Dismissed**	Unlawful sale of beer
(51) October 2, 2017 Ticket No. 86690 EF	Benjamin Reyna Flores **Dismissed**	Unlawful sale of beer

18. The Magistrate's award of attorney's fees of $35,887.23 following a half-day, non-jury magistrate trial is not supported by the evidence and violates the *Rules of Professional Conduct*, Supreme Court Rule 407, 1.5, "Fees": "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

19. There is insufficient evidence to sustain a finding of nuisance or to sustain an award of attorney's fees to the plaintiff/respondent.

Wherefore, having fully set forth her complaint, the plaintiff/appellant prays for

1. Reversal of the Magistrate's Order of Ejectment as being unsupported by competent evidence;

2. Reversal of the Magistrate's Award of attorney's fees;

3. For costs of this action;

4. For such other and further relief as the Court deems just and proper.

BELK, COBB, INFINGER & GOLDSTEIN, P.A.

August 9, 2018

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Attorneys for Plaintiffs

FILED
18 AUG 13 PM 3:27
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

PROOF OF SERVICE

I certify that I have served the Appellant's Third Amended Notice of Appeal on the Respondent, Harris Investments, by depositing a copy of it in the United States Mail, postage prepaid, on August 9, 2018, addressed to its attorney of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401.

August 9, 2018

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Attorneys for the Appellant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEREKLEY	)	Case No.: 2018-CP-08-1008
	)	
Aracelis Santos,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	SUMMONS
	)	APPEAL/CONSPIRACY
Harris Investment Holdings, L.L.C.,	)	(Appeal—non jury/Conspiracy—Jury Trial Demanded)
	)	
	)	
Respondent/Defendants.	)	
	)	

FILED
2018 JUN -1 PM 4:21
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you; and to serve a copy of your Answer to the said Complaint upon the subscribers at their offices at 2344 Cosgrove Avenue, Post Office Box 71121, Charleston, South Carolina, 29415-1121 within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

May 22, 2018

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ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEREKLEY	)	Case No.: 2018-CP-08- 1008
	)	
Aracelis Santos,	)	
	)	
Plaintiff/Appellant,	)	
	)	
vs.	)	COMPLAINT
	)	APPEAL/CONSPIRACY
Harris Investment Holdings, L.L.C.,	)	(Appeal—non jury/Conspiracy—Jury Trial Demanded)
	)	
	)	
Respondent/Defendants.	)	
	)	

FILED
2018 JUN -1 PM 4:2
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The plaintiff, complaining of the defendant, shows unto the Honorable Court as follows:

1. The plaintiff/appellant is a citizen of the County of Berkeley and rents a commercial building from the defendant, commonly referred to as 5901 Loftis Road in the City of Hanahan, County of Berkeley.

2. The defendant/respondent, is a corporation organized and existing pursuant to the laws of the state of Florida, but doing business in Berkeley County and owns the real estate commonly referred to as 5901 Loftis Road in the City of Hanahan. The parcel of real estate is the subject of this appeal and action. The defendant/respondent acquired the property in 2015, subject to the plaintiff's/appellant's lease which plaintiff signed prior to the defendant's acquisition.

3. On or about November 14, 2016, the defendant/respondent commenced an ejectment action in the Magistrate's Court for Berkeley County, seeking a writ of ejectment on several grounds.

4. On November 15, 2017, the Magistrate entered an Order of ejectment on the ground that the plaintiff/appellant constituted a nuisance. (The Magistrate found for the tenant/defendant on the other alleged grounds of ejectment.) Thereafter, the Magistrate denied the plaintiff's/appellant's motion for reconsideration by written Order dated February 2, 2018.

5. On February 8, 2018, The plaintiff/appellant appealed the Order of ejectment on several grounds as set forth in the plaintiff/appellant's notice of appeal, and thereafter filed an amended notice of appeal and a second amended notice of appeal, which stated: Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated March 7, 2018, (in addition to the prior Orders dated November 15, 2017, January 23, 2018, and February 26, 2018, previously appealed), and received by counsel on March 8, 2018.

6. Once the plaintiff/appellant appealed the Orders by the several notices of appeals, the defendant/respondent requested that the Magistrate Court set an appeal bond as a condition of appeal.

7. On February 26, 2018, the Magistrate Court entered an Order, requiring the plaintiff/appellant to post an appeal bond in the amount of $59,295.23 as a condition of seeking an appeal.

8. After the plaintiff/appellant timely appealed the final Order, the Berkeley County Court of Common Pleas took up the plaintiff's/appellant's appeal of the Order setting bond on March 14, 2018, and after considering the arguments of counsel and legal authorities, the circuit court entered an Order on May 7, 2018, remanding the case back to the Magistrate's Court for a re-determination of the appeal bond set by the Magistrate on February 26, 2018. The Magistrate heard the remanded case on May7, 2018, and entered an Order dated May 17, 2018, setting the appeal bond at $7,500.00. On May 10, 2018, the plaintiff/appellant filed a motion for reconsideration, and thereafter, the Magistrate entered the final Order in this case on May 17, 2018, setting the appeal bond at $5,500.00. Appellant's counsel received this final Order on May 21, 2018.

9. The plaintiff/appellant posted the cash bond of $5,500.00 with the Magistrate's Court.

10. Following the entry of the final on May 17, 2018, and the plaintiff's/appellant's compliance with its terms, the case is now ripe to be heard on the merits of the appeal.

FOR A FIRST CAUSE OF ACTION
APPEAL FROM A WRIT OF EJECTMENT

11. The plaintiff/appellant repeats the above allegations as if set forth here verbatim.

12. The defendant/respondent brought a writ of ejectment, making several claims, including a claim that the plaintiff failed to pay rent, failed to keep the property insured, and created a nuisance.

13. After a non-jury trial on the merits, the Magistrate found for the plaintiff/appellant on all causes of action except for the defendant's/respondent's allegation of nuisance, and the Magistrate found that the defendant/respondent proved by a preponderance of the evidence that the plaintiff/appellant created a nuisance and ordered ejectment.

14. Following the trial on the merits, the Magistrate also entered a written Order on February 9, 2018, awarding the defendant/respondent $35,887.23 in attorney's fees.

15. As set forth above, the plaintiff/appellant timely appealed the various orders at case No.: 2018-CP-08-00026, which the circuit court remanded to Magistrate Court for re-determination of the appeal bond. Those previous notices of appeals are incorporated into this appeal and attached here as Exhibit 1.

16. As set forth more fully in the second cause of action, the only evidence produced by the defendant/respondent of nuisance is comprised of numerous police visits to the business. These visits are controlled by the Town of Hanahan, usually under the guise of "compliance checks," and are pretextual to create the impression of a nuisance by initiating police calls, often under the guise of "compliance check," as evidence of nuisance. The Magistrate admitted the police incident reports, over appellant's objection, not to prove the truth of the matters contained within them, but to

document the number of police calls to 5901 Loftis Road. The police reports themselves are rank hearsay, often double or triple hearsay, which the Magistrate stated he was not relying upon in reaching a decision.

17. The admission of the police incident reports is clearly erroneous because the evidence contained within them is unsupported and constitutes hearsay and double hearsay. On the one hand, the Magistrate stated he was admitting the police reports for the limited purpose of documenting the number of calls to the plaintiff's/appellant's location, but on the other hand relied upon the unsupported allegations as evidence of nuisance. The only convictions of appellant to date are minimal zoning violations (summarized for the Court's convenience in the table below). These convictions arise out of a dispute between the parties over the legality of the City of Hanahan's consumption ordinance.

(Revised March 13, 2018)

DATE	DEFENDANT	CHARGE
Hanahan Municipal Court		
(1) August 20, 2016 Ticket No. 4102P0213362—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		
(2) October 1, 2016 Ticket No. 2007—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		
(3) October 2, 2016 2008—Officer Dodd	Benjamin F. Reyna	After Hours Consumption
Consolidated Bench Trial—Tried December 14, 2017		

(4) October 2, 2016 Benjamin F. Reyna Public Nuisance
Ticket No. 2009

Consolidated Bench Trial—dismissed
(Nuisance = Violation of § 4-2)

(5) October 2, 2016 Benjamin F. Reyna Disorderly House
Ticket No. 2010

Jury Trial—dismissed

(6) October 2, 2016 Benjamin F. Reyna Unsafe Building
(Occupancy)
Ticket No. 2011

Case re-opened, No contest plea Feb. 16, 2018 $50.00 fine

(7) October 23, 2016 Aracelis Santos Gomez Assault & Battery 3d
degree
Ticket No. 52737GT

Dismissed

(8) October 29, 2016 Benjamin F. Reyna After Hours Consumption
Ticket No. 2012

Consolidated Bench Trial—trial in absence—on appeal (same as

(9) November 5, 2016 Nicole Lynn Franz After Hours Consumption
4102P0213823—Officer Dodd

Consolidated Bench Trial

(10) November 5, 2016 Agustin Torres-Sanchez After Horus Consumption
4102P0213825—Officer Dodd

Consolidated Bench Trial (?)

(11) November 5, 2016 Guillermina Anastacio- After Hours Consumption
4102)0213828—Officer Dodd Eleuterio

Consolidated Bench Trial (?)

(12) November 5, 2016 Angela Hernandez After Hours Consumption
4102P0213829—Officer Dodd

No Contest Plea Feb. 16, 2018. $50.00 fine

(13) November 5, 2016 Arelia Santos Gomez After Hours Consumption
4102P0213830—Officer Dodd
Consolidated Bench Trial

(14) November 5, 2016 Cruz Torres After Hours Consumption
4102P0213824—Officer Dodd
Consolidated Bench Trial (?)

(15) November 5, 2016 Juan Balderas After Hours Consumption
(No ticket number)—Officer Dodd
Consolidated Bench Trial

(16) November 5, 2016 Gisel Gonzales Cruz After Hours Consumption
4102P0213827—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(17) November 6, 2016 Arelis Santos Gomez Unlicensed Sales
4102P0213834
Deferred Prosecution for 90 days from Feb. 160, 2018

(18) November 11, 2016 Arelis Santos Gomez After hours Consumption
Ticket No. 4102P0213835—Officer Dodd
No Contest Plea Feb. 16, 2018 $50.00 fine

(19) November 16, 2016 Benjamin F. Reyna Disorderly Conduct
Ticket No. 52738GT
Dismissed by Court Order

(20) November 16, 2016 Benjamin F. Reyna After Hours Consumption
Ticket No. 52739GT
Dismissed by Court Order

(21) November 26, 2016 Brandon Leroy Washington-Brown After Hours Consumption
Ticket No. 4102P0214311—Officer Dodd

No Contest Plea Feb. 16, 2018 $50.00 fine

(22) December 10, 2016 Leroy Washington-Brown Operating w/o license
Ticket No. 4102P0214334

Dismissed

(23) December 10, 2016 Leroy Washington-Brown After Hours Consumption
4102P0214335—Officer Dodd

No Contest Plea Feb. 16, 2018 $50.00 fine

(24) December 10, 2016 Leroy Washington-Brown Noise Ordinance
4102P0214336

Chief Turner reviewing

(25) December 24, 2016 Anthony Dale Foster After Hours
Consumption
4102P0214347—Officer Dodd

Consolidated Bench Trial—dismissed

(26) January 7, 2017 Arelis D. Santos Gomez After Hours Consumption
4102P0214411—Officer Dodd

Consolidated Bench Trial

(27) January 7, 2017 Arelis D. Santos Gomez Operating w/o business
4102P0214412—Officer Dodd license

Dismissed

(28) January 7, 2017 Arelis D. Santos Gomez Interfering with City
4102P0214413—Officer Dodd employees

Dismissed by Court Order (Judge Stokes)

(29-42)
January 7, 2017

3400	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3.1
3401	Arelis D. Santos Gomez	2015 IFC, 609.3.3.3
3402	Arelis D. Santos Gomez	2015 IFC, 609.3.3.1
3403	Arelis D. Santos Gomez	2015 IFC, 509.1
3404	Arelis D. Santos Gomez	2015 IFC, 901.6
3405	Arelis D. Santos Gomez	2015 IFC, 315.3.3

3406	Arelis D. Santos Gomez	2015 IFC, 605.1
3407	Arelis D. Santos Gomez	2015 IFC, 605.3
3408	Arelis D. Santos Gomez	2015 IFC, 605.4
3409	Arelis D. Santos Gomez	2015 IFC, 605.5
3410	Arelis D. Santos Gomez	2015 IFC, 605.6
3411	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.1
3412	Arelis D. Santos Gomez	2015 IFC, 1010.1.9.3.2.2
3413	Arelis D. Santos Gomez	2015 IFC, 110.1.1
3414	Arelis D. Santos Gomez	2015 IFC, 111.1

29-42: Dismissed

(43)
November 6, 2016 — Lance Grimes — Disorderly conduct
Ticket No. 4102P0210213836

Dismissed

(44) — Evodio Hernandez Santos — Unlawful use of 911
Ticket No. unknown

Chief Turner reviewing—Clerk's Office says convicted

(45) — Arelis Santos Gomez — Assault & Battery
3d degree
Ticket No. 52737 GT

Dismissed. (Same as No. 7)

(46) — Arelis Santos Gomez — Unlawful Consumption Ordinance 4-2
September 3, 2017
Ticket No. 4102P0216292

No Contest Plea Feb. 16, 18 $50.00 fine

(47)
November 23, 17 — Arelis Santos Gomez — Unlawful Consumption Ordinance 4-2
Ticket 2251

Consolidated Bench Trial

Moncks Corner-Traffic Tickets- SLED

(48) March 20, 2017 Ticket No. 26437 DB	Anthony Dale Foster **No Contest Plea, fine $50.00**	Unlawful sale of beer/and Operating w/o a permit
(49) March 20, 2017 Ticket No. 26438 DB	Arelis Santos Gomez **Dismissed**	Unlawful sale of beer/and Operating w/o a permit
(50) October 2, 2017 Ticket No. 86689 EF	Arelis Santos Gomez **Pending**	Unlawful sale of beer
(51) October 2, 2017 Ticket No. 86690 EF	Benjamin Reyna Flores **Pending**	Unlawful sale of beer

18. The Magistrate's award of attorney's fees of $35,887.23 following a half-day, non-jury magistrate trial is not supported by the evidence and violates the *Rules of Professional Conduct*, Supreme Court Rule 407, 1.5, "Fees": "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses."

19. There is insufficient evidence to sustain a finding of nuisance or to sustain an award of attorney's fees to the plaintiff/respondent.

FOR A SECOND CAUSE OF ACTION
(Civil Conspiracy)

20. The plaintiff/appellant repeats the above allegations as if set forth here *verbatim*.

21. At the non-jury trial of this case on October 11, 2017, the plaintiff learned for the first time that the defendant/respondent was engaged in secret meetings with the City of Hanahan to coordinate with the City to force the plaintiff/appellant to vacate the premises.

22. The defendant/respondent and the City entered into a combination joining for the purpose of injuring the plaintiff, which caused her special damages.

23. As a direct and proximate result of the defendant/respondent's unlawful combination with the City of Hanahan, the plaintiff has suffered specific economic and tangible losses including diminution of the value of business, excessive attorney's fees in being forced to defend her rights from the multi-prong attack launched by th City of Hanahan and the defendant/respondent and the loss of her business known as Latino Mix.

24. The plaintiff/appellant is entitled to a trial by jury and for judgment against the defendant/respondent for both actual and punitive damages in such amount as can be calculated by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(violation of plaintiff's/appellant's civil rights)

25. The plaintiff/appellant repeats the above allegations as if set forth here *verbatim.*

26. The South Carolina Constitution guarantees to every citizen the right to be treated equally under the law and to be protected from racially discriminatory policies.

27. The plaintiff is a member of a racially protected minority class.

28. The defendant/respondent joined in with the City of Hanahan to apply a racially discriminatory policy designed to drive the plaintiff/appellant from the location because the business is owned and operated by a minority citizen and the business serves a minority clientele.

29. The defendant/respondent misused its powers as landlord in a joint enterprise with the City, combining and concurring, to assist the City in its efforts to drive the plaintiff/appellant from her location.

30. The defendant/respondent has undertaken acts to act as an adjunct and arm of the City in forcing the plaintiff/appellant from her location.

31. The defendant's actions, acting in concert with the City of Hanahan, combining and concurring, constitutes a deprivation of plaintiff's property, liberty, and free association rights under the South Carolina Constitution.

32. The plaintiff is entitled to trial by jury and for an award of both actual and punitive damages for the defendant's misuse of civil process to deprive her of her constitutional rights.

FOR A FOURTH CAUSE OF ACTION
(Tortuous Interference with Prospective Business Relations)

33. The plaintiff repeats the above allegations as if set forth here *verbatim*.

34. The City of Hanahan is opposed to the plaintiff's operation of a lawful business and is attempting to prevent the plaintiff from doing so by misusing its police powers to harass the plaintiff and drive her out of the City. The defendant/respondent is participating in the City's efforts to close the plaintiff's business, and is acting jointly and severally with the City, to misuse civil process in order to deprive the plaintiff of the use of her property.

35. The defendant/ respondent instituted an ejectment proceeding at the request of the City in a joint effort to assist the City in closing the plaintiff's business.

36. The defendant's/respondent's efforts to eject the plaintiff are an intentional tortious interference with the plaintiff's efforts to operate a business at the location rented from the defendant/respondent, which the plaintiff/appellant rented prior to the defendant/appellant acquiring title to the property.

37. The appellant/respondent has been damaged by the defendant's/respondent's act in being forced to incur legal expenses and defend against a wrongful ejectment action.

38. The plaintiff/ appellant is entitled to judgment against the defendant for such amounts as both actual and punitive damages as found to be due by a jury.

Wherefore, having fully set forth her complaint, the plaintiff/appellant prays for

1. Reversal of the Magistrate's Order of Ejectment as being unsupported by competent evidence;

2. Reversal of the Magistrate's Award of attorney's fees;

3. A trial by jury;

4. An award against the defendant for actual, punitive, and special damages for interference with the plaintiff's business, and misuse of judicial process, including consequential damages occurring as the result of the unreasonable interference in operating;

5. An award for attorney's fees as allowed by § 15-77-300, *et. seq.*, S. C. Code, ann.;

6. For costs of this action;

7. For such other and further relief as the Court deems just and proper.

BELK, COBB, INFINGER & GOLDSTEIN, P.A.

May 29, 2018

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Attorneys for Plaintiffs

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
Magistrate's Court

Honorable Rad S. Deaton, Magistrate Court Judge

Case No.: 2016-CV-08-10600019
Case No.: 2016-CV-08-10605290

Harris Investment Holdings, LLC..... Respondent,

vs.

Aracelis Santos.....Appellant.

NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad S. Deaton dated December 7, 2017, and the Order Denying Motion for Reconsideration dated February 2, 2018, and received by counsel February 5, 2018.

February 8, 2018

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
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Attorneys for Appellants

Other counsel of record:
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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
Magistrate's Court

Honorable Rad S. Deaton, Magistrate Court Judge

Case No.: 2016-CV-08-10600019
Case No.: 2016-CV-08-10605290

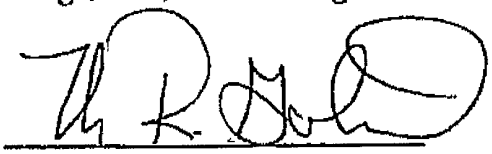
Harris Investment Holdings, LLC..... Respondent,

vs.

Aracelis Santos.....Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal on the Respondent, Harris Investment Holdings, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2018, addressed to its attorney of record, Merritt G. Abney, Nelson Mullins, Riley & Scarborough, LLP, 151 Meeting Street, Sixth Floor, Charleston, S.C. 29401.



February 8, 2018

Thomas R. Goldstein, #2186
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THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

AMENDED NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated November 15, 2016, and January 23, 2017, and received by counsel on March 3, 2017 (previously filed) and the Order on attorney's fees dated February 9, 2018, received by counsel on February 26, 2018.

March 6, 2018

BELK, COBB, INFINGER & GOLDSTEIN, P.A.
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Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

SECOND AMENDED NOTICE OF APPEAL

Aracelis Santos appeals the Orders of the Honorable Rad Deaton dated March 7, 2018, (in addition to the prior Orders dated November 15, 2017, January 23, 2018, and February 26, 2018, previously appealed), and received by counsel on March 8, 2018

March 9, 2018

Other counsel of record:
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THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

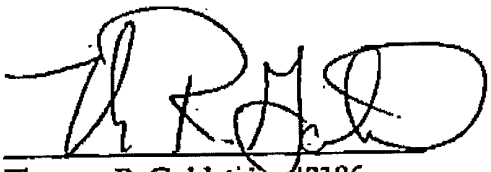
vs.

Aracelis Santos, ...Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Amended Notice of Appeal on the Respondent, Harris Investments, by depositing a copy of it in the United States Mail, postage prepaid, on March 6, 2018, addressed to its attorney of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401.

March 6, 2018



Thomas R. Goldstein, #2186
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Attorneys for the Appellant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	2018-CP-08-1008
	)	
Aracelis Santos,	)	
	)	**RESPONDENT/DEFENDANT'S MOTION TO DISMISS**
APPELLANT/PLAINTIFF,	)	
vs.	)	
	)	
Harris Investment Holdings, LLC,	)	
	)	
RESPONDENT/DEFENDANT.	)	

FILED
2018 JUL 11 AM 10:30
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

Respondent/Defendant Harris Investment Holdings, LLC ("HIH") moves to dismiss this action pursuant to Rules 12(b)(8) and 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this motion are set forth below.

Harris filed eviction actions seeking to eject Santos from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. Harris alleged Santos breached the leases for these properties in several respects and that the lease for Latino Mix of the units has expired according to its terms. The parties waived their rights to a jury trial, and an a consolidated bench trial was held on October 11, 2017. Harris was represented by Merritt G. Abney, Esq., and Santos was represented by Thomas R. Goldstein, Esq.

Following trial, the Magistrate's Court issued an order dated December 7, 2017, in which it granted HIH's applications for ejectment with respect to both Latino Mix and El Alamo. (Ex. A.) Santos filed a motion for a new trial, which the Court denied via written order dated February 2, 2018. (Ex. B.) On February 2, 2018, the Court issued a writ of ejectment with

respect to El Alamo.[1] On February 8, 2018, Santos filed a notice of appeal to this Court in Case No. 2018-CP-08-0026 (the "First Appeal").

In the meantime, following a hearing on February 26, 2018, the Magistrate's Court set an appeal bond in the amount of $59,295.23. (Ex. C.) Santos filed a motion for reconsideration of the bond amount, which the Magistrate's Court denied via written order dated March 7, 2018. (Ex. D.)

Thereafter, Santos moved the Circuit Court in the First Appeal to vacate the bond requirement, upon which the Circuit Court determined the inclusion of any amount awarded to HIH for attorneys' fees in the bond was improper. Via order issued on April 9, 2018, the Circuit Court remanded "the issue of the bond" to the Magistrate for re-calculation. (Ex. E.) The First Appeal did not terminate and the action remains pending in this Court.

After the Magistrate re-established the bond, Santos filed this action in which she purports to appeal the Magistrate's prior order of ejectment and to assert various tort claim, all of which are based upon the factual allegation that HIH improperly sought to eject Santos from the subject property.

ARGUMENT

First, this action should be dismissed pursuant to Rule 12(b)(8), SCRCP, which provides for dismissal when "another action is pending between the same parties for the same claim." S.C. R. Civ. P. 12(b)(8); *State ex rel. Wilson v. Condon*, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014) (holding Rule 12(b)(8) exists to prevent duplicative litigation between the same parties). The rule requires only that the claims or issues in the second case be "substantially the same," *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 532 (Ct. App. 2009), or "based on the same facts or circumstances," *Corbett v. City of Myrtle Beach*, 336 S.C. 601, 610,

[1] Santos vacated the Latino Mix premises voluntarily prior to the Court's ruling on the motion for a new trial.

521 S.E.2d 276, 281 (Ct. App. 1999), as those asserted in the prior-filed litigation. Accordingly, there are three requirements for dismissal under Rule 12(b)(8): (1) a pending claim; (2) between the same parties; (3) for the same or substantially the same claim/issues or based on the same facts and circumstances. *See Corbett*, 336 S.C. at 610, 521 S.E.2d at 281; *Capital City*, 382 S.C. at 106, 674 S.E.2d at 532.

In this case, the First Appeal remains pending and addresses the same issues between the same parties as the present action. Thus, this action should be dismissed pursuant to Rule 12(b)(8).

