

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-6574

NESHEN MITCHELL, individually and as
the next friend of her minor child, HAKEEM

T. M., ... Appellants,

vs.

JUAN P. MARRUFFO d/b/a LIBERTY
EXPRESS, ADRIAN MORALES, RET
PARTNERSHIP, WILLIAM T.
MCQUEENEY, CARL E. ROBERTS,
KARL R. HENDERSON, and STEVEN
PARHAM, ...

Defendants,

OF WHOM RET PARTNERSHIP, WILLIAM T.
MCQUEENEY, CARL E. ROBERTS,
KARL R. HENDERSON, and STEVEN
PARHAM, are the

Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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Andrew D. Gowdown, Esquire
Rosen, Rosen & Hagood, LLC
134 Meeting Street, Suite 200
Charleston, South Carolina 29401
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Attorneys for Appellants

Samuel R. Clawson, Esquire
Christina R. Fagnoli, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492

Attorneys for Respondents RET Partnership,
William T. McQueeney, Carl E. Roberts, Karl
R. Henderson, and Steven Parham

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,)

Juan P. Marruffo d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

2011 FEB 10 PM 6:44
JULIE A. STOUT
CLERK OF COURT

AFFIDAVIT OF MARK BLOOMER

PERSONALLY APPEARED before me, Mark Bloomer, who, after being duly sworn
does state as follows:

1. I am the Planning and Zoning Director for the Town of Ravenel, South Carolina.

The property known as 5858 Savannah Highway is located in the Town of Ravenel.

2. I have reviewed the Town file on this property, which indicates the zoning designation for this premises was changed in 1992 from Residential 1 to Neighborhood Commercial. I am attaching, as Exhibit A, a copy of the Rezoning Directive to Charleston County Planning Department advising them of this action. Since that time in 1992, no other zoning changes have been made to this property, and it is still zoned as Neighborhood Commercial. It is not zoned as General Business as that term is defined in the Town of Ravenel Zoning Ordinance.

FURTHER AFFIANT SAYETH NOT.

Mark A. Bloomer

Mark Bloomer

SWORN to before me this
26th day of January, 2011

Sarah W. Graham

NOTARY PUBLIC FOR SOUTH CAROLINA

MY commission expires:



Jan. 12. 2011 1:03PM

No. 0954 P. 23

REZONING DIRECTIVE TO:
CHARLESTON COUNTY PLANNING DEPT

CC: JOE HEARD
JOHN LINDSEY, TAX ASSESSOR

DATE: 4/30/92

TO: Jim Mathewson

240 Ashley Avenue

Charleston, SC 29403

Please be advised that these actions have been taken on
the following zoning request:

CHANGE: R1 - NC

PUBLIC HEARING: 3/17/92

APPLICATION # 2447-R

TMS# 187-00-00-029

READING # 3 and final 4/28/92

APPROVED X DISAPPROVED _____

REASON: _____

Respectfully,

Brandy Coker
Brandy Coker, CLERK
TOWN OF RAVENEL, SC

EXHIBIT

A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Moralez,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

**AFFIDAVIT OF KARL R.
HENDERSON**

2010 NOV 16 PM 1:54
JULIE J. ARMSTRONG
CLERK OF COURT

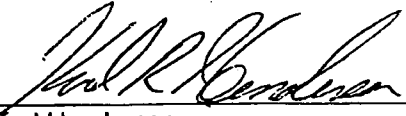
FILED

PERSONALLY appeared before me, Karl R. Henderson, who being duly sworn,
deposes and says:

1. That I am over eighteen (18) years old and otherwise qualified to make this statement.
2. That RET Partnership is a general partnership comprised of four (4) partners. These partners include myself, Thomas McQueeney, Carl Roberts, and Steve Parham.
3. That RET Partnership was formed for the purpose of owning the property

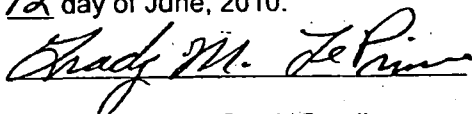
located at 5858 Savannah Highway ("the property").

4. That the property had a single family residential home located towards the front of the property.
5. That the partnership later built a larger warehouse-type building on the property for the purpose of housing the partners' personal RV's, campers, and other similar items.
6. That these are the only buildings located on the property.
7. That on or about January 30, 2009, RET Partnership entered into a rental agreement with tenant J. Jose Valdez to rent the single family home for a period of one (1) year. This lease only included the single family home on the property. Mr. Valdez did not lease the warehouse. (Exhibit A).
8. That the lease between RET Partnership and Jose Valdez was a residential lease governed by the South Carolina Residential Landlord Tenant Act.
9. That the single family home was used only for the purpose of residential rental.
10. That the warehouse was used only for the purpose of personal use of the partners of RET Partnership.
11. That the warehouse was not a "trucking terminal" and there was no "trucking terminal" or similar building located on the property.
12. That the property was never used for any trucking business whatsoever.
13. That, at the time of the accident, the property was not being used for any trucking business or any other business or commercial use.


Karl Henderson

SWORN TO BEFORE ME THIS

12th day of June, 2010.



Notary Public for South Carolina

My Commission Expires: My Commission Expires May 13, 2012

RENTAL AGREEMENTSTATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON

This Rental Agreement is entered into between RET Partnership hereinafter known as LANDLORD and J. Jose Valdez hereinafter known as TENANT, this 30 day of January, 2009, at Charleston, South Carolina. In consideration of the rent to be paid by the Tenant to the Landlord, the parties agree as follows:

1. **PROPERTY.** The premises which are the subject of this Rental Agreement consist of the land and buildings located thereon and is known generally as 5858 Savannah Hwy Charleston, South Carolina.

2. **OCCUPANTS.** Occupants of the premises shall be limited to Tenant(s) listed above.

3. **TERM.** The Landlord leases the premises to the Tenant, subject to the provisions of this Rental Agreement for a term of Twelve (12) Months starting on February 1st, 2009, and ending at 11:59 p.m. on January 31, 2010. Tenant agrees to vacate the premises on the ending date, leaving it clean and in good condition, free of Tenant's personal property, garbage and other waste, and to return the keys to the Landlord. Notice requirements are specified in paragraph 18.

4. **RENT.** The rent for the term of this lease is \$9,000.00 and is payable in monthly installments of \$800.00 to: Southeastern Management Group, Inc., P.O. Box 947, Columbia, SC 29202-0947 or at such other place that the Landlord may designate in writing.

5. **LATE CHARGE AND RETURNED CHECKS.** Rent is due in advance on the first day of the month.

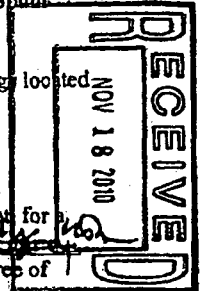
IF RENT IS NOT PAID WITHIN FIVE (5) DAYS OF THE DUE DATE TO THE ADDRESS LISTED ABOVE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTE WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Rent paid after the fifth day of the month will be subject to a late charge of \$ 95.00. Returned checks shall be subject to a charge of \$ 75.00 plus late charge if check is not made good before the sixth day of the month. Any additional returned checks from the tenant will be subject to a charge of \$ 100.00 and all future funds submitted must be certified. Notwithstanding, if any check of the Tenant for the security deposit or the first month's rent is returned because of insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

6. **SECURITY.** The sum of \$ 500.00 will be deposited by Tenant upon execution of this agreement, and prior to occupancy, to be held by Landlord until the termination of this tenancy as security for the full and faithful performance by Tenant of all the terms of this agreement. Landlord is given permission to place said security deposit with other security deposits or in a separate trust account and to deduct therefrom, the cost of any unusual cleaning or repairs to the premises and/or any accrued rent or late charges, upon vacating of tenant. The security deposit is for Landlord protection against damages to the premises and not a prepayment of the final month's rent under this Lease. If the damages sustained by the Landlord as a result of Tenant not fulfilling the entire term of this agreement equal or exceed so much of the security deposit as is left after deductions therefrom pursuant to this agreement, Landlord may elect to retain sum as liquidated damages.

Security deposit or any remaining portion will be returned within thirty (30) days after the termination of this tenancy. Deductions, if any, will be accompanied by an itemized written notice. To receive a refund within this time, Tenant shall provide Landlord, in writing, with a forwarding address where the deposit shall be sent. In the event the security deposit is not sufficient to pay all the charges due, Tenant shall pay said charges within five (5) working days after receiving notice from the Landlord.

7. **TRUST ACCOUNT INTEREST.** THE SOUTH CAROLINA REAL ESTATE LICENSING LAW, RULES, AND REGULATIONS REQUIRES ALL REAL ESTATE COMPANIES TO PLACE ALL FUNDS BELONGING TO THEIR CLIENT AND CUSTOMERS IN AN ESCROW ACCOUNT. THESE RULES AND REGULATIONS ALLOW REAL ESTATE COMPANIES TO EARN INTEREST ON THESE FUNDS WITH INTEREST ACCRUING TO THE REAL ESTATE COMPANY, PROVIDED THIS IS ACKNOWLEDGED BY THE CLIENT OR CUSTOMER. TENANT AGREES TO AND UNDERSTANDS THAT THE RIGHT TO OWNERSHIP OF THE INTEREST IS RELINQUISHED TO SOUTHEASTERN MANAGEMENT GROUP, INC. BY THIS WRITTEN AGREEMENT.



8. **POSSESSION.** If there is a failure to deliver possession of the premises at the commencement of this lease, the monthly rental provided for shall be abated pro-rata on a daily basis and shall not be due until occupancy is available. The tenant, however, may notify the Landlord upon five (5) days written notice that he elects to terminate the lease for failure to deliver the premises. In such case, the Landlord shall return all prepaid rent and security deposit.

9. **INSPECTION.** It is agreed that inspection will be made within three (3) working days after Tenant has completely vacated the premises and only between the hours of 9 a.m. and 5 p.m. Monday through Friday. No inspection will be made on Holidays or weekends, and **UTILITIES MUST BE LEFT ON AT THE TIME OF INSPECTION.** Tenant has the right to be present during the inspection, and Tenant's failure to appear at the inspection shall constitute the Tenant's agreement to accept the Landlord's inspection report as conclusive and final.

10. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:**
See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)

11. **PETS.** Tenant shall not keep domestic or other animals on or about the premises without the **PRIOR WRITTEN CONSENT** of the Landlord. If Landlord does, at his sole discretion, consent, and if Tenant makes payment of any required pet fee, Tenant may keep and maintain the specified domestic animal upon the premises in accordance with the terms hereof, and any special agreements reached between Landlord and Tenant shall not be in contradiction of these terms. Tenant shall be responsible for the animal, its behavior, and any damage, over and above the pet fee, done by said animal. The Landlord will have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage caused by animal. Any special pet agreement is an integral part of this lease.

12. **CONDITION OF PREMISES.** Tenant acknowledges that he has inspected the premises and agrees that the premises and the common areas, if any, are in safe and habitable condition. The electrical, plumbing, heating and air conditioning system if any and any appliance furnished with the premises are in good working order. **EXCEPTIONS**
None - Tenant agrees to accept unit "as is"

13. **MAINTENANCE AND REPAIR.** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition. The Landlord further agrees to maintain in reasonably good and safe working order and condition, all electrical, gas, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities and appliances supplied by him. The Landlord agrees to comply with all obligations set forth in the South Carolina Residential Landlord and Tenant Act in Article II, Section 21(a).

The Tenant agrees to keep the premises and all parts of the premises that he uses safe and clean. In the case of a single family house or duplex, Tenant shall keep the yard mowed, watered, and free of rubbish and to keep the gutters clean and the shrubs neatly trimmed. Tenant shall not knowingly destroy, deface, impair, or remove any part of the premises or knowingly allow any person to do so.

It is specifically understood that the Tenant will, at the Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial malfunction within five (5) days of occupancy; replace all broken windows and burned-out light bulbs; repair any damage to screens, interior walls and doors. Tenant agrees to report to the Landlord any malfunction of, or damage to, electrical, plumbing, heating or air conditioning systems. Tenant agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises, including repairs to electrical, plumbing, heating and cooling systems as well as floor coverings, carpeting and appliances, and to pay for repairs resulting from theft, malicious mischief or vandalism by Tenant. Intercoms and security systems, washers and dryers, icemakers, microwaves, and propane equipment (i.e. fireplace logs) are for convenience and will not be maintained.

Tenant agrees to be responsible for, and to make at Tenant's expense all routine maintenance including, but not limited to, stoppage of sewer because of misuse, broken water pipes or fixtures due to neglect or carelessness of Tenant. Tenant is directly responsible for any damage caused by tenant's appliances and/or furniture. Tenant is responsible for changing air filters in heating and air conditioning systems monthly, reporting any water leaks, lighting pilot lights, and checking for tripped breakers. Tenant will be held liable for damage to heating and air conditioning systems by filters not being kept in satisfactory condition.

Landlord is not responsible for changing batteries in smoke detectors, which must be tested once per month to verify working condition. Tenant must report, in writing, any malfunctioning detector.

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14. **PEST CONTROL.** Tenant will report any pest problem within seven (7) days of possession. Tenant's failure to identify any pest problem within said seven (7) days shall constitute Tenant's agreement that premises has no infestation of any kind. Any future infestations of any kind shall be the responsibility of Tenant.

15. **DAMAGE OR CASUALTY.** If the premises are damaged or destroyed by fire or other casualty to the extent that normal use and occupancy is substantially impaired, Tenant may immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter of his intention to terminate the rental agreement, in which case, the rental agreement terminates as of the date of vacating. If continued occupancy is lawful, Tenant may vacate any part of the dwelling unit rendered not usable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair market rental value of the unit. If the rental agreement is terminated, the Landlord shall return any portion of the security deposit not applied under Section 6 of this agreement and all prepaid rent. Accounting for rent in the event of termination or appointment will be made as of the date of the fire or casualty.

16. **INSURANCE.** Tenant acknowledges that the Landlord does not carry insurance to cover the Tenant's personal property or his personal liability. Tenant is advised to obtain Renter's insurance to protect his interests. Tenant agrees to comply in all respects with the requirements of the Landlord's present or future insurance carrier and not to permit anything to be done at or within the premises which shall cause cancellation of, or increase in the current rate of insurance thereon. Tenant agrees to obtain liability insurance to cover possible water damage should a waterbed be authorized by Landlord and Tenant hereby acknowledges that use of a water bed at the premises requires Landlord's advanced written consent, which Landlord may withhold or condition in its sole discretion.

17. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from conduct and actions of the Tenant on the premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by the Tenant resulting from the condition of, the premises, or any equipment or such as may result from any accident in or about the premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the premises is a part.

18. **UTILITIES.** Tenant agrees that he will pay for all utilities including water and sewer used upon and in connection with the premises by the Tenant, and in the event of Tenant's default therein, Landlord may pay the same and add the amount thereof to the installment of rent thereafter falling due hereunder, together with any penalties or interest which may have been paid by the Landlord. Tenant shall be liable for any inspections required by local authorities/utility companies due to the Tenant's failure to obtain service at time of occupancy, or to maintain said service during term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

19. **SUB-LETTING.** This Rental Agreement shall not be assigned nor shall the premises be sub-let without the advanced written consent of the Landlord, which Landlord may withhold or condition in its sole discretion. Tenant must have written permission from Landlord for guests to occupy the premises for more than 7 days.

If the Landlord procures a new tenant to sub-let the premises, Tenant agrees to pay Landlord a leasing commission equal to the value of one full month's rent, according to the terms of the original lease obligation.

If the Tenant procures a prospective Tenant to sub-let the premises, Tenant agrees to pay Landlord a \$200.00 administrative fee to make changes to or terminate this rental agreement.

20. **JOINT RESPONSIBILITY.** Each party who signs this Rental Agreement is responsible for rent and the obligations herein.

21. **NOTICE.** Any notice required or authorized to be given hereunder or pursuant to applicable law shall be sent by certified or registered mail or hand delivered to the following addresses: Tenant at the address of the premises. Landlord at: P.O. Box 21878, Charleston, SC 29413.

22. **DEFAULT.** If Tenant fails to perform any of the terms of this rental agreement, other than the payment of rent, or non-compliance with the provisions of this agreement affecting health, safety, or the physical condition of the property, the Landlord may deliver written notice to the Tenant specifying the breach and Tenant shall remedy the breach within fourteen (14) days. If Tenant fails to do so, Landlord may terminate this rental agreement. As to the default in the payment of rent and/or non-compliance with the provisions of the agreement affecting health, safety, or the physical condition of the property, the terms of this agreement and the South Carolina Residential Landlord-Tenant Act shall apply.

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23. ENTRY BY LANDLORD. ENTRY WILL BE MADE BY THE LANDLORD IN ACCORDANCE WITH THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT, SECTION 25:

- (a) A tenant shall not unreasonably withhold consent to the Landlord to enter into the premises in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (b) A Landlord or his agent may enter the premises without consent of the tenant:
 - (1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;
 - (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect or pest treatment, and the like, provided that prior to the entering, the Landlord announces his intent to enter to perform services; or
 - (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the Landlord announces his intent to enter to perform services.
- (c) A Landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item b above, the Landlord shall give the tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.
- (d) A Landlord has no other right of access except:
 - (1) pursuant to a court order;
 - (2) as permitted by Sections 34 and 35 of Article IV;
 - (3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of an ejectment proceedings; or
 - (4) unless the tenant has abandoned or surrendered the premises

24. SHOWING AUTHORIZATION. The Tenant hereby authorizes Southeastern Management Group, Inc. and any sub-agencies to use keys during the final 90 days of the lease for the purpose of showing the property to prospective occupants. Tenant will always be called in advance of any showing. Should special circumstances exist where showing would be a significant problem, the Tenant should advise Southeastern Management Group, Inc. The safeguarding and/or removal of a Tenant's valuables located within the premises is advised and Tenant releases Southeastern Management Group, Inc. and The Charleston Trident Association of Realtors from any responsibility for loss or damage. Tenant further acknowledges that Southeastern Management Group, Inc., any sub-agent, or The Charleston Trident Association of Realtors is an insurer against the loss of Tenant's personal property and Tenant is advised to verify existence of, or obtain personal property insurance through Tenant's insurance company.

25. RULES AND REGULATIONS. The common area facilities if any, when open and operating are subject to applicable rules and regulations posted by the Landlord. Tenants agree to keep all common areas safe and clean. **TENANT AGREES THAT HE/SHE WILL BE RESPONSIBLE FOR ANY DAMAGES TO COMMON AREAS THAT RESULT FROM CARELESSNESS, INTENTIONAL ACTS AND/OR MALICIOUS NEGLIGENCE, AND THAT THE COST OF REPAIRS OR UNUSUAL CLEANINGS WILL BE ASSESSED TO THOSE TENANTS THAT CAUSED THE DAMAGE. IN THE EVENT THAT FAULT CANNOT BE DETERMINED, ALL TENANTS OF THAT PARTICULAR BUILDING WILL PAY A PRO-RATA SHARE OF THE EXPENSES AS DETERMINED BY THE LANDLORD.**

Tenant shall occupy the premises only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or permit any illegal activities thereon. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt for the uses of the premises to include any restrictive covenants in effect within the community and/or legal jurisdiction.

