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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

Case No. 2020-001027

JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP, Appellant/Respondent,

v.

FIRST RELIANCE BANK, INC.; THE BLANTON COMPANY, INC.; JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC.; WW PLASMA II, LLC; DALE PORTER; F.R. SAUNDERS, JR.; HUNTER WILLIAMS; and JOSEPH B. BLANTON, individually, Defendants,

Of Which FIRST RELIANCE BANK, INC.; DALE PORTER; F.R. SAUNDERS, JR. are the, Respondents,

And

WW PLASMA II, LLC and HUNTER WILLIAMS are the Defendants.

RECORD ON APPEAL / VOLUME 2 OF 4

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material which is irrelevant to this appeal.

February 17, 2021

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC., ET AL..

F.R. SAUNDERS

February 12, 2020

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A. It ebbs and flows too, based on where we are, but roughly 150, give or take.

Q. And what are the gross revenues of the bank today on an annual basis?

A. 35 million probably.

Q. How about the net?

A. All in, in '19 -- I mean, 2019, we made, like, 4.1 million.

Q. Okay. And 2019, were there distributions to the shareholders? Dividends?

A. No.

Q. How about its loan portfolio today? Can you -- actually, strike that. I've got that printed out, so we can talk about that in a minute.

Let's get to the period that I'm interested in, which is 2008 to 2015 or so. But first I want to make sure that we're on the same page with regard to some banking terms. I want to make sure that my understanding of these terms is accurate.

A. Uh-huh.

Q. So let me start by asking: What is your -- what has been your interaction -- what was your interaction, say, between 2008 and 2015 with the -- what I'll call the problem loan department?

A. Uh-huh.

Q. First of all, let me ask you: What do you understand the meaning of the "problem loan department" to be and who's in it?

A. Back -- we had multiple people in there, and more in some periods and less in some periods.

But Jess Nance was our chief credit officer at the time. Dale Porter worked in special assets. Hal Cobb worked in special assets.

Q. And tell me what -- again, what your understanding of "special assets" means.

A. Any -- generally any loan asset that is not performing.

Q. Also could be called a "nonperforming asset"?

A. Could be.

Q. All right. So --

A. But there may be more things that would qualify it as a special asset team involvement of any nonperforming asset. It could be an asset that's deteriorating but it's not reached nonperforming status.

Q. All right. So before we dive into the particulars of what went on, sir, give me, if you would, please, your overview of what happened in 2007 or '08 through 2015. Just give me your description of what happened and what was the result with the bank.

A. Well, let me qualify your statement there.

Obviously, the entire world got excited about real estate. That excitement trickled down even into markets like South Carolina.

Our industry gets excited about robust economies, too, and therefore, competition can create an environment where -- and in that time, particularly, there were just way too many banks with C talent leaders in play.

So we had a lot of people making financial decisions that just exacerbated the problem even on a local level. People leveraging transactions too fully, extending terms on financing too fully, speculative transactions that were to people who weren't really qualified probably at the time, but seemed like they were because anybody could make money on real estate in 2005 and '06.

By 2006, I had begin [sic] to feel that the real estate bubble was a bit more than what anybody recognized as a problem, and we significantly reduced our lending exposure to construction in 2006.

We had loan production officers in Myrtle Beach, in Greenville, South Carolina, and Rock Hill, South Carolina. We shut all those loan production offices down in preparation for what we felt was going to be some kind of economic reset.

Q. Okay.

A. So we were getting prepared for what we thought would be a problem. We just had no idea how bad the problem was going to be. Obviously, the world completely flipped upside down.

So by 2007, it started to deteriorate. By 2008, we started to feel some of the essence of the real estate declines. And by 2009, '10 and '11, obviously, we were just slugging our way through the process.

Q. Okay. So tell me what it was in 2007, you said, "We felt the essence of it." Tell me how that manifested --

A. Well, it started to get to bubbling up when Lehman Brothers collapsed and some of the big -- Bank of America got in trouble and, you know, Washington Mutual shut down, and Wachovia failed.

You know, we obviously knew that this was a bigger issue than what anybody was going to recognize at the time. We just didn't know systemic it would be throughout our organization.

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We had high, exposure, like all community banks at that time, in real estate lending, and we felt like it was going to trickle in our world some, so we were getting prepared for it.

Q. It's my understanding that there are some -- do you understand the phrase "metrics"?

There's some metrics or numbers -- ratios that bankers use to describe their performance. I'm going to assume that you probably know a lot more about these metrics than I do.

But there's -- what I would like to find out is, is just to make sure that my understanding and your understanding of them are the same, and -- because I want to know what your relationship was to the problem loan department.

And is that what you-all called it? The problem loan department? Or --

A. I don't know what we called it. Risk management group is what I called them. But y'all call it whatever you want. We don't have any formal names or terms like that.

Q. I'll call it the problem loan. Can we agree that that's Nance, Porter, and Hal Cobb?

A. Yes. But, you know, Mr. Nance had duties beyond just problem loan management, obviously. He

managed credit risk for the whole company. That was just a piece of credit risk management.

Q. And you called Dale Porter "special assets." Is that how you --

A. That's the term that I have in my brain. What we officially called him during that period, I don't know what we called him. But that's basically what he did, though; is he worked loan assets that were problematic at the time.

Q. That's exactly what he said. So that's good. Okay. All right.

So let's talk about -- you've given me the overview and I thank you for that.

Tell me about your role from, say, the crisis beginning in 2007 through 2015. Give me the overview of your role with the problem loan department. What sort of interaction you had with them? How frequent were the meetings? What were the issues?

A. I don't know that I can answer that specifically. Look, I was pretty involved, obviously. I'm responsible for the organization as a whole, so I wanted to make sure we had our hands clear around what we were doing there.

Generally speaking, though, my role was more

higher level. We would set policy and practices in place on how we identified problems, and then what processes we went through as we identified a problem.

What I mean by that is, you know, assessing the workout plan for the client. Is it workable?

I would not necessarily get involved in the workout plan, but we established a protocol.

We would try to work with the client. Establish a plan. If payments discontinued, then we would revalue the asset. We would adjust our books accordingly. We'd write down the difference.

And back during that period, real estate values were declining almost monthly. So, I mean, we had to on a frequent basis -- and I don't remember the frequency -- but we set practices in place on frequently reassessing values on those real estate and would adjust those values and write our books down every time we had a problem loan that wasn't performing.

Even through that process, we would still try to work with the client where a client -- if the client had a good plan and wanted to try to pay us back. But if the client did not have a plan or did not want to pay us back, then we worked on deed

in lieus or foreclosure actions, which, at that point in time, there was a process how we would foreclose and how we would book an asset and then how we would dispose of the asset.

Q. Mr. Saunders, thank you. I'm interested generally in what the bank's methodology was with regard to problem assets. There's also, as you might understand, there's one problem loan in particular that I'm interested in, which is the Atlantic.

A. Right.

Q. Atlantic Regional LLC note and mortgage. So the --

A. So let me qualify. I'm interrupting you again. I'm sorry.

Q. No. Go ahead.

A. So I was trying to communicate to you that my role was establishing a practice. I rarely got involved in day-to-day decisions of those transactions.

Now, I would be involved in any committee environment where our credit people would come in and say, This particular asset has been devalued another 200,000. We need to write the asset down.

I may be involved in a committee discussion

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all be kept together?
A. Generally, yes.
Q. In the Atlantic file, right?
A. Generally, yes.
Q. So tax returns, balance sheets, profits and loss. What sort of documents would y'all want?
A. Yeah, that.
Q. Okay.
A. Okay. Yes. Balance sheets and financial statements.
Q. Okay. So Atlantic, in this case, starting in 2006 up through July of 2015, had -- I can't quote the exact number -- but almost $10,000 in late charges, and I think that was late, and that's $472 or so a clip. They were late maybe 25 times.
Is that an indicator that would put them on the watch status?
A. Could be. Yeah. So all kinds -- no specific line in the sand that says we're concerned about you now. If the borrower was having an issue with a billing practice and his cash flows were disrupted for whatever reason and he was communicating with us, we probably wouldn't create that as a watch loan. But where we would be concerned, if he was clearly descriptive of what

his issues were and he had his hands around it.
If he had been paying on time for a long period of time, then not was paying on time all of a sudden, wouldn't communicate with us, then it probably would go to a watch status. But there's a lot of different scenarios I could -- you know, we could talk through and it may -- one may fall into the category or not.
Q. Okay. Tell me what your understanding is of a nonperforming loan. And specifically, what the nonperforming loan ratio is. That's probably --
A. You just asked me two questions.
Q. I did.
A. Do you want me to answer both?
Q. Yes, please.
A. What would be a -- what would generally be considered a nonperforming loan would be an asset that has discontinued payments in a period of 90 days or more. But it could not even be that, though. If we got a bankruptcy notice all of a sudden and they weren't delinquent, we may very well put them in a nonperforming status.
Q. Okay.
A. But it would be anything indicative that the chances of us continuing to receive a regular

payment would be problematic, it probably would go to nonperforming status, which means at that point, we would put it in a nonaccrual.
We would shut down the interest accrual. We wouldn't report that as income going forward. Then we would assess the value of the asset to whatever those practices were at the time. Generally an outside appraiser would tell us what the asset was worth. And if they owed us more than what the appraiser came in, we would write off our books by whatever that difference would be.
Q. Is all of that information put into the file for that borrower?
A. Generally, yes.
Q. All right. So let's now talk about the ratio, the NPL ratio.
Can you, please, tell me what that is?
A. It's a consolidated of all problem loans, nonperforming loans, and just divided by your total outstanding capital.
Q. And is that -- can we agree that's a metric?
A. Yeah.
Q. Is that a metric that the bank tracks on a regular basis?
A. Yes.

Q. Okay. So, again, give me the overview between, let's say -- let's go before the economy fell off the cliff -- let's say 2005 or 2006 through 2015.
Give me the overview of what happened to the NPL ratio during that time.
A. A little like a bell curve --
(Indiscernible crosstalk.)
COURT REPORTER: I need y'all to please speak one at a time.
THE DEPONENT: We went from whatever the ratio was prior to the recession, which probably was close to zero, to, at a peak -- I don't remember what it was at the peak -- but it was probably well over 100-plus percent of capital, which is problematic at that range.
BY MR. LE CLERCQ:
Q. And then it came -- has it come back down?
A. Yeah. It's 3 or 4 percent now.
Q. All right. My colleague, Mr. Oxner, asked Mr. Porter at the deposition what the Texas ratio got up to, and he said 150.
Do you have any reason to dispute that?
A. Uh, I don't know if it was 150, but it was

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over 100 for sure. It was up there. And he may even be more knowledgeable exactly what it was because he was living it every day, so I probably would trust his number before mine.

Q. Tell me what the Texas ratio is.

A. It's the same thing. Nonperforming loans divided by capital.

Q. Okay.

A. They use the term "Texas ratio," by the way, when the thrift crisis came in the 1980s, when all the Texas banks failed.

Q. No oil boom, right?

A. Right. So when all the Texas banks failed and they had the big thrift crisis and banking crisis in the '80s, Texas ratio was a ratio the regulators put in place at the time to get a measure of health inside a bank.

Q. Describe to me, if you could -- again, this is from, say, 2005 to 2015 -- the regulatory environment that the bank is operating in relationship with the FDIC and how that changes during that period.

A. I don't know that our relationship with the FDIC ever changed. Obviously, we had challenges, but our challenges were well managed.

We never went under a formal agreement with regulators. We were well capitalized, so we had a -- what we would call a memoranda of understanding, which is a handshake, in essence, of we're not going to put you under any formal action. But we want -- we're going to pay attention and we want you-all to put a plan in place to fix it, and we did, and it worked itself out.

Q. All right. So did you -- the frequency of your contacts with the FDIC increase or change in the period from, say, 2006 to 2015?

A. Yes. And -- I can't tell you exactly what that frequency was. I think they typically run on 15 or 24-month cycles. We went to annual cycles with them during that period, I believe.

Q. Did you ever go beyond annual to monthly or quarterly?

A. No.

Q. Okay.

A. Now, some of my people may have had conversations with regulators, but we didn't go to any an -- meaning formalized review process with them. Now, we did -- under the memorandum of understanding did send them updates quarterly, I think, on executing the plan we put in place.

Q. Help me understand what the memorandum of understanding was, what the terms were generally and what was the purpose of that document.

A. Well, look. The regulators, when they see a deterioration in a specific bank or in industry, they have multiple levels of leverage that they pull in terms of what kind of actions they can and -- will and can take against you.

The best of all is, is that, Boy, you're all so awesome. We don't really need to talk to you but every two years. You know, we'll see you when we get back. Kind of thing.

The next level would be, Man. We think you-all have some issues. They could become problematic for you. We don't want you to get in such bad conditions that it becomes problematic, so we want to have an agreement between your company and the regulators on what you're going to do, how you're going to do that, and how you're going to manage the results to what we would like to see you get yourself back to.

And that's where we were.

Q. Okay.

A. And then there's a consent order, which is formal, and then there's a takeover over, which you

don't really want.

Q. Is that what happened to Atlantic Bank & Trust in Charleston? Takeover order?

A. I think they did. They had a takeover order. Yeah. They completely failed.

Q. How about -- and I'll admit I get my bank knowledge from my banker, which is the Bank -- at the Bank of South Carolina.

I understand that there are other things that can happen. Can they suggest a merger? Can the -- FDIC can suggest a merger or someone to come in and purchase portfolios? How does that work?

A. So it's rarely that they're going to give you a strategic direction. I'm not saying that they probably would not have a conversation with you, but they've never had one with us.

I would be -- just knowing what I know about the regulators, I would hardly doubt they would give you a strategic solution. They just want you to get the number and you figure the strategy out.

Q. So that in terms of ranking the different doses of medicine you have to take, at the top is the gold standard: We'll see you in 24 months.

The next is a memorandum of understanding?

A. Right.

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Q. The next level of hell is the --
A. Consent order.
Q. -- consent order. And then the lowest level is --
A. We're taking you out, yes.
Q. Were you aware from between 2009 and 2015 that several banks had been closed by the FDIC --
A. Sure.
Q. -- in South Carolina?
A. Uh-huh.
Q. Can you name any of those names?
A. Williamsburg First National was one. I think Atlantic Bank & Trust is one. Beach First is one. First National Bank of Spartanburg was one.
Q. Do you know why? Can you say as a general matter what it was? What happened to those?
A. They were undercapitalized and, generally, as a result of problem loans.
Q. All right. Where did your -- where did this bank's Texas ratio -- for example, where would it have compared to any of those others at the time they were shut down?
A. Significantly lower, probably.
Q. Do you know what --
A. I have no idea. You can go to the FDIC

website and look that stuff up, probably.
Q. Understood.
So tell me how this -- how it was that the MOU came about. Did FDIC come down? Did y'all sit down together? Tell me how that got hashed out.
A. Yeah. I mean they came in. They do their normal exam process. We've got problem assets. They recognize that.
We've got earnings challenges because of the asset breakdowns, but we were exceptionally well capitalized at the time, and there was no way they were ever doing anything other than putting us under a memorandum of understanding.
So it was zero percent chance of failure in my mind at the time, and I think they felt pretty good about that as well.
Q. So is the memorandum of understanding, was that -- it committed to a piece of paper?
A. Yes.
Q. You said zero percent chance of failure --
A. That's a big term, zero percent chance. You know it's an exaggerated term, right?
Q. I do it all the time. It's okay.
So there was some chance of failure, you would agree?

A. Yes.
Q. Any way of quantifying it?
A. Well, I'll give you -- I can give you an example.
Had I charged off 100 percent of every loan that was a problem at the time, we would have still been well capitalized. So what I can't predict is how much forward momentum we would have in terms of future problems, but at the very end of the cycle, if I had charged off 100 percent of the problems, we would have still been well capitalized. So it seemed extremely unlikely that we were a high risk of failure.
Q. Well, help me then understand what a 150 Texas ratio actually means.
A. It means that you could be headed for trouble if you're not careful.
Q. But would you agree with me that if the Texas ratio is greater than 100, that it means, by that metric, the bank has got more problem assets than it's got good assets to cover those assets?
A. Yeah. But, for instance, I had a million dollar loan secured by a million dollars' worth of property. I don't get the net zero against capital, but the million dollars is marked against

the capital.
So we have to look at the net valuation of the remaining assets that exist. So, yeah, I would have more problem loans than I do capital, which is going to affect my earnings for the next whatever period of time. But it doesn't necessarily mean I'm out of business because generally I have real estate or cash or stocks or whatever securing the balance of those assets that we felt like we had a good handle around what the valuations were at the time.
Q. But you also said earlier that the real estate values were falling throughout that period of time.
A. Yeah. They were stabilizing by this conversation. I mean we began to see stabilization values probably by year '14.
Q. So by 2014, real estate values were stabilizing?
A. Stabilizing, yes.
Q. But prior to then, were they still dropping?
A. Probably.
Q. Okay.
A. Now, you also have to understand, too, is that 80 percent of our problem loans were on our

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file?
A. If they were material things that were discussed. If it was general discussion, then probably not.
Q. Okay. And so if there were not any such meetings found to be in the files, you would expect that there weren't any asset-specific meetings relating to Sweetbriar?
A. Nothing of substance that would require documentation of the conversation.
Q. What would require documentation of the conversation? Is that an FDIC regulation, or is that an internal bank policy?
A. No. It's an internal bank policy. And I don't know that we had specific policy thresholds on what that would mean.
But for instance, if we were going to liquidate the asset, if there was a buyer established and we were going to liquidate the asset, that may very well make the minutes.
Q. Okay.
A. Something as simple as -- this isn't simple. But something as routine as, you know, we own the asset. We got the appraisal in. The valuation is $200,000 less than what's owed to us. We're going

to need to adjust our balance sheet by 200,000, take an earnings charge on that 200,000; that probably would not make it because it was a routine action.
Q. Particularly in this period when you've got --
A. When it's -- lots of them.
Q. Okay. Understood.
What I understand from Mr. Nance and Mr. Porter is that sounds like there's a division of labor at the bank, and I'd just like to get your comments on that.
Would you agree with me that as to workouts on loans, that typically that would be handled by an Allen Griffin, a lending guy, rather than the foreclosure guy? Is that a fair statement?
A. You know, there was a lot of controversy in our company at the time on how much work we wanted our sales force doing with respect to relationship problem solving and working through a problem asset.
I would say generally the consensus was from our risk people was they preferred the relationship bankers -- the managers of the portfolio to work through the early discussions of problem solving;

whether it would be a dialogue with, "Can you pay me? Can you give me a working plan together?"
Whatever those things may be. And generally, I don't think we handed it off to risk until it became a problem that couldn't be solved.
Q. Is that written down anywhere or is that the policy?
A. That was just the practice.
Q. So just so I'll -- we can confirm.
The risk people, that's Dale Porter and Jess Nance, right?
A. Yes.
Q. And Hal?
A. Hal Cobb.
Q. Cobb. All right.
And the sales guy, that's Allen Griffin?
A. That's correct.
Q. Okay. So what about once it lands on Dale Porter's desk or Hal Cobb's desk? Tell me generally what their marching orders are, to your understanding.
A. Well, I mean, I would hope that they would make one more effort to reach the borrower to determine is there a path. Sometimes the salespeople get frustrated and don't really --

aren't really capable of figuring a solution, and maybe a risk guy may have the capacity to have a different conversation.
So generally, they can go in, and I would hope they would to try to find another path to resolution, if possible.
And if that didn't take place, then there ought to be the most expedient process exercise possible to clean the asset up so the funds could be reinvested in whatever we were doing at the time.
Q. And by cleaning the asset up, do you mean --
A. Dispose of it.
Q. Foreclose?
A. Foreclose and dispose.
Q. Meaning go to foreclosure sale as soon as possible and then dispose?
A. Right.
Q. I like that. Foreclose and dispose.
And you would expect as -- if they make that last effort, if the last effort to reach the borrower and get them to pay doesn't work, you would expect that Dale and Hal don't have any further contact. They are going to go ahead and foreclosure and dispose?

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as part of their job?
A. Absolutely.
Q. Okay.
A. Again, remember, effectively managing the sale of those assets was more important than the actual speed.
MS. HOUGHTON: We've been going for about an hour. If we could take a break just when you get to a good stopping place.
MR. LE CLERCQ: Sure.
And I meant to say, this is not an endurance contest. If you ever need a break --
THE DEPONENT: That's fine. I will take a water.
(Off-the-record conference.)
BY MR. LE CLERCQ:
Q. Does the bank maintain any sort of table during this time, from 2008 to 2015, which would show every commercial loan and every residential loan on its portfolio by name?
A. We had them at the time.
Q. And is there a document which similarly talks about, and for the lack of a better term, the aging of that file or what happened to that file?

Any further handling notes?
A. That data would be available, but it's not the kind of data we would print or pull. I mean, I would not look at a ledger of every singe borrower in the bank.
Q. And what the status of their loan is?
A. No.
Q. Got it.
A. But the data was available if I decided one day I wanted to look at it.
Q. The decision that goes into a borrower's file being put on Dale Porter or Hal Cobb's desk -- forgive me. You may have mentioned this.
But is it a fair statement that the general policy was try to work it out first, but if you -- if you would do a reasonable amount of workouts and it doesn't work, send it to them?
A. So -- and I still think that we do this practice today.
My risk guys would have regular meetings with the sales force to discuss loans that were watched or classified performing at the time, what the performance standards of those loans were, what they were doing to improve the risk profile of the loan. It was just general conversations they would

have to make sure from a risk management practice they understood was the loan portfolio risk being managed appropriately in the sales environment.
If and when a loan deteriorated to a point where it was not recoverable or fixable, or they lost confidence or whatever in the lender to be objective, or to have the capability of managing through what they would think would be exceptional risk, they may very well take the asset from them.
Q. Would the bank be more inclined to do that in a situation where a borrower has got multiple loans outstanding with the bank?
And the reason I ask is I believe in this case that Richard Cook, who is one of the principals in Atlantic, I think that you-all went after maybe his beach house also.
I'm sorry. "Went after" is not the right phrase, but I think that there may have been a loan on other properties, and I would assume that the analysis that would be done, there would be heightened scrutiny if a borrower has got multiple problem issues.
MS. HOUGHTON: Object to form.
THE DEPONENT: I would disagree that multiple -- you understand, ten $5,000 car

loans is not problematic; ten $5 million loans is problematic.
BY MR. LE CLERCQ:
Q. Yeah.
A. So it's the dollar amount that would drive the concern more than the numbers of loans outstanding.
Q. You guys do car loans?
A. Sure.
Q. Bank keeps title on the car loans until it's paid off?
MS. HOUGHTON: Object to form.
THE DEPONENT: We hold the title, but the title is in the owner's name -- the borrower's name.
BY MR. LE CLERCQ:
Q. And they get it when they pay it off?
A. Correct.
Q. But the title itself is not in the name of the bank?
A. No. The owner of the property. We just have a security interest in it.
Q. All right. Let's talk about the sales of OREO after the foreclosure sale.
You would agree with me that -- that once

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own it, right?
Q. Right. Can you rent the building before you own it?
MS. HOUGHTON: Object to form.
THE DEPONENT: No.
BY MR. LE CLERCQ:
Q. Okay. As a general matter, can you, sitting here right now, tell me between the years of 2008 and 2015 what percentage of OREO got sold by the bank within a year of --
A. I have no idea.
Q. You think it's more than 50 percent?
A. I wouldn't know where to guess at that.
Q. No? Who would know the answer to that question?
A. Mr. Porter and Mr. Nance. And I don't even know if they can answer that now. It's been so many years.
Q. But you think there are documents that the bank has that would tell you the answer to that?
A. I'm sure we were tracking aging at the time.
Q. That's right. You mentioned the aging. I'm sorry.
A. I told you that. Yeah.
Q. All right. Let's talk about your borrowers.

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We've talked a lot of about the borrowers that got into trouble. There would try to be a workout. If the workout didn't work, then the file landed in the risk department and they would foreclose and then dispose.
Would you agree with me that the reason that process was happening was because those borrowers were not complying with the terms of the note and mortgage? They weren't paying.
A. Well, yeah. I think them not paying was a consequence of the recession.
Q. Right.
A. So there were bigger things going on in the economy, but -- you know, but that. But yeah. We ended up foreclosing because somebody quit paying.
Q. And they are obligated to pay under the note?
A. Correct.
Q. And if they don't pay, they suffer the consequences that are described in the note and in the mortgage?
A. That's correct.
Q. And they lose their interest in the property because they haven't complied with the terms of the note and mortgage; is that correct?

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MS. HOUGHTON: Object to form.
THE DEPONENT: Assuming we foreclose.
BY MR. LE CLERCQ:
Q. Then the answer is "yes"?
A. After foreclosure, then they lose their interest in it.
Q. Okay. Given that the bank is holding all of these borrowers to the letter of the note and mortgage, should the bank also be held to the letter of the note and mortgage, in your opinion?
MS. HOUGHTON: Object to form.
THE DEPONENT: I have no idea what you're talking about.
BY MR. LE CLERCQ:
Q. Well, do you believe that those -- the note and mortgage are legally binding documents?
A. I would say I depend on legal people and compliance people to draft our documentation to meet whatever state standards and national standards -- federal standards that we need to meet. So...
Q. And you would expect that when they do that, that the result is a note and mortgage which is legally binding?
MS. HOUGHTON: Object to form.

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THE DEPONENT: You would think so.
BY MR. LE CLERCQ:
Q. Right. Let's take a look at Exhibit 3.
Before we get there, though, I think you said you didn't have any direct contact with anyone from Atlantic, Richard Cook or Rick Cranford or anyone like that?
A. That's correct.
Q. So let's take a look at Exhibit 3, which -- it has been premarked.
(EXHIBIT 3, Atlantic 2006 mortgage, premarked, was tendered to the witness for identification.)
BY MR. LE CLERCQ:
Q. Do you recognize that document?
A. No.
Q. As a typical matter, did you review the notes and mortgages of your borrowers?
A. No.
Q. Have you ever, since you've been at Atlantic, have you ever sat down and actually read the note and mortgage that you guys are sending out?
A. No.
Q. All right. So you relied on bank's counsel

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then. Just less volume.

Q. You're a state charter, correct?

A. That's correct.

Q. You still have to get them off your books within five years, or get an extension?

A. So the state allows you a little more flexibility. The rule is still five years you have to begin writing those assets down. But they allowed you to -- compared you to national, federal banks, nationally chartered banks, that they do allow extensions without write-downs right now.

MR. OXNER: That's all the questions I have right now. Thank you.

MR. LE CLERCQ: Just one follow-up.

EXAMINATION

BY MR. LE CLERCQ:

Q. And you might have mentioned it. Forgive me.

Did First Reliance bank get TARP funds between 2008 and 2015?

A. We did.

Q. And that was from the Feds?

A. That's correct.

Q. What was that approximate amount? Was it 15 million or --

A. Roughly. Yeah.

Q. Any other white knights? Bailouts? Significant shareholder? Inputs of capital? Anything like that?

A. No.

Q. The restrictions that Mr. Oxner was just discussing -- I'm sorry. You mentioned it.

A. Let me just back up. Qualify that.

We did do a large capital raise, like 24 months ago, which is to acquire another bank in the upstate. But it has no -- yeah.

But it was no bailout, if that's what the term you want to use, to bail us through the recession.

Q. The principal bailout was the TARP funds?

A. Yeah. I don't know that I would even call that necessary. I mean, we used it as an insurance policy.

It is one of the reasons why we stayed under an informal order and not a formal order, because we were so well capitalized during that period. Had we not had the TARP, we would have still remained well capitalized, but on the lower cycle into that definition of well-capitalized, which probably would have put us under more scrutiny with

the regulators at the time.

So I wouldn't say that it bailed us out. It just made us have a littler easier life for those few years. That has been paid back in full with interest.

Q. You mentioned we had a restriction and couldn't pay dividends. Is that restriction set out in MOU?

A. Would be.

Q. Any other restrictions that you can think of or the terms of the MOU --

A. I'm not sure I'm even allowed to discuss the terms of memoranda with you. I think the Feds and the FDIC get pretty particular about their agreements and discussion of those agreements.

MR. LE CLERCQ: I don't have any other questions.

MR. OXNER: You good?

MR. ANDERSON: I'm good.

THE DEPONENT: Can I add one more thing, though?

There is a state law that under any circumstances you have to get regulatory approval to dividend any earnings -- any dividends up that are greater than the

earnings that you have for the quarter.

So regardless of what -- and so I don't know that I was right in saying specifically that, that the order said you can't dividend up. It is a state statute that does not allow that, and they do it, not disallowed it. So they just said don't call us for dividends.

MR. LE CLERCQ: Okay. Very good. Thank you.

THE DEPONENT: Quite welcome.

(The deposition concluded at 4:57 p.m.)

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC et al.

DALE PORTER

January 24, 2020

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on their own accord, but they certainly do not have to, based on their individual leases. I was told that they were on a month-to-month situation, but apparently this is not the case, only by notice. Again, this might not be problematic at all, but the current buyers are under the assumption that the tenants are on month-to-month and are planning on closing in two weeks. Mr. Blanton recommends a conference call between you and Mr. Blanton and Greg Wood to try to work this out as soon as possible. Please advise."

Do you recall having any sort of in person or telephone conversation with Mr. Brock subsequent to Friday, December 23, 2016, on the issues I just read?

A No. But I didn't agree with his position.

Q Do you recall having a -- It says, "Mr. Blanton recommends a conference call between you," meaning Dale Porter, "Mr. Blanton, and Greg Wood to try to work this out." Do you recall if there was such a conference call?

A I do not recall us having a conference call.

Q Do you know if they had a conference call with Mr. Nance to discuss that issue?

A I do not know. Again, I'm saying I don't know that it didn't happen, but I don't recall it.

(Deposition Exhibit Number 30 was marked for identification.)

BY MR. LE CLERCQ:

Q So let's take a look at Exhibit 30. Have you seen this document before? And it is --

A Not until this proceedings.

Q Okay. Were you aware at the end of December 2016, that the bank had agreed to indemnify Plasma?

MS. HOUGHTON: Object to form.

THE DEPONENT: What date?

BY MR. LE CLERCQ:

Q Well, it appears --

A January 27?

Q You couldn't have been aware in December of something that happened on the 27th of January. You said you retired at the end of December?

A December 31st.

Q And you didn't do any further work?

A That's right.

Q All right. Well, let me ask you this: Prior to your leaving, do you recall having any discussion with anyone from Plasma or David Brock or

Jess Nance or anybody else about whether the bank needed to enter an indemnification agreement with Plasma to get them to close?

A No. You're saying prior to this date?

Q Prior to December 31st.

A No, no.

Q No. After you were retired, did you do anything about it? Did you talk with anybody about indemnification?

A No.

Q Just a couple more questions. Let's turn back to -- Let's go back to 24.

A Okay.

Q Would you agree with me that if Blanton had been able to -- strike that, if Blanton had executed a lease with Elite Laser Tag, that the bank would have been obligated to honor that lease?

MS. HOUGHTON: Object to form.

THE DEPONENT: No.

BY MR. LE CLERCQ:

Q You don't agree with that?

A No.

Q Now, let's take a look at the February 8 letter, which is Exhibit 25. The language is -- The last of the -- The last part of the second full

paragraph, "If the bank finds a purchaser that wishes to use the property for some other purposes -- some other purpose, then the bank cannot put itself in a position not to be able to accommodate that purchaser's wishes."

So let's go back -- I'm going to ask you about your foreclosure experience and all the foreclosure files, other than this one at present. Would you agree with me that you were generally aware, prior to February 8, 2016, that in certain situations the bank has to keep its options open, as is set out right here, so as to not handcuff itself vis-a-vis prospective purchasers? Would you agree with me?

MS. HOUGHTON: Object to form.

THE DEPONENT: Uh-huh.

BY MR. LE CLERCQ:

Q That's a yes?

A Yes, that's a yes.

Q And that had come up in other files, correct? That issue had come up previously?

A I do not recall. We're talking about principle?

Q Principle.

A Principle.

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question. I'm going to have to call somebody. I'm not sure I need to answer that. We had pressure.

Q Let me ask you this question: Are you under a consent order now?

A No, sir.

Q And when did -- When did your pressure get alleviated by the FDIC where you could operate as a -- as you normally did prior to --

A To that time?

Q -- 2008?

A I don't recall the exact year, but it's been probably three or four years.

Q Okay. How low did your capital get?

A Pretty low.

Q Less than 4 percent?

A No. We made -- We actually had some capital that we raised to help support the bank, so we could weather the storm. And that was the, what do you call it, the thing the government did, the bailout for the banks. Got about $15 million I think it was.

Q Right. And do you remember how high your Texas ratio got?

A Probably 150, maybe plus.

Q Coverage ratio?

A Now define "coverage ratio."

Q Just your ratio of bad loans to assets.

A I don't recall. Pretty high.

Q Those are the two things that, back then, the feds were looking at pretty hard, those two ratios?

A Yes, they were.

Q What was this loan--the Sweetbriar loan, Atlantic loan--what was it on the books for once y'all brought it over to OREO?

A I don't understand your question.

Q The feds make you continue to write these things down. You wrote it down 300-and-something thousand dollars. I don't remember what that figure was.

A Right, right. Based on the appraisal.

Q At the time you brought it over to OREO from foreclosure status, what was the -- what dollar amount was the loan on your books for at that point? We know it started out at 2-million-something. Then what dollar value are we talking about once it gets on the OREO?

A It seems to me it was around probably, according to this chart here, mid-400s.

Q Remind me, so I don't have to look it up,

since you've got it right in front of you, what date is that appraisal?

A Let's see, the appraisal date? I don't have the appraisal date on here. I've just got the form where I did the analysis for the write-down. Written appraisal date -- yeah, current appraisal date, I got it right here. I wrote it down here.

Q What is that date?

A 10/8/15.

MR. LE CLERCQ: Is that Exhibit 13?

THE DEPONENT: 10/8/15, yeah.

BY MR. OXNER:

Q During this foreclosure process in 2015 until you became the titleholder of the property, you were still under pressure from the FDIC to liquidate these assets as quickly as possible?

MR. LE CLERCQ: Object to form.

THE DEPONENT: I don't remember if it was -- it's borderline. It was borderline time. I'm not sure that we were under pressure during that particular time, but our incentive was to get assets off the books, yes, sir.

BY MR. OXNER:

Q Well, you've got five years, right?

A That's right.

Q And it had been in foreclosure by the time y'all got it for a couple of years?

A Uh-huh.

Q So time was ticking. When -- Assuming we're in the 400s like we talked about that it's on the books at the bank for --

A Uh-huh.

Q -- that means you've got to set aside that in your books, correct?

A That's correct.

Q It counts against you in your Texas ratio, your coverage ratios, and all those ratios we don't want to talk about?

A That's correct. Nonperforming assets.

Q When you talk about the idea that you're not going to do anything until you're the actual title owner at the courthouse steps, is that more commonly known as lender liability?

A Absolutely. I had to protect the bank from that.

Q If you go out and do something like that, then there's decisions, to your knowledge, that say that you became the owner if you do that?

A I'd be in worse shape than I am right now.

Q You've been to lots of classes about that,

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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Q. You've been involved in the real estate business?
A. Yes.
Q. Okay. Very good.
So what I would like to do is talk with you about some real estate concepts before we get into any of the particulars of the case here.
So, and this is going to be a little bit of real estate 101, but because I'm not in the real estate business, I want to make sure we are on the same page in terms of what things mean.
So tell me what you understand the lease of property to be.
A. Tell me what I understand a lease on a property is?
Q. Yeah. What's a lease?
A. A lease is a legal bounding -- binding contract between a landlord and a lessee or lessor and lessee. States terms and conditions as far as the term and the conditions that follow along with that.
Q. Okay. And do both the lessor and the lessee, do they have both obligations as well as rights under a lease?
A. That's correct.

Q. All right. Tell me what the -- the typical duties and obligations of a tenant are.
A. That's pretty tough to answer because every tenant is different.
Q. Give me the most -- what you think are the most important obligations of a tenant in a lease.
A. To maintain the -- and, again, that's really difficult to answer, Ben, because, you know, I've got guys that are paying $1,000 a month for 1,000 square feet that run a taxi business out of there. They're -- obviously their lease is much less sophisticated than, perhaps, say Mike's.
So every lease would differ, but generally speaking, it's to maintain the property, pay the rent on time and, you know, to abide what their responsibilities are and to -- for the landlord or lessor/owner, to abide what his responsibilities are. Those are always drawn out in a lease.
Q. Okay. So let me ask this as an aside before we move on.
Approximately how many property management clients do you have right now?
A. Hmm. I -- quite frankly, I don't know.
Q. More than 50?
A. Yes.

Q. More than 100?
A. Yes.
Q. More than 200?
A. No.
Q. So somewhere between 100 and 200 clients?
A. That's correct.
Q. And what were your -- let me ask you this.
Since you started, have your revenues grown every year?
A. Since I started the Blanton Company?
Q. Yes, sir.
A. I can't say yes that every year they've grown, no. But they have grown as overall since we've been doing this.
Q. Can you tell me what your approximate gross revenue was last year?
A. $245,000, I think.
Q. Okay. So you talked about what the tenant obligations are to pay the rent on time and to maintain the property, and that these are typically set out in a lease agreement, a written agreement?
A. Yeah. We decide who's responsible for HVAC, who's responsible for the roof, exterior walls, plumbing, et cetera, and, you know, whatever special conditions may or may not arise, which are

added to a lease.
Q. Does that change from lease to lease?
A. Sure.
Q. So tell me about the landlord's typical obligations. We just talked about the tenant. What --
A. All right. We're a conduit.
Q. What's that mean?
A. You know what it means, Ben.
Q. When you say "you," "we" meaning the property manager.
A. "We" meaning my business.
We are a conduit to the landlord. We don't own anything. We don't claim any ownership. The landlord is the owner. Okay? We abide by their wishes and do what we're told to do. Okay?
Q. Got it.
A. Their responsibility is to honor any lease that we sign on their behalf or they sign themselves. Some want hands-on to sign it themselves. Some don't. Just say sign it -- you know, just sign as my agent.
Q. Can you tell me as a percentage -- I won't hold you to this -- but roughly how many times do you sign and how many times does the owner sign out

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relationship, do they have the obligation to tell you?

A. Legally whether they have the obligation or not? I'm not sure. But yes, I would hope that they have the obligation to tell me that.

Q. How about if they intend to demolish the property? They have a strip mall and they come to the decision that they're going to tear it down at some point during the term of their relationship with you.

Do you think that they have the obligation to tell you that?

A. Yes.

Q. We talked about long-term and short-term leases, and I believe you said earlier that everyone -- it's in everyone's interest to maximize the rents.

Let me just make sure that is your testimony, that in most cases, I'm not saying in every single cases, but in most cases it's the duty of the property manager to try to maximize the rents that are being derived from the property, correct?

A. Yes.

MR. ANDERSON: Object to form.

BY MR. LE CLERCQ:

Q. And that is both in the property manager's interest as well as in the lessor's interest?

A. Well, yes.

Q. Can we agree that when I say "lessor," I'm also referring to the landlord? I think we've said that.

But you would agree with me that if you signed a lease as the lessor, then you are also considered to be the lessor?

A. Acting as agent of the lessor.

Q. Okay. So would you agree with me then, sir, that there are some situations in which there are considered to be multiple lessors on a property, both the property manager acting as the agent and the ultimate landlord? Is that a fair statement?

A. Yes.

Q. How are property managers typically paid?

A. Based on a percentage -- commission is based on a percentage of rents received and paid to the owners that are agreed-upon percentage amount.

Q. And what is that typical percentage in your experience?

A. There is no typical.

Q. Can you give me some -- give me some ranges.

A. I'll give you a range: 5 to 10 percent.

Q. And take a look at second page of Exhibit 1 that I just handed to you. It says that the fee in this case, the management fee that you would take would be 7 percent. Is that accurate?

A. Yes.

Q. Do you typically, if the property that you are managing is sold, do you typically ask for a commission in the sale as a broker?

A. There is a clause in there that is sell to tenant; there's a clause that says that we expect to be paid a commission.

Q. And is that a standard clause that you have in many of your contracts?

A. Yes. Uh-huh.

Q. Tell me what sort of -- in the property manager business, what is your typical sort of record-keeping and what sorts of notifications do you make on behalf of the lessors and landlords that you work for? Do you send them statements every month?

A. They receive a monthly statement, income and expenditures. And, again, there's obviously verbal contacts from time to time. As far as paper flow goes, they get a monthly statement every month

showing income versus expenses.

Q. Okay.

A. And then a net -- a net.

Q. Do you do your bookkeeping in-house?

A. Yes.

Q. Who does your bookkeeping? Which of your employees?

A. Jean Parks.

Q. And did she do the bookkeeping during 2015 to 2017?

A. Yes.

Q. Okay. Who is -- what is the name of your CPA?

A. For the business?

Q. Yes, sir.

A. Ann Marie Hanna.

Q. I'm sorry?

A. Anne Marie Hanna.

Q. Okay. Do you have a different one for your personal?

A. Yes.

Q. Who is that?

A. WebsterRogers West.

Q. Rogers West?

A. WebsterRogers West.

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC et al.

DALE PORTER

January 24, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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Q Who would I ask, if I wanted to know that specifically, what the numbers were for --

A You'd have to go back and take a look at the record of what we had in foreclosures.

Q Would you be the first person -- Let's say I wanted to know how many commercial foreclosures did First Reliance Bank have pending in 2015 on January 1, would you be the person that would be able to tell me that?

A I'd have to go back to the records. I would have to look at the record. I can't -- I can't recall it.

Q I understand you can't recall it sitting here now, but as opposed to the other guys in here, you would be the foreclosure guy at the bank?

A Yeah, that's right.

Q All right. Understood.

MR. OXNER: Could we go off the record for a second?

(An off-the-record discussion took place.)

BY MR. LE CLERCQ:

Q So back on the record. We had -- You just testified that there were roughly 70 to 100 million in foreclosures. Can you tell me when that was? Was that in 2007, or was that in the period of 2007 to

now?

A Till the time I retired.

Q Okay. So, roughly, how many foreclosure cases would that be at any one time? Again, I won't hold you to the exact number--I may want to know it later--but are we talking about more than 50, more than 100, more than 200? Just in rough terms, how many are we talking about?

A Between 50 and 100, let's say.

Q Is it a fair statement that you were the person in charge of the department that was handling these problem loans?

A Jess Nance was the person in charge of the department. I was his -- he was my supervisor. I was primary in charge of managing those foreclosures and going through the processes of doing that.

Q And who is the bank's counsel in those foreclosure proceedings?

A Various counsels. We had several different attorneys.

Q Okay.

A I probably need to add I also had an individual that helped me during that period of time --

Q Yeah.

A -- that we hired. His name was Hal Cobb.

Q Okay.

A He also helped with the foreclosures during that period when they really started multiplying.

Q All right. So tell me about the -- Since we're talking on the subject of the bank, give me an overview of its revenues from its inception until today. What are its most recent revenues?

A You talking about the bank?

Q Yeah. Gross revenues first.

A I don't know exactly what the revenues are, but I think it's -- I think we earned between 5 -- about 5 million this year.

Q Is that a net revenue number or is that a gross?

A Yeah, I think that's sort of a net revenue, somewhere in that neighborhood. Don't hold me to the number exactly.

Q That's fine. Again, what I would like to do--I think it will go make things go more quickly since you were present for Mr. Blanton's deposition--I'd like to go through your understanding of some general terms that are very important in this case.

The first area is leases, lessors, and

lessees, and landlords. Would you agree with me that a lease of property is a contract between a landlord and a tenant with each side having rights and obligations?

A Yes.

Q Would you agree with me that the lessor of the property is also sometimes referred to as the landlord?

A Yes.

Q And if I use those terms interchangeably, you agree that they are roughly interchangeable? Lessor equals landlord?

A Yes, sir.

Q Now, you've just testified as to having 70 to 100 million in foreclosures. Would you agree with me that because of that, that sometimes banks are, for better or worse, in the property management business?

A Obviously, we receive property and we own property as a result of foreclosure sale, and our business is to dispose of that property as quickly as possible, because we -- we don't want to be property owners, prefer not to get the property.

Q But it happens, because of foreclosures, that you all get --

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A That's correct.
Q -- title? You said something which makes me ask the following question, which is: Is it the bank's -- you just said the bank does not want to own property?
A That's correct.
Q Would prefer not to be in the property management business?
A That's correct.
Q So is it the bank's philosophy to try to, when you get property in foreclosure sale, to try to sell it to somebody else or get rid of it?
A We dispose of it as quickly as possible.
Q Tell me how that philosophy was developed. Did you develop it? Did Saunders develop it? Why is that the bank's philosophy?
A Property is difficult to -- well, you obviously have to sell it. We want liquid assets. Our business is selling money, not property. We're not in the real estate business. So when we get property, we want into turn that into cash as quickly as possible so that we can begin to sell money again. Okay. We lend money.
Q And you get an interest, because you lend it, right, and that's how the bank makes its money?

A That's right.
Q So it's a fair statement that you rely on others, sometimes, in the -- when you get property in foreclosure, to advise you as to what's the quickest way to sell this property, how do we manage it until we sell it. Is that a fair statement?
A We hire real estate agents to dispose of the property.
Q How about to manage the property until you can get it sold?
A We do, and it's been a rare occasion that we've had an operating business. We prefer to get non-owner-occupied property. My preference is for the property to be empty when we get it. So we really used real estate agents to move the property, primarily.
Q So you just said you prefer to get property that's vacant, not -- and that means not owner-occupied?
A That's correct.
Q Is that -- Would you agree with me that it's easier to sell if there's nobody -- strike that. It's easier to sell if there are no owners on the property that are -- nobody leasing the property, nobody with an interest? If the property is vacant, you can sell it easier?
A I don't know about how easy it is to sell, but, yeah, I guess that's a fair statement.
Q Okay. Is it a fair statement that that guiding philosophy -- Let me not use that phrase. Has that been the guiding philosophy in the problem loan department since you were involved in it?
A Yes, sir.
Q You would agree with me that if the bank signs a lease as a lessor, the bank has a legal obligation to comply with the terms of the lease?
MS. HOUGHTON: Object to form.
THE DEPONENT: Repeat that question for me again.
BY MR. LE CLERCQ:
Q If the bank signs a lease as a lessor -- You've got a lot of property out there; I know you said you'd rather sell it than lease it, but -- Let me take it this way. You all have a branch that's right next to my office in Charleston. Does the bank own that property? First Reliance Bank on Shelmore, Shelmore at 17.
A I think we lease that property.
Q Okay. So did you sign the lease on behalf of the bank?

A No.
Q Do you know who did?
A No.
Q Would you agree with me that whoever the bank leased that property from, that there's probably a written agreement out there that's signed by the bank?
A Yes, yes.
Q Would you agree with me if the bank doesn't comply with the terms of that lease, then -- strike that. You would agree with me that the bank has an obligation to comply with the terms of that lease?
A Yes.
Q Pay the rent, for example?
A Absolutely.
Q All right. Would you agree with me, that -- If I say a legal phrase you don't understand, you're welcome to say it. But I asked Mr. Blanton if he understood what the term "quiet enjoyment" meant. Do you recall that testimony?
A I think I recall it.
Q And that "quiet enjoyment" was that as long as the tenant pays the rent, doesn't breach the deal, doesn't breach the lease, the landlord has to leave him alone, let him enjoy the property and do what he

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Book B 558 Page 0760

Deeds

CONNIE REEL-SHEARIN
FLORENCE COUNTY CLERK OF COURT
FLORENCE COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: FINKLEA LAW FIRM ✓

DATE: 012715 RECEIPT NO: 385811-000000

DESCRIPTION	# OF INST.	AMOUNT	FEES	#PAGES	** FEE ** STATE	COUNTY	TOTAL
Deeds				BOOK: B558 FROM PAGE: 760 THRU PAGE: 765			
		.00	11.00	6			11.00

****
THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====
****

TOTAL RECEIPT:	11.00	.00	.00	11.00

TOTAL	CHECK	CASH	CHANGE
11.00	962.80	.00	.00

CR2 CLERKPAY 25 Julie McCutcheon 145114

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Instrument#: 2014000139723, DEED BK: 3780 PG: 3153 DOCTYPE: 037 11/24/2014 at 02:54:09 PM, 1 OF 5 BALLERY V SKIPPER, HORRY COUNTY, SC
REGISTRAR OF DEEDS

FILED
2015 JAN 27 PM 2:43
CCCP & GS
FLORENCE COUNTY, SC

Finklea Law Firm
P.O. Box 1317
Florence, SC 29503

WHEN RECORDED MAIL TO:
First Reliance Bank
2170 West Palmetto Street
Florence, SC 29501

** Corrected dereivation**

SEND TAX NOTICES TO:
Atlantic Regional, LLC
P O Box 6708
Florence, SC 29502-6708

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

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ASSIGNMENT OF RENTS

THIS ASSIGNMENT OF RENTS dated November 17, 2014, is made and executed between Atlantic Regional, LLC, whose address is 2231 W Palmetto St, Florence, SC 29501 (referred to below as "Grantor") and First Reliance Bank, whose address is 2170 W. Palmetto St., Florence, SC 29501 (referred to below as "Lender").

ASSIGNMENT. **For valuable consideration, Grantor hereby assigns, grants a continuing security interest in, and conveys to Lender all of Grantor's right, title, and interest in and to the Rents from the following described Property located in Florence County, State of South Carolina:**

See Exhibit A, which is attached to this Assignment and made a part of this Assignment as if fully set forth herein.

The Property or its address is commonly known as 1935 Second Loop Rd / Sweetbriar Shopping Center, Florence, SC 29501. The Property tax identification number is 90029-01-014.

CROSS-COLLATERALIZATION. In addition to the Note, this Assignment secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

FUTURE ADVANCES. In addition to the Note, this Assignment secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Assignment secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Grantor, together with all interest thereon; however, in no event shall such future advances (excluding interest) exceed in the aggregate $2,125,000.00. This Assignment shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Assignment may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Assignment to be released and cancelled of record upon full payment of all Indebtedness then owing, and upon such cancellation of this Assignment of record, this Assignment shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Assignment.

THIS ASSIGNMENT IS GIVEN TO SECURE (1) PAYMENT OF THE INDEBTEDNESS AND (2) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF GRANTOR UNDER THE NOTE, THIS ASSIGNMENT, AND THE RELATED DOCUMENTS. THIS ASSIGNMENT IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Assignment or any Related Documents, Grantor shall pay to Lender all amounts secured by this Assignment as they become due, and shall strictly perform all of Grantor's obligations under this Assignment. Unless and until Lender exercises its right to collect the Rents as provided below and so long as there is no default under this Assignment, Grantor may remain in possession and control of and operate and manage the Property and collect the Rents, provided that the granting of the right to collect the Rents shall not constitute Lender's consent to the use of cash collateral in a bankruptcy proceeding.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that:

Ownership. Grantor is entitled to receive the Rents free and clear of all rights, loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Assign. Grantor has the full right, power and authority to enter into this Assignment and to assign and convey the Rents to Lender.

No Prior Assignment. Grantor has not previously assigned or conveyed the Rents to any other person by any instrument now in force.

No Further Transfer. Grantor will not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Rents except as provided in this Assignment.

LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS. Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:

Notice to Tenants. Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly to Lender or Lender's agent.

Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.

Maintain the Property. Lender may enter upon the Property to maintain the Property and keep the same in repair; to pay the costs thereof and of all services of all employees, including their equipment, and of all continuing costs and expenses of maintaining the Property in proper repair and condition, and also to pay all taxes, assessments and water utilities, and the premiums on fire and other insurance effected by Lender on the Property.

Compliance with Laws. Lender may do any and all things to execute and comply with the laws of the State of South Carolina and also all other laws, rules, orders, ordinances and requirements of all other governmental agencies affecting the Property.

Lease the Property. Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.

Exhibit "A"

All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic Regional, LLC, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded I the Office of the Clerk of Court for Florence County in Plat Book 89 at Page 467. Reference being had to said map for a more complete and accurate description.

Together with an easement over and across a strip of land being 12 feet wide and shown as "12' easement area" on the above referenced plat and conveyed to the Mortgagor herein by instrument of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.

Together with property shown as "Sign Area (Not Inc. in Timmons-Lams Survey)" being conveyed to the Mortgagor herein by Quit-Claim Deed of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.

Subject however to the terms and conditions of the Sign Usage and Maintenance Agreement attached to the above described Quit-Claim Deed as Exhibit A.

This being the same property conveyed to the Atlantic Regional, LLC by John M. Timmons, Jr. and Charles E. Lamb recorded August 16, 2006 in the Office of the Clerk of Court for Florence County in Deed Book B033 at Page 1.

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Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the Property, including the collection and application of Rents.

Other Acts. Lender may do all such other things and acts with respect to the Property as Lender may deem appropriate and may act exclusively and solely in the place and stead of Grantor and to have all of the powers of Grantor for the purposes stated above.

No Requirement to Act. Lender shall not be required to do any of the foregoing acts or things, and the fact that Lender shall have performed one or more of the foregoing acts or things shall not require Lender to do any other specific act or thing.

APPLICATION OF RENTS. All costs and expenses incurred by Lender in connection with the Property shall be for Grantor's account and Lender may pay such costs and expenses from the Rents. Lender, in its sole discretion, shall determine the application of any and all Rents received by it; however, any such Rents received by Lender which are not applied to such costs and expenses shall be applied to the Indebtedness. All expenditures made by Lender under this Assignment and not reimbursed from the Rents shall become a part of the Indebtedness secured by this Assignment, and shall be payable on demand, with interest at the Note rate from date of expenditure until paid.

FULL PERFORMANCE. If Grantor pays all of the Indebtedness when due and otherwise performs all the obligations imposed upon Grantor under this Assignment, the Note, and the Related Documents, Lender shall execute and deliver to Grantor a suitable satisfaction of this Assignment and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Property. Any termination fee required by law shall be paid by Grantor, if permitted by applicable law.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Assignment or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Assignment or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Rents or the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Assignment also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Assignment:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Assignment or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default on Other Payments. Failure of Grantor within the time required by this Assignment to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Default in Favor of Third Parties. Any guarantor or Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any guarantor's or Grantor's property or ability to perform their respective obligations under this Assignment or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Assignment or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Assignment or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against the Rents or any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Property Damage or Loss. The Property is lost, stolen, substantially damaged, sold, or borrowed against.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of any Event of Default and at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty that Grantor would be required to pay.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender shall have all the rights provided for in the Lender's Right to Receive and Collect Rents Section, above. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Other Remedies. Lender shall have all other rights and remedies provided in this Assignment or the Note or by law.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Assignment, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Assignment, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees

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and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Assignment:

Amendments. This Assignment, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Assignment. No alteration of or amendment to this Assignment shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Assignment or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Assignment shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision. The South Carolina Uniform Arbitration Act, as amended, does not apply to this Assignment or to any arbitration or award thereunder.

Caption Headings. Caption headings in this Assignment are for convenience purposes only and are not to be used to interpret or define the provisions of this Assignment.

Governing Law. This Assignment will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Assignment has been accepted by Lender in the State of South Carolina.

Merger. There shall be no merger of the interest or estate created by this assignment with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Interpretation. (1) In all cases where there is more than one Borrower or Grantor, then all words used in this Assignment in the singular shall be deemed to have been used in the plural where the context and construction so require. (2) If more than one person signs this Assignment as "Grantor," the obligations of each Grantor are joint and several. This means that if Lender brings a lawsuit, Lender may sue any one or more of the Grantors. If Borrower and Grantor are not the same person, Lender need not sue Borrower first, and that Borrower need not be joined in any lawsuit. (3) The names given to paragraphs or sections in this Assignment are for convenience purposes only. They are not to be used to interpret or define the provisions of this Assignment.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Assignment unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Assignment shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Assignment. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Assignment, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Assignment shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Assignment. Any party may change its address for notices under this Assignment by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Powers of Attorney. The various agencies and powers of attorney conveyed on Lender under this Assignment are granted for purposes of security and may not be revoked by Grantor until such time as the same are renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Assignment to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Assignment. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Assignment shall not affect the legality, validity or enforceability of any other provision of this Assignment.

Successors and Assigns. Subject to any limitations stated in this Assignment on transfer of Grantor's interest, this Assignment shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Assignment and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Assignment or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Assignment.

Waive Jury. All parties to this Assignment hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all Indebtedness secured by this Assignment.

Waiver of Right of Redemption. NOTWITHSTANDING ANY OF THE PROVISIONS TO THE CONTRARY CONTAINED IN THIS ASSIGNMENT, GRANTOR HEREBY WAIVES ANY AND ALL RIGHTS OF REDEMPTION FROM SALE UNDER ANY ORDER OR JUDGMENT OF FORECLOSURE ON GRANTOR'S BEHALF AND ON BEHALF OF EACH AND EVERY PERSON, EXCEPT JUDGMENT CREDITORS OF GRANTOR, ACQUIRING ANY INTEREST IN OR TITLE TO THE PROPERTY SUBSEQUENT TO THE DATE OF THIS ASSIGNMENT.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Assignment. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Assignment shall have the meanings attributed to such terms in the Uniform Commercial Code:

Assignment. The word "Assignment" means this ASSIGNMENT OF RENTS, as this ASSIGNMENT OF RENTS may be amended or modified from time to time, together with all exhibits and schedules attached to this ASSIGNMENT OF RENTS from time to time.