Next, Santos' tort claims should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim. All of Santos' claims are based entirely upon the same basic factual allegation – HIH allegedly improperly used the legal system to harass her by filing the ejectment action. Although the claims are styled as various different causes of action, Santos essentially alleges a claim for malicious prosecution. However, a claim for malicious prosecution fails as a matter of law where the plaintiff has not prevailed in the legal proceeding alleged to have been filed maliciously. *Pallares v. Seinar*, 407 S.C. 359, 365, 756 S.E.2d 128, 131 (2014) ("[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) ***termination of such proceedings in [the] plaintiff's favor***; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage.") (emphasis added). As a matter of law, because Santos lost the ejectment action, she cannot pursue tort claims based upon the theory that the action was instituted improperly. Thus, the tort claims must be dismissed pursuant to Rule 12(b)(6).

CONCLUSION

For all of the above reasons, Harris respectfully requests the Court dismiss the instant action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Counsel for Plaintiff Harris Investment Holdings, LLC

Charleston, South Carolina

July 5, 2018

ELECTRONICALLY FILED - 2018 Dec 04 10:42 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BERKELEY)	NINTH JUDICIAL CIRCUIT
Aracelis Santos,)	Case No. 2018-CP-08-1008
)	Case No. 2018-CP-08-0026
Appellant/Plaintiff,)	
)	**PLAINTIFF'S MOTION FOR A RULE TO SHOW CAUSE AND FOR DISMISSAL OF APPEAL FOR FAILURE TO PROSECUTE**
vs.)	
)	
Harris Investment Holdings, LLC,)	
)	
Respondent/Defendant.)	
)	

Plaintiff, Harris Investment Holdings, LLC, (hereinafter "Plaintiff" or "Harris") hereby moves this Court for a Rule to Show Cause compelling Defendant Aracelis Santos to appear before the Court and show cause why the Court should not find Defendant Santos in contempt for failing to prosecute the appeal or to comply with this Court's order filed on October 2, 2018 in this case.

BACKGROUND

HIH filed eviction actions in the Magistrate's Court seeking to eject Santos from two separate units in the same shopping center located at 5901 Loftis Road, Hanahan, South Carolina, known as "El Alamo" and "Latino Mix," respectively. A consolidated bench trial was held before the Magistrate on October 11, 2017.

Following trial, the Magistrate issued an order dated December 7, 2017, in which it granted HIH's applications for ejectment with respect to both Latino Mix and El Alamo. Santos filed a motion for a new trial, which the Court denied via written order dated February 2, 2018. On February 2, 2018, the Court issued a writ of ejectment with respect to El Alamo.[1] On February 8,

[1] Santos vacated the Latino Mix premises voluntarily prior to the Court's ruling on the motion for a new trial.

ELECTRONICALLY FILED - 2018 Dec 04 10:42 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

2018, Santos filed a Notice of Appeal of the Magistrate Court's orders to this Court in Case No. 2018-CP-08-0026 (the "First Appeal").

In the meantime, following a hearing on February 26, 2018, the Magistrate set an appeal bond in the amount of $59,295.23. Santos filed a motion for reconsideration of the bond amount, which the Magistrate denied via written order dated March 7, 2018.

Thereafter, Santos moved the Circuit Court in the First Appeal to vacate the bond requirement, upon which the Circuit Court determined the inclusion of any amount awarded to HIH for attorneys' fees in the bond was improper. Via order issued on April 9, 2018, this Court remanded "the issue of the bond" to the Magistrate for re-calculation in light of this Court's ruling. The First Appeal did not terminate and the action remains pending in this Court.

After the Magistrate re-calculated the bond, Santos filed a second civil action in this Court (Case No. 2018-CP-08-1008, the "Second Appeal"), in which she also sought to appeal the Magistrate's order of ejectment and subsequent order and, in addition, to assert various tort claims against HIH.

Hearing on the merits of the appeal have been scheduled multiple time with this Court, including on April 9, 2018 before Judge Nicholson and on August, 6, 2018. On both occasions, the Court was unable to review and decide the merits of the appeal because Santos failed to provide a transcript, which is Santos' obligation as the appellant. At both hearings, the Court expressly directed Santos' counsel to obtain a transcript of the hearing in order to avoid further delay, and Santos' counsel agreed to do so. Indeed, following the hearing on August 9, the Court issued an order dated October 2, 2018 (the "Order") requiring Santos to obtain the transcript. In addition, the Order expressly required Santos to dismiss the Second Appeal as redundant of the First Appeal. Despite repeated demands from counsel for Harris, Santos' counsel has refused to comply with

ELECTRONICALLY FILED - 2018 Dec 04 10:42 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

the order. Moreover, Santos' non-compliance is willful. She has refuses to comply in order to delay resolution of this appeal for as long as possible so that she may remain in the Premises despite the order of eviction while the appeal remains pending. Because Santos has flagrantly disregarded the rules of appellant procedure and the directives of this Court, she should be sanctioned and the appeal should be dismissed with prejudice.

ARGUMENT

This Court ordered Defendant Santos as follows:

> "1. Santos will dismiss the Second Appeal without prejudice, and HIH will withdraw its Motion to Dismiss the Second Appeal without prejudice.
> 3. Santos will order a transcription of the audio recordings from Magistrate court Proceedings in this matter to provide this Court will[sic] a complete record for appellate review.
> 4. The hearing on the First Appeal and HIH's motion to dismiss the First Appeal is continued, and shall not be rescheduled for hearing until the transcript referenced in item #3 above has been prepared and filed with the Court."

Order, filed October 2, 2018, attached as **Exhibit 1** (the "Order").

To date, Plaintiff's counsel has refused to dismiss the Second Appeal or to order the transcript as required by this Court, directly disobeying the Court's order and causing the case to unnecessarily hang in limbo. Counsel for Harris has followed up with Defendant Santos' counsel repeatedly regarding the transcript to no avail.

Not only should Defendant Santos' be held in contempt for her failure to order this transcript, this failure also amounts to a failure to prosecute, justifying dismissal of Santos' appeal in its entirety. The plaintiff (in this case the appellant) has the burden of prosecuting her action a court may properly dismiss an action for a party's unreasonable neglect in proceeding with her cause. McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). South Carolina courts have affirmed dismissal of actions based on a failure to prosecute where the dismissals

ELECTRONICALLY FILED - 2018 Dec 04 10:42 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

"were imposed to maintain the orderly disposition of cases in the face of repeated warnings to the offending party or multiple opportunities to proceed with trial" and upon a subsequent finding of unreasonable neglect. Id. (citing Small v. Mungo, 254 S.C. 438, 443, 175 S.E.2d 802, 804 (1970) (finding no abuse of discretion where counsel was apparently in his office and plaintiff and witnesses were at work when case was called for trial, and counsel informed the court that he could not appear for hours); Bond v. Corbin, 68 S.C. 294, 294–95, 47 S.E. 374, 374 (1904)). "In granting dismissal for failure to prosecute, there must be some showing of indifference to the rights of the defendant." Id. at 63, 626 S.E.2d at 904.

In this case, the appeal was initially scheduled for a hearing before Judge Nicholson on April 9, 2018. Santos failed to provide a transcript from the Magistrate Court proceeding, such that the Court could not review the decision below. At the hearing, Judge Nicholson instructed counsel for Santos to obtain a transcript in order to pursue the appeal. A second hearing was held on the appeal before Judge Buckner on August 6, 2018. Despite Judge Nicholson's directive at the April hearing, Santos again failed to obtain a transcript, resulting in further delay as Judge Buckner was unable to review the merits of the Magistrate's ruling without it.

Judge Buckner also instructed Santos' counsel to obtain the transcript if he intended to pursue the appeal, and counsel agreed to do so and to the entry of the Order requiring him to do so. Nevertheless, he has willfully refused to comply with the order despite repeated demands from Harris' counsel that he do so. By refusing to complete this simple task, even after having been ordered by this Court to do so, Santos has shown complete indifference to Harris' rights and this Court's authority, such that her appeal should be dismissed to maintain the orderly disposition of cases.

Based on the foregoing, Plaintiff respectfully requests this Court compel Defendant Santos to appear before the Court and show cause why she should not be held in contempt for failing to comply with this Court's Order dated October 2, 2018, and that both the First and Second Appeals be dismissed with prejudice for her failure to prosecute, along with any other such relief as the Court may deem just and proper.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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December 4, 2018

ELECTRONICALLY FILED - 2018 Dec 04 10:42 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

ELECTRONICALLY FILED - 2018 Dec 17 8:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

MOTION FOR CONTEMPT OF COURT

The appellant moves for an Order of the Court finding the plaintiff/respondent, Harris Investment Holdings, L.L.C. in contempt of court for violating this Court's Order Stay Order dated May 17, 2018, entered by the Magistrate following remand from this Court. This motion is based on the following grounds:

1. The defendant/appellant appealed an Order of ejectment entered by the Berkeley County Magistrate's Court on December 13, 2017. (The plaintiff brought suit alleging entitlement to an Order of Ejectment on three grounds. After a non-jury trial, the Magistrate found for the defendant/appellant on 2 grounds and found for the respondent on one ground; to wit, that the defendant appellant created a nuisance.)

2. After the circuit court remanded the case to the Magistrate's Court to set an appeal bond, the Magistrate set an appeal bond in the amount of $5,500.00 on May 17, 2018,

ELECTRONICALLY FILED - 2018 Dec 17 8:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

which the appellant timely posted with the Berkeley County Magistrate in conformity with the Court's Order.

3. Beginning in December, 2018, the plaintiff/respondent violated the Order of Stay by taking direct acts against the appellant including:

A. Placing a fence around the appellant's property;

B. Changing the locks on the appellant's property;

C. Terminating the appellant's electrical service

All of which are deliberate and intentional violations of the Court's May 17, 2018, Order of Stay.

The plaintiff's/respondent's acts are willful, in violation of the Court's Order of Stay of Ejectment, and taken without consultation with appellant's counsel or without application to the Court to modify the Order for Stay now in effect, and the plaintiff/respondent should be sanctioned for a willful disobedience of the Court's Orders, including being assessed a reasonable sum as attorney's fees to the appellant to compensate the plaintiff/appellant for having to incur attorney's fees to compel the plaintiff/respondent to obey the Orders of the Court.

December 13, 2018

/s/ Thomas R. Goldstein
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Attorneys for Respondent

ELECTRONICALLY FILED - 2018 Dec 17 8:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion for Contempt of Court and Sanctions, and supporting affidavit on the Respondent, Harris Investments, by depositing a copy of it in the United States Mail, postage prepaid, on December 13, 2018, addressed to its attorney of record, Merritt Abney, 151 Meeting Street, Sixth Floor, Charleston, S. C. 29401.

December 13, 2018

/s/Thomas R. Goldstein
Thomas R. Goldstein, #2186
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(843) 554-4291; (843) 554-5566 fax
Attorneys for the Appellant

ELECTRONICALLY FILED - 2018 Dec 17 8:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

APPEAL FROM BERKLEY COUNTY
MAGISTRATE COURT
Rad Deaton, Magistrate

Case No.: 2018-CP-08-00266

Harris Investment Holdings, LLC ,.....Respondent,

vs.

Aracelis Santos, ...Appellant.

AFFIDAVIT OF BENJAMIN REYNA

Personally appeared before me, Benjamin Reyna, who being duly sworn, does depose and say:

I am the General Manager for El Alamo. The business license is in my name. Since the Court entered its Order Staying Execution on May 17, 2018, I have complied fully with the terms of the Order. Despite the Order being in place, starting in December, 2018, the landlord has placed a fence around our property, changed the locks to the door, and terminated our utility services without asking the Court to modify or terminate the Order of Stay currently in effect. When I attempted to talk to the landlord's representative, Costa DeLuca, and pointed out to him that we

ELECTRONICALLY FILED - 2018 Dec 17 8:58 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0800266

are in full compliance with the Court's current Order, he responded by bringing the Hanahan Chief of Police to my location in an effort to intimidate me out of the property. (However, the Chief informed Mr. DeLuca that the matter was a civil, not a criminal matter.)

As a result, even though I tried to communicate with Mr. DeLuca, I have been forced to incur additional expenses to protect our rights under the Order now in effect.

Further your deponent says not.

Benjamin Reyna

SWORN TO BEFORE ME THIS

13th day of December, 2018

Notary Public for South Carolina
My Commission expires: April 16, 2020

ELECTRONICALLY FILED - 2019 Mar 19 11:29 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEREKLEY	)	Case No.: 2018-CP-08-01008
	)	
Aracelis Santos,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR TEMPORARY RESTRAINING ORDER
	)	Rule 65, *S. C. Rules of Civil Procedure*
	)	
Harris Investment Holdings, L.L.C., Costa DeLuca, Tri-Bay Construction, L.L.C., the City of Hanahan,	)	
	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that the plaintiff, above named, will move for an Order of the Court, ten days after notice hereof, or at some earlier time as the Court may allow under the exigent circumstances raised herein, for an Order of the Court directing the defendants immediately to cease and desist destroying the plaintiff's business and preserve the status quo until such time as the parties may be heard. This motion is based on the allegations contained in the amended complaint, attached to the plaintiff's motion to amend complaint and upon the affidavit of Benjamin Reyna previously filed with this Court and incorporated by this reference, and upon Rule 65, of the *South Carolina Rules of Civil Procedure*.

March 19, 2019

/s/Thomas R. Goldstein
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ATTORNEYS FOR PLAINTIFFS

ELECTRONICALLY FILED - 2019 Mar 19 11:29 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

Certificate of Service

I certify that I have served a copy of this pleading on counsel for Harris Investment Holdings, L.L.C. by electronic mail and by regular first class mail with proper postage affixed and addressed to its counsel of record, Merritt Abney at 151 Meeting Street, Suite 600, Charleston, South Carolina 29201, this 19th day of March, 2019.

March 19, 2019

/s/Thomas R. Goldstein
Thomas R. Goldstein, S. C. Bar # 2186
BELK, COBB, INFINGER, & GOLDSTEIN, P.A.

ELECTRONICALLY FILED - 2019 Jun 14 11:12 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEREKLEY	)	Case No.: 2018-CP-08-01008
Aracelis Santos,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	MOTION FOR RECONSIDERATION
	)	Rule 59, *S. C. Rules of Civil Procedure*
Harris Investment Holdings, L.L.C.,	)	
	)	
Defendant.	)	
	)	

TO MERRITT ABNEY, ATTORNEY FOR DEFENDANT:

PLEASE TAKE NOTICE that the plaintiff, above named, will move for an Order of the Court, ten days after notice hereof, or as soon thereafter as counsel may be heard, for an Order amending the Court's June 6, 2019, Order entered June 6, 2019 on the following grounds:

The Court's Order grants defendant's motion to dismiss without prejudice. The plaintiff is prepared to accept this decision and refile under a new case number provided the Order entered June 6, 2019, is corrected to set forth the correct procedural history of the case. As filed, the June 6th Order contains material errors that will compel an appeal that is unnecessary if the Order is amended to recite a neutral and correct procedural history. As filed the Order states:

Thereafter, Santos moved this Court in the First Appeal to vacate the bond requirement, upon which the Court determined the inclusion of any amount awarded to HIH for attorney's fees in the bond was improper. Via order issued on April 9, 2018, this Court remanded "the issue of the bond' to the magistrate's court for re-calculation. **Meanwhile, the First Appeal remained pending in this Court**.

Order at page 2.

ELECTRONICALLY FILED - 2019 Jun 14 11:12 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

The Order also includes a gratuitous footnote #2, stating that plaintiff's counsel misled the Court: "Moreover, the Court notes that, contrary to her counsel's statements at the hearing, Santos did not seek to amend her complaint in this action until March 19, 2019, and she did so then for the purpose of attempting to add additional parties to this action." This statement is not supported by the record as the pleadings, including counsel's August 13, 2018, cover letter to the Clerk of Court demonstrates:

> Pursuant to Judge Buckner's Order, I enclose the original and an extra copy of the appellant's third amended complaint and a proof of service. By copy of this letter, I am filing the third amended notice of appeal with the Clerk of Court's Office in Goose Creek and providing a copy to opposing counsel.
>
> Cover letter to Clerk of Court

To be fair to everyone concerned, the procedural history is confused because plaintiff's counsel conformed to Judge Buckner's oral ruling **before** the Judge entered his written Order on October 2, 2018. Thus, the footnote is incorrect, and more importantly, if either opposing counsel or the Court believes counsel misrepresented facts to the Court, either or both is obligated to report that assertion to Disciplinary Counsel as a violation of Rule 3.3 Candor Toward a Tribunal.

Because prevailing counsel wrote the Court's Order, it is understandable why he drafted it for use at a later time. By including an incorrect—or at least debatable—statement that the first appeal remained pending, the Order is requiring an unnecessary appeal to correct this incorrect finding. Once Judge Young remanded the case to the Magistrate to re-set the appeal bond, the circuit court lost jurisdiction, and the plaintiff was obligated to file a new appeal. Moreover, and perhaps more importantly, the Court's June 6, 2019, Order does not conform to Judge Buckner's October 2, 2018, Order, which the Court announced it was compelled to follow, because that Order holds:

ELECTRONICALLY FILED - 2019 Jun 14 11:12 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

ORDER OF THE COURT WITH CONSENT OF THE PARTIES

1. Santos will dismiss the Second Appel without prejudice, and HIH will withdraw its Motion to Dismiss the Second Appeal without prejudice.

2. Santos is granted leave to amend the First Appeal in order to state that she also seeks review of any further orders of the Magistrate Court entered after the filing date of the First Appeal.

3. Santos will order a transcription of the audio recordings from Magistrate Court proceedings in this matter to provide this Court [with] a complete record for appellate review.

4. The hearing on the First Appeal and HIH's motion to dismiss the First Appeal is continued, and shall not be rescheduled for hearing until the transcript referenced in Item #3 above has been prepared and is filed with the Court.

AND IT IS SO ORDERED.

Sept. 30, 2018
Walterboro, S. C.

_____
Perry M. Buckner, III
Circuit Court Judge

The plaintiff complied with that Order precisely, and when she did—see cover letter to Clerk of Court referenced above—that left the 2018-CP-08-1008, the tort case, standing alone and no longer connected to the appeal (2018-CP-08-00266) from Magistrate Court. Judge Buckner never addressed or even considered a dismissal of the tort suit—his Order touched merely on the dismissal of the appeal from Magistrate's Court: "**Santos will dismiss the Second Appeal without prejudice.**" Judge Buckner's October 2, 2018, Order did not obligate the plaintiff to dismiss her tort suit.

Based on the foregoing, the plaintiff respectfully requests the Court to amend its June 6, 2019, Order, which, if left unaltered, will spur a needless appeal to avoid the collateral estoppel trap carefully laid to be deployed against future litigation. In other words, even though Judge Buckner never took up the question of dismissing the plaintiff's tort suit, the plaintiff can live with a dismissal without prejudice, provided the Order does not lay the groundwork for future procedural skirmishing because the June 6, 2019, Order contains incorrect procedural history.

Respectfully submitted,

June 14, 2019

/s/ Thomas R. Goldstein
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ELECTRONICALLY FILED - 2019 Jun 14 11:12 AM - BERKELEY - COMMON PLEAS - CASE#2018CP0801008

TRANSCRIPTS

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CASE NO. 2016-CV-08-10605290
HARRIS INVESTMENT HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ARACELIS SANTOS,	)	
	)	
Defendants.	)	

ORIGINAL

* * * * * * * * * * * * * * * * *

TRANSCRIPTION OF BENCH TRIAL

HEARD BEFORE: HONORABLE RAD S. DEATON

DATE TAKEN: October 11, 2017

TIME: 10:10 a.m.

PLACE: Berkeley County Magistrate's Court

TRANSCRIBED BY: EVE WILBANKS
Registered Professional Reporter, Certified LiveNote Reporter and Notary Public

* * * * * * * * * * * * * * * * *

POST OFFICE BOX 21119

CHARLESTON, SOUTH CAROLINA 29413

Electronically signed by Eve Wilbanks (101-177-349-6970)

88b0700e-488a-471e-84e2-24c26baba67d

A P P E A R A N C E S

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ALSO PRESENT: Cynthia S. Hernandez, Certified Interpreter

Electronically signed by Eve Wilbanks (101-177-349-6970) 88b0700e-488a-471e-84e2-24c26baba67d

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Electronically signed by Eve Wilbanks (101-177-349-6970)
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Electronically signed by Eve Wilbanks (101-177-349-6970) 88b0700e-488a-471e-84e2-24c26baba67d

THE COURT: All right. All right. Before we get started, Mr. Goldstein, I just want to make sure I confirm your client is waiving her right to a jury trial in this case.

MR. GOLDSTEIN: Yes, your Honor. And if you want me to have her say that through the interpreter, I'll be happy to do that.

THE COURT: I mean, if you're -- I'm fine without getting it on the record from her. I just want to make sure you've discussed that --

MR. GOLDSTEIN: Yes.

THE COURT: -- with her and she's fine.

MR. GOLDSTEIN: We have.

THE COURT: All right.

MR. GOLDSTEIN: I have discussed it with her, your Honor, and she has knowingly and voluntarily waived the right to trial by jury.

THE COURT: Okay.

UNKNOWN: Your Honor, can I place two the ladies that's interpreting together because there's one interpreter and two -- (inaudible).

THE COURT: Sure. That's fine. All

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right. Are these -- the exhibits that you've given me, are these all -- are -- are you all wanting me to admit everything in evidence, or is there going to be some objections as to any of this stuff?

MR. GOLDSTEIN: Your Honor, I'm happy to go through them with you. Exhibit No. 1, there's no objection from the Defendant. Exhibit No. 2, there's no objection from the Defendant. Um, Exhibit 3, um, I am -- I am reserving -- I'm reserving --

THE COURT: Okay.

MR. GOLDSTEIN: I think that the testimony will probably make No. 3 admissible, but I just don't have enough --

THE COURT: No, I understand. I was wondering if we could clear up some of that stuff, it would make it run smoothly with me. I figured you all had; that's why -- I figured you all had these documents, but that's fine. So 1, 2 --

MR. GOLDSTEIN: 4 is without objection; 5 is without objection. 6 is -- the objection is relevancy, but that's the sole basis.

THE COURT: Well, I mean, just give me

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the ones that you have no objection to and we'll rule on the other ones once he --

MR. GOLDSTEIN: 7, no objection; 8, no objection; 9, no objection; 10, uh, no objection; 11, um, no objection; 12, no objection.

THE COURT: Okay.

MR. GOLDSTEIN: 13, no objection; oh, wait. I jumped from 13 -- oh, I skipped -- I'm sorry, Judge. My mistake. 14, no objection; 15, no objection; 16, no objection; 17, no objection; 18, no objection; 19, no objection; um, 20, no objection. 21, there will be an objection based on relevancy; 22, no objection; 23, no objection; and 24, no objection; 25, no objection; 26, no objection.

THE COURT: Okay. So most of them -- okay. And you're seeking to introduce all of those, Mr. Abney?

MR. ABNEY: Yes, sir. Some incident reports as well that will be separately marked as Exhibit 27.

MR. GOLDSTEIN: I'll object to the reports. I think there's a statute that governs that.

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THE COURT: I mean, we'll take that up. But, I mean, why wouldn't the incident reports be hearsay anyway? I'm just curious.

MR. ABNEY: They're not. In a civil case, public reports created by a public agency are an exception to hearsay, unless they --

THE COURT: Well, I understand that as it relates to that, but, I mean, wouldn't the actual statements in there be hearsay?

MR. ABNEY: I think that's the point, is that the statements in the report are an exception to hearsay --

THE COURT: Okay.

MR. ABNEY: -- under Rule 803.

THE COURT: Well, what's the statute you're referring to, then?

MR. GOLDSTEIN: Oh, the statute that prohibits the use of incident reports to prove the matters contained herein. There's a statute. I think it's in Title 19. I didn't know this was going to come up or I would have had the statute in front of me. But I think it's in Title 19. Um, but the other objection would be hearsay.

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I mean, I can tell you -- if you really want to know what's going on, I'll be happy to tell you. There's the -- I anticipate -- Judge Anderson says you should never anticipate; you should just wait and see what the case is about. I anticipate that they will attempt to use the incidences as a basis for asserting there's been a breach. However, there's been no convictions for the incidents contained within those incident reports. So not only would they be hearsay; they would be irrelevant. But, again, that's an anticipatory argument and probably not fair to Mr. Abney because I shouldn't --

MR. ABNEY: I can clarify. I mean, what we're --

THE COURT: You know, I'm trying to clear up some of this. So, you know, yeah, you clarify if you need to.

MR. ABNEY: The argument -- one of the bases for the eviction, one of many is that this place -- it has created a public nuisance, and that the tenant has violated the lease provisions that require them not to operate any immoral or illegal business on the

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premises or engage in any immoral or illegal conduct or any code violations. What the incident reports will show is that time after time after time, the Hanahan Police Department is coming into this place and -- between 2 and 7:00 in the morning, finding people with open containers of alcohol in violation of Hanahan ordinance and other incidents and disturbances on a regular basis. And that's part of the reason.