26. ALTERATIONS. The tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without the prior written consent of the Landlord. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter the walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any alteration or improvements made by the Tenant shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon termination of this lease, the Tenant shall restore the premises to its original condition or repair, safety and appearance, ordinary wear and tear excepted. If Tenant fails to do so, Tenant will promptly reimburse the Landlord for any expenses required to so restore the premises.

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27. **APPLICATION.** Tenant acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any material facts stated in the application are untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant any damages resulting therefrom including reasonable attorney's fees. Tenant and only those persons named in the application shall occupy or use the premises as residence.

28. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

29. **LIMITATION OF LIABILITY.** If property described in this rental agreement is delivered to a bonafide purchaser in a good faith sale, Landlord is relieved of liability under this agreement for acts and events occurring after written notice to the Tenant of the conveyance.

30. **LEASE TERMINATION.** Tenant agrees that Landlord reserves the right to terminate this lease agreement at any time during this lease agreement by giving Tenant a ninety (90) day notice.

31. **OTHER TERMS, CONDITIONS, ADDENDA:** No Dogs. No Parties. No Kegs.

The following addendums are attached and shall be a binding part of this agreement: Release of Security Deposit, Move-Out Guidelines, Lost Keys, and Lead-Based Paint.

Initials: _____ Initials: _____

This Rental Agreement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control. EACH PARTY ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE TERMS ARE AGREED TO. TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AND THEIR AGENTS AT THE EMAIL ADDRESS AND PHONE NUMBER LISTED BELOW.

TENANT: [Signature]
PHONE: 949 3557347

WITNESS: [Signature]
EMAIL: freeman@comcast.net

TENANT: TEXT: 949
09388740
PHONE: _____

WITNESS: _____
EMAIL: _____

LANDLORD: _____

By: _____

WITNESS: _____

Initial Here: I J V

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Morales, RET Partnership,
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and Adrian Morales,

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vs.

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Third-Party Defendant.

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CASE NO.: 09-CP-10-6574

AFFIDAVIT OF THOMAS
MCQUEENEY

PERSONALLY appeared before me, Thomas McQueeney, who being duly sworn,
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1. That I am over eighteen (18) years old and otherwise qualified to make this statement.
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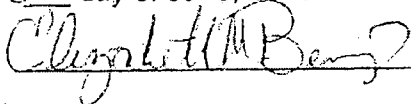
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11. That the warehouse was not a "trucking terminal" and there was no "trucking terminal" or similar building located on the property.
12. That the property was never used for any trucking business whatsoever.
13. That, at the time of the accident, the property was not being used for any trucking business or any other business or commercial use.


Thomas McQueeney

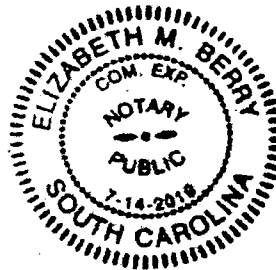
SWORN TO BEFORE ME THIS

30th day of June, 2010.



Notary Public for South Carolina

My Commission Expires: 7-14-19



RENTAL AGREEMENTSTATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON

This Rental Agreement is entered into between RET Partnership hereinafter known as LANDLORD and J. Jose Valdez hereinafter known as TENANT, this 30 day of January, 2009, at Charleston, South Carolina. In consideration of the rent to be paid by the Tenant to the Landlord, the parties agree as follows:

1. **PROPERTY.** The premises which are the subject of this Rental Agreement consist of the land and building located thereon and is known generally as 5858 Savannah Hwy Charleston, South Carolina.

2. **OCCUPANTS.** Occupants of the premises shall be limited to Tenant(s) listed above.

3. **TERM.** The Landlord leases the premises to the Tenant, subject to the provisions of this Rental Agreement for a term of Twelve (12) Months starting on February 1st, 2009, and ending at 11:59 p.m. on January 31, 2010. Tenant agrees to vacate the premises on the ending date, leaving it clean and in good condition, free of Tenant's personal property, garbage and other waste, and to return the keys to the Landlord. Notice requirements are specified in paragraph 18.

4. **RENT.** The rent for the term of this lease is \$9600.00 and is payable in monthly installments of \$800.00 to: Southeastern Management Group, Inc., P.O. Box 947, Columbia, SC 29202-0947 or at such other place that the Landlord may designate in writing.

5. **LATE CHARGE AND RETURNED CHECKS.** Rent is due in advance on the first day of the month.

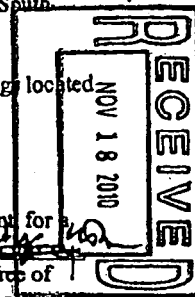
IF RENT IS NOT PAID WITHIN FIVE (5) DAYS OF THE DUE DATE TO THE ADDRESS LISTED ABOVE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTE WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Rent paid after the fifth day of the month will be subject to a late charge of \$ 95.00. Returned checks shall be subject to a charge of \$ 75.00 plus late charge if check is not made good before the sixth day of the month. Any additional returned checks from the tenant will be subject to a charge of \$ 100.00 and all future funds submitted must be certified. Notwithstanding, if any check of the Tenant for the security deposit or the first month's rent is returned because of insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

6. **SECURITY.** The sum of \$500.00 will be deposited by Tenant upon execution of this agreement, and prior to occupancy, to be held by Landlord until the termination of this tenancy as security for the full and faithful performance by Tenant of all the terms of this agreement. Landlord is given permission to place said security deposit with other security deposits or in a separate trust account and to deduct therefrom, the cost of any unusual cleaning or repairs to the premises and/or any accrued rent or late charges, upon vacating of tenant. The security deposit is for Landlord protection against damages to the premises and not a prepayment of the final month's rent under this Lease. If the damages sustained by the Landlord as a result of Tenant not fulfilling the entire term of this agreement equal or exceed so much of the security deposit as is left after deductions therefrom pursuant to this agreement, Landlord may elect to retain sum as liquidated damages.

Security deposit or any remaining portion will be returned within thirty (30) days after the termination of this tenancy. Deductions, if any, will be accompanied by an itemized written notice. To receive a refund within this time, Tenant shall provide Landlord, in writing, with a forwarding address where the deposit shall be sent. In the event the security deposit is not sufficient to pay all the charges due, Tenant shall pay said charges within five (5) working days after receiving notice from the Landlord.

7. **TRUST ACCOUNT INTEREST.** THE SOUTH CAROLINA REAL ESTATE LICENSING LAW, RULES, AND REGULATIONS REQUIRES ALL REAL ESTATE COMPANIES TO PLACE ALL FUNDS BELONGING TO THEIR CLIENT AND CUSTOMERS IN AN ESCROW ACCOUNT. THESE RULES AND REGULATIONS ALLOW REAL ESTATE COMPANIES TO EARN INTEREST ON THESE FUNDS WITH INTEREST ACCRUING TO THE REAL ESTATE COMPANY, PROVIDED THIS IS ACKNOWLEDGED BY THE CLIENT OR CUSTOMER. TENANT AGREES TO AND UNDERSTANDS THAT THE RIGHT TO OWNERSHIP OF THE INTEREST IS RELINQUISHED TO SOUTHEASTERN MANAGEMENT GROUP, INC. BY THIS WRITTEN AGREEMENT.



8. **POSSESSION.** If there is a failure to deliver possession of the premises at the commencement of this lease, the monthly rental provided for shall be abated pro-rata on a daily basis and shall not be due until occupancy is available. The tenant, however, may notify the Landlord upon five (5) days written notice that he elects to terminate the lease for failure to deliver the premises. In such case, the Landlord shall return all prepaid rent and security deposit.

9. **INSPECTION.** It is agreed that inspection will be made within three (3) working days after Tenant has completely vacated the premises and only between the hours of 9 a.m. and 5 p.m. Monday through Friday. No inspection will be made on Holidays or weekends, and UTILITIES MUST BE LEFT ON AT THE TIME OF INSPECTION. Tenant has the right to be present during the inspection, and Tenant's failure to appear at the inspection shall constitute the Tenant's agreement to accept the Landlord's inspection report as conclusive and final.

10. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:**
See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)

11. **PETS.** Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the Landlord. If Landlord does, at his sole discretion, consent, and if Tenant makes payment of any required pet fee, Tenant may keep and maintain the specified domestic animal upon the premises in accordance with the terms hereof, and any special agreements reached between Landlord and Tenant shall not be in contradiction of these terms. Tenant shall be responsible for the animal, its behavior, and any damage, over and above the pet fee, done by said animal. The Landlord will have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage caused by animal. Any special pet agreement is an integral part of this lease.

12. **CONDITION OF PREMISES.** Tenant acknowledges that he has inspected the premises and agrees that the premises and the common areas, if any, are in safe and habitable condition. The electrical, plumbing, heating and air conditioning system if any and any appliance furnished with the premises are in good working order. **EXCEPTIONS**
None - Tenant agrees to accept unit "as is"

13. **MAINTENANCE AND REPAIR.** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition. The Landlord further agrees to maintain in reasonably good and safe working order and condition, all electrical, gas, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities and appliances supplied by him. The Landlord agrees to comply with all obligations set forth in the South Carolina Residential Landlord and Tenant Act in Article II, Section 21(a).

The Tenant agrees to keep the premises and all parts of the premises that he uses safe and clean. In the case of a single family house or duplex, Tenant shall keep the yard mowed, watered, and free of rubbish and to keep the gutters clean and the shrubs neatly trimmed. Tenant shall not knowingly destroy, deface, impair, or remove any part of the premises or knowingly allow any person to do so.

It is specifically understood that the Tenant will, at the Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial malfunction within five (5) days of occupancy; replace all broken windows and burned-out light bulbs; repair any damage to screens, interior walls and doors. Tenant agrees to report to the Landlord any malfunction of, or damage to, electrical, plumbing, heating or air conditioning systems. Tenant agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises, including repairs to electrical, plumbing, heating and cooling systems as well as floor coverings, carpeting and appliances, and to pay for repairs resulting from theft, malicious mischief or vandalism by Tenant. Intercoms and security systems, washers and dryers, icemakers, microwaves, and propane equipment (i.e. fireplace logs) are for convenience and will not be maintained.

Tenant agrees to be responsible for, and to make at Tenant's expense all routine maintenance including, but not limited to, stoppage of sewer because of misuse, broken water pipes or fixtures due to neglect or carelessness of Tenant. Tenant is directly responsible for any damage caused by tenant's appliances and/or furniture. Tenant is responsible for changing air filters in heating and air conditioning systems monthly, reporting any water leaks, lighting pilot lights, and checking for tripped breakers. Tenant will be held liable for damage to heating and air conditioning systems by filters not being kept in satisfactory condition.

Landlord is not responsible for changing batteries in smoke detectors, which must be tested once per month to verify working condition. Tenant must report, in writing, any malfunctioning detector.

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14. **PEST CONTROL.** Tenant will report any pest problem within seven (7) days of possession. Tenant's failure to identify any pest problem within said seven (7) days shall constitute Tenant's agreement that premises has no infestation of any kind. Any future infestations of any kind shall be the responsibility of Tenant.

15. **DAMAGE OR CASUALTY.** If the premises are damaged or destroyed by fire or other casualty to the extent that normal use and occupancy is substantially impaired, Tenant may immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter of his intention to terminate the rental agreement, in which case, the rental agreement terminates as of the date of vacating. If continued occupancy is lawful, Tenant may vacate any part of the dwelling unit rendered not usable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair market rental value of the unit. If the rental agreement is terminated, the Landlord shall return any portion of the security deposit not applied under Section 6 of this agreement and all prepaid rent. Accounting for rent in the event of termination or appointment will be made as of the date of the fire or casualty.

16. **INSURANCE.** Tenant acknowledges that the Landlord does not carry insurance to cover the Tenant's personal property or his personal liability. Tenant is advised to obtain Renter's insurance to protect his interests. Tenant agrees to comply in all respects with the requirements of the Landlord's present or future insurance carrier and not to permit anything to be done at or within the premises which shall cause cancellation of, or increase in the current rate of insurance thereon. Tenant agrees to obtain liability insurance to cover possible water damage should a waterbed be authorized by Landlord and Tenant hereby acknowledges that use of a water bed at the premises requires Landlord's advanced written consent, which Landlord may withhold or condition in its sole discretion.

17. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from conduct and actions of the Tenant on the premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by the Tenant resulting from the condition of, the premises, or any equipment or such as may result from any accident in or about the premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the premises is a part.

18. **UTILITIES.** Tenant agrees that he will pay for all utilities including water and sewer used upon and in connection with the premises by the Tenant, and in the event of Tenant's default therein, Landlord may pay the same and add the amount thereof to the installment of rent thereafter falling due hereunder, together with any penalties or interest which may have been paid by the Landlord. Tenant shall be liable for any inspections required by local authorities/utility companies due to the Tenant's failure to obtain service at time of occupancy, or to maintain said service during term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

19. **SUB-LETTING.** This Rental Agreement shall not be assigned nor shall the premises be sub-let without the advanced written consent of the Landlord, which Landlord may withhold or condition in its sole discretion. Tenant must have written permission from Landlord for guests to occupy the premises for more than 7 days.

If the Landlord procures a new tenant to sub-let the premises, Tenant agrees to pay Landlord a leasing commission equal to the value of one full month's rent, according to the terms of the original lease obligation.

If the Tenant procures a prospective Tenant to sub-let the premises, Tenant agrees to pay Landlord a \$200.00 administrative fee to make changes to or terminate this rental agreement.

20. **JOINT RESPONSIBILITY.** Each party who signs this Rental Agreement is responsible for rent and the obligations herein.

21. **NOTICE.** Any notice required or authorized to be given hereunder or pursuant to applicable law shall be sent by certified or registered mail or hand delivered to the following addresses: Tenant at the address of the premises, Landlord at: P.O. Box 21878, Charleston, SC 29413.

22. **DEFAULT.** If Tenant fails to perform any of the terms of this rental agreement, other than the payment of rent, or non-compliance with the provisions of this agreement affecting health, safety, or the physical condition of the property, the Landlord may deliver written notice to the Tenant specifying the breach and Tenant shall remedy the breach within fourteen (14) days. If Tenant fails to do so, Landlord may terminate this rental agreement. As to the default in the payment of rent and/or non-compliance with the provisions of the agreement affecting health, safety, or the physical condition of the property, the terms of this agreement and the South Carolina Residential Landlord Tenant Act shall apply.

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23. ENTRY BY LANDLORD. ENTRY WILL BE MADE BY THE LANDLORD IN ACCORDANCE WITH THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT, SECTION 25:

- (a) A tenant shall not unreasonably withhold consent to the Landlord to enter into the premises in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (b) A Landlord or his agent may enter the premises without consent of the tenant:
 - (1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;
 - (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect or pest treatment, and the like, provided that prior to the entering, the Landlord announces his intent to enter to perform services; or
 - (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the Landlord announces his intent to enter to perform services.
- (c) A Landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item b above, the Landlord shall give the tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.
- (d) A Landlord has no other right of access except:
 - (1) pursuant to a court order;
 - (2) as permitted by Sections 34 and 35 of Article IV;
 - (3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of in ejectment proceedings; or
 - (4) unless the tenant has abandoned or surrendered the premises

24. SHOWING AUTHORIZATION. The Tenant hereby authorizes Southeastern Management Group, Inc. and any sub-agencies to use keys during the final 90 days of the lease for the purpose of showing the property to prospective occupants. Tenant will always be called in advance of any showing. Should special circumstances exist where showing would be a significant problem, the Tenant should advise Southeastern Management Group, Inc. The safeguarding and/or removal of a Tenant's valuables located within the premises is advised and Tenant releases Southeastern Management Group, Inc. and The Charleston Trident Association of Realtors from any responsibility for loss or damage. Tenant further acknowledges that Southeastern Management Group, Inc., any sub-agent, or The Charleston Trident Association of Realtors is an insurer against the loss of Tenant's personal property and Tenant is advised to verify existence of, or obtain personal property insurance through Tenant's insurance company.

25. RULES AND REGULATIONS. The common area facilities if any, when open and operating are subject to applicable rules and regulations posted by the Landlord. Tenants agree to keep all common areas safe and clean. **TENANT AGREES THAT HE/SHE WILL BE RESPONSIBLE FOR ANY DAMAGES TO COMMON AREAS THAT RESULT FROM CARELESSNESS, INTENTIONAL ACTS AND/OR MALICIOUS NEGLIGENCE, AND THAT THE COST OF REPAIRS OR UNUSUAL CLEANINGS WILL BE ASSESSED TO THOSE TENANTS THAT CAUSED THE DAMAGE. IN THE EVENT THAT FAULT CANNOT BE DETERMINED, ALL TENANTS OF THAT PARTICULAR BUILDING WILL PAY A PRO-RATA SHARE OF THE EXPENSES AS DETERMINED BY THE LANDLORD.**

Tenant shall occupy the premises only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or permit any illegal activities thereon. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt for the uses of the premises to include any restrictive covenants in effect within the community and/or legal jurisdiction.

26. ALTERATIONS. The tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without the prior written consent of the Landlord. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter the walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any alteration or improvements made by the Tenant shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon termination of this lease, the Tenant shall restore the premises to its original condition or repair, safety and appearance, ordinary wear and tear excepted. If Tenant fails to do so, Tenant will promptly reimburse the Landlord for any expenses required to so restore the premises.

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27. **APPLICATION.** Tenant acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any material facts stated in the application are untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant any damages resulting therefrom including reasonable attorney's fees. Tenant and only those persons named in the application shall occupy or use the premises as residence.

28. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

29. **LIMITATION OF LIABILITY.** If property described in this rental agreement is delivered to a bonafide purchaser in a good faith sale, Landlord is relieved of liability under this agreement for acts and events occurring after written notice to the Tenant of the conveyance.

30. **LEASE TERMINATION.** Tenant agrees that Landlord reserves the right to terminate this lease agreement at any time during this lease agreement by giving Tenant a ninety (90) day notice.

31. **OTHER TERMS, CONDITIONS, ADDENDA:** No Dogs. No Parties. No Kegs.

The following addendums are attached and shall be a binding part of this agreement: Release of Security Deposit, Move-Out Guidelines, Lost Keys, and Lead-Based Paint.

Initials: _____ Initials: _____

This Rental Agreement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control. EACH PARTY ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE TERMS ARE AGREED TO. TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AND THEIR AGENTS AT THE EMAIL ADDRESS AND PHONE NUMBER LISTED BELOW.