Borrower. The word "Borrower" means Atlantic Regional, LLC.

Default. The word "Default" means the Default set forth in this Assignment in the section titled "Default".

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Assignment in the default section of this Assignment.

Grantor. The word "Grantor" means Atlantic Regional, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the

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Note.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Assignment, together with interest on such amounts as provided in this Assignment. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Assignment.

Lender. The word "Lender" means First Reliance Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated November 17, 2014, **in the original principal amount of $843,013.19** from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Assignment" section of this Assignment.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all of Grantor's present and future rights, title and interest in, to and under any and all present and future leases, including, without limitation, all rents, revenue, income, issues, royalties, bonuses, accounts receivable, cash or security deposits, advance rentals, profits and proceeds from the Property, and other payments and benefits derived or to be derived from such leases of every kind and nature, whether due now or later, including without limitation Grantor's right to enforce such leases and to receive and collect payment and proceeds thereunder.

THE UNDERSIGNED ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS ASSIGNMENT, AND NOT PERSONALLY BUT AS AN AUTHORIZED SIGNER, HAS CAUSED THIS ASSIGNMENT TO BE SIGNED AND EXECUTED ON BEHALF OF GRANTOR ON NOVEMBER 17, 2014.

GRANTOR:

ATLANTIC REGIONAL, LLC

By: _____
Richard C Cooke, Member of Atlantic Regional, LLC

Signed, acknowledged and delivered in the presence of:

X _____
Witness

X _____
Witness

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF SC)
) SS
COUNTY OF Florence)

PERSONALLY appeared before me **and made oath** that he or she saw the within-named **Grantor(s)** sign, seal, and, as **his or her** act and deed, deliver the within-written Assignment **for the uses and purposes therein mentioned,** and that he or she with **the other witness subscribed above** witnessed the execution thereof.

_____
(Witness)

SWORN to before me this 17th
day of November, A.D. 20 14.

_____ (Seal)
Notary Public

My Commission expires: 07/27/2016

JOHN G. HENDRICK NOTARY PUBLIC MY COMMISSION EXPIRES 7/27/2016 SOUTH CAROLINA

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0527

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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THIS PAGE FROM VOL. II OF BLANTON DEP

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attaches an assignment of rents.

My only question: Did you go down to the courthouse and get those documents? Did you send someone to get them? Did you ask someone to send you those documents so you could read what the bank had filed?

A. No.

Q. So is it a fair statement that then you would have not read those documents in the first month or so after you received these documents on July 23 -- excuse me -- on July 24?

A. No, sir. I was just relying on this motion for order to rents to Plaintiff.

Q. Okay. If you turn to the next page, the letter, which is dated July 23, 2015, says that "I am directing that the two of you" -- and that's you and Richard Cook -- "immediately pay all monies held as principal or as agent for Atlantic Regional, or its tenants on the property referred to in the assignment to Mr. Dale Porter at First Reliance Bank. Atlantic Regional is in default under the terms of a note, mortgage, and assignment of rents held by the bank. I am attaching a copy of a motion which I have filed and am herewith serving it on you. Pursuant to the assignment and

SC Code Section 29-3-100, all future payments on your lease are to be made to First Reliance Bank."

Do you see that reference?

A. Yes.

Q. Do you recall what your reaction was when you read that document on July 24, 2015? Were you surprised? Were you not surprised? Do you recall what your reaction was?

A. I wasn't surprised.

Q. Why were you not surprised? Do you...

A. Well, first of all, I didn't -- I wasn't even aware who Atlantic Regional did finance with. However, with prior conversations with Richard Cook, I guess, who was the -- my contact person, I think with Atlantic Regional, I knew that they were not in great shape just based on his conversations, and that they were desperately trying to lease space.

And I can only assume, based on my conversations with him, that I knew that, again, that they were probably in trouble. As far as their status with the bank, payments owed, how many in default, I'm not sure. I don't know anything about any of that.

Q. Would those have been phone conversations

in --

A. Phone conversations.

Q. Okay.

A. Possibly one or two because they -- when they were running the ambulance service, Mr. Cook was there, and there were a few occasions that I spoke to him at his desk.

Q. Okay. And you would agree with me that the gist that you got from him was that they were in trouble?

A. He didn't say that specifically, as I recall. But I knew, having been around the block a few times, I could tell that they were -- you know, when an owner's saying -- appears to be desperate to lease something, I know that there's underlying problems in most cases.

Q. And did they appear to be desperate to lease the property?

A. Well, I used the word "desperate." Probably that might be a little overreaching. I sensed that they really needed to be leased. Okay?

Q. In other words, that Atlantic needed the money. They were in trouble. Let's get this place leased to get the owner some money?

A. (Moves head up and down.)

Q. Let me rephrase that.

A. Uh-huh.

Q. The borrower in possession of the property was in trouble, and the property needed to be leased, and so that confirmed your mandate to get the property leased prior to foreclosure.

MS. HOUGHTON: Object to form.

THE DEPONENT: It confirmed my mandate to try to get the property leased.

BY MR. LE CLERCQ:

Q. Okay. So let's look again at Page 3 of that Exhibit 12.

You would agree with me that the bank is asking that you, as property manager, turn over the rents to the bank.

Do you agree with me on that point?

A. Let's see. This is the letter dated July 23rd --

Q. Yes, sir.

A. -- to Mr. Cook and the Blanton Company.

Q. He says, "I'm directing that the two of you immediately pay all rent monies held as principal or agent for Atlantic to Dale Porter at First Reliance Bank."

A. That's correct.

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let it go."
Did he say those words or words to that effect when you talked with him --
A. I think when he said, "We're going to let it go," I think he meant that we're giving up on trying to maintain or hold the building. Okay? As far as their individual business goes, I don't have a clue.
Q. Understood.
But what I'm interested in is the building.
A. I think that that's what he -- that's the way I interpreted it, yes.
Q. You understood that they were not going to bring the mortgage current, but were going to --
A. That was my understanding.
Q. I'm sorry. Let me finish the question.
A. Okay. I didn't know you weren't finished.
Q. Your understanding after your one or more conversations with Richard Cook was that their business was bad and they were going to let the building go. They were not going to try to bring the mortgage current, but, by contrast, they were going to not -- that the property -- excuse me -- the property was going to go -- the building was going to go to the bank.

A. I was never told that exactly. I just -- it was insinuated that, Hey, we're not going to be able to hang in here. Okay? I don't know how to put it in precise verbiage.
Q. Okay. And you think that was one or even several conversations that took place by telephone after July 24 that were to that effect?
A. After?
Q. July 24.
A. And, again, I hope it's okay if I call you Ben.
Q. Please do.
A. Or Mr. Le Clercq.
We're talking about five years ago. Okay? A lot of times I can't remember what I had for dinner three nights ago. Okay?
Q. I understand. I understand.
A. So this is going on recall.
And I can't sit here under oath and, you know, swear that I remember how many telephone calls I had with him. I just know that we weren't adversaries; that I was going to do whatever they told me to do until the bank told me what to do. Okay?
And so, again, I was in that gray area. I

was caught between -- between the ropes.
Q. Understood.
Did you -- once they -- I understand that it has been five years ago.
Once they told you that, did you have any conversations with anybody from the bank where you let them know that that was the situation? Or do you think that the bank knew that?
MS. HOUGHTON: Object to form.
THE DEPONENT: The -- to my knowledge, that I recollect, is the bank didn't call me to tell me what their dealings were with their client. And I would expect them to.
BY MR. LE CLERCQ:
Q. Do you suspect that if you knew that, that the bank also knew what you just told me?
A. I told you I knew based on my conversations with Mr. Cook that things weren't going real good. I did not understand that to be that they were going to be foreclosed on.
Q. Let me make sure I just understood what you said.
You -- once the foreclosure happened, I've understood you to say that you called Richard Cook on a couple occasions, and the gist of what you got

out of that conversation was that, Point Number 1, things weren't looking good, and that they were not -- likely not to be able to stay in the building, and that the building -- title would likely be lost to the bank in the foreclosure.
A. Okay. The one question I have, Ben, is are we talking about prior to the foreclosure or subsequent?
Q. After.
A. After? I think he said, you know, "We're out of here." You know, "We're going to move out."
Q. Got it.
MS. HOUGHTON: Can we go off the record for a second?
MR. LE CLERCQ: Let me just -- hang on just a second, Lacey.
BY MR. LE CLERCQ:
Q. So that he says that -- the gist that you got was "We're out of here."
Let me make sure just to -- so that the record is clean, and we'll take these three points that I just said. I'd just -- I'd like to take them one by one.
Again, we're talking about the time subsequent to July 24, 2015, when you found out

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that the property was in foreclosure. That First Reliance was foreclosing on Atlantic.

I've understood you to say you recollect having one or more telephone conversations with Richard Cook and he conveyed to you the following basic points: That, Number 1, Atlantic's business was in trouble.

Do you agree with that?

A. Yes.

Q. Number 2, I'll use your words. The gist of what he communicated to you was, "We're out of here."

Do you agree with that?

A. Yes.

Q. You interpreted that to mean that Atlantic was not going to try to bring the mortgage current, but rather, the title to Sweetbriar would be lost in the foreclosure to the bank.

A. That it would be conveyed to the bank in lieu of payments not being made.

Q. Approximately how long after -- again, I won't hold you to exactly, but give me a range of time that you think those conversations took place. And was it on July 24th itself? Was it a week later? Was it a month? You know, when do you

think it was?

A. There's no way I can answer that except to guess. You know, it certainly wasn't on the day that I was presented with the fact that there was a foreclosure action. I guess he called me or I called him and said, "Hey, you know, let me know what you're doing, when you're getting out of here, so I can talk with the bank and see if they subsequently want to lease -- you know, to lease this space."

MR. LE CLERCQ: Madam Court Reporter, can you please read back the last statement by the witness?

(The Court Reporter read back the requested testimony.)

BY MR. LE CLERCQ:

Q. Just to make sure I'm clear on that, did you hear what the court reporter just read back?

A. Yeah.

Q. That was you calling them and you saying to them, being Richard Cook, "Hey, let me know what you are going to do so I can find out from the bank whether they want to lease the property."

A. Yes.

Q. Okay. And what was his response, if you

recall?

A. "We're moving out as soon as possible, moving whatever furniture."

They'd already been moving some prior to, so I knew it was coming down, I guess, so to speak, coming down.

But, again, I wasn't involved in their affairs with the bank. You know, I -- you know, which is -- waiting to be told what to do.

Q. Okay. Do you think that those conversations with Richard Cook took place within the first week of the foreclosure occurring, in other words, prior to July 31, 2015?

A. Ben, I'm not sure.

MR. ANDERSON: Object to form.

BY MR. LE CLERCQ:

Q. Do you know whether it would have been within the first two weeks after that? Do you have any recollection as to when it would have been?

A. I can only tell you that I assume so. I don't know.

Q. Okay. So you assume it would have been within the first couple of weeks of the foreclosure being served upon --

A. I just got through saying --

MR. ANDERSON: Object to form.

THE DEPONENT: -- that I don't -- I don't know. I don't recall.

BY MR. LE CLERCQ:

Q. Okay.

A. You can ask it any way you want to ask it, and I'm going to still answer it the same way.

Q. I understand and I appreciate your candor, Mr. Blanton.

Do you recall, did you have this conversation on your personal cellphone?

A. A lot of my business is done on my personal cellphone. A lot of my business is done on my business phone.

Q. Can you please give me those two numbers?

A. You've got them, but I'll be glad to give them to you again.

My cellphone is 843-230-7568. My business number is 843-662-2557.

Q. Got it.

And is the business phone a land line at your office?

A. Yes.

Q. All right. And who is the phone carrier for that?

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC et al.

DALE PORTER

January 24, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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the property that he is managing?
MS. HOUGHTON: Object to form.
MR. ANDERSON: Object to form.
THE DEPONENT: If there's no mitigating issues surrounding that issue, I would say yes.
BY MR. LE CLERCQ:
Q Okay. Let me -- Since there were some objections, perhaps the phrase "profitable use" could be unpacked a little bit. Is it the property manager's obligation to -- strike that. Let's take the situation where the property manager believes that long-term rentals are appropriate for the property. Is it his duty to try to get the longest term lease that he can at the highest per-square-foot rental rate?
MS. HOUGHTON: Object to form.
MR. ANDERSON: Object to the form.
THE DEPONENT: I would say yes if there are no mitigating circumstances surrounding that.
BY MR. LE CLERCQ:
Q And what would those mitigating circumstances be?
A Foreclosure.
Q Okay. We'll talk about foreclosure in just a second.

So is that a way of saying that if the property is in foreclosure, that -- does that change the analysis when it comes to the advisability of a long-term lease being entered?
A I agree, yes, sir.
Q All right. And tell me how it does that.
A Repeat the question again.
Q I knew you'd make me do that, and it was so brilliantly worded and now I can't get the exact wording.
Would you agree with me that the existence of the foreclosure may change the analysis of a property manager as to the advisability of entering a long-term lease?
MS. HOUGHTON: Object to form.
MR. ANDERSON: Object to form.
THE DEPONENT: I would agree to that.
BY MR. LE CLERCQ:
Q Good. Now tell me why you agree with that.
A Because the -- what's going to happen during that foreclosure we do not know. Several things could happen. First of all -- and I may take that back a little bit, because during a foreclosure, the owner of that property, the landowner of that property, has a right to cure that loan up to the

sale of the property. And so the property manager, if it's -- if the property manager says, okay, I'm going to enter into a long-term lease, I'm assuming that the property owner has told him, go ahead and enter into long-term leases. This is in foreclosure, so I'm going to try to cure this loan and -- Get as many leases as you can. That's a possibility.
And from a bank perspective, who is the lender and has the mortgage on that, he can't interfere with him doing business or interfere with him from being able to cure that loan. So there are some mitigating circumstances there that ties the hands of the mortgage or the bank to interfering with what the borrower can do with mitigating his foreclosure, this foreclosure action.
Q Okay. You just said the landowner has the right to cure the loan up to the sale of the property?
A Correct.
Q I want to get into more questions about that, but in your experience, beginning in the 2007 in the problem loan department, in what percentage of the foreclosure cases did that was actually happen, where they cured the default?
A Very few, small percentage.

Q Less than 5 percent?
A Probably.
Q Less than 2 percent?
A I don't know about that. Five percent is probably a good number.
Q Would you say that's been the situation since 2007, you've been aware of that?
A (Deponent nods head.)
Q Is that a yes?
A Yes.
Q So you would agree with me that when a property goes into foreclosure, that there's less than a 5 percent chance that the defaulting party is going to be able to cure the default?
MR. ANDERSON: Object to form.
MS. HOUGHTON: Object to form.
THE DEPONENT: Approximately.
BY MR. LE CLERCQ:
Q Could be 5 percent, could be 4 percent?
A Yeah, but it could be more, you know.
Q But it's a low percentage?
A Yes.
Q Tell me what -- Just so we're on the same page, let's be precise, what does it mean to go into foreclosure?

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Q The workout is somebody else's job?
A Exactly.
Q All right. So the workout, if there's going to be one, is Allen Griffin?
A That would be the lender, right.
Q You're the guy that does the foreclosures?
A I'm the bad guy. I do the hard job.
Q Well, somebody's got to do it. All right. So once you get file, your marching orders are to --
A To foreclosure.
Q -- to foreclosure?
(Deposition Exhibit 3 was identified for the record.)
BY MR. LE CLERCQ:
Q All right. Let's take a look at Exhibit 3 in this case, and you tell me if you recognize that document. I'll ask you the same questions I asked about the note.
A Okay.
Q Is this the mortgage between Atlantic and the bank?
A Yes, sir.
Q There are no other mortgages that you're aware of?
A Not to my knowledge.

Q And you see that it's dated August 14, 2006?
A Hold on a second. Let me find the date. Yes, I do. I've got it. I about marked it, out of habit.
Q I draw your attention to page 2, the second line, which is --
A You're talking about right here?
Q I'm talking about the -- The first page looks like --
A That there?
Q Yeah, that there.
A So you're calling this the second page?
Q That's right.
A Okay, got it.
Q It's the first page of the actual mortgage. It appears to be a principal amount of over $2,000,000; is that correct? It says 2,125,000.
A Yes.
Q So Atlantic is borrowing that amount. Do you know whether that was at the time they purchased the property?
A I don't know whether that was a purchase or --
Q You weren't involved in that part?

A Of the process, no.
Q All right. So you weren't in that division at the time, right?
A I was never in that division.
Q I'd like you to take a look on page 1. You see where it says Grant of Mortgage?
A Yes, sir.
Q I'd like you to read that first sentence into the record, please, sir.
A Okay. "For valuable consideration Grantor mortgages, grants, and conveys to Lender all the Grantor's rights, title, and interest in and to the following described real property, together with all existing and subsequently erected or affixed buildings, improvements, and fixtures, all easements, rights of way, all" --
Q Let me stop you there. That's enough for my purposes. But I'd ask you to read over the rest of the language in that paragraph to yourself, not out loud.
A Okay.
Q And my question to you is: Does that language mean what it says? And, specifically, that the Grantor -- you see the words "conveys to the Lender all of Grantor's right, title, and interest in

and to the following described real property," those words right there I just read.
A That's what --
Q Do those words mean what they say?
MS. HOUGHTON: Object to form.
THE DEPONENT: That's what the form says, yes.
BY MR. LE CLERCQ:
Q And the bank was not intending to deceive Atlantic by this document, were they? The bank was telling the truth in this document, right? They weren't in any way trying to deceive Atlantic by this mortgage?
A No.
Q So you'd agree with me that by this mortgage the title to the property, to the real property, is conveyed to the bank?
MS. HOUGHTON: Object to form.
THE DEPONENT: You know, that's a legal issue. That's legal language. I don't think I'm qualified to say what you're doing, but from a banking perspective, we view this mortgage as a security interest in the property that's being mortgaged. We did not act in a fashion that we acted as owners to that property.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

CA# 2015-CP-21-

First Reliance Bank,

Plaintiff,

vs.

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendants.

LIS PENDENS

FILED
2015 JUL 20 PM 1:47
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, S.C.

20 15 -LP-21- 203

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendant above named for the foreclosure of a certain mortgage given by Atlantic Regional, LLC to First Reliance Bank, dated the 14th day of August, 2008 and recorded in the Office of the Clerk of Court for Florence County on August 16, 2006 at 8:29 a.m. in Book B33 at page 72.

The description of the property is:

All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic Regional, LLC, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.

This being the same property conveyed to the Mortgagor herein by deed of The Florence Group, LLC, said deed being recorded in the office of the Clerk of Court for Florence County simultaneously herewith.

Ray Coit Yarborough, Jr.
Attorney for Plaintiff
POB 4198
Florence, S.C. 29502
(843) 676-0580

Florence, South Carolina

July 20, 2015

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
12th JUDICIAL CIRCUIT

CASE NO.: 2015-CP-21-2106

First Reliance Bank
Plaintiff,
vs.
Atlantic Regional, LLC., et.al
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
2015 JUL 23 PM 3:21
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Plaintiff's Attorney:	Defendant's Attorney:
Ray Coit Yarborough, Jr., Bar No. 5725 Address: POB 4198, Florence, SC 29502 Phone: 843-676-0580Fax 843-676-9045 E-mail: coit@sc.rr.comOther: _____	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion For Order to Pay Rents to Plaintiff
Estimated Time Needed: 15 min. Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Ray Coit Yb
Signature of Attorney for ☒ Plaintiff /☐ Defendant

July 23, 2015
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

Exhibit 15
0536

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STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE CA# 2015-CP-21-2106

First Reliance Bank,

Plaintiff,

vs. MOTION FOR ORDER TO PAY RENTS TO PLAINTIFF

Atlantic Regional, LLC and The Blanton Company, Inc.,

Defendants.

IN RE:

First Reliance Bank,

Plaintiff,

vs.

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendants.

FILED
2015 JUL 23 PM 3:21
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

You will please take notice that Plaintiff, through its undersigned counsel, on the tenth day after service, or as soon thereafter as counsel can be heard, will move the Court to direct the agent for the above named Lessor to pay lease proceeds due to Atlantic Regional, LLC. over to Plaintiff pursuant to pursuant to South Carolina Code Section 29-3-100 (Rev. 2007) and in accordance with the provisions of an Assignment of Rents referred to in the Complaint in the foregoing action. This motion is based upon the Complaint, the Assignment of Rents on file referred to therein, the attached letter from Plaintiff's attorney to the Defendants, and applicable statutory and case law.

Ray Coit Yarborough

Ray Coit Yarborough, Jr.
PO Box 4198
Florence, SC 29502
(843) 676-0580

Florence, South Carolina

July 23, 2015

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

Ray Coit Yarborough, Jr.
Attorney At Law
P.O. Box 4198
Florence, SC 29502
(843) 676-0580
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July 23, 2015

Richard Cooke
1967 Scott Street
Lake View, SC 29563

The Blanton Company, Inc.
Mr. Joe Blanton
126 S. Coit Street
Florence , SC 29501

HAND DELIVERED

RE: First Reliance Bank, Plaintiff vs. Atlantic Regional, LLC, et al

CA# 2015-CP-21-2106

Dear Sir or Madam:

On behalf of First Reliance Bank and pursuant to the attached assignment of rents from Atlantic Regional, LLC, I am directing that the two of you immediately pay all rent monies held as principal or as agent for Atlantic Regional, LLC, or its tenants on the property referred to in the assignment to Mr. Dale Porter at First Reliance Bank. Atlantic Regional LLC is in default under the terms of a note, mortgage and assignment of rents held by the bank. I am attaching a copy of a motion which I have filed and am herewith serving it upon you. Pursuant to the assignment and S.C. Code Section 29-3-100, all future payments on your lease are to be made to:

First Reliance Bank
c/o Dale Porter
2170 W. Palmetto Street
Post Office Box 36
Florence, South Carolina 29501

Sincerely Yours,

Ray Coit Yarborough, Jr.
Attorney for First Reliance Bank.

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

(A) For purposes of this section the following definitions apply:

(1) "Rents, issues, or profits" means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real property on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products, timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property.

(2) "Assignment of leases, rents, issues, or profits" means every document assigning, transferring, pledging, mortgaging, or conveying an interest in leases, licenses to real property, and rents, issues, or profits arising from real property, whether set forth in a separate instrument or contained in a mortgage, conditional sales contract, or other deed or instrument of conveyance.

(3) "Collateral assignment" means any assignment of leases, rents, issues, or profits made and delivered in connection with the grant of any mortgage, or the execution of any conditional sales contract or in connection with any extension of credit made against the security of any interest in real property, where the assignor retains the right to collect or to apply the lease revenues, rents, issues, or profits after assignment and prior to default.

(B) The recording of a written document containing an assignment of leases, rents, issues, or profits arising from real property is valid and enforceable from the time of recording to pass the interest granted, pledged assigned, or transferred as against the assignor, and is perfected from the time of recording against subsequent assignees, lien creditors, and purchasers for a valuable consideration from the assignor.

(C) Where an assignment of leases, rents, issues, or profits is a collateral assignment, after a default under the mortgage, conditional sales contract, or evidence of indebtedness which the assignment secures, the assignee is thereafter entitled, but not required, to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits subject to the assignment, without need for the appointment of a receiver, any act to take possession of the property, or any further demand on the assignor. Unless otherwise agreed, after default the assignee is entitled to notify the tenant or other obligor to make payment to him and is also entitled to take control of any proceeds to which he may be entitled. The assignee must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

(D) This section shall not exclude other methods of creating, perfecting, collecting, sequestering, or enforcing a security interest in rents, issues, or profits provided by the law of this State.

HISTORY: 1993 Act No. 66, Section 1.

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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history, et cetera, that I've got a, you know, gut feeling that they ain't going to pay. Okay? I'm not real sure how else to answer that.

BY MR. LE CLERCQ:

Q. Would you expect that if the -- that whatever the bank had done to try to work things out would have occurred prior to the filing of the foreclosure papers? That the foreclosure would be a last resort?

MS. HOUGHTON: Object.

THE DEPONENT: I -- I really can't answer that. I'm not sure. I would think, as a, you know, lender, borrower, that they would hopefully have some kind of working relationship. I don't know.

BY MR. LE CLERCQ:

Q. Okay. I asked you earlier, but you said you'd never been -- you'd never been in a situation where a property you were managing was foreclosed prior to this.

Do I take it from that, that you've never, prior to these events, you never told a tenant that a property was in foreclosure?

A. To the best of my knowledge, no.

Q. Do you think that a property manager when he finds out that a property that he's managing is in foreclosure, does he have an obligation to go to the borrower in possession and say, "What are you guys going to do? Are you going to bring it current, or are you going to let it go?"

A. Well, I was not notified of the foreclosure action until after the fact. So I can't answer that.

Q. But then once you know about it, do you think that a property manager has an obligation to go to the mortgagor in this case and say, "Guys, tell me what's up. Are you going to bring this current, or are you going to let it go?"

And if it's not obligation, is it a smart business practice?

A. You're asking do I have an obligation to go to the mortgagor --

Q. Atlantic in this case.

A. Well, again, I wasn't aware of them being foreclosed on until after the fact.

Q. What I'm saying after you find out that they've been foreclosed upon --

A. I don't have any obligations whatsoever to tell them whether they should pay up or not. No.

Q. That's not my question.

A. Okay.

Q. What my question is: Do you think that you have an obligation to go to them just to find out whether they are going to either bring the property current or whether they're going to let it go to the bank? Because you have to rent the property --

A. Well, I was going to say, as my knowledge, because I was caught in the middle. Okay.

Yeah. Sure. "What are you guys going to do? Are you moving out of here? Are you just going to sit until they basically throw you out?"

I don't know.

Q. Did you actually do that in this case? Did you go to Atlantic at any time after July 24 and have a conversation with them to find out what their intentions were with regard to the foreclosure?

A. I'm sure that we had phone conversations. We'd have a sit-down everybody records, et cetera. But I had conversations with them saying, "Yeah, you know, we're out of business," or "we're gone."

Q. That's what they told you?

A. I think so, yes.

Q. Okay.

A. To the best of my recollection.

Q. Okay. Who was it that told you that? Richard Cook?

A. Richard. He was my main guy that I talked with, yes.

Q. And at some point subsequent to July 24, 2015, you had a phone conversation -- one or more phone conversations with Richard Cook, and he told you words to the effect of, "We're out of business" --

A. Things ain't looking good. Okay? I fear that this may come to fruition. Okay?

Q. And he didn't say, "No. Everything's cool. We're going to bring this current."

A. No.

Q. Did he say that the ambulance company was out of business?

A. I can't truthfully say that he did or did not. Obviously, they were the anchor store, as in a Belk or a Sears or what have you. But he basically told me that their business was bad, and whether they went out of business -- I don't know if they moved to another town and stayed in business. I don't know. Okay?

Q. I heard you say the phrase "we're going to

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let it go."
Did he say those words or words to that effect when you talked with him --
A. I think when he said, "We're going to let it go," I think he meant that we're giving up on trying to maintain or hold the building. Okay? As far as their individual business goes, I don't have a clue.
Q. Understood.
But what I'm interested in is the building.
A. I think that that's what he -- that's the way I interpreted it, yes.
Q. You understood that they were not going to bring the mortgage current, but were going to --
A. That was my understanding.
Q. I'm sorry. Let me finish the question.
A. Okay. I didn't know you weren't finished.
Q. Your understanding after your one or more conversations with Richard Cook was that their business was bad and they were going to let the building go. They were not going to try to bring the mortgage current, but, by contrast, they were going to not -- that the property -- excuse me -- the property was going to go -- the building was going to go to the bank.

A. I was never told that exactly. I just -- it was insinuated that, Hey, we're not going to be able to hang in here. Okay? I don't know how to put it in precise verbiage.
Q. Okay. And you think that was one or even several conversations that took place by telephone after July 24 that were to that effect?
A. After?
Q. July 24.
A. And, again, I hope it's okay if I call you Ben.
Q. Please do.
A. Or Mr. Le Clercq.
We're talking about five years ago. Okay? A lot of times I can't remember what I had for dinner three nights ago. Okay?
Q. I understand. I understand.
A. So this is going on recall.
And I can't sit here under oath and, you know, swear that I remember how many telephone calls I had with him. I just know that we weren't adversaries; that I was going to do whatever they told me to do until the bank told me what to do. Okay?
And so, again, I was in that gray area. I

was caught between -- between the ropes.
Q. Understood.
Did you -- once they -- I understand that it has been five years ago.
Once they told you that, did you have any conversations with anybody from the bank where you let them know that that was the situation? Or do you think that the bank knew that?
MS. HOUGHTON: Object to form.
THE DEPONENT: The -- to my knowledge, that I recollect, is the bank didn't call me to tell me what their dealings were with their client. And I would expect them to.
BY MR. LE CLERCQ:
Q. Do you suspect that if you knew that, that the bank also knew what you just told me?
A. I told you I knew based on my conversations with Mr. Cook that things weren't going real good. I did not understand that to be that they were going to be foreclosed on.
Q. Let me make sure I just understood what you said.
You -- once the foreclosure happened, I've understood you to say that you called Richard Cook on a couple occasions, and the gist of what you got

out of that conversation was that, Point Number 1, things weren't looking good, and that they were not -- likely not to be able to stay in the building, and that the building -- title would likely be lost to the bank in the foreclosure.
A. Okay. The one question I have, Ben, is are we talking about prior to the foreclosure or subsequent?
Q. After.
A. After? I think he said, you know, "We're out of here." You know, "We're going to move out."
Q. Got it.
MS. HOUGHTON: Can we go off the record for a second?
MR. LE CLERCQ: Let me just -- hang on just a second, Lacey.
BY MR. LE CLERCQ:
Q. So that he says that -- the gist that you got was "We're out of here."
Let me make sure just to -- so that the record is clean, and we'll take these three points that I just said. I'd just -- I'd like to take them one by one.
Again, we're talking about the time subsequent to July 24, 2015, when you found out

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that the property was in foreclosure. That First Reliance was foreclosing on Atlantic.

I've understood you to say you recollect having one or more telephone conversations with Richard Cook and he conveyed to you the following basic points: That, Number 1, Atlantic's business was in trouble.

Do you agree with that?

A. Yes.

Q. Number 2, I'll use your words. The gist of what he communicated to you was, "We're out of here."

Do you agree with that?

A. Yes.

Q. You interpreted that to mean that Atlantic was not going to try to bring the mortgage current, but rather, the title to Sweetbriar would be lost in the foreclosure to the bank.

A. That it would be conveyed to the bank in lieu of payments not being made.

Q. Approximately how long after -- again, I won't hold you to exactly, but give me a range of time that you think those conversations took place. And was it on July 24th itself? Was it a week later? Was it a month? You know, when do you

think it was?

A. There's no way I can answer that except to guess. You know, it certainly wasn't on the day that I was presented with the fact that there was a foreclosure action. I guess he called me or I called him and said, "Hey, you know, let me know what you're doing, when you're getting out of here, so I can talk with the bank and see if they subsequently want to lease -- you know, to lease this space."

MR. LE CLERCQ: Madam Court Reporter, can you please read back the last statement by the witness?

(The Court Reporter read back the requested testimony.)

BY MR. LE CLERCQ:

Q. Just to make sure I'm clear on that, did you hear what the court reporter just read back?

A. Yeah.

Q. That was you calling them and you saying to them, being Richard Cook, "Hey, let me know what you are going to do so I can find out from the bank whether they want to lease the property."

A. Yes.

Q. Okay. And what was his response, if you

recall?

A. "We're moving out as soon as possible, moving whatever furniture."

They'd already been moving some prior to, so I knew it was coming down, I guess, so to speak, coming down.

But, again, I wasn't involved in their affairs with the bank. You know, I -- you know, which is -- waiting to be told what to do.

Q. Okay. Do you think that those conversations with Richard Cook took place within the first week of the foreclosure occurring, in other words, prior to July 31, 2015?

A. Ben, I'm not sure.

MR. ANDERSON: Object to form.

BY MR. LE CLERCQ:

Q. Do you know whether it would have been within the first two weeks after that? Do you have any recollection as to when it would have been?

A. I can only tell you that I assume so. I don't know.

Q. Okay. So you assume it would have been within the first couple of weeks of the foreclosure being served upon --

A. I just got through saying --

MR. ANDERSON: Object to form.

THE DEPONENT: -- that I don't -- I don't know. I don't recall.

BY MR. LE CLERCQ:

Q. Okay.

A. You can ask it any way you want to ask it, and I'm going to still answer it the same way.

Q. I understand and I appreciate your candor, Mr. Blanton.

Do you recall, did you have this conversation on your personal cellphone?

A. A lot of my business is done on my personal cellphone. A lot of my business is done on my business phone.

Q. Can you please give me those two numbers?

A. You've got them, but I'll be glad to give them to you again.

My cellphone is 843-230-7568. My business number is 843-662-2557.

Q. Got it.

And is the business phone a land line at your office?

A. Yes.

Q. All right. And who is the phone carrier for that?

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the property."
At what point subsequent to the foreclosure being served upon you -- and when I say that, do you understand what I mean? That on July 24, you were served with a motion to enforce rents.
A. I was noticed --
MR. ANDERSON: Object to the form.
BY MR. LE CLERCQ:
Q. Do you understand -- let's first of all make sure that we're on the same page as to what happened on July 24.
So why don't you tell me what happened on July 24.
A. I don't know.
Q. 2015.
A. I may have been at the beach. I'm not sure.
Q. Okay. But do you recall being served on July 24 with papers relating to the foreclosure?
A. Yeah. Probably. Yeah. Sure. I had to be served so that I wouldn't be sending the checks to Atlantic Regional, yeah.
Q. Okay. And subsequent to July 24, at what point do you recall contacting Mr. Timmons to ask him if he would be interested in leasing property at Sweetbriar?

A. Say that again.
Q. Subsequent to July --
A. He was already a tenant.
Q. I'm talking about --
A. You're saying "subsequent to," meaning after. Okay?
Q. Right.
A. Isn't that what you mean?
Q. That is exactly what I mean.
A. Okay. Mike was already in there. So what's your question?
Q. Well, his lease was not signed until August the 20th of 2015.
A. Okay.
Q. And you were served with the foreclosure papers on July the 24th, 2015 --
A. Okay.
Q. -- which is three weeks before then.
A. Okay.
Q. So Timmons did not actually start his lease until after the service of the foreclosure --
A. Okay. I understand what you're saying now. Yes.
Q. -- after you found out about the foreclosure.

So do you agree he was not, in fact, a lessor of the property -- I'm sorry -- a lessee of the property on July 24, 2015? He wasn't one of your existing tenants?
A. Yes. I think that is correct.
Q. Okay. So after July 24, 2015 -- I'm sorry. Strike that.
Let's get back to what exactly happens on July 24, 2015. You find out about the foreclosure.
What I'm interested in is subsequent to that time, tell me what you recall about your next conversation with Mike Timmons. Did you call him or did he call you?
A. Mike initiated the call, to the best of my recollection, that he heard that the existing business that was there was going to go out of business, and if anything should happen, for me to please contact him. To, again, to the best of my recollection, that's what happened.
Q. Okay.
A. I called Mike and told him that I think these other people are getting out of there.
Q. When we say "the existing business," we're talking about the bar or the restaurant?
A. There was another bar that didn't work --

there was another bar there that did not work.
Q. And he had called you at some point and said he was interested in it, right?
A. Sure.
Q. And then --
A. He knew more about it than I did because he's familiar with that stuff. Yeah.
Q. Then what Mr. Timmons has testified to is that at some point you called him and said the space is available?
A. Yes. Because he had asked me to do so prior, yes.
Q. Okay. And do you recall whether that was subsequent to July 24, when you first called him?
A. I feel pretty positive it was, yes.
Q. Okay. You would agree with me that as a property manager you would never sign a lease with a tenant if you knew that the lessor didn't have the ability to convey the property, for whatever reason. Would you agree with me?
A. Yes.
Q. Okay. Do you think that a company like Atlantic, that is what I'll call a borrower in possession of the property, that once they've been placed in foreclosure proceedings by the mortgagee,

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get tenants in there.
Is that a fair statement?
MS. HOUGHTON: Object to form.
THE DEPONENT: That is -- yes. That's a fair statement, yes.
BY MR. LE CLERCQ:
Q. And that includes, because it's a strip mall, getting long-term tenants in.
Would you agree with me that that's a fair statement?
A. Not at that point in time.
Q. How do you --
A. How could I -- how could I entice anybody into going into a long-term lease agreement knowing that there may be possible actions to come?
That would be unethical on my part to sign somebody into something. I wouldn't do that. Would never do it.
Q. Well, the lease here, sir, was signed by you as lessor on August the 20th --
A. That's correct.
Q. -- of 2015, which is three weeks after you were served with a motion to enforce rents by the bank.
A. Okay.

Q. And so we will -- it appears to me, based on my review of the documents, that you informed Atlantic and you also informed the bank of Mr. Timmons' proposal to lease the property.
Do you recall that, sir?
MS. HOUGHTON: Object to form.
THE DEPONENT: Well, sure. I would have passed that through to others. I couldn't approve it. Yes.
BY MR. LE CLERCQ:
Q. And you would also agree with me that neither Atlantic nor the bank ever said, "Don't enter this lease with Mike Timmons."
A. No one ever told me to not do that.
Q. And your marching orders as a property manager were to rent vacant property.
A. Correct.
Q. Do you agree?
A. Yes.
Q. Okay. So, and you've already said that you don't think that a party like Atlantic that has been foreclosed upon -- strike that.
Let me ask you this question.
Does a lender that forecloses on property, in your view, have an obligation to disclose to

prospective tenants, tenants that come in the future, that the property that they're interested in is in foreclosure?
Do you think they have that obligation?
MS. HOUGHTON: Object.
THE DEPONENT: I would think so.
BY MR. LE CLERCQ:
Q. Do you think it's also a good practice for them to do that?
A. I would think so.
Q. If a lender forecloses on property, are existing tenants at the moment they start foreclosure proceedings, do you believe that those tenants are bound if they don't have notice of the foreclosure, if the bank decides they're not going to notify those tenants?
MS. HOUGHTON: Object to form.
THE DEPONENT: Okay, Ben. I'm sorry.
BY MR. LE CLERCQ:
Q. Let me try that one again. It was a little awkward.
A. Let's try it again. Yeah.
Q. The -- when Sweet -- at the moment of the commencement of the foreclosure proceedings in 2015, there were existing tenants at Sweetbriar.

Do you agree with me?
A. Yes.
Q. I think you have already said you think the bank has got an obligation to notify those tenants of the foreclosure.
If the bank doesn't do that, does that mean that those tenants are not bound by the foreclosure?
What's the ramifications if the bank doesn't notify those tenants, in your view?
MS. HOUGHTON: Object.
THE DEPONENT: I would think that if I were a tenant -- I put myself in anybody else's place.
If I signed a tenant with Ben Le Clercq, that I signed my lease with Ben. And if all of a sudden the bank came in and took it over from Ben, then I would no longer be obligated to Ben if the bank took it over.
Is that a way to answer it? I'm not real sure how to do it intelligently.
BY MR. LE CLERCQ:
Q. Got it.
So we've got this lease that is signed

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between Mr. Timmons and you, as lessor, for what I would call a long-term lease. And -- on August 20th of 2015.

Would you agree with me that you would not have let him sign that lease knowing that the property was in foreclosure proceedings unless you had also told the bank about the proposed lease?

MS. HOUGHTON: Object to form.

THE DEPONENT: There is no way in this world -- and I'll give my license up tomorrow, and Mike knows this.

There's no way that I would have ever facilitated a lease with someone who's willing to spend their money, put their heart into it, and my heart into it, being a reputable broker who has been here 41 years, I would never, ever do that. And if I did, then just take my damn license away from me. I would not do that.

BY MR. LE CLERCQ:

Q. You were not intending to deceive or trick him?

A. No, sir. I was not. And off the record, I think if you and I and Mike sat down and had a beer and me a Coke, then we both would agree.

Q. I'd like that. We need to have your attorney there at the same time, though.

All right. Have you ever owned the Sweetbriar property?

A. I was a member of the Florence Group, which was an entity that I formed many years ago. I don't remember how many years ago it was.

The Florence Group was three doctors that I put together with myself, Dr. Imbeau, Dr. Steadman, Dr. Howell -- they're all personal friends of mine and my doctors -- I said, "Guys, why don't we put a partnership together and maybe try to buy some commercial property?

Bill Dailey was the owner at that point in time. We purchased the property from Bill Dailey, and the Florence Group owned it for a while. And then we sold it to Atlantic Regional.

Q. Okay.

A. Okay? And I only own 3 percent of interest in that partnership.

Q. And when was that partnership formed? Was it around 1995?

A. Oh.

Q. I'm going to hand you a document, which is going to be marked as Exhibit 4, which I think is

evidence of a closing that might have taken place. If you'll take a look at that document and let me know if you recognize it.

A. I don't know when it was formed. I know that we had several properties that we purchased. As far as when the Florence Group incorporated, went into effect, I don't recall the date.

(EXHIBIT 4, Blanton 000079, 12/07/1995 Letters from Dailey Development, Inc., was marked for identification.)

THE DEPONENT: Okay. I see Dailey, yes.

MR. LE CLERCQ: I'd like you to had him also 5, which is the lease.

(EXHIBIT 5, 08/20/2015 Commercial Lease, was marked for identification.)

BY MR. LE CLERCQ:

Q. Would you agree with me that Exhibit 4 is evidence that previously there had been property transactions relating to Sweetbriar in which you had been involved?

A. Yes.

Q. Now, I'd ask you to take a look at what has been marked as Exhibit 5, which is the commercial lease in this case. And do you recognize that

document?

A. Yes.

Q. Okay. And these are your initials at the bottom of each page?

A. That's correct.

Q. And that's your signature on Page 7?

A. Correct.

Q. And it was signed by you on or about August 20, 2015?

A. Correct.

Q. And the witness to the signature is Kelly R. Modlin, and that is someone from your office?

A. Yes.

Q. And she signed on Page 7?

A. Yes. She signed as a witness, and Jean Parks also signed as witness.

Q. And did you see Mr. Timmons sign the document? Do you recall?

A. Yes. I think so, yes.

Q. Okay. And is the handwriting that you see on the lease other than Mr. Timmons' initials and his signature, is that handwriting your handwriting? For example, on Page 1, where it gives the --

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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that you didn't receive any state -- you didn't receive any instructions from the bank telling you not to do the lease.

Do you agree with that?

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. If the bank had told you not to do the lease with Timmons, you wouldn't have done it, correct?

A. Yes. That's correct.

Q. All right. And so, but as a general matter, the bank also never told you, "Joe, Don't enter month-to-month leases."

They never said that, correct?

A. (Reading to self.) Yes. It says, "First Reliance Bank" -- (reading to self).

Yes.

Q. Right. So they never told you that.

And they never said, "Mr. Blanton, do not enter any long-term leases at the Sweetbriar property."

A. Not at that point in time, to the best of my recollection.

Q. Okay. Now, I thought we had it as an exhibit, but perhaps not.

I will represent to you that the bank's

interrogatory responses in this matter indicate that prior to the execution of the lease between you, as lessor, and Mr. Timmons, as lessee, that you had a conversation with Dale Porter regarding the lease.

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. Do you recall -- first of all, is that accurate? Prior to the lease with Mr. Timmons being executed, did you also have a conversation with Dale Porter about Mr. Timmons' lease that was being proposed?

MS. HOUGHTON: Object to form.

THE DEPONENT: I don't recall.

BY MR. LE CLERCQ:

Q. Okay. But you don't have any reason to doubt the veracity of what the bank says happened?

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. That that conversation occurred between you and Mr. Porter prior to the lease with Mr. Timmons being executed?

MS. HOUGHTON: Object.

THE DEPONENT: The bank told me to not enter into the lease with Mr. Timmons?

BY MR. LE CLERCQ:

Q. No, no. The question I've got is only: Did you have a conversation with Dale Porter regarding the prospective lease of Mr. Timmons for this property prior to August 20th?

That's all I'm asking. Did you have a conversation with Dale Porter on that subject?

A. I think that I did.

Q. And can you tell me what you recall from that conversation?

A. Again, you know, I was caught between several different road blocks here trying to figure out what to do. At one point in time, Atlantic Regional was telling me, you know, "Rent the building so we can get as much income as we can."

When the bank took it over, to my recollection was -- is, you know, "Lease what you can and, you know, let's get the income coming until we decide to sell it or to continue to manage it." And subsequently, they said, "We do not want to continue to hold it. We want to sell it."

Q. Got it. And you said your main contact at the bank was Dale Porter?

A. Yes.

Q. And would these conversations, you think,

have taken place in person where he told you that, or over the telephone?

A. Mostly on the telephone. We may have met personally from time to time. Again, I can't recall what happened five years ago.

Q. So when he said that, that was a confirmation -- you would agree with me that that's a confirmation of your mandate to get the property leased?

A. My job was to generate as much income as I could for either party. Okay?

Q. Okay.

A. That's what I tried to do.

Q. Now, you testified earlier that you don't think Atlantic has the right to enter a long-term lease when it's in foreclosure.

Would you agree with me that the only other party that would have such a right would be the bank?

MS. HOUGHTON: Object to form.

MR. ANDERSON: Same objection.

THE DEPONENT: If it's in a foreclosure action, again, I'm not an attorney.

If the foreclosure is going on, I would think that they probably would have the

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BY MR. LE CLERCQ:

Q. And if they take the property, "they" being the lender, the lessor, they get -- strike that.

If the mortgagee, being the lender, gets title to the property, they can do whatever they want with it, correct?

A. To my understanding, yes.

Q. They could sell it. They could lease it. They could --

A. Tear it down. Raze it. Whatever.

Q. They could give it to somebody?

A. (Moves head up and down.)

Q. They have the title to do whatever they want with it.

A. (Moves head up and down.)

Q. You agree with that?

A. Correct.

Q. Would you agree with me that when a property goes into foreclosure that there are two options: That the mortgagor comes current or he loses the property to the bank?

A. Correct.

Q. Have you ever of heard of a deed in lieu of foreclosure?

A. Yes. Now, to explain it, I'm not sure I

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know how to explain it.

Q. Is that where a mortgagor would say, Don't foreclose on me. I'll just transfer the title -- any of my title and interest to you, the lender?

A. Yes. Deed in lieu of paying the debt.

Q. All right. Now, let's take the situation prior to Timmons, so your entire work experience up to the time of Mr. Timmons.

Have you ever had a situation where a property that you managed went into foreclosure?

A. I don't recall that happening.

Q. So this -- all right. Very good.

So is it a fair statement that this, to your recollection, this case presents the very first time that a property that you were managing for a lessor came under foreclosure?

A. Again, to the best of my understanding, yes. I don't recall another occurring.

Q. Have you ever done any specialized training in foreclosure in real estate?

A. No.

Q. Okay. Tell me what you think are the duties, if any, of a property manager when a property gets foreclosed on. Does the property manager have a duty to tell the tenants?

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A. Notify all parties involved.

Q. That would include tenants?

A. Particularly tenants, yeah.

Q. Do you think it is the obligation of a mortgagee that's lending money on property when a property goes into foreclosure, do they -- are they obligated to go to the mortgagor and say, "What's going on? Are you going to come current?"

MS. HOUGHTON: Object to form.

THE DEPONENT: Well, I'm not a banker, but I would assume that they would do that.

BY MR. LE CLERCQ:

Q. All right. And whether or not they have an obligation, it would be smart business practice to do that, right?

A. Correct.

Q. So in this case, with -- you said that the property manager has the obligation to tell all the parties of the existence of the foreclosure.

In this case, when you got served with the foreclosure proceedings, did you notify all of the existing tenants at Sweetbriar?

A. I -- I'm not sure. I can't answer that, honestly. I'm not sure.

Q. Okay. And let me make sure that we're on

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the same page with terms.

When I say "Sweetbriar," do you understand what I mean by that?

A. Sure.

Q. Tell me what that means.

A. Sweetbriar, the strip mall in question or the properties thereon.

Q. So if you had told them about the foreclosure, how would you have done it?

A. Well, to go back on what we said earlier, I don't know if there's anything that says that I'm obligated to tell the tenants that there has been a foreclosure action. I don't see anywhere where it says that I'm obligated to do that.

Q. You don't think it's a prudent business practice --

A. I think it would be prudent or nice or whatever, but I don't know anything stated that says I have to do that.

Q. Well --

A. I certainly would appreciate it if somebody told me if I was leasing. But I can't say and, you know, I'm a little bit dumbfounded. I don't know where anything says that I'm obligated to do that.

Q. Well, do you believe that the bank has an

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Q. Okay. And who is your IT? Do you understand what I mean by IT, information technology?
A. BDS takes care of our equipment -- BDS. They take care of our computer needs, et cetera.
Q. That's bravo, David, sierra?
A. Sir?
Q. B, like bravo; D, like David; S, like sierra?
A. Yes. Uh-huh.
Q. Who's your contact person there?
A. I think the ladies always call a guy named Jim. I don't know his last name.
Q. Okay. Mr. Blanton, I'm going to represent to you that -- and this may be a term that you are not familiar with -- but, actually, tell me if it is.
Do you know what the word "fiduciary" means?
A. Sure.
Q. Tell me what your understanding of "fiduciary" is.
A. If I'm handling funds for anybody, I have a fiduciary responsibility to them to be ethical, honest, and handle those funds appropriately, and that -- yeah. I mean...

Q. Would you agree with me that it's a relationship in which one person has -- is under the duty to act for the benefit of another?
A. Sure.
Q. As to matters within the scope of their relationship?
A. Yes.
Q. Okay. And would you agree with me that an agent acting for a principal is an example of a fiduciary relationship?
A. Yes.
Q. Would you agree with me that in a fiduciary relationship, the person that owes the duty owes a high duty of care to the principal?
MR. ANDERSON: Object to form.
THE DEPONENT: Yes.
BY MR. LE CLERCQ:
Q. It sounds to me like that might be the kind of relationship that exists between a property manager and a landlord, the lessor. Do you agree with that?
A. Yes.
Q. So tell me what your understanding of the word "agent" is. Or "agency."
A. One acting on behalf of another.

Q. Does it also include the ability to enter contracts for the principal?
A. Depending on the individual agreement with the principal.
Q. And so in some cases, the agent has the authority to bind the principal.
Do you agree with that statement?
A. Yes.
Q. And that in an agency relationship, the work done by the agent ultimately is for the benefit of the principal.
Do you agree with that statement?
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes.
BY MR. LE CLERCQ:
Q. All right. I'm going to hand you -- I'm going to ask the court reporter to mark this Exhibit Number 2 to your deposition. These are Requests to Admit that were sent to your counsel in this case.
(EXHIBIT 2, Defendant Blanton Responses to Plaintiff's Request for Admissions, was marked for identification.)
BY MR. LE CLERCQ:
Q. And I would ask you, sir, do you recognize

this document? Have you seen this before?
A. Yes.
Q. So there came a point when you received this document and you were asked to review it. Is that a fair statement?
A. I'm sorry?
Q. You've reviewed these questions before today?
A. Yes. Yes.
Q. Okay. So let me ask you about Question Number 4, which is on Page 3.
It says that "Admit that subsequent to July 24, 2015, Blanton was acting as agent of First Reliance Bank with regard to the collection of rent from tenants at Sweetbriar, including rent payments from Plaintiff tenants."
Do you understand that question?
A. That Blanton has no written document or communication in its possession, paid subsequent to July 24, 2015 --
Q. I'm sorry. You might be reading from the wrong line. Are you at --
A. I'm at -- you said Number 3?
Q. No. I'm sorry. Number 4, the very bottom of Page 3.

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A. Okay. I'm sorry.
MS. HOUGHTON: To the extent you're asking a question, I object to form.
BY MR. LE CLERCQ:
Q. Have you seen -- do you understand the question that's being asked there? "Admit that subsequent to July 24, 2015..."?
A. Yes. Uh-huh.
Q. So you understand the question?
A. Yes.
Q. All right. And so the response is that "Admitted. After the October 2, 2015 order, Blanton was serving as First Reliance agent in collecting rents and managing the property."
So do you agree with me that subsequent to July 24, 2015, that you were acting as the agent for First Reliance Bank?
MS. HOUGHTON: Object to form.
THE DEPONENT: Subsequent to?
BY MR. LE CLERCQ:
Q. "Subsequent" -- in other words, beginning on July 24 --
A. I think prior to that, obviously, it would be Atlantic Regional LLC.
Q. Understood.

But I'm talking about after July 24, 2015, were you acting as agent for First Reliance Bank?
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes.
BY MR. LE CLERCQ:
Q. And so I want to drill down into that. In fact, let's -- but before we do that, let me ask you.
Have you ever been appointed property manager by a court before in your career, other than in this case?
A. I don't think so. Obviously, I've been doing it a long time. There may have been cases where there was a deceased and the court appointed me to handle the property for, you know, whatever.
Q. Do you recall --
A. No.
Q. -- how many times that's happened before?
A. No. If this happened, I can't recall that it happened at all, but maybe once or twice during 41 years. I can't tell you the honest to goodness truth.
Q. This word "owner" has bounced around a couple of times, so I want to drill down into that a little bit.

Would you agree with me that an owner of property is one that has the right to possess the property?
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. Do you agree with me?
A. Yes.
Q. That they have the right to use the property?
MS. HOUGHTON: Object to form.
THE DEPONENT: (Pause.)
BY MR. LE CLERCQ:
Q. An owner generally has the right to use the property?
A. Yes.
Q. And an owner also has the right to convey property that it owns?
A. Yes.
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. Tell me what your understanding of a mortgage is.
A. A mortgage is a document between an individual or a corporation or an LLC or a partnership, whatever, between a bank or a lending

institute that states that in lieu of property being held, in lieu of money owed or monies owed. And that mortgage obviously is to be honored. And most of them, as they say in a lot of real estate closings I've been in, if you don't pay, you don't stay.
Q. Do you agree with me as to this definition? Just so we're on the same page.
"A conveyance of title to property that's given as security for the payment of a debt by the performance of the duty."
Do you agree with that?
A. Sure.
Q. Okay. And that the mortgage becomes void upon the payment of the debt or the performance according to the terms of the mortgage.
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes.
BY MR. LE CLERCQ:
Q. Have you ever had a mortgage in your life?
A. Yes.
Q. Okay. And so that's why I'm asking about the phrase "owner."
A. Owner, landlord, lessor, three terms that basically mean the same thing, in my understanding.

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Q. And so the answer to my question is yes. It would have been subsequent to February 4, 2016 that the bank got its proceeds for February?
A. Yes.
Q. Okay. In the bank's interrogatory responses, they state that they received rent payments on February the 20th -- I'm sorry -- rent proceeds on February the 24th, 2016. I believe that there was a check, and we'll find it -- that there was a check that was written by you on February the 17th, which was then forwarded to the bank and which went into their account on February the 24th, 2016.
Does that jog your recollection of the facts in this case? Does that sound correct to you?
A. It -- it goes with what our process is. Rents are due on the 1st. They're late after the 5th. After the 10th, they go to the magistrate's office.
We receive the rents, and then we do a close-out, because we manage so many properties, we can't send each individual a check as received. So the close-out probably was 15th, 16th or 17th of that month, as it always is. And we would, of course, send the proceeds to the bank or whoever

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the owner happens to be.
Q. Okay.
(Off-the-record conference.)
(Mr. Oxner exited the deposition.)
BY MR. LE CLERCQ:
Q. So that would have been your standard procedure; that close-out occurred on 14th, 15th, 16th or 17th, and that subsequent to that time, the rent proceeds would have been sent to the bank?
A. That's correct.
Q. Okay.
A. It also has to do, also, with the days in the month, whether it be weekends, et cetera; so it's not always the exact same date.
Q. I'd like for us to look at -- do you recall that the Court actually entered an order appointing you as property manager in October of 2015? Do you recall that, Mr. Blanton?
MS. HOUGHTON: Object to form.
THE DEPONENT: I think that we already documented that, sir.
BY MR. LE CLERCQ:
Q. Okay. 46.
Do you recall that subsequent to the foreclosure sale occurring -- first of all, do you

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recall that the foreclosure sale actually occurred on or about February 4 of 2016?
A. I'm not sure when it occurred.
Q. But you don't have any reason to doubt that statement. I'll represent to you that it occurred on February 4th of 2016.
A. I have no reason to doubt that.
Q. Okay. Subsequent to that time, do you recall getting a letter from the bank, and I will -- all right. It was attached as Exhibit N, like Nancy, to our Complaint.
And it's a letter from First Reliance Bank signed by Dale Porter dated February 8. And let me find it and I will hand it to you.
(Off-the-record conference.)
(A recess transpired from 4:15 p.m. through 4:25 p.m.)
(Mr. Oxner joins via phone.)
BY MR. LE CLERCQ:
Q. Okay, Mr. Blanton. We were talking about checks payments by Mr. Timmons to you with regard -- excuse me -- to the Blanton Company for his payments under the lease before the break.
And the court reporter has just handed you four exhibits, which are Exhibits 61, 67, 68 and 70.