THE COURT: I think I understand what everybody's position kind of is based on all the summary judgment --

MR. ABNEY: Yeah.

THE COURT: -- documents that you all provided. I read almost everything. I can't recall every single line, but I've read every single thing, you know, including that transcript, so, um -- so, yeah, I mean, we'll take those incident reports up at the time he tries to introduce them. So I don't know -- you may or may not want to introduce those right now.

MR. ABNEY: It's going to be -- I can go ahead and tell you sort of the order --

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THE COURT: Yeah.

MR. ABNEY: -- if that will be helpful. We're going to have Mr. DeLuca here -- Costa DeLuca, who is the representative on behalf of the landlord.

THE COURT: Okay.

MR. ABNEY: And he's going to testify to several of the bases for which we seek eviction.

THE COURT: Okay.

MR. ABNEY: And then I have Chief Dennis Turner who is here, and he's going to talk about the resources that the department has to invoke to disturbances of this property and go through, your Honor, the incident reports to tell you the types of disturbances for which the police are regularly called to this property.

THE COURT: Okay.

MR. ABNEY: Officer Clif Driggers is here and is going to talk about the comparison between the number of times the police department is required to go to the El Alamo for disturbances related to other bars in Hanahan.

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THE COURT: Okay.

MR. ABNEY: Ms. Krutek -- Joy Krutek is a business license professional. She's going to testify generally about the status of the business license and the revocation of that license by the town. And then I have two local business owners who will be here a little bit later --

THE COURT: Okay.

MR. ABNEY: -- to talk about their experiences with El Alamo.

THE COURT: All right. Well, um, as it relates to the Defendant's exhibits, are these -- any of these -- are any of these exhibits that are --

MR. ABNEY: I've gone through them, your Honor. I don't believe I have any objections, understanding --

THE COURT: I know they may be duplicate exhibits, but I just want to make sure.

MR. ABNEY: There are some that are definitely duplicates. It looks like there are some text message transcripts. As far as I know, we don't actually have any electronic copy of that or anything.

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MR. GOLDSTEIN: Well, I mean, we have the phone. I didn't want to enter the phone into evidence.

MR. ABNEY: Yeah. So I'm fine with this, understanding that this, you know, is Magistrate's Court, and the rules of evidence are relaxed. We don't have a jury here.

THE COURT: Somewhat, yeah. I mean, somewhat, but we still try to follow the rules as much as we can. I just want to make sure if there's an object- -- if there's no objection to them, I'm going to deem them all admitted without objection, and then I can look at them and not worry about it. But I want to consider what is in evidence and what's not I'll exclude. But it makes it easier than doing that for a jury.

So -- so you don't have any objection to 1 through 14 --

MR. ABNEY: Right.

THE COURT: -- being admitted? So they're in evidence without objection. And then we'll deal with the incident reports and the two or three -- you know, I think No. 3, 6 and 21 of your documents and maybe 27. I

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don't know if he's -- so 3, 6, 21 and 27 are the ones, um, he said, you know, he may have an objection to or he does have an objection. Those are the ones I guess we'll take up at the time, you know, because I know some of them may be relevancy objections, and I don't know how I could determine if it's relevant unless I hear the testimony.

So do you all want to give opening statements? Do you want to waive them and let's start the testimony?

MR. ABNEY: I don't really have an opening statement so much as just going through the grounds for which we're seeking eviction.

THE COURT: That's fine if you want to kind of set the tone with that, and I'll let Mr. Goldstein kind of set the tone for what his defenses are, if he wants to.

MR. GOLDSTEIN: Your Honor --

THE COURT: Do I need to slow down?

THE INTERPRETER: No, your Honor. I usually get sworn in as --

THE COURT: Oh, absolutely. Absolutely. I do -- I don't have -- I don't know it by

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heart, so -- we have it in the -- (inaudible) -- court on the wall, but --

THE INTERPRETER: (Inaudible.)

THE COURT: Absolutely -- well, absolutely. And I was needing to do that, but I figured I'd take --

THE INTERPRETER: (Inaudible.)

THE COURT: I'm going to tape it on the wall up there. And, ma'am, can you state your name for the record?

THE INTERPRETER: Cynthia Smith Hernandez.

(Interpreter sworn by the Court.)

THE COURT: All right. Well, you are sworn in, and you have to interpret everything I say and everything the people say exactly as they say it. If you need me to slow down or reclarify something, please let me know.

THE INTERPRETER: Yes, your Honor.

MR. GOLDSTEIN: Your Honor, before we begin, may I ask, the rule is recognitory, not mandatory -- or I guess I should say discretionary. This is a nonjury case, but may I inquire as to your Honor's leanings towards sequestration of witnesses?

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THE COURT: I'm happy to hear why we should sequester or if we should sequester, but I've done it before; I don't have a problem with it.

MR. GOLDSTEIN: Well, if the incident reports are going to be a big part of this case, then I am going to request sequestration.

THE COURT: Mr. Abney?

MR. GOLDSTEIN: I'm sorry, Judge?

THE COURT: I said, Mr. Abney, any objection to that?

MR. ABNEY: Sequestration of all the witnesses or --

MR. GOLDSTEIN: Well, I guess it would be all the witnesses.

MR. ABNEY: I just don't see why.

THE COURT: Yeah. What -- in terms of the incident reports, who is going to be testifying about the incident reports other than the chief?

MR. GOLDSTEIN: Well, I'm assuming that Ms. Krutek, then Chief Turner and then Officer Driggers will be. But I'm speculating. I don't know.

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MR. ABNEY: Ms. Krutek will not. Officer Driggers, as I said, will simply be providing the statistics on the number of disturbances at El Alamo versus the number of disturbances at other establishments -- similar establishments in Hanahan. So the only witness that is going to directly testify regarding the incident reports is the chief.

THE COURT: I mean, you know, what I'm trying to figure out, is there a dispute as to these incidents occurring or a dispute as to their relevancy or what? I'm just trying to figure out -- if I send everybody out, I want to know why.

MR. GOLDSTEIN: That's right. And you've peeled back the layers of the onion. I'll stipulate that there's all these incidents; I'll stipulate to that. That's not the issue. The issue is how many of them have resulted in convictions of criminal behavior. The answer is zero. So it's -- it's -- on the Defendant's part, it's unfair to use unproven allegations as a basis to support a breach of a lease.

So if it will help Counsel, I'll

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stipulate as to the number of calls. But it is our contention that these calls are manufactured by the town in a political effort -- and you're going to hear -- you're going to read evidence and hear testimony specifically, um, illustrating the town's coordination, the police agency's coordination with the landlord, with -- with the business license revocation. I feel a little bit like the mouse in the trap; I'm dealing not only with -- fending off not only Mr. Abney on this case, but Mr. -- the Haynsworth firm on the license revocation.

THE COURT: That's still pending?

MR. GOLDSTEIN: It's still pending.

THE COURT: So on a -- (inaudible) -- level or where is --

MR. ABNEY: There's a motion to dismiss at the Court of Appeals waiting for evidence, as we all are.

THE COURT: Okay.

MR. GOLDSTEIN: And -- so there's going to be evidence of a coordination geared towards getting these people out of this space. It's our contention that they have

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been singled out for disparate treatment based on their being identified as -- identifiable members of a protective class. That's our theory. But our legal defense -- I mean, I'm making an opening statement.

THE COURT: That's fine.

MR. GOLDSTEIN: But our legal defense is based on the Kiriakides case. That's our legal defense. Kiriakides says you can't throw somebody out of a commercial lease; it's immaterial --

THE COURT: That's why I haven't granted summary judgment until I hear more about it. You know, because the -- as I said, partial summary judgment is appropriate as to not paying the rent on time for at least a couple of months. I mean, that's clear. I don't think there's any -- there's no dispute, because your e-mails and your letters say that. But, you know, is it material? I think that was the whole point of Cartages case: What is material about it? And as to anything else, I mean, it's hard without affidavits and things like that for a magistrate to say, Okay, yeah, they're prejudiced. I mean, it's

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hard to. I understand that summary judgment at the magistrate level is a little different. You know, why we can do it -- I mean, there's a couple of cases that say we can do it. It's not clear what it's based on, whether it's based on just a bunch of documents you provide or is it based on affidavits or is it based on -- certainly not depositions.

So I really don't -- you know, I didn't feel comfortable saying -- ruling on the prejudice issues, particularly as to the rent, without hearing more. You know, that's all. I just think clarification of the facts is necessary to at least determine. And, of course, I want to hear the defense too. So, anyway, um -- so what are -- I understand your defense is based on materiality most likely --

MR. GOLDSTEIN: Correct.

THE COURT: -- for the most part, legally, here today?

MR. GOLDSTEIN: Sure.

THE COURT: I understand you have theories as to why these things are happening. But from a legal perspective, it's not material, is what you're saying; whatever

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breaches they prove, if they prove any, are not material?

MR. GOLDSTEIN: It comes from a long line of paranoid people.

THE COURT: I understand. I'm with you. I understand. I think all of us do nowadays, though. You know, nowadays there's a reason to be paranoid. But anyway -- for a lot of things, but I don't know about this. But who knows?

All right, Mr. Abney. Do you want to tell me kind of -- you were going to tell me kind of the basis for all the reasons for the eviction.

MR. ABNEY: Right. So you're familiar with this case.

THE COURT: Yeah.

MR. ABNEY: We've got two properties; one is El Alamo, which is a space that is suitable for a restaurant, that type of establishment. And the Latino Mix is a separate unit that's suitable for like a convenience market kind of thing. They are leased separately.

THE COURT: Uh-huh.

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MR. ABNEY: Our client purchased this property in 2015 and assumed these leases.

THE COURT: Okay.

MR. ABNEY: We have -- I mean, you've seen several grounds for eviction here. One is financial default. As your Honor has already determined, there's no question there were several incidences when payment was not made on time. We will show that the violations are February rent was missed, March rent was missed, August rent was missed and September; that's for El Alamo. For Latino Mix, April rent -- this is all in 2017 -- August, and September. Again, you've already determined summary judgment was appropriate on the fact that all of those before August were actually missed.

THE COURT: Right.

MR. ABNEY: We're here today, I guess, to talk about whether that was material to the leases.

The second ground is the usage of the property violates the terms of the lease. El Alamo, the lease specifies it is to be used as a cafe, restaurant and discotheque. It is not

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used as a restaurant. It is not open for breakfast, lunch or dinner. It does not open until 2:00 in the morning, and that is not the contemplated use permitted under the lease agreement.

For El Alamo, the lease specifies that it should be used as a minimarket/cellular store. El Alamo we will show is also not open during --

THE COURT: No. Latino Mix.

MR. ABNEY: I'm sorry. Latino Mix. Thank you. Latino Mix also does not operate during the daytime. It operates at night, roughly the same time period as El Alamo. And we will show that it operates to provide beer for patrons of El Alamo. El Alamo, you cannot sell beer there, but they can have it there, except between the hours between 2 and 7, and people buy beer at Latino Mix and take it over to El Alamo.

The lease specifically requires that El Alamo (sic) must be operated as a minimart in regular business hours. As I said, we will show it does not do that, and that is a violation of the terms of the lease.

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Next we will show that the operation at El Alamo, and, by extension, Latino Mix, creates a public nuisance, based on the numerous incidents beginning all the way back in 2014 and continuously to the present. Criminal activity on the premises, drug use, weapons, overconsumption of alcohol, consumption during hours when the Hanahan ordinance prohibits consumption. The police are called out there on a regular basis, and we will show this continuous pattern of activity creates a public nuisance.

The violations of the ordinance regarding after-hours consumption by itself is a breach of the lease, which prohibits any immoral or activity in violation of local or state law.

We will show the repeated violations of occupancy limits for the building, which is also in violation of the International Fire Code adopted by the Hanahan ordinance.

The lease requires the tenant to provide evidence of liability insurance. We demanded evidence of liability insurance in 2016 for the 2017 year. No such evidence of liability

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insurance was ever provided. That in itself is a violation of the lease.

Both leases prohibit subleasing or allowing a third party to occupy the premises without written consent of the landlord. What the evidence will show is that El Alamo, while Ms. Santos is the tenant, the business license for the operation was held by a Benjamin Reyna. The landlord did not consent in writing at any time to allow Benjamin Reyna to operate a business in the premises. That in itself is a violation of the El Alamo lease.

And finally, we'll show that the Latino Mix lease simply expired. And I think you ruled on --

THE COURT: Well, I mean, you know, I was curious about that. Because, honestly, that would have been an easy, easy way, one way or the other, to resolve that kind of issue. But for the lease, um, at least that's the one lease -- but, I mean, the lease -- from what I remember, the earlier lease lists the entire premises -- or, no, the second lease lists the entire premises and the earlier lease lists a specific suite number,

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if that makes sense.

MR. ABNEY: And we submitted an affidavit after I got your -- (inaudible) --

THE COURT: Well, yeah.

MR. ABNEY: -- and I don't believe there's any dispute --

THE COURT: Well, I mean, I was curious as to that. I mean, that's a pretty simple thing one way or the other. You know, when I'm looking at everything in a light most favorable to him, I have to say -- they have the same address, and one of them says a suite and the other one is silent, that means one of them encompasses the whole thing.

MR. ABNEY: Right.

THE COURT: At least that's my understanding of -- or at least that's an argument to be made. So I don't know -- I mean, is there any dispute as to the second lease covering the entire premises? And I know your client didn't draft that lease or wasn't part of it. They took this property subject to it. But it was a pretty horribly drafted provision, I would think, if there are different suites --

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MR. ABNEY: Right.

THE COURT: -- and not mention a suite.

But, Mr. Goldstein, I don't know what you all's position is to that. You don't have to take a position if you don't want to. I'm just -- I'm curious as to -- if you all are in agreement as to one lease applies to Latino Mix and one lease applies to, um -- um, El Alamo, sorry. Um, if one of them is expired, it's -- you know, I mean, it is what it is; it's not --

MR. GOLDSTEIN: The testimony is going to clear that up. None of them have expired. The original 2015 -- strike that. The original 2013 lease has a two- -- two- -- two-year, um -- two -- two-year renewal periods called for in the lease. Their testimony is going to be when they were signing the new leases -- and that's what the e-mail from the Plaintiff's agent and what the text messages from the Plaintiff's agent talk about, was they thought in signing the new lease, that they were renewing the old lease, and that it was all being extended, is what they thought.

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But it's clearly ambiguous; there's no question it's ambiguous. So the legal question is, who are you going to construe the ambiguity against? I think the evidence about that is pretty clear. They drafted the lease, not us.

THE COURT: They may not have drafted it. Somebody drafted it that they're stuck with.

MR. ABNEY: That obviously wasn't brought up in the summary judgment.

THE COURT: I agree. But, I mean, the -- (inaudible) -- brought it up.

MR. ABNEY: Right.

THE COURT: But I'm trying to make the decision based on all the documents provided, and that stood out to me when I was actually thinking about resolving it that way. I mean, that would have been an easy way to resolve it if the leases said -- the lease said it's expired, and that's it. At least that's one of the premises. It's pretty simple. But then when I look and see they have the same address and one just has a suite number and one doesn't, I mean, you know, if I've written

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-- I forget the -- what is the address? What is the address?

MR. ABNEY: 5901 --

THE COURT: If I've written 5901, I think -- I mean, under a lease, I think I have the whole premises, at least that's what my -- you know, that's what I would think, or at least there's a good basis to believe that. So whether or not that's the case, I don't know. And apparently we're going to get testimony on it and that's good. One way or the other, I'll make a finding of fact at some point.

So I think I've got, um, an understanding of what's going on. So let's just -- do you want to call your first witness? Let's rock and roll.

MR. ABNEY: All right. The Plaintiff calls Costa DeLuca to the stand.

THE COURT: Mr. DeLuca, come on over. All right, Mr. DeLuca. Raise your right hand for me.

COSTA DELUCA, SWORN.

DIRECT EXAMINATION

BY MR. ABNEY:

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Q. Mr. DeLuca, could you please tell the Court where you're from and where you grew up, please?

A. Yeah. I was born in Charleston, grew up West Ashley and, um, pretty much have lived there my entire life. I live in Summerville now.

Q. And are you employed with Harris Investment Holdings?

A. Yes.

Q. Okay. And what is your position with --

A. Vice president.

Q. Thank you. Tell us a little bit about your educational background.

A. I attended Charleston public schools, the College of Charleston, and that's basically it, right here.

Q. What are your duties as a vice president of Harris?

A. Well, I primarily work with a sister company in the temporary staffing business, and we operate in eight states. And I'm in charge of the entire operations and sales of that. And I also, in the capacity of looking for space for Harris Investment, travel around, looking for different buildings and investment property.

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And as far as locally, since I'm based here, I've been charged with basically looking over the properties here.

Q. Okay. So you're the person on the ground here who is responsible for the leases that we're here about today?

A. Yes.

Q. Um, have you visited these properties on a regular basis?

A. Yes, definitely.

Q. Okay. And how long have you -- have you been in your position responsible for these leases going back to the time Harris acquired these properties?

A. Yes. I was -- yes, absolutely.

Q. And about how often do you visit the properties that are at issue?

A. Several times a month to physically visit them, I would say. I usually ride by there twice a day when I'm on my way to work. It's right along the way, and I pull through the parking lot, check things out.

Q. Okay. So are you here today to testify on behalf of Harris about these leases?

A. Yes.

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Q. Okay. Tell us about the two properties that are at issue.

A. Well, we have one that is a larger space, which is the El Alamo. It's supposed to operate as a restaurant -- breakfast, lunch and dinner type restaurant -- and a discotheque maybe at night; I don't know for sure. And then the Latino Mix, which is a -- like a convenience store. Neither one appears to be operating as such.

Q. Do -- are they leased separately?

A. Yes.

Q. Okay. So you have a separate lease for El Alamo and then a different lease for Latino Mix?

A. Yes, we do.

Q. And is Ms. Santos the tenant for both leases?

A. Yes.

Q. All right. How did Harris became landlord of these two properties?

A. We purchased the entire complex in late 2015 --

Q. And was Ms. San- -- I'm sorry. Go ahead.

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A. -- and assumed the leases then.

Q. And was Ms. Santos already leasing the properties when Harris purchased them?

A. Yes.

Q. Tell us about El Alamo. You said it's -- what is it?

A. Well, that's originally -- when we bought the property, we thought it was a restaurant, Hispanic-type descent, Mexican-type foods. And it was kind of strange that through the time, and I would ride through there, I would never notice anybody there, ever; in the mornings and in the afternoons, never notice anybody there. So we didn't really know what was happening there.

Q. Have you ever -- have you seen people there for breakfast?

A. No.

Q. Have you seen any people there for lunch?

A. No.

Q. Have you ever witnessed people there for dinner?

A. No.

Q. Okay. To your knowledge, when does El Alamo operate?

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A. My knowledge is it operates from 2 a.m. to 7 a.m. Sort of a nightly -- a nighttime nightclub.

Q. And who runs El Alamo?

A. I believe a gentleman named Benjamin Reyna.

Q. Reyna?

A. Reyna, yes.

Q. And does El Alamo serve alcohol?

A. Serve it themselves? I think people bring it in there to -- there is alcohol consumed on that premises.

Q. Does it have a permit to serve alcohol?

A. No, not to my knowledge.

Q. All right. If you would take a look at Exhibit No. 2, please.

A. I didn't bring it up here.

Q. Oh, I'm sorry.

A. I'm sorry.

Q. All right. Can you confirm that Exhibit No. 2 is the lease -- the applicable lease for El Alamo?

A. Yes.

Q. Okay. Tell us about Latino Mix, please.

A. Latino Mix is supposedly a convenience

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store, like a minimart type of thing.

Q. Okay. And if you would take a look at Exhibit No. 23. And can you confirm -- can you confirm that this is the lease agreement applicable to the Latino Mix space?

A. Yes.

Q. And how do you know that? If you look on the --

MR. GOLDSTEIN: Can I ask Counsel to call the number out again? Did you say 3?

MR. ABNEY: 23.

MR. GOLDSTEIN: Oh, 23. I'm sorry.

BY MR. ABNEY:

Q. Mr. DeLuca, how can you tell that this is the lease for Latino Mix specifically?

A. Primarily the dollar amount; the rent is different than the dollar amount of the El Alamo. It's a smaller space, so smaller rent.

Q. And does the square footage specified in the lease correspond to what you understand to be the square footage for Latino Mix?

A. Yes.

Q. And I'll note, you see it says "Trade Name" in section 1(f), it says "La Mexicana"; do you see that?

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A. Yes, sir.

Q. Okay. But do you understand that -- is it your understanding that the trade name changed to Latino Mix at some point?

A. Same premises, yes.

Q. Okay. Do leases require the payment of rent?

A. Yes, sir.

Q. Okay. And when is rent due?

A. Rent is due on the 1st of each month.

Q. So it's due monthly, correct?

A. Yes.

Q. All right. If you would turn to Exhibit 2, please.

A. Yes.

Q. And take a look at section 1(a).

A. Yes.

Q. And could you read that into the record, please?

A. "Rent: Tenant shall pay to the landlord a monthly base rental and additional rent as follows: Monthly Base Rental: Tenant shall pay a monthly base rental to landlord for each month during the term of this lease and any renewal thereof in advance" before -- "on or before the

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1st day of each month during the terms of this lease agreement."

THE COURT: Just make sure you speak into the microphone, if possible, so we can get -- it's being recorded.

THE WITNESS: Great.

THE COURT: Thanks. I can hear you, but --

A. "...in advance, on or before the 1st day of each month during the terms of this agreement."

Q. Thank you. And would -- and that's for El Alamo, correct?

A. Yes.

Q. And if you would turn to the Latino Mix agreement, which is Exhibit No. 23.

A. Yes.

Q. And can you read the first sentence there in section 3 of the lease? It begins "Rental."

A. "Rental: Lessee agrees to pay lessor, without notice, demand, deduction or offset whatsoever, as monthly rent for the demised premises a fixed minimum rent (herein-hereafter (sic) referred to as 'minimum rent') as shown in paragraph 1(k) of the lease, payable monthly in

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advance on the first day of each and every calendar month through the term of the lease."

Q. Okay. And what happens if the tenant fails to make a payment on the 1st of the month?

A. They're in default.

Q. Okay. And would you turn with me in the Latino Mix lease, No. 23, to section 30? I'm sorry. It's section -- excuse me -- section 18. Excuse me.

A. Okay. Okay.

Q. Um, and just read that section 18 (a)(i), please.

A. "The lessee shall be in financial default if it fails: (i), to pay when due each installment of minimum rent."

Q. Okay.

A. "(iii) to pay when due additional rent by way of pro rata contribution, as defined in paragraph 11."

Q. Okay. Turn if you would back to Exhibit No. 2, the Latino Mix lease -- I'm sorry -- the El Alamo lease.

A. Yes.

Q. And read the first sentence of section 30, please.

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A. "Default: If tenant fails to pay monthly base rental, including additional rent, on or before the due date as herein stated (time is of the essence), this agreement shall be in default."

Q. Okay. Thank you very much. How did Ms. Santos ordinarily pay -- make rental payments?

A. Normally, she would send two checks in each month, one for Latino Mix and one for El Alamo.

Q. Okay. Did she ever miss rental payments by --

A. Yes, yes.

Q. On -- on several occasions?

A. Many occasions.

Q. Were checks that Ms. Santos delivered for rent returned due to insufficient funds?

A. Yes, they were.

Q. Can you review Exhibit No. 12, please, in your binder?

A. Yes.

Q. And can you tell us what this is?

A. It's a returned check from February 4th, 2017, for El Alamo -- El Alamo. It states it on the check.

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Q. Okay. And if you'd turn to Exhibit 14. Okay. And what is this?

A. That is a returned check, uh, for it looks like March.

Q. For El Alamo?

A. For El Alamo.

Q. Okay. And would you turn to Exhibit No. 16, please?

A. That would be a returned check for Latino Mix.

Q. Okay. And do you see the date there at the top, April the 21st, 2017?

A. Um --

Q. The top right-hand corner.

A. Yes.

Q. Okay. Can you confirm these are notices of bounced checks for the February and March rent for El Alamo and for the April rent for Latino Mix?

A. Yes, I can.

Q. And meaning that these checks bounced?

A. These checks bounced, and we did not obtain the funds.

Q. Okay. Did Harris provide notice of breach to Ms. Santos in connection with these

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bounced checks?

A. Yes, we did.

Q. Okay. If you could review Exhibit No. 13, please.

A. Okay.

Q. And could you tell us what this document is, Exhibit 13?

A. Uh, this is a document from you to Mr. Goldstein, stating the rent checks had bounced.

Q. For February, correct?

A. For February, yes.

Q. Okay. And if you look at Exhibit No. 15, would you agree this is also -- this is a letter from Merritt Abney to Tommy Goldstein, counsel for Ms. Santos, regarding failure to make the March rent payment?