TENANT: [Signature]
PHONE: 949 3557347
TEXAS 02 #

WITNESS: [Signature]
EMAIL: hempman@comcast.net

TENANT: 09388740
PHONE: _____

WITNESS: _____
EMAIL: _____

LANDLORD: _____

By: _____

WITNESS: _____

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Morales, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Morales,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

AFFIDAVIT OF STEVE PARHAM

2010 NOV 16 PM 1:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

PERSONALLY appeared before me, Steve Parham, who being duly sworn,
deposes and says:

1. That I am over eighteen (18) years old and otherwise qualified to make this statement.
2. That RET Partnership is a general partnership comprised of four (4) partners. These partners include myself, Karl Henderson, Thomas McQueeney, and Carl Roberts
3. That RET Partnership was formed for the purpose of owning the property

located at 5858 Savannah Highway ("the property").

4. That the property had a single family residential home located towards the front of the property.
5. That the partnership later built a larger warehouse-type building on the property for the purpose of housing the partners' personal RV's, campers, and other similar items.
6. That these are the only buildings located on the property.
7. That on or about January 30, 2009, RET Partnership entered into a rental agreement with tenant J. Jose Valdez to rent the single family home for a period of one (1) year. This lease only included the single family home on the property. Mr. Valdez did not lease the warehouse. (Exhibit A).
8. That the lease between RET Partnership and Jose Valdez was a residential lease governed by the South Carolina Residential Landlord Tenant Act.
9. That the single family home was used only for the purpose of residential rental.
10. That a few weeks later, I noticed a tractor-trailer parked on the property. I stopped and attempted to tell Jose Valdez that he could not park a tractor trailer on this property. However, Mr. Valdez was not at home. I placed a note on the windshield of the tractor-trailer stating that the truck could not be parked on the property. Several days later, I noticed that the tractor-trailer was still parked on the property. I stopped again and this time Mr. Valdez was at home. I told Mr. Valdez that he could not park the tractor-trailer on the property. I further told him that if he needed somewhere to park the

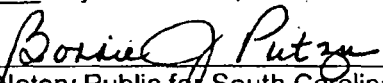
truck, he was free to park it on another lot located approximately one-half mile from the property.

11. That the warehouse on the property was used only for the purpose of personal use of the partners of RET Partnership.
12. That the warehouse was not a "trucking terminal" and there was no "trucking terminal" or similar building located on the property.
13. That the property was never used for any trucking business whatsoever.
14. That, at the time of the accident, the property was not being used for any trucking business or any other business or commercial use.



Steve Parham

SWORN TO BEFORE ME THIS
11 day of October, 2010.



Notary Public for South Carolina
My Commission Expires: 7-13-2014

RENTAL AGREEMENTSTATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON

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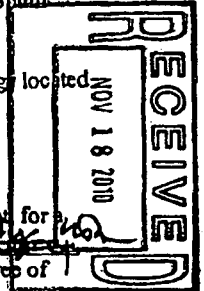
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Rent paid after the fifth day of the month will be subject to a late charge of \$ 95.00. Returned checks shall be subject to a charge of \$ 75.00 plus late charge if check is not made good before the sixth day of the month. Any additional returned checks from the tenant will be subject to a charge of \$ 100.00 and all future funds submitted must be certified. Notwithstanding, if any check of the Tenant for the security deposit or the first month's rent is returned because of insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

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12. **CONDITION OF PREMISES.** Tenant acknowledges that he has inspected the premises and agrees that the premises and the common areas, if any, are in safe and habitable condition. The electrical, plumbing, heating and air conditioning system if any and any appliance furnished with the premises are in good working order. **EXCEPTIONS**
None - Tenant agrees to accept unit "as is"

13. **MAINTENANCE AND REPAIR.** Landlord agrees to make repairs and do what is necessary to keep the premises in a fit and habitable condition. The Landlord further agrees to maintain in reasonably good and safe working order and condition, all electrical, gas, plumbing, sanitary, heating, ventilation, air conditioning, and other facilities and appliances supplied by him. The Landlord agrees to comply with all obligations set forth in the South Carolina Residential Landlord and Tenant Act in Article II, Section 21(a).

The Tenant agrees to keep the premises and all parts of the premises that he uses safe and clean. In the case of a single family house or duplex, Tenant shall keep the yard mowed, watered, and free of rubbish and to keep the gutters clean and the shrubs neatly trimmed. Tenant shall not knowingly destroy, deface, impair, or remove any part of the premises or knowingly allow any person to do so.

It is specifically understood that the Tenant will, at the Tenant's expense, keep sinks, lavatories, and commodes open, reporting any initial malfunction within five (5) days of occupancy; replace all broken windows and burned-out light bulbs; repair any damage to screens, interior walls and doors. Tenant agrees to report to the Landlord any malfunction of, or damage to, electrical, plumbing, heating or air conditioning systems. Tenant agrees to pay for the cost of all repairs made necessary by negligence or careless use of the premises, including repairs to electrical, plumbing, heating and cooling systems as well as floor coverings, carpeting and appliances, and to pay for repairs resulting from theft, malicious mischief or vandalism by Tenant. Intercoms and security systems, washers and dryers, icemakers, microwaves, and propane equipment (i.e. fireplace logs) are for convenience and will not be maintained.

Tenant agrees to be responsible for, and to make at Tenant's expense all routine maintenance including, but not limited to, stoppage of sewer because of misuse, broken water pipes or fixtures due to neglect or carelessness of Tenant. Tenant is directly responsible for any damage caused by tenant's appliances and/or furniture. Tenant is responsible for changing air filters in heating and air conditioning systems monthly, reporting any water leaks, lighting pilot lights, and checking for tripped breakers. Tenant will be held liable for damage to heating and air conditioning systems by filters not being kept in satisfactory condition.

Landlord is not responsible for changing batteries in smoke detectors, which must be tested once per month to verify working condition. Tenant must report, in writing, any malfunctioning detector.

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15. **DAMAGE OR CASUALTY.** If the premises are damaged or destroyed by fire or other casualty to the extent that normal use and occupancy is substantially impaired, Tenant may immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter of his intention to terminate the rental agreement, in which case, the rental agreement terminates as of the date of vacating. If continued occupancy is lawful, Tenant may vacate any part of the dwelling unit rendered not usable by the fire or casualty, in which case the Tenant's liability for rent is reduced in proportion to the diminution in the fair market rental value of the unit. If the rental agreement is terminated, the Landlord shall return any portion of the security deposit not applied under Section 6 of this agreement and all prepaid rent. Accounting for rent in the event of termination or appointment will be made as of the date of the fire or casualty.

16. **INSURANCE.** Tenant acknowledges that the Landlord does not carry insurance to cover the Tenant's personal property or his personal liability. Tenant is advised to obtain Renter's insurance to protect his interests. Tenant agrees to comply in all respects with the requirements of the Landlord's present or future insurance carrier and not to permit anything to be done at or within the premises which shall cause cancellation of, or increase in the current rate of insurance thereon. Tenant agrees to obtain liability insurance to cover possible water damage should a waterbed be authorized by Landlord and Tenant hereby acknowledges that use of a water bed at the premises requires Landlord's advanced written consent, which Landlord may withhold or condition in its sole discretion.

17. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs, and expenses, including reasonable attorney's fees, arising from conduct and actions of the Tenant on the premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by the Tenant resulting from the condition of, the premises, or any equipment or such as may result from any accident in or about the premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the premises is a part.

18. **UTILITIES.** Tenant agrees that he will pay for all utilities including water and sewer used upon and in connection with the premises by the Tenant, and in the event of Tenant's default therein, Landlord may pay the same and add the amount thereof to the installment of rent thereafter falling due hereunder, together with any penalties or interest which may have been paid by the Landlord. Tenant shall be liable for any inspections required by local authorities/utility companies due to the Tenant's failure to obtain service at time of occupancy, or to maintain said service during term of this agreement. Tenant shall pay all costs of hook-ups and connection fees and security deposits in connection with providing utilities to premises during the term of the Lease.

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If the Landlord procures a new tenant to sub-let the premises, Tenant agrees to pay Landlord a leasing commission equal to the value of one full month's rent, according to the terms of the original lease obligation.

If the Tenant procures a prospective Tenant to sub-let the premises, Tenant agrees to pay Landlord a \$200.00 administrative fee to make changes to or terminate this rental agreement.

20. **JOINT RESPONSIBILITY.** Each party who signs this Rental Agreement is responsible for rent and the obligations herein.

21. **NOTICE.** Any notice required or authorized to be given hereunder or pursuant to applicable law shall be sent by certified or registered mail or hand delivered to the following addresses: Tenant at the address of the premises. Landlord at: P.O. Box 21878, Charleston, SC 29413.

22. **DEFAULT.** If Tenant fails to perform any of the terms of this rental agreement, other than the payment of rent, or non-compliance with the provisions of this agreement affecting health, safety, or the physical condition of the property, the Landlord may deliver written notice to the Tenant specifying the breach and Tenant shall remedy the breach within fourteen (14) days. If Tenant fails to do so, Landlord may terminate this rental agreement. As to the default in the payment of rent and/or non-compliance with the provisions of the agreement affecting health, safety, or the physical condition of the property, the terms of this agreement and the South Carolina Residential Landlord Tenant Act shall apply.

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23. ENTRY BY LANDLORD. ENTRY WILL BE MADE BY THE LANDLORD IN ACCORDANCE WITH THE SOUTH CAROLINA RESIDENTIAL LANDLORD AND TENANT ACT, SECTION 25:

- (a) A tenant shall not unreasonably withhold consent to the Landlord to enter into the premises in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the premises to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (b) A Landlord or his agent may enter the premises without consent of the tenant:
 - (1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;
 - (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect or pest treatment, and the like, provided that prior to the entering, the Landlord announces his intent to enter to perform services; or
 - (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the Landlord announces his intent to enter to perform services.
- (c) A Landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item b above, the Landlord shall give the tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.
- (d) A Landlord has no other right of access except:
 - (1) pursuant to a court order;
 - (2) as permitted by Sections 34 and 35 of Article IV;
 - (3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of in ejectment proceedings; or
 - (4) unless the tenant has abandoned or surrendered the premises

24. SHOWING AUTHORIZATION. The Tenant hereby authorizes Southeastern Management Group, Inc. and any sub-agencies to use keys during the final 90 days of the lease for the purpose of showing the property to prospective occupants. Tenant will always be called in advance of any showing. Should special circumstances exist where showing would be a significant problem, the Tenant should advise Southeastern Management Group, Inc. The safeguarding and/or removal of a Tenant's valuables located within the premises is advised and Tenant releases Southeastern Management Group, Inc. and The Charleston Trident Association of Realtors from any responsibility for loss or damage. Tenant further acknowledges that Southeastern Management Group, Inc., any sub-agent, or The Charleston Trident Association of Realtors is an insurer against the loss of Tenant's personal property and Tenant is advised to verify existence of, or obtain personal property insurance through Tenant's insurance company.

25. RULES AND REGULATIONS. The common area facilities if any, when open and operating are subject to applicable rules and regulations posted by the Landlord. Tenants agree to keep all common areas safe and clean. **TENANT AGREES THAT HE/SHE WILL BE RESPONSIBLE FOR ANY DAMAGES TO COMMON AREAS THAT RESULT FROM CARELESSNESS, INTENTIONAL ACTS AND/OR MALICIOUS NEGLIGENCE, AND THAT THE COST OF REPAIRS OR UNUSUAL CLEANINGS WILL BE ASSESSED TO THOSE TENANTS THAT CAUSED THE DAMAGE. IN THE EVENT THAT FAULT CANNOT BE DETERMINED, ALL TENANTS OF THAT PARTICULAR BUILDING WILL PAY A PRO-RATA SHARE OF THE EXPENSES AS DETERMINED BY THE LANDLORD.**

Tenant shall occupy the premises only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or permit any illegal activities thereon. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt for the uses of the premises to include any restrictive covenants in effect within the community and/or legal jurisdiction.

26. ALTERATIONS. The tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without the prior written consent of the Landlord. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter the walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any alteration or improvements made by the Tenant shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon termination of this lease, the Tenant shall restore the premises to its original condition or repair, safety and appearance, ordinary wear and tear excepted. If Tenant fails to do so, Tenant will promptly reimburse the Landlord for any expenses required to so restore the premises.

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27. **APPLICATION.** Tenant acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any material facts stated in the application are untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant any damages resulting therefrom including reasonable attorney's fees. Tenant and only those persons named in the application shall occupy or use the premises as residence.

28. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

29. **LIMITATION OF LIABILITY.** If property described in this rental agreement is delivered to a bonafide purchaser in a good faith sale, Landlord is relieved of liability under this agreement for acts and events occurring after written notice to the Tenant of the conveyance.

30. **LEASE TERMINATION.** Tenant agrees that Landlord reserves the right to terminate this lease agreement at any time during this lease agreement by giving Tenant a ninety (90) day notice.

31. **OTHER TERMS, CONDITIONS, ADDENDA:** No Dogs. No Parties. No Kegs.

The following addendums are attached and shall be a binding part of this agreement: Release of Security Deposit, Move-Out Guidelines, Lost Keys, and Lead-Based Paint.

Initials: _____ Initials: _____

This Rental Agreement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control. EACH PARTY ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE TERMS ARE AGREED TO. TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AND THEIR AGENTS AT THE EMAIL ADDRESS AND PHONE NUMBER LISTED BELOW.

TENANT: [Signature]
PHONE: 949 3557347
TEXAS 924

WITNESS: [Signature]
EMAIL: tequimay@comcast.net

TENANT: 09388740
PHONE: _____

WITNESS: _____
EMAIL: _____

LANDLORD: _____

By: _____

WITNESS: _____

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Morales, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Morales,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

AFFIDAVIT OF CARL E. ROBERTS

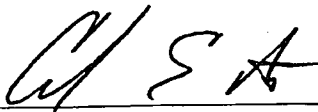
FILED
2010 NOV 16 PM 1:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY appeared before me, Carl E. Roberts, who being duly sworn,
deposes and says:

1. That I am over eighteen (18) years old and otherwise qualified to make this statement.
2. That RET Partnership is a general partnership comprised of four (4) partners. These partners include myself, Karl Henderson, Thomas McQueeney, and Steve Parham.
3. That RET Partnership was formed for the purpose of owning the property

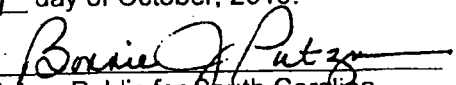
located at 5858 Savannah Highway ("the property").

4. That the property had a single family residential home located towards the front of the property.
5. That the partnership later built a larger warehouse-type building on the property for the purpose of housing the partners' personal RV's, campers, and other similar items.
6. That these are the only buildings located on the property.
7. That on or about January 30, 2009, RET Partnership entered into a rental agreement with tenant J. Jose Valdez to rent the single family home for a period of one (1) year. This lease only included the single family home on the property. Mr. Valdez did not lease the warehouse. (Exhibit A).
8. That the lease between RET Partnership and Jose Valdez was a residential lease governed by the South Carolina Residential Landlord Tenant Act.
9. That the single family home was used only for the purpose of residential rental.
10. That the warehouse was used only for the purpose of personal use of the partners of RET Partnership.
11. That the warehouse was not a "trucking terminal" and there was no "trucking terminal" or similar building located on the property.
12. That the property was never used for any trucking business whatsoever.
13. That, at the time of the accident, the property was not being used for any trucking business or any other business or commercial use.



Carl E. Roberts

SWORN TO BEFORE ME THIS
11 day of October, 2010.



Notary Public for South Carolina
My Commission Expires: 7-13-2014

RENTAL AGREEMENTSTATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON

This Rental Agreement is entered into between RET Partnership hereinafter known as LANDLORD and J. Jose Valdey hereinafter known as TENANT, this 30 day of January, 2009, at Charleston, South Carolina. In consideration of the rent to be paid by the Tenant to the Landlord, the parties agree as follows:

1. **PROPERTY.** The premises which are the subject of this Rental Agreement consist of the land and building located thereon and is known generally as 5858 Savannah Hwy Charleston, South Carolina.

2. **OCCUPANTS.** Occupants of the premises shall be limited to Tenant(s) listed above.

3. **TERM.** The Landlord leases the premises to the Tenant, subject to the provisions of this Rental Agreement for term of Twelve (12) Months starting on February 1st, 2009, and ending at 11:59 p.m. on January 31, 2010. Tenant agrees to vacate the premises on the ending date, leaving it clean and in good condition, free of Tenant's personal property, garbage and other waste, and to return the keys to the Landlord. Notice requirements are specified in paragraph 18.

4. **RENT.** The rent for the term of this lease is \$9,600.00 and is payable in monthly installments of \$800.00 to: Southeastern Management Group, Inc., P.O. Box 947, Columbia, SC 29202-0947 or at such other place that the Landlord may designate in writing.

5. **LATE CHARGE AND RETURNED CHECKS.** Rent is due in advance on the first day of the month.

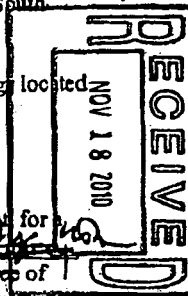
IF RENT IS NOT PAID WITHIN FIVE (5) DAYS OF THE DUE DATE TO THE ADDRESS LISTED ABOVE, LANDLORD CAN START TO HAVE TENANT EVICTED AND MAY TERMINATE THE RENTAL AGREEMENT, AS THIS CONSTITUTE WRITTEN NOTICE IN CONSPICUOUS LANGUAGE IN THIS WRITTEN AGREEMENT OF LANDLORD'S INTENTION TO TERMINATE AND PROCEED WITH EVICTION. TENANT WILL RECEIVE NO OTHER WRITTEN NOTICE AS LONG AS TENANT REMAINS IN THIS RENTAL UNIT.

Rent paid after the fifth day of the month will be subject to a late charge of \$ 95.00. Returned checks shall be subject to a charge of \$ 75.00 plus late charge if check is not made good before the sixth day of the month. Any additional returned checks from the tenant will be subject to a charge of \$ 100.00 and all future funds submitted must be certified. Notwithstanding, if any check of the Tenant for the security deposit or the first month's rent is returned because of insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

6. **SECURITY.** The sum of \$500.00 will be deposited by Tenant upon execution of this agreement, and prior to occupancy, to be held by Landlord until the termination of this tenancy as security for the full and faithful performance by Tenant of all the terms of this agreement. Landlord is given permission to place said security deposit with other security deposits or in a separate trust account and to deduct therefrom, the cost of any unusual cleaning or repairs to the premises and/or any accrued rent or late charges, upon vacating of tenant. The security deposit is for Landlord protection against damages to the premises and not a prepayment of the final month's rent under this Lease. If the damages sustained by the Landlord as a result of Tenant not fulfilling the entire term of this agreement equal or exceed so much of the security deposit as is left after deductions therefrom pursuant to this agreement, Landlord may elect to retain sum as liquidated damages.