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(EXHIBIT 61, Blanton 000018, 02/31/2017 Oxner & Stacy Check to Blanton Co for Sweetbriar Closing, was marked for identification.)
(EXHIBIT 67, 02/08/2016 Letter to Blanton from Bank re All Lease Agreements are Extinguished, was marked for identification.)
(EXHIBIT 68, 02/26/2016 Letter from Blanton re All Leases are Extinguished, was marked for identification.)
(EXHIBIT 70, 12/23/2016 Email Chain, was marked for identification.)
BY MR. LE CLERCQ:
Q. And so Exhibit 61, will you please take a look at and tell me if you recognize that?
A. It's a check from Oxner Stacy, PA.
Q. And what's the amount?
A. Made payable to Blanton Company for $18,450.
Q. So would you agree with me that as a result of the sale of the company from First Reliance Bank to Plasma that you were paid a real estate commission?
A. Yes.

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from Sweetbriar? Is that how you interpret this document?
A. That's the way I interpret it, yes.
Q. How about the next page, which is --
A. Same.
Q. Let me ask you because it is -- because there's a date circled there at the top, August of 2015 through December of 2015.
First of all, tell me what this cash flow statement is.
A. What that means is it's a consolidated statement from August 2015 through December 2015. These are period-of-dates and year-to-dates, and it says, you know, net operating income and -- yeah. What do you want me to say?
Q. You would agree with me that on or about July 24, 2015, when you were served with the bank's motion to enforce rents, that any of the rents that were for occupancy that occurred after July 24 were paid to First Reliance Bank.
A. That's correct.
Q. And any rents prior to July 24 would have gone to Atlantic; is that fair?
A. That's correct, yes.
MR. LE CLERCQ: I'm going to hand you

Number 8.
(EXHIBIT 8, Blanton 000112-000115, Sweetbriar Funds Cash Flow Sheets, January 2015-July 2015, August 2015-December 2015, January 2016, was marked for identification.)
BY MR. LE CLERCQ:
Q. Exhibit 8 is a -- looks like the first page is a summary followed by three cash flow statements, but take a quick look at those documents and tell me if you recognize those documents.
A. (Pause.)
Q. I guess the way to do it is tell me what this first page is, Blanton 112, page numbered at the bottom. It says, "Sweetbriar Funds" at the top. Tell me what your understanding of this document is.
A. Obviously, it was kind of the sort of a bill-of-the-year type transaction. The first part says, "Total Income Received, $29,951; disbursed 17,471.09 disbursed to Atlantic Regional."
Then effective August, says "Funds held in Sweetbriar account beginning October 2015; funds

disbursed to First Reliance." And it shows what those funds were, and it shows who they were mailed to at First Reliance Bank.
Q. And that first payment appears to be on October 16, 2015 in the amount of $9,617.61.
Is that a combination of a number of months, in your understanding?
A. Okay. Again, please Ben, tell me where you are here.
Q. It says, "Beginning October 2015 "funds -- "
A. Yes.
Q. -- "disbursed to First Reliance."
A. Correct.
Q. The first check is kind of a big one.
And I guess my question is: Why was it a big one? I suspect that it was probably for August, September and October rent.
A. Yes. I can only assume. Obviously, if you look at the balance -- the average of the others, this was an accumulation of funds that we probably -- as above it says, "Funds held in Sweetbriar account until they were released."
At that point in time, we released the funds, which were $9617.61. Then the funds levelled out after that.

Q. Did you prepare this document?
A. No, I didn't.
Q. Would it have been someone in your office that did?
A. Yes.
Q. And is that your writing at the bottom of the page, or is that someone from your office? Where it says, "Sweetbriar's info."
And then it looks like it says Coit's e-mail. It's coit@sc.rr.com?
A. Sweetbriar info. There was a reference to, I assume, Coit Yarborough's e-mail.
Q. You understand Mr. Coit Yarborough is the bank's attorney?
A. Yes.
Q. And so does that mean that you and your office were in contact with Mr. Yarborough subsequent to July 24 with issues relating to Sweetbriar?
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes.
BY MR. LE CLERCQ:
Q. Okay.
A. I think Coit and I met once, maybe twice. I'm not sure.

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the property."
At what point subsequent to the foreclosure being served upon you -- and when I say that, do you understand what I mean? That on July 24, you were served with a motion to enforce rents.
A. I was noticed --
MR. ANDERSON: Object to the form.
BY MR. LE CLERCQ:
Q. Do you understand -- let's first of all make sure that we're on the same page as to what happened on July 24.
So why don't you tell me what happened on July 24.
A. I don't know.
Q. 2015.
A. I may have been at the beach. I'm not sure.
Q. Okay. But do you recall being served on July 24 with papers relating to the foreclosure?
A. Yeah. Probably. Yeah. Sure. I had to be served so that I wouldn't be sending the checks to Atlantic Regional, yeah.
Q. Okay. And subsequent to July 24, at what point do you recall contacting Mr. Timmons to ask him if he would be interested in leasing property at Sweetbriar?

A. Say that again.
Q. Subsequent to July --
A. He was already a tenant.
Q. I'm talking about --
A. You're saying "subsequent to," meaning after. Okay?
Q. Right.
A. Isn't that what you mean?
Q. That is exactly what I mean.
A. Okay. Mike was already in there. So what's your question?
Q. Well, his lease was not signed until August the 20th of 2015.
A. Okay.
Q. And you were served with the foreclosure papers on July the 24th, 2015 --
A. Okay.
Q. -- which is three weeks before then.
A. Okay.
Q. So Timmons did not actually start his lease until after the service of the foreclosure --
A. Okay. I understand what you're saying now. Yes.
Q. -- after you found out about the foreclosure.

So do you agree he was not, in fact, a lessor of the property -- I'm sorry -- a lessee of the property on July 24, 2015? He wasn't one of your existing tenants?
A. Yes. I think that is correct.
Q. Okay. So after July 24, 2015 -- I'm sorry. Strike that.
Let's get back to what exactly happens on July 24, 2015. You find out about the foreclosure.
What I'm interested in is subsequent to that time, tell me what you recall about your next conversation with Mike Timmons. Did you call him or did he call you?
A. Mike initiated the call, to the best of my recollection, that he heard that the existing business that was there was going to go out of business, and if anything should happen, for me to please contact him. To, again, to the best of my recollection, that's what happened.
Q. Okay.
A. I called Mike and told him that I think these other people are getting out of there.
Q. When we say "the existing business," we're talking about the bar or the restaurant?
A. There was another bar that didn't work --

there was another bar there that did not work.
Q. And he had called you at some point and said he was interested in it, right?
A. Sure.
Q. And then --
A. He knew more about it than I did because he's familiar with that stuff. Yeah.
Q. Then what Mr. Timmons has testified to is that at some point you called him and said the space is available?
A. Yes. Because he had asked me to do so prior, yes.
Q. Okay. And do you recall whether that was subsequent to July 24, when you first called him?
A. I feel pretty positive it was, yes.
Q. Okay. You would agree with me that as a property manager you would never sign a lease with a tenant if you knew that the lessor didn't have the ability to convey the property, for whatever reason. Would you agree with me?
A. Yes.
Q. Okay. Do you think that a company like Atlantic, that is what I'll call a borrower in possession of the property, that once they've been placed in foreclosure proceedings by the mortgagee,

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do they have a right to enter leases on that property?

MS. HOUGHTON: Object to form.

THE DEPONENT: I would say -- you talking about after they were foreclosed?

BY MR. LE CLERCQ:

Q. After they were foreclosed on.

A. After the foreclosure was done --

Q. Do they have the right --

A. -- then they would not have the right to do so.

MR. LE CLERCQ: Let's take a quick break, please. Let's go off the record.

THE DEPONENT: Could I just have a question here before we go so it is on the record?

MR. LE CLERCQ: All right.

THE DEPONENT: I know I'm here to answer questions, okay? But I have a question.

MR. LE CLERCQ: Okay.

THE DEPONENT: And I'm not sure if David is supposed to be able to answer this or not.

But to my recollection, and, again, we

are talking about a lot of years and we're talking about a whole a lot of other things that went down in my professional career. Okay? Physically and business-wise.

I -- and David, you guys can talk however you-all do this. I think that it goes back that I do not recall receiving that deal, Affidavit, whatever it's called. It was brought to me, telling me of the actual foreclosure on that date. Okay?

I think that that is in question. You and David could talk to each other about it, but I think, you know, it was a blank in my brain. I don't recall signing off on that.

BY MR. LE CLERCQ:

Q. Well, I think we've talked about, Mr. Blanton -- and we're still on the record.

We've talked about the universe of the people that have an interest in the property, and that is the borrower in possession of the property, Atlantic, and the lender, First Reliance Bank.

A. Yes, sir.

Q. That actually has title to the property.

MS. HOUGHTON: Object.

BY MR. LE CLERCQ:

Q. You, as a property manager, we've already established, have a duty to try to maximize the revenues --

A. Certainly.

Q. -- of the strip mall. And that if you tell both Atlantic, the borrower in possession, as well as the lender, "We've got some possible tenants," your mandate is to maximize the revenue. Those are your marching orders. And you don't stand down until somebody tells you to stand down.

Do you agree with that statement?

MS. HOUGHTON: Object to form.

MR. ANDERSON: Object to form.

THE DEPONENT: Yes, sir. I do agree with that.

And again, we're all going back on recollection, Ben. You know, it's been a lot of water under the bridge. And I've had a lot of other transactions in a lot of different ways to try to recall all this, and I'm doing my best to be accurate.

BY MR. LE CLERCQ:

Q. I appreciate your candor.

A. As I swear that I'm telling things to the

best of my knowledge and recollection, and I will never say anything, that I may swear to God, that I will not say anything untrue to my knowledge.

I think -- again, I think Atlantic Regional was struggling so bad, you know, saying, "Hey, man. Get a tenant in there. Get a tenant in there."

And Mike and I have known each other; we spoke back and forth. And when it came available, he and I worked out terms that we thought were acceptable. And I passed that on to Atlantic Regional, and they thought it was acceptable, and then Mike and I executed the lease.

Now, how long that happened prior to or after July? I don't know to be totally honest.

Q. We're going to get to the documents that looks at the same time that you let the bank know what was going on.

You were keeping everybody informed, right, Mr. Blanton?

A. I tried my best.

MS. HOUGHTON: Object to form.

THE DEPONENT: Yeah. I tried my best.

BY MR. LE CLERCQ:

Q. And when I said you kept the bank informed of what was going on, you kept Atlantic informed of

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Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FLORENCE) CVA No. 2018-CP-22-00227

John Michael Timmons, Jr., d/b/a Tavern on the Loop,
Plaintiff,
vs.
First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, Individually,

Defendants.

CONTINUATION OF THE
DEPOSITION OF JOHN MICHAEL TIMMONS, JR.

DATE TAKEN: August 20, 2019

TIME BEGAN: 10:05 a.m.

TIME ENDED: 4:13 p.m.

LOCATION: Oxner & Stacy, P.A.
235 Church Street
Georgetown, SC 29440

REPORTED BY: Michele E. Starkey
Certified Shorthand Reporter
Notary Public for South Carolina

Page 2

*Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

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.....On behalf of the Defendants WW Plasma II, LLC and Hunter Williams

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.....On behalf of the Defendants First Reliance Bank and Dale Porter and F.R. Saunders, Jr.

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ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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it, Mike. He said, they bring me my rent check like clockwork every month. As long as they pay me the rent, I don't care what they do. They can open, not open. Don't make no difference to me. I said, well, I understand that.

I said, well, all I'm saying is, if down the road, next month, next year, whatever the case, if it ever becomes available, just make sure you call me first, if you don't mind. He said, you know I will. I've done it before. I said, yes, sir.

And we chitchatted a minute and asked him how he's been doing and, you know, same old normal type stuff like that.

Q. So what was your -- what were you doing at that particular time?

A. What you mean?

Q. What kind of occupation? What business pursuit were you involved in when you were inquiring about this location?

A. I still had the building up front, right in front of this location.

Q. And what were you running out of that?

A. A bar that I called Tavern On The Loop.

Q. Okay. So you had Tavern On The Loop in

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front of this, but it wasn't part of this --

A. No, sir.

Q. -- shopping center.

A. (Witness moves head from side to side.)

Q. It was just -- where -- tell me about that entity. What was going on in the Tavern On The Loop there?

A. It was still operating fine. There was just no -- there was no friendliness. It was still all the black lights and the floors were, you know, painted. It was just same old 12-hour-a-week kinda late-night bar type thing.

Q. Okay. It didn't have a restaurant?

A. It had a small kitchen in the back where we'd cook wings and hamburgers, yes, sir.

Q. And that's what you were -- that's where you were working at the time when you mentioned this to -- this business concept to Joe?

A. Yes, sir.

Q. All right. You go on in your interrogatories. You say that Blanton was aware of the enormous amount of money that was needed to get the location renovated and suitable for your purposes, all of which were known to Blanton and knew he -- it was his responsibility to make sure

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that there was an adequate lease in place that would give Timmons a long-term commitment so that Timmons could recoup the large investment necessitated by the investment and renovation of the space. Do you see that?

A. Yes, sir.

Q. How did he know what kind of amount of money was going to be spent there?

A. Well, after our first -- whatever and ever, he called me and told me it was available, that I could come by and get a key if I wanted to. And I forget what day it was, but I said, okay. I'll come by the beginning of next week and grab a key and go take a look. So I did.

And then after I looked at it I called Joe and said, I don't know if you've seen this place, but it is a total gut job. They have destroyed the entire -- the only thing that's left is some old pleather couches and more cockroaches and tiny roaches than I have ever seen in my entire life in one particular building. I said, this is a total redo. There really nothing there that I can use for my purposes.

And I don't know. I'm sure Joe probably went over and looked at the place or, you

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know, kind of followed up on what I was telling him. And then we just started communicating, having dialogue like we had done in the past.

Q. All right. So there was a negotiation process before any lease was entered into?

A. Yes, sir.

Q. That conversation you had with Joe, did he go out to the location with you? Did he ever meet you out there?

A. Not that I recall, no, sir.

Q. What did this other entity -- what was it called?

A. Which one?

Q. The place that you were -- that was not open all the time.

A. Oh. I absolutely can't --

Q. Did they serve food there?

A. I don't think they served food there, but there's no telling. I mean, they could have.

Q. Did it have any kind of -- in the interior of that place, did it have any coolers, did it have any stoves, any kind of appliances that --

A. Only thing it had was a hood, and the exhaust system from the hood had been gutted.

Dear. Joe Blaton, August 17, 2015

My offer for the property located at 1945 Second Loop Road is as follows:

- 3 year term with two 5 year options
- $2000 per month for the first 3 year term with 6 months free rent and no security deposit
- First 5 year option $2250 per month
- Second 5 year option $2500 per month

Please take the following into consideration I am a nightclub owner with over 25 years of experience in the industry, all money will be paid on time every time. The reason I think my offer is extremely fair to both parties involved is because the place was destroyed by the previous tenants and I am looking at somewhere between $80,000 to $90,000 investment to get operable.

Thank you for your consideration

8-17-15

Mike Timmons Jr

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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get tenants in there.
Is that a fair statement?
MS. HOUGHTON: Object to form.
THE DEPONENT: That is -- yes. That's a fair statement, yes.
BY MR. LE CLERCQ:
Q. And that includes, because it's a strip mall, getting long-term tenants in.
Would you agree with me that that's a fair statement?
A. Not at that point in time.
Q. How do you --
A. How could I -- how could I entice anybody into going into a long-term lease agreement knowing that there may be possible actions to come?
That would be unethical on my part to sign somebody into something. I wouldn't do that. Would never do it.
Q. Well, the lease here, sir, was signed by you as lessor on August the 20th --
A. That's correct.
Q. -- of 2015, which is three weeks after you were served with a motion to enforce rents by the bank.
A. Okay.

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Q. And so we will -- it appears to me, based on my review of the documents, that you informed Atlantic and you also informed the bank of Mr. Timmons' proposal to lease the property.
Do you recall that, sir?
MS. HOUGHTON: Object to form.
THE DEPONENT: Well, sure. I would have passed that through to others. I couldn't approve it. Yes.
BY MR. LE CLERCQ:
Q. And you would also agree with me that neither Atlantic nor the bank ever said, "Don't enter this lease with Mike Timmons."
A. No one ever told me to not do that.
Q. And your marching orders as a property manager were to rent vacant property.
A. Correct.
Q. Do you agree?
A. Yes.
Q. Okay. So, and you've already said that you don't think that a party like Atlantic that has been foreclosed upon -- strike that.
Let me ask you this question.
Does a lender that forecloses on property, in your view, have an obligation to disclose to

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prospective tenants, tenants that come in the future, that the property that they're interested in is in foreclosure?
Do you think they have that obligation?
MS. HOUGHTON: Object.
THE DEPONENT: I would think so.
BY MR. LE CLERCQ:
Q. Do you think it's also a good practice for them to do that?
A. I would think so.
Q. If a lender forecloses on property, are existing tenants at the moment they start foreclosure proceedings, do you believe that those tenants are bound if they don't have notice of the foreclosure, if the bank decides they're not going to notify those tenants?
MS. HOUGHTON: Object to form.
THE DEPONENT: Okay, Ben. I'm sorry.
BY MR. LE CLERCQ:
Q. Let me try that one again. It was a little awkward.
A. Let's try it again. Yeah.
Q. The -- when Sweet -- at the moment of the commencement of the foreclosure proceedings in 2015, there were existing tenants at Sweetbriar.

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Do you agree with me?
A. Yes.
Q. I think you have already said you think the bank has got an obligation to notify those tenants of the foreclosure.
If the bank doesn't do that, does that mean that those tenants are not bound by the foreclosure?
What's the ramifications if the bank doesn't notify those tenants, in your view?
MS. HOUGHTON: Object.
THE DEPONENT: I would think that if I were a tenant -- I put myself in anybody else's place.
If I signed a tenant with Ben Le Clercq, that I signed my lease with Ben. And if all of a sudden the bank came in and took it over from Ben, then I would no longer be obligated to Ben if the bank took it over.
Is that a way to answer it? I'm not real sure how to do it intelligently.
BY MR. LE CLERCQ:
Q. Got it.
So we've got this lease that is signed

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MIKE TIMMONS JR
RIBA TAVERN ON
THE LOOP

TENANT
ALL Repairs
except Roof
EXT. walls
parking Lot

August 17, 2015

Dear. Joe Blanton,

206 6086
mike

My offer for the property located at 1945 Second Loop Road is as follows:

- 3 year term with two 5 year options
- $2000 per month for the first 3 year term with 6 months free rent and no security deposit
- First 5 year option $2250 per month — 2400
- Second 5 year option $2500 per month — 2600

Please take the following into consideration I am a nightclub owner with over 25 years of experience in the industry, all money will be paid on time every time. The reason I think my offer is extremely fair to both parties involved is because the place was destroyed by the previous tenants and I am looking at somewhere between $80,000 to $90,000 investment to get operable.

3 months Free
NO Deposit

Thank you for your consideration

CO AREA — TO BE SHARED DURING DAY LIGHT WORKING HRS

MIKE TIMMONS
206-6086

Mike Timmons Jr

8-17-15

RAY Co. tyar bacon
676-0580

Sept. 1

AGREED By 8/18/15
RICK CRANFORD
845-7937

SCANNED
AUG 18 2015
BY _____

EXHIBIT 29
Deponent Blanton
Date 1-16-20
Madonna Farrell, RPR

EXHIBIT 24

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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Q. -- of 2015, which is three weeks after you were served with a motion to enforce rents by the bank.
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Q. And your marching orders as a property manager were to rent vacant property.
A. Correct.
Q. Do you agree?
A. Yes.
Q. Okay. So, and you've already said that you don't think that a party like Atlantic that has been foreclosed upon -- strike that.
Let me ask you this question.
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A. Let's try it again. Yeah.
Q. The -- when Sweet -- at the moment of the commencement of the foreclosure proceedings in 2015, there were existing tenants at Sweetbriar.

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THE DEPONENT: I would think that if I were a tenant -- I put myself in anybody else's place.
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BY MR. LE CLERCQ:
Q. Got it.
So we've got this lease that is signed

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between Mr. Timmons and you, as lessor, for what I would call a long-term lease. And -- on August 20th of 2015.

Would you agree with me that you would not have let him sign that lease knowing that the property was in foreclosure proceedings unless you had also told the bank about the proposed lease?

MS. HOUGHTON: Object to form.

THE DEPONENT: There is no way in this world -- and I'll give my license up tomorrow, and Mike knows this.

There's no way that I would have ever facilitated a lease with someone who's willing to spend their money, put their heart into it, and my heart into it, being a reputable broker who has been here 41 years, I would never, ever do that. And if I did, then just take my damn license away from me. I would not do that.

BY MR. LE CLERCQ:

Q. You were not intending to deceive or trick him?

A. No, sir. I was not. And off the record, I think if you and I and Mike sat down and had a beer and me a Coke, then we both would agree.

Q. I'd like that. We need to have your attorney there at the same time, though.

All right. Have you ever owned the Sweetbriar property?

A. I was a member of the Florence Group, which was an entity that I formed many years ago. I don't remember how many years ago it was.

The Florence Group was three doctors that I put together with myself, Dr. Imbeau, Dr. Steadman, Dr. Howell -- they're all personal friends of mine and my doctors -- I said, "Guys, why don't we put a partnership together and maybe try to buy some commercial property?

Bill Dailey was the owner at that point in time. We purchased the property from Bill Dailey, and the Florence Group owned it for a while. And then we sold it to Atlantic Regional.

Q. Okay.

A. Okay? And I only own 3 percent of interest in that partnership.

Q. And when was that partnership formed? Was it around 1995?

A. Oh.

Q. I'm going to hand you a document, which is going to be marked as Exhibit 4, which I think is

evidence of a closing that might have taken place. If you'll take a look at that document and let me know if you recognize it.

A. I don't know when it was formed. I know that we had several properties that we purchased. As far as when the Florence Group incorporated, went into effect, I don't recall the date.

(EXHIBIT 4, Blanton 000079, 12/07/1995 Letters from Dailey Development, Inc., was marked for identification.)

THE DEPONENT: Okay. I see Dailey, yes.

MR. LE CLERCQ: I'd like you to had him also 5, which is the lease.

(EXHIBIT 5, 08/20/2015 Commercial Lease, was marked for identification.)

BY MR. LE CLERCQ:

Q. Would you agree with me that Exhibit 4 is evidence that previously there had been property transactions relating to Sweetbriar in which you had been involved?

A. Yes.

Q. Now, I'd ask you to take a look at what has been marked as Exhibit 5, which is the commercial lease in this case. And do you recognize that

document?

A. Yes.

Q. Okay. And these are your initials at the bottom of each page?

A. That's correct.

Q. And that's your signature on Page 7?

A. Correct.

Q. And it was signed by you on or about August 20, 2015?

A. Correct.

Q. And the witness to the signature is Kelly R. Modlin, and that is someone from your office?

A. Yes.

Q. And she signed on Page 7?

A. Yes. She signed as a witness, and Jean Parks also signed as witness.

Q. And did you see Mr. Timmons sign the document? Do you recall?

A. Yes. I think so, yes.

Q. Okay. And is the handwriting that you see on the lease other than Mr. Timmons' initials and his signature, is that handwriting your handwriting? For example, on Page 1, where it gives the --

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First Reliance Bank."
A. Yes.
Q. All right. So you agree with what Mr. Yarborough has said there?
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. That that's what he was -- that's what -- that's what -- you agree, first of all, that he asked the Court to do that?
A. Yes.
Q. And do you also agree that Mr. Yarborough is simply confirming as of September 30 the facts on the ground, which are that you have been managing the property, you have been finding new tenants, and you have been doing all the things that property managers do?
A. Yes, sir.
Q. Okay. So let's look now at Exhibit 29. It's marked Blanton 321.
A. Okay.
Q. All right. So do you recognize this document?
A. Yes. It's my handwriting.
Q. All right. Very good. And the date on it appears to be August 17, 2015.

And my first question would be: Other than what appears to be the signature -- well, let me ask you.
Is that the signature of Mike Timmons below his typed name?
A. Well, I can't testify to that. I could only assume that it is.
Q. Okay. Tell me what your recollection -- tell me, first of all, what this document is.
A. It's from Mike saying, "My offer is as follows."
And I don't want to read it all out, but "is as follows." And, you know, follow with that.
Q. And this is --
A. And then there were discussions where I would give him three months of, based on the owner's approval, no rent for his upgrade. Common areas to be shared with -- during daylight working hours.
And Mike basically would be responsible after hours because of the nature of the business, because there were beer cans, et cetera, that he was required to, you know, pick up and clean up.
Q. Okay. So again, to confirm, this is Mr. Timmons' offer to lease the space dated

August the 17th, which is three days prior to the lease that he ultimately signed and that you signed.
And sir, is the handwriting on this document, other than what appears to be Mr. Timmons' signature, is that your handwriting?
A. Yes. That's my print, yes.
Q. Okay. So do you recall how you got this document, whether it was by e-mail or by fax or handed to you?
MR. ANDERSON: Object to form.
THE DEPONENT: No, I don't recall.
BY MR. LE CLERCQ:
Q. Okay. So let me -- let's get straight to the part in the bottom.
It appears, first of all, that he's made an offer that would have two 5-year terms and an initial term -- excuse me -- two 5-year renewal terms and an initial term of 3 years. He says the amount that he's going to pay. And then at the bottom is written Ray Coit Yarborough, and there's a telephone number 676-0580.
And then there's a date circled at the bottom, September 1, and it says -- it appears to say, "agreed by Rick Cranford."

And the line actually says, "agreed by 8/18/15."
Can you please interpret all of that handwriting for me. Tell me what it means: The Ray Coit Yarborough, the telephone number, the "agreed by 8/18/15" and then Rick Cranford with his telephone number.
A. It's all my handwriting. Obviously talked with Ray. Talked with Mike. And called Rick Cranford, who agreed, based on that date of 8/18/15, I think.
Q. And did Ray Coit Yarborough also agree to the lease on 8/18/15 when you talked to him?
A. Did he do what, sir?
Q. Did he agree, like with the Elite Laser Tag lease, did he authorize you to enter this lease?
MS. HOUGHTON: Object to form.
THE DEPONENT: I -- I -- I don't know.
BY MR. LE CLERCQ:
Q. But he had authorized you to proceed with the Elite Laser Tag lease, correct?
A. He authorized me to act on behalf of the bank.
Q. Okay. And so was it -- and in cases like with the Elite Laser Tag, if he authorizes you to

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COMMERCIAL LEASE AGREEMENT

This lease is made between: **THE BLANTON COMPANY** herein called Lessor, and MIKE TIMMONS, JR. D|B|A TAVERN ON THE LOOP

Herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in the city of Florence, County of Florence, State of South Carolina, described as:

1945 SECOND LOOP ROAD FLORENCE, S.C.

upon the following TERMS and CONDITIONS:

Terms and Rent: Lessor to lease to Lessee the above premises for a term of 3 year, Commencing AUG. 20, 2015 and terminating on SEPT 1, 2018 as provided herein..Lessee shall pay to Lessor, without deduction or offset and prior to notice or demand, and for the use and occupancy of the leased premises, and monthly rental of $2,000 for 36 months & $_____ for ___ months payable in advance on the 1st day of each and every calendar month thereafter in advance.
FIRST MONTH DUE DECEMBER 1, 2015.

(A) All rental payments shall be made to Lessor, at the following address:

126 S. Coit Street, Florence, SC 29501

(B) Late Payments: Any rent payment not received by Lessor within 5 days of its due date shall be subject to a late fee of $45.00. This Late Fee shall commence at 5:01 p.m. on the 5th day of the month and accrue until rent payment and accumulative Late Fees are received by Lessor.

(C) Rents not received by the 9th of the month will be subject to collection by the Magistrate with a $45.00 Eviction fee added to rent due.

(D) Reinstatement fee of $45.00 will also be added to rents not paid by the 9th of the month.

Use:....Lessee shall use and occupy the premises for: BAR
The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose.

Exhibit 26

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Care and Maintenance of Premises:.....Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including: plumbing, electrical, flooring, painting, plate glass windows, and HVAC systems. Lessee shall surrender the same at termination hereof, in as good condition as received, normal wear and tear accepted. Lessee shall be responsible for all repairs required, excepting the exterior walls and structural foundations. ~~**TENANT RESPONSIBLE FOR FIRST $500 OF HVAC REPAIR.~~ LANDLORD RESPONSIBLE FOR ROOF, EXTERNAL WALLS AND ROOF.

Alterations:.....Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

Ordinances and Statutes:.....Lessee shall, at Lessee's sole cost comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, pertaining to the use of said premises and shall faithfully observe in said use all municipal ordinances, state and federal statutes now in force or which may hereafter be in force and specifically observe and maintain all Environmental standards pertaining to soil contamination.

WAIVED IN LIEU OF REPAIRS

Security Deposit:.....Lessee shall deposit with Lessor on the signing of this lease the sum of $ 0 as security deposit for the performance of Lessee's obligations under this lease, including without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease. To be paid $100.00 per month for six (6) months.

Assignment and Subletting:.....Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting with consent shall be void and, at the option of the Lessor, may terminate this lease.

Utilities:.....All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, and electricity and telephone services.

 Lessee Lessor

TENANT TO RECEIVE (3) MONTHS FREE RENT FOR SEPTEMBER, OCTOBER, NOVEMBER FOR RENNOVATIONS TO SAID PROPERTY

Entry and Inspection:.....Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty days prior to the expiration of this lease, to place upon the premises any usual..To Let or For Lease..signs, and permit persons desiring to lease the same to inspect the premises thereafter.

Possession:.....If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or avoidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 1 days of the commencement of the term hereof.

Indemnification of Lessor:....Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim for damages, no matter how caused.

Indemnification of Lessor:....Lessee, as a material part of the consideration to be rendered Lessor's , hereby waives all claims and demands against Lessor for all the aforesaid losses and damages to goods, wares and merchandise in, upon or about said premises, and for injuries to persons in, upon or about said premises, from any cause whatsoever, arising at any time. Lessee will hold Lessor, its employees, agents and affiliated entities exempt and harmless from any liability, loss, cost and obligation on account of any damage or injury to any person, or the goods, wares and merchandise of any person, arising in any manner from the use or occupancy of the premises by the Lessee.

 Lessee  Lessor 

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Insurance:.....Lessee, at Lessee's sole cost and expense, but for the mutual benefit of Lessor and Lessee maintain public liability insurance, including liability against claims for personal injury, death, or property damage occurring in, upon, or about the premises and on any sidewalks directly adjacent to the premises. The limits of liability of such insurance shall not be less than $500,000 in respect to injury or death of one person and to the limit of not less than $1,000,000 in respect to any one occurrence and to the limit of not less than $100,000 in respect to property damage or in such higher amounts as Lessor may require. **TENANT TO PROVIDE COPY OF POLICY.

Insurance:.....All such policies of insurance shall be issued in the name of Lessee, with the LESSOR'S NAMED AS ADDITIONAL INSURED. Evidence of the insurance of such policies shall be delivered to Lessor within (10) days after the term of this Lease commences. Lessee shall obtain a written obligation on the part of each insurance company to notify Lessor in writing at least (30) days prior to any cancellation or material change of coverage.

Eminent Domain:.....If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

Destruction of Premises:.....In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof. Lessor may elect to terminate this lease whether the demised premises are injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

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Heirs, Assigns, Successors:.....This lease is binding upon and inures to the benefit of the heirs, assigns, and successors in interest to the parties.

Option to Renew:.....Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional term of 10 years commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the monthly rent shall be the sum of $2,400 1ST TERM. The option shall be exercised by written notice given to Lessor not less than _60__days prior to the expiration of initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire. NEGOTIABLE WITH 60 DAYS NOTICE.. 2ND TERM 5 YEARS $2600/month

Subordination:.....This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

Environmental – Hazardous Substances:.....Tenant shall not cause or permit any hazardous or toxic substances, materials, or waste ("Hazardous Substances") to be used, generated, stored or disposed of in, on or under, or transported to or from the premises (Hazardous Materials Activities) unless (a) such Hazardous Substances are necessary for Tenant's business and (b) Tenant first obtains the written consent of Landlord. If these conditions are satisfied, tenant shall at all times and in all respects comply with all local ,state, and federal laws, ordinances, regulations and orders relating to Hazardous Substances.

Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold Landlord harmless, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures. Losses, costs (including clean-up costs) or expenses (including attorney's fees, consultant's fees and expert's fees) for the death of or the injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) the presence in, on, under, or about the premises of any Hazardous Substances; (b) any discharge or release in or from the premises of any Hazardous Substances; (c) Tenant's use, storage, transportation, generation, disposal, release or discharge of Hazardous Substances, to, in, on under, about or from the premises; or (d) Tenant's failure to comply with any Hazardous Substances law. Tenant's obligation under this section shall survive the expiration or earlier of the term of the lease.

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Lessor's Remedies on Default:... If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 5__ days, after the giving of such notice (or if such other default is of such other nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such _5_ and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than _5_ days notice to Lessee. On the date specified in such notice the term of the lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

Tax Increase:... In the event there is any increase during any year of term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation. Lessee shall pay to Lessor upon presentation of paid tax bills in the amount equal __N/A__per-cent of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

Common Area Expenses:.....In the event of the demised premises are situated in a shopping center or in a commercial building in which there are common areas, Lessee agrees to pay his pro-rate share of maintenance, taxes, and insurance for the common area. TO BE SHARED WITH ADJACENT TENANT DURING 8AM TO 5PM

Attorney's Fees:.....In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

Notices:.....Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address show below:

_____126 S. Coit Street___,Florence SC 29501_____

Or at such other places as may be designated by the parties from time to time.

 Lessee: _____ Lessor: _____

Additional Terms and Conditions:...

Entire Agreement:... The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed 20th of August, 2015

By _____
Lessee

Witness

By _____
Lessor

Witness

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COMMERCIAL LEASE

In consideration of the covenants herein contained The Sunshine House, Inc., hereinafter called "Tenant" and Atlantic Regional, Landlord, or Agent for the Landlord, hereinafter called "Landlord", agree as follows:

For the period of time beginning on: July 1, 2014, and ending at midnight on June 30, 2017, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision _____

Address 1923 A + B Second Loop Road

Tax Map # _____ City Florence Zip 29501

County of Florence, State of South Carolina.

The Board

THE LANDLORD/TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. RENT. Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:

(a) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 1st day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be Thirteen hundred dollars Dollars ($ 1,300.00).

(b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: 1st Month's Rent due September 1, 2014

(c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):

☐ 1. PROPERTY TAXES (choose one):

☐ TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees) over those assessed for the year of Not Applicable, on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

☐ NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

☐ 2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to _____ % of gross sales, as herein defined, in excess of Not Applicable Dollars ($ _____). In any lease year, Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-3). Tenant shall deliver to Landlord a certified copy of each

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monthly report within ten (10) days after report is due to the South Carolina Tax Commission. Lease year as used herein shall be the period of one year's duration commencing on the effective day of the lease and each successive period of one full year commencing on the anniversary of said effective date. Tenant shall deliver to Landlord within days following the end of each lease year written statement signed and certified by Tenant to be a true and correct statement of the amount of gross sales during the preceding lease year. Tenant shall at the same time pay the amount of Additional Rent due (if any) as a percentage of the excess over the amount herein stated.

☐ 3. COMMON AREA MAINTENANCE. Tenant shall pay on the first day of each month, in advance, a fee equal to the Tenant's pro rata share of the cost of maintaining common areas. Tenant's common area maintenance fee, for the remaining portion of the calendar year in which this lease became effective shall be Not Applicable Except For Green Space Dollars ($) per month. Said fee shall be adjusted at the end of each calendar year to reflect any increase in cost during said year. Common areas include all areas used in common with the other Tenants of the property of which the Premises is a part, for the convenience or welfare of all tenants' customers collectively. Common area maintenance shall mean and include all amounts paid or incurred by Landlord for operating, managing and maintaining the Property, including the buildings, improvements and common area facilities of the Property in a manner deemed by Landlord reasonable and appropriate and for the best interest of the Property, including, without limitation, all costs and expenses of 1) operating, repairing, lighting, cleaning, painting and securing the Property and the common areas of the Property, and water and sewer charges; 2) paying all personnel employed on a part time basis or full time basis in the operation, maintenance, or repair of the Property, including the common areas; 3) removing rubbish and debris from the Property; 4) repair and maintenance of walkway, landscaping, and lighting facilities, other than such costs and expenses of a capital nature; 5) management fees paid to the property management firm to manage the Property; 6) planting, replacing and replacing flowers, shrubbery, and planters and the supplies required therefore; 7) all utilities used in connection with the operation of the common area facilities; 8) seasonal decorations, including installation and removal thereof and electricity therefore; 9) leasing or renting equipment used in connection with the operation and maintenance of the common areas; 10) fountain maintenance and repairs, when applicable; 11) security, fire and crime prevention services; 12) utility charges for the common area including without limitation, storm water, sewer and pollution control fees.

Adjacent to Building Fence Required at Tenant Expense

☐ 4. INSURANCE. Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one):

☒ INSURANCE INCREASE. Tenant shall pay annually a sum equal to any increase in insurance premiums for the year of _____, on a pro rata basis. Presentation of copies of insurance bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

See Section 8

☐ NET LEASE. Tenant shall pay annually the insurance premium upon presentation by the Landlord of bill on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

☐ 5. PRORATION OF CHARGES. If the Premises described herein are less than the entire property, the increases in Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the Premises bears to the rentable floor space of the entire property. Landlord and Tenant hereby state that the Premises contains approximately 2900 square feet of rentable area of the entire property which is approximately 23,4700 square feet, resulting in a percentage ratio factor of _____ percent (12.4 %).

☐ 6. ADDITIONAL CHARGES. Any charges due Landlord by Tenant, including but not limited to, damage to Premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc. or for work done on the Premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien

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for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

☐ 7. LATE RENT. If rent is not paid within 10 days after due date, the Tenant is subject to a one-time late fee of Fifty Dollars ( ) %) percent of all rents due at that time.

2. SECURITY DEPOSIT. Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of ($ 1,500) Thirteen hundred Dollars. Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. TENANT'S UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: Parking Area Lighting

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for Child Care and Child Education and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity. As is Condition, 2 months free Rent in Lieu of renovations by Tenant.

5. EXAMINATION OF PREMISES. Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. DELAY OF POSSESSION. If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or invalidated in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by Sept. 1, 2018, and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. TENANT'S PARKING. Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows: N/A

8. LIABILITY INSURANCE. Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance covering the Premises. Tenant agrees to pay upon demand as

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Tenants Liability shall provide any waiver of subrogation against Landlord and Landlord's Agent.

additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:

Single Limit $ 1,000,000 per occurance. Aggregate $ 2,000,000 General Aggregate

A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the Landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease. The additional cost to Landlord carried by Landlord per Rick Crandford to be paid by tenant.

9. MAINTENANCE AND REPAIRS. Landlord shall repair and maintain the foundation, roof, outside walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment servicing the Premises, to include the compressors, condensing units, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning, and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. REGULATIONS AND SANITATION. Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers', invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow loitering on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. ALTERATIONS. Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises, and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc. which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.

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12. ASSIGNMENT OR SUBLEASE. Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease Agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.

13. SIGNS OR AWNINGS. Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement. Signs at Tenant Expense

14. WAIVER OF RIGHTS. No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. RULES AND REGULATIONS. Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment that may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. RIGHT OF ENTRY. Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to exercise same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notice, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. LIENS. Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

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18. DAMAGE OR DESTRUCTION OF PREMISES. If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence. Insurance proceeds, if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.

25% Damages Would Terminate Lease at Tenant's Request.

19. DAMAGE TO PERSONAL PROPERTY. All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

20. CONDEMNATION. If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.

21. 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 the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, 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.

22. HOLDOVER. Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.

23. EFFECTIVE DATE OF LEASE. This Agreement shall become effective as a binding agreement only upon the execution and delivery hereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.

24. NOTICES. Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessory distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: The Sunshine House, Inc., Attention CEO
1000 East North Street, Suite 200
Greenville, SC 29601

Landlord Address: The Blanton Company
121 S. Coit Street
Florence, SC 29501

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25. BANKRUPTCY. If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. BEYOND LANDLORD'S CONTROL. None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental, Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied, or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. KEYS. Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. ESTOPPEL. Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. PEACEFUL POSSESSION. Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. DEFAULT. If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord, or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within sixty (30) days after the receipt of written notice of default from Landlord, or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said Premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to claim for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. ASSIGNMENT OF [illegible]. Tenant hereby pledges and assigns to Landlord all the furniture, [illegible], goods, equipment and chattels of Tenant which shall or may be brought [illegible] as security for the payment of said rent, and tenant agrees that said [illegible] by distraint or [illegible], at the election of Landlord. It is understood and agreed that [illegible] merchandise, fixtures, furniture or equipment left in the Premises when Tenant vacates

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shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

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

33. AGENT. Tenant acknowledges that The Blanton Company is the [illegible] agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE. Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the Premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosure thereof, and to the lessor in the event of a termination of any such ground lease.

35. DEFINITIONS. "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or sublessees, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

36. ENVIRONMENTAL MATTERS. Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, subtenants, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities to and around the Premises.

37. AMERICANS WITH DISABILITIES ACT. Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the Premises. Tenant further agrees to indemnify, defend and hold Landlord harmless against any claims, which may arise out of Tenant's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

38. SPECIAL STIPULATIONS. Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): Tenant to receive 2 months free rent. Rent due September 1, 2014

39. SOUTH CAROLINA LAW TO GOVERN. Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

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40. ENTIRE AGREEMENT. This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.

41. FACSIMILE. The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax 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.

42. MEGAN'S LAW. The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

43. NON-RELIANCE CLAUSE. Both Tenant and Landlord hereby acknowledge that they have not received or relied *nor* could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Tenant The Sunshine House, Inc. CEO Date 6/25/14 Witness to Tenant Michelle Watkins 6/25/14

Tenant's Email Address: Brandi@sshouse.com

Phone: 864-990-1220 Fax:

Tenant Date Witness to Tenant

Tenant's Email Address:

Phone: Fax:

No mention of landlord

Landlord 6/30/14 Date Witness to Landlord

Landlord's Email Address: Jean@thebeaufortco.com

Phone: Fax:

LANDLORD'S AGENT AND COMPANY The Beaufort Co.

TENANT'S AGENT AND COMPANY

Tenant shall an option to Renew for two years Effective July 1, 2017 at $1,400 per month for 1 year and $1,450 for year two.

DJS

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GUARANTEE

As an inducement and, thus, a further consideration for the Landlord entering into this Agreement with the Tenant, the undersigned jointly and severally, if more than one) hereby guarantees full performance by the Tenant and its heirs, successors, or assigns of all of the terms and conditions of the Agreement. The Landlord is not required to provide the Guarantor(s) with any notice provided for in the Agreement. In addition, this Guarantee is not waived by any delay that the Landlord has permitted the Tenant in satisfying its obligations under the Agreement. This Guarantee runs to the Guarantor's heirs, successors, and assigns and ensures to the benefit of the Landlord and its successors, and assigns. The Landlord and Tenant may agree to a modification of the Agreement without the approval of the Guarantor(s), provided that the obligation of the Guarantor(s) is not increased beyond the financial conditions contained in the Lease. This is a guarantee of payment and performance and not merely of collection of any term or condition of the Agreement that requires the Tenant to pay the Landlord any sum of money.

GUARANTOR _____ Date _____ Witness to GUARANTOR _____

GUARANTOR _____ Date _____ Witness to GUARANTOR _____

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2018-CP-21-00227
	)	
John Michael Timmons, Jr., d/b/a Tavern on the Loop,	)	
	)	
Plaintiff,	)	
	)	**DEFENDANTS THE BLANTON COMPANY, INC., JOSEPH B. BLANTON, INDIVIDUALLY, AND INCORRECTLY IDENTIFIED AS JBJR ENTERPRISES, INC. D/B/A THE BLANTON COMPANY, INC.'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS**
vs.	)	
	)	
First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, individually,	)	
	)	
Defendants.	)	

TO: PLAINTIFF JOHN MICHAEL TIMMONS, JR., D/B/A TAVERN ON THE LOOP AND HIS ATTORNEY, BEN LE CLERQ, ESQUIRE

Defendants The Blanton Company, Inc., Joseph B. Blanton, individually, and incorrectly identified JBJR Enterprises, Inc., d/b/a The Blanton Company, Inc., ("Blanton") by and through their undersigned counsel, responds to Plaintiff's Request for Admissions as follows.

1. Admit that, subsequent to July 24, 2015, all rent payments collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons, were sent by Blanton to Defendant First Reliance Bank.

RESPONSE: Admitted, the Order for Payment of Rents and Reference filed on October 2, 2015 was complied with by the Blanton Company.

Interrogatory No. 1:

EXHIBIT 28

If your response to the foregoing request for admission is another other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Not applicable

Request for Production No. 1:

Produce all documents and records relating to Blanton's sending of rent payments to Bank from July 24, 2015 to present.

RESPONSE: Please refer to the lease schedule previously produced as well as to the bate labelled documents in item 3 below.

2. Admit that, to the best of Blanton's knowledge, information and belief, subsequent to July 24, 2015, First Reliance Bank accepted upon receipt from Blanton all rent payments collected by Blanton from tenants at the Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: The Blanton Company collected lease payments and tendered them to First Reliance Bank in response to the Court's Order to do so. Once First Reliance Bank sold the property to WW Plasma II, LLC, those rents collected were paid to that entity until the remaining tenants left.

Interrogatory No. 2:

If you response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial

ANSWER: Please see statement above.

Request for Production No. 2:

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Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept rent payments collected by Blanton, or b) rejected the same.

RESPONSE: Please refer to the rent rolls which documents the payments received and paid out from the Sweetbriar tenants to include items noted in item 3 below.

3. Admit that Blanton has no written document or communication in its possession, dated subsequent to July 24, 2015, indicating that First Reliance Bank rejected any rent payment collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

ANSWER: Admitted, the Order for Payment of Rents and Reference filed on October 2, 2015 was complied with by the Blanton Company.

Interrogatory No. 3:

If you response to the forgoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Not applicable.

Request for Production No. 3:

Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept rent payments collected by Blanton, or b) rejected the same.

RESPONSE: Please refer to Blanton 148-151; 87-88; 112-115; 131-134; 36-144; 148-151; 173-174; 229; 250-258; 261-264 and 271-275.There are no documents found where a rejection was made.

4. Admit that subsequent to July 24, 2015, Blanton was acting as agent of First Reliance

Bank with regard to the collection of rent from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: Admitted that after the October 2, 2015 Order Blanton was serving as First Reliance's Agent in collecting rents and managing the property.

Interrogatory No. 4:

If your response to the foregoing request for admission is anything other than an unqualified "admission," pleas estate with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Please refer to the response above.

Request for Production No. 4:

Produce any and all documents or other evidence relating to Blanton's collection of rents from tenants at Sweetbriar and the sending of same to First Reliance Bank.

RESPONSE: Please refer to Blanton documents labelled, Blanton 148-151; 87-88; 112-115; 131-134; 36-144; 148-151; 173-174; 229; 250-258; 261-264 and 271-275.

5. Admit that subsequent to July 24, 2015, Blanton was acting as property manager for First Reliance Bank with regard to Sweetbriar, including for the property leased by Timmons.

RESPONSE: Admitted until it received notice from WW Plasma II that it was the new owner and to collect rents on its behalf during the transition period.

Interrogatory No. 5:

If you response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See response above.

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Request for Production No. 5:

Produce any and all documents or other evidence, dated subsequent to July 24, 2015, indicating that Blanton acted as property manager and agent for First Reliance Bank (or any other party) with regard to Sweetbriar.

RESPONSE: See letter from Dale Porter to Joe Blanton dated February 8, 2016 bate stamped Blanton 97.

6. Admit that Blanton has no written document or communication in its possession, dated subsequent to July 24, 2015, with prior owner of Sweetbriar, Atlantic Regional, LLC.

RESPONSE: Blanton has made a reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to either admit or deny this request.

Interrogatory No. 6:

If your response to the forgoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: The Defendant is undergoing medical treatment and is unavailable to confirm whether any other communication is available pertaining to this request.

Request for Production No. 6:

Produce any and all communications and other documents between Blanton and Atlantic Regional, LLC subsequent to July 24, 2015.

RESPONSE: If documents had been found, they would have been produced. Discovery is still ongoing and should additional documentation is found, this response will be supplemented.

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7. Admit that, subsequent to July 24, 2015, with regard to tenant issues or question relating to Tenants at Sweetbriar, including Plaintiff Timmons, Blanton and Blanton's staff addressed the same to First Reliance Bank and/or one or more of its employees or officers.

RESPONSE: Blanton would in theory admit to this statement but does not know if this situation ever occurred.

Interrogatory No. 7:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See response above.

Request for Production No. 7:

Produce any and all communications and other documents between Blanton and any party, relating to tenants at Sweetbriar (including Plaintiff Timmons) other than to First Reliance Bank. If there are none, the response must so state.

RESPONSE: Please refer to Blanton 276-307 for documents detailing invoices for various aspects of the Sweetbriar property.

8. Admit that, subsequent to July 24, 2015, with regard to tenant issues or questions relating to Tenants at Sweetbriar, including Plaintiff Timmons, Blanton and Blanton's staff did not address the same to Atlantic Regional, LLC and/or any of its members, officers, or employees,

RESPONSE: Denied

Interrogatory No. 8:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: When the Timmons and Sams leases were entered, The Blanton Company were still getting input from the Atlantic Regional, LLC representatives.

Request for Production No. 8:

Produce any and all communications and other documents between Blanton and any party, relating to tenants at Sweetbriar (including Plaintiff Timmons) other than to Frist Reliance Bank. If there are none, the response must so state.

RESPONSE: Please refer to document Blanton 175.

9. Admit that, subsequent to July 24, 2015, with regard to building maintenance issues or questions relating to Sweetbriar, Blanton and Blanton's addressed the same to First Reliance Bank and/or one or more of its members, officers or employees.

RESPONSE: Denied

Interrogatory No. 9:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Please refer to Blanton 175 when as late as October 15, 2015 Blanton was seeking input from the landlord as to tenant issues.

Request for Production No. 9:

Produce any and all communications and other documents between Blanton and any party, relating to building maintenance issues at Sweetbriar (including Plaintiff Timmons),

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subsequent to July 24, 2015, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: Please refer to Blanton 175.

10. Admit that, subsequent to July 24, 2015, with regard to building or maintenance issues or question relating to Sweetbriar, Blanton and Blanton's staff did not address the same to Atlantic Regional, LLC and/or any of its members, officers, or employees.

RESPONSE: Denied

Interrogatory No. 10:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: On October 15, 2015 Blanton sought approval from Atlantic Regional agent, Richard Cook to change the color of the awning on the building.

Request for Production No. 10:

Produce any and all communications and other documents between Blanton and any party, relating to building and maintenance issues at Sweetbriar (including Plaintiff Timmons), subsequent to July 24, 2015, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: See Blanton 175

11. Admit that, prior to the signing of the Lease with Timmons, attached as Exhibit A to the Complaint, Blanton did not reveal to Timmons the identity of the entity for whom Blanton was acting as agent and property manager.

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RESPONSE: Blanton has made reasonable inquiry and that the information known to him is insufficient to enable him to admit or deny. Blanton would have readily revealed the identity of the property owners if asked. It is known that Plaintiff Timmons knew that Blanton was not the owner of the property.

Interrogatory No. 11:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Statement stands for itself.

Request for Production No. 11:

Produce any and all communications and other documents indicating that Blanton revealed to Timmons, prior to signature of the Lease by Timmons and Blanton, the identity of the entity for whom Blanton was acting as agent and property manager. If there are none, the response must so state.

RESPONSE: Discovery is still ongoing and if any documentation is found to note this, this response will be supplemented.

12. Admit that, prior to signing of the Lease with Timmons, attached as Exhibit A to the Complaint, Blanton did not tell Timmons that First Reliance Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing.

RESPONSE: Admitted.

Interrogatory No. 12:

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If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See response above.

Request for Production No. 12:

Produce any and all communications and other documents indicating that Blanton revealed to Timmons, prior to signature of the Lease by Timmons and Blanton, that First Reliance Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing. If there are none, the response must so state.

RESPONSE: Blanton does not have documents responsive to this request.

13. Admit that, prior to the signing of the Lease with Timmons, attached as Exhibit A to the Complaint, Blanton did not receive any communications, instructions, or documents from First Reliance Bank indicating:

i) Blanton should only enter short term or "month to month" leases with tenants at the Sweetbriar, including Timmons; or

ii) Blanton should not enter long term releases with tenants at the Sweetbriar, including Timmons.

RESPONSE: Admitted.

Interrogatory No. 13:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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ASNWER: See above.

Request to Produce No. 13:

Produce any and all communications and other documents indicating that Blanton did receive any such instructions or communications from First Reliance Bank. If there are none, the response must so state.

RESPONSE: Blanton has no documents responsive to this request.

14. Admit that, prior to the signing of the Lease with Timmons, attached as Exhibit A to the Complaint, Blanton was aware that Timmons intended to invest substantial sums in renovating the property he would be leasing, and that Blanton and Timmons had agreed to the necessity of a long-term Lease so that Timmons would have the opportunity to recoup his investment.

RESPONSE: Blanton admits that he knew that Timmons was making investments to the property and was given free rent to offset same. Lease was a standard commercial lease with options to extend same.

Interrogatory No. 14:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Above response is self explanatory.

Request for Production No. 14:

Produce any and all communications and other documents indicating that Blanton knew of Timmons' planned investment in the leasehold, or relating to the necessity of a long-term Lease.

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RESPONSE: Blanton refers to documents previously produced.

15. Admit that, subsequent to July 24, 2015, Blanton expected to be compensated by First Reliance Bank, and was in fact compensated by First Reliance Bank for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted.

Interrogatory No. 15:

If you response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See above.

Request for Production No. 15:

Produce any and all communications and other documents indicating that Blanton was compensated for such work by First Reliance Bank.

RESPONSE: Blanton received a fee from the rental checks collected and those fees are noted in the documents that have previously been provided.

16. Admit that, subsequent to July 24, 2015, Blanton did not expect to be compensated by Atlantic Regional, LLC, or any of its members, officers, or employees, and did not in fact receive any compensation from Atlantic Regional, LLC for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

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ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Denied, it was not until the foreclosure took place and the court directed that rental proceeds were to go to the bank that Blanton knew he would not receive compensation from Atlantic Regional.

Interrogatory No. 16:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See above explanation.

Request for Production No. 16:

Produce any and all communications and other documents indicating that Blanton was compensated for such work by Atlantic Regional, LLC, its members, officers or employees. If there are no such documents, the response must so state.

RESPONSE: Blanton received a portion of rents collected and those fees are shown in the documents previously provided.

17. Admit that, subsequent to July 24, 2015, Blanton had either an oral, written or implied contract with Frist Reliance Bank under which Blanton had the right to be compensated for his services for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

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ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted.

Interrogatory No. 17:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: see above.

Request for Production No. 17:

Produce any and all communications and other documents indicating Blanton's understanding of the nature of his relationship with Bank subsequent to July 24, 2015, or documentation of such relationship.

RESPONSE: Please see documents previously produced.

18. Admit that the $2,000 rent payment described in Timmons' Check # 2129, attached to the Firsts Amended Complaint as Exhibit Z1 and also attached hereto, cleared and funds were made available to Blanton's bank account on or after February 4, 2016.

RESPONSE: The described check was not attached to the admissions therefore this Defendant can neither admit or deny. Blanton deposited all checks received in relation to the lease of said property.

Interrogatory No. 18:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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ANSWER: See above response.

Request for Production No. 18:

Produce any and all communications and other documents, including bank statements, indicating the date Timmons' check #2129 cleared and such funds became available to Blanton.

RESPONSE: Please refer to item 4 where it may show where this check was submitted.

19. Admit that to the best of Blanton's knowledge, information and belief, from the time of the execution of the Lease, until Timmons left the property at Sweetbriar, Timmons:

i) Paid rent each month;

ii) Did not breach any term of the Lease attached as Exhibit A to the Complaint.

RESPONSE: Admitted that Timmons's paid his rent on time during the time that Blanton managed the property.

Interrogatory No. 19:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: see above.

Request for Production No. 19:

Produce any and all communications and other documents, indicating that Timmons paid rent timely. Produce any documents indicating Timmons breached the Lease attached as Exhibit A to the Complaint. If there are none, the response must so state.

RFESPONSE: Please see response to item 4 above.