A. Yes, March rent for El Alamo.

Q. Okay. Take a look at Exhibit No. 17.

A. Okay. Once again, a letter from Merritt Abney, our attorney, to Mr. Goldstein, informing him that Latino Mix's April rent check has bounced.

Q. Okay. And did Ms. Santos cure these breaches that we've just discussed by making the monthly rental payment within five days of the

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notice?

A. No.

Q. Did Ms. Santos pay rent for El Alamo or Latino Mix timely for August of 2017?

A. Not to my knowledge, no.

Q. Okay. And did your attorney send the notice of default in connection with that missed payment?

A. Yes.

Q. And take a look at Exhibit No. 18. Thank you. Can you confirm this is a notice of default in connection with the August 2017 rental payments for both El Alamo and Latino Mix?

A. Yes, sir. This is for both El Alamo and Latino Mix for August rent.

Q. Okay. And did Ms. Santos pay rent timely for September of 2017?

A. No, sir.

Q. Okay. And if you would turn to Exhibit No. 19. Would you agree this is a notice of default from Merritt Abney to Tommy Goldstein and Aracelis Santos regarding a missed rental payment for both El Alamo and Latino Mix for September?

A. Yes, that is correct.

Q. Why is it important for Harris to

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receive timely payment of rent?

A. Well, we wouldn't have purchased the building had we not expected to receive rent. And it puts a financial burden on us when we don't have rent. We could lease the space to people that pay rent on time.

Q. Okay. Does it frustrate your ability to determine what you're willing to pay for a property if rent is not timely received?

A. Absolutely, sure.

Q. Is timely payment of rent critical for managing cash flow for a landlord?

A. It means everything.

Q. And is that why the lease provides that "time is of the essence"?

A. That is correct, yes.

Q. Does Harris consider the failure to pay rent on these occasions a material breach of these leases?

A. Absolutely.

Q. All right. Let's turn to the uses of the two properties. Earlier you said El Alamo was an all-night club, correct?

A. Correct. Yes, sir.

Q. What did you understand El Alamo to be

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when Harris purchased the property?

A. A Mexican restaurant, sort of a family restaurant.

Q. And what did you base that understanding on?

A. Well, it was in the lease, number one, cafe, restaurant. And also what we thought -- you know, just hearing, understanding -- that was our understanding of it.

Q. Take a look at Exhibit No. 2 again, which is the El Alamo lease. And if you would, turn with me to section No. 4.

A. Yes.

Q. Please read that entire section into the record, please.

A. "Use of premises: Tenant agrees not to abandon or vacate the premises and to use the entire leased property for cafe, restaurant, discotheque and for no other purposes, without the expressed written consent of the landlord."

Q. You can keep going.

A. "Pets, animals or birds may not be kept on the premises without the landlord's permission. These premises may not be used for sleeping quarters or apartments, immoral conduct or any

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illegal activity."

Q. Okay. Okay. So would you agree that the lease prohibits the use of the premises for other than the specified purposes?

A. Yes, sir.

Q. Does El Alamo actually provide regular food service?

A. I've never seen it, no, sir.

Q. And I think you said earlier, correct me if I'm wrong, you've never seen lunch, dinner or breakfast being served there?

A. That is correct, yes.

Q. And you drive by this property how many times a day, you said?

A. A couple of times a day, maybe four times a week, five times a week.

Q. Okay. Did Harris ever authorize Ms. Santos not to operate a restaurant on the premises?

A. No, sir.

Q. Did Harris ever authorize Ms. Santos to operate an all-night club on the premises?

A. No, sir.

Q. Does Harris believe that Ms. Santos has breached the lease by operating El Alamo as she

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does on these premises?

MR. GOLDSTEIN: Objection. Calls for a legal conclusion.

THE COURT: I'll sustain it. I understand what his opinion is, but, I mean, that's for me to determine.

MR. ABNEY: Sure.

BY MR. ABNEY:

Q. Okay. You said Latino Mix is a convenience store, correct?

A. That's correct.

Q. Okay. Does it actually operate as a convenience store?

A. Any time I've ever been there, um, I've never seen anybody really going in and out and buying things like a convenience store type operation.

Q. Do they stock items that you would expect to see in a convenience store?

A. I've looked in there, you know, through the window, and I've stood inside there a couple of times and I see beer and like Red Bull and maybe some cigarettes. But I don't recall seeing any normal, you know, candy and things of that nature.

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Q. Do you see them selling food stuffs?
A. I did not notice any.
Q. Okay. Does Latino Mix operate at night?
A. Yes.
Q. Does it operate during the same hours as El Alamo?
A. I believe so, yes.
Q. And does Latino Mix sell alcohol?
A. Yes, I believe so.
Q. And how do you know that?
A. I saw beer in there, yes.
Q. And do you have an understanding of whether patrons of Latino Mix carry beer to El Alamo?
A. That's my understanding, yes.
Q. And does the lease require Ms. Santos to operate Latino Mix during regular business hours?
A. Yes, it does.
Q. If you would turn to Exhibit No. 23, which is the Latino Mix lease, could you please read section 7(a) to the Court.
A. "Use of premises, (a): It is understood and agreed that the demised premises will be used and occupied by lessee solely for that purpose designated in paragraph 1(r) above and for no

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other purpose without" the expressed -- "without the written consent of the lessor. As an inducement to lessor to execute this lease, lessee agrees to conduct its business in the demised premises on the days and during the hours which are generally accepted as the time of operations of the shopping center business. Lessee agrees to keep its store adequately stocked with salable merchandise and adequately staffed with employees."

Q. Okay. And what are the general hours of the shopping center?

A. Generally 9 a.m. to 9 p.m.

Q. And does Latino Mix operate during those hours, based on your observing?

A. No.

Q. At some point did you become aware of disturbances and alleged criminal conduct at El Alamo?

A. Yes.

Q. And how did you become aware of that?

A. I was contacted by the City of Hanahan Police Department, I believe it was, just asked me to come to a meeting to discuss our property there. Um, and it was relayed to me that there

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were some issues going on that they wanted to make sure we were aware of because it's our property.

Q. And what types of activities did you become aware of?

A. We became aware of --

MR. GOLDSTEIN: Calls for hearsay.

MR. ABNEY: Um, well, he's just generally talking about what he became aware of, not -- and when and how the owner became aware of it; we're not using it to prove truth of anything.

THE COURT: I mean, I'll allow him to say what he became aware of, but I won't consider any of the incidents as true. How about that?

MR. GOLDSTEIN: That's fair enough.

THE COURT: All right.

A. Um, weapons violations, um, fighting disturbances, underage drinking, or drinking, urination -- public urination; a number of incidents, drug use, drug dealing, stuff like that.

Q. And when you found out about those activities, what did you do next?

A. Well, it was a complete surprise. We

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had no idea of that. I did speak with Mr. Reyna about that and advised him that we should -- if that was going on, we needed to clear it up and clean it up and -- from a liability standpoint, as a landlord, I could not believe what I was hearing. You know, we were concerned about, A, first and foremost, people getting hurt, but also the liability that we may incur if someone is injured on that property and we may have a problem.

Q. What do you know about the status of the business license for El Alamo?

A. It's my understanding it's been revoked.

Q. Do the leases for Latino Mix and El Alamo require the tenant to remain in compliance with local and state law?

A. Yes, they do.

Q. Okay. If you could turn to Exhibit No. 2, the El Alamo lease, section 10, please.

A. Okay.

Q. And just read the first sentence there into the record.

A. "Regulations and sanitation: The tenant shall keep the premises clean, safe, sanitary and in compliance with laws, ordinances and

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requirements of any legally constituted public authority."

Q. Okay. And, again, let's read the last sentence of section 4 of that same lease.

A. Are you talking about where it says "net lease"?

Q. Section 4 of Exhibit No. 2, the last sentence, beginning "These premises..."

A. I don't see that, section 4. Mine has an insurance. Oh, this one? Okay. "Use of premises: Tenant agrees not to abandon or vacate the premises and to use the entire leased property for a cafe, restaurant and discotheque and for no other purpose, without the express written consent of the landlord."

Q. And can you read the last sentence of that paragraph, please?

A. The last sentence, "These premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity."

Q. Okay. So that's El Alamo. Let's turn to Exhibit 23, the Latino Mix lease, please.

A. Yes.

Q. And please read in 7(c) -- section 7(c).

A. "Lessee shall not use the demised

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premises for any illegal trade or purpose. Lessee shall at all times comply with its occupancy and use, with all applicable local ordinances and all state and federal laws and regulations relating thereto. Lessee shall refrain from permitting any nuisance or unlawful or immoral practices to be carried on within the demised premises. Lessee agrees to endeavor to keep the demised premises in such a manner so as not to disturb other tenants and/or customers and not to detract from the reputation and integrity of the shopping center. Lessee shall not use or permit the use of the demised premises for generation, storage, treatment, use, transportation or disposal of any chemical material or substance which could pose a hazard to the health and safety of other tenants and occupants of the shopping center."

Q. Okay. Do you believe that Latino Mix supports the activity at El Alamo?

A. Sure.

MR. GOLDSTEIN: Objection. Calls for speculation.

Q. What's the basis for your belief?

A. I understand that's where the alcohol gets carried into the El Alamo.

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THE COURT: Let me rule on that real quick, just to make sure it's -- um, your basis is -- your basis for your objection is speculation?

MR. GOLDSTEIN: Now it's lack of foundation. Before it was speculation. Now it's lack of foundation.

THE COURT: I've got you. Okay. All right. Um, yeah, I mean, how is he gonna -- I mean, is he just basing it based on what people told him? Has he been in the place at all other than driving by?

BY MR. ABNEY:

Q. How many times do you visit the properties per month?

A. A couple of times. But physically been inside, yes. Not in the 2 a.m. hours, but in the middle of the day, yes.

Q. So you physically visit the property --

A. Yes.

Q. -- a couple of times a month, and you drive by how many times?

MR. GOLDSTEIN: Now the objection is leading.

MR. ABNEY: He asked me to --

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THE COURT: I mean, I'll allow him to clarify -- just clarify the --

A. Yeah, I ride by basically every day.

THE COURT: -- the point you're trying to make. Okay.

Q. And based on that, are you aware that patrons of Latino Mix carry alcohol to El Alamo?

A. That's my understanding, yes.

THE COURT: I mean, I'm going to have to sustain it. If he's never seen it, if he's never been there, how -- I mean, it's just -- it's hearsay. I mean, it's gotta be. I mean, how is he --

BY MR. ABNEY:

Q. Have you -- I'm sorry. Have you witnessed patrons carrying --

THE COURT: He said he's not been there during the hours of operation, so, I mean, how --

A. But if I don't see people going in and out during the time I've been there during the -- in the afternoon.

THE COURT: No. I understand. I think you can testify that -- you know, of course, you can definitely testify that they're not

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operating as a restaurant and all of that. But as it relates to bringing alcohol back and forth, he's relying on one of the detectives or somebody. Somebody is going to say it, but it can't be him, if he didn't see it.

BY MR. ABNEY:

Q. Okay. Do the leases require the tenant to carry liability insurance?

A. Yes, they do.

Q. Can you turn to Exhibit No. 2, the El Alamo lease, and take a look at section 8?

A. Yes.

Q. And you don't have to read the whole thing, but about midway through do you see where it says "Tenant shall keep..."?

A. Yes.

Q. Beginning there, please, read the rest of that.

A. "Tenant shall keep in full force and effect, at tenant's expense, insurance for plate glass, personal property, trade fixtures and property damages, as well as a public liability policy in which both tenant and landlord shall be named as the insured with the following minimum coverage: Single limit, $1,000,000; aggregate,

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$2,000,000. A certificate of insurance showing the landlord and the landlord's agent as additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such policy during the term of this lease."

Q. Okay. So you have to provide it at the commencement of the lease and prior to the expiration of any policy, correct?

A. That is correct.

Q. All right. If you would, turn with me to Exhibit No. 8. And can you tell us what this is?

A. It's a Certificate of Liability Insurance.

Q. And on what date does the coverage expire?

A. The coverage expires December 30th, 2016.

Q. Meaning that the insurance coverage ends on that date, correct?

A. Yes.

Q. Did Harris request that Santos provide evidence of insurance for 2017?

A. Yes.

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Q. Okay. And if you'd take a look at Exhibit 9, tell us what this is.

A. It's an e-mail from our attorney, Merritt Abney, to Mr. Goldstein, concerning vacating.

Q. And --

A. And the insurance certificates that have expired on the end of December.

Q. And were insurance certificates for 2017 ever provided to you or your attorneys?

A. No.

Q. Did Harris also request that Ms. Santos increase the liability insurance for El Alamo in light of the reports you had regarding activity there?

A. Yes.

Q. Okay. And if you'd take a look at Exhibit No. 3.

A. Okay.

Q. Can you tell us what Exhibit 3 is?

A. Yeah. This is a letter from our CFO to Ms. Santos concerning the default of the lease due to section 10, Regulations and Sanitation, and section 8, Liability Insurance.

Q. Okay. And if you look at the last

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paragraph, would you agree there's a request to increase the liability insurance to 3 million -- single limit to 3 million and an aggregate of 6 million?

A. Yes, sir, that's correct.

Q. And also a request to provide an updated insurance certificate within ten days?

A. Yes, sir, that's correct.

Q. And did you receive any insurance certificates in connection with this request?

A. No, we have not.

THE COURT: And just FYI, for clarification purposes, 3 is not in evidence at this point.

MR. ABNEY: Oh, okay. I'm sorry. Well, I'll move to enter it into evidence.

MR. GOLDSTEIN: The objection was that it contains hearsay that is incorrect. Now, maybe we can --

THE COURT: Yeah, what part of it?

MR. GOLDSTEIN: This citation makes reference -- there absolutely is a citation; there's no question that that's an accurate statement. But there's been no adjudication of that and, therefore, it remains an unproven

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allegation at this point. And unless the presumption of innocence has been suspended in Berkeley County, I don't think it can be used against the Defendant in this case. I think it's sort of an end run around Rule 404, the Rules of Evidence. I think they're trying to show bad conduct by -- by all of these allegations that are unproven at this point.

THE COURT: Well, how about this: I mean, I'll allow the document in right now for the purposes of --

MR. GOLDSTEIN: Notice.

THE COURT: -- notice. I mean, we're talking about para- -- the paragraph 1 and paragraph 4 I think is really what he's getting at right now. Am I right?

MR. ABNEY: That's the purpose of it being introduced, just -- (inaudible) --

THE COURT: So I'm going to exclude -- I mean, I'm going to exclude paragraph 2. I don't really care about that at this point in time. Of course, if you all can prove it through another way, I mean, I think certainly I can consider it and you can, you know, talk about that exhibit again.

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MR. ABNEY: I mean, I think the whole point is to --

THE COURT: To show that you asked him -- you asked him --

MR. ABNEY: To stop doing --

THE COURT: -- to stop doing whatever he was doing. But I think that's -- you know, regardless of whether that's true, I can't, you know -- I agree with you in the general sense. Whether or not it's -- there was 191 patrons in there -- I think it goes more to the weight and the admissibility, if that makes sense. I mean, because -- I agree with you, you know, he wouldn't know that or whoever is sending that wouldn't necessarily know that, but -- and the citation is what it is, but I think it's for, Hey, here is a notice provision. So, I mean, I think I can consider it for what he's offering it for. I mean, it is a notice, whatever that means.

MR. ABNEY: And to close the loop on that, I can ask the questions to show why we're introducing it, those paragraphs as well.

BY MR. ABNEY:

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Q. Did Harris ever provide notice of breach to Ms. Santos regarding violations of the fire code?

A. Yes. We advised about a citation.

Q. And is that reflected here in Exhibit 3?

A. Yes, yes.

MR. ABNEY: I don't know if -- I'm moving Exhibit 3 into evidence.

THE COURT: Um, and I'll --

MR. GOLDSTEIN: And I object and lost.

THE COURT: Right. I'll admit it over the objection, based on, you know, what we discussed.

MR. ABNEY: Thank you.

BY MR. ABNEY:

Q. Okay. Does the lease for El Alamo prohibit the tenant from subleasing the property to a third party?

A. Yes.

Q. Okay. Can you take a look at section 12 of Exhibit No. 2?

A. Okay.

Q. And read the first paragraph there into the record, please.

A. Sure. "Assignment or Sublease: Tenant

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shall not, without written consent of the landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease or sublet the premises or any part thereof or permit the premises to be occupied by other persons."

Q. That's good. Who held the business license for El Alamo before it was revoked?

A. I understand it was Benjamin Reyna.

Q. Did Harris ever consent to have Mr. Reyna operate a business on the premises?

A. No, sir.

Q. Is Mr. Reyna continuing to operate El Alamo on the premises today?

A. Yes, sir.

Q. And why is -- is this provision important to Harris?

A. Well, we want to know who we're renting to and what they're using it as.

Q. Okay. And did you ever agree to rent space to Benjamin Reyna?

A. No, we did not.

Q. What is the term of the Latino Mix lease?

A. Is that 23?

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Q. Yes, 23.

MR. GOLDSTEIN: Your Honor, I think the Rule of Evidence prohibits this testimony. The documents are in evidence and speak for themselves.

THE COURT: It's superfluous. I agree. It's -- yeah, it is what it is.

BY MR. ABNEY:

Q. Has Ms. Santos remained in the premises after the termination date?

A. Yes.

Q. Has Harris demanded she vacate?

A. Yes.

Q. And would you take a look at Exhibit No. 24? Tell us what this is.

A. This is a letter from you, Merritt Abney, to Mr. Goldstein, instructing Santos to vacate the premises by noon on December 31st, 2016.

Q. Has Harris incurred attorney's fees in connection with these eviction actions?

A. Yes, sir.

Q. And are you requesting that the Court award those attorney's fees, pursuant to the terms of the lease?

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A. Yes, sir.

Q. Has Harris continued to receive rent checks from time to time from Ms. Santos after the lease was terminated?

A. Yes.

Q. And what have you done?

A. We turned them over to Mr. Abney, you, to hold. We did not want to give any credence to the fact that they were not supposed to be in the space.

Q. And is Harris asking the Court to allow you to keep those rent checks for the period that Ms. Santos remained in the property?

A. Yes.

MR. ABNEY: That's all I have. Thank you.

THE COURT: All right. Please answer any questions that Mr. Goldstein may have.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. You're asking for attorney's fees. How much is the bill to date? I'm kind of curious about that since you're asking my client.

A. I don't have that readily available.

Q. What is his hourly rate?

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A. I don't know that.
Q. You don't know any of that?
A. No.
Q. You don't know how much you paid in retainment?
A. That's not part of my job description.
Q. Well, what is part of your job description?
A. Certainly not that part.
Q. Okay. Do you --
A. I don't pay the bills of the --
Q. (Inaudible.)
A. Yes.
Q. That's fair enough. You're the local guy?
A. Yes.
Q. You told us in your Direct that you run -- you look for property for the home office, and you also are involved in this Fade (ph) Company, where you're training people?
A. It's a staffing company, yes.
Q. And you told us you went by Latino Mix and El Alamo twice a day, maybe four times a week, on the way to work -- on the way to the office and on the way home from the office, correct?

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A. Correct, yes.

Q. And you suggested that El Alamo is not a restaurant. Did I understand your testimony that way? Is that what you were trying --

A. Well, I've been inside there, and I --

Q. Well, you weren't trying to mislead the Court, were you?

A. No.

Q. Okay. You saw the big letter "A," the big blue letter "A" --

A. Yes.

Q. -- saying this place is certified by the Department of Health and Environmental Control as "A"?

A. Yeah. That's on the door.

Q. All right. And it is a full-service restaurant in there, a full-service kitchen; isn't that true?

A. There's a grill in there and there's probably five tables.

Q. Do you know how many lunches they serve during the day?

A. I have no idea.

Q. You don't care about that?

A. I never see anybody over there.

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Q. That's what I'm saying, you don't care? You just want them out; you don't care what the facts are, you just want them out? Because you closed the loop a little bit before -- now we've learned that the police called you over to the City of Hanahan and sat you down, right?

A. They asked if I'd come there, yes.

Q. And you went?

A. Of course.

Q. And the police called you to go?

A. Uh-huh.

Q. Right?

A. That's correct.

Q. You met with Chief Turner?

A. Yes.

Q. Who else was there?

A. There were a number of people there.

Q. Who?

A. There was a zoning person, and there were other police officers and I believe Ms. Krutek might have been there.

Q. Okay. And at that meeting, they made it clear that Harris Investments, your company, was liable for anything that happened over there?

A. No. That's not the case.

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Q. They told you to get them out?

A. No, they did not.

Q. They told you that you were going to be sued if anything happened over there? We know that.

A. Not to my knowledge, no. That I may be sued. I did not understand it to mean the city would sue us. I understood it to mean somebody may be hurt on the premises and we may be sued by that.

Q. Well, when you all -- when I say "you all," I don't mean --

A. Sure. I understand.

Q. Harris Investments --

A. Right.

Q. When you all bought the property on December 1st, 2015 -- (inaudible) -- subject to the lease that you've already been examined over --

A. Yes.

Q. -- right?

A. That's correct.

Q. They entered into a lease back in 2014, correct?

A. We assumed it, yes.

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Q. You assumed it. And the lease clearly says that it's for both Suite 2 and I think Suite 4 is what it says. We can get it out. Do you agree?

A. I don't recall that exact --

Q. Okay. Well, then let me -- let me go off my numbers --

MR. GOLDSTEIN: Oh, somebody has got the blue book.

THE COURT: I've got it.

MR. GOLDSTEIN: The Judge has it.

BY MR. GOLDSTEIN:

Q. Let's go off my book, if you don't mind, because I've got these numbers in my head. I don't see my table of contents. I gave them all away. But the original lease, in 2014, all of these documents, Defendant's Exhibit 1 is in evidence. The lease says --

MR. GOLDSTEIN: May I approach the witness, your Honor?

THE COURT: Sure.

BY MR. GOLDSTEIN:

Q. My Defendant's Exhibit 1, which is already in evidence, is the same as Plaintiff's Exhibit 23, correct?

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A. Yes.

Q. Okay. It's the same lease; it's just -- mine is just -- it's just got bigger print is all, so it's easier to read, at least for those of us who are older. And it says that the demised premise address is 5901 Loftis Road, Suite 2 and 4, Hanahan, South Carolina 29406, right?

A. Yes.

Q. You agree with that; that's what it says?

A. Yes.

Q. So when you all bought the property -- when you all bought the property, you bought it subject to this lease; you knew this lease existed?

A. Yes. But I believe the spaces at one time where El Alamo is may have been two spaces. It looks like there might have been a wall between them. Because there's a front door that's not used, and they used the side door. So I believe those may be two spaces; maybe that's what it was referring to back then.

Q. Okay. Well, whatever this lease refers to, you all bought the property subject to this lease, Defendant's Exhibit 1, Plaintiff's Exhibit

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23, correct? No question of that?

A. No.

Q. Now, the lease specifically calls for the premises to be used as a convenience store and cellular store, correct?

A. That's what it says, yes.

Q. And then the agent that you used in negotiating the new leases was Isabelle Martinez with The Boulevard Company in Mt. Pleasant, right?

A. Yes.

Q. Okay. And she was you all's agent -- real estate agent?

A. Right.

Q. Okay. And so we have her text messages in there, from Isabelle Martinez, who was Harris Investment company's agent, right --

A. Yes.

Q. -- acting on behalf of Harris Investment Company, to get the new leases signed by Aracelis Santos, correct?

A. I have not seen those, so I couldn't tell you.

Q. Okay. But, I mean, that's who you all used, is Isabelle Martinez?

A. Right.

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Q. She --
A. She had to do it subject to our approval.
Q. Okay. And is she coming today?
A. Not to my knowledge.
Q. Okay. But in her text messages on the two new leases --
A. I'm not privy to those, so I don't know.
Q. I know. But she was your agent; you know --
A. But I still don't know -- I don't know what she did.
Q. Okay. Well, in -- they're already in evidence, so -- and I can walk you through to -- walk you through them if you want me to.
A. Sure.
Q. In her text messages to the Defendant in this case, she said that the City of Hanahan is threatening you -- you personally, with a $200,000 suit. Are you aware of that?
A. No. That's -- to me doesn't -- I don't know how she would be privy to that if she was not at that meeting.
Q. Well, isn't that interesting? Do you have any e-mails from the city to you?

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A. I don't believe I do, no.

Q. Do you have any e-mails from the city to the home office?

A. To our home office? I don't have any, no.

Q. How did you know to show up at this meeting at the City of Hanahan? You just showed up one day?

A. By a telephone call.

Q. Who called you? Chief Turner?

A. It may have been Chief Turner, or someone in the police department, yeah.

Q. Someone in the police department?

A. Yes.

Q. I want to be fair. I don't want to box you in. But somebody from the police department called you?

A. Yeah.

Q. And said, We're concerned about El Alamo; we need to talk to you?

A. That is correct.

Q. And then El Alamo -- and then they called you to a meeting that was attended by all these people you've already told us about, right?