Security deposit or any remaining portion will be returned within thirty (30) days after the termination of this tenancy. Deductions, if any, will be accompanied by an itemized written notice. To receive a refund within this time, Tenant shall provide Landlord, in writing, with a forwarding address where the deposit shall be sent. In the event the security deposit is not sufficient to pay all the charges due, Tenant shall pay said charges within five (5) working days after receiving notice from the Landlord.

7. **TRUST ACCOUNT INTEREST.** THE SOUTH CAROLINA REAL ESTATE LICENSING LAW, RULES, AND REGULATIONS REQUIRES ALL REAL ESTATE COMPANIES TO PLACE ALL FUNDS BELONGING TO THEIR CLIENT AND CUSTOMERS IN AN ESCROW ACCOUNT. THESE RULES AND REGULATIONS ALLOW REAL ESTATE COMPANIES TO EARN INTEREST ON THESE FUNDS WITH INTEREST ACCRUING TO THE REAL ESTATE COMPANY, PROVIDED THIS IS ACKNOWLEDGED BY THE CLIENT OR CUSTOMER. TENANT AGREES TO AND UNDERSTANDS THAT THE RIGHT TO OWNERSHIP OF THE INTEREST IS RELINQUISHED TO SOUTHEASTERN MANAGEMENT GROUP, INC. BY THIS WRITTEN AGREEMENT.



8. **POSSESSION.** If there is a failure to deliver possession of the premises at the commencement of this lease, the monthly rental provided for shall be abated pro-rata on a daily basis and shall not be due until occupancy is available. The tenant, however, may notify the Landlord upon five (5) days written notice that he elects to terminate the lease for failure to deliver the premises. In such case, the Landlord shall return all prepaid rent and security deposit.

9. **INSPECTION.** It is agreed that inspection will be made within three (3) working days after Tenant has completely vacated the premises and only between the hours of 9 a.m. and 5 p.m. Monday through Friday. No inspection will be made on Holidays or weekends, and **UTILITIES MUST BE LEFT ON AT THE TIME OF INSPECTION.** Tenant has the right to be present during the inspection, and Tenant's failure to appear at the inspection shall constitute the Tenant's agreement to accept the Landlord's inspection report as conclusive and final.

10. **LEAD-BASED PAINT DISCLOSURE FOR MOST RESIDENTIAL PROPERTIES BUILT BEFORE 1978:**
See Lead-Based Paint Disclosure Addendum attached (only applies to most rental properties built before 1978.)

11. **PETS.** Tenant shall not keep domestic or other animals on or about the premises without the **PRIOR WRITTEN CONSENT** of the Landlord. If Landlord does, at his sole discretion, consent, and if Tenant makes payment of any required pet fee, Tenant may keep and maintain the specified domestic animal upon the premises in accordance with the terms hereof, and any special agreements reached between Landlord and Tenant shall not be in contradiction of these terms. Tenant shall be responsible for the animal, its behavior, and any damage, over and above the pet fee, done by said animal. The Landlord will have the right to withdraw consent and demand removal of any previously permitted animal upon the first complaint registered against such animal or upon evidence of injury or damage caused by animal. Any special pet agreement is an integral part of this lease.

12. **CONDITION OF PREMISES.** Tenant acknowledges that he has inspected the premises and agrees that the premises and the common areas, if any, are in safe and habitable condition. The electrical, plumbing, heating and air conditioning system if any and any appliance furnished with the premises are in good working order. **EXCEPTIONS**
None - Tenant agrees to accept unit "as is"

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- (b) A Landlord or his agent may enter the premises without consent of the tenant:
 - (1) At any time in case of emergency - prospective changes in weather conditions which pose a likelihood of danger to the property may be considered an emergency;
 - (2) Between the hours of 9:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace and air-conditioning filters, providing termite, insect or pest treatment, and the like, provided that prior to the entering, the Landlord announces his intent to enter to perform services; or
 - (3) Between the hours of 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the Landlord announces his intent to enter to perform services.
- (c) A Landlord shall not abuse the right of access or use it to harass the tenant. Except in cases under item b above, the Landlord shall give the tenant at least twenty-four hours notice of his intent to enter and may enter only at reasonable times.
- (d) A Landlord has no other right of access except:
 - (1) pursuant to a court order;
 - (2) as permitted by Sections 34 and 35 of Article IV;
 - (3) when accompanied by a law enforcement officer at reasonable times for the purpose of service of in ejectment proceedings; or
 - (4) unless the tenant has abandoned or surrendered the premises

24. SHOWING AUTHORIZATION. The Tenant hereby authorizes Southeastern Management Group, Inc. and any sub-agencies to use keys during the final 90 days of the lease for the purpose of showing the property to prospective occupants. Tenant will always be called in advance of any showing. Should special circumstances exist where showing would be a significant problem, the Tenant should advise Southeastern Management Group, Inc. The safeguarding and/or removal of a Tenant's valuables located within the premises is advised and Tenant releases Southeastern Management Group, Inc. and The Charleston Trident Association of Realtors from any responsibility for loss or damage. Tenant further acknowledges that Southeastern Management Group, Inc., any sub-agent, or The Charleston Trident Association of Realtors is an insurer against the loss of Tenant's personal property and Tenant is advised to verify existence of, or obtain personal property insurance through Tenant's insurance company.

25. RULES AND REGULATIONS. The common area facilities if any, when open and operating are subject to applicable rules and regulations posted by the Landlord. Tenants agree to keep all common areas safe and clean. **TENANT AGREES THAT HE/SHE WILL BE RESPONSIBLE FOR ANY DAMAGES TO COMMON AREAS THAT RESULT FROM CARELESSNESS, INTENTIONAL ACTS AND/OR MALICIOUS NEGLIGENCE, AND THAT THE COST OF REPAIRS OR UNUSUAL CLEANINGS WILL BE ASSESSED TO THOSE TENANTS THAT CAUSED THE DAMAGE. IN THE EVENT THAT FAULT CANNOT BE DETERMINED, ALL TENANTS OF THAT PARTICULAR BUILDING WILL PAY A PRO-RATA SHARE OF THE EXPENSES AS DETERMINED BY THE LANDLORD.**

Tenant shall occupy the premises only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or permit any illegal activities thereon. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt for the uses of the premises to include any restrictive covenants in effect within the community and/or legal jurisdiction.

26. ALTERATIONS. The tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without the prior written consent of the Landlord. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter the walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any alteration or improvements made by the Tenant shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon termination of this lease, the Tenant shall restore the premises to its original condition or repair, safety and appearance, ordinary wear and tear excepted. If Tenant fails to do so, Tenant will promptly reimburse the Landlord for any expenses required to so restore the premises.

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27. **APPLICATION.** Tenant acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any material facts stated in the application are untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant any damages resulting therefrom including reasonable attorney's fees. Tenant and only those persons named in the application shall occupy or use the premises as residence.

28. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that this Agreement may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the Internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

29. **LIMITATION OF LIABILITY.** If property described in this rental agreement is delivered to a bonafide purchaser in a good faith sale, Landlord is relieved of liability under this agreement for acts and events occurring after written notice to the Tenant of the conveyance.

30. **LEASE TERMINATION.** Tenant agrees that Landlord reserves the right to terminate this lease agreement at any time during this lease agreement by giving Tenant a ninety (90) day notice.

31. **OTHER TERMS, CONDITIONS, ADDENDA:** No Dogs. No Parties. No Kegs.

The following addendums are attached and shall be a binding part of this agreement: Release of Security Deposit, Move-Out Guidelines, Lost Keys, and Lead-Based Paint.

Initials: _____ Initials: _____

This Rental Agreement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control. EACH PARTY ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE TERMS ARE AGREED TO. TENANT AGREES TO RECEIVE COMMUNICATIONS FROM LANDLORD AND THEIR AGENTS AT THE EMAIL ADDRESS AND PHONE NUMBER LISTED BELOW.

TENANT: *Carolee Walker*

WITNESS: *W. P. ...*

PHONE: 949 3557347

EMAIL: *carolee.walker@comcast.net*

TEXAS 92#

TENANT: 09388740

WITNESS: _____

PHONE: _____

EMAIL: _____

LANDLORD: _____

By: _____

WITNESS: _____

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5

35

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express and
Adrian Moralez,

Third Party Plaintiffs,

v.

Sharon A. Mitchell,

Third Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

FILED
2010 DEC -8 PM 12:09
JULIE J. ARSHTROM
CLERK OF COURT
PX

**AFFIDAVIT OF
JEFFERSON C. WOODALL, RIBA**

PERSONALLY APPEARED before me, Jefferson C. Woodall, RIBA, who being duly
sworn does state as follows:

1. I am an architect, licensed in Maryland, Virginia, North Carolina, South Carolina,
Georgia, Tennessee, Pennsylvania, Alabama, Louisiana, Florida, and the United
Kingdom.
2. I am certified by the National Council of Architectural Registration Boards (NCARB)
and am a member of The Royal Institute of British Architects (RIBA.)

3. I earned a Master of Science in Architecture from North Carolina State University in 1976.
4. I have been in private practice as an architect since 1978. A large part of my business involves the design of semi, tractor-trailer storage lots for Interstate Travel Plazas.

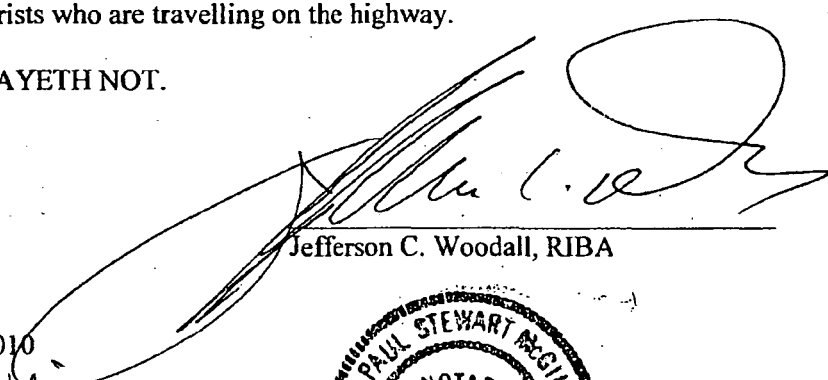
In addition, I have been hired numerous times to design warehouse plans which require access for semi, tractor-trailer loading.
5. My professional qualifications are set forth in my Curriculum Vitae attached hereto as Exhibit "A."
6. I have actual professional knowledge and experience in the specialty area of practice in which this opinion is given, as a result of my educational background and having been regularly engaged in the field of architecture for over thirty years, especially with regard to the design and safety standards of truck terminals.
7. I have reviewed the photographic evidence and am familiar with the general area surrounding 5858 Savannah Highway in Ravenel, South Carolina (hereinafter "the property") where the collision which is the subject of this action occurred.
8. The property is not equipped to accommodate the loading and unloading of semi, tractor-trailers for the following reasons:
 - a. There is insufficient space for semi tractor trailers to enter the property so as to be able to hook a load without first pulling onto the adjacent highway and backing onto the property. This activity causes a highly dangerous condition present on the highway, hazardous to those who lawfully use it.
 - b. There are no lights on the property sufficient to warn highway users of the makeshift loading zone. The absence of lights on the property is especially

dangerous given that the broad sides of semi tractor trailers generally do not have reflectors, lights, or any other distinguishing feature which provide some alternative warning to approaching motorists that they are blocking the lanes of travel.

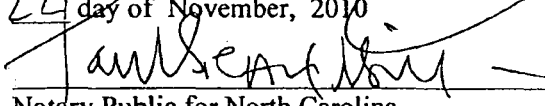
- c. There are no signs on or near the property warning of the loading zone.
- d. The shrubbery and unkempt boarder surrounding the loading zone make it impossible for approaching vehicles to see the loading zone before they actually come upon it.

9. It is my professional opinion that the property falls well below applicable building codes, industry standards, and other governing law pertaining to truck terminals. The residential nature, size, and design of the property render it wholly inadequate for use as truck terminal or loading zone for semi tractor trailers. Because the property itself is not suitable for such purposes, it causes the drivers of tractor trailers who are loading and unloading on the property to improperly position their vehicles across the southbound lanes of Savannah Highway, blocking traffic and creating a significant and potentially fatal hazard to motorists who are travelling on the highway.

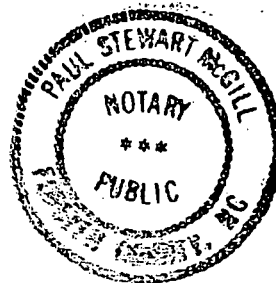
FURTHER DEPONENT SAYETH NOT.


Jefferson C. Woodall, RIBA

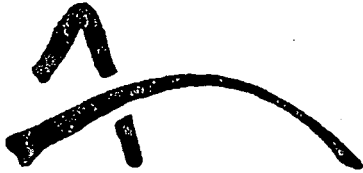
SWORN to before me this
22 day of November, 2010


Notary Public for North Carolina

My commission expires: 6/8/14



June 2010
Curriculum Vitae | Abbreviated



Jefferson C. Woodall, RIBA
1100 Reynolda Road • Winston-Salem, NC 27104
(336)-689-1362 • jcwoodall@conceptarc.com

EDUCATION Master of Science in Architecture -1973-1976
NORTH CAROLINA STATE UNIVERSITY Raleigh, NC.

EXPERIENCE Private Practice
Winston-Salem NC | Since 1978
On occasion with branch offices in Washington DC, Charlest
Savannah CA

Professor
Forsyth Technical Community College | 1991
Architectural Technology

Teacher
Boy Scouts of America | 1999
Architectural Merit Badge

Seminar Presenter
Architecture Exchange East | 2004
Conceptual Design

REGISTRATION Licensed in the following North American jurisdictions

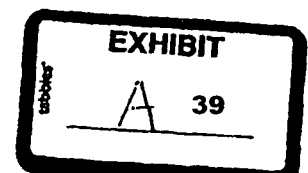
- Maryland
- Virginia
- North Carolina
- South Carolina
- Georgia
- Tennessee
- Pennsylvania
- Alabama
- District of Columbia
- Louisiana
- Florida

Licensed in the following European jurisdictions

- United Kingdom

CERTIFICATION **NCARB**
National Council of Architectural Registration Boards
Certificate Holder

RIBA
Royal Institute of British Architects
Member



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

v.

Juan P. Marruffo d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

JULIE J. ARMSTRONG
CLERK OF COURT

2011 FEB 10 PM 4:14

FILED

SUPPLEMENTAL AFFIDAVIT OF
JEFFERSON C. WOODALL, RIBA

PERSONALLY APPEARED before me, Jefferson C. Woodall, RIBA, who being duly
sworn does state as follows:

1. I am a licensed architect with a special emphasis on the design and safety standards for trucking terminals, and I have been asked to give opinions regarding the use of the property known as 5858 Savannah Highway (hereinafter "the Property") located in Ravenel, South Carolina, which is owned by Defendant RET Partnership. I have previously provided an affidavit outlining my qualifications and my opinions in this litigation. In addition, my deposition was taken on January 11, 2011, by counsel for Defendant RET Partnership. This affidavit will supplement those opinions I have already expressed.

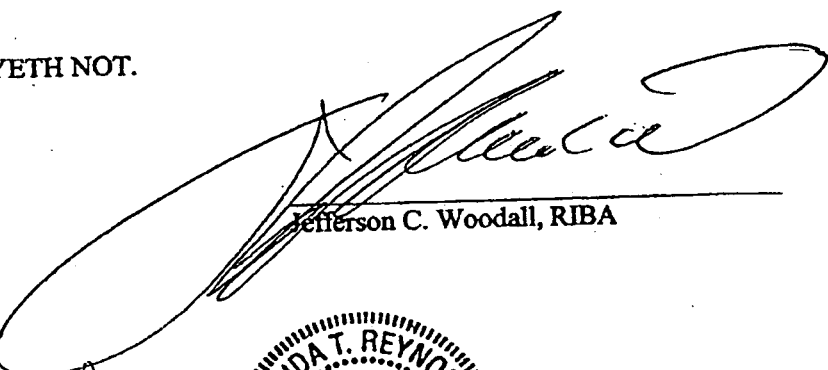
2. Since the date of my deposition, I have been provided and have reviewed the affidavit of Mark Bloomer, the Planning and Zoning Director for the Town of Ravenel, in which Mr. Bloomer states that the Property is zoned as Neighborhood Commercial and has been since 1992.

3. I have also been provided and have reviewed a copy of the Town of Ravenel Zoning Ordinance, which was adopted on January 20, 2000. Section 2.6.10 of the Ordinance outlines the regulations for any premises zoned Neighborhood Commercial. Pursuant to this provision, areas which are deemed Neighborhood Commercial "are designed to encourage the formation and continuance of a quiet, compatible and un-congested environment for office and limited retail business; and to discourage any encroachment by unrestricted retail or wholesale business establishments, industrial concerns or other uses capable of adversely affecting the specialized commercial and housing character of the district." A copy of this section is attached hereto as Exhibit A. The specifically permitted uses of Neighborhood Commercial property are set forth in Appendix B: Table of Permitted Uses, under the heading NC, which is attached to the Ordinance. A copy of this appendix is attached hereto as Exhibit B.

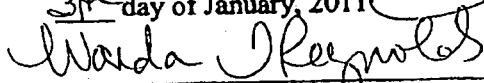
4. In addition, I again reviewed the affidavits of the four individual partners of RET Partnership, which were previously submitted to the Court. Each of the RET partners has averred under oath that the partnership built a warehouse on the Property for the purpose of storing their campers and recreational vehicles. Steven Parham further averred in his affidavit that he was aware that RET's property was also being used as a parking grounds for tractor trailers.

5. According to Appendix B: Table of Permitted Uses, use of the Property as a motor freight terminal (pg. 5), a truck terminal (pg. 7), or a place for RV storage (pg. 7) is not permissible for a premises zoned as Neighborhood Commercial. The use of the Property for any of these purposes is non-conforming under the Ordinance.

FURTHER AFFIANT SAYETH NOT.

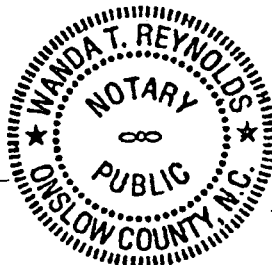

Jefferson C. Woodall, RIBA

SWORN to before me this
31st day of January, 2011



Notary Public for North Carolina

My commission expires: 8-18-2012



Electrical Code, specifically as practiced by the South Carolina Electric and Gas Company and Berkeley Electric Co-op and as described in Electrical Underground Distribution for Mobile Homes, by the South Carolina Electric and Gas Company - Distribution Engineering Department. Whereas the developer shall enter into service agreements with the South Carolina Electric and Gas Company or Berkeley Electric Co-op for provision of electrical service, the above referenced document shall be considered the minimum standards required by this chapter.

- i. Fuel supply and storage. All mobile home districts that provide fuel supply or storage shall use equipment, materials and installations of the County Code and all applicable federal safety codes.
- j. Telephone lines. The distribution of telephone lines to all mobile home stands within mobile home districts shall be underground.