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20. Admit that on or before December 23, 2016, Blanton had a conversation with David Brock, as indicated in Exhibit N1, p.2, to the First Amended Complaint (and attached hereto), during which conversation Blanton recommended that a conference call be held between Dale Porter of First Reliance Bank, Blanton, Brock, and Plasma's agent Greg Wood, to discuss the current tenants (including Timmons) and their leases and the impact of such leases on the proposed sale of Sweetbriar to Plasma.

RESPONSE: Admitted

Interrogatory No. 20:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: see above.

Request for Production No. 20:

Produce any and all communications and other documents between Blanton, David Brock, Greg Wood, and/or Dale Porter.

RESPONSE: A download of the email account of Mr. Blanton has been conducted and once those documents, are reviewed for privilege, if any are responsive to this request, they will be provided. We hope to have this accomplished by December 14, 2019.

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ATTORNEYS FOR DEFENDANTS THE BLANTON COMPANY, INC., JOSEPH B. BLANTON, JR., AND INCORRECTLY IDENTIFIED JBJR ENTERPRISES, INC. D/B/A THE BLANTON COMPANY, INC.

November 27, 2019

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CERTIFICATE OF SERVICE

I, the undersigned employee of Richardson Plowden & Robinson, P.A., do hereby certify that I have served the foregoing ***DEFENDANTS THE BLANTON COMPANY, INC., JOSEPH B. BLANTON, INDIVIDUALLY, AND INCORRECTLY IDENTIFIED AS JBJR ENTERPRISES, INC. D/B/A THE BLANTON COMPANY, INC.'S RESPONSES TO PLAINTIFF'S REQUEST FOR ADMISSIONS*** in the above-referenced captioned case, electronically and/or by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of record as indicated below on November 27, 2019.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DEFENDANT FIRST RELIANCE BANK, INC.'S ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSION**

TO: BEN LE CLERCQ, ESQUIRE AND DAVID D. ASHLEY, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant First Reliance Bank, Inc., ("First Reliance") reserving the right to supplement and/or amend, hereby answers Plaintiff's Requests for Admission, as follows:

REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit that, subsequent to July 24, 2015, all rent payments collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons, were sent by check from Blanton to Defendant First Reliance Bank.

RESPONSE: Denied. Responding further, Defendant admits it received the following checks from Blanton representing a portion of rental income derived from Sweetbriar tenants including Plaintiff, as previously answered in response to Plaintiff's Interrogatory No. 21:

Rental Payments Received from The Blanton Company	Date Received
$9,616.61	10/23/2015
$1,369.16	11/27/2015

$1,900.00	11/27/2015
$4,544.79	12/29/2015
$4,612.30	1/28/2016
$4,367.95	2/24/2016
$4,806.32	3/21/2016
$4,392.47	4/20/2016
$7,007.65	5/20/2016
$3,063.57	6/22/2016
$2,587.92	7/25/2016
$3,222.16	8/24/2016
$3,893.82	9/21/2016
$2,705.04	10/20/2016
$3,856.28	11/25/2016
$2,765.81	12/22/2016
$3,961.68	1/20/2017

Based on review of documents produced by Blanton, it appears following 1/20/17, rent payments collected by Blanton were sent to WW Plasma II, LLC. Defendant further responds that Blanton collected a fee from any rental income derived from Sweetbriar before issuing the above-referenced rental proceeds to Defendant First Reliance Bank.

Interrogatory No. 1: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response above is self-explanatory. Defendant further refers Plaintiff to its response to Plaintiff's Interrogatory No. 19 for Defendant's understanding of the management fees collected by Blanton.

Request for Production No. 1: Produce all documents and records relating to Blanton's sending of rent payments to Bank from July 24, 2015 to the present.

RESPONSE: Defendant has no non-privileged records in its possession other than documents previously produced.

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Request for Admission No. 2: Admit that, subsequent to July 24, 2015, First Reliance Bank accepted upon receipt the rent payment checks sent from Blanton and collected from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: Defendant admits it accepted the following rent payment checks from Blanton, representing a portion of rental income derived from Sweetbriar tenants including Plaintiff:

Rental Payments Received from The Blanton Company	Date Received
$9,616.61	10/23/2015
$1,369.16	11/27/2015
$1,900.00	11/27/2015
$4,544.79	12/29/2015
$4,612.30	1/28/2016
$4,367.95	2/24/2016
$4,806.32	3/21/2016
$4,392.47	4/20/2016
$7,007.65	5/20/2016
$3,063.57	6/22/2016
$2,587.92	7/25/2016
$3,222.16	8/24/2016
$3,893.82	9/21/2016
$2,705.04	10/20/2016
$3,856.28	11/25/2016
$2,765.81	12/22/2016
$3,961.68	1/20/2017

Interrogatory No. 2: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

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Request for Production No. 2: Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept rent payments collected by Blanton, or b) rejected the same.

RESPONSE: Defendant has no non-privileged records in its possession other than documents previously produced.

Request for Admission No. 3: Admit that First Reliance Bank has no written document or communication in its possession, dated subsequent to July 24, 2015 and prior to December 31, 2016, indicating that First Reliance Bank, or any Bank Defendant, rejected any rent payment collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: Admitted.

Interrogatory No. 3: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: N/A.

Request for Production No. 3: Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept Sweetbriar tenant rent payments collected by Blanton, or b) rejected the same.

RESPONSE: Defendant has no non-privileged records in its possession other than documents previously produced.

Request for Admission No. 4: Admit that subsequent to July 24, 2015, and until the sale of Sweetbriar to Plasma, Blanton was acting as agent of First Reliance Bank with regard to the collection of rent from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

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RESPONSE: Admitted as to the time period following February 8, 2016. Defendant denies all remaining matters contained in Request No. 4.

Interrogatory No. 4: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial

ANSWER: Blanton did not begin to act as agent for the Bank with regard to collection of rents from tenants at Sweetbriar until Blanton accepted the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank in this regard. From July 24, 2015 until that time, Blanton acted as agent for the then-owner of the property, Atlantic Regional, LLC and/or collected rents at the direction of the Court pursuant to Orders dated October 2, 2015 and December 2, 2015, Florence County Civil Action No. 2015-CP-21-2106.

Request for Production No. 4: Produce any and all documents or other evidence relating to Blanton's collection of rents from tenants at Sweetbriar and the sending of same to First Reliance Bank.

RESPONSE: Defendant has no non-privileged records in its possession other than documents previously produced.

Request for Admission No. 5: Admit that subsequent to July 24, 2015, and until the sale of Sweetbriar to Plasma, Blanton was acting as property manager for First Reliance Bank with regard to Sweetbriar, including for the property leased by Timmons.

RESPONSE: Defendant admits that upon Blanton's acceptance of the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank with management of the Sweetbriar property, Blanton began to act as agent for the Bank with the scope of his authority being limited to that expressly conferred on him by the Bank. Defendant denies all remaining matters in Request No. 5.

Interrogatory No. 5.: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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ANSWER: From July 24, 2015 until Blanton's acceptance of the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank with management of the Sweetbriar property, Blanton acted as agent for the then-owner of the property, Atlantic Regional, LLC and/or collected rents at the direction of the Court pursuant to Orders dated October 2, 2015 and December 2, 2015, Florence County Civil Action No. 2015-CP-21-2106.

Request for Production No. 5: Produce any and all documents or other evidence, dated subsequent to July 24, 2015, indicating that Blanton acted as property manager and agent for First Reliance Bank (or any other party) with regard to Sweetbriar.

RESPONSE: Defendant has no such non-privileged records in its possession other than documents previously produced.

Request for Admission No. 6: Admit that, subsequent to July 24, 2015, with regard to tenant issues or questions relating to Tenants at Sweetbriar, including Plaintiff Timmons, Blanton and Blanton's staff addressed the same to First Reliance Bank and/or one or more of its employees or officers.

RESPONSE: Denied. Responding further, Defendant admits that Blanton did address some questions pertaining to tenant issues to former Bank employee Dale Porter following February 8, 2016. Responding further, at an unknown time before February 8, 2016, Defendant admits Mr. Blanton called Mr. Porter and informed him that a prospective tenant was interested in leasing a unit in the Subject Property. Mr. Porter told Mr. Blanton that he could not advise him as to how to proceed with respect to the prospective tenant.

Interrogatory No. 6: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response above is self-explanatory. Prior to February 8, 2016, based on documents produced by Blanton, tenant questions were addressed to representatives of Atlantic Regional, LLC.

Request for Production No. 6: Produce any and all communications and other documents between Blanton and First Reliance Bank relating to tenant issues at Sweetbriar.

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RESPONSE: Defendant has no such records in its possession other than documents previously produced.

Request for Admission No. 7: Admit that First Reliance Bank has no document or communication in its possession, with a date subsequent to July 24, 2015 and prior to the sale of the property to Plasma, relating to or describing tenant issues or questions at Sweetbriar, including Plaintiff Timmons, addressed to or copied on Atlantic Regional, LLC and/or any of its members, officers or employees.

RESPONSE: Denied.

Interrogatory No. 7: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Blanton has produced documents reflecting communications with representatives of Atlantic Regional, LLC in the fall of 2015. Responding further, Defendant refers to the following documents: Blanton 175, 218, 265.

Request for Production No. 7: Produce any and all communications and other documents in Bank's possession, relating to tenants at Sweetbriar (including Plaintiff Timmons) addressed to Atlantic or any party other than First Reliance Bank. If there are none, the response must so state.

RESPONSE: Defendant has no non-privileged documents other than those previously produced.

Request for Admission No. 8: Admit that, subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, with regard to building or maintenance issues relating to Sweetbriar, Blanton and Blanton's staff addressed the same to First Reliance Bank and/or one or more of its members, officers or employees.

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RESPONSE: Denied as to the time period between July 24, 2015 and February 4, 2016. As to the time period from February 4, 2016 until the sale of the property to WW Plasma II, LLC, after reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable it to admit or deny the matters contained in Request No. 8. Defendant has not seen any documents reflecting a building or maintenance issue communicated to it by Blanton, and its representatives do not recall such a communication.

Interrogatory No. 8: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant states that at least up until October 15, 2015, the Blanton Company addressed building concerns to representatives of Atlantic Regional, LLC as reflected in Blanton 175.

Request for Production No. 8: Produce any and all communications and other documents between Blanton and any party, relating to building and maintenance issues at Sweetbriar (including Plaintiff Timmons), subsequent to July 24, 2015, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: Defendant has no non-privileged documents in its possession of which it is aware.

Request for Admission No. 9: Admit that, with regard to building or maintenance issues or questions relating to Sweetbriar, Bank has no document in its possession with a date subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, indicating that such questions were directed to Atlantic Regional, LLC and/or any of its members, officers or employees.

RESPONSE: Denied.

Interrogatory No. 9: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis

for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Blanton has produced documents reflecting communications with representatives of Atlantic Regional, LLC in the fall of 2015. Responding further, Defendant refers to the following documents: Blanton 175, 218, 265.

Request for Production No. 9: Produce any and all communications and other documents between Blanton and any party, relating to building and maintenance issues at Sweetbriar (including Plaintiff Timmons), subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: Defendant has no non-privileged documents in its possession of which it is aware.

Request for Admission No. 10: Admit that First Reliance Bank has no document in its possession with a date on or before August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint), indicating that Blanton or First Reliance Bank revealed to Timmons the identity of the entity for whom Blanton was acting as agent and property manager.

RESPONSE: Denied.

Interrogatory No. 10: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: The Bank filed a Foreclosure Complaint and Lis Pendens on July 20, 2015 in the public records of Florence County, attached to Plaintiff's Complaint as Exhibit G, notifying all the world that the Sweetbriar Shopping Center was owned by Atlantic Regional, LLC and was the subject of a pending foreclosure action. These public records with which Mr. Timmons is charged with constructive knowledge "reveal" that Atlantic Regional, LLC is the owner of the Subject Property.

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Request for Production No. 10: Produce any and all communications and other documents indicating that Blanton or Bank revealed to Timmons, prior to signature of the Lease by Timmons and Blanton, the identity of the entity for whom Blanton was acting as agent and property manager. If there are none, the response must so state.

RESPONSE: Defendant has no such records other than the Lis Pendens, Foreclosure complaint and other filings of record in Florence County Civil Action No. 2015-CP-21-2106 of which Plaintiff is in possession.

Request for Admission No. 11: Admit that First Reliance Bank did not tell Blanton to inform Timmons that Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing, either on or prior to August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint).

RESPONSE: Admitted. Further responding, Defendant denies that it was made aware of Mr. Timmons' intent to execute the lease agreement dated August 20, 2015.

Interrogatory No. 11: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 11: Produce any and all communications and other documents indicating that Bank told Blanton to tell Timmons, prior to signature of the Lease by Timmons and Blanton, that First Reliance Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing. If there are no, the response must so state.

RESPONSE: Defendant has no non-privileged documents in its possession.

Request for Admission No. 12: Admit that First Reliance Bank did not instruct or tell Blanton, in writing or orally, on or before August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint) that:

i) Blanton should only enter short term or "month to month" leases with tenants at the Sweetbriar, including Timmons; or

ii) Blanton should not enter long term leases with tenants at the Sweetbriar, including Timmons,

RESPONSE: Admitted.

Interrogatory No. 12: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 12: Produce any and all communications and other documents indicating that Blanton did receive any such instructions or communications from First Reliance Bank. If there are none, the response must so state.

RESPONSE: Defendant has no non-privileged documents in its possession of which it is aware.

Request for Admission No. 13: Admit that, subsequent to July 24, 2015, First Reliance Bank expected to compensate Blanton, and did in fact compensate Blanton, for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

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RESPONSE: Admitted as to the time period following Defendant's acquisition of the subject property on February 4, 2016. Defendant denies the remaining matters contained in Request No. 13.

Interrogatory No. 13: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Prior to February 4, 2016, all management fees for rent collection and property management performed by Blanton was collected by Blanton for services rendered to Atlantic Regional, LLC. Defendant refers Plaintiff to its response to Plaintiff's Interrogatory No. 19.

Request for Production No. 13: Produce any and all communications and other documents indicating that Blanton was compensated for such work by First Reliance Bank.

RESPONSE: Defendant has no such non-privileged documents other than what has been previously produced.

Request for Admission No. 14: Admit that First Reliance Bank has no document in its possession with a date on or after July 24, 2015 and before the date Bank sold Sweetbriar to Plasma, indicating that Blanton expected to be compensated by Atlantic Regional, LLC, or any of its members, officers, or employees, and/or was in fact compensated by Atlantic Regional, LLC for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

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RESPONSE: Denied.

Interrogatory No. 14: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Prior to February 4, 2016, all management fees for rent collection and property management performed by Blanton was collected by Blanton for services rendered to Atlantic Regional, LLC. Defendant refers Plaintiff to its response to Plaintiff's Interrogatory No. 19. Defendant further refers Plaintiff to the public filings in Florence County Civil Action No. 2015-CP-21-2106 of which Plaintiff is in possession, and the deed reflecting Defendant's acquisition of ownership of the subject property on February 4, 2016.

Request for Production No. 14: Produce any and all communications and other documents indicating that Blanton was compensated for such work by Atlantic Regional, LLC, its members, officers or employees, including any checks drawn on First Reliance Bank accounts. If there are no such documents, the response must so state.

RESPONSE: All such documents in Defendant's possession have previously been produced. Defendant refers to its responses above for a description of the same.

Request for Admission No. 15: Admit that, subsequent to July 24, 2015, Blanton had either an oral, written, or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

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RESPONSE: Admitted as to the time period following Defendant's acquisition of the subject property on February 4, 2016. Defendant denies the remaining matters contained in Request No. 15.

Interrogatory No. 15: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Prior to February 4, 2016, Blanton's right to compensation was derived from its agreement with Atlantic Regional, LLC and/or the Court Orders dated October 2, 2015 and December 2, 2015 Florence County Civil Action No. 2015-CP-21-2106.

Request for Production No. 15: Produce any and all communications and other documents indicating Bank's or Blanton's understanding of the nature of the relationship between them subsequent to July 24, 2015, or documentation of such relationship.

RESPONSE: All such documents in Defendant's possession have previously been produced.

Request for Admission No. 16: Admit that the $2,000 rent payment described in Timmons' Check # 2129, attached to the First Amended Complaint as **Exhibit Z1**, and also attached hereto, cleared and funds were made available to Blanton's bank account on or after February 4, 2016.

RESPONSE: After reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable it to admit or deny the matters contained in Request No. 16. Responding further, Blanton does not maintain a bank account at First Reliance Bank through which the referenced check was processed, and thus Defendant has no way of knowing when said funds were made available to Blanton's bank account.

Interrogatory No. 16: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 16: Produce any and all communications and other documents, including bank statements, indicating the date Timmons' check #2129 cleared and such funds became available to Blanton.

RESPONSE: None in the possession of this Defendant.

Request for Admission No. 17: Admit that to the best of First Reliance Bank's knowledge, information and belief, from the time of the execution of the Lease, until Timmons left the property at Sweetbriar, Timmons:

i) Paid rent each month;

ii) Did not breach any term of the Lease attached as Exhibit A to the Complaint.

RESPONSE: Defendant admits that Mr. Timmons paid rent each month but denies that all such rent payments were made on or before the first of the month as required by Mr. Timmons' 8-20-15 Lease attached as Exhibit A to Plaintiff's Complaint. Defendant denies that Mr. Timmons did not breach any of the terms of the 8-20-15 Lease attached as Exhibit A to Plaintiff's Complaint.

Interrogatory No. 17: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant refers to Blanton 318 for a tenant ledger showing rent payments not made on or before the first of the month. Defendant further refers to Plaintiff's deposition testimony indicating he did not obtain insurance as required by the terms of the lease.

Request for Production No. 17: Produce any and all communications and other documents, indicating that Timmons paid rent timely. Produce any documents indicating Timmons breached the Lease attached as Exhibit A to the Complaint. If there are none, the response must so state.

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RESPONSE: None in the possession of this Defendant; Defendant refers to document referenced above produced by Blanton.

Request for Admission No. 18: Admit that on December 23, 2016 Dale Porter received an email from David Brock, as indicated in Exhibit N1, p. 2, to the First Amended Complaint (and attached hereto); stating:

> Dale I spoke with Joe Blanton and he recommends a conference call with Greg Wood. Apparently the tenants all have leases in place that go for years and from my experience they will transfer to the new owners. Basically they don't have to leave unless they are willing to leave. I understand that Mr. Blanton sent notices to all tenants informing them that they were on month to month lease's effective immediately. That sounds as if we are voiding their individual contracts with the lessor. Please advise my experience they may leave on their own accord but they certainly do not have to based on their individual leases. I was told that they were on a month to month situation but apparently this is not the case only by notice. Again this might not be problematic at all but the current buyers are under the assumption that the tenants are on month to month and are planning on closing in two weeks. Mr. Blanton recommends a conference call between you Mr. Blanton & Greg Wood to try and work this out as soon as possible please advise.

RESPONSE: Admitted. Further responding, Defendant denies that it agreed with Mr. Brock's statements in his December 23, 2016 email to Dale Porter pertaining to the legal status of the Sweetbriar tenants and/or leases. Further responding, Mr. Brock is not an attorney and his comments on legal matters are not binding on this Defendant.

Interrogatory No. 18: Describe the email in detail, and if you agree with Mr. Brock's characterization of the call. If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's characterization of the email above is self-explanatory.

Request for Production No. 18: Produce any and all communications and other documents between Blanton, David Brock, Greg Wood, and/or Dale Porter.

RESPONSE: Defendant has no non-privileged documents which have not been previously produced.

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Request for Admission No. 19: Admit that the appraised value of Sweetbriar, including as demonstrated on attached FRB/CCS 000059, is higher with Timmons' rent obligations under the Lease included in such appraisal valuation, than the appraised value of Sweetbriar would have been without including Timmons' rent obligations.

RESPONSE: After reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable it to admit or deny the matters contained in Request No. 19.

Interrogatory No. 19: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant is not in the business of real estate appraisal nor qualified to make such assessments, which is why it contracts appraisal professionals to make such evaluations as in the case of the appraisal report referenced by Plaintiff in Request No. 19. Generally speaking, Defendant believes the valuation of a particular property is subject to a number of factors evaluated by appraisal professionals, any of which can individually or collectively affect the appraised value of a property. Moreover, upon information and belief, in some instances the presence of tenants can decrease, rather than increase, the value of a property.

Request for Production No. 19: Produce any and all communications and other documents, indicating that including Lease Payments and Obligations decreased the appraisal value of Sweetbriar. If there are none, the response must so state. Produce all documents indicating the Lease increased the value of Sweetbriar.

RESPONSE: Defendant has no non-privileged documents which have not been previously produced.

Request for Admission No. 20: Admit that, on and after July 24, 2015, the date First Reliance Bank began foreclosure proceedings on Sweetbriar, Bank either intended to obtain title to Sweetbriar, or knew that it was possible that it would obtain title to Sweetbriar, and that if First

Reliance Bank did obtain title to Sweetbriar then it would sell Sweetbriar as soon as reasonably possible at the highest possible price.

RESPONSE: Admitted.

Interrogatory No. 20: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: N/A.

Request for Production No. 20: Produce any and all communications and other documents relating to the Bank's intentions on the sale or lease of Sweetbriar on or after July 24, 2015.

RESPONSE: Defendant has no such non-privileged records in its possession other than documents previously produced.

This 12th day of December, 2019.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: _____

D. GARY LOVELL, JR.
State Bar No.: 69293
LACEY L. HOUGHTON
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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing ***Defendant First Reliance Bank, Inc.'s Answers to Plaintiff's Requests for Admissions***, upon all parties to this matter by electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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Counsel for Defendants W.W. Plasma, III, LLC and Hunter Williams

This 12th day of December, 2019.

Tori Rent

Legal Assistant II for D. Gary Lovell, Jr. and Lacey L. Houghton

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COMMERCIAL LEASE AGREEMENT

This lease is made between: **THE BLANTON COMPANY** herein called Lessor, and
XAVIER SAMS D/B/A Name unknown at this time

Herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in the city of Florence, County of Florence, State of South Carolina, described as:

1933 2ND LOOP ROAD

upon the following TERMS and CONDITIONS:

Terms and Rent: Lessor to lease to Lessee the above premises for a term of 3 year, Commencing Sept 1, 20 15 and terminating on AUG 31, 20 18 as provided herein..Lessee shall pay to Lessor, without deduction or offset and prior to notice or demand, and for the use and occupancy of the leased premises, and monthly rental of $ 650 payable in advance on the 1st day of each and every calendar month thereafter in advance. YEAR 2 $650 1mo. YEAR 3 $700 1mo.

(A) All rental payments shall be made to Lessor, at the following address:

~~1416 W. Evans St.~~ Florence, SC 29501
126 S. COIT ST.

(B) Late Payments: Any rent payment not received by Lessor within 5 days of its due date shall be subject to a late fee of $45.00. This Late Fee shall commence at 5:01 p.m. on the 5th day of the month and accrue until rent payment and accumulative Late Fees are received by Lessor.

(C) Rents not received by the 9th of the month will be subject to collection by the Magistrate with a $45.00 Eviction fee added to rent due.

(D) Reinstatement fee of $45.00 will also be added to rents not paid by the 9th of the month.

Use:....Lessee shall use and occupy the premises for: RECORDING STUDIO
The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose.

RENT TO BEGIN NOV. 1, 2015
2 MONTHS FREE DUE TO TENANT IMPROVEMENTS.

EXHIBIT 30

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Care and Maintenance of Premises:.....Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including: plumbing, electrical, roof, flooring, painting, plate glass windows, and HVAC systems. Lessee shall surrender the same at termination hereof, in as good condition as received, normal wear and tear accepted. Lessee shall be responsible for all repairs required, excepting the exterior walls and structural foundations. **TENANT RESPONSIBLE FOR FIRST $500 OF HVAC REPAIR.

Alterations:.....Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

Ordinances and Statutes:.....Lessee shall, at Lessee's sole cost comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, pertaining to the use of said premises and shall faithfully observe in said use all municipal ordinances, state and federal statutes now in force or which may hereafter be in force and specifically observe and maintain all Environmental standards pertaining to soil contamination.

Security Deposit:.....Lessee shall deposit with Lessor on the signing of this lease the sum of $650.00 as security deposit for the performance of Lessee's obligations under this lease, including without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

Assignment and Subletting:.....Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting with consent shall be void and, at the option of the Lessor, may terminate this lease.

Utilities:.....All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, and electricity and telephone services.

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Entry and Inspection:.....Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty days prior to the expiration of this lease, to place upon the premises any usual..To Let or For Lease..signs, and permit persons desiring to lease the same to inspect the premises thereafter.

Possession:.....If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or avoidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 1 days of the commencement of the term hereof.

Indemnification of Lessor:....Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim for damages, no matter how caused.

Indemnification of Lessor:....Lessee, as a material part of the consideration to be rendered Lessor's , hereby waives all claims and demands against Lessor for all the aforesaid losses and damages to goods, wares and merchandise in, upon or about said premises, and for injuries to persons in, upon or about said premises, from any cause whatsoever, arising at any time. Lessee will hold Lessor, its employees, agents and affiliated entities exempt and harmless from any liability, loss, cost and obligation on account of any damage or injury to any person, or the goods, wares and merchandise of any person, arising in any manner from the use or occupancy of the premises by the Lessee.

 Lessee  Lessor 

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Insurance:.....Lessee, at Lessee's sole cost and expense, but for the mutual benefit of Lessor and Lessee maintain public liability insurance, including liability against claims for personal injury, death, or property damage occurring in, upon, or about the premises and on any sidewalks directly adjacent to the premises. The limits of liability of such insurance shall not be less than $500,000 in respect to injury or death of one person and to the limit of not less than $1,000,000 in respect to any one occurrence and to the limit of not less than $100,000 in respect to property damage or in such higher amounts as Lessor may require. **TENANT TO PROVIDE COPY OF POLICY.

Insurance:.....All such policies of insurance shall be issued in the name of Lessee, with the LESSOR'S NAMED AS ADDITIONAL INSURED. Evidence of the insurance of such policies shall be delivered to Lessor within (10) days after the term of this Lease commences. Lessee shall obtain a written obligation on the part of each insurance company to notify Lessor in writing at least (30) days prior to any cancellation or material change of coverage.

Eminent Domain:.....If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

Destruction of Premises:.....In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof. Lessor may elect to terminate this lease whether the demised premises are injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

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Lessor's Remedies on Default:... If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 5__ days, after the giving of such notice (or if such other default is of such other nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such _5_ and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than _5_ days notice to Lessee. On the date specified in such notice the term of the lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

Tax Increase:... In the event there is any increase during any year of term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation. Lessee shall pay to Lessor upon presentation of paid tax bills in the amount equal N/A per-cent of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

Common Area Expenses:.....In the event of the demised premises are situated in a shopping center or in a commercial building in which there are common areas, Lessee agrees to pay his pro-rate share of maintenance, taxes, and insurance for the common area.

Attorney's Fees:.....In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

Notices:.....Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address show below:

_____~~1416 W. Evans~~ 126 S. Coit St._____,Florence SC 29501_____

Or at such other places as may be designated by the parties from time to time.

 Lessee (KS) Lessor

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Heirs, Assigns, Successors:.....This lease is binding upon and inures to the benefit of the heirs, assigns, and successors in interest to the parties.

Option to Renew:.....Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional term of _3_years commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the monthly rent shall be the sum of $_____. The option shall be exercised by written notice given to Lessor not less than _60__days prior to the expiration of initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.
NEGOTIABLE WITH 60 DAYS NOTICE..

Subordination:.....This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

Environmental – Hazardous Substances:.....Tenant shall not cause or permit any hazardous or toxic substances, materials, or waste ("Hazardous Substances") to be used, generated, stored or disposed of in, on or under, or transported to or from the premises (Hazardous Materials Activities) unless (a) such Hazardous Substances are necessary for Tenant's business and (b) Tenant first obtains the written consent of Landlord. If these conditions are satisfied, tenant shall at all times and in all respects comply with all local ,state, and federal laws, ordinances, regulations and orders relating to Hazardous Substances.

Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold Landlord harmless, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures. Losses, costs (including clean-up costs) or expenses (including attorney's fees, consultant's fees and expert's fees) for the death of or the injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) the presence in, on, under, or about the premises of any Hazardous Substances; (b) any discharge or release in or from the premises of any Hazardous Substances; (c) Tenant's use, storage, transportation, generation, disposal, release or discharge of Hazardous Substances, to, in, on under, about or from the premises; or (d) Tenant's failure to comply with any Hazardous Substances law. Tenant's obligation under this section shall survive the expiration or earlier of the term of the lease.

Additional Terms and Conditions:...

Entire Agreement:... The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed 3RD of SEPT., 20 15

By _____
Lessee

By _____
Lessor

Witness

Witness

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ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

State of South Carolina)
)
County of Florence)

In The Court of Common Pleas
Twelfth Judicial Circuit
2015-CP-21-02106

First Reliance Bank,

Plaintiff,

vs.

Atlantic Regional, LLC, et al.,

Defendants.

Transcript of Record

September 30, 2015
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

Ray Coit Yarborough, Jr., Esquire
Attorney for the Plaintiff

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

EXHIBIT 31

I N D E X

Witness/Description	Page No.
Certificate Page.	6

E X H I B I T S

No.	Description	Ev.

No exhibits introduced.

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THE COURT: The next matter is *First Reliance Bank vs. Atlantic Regional, et al*.

MR. YARBOROUGH: Hey, Judge. Coit Yarborough on behalf of First Reliance Bank in this matter.

THE COURT: Yes, sir.

MR. YARBOROUGH: I have two motions pending. One is on your docket; I don't know if the other one is.

First one is, is a motion to enforce rents. There is an assignments -- an assignment of leases, rents, and contracts filed downstairs in the clerk's office. This is a foreclosure action that -- there, there is a verified complaint that the defendant is in default on the payments. And as I read the statute, we can request that all rents be paid to us through that, using that assignment of rents, but there are some other potential leases sort of up in the air, and something needs to be done to, to either consummate the leases or, you know, reject the leases.

We would like to employ the Blanton Company to collect the, collect the leases and to manage the property, as they have been doing all along, on behalf of the bank, as well as the owner, pending this action, and we want the rents paid over to First Reliance Bank.

In addition, I've, I've only got one defendant that, that answered. Mr. George Speedy answered on, on his behalf. We tried to call George before we filed the motion

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and never could get him to call us back, but yesterday he called me on the phone yesterday afternoon, and he said he would consent to my motion for a reference. So, we could knock out two birds with one stone here, and I could add that to an order if you will grant it.

THE COURT: Is the -- have all the defendants been notified? You have Atlantic Regional, LLC ---

MR. YARBOROUGH: Everybody ---

THE COURT: --- Russell Cobb, Richard Cook, and Jerry Nettles.

MR. YARBOROUGH: Everybody was served. I have the proof of service.

THE COURT: All right.

MR. YARBOROUGH: Along with a copy of the motion. Well...

THE COURT: All right, I don't...

MR. YARBOROUGH: I can, I can look here. Let me make sure. Yes, motion of reference was served on everybody, and it was filed September 21st.

THE COURT: All right.

MR. YARBOROUGH: But everybody's ---

THE COURT: And I have the ---

MR. YARBOROUGH: --- notice of hearing ---

THE COURT: --- notice of hearing on the other matters, yeah.

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MR. YARBOROUGH: Sir?

THE COURT: I, I also see here in the file that there was -- the notice of today's hearing was sent.

MR. YARBOROUGH: Oh, yeah, notice ---

THE COURT: To all parties.

MR. YARBOROUGH: --- of everything was sent.

THE COURT: All right. All right, I'm, I'm, I'm going to grant your motion for order to pay the rents, and I'm also going to grant the motion to refer the matter to the special referee. If you could ---

MR. YARBOROUGH: I, I set it up with Steve Michael. It isn't that I have any kind of personal thing with Haigh Porter. He just has so many, and if, if I go to the cell and stand there two, two hours ---

THE COURT: Yeah, I've got no problem with that.

MR. YARBOROUGH: Okay.

THE COURT: That will work. All right.

MR. YARBOROUGH: Thank you.

THE COURT: If you'd prepare that for me. Thank you.

--- **END OF TRANSCRIPT OF RECORD** ---

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CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE TWELFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR FLORENCE COUNTY, SOUTH CAROLINA, ON THE 30TH DAY OF SEPTEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 11TH, 2019

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

LEGAL | MEDIA | EXPERTS

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you contacted Rick Cranford.
So I guess the general question is: Why are you contacting both of them?
A. Why am I contacting both of them? Because I'm sitting there in the line of fire wanting questions as to what I'm supposed to do to cover my behind. Okay? I mean, that's putting it in street talk, but that's the bottom line. Yeah.
Guys, tell me what to do. Okay.
Q. And you -- right. And so you contacted -- and do you agree with me that in terms of the ownership of the property at that moment, in early August of 2015, that the bank has title to the property and Atlantic has some sort of interest, but their interest is being foreclosed on by the bank?
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. Do you agree to that?
A. Their interest is the fact they're being foreclosed upon, yes.
Q. And other than those two parties, there isn't anyone else that Joe Blanton needs to be contacting relating to the property. Just those two?

A. That's correct.
Q. When we're talking about tenant issues and people that might be renting the property.
Do you agree that with that?
A. That I should -- I think what you're asking me is, is should I have taken the initiative to contact tenants and tell them what was possibly going on?
Q. No. That was not the question. It was --
A. Okay. Well, repeat it.
Q. Sorry.
The prospective tenants that come in, and we'll go through the documents that show this, all I'm trying to get at is that because you haven't dealt with foreclosures before, you were uncertain, you contacted and -- in an abundance of caution you contacted both the bank and Atlantic.
A. Yeah.
Q. All right?
A. Well, we sure went around the horse's tail to get that, didn't we?
Q. Well, lawyers -- we try to get at the truth --
MR. ANDERSON: What time are we breaking for lunch, Counsel?

MR. LE CLERCQ: I'm sorry?
MR. ANDERSON: What time are we breaking for lunch?
MR. LE CLERCQ: Let's break at 1:30. All right. Here's Exhibit 9.
MS. HOUGHTON: What exhibit is that?
MR. LE CLERCQ: I'm sorry, 10.
(EXHIBIT 10, Blanton 000121-000122, 10/02/2015 Order-Payments of Rents and Reference, was marked for identification.)
BY MR. LE CLERCQ:
Q. I'm going to give you 11, 12 and 13 all at the same time because we're going to go through them in one fell swoop.
(EXHIBIT 11, 04/23/2015 Letter from Coit Yarborough for Bank to the Blanton Company, was marked for identification.)
(EXHIBIT 12, 07/23/2015 Motion Assigning Rents to Bank, was marked for identification.)
(EXHIBIT 13, 01/27/2015 Assignment of Rents, was marked for identification.)
BY MR. LE CLERCQ:

Q. Now, before I ask you about those, I have one follow-up question on Efrem Andrews, which is he said that the fact that the property was in foreclosure was a deal breaker for him.
And did he ever communicate that to you, sir?
A. I think that he did. I'm not -- I can't sit here and swear to it, but I think so, yes.
Q. What was your -- did you have a positive prior experience with Mr. Timmons, given his lease of property from you prior to the deal in question?
A. Yes.
Q. Was it your experience that he paid on time every time?
A. Yes.
Q. Do you ever remember him breaching the prior lease?
A. No.
Q. How about your experience with the -- strike that.
We've already looked at the motion to assign rents, which is attached as Exhibit 11. So if you'll please take a quick look. It's a duplicate from another exhibit, so you've already testified that you recognize that.

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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of the 150 clients you have, for example?
A. Well, I would say and, again, we're kind of, sort of guessing here, because if you told me to prep this before I came, I could tell you exactly and we could tell you exactly.
(Mr. Porter enters.)
MR. ANDERSON: Who are you, sir?
MS. HOUGHTON: This is Dale Porter. He's joining us this morning. Sorry for the interruption.
THE DEPONENT: Where was I, Ben?
BY MR. LE CLERCQ:
Q. We were talking about how often you sign and how often they signed.
A. Okay. All right. On residential leases, I probably signed and/or one of my staff who is licensed to do so sign on the owner's behalf probably 90 -- at least 95 percent of the time on residential.
On commercial, there aren't that many. Our primary is residential, but on the commercial leases, again, most owners entrust me to sign on their behalf.
Q. Now, you said something I want to make sure I heard it right.

You said that the landlord has "to honor the lease that we sign on their behalf."
A. Oh, sure. Landlords and tenants have to honor, yes.
Q. So they both have to honor. And then in that capacity, are you acting as the agent of the owner?
A. I tell everybody I'm the agent for the owner. The owner's my client. The tenant is my customer.
Q. What kind of obligations do you have to the tenant as your customer?
A. I'm sorry?
Q. What sort of obligations do you think you have, if any, to the tenant as your customer on the property?
A. My obligations are what I've always built my business on in my own life, is to be ethical and to be helpful in any way I possibly can, but to live within the rules of the lease and to try to honor everything that's written on that statement, whether it be landlord or tenant's responsibility.
Q. Do you try to understand what it is that the tenant is seeking when you're negotiating the lease?

A. Certainly I do.
Q. And how do you do that? Do you talk with them and ask them what it is they want? Give me --
A. Sure.
Q. Okay. And so within the parameters of the lease that you're doing, you try to make it so that the tenant is profitable in their enterprise as well?
A. Of course.
Q. So even though you're acting as agent for someone else, if you signed the lease as lessor, do you consider that you have an obligation under that, the contract as well?
A. I'm not an attorney, but I'm assuming yes. I take on responsibilities as the agent for the owner.
Q. And if those --
A. Our business wouldn't work if I didn't.
Q. Understood.
You've got obligations -- would you agree with me, sir, that the owner of the property has got obligations under the lease. You, as the property manager, have obligations and rights under the lease. And then the tenant also has obligations?

A. Certainly. It's a three-way street, yeah.
Q. Okay.
A. And I might add, my job is to make sure that each party abides by what was contractually written.
Q. Okay. In your understanding, do leases for real property have to be in writing in the State of South Carolina?
A. Yes. As far as I'm concerned, yes.
Q. Okay. And so that's part of your normal practice is you always have a written contract for real property for a lease?
A. Yes.
Q. Okay. How about right now, is your current practice to sign a lease as lessor, or are you more inclined to get the owner to sign the lease?
A. Well, I think we've already gone over that. In the majority of the cases, I sign as agent for the landlord.
Q. And that's both in residential and commercial?
A. Primarily in residential, yes.
Q. Okay. I want to get some of the terms correct because the term "owner" has a little bit of imprecision in it.

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE CA# 2015-CP-21-2106

First Reliance Bank,

Plaintiff,

vs.

ORDER
(Payment of Rents and Reference)

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendants.

FILED
2015 OCT -2 PM 2:10
CLERK OF COURT
FLORENCE COUNTY, SC

This is a foreclosure action. Plaintiff filed a motion for an order to pay rents to Plaintiff and an Order of Reference. All of the parties were served with the motions and notified of the hearing.

Plaintiff holds a recorded Assignment of Rents given by Defendants in connection with the loan. The Assignment provides that Plaintiff may collect the rents if the Defendants default in payment of the loan. The verified Complaint on file in this action alleges that the Defendants are in default in payment. Procedurally, only one Defendant filed a general denial, but he did not object to Plaintiff's motion. All of the remaining Defendants are in default. Plaintiff proposes that the current property manager, The Blanton Company, remain property manager, but that all rents collected be paid over to Plaintiff pursuant to the terms of the Assignment until this action is concluded. I find that the Defendants are in default in payment of the loan. The Blanton Company should remain as property manage, and all rents collected should be paid over to Plaintiff. Further, this is a proper matter to refer to a Special Referee for hearing and to bring the matter to conclusion. Mr. Yarborough informed me that Mr. George Speedy, the only

Mailed 10-8-15
cc: Yarborough Jr.
Mikell (Sp Ref)
Speedy

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attorney to file and Answer in this matter, called him the day before this hearing and informed him that he consented to the Referee of Mr. Yarborough's choice.

IT IS THEREFORE ORDERED THAT:

1 - The Blanton Company will continue to manage the property referred to in the Complaint until this matter is finally disposed of, and The Blanton Company will pay over any rents collected to First Reliance Bank, and,

2 - this action be, and the same hereby is, referred to the Steven G. Mikell, as Special Referee, to direct entry of final judgment in this action under Rule 53, South Carolina Rules of Civil Procedure, and all matters arising from or reasonably related to such action. The Referee shall retain jurisdiction to perform all necessary acts incident to this foreclosure including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Special Referee shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60 (b). Any appeal from the final judgment entered by the Special Referee shall be directly to the Supreme Court.

PRESIDING JUDGE FOR THE TWELFTH CIRCUT

Florence, South Carolina

October 1st, 2015

FILED
2015 OCT -2 PM 2:10
CCCP & GS
FLORENCE COUNTY, SC

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EFRAM ANDREWS
Sweetbriar 14000 #
804 248-1466
Lazer TAG

RICK CRanford
(843) 845-7937

Martha
~~MAS~~ S

E-MAIL TO
RICK CRANFORD
ASAP JB

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ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

Sec. Deposit Needed
$3,000
$6,000

Efrem B. Andrews
4008 Lake Russell Drive
Florence, SC 29501
October 2, 2015

Mr. Joe Blanton
The Blanton Company
126 S. Coit Street
Florence, SC 29501

Dear Mr. Joe Blanton:

This letter is to express interest on behalf of Elite Tactical Laser Tag LLC, in leasing the property located at: 1935 Second Loop, Florence, SC 29501 in the Sweetbriar Shopping Plaza formally occupied by Carolina Medcare.

Elite Tactical Laser Tag LLC, will be a premier tactical laser tag venue, powered by iCombat equipment which is supported by Universal Electronics out of Whitewater, WI; a $60 million company. The concept gives players a fully immersed experience of competitive combat in a totally safe environment. ETLT will capitalize on the video game experiences like Call of Duty, Battlefield and other popular first person shooter games to bring those players out of their homes and into a realistic action packet arena that we plan to place inside your facility at 1935 Second Loop. ETLT plans to feed the need of local residence and travelers on the I-95 corridor for safe family entertainment.

After carefully evaluating the facility and fair-market value I propose the following terms for your consideration.

In leasing the for-mentioned space Elite Tactical Laser Tag at its own expense will do the following:

1. All of its needed up-fit / build-out for business operations. If it is determined that the current restrooms are not ADA complaint, the completion cost to bring such restrooms into compliance shall be an item open for additional negotiations in this lease agreement.

SCANNED
OCT 05 2015
BY

BLANTON000117

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ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

ETLT would like to lease the facility for three (3) years with an option to renew for an addition two (2) year minimum. Based on the estimated 14,000 total square footage, we would like an all in lease rate of $4.90 per square foot for the first year, which would include base rent and triple net calculation cost equaling $68,600 per year and/or $5,716 per month. For the next two years we propose yearly increases as follows:

Year number two (2) a 2% increase equaling $69,972 per year and/or $5,831 per month. In year number three (3) a .029% increase rounded to an even $72,000 per year and or $6,000 per month. In the two year minimum renewal option we would like to hold steady at the $72,000 per year and/or $6,000 per month. We would like to take possession of the property for build-out no later than Nov 1, 2015

In order for ETLT to be successful we would like the landlord to provide the following incentives:

1. We anticipate build-out to take 2-3 months and would like to pay zero (0) rent during this time period.
2. In order to establish a strong revenue base we would like to operate at a reduced rental rate of 50% during months 4-5, with full rental rate due in month 6 of the leasing period and going forward until lease termination date.
3. If the build-out is completed earlier then the estimated time and ELTL is able to open for business sooner than the estimated build-out time, we would like to immediately start paying rent at the reduced rate listed in item #2 for two (2) consecutive months and then the full rental rate going forward.
4. Certifications that all electrical, plumbing, roofing and HVAC systems are operable with no issues and if not repairs are to be made timely by the landlord, prior to occupancy on Nov 1, 2015.

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ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

I am excited at the prospect of leasing the above-mentioned space and partnering with your organization. Elite Tactical Laser Tag will be an asset to you and the Sweetbriar Plaza. If you have any questions about this proposal of leasing terms, or the business itself, please contact me at 804-248-1466, or by email @ eandrews@sc.rr.com.

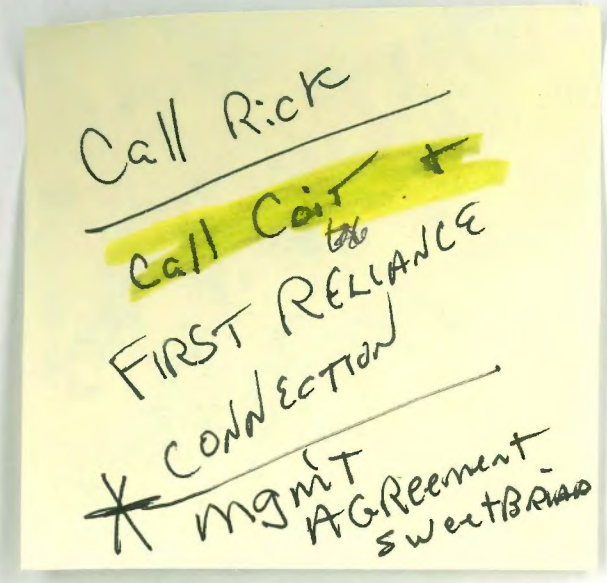
Thank you for taking the time to consider this offer. I look forward to a prompt and favorable reply.

Sincerely,

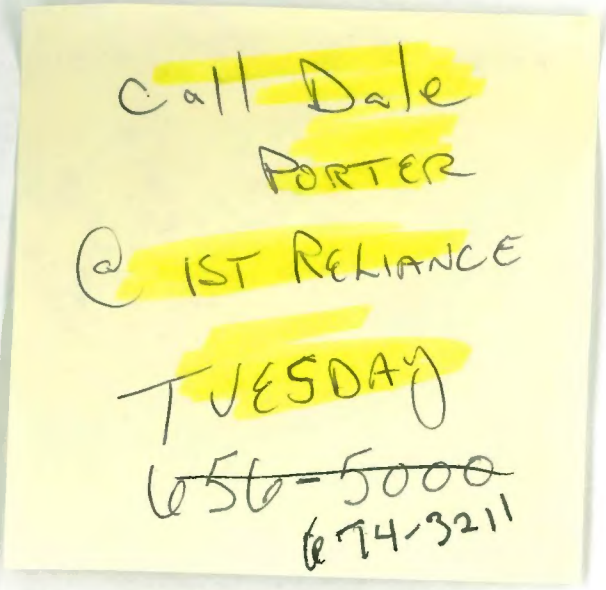
Efrem B. Andrews

Elite Tactical Laser Tag LLC

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ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FflorENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP, Plaintiff, v. FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DECLARATION OF EFREM ANDREWS**

1. My name is Efrem Andrews.

2. I am a member and decision-maker of Elite Tactical Laser Tag LLC ("Company").

3. In the Fall of 2015 the Company was looking for space to lease in Florence, in which to conduct our laser tag business.

4. At some point in the Fall of 2015, either in late August or early September, I saw a sign advertising space at 1935 second Loop Rd., Florence, SC 29501 in the Sweetbriar Shopping Plaza, formally occupied by Carolina Medicare (the "Space").

5. The sign listed Joe Blanton and/or the Blanton company as the property manager/listing agent, with their telephone number, and so I called Mr. Blanton.

6. I had a number of conversations over the next weeks with Mr. Blanton, and went to his office to meet him.

7. Initially, Mr. Blanton showed me the Space, and I went back a number of times after that to his office and got the key from his office to look at the Space. I would estimate I looked at the Space seven or eight times in total.

Exhibit 36

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8. During the month of September, 2015 I came to the conclusion that the Space was very well-suited to our needs, and decided to lease the Space for the Company.

9. On October 2, 2015 I drafted a letter proposing lease terms which I either mailed or hand-delivered to Mr. Blanton at his office. I understand that letter has been produced in this litigation as Blanton 000128 - 130. It is attached hereto.

10. As you can see from the letter, I was excited the prospect of leasing the Space, and thought that our Company would be an asset to the Sweetbriar Plaza.

11. I proposed to lease the Space for three years with an option to renew for an additional two-year minimum, at a rate of $4.90 per square foot for the first year, to include base rent and triple net calculation, with yearly increases to follow. We also asked for certain incentives as part of this package, set out in the letter.

12. At no time prior to drafting and delivering my letter of October 2, 2015, did Mr. Blanton inform me that the Sweetbriar shopping center was in foreclosure.

13. At some point subsequent to delivering my letter of October 2, 2015, I found out that the Sweetbriar shopping center was in foreclosure. Of course, in hearing that news, I was concerned and skeptical, not wanting to have any uncertainty given that we contemplated making significant investments in the Space, and planned to stay at least 5 years.

14. Before hearing the property was in foreclosure, we had hired a contractor to take a look at structural elements of the Space; he said it needed significant repairs.

15. I had one or more conversations with Mr. Blanton about the foreclosure.

16. The foreclosure was a "dealbreaker" for us, and caused us to not lease the Space.

17. As you can tell from the letter of October 2, we wanted to lease the space, and would have done so (assuming we could get to agreement regarding the roof/structural repairs), but hearing that the property was in foreclosure caused us to look elsewhere.

18. We did in fact lease space elsewhere in Florence as a result, where we now have our business.

Pursuant to 28 USC Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on January 15, 2020.

By: _____
Efrem Andrews

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ELITE TACTICAL LASER TAG
WHERE HEROES ARE BORN EVERYDAY

Efrem B. Andrews
4008 Lake Russell Drive
Florence, SC 29501
October 2, 2015

Mr. Joe Blanton
The Blanton Company
126 S. Coit Street
Florence, SC 29501

Dear Mr. Joe Blanton:

This letter is to express interest on behalf of Elite Tactical Laser Tag LLC, in leasing the property located at: 1935 Second Loop, Florence, SC 29501 in the Sweetbriar Shopping Plaza formally occupied by Carolina Medcare.

Elite Tactical Laser Tag LLC, will be a premier tactical laser tag venue, powered by iCombat equipment which is supported by Universal Electronics out of Whitewater, WI; a $60 million company. The concept gives players a fully immersed experience of competitive combat in a totally safe environment. ETLT will capitalize on the video game experiences like Call of Duty, Battlefield and other popular first person shooter games to bring those players out of their homes and into a realistic action packet arena that we plan to place inside your facility at 1935 Second Loop. ETLT plans to feed the need of local residence and travelers on the I-95 corridor for safe family entertainment.

After carefully evaluating the facility and fair-market value I propose the following terms for your consideration.

In leasing the for-mentioned space Elite Tactical Laser Tag at its own expense will do the following:

1. All of its needed up-fit / build-out for business operations. If it is determined that the current restrooms are not ADA complaint, the completion cost to bring such restrooms into compliance shall be an item open for additional negotiations in this lease agreement.

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ELITE TACTICAL LASER TAG
WHERE HEROES ARE BORN EVERYDAY

ETLT would like to lease the facility for three (3) years with an option to renew for an addition two (2) year minimum. Based on the estimated 14,000 total square footage, we would like an all in lease rate of $4.90 per square foot for the first year, which would include base rent and triple net calculation cost equaling $68,600 per year and/or $5,716 per month. For the next two years we propose yearly increases as follows:

Year number two (2) a 2% increase equaling $69,972 per year and/or $5,831 per month. In year number three (3) a .029% increase rounded to an even $72,000 per year and or $6,000 per month. In the two year minimum renewal option we would like to hold steady at the $72,000 per year and/or $6,000 per month. We would like to take possession of the property for build-out no later than Nov 1, 2015

In order for ETLT to be successful we would like the landlord to provide the following incentives:

1. We anticipate build-out to take 2-3 months and would like to pay zero (0) rent during this time period.
2. In order to establish a strong revenue base we would like to operate at a reduced rental rate of 50% during months 4-5, with full rental rate due in month 6 of the leasing period and going forward until lease termination date.
3. If the build-out is completed earlier then the estimated time and ELTL is able to open for business sooner than the estimated build-out time, we would like to immediately start paying rent at the reduced rate listed in item #2 for two (2) consecutive months and then the full rental rate going forward.
4. Certifications that all electrical, plumbing, roofing and HVAC systems are operable with no issues and if not repairs are to be made timely by the landlord, prior to occupancy on Nov 1, 2015.

ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

I am excited at the prospect of leasing the above-mentioned space and partnering with your organization. Elite Tactical Laser Tag will be an asset to you and the Sweetbriar Plaza. If you have any questions about this proposal of leasing terms, or the business itself, please contact me at 804-248-1466, or by email @ eandrews@sc.rr.com.

Thank you for taking the time to consider this offer. I look forward to a prompt and favorable reply.

Sincerely,

Efrem B. Andrews

Elite Tactical Laser Tag LLC

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Kelley Modlin

From: Kelley Modlin
Sent: Monday, October 05, 2015 12:06 PM
To: 'Rick Cranford'
Subject: Elite Tactical Laser Tag 1935 Second Loop Rd
Attachments: Elite Tactical Laser Tag 1935 Second Loop Rd.PDF

CALL Coit Y.

Rick –

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

10/8/15 Called Coit Yarborough
He said to proceed with lease
and hold rents in escrow until
court order says where rents
go.

0654

GBB 10/8/15

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Carmella Mention

From: Dale Porter
Sent: Tuesday, September 15, 2015 4:21 PM
To: Andy Fowler
Cc: Ann Dowling; James V. Webb; Carmella Mention
Subject: FW: Sweet Briar Rent Rolls
Attachments: doc04178820150915151518.pdf

Andy,
Attached are the rent rolls and operating statement through July 2015. The Blanton Company manages the property and if you have any questions please call them. I understand he is working on a new renter that will help improve these numbers.
Thanks,

Dale Porter
NMLS # 1092721
VP & Senior Loan Administrator
First Reliance Bank
NMLS # 411728
2170 West Palmetto Street
Florence, SC 29501
(843) 674-3211 Direct
(843) 319-8251 Cell
(843) 674-3296 Fax
(843) 674-3ASK Customer Care Center
DPorter@firstreliance.com

Check out our web Site: http://www.firstreliance.com/

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-----Original Message-----
From: scan@firstreliance.com [mailto:scan@firstreliance.com]
Sent: Tuesday, September 15, 2015 4:15 PM
To: Dale Porter
Subject: Sweet Briar Rent Rolls

see attached

TASKalfa 300i
[00:c0:ee:81:26:0f]

0655

Exhibit 38

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RENT ROLLS

Cash Flow (Cash)
SWEETBRIAR #525 - (525)
July 2015

Prepared For:
ATLANTIC REGIONAL, LLC
C/O Richard Cooke/Cooke Management
Po Box 808
Lake View, SC 29563

Prepared By:
THE BLANTON COMPANY
126 S. Coit
FLORENCE, SC 29501

	Month to Date	%	Year to Date	%
INCOME				
RENT/FEES	2,495.00	100.00	29,376.45	100.00
TOTAL INCOME	2,495.00	100.00	29,376.45	100.00
EXPENSE				
MANAGEMENT	174.65	7.00	2,087.85	7.11
MAINTENANCE	0.00	0.00	45.00	0.15
GARDENING	330.00	13.23	2,310.00	7.86
ELECTRICITY	923.50	37.01	5,901.99	20.09
WATER & SEWER	253.82	10.17	1,702.62	5.80
INSPECTION	0.00	0.00	180.00	0.61
MAGISTRATE	45.00	1.80	45.00	0.15
PLUMBING	0.00	0.00	150.00	0.51
TOTAL EXPENSE	1,726.97	69.22	12,422.46	42.29
NET OPERATING INCOME	768.03	30.78	16,953.99	57.71
ADJUSTMENTS				
OWNER DRAW	-768.03		-16,953.99	
TOTAL ADJUSTMENTS	-768.03		-16,953.99	
CASH FLOW				
Beginning Cash	0.00			
Ending Balance	0.00			

Tenant Directory
525 - SWEETBRIAR #525

Unit # / Code / Status	Tenant Name / Tenant Address	Total Owe / 0 - 30 / 30 - 60 / 60 - 90	Rent / New Rent / Late Fee / $/Day	Deposit / Interest / Last Mont / Due Day	Move In / Move Out / Lease Fro / Lease To	Last Inc / Next Inc / Notice	Sq. Ft. / $ / Sq Ft / % Sq Ft	Phone: cell / Home / Notes
525	SWEETBRIAR #525							
1923	Sunshine House #525/D425	1,300.00	1,300.00	1,300.00	07/01/14	09/01/14	0.0	(864) 990-1820
d425	12 Interchange Blvd.	0.00	0.00	0.0				
Current	Greenville, SC 29607	0.00	0.00%	0.00	07/01/14		0.0	
		0.00	0.00	1	06/30/16			
1933	The Machine Prods., LLC #525/D362,	1,300.00	650.00	650.00	11/01/13		0.0	
d362	1933 Second Loop Road	650.00	0.00	0.0				
Current	Florence, SC 29505	0.00	0.00%	0.00	11/01/13		0.0	
		0.00	0.00	1	05/01/15			
1937	Cooke Management Co	2,000.00	2,000.00	0.00	06/23/15		0.0	
d535	P. O. Box 808	0.00	2,000.00	0.0		06/01/15		
Current	Lake View, SC 29563	0.00	0.00%	0.00			0.0	
		0.00	0.00	1				
1943	KD (Takisha) Dunham C845	495.00	495.00	425.00	05/03/10	06/01/12	0.0	
c845	d/b/a Glammed Out	0.00	0.00	0.0				
Current	1943 Second Loop Rd.	0.00	0.00%	0.00	05/03/10		0.0	
	Florence, SC 29501	0.00	0.00	1	04/30/13			
1945	Joyce Kirven #525/D270	4,045.00	2,000.00	0.00	06/28/12	06/28/12	0.0	(843) 472-0704
d270	d/b/a Blush Ultra Lounge	2,045.00	0.00	0.0				
Current	1945 Second Loop Road	0.00	0.00%	0.00	06/28/15		0.0	
	Florence, SC 29501	0.00	0.00	1				
		9,140.00	6,445.00	2,375.00			0.00	
		2,695.00	2,000.00	0.00			0.00	
		0.00		0.00				
		0.00						

MOVED!