A. Yes.

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Q. And they walked you through all of your concerns. And I wrote them down. They told you -- this is when my objection got overruled. They told you they were concerned about weapons, fighting, underage drinking, public urination, drug use and drug deals; that's what you testified on Direct?

A. Part of it, yes, sure.

Q. Was there more?

A. There may have been. I can't recall.

Q. I want to be fair; I don't want to sandbag you.

A. Not at all.

Q. That's what you said?

A. That's what I said. I stand by that, yes.

Q. Now, as you sit here today as the representative of Harris Investment Company, tell the Court how many convictions there have been at El Alamo for weapons use.

A. I have no idea.

Q. There are none, isn't that right? Zero?

A. I have no idea.

Q. How about fights? Zero?

A. I have no idea.

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Q. Underage drinking? Zero?

A. I have no idea.

Q. So if I go through the whole list, your sworn testimony is, I don't know if these things are happening or not. But the police called me, they're concerned about it; they say it's happening?

A. I can only go by when the police department states concerns, and that they have had complaints; that's all they were informing me of.

Q. Now, if I got a call from Chief Turner, who said, Go -- you need to come and see me, there's some stuff going on in your parking lot we need to talk about -- (inaudible) --

A. Yes.

Q. -- right? Okay. So you don't know how many lunches they served during the day?

A. On the premises? No.

Q. And let's be fair with each other; we'll concede they're not open for breakfast. Okay? I think we can all agree about that. But you're not there during the day, and you don't see that full-restaurant selling all of those lunches?

A. Not at all. I've been by there 11:30, 12, 12:30, 1:00 with maybe one car in the parking

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lot, which would Mr. Reyna's.

Q. You don't smell the fried food coming out of the oven vents?

A. No, I don't.

Q. You don't see the trays of Styrofoam takeout orders sitting up on the glass ready to be picked up?

A. No.

Q. You don't smell the refried beans?

A. No.

Q. Okay. Um, but you don't know one way or another how many lunches they sell in a day?

A. On the premises for consumption?

Q. Yeah.

A. Not at all.

Q. Or for takeout?

A. All I'm telling you is, I don't see a mode of traffic going in and out to conduct that trade.

Q. Okay. And that's fair. But you've already told us you go by there on the way -- where is your office?

A. Right around the corner.

Q. You go by there on the way to your office --

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A. Uh-huh.
Q. -- correct?
A. That's early in the morning.
Q. Early in the morning. We agreed that -- and then you stop by there on your way home, 5, 6?
A. No. I ride by there -- since it's so close, and running to the hardware store, et cetera, I'm in and out of that parking lot at lunchtime several days a week.
Q. Okay. But you do agree they've got the big blue letter "A" on their door for that kitchen, right?
A. Yes. I don't know how old it is; I don't know if it's current.
Q. Um, and you told us you've never been in there at night?
A. Correct.
Q. So you don't -- you've never gone in there at night and bought a taco?
A. No.
Q. But you're not in a position to know one way or another how much cooking is going on there at night; you would defer to the people who were there, wouldn't you?
A. Sure.

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Q. Okay. Now, the insurance -- you talked about the breach of the insurance. Now, let's be fair about that. Your lease calls for a $1,000,000 policy, right?

A. Yes.

Q. But then you wrote them a letter and said, Oh, no, that ain't good enough anymore; we want a $3,000,000 policy, right?

A. Yes.

Q. Okay. But there's no provision in the lease that demanded a $3,000,000 policy; the lease called for a $1,000,000 policy, right?

A. That's -- yes.

Q. Okay. So, really, you all were breaching the lease because you're requiring as a condition of them staying there that they do more work (ph) than the lease requires them to do?

MR. ABNEY: Objection. Calls for a legal conclusion.

THE COURT: I'll sustain the objection.

BY MR. GOLDSTEIN:

Q. I'll rephrase the question. You agree that whatever the lease calls for, that's what they got?

A. Yes.

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Q. And as far not paying rent, what you really meant to say was they missed rent; they haven't paid rent timely, but they've paid rent?

A. No. They've not paid rent.

Q. But they're currently current right now, and you all haven't cashed the checks, but they're current on their rent?

A. No, they're not.

MR. GOLDSTEIN: Okay. Well -- may I approach, your Honor?

Q. Let me show you what is already in evidence as Defendant's 11. We haven't put stickers on them, but I assume we'll do that later. It's 11.

THE COURT: Okay. Yeah. Okay. That's --

MR. GOLDSTEIN: There's an index.

THE COURT: As long as it's indexed, yeah. Every one of yours was admitted, so --

BY MR. GOLDSTEIN:

Q. I'll show you what has been marked as Exhibit 11. It's already in evidence, so I can publish it. That's an August 15th check for 2,852, correct?

A. It looks like it.

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Q. And that's a cashier's check, right?
A. Yes.
Q. All right. And then there's a check dated September 18th for 2,852; that's a cashier's check, isn't it?
A. Yes.
Q. And then there's a check dated October 10th, 2017, for 2,852; that's a cashier's check, isn't it?
A. Yes.
Q. And those are all made to Harris Investment Holdings, LLC, right?
A. Yeah.
Q. And then if you turn the page to the next two exhibits, those are the receipts from the U.S. Post Office showing transmission of those checks to Harris Investment Holdings, LLC. Do you agree with that?
A. This looks like a check out of a checkbook.
Q. Oh, I'm sorry. That's a check for Latino Mix. The next is Latino Mix's check register. And then following that, 13 and 14, are the receipts showing transmission of those checks to your home office, correct; it's already in

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evidence, so --

A. I'm just looking.

Q. So what you're saying is, we have the checks; we're just not cashing them because we want them out; that's what you're stating?

MR. ABNEY: Objection. Misstates prior testimony.

THE COURT: Yeah. Rephrase it.

BY MR. GOLDSTEIN:

Q. You received these checks?

A. Yes.

Q. Okay. You just hadn't cashed them?

A. I understand they're being held by Mr. Abney.

Q. Okay. But they're subject to your control, right? They're made payable to Harris Investment Holdings, LLC, right?

A. Yeah, after the first of the month.

Q. Yes, sir. So what I'm getting at is, to be fair -- I want to be fair to you, and I want you to be fair to us -- to be fair, you didn't endorse these checks, send them back to Mr. Reyna or Ms. Santos and say, We're not accepting any more of your money; we want you out? You didn't do that, right?

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A. That is correct.

Q. So lawyers -- lawyers always mess things up because we make the simplest things complex. We have this thing that we call "constructive receipt," that when you receive something, even though you may not have actually used it, it's constructive receipt. So you have constructively received these checks; they're subject to your control?

MR. ABNEY: Objection, your Honor. This is -- he's asking about --

THE COURT: I think it's --

MR. GOLDSTEIN: I will --

THE COURT: All you're trying to add, I guess, you know -- they have the check; Mr. Abney has the check; it's in the amount owed -- the rent owed?

MR. GOLDSTEIN: That's right.

A. Yes.

THE COURT: I think it's -- (inaudible) -- rephrase it.

BY MR. GOLDSTEIN:

Q. So even though they've been late on rent checks, whenever you -- when I say "you," I'm not --

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A. I understand.

Q. I know you're here representing --

A. I understand.

Q. Whenever they've been late with the rent check and you have called it to their attention, they then made the rent good; so it was paid, just not on time; is that a fair statement? You don't have to look to Mr. Abney, now. Either you know or you don't.

A. I thought he was going to say something. That's why I looked at him. They've sent the checks. I'm not denying that, yes.

Q. I understand. Now, let's see what other breach -- oh, immoral conduct; you said that the lease prohibits immoral conduct; you've never witnessed any immoral conduct?

A. Me personally, no.

Q. And being open late at night is not immoral; would you agree with that?

A. Being what?

Q. Being open late at night is not immoral.

A. It depends on if -- your mother used to say, only bad things happen after midnight.

Q. Well, you know, when I was in law school, I unloaded UPS trucks in the middle of the

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night. And when we got off work, we didn't necessarily always go home; do you think that was immoral conduct?

A. No.

Q. I mean, there are people who work the night shift; you'd agree with that?

A. Yes.

Q. And there's nothing immoral about getting off of work on the night shift and not going straight home, for example?

A. Sure.

Q. Um -- okay. Have I covered all the breaches with you? We've covered the insurance; we've covered the rent; we've covered the immoral conduct; we've covered the alleged bad acts. Are there any other breach -- oh, you said the business license was held by Mr. Reyna?

A. Yes.

Q. And is it your testimony that, as representative of Harris Investment Company, that because the business license is held by Mr. Reyna, that that is a breach of your lease?

A. The lease was not to Mr. Reyna, though.

Q. Well, I understand. But do you know the relationship between Aracelis Santos and Benjamin

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Reyna?

A. I do not know that.

Q. Well, I mean, wouldn't you kind of want to know what their relationship is if you're making --

A. I thought that maybe girlfriend.

Q. Okay. Well, let's suppose they're husband and wife. Would that factor into your decision at all?

A. Not really.

Q. Okay. Are there any other breaches that we -- we talked about the rent, we talked about the immoral conduct, we talked about the alleged bad acts. We talked about the business license. Are there any others?

A. Not to my knowledge.

Q. Oh. The space currently occupied by El Alamo, I think I asked you this, and I apologize, they have a full-service kitchen; you'd agree with that?

A. It depends on what you're -- I've seen like a grill and a -- refrigeration.

Q. Now, you're aware that approximately a year ago, that the heating and air-conditioning was stolen by a third party; you're aware of that,

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correct?

A. It was vandalized, yes.

Q. Vandalized, right. Now, Mr. Reyna contacted you and informed you that the -- that the compressor and the wiring and such had been stolen, correct?

A. Yes.

Q. And, yet, Harris Investment Company made no effort to replace that; isn't that also true?

A. We're looking at it. There is still a unit there.

Q. Well, under the terms of the lease that control your legal relationship, the landlord is obligated to provide heating and air-conditioning; isn't that also correct?

A. I am not a hundred percent sure without looking at the lease. But I think it says something about vandalism is the tenant's responsibility.

Q. So if somebody steals the air-conditioning compressor, it's your view that the lease requires the tenant to replace it?

A. It requires the repairs to be made, yes.

Q. The landlord does have certain responsibilities, right?

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A. Sure.
Q. The right to provide quiet enjoyment; do you know what that means?
A. Kind of.
Q. To be left alone?
A. Yeah.
Q. And the right to maintain the building for the use of the tenant?
A. Yes.
Q. Um, the inventory at Latino Mix, you've never actually conducted an inventory of what they have?
A. No, no.
Q. But you are aware that they do have a proper license issued by the State of South Carolina to sell beer and wine?
A. I assume so.
Q. Okay. And their business license has not been suspended?
A. To the best of my knowledge, no.
Q. And there's nothing wrong with purchasing beer, wine or cigarettes in South Carolina; do you agree with that?
A. Sure.
Q. It's not illegal?

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A. No.
Q. Or lottery tickets?
A. Yeah. No.
Q. Which I personally think should be illegal.
MR. GOLDSTEIN: Your Honor, I think that's all I have. Can I just -- (inaudible).
THE COURT: Sure.
MR. GOLDSTEIN: (Inaudible).
Oh, I know what I forgot to ask.
BY MR. GOLDSTEIN:
Q. The original 2014 lease that you all received, it does contain two periods of right to renew, correct?
A. Upon certain stipulations, yes.
Q. And the two new leases that you all provided to Latino Mix and to El Alamo were presented to them through your agent, Isabelle Martinez?
MR. ABNEY: Objection. Assumes facts not in evidence. Foundation.
THE COURT: Rephrase it.
BY MR. GOLDSTEIN:
Q. Okay. I will rephrase it. Is it your content- -- your intention that -- well, I'm going

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to hand you the book back so we can keep all these exhibits together. Defendant's Exhibits 2 and 3 are already in evidence, and I'm just keeping them all in the book so they're not scattered around. Number 2 is in front of you as a purported commercial lease from Harris Investment Company to Latino Mix, Aracelis Santos, correct, dated August 1, 2016?

A. This is December 1st. This is another lease.

Q. Right. There are three leases that -- just to be clear, there are three leases that are in play in this case; you'd agree with that?

MR. ABNEY: Objection. (Inaudible).

A. The lease you're showing me right here --

THE COURT: You know, you can testify to what your understanding is regarding the lease.

A. Well, this is the lease for December 1st of 2015, not what you're saying.

Q. Okay. Well, I might have turned to the wrong --

A. I don't -- yeah, I mean, maybe so. I'm just -- oh, okay. That's what this appears to be,

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yes.

Q. Okay. And then there's one for -- a separate one for El Alamo. And I think you were looking at that one?

A. That's exactly right. No, I didn't see the other one there.

Q. All right. So I have them reversed. I apologize. So Defendant's Exhibit 2 is the lease dated December 1st, 2015, correct?

A. Yes.

Q. And that's the lease purportedly between Harris Investment Holdings, LLC, and Aracelis Santos?

A. Yes.

Q. And that's the lease that you -- and when I say "you," again, I'm talking about Harris.

A. Sure.

Q. -- that Harris presented to Aracelis Santos through its agent of Isabelle Martinez?

A. It appears to be.

Q. Okay. And then if you turn to the next exhibit, which is 3, that's the one dated August 1st, 2016, that Harris Investment Company presented to Aracelis Santos, dated August 1st, 2016, correct?

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A. It appears to be one that Ms. Martinez presented to us, yes.

Q. Okay. And all of the leases referred to tax map No. 265-15-02-067?

A. I think that's what the entire building is mapped at.

Q. And all the leases relate to 5901 Loftis Road?

A. But clearly they're different because they're different amounts, and we got different checks for each one when they did pay rent.

Q. That's right.

A. Yes. Sure.

Q. Let me ask you about these checks which have not been admitted into evidence yet. So I'm going to show you what will be marked as Defendant's Exhibit -- Defendant's Exhibit -- let me show you what has been marked as Defendant's Exhibit 18 and ask if you can identify that?

A. It's a cashier's check dated April 3rd.

Q. And the reason that I wanted to ask you about this check separately is I thought I understood your testimony, and then I got a little bit confused. This April 3rd, 2017, check, you all did negotiate this one; is that correct?

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A. That, I do not know.
Q. Who would know?
A. Our accounting department would know.
Q. All right. Well, then let me show you what has been marked as Defendant's Exhibit 16 and ask you if you can identify that?
A. It's, once again, a May 16th check.
Q. And do you know if that check has been negotiated?
A. No, I do not know that.
Q. Okay. Let me show you what has been marked as Defendant's Exhibit 17, dated May 16th, 2017, and ask you if you can identify that.
A. It's another cashier's check, yes.
Q. Dated May 16th --
A. Yes.
Q. And is it made payable to Harris Investment Holdings?
A. Yes, it is.
Q. And do you know if that check has been negotiated?
A. No. I do not have that information.
Q. I guess what I'm asking you is, as we sit here today trying this case, do we know exactly when you stopped negotiating checks and

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which checks you're actually holding?

A. That is not my department, so I don't have firsthand information about that.

Q. How would we get that information? Who would we call to --

A. We would have to call our accounting department.

Q. And who would that be?

A. That would be Eric Coulter, our CFO.

Q. Where is he located?

A. In Tampa, Florida.

Q. Oh, in Tampa, Florida?

A. That's where his office is, yes.

Q. Now, let me show you what has been marked as Defendant's Exhibit 18, and ask you if you can identify that, Exhibit 18?

A. Sure. Uh, it looks like a check to Merritt Abney, dated April 18th.

Q. And what about that check, do you know if that check has been negotiated?

A. I have no idea.

Q. And would your answer be the same, that if we were to determine an accurate accounting of that check, what its current status is, we would have to call -- say the name again? I apologize.

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I already forgot.

A. Eric Coulter. But this check is -- says it's for February rent, but it's dated April 18th.

Q. Correct. So do you know if that check has or has not been applied to the rent obligation?

A. I am not privy to that, no, I do not know.

Q. Okay. When you all bought the property, that year after you bought it, you mortgaged it to -- was it Bank of America?

A. I am not sure. Once again, that goes through Eric Coulter.

Q. Okay. Well, it's already in evidence.

A. Yeah.

Q. The mortgage is already in evidence, so I don't need to waste your time digging through it. But are you aware that the mortgage contains an assignment of rents to the bank?

MR. ABNEY: Objection. Foundation.

A. I have no idea.

THE COURT: If he doesn't know, he doesn't know.

BY MR. GOLDSTEIN:

Q. I kind of figured that would be your

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answer, and I'm not trying to trick you. But my question really is, has the bank put you all on notice of any kind of default about rent or anything?

A. To my knowledge, no.

Q. Okay. So Harris Investment Company to date has not suffered any financial harm as a result of late payment of rent?

A. Yes, we have.

Q. Okay. But your mortgage -- they haven't called your mortgage due?

A. Oh, no.

Q. The harm is just the cash flow problem; not paying on time is frustrating because you've got bills to pay, right?

A. Right.

Q. And doesn't the lease provide for a late payment penalty?

A. I believe it probably does, yes.

Q. Okay. And the penalty -- isn't the purpose of the penalty to compensate you for the late payment?

A. I would assume so.

MR. GOLDSTEIN: Your Honor, I'd offer Defendant's Exhibits 15, 16, 17 and 18 into

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evidence.

THE COURT: Any objection?

MR. ABNEY: No objection.

THE COURT: 15, 16, 17 and 18 without objection. Those are -- are these right here, Mr. Goldstein; are you taking them out of your --

MR. GOLDSTEIN: Oh, I'm putting them in the book right now.

THE COURT: Okay. You're putting them in the book. That's fine.

MR. GOLDSTEIN: Yes, sir. I wrote in blue ink on the bottom of those, and I'll come and get those. I don't know if having a book is a good idea or a bad idea.

THE COURT: Well, I mean, as long as we have -- do you want to give him those, or you can start writing them. As long as we have the stickers on there. Mr. Abney already did it, so I assumed yours were done, so I didn't look at them.

MR. GOLDSTEIN: I'm sorry, Judge?

THE COURT: I said, he had already put exhibit stickers on his so I assumed they were on yours. That's why -- you know, that's

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okay.

MR. GOLDSTEIN: You know, every time I do that, a court reporter fusses at me, so I stopped doing it.

THE COURT: You know, we have that luxury of not having that court reporter here. I mean, that's good and bad.

BY MR. GOLDSTEIN:

Q. All right. Last question and then Mr. Abney may have some more questions for you. You haven't done an inventory of the -- or you haven't -- let me start over.

You haven't made an effort to ascertain the actual inventory of the items offered for sale in Latino Mix, have you?

A. No. Just visual.

Q. Okay. You'd agree there are groceries for sale?

A. I don't recall seeing anything of groceries, per se. And I'm talking about bread, eggs, milk, that type of stuff.

MR. GOLDSTEIN: Okay. Thank you. That's all the questions I have. But don't rush off. Mr. Abney may have some more questions for you.

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REDIRECT EXAMINATION

BY MR. ABNEY:

Q. Mr. DeLuca, do you have the Defendant's exhibits up there?

A. No, I don't.

THE COURT: They're all right here.

A. Oh.

Q. Take a look at Exhibit Nos. 2 and 3. Defendant's Exhibits 2 and 3, these are purported leases that Mr. Goldstein showed you.

A. Yes.

Q. Are these leases executed by Harris Investment?

A. No. No, they're not.

Q. Did Harris Investment agree to the terms of these leases?

MR. GOLDSTEIN: Objection. Calls for a legal conclusion.

THE COURT: I think he can conclude as to whether or not they agreed to something.

A. No, they were not.

Q. Did Harris Investment ever consent to a renewal of the Latino Mix lease?

A. No.

Q. Did Harris Investment ever authorize a

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real estate agent to enter into an extension of a lease for either Latino Mix or El Alamo?

MR. GOLDSTEIN: Now, I object to that, based on the parol evidence rule.

THE COURT: Okay. I mean, what about that? There's a document that showed that there was a lease, right? He's already testified about that, right?

MR. ABNEY: An extension to the lease.

THE COURT: Right.

MR. ABNEY: He's given him leases that were never signed.

THE COURT: I understand that. But his position is there's a real estate agent that gave them to him, right?

THE WITNESS: It's my understanding she brought a lease to us for consideration, which we did not --

THE COURT: But he doesn't have any knowledge of whether or not she provided that to these people, correct?

MR. ABNEY: My question to him was, did Harris Investment --

THE COURT: Authorize.

MR. ABNEY: -- authorize her to --

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THE COURT: He can answer that if he's answering on behalf of the company --

A. No.

THE COURT: -- if he knows.

A. No.

BY MR. ABNEY:

Q. The answer is no?

A. No.

THE COURT: I think you can cross-examine on whether or not he knows it and how he would know that.

BY MR. ABNEY:

Q. Did Harris Investments ever consent to an extension of either a Latino Mix or an El Alamo lease?

MR. GOLDSTEIN: Same objection, your Honor. Parol evidence rule.

MR. ABNEY: Parol evidence based on what?

MR. GOLDSTEIN: My objection is that we have a writing and that --

MR. ABNEY: (Inaudible.)

THE COURT: But the writing is only -- I mean, it doesn't -- it doesn't mean it was authorized. It doesn't even mean it was

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provided. I mean, it's just a document, right?

MR. GOLDSTEIN: That's correct.

THE COURT: So, I mean, he can testify as -- you know, I think he can testify as to whether or not it was provided or authorized to be provided, you know. That's -- I don't know if it was provided or not. Are you saying it was never provided to these people?

MR. ABNEY: I'm not saying that. I'm just saying --

THE COURT: You don't know if it was authorized?

MR. ABNEY: -- if it was authorized.

THE COURT: I understand. I think he can do that.

I overrule your objection as to that.

A. No, I don't believe so.

BY MR. ABNEY:

Q. And was it Harris Investment's intention at any time to enter into an extension of either the El Alamo or Latino Mix leases?

MR. GOLDSTEIN: Same objection, your Honor.

THE COURT: And I overrule for the same

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reason.

A. No.

Q. Is it Harris Investment's position that the lease for Latino Mix has expired according to its terms?

A. Yes.

MR. GOLDSTEIN: Calls for a legal conclusion. I object.

THE COURT: I mean, I overrule the objection as to the same -- the same reason.

BY MR. ABNEY:

Q. If you would, take a look at Exhibit No. 11.

A. These aren't numbered. I don't know where --

MR. GOLDSTEIN: Oh. Judge, should we take a minute and put numbers on them?

THE COURT: She's got stickers. So if you want...

MR. ABNEY: I can show it to him.

THE COURT: That's fine. If we can get the book real quick. Let me get the book real quick, and I can have her put the 1 through 11 on there or 1 through -- 1 through 18, but I don't know if there are 18 in there yet.

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MR. ABNEY: Let me know when you're ready, Ms. Mills.

THE COURT: Yeah, I'm going to take a break after this witness, so -- you know, I just wanted to get through the witness, if I could.

Thank you. Here you go.

MR. GOLDSTEIN: Okay.

THE WITNESS:

A. Now, No. 11, you say?

BY MR. ABNEY:

Q. Number 11.

A. Okay.

Q. Number 11 -- Defendant's Exhibit 11 are some checks that Mr. Goldstein was showing to you and saying that these were checks delivered to Harris Investment. Were any of these checks delivered timely, pursuant to the lease?

A. No, it appears not.

Q. Take a look at Defendant's Exhibit 17, if you would -- I'm sorry -- Plaintiff's Exhibit 17 in the black binder.

A. Sure.

Q. Okay. Mr. Goldstein was asking you some questions regarding whether or not Harris ever

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returned checks to Ms. Santos. If you take a look at 17, read the first sentence there, the last paragraph on that page.

A. "Next" -- starting with "Next"?

Q. Yes, please.

A. "Next, we are returning the enclosed check received from your client for El Alamo. I notified you in writing that your client was in financial default under the lease for El Alamo on March 10th, for failure to make the February rent payment. Although you responded on March 14th that you would send payment for the February rent from your trust account, no payment was sent until the enclosed check was delivered on or about April 19th. Because the financial default was not cured within the time specified in the lease, the landlord elected to terminate the lease."

Q. Okay. So would you agree with me that Harris did return checks to Ms. Santos?

MR. GOLDSTEIN: Objection. Leading. It's Direct Examination.

THE COURT: I sustain the objection. Just rephrase it.

BY MR. ABNEY:

Q. Based on Exhibit 17, what do you

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understand Harris did with the rent check for March 2017?

A. Based on this certified letter, it looks like we returned it to them.

Q. And did you continue to receive checks from time to time from Ms. Santos after that point?

A. Yes, I believe so.

Q. And at some point was a decision made to simply escrow those checks --

A. Yes.

Q. -- rather than continuing to return them to Ms. Santos?

A. That's exactly what we discussed.

MR. ABNEY: That's all I have.