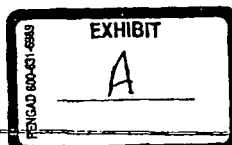
Section 2.6.10. Neighborhood Commercial.

It is the intent of this section that the NC District be developed and reserved for certain service type businesses, offices and specified public purposes. The regulations which apply within this district are designed to encourage the formation and continuance of a quiet, compatible and un-congested environment for office and limited retail business; and to discourage any encroachment by unrestricted retail or wholesale business establishments, industrial concerns or other uses capable of adversely affecting the specialized commercial and housing character of the district.

- A. Permitted uses: See Appendix B. Table of Permitted Uses.
- B. Lot, yard, height and coverage requirements.
 - 1. Minimum lot requirements. 12,500 square feet.
Minimum lot width measured at building line: 100 feet
 - 2. Minimum setback requirements. There shall be a 50-foot building setback from the edge of any street.

Front setback	50 feet
Side setback	25 feet*
Rear setback	25 feet**
 - 3. Maximum height. Maximum height shall be 35 feet (2.5 stories)
 - 4. Building coverage: No more than 35% of the lot area may be covered by the principle use.
- C. Buffer yard requirements. Minimum buffer yard requirements for and between permitted uses in this district and residential uses as provided in Section 4.2.
- D. Development in NC district shall comply with all applicable regulations of this ordinance.

* Minimum side yard setbacks for existing lots of record of two acres or less and that abut other commercial lots shall be 10 feet.
** Minimum rear yard setback for existing lots of record of two acres or less and that abut other commercial lots shall be 15 feet.



APPENDIX B

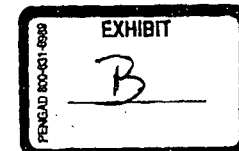
PERMITTED USES BY BASE ZONING DISTRICT

Permitted principle uses for each base zoning district shall be in accordance with the following Table of Permitted Uses. Symbols used in the Table are as follows:

1. A. Indicates that the use is allowed by right in the indicated district, subject to compliance with all other applicable regulations of this Ordinance.
2. S. Indicates that a use is allowed only if reviewed and approved in accordance with the Special Exception procedures listed in Chapter 3, subject to compliance with all other applicable regulations of this Ordinance.
3. C. Indicates that a use is allowed only if it satisfies the specific use conditions as listed in Chapter 3 and all other applicable regulations of this Ordinance.
4. . A blank cell indicates that the use is not allowed in the respective zoning district.

TABLE OF PERMITTED USES

May 2004



PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Agricultural and Related Uses													
Agricultural Processing													
Agricultural production, Hydroponics, Horticulture, Nursery or Greenhouse operations	A										A	A	
Agricultural sales or services	A									A	A	A	
Animal aquaculture, Commercial fishing, Fish and shellfish farming	S										A	A	
Commercial timber operations	A										A	A	
Horse production operations, Breeding stables	A												
Kennels with inside/outside boarding	S										A	A	
Landscape and horticulture services	S									A	A	A	
Livestock and/or Dairy Farms	S									S	S	S	
Lumber mills, Planing, Sawmills, including chipping or mulching	S									S	A	A	
Stable, Boarding and Riding	A										A	A	
Veterinary services	C									C	A	A	
Residential													
Single-family dwellings, Detached	A	A	A	A	A	A	A	A	C	C	C	C	A
Duplex/two family dwellings	A		A	A	A	A							A
Multi-family dwellings						S	S						
Manufactured home on individual lot	A	A		A		A		A					
Manufactured home park								C					
Farm labor homes	C												
Group Residential, Fraternity or Sorority house	S					S							

"A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Group care homes	S	S		S		S							
Retirement homes	S	S		S							"		
Civic, Public Administration, Social and Medical Offices													
Arboreta, botanical gardens and zoological exhibits	S									A	A	A	
Cemetery, Crematorium	S	S		S		S			S				S
Civic/Fraternal/Social Associations, including youth organizations, sorority, fraternity, or social club or lodge	S								A	A	A	A	
Colleges, universities, professional schools, vocational schools	S								S	S	S	S	
Convention/Meeting Center, Visitors bureau									S	S	S	S	
Community recreation center	S	S							S	S	S	S	
Convalescent center	S	S							S	S			
Correctional Institutions											S		
Courts, judicial									A	A	A	A	
Cultural Center									A	A	A	A	S
Day care center, adult, family	A	S							A	A			
Day care center, educational, pre-school	C	C	C	C	C	C	C		C	C			
Elementary, secondary schools	S	S	S	S	S	S	S		S	S	S	S	
Funeral services including funeral homes or mortuaries									S	A		A	
Government offices/facilities									A	A	A	A	
Hospitals										A	A	A	
Individual and family social service									A	A	A	A	
Libraries, Archives	A								A	A	A	A	

"A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Medical and dental offices, laboratories, outpatient clinics									S	A	A	A	
Museum, art galleries, nature exhibits	S								A	A	A	A	S
Personal improvement schools, i.e. driving schools, dance school									A	A		A	
Public order and safety, police and fire protection stations	A	A	A	A	A	A	A	A	A	A	A	A	A
Religious assembly, Churches	S	S	S	S	S	S	S	S	A	A	S	A	S
Residential treatment facility									S	S	S	S	
U. S. Post Office	A	A	A	A	A	A	A	A	A	A	A	A	A
Communication													
Cable/ other pay television services										A	A	A	
Communication Services, including radio or television broadcasting studios, film or sound recording studios, telecommunication service center or telegraph service office									S	A	A	A	
Communication transmitting station										A	A	A	
Telecommunication towers											C		
Telephone facilities										A	A	A	
Utilities													
Electrical or gas power generation facilities	A	A	A	A	A	A	A	A	A	A	A	A	A
Electric or gas substation	S	S	S	S	S	S	S	S	A	A	A	A	S
Fuel bottling and distribution											A		
Maintenance facilities for utilities											A	A	
Recycling/solid waste disposal											S		
Right-of-way, pipeline, pressure control station											A	A	
Sewage collection service line	A	A	A	A	A	A	A	A	A	A	A	A	A

A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Sewerage disposal facilities	S	S	S	S	S	S	S	S	S	S	A	S	
Telephone switching facility	A	A	A	A	A	A	A	A	A	A	A	A	A
Waste transfer/Collection services											S		
Water service line	A	A	A	A	A	A	A	A	A	A	A	A	A
Water storage tank	S										A	A	
Water Treatment Plant											A		
Transportation Related													
Airports, Airstrips											A		
Courier services										A	A	A	
Dry stack boat storage											A	A	
Household moving company									A	A	A	A	
Maine terminals, boat rental services										A	A	A	
Motor freight terminals										S	A	A	
Parking lots, garages										A	A	A	
Railroad stations, switching yards											A		
Taxi, limo service, vehicle rental or leasing									A	A			
Towing services, no vehicle storage										C	A	A	
Towing Services with vehicle storage											C		
Transit terminals with garaging and/or maintenance											A	A	
INDUSTRIAL SERVICES													
Concrete products manufacturing, cement processing											A	A	
Fabricated metal products											A	A	
Food and related products											A	A	

"A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Furniture, cabinets, fixtures or related products manufacturing										S	A	A	
Industrial and commercial machinery and transportation equipment											A	A	
Iron works industries											A	A	
Manufacturing, Light, including: computers or electronic products and equipment, fabric and material industry, food processing, glass and related goods production										C	A	A	
Manufacturing, Heavy, including aircraft, beverage, cement or concrete products, chemical, clay, machinery, tools, toy or construction equipment											A	S	
Meat packing	S										A	A	
Motor vehicles, watercraft or trailer manufacturing, including related parts											A	A	
Resource Extraction, Mining and Quarry	C										S	S	
Paper and allied products											A	A	
Petroleum refining and related industries											A		
Professional or commercial equipment or supplies manufacturing, including office, medical, restaurant equipment or specialty items											A		
Pulp or paper mills											S		
Printing and publishing industries, including newspaper, periodical, book, database or software publishers, printing press										A	A	A	
Research and development laboratories	S										A	A	
Salvage and Junk Yards, including auto wrecking yards, parts or paper salvage, and wholesale scrap, waste materials, material recovery or wrecking yards, or parts salvage.											C		

A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Sign manufacturing											A	A	
Stone, clay, glass and concrete products manufacturing											A	A	
Textile mill products											A	A	
Wood products manufacturing, Decoration, Yard Art											A	A	
Warehouse and Freight Movement													
Cold storage plants											A	A	
Freight Container Storage Yards, excluding Fuel Storage Facilities											C		
Freight forwarding facilities, including truck terminals, marine terminals, or packing and crating facilities											S	S	
Fuel storage facilities											A		
Household moving and storage											A	A	
Grain terminals and elevators	S										A	A	
Parcel services										A	A	A	
Retail store warehouse											A	A	
Self-storage, mini-warehousing										S	A	A	
Stockpile of sand, gravel, etc										S	A	A	
Vehicle storage, including bus barns, RV storage or impound yards											C	C	
Warehousing: Industrial											A	A	
Warehousing: office										S	A	A	
Warehouse and distribution facilities											A	A	
Miscellaneous manufacturing-type industries that are not elsewhere classified											S	S	

"A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Wholesale Trade													
Aircraft wholesalers											A	A	
Apparel or fabric wholesalers											A	A	
Chemical and allied products											A		
Electrical equipment, appliances, or components wholesalers										S	A	A	
Flowers, nursery stock	A									A	A	A	
Food or related products										A	A	A	
Furniture, cabinets or related products										C	A	A	
Petroleum bulk station and terminals											A		
Professional or Commercial equipment or supplies wholesalers											A	A	
Toy or artwork wholesalers											A	A	
Watercraft and related parts wholesalers											A	A	
Wholesalers, including construction materials, farm supplies and equipment, leather products, metal, mineral, printed materials										S	A	A	
Wholesalers, motor vehicles, commercial or passenger, trailers wholesalers including related parts											A	A	
Other miscellaneous wholesale sales											S	S	
Retail Trade													
Adult and sexually-oriented businesses											C		
Art, hobby, musical instrument, toy, sporting goods, or related products store									A	A	A	A	
Auto and home supply store									A	A	A	A	
Building materials/Lumber Yards									A	A	A	A	

"A" = ALLOWED USE

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"S" = SPECIAL EXCEPTION USE

PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Catering services									A	A	A	A	
Convenience stores									A	A	A	A	
Department stores, including clothing, piece goods, shoes, jewelry, leather goods, or related products									A	A	A	A	
Bar or Lounge, including taverns, cocktail lounges, members exclusive bars or lounges, drinking places for alcoholic beverage										C	C	C	
Eating places, including cafeterias, diners or full service restaurants									C	A	A	A	
Eating places, including fast food, drive-in, snack or non-alcoholic beverage bars									A	A	A	A	
Electronics, appliances, or related products store									S	A	A	A	
Farm equipment										A	A	A	
Florist									A	A	A	A	
Food, grocery stores, meat markets, retail bakeries, candy shops									C	A	A	A	
Fuel dealers, (except liquefied petroleum gas) including heating oil dealers											A	A	
Furniture stores, Home furnishings									A	A	A	A	
Garden supplies center									A	A	A	A	
Gasoline service stations									C	A	A	A	
Hardware stores, Home Improvement stores									A	A	A	A	
Heating and plumbing supplies									A	A	A	A	
Heavy duty truck or commercial vehicle dealer									S	A	A	A	
Liquefied petroleum gas (bottled) dealers										A	A	A	
Liquor stores, beer or wine sales									S	S	A	A	

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Marine craft and accessories										A	A	A	
Manufactured homes sales, Mobile home dealer										A	A	A	
Motor vehicle dealer, new or used										A	A	A	
News dealers, newsstands									A	A	A	A	
Nonstore Retailers, direct selling merchandise, mail-order houses									S	A	A	A	
Optical goods									A	A	A	A	
Paint, glass and wallpaper stores									A	A	A	A	
Pawn Shop										A		A	
Pet Stores or grooming salons									A	A	A	A	
Pharmacy, drug store									A	A	A	A	
Private postal, mailing service									A	A	A	A	
Recreational motor homes										A	A	A	
Recreational and utility trailer dealers										A	A	A	
Retail nursery, lawn and garden supply stores										A	A	A	
Tobacco stores and stands									A	A	A	A	
Used merchandise stores									A	A	A	A	
Vending machine operators											A	A	
Variety stores									A	A	A	A	
Warehouse clubs or superstores										A	A	A	
Miscellaneous general merchandise store, not elsewhere listed									S	S	S	S	
Business Services													

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Accounting, auditing and book keeping services, couriers, insurance offices, tax preparation offices									A	A	A	A	
Advertising agencies									A	A	A	A	
Business or professional offices									A	A	A	A	
Computer and data processing									A	A	A	A	
Contractor, construction company, including carpentry, concrete, electrical, excavation, painting, roofing, siding, sheet metal and flooring including tile and terrazzo									C	A	A	A	
Engineering, architectural and surveying services									A	A	A	A	
Finance services, including savings banks, loan or lending services, stock or bond brokers, Credit Unions									A	A	A	A	
Insurance carriers and services									A	A	A	A	
Legal Services, secretarial services									A	A	A	A	
Management and consultant service									A	A	A	A	
Print shop, duplicating services									A	A	A	A	
Real estate and travel services									A	A	A	A	
Security, commodity brokers									A	A	A	A	
Personal Services													
Barber/Beauty shops, skin care services	S	S							A	A	A	A	
Cleaning and maintenance services, carpet cleaning, janitorial services									A	A	A	A	
Consumer goods, rental services									A	A	A	A	
Day care centers, family day care, overnight care centers	C	C		C		C		C	C	C			
Dry cleaning/laundry with plant operations										A	A	A	

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Exterminating services									A	A	A	A	55
Florists									A	A		A	
Funeral services, mortuaries									A	A	A	A	
Landscaping services									A	A	A	A	
Locksmith									A	A	A	A	
Medical and dental services, clinics									A	A	A	A	
Pet grooming, no boarding	A								A	A	A	A	
Pet grooming, boarding facilities										A	A	A	
Photographic/portrait studios									A	A	A	A	
Shoe repair shops									A	A	A	A	
Small engine, electronics repair									A	A	A	A	
Tailors or seamstresses									A	A	A	A	
Miscellaneous Services													
Contract construction										A	A	A	
Equipment rental and leasing										A	A	A	
Hotels, motels and inns										A		A	
Lodges: fishing, fishing guide services, hunting	S								S	S			
Photofinishing labs									A	A	A	A	
Recreational vehicle park	C								C	C		C	
Research and development labs										A	A	A	
Rooming and boarding homes	S								S	A			
Tourist homes/Bed and breakfast	C	C	C	C	C	C	C						C
Miscellaneous services, not elsewhere classified									S	S	S	S	

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Repair services													
Automotive vehicle body repair, motor repair, muffler repair, tire and brake shop,										A	A	A	
Automotive vehicle limited service including oil change or lubrication or car wash									S	A	A	A	
Boat yard, boat repair, boat maintenance										A	A	A	
Repair shops, including appliance, electrical, small engine repair shops, tool repair, professional instrument repair										A	A	A	
Repair shop, including jewelry, upholstery and furniture repair									S	A	A	A	
Welding, iron work shops											A	A	
Vehicle services including vehicle oil change, lubrication shops, car wash									S	A	A	A	
Repair shops, not elsewhere listed										S	S	S	
Amusement and Recreation Services, except Motion Picture													
Amusement parks, fairgrounds, go-cart tracks										S	S	S	
Bowling alley, billiard and pool establishments										A	A	A	
Camping, picnicking areas	S									A	A	A	
Coin-operated amusement devices										A	A	A	
Dance studios and schools									A	A	A	A	
Gun ranges, indoor/outdoor											A	S	
Membership health, sports and recreation clubs									A	A	A	A	
Miniature golf, putt-putt courses										A	A	A	
Parks, public playgrounds	A	A							A	A	A	A	
Professional sports clubs and promoters, arenas, stadiums										C	A	A	

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Public golf courses, driving range	S									S	A	A	
Recreation or vacation camps	S								A	A			
Skating rinks, ice and roller rinks										A	A	A	
Motion Picture and Theaters													
Motion picture production									A	A	A	A	
Theaters, including motion picture										A	A	A	
Video tape rental									A	A	A	A	
ACCESSORY USES													
Residential - Accessory Uses must meet Special Accessory Uses Conditions as per Section													
Accessory vehicle/storage building	A	A	A	A	A	A	A	A	A	A	A	A	A
Accessory garage apartment	A	A	A					A	A	A			
Accessory guest accommodations or living quarters for owners, employees or caretakers	A								C	C	C	C	
Private docks - 5 or less slips	A	A	A	A	A	A	A	A	A	A	A	A	A
ACCESSORY USES													
Commercial													
Accessory off-street parking and loading										A	A	A	
Accessory roadside stand	A	A							A	A			
TEMPORARY USES													
Residential													
Temporary Dwelling Unit as allowed under Section 3.3	A	A	A	A	A	A	A						A
Commercial													
Roadside produce stands, other seasonal uses as allowed under Section 3.3	A	A							A	A		A	
Temporary sales or construction office as allowed under Section 3.3	A	A	A	A	A	A	A	A	A	A	A	A	

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PRINCIPAL USES	A-R	R-1	R-1R	R-2	R-2R	R-3	R-3R	MHP	NC	GB	LI	GI	HC
Turkey shoots	C									C	C	C	

A" = ALLOWED USE

"C" = USE ALLOWED SUBJECT TO CONDITIONS

"S" = SPECIAL EXCEPTION USE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Moralez,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

DEFENDANTS RET PARTNERSHIP,
WILLIAM T. MCQUEENEY, CARL E.
ROBERTS, KARL R. HENDERSON,
AND STEVEN PARHAM'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 DEC -8 AM 10:27

FILED

TO: RICHARD ROSEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Defendants RET Partnership, William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steven Parham (the "RET Defendants"), by and through their undersigned attorneys, hereby submit the following memorandum in support of their Motion for Summary Judgment:

FACTS

RET Partnership is a general partnership owned by William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steve Parham. RET Partnership owns property located

at 5858 Savannah Highway in the Town of Ravenel, Charleston, County, South Carolina (the "Subject Property"), which abuts Highway 17. (Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham ¶¶ 2-3). The Subject Property contained a single family residential home located towards the front of the property and a larger warehouse-type building towards the back of the property. (Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham ¶¶ 4-6). RET leased the single family home to J. Jose Valdez pursuant to a residential lease, which was governed by the South Carolina Residential Landlord Tenant Act. (Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham ¶¶ 7-9; Ex. E, Lease). This lease did not include the warehouse. (Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham ¶ 7; Ex. E, Lease). The partners of RET used the warehouse for their own personal use for the purpose of housing their personal RV's, campers, and the like. (Ex. A-C, Affs. of McQueeney, Roberts, & Henderson ¶¶ 10-13; Ex. D, Aff. of Parham ¶¶ 11-14). The RET Defendants did not use the Subject Property for commercial use. (Ex. A-C, Affs. of McQueeney, Roberts, & Henderson ¶¶ 10-13; Ex. D, Aff. of Parham ¶¶ 11-14).