MIKE TIMMONS

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FIRST RELIANCE BANK

Appraisal Request

Cover Sheet

General Information (Loan Officer to Complete)	
Lender Name:	Allen Griffin
Applicant/Borrower:	Atlantic Regional LLC
Customer Contact Info:	Richard Cranford 843-845-7937
Property Address:	Sweet Briar Shopping Mall TMS 90029-01-014 (1935 Second Loop, Flor)
Appraisal Type:	**Residential:** ☐ Full (1004)* ☐ Drive-by (2055) ☐ AVM *Required for HPML **Commercial:** ☐ Self-Contained x Summary ☐ Restricted
Purpose:	x Market Value "As Is" ☐ Market Value "Subject to Completion" ☐ Market Value "At Stabilization" ☐ Quick Sale Value
Property Rights:	x Fee Simple Estate ☐ Leased Fee Estate ☐ Leasehold Estate
Appraisal Notice provided, if secured by 1st lien on 1-4 family dwelling?	☐ Yes ☐ No

Additional Information	
Date Needed:	Asap
Loan Type:	Commercial RE
Loan Amount:	845000
Loan Number (if applicable):	980114667
Sales Price (if applicable):	
Special Notes to the Appraiser: • Leases are through Joe Blanton & Company • Need breakdown on Land value within appraisal	

Flood Determination (Completed by Loan Operations Assistant)	
Date of Flood Determination	
Flood Insurance Required	☐ Yes ☐ No
If required, include amount of required flood insurance on determination and send to loan officer. Record date loan officer was notified	

1-4 Family, First Lien Appraisal Delivery Compliance (Completed by Loan Operations Assistant)	
Appraisal Notice signed within 3 business days of application?	☐ Yes ☐ No
Date Appraisal Received from AMC	
Acknowledgment / Waiver Form date	
Form signed 3 business days before closing? If no, contact Compliance	☐ Yes ☐ No

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Carmella Mention

From: Dale Porter
Sent: Wednesday, November 25, 2015 10:26 AM
To: Kimberly R. Yarborough; Melissa H. Wober; Robert F. Richardson; Jason Hucks
Cc: James V. Webb; Jess Nance; Carmella Mention; Dale Porter
Subject: FW: Atlantic Regional Partial Charge off
Attachments: doc04506120151125102212.pdf

Kim,
MLC approved the partial charge off of $385,000.00 on Atlantic Regional. Please process this partial charge off today with Accounting's approval.
Thanks,

Dale Porter
NMLS # 1092721
VP & Senior Loan Administrator
First Reliance Bank
NMLS # 411728
2170 West Palmetto Street
Florence, SC 29501
(843) 674-3211 Direct
(843) 319-8251 Cell
(843) 674-3296 Fax
(843) 674-3ASK Customer Care Center
DPorter@firstreliance.com

Check out our web Site: http://www.firstreliance.com/

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-----Original Message-----
From: scan@firstreliance.com [mailto:scan@firstreliance.com]
Sent: Wednesday, November 25, 2015 10:22 AM
To: Dale Porter
Subject: Atlantic Regional Partial Charge off

see attached

TASKalfa 300i
[00:c0:ee:81:26:0f]

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FIRST RELIANCE BANK

Update Memo

Officer:	**Dale Porter**
Customer:	**Atlantic Regional LLC**
Date:	**11/24/15**

Purpose:
Establish Partial Charge off on Atlantic Regional LLC.

Background:
Atlantic Regional LLC is the owner of a strip mall on Second Loop Road commonly known as Sweetbriar Shopping Center. The only guarantor of Atlantic Regional LLC is Richard C Cooke. The property has been in default for several months and as a result the bank has begun foreclosure action on the property. In October the bank was able to exercise its rights to rent rolls and collected its first rents of $9,617.61(two months rents). The rents should average approximately $4,500.00 per month depending on the amount of maintenance that might be required which will be deducted from the rents monthly. The foreclosure hearing date is scheduled for 12/2/15 with an anticipated sale date to be mid February 2016 since the bank is seeking a deficiency judgment.

Impairment Summary:

Trying to determine the highest and best use of the property, the bank has concluded that selling the property as a vacant commercial lot is the most cost effective solution. The bank ordered an as is value appraisal from Ernest R. English, Jr. State Certified General Real Estate Appraiser on October 8, 2015. The As-Is value was $760,000.00. When the bank saw the value, it then requested a land value appraisal that was accomplished on November 10, 2015. That value was $572,000.00. This meant that the building was only given a value of $188,000.00. With the deferred maintenance being over $500.000.00 or more the bank concluded that the best use of this property was to sell it as a vacant commercial lot.

Using the land value appraisal an Impairment Worksheet was prepared at Fair Value of Collateral (See Attached). Taking into consideration selling costs, Taxes, Insurance, legal costs, and other expenses the impairment result was

$384,724.76. Therefore we are recommending a partial charge off of $385,000.00.

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ASC 310-10 Impairment Worksheet
First Reliance Bank
November 23, 2015 12 Quarter

Borrower Name	Atlantic Regional, LLC
Loan Number	980114667
Impairment Status	Impaired With Specific Reserve

Method for Calculating Impairment:

X	Fair Value of Collateral
	Observable Market Price
	Discounted Cash Flow

Impairment Calculation:

Loan Balance	851,824.76

Appraisal Amount	572,000.00
Expected Market Depreciation	0.00
Expected Selling Expenses	42,900.00
Other Expenses	62,000.00
Prior Liens	0.00
Collateral Amount	467,100.00
Other Impairment Amount	0.00
Fair Value of Collateral	467,100.00

Required Reserve	384,724.76

Other Data:

Taxes and Insurance	20000
Repairs and Expenses	35000
Legal Costs	7000
Date of Impairment Analysis	10/20/2015
Original Appraisal Date	8/10/2006
Estimated Holding Period (In Months)	12
Original Appraisal Value	1250000
Valuation Source	External
Current Appraisal Date	10/8/2015
Collateral Dependent	No
TDR	Yes

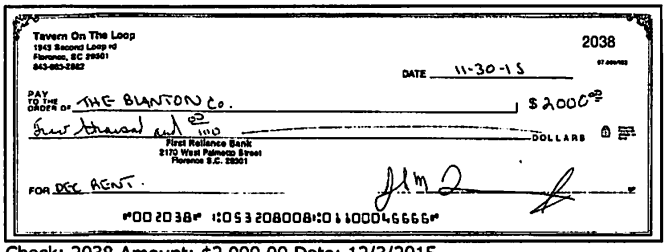
Comments:

11/20/15 - Received a Land only appraisal for $572,000.00. Re-worked analysis to reflect the current impairment. It appears the highest and best use is to sell as raw land which will require the demolishion of the current building. The expense to do that is estimated at $60,000.00 but should receive approximately $25,000.00 in rents between the time the bank takes ownership and it actually demolishes the building. Subtract the rents from the demolishion costs and it comes to the $35,000 listed in Repairs and Expenses. Taxes, Insurance, and Legal costs are self explanitory and estimated. The total other expenses comes to $62,000.00. Hearing scheduled for Dec 2nd and expect to take ownership of building mid first quarter 2016.

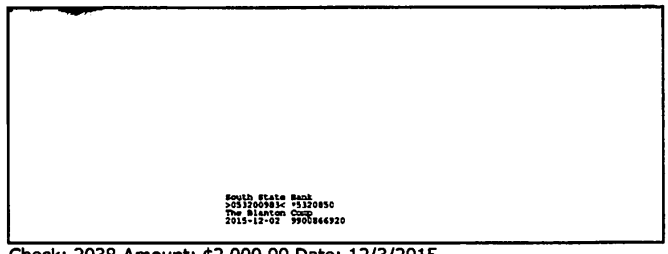
Admin Comment:

Printed 11/25/2015

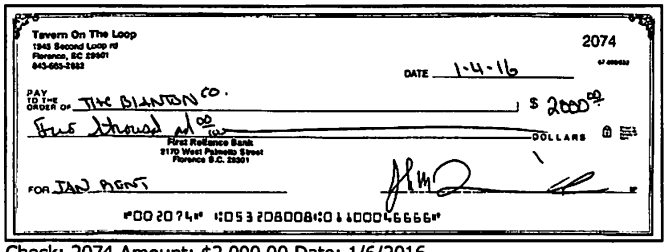
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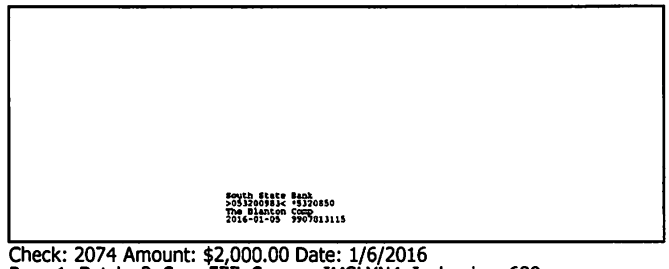
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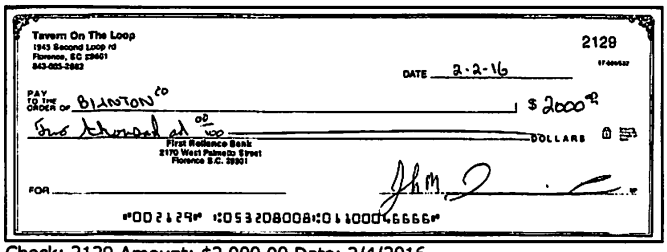
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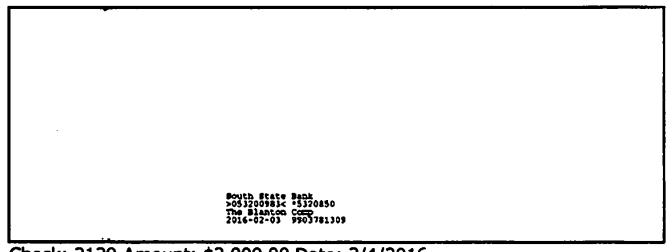
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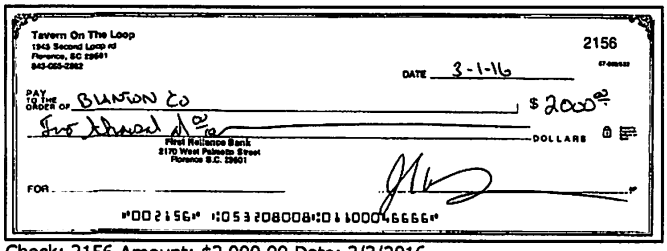
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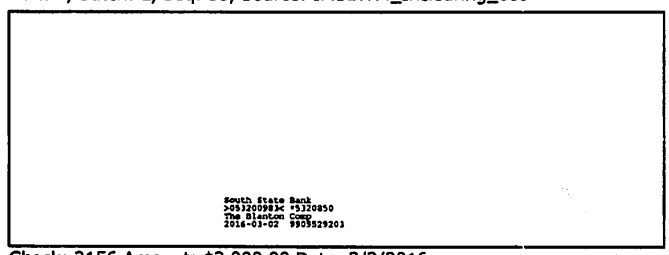
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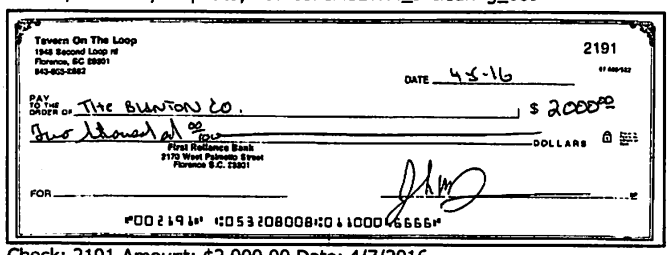
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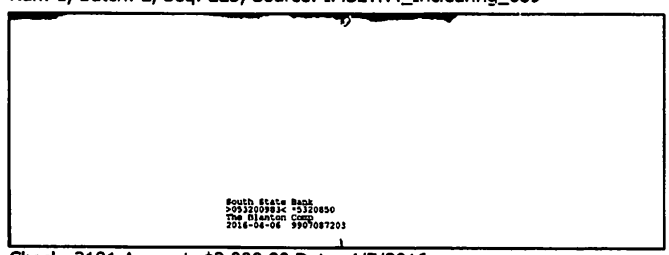
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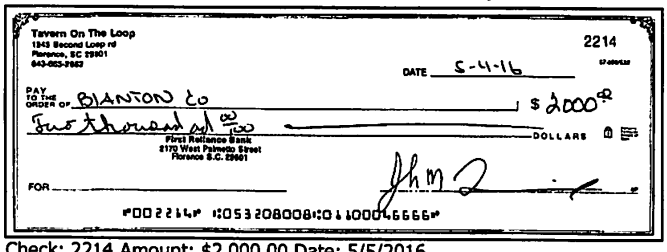
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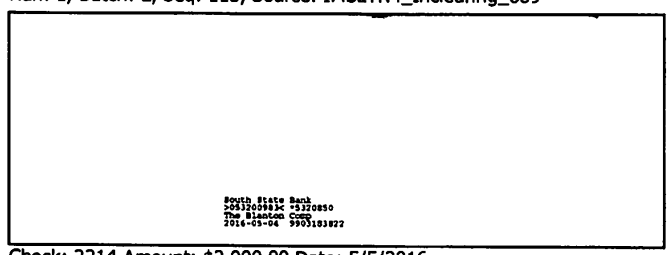
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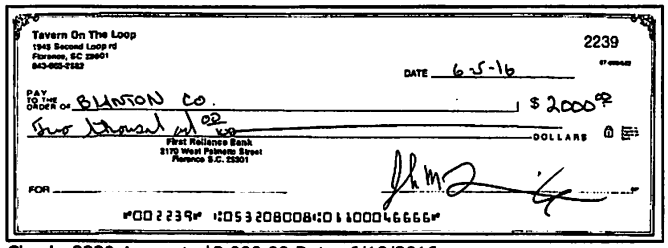
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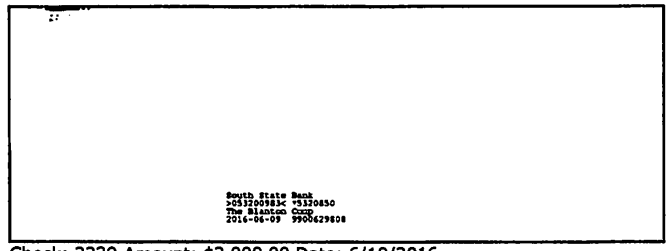
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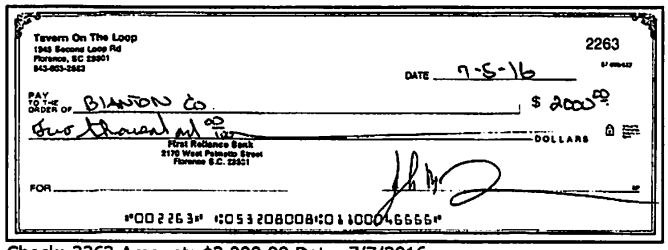
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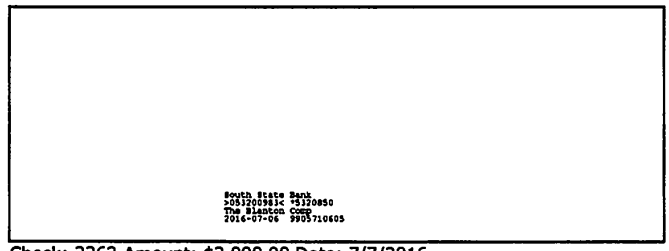
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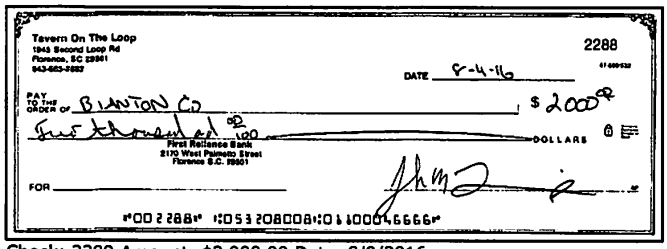
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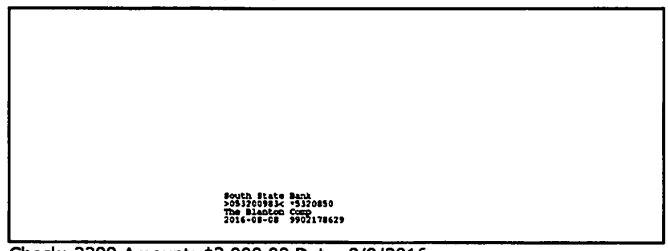
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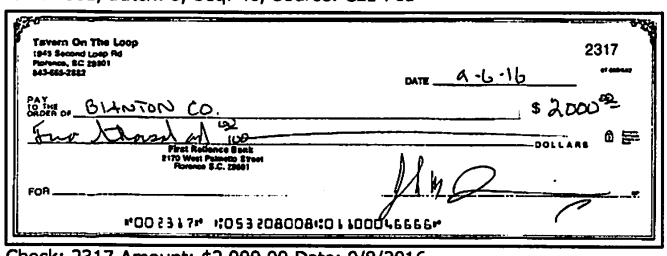
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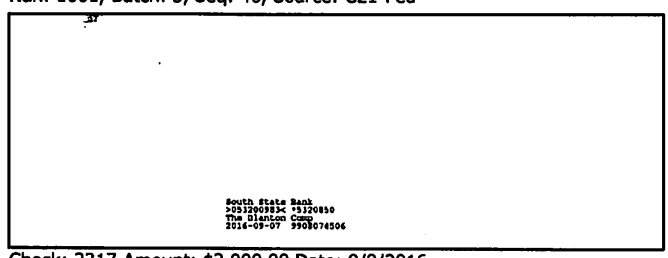
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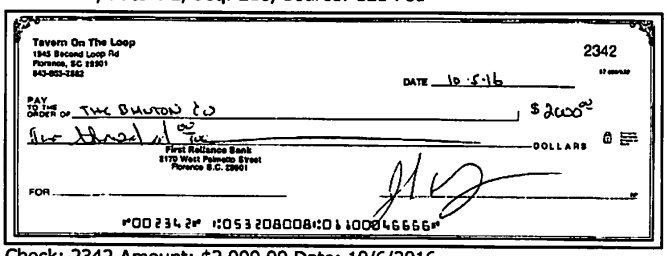
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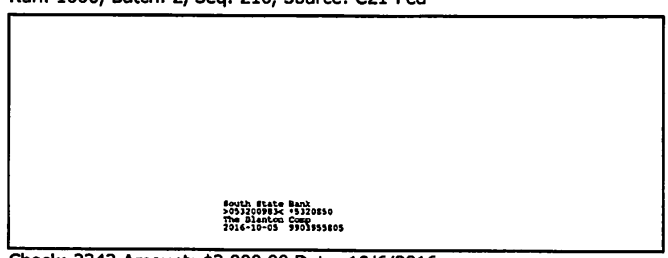
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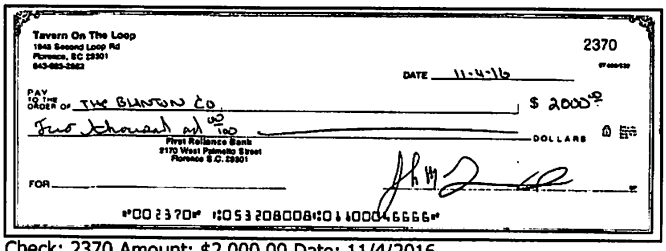
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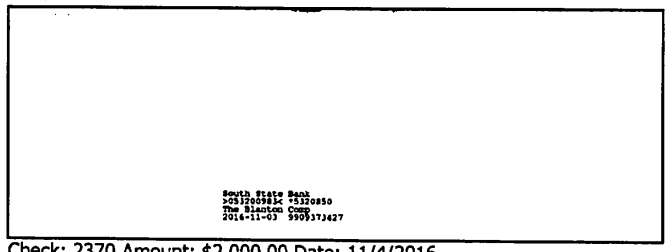
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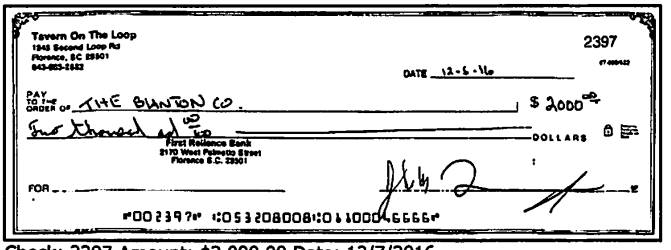


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Check: 2370 Amount: $2,000.00 Date: 11/4/2016
Run: 1000, Batch: 2, Seq: 268, Source: C21-Fed

0664


Tavern On The Loop
1945 Second Loop Rd
Florence, SC 29501
843-665-2662

2397

DATE 12-5-16

PAY TO THE ORDER OF THE BLANTON CO. $ 2000.00

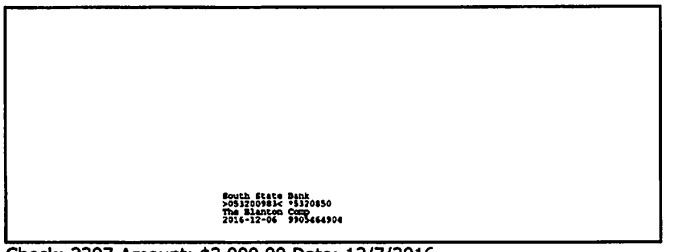
Two thousand and 00/100 DOLLARS

First Reliance Bank
2170 West Palmetto Street
Florence S.C. 29501

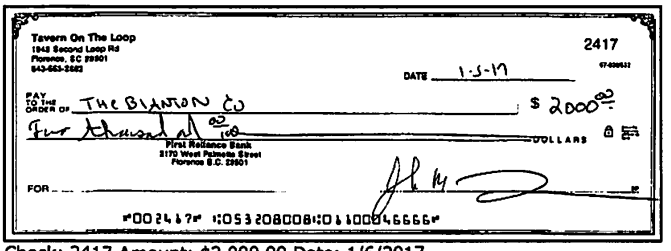
FOR

⑈002397⑈ ⑆053208008⑆0100046666⑈

Check: 2397 Amount: $2,000.00 Date: 12/7/2016
Run: 1001, Batch: 2, Seq: 430, Source: C21-Fed


South State Bank
⑆053208008⑆ ⑈320850
The Blanton Comp
2016-12-06 9903464904

Check: 2397 Amount: $2,000.00 Date: 12/7/2016
Run: 1001, Batch: 2, Seq: 430, Source: C21-Fed


Tavern On The Loop
1945 Second Loop Rd
Florence, SC 29501
843-665-2662

2417

DATE 1-5-17

PAY TO THE ORDER OF THE BLANTON CO $ 2000.00

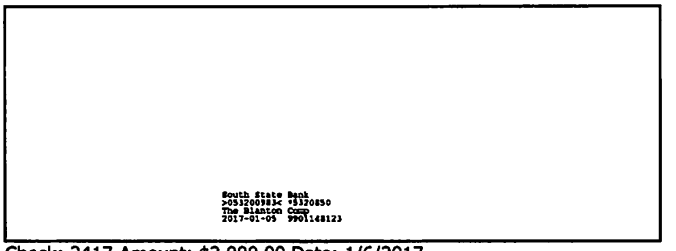
Two thousand and 00/100 DOLLARS

First Reliance Bank
2170 West Palmetto Street
Florence S.C. 29501

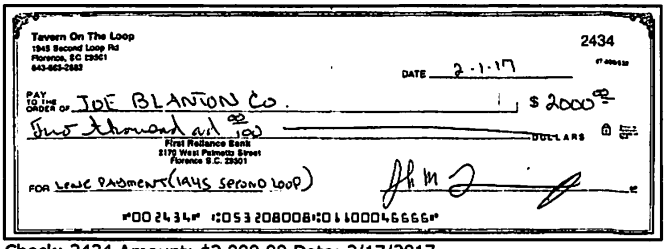
FOR

⑈002417⑈ ⑆053208008⑆0100046666⑈

Check: 2417 Amount: $2,000.00 Date: 1/6/2017
Run: 1000, Batch: 2, Seq: 516, Source: C21-Fed


South State Bank
⑆053208008⑆ ⑈320850
The Blanton Comp
2017-01-05 9901148123

Check: 2417 Amount: $2,000.00 Date: 1/6/2017
Run: 1000, Batch: 2, Seq: 516, Source: C21-Fed


Tavern On The Loop
1945 Second Loop Rd
Florence, SC 29501
843-665-2662

2434

DATE 2-1-17

PAY TO THE ORDER OF JOE BLANTON CO. $ 2000.00

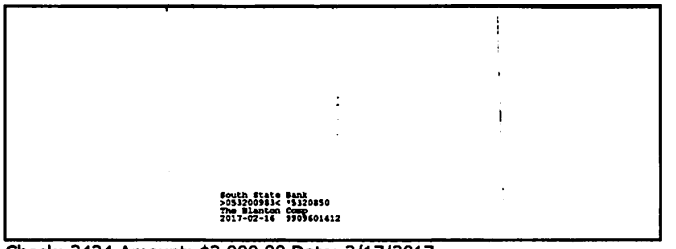
Two thousand and 00/100 DOLLARS

First Reliance Bank
2170 West Palmetto Street
Florence S.C. 29501

FOR Lease Payment (1945 Second Loop)

⑈002434⑈ ⑆053208008⑆0100046666⑈

Check: 2434 Amount: $2,000.00 Date: 2/17/2017
Run: 1000, Batch: 2, Seq: 408, Source: C21-Fed


South State Bank
⑆053208008⑆ ⑈320850
The Blanton Comp
2017-02-16 9903601412

Check: 2434 Amount: $2,000.00 Date: 2/17/2017
Run: 1000, Batch: 2, Seq: 408, Source: C21-Fed

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Page 1

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FLORENCE) CVA No. 2018-CP-22-00227

John Michael Timmons, Jr., d/b/a Tavern on the Loop,
Plaintiff,
vs.
First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, Individually,

Defendants.

CONTINUATION OF THE
DEPOSITION OF JOHN MICHAEL TIMMONS, JR.

DATE TAKEN: August 20, 2019

TIME BEGAN: 10:05 a.m.

TIME ENDED: 4:13 p.m.

LOCATION: Oxner & Stacy, P.A.
235 Church Street
Georgetown, SC 29440

REPORTED BY: Michele E. Starkey
Certified Shorthand Reporter
Notary Public for South Carolina

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*Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

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.....On behalf of the Defendants The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., and Joseph B. Blanton Individually

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Hoxner@oxnerandstacy.com

.....On behalf of the Defendants WW Plasma II, LLC and Hunter Williams

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lhoughton@carlockcopeland.com

.....On behalf of the Defendants First Reliance Bank and Dale Porter and F.R. Saunders, Jr.

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ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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this complaint.
A. Is that on the front page?
Q. You'll see it right here on the complaint.
A. Oh, oh, oh.
Q. JBJR. It should be on both.
A. I was under the thought process that that was what Mr. Blanton's company was called.
Q. Did you ever enter into any particular contract or any dealings with JBJR?
MR. LE CLERCQ: Object to the form of the question.
THE WITNESS: Can you repeat the question?
BY MR. ANDERSON:
Q. Let me see if I can rephrase the question so it won't be objectionable. Are you aware of any particular contract or business arrangement you may have entered into with JBJR?
MR. LE CLERCQ: Same objection, but you can answer.
THE WITNESS: I'm not aware, as I'm sitting here, of any business dealings that I had with a JBJR Enterprises. My --
BY MR. ANDERSON:

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Q. And let me make it also Joe Blanton and The Blanton Company. When you dealt with Joe Blanton and his company, The Blanton Company, were all those dealings with him primarily as a property manager? In other words, he was managing property that you were interested in?
A. Yes, sir.
Q. And in that role, do you know whether he owned any of the property, or was he basically managing it for an owner?
A. It was my understanding that he was managing all -- he may own some properties that I was not aware of, but it was my -- my understanding with Joe has always been that he was one that -- him and his company manages properties.
Q. Okay. Are you familiar with his operation?
A. I mean, I'm aware of what he does to make a living. I know that he's a property manager.
Q. All right. Does he have a large company, or is it just him and a couple of office workers or...
A. Him and two very sweet ladies.
Q. Okay. Do you consider him a friend?

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A. I do.
Q. Had you done business with him in your sign company or with your T-shirt company or anything of that nature or any other business entities?
A. I actually did do a sign for Joe on his building that he's at now, yes, sir.
Q. All right. Did he pay you for that work?
A. Yes, sir.
Q. Has he always basically kept his word to you in the past?
A. Yes, sir.
Q. When this particular lease -- issues came up with this lease, did Joe meet with you or talk to you about it?
A. When the issues started to arise?
Q. Right.
A. Yes, sir.
Q. What did he tell you?
A. He told me that he was very sorry that this had happened but that he felt like there was nothing for me to worry about because if the bank ever did sell the property, that anybody in their right mind would want to keep actually a tenant

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like myself that paid rent on time every time, was basically his philosophy.
Q. Did he go to bat for you on this transaction?
A. Did he go --
MR. LE CLERCQ: Object to the form.
BY MR. ANDERSON:
Q. Was he trying to assist you with staying in the property?
A. Best of my recollection, according to Joe, he was, yes, sir.
Q. Okay. Would you agree that his role was limited or at least his hands were kind of limited as far as what he could do since he didn't own the property?
MR. LE CLERCQ: Object to the form of the question.
BY MR. ANDERSON:
Q. And there can be objections throughout, and that's just -- he's asserting on the record for the court to later make a determination. But unless he tells you not to answer a question, you're still supposed to answer the question, okay?
A. Okay.
Q. So did you realize that Joe didn't own

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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LEGAL | MEDIA | EXPERTS

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Q. And so the answer to my question is yes. It would have been subsequent to February 4, 2016 that the bank got its proceeds for February?
A. Yes.
Q. Okay. In the bank's interrogatory responses, they state that they received rent payments on February the 20th -- I'm sorry -- rent proceeds on February the 24th, 2016. I believe that there was a check, and we'll find it -- that there was a check that was written by you on February the 17th, which was then forwarded to the bank and which went into their account on February the 24th, 2016.
Does that jog your recollection of the facts in this case? Does that sound correct to you?
A. It -- it goes with what our process is. Rents are due on the 1st. They're late after the 5th. After the 10th, they go to the magistrate's office.
We receive the rents, and then we do a close-out, because we manage so many properties, we can't send each individual a check as received. So the close-out probably was 15th, 16th or 17th of that month, as it always is. And we would, of course, send the proceeds to the bank or whoever

the owner happens to be.
Q. Okay.
(Off-the-record conference.)
(Mr. Oxner exited the deposition.)
BY MR. LE CLERCQ:
Q. So that would have been your standard procedure; that close-out occurred on 14th, 15th, 16th or 17th, and that subsequent to that time, the rent proceeds would have been sent to the bank?
A. That's correct.
Q. Okay.
A. It also has to do, also, with the days in the month, whether it be weekends, et cetera; so it's not always the exact same date.
Q. I'd like for us to look at -- do you recall that the Court actually entered an order appointing you as property manager in October of 2015? Do you recall that, Mr. Blanton?
MS. HOUGHTON: Object to form.
THE DEPONENT: I think that we already documented that, sir.
BY MR. LE CLERCQ:
Q. Okay. 46.
Do you recall that subsequent to the foreclosure sale occurring -- first of all, do you

recall that the foreclosure sale actually occurred on or about February 4 of 2016?
A. I'm not sure when it occurred.
Q. But you don't have any reason to doubt that statement. I'll represent to you that it occurred on February 4th of 2016.
A. I have no reason to doubt that.
Q. Okay. Subsequent to that time, do you recall getting a letter from the bank, and I will -- all right. It was attached as Exhibit N, like Nancy, to our Complaint.
And it's a letter from First Reliance Bank signed by Dale Porter dated February 8. And let me find it and I will hand it to you.
(Off-the-record conference.)
(A recess transpired from 4:15 p.m. through 4:25 p.m.)
(Mr. Oxner joins via phone.)
BY MR. LE CLERCQ:
Q. Okay, Mr. Blanton. We were talking about checks payments by Mr. Timmons to you with regard -- excuse me -- to the Blanton Company for his payments under the lease before the break.
And the court reporter has just handed you four exhibits, which are Exhibits 61, 67, 68 and 70.

(EXHIBIT 61, Blanton 000018, 02/31/2017 Oxner & Stacy Check to Blanton Co for Sweetbriar Closing, was marked for identification.)
(EXHIBIT 67, 02/08/2016 Letter to Blanton from Bank re All Lease Agreements are Extinguished, was marked for identification.)
(EXHIBIT 68, 02/26/2016 Letter from Blanton re All Leases are Extinguished, was marked for identification.)
(EXHIBIT 70, 12/23/2016 Email Chain, was marked for identification.)
BY MR. LE CLERCQ:
Q. And so Exhibit 61, will you please take a look at and tell me if you recognize that?
A. It's a check from Oxner Stacy, PA.
Q. And what's the amount?
A. Made payable to Blanton Company for $18,450.
Q. So would you agree with me that as a result of the sale of the company from First Reliance Bank to Plasma that you were paid a real estate commission?
A. Yes.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP, Plaintiff, v. FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227

SWORN AFFIDAVIT OF BRITT CAMPANA

1. My name is Britt Campana, I am 46 years old. I own several food/beverage/nightclub businesses in South Carolina, including "Fifteen 20 Entertainment Complex, located at 1520 West Palmetto Street, Florence, SC 29501; Mac's Lounge 115 W Camden Ave, Hartsville, SC 29550, and I am a few days from opening up the Dizzy Crab, a new seafood restaurant and sports bar located at 2015 W Evans Street, Florence, SC 29501.

2. I worked for a plastic company until 1996, but throughout the 1990s always wanted to open my own sports bar/restaurant/nightclub.

3. In the 1990s I went frequently (usually at least several times per month) to Shooters, a business in Florence that I believe was operated by Mike Timmons. I met Mike there, and he appeared to be in charge. Based on the huge crowds I regularly saw year after year in Shooters (more than 400-500 on busy nights), and the many years I went there regularly, it appeared to me to be successful. Shooters had live bands, a cover charge, good food, good music, and was a fun spot to watch sports.

4. Mike and I always talked when I went to Shooters. He was nice and we talked frequently about the business. I learned a lot from him about the business, and it made me think that I could open up my own place. I liked his concept, and wanted to open something like it.

EXHIBIT 42

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5. In 2003, I opened my own business, which was originally called "Spin." I have operated that business continuously since then (with one name change to "Fifteen 20 Entertainment Complex"). I have worked full time in the food/beverage/nightclub industry in Florence County since 2003. My profits have varied from month to month, but I have been profitable on an annual basis each year, and my annual profits have typically increased each year compared with the preceding year. I have also enjoyed the business a lot – – it puts you out there in the public eye and you meet interesting people.

6. My concept, similar to that I saw at Shooters and Tavern on the Loop, is in my opinion a good one for this area. It lets you capture the sports fans, the people that want to eat after work, and those that want to go out for food and drinks on the weekend, and dance afterwards. I've done it successfully in the same place for more than 16 years.

7. After Shooters, Mike ran Tavern on the Loop at its old location, at 1931 Second Loop Road, for many years. I went in there frequently also, always seeing and talking to Mike, and he appeared to be as successful there as he was at Shooters, judging by the crowds I saw regularly. By then I had opened my place, and Mike and I competed vigorously on everything from drink specials to entertainment.

8. I am familiar with "Block Rock" – an annual event that Mike ran for years in the 1990s, which was always one of the highlights of the summer season in Florence. Each time I went there were always huge crowds, usually in the thousands, with a lot of bands.

9. One of the things that I have done since I opened in 2003, is to make sure I keep up on what the competition is doing – – what they are serving, how much they are charging, what their entertainment is like, how their places look, how many people they draw, the type of customer they have, their parking, and that sort of thing. At least several times per month, and often at least once a week, I am out visiting other locations throughout Florence County and throughout the state.

10. As a result, and because of the huge amount of time I've devoted to making by business successful since 2003, I have learned a lot about this business, and what makes this sort of business work. I know the good locations in this area, the factors that go into making a place successful, typical costs, employee issues, parking, marketing and advertising, on site entertainment, overhead, profit margins, vendor relationships, and the like.

11. Mike opened Tavern on the Loop at its second location, 1945 Second Loop Road, in Fall, 2015.

12. From the time he opened the second Tavern on the Loop, I was very impressed with the large crowds I saw there. I went in there sometimes once a week, and at least several times a month for at least the first four or five months he was open. Mike and I always talked "shop."

13. Mike did a great job on the renovations at the second Tavern on the Loop. I had looked at the space before he started work--and it looked to me like at least a $200,000 renovation

job and upfit. I'm in the process of doing renovations for my new restaurant, so I'm well aware of what renovations cost.

14. The 1945 Second Loop location was excellent -- it was spacious inside with a big terrace. Second Loop Road has a lot of traffic, and the place had a nice entrance and good street/curb appeal. It also had a lot of parking. Milligan's was in that spot for years.

15. At some point after Mike had been open at 1945 Second Loop Road, during probably December, 2015 or January 2016, I decided that I wanted to try to buy Tavern on the Loop. I thought I could do well at that location. I had talked with Mike a lot by then, and I had seen the huge crowds that he had on weekends (including Thursday night). I regularly saw at least 200-300 people, and on some nights more than that.

16. In late 2015 or early 2016, I offered to buy Tavern on the Loop from Mike for $250,000, with $150,000 to be paid up front in cash, and $100,000 to be paid over 24 months. I had the cash on hand. I was seriously interested, and had he accepted I would have purchased it immediately.

17. Based on the crowds that I saw there, and my observations as to the purchases being made, I estimated the value of Tavern on the Loop as at least $15,000 per month of net profit, with potential for significantly more, based on its prime location. In coming to that determination I didn't factor in any start-up/upfit costs, since it looked to be a "turnkey" purchase. When I was evaluating Tavern on the Loop as a business to purchase, I looked closely at the number of people I saw there, and then I calculated the amount of profit I thought I would make, and how quickly I could pay off the purchase price. I can tell from my years of experience what the number of customers means to the bottom line—how much they are purchasing in food and drinks, what the overhead is, the costs of items sold, etc. For example, I was at Tavern on the Loop multiple nights in 2015 and 2016 when there were more than 350--400 people there—in my experience that translates into at least $5,000--$6,000 gross sales (average of $15 per head is conservative) and $2,000-$2500 in profit, based my normal profit margin of 35-40%. I believed I could do those kind of numbers or better at least seven or eight times a month, which is why I offered to buy it.

18. In this case, I believed that I would be able to pay off the $250,000 purchase price quickly. Actually, given the big business I saw at the Tavern on the Loop when I visited it regularly in 2015 and 2016, I thought at the time that I be able to pay it off in 12 to 18 months, but I was certain that I would've been able to pay it off in the first 24 months without any problem, or I wouldn't have offered to buy it. I was buying for the long term, not with the idea of "flipping" it quickly.

19. Mike did not appear to me to be particularly interested in selling, since he declined my offer. I reiterated my offer and couple more times on subsequent nights, but he declined.

20. Beginning in February 2016, and particularly when the huge for sale signs were put up, Tavern on the Loop's business appeared to me to dry up quickly—it almost seemed like overnight. On the nights I went in after the signs went up business was way down, with many fewer customers, and frankly I was secretly happy that Mike had declined my offer—but did not

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tell him that. Florence is a small town, and in my experience, bad news travels fast--if the word gets around that a place is having troubles, like being evicted/torn down, customers stop coming--and that is what appeared to me to happen to Tavern on the Loop. I heard people say that Tavern on the Loop was going to be torn down and turned into apartments, or something else put there. In fact, it did get torn down, so the rumors turned out to be correct.

21. In my experience, employees in this business do not want to work for a place that appears to be failing or going out of business, and they tend to go to the places that appear to be successful, with lots of customers.

22. My opinion of Mike as a business owner went down considerably as a result of the failure of Tavern on the Loop. Prior to that happening, I had always admired him, as a worthy competitor, based on my high opinion of Shooters and the original Tavern on the Loop.

FURTHER AFFIANT SAYETH NAUGHT.

I swear, affirm and declare under penalty of perjury that the statements made herein are true, correct and accurate to the best of my personal knowledge, information and belief.

Britt Campana

State of South Carolina
County of

On this, the 9 day of December, 2019, before me a notary public, Britt Campana personally appeared before me, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing statements, declarations and affirmations, and that he executed the same for the purposes therein contained. In witness hereof, I hereunto set my hand and official seal.

CHRISTOPHER RYON NOTARY PUBLIC SOUTH CAROLINA COM. EXP. 7-13-2026

Notary Public

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Amended

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 **CP-21-2106**

First Reliance Bank	Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles
PLAINTIFF(S)	DEFENDANT(S)

2015 DEC -4 AM 10:38

Submitted by: Ray Coit Yarborough, Jr.	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : Judgment of Foreclosure and Sale

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First Reliance Bank	Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles	$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
3.28 acres
TMS# 90029 01 014

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

Steven G. Mikell, Special Referee — 12-3-15

Exhibit 43

0674

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Circuit Court Judge	Judge Code	Date

For Clerk of Court Office Use Only

This judgment was entered on the 4 day of December, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of December 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

R. Harborin Jr. (Grand Cl.)
PO Box 4168
Florence, SC 29502
ATTORNEY(S) FOR THE PLAINTIFF(S)

S. Mikell (Sp. Ref.)
909 W. Evans St.
Florence, SC 29501
Court Reporter:

G. Speedy
PO Box 100
Conway, SC 29021
ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Reid-Thurmon
CLERK OF COURT

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-21-2106

FILED
2015 DEC 1 3

First Reliance Bank

PLAINTIFF(S)

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles

DEFENDANT(S)

Submitted by: Ray Coit Yarborough, Jr.	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment of Foreclosure and Sale

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
First Reliance Bank	Atlantic Regional, LLC	$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:
3.28 acres
TMS# 90029 01 014

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

~~Circuit Court Judge~~ Steven G. McKell
Special Referee for Florence County

Judge Code

12-2-15
Date

SCRCP Form 4C (10/2011)

0676

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For Clerk of Court Office Use Only

This judgment was entered on the 3 day of December, 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 4 day of December 20 15 to attorneys of record or to parties (when appearing pro se) as follows:

R. Yarborough Jr. (Third Cir.)
PO Box 4198
Florence, SC 29502
ATTORNEY(S) FOR THE PLAINTIFF(S)

S. Mikell (Sp. Ref.)
401 W. Evans St.
Florence, SC 29501
Court Reporter:

G. Speed
PO Box 100
Camden, SC 29021
ATTORNEY(S) FOR THE DEFENDANT(S)

Connie Bell-Shavis
CLERK OF COURT

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CA# 2015-CP-21-2106

First Reliance Bank,

Plaintiff,

vs.

JUDGMENT OF FORECLOSURE AND SALE

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendant.

Pursuant to Rule 53 SCRCP, the above captioned action was referred to me to make appropriate findings of fact and conclusions of law with authority to enter a final judgment. Pursuant to the Order of Reference, I conducted a merits hearing on December 2, 2015 attended by Mr. Ray Coit Yarborough, Jr., Attorney for Plaintiff. All parties were served with Notice of the Hearing. Plaintiff presented testimony from which I find the following:

FINDINGS OF FACT

1. The Summons, Complaint and Lis Pendens were filed on July 20, 2015.

2. The Defendants were duly served and all but Russell C. Cobb are in default. Mr. Cobb filed an "Answer and Counterclaim" but the pleadings indicate that he merely answered the Complaint.

3. The individuals in default are not in the military service as contemplated under the Soldiers and Sailors Civil Relief Act (50 USC App. 520). The property is not subject to the Home Affordable Modification Program (HMP), and no "intervention" is required pursuant to the Administrative Order of the South Carolina Supreme Court dated May 2.

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2011.

4. For value received, Atlantic Regional, LLC, made, executed and delivered to First Reliance Bank a certain note August 14, 2006 in the original principal amount of $1,073,420.00, together with interest on the unpaid balance payable in installments. The note was renewed on November 17, 2014 when Atlantic Regional, LLC, through its authorized agent, made, executed and delivered to First Reliance Bank whereby it promised to pay First Reliance Bank the principal sum of $843,013.19, together with interest on the unpaid balance payable in installments. Other terms and conditions are stated in the note which is of record herein.

5. To secure payment of the note, on August 14, 2006, Atlantic Regional, LLC made, executed and delivered a mortgage to First Reliance Bank encumbering real property located in Florence County which is described as follows:

All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic Regional, LLC, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.

TOGETHER with easement over and across a strip of land being 12 feet wide and shown as "12' easement area" on the above referenced plat and conveyed to the Mortgagor herein by instrument of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.

TOGETHER with property shown as "Sign Area (Not Inc. in Timmons-Lamb Survey)" being conveyed to the Mortgagor herein by Quit-Claim Deed of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.

SUBJECT HOWEVER TO the terms and conditions of the Sign Usage and Maintenance Agreement attached to the above described Quit-Claim Deed as Exhibit A.

This being the same property conveyed to the Mortgagor herein by deed of The Florence Group, LLC, said deed being recorded in the office of the Clerk of Court for Florence

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County simultaneously herewith.

6. The mortgage was recorded in the office of the office of the Clerk of Court for Florence County on August 16, 2006 at 8:29 a.m. in Book B33 at page 72 and constitutes a **first** mortgage lien on the subject property.

7. To secure payment of the note, on November 17, 2014, Richard C. Cooke made, executed and delivered a mortgage to First Reliance Bank encumbering real property located in Horry County which is described as follows:

Parcel One:
All that certain piece, parcel or tract of land lying, being and situate in, State of South Carolina, County of Horry, and in Little River Township, being designated as Lot Two (2), in Block Eleven (11) of the Cherry Grove Beach Development as shown on plat recorded in Plat Book 2 at Page 191 in the Office of the Register of Deeds for Horry County.

This conveyance is made subject to any and all recorded rights-of-way, easements, conditions, restrictions, and zoning ordinances pertaining to the foregoing and/or which may appear from an inspection of premises.
TMS: 145-05-31-010

Parcel Two:
All and singular, all that certain piece, parcel or lot of land, with improvements located thereon, lying, situate and being in the Cherry Grove Beach Section, Town of North Myrtle Beach, Little River Township, Horry County, South Carolina being designated as Lot Three (3), Block Eleven (11) of the Cherry Grove Beach Development as shown upon a map of said property recorded in Plat Book 12 at Page 113, Office of the Register of Deeds for Horry County, reference to which is made as forming a part of these presents. Included in the conveyance are all furniture, fixtures, and equipment located in the within described premises. This conveyance is subject to restrictive covenants of the Cherry Grove Beach Development appearing of record.

TMS: 145-05-31-033

Parcel Three:
All and singular, all that certain piece, parcel or lot of land, situate, lying and being in the State of South Carolina, County of Horry, and in the Little River Township, being designated as Lot Four (4), Block Eleven (11) on the East by Sixth Avenue, now known as 29th Avenue North; on the South by Front Street, now known as North Ocean Boulevard; and on the West by Lot Three (3),
This conveyance is made subject to any and all recorded rights-of-way, easements,

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conditions, restrictions, and zoning ordinances pertaining to the foregoing and/or which may appear from an inspection of premises.
This conveyance is subject to restrictive covenants of the Cherry Grove Beach Development appearing of record.

TMS: 145-05-31-032

This being the same property conveyed to Richard C. Cooke by deed of Edgar Kendall Foster October 3, 2013 in the Office of the Horry County Register of Deeds, in Deed Book 3688 at Page 2297.

8. The mortgage was recorded in the office of the office of the RMC for Horry County on November 24, 2014 at 2:54 p.m. in Book 5637 at page 799. However, prior to the hearing, Plaintiff's agent, Dale Porter indicated that he wished to release the property from this action without prejudice to bring a separate action to foreclose the Horry County property at a later time.

9. On August 14, 2006, Richard C. Cooke, Russell C. Cobb and Jerry A. Nettles, for consideration, made, executed and delivered unconditional personal guaranties in favor of First Reliance Bank personally guaranteeing payment of the note.

10. Payment due on the note has not been made as provided for therein, and the Plaintiff, as a holder thereof, has elected to accelerate the payment of the entire indebtedness and has placed the note and mortgage in the hands of an attorney for collection.

11. The note provides for reasonable attorney's fees when the note is placed in the hands of an attorney for collection. I find the sum of $15,000.00 is a reasonable sum to allow as attorney fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action.

12. The amount due and owing on the note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee, is as

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follows:

(a) Principal Due (12/02/2015)	$	824,870.72
(b) Interest	$	19,866.15
(c) Late fees	$	2,263.80
(d) Tax/ Appraisal/ Expenses	$	24,474.65
(d) Attorney's Fees	$	15,000.00
(e) Suit Costs	$	747.65
TOTAL DEBT	**$**	**887,222.47**

13. The Plaintiff demands deficiency judgment against the defendants.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure against Atlantic Regional, LLC, Richard C. Cooke, Russell C. Cobb and Jerry A. Nettles, for the **TOTAL DEBT**, stated above, and sale of the mortgaged real property. The mortgaged property should be ordered sold at public auction after due advertisement. The sale shall be made subject to taxes and assessments, any restrictions or easements of record on the day of such sale. After making the required deposit the successful bidder at the sale shall be required to pay interest at the rate of 7.25% from date of sale to the date of compliance.

2. The proceeds arising from such sale should be applied, first, to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Plaintiff's judgment and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further order of the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

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1. That the property described in Paragraph 7 above be released from this action without prejudice, and Plaintiff may, provided there remains an obligation, bring a separate action to foreclose the Horry County property at a later time, and the Clerk of Court for Horry County is hereby directed to cancel the Lis Pendens on file for this action in Horry County designated as 2015-LP-26-1277.

2. That Plaintiff have judgment of foreclosure against Atlantic Regional, LLC on the obligation and mortgage as set forth in the Complaint for the sum of $887,222.47, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

3. The amount due in the preceding paragraph shall constitute the total judgment debt due the Plaintiff and shall bear interest at the rate of 7.25% per annum.

4. That the Defendants liable for the aforesaid mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

. That on default of payment at or before the time herein indicated, the mortgaged property described in the Complaint, as hereinafter set forth, be sold by the undersigned, at public auction in the foyer of the Florence County Courthouse, 180 North Irby Street, Florence, South Carolina, at some convenient sales day and hour, or on some convenient sales day thereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned Special Referee will require a deposit of five percent (5%) on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within

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thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. The sale shall be subject to taxes and assessments, existing easements and restrictions of record. C. Purchaser to pay for deed stamps and costs of the recording of the deed. If Plaintiff is the successful bidder at the sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the undersigned only the amount of costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

5. Personal or deficiency judgment having been demanded, the bid will remain open for a period of 30 days after the sale and the liability of the guarantors, Richard C. Cooke, Russell C. Cobb and Jerry A. Nettles, will be determined in the Report on Sale and Order for Deficiency Judgment if any deficiency exists on the obligation after the sale.

6. That the undersigned will by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and the Special Referee will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that is, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Special Referee may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

7. That the undersigned will apply the proceeds of sale as follows: FIRST: to the payment of the amount of the costs and expenses of this action; SECOND: to the

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payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the purchase money will pay on same, and; NEXT: Any surplus will be held pending further order of this Court.

8. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein and all person whomsoever claiming under him, them or it be forever barred and foreclosed of all right, title, interest, and equity in redemption in the said mortgaged premises so sold, or any part thereof.

9. The following is a description of the real property ordered to be sold:

All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic Regional, LLC, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.
TOGETHER with easement over and across a strip of land being 12 feet wide and shown as "12' easement area" on the above referenced plat and conveyed to the Mortgagor herein by instrument of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.
TOGETHER with property shown as "Sign Area (Not Inc. in Timmons-Lamb Survey)" being conveyed to the Mortgagor herein by Quit-Claim Deed of John M. Timmons, Jr. and Charles E. Lamb recorded simultaneously herewith.
SUBJECT HOWEVER TO the terms and conditions of the Sign Usage and Maintenance Agreement attached to the above described Quit-Claim Deed as Exhibit A.
This being the same property conveyed to the Mortgagor herein by deed of The Florence Group, LLC, said deed being recorded in the office of the Clerk of Court for Florence County simultaneously herewith.

10. The Blanton Company will be released from any further obligation under the Order of the Court filed October 2, 2015 when the property is conveyed to the purchaser at the sale.

Florence, South Carolina

Special Referee for Florence County

December 2, 2015

2015 DEC -3 PM 2:58

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CA# 2015-CP-21-2106

First Reliance Bank,

Plaintiff,

vs.

RECORD OF PROCEEDING

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendant.

2015 DEC -3 PM 2:58

Florence, South Carolina –December 2, 2015

Pursuant to the Order of Reference granted in the above entitled action, a Reference was held before the Honorable Steven G. Mikell as Special Referee for Florence County on the 2nd day of December, 2015 at 10:00 a.m. attended by Ray Coit Yarborough, Jr., Plaintiff's attorney. The original Summons, Complaint, and Lis Pendens in the Office of the Clerk of Court for Florence on July 20, 2015. Plaintiff provided proof that all defendants were duly served and all but Russell C. Cobb are in default, and that the individual defendant(s) in default were not in the military service. An affidavit declaring this action exempt from the HMP and from the Administrative Order of the South Carolina Supreme Court dated September 18, 2015 was filed with the suit, and no defendant contested its validity. Copies of the original note and mortgage are attached to the Summons and Complaint. It appears that Atlantic Regional, LLC executed a note in the amount of $1,073,420.00, in favor of First Reliance Bank on August 14, 2006. That same day, Atlantic Regional, LLC gave First Reliance Bank a mortgage to secure the debt. The mortgage was recorded in the office of the Clerk of Court for Florence County, South Carolina, August 16, 2006 in Book B33 at page 7 and constitutes a first lien encumbering the property. Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles personally guaranteed payment of the debt. The note, mortgage and guarantees make provisions for default, and it appears that the

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debtors did not pay as agreed. The action was turned over to Mr. Yarborough for collection. Upon examination of the records in said Clerk's office, it appears there were no liens unaddressed in this action other than real estate taxes for Florence County as of the date of filing the Notice of Pendency of this action.

The installments as provided for in said note and mortgage were not paid according to the terms and conditions thereof, and, therefore, the note and mortgage are in default; and, as a result thereof, the balance of the note is due and payable. There is now due and owing on the Plaintiff's note and mortgage the following:

(a) Principal Due (12/02/2015)	$	824,870.72
(b) Interest	$	19,866.15
(c) Late fees	$	2,263.80
(d) Tax/ Appraisal/ Expenses	$	24,474.65
TOTAL DEBT	**$**	**871,475.32**

REFERENCE ADJOURNED.

c:\users\hp\dropbox\foreclosure\fcb vs atlantic regional judgment of foreclosure and sale 2015.docx

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STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CA# 2015-CP-21-2106

First Reliance Bank,

Plaintiff,

vs.

AFFIDAVIT OF ATTORNEY FEES

Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles,

Defendant.

2015 DEC -3 PM 2:58

PERSONALLY APPEARED BEFORE ME, the undersigned, Ray Coit Yarborough, Jr., who first being duly sworn, deposes and states that he is a sole practitioner and represents the Plaintiff in the following collection action: First Reliance Bank vs. Atlantic Regional, LLC, Russell C. Cobb, Richard C. Cooke and Jerry A. Nettles, CA # 2015-CP-21-2106. I have assumed responsibility for the institution of this action, reviewed all of the loan documents, had title to the property examined, prepared or will prepare the following: Summons, Complaint, Lis Pendens, Affidavit of Default, Judgment of Foreclosure and Sale, Transcript of Hearing and Notice of Sale. I arranged for service of process on the Defendants, had conferences with the Plaintiff regarding the suit. I spent time reviewing account information in preparation for the hearing. I will be responsible for preparation of any other documents that will be necessary to conclude this particular action. I have been involved in this action and have 30 years experience in the field of foreclosure and collection. I have spent or will spend approximately 35 hours on this file. I bill an average of $250.00 for my time. The loan documents contain provisions for reasonable attorney's fees when the loans were turned over to an attorney for collection. In determining its attorneys fees, the undersigned requests that the court consider the facts set forth in Blumberg vs. Nealco, 427 SE2d 659 (1993) and its progeny. I spent $747.65 in costs to file and prosecute this suit which included $150.00 for the Clerk's filing fee, $487.65 in service fees, $60.00 for courier fees, and $50.00 motion fee.