THE COURT: Anything else?

MR. GOLDSTEIN: Just one.

THE COURT: I've got you.

RECROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. When you escrowed the checks, you didn't negotiate them; is that correct? Or do you mean you negotiated them and put them in an escrow account? Which one?

A. Negotiate mean cash?

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Q. Yes.
A. It's in escrow, yes.
Q. Okay. Whose escrow account?
A. Mr. Abney's.
Q. So you cashed the check and then gave the money to -- or you just gave him the checks to hold?
A. We gave him the checks for escrow.
Q. Okay. So you don't know one way or another if they've been negotiated; you think the checks are just sitting in an envelope in his office? Is that what you think? You don't know?
A. I don't know.
Q. Okay. That's fair enough.
A. It depends on what the meaning of "escrow" would be in that.
Q. I understand. I wasn't trying to trick you. Sometimes you know and sometimes you don't know.
A. Exactly.
THE COURT: All right. Anything further?
MR. GOLDSTEIN: Nothing, your Honor.
THE COURT: All right. Any further Redirect or --

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MR. ABNEY: No, your Honor.

THE COURT: -- Direct? All right. Sir, you can step down. Thank you. We're going to take a couple-minutes break. I think the interpreter needs a break, as well as I need to sign a warrant. So, I mean, five, ten minutes? Whatever you all need. Do you all need us to break for lunch? I mean, we've only been going for an hour and 45 minutes. I usually don't like to break for lunch unless we have to, but --

MR. GOLDSTEIN: None of the warrants say Goldstein, do they?

THE COURT: I don't know until I see it. So who knows? He hasn't locked you up yet, so --

MR. GOLDSTEIN: Judge, it's his case. So I'm going to defer to whatever Mr. --

MR. ABNEY: It may be worth talking about. I've got Chief Turner next. And, I mean, the exam is largely going to consist of him reviewing several of these incident reports.

THE COURT: So how long do you think it could be? It could be an hour or two hours?

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MR. ABNEY: It could be an hour, yeah.

THE COURT: I mean, do you all need me to break for lunch? Do you all want to break for lunch or do you all want to plug on?

MR. GOLDSTEIN: I'm a team player.

MR. ABNEY: We're good over here. We've tried to move along as --

THE COURT: All right. And that's fine. I just -- you know, let's take a five-minute or ten-minute break, just bathrooms, whatever you need to do; stretch your legs.

(A recess was taken.)

THE COURT: All right. We're back on. You can call your next witness.

MR. ABNEY: Thank you, your Honor. We call Chief Dennis Turner to the stand.

THE COURT: Raise your right hand.

DENNIS TURNER, SWORN.

DIRECT EXAMINATION

BY MR. ABNEY:

Q. Chief Turner, you are the chief of police for the Hanahan Police Department, correct?

A. Yes.

Q. And how long have you been with the police department?

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A. Nineteen years.
Q. And how long have you been the chief?
A. Since 2015.
Q. Okay. Um, in performing your duties as chief, have you become familiar with the El Alamo?
A. Yes.
Q. And how have you become familiar with that establishment?
A. I've become familiar with it through incidents -- incident reports filed, um, citations and other charging documents on patrons and employees from incidents stemming on the premises and incidents stemmed off the premises but have been linked back to the premises.
Q. And what type of incidents?
A. We've had -- ranging from incidents of disorderly conduct, over-intoxication, assaults, drug arrests; um, we had an armed robbery, um, and violation of state agency laws as well.
Q. And approximately what time of day did these incidents occur?
A. Start anywhere from 2 in the morning until dawn.
Q. And how often do they occur?
A. Frequent.

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Q. How frequent compared to other establishments that allow consumption of alcohol?

A. They are more frequent than the other ones in the city.

Q. Who operates El Alamo?

A. Mr. Benjamin Reyna.

Q. Has your department ever communicated with Mr. Reyna about the incidents on the property?

A. Yes.

Q. And what types of discussions have you had?

A. He's been there for some on premises when they've happened, and through reviewing videos and speaking with the officers. They spoke to him about the incidents that we've had.

Q. How long have these incidents been occurring?

A. From at least 2014.

Q. Up to the present?

A. Correct.

Q. Has Mr. Reyna actually been arrested on-site at the premises?

A. I believe so.

Q. And how about Ms. Santos?

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A. Yes.
Q. Has Mr. Reyna been warned by your department about criminal activity on the --
A. Yes.
Q. And did it stop after those warnings?
A. No.
Q. In 2016, are you aware that Hanahan adopted Ordinance 4-2 related to late night open container?
A. Yes.
Q. And have you and your department performed compliance checks with that ordinance at El Alamo?
A. Yes.
Q. Have they stopped?
A. They've been in violation.
Q. On how many occasions?
A. Several.
Q. Tell us about the resources that your department devotes to El Alamo.
A. When there's a disturbance that takes place there -- first of all, let me back up just a second. We have -- typically, we have four officers working, occasionally five, on the night shift. We work 6 p.m. to 6 a.m. And when a

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disturbance breaks out -- and the officers are typically spread out in the city in the different zones.

When a disturbance happens there, all the officers have to come because of a couple of factors: One, the -- they could easily be outnumbered 20 to 1, 25 to 1. And then when you factor in alcohol consumption, that poses an officer safety risk.

Q. What does -- if all of the officers have to come, what does that mean for your ability to handle disturbances elsewhere in town?

A. The biggest thing that we -- the issue it causes, it causes other areas of the city to go unprotected or uncovered. And depending on how long the incident could take to resolve, it could be a few minutes, it could be over an hour, but that's leaving other neighborhoods and zones within the city without police coverage.

Q. Does your department document the incidents that have occurred at El Alamo?

A. Yes.

Q. And is it your department's duty to document such incidents?

A. Yes.

Q. And are they documented at or about the time that the incidents occur?

A. Yes.

Q. And are they maintained -- the records of those incidents maintained in the regular course of business of the department?

A. Yes.

Q. Okay. I'm handing you what has been marked as Plaintiff's Exhibit 27.

THE COURT: Is this the Court copy or is this the original?

MR. ABNEY: He has the Court copy.

THE COURT: So he has the Court copy. All right. And this is a copy just for me or what? Or is this --

MR. ABNEY: Correct.

THE COURT: All right. Thanks. I just want to make sure which one is which. Thanks.

BY MR. ABNEY:

Q. Chief, I'm showing you Exhibit No. 27. Um, can you confirm that these are incident reports related to El Alamo that your department -- your department has prepared from 2014 to the present?

A. Yes.

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MR. ABNEY: Your Honor, I'd move Exhibit No. 27 into evidence.

THE COURT: Mr. Goldstein?

MR. GOLDSTEIN: Objection. Hearsay. Incident reports are not admissible to prove the, um -- the truth of the matters contained; uh, it's -- an additional basis for my objection is Rule 404, attempting to prove character by prior -- alleged prior bad conduct, which is prohibited by Rule 404 in the South Carolina Rules of Evidence. And I had one more basis for the objection, um, which just floated out of my head. Well, I said hearsay. And I -- you know, I didn't know these were going to come in. I would have had the statute in front of me, but I think it's in Title 19, which is the evidence statute, that says that incident reports are not admissible to prove matters contained within them. And also that it's a violation of Rule 404 of the South Carolina Rules of Evidence.

MR. ABNEY: Your Honor --

THE COURT: Well, I mean, 404 involves, you know, a person's character or trait or

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proving action and conformity therewith. I mean, so --

MR. GOLDSTEIN: Oh, I know what my other objection was. Due process. It violates due process. Because it allows -- it violates the Defendant's right under presumptions of innocence.

THE COURT: Well, I mean, as I understand it, he's introducing these -- I mean, I'm trying to think through this objection because it's got three different little prongs of it. But as I understand it, he's introducing these under the exception of hearsay, um, 803(8), which just basically says, um, you know, records, reports, statements or data compilations in any form to public offices or agencies, setting forth (A) the activities of the officer or agency or matters observed pursuant to the duty imposed by law as to which matters there was a duty to report. Um, which, of course, it's excluding criminal cases, matters observed by police officers and other law enforcement personnel, um, you know, provided, however, that investigating those involving opinions,

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judgments or conclusions are not admissible. I mean, I think --

MR. GOLDSTEIN: Give me that citation, Judge.

THE COURT: It's 803(8).

MR. GOLDSTEIN: Okay.

THE COURT: It's just the Rule 803(8). It's at page 474 at the bottom -- or at the top, excuse me.

MR. ABNEY: Your Honor, my argument is --

THE COURT: Oh, you're not -- yeah, you don't have the same book I have. So I assume that's what you're --

MR. ABNEY: Absolutely. This is precisely what the rule contemplates. We're not in a criminal case. These reports detail exactly what those officers observed when they are acting in the course of their job with the department, which they have a duty to observe and to report. It's simply observations. It does not contain opinions, judgments or conclusions, simply observations. And that is squarely permitted by the exception to the hearsay rule.

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MR. GOLDSTEIN: Judge, I don't think it is and -- I don't think it is an exception of the hearsay rule. Let me just give you an --

THE COURT: You tell me why would they put in criminal cases matter observed by law enforcement officers -- why would they say that otherwise? I mean --

MR. GOLDSTEIN: As your Honor read, it says, Provided, however, investigating those involving opinions, judgments or conclusions are not admissible. That's what all of these are. I just opened --

THE COURT: Opinions, judgments and conclusions? I don't know. I haven't read any of these reports. I will see, you know.

MR. GOLDSTEIN: Well, Judge, let me tell you, I just opened it and read -- 175 just -- let me read you 175. This is an officer reporting to 1255 Yeamans Hall Road --

THE COURT: Right.

MR. GOLDSTEIN: -- in response to a domestic dispute in which the complainant is saying that she and her husband had a fight while they were at El Alamo. I mean, the officer is not even responding to El Alamo.

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He's responding to 1255 Yeamans Hall Road.

THE COURT: But is anything in there an opinion of the officer?

MR. GOLDSTEIN: Everything is an opinion of an officer, every single one of these investigative reports are nothing but opinions of the officer. I have surveillance tapes from Hanahan officers. Now, we can put those into evidence, where they say, and I quote, "I hate" -- and I'm quoting now, so don't be offended -- "I hate this fucking place. It needs to be burned to the ground."

Now, if they want to put that kind of stuff in evidence, that's straight out of -- word-for-word verbatim out of a City of Hanahan Police Department body cam, so --

THE COURT: Well, I mean -- well, looking at page 175, I don't think you need to object to that, but what -- looking at page 175: On April 1st, 2015, 1702 hours, I was dispatched to the police department in reference to a meeting with -- I get it, but, I mean, that's an observation.

MR. GOLDSTEIN: Right.

THE COURT: They were dispatched. They

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did that. Okay.

Upon arrival, I met this person, and she said this. She then stated this. She then stated this; her attorney stated this; a victim's form was completed. I provide the victim the case number. I prepared an arrest record. A warrant of affidavit was complete. And it's pending a Judge to find probable cause to sign off on.

I mean, I don't see anything in there as an opinion. It just says, This is what I did.

MR. GOLDSTEIN: Yeah.

THE COURT: And I think that's kind of precisely what that rule kind of looks at. I mean, I can't sit here and say that I'm worried about, you know, the 803 (8) public records exception very much in terms of police reports coming in in a civil case. Because it doesn't happen that often. I can't imagine it happens that often because it's not an accident case. And so -- it just doesn't happen that often. But when I'm looking at it, it says, it excludes in criminal cases matters observed by police officers and other law enforcement personnel. And that means a

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lot to me because that means in civil cases it doesn't exclude matters observed by law enforcement personnel. So to the extent that any of these are matters observed by law enforcement personnel, you know, and they are simply compilations and reports of statements, um, I don't see how they're not admissible, provided -- and that's unfortunate because I've got 450 -- or, no, 470-and-something pages of documents here. I've got to take every single one of them and exclude opinions. And I think you would agree with that, correct?

MR. GOLDSTEIN: Well, and --

THE COURT: Any opinions -- and I don't know -- but in that particular one you're talking about, I mean, you have to agree with me, there's no opinion in there: This is what I did, and this is what I saw. Whether it's true or not doesn't matter to me because I don't think I can make a decision whether or not it's true. And I agree with you on that. I don't think I can hold it against them that this in fact happened there, quite frankly. What I can say is that they were called out.

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Because I think that's the whole point of their -- I mean, I think they are allowed to document that they were called out. Whether or not there was a legitimate incident, I mean, you can cross-examine him all day long about that and why they're -- if you're saying they're not getting convictions on any of these, I'm sure the chief would love to explain that. Out of 475 reports --

MR. ABNEY: And he can make that case, you know, I mean, in response.

THE COURT: I agree.

MR. ABNEY: It can come in.

THE COURT: I agree. I mean, I will admit them -- but I'll admit them -- well, I want to get back to the 404 evidence -- or the 404 reference first, because, I mean --

MR. GOLDSTEIN: See, that's my point. They're being offered to show bad conduct. This is being tailored to the, quote, immoral conduct.

THE COURT: Well, are they -- are they -- are they being offered -- I don't take them as -- I mean, and maybe I'm wrong. Maybe Mr. Abney wants me to take them as offering to be

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proven, you know, bad conduct. But I'm offering -- but I would think that he's offering them to prove that they're coming out there, period; that Hanahan just has to respond. One way or the other, whether it's bad conduct, whether it's not bad conduct, here is a call, this is why we were called out, you know, and this is what these people are saying is going on. Whether or not they actually are going on doesn't matter, you know.

MR. ABNEY: I'm not here to prove a crime. I'm here to show that this establishment is a public nuisance that has completely absorbed the attention of the Hanahan Police Department for the last three years.

MR. GOLDSTEIN: See, that's a two-edged sword. The government certainly can't focus its attention on a business to create the impression that it's a public nuisance as well.

THE COURT: That's a finding of fact. I mean, I think that would be me, you know, having to find that based on your

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Cross-Examination and looking at -- and like I said, I'm not -- I don't really think that 404 -- I mean, there's no -- I mean, typically evidence of a person's character or a trait of a character is not admissible for the purpose of proving action and conformity therewith on a particular occasion. But I don't think these are all entered to prove that Mr. Reyna or Ms. Santos were committing crimes at the residence -- or, I mean, at the premises. I mean, if there were incident reports involving Mr. Reyna or Ms. Santos's arrests, I mean, maybe they would fall under that. I mean, are those reports in there somewhere? Probably?

MR. ABNEY: They were arrested at the establishment.

THE COURT: Right.

MR. ABNEY: Because that was an observation of what happened when they were there. But, again, I'm not here to prove that Ms. Santos or Mr. Reyna committed a crime. I'm here to show that this establishment is a public nuisance, and that -- it's a civil case for eviction and --

THE COURT: I mean, you know, and --

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motive, identity, existence of a common scheme or plan, in the absence of a mistake or accident or intent, I mean, you know, we're not talking about -- I mean -- and I understand from a due process perspective, you're just talking about, Hey, none of these people have been found guilty or the presumption of innocence applies. So you can't take anything in here as true, but I'm not -- I don't think they're being offered for the truth of anything in there anyway. I think they're just being offered that Hanahan had to go out there. And that's all I'm taking. I mean, if they want me to find that every one of these incidences is a fact, there's no way -- you know, I mean, there's nobody here to testify to that other than Chief Turner and -- I mean, all he can say is these are reports from the department, some of which he probably did respond to, some of which he didn't, I'm sure. I don't know -- I don't know if he did or not. I'm sure Mr. Driggers has probably responded to a couple too.

MR. ABNEY: I think what the Rule

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contemplates, your Honor, is that I would not have to bring public people in --

THE COURT: In here to prove --

MR. ABNEY: -- (inaudible).

THE COURT: I understand. I think that's -- that's how I'm reading the Rule. How fair that is, I don't know. And I say that, you know, but I think, you know, if we were dealing with, let's say, 175 -- if we were dealing with a civil case against Giselle Natale (ph) Rodriguez, you know, I think it would -- there would be some more concerns. But we're not dealing with that. What we're dealing with is one against the actual, you know, lessor of the premises or lessee of the premises. And, you know, my guess is 175 is being offered to prove that somebody said there was a domestic incident on that property so we had to do a report, period. Right? That's all you're trying to prove there?

MR. ABNEY: I mean, to show that -- yeah, that that happens almost every night. If he wants to make the case, your Honor, then, you know, that's not really what is going on.

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THE COURT: Well, I mean, it seems to me that you're proving here and that Rule allows you to prove that the reports were taken, and that these were the reports, these are what they're about.

MR. ABNEY: I mean, it's an exception to hearsay.

THE COURT: I understand. And the statements are in there --

MR. ABNEY: I wouldn't need an exception to prove it for that.

THE COURT: I understand. Well, I agree with that. I agree with that too. So I think under 803, you know, (8), they come in except for opinions and legal conclusions. For example, if an officer writes in there, I believe such-and-such is telling the truth, I think that's something I have to exclude. If the officer writes in there, I think this person is guilty of this, that's an opinion. I have to exclude that.

MR. ABNEY: And, your Honor, there's a case, Fowler v. Nationwide Mutual Fire Insurance Company -- it's 410 S.C. 403 -- that illustrates a Supreme Court case from 2000- --

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I'm sorry -- Court of Appeals from 2014 that squarely addresses the issue. In that case, you know, we had a report prepared specifically for trial by a fire chief opining on the cause of a fire. In that, the Court concluded -- this is basically an expert's report; he wasn't qualified as an expert.

THE COURT: Right.

MR. ABNEY: That's what the Court said this last clause contemplates.

THE COURT: Right. I understand.

MR. ABNEY: A regular incident report by a firefighter going out on a call --

THE COURT: Well, I mean, I agree with you. That's what I'm trying to tell you, is that provided however -- you know, that's important, as is the -- in criminal cases, those two things are very important to me in making that ruling. I mean, I think it's -- I think they're admissible based on that, you know, notwithstanding -- talking about 404, you know, I don't think he's trying to prove conformity with these actions by the lessee. I think he's trying to prove something else. I don't think that 404 is going to apply as it

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relates to due process. I mean, it's sort of hard to rule on a due process argument in a civil matter, if that makes sense.

MR. GOLDSTEIN: No, I understand. You know, the basis for my objection is that they're trying to establish bad conduct.

THE COURT: I understand. I understand what you're saying. The problem is, if the hearsay exception allows them to establish that these statements were made, you know, the weight of that may be something I have to consider. But I think it goes to the weight as opposed to whether or not it comes in. So I'm going to allow them in over the objection.

MR. GOLDSTEIN: Thank you, your Honor.

THE COURT: Yes, sir.

MR. ABNEY: Thank you, your Honor.

Let's pause a moment. What I would like to do -- I think the most efficient thing to do would be to have the chief walk us through some of these incident reports rather than me constantly asking him questions, if that's permissible.

THE COURT: Well, I mean, that's fine. But I don't need him to read every

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400-and-some pages. He knows I can read; I know he can read. So, um, you know, if you want to walk through a few, but I know Mr. Goldstein can read them too, and I don't want to be here all day listening to Chief Turner read.

MR. ABNEY: Well, why don't we -- I guess maybe what the -- how about we just have Chief Turner sort of summarize what the incident reports contain --

THE COURT: That's fine.

MR. ABNEY: -- whereby we will save about an hour of time?

THE COURT: That's fine. Because I'm going to have to read it all -- I mean, every single line in there to determine what's admissible, what's not, in terms of the opinions. Because I'm going to have to exclude any opinion, and I will exclude any opinion evidence in there.

MR. GOLDSTEIN: Mr. Abney and I pledge that we will consult with one another in an effort to arrive at a mutually agreeable -- (inaudible) -- that relieves you from that obligation.

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THE COURT: Okay. I've got you.

MR. GOLDSTEIN: We'll do that at the conclusion.

THE COURT: Okay. Sounds good. All right.

BY MR. ABNEY:

Q. Chief Turner, if you would, please describe to us the nature and frequency of the incidents contained in these reports that were just admitted as Exhibit No. 27.

A. An example of what you're seeing is -- on the first report, it was dated Sunday morning, 4:17 would be the time when we get -- usually we get there until we clear. It's showing the hours -- and it's frequent. I mean, there are some weekends where there are multiple incidents; some weekends there might just be one or two, some weekends there might be none. But there's still a consistency of having these incidents of open containers in the parking lot, of public drunks walking down the street that stem from there.

We had one incident in particular, it is in here somewhere, where an officer got called to Belvedere Drive, which is about a block and a half away, an intoxicated individual sleeping in the

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car. The officer had to put the car in gear so it would roll and started trying to wake him up, and when the gentleman wakes up, he punches the officer.

Post-incident, we ended up having him interviewed by a detective and he said that he had been at El Alamo drinking. And then we've seen cases where they said -- going back to cases of malicious damage, cars getting keyed. I believe we've had -- there's a report in here somewhere where -- a car getting shot. We've had incidents of -- just a few months ago, shots fired in the parking lot.

Q. What about fights?

A. We have had some fights.

Q. What about drug seizures?

A. We've made drug arrests.

Q. What types of drugs?

A. Um, marijuana and cocaine.

Q. And what about, uh, open containers after 2 a.m.?

A. We found that.

Q. How frequently?

A. It was every weekend for a while.

Q. And that is specifically prohibited by

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--

A. The ordinance.

Q. -- the Hanahan ordinance?

A. Yes.

Q. What about occupancy levels?

A. There's been occupancy citations issued.

Q. Beyond the permissible occupancy limit?

A. Correct.

Q. Um, what about selling alcohol?

A. The State Law Enforcement Division has made, my understanding, two -- I don't have those incident reports, but have made, um, two investigations as a result of the selling without a state -- without a state license. The most recent one happened, I believe, within the past four to six weeks.

Q. Um, what types of weapons have you seen at the property?

A. We had one incident where a gentleman hired by security after, um, getting into an altercation presented a weapon -- a firearm at an individual. Come to find out, SLED -- that was referred to SLED. They investigated it. He did not have the proper licensing. I believe we charged him also with pointing and presenting.

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And we have also an incident report on record where individuals, um, were stopped and had possession of a sawed-off shotgun.

Q. Um, and do the reports reflect that Mr. Reyna and Ms. Santos have been present for these incidents?

MR. GOLDSTEIN: Objection. Leading.

THE COURT: I'll sustain it.

BY MR. ABNEY:

Q. Do the reports reflect whether Mr. Reyna and Ms. Santos have been present for these incidents?

A. Some, yes.

Q. They have been present for some?

A. (Inaudible.)

MR. ABNEY: I think that's all I have, Chief.

THE COURT: Answer any questions that Mr. Goldstein may have.

MR. GOLDSTEIN: May it please the Court.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. While I've got Chief Turner under oath, I can ask him all kinds of questions about Carolina and Clemson and he has to answer

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truthfully. Just kidding you, Chief.

I'm not going to keep you long. Chief, it's fair to say that El Alamo has attracted a lot of attention from the town; that's fair, right?

A. Yes.

Q. And you were present when Mr. -- is it DeCosta? I'm sorry.

MR. ABNEY: DeLuca.

Q. DeLuca, I apologize. You were present when Mr. DeLuca testified?

A. Correct.

Q. And he talked about the meeting at city hall?

A. Yes.

Q. Who called that meeting?

A. What we did is reached out to, um -- I had Joy Krutek in building and codes locate the landlord information and then arrange a meeting.

Q. Okay. You had who? I'm sorry?

A. Joy Krutek from building and codes --

Q. I see.

A. -- to do the research, locate the landlord and set up the meeting.

Q. So you all called the landlord in?

A. Correct.

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Q. When I say "you all," you know what I mean? I mean, the city?

A. Yes.

Q. And so present was the business license officer, correct?

A. Correct.

Q. You?

A. Correct.

Q. The landlord?

A. Correct.

Q. Was it --

A. Mr. --

Q. -- Mr. DeLuca?

A. Yes.

Q. Was there a city councilman there?

A. No, sir.

Q. Who else was there?

A. I believe -- possibly -- I believe it was Larry Sturdivant, our code enforcement -- code enforcement -- or building inspector, I'm sorry. He's over code enforcement. And I believe our city administrator might have sat in on it also.

Q. Okay. And have you all sent any -- when I say "you all," you know what I mean. Has the City of Hanahan, either through your office or

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through planning and zoning or building -- business license, any of the departments, sent any e-mails to Harris Investment Company?

A. That, I'm unsure.

Q. Have you received any e-mails from Harris Investment Company?

A. That, I'm unsure.

Q. How about regular letters, text messages or anything?

A. Like I said, I'm unsure. I don't think I've ever received any text messages from them.

Q. But there has been a coordinated effort between the city and the landlord to do -- to deal with El Alamo, correct?

MR. ABNEY: Objection. Assumes facts not in evidence. No foundation.