On or about March 3, 2009, Plaintiff and Defendant Adrian Morales were involved in an automobile collision on Savannah Highway in the Town of Ravenel, when the vehicle in which Plaintiff was a passenger struck the truck operated by Defendant Morales. (Ex. F, Compl. ¶¶ 14-19). This collision occurred in the southbound lanes of Highway 17. (Ex. F, Compl. ¶¶ 14, 18-19).

It is undisputed that the collision did not occur on any portion of the Subject Property. (See Ex. F, Compl. ¶¶ 14-19). The only allegations in the Complaint concerning the RET Defendants is Plaintiff's mistaken belief that the Subject Property contains a

"trucking terminal" and that RET owes a "special duty" arising from the "commercial nature" of the property. (See Ex. F, Compl.). The RET Defendants now seek summary judgment on the grounds that they did not owe a duty to Plaintiff for injuries sustained in this accident.

ARGUMENT

"[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Pittman v. Grand Strand Entm't, Inc., 611 S.E.2d 922, 925 (S.C. 2005). "[T]he evidence and all inferences that can reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party." Moore v. Weinberg, 644 S.E.2d 740, 743 (S.C. Ct. App. 2007). "Once the party moving for summary judgment meets the initial burden of showing the absence of a genuine issue as to any material fact, the nonmoving party may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 634 S.E.2d 15, 17 (S.C. Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 17-18.

The RET Defendants seek summary judgment in this matter on the grounds that they did not owe a duty to Plaintiff for injuries sustained while on the public highway. "In order for liability to attach based on a theory of negligence, the parties must have a relationship recognized by law as providing the foundation for a duty to prevent an injury." McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 644 S.E.2d 43, 47-48 (S.C. 2007). "An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." Id.

I. THE RET DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE, AS A MATTER OF LAW, THEY DID NOT OWE A COMMON LAW DUTY TO PLAINTIFF.

It is well-settled South Carolina law that the owners of property abutting or adjoining a public highway owe no common law duty to motorists injured on the public highway, where the owners neither possess nor control the highway. Skinner v. S.C. Dep't of Transp., 681 S.E.2d 871 (S.C. 2009) (abutting property owners owed no duty to person injured by driver who lost control when he veered onto roadway's shoulder); see also Mahle v. Wilson, 323 S.E.2d 65 (S.C. Ct. App. 1984) (abutting property owners owed no duty where pedestrian was struck while attempting to cross highway from the property at issue); Ford v. S.C. Dep't of Transp., 492 S.E.2d 811 (S.C. Ct. App. 1997) (abutting property owners owed no duty to motorist injured when he struck a tree that had fallen from adjoining property across a public highway). The law only imposes a duty for highway conditions where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers. Skinner, 681 S.E.2d at 873. This rule applies equally to both residential and commercial property, as it does not distinguish between the two. See Skinner, 681 S.E.2d 871 (residential and commercial property); Mahle, 323 S.E.2d 65 (commercial property); Ford, 492 S.E.2d 811 (residential property).

Here, the only allegations in the Complaint concerning the RET Defendants relate to their ownership of the Subject Property, which abuts Highway 17, where the accident occurred. (See Ex. F, Compl.). The Complaint does not allege the RET Defendants created an artificial condition on the highway which caused or contributed to this accident, and the

Plaintiff has put forth no evidence to that effect. (See Ex. F, Compl.). The only involvement the Subject Property had with this accident is that apparently the truck driven by Defendant Moralez was attempting to enter the driveway. (See Ex. F, Compl.). However, the accident occurred on the southbound lanes of Highway 17 and did not occur on the driveway of the Subject Property or on any other portion of the Subject Property. (Ex. F, Compl. ¶¶ 14, 18-19). There is no allegation the driveway or any other portion of the Subject Property did anything to cause or contribute to this accident other than the mere fact that it existed. (See Ex. F, Compl.). Therefore, under Skinner, *supra*, and related case law, the RET Defendants did not owe a common law duty to Plaintiff for injuries received from a collision that occurred on the public highway. To hold otherwise would lead to an absurd result and would be contradictory to the law espoused by our Supreme Court.

As demonstrated in the above-cited case law, that Plaintiff mistakenly believes the Subject Property contained a commercial trucking terminal has no effect on the long-standing rule that owners of property abutting a public highway owe no common law duty to motorists injured on the public highway where the owners neither possess nor control the highway. See, e.g., Skinner, 681 S.E.2d 871 (residential and commercial property); Mahle, 323 S.E.2d 65 (commercial property); Ford, 492 S.E.2d 811 (residential property).

Therefore, summary judgment should be granted in favor of the RET Defendants because they did not owe a duty to Plaintiff concerning this accident.

II. THE RET DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE, AS A MATTER OF LAW, THEY DID NOT OWE A STATUTORY OR REGULATORY DUTY TO PLAINTIFF.

The Plaintiff's Complaint mistakenly alleges the RET Defendants owed a "special duty" Plaintiff because they operated a "trucking terminal" on the Subject Property. As

stated in the affidavits attached hereto as exhibits, this allegation is incorrect, as the RET Defendants did not operate a trucking terminal nor conduct any other type of commercial business on the Subject Property. (See Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham). The RET Defendants leased the single family residence to J. Jose Valdez pursuant to a residential lease, which was governed by the South Carolina Residential Landlord Tenant Act. (Ex. A-D, Affs. of McQueeney, Roberts, Henderson, & Parham ¶¶ 7-9). The lease did not include the warehouse located toward the back of the property, which was used by the RET partners for their personal use to house their personal RV's, campers, and the like. (Ex. A-C, Affs. of McQueeney, Roberts, & Henderson ¶¶ 10-13; Ex. D, Aff. of Parham ¶¶ 11-14). The Subject Property was never used for any trucking business whatsoever. (Ex. A-C, Affs. of McQueeney, Roberts, & Henderson ¶¶ 10-13; Ex. D, Aff. of Parham ¶¶ 11-14). Therefore, the allegations contained in the Complaint concerning the RET Defendants' operation of a "trucking terminal" are incorrect and Plaintiff has not put forth a scintilla of evidence proving otherwise.

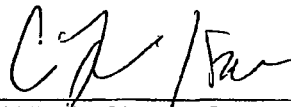
However, assuming *arguendo* (without admitting) that the RET Defendants were operating a trucking terminal on the Subject Property, this would not change the fact that the RET Defendants did not owe a duty to Plaintiff for injuries sustained in a collision on the public highway. The truck involved in the collision was not driven by an RET Defendant nor owned by an RET Defendant and such is not alleged in the Complaint. (See Ex. F, Compl.). Moreover, there is no applicable statute, regulation, or other law concerning trucking terminals or otherwise that creates a duty flowing from the RET Defendants to drivers on the abutting public highway.

Therefore, summary judgment should be granted in favor of the RET Defendants

because they did not owe a duty to Plaintiff concerning this accident.

CONCLUSION

As more fully set forth above, Defendants RET Partnership, William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steven Parham did not owe a common law duty, statutory duty, regulatory duty, or any other type of duty to Plaintiff for the injuries sustained in this accident, which occurred on a public highway. The RET Defendants merely owned a piece of property abutting the public highway where this accident occurred. Therefore, the RET Defendants respectfully request this Court grant summary judgment in their favor.



SAMUEL R. CLAWSON
CLAWSON & STAUBES, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

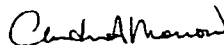
Attorney for Defendants RET
Partnership, William T. McQueeney,
Carl E. Roberts, Karl R. Henderson, and
Steven Parham

Charleston, South Carolina

December __, 2010

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 8th day of December, 2010.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Moralez, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Moralez,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

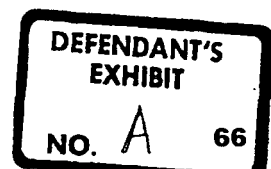
IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

AFFIDAVIT OF THOMAS
MCQUEENEY

PERSONALLY appeared before me, Thomas McQueeney, who being duly sworn,
deposes and says:

1. That I am over eighteen (18) years old and otherwise qualified to make this statement.
2. That RET Partnership is a general partnership comprised of four (4) partners. These partners include myself, Karl Henderson, Carl Roberts, and Steve Parham.
3. That RET Partnership was formed for the purpose of owning the property



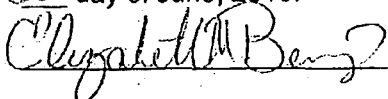
located at 5858 Savannah Highway ("the property").

4. That the property had a single family residential home located towards the front of the property.
5. That the partnership later built a larger warehouse-type building on the property for the purpose of housing the partners' personal RV's, campers, and other similar items.
6. That these are the only buildings located on the property.
7. That on or about January 30, 2009, RET Partnership entered into a rental agreement with tenant J. Jose Valdez to rent the single family home for a period of one (1) year. This lease only included the single family home on the property. Mr. Valdez did not lease the warehouse. (Exhibit A).
8. That the lease between RET Partnership and Jose Valdez was a residential lease governed by the South Carolina Residential Landlord Tenant Act.
9. That the single family home was used only for the purpose of residential rental.
10. That the warehouse was used only for the purpose of personal use of the partners of RET Partnership.
11. That the warehouse was not a "trucking terminal" and there was no "trucking terminal" or similar building located on the property.
12. That the property was never used for any trucking business whatsoever.
13. That, at the time of the accident, the property was not being used for any trucking business or any other business or commercial use.


Thomas McQueeney

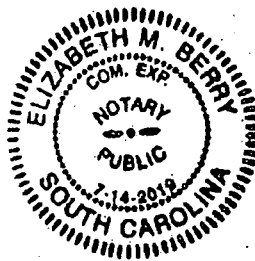
SWORN TO BEFORE ME THIS

30th day of June, 2010.



Notary Public for South Carolina

My Commission Expires: 7-14-19



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Neshen Mitchell individually and as the
next friend of her minor child, Hakeem
T. Mitchell,

Plaintiffs,

vs.

Juan P. Marruffo, d/b/a Liberty Express,
Adrian Morales, RET Partnership,
William T. McQueeney, Carl E. Roberts,
Karl R. Henderson, and Steven Parham,

Defendants.

Juan P. Marruffo d/b/a Liberty Express
and Adrian Morales,

Third-Party Plaintiffs,

vs.

Sharon A. Mitchell

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 09-CP-10-6574

DEFENDANTS RET PARTNERSHIP,
WILLIAM T. MCQUEENEY, CARL E.
ROBERTS, KARL R. HENDERSON,
AND STEVEN PARHAM'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

FILED
2011 FEB - 1 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: RICHARD ROSEN, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Defendants RET Partnership, William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steven Parham (the "RET Defendants"), by and through their undersigned attorneys, hereby submit the following Supplemental Memorandum in Support of Motion for Summary Judgment:

FACTS

The relevant facts are more fully set forth in our Memorandum in Support of Summary Judgment and accompanying exhibits, which are incorporated herein. A brief

summary of the undisputed facts is as follows: RET Partnership is a general partnership owned by William T. McQueeney, Carl E. Roberts, Karl R. Henderson, and Steve Parham. RET Partnership owns property located at 5858 Savannah Highway in the Town of Ravenel, Charleston, County, South Carolina (the "Subject Property"), which abuts Highway 17. The Subject Property contained a single family residential home located towards the front of the property and a larger warehouse-type building towards the back of the property. RET leased the single family home to J. Jose Valdez pursuant to a residential lease, which was governed by the South Carolina Residential Landlord Tenant Act. This lease did not include the warehouse. The partners of RET used the warehouse for their own personal use for the purpose of housing their personal RV's, campers, and the like. The RET Defendants did not use the Subject Property for commercial use.

On or about March 3, 2009, Plaintiff and Defendant Adrian Moralez were involved in an automobile collision on Savannah Highway in the Town of Ravenel, when the vehicle in which Plaintiff was a passenger struck the truck operated by Defendant Moralez. (This collision occurred in the southbound lanes of Highway 17. It is undisputed that the collision did not occur on any portion of the Subject Property. The RET Defendants now seek summary judgment on the grounds that they did not owe a duty to Plaintiff for injuries sustained in this accident.

ARGUMENT

"[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Pittman v. Grand Strand Entm't, Inc., 611 S.E.2d 922, 925 (S.C. 2005). "[T]he evidence and all inferences that can reasonably drawn therefrom must be viewed in the light most favorable to the

nonmoving party." Moore v. Weinberg, 644 S.E.2d 740, 743 (S.C. Ct. App. 2007). "Once the party moving for summary judgment meets the initial burden of showing the absence of a genuine issue as to any material fact, the nonmoving party may not simply rest on the mere allegations contained in the pleadings." Grant v. Mount Vernon Mills, 634 S.E.2d 15, 17 (S.C. Ct. App. 2006). "Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." Id. at 17-18.

The RET Defendants seek summary judgment in this matter on the grounds that they did not owe a duty to Plaintiff for injuries sustained while on the public highway. "In order for liability to attach based on a theory of negligence, the parties must have a relationship recognized by law as providing the foundation for a duty to prevent an injury." McCullough v. Goodrich & Pennington Mortg. Fund, Inc., 644 S.E.2d 43, 47-48 (S.C. 2007). "An affirmative legal duty may be created by statute, a contractual relationship, status, property interest, or some other special circumstance." Id.

I. UNDER SKINNER V. S.C.D.O.T. AND RELATED CASES, THE RET DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE THEY DID NOT OWE A COMMON LAW DUTY TO PLAINTIFF.

It is well-settled South Carolina law that the owners of property abutting or adjoining a public highway owe no common law duty to motorists injured on the public highway, where the owners neither possess nor control the highway. Skinner v. S.C. Dep't of Transp., 681 S.E.2d 871 (S.C. 2009) (abutting property owners owed no duty to person injured by driver who lost control when he veered onto roadway's shoulder); see also Mahle v. Wilson, 323 S.E.2d 65 (S.C. Ct. App. 1984) (abutting property owners owed no duty where pedestrian was struck while attempting to cross highway from the property at issue); Ford v. S.C. Dep't of Transp., 492 S.E.2d 811 (S.C. Ct. App. 1997) (abutting

property owners owed no duty to motorist injured when he struck a tree that had fallen from adjoining property across a public highway). The law only imposes a duty for highway conditions where an individual or business has undertaken an activity that creates an artificial condition on the highway which is dangerous to travelers. Skinner, 681 S.E.2d at 873. This rule applies equally to both residential and commercial property, as it does not distinguish between the two. See Skinner, 681 S.E.2d 871 (residential and commercial property); Mahle, 323 S.E.2d 65 (commercial property); Ford, 492 S.E.2d 811 (residential property).

In its Memorandum in Opposition to Summary Judgment, Plaintiff goes to great length to cite cases from across the country on this issue. However, these cases are inapplicable to the situation at hand, as our courts have repeatedly spoken on this issue and held that, absent the creation of an artificial condition on the highway, owners of property abutting a public highway owe no duty to motorists traveling on that highway. See, e.g., Skinner, supra.

A. Under Skinner, the RET Defendants Did Not Owe a Common Law Duty to Plaintiff Because They Did Not Possess or Control the Highway.

Here, the only allegations in the Complaint concerning the RET Defendants relate to their ownership of the Subject Property, which abuts Highway 17, where the accident occurred. There is no allegation that the RET Defendants owned or controlled the public highway where the accident occurred. The only involvement the Subject Property had with this accident is that apparently the truck driven by Defendant Morales was attempting to enter the driveway. However, the accident occurred on the southbound lanes of Highway 17 and did not occur on the driveway of the Subject Property or on any other portion of the

Subject Property. There is no allegation the driveway or any other portion of the Subject Property did anything to cause or contribute to this accident other than the mere fact that it existed. Therefore, under Skinner, supra, and related case law, the RET Defendants did not owe a common law duty to Plaintiff for injuries received from a collision that occurred on the public highway. To hold otherwise would lead to an absurd result and would be contradictory to the law espoused by our Supreme Court.

B. The Skinner Rule Applies Equally to Both Residential and Commercial Property.

As demonstrated in the above-cited case law, that Plaintiff mistakenly believes the Subject Property contained a commercial trucking terminal has no effect on the long-standing rule that owners of property abutting a public highway owe no common law duty to motorists injured on the public highway where the owners neither possess nor control the highway. See, e.g., Skinner, 681 S.E.2d 871 (residential and commercial property); Mahle, 323 S.E.2d 65 (commercial property); Ford, 492 S.E.2d 811 (residential property). Therefore, this rule applies to the case at hand, regardless of whether the Subject Property was being used for residential or commercial purposes. Accordingly, summary judgment should be granted in favor of the RET Defendants because they did not owe a duty to Plaintiff concerning this accident.

C. The RET Defendants Did Not Create an "Artificial Condition" on the Public Highway.

1. The Situation At Hand Did Not Constitute a "Traffic Jam."

Plaintiff has alleged that, under Skinner, the RET Defendants created an "artificial condition" by creating a "traffic jam." While it is true that the Skinner Court recognized that

a traffic jam can be an artificial condition, the situation at hand does not constitute a traffic jam, as contemplated by our Supreme Court.

In stating that a traffic jam can be an artificial condition, the Court cited Holiday Rambler Corp. v. Gessinger, 541 N.E.2d 559 (In. Ct. App. 1989). Looking to the facts of Holiday Rambler provides some guidance as to circumstances in which our courts consider a traffic jam as existing and constituting an artificial condition. In Holiday Rambler, a landowner operated a factory on its property. Id. at 560-61. The manufacturing employees' shift ended at 3:00 p.m. each day. Id. The employees exited the property from four driveways and entered onto the public highway each day at 3:00 p.m. Id. An accident occurred as several hundred employees attempted to leave the property and enter the highway. Id. This is the fact pattern cited by our Supreme Court in stating that a traffic jam can constitute an artificial condition. The Holiday Rambler situation clearly involved several hundred vehicles entering a two-lane highway at one time. There can be no doubt that this is a traffic jam. However, this situation is wholly different than the case at hand wherein one car collided with one truck.

In understanding the meaning of "traffic jam," as contemplated by the Supreme Court, one must also look to the plain and ordinary meaning of the term. Traffic jam, as the term is commonly understood, is defined as follows:

"A number of vehicles blocking one another until they can scarcely move." Webster's Dictionary, webster-dictionary.org/definition/traffic%20jam (last visited Jan. 25, 2011). "A line of traffic that cannot move or moves very slowly or spasmodically because of overcrowding or an obstruction." Encarta World English Dictionary, encarta.msn.dictionay_1861721322/traffic_jam.html (last visited Jan. 25, 2011). "A large number of vehicles close together and unable to move or moving very slowly." Cambridge Dictionary

Online, dictionary.cambridge.org/dictionary/british/traffic-jam (last visited Jan. 25, 2011).