SWORN TO AND SUBSCRIBED before me this 2nd day of December, 2015.

Notary Public for South Carolina

Ray Coit Yarborough, Jr.

My Commission Expires: 8-26-25

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JB JR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DEFENDANT FIRST RELIANCE BANK, INC.' S SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES**

TO: BEN LE CLERCQ, ESQUIRE AND DAVID ASHLEY, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant First Reliance Bank, Inc. ("this Defendant") reserving the right to supplement and/or amend, hereby answers Plaintiff's First Interrogatories, as follows.

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: In addition to the parties to this action, these Defendants have identified the following persons responsive to this Interrogatory:

- **Employees of First Reliance Bank ("the Bank") who were involved with the foreclosure upon the shopping center which forms the basis of this action ("Subject Property") and subsequent sale include former employees Jess Nance and Defendant Dale Porter, who may be contacted through the undersigned counsel. These individuals have knowledge regarding the Bank's actions with respect to the Subject Property, nature of the Bank's relationship with The Blanton Company, Inc. and/or Joseph Blanton, and any communications with**

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employee discuss the issue with any other current or former bank employees? Describe in particularity all communications related to such issue, between any Bank Defendants and/or with third parties, and state whether they occurred by email, text message, telephone, letter, fax, or otherwise.

ANSWER: These Defendants object to the extent this Interrogatory seeks documents protected by attorney-client privilege and/or work product doctrine. Subject to and without waiving the foregoing, the referenced language refers to a statement made in a pleading in Florence County Court of Common Pleas Case No. 2015-CP-21-21. These Defendants dispute that the Bank "retain[ed] the Blanton Company as property manager" at the time of the referenced-document. Dale Porter and Jess Nance were the Bank's employees involved in making decisions relating to the foreclosure and exercise of the Bank's rights under the Assignment of Rents from Atlantic Regional, LLC.

SECOND SUPPLEMENTAL ANSWER: Subject to and without waiving the foregoing objections, Exhibit J to Plaintiff's Complaint is a Court Order from the Court of Common Pleas for Florence County dated October 2, 2015, granting this Defendant's motion for an order to pay rents to this Defendant. The Court states in its order "plaintiff proposes that the current property manager, the Blanton Company, remain property manager, but that all rents collected be paid over to plaintiff pursuant to the terms of the assignment until this action is concluded." As stated above, Dale Porter and Jess Nance made all decisions pertaining to the foreclosure of the Subject Property, including the decision to propose that Blanton remain property manager of the property during the pendency of the foreclosure proceeding. Mr. Porter primarily made this decision, and Mr. Nance was his supervisor. As stated above, this Defendant disputes that this Defendant "retain[ed] the Blanton company as property manager" at that time. This Defendant has not located any non-privileged communications related to this decision.

As to all funds received from Blanton representing Subject Property rents, this Defendant states:

Rental Payments Received from The Blanton Company	Date Received	Posted To Atlantic Regional, LLC loan Account 980114677	Posted To OREO Rental Income GL 98-496837
$9,616.61	10/23/2015	X	
$1,369.16	11/27/2015	X	
$1,900.00	11/27/2015	X	
$4,544.79	12/29/2015	X	
$4,612.30	1/28/2016	X	
$4,367.95	2/24/2016	X	on 5-10-2016 moved to OREO Rental Income GL-

This 4th day of October, 2019.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: _____
D. GARY LOVELL, JR.
State Bar No.: 69293
LACEY L. HOUGHTON
State Bar No.: 102968
Attorneys for Defendants First Reliance Bank; Dale Porter; and F.R. Saunders, Jr.

40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
glovell@cskl.law
lhoughton@cskl.law
Ph: 843-727-0307

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing ***Defendants First Reliance Bank, Inc.'s Second Supplemental Answers to Plaintiff's First Interrogatories***, upon all parties to this matter by electronic mail and/or regular U.S. mail, proper postage prepaid, addressed to counsel of record as follows:

Ben Le Clercq, Esq.
David Ashley, Esq.
Le Clercq Law Firm
708 South Shelmore Blvd., #202
Mt. Pleasant, SC 29464
Ben@LeClercqLaw.com
David@LeClercqLaw.com
Counsel for Plaintiff

David Allen Anderson, Esq.
Richardson Plowden
P.O. Drawer 7788
Columbia, SC 29202
danderson@richardsonplowden.com
Counsel for Defendants The Blanton Company, Inc.; JBJR Enterprises, Inc; and Joseph B. Blanton

Jeffrey L. Payne, Esq.
Turner Padget
P.O. Box 5478
Florence, SC 29502
jpayne@turnerpadget.com
Counsel for First Reliance Bank, Inc.; and Dale Porter

Harry A. Oxner, Esq.
Oxner & Stacy, P.A.
P.O. Box 481
Georgetown, SC 29442
Hoxner@oxnerandstacy.com
Counsel for Defendants W.W. Plasma, III, LLC and Hunter Williams

This 4th day of October, 2019.

Teri Rentz

Legal Assistant II for D. Gary Lovell, Jr. and Lacey L. Houghton

Copeland, Stair, Kingma & Lovell, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401-3531
Ph: 843-727-0307

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **VERIFICATION**

Personally appeared before the undersigned officer, authorized to administer oaths, Jeremy R. Groom on behalf of Defendant First Reliance Bank, Inc., who after being duly sworn, states that the facts contained in *Defendant First Reliance Bank, Inc.'s Second Supplemental Answers to Plaintiff's Interrogatories*, are true and correct to the best of his knowledge, information and belief.

I certify that First Reliance Bank, Inc. has reasonably reviewed all communications, via hard copy document and by electronic means, which are responsive to Plaintiff's Interrogatories and Requests for Production to First Reliance Bank, Inc. and produced the same.

Signatures on next page

This 4TH day of OCTOBER, 2019.

First Reliance Bank, Inc.

By: Jeremy A. Groom
(printed name)

Its: SVP, Compliance & Risk Management
(title)

SWORN TO and subscribed before me,
this 4 day of October, 2019.

Mary Neale Fowler
NOTARY PUBLIC
Florence, South Carolina
(SEAL)

Notary Public for the State of South Carolina
My Commission Expires: 6/26/23

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TBC

THE BLANTON COMPANY

Property Management - Real Estate

February 26, 2016

Attn: Sweetbriar Tenants

Dear Lessees,

It is with much regret that I write this letter. I have enclosed a copy of First Reliance Bank's letter to me. I sincerely wish I had an answer for this, but legally, I do not. Feel free to call me and I will try to answer your questions. You need to continue to pay your lease payments to The Blanton Company as scheduled.

Again, I am sorry to forward this information, but I have no choice. I would assume that any new buyer would want to continue your leases. I will stay in touch.

Sincerely,

Joseph B. Blanton
Broker-in-Charge

Enclosure

126 S. COIT STREET FLORENCE,S.C. 29501 * 843/662-2557 *

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FIRST RELIANCE
BANK

February 08, 2016

Joe Blanton
The Blanton Company
126 S. Coit Street
Florence, SC 29501

Dear Mr. Blanton,
This letter is to notify you that Atlantic Regional, LLC is no longer the owner of what is commonly known as The Sweet Briar Shopping Center located at 1935 Second Loop Road. On February 4, 2016 at twelve noon at the Florence City County Complex, the property was held for public auction due to the foreclosure action between First Reliance Bank vs. Atlantic Regional, LLC. First Reliance Bank was the high bidder at that auction and now is the new owner.

As a result of that sale, **all agreements** (lease or otherwise) with Atlantic Regional and occupants related to the Sweat Briar Shopping Center **are extinguished**. The bank would like to enter into month-to-month lease agreements with the current tenants until it has opportunity to explore purchaser opportunities. We would also like to employ your firm to assist the bank with these agreements and the management of this property while the bank finds a purchaser. If a future purchaser wishes to enter into long term leases with any of the current tenants that will be between them and the tenants with the change of ownership. However, if the bank finds a purchaser that wishes to use the property for some other purpose then the bank cannot put itself in a position not to be able to accommodate that purchaser's wishes.

We appreciate your willingness to assist us in this matter and if you should have any questions please do not hesitate to contact me.

Sincerely,

Dale Porter,
VP & Senior Loan Administrator
First Reliance Bank
2170 W. Palmetto St.
Florence, SC 29501
843-674-3211

CC: Carmella Mention
Jess Nance

0697

EXHIBIT "E"

Rhonda McDaniel

From: Dan Stacy
Sent: Wednesday, January 04, 2017 10:47 AM
To: Hunter Williams
Cc: Rhonda McDaniel
Subject: RE: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc

I left you a voice mail, but got a call today from an atty representing the bank on your Florence deal indicating they want to close next week. To work to that goal I have a few questions:

1. Did you get your new survey and if so, can you send me one.
2. Is everyone that will have to sign going to be around?
3. Did the tenants respond to the letter?

From: Hunter Williams [mailto:hwilliams@brighamwilliams.com]
Sent: Thursday, December 29, 2016 4:49 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>
Subject: RE: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc

That is our intention

On Dec 29, 2016 3:09 PM, "Dan Stacy" <DStacy@oxnerandstacy.com> wrote:

The letter appears to be fine, but I would really prefer if the lender/seller provide evidence that each tenant received the letter, and that they signed their letter. Can we get that?

From: Hunter Williams [mailto:hwilliams@brighamwilliams.com]
Sent: Thursday, December 29, 2016 4:15 PM
To: Dan Stacy <DStacy@OxnerandStacy.com>
Subject: FW: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc

Dan, Greg Wood and I plan to tear down a large portion of the center after closing. We have asked the seller to get some sort of affirmation from the tenants that they are on a month to month status and must leave with 30 days notice if asked to do so. My question to you concerns the adequacy of the letter the seller is using or do I even need to worry about it because the foreclosure law mandates the month to month status. Our concern is that the bar owner apparently invested heavily in his facility and might exhibit reluctance to vacate in the timely manner. We have no evidence that he will do that but wanted to do what preventative measures we can to insure he does not hold over. Let me know what you think. Thanks Hunter Tomorrow or Tuesday will be fine. Happy new Year to you and your staff. Hunter

Hunter Williams, CCIM

Brigham Williams Commercial Properties

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400 Union Hill Drive, Suite 100

Birmingham,Al 35209

205-868-4575 office

205-868-4582 fax

hwilliams@brighamwilliams.com

From: Greg Wood [mailto:gwood@highlandrs.com]
Sent: Wednesday, December 28, 2016 2:49 PM
To: Hunter Williams CCIM
Subject: FW: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc

Hunter

This is the Bank's confirmation of the month-to-month leases. Let me know if Dan thinks this provides us adequate protection or if we need an estopple from each tenant.

Looking forward to working with you again next year on Immunotek deals.

Gregory Wood, CCIM

Highland Realty Services, LLC

6 Office Park Circle, Suite 100

Birmingham, AL 35223

205.278.6400

gwood@highlandrs.com

From: David Brock [mailto:realtor1691@gmail.com]
Sent: Wednesday, December 28, 2016 2:04 PM

WW PLASMA/WILLIAMS EXHIBIT #038

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To: Greg Wood
Subject: Fwd: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc

Greg banks & Joe Blanton are doing everything in their power to acomadate your request . Bank is following up immediately with letter of month to month notices that must be signed by the Lessee. Im forwarding this to you as well. Any further questions about the lease please direct to Joe Blanton the leasing agent he handles anything to do with these.

David E. Brock

Multi-Million Dollar Producer

(803) 312.1908

1084 Lake Murray Blvd Irmo, SC 29063

---------- Forwarded message ----------
From: **Dale Porter** <DPorter@firstreliance.com>
Date: Wed, Dec 28, 2016 at 2:04 PM
Subject: Contract Letter for Sweet Briar Shopping Center Letter regarding leases.doc
To: David Brock <realtor1691@gmail.com>
Cc: Jess Nance <JNance@firstreliance.com>

David,

Just delivered this letter to Joe Blanton to mail return receipt requested and place on each of their doors to make sure notification has been given. Please let me or Jess Nance know if there is anything else that needs to be done before closing.

Thanks,

Dale Porter

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WW PLASMA/WILLIAMS EXHIBIT #039

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

From: David Brock <realtor1691@gmail.com>
Sent: Fri, 23 Dec 2016 21:11:56 -0500
Subject: Lease terminations please advise
To: Dale Porter VP First Reliance❖ ❖ CELLPHONE❖<DPorter@firstreliance.com>, <joe@theblantoncompany.com>

David

Following up on our conversation this morning:

Please provide me with contact information for the Bank's attorney so our attorney can coordinate the closing. By our interpretation of the Contract, the outside closing date is 1/14/17.

We are still not comfortable with the Landlord's rights in existing leases. It is understandable the Bank will not want to terminate any of the leases prior to closing but we need assurance the Landlord has occupancy rights to all of the space in the center. Since our intention is to demolish a portion of the center, we will require written acknowledgement from each tenant designating a month-to-month tenancy with a 30-day cancellation right retained by the Landlord.

Give me a call if you or the Bank have questions or needs to discuss the above.

Hope you have a Blessed Christmas.

Gregory Wood, CCIM

Highland Realty Services, LLC

6 Office Park Circle, Suite 100

Birmingham, AL 35223

205.278.6400

gwood@highlandrs.com

My response : David Brock

David Brock <realtor1691@gmail.com> 11:24 AM (9 hours ago)

to Greg, Hunter

Greg

0701

I spoke with the bank we have laws in our state that protect the tenant & protect the landlord they are specific & defined. Mr Blanton is the leasing agent for the shopping center. He is fully aware & has served each tenant with the

month to month notices on their leases. The bank is not on board with serving notices prior to you taking ownership especially if you have not closed and taken full ownership. It will be your responsibility to serve notice once you acquire the property please feel free to speak with the Joe Blanton on how you want to proceed or the procedure . I will send you the banks attorney once I am notified of the exact law firm First Reliance is using.

David

We understand the Bank's position on issuing lease termination notices prior to a transfer of title and we are not asking for this. Our concern is with the existing leases and the acknowledgement that each lease is now a month-to-month lease. Mr. Blanton being fully aware of the lease situation does not ensure to us the tenants are in agreement with this position. We will require lease amendments or written acknowledgement from each tenant that all lease are month-to-month prior to closing. Mr. Blanton is a leasing agent for the Bank and if the Bank wants to use his services to secure these acknowledgements, then it would up the them to do so. Once we take ownership, it is our intention to terminate some leases and possibly renegotiate others.

Thanks for your response and hope you have a Wonderful Christmas.

From: David Brock [mailto:realtor1691@gmail.com]
Sent: Friday, December 23, 2016 10:25 AM
To: Greg Wood
Cc: Hunter Williams CCIM
Subject: Re: Sweetbrier Shopping Center

Dale I spoke with Joe Blanton and he recommends a conference call with Greg Wood. Apparently the tenants all have leases in place that go for years and from my experience they will transfer to the new owners. Basically they don't have to leave unless they are willing to leave . I understand that Mr. Blanton sent notices to all tenants informing them that they were on month to month lease's effective immediately. That sounds as if we are voiding their individual contracts with the lessor. Please advise my experience they may leave on their own accord but they certainly do not have to based on their individual leases. I was told that they were on a month to month situation but apparently this is not the case only by notice. Again this might not be problematic at all but the current buyers are under the assumption that the tenants are on month to month and are planning on closing in two weeks. Mr. Blanton recommends a conference call between you Mr. Blanton & Greg Wood to try and work this out as soon as possible please advise.

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FIRST RELIANCE BANK

December 28, 2016

Joe Blanton
The Blanton Company
126 S. Coit Street
Florence, SC 29501

Dear Mr. Blanton,
This letter is to notify you that First Reliance Bank is under contract to sell the Sweet Briar Shopping Center on or before January 14, 2017. Please notify the current tenants that this transaction is coming. It will be their responsibility to negotiate lease agreements with the new owner after the sale is complete.

We would like each tenant to sign this letter stating that they have been notified of this transaction and recognize that it will be their responsibility to negotiate leases with the new owner from the current month to month leases they have with the bank.

We appreciate your willingness to assist us in this matter and if you should have any questions please do not hesitate to contact me.

Sincerely,

Dale Porter,
VP & Senior Loan Administrator
First Reliance Bank
843-674-3211

We the undersigned acknowledge the notification of the above and recognize our responsibility to re-negotiate our leases with the new owner once the sale is complete.

	Owner's signature	Date
Sunshine House	_____	_____
Mike Timmons DBA Tavern on the Loop	_____	_____
KD (Takisha) Dunham Glammed Our	_____	_____
Xavier Sams	_____	_____

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EXHIBIT "D"

STATE OF SOUTH CAROLINA)
) INDEMNIFICATION AGREEMENT
COUNTY OF FLORENCE)

This Indemnification Agreement ("Agreement") is entered into to be effective as of the 27th day of January, 2017 by and between WW PLASMA II, LLC, a South Carolina limited liability company ("Plasma") and FIRST RELIANCE BANK ("First Reliance").

WHEREAS, pursuant to that certain Real Estate Purchase Agreement between Plasma and First Reliance dated July _____, 2016 ("Contract"), Plasma did agree to purchase from First Reliance and First Reliance did agree to sell property to Plasma, all as more particularly set forth in the Contract; and

WHEREAS, Paragraph 2.04 of the Contract requires that First Reliance deliver the property to Plasma free and clear of all liens, encumbrances, leases and tenancies; and

WHEREAS, the Closing Date is scheduled to occur on or before January 27, 2017; and

WHEREAS, a tenant operating in the property, which is the subject of the Contract, known as "Tavern on The Loop" has refused to leave the property as part of the purchase by Plasma;

WHEREAS, Plasma desires to move forward and acquire the property and assume the responsibility of the eviction of "Tavern on The Loop" and any other hold-over tenant; and

WHEREAS, First Reliance has agreed to indemnify Plasma for reasonable and actual expenditures related to the eviction of said tenant(s), including but not limited to subsequent appeals, if any.

NOW THEREFORE, for and in consideration of the terms and conditions of this Agreement, the Contract and other good and valuable consideration, the parties do agree as follows:

1. First Reliance, as an accommodation to Plasma for being unable to deliver the property free of tenants, hereby agrees to indemnify Plasma against and hold, save and defend Plasma harmless from any and all claims, demands, actions, causes of actions, suits, liabilities, flowing from the eviction of said tenants, and agrees to promptly reimburse Plasma for actual costs and expenses of any kind or nature, including reasonable attorney's fees and court costs incurred with the eviction of "Tavern on The Loop" or any other hold-over tenant which Plasma may suffer or incur or which may be asserted against Plasma, whether meritorious or not, and which may rise in connection with the eviction action by Plasma against "Tavern on The Loop" or other hold-over tenant.

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2. Plasma hereby acknowledges that First Reliance's indemnification pertains only to the items described herein and does not apply to unforeseen costs associated with project delays or other ancillary matters.

3. This Agreement may be executed in multiple counterparts, the signature pages of which may be compiled to constitute an original document.

[SIGNATURE PAGES TO FOLLOW]

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WW PLASMA, II, a South Carolina limited liability company

signature of Witness

BY:

ITS: MEMBER

signature of Notary
(same as Acknowledgment below)

* * * * * * * * * * *

STATE OF ~~SOUTH CAROLINA~~ ALABAMA MT)
)
COUNTY OF JEFFERSON)

ACKNOWLEDGMENT

The due execution of the foregoing instrument was acknowledged before me this 27 day of January, 2017 by WW Plasma II, LLC, by Gregory Frank Wood its Member.

Notary Public for ~~South Carolina~~ Alabama MT
My Commission Expires: 5-26-20

RICHARD W. THEIBERT
My Commission Expires
May 23, 2020

16-1479

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

FIRST RELIANCE BANK

_____ **BY:** _____

signature of Witness

ITS: _____

_____

signature of Notary
(same as Acknowledgment below)

* * * * * * * * * *

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF _____)

The due execution of the foregoing instrument was acknowledged before me this _____ day of January, 2017 by First Reliance Bank, by _____ its _____.

_____
Notary Public for South Carolina
My Commission Expires: _____

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SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

FIRST RELIANCE BANK

Carmella Martin
signature of Witness

BY: [signature]

ITS: EVP

[signature]
signature of Notary
(same as Acknowledgment below)

****

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF Florence)

The due execution of the foregoing instrument was acknowledged before me this 30th day of January, 2017 by First Reliance Bank, by Jess Nance its Chief Credit officer.

[signature]
Notary Public for South Carolina
My Commission Expires: 6/25/2025

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

PLASMA/WILLIAMS EXHIBIT

Receipted 1/31/2017 15:42:17 PM

Book B 673 Page 0890

Deeds

DORIS POULOS O'HARA
FLORENCE COUNTY CLERK OF COURT
FLORENCE COUNTY COMPLEX, 180 N. IRBY ST., MSC-E
FLORENCE, SOUTH CAROLINA 29501
(843) 665-3031

RECEIVED FROM: ONXER AND STACY 3417
ADDRESS: 90 WALL STREET STE B
PAWLEYS ISLAND SC 29585

DATE: 013117 RECEIPT NO: 407987-000000

DESCRIPTION						
# OF INST.	AMOUNT	FEES	#PAGES	** FEE ** STATE	COUNTY	TOTAL
Deeds		BOOK: B673	FROM PAGE: 890	THRU PAGE: 894		
	615,000.00	10.00	5	1,599.00	676.50	2,285.50

****
THIS SHEET IS NOW PART OF THIS DOCUMENT
===== PLEASE LEAVE ATTACHED =====
****

TOTAL RECEIPT:	10.00	1,599.00	676.50	2,285.50

TOTAL	CHECK	CASH	CHANGE
2,285.50	2,313.50	.00	1.00

CR1 CLERKPAY 15 MB 154217 0708

EXHIBIT 51

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

FILED

2017 JAN 31 PM 3:42

DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

Prepared by:
J. Greg Hendrick
Finklea Law Firm
814 W. Evans St.
Florence, SC 29501

DEED PREPARED ONLY; TITLE NOT SEARCHED BY PREPARER
PREPARER ASSUMES NO RESPONSIBILITY FOR WITHHOLDINGS

Return to: OXNER & STACY, P.A. (rtm)
File #16-1479 Daniel W. Stacy, Jr.
90 Wall St., Unit B
Pawleys Island, SC 29585

PROPERTY DESIGNATED AS: 90029-01-014

SPLIT FROM: _____

BY FLORENCE COUNTY ASSESSOR'S OFFICE mmp

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

SPECIAL WARRANTY DEED

THIS **SPECIAL WARRANTY DEED** is made as of the 27th day of January, 2017, by and between **First Reliance Bank,** as party of the first part, hereinafter referred to as "Grantor," and **WW Plasma II, LLC,** a South Carolina limited liability company, having a principal mailing address of 200 Union Hill Drive, #301, Birmingham, AL 35209, as party of the second part, hereinafter referred to as "Grantee," the words "Grantor" and "Grantee" to include the successors and assigns of each of the parties hereto.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS THAT, FOR AND IN CONSIDERATION OF [SEE ATTACHED AFFIDAVIT] in hand paid and other good and valuable consideration delivered to Grantor by Grantee at and before the execution, sealing and delivery hereof, the receipt and sufficiency of which is hereby acknowledged, Grantor has and hereby does grant, bargain, sell and convey unto Grantee, and the heirs, legal representatives, successors and assigns of Grantee, all of Grantor's right, title, and interest in and to the real property described in Exhibit A (attached hereto and incorporated by this reference), together with any and all improvements affixed thereto and in, under, and lying in, under or thereupon, and together with any and all appurtenances thereto (with the foregoing being, collectively, the "Property"), subject, however, to the terms and provisions of this Special Warranty Deed.

The Property is hereby conveyed to the Grantee subject to matters of zoning, taxes for the 2017 tax year and future years, which constitute a lien but are not yet due and payable, all matters which would be disclosed upon a current and accurate ALTA/ACSM land title survey or physical inspection of the Property, and easements, restrictions, conditions, and other matters which are of record in the Florence County, South Carolina, real estate records, other than excepting mortgages and monetary liens.

TO HAVE AND TO HOLD the Property, together with any and all improvements, buildings, and fixtures located thereon and all rights, hereditaments, and appurtenance thereunto belonging or appertaining to Grantor, subject, however, to the above easements, restrictions, and exceptions, unto the Grantee, its successors and assigns, forever, IN FEE SIMPLE.

$ STATE FEE 1599.00
COUNTY FEE 676.50

AND GRANTOR SHALL WARRANT and defend the title to the Property unto the Grantee, and its successors and assigns, forever, against the claims of all persons whomsoever claiming by, through or under Grantor, subject to the limitations and exceptions contained herein, but against no others.

IN WITNESS WHEREOF, Grantor has signed and sealed this deed as of the day and year first above written.

GRANTOR:

Signed, sealed and delivered
in the presence of:

FIRST RELIANCE BANK,

_____(W-1)

_____(W-2)

BY: _____
Jess Nance
ITS: EVP & Chief Credit Officer

ACKNOWLEDGEMENT

PERSONALLY APPEARED before me Jess Nance, as the EVP & Chief Credit Officer of the within named Grantor, who, after being duly sworn, acknowledged his/her execution of the within Special Warranty Deed in such capacity and for the uses and purposes mentioned therein.

SWORN to before me this 26 day
of January, 2017.

_____
Notary Public for South Carolina
My Commission Expires: 1-25-26
[SEAL HERE]



ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

EXHIBIT A

All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of south Carolina, being shown and designated as the major portion of Tract No. 4 containing 3.28 acres, more or less, as shown on a map prepared for Atlantic Regional, LLC by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the Office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.

TMS#90029-01-014

TOGETHER WITH easement over and across a strip of land being 12 feet wide and shown as "12' Easement Area" on the above referenced plat and conveyed to Atlantic Regional, LLC by instrument of John M. Timmons, Jr. and Charles E. Lamb dated August 14, 2006 and recorded on August 16, 2006 in Book 0320 at page 1797 in the Office of the Clerk of Court for Florence County.

TOGETHER WITH property shown as "Sign Area" (Not Inc. in Timmons-Lamb Survey)" conveyed to Atlantic Regional, LLC by Quit-Claim Deed of John M. Timmons, Jr. and Charles E. Lamb recorded on August 16, 2006 in Book B033 a page 1.

Said "Sign Area" is more fully described as follows: All that certain piece or parcel of land shown and designated as "Sign Area (not inc.)" as shown on a plat prepared for Michael Timmons, Jr. and Charles Lamb by Lind, Hicks & Associates, Surveyors, Inc. dated January 9, 2006 and recorded in the Office of the Clerk of Court for Florence County in Plat Book 88 at page 207. Said parcel fronts on Second Loop Road for a distance of 4.90 feet and is surrounded by property of the Grantors herein, on its western most boundary for a distance of 19.79 feet, its northern most boundary for a distance of 4.90 feet, and its eastern most boundary for a distance of 19.80 feet. Reference the above described plat for a more complete and accurate description.

SUBJECT, HOWEVER, to the terms and conditions of the Sign Usage and Maintenance Agreement attached to the above described Quit-Claim Deed as Exhibit A.

This being the same property conveyed to First Reliance Bank by Special Referee's Title recorded February 12, 2016 in the Office of the Clerk of Court for Florence County in Deed Book B616 at Page 282.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT FOR TAXABLE OR EXEMPT TRANSFERS**
COUNTY OF FLORENCE)

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 1923-+45 2nd Loop Rd., bearing Florence County Tax Map Number 90029-01-014, and was transferred by First Reliance Bank to WW Plasma II, LLC on January 27, 2017.

3. Check one of the Following: The Deed is

(a) XX Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.

(c) _____ Exempt from the deed recording fee because (See Information section of this affidavit);

(If exempt, please skip items 4-7, and go on to item 8 of this affidavit.)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

(a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $615,000.00

(b) _____ The fee is computed on the fair market value of the realty which is _____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No XX to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: N/A.

6. The deed recording fee is computed as follows:

(a)	Place the amount listed in item 4 above here:	$615,000.00
(b)	Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	$ 0.00
(c)	Subtract line 6(b) from line 6(a) and place result here:	$615,000.00

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is: $2,275.50

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: John G. Hendrick. (Settlement Agent)

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 27th day of January, 2017

Notary Public for South Carolina
My Commission Expires: 01-10-2016
Notary (printed): Kimberly Winburn

KIMBERLY B. WINBURN
MY COMMISSION EXPIRES 1/25/2026
NOTARY PUBLIC SOUTH CAROLINA

Settlement Agent
Responsible Person Connected with the Transaction

John G. Hendrick

894

EXHIBIT "S"

OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN 1.☐FHA 2.☐FmHA 3.☒CONV. UNINS. 4.☐VA 5.☐CONV. INS. 6. FILE NUMBER 16-1479 7. LOAN NUMBER 8. MORTGAGE INS CASE NUMBER

C. *NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

1.0 3/98 (BRIGHAMWILL-1923-19452ND.PFD/16-1479/9)

D. NAME AND ADDRESS OF BORROWER	E. NAME AND ADDRESS OF SELLER	F. NAME AND ADDRESS OF LENDER
WW Plasma II, LLC, a South Carolina limited liability company 200 Union Hill Drive, #301 Birmingham, AL 35209	First Reliance Bank 2170 W. Palmetto Street Florence, SC 29501	Wells Fargo Bank,N.A.

G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. SETTLEMENT DATE
1923 - 1945 2nd Loop Florence, SC 29501 Florence County, South Carolina 3.28 acres, Sign Area and 10' Easement Area TMS#90029-01-014	Oxner & Stacy, P.A. PLACE OF SETTLEMENT 90 Wall Street Unit B Pawleys Island, SC 29585	January 27, 2017

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		**400. GROSS AMOUNT DUE TO SELLER:**	
101. Contract Sales Price	615,000.00	401. Contract Sales Price	615,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	12,585.00	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		*Adjustments For Items Paid By Seller in advance*	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	627,585.00	*420. GROSS AMOUNT DUE TO SELLER*	615,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		**500. REDUCTIONS IN AMOUNT DUE TO SELLER:**	
201. Deposit or earnest money	25,000.00	501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)	315,000.00	502. Settlement Charges to Seller (Line 1400)	58,835.50
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage	
205.		505. Payoff of second Mortgage	
206.		506.	
207.		507. (Deposit disb. as proceeds)	
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		*Adjustments For Items Unpaid By Seller*	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes 01/01/17 to 01/28/17	1,063.75	511. County Taxes 01/01/17 to 01/28/17	1,063.75
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	341,063.75	*520. TOTAL REDUCT.AMT DUE SELLER*	59,899.25
300. CASH AT SETTLEMENT FROM/TO BORROWER:		**600. CASH AT SETTLEMENT TO/FROM SELLER:**	
301. Gross Amount Due From Borrower (Line 120)	627,585.00	601. Gross Amount Due To Seller (Line 420)	615,000.00
302. Less Amount Paid By/For Borrower (Line 220)	(341,063.75)	602. Less Reductions Due Seller (Line 520)	(59,899.25)
303. CASH (X FROM) (TO) BORROWER	286,521.25	*603. CASH (X TO) (FROM) SELLER*	555,100.75

JAN

HUD-1 (3-86) RESPA, HB4305.2

EXHIBIT 52

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

L. SETTLEMENT CHARGES

			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	$ 615,000.00 @ 6.0000 %	36,900.00		
Division of Commission (line 700) as Follows:				
701. $ 18,450.00	to Highland Realty Services			
702. $ 18,450.00	to ERA Wilder Realty			
703. Commission Paid at Settlement				36,900.00
704. 3% commission	to The Blanton Company			18,450.00
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee %	to			
802. Loan Discount %	to			
803. Appraisal Fee	to Wells Fargo Bank,N.A.		2,650.00	
804. Credit Report	to			
805. Appraisal Review Fee-Internal	to Wells Fargo Bank,N.A.		640.00	
806. Environmental Phase I Fee	to Wells Fargo Bank,N.A.		1,850.00	
807. Environmental Review-Internal	to Wells Fargo Bank,N.A.		445.00	
808. Internal Legal Fees	to Wells Fargo Bank,N.A.		140.00	
809. Tax Service Fee	to Wells Fargo Bank,N.A.		52.00	
810. Flood Zone Rating/Deter. Fee	to Wells Fargo Bank,N.A.		5.00	
811.				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest From 01/27/17 to 02/01/17	@ $ /day (5 days %)			
902. Mortgage Insurance Premium	months			
903. Hazard Insurance Premium 1.0 years		POC by Borrower		
904.				
905.				
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance	months @ $ per month			
1002. Mortgage Insurance	months @ $ per month			
1003. City/Town Taxes	months @ $ per month			
1004. County Taxes	months @ $ per month			
1005. Assessments	months @ $ per month			
1006.	months @ $ per month			
1007.	months @ $ per month			
1008.	months @ $ per month			
1100. TITLE CHARGES				
1101. Attorney's Fee - Formation LLC	to Oxner & Stacy, P.A.		650.00	
1102. Abstract or Title Search	to TA Title Services		393.00	
1103. Curative Title Work	to Finklea Law Firm			960.00
1104. Title Insurance Binder	to Midway Inlet Title Agency, Inc.		200.00	
1105. Document Preparation	to Finklea Law Firm			250.00
1106. Attorney's Fee-Bank's Counsel	to Najjar Denaburg, P.C.		1,750.00	
1107. Attorney's Fees	to Oxner & Stacy, P.A.		1,750.00	
(includes above item numbers: 1107	)			
1108. Title Insurance	to Midway Inlet/Commonwealth		1,877.00	
(includes above item numbers: 1108	)			
1109. Lender's Coverage	$ 315,000.00	1,181.50		
1110. Owner's Coverage	$ 615,000.00	695.50		
1111. Endorsements				
1112. Satisfaction Processing Fee	Oxner & Stacy, P.A.			
1113. Admin Fee	to Oxner & Stacy, P.A.		35.00	
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed $ 11.00 ; Mortgage $ 27.00 ;		Releases $	38.00	
1202. City/County Tax/Stamps: Deed	2,275.50 ; Mortgage			2,275.50
1203. State Tax/Stamps: Deed	; Mortgage			
1204.				
1205.				
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey	to			
1302. Pest Inspection	to			
1303. Filing Fee -LLC (Reimb.)	to SC Secretary of State/Oxner & Stacy, P.A.		110.00	
1304.				
1305.				
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			12,585.00	58,835.50

Oxner & Stacy, P.A.

Daniel W. Stacy, Jr.

(16-1479 / 16-1479 / 9)

PLASMA/WILLIAMS EXHIBIT

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: WW Plasma II, LLC, a South Carolina limited liability company
Seller: First Reliance Bank
Lender: Wells Fargo Bank,N.A.
Settlement Agent: Oxner & Stacy, P.A.
(843)235-6747
Place of Settlement: 90 Wall Street Unit B
Pawleys Island, SC 29585
Settlement Date: January 27, 2017
Property Location: 1923 - 1945 2nd Loop
Florence, SC 29501
Florence County, South Carolina
3.28 acres, Sign Area and
10' Easement Area
TMS#90029-01-014

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

WW Plasma II, LLC, a South Carolina limited liability company

By:_____
Gregory Frank Wood
Member

By: _____
John Thomas Hunter Williams
Member

First Reliance Bank

By:_____
Its EVP & Chief Cr. Off.

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(BRIGHAMWILL-1923-19452ND.PFD/16-1479/9)

WW

0715

PLASMA/WILLIAMS EXHIBIT

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower:	WW Plasma II, LLC, a South Carolina limited liability company
Seller:	First Reliance Bank
Lender:	Wells Fargo Bank,N.A.
Settlement Agent:	Oxner & Stacy, P.A. (843)235-6747
Place of Settlement:	90 Wall Street Unit B Pawleys Island, SC 29585
Settlement Date:	January 27, 2017
Property Location:	1923 - 1945 2nd Loop Florence, SC 29501 Florence County, South Carolina 3.28 acres, Sign Area and 10' Easement Area TMS#90029-01-014

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

WW Plasma II, LLC, a South Carolina limited liability company

By: _____
Gregory Frank Wood
Member

By: _____
John Thomas Hunter Williams
Member

First Reliance Bank

By: _____
Its _____

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(BRIGHAMW/LL-1923-1945ND.PFD/16-1479/9)

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

OXNER & STACY, P.A.
ATTORNEYS AND COUNSELORS AT LAW
90 WALL STREET - UNIT B
PAWLEYS ISLAND, SC 29585
TELE: (843) 235-6747 • FAX: (843) 235-6650

HARRY A. OXNER
DANIEL W. STACY, JR.

GEORGETOWN OFFICE:
235 CHURCH STREET
POST OFFICE BOX 481
GEORGETOWN, SC 29442-0481
TELE: (843) 527-8020
FAX: (843) 485-4121

REPLY TO:
PAWLEYS ISLAND OFFICE

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

February 6, 2017
VIA CERTIFIED MAIL

Sunshine House
12 Interchange Blvd.
Greenville, SC 29607

Xavier Sams
1933 Second Loop Road
Florence, SC 29501

K.D. Dunham dba
Glammed Out
1943 Second Loop Road
Florence, SC 29501

Mike Timmons dba
Tavern on the Loop
1945 Second Loop Road
Florence, SC 29501

Re: Sweetbriar Shopping Center
O.S. File #16-1479

Ladies and Gentlemen:

I represent an entity known as WW Plasma II, LLC which has acquired the Sweetbriar Shopping Center on Second Loop Road from First Reliance Bank. As you are all aware, when First Reliance foreclosed on the Shopping Center, your leases were all subordinate to the lien of the mortgage and therefore became month-to-month leases. My client does not wish to continue the tenancies with any of you with respect to the Shopping Center as their redevelopment plans will not accommodate your current use. Please allow this to serve as your thirty (30) day termination notice such that you will need to vacate the property on or before **March 13, 2017**.

Should you have any questions, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

Daniel W. Stacy, Jr.

DWS/scp

cc: Hunter Williams

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

John Michael Timmons, Jr., d/b/a Tavern on the Loop)
Plaintiff(s))

vs.)

2018-CP - 21- 227

First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc., d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, Individually,)

Defendant(s))

Submitted By: Ben LeClercq
Address: 708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464

SC Bar #: 65754
Telephone #: 843.722.3523
Fax #: 843.352.2977
Other:
E-mail: ben@leclercqlaw.com

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
JAN 29 AM 10:04
CHRIS POULOS-CHIRA
CCCP & GS
FLORENCE CO., S.C.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 1/26/18

EXHIBIT 54

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE # 2018-CP-21- 227
	)	
JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP	)	
	)	
Plaintiff,	)	**SUMMONS**
vs.	)	
	)	
FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually,	)	
	)	
Defendants.	)	
	)	

FILED
2018 JAN 29 AM 10:04
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on Ben Whaley Le Clercq, Attorney, at 708 S. Shelmore Blvd, Suite 202, Mount Pleasant, South Carolina, 29464, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer or appear and defend the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default.

January 26, 2018

Respectfully Submitted,

Ben Le Clercq (S.C. Bar #65754)
Le Clercq Law Firm
Ben@LeClercqLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Counsel for Plaintiff

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE # 2018-CP-21-227
	)	
JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	
vs.	)	
	)	
FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually,	)	
	)	
Defendants.	)	Jury Trial Requested

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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FLORENCE COUNTY, SC

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COMES NOW, Plaintiff John Michael Timmons, Jr. d/b/a Tavern on the Loop, by and through his undersigned counsel, complaining of the Defendants herein and alleging as follows:

PARTIES

1. Plaintiff John Michael Timmons, Jr. ("Timmons") d/b/a Tavern on the Loop ("Tavern on the Loop") is a citizen and resident of Florence County, South Carolina.

2. Defendant First Reliance Bank, Inc. ("Bank") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed upon information and belief by Defendants Porter and Saunders in 1999.

3. Defendant Dale Porter ("Porter") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. At all times relevant to

these claims, Porter was an employee and, upon information and belief, an executive of the Bank, and individually responsible and liable for his own acts and/or the tortious actions of the Bank described herein in which he participated or was otherwise negligent.

4. Defendant F.R. Saunders, Jr. ("Saunders") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. At all times relevant to these claims, Saunders was an employee and chief executive of the Bank, and individually responsible and liable for his own acts and/or the tortious actions of the Bank described herein in which he participated or was otherwise negligent, including negligent supervision.

5. Defendant The Blanton Company, Inc. ("TBC") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed in 2013.

6. Defendant JBJR Enterprises, Inc. ("JBJR") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed in 2013. Upon information and belief JBJR and TBC are part of a group of companies with common stockholders, officers and employees, which are indistinguishable from one another, and which were used herein as an artifice to perpetrate illegal and/or wrongful, tortious and deceptive acts damaging Plaintiff.

7. Defendant Joseph B. Blanton ("Blanton") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. During the relevant timeframe, Blanton did business as a property manager and as broker in charge under the name The Blanton Company, Inc., the principal office of which was in Florence, South Carolina.

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8. Defendant WW Plasma II, LLC ("Plasma") is a South Carolina domestic company with its principal place of business, on information and belief, in Florence, Florence County, South Carolina. It was formed in 2016.

9. Defendant Hunter Williams ("Williams") was, on information and belief, at relevant times to these claims, a member of Plasma acting as Plasma's agent in Plasma's dealings with Timmons and the Bank that concerned Plasma's ownership of the property at issue in this complaint, and individually responsible and liable for his own acts and/or the tortious actions of Plasma described herein in which he participated or was otherwise negligent.

FACTUAL ALLEGATIONS

10. On August 14, 2006 the Bank acquired a mortgage lien ("the Mortgage") on a site described as

> All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.

Exhibit G.1.

11. The building on this property was a strip mall within a portion of which (said portion being "the Site") Timmons would later open his business under a lease with the Bank that is the subject of this action ("the Lease").

12. Also on August 14, 2006, the Bank received a promissory note (the "Note") in conjunction with the Mortgage. **See attached Exhibit D.**

13. The other party signing the Note and Mortgage was Atlantic Regional, LLC ("Atlantic"). **See attached Exhibit D.**

14. The Note reflected the Bank's loan to Atlantic in the principal amount of $1,073,420.00. **See attached Exhibit D.**

15. The Note's payments were structured so that the Bank would be paid a relatively small amount, $9,925.73, each month for fifty-nine months, then a very large payment, $966,589.15, due on the maturity date of August 14, 2011. **See attached Exhibit D.**

16. This payment structure created a large risk for the Bank in the event that the borrower defaulted on the Note, which may explain why the Bank later insisted Atlantic execute the Assignment of Rents document described below, giving the Bank Possession Rights and Rent Rights which the Bank used to enter the Lease with Timmons.

17. On November 17, 2014, the Bank renewed its Note with Atlantic ("the Renewal"). The Renewal gave the Bank the right to demand payment in full at any time. **See attached Exhibit E.**

18. The Renewal's principal was $843,013.19. **See attached Exhibit E.**

19. The Renewal's payment structure resembled that of the Note: until the Bank might demand payment in full, there would be fifty monthly payments of $9,055.17 and one final payment of approximately $599,066.41 on the maturity date of November 25, 2019. **See attached Exhibit E.**

20. With the Renewal the Bank maintained the same large risk as described above regarding the Note.

21. On November 17, 2014, Atlantic executed, at the Bank's requirement, an Assignment of Rents ("Assignment of Rents"). The Bank perfected its security interest ("the

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Security Interest") in the Site for the Assignment of Rents by filing the Assignment of Rents on or about January 27, 2015. **See attached Exhibit F.**

22. The Assignment of Rents/Security Interest gave the Bank possession rights ("Possession Rights") and rights to rents ("Rent Rights"), *whether or not there was a default*, which it in fact asserted as described herein, by the following provisions:

> **LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:
>
> > **Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly ***to Lender or Lender's agent***. ["Notice to Tenants Clause"].
> >
> > **Enter the Property.** ***Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents***; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the rents and remove any tenant or tenants or other persons from the Property. . . . ["Enter the Property Clause"].
> >
> > **Lease the Property.** ***Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate***. ["Lease the Property Clause"].
> >
> > **Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the property, including the collection and application of Rents ["Employ Agents Clause"].

See attached Exhibit F (some emphasis added).

23. The Possession Rights and Rent Rights gave the Bank landlord status for the Site, with power to possess and rent the Site, whether or not there was a default, and including via an agent, "*for such term or terms and on such conditions as Lender may deem appropriate*." **See attached Exhibit F.**

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24. The Security Interest explicitly created the Bank's power to create an agency for the purpose of taking possession of the property, renting it, creating an agency and/or collecting rents, which the Bank in fact did, as described hereunder, via its agent TBC, Blanton and/or JBJR.

25. On July 20, 2015 the Bank filed a foreclosure complaint (2015-CP-21-02106) ("the Foreclosure") and lis pendens in Florence County against Atlantic for default on the Note and Mortgage. **See attached Exhibit G.**

26. The Foreclosure did not name any tenant of the strip mall. **See attached Exhibit G.** Timmons was not a tenant at that time, only becoming a tenant after Bank took possession of the Site via the Assignment of Rents/Security Interest.

27. On July 23, 2015 Bank exercised its rights under the Assignment of Rents/Security Interest by letter to Atlantic (via Atlantic's agent and guarantor Richard Cooke), Blanton, JBJR, and TBC, the Bank. Bank directed TBC, JBJR, Blanton, and Atlantic to pay over rents to it on the property subject to the Security Interest, and made TBC, JBJR, Blanton, and Atlantic its agents for exercising its Rent Rights, stating that Atlantic was in default under a note, mortgage, and Assignment of Rents held by the Bank (the "Assignment of Rents Letter"). **See attached Exhibit H.** Atlantic, TBC, and Blanton accepted and agreed to this agency.

28. Assuming that the Bank had received monthly payments under the terms of the Renewal up through July 23, 2015, the outstanding amount owed to the Bank under the Renewal would have been approximately $779,627.00. Given that Atlantic had defaulted, however, the actual amount owed was likely higher than that.

29. Also on July 23, 2015, the Bank moved this Court to order that TBC and Atlantic pay rents due to Atlantic to the Bank in accordance with the Security Interest (the "Rent Payments Motion"). **See attached Exhibit I.**

30. TBC and Blanton were served with the Rent Payments Motion on July 24, 2015. **See attached Exhibit K.** TBC, Blanton and the Bank were therefore, of course, well aware of the Foreclosure prior to entering any Lease arrangements with Timmons.

31. As of July 23, 2015, or prior to such date, Timmons was not a tenant at the Site.

32. The Rent Payments motion was granted and the order entered on October 2, 2015. **See attached Exhibit J.**

33. Timmons, an experienced owner and operator with years of experience in the food and beverage industry, sought a location in Florence in early August, 2015 to open an upscale family-friendly sports restaurant with bar.

34. Timmons, who had previously known Blanton, found out from Blanton about the Site on Second Loop Road, for which he ultimately signed the Lease. Blanton called Timmons in late July or early August to tell Timmons the Site was available. Timmons named his prospective business "Tavern on the Loop" for its location on Second Loop Road.

35. Blanton, JBJR, and TBC acted as the Bank's agents when negotiating, drafting and executing the Lease with Timmons, and at all times thereafter relevant to this Complaint. Bank was an undisclosed principal, and, as such, both Bank and its agents are liable hereunder.

36. Blanton additionally acted as an agent of TBC and JBJR when negotiating and executing the Lease with Timmons and at all relevant times further described in this Complaint.

37. While negotiating the Lease with Timmons, Defendants knew that Timmons needed to invest considerable money into renovating and up-fitting the Site for the Tavern on the Loop

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before it could open. Defendants knew that operating the Tavern on the Loop was Timmons' intended use of the Site.

38. At the time of negotiating the Lease, Defendants upon information and belief also knew that the Bank intended to buy the Site in foreclosure and to sell it short-term.

39. Nevertheless, Defendants knowingly agreed to and/or executed an ***eighteen-year Lease*** with Timmons, to illicitly entice him to spend large sums improving the property which could then be taken by the Bank and sold for a higher price than if said improvements had not been made.

40. On August 20, 2015 Timmons executed the Lease for Tavern on the Loop, at the address 1945 Second Loop Road, Florence, S.C. **See attached Exhibit A.**

41. The other parties signing the Lease were Blanton and TBC, a property management firm, as—according to the Lease's language—the Lessor. TBC, JBJR, and Blanton were acting as agents for the Bank, who, as of the date of signature of the Lease, had full rights to lease the same "*for such term or terms and on such conditions as [Bank] may deem appropriate.*" **Exhibit F, p. 2.**

42. TBC and Blanton, in drafting the Lease, did not identify the owner or possessor of the Site or the identity of the Landlord/principal.

43. The Lease's initial three-year term started on August 20, 2015 and was to run until September 1, 2018. **See attached Exhibit A.**

44. The Lease gave Timmons two sequential option terms—the first was for ten years, and the second was for five years. **See attached Exhibit A.**

45. Upon his initial review of the site, Timmons knew that he liked the location, particularly the outdoor terrace, but also knew that he would have to invest an enormous amount

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of time and money in renovations. Because of the terrible, dilapidated condition of the Site, Defendants agreed to a number of critical terms for the benefit of Timmons: first and foremost, the lengthy term and option terms totaling ***eighteen (18) years***. The lengthy terms would allow Timmons to recoup his enormous initial investment, for which both he and his wife had to borrow money. Timmons and his wife depleted their life's savings in making the investment, in reliance on and based on the representations, described further herein, of Defendants. Further, Lessor waived the security deposit and gave Timmons the initial three months' use rent-free, meaning that the first rent payment was not due until December, 2015. **See attached Exhibit A.**

46. Prior to reaching agreement, Blanton and/or TBC told Timmons that he needed to draft an offer letter describing the proposed terms, so that Blanton and/or TBC could talk to "his guys" (without saying who they were) about the same. See attached **Exhibit A.2.**

47. In his office while executing the Lease, Blanton, stating he had "a responsibility to Timmons," communicated to Timmons that he understood Timmons was spending a fortune on fixing the Site and opening the business and that was why he, Blanton, secured both the rent-free first three months and the sequential option terms in the Lease, so that Timmons could recoup his investment. Timmons relied on these representations to sign the Lease.

48. On October 2, 2015 this Court entered its order granting the Bank's Rent Payments Motion referenced above. **See attached Exhibit J.** The order states in particular:

> ***[The Bank] proposes that the current property manager, the Blanton Company, remain property manager*** . . . . IT IS THEREFORE ORDERED THAT: 1- The Blanton Company will continue to manage the property referred to in the complaint until this matter is finally disposed of, and the Blanton Company will pay over any rents collected to First Reliance Bank.

Exhibit J, p. 1-2 (some emphasis added).

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49. Timmons spent in excess of $109,000 repairing and up-fitting the Site to open Tavern on the Loop. **See attached Exhibit B.** Moreover, his wife took out substantial loans to start up and fund the operations of the business.

50. Timmons and his friends and family did a substantial part of the renovation work themselves. The work took about six weeks, and Tavern on the Loop's opening night was Thursday, October 27, 2015 which included a Halloween party. Timmons spent significant sums on marketing, and it paid off. Tavern on the Loop had a big night that night, grossing at least $5,000.

51. Revenues were significant in the first four months (November of 2015 through February of 2016), with monthly gross revenues averaging in excess of $30,000. Timmons' net profit for January, 2016 was $9,943.98, while his net profit for February, 2016 was $7,876.17 **See attached Exhibits C.1 through C.4.**

52. Tavern on the Loop initially proved popular in the local community, and hosted a number of office parties and other social functions in its initial year of operations.

53. Timmons found out only after considerable expense and effort opening the Tavern on the Loop that Defendants would "double-cross" him, kill the business, take his improvements and eventually force him to close the Tavern on the Loop.

54. Defendants of course knew before the Lease's execution that the Site was already in foreclosure, that the Bank intended to buy it in foreclosure, and shortly thereafter sell it to minimize the Bank's loss on the Note, and that Timmons's pending tenancy and business venture were doomed from the outset.

55. The Bank got its judgment on the Foreclosure on December 2, 2015. **See attached Exhibit L.**

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56. On February 4, 2016 the Bank bought the Site and the strip mall parcel containing the Site in foreclosure sale for a bid of $485,300 which amount was, upon information and belief, less than the amount owed to the Bank by Atlantic. **See attached Exhibit M.** This was on information and belief a "credit bid."

57. Only four days later on February 8, 2016, the Bank outrageously and unconscionably breached and/or anticipatorily repudiated the Lease with Timmons, while purporting to extinguish all leases (including the Lease) on the strip mall parcel (including the Site) by letter to TBC (the "Extinguishment Letter"), purporting to transform all current tenancies into month-to-month tenancies. **See attached Exhibit N.** Such action by the Bank, in addition to the others described herein, makes Defendants liable for Plaintiff's damages hereunder. Though Timmons refused and rejected the same, unfortunately the die was cast and his business was doomed, since word of Bank's actions soon spread amongst Timmons' clients and vendors, as well as the community at large, as the Bank started marketing the Site for sale and "spreading the word", all of which significantly damaged Timmons' business and decreased revenues and prospects.

58. Deceptively not mentioning the Security Interest/Assignment of Rents and the fact that it was and had been in actual or constructive possession of the Site, the Bank misrepresented in its Extinguishment Letter that the Lease's extinguishment was the natural and inevitable result of the Bank's purchase of the foreclosed Site when it stated, "[The Bank] was the high bidder at the [public auction due to the Foreclosure action] and now is the new owner. As a result of that sale, **all agreements** (lease or otherwise) with . . . occupants related to the Sweat [sic] Briar Shopping Center **are extinguished.**" (emphasis original). **See attached Exhibit N.**

59. In its Extinguishment Letter, the Bank communicated its intent to sell the Site short-term, stating:

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> The bank would like to enter into month-to-month lease agreements with the current tenants until it has opportunity to explore purchaser opportunities. We would also like to employ your firm [Blanton and TBC] to assist the bank with these agreements and the management of this property while the bank finds a purchaser. If a future purchaser wishes to enter into long term leases with any of the current tenants that will be between them and the tenants with the change of ownership. However, *if the bank finds a purchaser that wishes to use the property for some other purpose then the bank cannot put itself in a position not to be able to accommodate that purchaser's wishes.*

See attached Exhibit N (emphasis supplied).

60. On February 26, 2016 Blanton delivered Timmons a letter (the "TBC Letter") with attached the Bank's Extinguishment Letter (upon information and belief at the direction of the Bank), stating, "It is with much regret that I write this letter. I sincerely wish I had an answer for this [letter from the Bank], but legally, I do not." **See attached Exhibit O.**

61. Timmons rejected the attempted breach of the Lease, and refused to change the terms of the Lease. Unfortunately for Timmons, however, and Tavern on the Loop, the word quickly spread amongst Timmons' clients, patrons, employees and others over the following months as Defendants marketed the Site that Timmons/Tavern on the Loop had lost the Lease, that the Site would be sold, and Timmons/Tavern on the Loop would be kicked out. Defendants' outrageous and unconscionable actions herein quickly became well-known in Florence and ultimately destroyed Timmons' business, forcing a loss of his and his wife's life savings. The ultimate financial repercussions for Timmons and his family were catastrophic: Timmons, a lifelong self-employed entrepreneur, had to go to work in his parents' furniture store located in Columbia (over 80 miles from his home in Florence), and now cannot afford to pay heating or cooling for the house where one of his daughters lives with her mother.

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62. Revenues began to show a significant dip in the next four months (March of 2016 through June of 2016), with monthly gross / net revenues averaging about $20,627.08 / $1,928.24—a percentage loss of **33% / 75%. See attached Exhibits C.5 through C.8.**

63. Timmons operated the Tavern on the Loop at a profit until September of 2016 when the rampant rumors about the Tavern on the Loop's imminent closing, brought on by the outrageous breach of contract, and other unconscionable, illicit and illegal acts of Defendants described herein, turned his once profitable operations upside down and began the spilling of "red ink." He and his wife had to borrow money to stay afloat, an additional measure of damages which would not have been necessary but for Defendants' actions.

64. As a direct result of Defendants' actions, from September of 2016 through May of 2017 (when Timmons was forced by Defendants to shut the Tavern on the Loop), revenues were significantly lower than in the first four months, with monthly gross / net revenues averaging about $10,085.83 / **-$3,141.16 (negative number)**—a percentage loss of **67% / 141%. See attached Exhibits C.11 through C.19.**

65. For the period from December, 2015 (when the first rent check was due) to March 1, 2016, Timmons hand-delivered monthly rent checks to TBC's office. During said period, Timmons saw Blanton in TBC's office and they'd always stop to chat for a few minutes, but Blanton only notified Timmons of the Foreclosure and Extinguishment Letter as described above, on February 26, 2016 after having remained deceptively and outrageously silent about it ever since negotiating the Lease with Timmons.