THE COURT: I mean, just rephrase it. I think I know what you're asking, but...

BY MR. GOLDSTEIN:

Q. Have you had only the one meeting or has there been more than one meeting?

A. I know we've met once.

Q. It could have been more than once?

A. I don't think so.

Q. How about, has building license or

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zoning and planning met with the landlord without you and reported back to you?

A. That -- not that I'm aware of.

Q. Now, I notice you introduced -- when I say "you," I mean Mr. Abney, introduced all these incident reports over my objection. Was there an incident report filed regarding the meeting with Harris Investment Company?

A. No.

Q. Um, now, the presumption of innocence still applies in Berkeley County, right?

A. Yes.

Q. And including the City of Hanahan --

A. Yes.

Q. -- do you agree? You've got to say yes or --

A. Yes.

Q. I'm not picking on you. The microphone has to pick up an audible response. And to date, there's been no convictions on any of these incident reports, correct?

A. That, I can't answer. I don't know. I don't have court -- access to court records.

Q. But if there had been convictions, you would have brought them here with you today and

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been prepared to hand them out and say, Yeah, look at all these convictions we got, right?

A. Well, I wasn't asked about convictions, just the incident reports.

Q. Did you come here voluntarily or were you subpoenaed?

A. Voluntarily.

Q. And the reason that you're here voluntarily is because as the chief of police for the City of Hanahan, I mean, you're doing your duty as the chief by participating in this case, right?

A. Right.

Q. Okay. Um, the City of Hanahan -- the City of Hanahan has gone to great lengths to -- and I don't mean this -- I'm going to use the word target, but I don't mean it in a pejorative sense, to address El Alamo, correct?

A. Because of the problems that occur.

Q. The city drafted an ordinance making it unlawful to consume alcohol after 2 a.m. in direct response to El Alamo, correct?

MR. ABNEY: Objection. Lack of foundation.

MR. GOLDSTEIN: (Inaudible.)

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THE COURT: I mean, I think he can ask whether he knows that that's the reason why they enacted. I mean, he may not know that.

BY MR. GOLDSTEIN:

Q. Well, you were at the city council meetings; you gave reports, right?

A. Correct.

Q. And, again, I'm not picking on you. It's just you have to say yes, because you have to give an audible answer.

So you know that at all of these city meetings, the discussion was El Alamo; you were at those meetings? There's published minutes of those meetings.

A. Which meeting?

Q. The meetings where city council -- as they enacted the new 2 a.m. no consumption ordinance?

A. It wasn't specifically done towards El Alamo.

Q. Now, to be fair, at the time, there were only three businesses in the City of Hanahan that were open after 2 a.m., correct? Oh, was El Alamo the only business open after 2 a.m. in the City of Hanahan?

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A. Yes.

Q. Okay. So the Court can draw whatever conclusion it wants from that; that's just a fact, correct?

A. That was the only one that was open after 2 a.m.

Q. Now, if anybody had been convicted of murder at El Alamo, certainly you would know about it, right?

A. We haven't had any homicides there.

Q. Or rapes, right?

A. Correct.

Q. Or armed robberies?

A. We've had one reported.

Q. It was a strong armed robbery?

A. Strong arm.

Q. In the parking lot?

A. Yes.

Q. Not in El Alamo?

A. But on the property.

Q. On the property. Okay. Now, Mr. -- you've been into El Alamo, right?

A. Yes.

Q. And you know that it has a full-service kitchen?

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A. When I've been in there, I've seen food.

Q. Okay. And they've got a big letter "A" on the front door, correct?

A. I don't know -- I don't know about the letter.

Q. Well, let me mark this as Defendant's Exhibit -- I'll show you what has been marked as Defendant's Exhibit 19. Can you identify that?

A. It's a photo of a door.

Q. Can you identify which door, though?

A. Yes. That's -- I believe this is the entrance to the El Alamo.

Q. Okay. And as far as you know, sitting here today, that's an accurate depiction of the door going into El Alamo?

A. Yes, sir.

MR. GOLDSTEIN: Okay. Your Honor, I'm going to offer Defendant's Exhibit No. 19 into evidence.

THE COURT: Any objection?

MR. ABNEY: No objection.

BY MR. GOLDSTEIN:

Q. Okay. Let me show you what has been marked as Defendant's Exhibit 20. Have you ever been in Latino Mix?

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A. Yes.

Q. You've been in there? Okay. Let me show you what's been -- let me show you what has been marked as Defendant's Exhibit 20 and ask you if you can identify it?

A. It looks to be the inside of Latino Mix.

Q. Okay. Does that appear to be an accurate depiction --

A. Yes, sir.

Q. -- of Latino Mix?

MR. GOLDSTEIN: Your Honor, I'll offer Defendant's Exhibit 20 into evidence.

THE COURT: Any objection?

MR. ABNEY: No objection. But, I mean, to the extent this is -- the argument is it's representative of the stocking at all times, obviously, I don't agree with that. But I don't have any objection to him offering the photo.

THE COURT: Cross-Examination and obviously presenting any other evidence.

BY MR. GOLDSTEIN:

Q. Okay. So when you've been in El Alamo, you've seen a full-service kitchen, right?

A. I haven't been into the back where the

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inside of the kitchen is, but I've seen where food was.

Q. Okay. And you know that they do a pretty good lunch crowd; you'd agree with that?

A. I've never seen a lunch crowd there.

Q. What about a takeout lunch crowd?

A. I've never seen that either.

Q. Do you know if they operate a remote taco truck?

A. No, sir.

Q. You have no information --

A. No, sir.

Q. And Latino Mix, that is a small convenience store, correct?

A. Yes, sir.

Q. And as depicted in the photo, it has various items for sale to the general public, correct?

A. Correct.

Q. Now, let's be fair -- I mean, let's be fair; I want to be fair with you. Latino Mix does a heavy -- it does have an emphasis on the sale of beer and wine, correct?

A. I have no idea what their emphasis is.

Q. Oh, just so the Court knows, do you know

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when the City of Hanahan enacted its no 2 a.m. consumption? Do you remember when that was? I'm thinking it was 2016, but I could --

A. It was 2016. The exact date, I don't know.

Q. It's not a memory test; I'm not trying to trick you on the exact date. But whenever it was enacted, the Court can take judicial knowledge of when it was enacted. When it was enacted, the purpose of the ordinance was to prevent public consumption or even any kind of consumption from 2 a.m. to 6 a.m. of alcohol, correct?

A. Correct.

Q. And to be fair to the City of Hanahan, the ordinance is based on a similar ordinance that the Supreme Court approved in Daneen (ph) versus the City of Charleston. Are you familiar with that case?

A. No, sir.

Q. Okay. Now, you agree that both El Alamo and Latino Mix are owned by Hispanics, correct?

A. Correct.

Q. And they both serve a predominantly Hispanic crowd? Do you agree with that?

A. I agree, yes.

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Q. Okay. Have you reviewed the dash cams of Officer Green and Officer Lanphere (ph), that I was referring to earlier?

A. Which incident was that?

Q. The October 23rd, 2016, Officer Lanphere and Officer Green responded to a call at El Alamo and made some arrests for disorderly conduct. Were you aware of that.

A. I would need to look at the report, to be honest -- to read it to see.

Q. But have you looked at their dash cams?

A. With that, I don't know until I read the report to see if that helps recall.

Q. Does the City of Hanahan provide its officers with dash cams?

A. Yes.

Q. And, um, the dash cams include both cams located on the dashboard of the motor vehicle, as well as on the officer's uniform, correct?

A. Correct.

Q. And you're aware that the city has provided us the disk of both the dash cam and the body cam; you're aware of that?

A. Those are our disks, so I would say yes.

Q. Yeah. Okay. And do you remember when I

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came to your office because I was having trouble opening it and the --

A. Okay.

Q. -- clerk was so kind to help me? Do you remember that?

A. Yes, sir.

Q. So you're aware that that incident from October 23rd is captured on both the dash cam and the officer's body cam?

A. If you have the disks, then, yes.

Q. All right. And you haven't reviewed these two disks?

A. I don't know if I have. I would need -- I need to read the report to be able to --

Q. Okay. Well, the report from this should be in these reports here, correct, October 23rd, 2016?

A. Do you have a page number?

Q. Yeah, I'm looking for it. October 23rd, 2016. I'm zeroing in on it.

A. What is the date again?

Q. October 23rd --

A. Of this year?

Q. -- 2016. It looks like it begins at page 400, and the narrative begins at page 402.

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A. Okay. I'm looking at it.

Q. It begins on October 23rd, 2016, at 4:09 hours, units responded to 5901 Loftis Road and El Alamo in reference to a fight in progress.

A. Okay. Yes, sir. I remember the incident.

Q. Okay. And those -- the two officers who reported to that incident are Officers Lanphere and Officer Green?

A. Correct.

Q. Okay. And those events were captured on the videotape?

A. I can't see the case numbers.

Q. I'm sorry. I apologize.

A. These don't match the numbers for October 23rd -- the case numbers.

Q. What case number are we looking for?

A. 26138. This is what -- the report you directed me to.

Q. Okay. What are those two disks that we have in front of us?

A. I've got 26557.

Q. What do they relate to?

A. Um, I don't know without finding the report.

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Q. Okay. Well, I was going to offer these into evidence. How would we go about getting the correct disks?

A. I assume file a motion for discovery.

Q. Okay. That's what we did; that's what you all gave us.

A. Oh.

Q. I'll move on. Listen, of all the incidents --

A. Uh-huh.

Q. -- that your office has responded to, how many of them were responded to by Officer Dodd?

A. I don't have an account.

Q. Um, if we go through the reports, it will tell us what officer responded?

A. Correct.

Q. Okay. So I'm not asking you to agree this is true or not because I don't want to take up the Court's time going through the report. But is it possible that the reports filed August 20th, 2016, October 1st, 2016, October 2nd, 2016, November 5th, 2016, and December -- and November 26th, 2016, December 10th, 2016, December 24th, 2016, January 20th -- January 7th, 2017, January

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7th, 2017 -- is it possible that all of those citations were written by Officer Dodd?

A. I would have to look -- I would have to look at the citations to give a correct answer on that.

Q. All right. Well, we can do that, but they're already in evidence. So will you agree that a lot of these were written by -- I'm just trying to save us time. Would you agree that a lot of these were written by Officer Dodd?

A. Yes.

Q. And the Court can go through and see which ones were and which ones weren't, correct?

A. Correct.

Q. I mean, the facts are what the facts are; would you agree?

A. (Inaudible.)

Q. Okay. Now, Officer Dodd has been terminated from the City of Hanahan for misconduct?

A. No, sir.

Q. He's been terminated?

A. No, sir.

Q. Is he reinstated?

A. He's not employed with us.

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Q. Oh, he's not employed with the City of Hanahan?

A. Correct.

Q. Okay. Well, did you terminate him, or did he quit?

A. No, sir. He resigned.

Q. He resigned. And he resigned because he had his own pending criminal matter?

A. He resigned.

MR. ABNEY: Objection. It calls for speculation.

THE COURT: Well, I mean, if he knows -- if he's aware of it, I think he can testify about it.

BY MR. GOLDSTEIN:

Q. Do you know why he resigned?

MR. ABNEY: How would he know the reason unless --

BY MR. GOLDSTEIN:

Q. Do you know the reason?

THE COURT: Well, I don't know. I mean, maybe he arrested himself. I don't know.

Q. Do you know the reason he resigned?

A. Well, I would have to go back and look for -- look at his file.

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Q. Um, why is it that the City of Hanahan will not allow off-duty police officers to work security for places such as El Alamo?

A. It's dangerous -- number one, it's dangerous to the officers.

Q. Um, is it a specific policy at the city not to allow its officers to take off-duty security jobs?

A. When someone requests off-duty, we review it, myself and the command staff.

Q. Who is the command staff?

A. It's myself, Lieutenant Brooks and Deputy Chief Fowler.

Q. And you all would not agree to allow any of your officers to serve as off-duty security for El Alamo, correct?

A. At any nightclubs.

Q. Any nightclubs. Okay. Would you allow North Charleston -- off-duty North Charleston police officers to serve?

A. No, sir. They don't have any jurisdiction.

Q. Now, you don't have any information about this dispute in terms of whether the rent was late -- you have no --

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A. No, sir.

Q. Your testimony -- you've been called here today -- you came voluntarily today. Why did you come voluntarily today?

A. I was asked.

Q. Who asked you?

A. Mr. Abney.

Q. Okay. And did you meet with Mr. Abney prior to coming to testify today?

A. Yes.

Q. And reviewed your testimony?

A. Reviewed the case, yes.

Q. Reviewed the case. Nothing wrong with that. But, I mean, you got prepared for today's hearing, right?

A. Correct.

Q. And -- oh, I know what I wanted to add. I knew there was another one I wanted to ask you. When your officers respond to El Alamo and write citations, they issue them on -- what is that -- is it called a Uniform Summons and Citation?

A. UTC.

Q. What is that called?

A. UTC, Uniform Traffic Citation.

Q. Uniform Traffic. And that allows the

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Defendant to appear -- you're basically released on your own recognizance, correct?

A. Correct. (Inaudible).

Q. And it's normal policy at the City of Hanahan when making a charge that is a misdemeanor charge on a UTC, to just hand it to the person and give them their court date, correct?

A. Not necessarily.

Q. Okay. Um, in this case, you're aware that Officer Dodd, even though he issued citations to Mr. Reyna and Ms. Santos, that he actually took them to jail and made them have a bond hearing; are you aware of that?

A. On which one?

Q. Well, I will give you the number. I've got it. It was also Lanphere. I stand corrected. And it was, um, January 7th, 2017, the citation number is --

A. Do you have a page number in here?

Q. Oh, well, we'd have to go through -- we'd have to go through it and find the page number, but I can do that. Well, if they testified they were carried to jail and had to spend the night in jail or had a bond hearing on the Uniform Traffic --

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A. Then they would have noted this in the report and they would have gone (ph).

Q. Okay. And it's in here. I mean, we can -- I just don't want to take up the Judge's time and search for it, because it's in here.

A. What was the date?

Q. The date was January 7th, 2017. And it was Officer Dodd. But, now, to be fair -- oh, do you want to look for it? I was just going to move on. But if you want to look for it, I'll be quiet and give you a chance to look.

MR. ABNEY: It looks like page 447.

A. Okay. Okay.

Q. Now, see, that's an example -- it's funny that we should turn to that one. That's an example of an incident report that contains conclusions. Would you agree? It said --

MR. GOLDSTEIN: No. I'm talking to the witness.

BY MR. GOLDSTEIN:

Q. It says on Saturday, January 7th, 2017, units along with Chief Bowers -- I assume that's -- Chief Bowers is the fire department?

A. Yes.

Q. -- Chief Bowers conducted compliance

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checks of the bars and clubs within the city. While doing so, El Alamo was found to be in violation. Well, of course, that's an allegation, not a judicial finding, correct?

A. Probable cause.

Q. Exactly, probable cause. And you're not -- you have never done a count and determined that there was more than the allowed -- maximum allowed occupancy in the building, correct?

A. I never have.

Q. In fact, the times when you've been there, it's been pretty sparsely occupied; isn't that a fair statement?

A. I wouldn't say sparsely.

Q. Give us your best guesstimate.

A. I --

Q. Fifty, 75?

A. It's -- 75, at least, in there.

Q. Um, now, what factors does -- is an officer supposed to consider whether to -- to decide whether he or she is going to transport someone to jail and lodge them in jail on a Uniform Traffic Citation?

A. It's officer discretion.

Q. Exactly. That's the point I'm trying to

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make. Doesn't that strike you as -- as monumentally discriminatory?

A. No. It's for the officer to explain the reasoning behind doing that.

Q. And my client and I just don't have the same memory. Did you or did you not say -- you do or you don't know why Officer Dodd resigned?

A. I said he resigned.

Q. I know. But my question was, do you know why he resigned?

A. I would need to go back and look at the file first to be 100 percent sure.

MR. GOLDSTEIN: Thank you, Chief. That's all I've got. Don't run off. Mr. Abney might have some more questions for you.

MR. ABNEY: I don't have anything further.

THE COURT: All right. Next witness.

The Court is -- I don't know if we are -- do you want to put it up here just in case the next witness can't see over it? I mean --

MR. ABNEY: (Inaudible.)

THE COURT: That's all right.

MR. GOLDSTEIN: It's up there somewhere.

MR. ABNEY: Your Honor, can I run to the

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restroom real quick? Take a quick five-minute break?

THE COURT: Yeah, take a five-minute break.

(A recess was taken.)

THE COURT: All right. Everybody ready? All right. Call your next witness.

MR. ABNEY: Your Honor, we'd call Officer Clif Driggers to the stand.

CLIF DRIGGERS, SWORN.

THE COURT: Your witness.

DIRECT EXAMINATION

BY MR. ABNEY:

Q. Officer Driggers, can you tell me where you're currently employed?

A. Hanahan Police Department.

Q. And how long have you been with the department?

A. Since November of last year.

Q. And in your time with the department, have you become familiar with El Alamo?

A. Yes, sir.

Q. Okay. Can you -- you heard testimony earlier about disturbances at El Alamo. Can you tell the Court some personal observations that

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you've had at El Alamo?

A. When I was on patrol, I responded as backup officer for a disorderly conduct case involving a 19-year-old underage drinker in the parking lot -- or intoxicated in the parking lot. I responded to a noise ordinance violation, where the establishment was shut down for the evening. I responded as a backup officer for the occupants exceeding the -- I believe it was 99 person limit.

Q. And did you personally conduct a count?

A. Yes, sir. I was -- I was sent to clear the -- well, to make sure that -- to check on it and check the bathroom, make sure no one was hiding in there. And then I counted the personnel that were coming out. I don't know the number off the top of my head, but I know that it exceeded 99.

Q. And approximately when did that take place?

A. That was last year. Um, yes, sir, it was last year.

Q. You heard some discussion earlier about people potentially bringing alcohol from Latino Mix over to El Alamo. Have you witnessed anything in that regard?

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A. Yes, sir.

Q. Tell us about that, please.

A. Last year I reached out to Lieutenant Leslie (ph) with SLED. There were some concerns that alcohol was being sold inside. Also, I was advised that it was a private club, where you had to have a membership to come in. And we were -- received word that you could actually go to the door and pay to get inside, which would basically kind of negate the whole membership policy. SLED provided two undercovers that went in. They were allowed to pay -- I believe it was $15 to get in, and then they were directed over to the Latino Mix, where they purchased alcohol from the Latino Mix and then took it back to the El Alamo.

Q. Okay. And have you yourself personally witnessed people going from Latino Mix to the El Alamo with alcohol?

A. Yes, sir. I've conducted surveillance on the parking lot area in reference to a complaint. And I witnessed Mr. Reyna and another person drive up around midnight. Mr. Reyna went and opened up the El Alamo. The other smaller male gentleman went and opened up the Latino Mix. As patrons started coming to the store, the

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smaller male was going back and forth carrying cases of beer.

Q. (Inaudible.)

A. And I witnessed patrons that came to the El Alamo that would then go to the Latino Mix, purchase alcohol and then go back to the El Alamo.

Q. Are you familiar with the incident reports that were admitted as Plaintiff's Exhibit 27?

A. Yes, sir.

Q. Okay. And you've reviewed those reports?

A. Yes, sir.

Q. Okay. Have you reviewed reports from other establishments that allow on-premises consumption of beer for the same timeframe?

A. Yes, sir. Well, we don't have any establishments that were open after 2 a.m.

Q. Correct. Right. I'm sorry. I meant through the same years?

A. Yes, sir.

Q. And what establishments were those?

A. It was Bucca's, which is closed now, LG's on the Creek, and Hanahan's.

Q. And what did you determine, uh -- did

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you conduct a comparison of the number of incidents at El Alamo compared to these other establishments?

A. Yes, sir.

Q. And what were the results of that comparison?

A. The incidents at El Alamo greatly exceeded the other three establishments.

MR. ABNEY: May I approach?

THE COURT: Uh-huh.

BY MR. ABNEY:

Q. I'm handing you what has been marked as Exhibit No. -- Plaintiff's Exhibit No. 28 for identification. And can you tell us what this is?

A. Yes, sir. This was a spreadsheet comparing El Alamo, Hanahan's, LG's and Bucca's from 2014 to 2016.

Q. Okay. And is this a spreadsheet that you prepared?

A. Yes, sir.

Q. And you prepared it based upon your review of the incident reports maintained by the department?

A. Yes, sir.

MR. ABNEY: Okay. Your Honor, I move to

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introduce Exhibit No. 28 into evidence.

THE COURT: Any objection?

MR. GOLDSTEIN: No, no objection.

THE COURT: All right. Exhibit 28 -- Plaintiff's Exhibit 28 is in evidence without objection.

BY MR. ABNEY:

Q. Officer Driggers, can you just tell us -- explain to us, based on this spreadsheet, how many incidents occurred at El Alamo compared to the other establishments?

A. Total calls for service in 2014, uh, for El Alamo was 35. Calls for service with reports taken was 22. In 2015, total calls for service was 46. Calls for service with reports taken was 16.

For Hanahan's, in 2014, there was zero. 2015, total calls for service for Hanahan's was zero -- or, excuse me, was one.

Total calls for service for LG's in 2014 was 50 with -- and only four where reports had to be taken. 2015, for Hanahan's, there were 52 with eight reports having to be taken. 2016, four calls for service, zero reports had to be taken.

And then at Bucca's, in 2014, there were

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five calls for service with one report being taken. In 2015, there were two calls for service with one report being taken. In 2016, there were zero.

Q. And does your spreadsheet here show the different types of calls at -- the different types of incidents that occurred on these calls?

A. Yes, sir.

MR. ABNEY: Okay. That's all I have. Thank you, Officer Driggers.

MR. GOLDSTEIN: May it please the Court?

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. You told us in your Direct Exam that El Alamo is the only club in Hanahan open after 2, correct?

A. Yes, sir.

Q. And your spreadsheet that you just testified about, if I'm looking at it correctly, could you have made the type any smaller?

A. That wasn't -- that wasn't -- I think that wasn't my original one. That wasn't my original one.

Q. Fall on the sword for that one. If I'm going down to total calls for service, it appears

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that LG's, in 2014, that number appears to be 50.

A. I said that, correct. Fifty calls for service with four reports being taken.

Q. Okay. And then the next one is 52 with eight calls being taken?

A. Yes, sir.

Q. Okay. All right. So total calls for service, 2014, El Alamo was 35, correct?

A. Yes, sir.

Q. And LG's was 50?

A. Yes, sir.

Q. And in 2015, the total calls at El Alamo was 46, right?

A. Yes, sir.

Q. And LG's was 52?

A. Yes, sir.

Q. All right. And then in 2016, the total calls for service for El Alamo was 17, correct?

A. Yes, sir.

Q. And four for LG's, right?

A. Yes, sir.

Q. All right. Is LG's still open?

A. Yes, sir.

Q. You all didn't revoke their business license?

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A. No, sir.

MR. GOLDSTEIN: Okay. That's all I have. Thank you.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MR. ABNEY:

Q. Officer Driggers, what distinguishes a call for service from a call for service with report taken?

A. Depending on the incident that had occurred, if there was a complainant, to where their biographical data could be taken down -- basically having information for a report to be taken.

MR. ABNEY: That's all I have.

THE COURT: All right. Anything further? Mr. Goldstein?

MR. GOLDSTEIN: Oh, could I ask one more question? I forgot.

RECROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. El Alamo is a BYOB club, correct?

A. Yes, sir.

Q. And there's nothing unlawful about that; would you agree with that?

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A. No, sir.
Q. Okay.
A. Yes, sir, I agree with you.
Q. It's lawful?
A. Yes, sir.
Q. Um, I was going to tell you something, but maybe I should reserve it for later. But anyway. But when I was 17, I went to look at the University of South Carolina and it was BYOB and I opted -- I'd never seen such a thing.
MR. GOLDSTEIN: Thank you. That's all I have.
THE COURT: All right. Anything further? Thank you. You may step down. Thank you.
Call your next witness.
Is that a different one?
MR. ABNEY: No, no. It's the same one. I just want to make sure -- (inaudible).
THE COURT: Yeah, yeah. Is this not --
MR. ABNEY: No. It's the same one.
THE COURT: All right. We don't -- which one -- is this yours or is this --
MR. ABNEY: I guess this is an extra.
THE COURT: Yeah, okay. All right.

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Just making sure we don't have two of the same. It's marked, so...

MR. ABNEY: Um --

THE COURT: It looks to be the same document. They both have the same Bates stamp on it.

MR. ABNEY: Your Honor, the next witness is Ms. Joy Krutek.

THE COURT: All right. Come on up.

JOY KRUTEK, SWORN.

THE COURT: All right. Have a seat.