These definitions clearly envision a substantial amount of vehicles in a line and unable to move for some period time. This is not the situation in this case. Here, one car collided with one truck. It is undisputed that Plaintiff's vehicle was not in a "line of traffic" with other vehicles or otherwise engaged in heavy congestion. Thus, the accident and situation in this case do not meet the plain and ordinary meaning of the term "traffic jam." To hold otherwise would be to torture the meaning of the term "traffic jam," as it has been utilized by our courts and as it is commonly defined.

Therefore, the RET Defendants are entitled to summary judgment, as they did not owe a duty to Plaintiff.

2. Even If the Situation Was a "Traffic Jam" (Which is Denied), the RET Defendants Did Not Create the Traffic Jam.

If a traffic jam existed (which is denied), it was created by Defendant Adrian Morales, not by the RET Defendants. The RET Defendants leased the property to a tenant named J. Jose Valdez pursuant to a residential lease. The truck involved in the accident was driven by Defendant Adrian Morales. Mr. Morales was not a tenant under the lease. (See Ex. E, Lease). The RET Defendants did not know Mr. Morales, have never met Mr. Morales, and never gave him permission to enter the property and/or drive trucks on the property on the date of the accident or on any other date. (Ex. G, Roberts Depo. 22:10-19; Ex. H, Parham Depo. 80:3-4; Ex. I, Henderson Depo. 53:16-19; Ex. J, McQueeney Depo. 81:20-82:1). Therefore, Mr. Morales did not have the express or implied permission of the RET Defendants to drive a truck tractor onto the property on the date of the incident. (See

Ex. G, Roberts Depo. 22:10-19; Ex. H, Parham Depo. 80:3-4; Ex. I, Henderson Depo. 53:16-19; Ex. McQueeney Depo. 81:20-82:1). Moreover, Mr. Moralez did not have the express or implied permission of the RET Defendants back a truck tractor onto the property in such a way as would block Highway 17, as none of the RET Defendants had ever even met or spoken with Mr. Moralez. (See Ex. G, Roberts Depo. 22:10-19; Ex. H, Parham Depo. 80:3-4; Ex. I, Henderson Depo. 53:16-19; Ex. McQueeney Depo. 81:20-82:1). This act is simply too far removed from the RET Defendants to hold that they created the alleged traffic jam.

Likewise, the RET Defendants never gave Mr. Valdez permission to drive or park truck tractors on the property. (Ex. G, Roberts Depo. 21:13-14, 22:5-11, 23:21-24:6, Ex. H, Parham Depo. 48:20-49:2, 50:11-13, 50:23-25, 51:1-25, 63:6-20, 80:19-81:1; Ex. I, Henderson Depo. 45:21-46:10, 47:1-11; Ex. J, McQueeney Depo. 61:25-62:11, 63:16, 83:1-12). In fact, every single time the RET Defendants saw a truck tractor on the property, they explicitly and expressly told Mr. Valdez this was not permitted and ordered him to move the truck. (See id.) Specifically, Defendant Parham twice saw a truck tractor on the property. (See id.) On each occasion, he ordered Mr. Valdez to remove the truck tractor and not park it on the property again. (See id.) Plaintiff's own expert, Jefferson C. Woodall, testified that the actions taken by the RET Defendants in response to twice seeing truck tractors on the property were "appropriate" and "reasonable." (Ex. K, Woodall Depo. 12:4-16, 20:10-20). He also testified that, in his opinion, the RET Defendants did not intend for the property to be used as a trucking terminal. (Ex. K, Woodall Depo. 56:21-57:3).

Therefore, the so-called traffic jam was caused by the manner in which Mr. Moralez chose to maneuver his truck tractor across Highway 17. The actions and involvement of

the RET Defendants did nothing to cause or create this alleged traffic jam, as the Defendants merely owned the property and their actions were simply too far removed from the incident itself.

Thus, the RET Defendants are entitled to summary judgment under Skinner and related cases because they did not create an artificial condition on the highway and, therefore, owed no duty to Plaintiff.

II. NO NEW RELEVANT INFORMATION CONCERNING THIS ISSUE HAS BEEN DISCOVERED SINCE THE PRIOR SUMMARY JUDGMENT HEARING.

Since the prior summary judgment hearing, the depositions of the RET Defendants, witness Willie Gordon, and Plaintiff's expert Jefferson Woodall have been taken. No new relevant information has been discovered during these depositions. All testified substantially consistent with their affidavits. The Skinner rule cited above is the controlling rule and is an absolute rule – the owners of property abutting or adjoining a public highway owe no common law duty to motorists injured on the public highway, where the owners neither possess nor control the highway, unless the owners created an artificial condition dangerous to travelers. There are no exceptions or qualifications to this absolute rule. Therefore, The only relevant question is whether the RET Defendants created an artificial condition on the public highway which is dangerous to travelers. If they did not, they cannot be held liable for the injuries sustained in this accident because they had no duty to Plaintiff. Whether the RET Defendants had knowledge of trucking activity, how often the trucking activity was taking place, steps taken to abate the activity, and other similar issues are irrelevant to the rule espoused in Skinner because there is no exception to the

controlling case law. Therefore, these issues are irrelevant to the ultimate question at issue in this Motion – whether the RET Defendants owed a duty to Plaintiff.

A. Willie Gordon's Testimony is Irrelevant to the Ultimate Issue & Does Not Create a Genuine Issue of Fact.

In his deposition Willie Gordon testified that, in the six month period prior to the accident, he saw truck tractors parked on the property. He never saw more than two on the property at the same time. (Ex. L, Gordon Depo. 21:20-22:5). He never observed trucks loading or unloading from the warehouse on the back of the property. He simply saw trucks parked on the property on occasion. (Ex. L, Gordon Depo. 23:4-6). He testified that he once had to stop on Highway 17 because of a truck backing across the highway onto the property. These issues were set forth in his affidavit, which was submitted as an exhibit at the prior summary judgment hearing.

As set forth above, the RET Defendants did not create a traffic jam or other artificial condition as contemplated by the Skinner rule. That Mr. Gordon allegedly saw a truck or two (at most) parked on the property prior to the accident does not establish liability under Skinner or even create a question of fact on this issue. Likewise, Mr. Gordon's testimony that he once stopped his vehicle on Highway 17 because of a truck backing onto the property does not establish liability on the RET Defendants. As more fully explained above, not only does this not create a traffic jam or other artificial condition, the RET Defendants did nothing whatsoever to cause or create this situation. This situation deals with the way in which the truck driver chose to maneuver his vehicle – a decision wholly separate from any actions or inactions of the RET Defendants. Additionally, Mr. Gordon's testimony does not have any bearing on whether an artificial condition existed on the date of the accident.

His testimony is, quite simply, irrelevant to the ultimate issues in this case and does not operate to create any genuine issues of material fact.

B. The Deposition Testimony of the RET Defendants is Irrelevant to the Ultimate Issue & Does Not Create a Genuine Issue of Fact.

The RET Defendants each testified consistent with the affidavits submitted to the Court at the prior summary judgment hearing. As stated above, the RET Defendants twice saw a truck tractor parked on the property. Each time, they expressly directed the tenant to remove the truck from the property. However, this testimony does not in any way create liability for the RET Defendants for two reasons. First, the plaintiff's expert, Jefferson Woodall, characterized their actions in response to seeing the trucks as "appropriate" and "reasonable." Second, this issue is irrelevant to the ultimate question in this case under Skinner – whether the RET Defendants had a duty because they created an artificial condition on the public highway which is dangerous to travelers. This is the only inquiry under South Carolina case law. Whether the RET Defendants had knowledge of trucking activity, how often the trucking activity was taking place, steps taken to abate the activity, and other similar issues are irrelevant because there are no exceptions or qualifications to the Skinner rule concerning these issues.

C. The Deposition Testimony of Jefferson Woodall is Improper and Should Not be Considered by the Court in Ruling Upon this Motion.

In his deposition, Plaintiff's expert Jefferson Woodall offered legal arguments and legal conclusions as opinions. These opinions are improper and should not be considered by the Court. For example, Mr. Woodall testified as follows:

A: "To the extent something happened on their property and they were aware of it, they were negligent." (Ex. K, Woodall Depo. 11:17-19).

Q: "It's absolute liability?"

A: "Yes"

Q: "In other words, you cannot escape negligence?"

A: "That's my opinion."

...

A: "I don't think you can escape negligence, no, not in this case." (Ex. K, Woodall Depo. 14:6-15).

Q: "Do they have absolute liability for what happens on their property?"

...

A: "Yes." (Ex. K, Woodall Depo. 37:16-19).

Not only are these opinions inconsistent with South Carolina law, they are improper legal conclusions. In Dawkins v. Fields, 580 S.E.2d 433, 437 (S.C. 2003), the Supreme Court held, "expert testimony on issues of law is inadmissible." Therefore, trial courts should exclude expert testimony offered to establish a conclusion of law because that is within the exclusive province of the trial court. Id.

Here, in ruling upon this Motion for Summary Judgment, the Court should not consider or give any weight to the deposition testimony of Jefferson Woodall. His opinions contain improper legal arguments and conclusions. In fact, he was unable to answer questions as to what, if anything, the RET Defendants should have done differently because he simply believed they face "absolute liability" for this incident. (Ex. K, Woodall Depo. 13:16-14:15). This is improper because: 1) it is not the law of this state; 2) it is an improper legal conclusion; and 3) he failed to provide any factual or technical basis for this opinion. Additionally, Mr. Woodall's opinion that the property violates zoning ordinances should not be considered by the Court because Mr. Woodall testified that he has not seen

the applicable zoning ordinances. (Ex. K, Woodall Depo. 7:3-15, 75:2-7). Therefore, this opinion is not proper and has no basis. As a result, the Court should not consider the testimony of Jefferson Woodall in ruling upon this Motion for Summary Judgment as it is improper and does not create a genuine issue of fact.

Therefore, the RET Defendants are entitled to summary judgment because they did not owe a duty to Plaintiff for injuries sustained in this accident.

III. THE RET DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE, AS A MATTER OF LAW, THEY DID NOT OWE A STATUTORY OR REGULATORY DUTY TO PLAINTIFF.

As more fully set forth in our Memorandum in Support of Summary Judgment, the RET Defendants did not operate a "trucking terminal" on the Subject Property, as has been alleged by the Plaintiff. Even taking Plaintiff's allegations that truck tractors and trailers periodically parked on the property as true, this does not constitute a trucking terminal as the term has been utilized in Plaintiff's Complaint.

However, assuming *arguendo* (without admitting) that the RET Defendants were operating a trucking terminal on the Subject Property, this would not change the fact that the RET Defendants did not owe a duty to Plaintiff for injuries sustained in a collision on the public highway. The truck involved in the collision was not driven by an RET Defendant nor owned by an RET Defendant and such is not alleged in the Complaint. Moreover, there is no applicable statute, regulation, or other law concerning trucking terminals or otherwise that creates a duty flowing from the RET Defendants to drivers on the abutting public highway.

Therefore, summary judgment should be granted in favor of the RET Defendants

because they did not owe a duty to Plaintiff concerning this accident.

IV. THE RET DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT, UNDER BYLERLY V. CONNOR, BECAUSE THEY ARE NOT LIABLE FOR HAZARDOUS CONDITIONS ON THE PROPERTY.

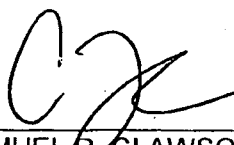
It has been suggested by Plaintiff that the Subject Property was commercial property, rather than residential. Specifically, Plaintiff has alleged it was a commercial trucking terminal. RET Defendants deny a trucking terminal was being operated on the property and that it was a commercial property. However, assuming *arguendo* (without admitting), the property was commercial in nature, the RET Defendants are absolved from liability under Bylerly v. Connor, 415 S.E.2d 796 (S.C. 1992). In Byerly, the Supreme Court held, "when land is occupied by a lessee . . . the law of property regards the lease as equivalent to possession and control of the land to the lessee." Id. at 798. "After the premises is surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." Id. In other words, the lease is the equivalent of a sale for th term of th lease. This rule applies to commercial property. See S.C. Code Ann. § 27-40-10, *et. seq.*

Therefore, if the Subject Property is deemed "commercial property," as has been suggested by Plaintiff, the RET Defendants are not liable for the accident because it was caused by a condition that developed after the premises was surrendered to Mr. Valdez. Thus, the RET Defendants are entitled to judgment as a matter of law because they did not owe a duty to Plaintiff for injuries sustained in this accident.

CONCLUSION

As more fully set forth above, Defendants RET Partnership, William T. McQueeney,

Carl E. Roberts, Karl R. Henderson, and Steven Parham did not owe a common law duty, statutory duty, regulatory duty, or any other type of duty to Plaintiff for the injuries sustained in this accident, which occurred on a public highway. The RET Defendants merely owned a piece of property abutting the public highway where this accident occurred. Therefore, the RET Defendants respectfully request this Court grant summary judgment in their favor.



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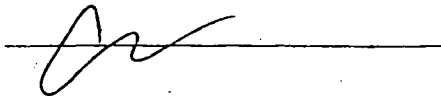
Attorney for Defendants RET
Partnership, William T. McQueeney,
Carl E. Roberts, Karl R. Henderson, and
Steven Parham

Charleston, South Carolina

January 31, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing pleading has been served upon opposing counsel by mailing, hand delivering or electronically forwarding a copy properly addressed and with sufficient postage affixed thereto on this 31 day of January, 2011.



Deposition of Karl Henderson

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 CASE NO: 09-CP-10-6574

5 VIDEOTAPED DEPOSITION OF KARL RUSSELL HENDERSON

6 NESHEN MITCHELL, individually, and as the next
7 friend of her minor child, HAKEEM T. MITCHELL,

8 PLAINTIFFS,

9 vs.

10 JUAN P. MARRUFFO, d/b/a LIBERTY EXPRESS, ADRIAN
11 MORALEZ, RET PARTNERSHIP, WILLIAM T. McQUEENEY, CARL
12 E. ROBERTS, KARL R. HENDERSON and STEVEN PARHAM,

13 DEFENDANTS.

14 -----
15 WITNESS: KARL RUSSELL HENDERSON

16 DATE: JANUARY 13, 2011

17 TIME: 9:40 A.M.

18 LOCATION: ROSEN, ROSEN & HAGOOD
19 134 Meeting St., Ste. 200
20 Charleston, SC 29401
21 -----

22 REPORTED BY:
23 WANDA S. BUCKNER
24 NCRA Registered Professional Reporter
25 NCRA Certified Realtime Reporter
 CLARK & ASSOCIATES
 P.O. Box 73129
 North Charleston, SC 29415
 (843) 762-6294

Deposition of Karl Henderson

1 A Like I said, I had no idea. I never
2 questioned it.

3 Q As far as you know, he was probably a
4 native of Mexico?

5 A Right.

6 Q And he had a Texas driver's license?

7 A Texas driver's license.

8 Q He had no connection with South Carolina
9 that you knew of?

10 A No, sir.

11 Q As far as you knew, he was not a citizen
12 of South Carolina, did not have a South Carolina
13 driver's license, didn't vote in South Carolina?

14 A Did not know.

15 Q As far as you know, he wasn't even a
16 United States citizen?

17 A Did not know.

18 Q And y'all did no background check on
19 Mr. Valdez?

20 A No, sir.

21 Q Did you know he was a truck operator?

22 A No, sir.

23 Q When you went down to the property, did
24 you ever see the tractor-trailers on the property?

25 A Saw the tractor-trailer twice and the only

Deposition of Karl Henderson

1 way that happened, I got the call from Steve Parham.
2 He was a little upset. I think he went to pull into
3 the driveway and there was a truck sat in there. He
4 spoke to someone, not knowing who, and told them
5 they needed to get the truck off the property. It
6 wasn't to be there because basically we couldn't get
7 the motor homes in there with it sitting there.

8 I had seen that. And then one other time
9 I seen it parked in the back to the right-hand side
10 of the larger building in the back.

11 Q Do me a favor. Look at the photographs in
12 front of you on top of that stack. I think one is
13 6A and one is 6B in a separate document. Top of
14 that stack, there is copies of photographs. Do
15 yours have stickers that say 6A and 6B?

16 A They do.

17 Q Is 6A a picture of the small house in
18 front and the warehouse in back?

19 A Yes, sir.

20 Q 6B is a photograph of the driveway with
21 some tractor-trailers sitting there?

22 A I don't know about tractor-trailers. It
23 looks to me like I see a tractor and a trailer, one.

24 Q Did you see those on the property?

25 A No, sir.

Deposition of Karl Henderson

1 Q Where did you see them?

2 A The only thing I seen was when I pulled in
3 that one time, there was a truck that was hooked to
4 a trailer sitting there. That is whenever Steve had
5 mentioned about it. He ran into somebody and asked
6 them to get the truck off. He didn't ask them; he
7 told them to get the truck off.

8 Q He told them to get the truck off?

9 A Off of the property.

10 Q He did?

11 A Right.

12 Q What was the reason for that?

13 A There was no possible way for us to get in
14 there with the motor homes with it blocking it like
15 that.

16 Q When you were there, you saw a
17 tractor-trailer on the property?

18 A Yes, sir.

19 Q Where was it parked?

20 A Back behind the fence on the right-hand
21 side of the property.

22 Q All right. So if we look -- is it
23 photograph 6B that shows the tractor-trailer?

24 A Well, again, I saw it twice. The first
25 time I saw one which is on the left which is what we

Deposition of Karl Henderson

1 him?

2 A No, sir.

3 Q Who was the gentleman that Steve Parham
4 talked to on the property other than Mr. Valdez?

5 A Don't know, sir. That is what I am
6 telling you. He told me that day he spoke to
7 someone on the property. Who it was, I am not
8 certain.

9 Q Did you ever tell Mr. Valdez he couldn't
10 use any other part of the property other than the
11 house?

12 A No, sir.

13 Q Did RET Partnership ever adopt any rules
14 and regulations for the property?

15 A No, sir, not that I know of.

16 Q Do you know Juan Marruffo?

17 A No.

18 Q Or Adrian Morales?

19 A No, sir.

20 Q Did you ever go on the property to inspect
21 the house that you were renting?

22 A No. You mean while he was living there?
23 No, sir, I did not.

24 Q Were you ever in it while he was living
25 there?

Deposition of William McQueeney

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 CASE NO: 09-CP-10-6574

5 VIDEOTAPED DEPOSITION OF WILLIAM T. McQUEENEY

6 NESHEN MITCHELL, individually, and as the next
7 friend of her minor child, HAKEEM T. MITCHELL,

8 PLAINTIFFS,

9 vs.