66. Blanton and TBC, again acting as agents of the Bank, represented to Timmons that it was likely that a new purchaser would wish to continue the Lease, stating, "Again, I am sorry to

forward this information, but I have no choice. I would assume that any new buyer would want to continue your leases." **See attached Exhibit O.**

67. In making this statement Blanton, TBC, and the Bank intended to induce both Timmons's reliance on the prospect that the Lease would continue and to trick him into foregoing taking any action adverse to their interests, in order to sustain the monies they were receiving from the Lease, and to have a "clean slate" and clear title on the Site so as to be able to convey it to a third party purchaser like Plasma.

68. Sometime on or before December 27, 2016, the Bank entered a contract with a purchaser for the Site and strip mall parcel. **See attached Exhibit P.**

69. On December 27, 2016 the Bank sent a letter ("the Acquiescence Letter") to TBC and Blanton notifying them that it was under contract to sell the Site and strip mall parcel on or before January 14, 2017, requesting that they have each tenant sign said letter stating they've been notified of the contract and recognizing that "it will be their responsibility to negotiate leases with the new owner from the current month to month leases they have with the bank." **See attached Exhibit P.**

70. Timmons refused to sign the Acquiescence Letter.

71. Upon information and belief, during negotiations with Plasma, the Bank, TBC, Blanton, one or more individual defendants and/or JBJR knew that Plasma intended to raze the Site and strip mall, yet continued to dupe and mislead Timmons, including that the tenancy would continue with the purchaser.

72. Neither the Bank, Blanton, TBC nor the other Defendants ever communicated Plasma's intention to Timmons or anyone else at the Tavern on the Loop.

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73. To the contrary, when Timmons went to pay his rent in person, Blanton told Timmons, no later than December, 2016, "Mike I have been in regular contact with the developers and although I don't have anything in writing I am 98% sure they will honor your Lease--no way they'll kick out a tenant like you who pays on time every time."

74. Sometime later the broker for the transaction between the Bank and Plasma (the "Broker") stated to Timmons, "Mr. Timmons you have been kept in the dark, haven't you? The new developer [Plasma] has no intentions of keeping you."

75. About two weeks before the Bank and Plasma closed on the Site and strip mall, this same broker asked Timmons what amount of money it would take to have Timmons sign the Acquiescence Letter so that the closing could occur, stating, "I'm tired of screwing around with Dale Porter at the bank—what will it take to get this done? Give me a number."

76. About ten minutes later Dale Porter, Vice President of the Bank, called Timmons and stated, "Mike, I hear you're being a problem with the closing."

77. Timmons replied, "You gotta understand—what am I going to do to support my family, my daughters and my wife? I've spent every last dime--I got my wife to get loans for this property, and now you're telling me I just gotta move on? I'll be damned if I just take this, because it's about my kids and wife and providing for my family."

78. Porter replied, "What will it take to move you to another location?"

79. Porter, acting as agent for the Bank, made a "low ball" offer to Timmons for Timmons to abandon his tenancy, which Timmons rejected.

80. About a week later the Broker again called Timmons, stating, "Mike, I'm tired of screwing with Porter and all of them. When I get off this phone I'm calling the President of First

Reliance one on one to make this work, so you tell me what number will make this work, and we'll include you in [cash disbursements to be distributed at] the closing."

81. The Bank and/or Broker again "low balled" Timmons, and Timmons refused to accept.

82. The Bank and Plasma closed the deal without further negotiation with, or any payment to, Timmons, the deal closing on or about January 27, 2017 for $615,000. **See attached Exhibit Q.**

83. Dale Porter retired from his career at the Bank soon after the Bank sold the strip mall.

84. Broker was Plasma's agent for the closing between Plasma and the Bank.

85. To the extent that the Lease was not already extinguished by Defendants' anticipatory repudiation and other wrongful conduct described above, and as an alternative allegation herein, by operation of law, S.C. Code Sec. 27-35-50, the Lease automatically became a Lease with Plasma, on the exact same terms as in the Lease. Nevertheless, given the destruction of Timmons' business by the Defendants' outrageous and unconscionable actions, breach and tortious interference, Timmons' damages as to the Bank, the Bank officers and agents, including Blanton, TBC and JBJR, had already accrued.

86. By letter dated February 6, 2017 (the "Vacate Letter"), Plasma, by its attorney, sent Timmons a "termination notice" in which it notified Timmons that it would not continue his tenancy, giving Timmons until March 13, 2017 to vacate. In this clear breach of contract and anticipatory repudiation of the Lease, significantly damaging Timmons, Plasma misrepresented that Timmons's tenancy was month-to-month due to the Foreclosure purchase and it failed to mention that Plasma had the power—indeed, legal obligation—to honor the Lease nevertheless.

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See attached Exhibit R. Plasma's actions, as with the Bank, quickly were communicated to third parties, vendors and clients of Timmons, further damaging his business and decreasing his revenues. For example, numerous construction crews and dumpsters were frequently at the site, all of which further fueled the "rumor mill," decreased Timmons' business and scared clients and employees off.

87. Holding on by a thread, given the word on the streets regarding his imminent demise, with the commensurate loss of clients, business and revenue, yet continuing to scrape by and pay the rent in full on time each month, Timmons attempted unsuccessfully to have Plasma uphold its obligations. Given Plasma's unreasonable refusal, and unwillingness to act in good faith, Timmons had no choice but to attempt to mitigate his damages following Plasma's unilateral termination of the Lease.

88. Following the outrageous termination and abrupt cancellation of the Lease by Defendants, including the Bank, and subsequently, Plasma, Timmons, with a "gun to his head," was forced by Defendants to close the Tavern on the Loop on or about May 26, 2017, just one year and nine months into his expected eighteen-year Lease. **See attached Exhibit S (S.C. Dep't of Revenue "Account Closing Form" for Tavern on the Loop).** Given the abrupt, illegal Lease termination by Defendants, Timmons also was forced by Defendants' actions to sell at "fire sale" all or most of his equipment, which he could not afford to store, valued new in excess of $80,000, for pennies on the dollar.

89. Struggling mightily to make ends meet, support his family, and pay his Tavern on the Loop creditors, and in an attempt to mitigate his damages, on or about June 27, 2017, Timmons executed two separate versions of a release purporting to release Plasma (the "Plasma Releases") from all claims associated with the Site and the Lease. Each of these Plasma

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Releases also purported to terminate the Lease, in consideration of payment for $10,322.58 from Plasma to Timmons. **See attached Exhibits T and U (two versions of the Plasma Release).**

90. On or about June 30, 2017, Timmons executed a third version of the release purporting to release Plasma (the "Plasma Releases") from all claims associated with the Site and the Lease. This release also purported to terminate the Lease, in consideration of payment for $10,322.58 from Plasma to Timmons. **See attached Exhibit V.**

91. Plasma and its agents and owners deceptively coerced Timmons and put him under duress into signing the Plasma Releases, and/or willfully deceived Timmons and were guilty of misrepresentation by, inter alia, (1) unfairly breaching and anticipatorily repudiating the Lease, and knowingly leaving Timmons in desperate financial straits with his clients and Tavern on the Loop creditors, and intentionally communicating such information to third parties and interfering with actual clients and prospective contractual relations of Timmons; (2) asserting in its Vacate Letter that Timmons's tenancy was month-to-month; (3) omitting any mention of its ability, let alone obligation, to honor the Lease; (4) ruining Timmons's business income by communicating its intent to re-develop the Site and terminate his tenancy, and communicating such information to third parties; (5) ejecting him on February 6, 2017 in its Vacate Letter; and (6) knowing he was broke and in debt on his business, offering him monetary consideration in exchange for his executing the Plasma Releases, knowing he was desperate to mitigate his damages in any way he could.

COUNT I–BREACH OF CONTRACT
As to Bank, Blanton, TBC, & JBJR

92. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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93. Through its agents TBC, Blanton, and JBJR, the Bank executed the Lease with Timmons.

94. The Lease was a contract between Timmons and each of the Bank, TBC, Blanton, and JBJR, with all such parties being liable for the same.

95. The Lease's material terms included the three sequential terms of three, ten, then five years.

96. The Bank, TBC, JBJR, and Blanton breached the Lease including by anticipatory repudiation when they (1) issued the Extinguishment Letter; (2) unilaterally purported to convert Timmons's tenancy into a month-to-month tenancy; (3) issued the Acquiescence Letter; and (4) tortuously interfered with Timmons' existing and prospective contractual relations as described below.

97. Following such breach and anticipatory repudiation and the destruction of his business by the Bank (and its agents') unconscionable, unscrupulous acts, Timmons has reasonably sought to mitigate his damages by, among other things, negotiating with the Bank to secure an amount that would allow him to pay back his creditors for the Tavern on the Loop's operation, and salvage something of his and his wife's life savings.

98. Timmons at all relevant times performed his obligations under the Lease.

99. As a direct and proximate cause of the breaches by Blanton, TBC, JBJR, and the Bank, Timmons has lost his eighteen-year lease, his once profitable business, and his and his wife's life savings, among other damages described *infra*.

100. The destruction of Timmons' business, damage to his reputation and standing in the community, and damage to Timmons's ability to earn his livelihood and to operate the Tavern on

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the Loop was the natural, severe and reasonably foreseeable result of the Defendants' breaches of the Lease.

101. Timmons's damages include lost profits for the entire multi-term duration of the Lease, financial harm caused by his inability to pay his creditors for opening the Tavern on the Loop, emotional suffering, damage to business reputation and reputation in the community and loss of enjoyment of life.

COUNT II – BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT
As to Bank, Blanton, TBC, JBJR

102. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

103. Blanton, JBJR, and TBC's fraudulent acts accompanying the breaches described above include: (1) representing to Timmons that TBC was the lessor on the Lease, without mentioning who the actual owner and true landlord of the Site was, while knowing that the Bank had already exercised its Rent Rights and Possession Rights for the Site pursuant to the Assignment of Rents/Security Interest; (2) representing to Timmons during Lease negotiations that Timmons's long-term interest in the Site was "covered" and that Timmons could rely on the three-term duration of the Lease (three, ten, then five year terms), while knowing of the Foreclosure and the Bank's intent to extinguish the Lease and to sell the Site quickly; (3) omitting communicating to Timmons, despite knowing, the facts of the filed Foreclosure, the court order for Payment of Rents, the Bank's purchase of the Site in foreclosure, and the Bank's intent to extinguish the Lease and to sell the Site as soon as possible—with the intention of duping and deceiving Timmons so as to entice him to invest his and his wife's life savings in the Site--until Timmons came to know these facts as described *supra*; (4) representing to Timmons that it was likely that the new buyer would continue Timmons's tenancy and honor the Lease,

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while knowing that the Bank intended to extinguish the Lease and was not intending to require that a new purchaser honor the Lease; and (5) communicating to Timmons in the Acquiescence Letter that it would be his responsibility to renegotiate his lease with the new buyer, while knowing that this was not the law and that the new buyer's only intention was to raze the Site and strip mall and discontinue all tenancies including that of Timmons.

104. Each of Blanton, JBJR, and TBC's aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Timmons's money through rents paid under the Lease and his and his wife's investments in the Lease and Site.

105. Blanton, JBJR, and TBC had the duty to disclose the facts described with the fraudulent acts above because they had superior knowledge of the facts and said facts were not readily available to Timmons and they knew that Timmons was acting on the basis of mistaken knowledge.

106. Each of Blanton, JBJR, and TBC's aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Timmons, and that Timmons's decisions regarding the Lease would be affected were Timmons to have the same knowledge.

107. The Bank's, Saunders, and Porter's fraudulent acts accompanying the breaches described above include (1) all the fraudulent acts of Blanton, JBJR, and TBC who were acting as the Bank's agents with respect to Timmons and the Lease; (2) purporting to extinguish the Lease by its Extinguishment Letter and representing that such extinguishment was a natural and unavoidable consequence of the Bank becoming the new owner of the Site, despite knowing that this was not an inevitable operation of landlord-tenant, mortgage law, or the Mortgage; (3)

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representing in the Extinguishment Letter and the Acquiescence Letter that existing leases would not be honored by any subsequent purchaser and that each tenant would have the responsibility to negotiate a new lease with a new buyer, while knowing that such Leases automatically became the obligation of the new purchaser by operation of law, and (4) representing in the Acquiescence Letter that tenants would face the scenario of renegotiating leases with the new buyer, despite knowing that Plasma's intention was to raze the strip mall. Upon information and belief, Porter and Saunders: 1) participated in the tortious and other acts described herein; 2) were negligent in supervising the conduct of business by the Bank and its agents, and/or 3) were negligent in the appointment of one or more wrongdoer/agents.

108. Each of the Bank's, Saunders and Porter's aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Timmons's money through rents paid under the Lease.

109. The Bank, Saunders and Porter had the duty to disclose the facts described with the fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Timmons and it knew that Timmons was acting on the basis of mistaken knowledge.

110. Each of the Bank's, Saunders and Porter's aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Timmons, and that Timmons's decisions regarding the Lease would be affected were Timmons to have the same knowledge.

111. The destruction of Timmons' business, damage to his business reputation and standing in the community, and damage to Timmons's ability to earn his livelihood and to

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operate the Tavern on the Loop was the natural, severe and reasonably foreseeable result of the Defendants' actions.

112. Timmons's damages include lost profits for the entire multi-term duration of the Lease, financial harm caused by his inability to pay his creditors for opening the Tavern on the Loop, emotional suffering, damage to business reputation and reputation in the community and loss of enjoyment of life.

113. Punitive damages are warranted against each Defendant because of each Defendant's fraudulent acts accompanying the breaches of the Lease described herein.

COUNT III—BREACH OF CONTRACT
As to Plasma

114. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

115. To the extent that the Lease was not already extinguished by Defendants' anticipatory repudiation and other wrongful conduct described above, and as an alternative allegation herein, by operation of law, S.C. Code Sec. 27-35-50, the Lease automatically became a Lease with Plasma, on the exact same terms as in the Lease with the Bank, TBC, Blanton, and JBJR.

116. Plasma became a party—and landlord—to the Lease when it purchased the Site from the Bank.

117. The Lease was a contract between Timmons and Plasma.

118. The Lease's material terms included the three sequential terms of three, ten, then five years.

119. Plasma breached the Lease by anticipatory repudiation when it issued its "termination notice" in the Vacate Letter.

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120. Following such anticipatory repudiation and the further destruction of his business by Plasma's unconscionable, unscrupulous acts, and in the face of extreme, several financial distress, under coercion and duress, Timmons reasonably sought to mitigate his damages by, among other things, negotiating with Plasma, regarding the Plasma Releases, to secure an amount that would allow him to pay back his creditors for the Tavern on the Loop's operation, and salvage something of his and his wife's life savings.

121. Timmons at all relevant times performed his part of the Lease.

122. As a direct and proximate cause of the breaches by Plasma, Timmons has lost his eighteen-year lease, his once profitable business, his and his wife's life savings, among other damages described *infra*.

123. At the time of becoming a party to the Lease—and later when it issued the Vacate Letter—Plasma was aware of the adverse effects which their plan to eject Timmons and to raze the Site would have on Timmons, because of their education, training, and information, since Plasma knew of said plan and of the long duration of the Lease, that Timmons operated the Tavern on the Loop at the Site, that he had invested much money into its operation, and of Timmons's business goals.

124. The destruction of Timmons' business, damage to his reputation and standing in the community, and damage to Timmons's ability to earn his livelihood and to operate the Tavern on the Loop was the natural, severe and reasonably foreseeable result of the Defendants' breaches of the Lease.

125. Timmons's damages include lost profits for the entire multi-term duration of the Lease, financial harm caused by his inability to pay his creditors for opening the Tavern on the

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Loop, emotional suffering, damage to business reputation and reputation in the community and loss of enjoyment of life.

COUNT IV—BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

As to Plasma

126. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

127. Plasma's fraudulent acts accompanying the breach described above include (1) representing in its Vacate Letter that the Bank's foreclosure purchase of the Site had transformed Timmons's tenancy into a month-to-month tenancy, despite that Plasma (1) knew or reasonably should have known that a month-to-month tenancy was not the inevitable effect of the Bank's foreclosure purchase; and (2) omitted the fact that Plasma retained the right and obligation to honor the Lease when it purchased the Site.

128. Plasma's fraudulent acts were done with reckless disregard of the truth, or with the intent to deceive, and were dishonest in fact, unfair dealing, and done with the design of unlawfully ejecting Timmons and unlawfully terminating the Lease.

129. Plasma had the duty to disclose the facts described with its fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Timmons and it knew that Timmons was acting on the basis of mistaken knowledge.

130. Plasma's fraudulent acts were done with special knowledge of the facts described with its fraudulent acts above, and with knowledge that these facts were not available to Timmons and that Timmons's decisions regarding the Lease would be affected were Timmons to have the same knowledge.

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131. Each of the aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Timmons's money through rents paid under the Lease.

132. Plasma had the duty to disclose the facts described with the fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Timmons and it knew that Timmons was acting on the basis of mistaken knowledge.

133. Each of the aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Timmons, and that Timmons's decisions regarding the Lease would be affected were Timmons to have the same knowledge. Upon information and belief, Williams: 1) participated in the tortious and other acts described herein; 2) was negligent in supervising the conduct of business by Plasma and/or its agents, and/or 3) as negligent in the appointment of one or more wrongdoer/agents.

134. Punitive damages are warranted against each Defendant because of each Defendant's fraudulent acts accompanying the breaches of the Lease described herein.

135. The destruction of Timmons' business, damage to his reputation and standing in the community, and damage to Timmons's ability to earn his livelihood and to operate the Tavern on the Loop was the natural, severe and reasonably foreseeable result of the Defendants' actions.

136. Timmons's damages include lost profits for the entire multi-term duration of the Lease, financial harm caused by his inability to pay his creditors for opening the Tavern on the Loop, emotional suffering, damage to reputation in the community and loss of enjoyment of life.

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COUNT V–FRAUD

As to Bank, Blanton, TBC, JBJR, Saunders & Porter

137. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

138. Blanton, JBJR, and TBC's fraudulent statements (2), (4), and (5)—described in paragraph 103 of Count II above—were affirmative representations of facts that were false because Timmons's three-term interest in the Lease was not "covered" but was subject to immediate breach as described above, because it was not likely that the new purchaser would honor the Lease, and because it was not necessarily Timmons's responsibility to renegotiate the Lease with the new purchaser, respectively.

139. Blanton, JBJR, and TBC's fraudulent statements (1) and (3)—described in paragraph 103 of Count II above—were misrepresentations by nondisclosure of the facts described therein above.

140. Blanton, JBJR, and TBC's fraudulent statements (2), (4), and (5)—described in paragraph 103 of Count II above—were material because they all directly related to the Lease's provision for multiple terms and Timmons's interest in operating a long-term business.

141. Blanton, JBJR, and TBC's fraudulent statements (1) and (3)—described in paragraph 103 of Count II above—were material because their omitted facts would have led a reasonable person in Timmons's position to avoid entering the Lease in order to operate a business long-term.

142. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were made with Blanton, JBJR, and TBC's knowledge of their falsity or a reckless disregard of their truth or falsity.

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143. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were made with the intent that Timmons act on the representations because Blanton, JBJR, and TBC stood to gain from Timmons's Lease by managing the property under whatever financial arrangements they had with the Bank.

144. All of Blanton, JBJR, and TBC's fraudulent statements' falsity—described in Count II above—was unknown to Timmons.

145. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were relied on by Timmons as the truth in entering and continuing to perform under the Lease.

146. Timmons had the right to rely on all of Blanton, JBJR, and TBC's fraudulent statements described in Count II above.

147. Timmons was consequently and proximately damaged by relying on all of Blanton, JBJR, and TBC's fraudulent statements described in Count II above.

148. The allegations of fraud against TBC, JBJR, and Blanton pled above are re-pled by incorporation hereby against the Bank, the undisclosed Principal, and correspond to the Bank's statements in (1) of paragraph 107 described in Count II above.

149. The Bank's fraudulent statements described in paragraph 107 of Count II above—were affirmative representations of facts or failures to disclose that were false because the Lease was not extinguished by the Bank's purchase of the Site in foreclosure, because the Bank also had the right to negotiate the Lease with any prospective buyer of the Site, because the Bank had the right to require that a new buyer of the Site honor the Lease, and because Timmons would not be able to renegotiate the Lease with the new buyer because that new buyer, Plasma, had communicated to the Bank its intent to raze the Site, respectively.

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150. The Bank's fraudulent statements described in paragraph 107 of Count II above—were material because a reasonable businessman in Timmons's position would have a significant interest in knowing any imminent changes to the party to whom he pays rents and who is exercising powers of a landlord over his tenancy.

151. The Bank's fraudulent statement (4)—described in paragraph 107 of Count II above—was material because a reasonable businessman in Timmons's position would have a significant interest in knowing how his tenancy would be subject to change, including unilateral termination, by any party related to a forthcoming real estate transaction.

152. All of the Bank's fraudulent statements—described in Count II above—were made with the Bank's knowledge of their falsity or a reckless disregard of their truth or falsity.

153. All of the Bank's fraudulent statements—described in Count II above —were made with the intent that Timmons act on the representations because the Bank stood to gain from Timmons's Lease by getting Timmons's rents.

154. All of the Bank's fraudulent statements' falsity—described in the Breach of Contract Accompanied by a Fraudulent Act above—was unknown to Timmons.

155. All of the Bank's fraudulent statements—described in the Breach of Contract Accompanied by a Fraudulent Act above—were relied on by Timmons as the truth in entering and continuing to perform under the Lease.

156. Timmons had the right to rely on all of the Bank's fraudulent statements described in Count II above.

157. Upon information and belief, Porter and Saunders: 1) participated or made the statements attributed to the Bank described herein; 2) were negligent/reckless in supervising the conduct of business by the Bank and its agents, 3) were negligent/reckless in the appointment of

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one or more wrongdoer/agents and/or 4) were complicit in and/or approved the statements and actions described herein.

158. Timmons was consequently and proximately damaged by relying on all of the Bank's, Saunders and Porter's fraudulent statements described in Count II above.

159. The destruction of Timmons' business, damage to his reputation and standing in the community, and damage to Timmons's ability to earn his livelihood and to operate the Tavern on the Loop was the natural, severe and reasonably foreseeable result of the Defendants' actions.

160. Timmons's damages include lost profits for the entire multi-term duration of the Lease, financial harm caused by his inability to pay his creditors for opening the Tavern on the Loop, emotional suffering, damage to reputation in the community and loss of enjoyment of life. Punitive damages are warranted.

COUNT VI—FRAUD
As to Plasma and Williams

161. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

162. Plasma's and William's fraudulent statement that Timmons's tenancy became month-to-month due to the Foreclosure was an affirmative representation of fact that was false because the Lease was not extinguished and transformed into a month-to-month tenancy by the Bank's Foreclosure, and because Plasma retained the obligation to honor the Lease when it purchased the Site.

163. Plasma's and William's fraudulent implied statement, that it had no right to honor the Lease because the tenancy had become month-to-month, was a representation by nondisclosure because Plasma retained the right to honor the Lease when it purchased the Site.

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164. Each of Plasma's and William's fraudulent statements and omissions was material because a reasonable businessman in Timmons's position would have a significant interest in knowing the true nature of his tenancy at the time of Plasma's purchase of the Site and whether Plasma had the right to honor the Lease.

165. All of Plasma's and William's fraudulent statements were made with Plasma's and William's knowledge of their falsity or a reckless disregard of their truth or falsity.

166. All of Plasma's and William's fraudulent statements were made with the intent that Timmons act on the representations/omissions because Plasma and Williams stood to gain from not honoring the Lease and ejecting Timmons, along with the other tenants, in order to profit from razing the building and re-developing it.

167. All of Plasma's and William's fraudulent statements' falsity was unknown to Timmons.

168. All of Plasma's and William's fraudulent statements were relied on by Timmons as the truth in vacating the premises and deciding to cut his losses without asserting any legal rights.

169. Timmons had the right to rely on all of Plasma's and William's fraudulent statements.

170. Timmons was consequently and proximately damaged by relying on all of Plasma's and William's fraudulent statements.

171. Punitive damages are warranted for each Defendant's fraud.

COUNT VII– NEGLIGENT MISREPRESENTATION
As to Blanton, JBJR, TBC, Porter, Saunders and Bank

172. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

173. All Defendants' representations described above—in Count V above—were false for the reasons therein.

174. All Defendants' representations described above—in the allegations of Fraud—were made with Defendants' pecuniary interests described therein.

175. Each Defendant owed Timmons a duty of care to see that it communicated truthful information to Timmons because it possessed the special knowledge described above that made it reasonable for Timmons to rely on its judgment and ability to make careful inquiry into the likelihood that Timmons would actually be able enjoy the negotiated duration of the Lease.

176. Each Defendant breached its duty by omitting or misrepresenting material facts as described above.

177. Timmons justifiably relied on each Defendant's misrepresentations because, among other grounds, he reasonably placed his trust in (1) each of Blanton, TBC, JBJR where it communicated to Timmons that his long-term interest in the Lease was "covered" and that no new purchaser would cancel a lease with such a good tenant as Timmons; (2) the Bank where it communicated to Timmons that his Lease was extinguished by its foreclosure purchase and turned into a month-to-month tenancy and it was his responsibility to negotiate his tenancy with any new purchaser; (3) Plasma where it communicated to Timmons that his tenancy was month-to-month and Plasma had no power to honor his Lease.

178. Timmons suffered a pecuniary loss as the proximate result of his reliance on each misrepresentation of each Defendant.

COUNT VIII—NEGLIGENT MISREPRESENTATION
As to Plasma and Williams

179. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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180. All Defendants' representations described above—in Count VI—were false for the reasons therein.

181. All Defendants' representations described above—in the allegations of Fraud—were made with Defendants' pecuniary interests described therein.

182. Each Defendant owed Timmons a duty of care to see that it communicated truthful information to Timmons because it possessed the special knowledge described above that made it reasonable for Timmons to rely on its judgment and ability to make careful inquiry into the likelihood that Timmons would actually be able enjoy the negotiated duration of the Lease.

183. Each Defendant breached its duty by omitting or misrepresenting material facts as described above.

184. Timmons justifiably relied on each Defendant's misrepresentations because, among other grounds, he reasonably placed his trust in (1) Plasma and Williams where they communicated to Timmons that his Lease was turned into a month-to-month tenancy by the Foreclosure; and (2) Plasma and Williams where they impliedly communicated to Timmons that they had no obligation to honor his Lease.

185. Timmons suffered a pecuniary loss as the proximate result of his reliance on each misrepresentation of each Defendant.

COUNT IX—VIOLATION OF UNFAIR TRADE PRACTICES ACT
As to all Defendants

186. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

187. The Defendants' acts—including as described in Count II and Count IV above—were unfair or deceptive.

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188. The Defendants' acts as described above negatively impact the public interest by decreasing tenants' faith in their dealings with property managers and landlords by making insecure any business person's prospect of operating a business in a tenancy that he had negotiated to last longer than one year.

189. The Defendants' acts—including those described in Count II and Count IV above—can be repeated because their acts were natural to the Defendants' processes of securing leases, enforcing security interests, litigating foreclosures, closing short-term real estate transactions with new buyers, and purchasing and re-developing properties.

190. Members of the public were adversely affected by Defendants' unfair or deceptive acts because, among other reasons, the tenants at the strip mall lost their tenancies due to Defendants' acts and lost their clientele who, in turn, lost the businesses, and likely discussed the same with friends, families, and business colleagues, and the Tavern on the Loop's staff and customers discussed the pending closure of the Tavern on the Loop upon learning of the Foreclosure.

191. Timmons suffered damages proximately caused by Defendants' unfair or deceptive acts, including actual and consequential damages.

192. Each Defendant knew or should have known that each of its deceptive or unfair acts was a violation of the Unfair Trade Practices Act.

193. Each Defendant thus willfully violated the Unfair Trade Practices Act, warranting treble damages and attorney's fees for Plaintiff.

COUNT X—DECLARATORY ACTION (RESCISSION)

194. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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195. The Plasma Releases are unenforceable because Timmons signed them under duress and coercion, under the most extreme and dire financial distress brought on directly by the conduct described herein.

196. Plasma's coercion and the exertion of duress as described above was unlawful, and offensive, taken in bad faith with the intent, or having the reasonably foreseeable result, to reduce Timmons's state of mind to fearing for his ability to provide for his family and to earn money in the business to which he devoted his life, and to pay back his business's creditors, such that he could not resist signing the Plasma Releases to get what money he could in meager mitigation of his actual damages.

197. Plasma may not take advantage of the very confusion it wrought by its breach and anticipatory repudiation contained in the termination notice/Vacate Letter and other communications with Timmons, concerning Timmons's understanding of the nature of his tenancy and the validity of the Lease, by asserting the validity of the Plasma Releases.

COUNT XI—TORTIOUS INTERFERENCE WITH CONTRACT
As to all Defendants

198. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

199. The Lease was a contract as described above.

200. Each Defendant, at all times relevant to this claim, knew of the contract.

201. Timmons had contracts with the clients, employees and suppliers of the Tavern on the Loop.

202. Each Defendant, at all times relevant to this claim, knew of these client, employee and supplier contracts.

203. One or more Defendants intentionally procured the breach of Timmons's tenancy and/or Lease with TBC, JBJR, the Bank, and Blanton, as well as of Timmons's employee, client and supplier contracts, by way of fraudulent and/or negligent misrepresentations described above, as well as the Foreclosure, Extinguishment Letter and Acquiescence Letter, all without justification because the Bank did not have the legal right either to transform Timmons's tenancy into a month-to-month tenancy or to extinguish the Lease.

204. Timmons suffered damage proximately caused by such interference.

205. Defendants' interference was aggravated and in reckless disregard of Timmons's rights, meriting punitive damages.

206. Plasma intentionally procured the breach of Timmons's tenancy and/or Lease with one or more Defendants, as well as of Timmons's employee, client and supplier contracts, with (1) its offers to Timmons and the Bank via its agent, the Broker, to procure money that would be given to Timmons in exchange for Timmons's signing the Bank's Acquiescence Letter; and (2) its initial condition, to closing on the strip mall with the Bank, that the Bank have each tenant sign the Acquiescence Letter; and (3) with its fraudulent and/or negligent misrepresentations described above; all procurements being without justification because Plasma intended to raze the strip mall and employed means in bad faith to avoid its pending duties and obligations of the Lease and of its landlord status over the strip mall's tenants including Timmons.

207. Timmons suffered damage proximately caused by the Plasma's interference.

208. Plasma's interference was aggravated and in reckless disregard of Timmons's rights, meriting punitive damages.

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COUNT XII—TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS OPPORTUNITIES

As to all Defendants

209. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

210. Timmons had prospective contractual relations with the customers, employees, and suppliers of the Tavern on the Loop (collectively the "Prospects").

211. These Prospects were reasonably probable based on Timmons' prior success as a bar owner and operator, on the duration-terms of the Lease, on the existing contracts with customers, employees, and suppliers, and on the profits he initially made with the Tavern on the Loop.

212. Timmons lost these Prospects when clients, employees, and suppliers learned of the foreclosure, extinguishment of the Lease, and pending sale of the Site. They were further lost when the same learned of Timmons's ejection, Plasma's plan to re-develop the strip mall, and the termination of the Lease.

213. Each Defendant addressed in the claim of tortious interference with contract described above also intentionally interfered with Timmons's Prospects by the same acts described in said claim, these acts being improper and wrongful, and effecting improper purposes: namely, to induce Timmons to relinquish his contractual right to the Lease and his tenancy at the Site.

214. Timmons suffered damage proximately caused by each Defendant's interference.

215. Each Defendant's interference was aggravated and in reckless disregard of Timmons's rights, meriting punitive damages.

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COUNT XIII—BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING
As to all Defendants

216. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

217. Each Defendant owed Timmons the duty of good faith and fair dealing by virtue of the contract(s) previously alleged to exist between Timmons and each Defendant.

Each Defendant breached said duty by its acts giving rise to the above claims for breach of contract, breach of contract accompanied by fraudulent act, fraud, and negligent misrepresentation.

218. Each Defendant's breach proximately caused Timmons damages that include, *inter alia*, his loss of the Lease and of his profits from the Tavern on the Loop.

COUNT XIV—NEGLIGENT SUPERVISION
As to Bank, Saunders and Porter

219. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

220. Based on their employment and/or agency relationship, Bank, Saunders and Porter had a duty to Plaintiff to reasonably and appropriately supervise Bank employees committing tortious conduct described herein, as well as Defendants TBC, JBJR and Blanton also committing tortious conduct described herein.

221. Based on the actions of Bank, Saunders and Porter described above, including their failure to appropriately supervise Bank employees committing tortious conduct described herein, as well as Defendants TBC, JBJR and Blanton also committing tortious conduct described herein — Bank, Saunders and Porter breached their duty to Plaintiff.

222. Plaintiff suffered great damages as a result of Defendant Bank, Saunders and Porter's breach of their duty, in an amount to be proven at trial, including his loss of the Lease and of his profits from the Tavern on the Loop.

DAMAGES

223. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

224. As a result of the acts and omissions of the Defendants set forth generally above, and other and further acts and omissions of a similar nature, Plaintiff has suffered and will suffer the following damages:

(a) Past expenses for general living;

(b) Loss of life savings and ability to repay debts created in operating the Tavern on the Loop;

(c) Damage to credit rating, and to professional and business reputation;

(d) Damage to reputation in the community;

(e) Past and future lost income and impairment of earning capacity;

(f) General damages for suffering, mental and emotional distress, substantial alterations of lifestyle, loss of enjoyment of life, and other significant damages;

(g) Unforeseen expenses;

(h) Damage for loss of employees;

(i) Damage for loss of customers and loss of equipment it had to sell for pennies on the dollar following Defendants' termination of the Lease;

(j) Damage for loss of goodwill;

(k) Attorney fees for having to retain counsel to prosecute this action, including as may be allowed under the Lease and SCUTPA; and

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(l) Plaintiffs' costs of this action, together with interest on special and general damages from the date of occurrence at the legal rate until paid, interest on any judgment awarded herein at the legal rate until paid, and other and further relief as the Court deems equitable and just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

225. For compensatory damages in an amount supported by the evidence at trial;

226. For consequential damages in an amount supported by the evidence at trial;

227. For punitive damages authorized by law;

228. For treble damages as authorized by law;

229. For an award of attorneys' fees and costs to the extent allowed by the Lease and/or other applicable law, including SCUTPA;

230. For pre- and post-judgment interest; and

231. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests that this case be tried by a jury.

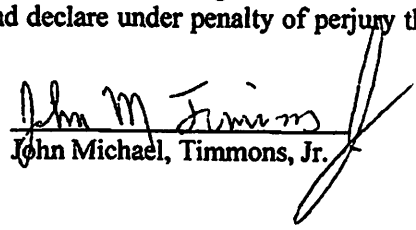
Dated: January 24, 2018.

Ben Le Clercq (S.C. Bar #65754)
Scott Riddell (S.C. Bar #102809)
Le Clercq Law Firm
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708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
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Fax (843) 352-2977
Counsel for Plaintiff

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VERIFICATION

I, John Michael Timmons, Jr., having reviewed the allegations contained in the Complaint set out above, do hereby verify the same and declare under penalty of perjury they are true and correct, this 19th day of January, 2018.



John Michael, Timmons, Jr.

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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Q. You've been involved in the real estate business?
A. Yes.
Q. Okay. Very good.
So what I would like to do is talk with you about some real estate concepts before we get into any of the particulars of the case here.
So, and this is going to be a little bit of real estate 101, but because I'm not in the real estate business, I want to make sure we are on the same page in terms of what things mean.
So tell me what you understand the lease of property to be.
A. Tell me what I understand a lease on a property is?
Q. Yeah. What's a lease?
A. A lease is a legal bounding -- binding contract between a landlord and a lessee or lessor and lessee. States terms and conditions as far as the term and the conditions that follow along with that.
Q. Okay. And do both the lessor and the lessee, do they have both obligations as well as rights under a lease?
A. That's correct.

Q. All right. Tell me what the -- the typical duties and obligations of a tenant are.
A. That's pretty tough to answer because every tenant is different.
Q. Give me the most -- what you think are the most important obligations of a tenant in a lease.
A. To maintain the -- and, again, that's really difficult to answer, Ben, because, you know, I've got guys that are paying $1,000 a month for 1,000 square feet that run a taxi business out of there. They're -- obviously their lease is much less sophisticated than, perhaps, say Mike's.
So every lease would differ, but generally speaking, it's to maintain the property, pay the rent on time and, you know, to abide what their responsibilities are and to -- for the landlord or lessor/owner, to abide what his responsibilities are. Those are always drawn out in a lease.
Q. Okay. So let me ask this as an aside before we move on.
Approximately how many property management clients do you have right now?
A. Hmm. I -- quite frankly, I don't know.
Q. More than 50?
A. Yes.

Q. More than 100?
A. Yes.
Q. More than 200?
A. No.
Q. So somewhere between 100 and 200 clients?
A. That's correct.
Q. And what were your -- let me ask you this.
Since you started, have your revenues grown every year?
A. Since I started the Blanton Company?
Q. Yes, sir.
A. I can't say yes that every year they've grown, no. But they have grown as overall since we've been doing this.
Q. Can you tell me what your approximate gross revenue was last year?
A. $245,000, I think.
Q. Okay. So you talked about what the tenant obligations are to pay the rent on time and to maintain the property, and that these are typically set out in a lease agreement, a written agreement?
A. Yeah. We decide who's responsible for HVAC, who's responsible for the roof, exterior walls, plumbing, et cetera, and, you know, whatever special conditions may or may not arise, which are

added to a lease.
Q. Does that change from lease to lease?
A. Sure.
Q. So tell me about the landlord's typical obligations. We just talked about the tenant. What --
A. All right. We're a conduit.
Q. What's that mean?
A. You know what it means, Ben.
Q. When you say "you," "we" meaning the property manager.
A. "We" meaning my business.
We are a conduit to the landlord. We don't own anything. We don't claim any ownership. The landlord is the owner. Okay? We abide by their wishes and do what we're told to do. Okay?
Q. Got it.
A. Their responsibility is to honor any lease that we sign on their behalf or they sign themselves. Some want hands-on to sign it themselves. Some don't. Just say sign it -- you know, just sign as my agent.
Q. Can you tell me as a percentage -- I won't hold you to this -- but roughly how many times do you sign and how many times does the owner sign out

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Ray Coit Yarborough, Jr.
Attorney At Law
P.O. Box 4198
Florence, SC 29502
(843) 676-0580
FAX 676-9045

July 23, 2015

Richard Cooke
1967 Scott Street
Lake View, SC 29563

The Blanton Company, Inc.
Mr. Joe Blanton
126 S. Coit Street
Florence , SC 29501

HAND DELIVERED

RE: First Reliance Bank, Plaintiff vs. Atlantic Regional, LLC, et al

CA# 2015-CP-21-2106

Dear Sir or Madam:

On behalf of First Reliance Bank and pursuant to the attached assignment of rents from Atlantic Regional, LLC, I am directing that the two of you immediately pay all rent monies held as principal or as agent for Atlantic Regional, LLC, or its tenants on the property referred to in the assignment to Mr. Dale Porter at First Reliance Bank. Atlantic Regional LLC is in default under the terms of a note, mortgage and assignment of rents held by the bank. I am attaching a copy of a motion which I have filed and am herewith serving it upon you. Pursuant to the assignment and S.C. Code Section 29-3-100, all future payments on your lease are to be made to:

First Reliance Bank
c/o Dale Porter
2170 W. Palmetto Street
Post Office Box 36
Florence, South Carolina 29501

Sincerely Yours,

Ray Coit Yarborough, Jr.
Attorney for First Reliance Bank.

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

Exhibit 56

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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A. Yes.
Q. Is it your recollection that you were in contact with Mr. Coit Yarborough as to the Elite proposed lease in October of 2015?
A. I guess I did. You know, I'm not sure. I guess I did, yeah.
Q. And is it your recollection that you also were in contact with Dale Porter at the bank relating to the proposed lease of Elite Tactical Laser Tag?
A. I think so. I -- I can't state yes or no for sure.
Q. Talk to me qualitatively, if you look back at page 118, about the relative size of this lease. It looks like they're proposing 14,000 total square footage at a rent of 490 per square feet for $68,000 a year. That's a fairly hot lead, wouldn't you agree?
A. Fairly what?
Q. A hot lead? That's a good prospect?
A. Yeah.
Q. Do you recall how you received this letter? Was it by e-mail? Was it hand delivery? Or do you recall?
A. Don't recall.

Q. Okay. Did Mr. Andrews come in and speak with you about the property in October of 2015?
A. Yeah. I spoke to him, obviously.
Q. Did you show him the property?
A. Yeah. I'm pretty sure I did, yes.
Q. Okay. So the management agreement that is referred to on that sticky note, on Blanton 120, is that similar to the management agreement -- strike that.
The sort of management agreement which you would have wanted is the kind that we've seen that is attached as Exhibit 1 that you had with Atlantic. Is that the type of management agreement we are talking about?
A. Yes.
Q. All right. Okay. I'm going to represent to you that October 2nd was a Friday, and that it's my belief that you were -- you got this letter by hand delivery, and it says, "Call Dale Porter Tuesday."
So do you recall why Elite Tactical Laser Tag ended up not leasing the space?
A. No. Other than to say that ultimately it wasn't my decision. I'm assuming that my relationship with First Reliance told me that's not anything they wanted to enter into.

Q. Do you recall who it was at the bank that told you that?
MS. HOUGHTON: Object to form.
THE DEPONENT: I'm not positive, but most of my conversations were with Dale.
BY MR. LE CLERCQ:
Q. Did you have any contacts with Jess Nance at the bank?
A. Yes, I did.
Q. But you think your main point of contact for things relating to Sweetbriar would have normally been with Dale Porter?
A. That's correct.
Q. Do you have any specific recollection of conversations -- strike that.
Now, you got this -- it appears that you got this letter on or about Friday, October 2, 2015.
The prior Wednesday, which is September the 30th, do you recall being in court with Mr. Coit Yarborough on the hearing on the bank's motion to enforce rents? Do you remember going to court?
A. I think it was in a magistrate's court, if I recall. I'm not sure. I think so, yeah.
Q. Okay. Well, I've talked with Mr. Andrews and he says that -- that the -- that he found out

that the property was in foreclosure and that dissuaded him from entering the lease.
Do you know how it was that he found out that the property was in foreclosure?
A. No, sir.
Q. Do you recall telling him that?
A. I don't recall.
Q. Do you know whether he might have found out from a competitor that the property was in foreclosure?
A. It's possible.
Q. Florence is a small town?
A. Depends on who's asking.
Q. Do you know where the Elite Laser Tag ended up renting space?
A. I don't have a clue.
Q. Do you recall that Mr. Andrews also found out that there were issues -- there were structural issues with the roof that had to be addressed?
A. If he did his due diligence, he probably did.
Q. Tell me what you think he would have found out.
A. That it most likely was in need of repair, which I beg every owner that ever owned the place

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vs

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JOSEPH BLANTON

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history, et cetera, that I've got a, you know, gut feeling that they ain't going to pay. Okay? I'm not real sure how else to answer that.

BY MR. LE CLERCQ:

Q. Would you expect that if the -- that whatever the bank had done to try to work things out would have occurred prior to the filing of the foreclosure papers? That the foreclosure would be a last resort?

MS. HOUGHTON: Object.

THE DEPONENT: I -- I really can't answer that. I'm not sure. I would think, as a, you know, lender, borrower, that they would hopefully have some kind of working relationship. I don't know.

BY MR. LE CLERCQ:

Q. Okay. I asked you earlier, but you said you'd never been -- you'd never been in a situation where a property you were managing was foreclosed prior to this.

Do I take it from that, that you've never, prior to these events, you never told a tenant that a property was in foreclosure?

A. To the best of my knowledge, no.

Q. Do you think that a property manager when he finds out that a property that he's managing is in foreclosure, does he have an obligation to go to the borrower in possession and say, "What are you guys going to do? Are you going to bring it current, or are you going to let it go?"

A. Well, I was not notified of the foreclosure action until after the fact. So I can't answer that.

Q. But then once you know about it, do you think that a property manager has an obligation to go to the mortgagor in this case and say, "Guys, tell me what's up. Are you going to bring this current, or are you going to let it go?"

And if it's not obligation, is it a smart business practice?

A. You're asking do I have an obligation to go to the mortgagor --

Q. Atlantic in this case.

A. Well, again, I wasn't aware of them being foreclosed on until after the fact.

Q. What I'm saying after you find out that they've been foreclosed upon --

A. I don't have any obligations whatsoever to tell them whether they should pay up or not. No.

Q. That's not my question.

A. Okay.

Q. What my question is: Do you think that you have an obligation to go to them just to find out whether they are going to either bring the property current or whether they're going to let it go to the bank? Because you have to rent the property --

A. Well, I was going to say, as my knowledge, because I was caught in the middle. Okay.

Yeah. Sure. "What are you guys going to do? Are you moving out of here? Are you just going to sit until they basically throw you out?"

I don't know.

Q. Did you actually do that in this case? Did you go to Atlantic at any time after July 24 and have a conversation with them to find out what their intentions were with regard to the foreclosure?

A. I'm sure that we had phone conversations. We'd have a sit-down everybody records, et cetera. But I had conversations with them saying, "Yeah, you know, we're out of business," or "we're gone."

Q. That's what they told you?

A. I think so, yes.

Q. Okay.

A. To the best of my recollection.

Q. Okay. Who was it that told you that? Richard Cook?

A. Richard. He was my main guy that I talked with, yes.

Q. And at some point subsequent to July 24, 2015, you had a phone conversation -- one or more phone conversations with Richard Cook, and he told you words to the effect of, "We're out of business" --

A. Things ain't looking good. Okay? I fear that this may come to fruition. Okay?

Q. And he didn't say, "No. Everything's cool. We're going to bring this current."

A. No.

Q. Did he say that the ambulance company was out of business?

A. I can't truthfully say that he did or did not. Obviously, they were the anchor store, as in a Belk or a Sears or what have you. But he basically told me that their business was bad, and whether they went out of business -- I don't know if they moved to another town and stayed in business. I don't know. Okay?

Q. I heard you say the phrase "we're going to

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let it go."
Did he say those words or words to that effect when you talked with him --
A. I think when he said, "We're going to let it go," I think he meant that we're giving up on trying to maintain or hold the building. Okay? As far as their individual business goes, I don't have a clue.
Q. Understood.
But what I'm interested in is the building.
A. I think that that's what he -- that's the way I interpreted it, yes.
Q. You understood that they were not going to bring the mortgage current, but were going to --
A. That was my understanding.
Q. I'm sorry. Let me finish the question.
A. Okay. I didn't know you weren't finished.
Q. Your understanding after your one or more conversations with Richard Cook was that their business was bad and they were going to let the building go. They were not going to try to bring the mortgage current, but, by contrast, they were going to not -- that the property -- excuse me -- the property was going to go -- the building was going to go to the bank.

A. I was never told that exactly. I just -- it was insinuated that, Hey, we're not going to be able to hang in here. Okay? I don't know how to put it in precise verbiage.
Q. Okay. And you think that was one or even several conversations that took place by telephone after July 24 that were to that effect?
A. After?
Q. July 24.
A. And, again, I hope it's okay if I call you Ben.
Q. Please do.
A. Or Mr. Le Clercq.
We're talking about five years ago. Okay? A lot of times I can't remember what I had for dinner three nights ago. Okay?
Q. I understand. I understand.
A. So this is going on recall.
And I can't sit here under oath and, you know, swear that I remember how many telephone calls I had with him. I just know that we weren't adversaries; that I was going to do whatever they told me to do until the bank told me what to do. Okay?
And so, again, I was in that gray area. I

was caught between -- between the ropes.
Q. Understood.
Did you -- once they -- I understand that it has been five years ago.
Once they told you that, did you have any conversations with anybody from the bank where you let them know that that was the situation? Or do you think that the bank knew that?
MS. HOUGHTON: Object to form.
THE DEPONENT: The -- to my knowledge, that I recollect, is the bank didn't call me to tell me what their dealings were with their client. And I would expect them to.
BY MR. LE CLERCQ:
Q. Do you suspect that if you knew that, that the bank also knew what you just told me?
A. I told you I knew based on my conversations with Mr. Cook that things weren't going real good. I did not understand that to be that they were going to be foreclosed on.
Q. Let me make sure I just understood what you said.
You -- once the foreclosure happened, I've understood you to say that you called Richard Cook on a couple occasions, and the gist of what you got

out of that conversation was that, Point Number 1, things weren't looking good, and that they were not -- likely not to be able to stay in the building, and that the building -- title would likely be lost to the bank in the foreclosure.
A. Okay. The one question I have, Ben, is are we talking about prior to the foreclosure or subsequent?
Q. After.
A. After? I think he said, you know, "We're out of here." You know, "We're going to move out."
Q. Got it.
MS. HOUGHTON: Can we go off the record for a second?
MR. LE CLERCQ: Let me just -- hang on just a second, Lacey.
BY MR. LE CLERCQ:
Q. So that he says that -- the gist that you got was "We're out of here."
Let me make sure just to -- so that the record is clean, and we'll take these three points that I just said. I'd just -- I'd like to take them one by one.
Again, we're talking about the time subsequent to July 24, 2015, when you found out

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC et al.

DALE PORTER

January 24, 2020

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Q Okay. Is that foreclosure process filed in a court somewhere?
A Yes.
Q Is the -- what's the goal of the foreclosure proceeding?
A To bring attention to the borrower that he's in default or she's in default or the entity is in default, and state the terms that they have to meet to cure that loan, to bring it out of default. If they fail to meet those terms, then it goes to the foreclosure sale.
Q What happens at the foreclosure sale?
A It changes ownership.
Q Who becomes the owner?
A Whoever purchases the property.
Q In what percentages of the foreclosures that you've done since 2007 is that the bank?
A The majority.
Q Greater than 90 percent?
A I don't know about greater, you know. I would say the majority. The majority of those the bank has gotten.
Q So this is one of the questions that we --
A It's a high -- it's a high percentage.
Q So can you qualify "high" any more than

that? Is it more than 60, more than 80, more than 90? Sitting here today, can you do that?
A Again, without the numbers, all I can tell you is it's the majority of the loans.
Q What numbers would you have to look to answer that question?
A All the foreclosures that occurred during my tenure.
Q If you're not able to answer that question today, that is one of the -- our topics for your 30(b)6 deposition. Do you understand that the bank has designated you as the representative of the bank that is required to answer certain questions on certain topics that we've asked; do you understand that?
A Okay, yes, sir.
Q And that's one of the questions that we want to know, which is what percentage of the cases in which the bank forecloses, does the bank, at the foreclosure sale, become the owner? You don't have to tell me, we had 842 of them and 831... I'm not asking you to go to the burden of having to know every one, but if you all have done studies or if you've done analysis where you can put your finger on an approximate percentage within a couple percent,

that's really what I'm after. I'm not trying to overwork you, but that's a question that's very important in this case. So --
MS. HOUGHTON: Ben, we have served an objection to that topic prior to today.
MR. LE CLERCQ: Okay. We can continue your deposition until such time as we can get that worked out.
MS. HOUGHTON: Have you seen the objection?
MR. LE CLERCQ: I have not, no.
MS. HOUGHTON: Okay.
BY MR. LE CLERCQ:
Q So it's a fair question, and it's a relevant question in this case. But you spoke earlier that only, you think, the great majority, as I would say -- as I think you characterized it --
A And I would characterize that the same. It's a majority or greater majority. I'd go with either one of those terms.
Q So you think the percentage of borrowers that are not able to cure the default, in just as high a percentage of cases, the bank up ends owning the property?
A Yeah. Banks like to use quartiles. We would be in the 75 percent quartile of getting the

properties. Would that satisfy what you're looking for?
Q So from 75 percent to 100?
A Yeah.
Q Do you think it's greater than 90 percent, sitting here today?
MS. HOUGHTON: Object to form.
THE DEPONENT: Again, I don't know.
BY MR. LE CLERCQ:
Q So the results of the foreclosure, I think you've just said, is to terminate the borrower's interest in the property?
A Correct.
Q Would you agree with me that the -- Would you agree with me that the -- that, although the borrower's interest is extinguished in the foreclosure, that the bank's interest is not extinguished in the foreclosure? Is that a fair statement?
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q Let me phrase it this way.
A Yeah. Explain it to me, because I see us being the new owner. So I didn't understand your question, I don't think.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FLORENCE) CVA No. 2018-CP-22-00227

John Michael Timmons, Jr., d/b/a Tavern on the Loop,
Plaintiff,
vs.
First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, Individually,

Defendants.

CONTINUATION OF THE
DEPOSITION OF JOHN MICHAEL TIMMONS, JR.

DATE TAKEN: August 20, 2019

TIME BEGAN: 10:05 a.m.

TIME ENDED: 4:13 p.m.

LOCATION: Oxner & Stacy, P.A.
235 Church Street
Georgetown, SC 29440

REPORTED BY: Michele E. Starkey
Certified Shorthand Reporter
Notary Public for South Carolina

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*Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

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.....On behalf of the Defendants First Reliance Bank and Dale Porter and F.R. Saunders, Jr.

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ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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Q. All right. So can you recall any conversations with anybody in the world back in 2006 about this easement?
A. Not one. No, ma'am.
Q. All right. So I asked you some questions earlier about properties that you've purchased in the past and you told me about some properties that you purchased in the past, right?
A. Yes, ma'am.
Q. Are you familiar with -- well, let me back up. When you purchased these properties, there were deeds that were signed that conveyed those properties to you, correct?
A. Yes, ma'am.
Q. Are you familiar with the fact that documents like deeds conveying property get filed in the public records of the county where the land is located?
MR. LE CLERCQ: Object to form.
A. When you buy or sell a property?
Q. Yes, sir.
A. Yes, I'm familiar now since -- especially with being a real estate, that deeds are filed, yes, ma'am.
Q. Okay. Prior to becoming a real estate agent did you have an understanding that documents like deeds get filed with the records of the county?

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A. Yes, ma'am.
Q. Okay.
MR. LE CLERCQ: Object to form to the last question.
BY MS. HOUGHTON:
Q. Have you ever owned a property that was foreclosed upon?
A. That was foreclosed upon. The house that was in Tara Village would have had to been foreclosed on, and then 1931 Second Loop Road would have had to been foreclosed on. Those are the only two I can recall.
Q. When you purchased 1931 Second Loop Road, you got a loan from First Reliance Bank, correct?
A. I was -- I did all my banking with them. I would assume that's who I got the loan with, yes, ma'am. I wouldn't swear by it but I would think that is who I got the loan with.
Q. Okay.
A. I can't remember how it got to Williamsburg First National after that but I would assume that's who I bought it through.
Q. All right. With regard to this foreclosure of 1931 Second Loop Road, do you remember when that foreclosure process started, generally?
A. No, ma'am, I can't say with no type of

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guesstimation exactly when it started. No, ma'am.
Q. I'll show you a document that we'll mark as Exhibit 8. Here you go. I'll give you a moment, and the question I'm going to ask you is do you understand this to be a foreclosure deed for 1931 Second Loop Road. But I'm going to let you take your time to look at the document.
A. Okay.
(Defendant's Exhibit No. 8 was marked.)
A. Document looked like a foreclosure document to me.
Q. Okay. So based on this document it looks like the property was foreclosed on and the title was issued on September 10, 2015, correct?
A. What it looks like, yes, ma'am.
Q. Okay. So you were in the process of being foreclosed on for 1931 Second Loop Road when you started talking to Mr. Blanton about 1945 Second Loop Road, correct?
A. Looks likes it, yes, ma'am.
Q. Okay. I wanted to show you, and we'll mark that as 8 if I haven't done it already. Show you another document that pertains to 1931 Second Loop Road. Hand to your attorney and for you, and this will be Exhibit 9. And again, I'll give you a couple of minutes

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to take a look at it and familiarize yourself with it.
MR. LE CLERCQ: Have you produced this document to us?
MS. HOUGHTON: I believe it's been produced.
MR. LE CLERCQ: I don't see a Bates number on it.
MS. HOUGHTON: I may not have pulled it from the production. I can confirm that it's been produced.
MR. LE CLERCQ: Because if you haven't, I think I have the right to talk with him about it before you question him about it. Let me pull out your production because I don't think I've seen it.
MS. HOUGHTON: Okay. You know, it's possible that I pulled this off of public records as I was preparing for the deposition and it didn't come in the files from the bank, so I'm not -- I don't -- you know, that's possible. That I just pulled, because I went and looked up a bunch of public records when I was preparing.
MR. LE CLERCQ: Can you search your document production by words and see if you pulled it up? Because you got, like, 1800 pages. Most of it, 40 percent of that is the appraisal, but I --
MS. HOUGHTON: Right. You know, it's a public

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the property?
A. No, sir.
Q. Did you know about an entity, Atlantic, that owned a -- or ran a ambulance company out of one of the buildings?
A. I never knew nothing about Atlantic or any other partners or none of that. My dealings like that have always been with Joe. I knew there was -- was some sort of owner, but I didn't really care one way or the other. Joe was my guy and that's who I, you know, trusted and signed the lease with. I didn't -- I didn't ever hear nothing about the word Atlantic Regional, LLC until I received some sort of paperwork down the road. I mean, down, you know, through this process.
Q. All right. There were other tenants in the Sweet Briar Shopping Center.
A. Yes, sir.
Q. Who were some of those other tenants?
A. One of them was some kind of makeshift nightclub, and then there was a hair salon. There was a day care. At one time there was a Michael's Italian, but not during this process. And there was somebody there that did run some sort of ambulance, an EMS type service.