DIRECT EXAMINATION

BY MR. ABNEY:

Q. Ms. Krutek, you are the business license official for the Town of Hanahan, correct?

A. Yes.

Q. And have you become familiar with the El Alamo in the course of your duties as the business license official?

A. Yes.

Q. Okay. Did El Alamo apply for a business license at some point?

A. Yes.

Q. Okay. And what does that entail?

A. Um, any business, when they come into

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the City of Hanahan, needs to submit a letter to the building official, um, for zoning approval, um, that would be evaluated to see if the area that the business is is approved for that type of usage. Um, they'll apply -- they'll write a letter stating what type the business will be, hours, maybe the type -- the number of employees.

Once that's approved, the building official will write a letter creating approval and we'll issue a business license.

Q. Okay. And is that the process that was followed with respect to El Alamo?

A. I believe so, yes.

Q. And who submitted the request for the license on behalf of the El Alamo?

A. Mr. Reyna.

Q. Okay. And if you'd turn with me to Exhibit No. 20.

A. I have it.

Q. And if -- can you identify this document?

A. Yes.

Q. Is this the letter that Mr. Reyna submitted on behalf of El Alamo's request for a business license?

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A. I believe so, yes.

Q. And could you just read from the first paragraph there?

A. "This is a summary of how the space at 5901 Loftis in Hanahan, South Carolina, will be used. The overall concept is that of a Mexican restaurant. Breakfast, lunch and dinner will be served in a family ambience. Hours of operation will be 7 a.m. to 9 p.m., Monday through Thursday, and open 24 hours Friday to Sunday. Along with our main dining room, there will be a party room available for parties. There will be a full-operational kitchen. Customers will be able to BYOB or provide their own wine."

Q. And has the operation at El Alamo been consistent with -- as what's represented in the business license?

MR. GOLDSTEIN: Objection. Calls for a legal conclusion.

THE COURT: That's sustained. Rephrase.

BY MR. ABNEY:

Q. Has the operation at El Alamo been consistent with the description contained in Exhibit No. 20?

A. No, sir.

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Q. And how has it been inconsistent?
A. Um, based on hours of operation.
Q. Okay.
A. And, um, information -- based on breakfast, lunch and dinner, it does -- from my observation, being at the property, um, it does not operate during breakfast or lunch.
Q. Okay. Has the Town of Hanahan taken action against this business license?
A. Yes.
Q. And what is the outcome of that action?
A. The business license has been revoked.
MR. ABNEY: Thank you. No further questions.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:
Q. And I know I'm going to mess up your name, so help me with it.
A. Krutek.
Q. Krutek. Ms. Krutek -- sorry.
A. No worries.
Q. -- the -- Exhibit 20, it does say that they'll be open 24 hours over the weekend, correct?
A. Yes.

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Q. Okay. And you all keep saying there's no lunch in there. Why do you all keep saying that?

A. Myself, I have never observed anyone coming or going from the establishment during a -- what I would consider a normal lunch hour.

Q. Do you know how many lunches they serve in a day yourself?

A. No, sir.

Q. But it does have a full-service kitchen?

A. I've never been inside.

Q. Oh. Well, then, you would -- then you wouldn't -- you're not in any position to know how many lunches they sell or serve in a day, right?

A. Not necessarily.

Q. Okay.

MR. GOLDSTEIN: All right. That's all the questions I have. Thank you.

THE COURT: Any questions?

MR. ABNEY: One more. I just realized Exhibit No. 6 wasn't in.

REDIRECT EXAMINATION

BY MR. ABNEY:

Q. Ms. Krutek, could you turn to Exhibit No. 6, please? Do you recognize this as a

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transcript of the Business License Revocation Hearing --

A. Yes.

Q. -- that was held in connection with El Alamo?

MR. GOLDSTEIN: Your Honor, let me see if I can save Counsel some time. I'm objecting to it on relevancy. However, the document is a certified, uh, transcript of a proceeding held before the City of Hanahan Business License. So he really doesn't need to lay a foundation for it.

THE COURT: I hear -- your objection is not foundation; it's just you don't think it's relevant to this proceeding?

MR. GOLDSTEIN: Correct.

THE COURT: I don't have -- I don't know what happened, but I've got this one but I don't have the other one now.

MR. ABNEY: Did I take yours?

THE COURT: I think you might have taken mine.

MR. ABNEY: I apologize.

THE COURT: That's all right. I just -- I was looking for it, and I realized I have

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two copies of Exhibit 27. Lots of incident reports. All right.

So as to relevancy, yeah, tell me why it's relevant, why the license -- the transcript is relevant.

MR. ABNEY: Well, the lease requires compliance with all local laws and ordinances. And the revocation of a business license for the El Alamo and the reasons for it are therefore relevant as to whether that provision of the lease has been complied with.

THE COURT: What about that, Mr. Goldstein?

MR. GOLDSTEIN: Well, I don't think it's -- I don't think it's relevant. Obviously, the case is on appeal and hasn't been determined yet. So...

THE COURT: I mean, it does make it difficult to make a decision based on that if -- you know, I mean -- if I say, okay, they're in -- not in compliance with the lease -- I mean, Mr. Abney, you tell me what you think. But if I say they're not in compliance with the lease because they don't have a business license because it's been revoked and I order

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them out and the Court of Appeals says, No, he should have never done that, then what? Where are we at?

MR. ABNEY: Um, I don't -- I'm not sure. We would be in sort of an awkward procedural position.

THE COURT: Very.

MR. ABNEY: But that goes to relevancy.

THE COURT: Oh, I understand that. I kind of moved off on a tangent there.

MR. ABNEY: But I think there are -- if that were the case, that the license, for some reason, is determined -- it's determined by the Court of Appeals that it shouldn't have been revoked, although it's been upheld by the circuit court --

THE COURT: I understand that.

MR. ABNEY: -- then --

THE COURT: It wouldn't be the first time.

MR. ABNEY: I don't know how that would play in, but there are other grounds for breach of --

THE COURT: Oh, I understand that. I'm not -- I'm just thinking down the line if --

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you know, for example -- if that happened, what would be the -- I mean, it's not often that I have a case on appeal that one of the issues, you know, has been determined in a different court --

MR. ABNEY: Right.

THE COURT: -- and is on appeal. So that's -- but as to relevancy, I mean, certainly whether or not you have a business license is relevant. You know, I mean, I think that's relevant. I don't know if your objection is all this stuff in here is not relevant; just the fact that they admit they don't have a business license because it was revoked.

MR. GOLDSTEIN: This -- this transcript has always -- I'm probably the wrong lawyer for this case --

THE COURT: Don't say that.

MR. GOLDSTEIN: This transcript has always given me a very difficult time. I've struggled with it emotionally. There's a lot --

MR. ABNEY: Objection.

MR. GOLDSTEIN: There's a lot of stuff

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that really comes right up to the line --

THE COURT: I understand.

MR. GOLDSTEIN: -- of racism.

THE COURT: I understand what you're saying.

MR. GOLDSTEIN: And it's hard for me to read some of it. I certainly understand that the City of Hanahan is within its rights to revoke a business license, but some of the testimony -- or the comments by members in attendance are really tough to stomach. And that's no reflection on the employees of the City of Hanahan.

THE COURT: I understand what you mean. I mean, I obviously had to read through the transcript and -- I mean, there were some -- just some bantering between the lawyers, I think, in that case, about what was -- I don't think --

You weren't there, were you?

MR. ABNEY: No, I was not.

THE COURT: I knew you weren't there, and I didn't think you were there either. So, yeah, it seemed like it got a little heated, or at least in that regard. But, I mean, as

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to -- as to whether or not this transcript and the testimony presented is relevant, I mean, was the testimony presented by -- did they hear from -- I don't remember. Did they hear from Mr. Reyna or Ms. Santos?

MR. GOLDSTEIN: No. He chose not to testify.

THE COURT: I've gotcha. Okay.

MR. ABNEY: I mean, your Honor, as I understand, the only issue -- the only objection is relevance, and there's no question whether or not they have a business license is relevant. It's a --

THE COURT: Oh, I agree with that.

MR. ABNEY: -- (inaudible) -- as to why, and it details the decision-making by the town in revoking the license. I think it's all relevant.

MR. GOLDSTEIN: Judge, I'll stipulate that we don't have a business license and it's under judicial review. I'll stipulate to that.

THE COURT: I mean -- what I'm trying to figure out is why is the actual transcript necessary if there is no business license? It

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was made, it was made for whatever reasons. From my standpoint, it's either they don't have a business license, therefore, they didn't comply with the lease for that reason, or for whatever other reason you present, or, you know, I guess they did have a business license. I can't find that, probably. And, you know -- or, hey, it's still on appeal and I can't base anything on it based on it being on appeal.

I don't know how to answer that question off the top of my head. But in terms of the actual transcript, I mean, what is the -- what is the relevancy of the reasons for the revocation other than what was testified to already? That's what I'm trying to figure out.

MR. ABNEY: I mean, the reasons for the revocation of the license are a lot of the same reasons why, um, the activity at El Alamo is a public nuisance and is in violation of the provisions of the lease.

THE COURT: I understand. I think they're -- what I'm trying to say is, maybe it's just repetitive -- maybe it's kind of the

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same thing as to what Chief Turner testified to, Here is all these reports; you know, kind of the same thing as Officer Driggers testified to, Hey, this is what I observed.

It was all done in a previous proceeding; it just has nothing to do with this proceeding, except for part of the basis for your -- for your -- out case (ph) for ejectment is, Hey, he doesn't have a business -- or they don't have a business license.

You know, I mean, I think it's certainly relevant. What parts of this entire, you know, revocation hearing are relevant is the question, you know, if that makes sense. There are certainly plenty of -- there's certainly plenty of information in there that is relevant. I mean, that's -- the problem is, you would have to go line-by-line saying this is relevant, this is not, this is -- you know, I'm not sure how to do that.

MR. GOLDSTEIN: Rule 403 allows even relevant evidence to be excluded if it is, in the Court's opinion, quote, needless presentation of cumulative evidence.

THE COURT: Oh, I understand that. And,

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you know, that's what I'm kind of trying to figure out, whether or not it's cumulative or whether there's new information in here. That's what I'm trying -- is there something that you're not presenting here that is in here?

MR. ABNEY: The discussion among city council.

THE COURT: Okay.

MR. ABNEY: Their decision, that is in here.

THE COURT: Okay.

MR. ABNEY: There is testimony from an assault victim as well that we do not have here today.

THE COURT: Well, here is what I'll do: I mean, I'm going to -- I'm gonna allow it, you know, as -- I mean, I think it's relevant. And I think to the extent that there are things in there that are not relevant, if I find, Hey, I don't think this is relevant, I'll exclude those -- those portions of it and let you know what I think is irrelevant to -- you know, because I think some of it is -- you know, especially the banter and things like

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that has nothing to do with this proceeding, you know. I don't really care about it.

But in terms of the revocation hearing itself, I agree that discussion among city council may be relevant. It may be -- I don't know who it's going to help because I don't remember exactly what it says or what each person said, and I don't know, you know, if some of the things you were talking about were made by city council members.

MR. GOLDSTEIN: They were. Page 143.

THE COURT: Okay. There you go. So it may be to your benefit that it's in, but --

MR. GOLDSTEIN: That's true.

THE COURT: But I think certainly -- certainly it's relevant. So I'm going to allow it to be in. Anything else?

MR. ABNEY: That's it. Nothing else.

THE COURT: Okay. All right. So 6 over the relevancy objection is in. All right? The next witness, or do we have any more questions? Mr. Goldstein, do you have any more questions for --

MR. GOLDSTEIN: I didn't know if you were through.

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THE COURT: All right.

MR. GOLDSTEIN: No, I have no more.

THE COURT: All right. You can step down then. Thank you.

I know we have a couple more listed. So next witness?

MR. ABNEY: We call Chad Chinners to the stand, please.

THE COURT: All right. Raise your right hand for me, sir.

CHAD CHINNERS, SWORN.

THE COURT: All right. Thank you.

Your witness.

DIRECT EXAMINATION

BY MR. ABNEY:

Q. Mr. Chinners, could you tell us about your occupation?

A. I am the owner of Blackwell Hardware Company.

Q. Okay. And where is that located?

A. Right there in Hanahan -- right there on Yeamans Hall Road, kind of across the street.

Q. Did you grow up in Hanahan?

A. No. I grew up in Moncks Corner.

Q. How long have you lived there?

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A. About five years.

Q. And how close is your business to the El Alamo?

A. It's right across the street on the same corner, on the same intersection.

Q. Okay. And could you just tell us about your experience with disturbances at El Alamo?

A. The only direct impact it's had on my store was when a driver hit the sign. Other than that, it has not directly impacted my business.

Q. And tell us about the incident with the sign.

A. I got a call around 6 a.m. on Sunday morning from my warehouse manager, um, saying that somebody had driven across the intersection and ran into the sign. It was busted up. I got there and it was in pieces. Thankfully, no one was hurt, and we were able to get it replaced.

Q. And what do you know about where the driver came from?

A. From El Alamo.

Q. Um, any other experience directly with El Alamo?

A. Um, not direct experience.

MR. ABNEY: All right. No further

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questions. Thank you, Mr. Chinners.

MR. GOLDSTEIN: May it please the Court.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. The driver that hit your sign, what was his name?

A. I don't recall.

Q. Where does he live?

A. I have no idea.

Q. Did his insurance company take care of the sign?

A. It did.

Q. Did you interview him?

A. No, no.

Q. Did you go to a deposition with him or anything?

A. I did not.

Q. You had no communication with him whatsoever?

A. No, sir.

MR. GOLDSTEIN: Okay. That's all I have. Thank you.

THE COURT: All right. You can step down.

Any other witnesses?

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MR. ABNEY: One more. Your Honor, we call Ronald Newman to the stand.

THE COURT: All right. Raise your right hand for me.

RONALD NEWMAN, SWORN.

MR. ABNEY: Pull that mic up just a little bit, please.

DIRECT EXAMINATION

BY MR. ABNEY:

Q. Mr. Newman, you are the owner of a property that is adjacent to the El Alamo, correct?

A. Yes, sir.

Q. And what is -- what do you operate on that property?

A. It's a -- it's a mobile home park.

Q. Okay.

A. With about 85 -- 85 families.

Q. Okay. And have you become familiar with the El Alamo within the last several years?

A. Sadly.

Q. Okay. Tell us about your experience with the El Alamo as an adjacent property owner.

A. Well, the biggest problem that I have is their customers, uh, tend to -- tend to get very

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drunk and start going around, and they go through the property, through my fences --

THE WITNESS: Your Honor?

Q. Focus on me.

THE WITNESS: Can you do that? I don't appreciate it.

THE COURT: Do what?

THE WITNESS: He's over there shaking his head over everything I say.

THE COURT: You know, Mr. Goldstein, please instruct any of your clients or witnesses just to refrain from making faces or anything. But I don't know. I haven't seen anything. So, you know...

THE WITNESS: I have, your Honor.

THE COURT: I understand that, but just answer any questions that Mr. Abney may have.

BY MR. ABNEY:

Q. You were telling us about your experience with El Alamo.

A. There tend -- seem to be a lot of drunks hanging around outside, and they go through the fences.

Q. The fence between El Alamo --

A. Between the two properties. And they

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urinate in the yards. They go around and urinate. And I have my tenants calling and complaining about the people that come over there. And it's hard enough to run a business without having drunks come in from the bar next door. Uh, I personally don't -- don't drink, but I don't have a problem with people that do drink as long as they don't take it out on me or my customers.

Q. How frequent are those incidents that you're describing?

A. Well, when they were operating, it was regular; it was a regular thing. And they would tend to wander through the entire park. So what I had to do, I had to start patrolling the park, asking the police to come through a couple of times at night to make sure they're not in there, and then I patrol it myself as well. And I try to keep people that don't live there out of there. And -- because they -- they don't know how -- I guess they come from farms, so they just go to the bathroom wherever they want to.

Q. And your -- do you receive complaints regarding these incidents from your customers?

A. Yes, sir.

Q. How does that impact your business?

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A. Well, I've had one family that moved away because of it, because I couldn't stop it.

Q. All right. Uh, any other experiences that you've had with El Alamo that you want to share?

A. No, sir. As long as I stay away from over there and they stay away from me, I'm okay. But it does -- it does concern me that -- the reputation that we're getting is to be loose in our city. You know, I'm a citizen, you know, and I don't want people to be going around making Hanahan come across like Charleston, people going around with sawed-off shotguns and stuff. I just don't want to attract that kind of people to our community. That's my -- as a citizen speaking, not as a home -- not as a business owner.

MR. ABNEY: I understand. No further questions, Mr. Newman. Thank you very much.

CROSS-EXAMINATION

BY MR. GOLDSTEIN:

Q. Mr. Newman, what is the address of your mobile home park with 85 units?

A. It's two addresses.

Q. Okay. Are they both Loftis Road?

A. No, sir.

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Q. What's the -- what road? You don't have to give me the number.

A. Sellers.

Q. Sellers?

A. But it's one parcel that goes from Sellers to Loftis.

Q. Where do you reside?

A. Where do I reside? Currently?

Q. Well, for the last three years, say.

A. My -- in North Charleston.

Q. In North Charleston?

A. Yes, sir.

Q. So these complaints that you're telling us about today, these are complaints that have come to you from other people; nothing you've witnessed yourself?

A. Well, I've watched the -- I've seen the poop that they put in the yard. How about that? Is that called seeing it? And the tenant explained it to me, but I witnessed the poop. Is that enough?

Q. Did you do any DNA testing to determine the origin of the species?

A. I'm not a DNA guy. I can take my client's word, because they have nothing to lose

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or gain.

Q. Okay. So what you're telling the Court under your sworn testimony is that based on a pile of excrement that your tenant pointed out to you, your testimony here today is that originated with some client or customer of El Alamo?

A. Not every one. One of them was -- I witnessed him urinating in the yard, yes.

Q. Okay.

A. But most of them were by somebody else. But I did see one.

Q. Did you say that -- you're testifying here today as a citizen?

A. Yes, sir.

Q. Okay. Do you draw a distinction between your testimony as a citizen and someone who may not be a citizen?

A. I'm a citizen of the United States of America, yes, sir. And we have certain rights that we don't have to put up with that kind of crap.

Q. So your testimony is that as a citizen, you have more rights than somebody living here who is not a citizen; that's your testimony?

A. No, sir. No, sir. Everybody has that

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right.

Q. Now, some of your tenants are actually customers of El Alamo, correct?

A. If they were, they've never told me.

Q. Okay. Really everything that you've told us here today is based on what your tenants have told you, correct?

A. No, sir. That's not correct. I've already answered that question.

Q. You saw a person urinating, correct? That was your testimony?

A. That's correct.

Q. Okay. What -- was this person male or female?

A. Male.

Q. And what was his name?

A. I don't know.

Q. Did you --

A. I just told him to get off the property.

Q. Did you call the police?

A. I did not.

Q. Was it your tenant?

A. No, sir.

Q. How do you know?

A. Well, I think I know just about every

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one of my tenants by name and by recognition, because I have their picture on my phone. Every time I have a customer, I take their picture and hold it on my phone so I'll know who they are when I see them because I don't see them very often.

Q. How many of your tenants are Hispanic?

A. I've never done an analysis. Probably half, but I've never done an analysis.

MR. GOLDSTEIN: Thank you. That's all the questions I have.

THE COURT: Nothing further. You can step down.

Anything further from the Plaintiff?

All right. Anything I need to take up at this point in time, Mr. Goldstein?

MR. GOLDSTEIN: Oh, is the Plaintiff resting?

THE COURT: The Plaintiffs rest.

MR. GOLDSTEIN: Oh, I didn't hear that. I'm sorry. I'll move for an involuntary non-suit with prejudice, based on the fact that the Plaintiff -- the Plaintiff has alleged the following breaches: Failure to provide insurance, um, but yet testified that they demanded more insurance than is required

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by the lease; failure to pay rent, but yet testified that all the rent has been paid but is currently held in escrow; based on, quote, immoral acts, which of course can -- as a matter of law cannot sustain a -- a writ of ejectment. Um, and let's see. What was the other one they alleged? Oh, failure to have a business license, which is, under South Carolina law -- because the revocation is on appeal, under South Carolina law, the applicant is deemed to be operating under a temporary de facto business license while the revocation is stayed by the appeal. That's a matter of South Carolina law.

And I think the other allegation of breach was that -- uh, that the business license was held by Mr. Reyna as opposed to Aracelis Santos. But, yet, there's nothing in the lease that speaks to that and it is pure pretext.

So for all those reasons, I move for an involuntary non-suit with prejudice.

THE COURT: Involuntary non-suit under 41 -- Rule 41?

MR. GOLDSTEIN: I think it is Rule 41.

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Because, you know, with a jury trial, it's a directed verdict. But with a nonjury trial, it's an involuntary non-suit.

THE COURT: I've never really heard it termed that way, but I guess it is.

MR. GOLDSTEIN: Oh, yeah. Judge Young --

THE COURT: Educated you on that?

MR. GOLDSTEIN: Oh, yeah. He hates it when -- in nonjury trials when you say --

THE COURT: Directed verdict?

MR. GOLDSTEIN: He calls you out on that.

THE COURT: All right. Mr. Abney?

MR. ABNEY: Your Honor, we presented evidence on every single one of the grounds for breach, starting with the financial breach. You saw all of the missed payments; you saw the notices of insufficient funds; you saw the --

THE COURT: I think I already found --

MR. ABNEY: Yeah, you already found there was a breach. Mr. DeLuca testified about the impact of missed payments and failure to make timely payments. I would

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argue the number, the repeated nature of failure to make payments is more than sufficient by itself to constitute materiality for purposes of South Carolina law. It's happened over and over again; under the plain language of the lease, that is more than sufficient to terminate the lease and eject the tenant.

On the public nuisance issue and violations of code, I mean, the incident reports that have come in are replete and you have heard evidence from the Chief, Officer Driggers about repeated violations of the town ordinance, people going in there and having open containers of alcohol after -- after 2 a.m. That is just a -- that is a completely straightforward violation of local law; repeated violations of the fire code occupancy limits, and just the general nature of the repeated criminal activity facilitated by this establishment.

THE COURT: All right. Well, let me ask Mr. Goldstein. Is the standard the same as the directed verdict standard?

MR. GOLDSTEIN: Yes, sir.

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THE COURT: You would agree with that. It must be silent in the rule. But, you know, you would agree that I would have to review the evidence in the light most favorable to the nonmoving party?

MR. GOLDSTEIN: That is correct.

THE COURT: You know, evidence in the light most favorable to the nonmoving party, I think, you know, there's sufficient evidence clearly, um, and it's -- I've already granted a partial summary judgment as to the financial issue. I mean, whether or not they've accepted or whether or not they're current on the lease is immaterial to whether or not they violated the lease in paying something late. You know, the question then becomes, is it material? But, I mean, that's something else for me to decide.

You know, I think there's sufficient evidence of, you know, violations of the lease, if I believe everything that they've presented, to, you know, justify a decision to -- to uphold the eviction based on -- you know, if everything they've presented is correct, I mean, I think there's sufficient

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evidence in there. So I respectfully deny the motion for involuntary dismissal, and -- I appreciate the education on that issue, though. I haven't read that rule in a long time, not that part of the Rule, 41(b) as opposed to 41(a); I think most Plaintiff's lawyers know 41(a) like the back of their hand. 41(b) is not. Of course, in this case, I had to do 41(a) a lot but -- I think I did an order on 41(a).

But, anyway, so respectfully, that motion is denied, but I know that it was made. So -- any other motions?

MR. GOLDSTEIN: None from the Defendant, your Honor.

THE COURT: All right. None from the Plaintiff? All right.

You can call your first witness, Mr. Goldstein.

MR. GOLDSTEIN: We will -- we'll start with Arelis Santos.

THE INTERPRETER: Your Honor, I need to move next to her.

THE COURT: Yes, ma'am. Well, there's a chair right over here; you should be able to

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use it if you need it. Does she need to come -- does she need to come stand next to you?

MR. GOLDSTEIN: Oh, I didn't think about that.

THE COURT: Is that possible?

THE INTERPRETER: (Inaudible).

THE COURT: Okay. That's fine. That's true. I didn't think about that. That's true. Okay. All right.

THE INTERPRETER: But I'll have the mic.

THE COURT: Yeah, you'll have the mic.

THE INTERPRETER: I think it will pick both of us up.

THE COURT: Okay. Good.

THE INTERPRETER: It will be consecutive in this case, not simultaneous.

THE COURT: Okay. Thank you. All right. Ma'am, raise your right hand.

ARELIS SANTOS, SWORN (VIA INTERPRETER).

THE COURT: Will you state your full name for the record?

THE WITNESS: Arelis de (ph) Santos Gomez.

THE COURT: I want to make sure, because Mr. Goldstein had an unrelated case, I assume,

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