10 JUAN P. MARRUFFO, d/b/a LIBERTY EXPRESS, ADRIAN
11 MORALEZ, RET PARTNERSHIP, WILLIAM T. McQUEENEY, CARL
12 E. ROBERTS, KARL R. HENDERSON and STEVEN PARHAM,

13 DEFENDANTS.

14 -----
15 WITNESS: WILLIAM T. McQUEENEY

16 DATE: JANUARY 12, 2011

17 TIME: 1:25 P.M.

18 LOCATION: ROSEN, ROSEN & HAGOOD
19 134 Meeting St., Ste. 200
20 Charleston, SC 29401
21 -----

22 REPORTED BY:

23 WANDA S. BUCKNER

24 NCRA Registered Professional Reporter

25 NCRA Certified Realtime Reporter

 CLARK & ASSOCIATES

 P.O. Box 73129

 North Charleston, SC 29415

 (843) 762-6294

Deposition of William McQueeney

1 set up by South Carolina to evict tenants who
2 violated leases?

3 A Yes. But, again, that eviction, I went
4 through Southeastern Management to do it. I didn't
5 do it.

6 Q They were going to do -- if you wanted to
7 evict somebody here, you would have asked
8 Southeastern to take care of it?

9 A That's correct. For reasonable cause that
10 is in the lease.

11 Q Okay.

12 A Not paying, for instance.

13 Q Did Mr. Parham tell you that he had gone
14 by the property and seen the tenant parking a
15 tractor-trailer on the property?

16 A Eventually, not when it happened.

17 Q When you say eventually, was it before or
18 after our client was injured in this wreck?

19 A Well after the accident.

20 Q After the accident?

21 A That's correct.

22 Q Prior to the accident, which I think was
23 March of 2009 --

24 A Right.

25 Q -- you were not aware that your tenant was

Deposition of William McQueeney

1 parking a tractor-trailer rig on the property?

2 A Absolutely not. I never had seen a
3 tractor-trailer on that property.

4 Q All right. Were you aware that more than
5 one tractor-trailer from time to time had parked on
6 that property before?

7 A I am still not aware of that.

8 Q Still don't know about that?

9 A No.

10 Q Nobody told you about that?

11 A No.

12 Q You haven't read any depositions in this
13 case?

14 A No.

15 Q You haven't seen any statements of
16 witnesses in this case?

17 A I may have seen them and not read it. Is
18 there something in there?

19 Q You are not aware there is a witness who
20 says that there was more than one tractor-trailer
21 parked on that property before this wreck.

22 A Now, I think that came up in one of our --
23 I guess attorney-client things.

24 Q I am not asking you about what Mr. Clawson
25 may have told you or you may have discussed with

Deposition of William McQueeney

1 your lawyer.

2 A Yeah. It is third-hand information to me.

3 Q Going back --

4 A I never seen the first one. You are
5 saying there is a second one, so --

6 Q What you are saying is prior to the wreck
7 in which our client, Hakeem Mitchell, was injured,
8 you were not aware that your property was being used
9 by people who were parking tractor-trailers on it?

10 A I am aware that it was never being used
11 for that. I never had seen a tractor-trailer on
12 that property.

13 Q Well, you know now there was, right?

14 A No, I don't know that.

15 Q You don't know that?

16 A No.

17 Q Mr. Parham never told you he saw that?

18 A No. Mr. Parham told me after the
19 accident, but it was never used for
20 tractor-trailer -- for the purpose of storing a
21 tractor-trailer of any type on that property.

22 Q How would you know that if you had never
23 seen it?

24 A Because that is what y'all are alleging.

25 Q All right. In addition to alleging it,

Deposition of William McQueeney

1 it wouldn't happen again.

2 Q Let me ask you this. If you think about
3 it now, that the tractor-trailer parked on your
4 property and the front of the trailer is facing
5 Highway 17 --

6 A Um-hum.

7 Q -- would you assume that in order to get
8 that trailer there, somebody has to back it across
9 Highway 17 to get it on that property?

10 A I would make that assumption.

11 Q If you had known that in January or
12 February before this accident happened, would you
13 have tried to stop it?

14 A Absolutely.

15 Q You would have done that because it would
16 have been dangerous, right?

17 MR. McLEOD: I object to the form.

18 A It was -- I would have done that because I
19 would have assumed that that person would know that
20 we don't allow it, that we couldn't have access past
21 that to get our RVs in and out, and that that was
22 not the intended use for what the lease was made --

23 Q Okay.

24 A -- the residential lease.

25 Q Okay. And would you have also assumed it

Deposition of William McQueeney

1 A Not aware of that.

2 Q When was the first time you became aware
3 of that?

4 A After the accident. Well, let me go back.
5 I still don't know that he drives a tractor-trailer.

6 Q All you know is somebody was parking a
7 tractor-trailer on the property?

8 A I think -- wasn't that accident, wasn't
9 that someone else's tractor-trailer?

10 Q Well, I can't answer questions, but I do
11 believe the title to this vehicle is in the name of
12 someone else.

13 A Okay. The title -- the only thing I am
14 aware of is someone that we did not rent to had an
15 accident near our property with a tractor-trailer
16 that they were backing into our property which was
17 unauthorized. That is the only thing I am aware of.

18 Q Okay. But you are also aware that you
19 knew it was not authorized and they kept doing it?

20 A I was not aware that they kept doing it.
21 I only knew of the one incident which Mr. Parham had
22 put a note on the person's vehicle to have it
23 removed. Beyond that, that's all I knew.

24 Q Mr. Parham didn't tell you he actually, at
25 some other point, had a face-to-face conversation

Deposition of William McQueeney

1 Q Okay. This appears to be a tenant ledger
2 from Southeastern on Mr. Valdez?

3 A Okay, um-hum.

4 Q It says there is an entry at October 9,
5 2009, called first paper eviction which follows late
6 fee -- actually follows several late fees?

7 A Right.

8 Q Do you recall whether or not Southeastern
9 on your behalf did undertake to eject this tenant?

10 A That I don't know. I don't know whether
11 he was ejected or he just moved away. I have no
12 idea.

13 Q All right. You were aware that -- because
14 I think I have told you -- you were aware that
15 Mr. Parham today testified he met another gentleman
16 of Hispanic descent at the property?

17 A I not aware of that.

18 Q Do you know who that might have been?

19 A I am not aware that he did.

20 Q Do you know Juan Marruffo?

21 A Never heard of him.

22 Q Do you know Adrian Morales?

23 A Are they names in the lawsuit? Maybe I
24 have seen the names before.

25 Q Maybe. I can't tell you the answer to

Deposition of William McQueeney

1 that.

2 A I don't know.

3 Q I know --

4 A That sounds familiar to me as the names
5 that are in the lawsuit.

6 Q You don't know who they are?

7 A I don't know on which side of the lawsuit.
8 I assume is this the Liberty Express person
9 possibly? I am asking you the question. I'm sorry.

10 Q I mean, my question is do you know them?

11 A I don't know them, no.

12 Q As far as you know, were you allowed to
13 come on this property at any time you wanted to?

14 A I did.

15 Q As far as you know, that was perfectly
16 appropriate?

17 A Yeah, we had the storage building back
18 there. The only access was to go through there.

19 Q How often were you on this property?

20 A Perhaps once a month. Somewhere in that
21 neighborhood. Sometimes more. During the
22 summertime it seems like we had kids' birthday
23 parties there. We went more often.

24 Q You never saw the tenants there?

25 A Never saw the tenants, no.

Deposition of William McQueeney

1 Q Never saw a tractor-trailer there?

2 A Never saw a tractor-trailer. I tell you,
3 I am just throwing this, a tractor-trailer there
4 would have been a big problem. So that is why
5 Mr. Parham, I am sure, left the note.

6 Q You have seen photos of the
7 tractor-trailer on the property, right?

8 A I have seen them, yeah.

9 Q You know it was there?

10 A That doesn't mean that we authorized them
11 being there. What I am telling you is we would not
12 allow them there.

13 Q Despite the fact that you leased the house
14 to Mr. Valdez, you retained control of the property,
15 didn't you?

16 A We did through Southeastern Management,
17 that's correct.

18 Q Well, Southeastern Management was your
19 agent, correct?

20 A That's correct.

21 Q But RET Partnership owned the property?

22 A That's correct.

23 Q RET maintained control of the property?

24 A Yes.

25 Q The whole property?

Deposition of Steven Parham

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 CASE NO: 09-CP-10-6574

5 VIDEOTAPED DEPOSITION OF STEVEN PARHAM

6 NESHEN MITCHELL, individually, and as the next
7 friend of her minor child, HAKEEM T. MITCHELL,

8 PLAINTIFFS,

9 vs.

10 JUAN P. MARRUFFO, d/b/a LIBERTY EXPRESS, ADRIAN
11 MORALEZ, RET PARTNERSHIP, WILLIAM T. McQUEENEY, CARL
12 E. ROBERTS, KARL R. HENDERSON and STEVEN PARHAM,

13 DEFENDANTS.

14 WITNESS: STEVEN PARHAM

15 DATE: JANUARY 12, 2011

16 TIME: 10:00 A.M.

17 LOCATION: ROSEN, ROSEN & HAGOOD
18 134 Meeting St., Ste. 200
19 Charleston, SC 29401

20 REPORTED BY:
21 WANDA S. BUCKNER
22 NCRA Registered Professional Reporter
23 NCRA Certified Realtime Reporter
24 CLARK & ASSOCIATES
25 P.O. Box 73129
 North Charleston, SC 29415
 (843) 762-6294

Deposition of Steven Parham

1 Q Did you meet someone named Juan Marruffo?

2 A Not I can't recall.

3 Q Did you meet Adrian Morales?

4 A No.

5 Q You were able to come on the property at
6 any time you wanted to, correct?

7 A Yes.

8 Q There was nothing preventing you from
9 doing that?

10 A No.

11 Q The tenant never tried to stop you?

12 A No.

13 Q And you didn't feel like you needed to
14 notify the tenant when you were coming on the
15 property?

16 A No.

17 Q And you didn't do that?

18 A No.

19 Q You at one time offered Mr. Valdez another
20 place to park, is that correct?

21 A Yes.

22 Q Where was that?

23 A At the other piece of property on Savannah
24 Highway.

25 Q Why did you do that?

Deposition of Steven Parham

1 A Because I didn't want his truck there.

2 Q Okay.

3 A The other place had -- it was a bigger
4 piece of property. There was a way in and a way
5 out. And he wouldn't have to have his truck on that
6 property.

7 Q So the other piece of property you offered
8 him, he could have pulled in and pulled out without
9 backing across Highway 17?

10 A That's correct.

11 Q Did you ever see a car that Mr. Valdez
12 owned?

13 A He had a red pickup truck or burgundy
14 pickup truck.

15 Q In addition to his tractor-trailer?

16 A Yes. Well, I have seen him drive that. I
17 don't know that he, in fact, owned that, but I did
18 see him in that truck.

19 Q When you spoke to Mr. Valdez about parking
20 on the property, was anybody else there?

21 A No.

22 Q Either time?

23 A No. When I left a note on the truck, you
24 know, he wasn't at home and the truck was there.
25 That is when I left a note on the truck. And I had

Deposition of Carl Roberts

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY
4 CASE NO: 09-CP-10-6574

5 VIDEOTAPED DEPOSITION OF CARL E. ROBERTS

6 NESHEN MITCHELL, individually, and as the next
7 friend of her minor child, HAKEEM T. MITCHELL,

8 PLAINTIFFS,

9 vs.

10 JUAN P. MARRUFFO, d/b/a LIBERTY EXPRESS, ADRIAN
11 MORALEZ, RET PARTNERSHIP, WILLIAM T. McQUEENEY, CARL
12 E. ROBERTS, KARL R. HENDERSON and STEVEN PARHAM,

13 DEFENDANTS.

14 -----
15 WITNESS: CARL E. ROBERTS

16 DATE: JANUARY 13, 2011

17 TIME: 11:10 A.M.

18 LOCATION: ROSEN, ROSEN & HAGOOD
19 134 Meeting St., Ste. 200
20 Charleston, SC 29401
21 -----

22 REPORTED BY:
23 WANDA S. BUCKNER
24 NCRA Registered Professional Reporter
25 NCRA Certified Realtime Reporter
 CLARK & ASSOCIATES
 P.O. Box 73129
 North Charleston, SC 29415
 (843) 762-6294

Deposition of Carl Roberts

1 A Occasionally, yeah. I have been there.

2 Q How often do you think you went there?

3 A Golly, I might not go there but four or
4 five times a year.

5 Q Do you remember when y'all leased it to
6 Mr. Valdez?

7 A I don't recall when we did. He called
8 me -- Rusty called me and asked me -- he had a
9 gentleman that was looking for a six-month lease.
10 Was I game for a six-month lease. I said, well, we
11 have no one in there. Six months is better than
12 nothing. But I couldn't tell you when that was.

13 Q Did you ever meet Mr. Valdez?

14 A Never saw him.

15 Q Were you involved in getting the lease
16 signed?

17 A No, sir. Never saw the lease.

18 Q Were you ever involved in getting any of
19 the leases for any of the tenants there?

20 A No, sir.

21 Q I think Mr. Henderson's daughter lived
22 there at some time?

23 A Yes, sir.

24 Q Did she have a lease?

25 A I don't even know. I think she was --

Deposition of Carl Roberts

1 yeah, she was in there for a while. I couldn't tell
2 you how long she was in there. I believe it was --
3 I believe it was Andrea was the one that was in
4 there.

5 Q Did you ever see tractor-trailers parked
6 on the property?

7 A No, sir.

8 Q You never saw a truck on the property?

9 A Not no tractor-trailer truck, no, sir.

10 Q Did you ever meet Mr. Valdez?

11 A No, sir, never saw him.

12 Q Did you ever meet anybody else that was
13 living there with him?

14 A Never saw a soul around there.

15 Q Ever meet Adrian Morales?

16 A No.

17 Q Or Juan Marruffo?

18 A Don't know -- as far as I know I never
19 spoke with any of those guys.

20 Q Let me ask you if you can do this. In
21 front of you in that pile there are some photographs
22 of the property.

23 A Okay.

24 Q 6A and 6B.

25 A Okay. 6A, yes, sir.

Deposition of Carl Roberts

1 Q Is that a fair representation of the house
2 in front and the warehouse in back?

3 A Yes, sir.

4 Q And if you look at 6B --

5 A Okay.

6 Q -- do you see a tractor and a trailer?

7 A Sure do.

8 Q Ever seen those before?

9 A No, sir, never have.

10 Q Were you aware they were being parked on
11 your property?

12 A No, sir.

13 Q Did Steve Parham ever call you and tell
14 you the tenant was parking a tractor-trailer rig on
15 the property?

16 A No, sir.

17 Q Did Mr. Henderson ever call you and tell
18 you the tenant was parking a tractor-trailer on the
19 property?

20 A No, sir.

21 Q When was the first time you learned that
22 your tenant was parking tractor-trailers on your
23 property?

24 A The first I heard about it, that was after
25 the papers were served. And that is when Steve had

Deposition of Carl Roberts

1 mentioned something about talking or leaving a note
2 on this gentleman's truck, but that was after I was
3 served papers. I couldn't tell you when that was,
4 when I got the papers.

5 Q The lawsuit we are here about today?

6 A Yes, sir.

7 Q So that was sometime in 2009?

8 A Correct.

9 Q Mr. Valdez, let's see, I think his lease
10 is probably in front of you, but I have a ledger
11 here which is Exhibit 8. If you can look in that
12 pile in front of you there is a document that looks
13 like a tenant ledger, it says at the top.

14 A Right here.

15 Q Which indicates that Mr. Valdez, I guess,
16 started maybe paying rent in January or February of
17 2009?

18 A This is the first time I have seen this
19 document. I don't know. I don't know when the
20 lease was actually -- let's see. I see a security
21 deposit, then, I guess, if this is his.

22 Q The lease is in that pile, too. It is
23 actually Exhibit 5, if that helps you. It might be
24 in the pile on your left hand.

25 A 5? Yes, sir.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

NESHEN MITCHELL, INDIVIDUALLY
AND AS THE NEXT FRIEND OF HER
MINOR CHILD, HAKEEM T. MITCHELL,
Plaintiff,

vs.

CASE NO. 09-CP-10-6574

JUAN P. MARRUFFO, d/b/a LIBERTY
EXPRESS, ADRIAN MORALES, RET
PARTNERSHIP, WILLIAM T. MCQUEENEY,
CARL E. ROBERTS, KARL R. HENDERSON
and STEVEN PARHAM,

Defendants.

VIDEO

DEPOSITION OF: JEFFERSON C. WOODALL

DATE: January 11, 2011

TIME: 1:07 p.m.

LOCATION: Law Offices of
Clawson & Staubes
126 Seven Farms Drive
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: Skyler Hare Britt,
Court Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 know what his relationship to the property was?

2 A. This is an assumption, but I assume he
3 was living in the house.

4 Q. Do you know whether or not the resident
5 of the house had been told that people should not
6 park trucks there?

7 A. I only know what the affidavit said
8 that one of the property owners spoke to someone
9 living in the house and it said exactly that.
10 Please don't park the truck here. We have a place
11 down the road if you need to park it. I believe
12 that's all that was said about that.

13 Q. While it may not be within the purview
14 of your legal opinion, do you think that action was
15 appropriate by a property owner?

16 A. Yes.

17 Q. Should a property owner be liable if a
18 tenant having been instructed not to do something
19 does something in contravention to those
20 instructions?

21 MR. GOWDOWN: Object to the form.

22 BY MR. CLAWSON:

23 Q. You can answer.

24 A. I don't think the property owner can be
25 absolved of his responsibility by just giving a

1 keep them from observing what the use of the
2 residential portion of the property is?

3 MR. GOWDOWN: Object to the form.

4 THE WITNESS: I can't imagine a
5 property owner that would ignore something that they
6 saw on a portion of their property even though they
7 weren't going to that portion specifically. I think
8 they would note something that concerned them.

9 BY MR. CLAWSON:

10 Q. Okay. Do you think that property
11 owners then going on that -- to check on their --
12 their RVs there, if they noticed a truck that was
13 there, in fact, told them you need to move that
14 truck and did not see other trucks on the property,
15 do you think that is reasonable on the part of the
16 property owners?

17 A. Well, only one of the three stated that
18 they had seen a truck on the property, but I think
19 his actions to the extent that they went were
20 reasonable.

21 Q. Are they responsible if someone then
22 acts without permission or in contravention to those
23 instruction?

24 MR. GOWDOWN: Object to the form.

25 THE WITNESS: I'll go back to what I

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 09-CP-10-6574

NESHEN MITCHELL, individually and as
the next friend of her minor child, HAKEEM
T. M., ... Appellants,

vs.

JUAN P. MARRUFFO d/b/a LIBERTY
EXPRESS, ADRIAN MORALES, RET
PARTNERSHIP, WILLIAM T.
MCQUEENEY, CARL E. ROBERTS,
KARL R. HENDERSON, and STEVEN
PARHAM, ... Defendants,

OF WHOM RET PARTNERSHIP, WILLIAM T.
MCQUEENEY, CARL E. ROBERTS,
KARL R. HENDERSON, and STEVEN
PARHAM, are the Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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