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Q. Did you know that the ambulance/EMS type service was actually one of the owners, or did you ever know that, or had that ever been told to you?
A. No. When we -- a group of doctors had owned it at one time. I did know that when we purchased the property. And it seemed like it may have -- seems like it may have at some time been mentioned that the ambulance company was the owners of that strip mall or something to that effect.
Q. The other nightclub or other nightclub entity, who was that?
A. I don't even have no clue how you would keep up with that. There was -- whoever wanted to -- I don't know who owned it or signed the lease with Joe, but I know they'd be open sometimes once a month, sometimes not for three months, sometimes four nights in a week. You just didn't ever -- I don't know who owned it. I have no clue.
Q. When you met with Mr. Blanton to lease the property where the Tavern On The Loop was located, did you explain to him what you were wanting to do?
A. Yes, sir.
Q. And what did you tell him?

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A. Told him I wanted to open up a nice sports bar with great food that would have a really good happy hour, where a place like me and him wouldn't be ashamed to carry a business associate or something to that effect after work and have a bite to eat and a cold beer or cold Pepsi or whatever your choice may be.
And I plan on doing it right, that this was -- I was going to put all my knowledge over the previous years that I had learned of the good to mistakes I had made, and this was -- this was the one that I wanted to really do right; a place that I could have my mother and stepfather stop by and me not be ashamed because the floors were painted black and the walls black and there was black lights everywhere like some of my places in the past. I wanted to do this place right.
That's what I told Joe. I said, I'm going to do it right. This ain't -- he says, you ain't going to do none of them -- ain't going to be none of them little kids every night, nothing like you used to do. I said, no, sir. I said, this is going to be -- we're going to -- I'm going to do this one up and have it, you know -- mainly happy hour, really, is what I hoped.

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Q. And did he have a particular location in mind for you, or did you already know about this particular location?
A. Yeah. It kinda, as weird as it may sound, played out kinda like our first interactions. I had called Joe because I had heard rumors that these cats back there in the Sweet Briar was moving out or, you know, going to move out. So I -- and somebody -- I had got a rumor that one or two people had looked at it.
And so I called Joe kinda like I did many, many, many years ago and said, Joe, I hear that that place back there might be -- might come -- become available. And if it is, I want you to give me first shot.
He said, well, Mike, all I can tell you -- and I said -- I told Joe, I said, Joe, Lord have mercy. I don't know that I'd ever seen such. They're open one month -- one day a month, maybe. They won't up this month. Then one week they might open three or four days. I said, I don't know what's going on, but I've heard a couple people's looking at it so just keep in mind if it ever comes available. Let me know.
He said, I don't care what they do with

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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between Mr. Timmons and you, as lessor, for what I would call a long-term lease. And -- on August 20th of 2015.

Would you agree with me that you would not have let him sign that lease knowing that the property was in foreclosure proceedings unless you had also told the bank about the proposed lease?

MS. HOUGHTON: Object to form.

THE DEPONENT: There is no way in this world -- and I'll give my license up tomorrow, and Mike knows this.

There's no way that I would have ever facilitated a lease with someone who's willing to spend their money, put their heart into it, and my heart into it, being a reputable broker who has been here 41 years, I would never, ever do that. And if I did, then just take my damn license away from me. I would not do that.

BY MR. LE CLERCQ:

Q. You were not intending to deceive or trick him?

A. No, sir. I was not. And off the record, I think if you and I and Mike sat down and had a beer and me a Coke, then we both would agree.

Q. I'd like that. We need to have your attorney there at the same time, though.

All right. Have you ever owned the Sweetbriar property?

A. I was a member of the Florence Group, which was an entity that I formed many years ago. I don't remember how many years ago it was.

The Florence Group was three doctors that I put together with myself, Dr. Imbeau, Dr. Steadman, Dr. Howell -- they're all personal friends of mine and my doctors -- I said, "Guys, why don't we put a partnership together and maybe try to buy some commercial property?

Bill Dailey was the owner at that point in time. We purchased the property from Bill Dailey, and the Florence Group owned it for a while. And then we sold it to Atlantic Regional.

Q. Okay.

A. Okay? And I only own 3 percent of interest in that partnership.

Q. And when was that partnership formed? Was it around 1995?

A. Oh.

Q. I'm going to hand you a document, which is going to be marked as Exhibit 4, which I think is

evidence of a closing that might have taken place. If you'll take a look at that document and let me know if you recognize it.

A. I don't know when it was formed. I know that we had several properties that we purchased. As far as when the Florence Group incorporated, went into effect, I don't recall the date.

(EXHIBIT 4, Blanton 000079, 12/07/1995 Letters from Dailey Development, Inc., was marked for identification.)

THE DEPONENT: Okay. I see Dailey, yes.

MR. LE CLERCQ: I'd like you to had him also 5, which is the lease.

(EXHIBIT 5, 08/20/2015 Commercial Lease, was marked for identification.)

BY MR. LE CLERCQ:

Q. Would you agree with me that Exhibit 4 is evidence that previously there had been property transactions relating to Sweetbriar in which you had been involved?

A. Yes.

Q. Now, I'd ask you to take a look at what has been marked as Exhibit 5, which is the commercial lease in this case. And do you recognize that

document?

A. Yes.

Q. Okay. And these are your initials at the bottom of each page?

A. That's correct.

Q. And that's your signature on Page 7?

A. Correct.

Q. And it was signed by you on or about August 20, 2015?

A. Correct.

Q. And the witness to the signature is Kelly R. Modlin, and that is someone from your office?

A. Yes.

Q. And she signed on Page 7?

A. Yes. She signed as a witness, and Jean Parks also signed as witness.

Q. And did you see Mr. Timmons sign the document? Do you recall?

A. Yes. I think so, yes.

Q. Okay. And is the handwriting that you see on the lease other than Mr. Timmons' initials and his signature, is that handwriting your handwriting? For example, on Page 1, where it gives the --

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FIRST RELIANCE BANK

Update Memo

Officer:	**Dale Porter**
Customer:	**Atlantic Regional LLC**
Date:	**11/24/15**

Purpose:
Establish Partial Charge off on Atlantic Regional LLC.

Background:
Atlantic Regional LLC is the owner of a strip mall on Second Loop Road commonly known as Sweetbriar Shopping Center. The only guarantor of Atlantic Regional LLC is Richard C Cooke. The property has been in default for several months and as a result the bank has begun foreclosure action on the property. In October the bank was able to exercise its rights to rent rolls and collected its first rents of $9,617.61(two months rents). The rents should average approximately $4,500.00 per month depending on the amount of maintenance that might be required which will be deducted from the rents monthly. The foreclosure hearing date is scheduled for 12/2/15 with an anticipated sale date to be mid February 2016 since the bank is seeking a deficiency judgment.

Impairment Summary:

Trying to determine the highest and best use of the property, the bank has concluded that selling the property as a vacant commercial lot is the most cost effective solution. The bank ordered an as is value appraisal from Ernest R. English, Jr. State Certified General Real Estate Appraiser on October 8, 2015. The As-Is value was $760,000.00. When the bank saw the value, it then requested a land value appraisal that was accomplished on November 10, 2015. That value was $572,000.00. This meant that the building was only given a value of $188,000.00. With the deferred maintenance being over $500.000.00 or more the bank concluded that the best use of this property was to sell it as a vacant commercial lot.

Using the land value appraisal an Impairment Worksheet was prepared at Fair Value of Collateral (See Attached). Taking into consideration selling costs, Taxes, Insurance, legal costs, and other expenses the impairment result was

EXHIBIT 62

$384,724.76. Therefore we are recommending a partial charge off of $385,000.00.

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ASC 310-10 Impairment Worksheet
First Reliance Bank
November 23, 2015 12 Quarter

Borrower Name	Atlantic Regional, LLC
Loan Number	980114667
Impairment Status	Impaired With Specific Reserve

Method for Calculating Impairment:

X	Fair Value of Collateral
	Observable Market Price
	Discounted Cash Flow

Impairment Calculation:

Loan Balance	851,824.76

Appraisal Amount	572,000.00
Expected Market Depreciation	0.00
Expected Selling Expenses	42,900.00
Other Expenses	62,000.00
Prior Liens	0.00
Collateral Amount	467,100.00
Other Impairment Amount	0.00
Fair Value of Collateral	467,100.00

Required Reserve	384,724.76

Other Data:

Taxes and Insurance	20000
Repairs and Expenses	35000
Legal Costs	7000
Date of Impairment Analysis	10/20/2015
Original Appraisal Date	8/10/2006
Estimated Holding Period (In Months)	12
Original Appraisal Value	1250000
Valuation Source	External
Current Appraisal Date	10/8/2015
Collateral Dependent	No
TDR	Yes

Comments:

11/20/15 - Received a Land only appraisal for $572,000.00. Re-worked analysis to reflect the current impairment. It appears the highest and best use is to sell as raw land which will require the demolishion of the current building. The expense to do that is estimated at $60,000.00 but should receive approximately $25,000.00 in rents between the time the bank takes ownership and it actually demolishes the building. Subtract the rents from the demolishion costs and it comes to the $35,000 listed in Repairs and Expenses. Taxes, Insurance, and Legal costs are self explanitory and estimated. The total other expenses comes to $62,000.00. Hearing scheduled for Dec 2nd and expect to take ownership of building mid first quarter 2016.

Admin Comment:

Printed 11/25/2015

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	)	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DEFENDANT DALE PORTER'S ANSWERS TO PLAINTIFF'S REQUESTS FOR ADMISSION**

TO: BEN LE CLERCQ, ESQUIRE AND DAVID D. ASHLEY, ESQUIRE, ATTORNEYS FOR PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant Dale Porter ("Defendant Porter") reserving the right to supplement and/or amend, hereby answers Plaintiff's Requests for Admission, as follows:

REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit that, subsequent to July 24, 2015, all rent payments collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons, were sent by check from Blanton to Defendant First Reliance Bank.

RESPONSE: Denied. Responding further, Defendant admits that First Reliance Bank (the "Bank") received the following checks from Blanton representing a portion of rental income derived from Sweetbriar tenants including Plaintiff, as previously answered in response to Plaintiff's Interrogatory No. 21:

Rental Payments Received from The Blanton Company	Date Received
$9,616.61	10/23/2015
$1,369.16	11/27/2015

$1,900.00	11/27/2015
$4,544.79	12/29/2015
$4,612.30	1/28/2016
$4,367.95	2/24/2016
$4,806.32	3/21/2016
$4,392.47	4/20/2016
$7,007.65	5/20/2016
$3,063.57	6/22/2016
$2,587.92	7/25/2016
$3,222.16	8/24/2016
$3,893.82	9/21/2016
$2,705.04	10/20/2016
$3,856.28	11/25/2016
$2,765.81	12/22/2016
$3,961.68	1/20/2017

Based on review of documents produced by Blanton, it appears following 1/20/17, rent payments collected by Blanton were sent to WW Plasma II, LLC. Defendant further responds that Blanton collected a fee from any rental income derived from Sweetbriar before issuing the above-referenced rental proceeds to the Bank.

Interrogatory No. 1: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response above is self-explanatory. Defendant further refers Plaintiff to his and the Bank's response to Plaintiff's Interrogatory No. 19 for Defendant's understanding of the management fees collected by Blanton.

Request for Production No. 1: Produce all documents and records relating to Blanton's sending of rent payments to Bank from July 24, 2015 to the present.

RESPONSE: Defendant has no non-privileged records in his possession other than documents previously produced.

Request for Admission No. 2: Admit that, subsequent to July 24, 2015, First Reliance Bank accepted upon receipt the rent payment checks sent from Blanton and collected from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

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RESPONSE: Defendant admits the Bank accepted the following rent payment checks from Blanton, representing a portion of rental income derived from Sweetbriar tenants including Plaintiff:

Rental Payments Received from The Blanton Company	Date Received
$9,616.61	10/23/2015
$1,369.16	11/27/2015
$1,900.00	11/27/2015
$4,544.79	12/29/2015
$4,612.30	1/28/2016
$4,367.95	2/24/2016
$4,806.32	3/21/2016
$4,392.47	4/20/2016
$7,007.65	5/20/2016
$3,063.57	6/22/2016
$2,587.92	7/25/2016
$3,222.16	8/24/2016
$3,893.82	9/21/2016
$2,705.04	10/20/2016
$3,856.28	11/25/2016
$2,765.81	12/22/2016
$3,961.68	1/20/2017

Interrogatory No. 2: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 2: Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept rent payments collected by Blanton, or b) rejected the same.

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RESPONSE: Defendant has no non-privileged records in his possession other than documents previously produced.

Request for Admission No. 3: Admit that First Reliance Bank has no written document or communication in its possession, dated subsequent to July 24, 2015 and prior to December 31, 2016, indicating that First Reliance Bank, or any Bank Defendant, rejected any rent payment collected by Blanton from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: Admitted.

Interrogatory No. 3: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: N/A.

Request for Production No. 3: Produce any and all documents or other evidence indicating that First Reliance Bank either a) accept Sweetbriar tenant rent payments collected by Blanton, or b) rejected the same.

RESPONSE: Defendant has no non-privileged records in his possession other than documents previously produced.

Request for Admission No. 4: Admit that subsequent to July 24, 2015, and until the sale of Sweetbriar to Plasma, Blanton was acting as agent of First Reliance Bank with regard to the collection of rent from tenants at Sweetbriar, including rent payments from Plaintiff Timmons.

RESPONSE: Admitted as to the time period following February 8, 2016. Defendant denies all remaining matters contained in Request No. 4.

Interrogatory No. 4: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis

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for such denial and identify each witness and documents upon which you will rely to support your denial

ANSWER: Blanton did not begin to act as agent for the Bank with regard to collection of rents from tenants at Sweetbriar until Blanton accepted the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank in this regard. From July 24, 2015 until that time, Blanton acted as agent for the then-owner of the property, Atlantic Regional, LLC and/or collected rents at the direction of the Court pursuant to Orders dated October 2, 2015 and December 2, 2015, Florence County Civil Action No. 2015-CP-21-2106.

Request for Production No. 4: Produce any and all documents or other evidence relating to Blanton's collection of rents from tenants at Sweetbriar and the sending of same to First Reliance Bank.

RESPONSE: Defendant has no non-privileged records in his possession other than documents previously produced.

Request for Admission No. 5: Admit that subsequent to July 24, 2015, and until the sale of Sweetbriar to Plasma, Blanton was acting as property manager for First Reliance Bank with regard to Sweetbriar, including for the property leased by Timmons.

RESPONSE: Defendant admits that upon Blanton's acceptance of the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank with management of the Sweetbriar property, Blanton began to act as agent for the Bank with the scope of his authority being limited to that expressly conferred on him by the Bank. Defendant denies all remaining matters in Request No. 5.

Interrogatory No. 5.: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: From July 24, 2015 until Blanton's acceptance of the Bank's offer as communicated via letter from Dale Porter dated February 8, 2016 to assist the Bank with management of the Sweetbriar property, Blanton acted as agent for the then-owner of the property, Atlantic Regional, LLC and/or collected rents at the direction of the Court pursuant to Orders dated October 2, 2015 and December 2, 2015, Florence County Civil Action No. 2015-CP-21-2106.

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Request for Production No. 5: Produce any and all documents or other evidence, dated subsequent to July 24, 2015, indicating that Blanton acted as property manager and agent for First Reliance Bank (or any other party) with regard to Sweetbriar.

RESPONSE: Defendant has no such non-privileged records in his possession other than documents previously produced.

Request for Admission No. 6: Admit that, subsequent to July 24, 2015, with regard to tenant issues or questions relating to Tenants at Sweetbriar, including Plaintiff Timmons, Blanton and Blanton's staff addressed the same to First Reliance Bank and/or one or more of its employees or officers.

RESPONSE: Denied. Responding further, Defendant admits that Blanton did address some questions pertaining to tenant issues to Defendant Porter following February 8, 2016. Responding further, at an unknown time before February 8, 2016, Defendant admits Mr. Blanton called Mr. Porter and informed him that a prospective tenant was interested in leasing a unit in the Subject Property. Mr. Porter told Mr. Blanton that he could not advise him as to how to proceed with respect to the prospective tenant.

Interrogatory No. 6: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response above is self-explanatory. Prior to February 8, 2016, based on documents produced by Blanton, tenant questions were addressed to representatives of Atlantic Regional, LLC.

Request for Production No. 6: Produce any and all communications and other documents between Blanton and First Reliance Bank relating to tenant issues at Sweetbriar.

RESPONSE: Defendant has no such records in his possession other than documents previously produced.

Request for Admission No. 7: Admit that First Reliance Bank has no document or communication in its possession, with a date subsequent to July 24, 2015 and prior to the sale of

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the property to Plasma, relating to or describing tenant issues or questions at Sweetbriar, including Plaintiff Timmons, addressed to or copied on Atlantic Regional, LLC and/or any of its members, officers or employees.

RESPONSE: Denied.

Interrogatory No. 7: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Blanton has produced documents reflecting communications with representatives of Atlantic Regional, LLC in the fall of 2015. Responding further, Defendant refers to the following documents: Blanton 175, 218, 265.

Request for Production No. 7: Produce any and all communications and other documents in Bank's possession, relating to tenants at Sweetbriar (including Plaintiff Timmons) addressed to Atlantic or any party other than First Reliance Bank. If there are none, the response must so state.

RESPONSE: Defendant has no non-privileged documents other than those previously produced.

Request for Admission No. 8: Admit that, subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, with regard to building or maintenance issues relating to Sweetbriar, Blanton and Blanton's staff addressed the same to First Reliance Bank and/or one or more of its members, officers or employees.

RESPONSE: Denied as to the time period between July 24, 2015 and February 4, 2016. As to the time period from February 4, 2016 until the sale of the property to WW Plasma II, LLC, after reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable him to admit or deny the matters contained in Request No. 8. Defendant has not seen any documents reflecting a building or maintenance issue communicated to it by Blanton, and he does not recall such a communication, but it is possible such a conversation occurred following February 4, 2016.

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Interrogatory No. 8: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant states that at least up until October 15, 2015, the Blanton Company addressed building concerns to representatives of Atlantic Regional, LLC as reflected in Blanton 175.

Request for Production No. 8: Produce any and all communications and other documents between Blanton and any party, relating to building and maintenance issues at Sweetbriar (including Plaintiff Timmons), subsequent to July 24, 2015, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: Defendant has no non-privileged documents in his possession of which he is aware.

Request for Admission No. 9: Admit that, with regard to building or maintenance issues or questions relating to Sweetbriar, Bank has no document in its possession with a date subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, indicating that such questions were directed to Atlantic Regional, LLC and/or any of its members, officers or employees.

RESPONSE: Denied.

Interrogatory No. 9: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Blanton has produced documents reflecting communications with representatives of Atlantic Regional, LLC in the fall of 2015. Responding further, Defendant refers to the following documents: Blanton 175, 218, 265.

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Request for Production No. 9: Produce any and all communications and other documents between Blanton and any party, relating to building and maintenance issues at Sweetbriar (including Plaintiff Timmons), subsequent to July 24, 2015 and prior to the sale of Sweetbriar to Plasma, other than to First Reliance Bank. If there are none, the response must so state. Also produce any such documents or communications with First Reliance Bank.

RESPONSE: Defendant has no non-privileged documents in his possession of which he is aware.

Request for Admission No. 10: Admit that First Reliance Bank has no document in its possession with a date on or before August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint), indicating that Blanton or First Reliance Bank revealed to Timmons the identity of the entity for whom Blanton was acting as agent and property manager.

RESPONSE: Denied.

Interrogatory No. 10: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: The Bank filed a Foreclosure Complaint and Lis Pendens on July 20, 2015 in the public records of Florence County, attached to Plaintiff's Complaint as Exhibit G, notifying all the world that the Sweetbriar Shopping Center was owned by Atlantic Regional, LLC and was the subject of a pending foreclosure action. These public records with which Mr. Timmons is charged with constructive knowledge "reveal" that Atlantic Regional, LLC is the owner of the Subject Property.

Request for Production No. 10: Produce any and all communications and other documents indicating that Blanton or Bank revealed to Timmons, prior to signature of the Lease by Timmons and Blanton, the identity of the entity for whom Blanton was acting as agent and property manager. If there are none, the response must so state.

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RESPONSE: Defendant is aware of no such records other than the Lis Pendens, Foreclosure complaint and other filings of record in Florence County Civil Action No. 2015-CP-21-2106 of which Plaintiff is in possession.

Request for Admission No. 11: Admit that First Reliance Bank did not tell Blanton to inform Timmons that Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing, either on or prior to August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint).

RESPONSE: Admitted. Further responding, Defendant denies that he or First Reliance Bank was made aware of Mr. Timmons' intent to execute the lease agreement dated August 20, 2015.

Interrogatory No. 11: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 11: Produce any and all communications and other documents indicating that Bank told Blanton to tell Timmons, prior to signature of the Lease by Timmons and Blanton, that First Reliance Bank was foreclosing on Atlantic Regional, LLC with regard to Sweetbriar property that included the property Timmons would be leasing. If there are no, the response must so state.

RESPONSE: Defendant has no non-privileged documents in his possession.

Request for Admission No. 12: Admit that First Reliance Bank did not instruct or tell Blanton, in writing or orally, on or before August 20, 2015 (the date of the Lease with Timmons attached as Exhibit A to the Complaint) that:

i) Blanton should only enter short term or "month to month" leases with tenants at the Sweetbriar, including Timmons; or

ii) Blanton should not enter long term leases with tenants at the Sweetbriar, including Timmons,

RESPONSE: Admitted.

Interrogatory No. 12: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 12: Produce any and all communications and other documents indicating that Blanton did receive any such instructions or communications from First Reliance Bank. If there are none, the response must so state.

RESPONSE: Defendant has no non-privileged documents in his possession of which he is aware.

Request for Admission No. 13: Admit that, subsequent to July 24, 2015, First Reliance Bank expected to compensate Blanton, and did in fact compensate Blanton, for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted as to the time period following the Bank's acquisition of the subject property on February 4, 2016. Defendant denies the remaining matters contained in Request No. 13.

Interrogatory No. 13: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis

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for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Prior to February 4, 2016, all management fees for rent collection and property management performed by Blanton was collected by Blanton for services rendered to Atlantic Regional, LLC. Defendant refers Plaintiff to his and the Bank's response to Plaintiff's Interrogatory No. 19.

Request for Production No. 13: Produce any and all communications and other documents indicating that Blanton was compensated for such work by First Reliance Bank.

RESPONSE: Defendant has no such non-privileged documents other than what has been previously produced.

Request for Admission No. 14: Admit that First Reliance Bank has no document in its possession with a date on or after July 24, 2015 and before the date Bank sold Sweetbriar to Plasma, indicating that Blanton expected to be compensated by Atlantic Regional, LLC, or any of its members, officers, or employees, and/or was in fact compensated by Atlantic Regional, LLC for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Denied.

Interrogatory No. 14: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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ANSWER: Prior to February 4, 2016, all management fees for rent collection and property management performed by Blanton was collected by Blanton for services rendered to Atlantic Regional, LLC. Defendant refers Plaintiff to his and the Bank's response to Plaintiff's Interrogatory No. 19. Defendant further refers Plaintiff to the public filings in Florence County Civil Action No. 2015-CP-21-2106 of which Plaintiff is in possession, and the deed reflecting the Bank's acquisition of ownership of the subject property on February 4, 2016.

Request for Production No. 14: Produce any and all communications and other documents indicating that Blanton was compensated for such work by Atlantic Regional, LLC, its members, officers or employees, including any checks drawn on First Reliance Bank accounts. If there are no such documents, the response must so state.

RESPONSE: All such documents in Defendant's possession have previously been produced. Defendant refers to his responses above for a description of the same.

Request for Admission No. 15: Admit that, subsequent to July 24, 2015, Blanton had either an oral, written, or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted as to the time period following the Bank's acquisition of the subject property on February 4, 2016. Defendant denies the remaining matters contained in Request No. 15.

Interrogatory No. 15: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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ANSWER: Prior to February 4, 2016, Blanton's right to compensation was derived from its agreement with Atlantic Regional, LLC and/or the Court Orders dated October 2, 2015 and December 2, 2015 Florence County Civil Action No. 2015-CP-21-2106.

Request for Production No. 15: Produce any and all communications and other documents indicating Bank's or Blanton's understanding of the nature of the relationship between them subsequent to July 24, 2015, or documentation of such relationship.

RESPONSE: All such documents in Defendant's possession have previously been produced.

Request for Admission No. 16: Admit that the $2,000 rent payment described in Timmons' Check # 2129, attached to the First Amended Complaint as **Exhibit Z1**, and also attached hereto, cleared and funds were made available to Blanton's bank account on or after February 4, 2016.

RESPONSE: After reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable him to admit or deny the matters contained in Request No. 16. Responding further, Blanton does not maintain a bank account at First Reliance Bank through which the referenced check was processed, and thus Defendant has no way of knowing when said funds were made available to Blanton's bank account.

Interrogatory No. 16: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's response is self-explanatory.

Request for Production No. 16: Produce any and all communications and other documents, including bank statements, indicating the date Timmons' check #2129 cleared and such funds became available to Blanton.

RESPONSE: None in the possession of this Defendant.

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Request for Admission No. 17: Admit that to the best of First Reliance Bank's knowledge, information and belief, from the time of the execution of the Lease, until Timmons left the property at Sweetbriar, Timmons:

i) Paid rent each month;

ii) Did not breach any term of the Lease attached as Exhibit A to the Complaint.

RESPONSE: Defendant admits that Mr. Timmons paid rent each month but denies that all such rent payments were made on or before the first of the month as required by Mr. Timmons' 8-20-15 Lease attached as Exhibit A to Plaintiff's Complaint. Defendant denies that Mr. Timmons did not breach any of the terms of the 8-20-15 Lease attached as Exhibit A to Plaintiff's Complaint.

Interrogatory No. 17: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant refers to Blanton 318 for a tenant ledger showing rent payments not made on or before the first of the month. Defendant further refers to Plaintiff's deposition testimony indicating he did not obtain insurance as required by the terms of the lease.

Request for Production No. 17: Produce any and all communications and other documents, indicating that Timmons paid rent timely. Produce any documents indicating Timmons breached the Lease attached as Exhibit A to the Complaint. If there are none, the response must so state.

RESPONSE: None in the possession of this Defendant; Defendant refers to document referenced above produced by Blanton.

Request for Admission No. 18: Admit that on December 23, 2016 Dale Porter received an email from David Brock, as indicated in Exhibit N1, p. 2, to the First Amended Complaint (and attached hereto); stating:

> Dale I spoke with Joe Blanton and he recommends a conference call with Greg Wood. Apparently the tenants all have leases in place that go for years and from my experience they will transfer to the new owners. Basically they don't have to leave unless they are willing to leave. I understand that Mr. Blanton sent notices to all tenants informing them

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> that they were on month to month lease's effective immediately. That sounds as if we are voiding their individual contracts with the lessor. Please advise my experience they may leave on their own accord but they certainly do not have to based on their individual leases. I was told that they were on a month to month situation but apparently this is not the case only by notice. Again this might not be problematic at all but the current buyers are under the assumption that the tenants are on month to month and are planning on closing in two weeks. Mr. Blanton recommends a conference call between you Mr. Blanton & Greg Wood to try and work this out as soon as possible please advise.

RESPONSE: Admitted. Further responding, Defendant denies that he agreed with Mr. Brock's statements in his December 23, 2016 email to Dale Porter pertaining to the legal status of the Sweetbriar tenants and/or leases. Further responding, Mr. Brock is not an attorney and his comments on legal matters are not binding on this Defendant.

Interrogatory No. 18: Describe the email in detail, and if you agree with Mr. Brock's characterization of the call. If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant's characterization of the email above is self-explanatory.

Request for Production No. 18: Produce any and all communications and other documents between Blanton, David Brock, Greg Wood, and/or Dale Porter.

RESPONSE: Defendant has no non-privileged documents which have not been previously produced.

Request for Admission No. 19: Admit that the appraised value of Sweetbriar, including as demonstrated on attached FRB/CCS 000059, is higher with Timmons' rent obligations under the Lease included in such appraisal valuation, than the appraised value of Sweetbriar would have been without including Timmons' rent obligations.

RESPONSE: After reasonable inquiry, the information known or readily obtainable by Defendant is insufficient to enable him to admit or deny the matters contained in Request No. 19.

Interrogatory No. 19: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis

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for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: Defendant is not in the business of real estate appraisal nor qualified to make such assessments, which is why the Bank contracts appraisal professionals to make such evaluations as in the case of the appraisal report referenced by Plaintiff in Request No. 19. Generally speaking, Defendant believes the valuation of a particular property is subject to a number of factors evaluated by appraisal professionals, any of which can individually or collectively affect the appraised value of a property. Moreover, upon information and belief, in some instances the presence of tenants can decrease, rather than increase, the value of a property.

Request for Production No. 19: Produce any and all communications and other documents, indicating that including Lease Payments and Obligations decreased the appraisal value of Sweetbriar. If there are none, the response must so state. Produce all documents indicating the Lease increased the value of Sweetbriar.

RESPONSE: Defendant has no non-privileged documents which have not been previously produced.

Request for Admission No. 20: Admit that, on and after July 24, 2015, the date First Reliance Bank began foreclosure proceedings on Sweetbriar, Bank either intended to obtain title to Sweetbriar, or knew that it was possible that it would obtain title to Sweetbriar, and that if First Reliance Bank did obtain title to Sweetbriar then it would sell Sweetbriar as soon as reasonably possible at the highest possible price.

RESPONSE: Admitted.

Interrogatory No. 20: If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: N/A.

Request for Production No. 20: Produce any and all communications and other documents relating to the Bank's intentions on the sale or lease of Sweetbriar on or after July 24, 2015.

RESPONSE: Defendant has no such non-privileged records in his possession other than documents previously produced.

This 12th day of December, 2019.

Respectfully submitted,

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: _____
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO.: 2018-CP-21-00227
	)	
John Michael Timmons, Jr. d/b/a Tavern on the Loop,	)	
	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
vs.	)	
	)	
First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually,	)	
Defendants.	)	

I hereby certify that I have this day served a copy of the within and foregoing ***Defendant Dale Porter's Answers to Plaintiff's Requests for Admissions***, upon all parties to this matter by electronic mail and/or regular U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

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This 12th day of December, 2019.

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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in breach of the lease, correct?
A. I just said no.
Q. Okay. If Mr. Timmons had done something, which in your mind was a breach of the lease, you would have told him, right?
A. Yes, of course.
Q. I'm going to hand you Exhibit 46.
MR. OXNER: Before we do that, Ben, where are we going here? I told you I had to leave at 4:00, and we've been going about 7 and a half hours.
MR. LE CLERCQ: How long have we been going, ma'am?
MR. OXNER: It doesn't make a difference. We have been here since 9:30.
THE DEPONENT: Yeah, we have. Yes.
MR. OXNER: You're not going to finish today, are you?
MR. LE CLERCQ: I'm very close.
MR. OXNER: How close?
MR. LE CLERCQ: I'd say I'd be ready to wind it up -- I'd say another 15 to 20 minutes. So let me give you --
MR. OXNER: How long are you going to go?

MS. HOUGHTON: I think at least 40 minutes.
MR. LE CLERCQ: Here's 46.
(EXHIBIT 46, 02/04/2016 Rent Checks from John Michael Timmons to Blanton AND Acceptance of Feb 2016 Rent by Bank on 2/24/16, was marked for identification.)
(Off-the-record conference.)
BY MR. LE CLERCQ:
Q. So we're looking at Exhibit Number 46, Mr. Blanton. I would ask you to take a look at what's marked as -- it appears to be Check Number 2123 from Tavern On the Loop, Pay to the Order of Blanton for $2,000, and it's dated on February the 2nd of 2016.
Do you see that reference?
A. To 2016? Yes.
Q. And it's the third check down and it's signed --
A. $2,000, yes.
Q. $2,000.
And do you see the date over to the side where it says, "Date 2/4/2016"?
A. Are you saying to the right?

Q. Yeah. To the right of -- underneath it says Check 2129 in the amount of $2,000, and the date is 2/4/2016.
Do you see that reference?
A. Well, I'm looking at a copy of that check, yes.
Q. Okay. Now, I'll represent to you that this is a -- these are the rent checks that Mr. Timmons made to Tavern on the Loop [sic]. And -- or excuse me -- for his rent for Tavern on the Loop, and he made them out to you.
Would you agree with me that it would appear that the check cleared Mr. Timmons' bank on February the 4th, 2016?
A. Yes.
Q. And you would agree with me, then, that the funds would have been in your account as of February the 4th, 2016?
A. Yes.
Q. Okay. And you also understand that the bank became the owner -- excuse me. Strike that.
You also understand that the foreclosure sale occurred on February the 4th, 2016, and the bank foreclosed and terminated the interest of Atlantic in the property, and the hammer dropped on

February 4, 2016. Do you understand that?
MR. ANDERSON: Object to form.
THE DEPONENT: I understand what you're saying. Where are we going with this? Okay?
BY MR. LE CLERCQ:
Q. The question is that -- would it be -- am I correct in -- excuse me.
Would you agree with me that at some point after February the 4th, 2016, the Blanton Company made a rent payment to the bank that would have included Mr. Timmons' occupancy for February of 2016?
A. We wouldn't have made a rent payment. We would have made a proceeds payment to the bank. The rent payment's made to us; the proceeds are made to the bank.
Q. Understood. So that the proceeds that came from the occupancy by Mr. Timmons of this space in February of 2016 would have been paid to the bank at some point subsequent to or after February the 4th, 2016.
Do you agree with that?
A. After we do our close-out at the office, we send checks directly to the owners.

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Q. And so the answer to my question is yes. It would have been subsequent to February 4, 2016 that the bank got its proceeds for February?
A. Yes.
Q. Okay. In the bank's interrogatory responses, they state that they received rent payments on February the 20th -- I'm sorry -- rent proceeds on February the 24th, 2016. I believe that there was a check, and we'll find it -- that there was a check that was written by you on February the 17th, which was then forwarded to the bank and which went into their account on February the 24th, 2016.
Does that jog your recollection of the facts in this case? Does that sound correct to you?
A. It -- it goes with what our process is. Rents are due on the 1st. They're late after the 5th. After the 10th, they go to the magistrate's office.
We receive the rents, and then we do a close-out, because we manage so many properties, we can't send each individual a check as received. So the close-out probably was 15th, 16th or 17th of that month, as it always is. And we would, of course, send the proceeds to the bank or whoever

the owner happens to be.
Q. Okay.
(Off-the-record conference.)
(Mr. Oxner exited the deposition.)
BY MR. LE CLERCQ:
Q. So that would have been your standard procedure; that close-out occurred on 14th, 15th, 16th or 17th, and that subsequent to that time, the rent proceeds would have been sent to the bank?
A. That's correct.
Q. Okay.
A. It also has to do, also, with the days in the month, whether it be weekends, et cetera; so it's not always the exact same date.
Q. I'd like for us to look at -- do you recall that the Court actually entered an order appointing you as property manager in October of 2015? Do you recall that, Mr. Blanton?
MS. HOUGHTON: Object to form.
THE DEPONENT: I think that we already documented that, sir.
BY MR. LE CLERCQ:
Q. Okay. 46.
Do you recall that subsequent to the foreclosure sale occurring -- first of all, do you

recall that the foreclosure sale actually occurred on or about February 4 of 2016?
A. I'm not sure when it occurred.
Q. But you don't have any reason to doubt that statement. I'll represent to you that it occurred on February 4th of 2016.
A. I have no reason to doubt that.
Q. Okay. Subsequent to that time, do you recall getting a letter from the bank, and I will -- all right. It was attached as Exhibit N, like Nancy, to our Complaint.
And it's a letter from First Reliance Bank signed by Dale Porter dated February 8. And let me find it and I will hand it to you.
(Off-the-record conference.)
(A recess transpired from 4:15 p.m. through 4:25 p.m.)
(Mr. Oxner joins via phone.)
BY MR. LE CLERCQ:
Q. Okay, Mr. Blanton. We were talking about checks payments by Mr. Timmons to you with regard -- excuse me -- to the Blanton Company for his payments under the lease before the break.
And the court reporter has just handed you four exhibits, which are Exhibits 61, 67, 68 and 70.

(EXHIBIT 61, Blanton 000018, 02/31/2017 Oxner & Stacy Check to Blanton Co for Sweetbriar Closing, was marked for identification.)
(EXHIBIT 67, 02/08/2016 Letter to Blanton from Bank re All Lease Agreements are Extinguished, was marked for identification.)
(EXHIBIT 68, 02/26/2016 Letter from Blanton re All Leases are Extinguished, was marked for identification.)
(EXHIBIT 70, 12/23/2016 Email Chain, was marked for identification.)
BY MR. LE CLERCQ:
Q. And so Exhibit 61, will you please take a look at and tell me if you recognize that?
A. It's a check from Oxner Stacy, PA.
Q. And what's the amount?
A. Made payable to Blanton Company for $18,450.
Q. So would you agree with me that as a result of the sale of the company from First Reliance Bank to Plasma that you were paid a real estate commission?
A. Yes.

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Q. Okay. And what's the received stamp, July 2, 2014 mean?
A. Received? I'm assuming that's when we received it back from Sunshine with a signed document.
Q. And is that your signature or your initials down at the bottom of that page?
A. On Page 1? Yes; tenant signature -- or initial and my initial, yes.
Q. Okay. And turn to the very last page of that exhibit, if you would please, which is -- not the second to the last page, which is FRB/CCS2969.
A. Could you give me a number on the lease, per se, please, whether it be 40, 41, 20, 38, whatever?
Q. It's right below Paragraph 43, but the very last page of the document, the Bates Number is FRB/CCS002969. It's the signature page of the document. It appears to have your signature as landlord at the bottom.
A. Yeah.
Q. And I just want to confirm --
A. Yes, it does. Yes. Uh-huh.
Q. And you signed the document, it would appear, on July --
A. June 30, 2014.

Q. That's right. And you signed as landlord. And was it witnessed by Jean at the -- what is that written right below there? Jean at the Blanton Company.
A. Witnessed by Jean Parks at the Blanton Company.
Q. Okay. So if you would turn back, you can see on previous pages that it appears that you initialed the bottom of each page. Is that accurate?
A. Yes, sir. I would assume so without looking at all of them, yes.
Q. So you signed it on June 30, 2014, which is approximately a year before -- a little bit more than a year before you executed the lease with Mr. Timmons.
But in this case, with the Sunshine House, you -- the landlord is listed as Atlantic Regional.
Do you agree with that, sir?
A. Yes. Uh-huh.
Q. Okay. I would also say that this is another one of the documents that we haven't received from you-all. So, again, I would ask you to please search your files and try to find all documents that are responsive to our discovery requests and

produce them.
(This page contains requested information.)
THE DEPONENT: Where did you get this from if they didn't --
BY MR. LE CLERCQ:
Q. We got it from the bank. We didn't get it from you.
A. Okay.
Q. Do you agree, Mr. Blanton, that subsequent to the signature of the lease on August 20, 2015 by Mr. Timmons, as long as you were property manager, he paid his rent on time every time?
A. Ben, I'm sorry. I'm not trying to be disruptive here, but we went from Sunshine management to a totally different line of questioning.
Tell me where we're going here. Are we still on Sunshine management or are we going back to something else?
Q. We'll go to something else in a second, but the follow-up question for Sunshine House is: Can you think of any other leases in which you -- where, as with the Sunshine House, you executed in the name of Atlantic Regional?

A. Yeah, I guess. You know --
MR. LE CLERCQ: We would like them to be produced if you -- from your side if there are other leases that you executed.
(This page contains requested information.)
THE DEPONENT: I think probably most of the ones were existing leases that existed between the prior owner that had been there. You know, hell. I don't know. I mean, you know, again, we're talking a long time ago here.
BY MR. LE CLERCQ:
Q. We were talking about -- let's move to the checks. You've previously testified as to Mr. Timmons' good payment history.
Is it your recollection that after he signed the lease on August the 20th of 2015, that as long as you were property manager, that Mr. Timmons paid the rent in a timely manner?
A. Yes.
Q. And at no point did you ever tell him that he was in breach of the lease?
A. No.
Q. The answer's no, you never told him he was

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MR. LE CLERCQ: Okay. Let me -- let's do this. I will read to you -- there is --

BY MR. LE CLERCQ:

Q. Have you got Exhibit 34 out, sir?

A. Yes, sir.

Q. All right. I would ask you to turn to Page 2 of that exhibit. And this, what I'll represent to you is that --

MR. OXNER: Hold on. I need a copy of it. I need to be able look at what y'all are talking about. If you've got it or sent it to me and got a Bates stamp number, I can find it on my Dropbox. And I'll be glad to do it that way, like I've been doing all day. But --

MR. LE CLERCQ: Hang on just a second.

MR. OXNER: But, again, that's why you make copies of exhibits for all attorneys.

MR. LE CLERCQ: Mr. Anderson, have you looked at it? Can you please pass it to Mr. Oxner?

MR. ANDERSON: I will want to finish reading it. I don't recall receiving this, but you say we have.

MR. LE CLERCQ: I'm going to e-mail it

to you right now, Harry.

MR. OXNER: Okay.

MS. HOUGHTON: Will you put me on that also, please?

MR. LE CLERCQ: Yeah.

MR. ANDERSON: And you referenced that Mr. Blanton was there, but where are you getting that from?

MR. LE CLERCQ: There's an invoice that he billed -- first of all, he's already testified to it. And there's also --

MR. ANDERSON: Well, go on the record or continue.

MR. LE CLERCQ: He's testified that he was there. And he also billed for his time, which we'll show in just a second.

BY MR. LE CLERCQ:

Q. Okay. So what I would ask you to do is to take a look at the -- at Page 2 -- and I'll represent to you that this is -- as you see from the first page, which is a record of proceedings held September 30, 2015.

Now, as we've seen earlier, October 2, 2015 was a Friday, so this means that this was a Wednesday. And you previously testified that you

recall being present in magistrate's court with Mr. Yarborough on this matter.

So I'd ask you to turn to Page 3, and Mr. Yarborough says -- who's, again, the bank's attorney -- "This is a motion to enforce rents. There's an assignment of leases, rents, and contracts filed downstairs in the clerk's office."

And he says, "This is a foreclosure action. There's a Verified Complaint that the defendant is in default on payments. And that defendant, as we've heard, is Atlantic.

"And as I read the statute, we can request that all rents be paid to us through that using that assignment of rents, but there are some other potential leases sort of up in the air, and something needs to be done to either consummate the leases or, you know, reject the leases.

"We would like to employ the Blanton Company to collect the leases and to manage the property, as they have been doing all along on behalf of the bank as well as the owner, pending this action, and we want the rents paid over to First Reliance Bank."

Sir, do you -- Mr. Blanton, do you recall being present in the magistrate's court on

Wednesday, September 30, 2015, and hearing Mr. Coit Yarborough, the bank's attorney, say those words?

MR. ANDERSON: Object to form.

THE DEPONENT: I recall being there with Ray Coit. As to his exact words, I can't recall. But I do recall being there with him.

BY MR. LE CLERCQ:

Q. And you would agree with me that he is -- what he says is that they want to employ you, the bank wants to employ you as the property manager to basically confirm the situation which has existed on the ground, which is that you have been acting as the property manager.

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. Do you agree?

A. Yes, sir.

Q. Okay. And so did you understand from that that Mr. Yarborough was confirming that you were acting as the agent of the bank with regard to matters happening at the Sweetbriar?

MS. HOUGHTON: Object to form.

THE DEPONENT: Yes. My understanding is yes. Uh-huh.

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to take care of.

Q. Including the bank?

A. Not that I recall. Possibly.

Q. Once the property went into foreclosure -- and again, you've said that this was your first property that you'd ever managed that was in foreclosure.

But once you got the motion to enforce rents served upon you, did you understand that the property was in foreclosure?

A. I'm sorry. Could you repeat that, please?

Q. Let me say it again.

You get served on or about July 24, 2015 with some documents. We've already looked at the documents.

There was a subpoena and there was also a motion to enforce rents, and there's a letter from Ray Coit Yarborough that says that Atlantic is in default.

Did you understand from receiving those documents that the property was in foreclosure proceedings by the bank?

A. Yes.

Q. Okay.

A. In proceedings, yes.

Q. All right. And you know how I asked you the two masters question earlier?

Is it a fair statement that after July 24, that given that you didn't have any experience with foreclosure proceedings prior to that, that you're going to cover all the bases and you're going to make sure Atlantic knows about everything and make sure that the bank knows about everything that relates to the property.

Is that a fair statement?

MR. ANDERSON: Object to form.

MS. HOUGHTON: Object to form.

THE DEPONENT: Yes. And I was not familiar at the point serving in the -- where I was serving. Obviously, I told you earlier that I had experience with foreclosures when I was purchasing property myself or on behalf of others.

But yeah. I understand what a foreclosure proceeding is, yes. But as far as who I'm supposed to contact? Who I'm supposed to tell? No.

You know, I think the way I understood your question was is -- no. This is my first go-around. I didn't know what I was supposed to do. Okay?

BY MR. LE CLERCQ:

Q. Understood. Fair enough.

And so in an abundance of caution, and I think it's supported by the documents we'll look at.

In an abundance of caution, you were talking with everybody that had a legal interest in the party, which means Atlantic and which means the bank.

MS. HOUGHTON: Object to form.

THE DEPONENT: Yes.

MR. LE CLERCQ: What's objectionable?

MS. HOUGHTON: I can elaborate.

MR. LE CLERCQ: No. That's all right. I don't want you to. I'm satisfied with the question.

BY MR. LE CLERCQ:

Q. But let me rephrase it to make sure.

In an abundance of caution, if there were tenant issues, particularly relating to prospective tenants, tenants to come in the future, you were in communication both with Atlantic and, as well, with the bank, because that is the entire universe of everyone that has an interest in the property in

terms of its ownership.

Do you agree with that statement?

A. I agree with the last part of what you said, but the actual question is?

Q. The question is: You get served with the documents that we've already looked at, and you just said you understand that the property is in foreclosure.

You've got a job to do.

A. Or in the --

MR. ANDERSON: Object to form.

THE DEPONENT: -- process of foreclosure, yes.

BY MR. LE CLERCQ:

Q. It's in foreclosure proceedings.

You testified that your mandate is to get property leased, and this is your -- this is the first time that you've been the manager of property that has been foreclosed on.

A. That's correct.

Q. And so there are documents, for example, the document that we've looked at, Document Blanton 120, in which you're contacting the bank -- that indicates that you've contacted the bank, and there's also a prior document that indicates that

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into the record, I would ask you to just briefly read over the entire language from there down to the end of the page and just familiarize yourself with it. Make sure you understand it. In fact, while you're doing that, I will just put a couple of selected points into the record.

It states, "Lender's Right to Receive and Collect Rents. Lender shall have the right at any time, even though no default shall have occurred under this assignment, to collect and receive the rents. Lender is hereby given and granted the following rights, powers, and authority:"

One of the rights is to enter the property, that the Lender can enter and take possession of the property. The one at the very bottom of the page states "Lease the Property".

And so what I would ask you to do, please, sir, is to read that subsection into the record where it says "Lease the Property."

A At the very bottom?

Q Yeah, where it says -- starts with "Lease the Property".

A "Lender may rent or lease the whole or any part of the property for such term or terms and on such conditions as Lender may deem appropriate."

Q If you turn over, not to the next page, Exhibit A -- But while you're on Exhibit A, does that, to you, appear to be a fair description of the Sweetbriar Shopping Center?

A Yes, sir.

Q So turn to the next page where it says "Employ Agents". You agree with me it states, "Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the property" --

A Yes.

Q -- "including the collection and application of rents."?

A Yes.

Q Same questions as before. Is there anything in the language that you just read or that I've read into the record that you disagree with?

A No, that's what the document says.

Q So you would agree with me the bank does, in fact, have those rights vis-a-vis Atlantic?

*****

A Yes.

Q You would agree with me then that if that language means what it says, that if Atlantic is in default on the property, say, on August 1, 2015, that if the Sweetbriar property -- if some of it is

vacant, the bank has the right, if it wants to, to come in and lease the property?

A That would be correct.

Q It could lease the property on whatever terms it wants, right?

A Are we talking specifically about Sweetbriar?

Q Yes.

A If this is specifically about Sweetbriar, we did not exercise our rights to do that. We had a right to, but we didn't exercise those rights.

Q Okay. So the bank is also given the right to appoint a receiver, right?

A Yes.

Q What's your understanding of a receiver?

A Someone who comes in and begins to collect the rents to -- that would come under contract with us to collect the rents or manage the property.

Q Did the bank at any time vis-a-vis -- I've got to stop using that expression, sorry. Did the bank at any time with regard to Atlantic, to its relationship with Atlantic, did it at any time appoint a receiver?

A I would say no.

Q Blanton doesn't qualify as a receiver?

A I don't see him qualifying as a receiver.

Q Why not?

A I think he was appointed by the Court to collect the rents as he was doing for -- continue as the property manager and agent for Atlantic Regional, and the Court ordered him to direct those rents to the bank, but he was still acting as the agent for Atlantic Regional, not the bank.

Q But you would agree with me that the language that has just been read authorized the bank to retain Blanton, if it wanted to, as its agent to manage the property?

A Yeah, but we didn't exercise that right.

Q Let's use the example that we used with Mr. Blanton. What if a pharmacy had come in on August 1, 2015, and said, we want all of Atlantic's space and we'll pay you a premium for it, but we've got to have a 30-year lease, would the bank, under the document and language you just read, have had the right to enter that lease?

A It had the right to enter that lease, but we would not have interfered with Atlantic Regional. Atlantic Regional would have had to make that decision while it was in foreclosure, in their attempt to cure the loan. We're not going to

***** see hrg transcr.

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Q Is it your testimony that -- Let me make sure I understand. What you intended -- What the bank intended was that Blanton collect the rents from the tenants and pay them over to the bank, right?
A Correct.
Q But your position on the record here today is that that does not make Blanton the bank's agent?
A That is correct.
(Deposition Exhibit 6 was identified for the record.)
BY MR. LE CLERCQ:
Q Let's take a look at Exhibit 6. This appears to be the motion to enforce rents that was attached to the letter that you've just seen. Do you agree with that characterization?
A Yes.
Q And you see that it's dated July 23, 2015?
A Yes.
Q And is Ray Coit Yarborough the attorney for the bank in this foreclosure proceeding?
A Yes.
Q And you would agree with me that it states that the bank will move the Court to direct the agent to pay the lease proceeds due to Atlantic over to Plaintiff?

A Yes.
Q And you would agree with me that -- that soon thereafter that you received the tenant roster from Blanton?
A Yes.
Q Would you also agree with me that one of these tenant rosters was written the name of Mike Timmons?
A Yes.
Q The bank was in possession of that document prior to the execution of the lease by Blanton with Timmons?
A Yes.
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q Let's look at -- Here's a document that is 6-A. It's not actually -- It's not in -- yeah, turn over to the next one. You see there's a green sticky tab that says 6-A?
A Right there.
MR. LE CLERCQ: This, ma'am, needs to be marked. That's 6-A.
(Deposition Exhibit Number 6-A was marked for identification.)

BY MR. LE CLERCQ:
Q Now, what I would like you to do is flip back to Exhibit 5. And what it says at the bottom of that page is, "Pursuant to the assignment and SC Code Section 29-3-100, all future payments on your lease are to be made to: First Reliance Bank, c/o Dale Porter."
A Uh-huh.
Q Now, if you would, flip back over to 6-A, I'll represent to you this is the code section that Mr. Yarborough has cited. You've indicated the bank's attorney is Coit Yarborough.
A Yes.
Q So I would draw your attention to the very bottom of the page to the highlighted language. Would you agree with me that the bank is obligated to proceed in a -- what the statute calls a commercially reasonable manner in a situation where it is acting in a foreclosure and is exercising its rights under an assignment of rents?
A Yes.
MS. HOUGHTON: Object to form.
(Deposition Exhibit 7 was identified for the record.)

BY MR. LE CLERCQ:
Q Let's take a look at Exhibit 7. And we're going to go -- These are responses to Requests to Admit that we got from The Blanton Company in this case, and I want to get your opinion on this. If you look at page 17 -- I'm sorry, page 13. What I'm looking at is on page 13, paragraph 17. And it says, "Admit that, subsequent to July 24, 2015, Blanton had either an oral, written, or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for: Work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank," and, number 2, "acting as property manager with regard to Sweetbriar, including managing the property Timmons leased." And the response to that by Blanton is "Admitted".
So my question to you would be the same question. Do you agree that subsequent to July 24, 2015, that Timmons -- excuse me. Do you agree that subsequent to July 24, 2015, that Blanton and the bank had either an oral, a written, or an implied contract whereby Blanton had the right to be compensated for his work done collecting the rents?
MS. HOUGHTON: Object to form.

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Q So there weren't any other prospective tenants in -- Let me ask it this way: Who were the prospective tenants for Sweetbriar between August 15 and September 1st of --

A I don't know.

Q You don't recall whether Mr. Blanton mentioned Mr. Timmons' lease in that regard?

A No.

Q What was -- Tell me about your conversation with Mr. Blanton.

A Joe called me up, saying, you know, I've got the tenant that is wanting to lease a property. And he says, I just want to know what I need to do here. And I told Joe, I said, Joe, I said, this loan is in foreclosure. I can't give you any guidance or tell you what to do or what not to do. I'm sorry, I can't do that at this time. I think he ended the conversation, well, I think I'm going to go ahead and enter the lease. I said, I'm sorry I can't tell you help you. That was basically the conversation.

Q And that was by telephone?

A By telephone.

Q Would you agree with me you knew at that time that the lease that was being proposed was not a month-to-month lease, but was a longer term lease?

A I had no knowledge of whether it was going to be long-term or short-term.

Q He didn't say anything about that?

A No, we didn't talk about that.

Q Take a look at the next page of that exhibit. Would these have been the rent rolls that you would have sent to Andy Fowler?

A Yes.

Q And that's both page 1826 and the next page, 1827.

A Okay.

Q And 1826 is the cash flow statement for Sweetbriar July 2015. And you would agree with me that page 1827, up at the upper right, the date of that document is July 28, 2015?

A I do.

Q So you would agree with me that Blanton had sent you the tenant directory on or prior to July 28, 2015?

MS. HOUGHTON: Object to form.

THE DEPONENT: Say that again now.

BY MR. LE CLERCQ:

Q All right. The document has got a date of July 28, 2015, at 11:24 a.m.

A Right.

Q Do you -- So I assume that that's the date that -- well, I don't know. I don't want to assume anything. Is that the date that you think that Blanton produced the document? Is that the date they sent it to you? Or is that the tenants as of July 28? Tell me what your understanding of that is.

A He just sent me the rent rolls, and I saw these rent rolls, which I sent to the appraiser.

Q Okay. And so would you agree with me that he likely sent you the rent rolls fairly soon after July 24, 2015, when he got served?

A Yes.

Q Would it have been within a week?

A It would have to be, wouldn't it?

Q Yes.

A Okay.

Q All right. Do you see on this page where it says Joyce Kirven, Blue -- Blush Ultra Lounge at 1945 Second Loop Road. Under that it says, Moved. Then underneath that, it says, Mike Timmons.

A Which form are you looking at?

Q I'm looking at 1827.

A Okay. Got it.

Q So do you see where, right underneath the words Joyce, and I think it's Kirven --

A Yeah.

Q -- and then it says Blush Ultra Lounge?

A Uh-huh.

Q It says, Moved. And Mr. Blanton testified he had written that word "moved" in there and also wrote in Mike Timmons next to that.

A Right.

Q Do you recall seeing this document when Mr. Blanton sent it to you?

A I do.

Q And so you would agree with me then that the -- Let me phrase it this way: Do you understand that the space that Mr. Timmons intended for Tavern on the Loop had been previously occupied by the Blush Ultra Lounge?

MS. HOUGHTON: Object to form.

THE DEPONENT: No, I did not know that.

BY MR. LE CLERCQ:

Q You did not know that? All right. Did you understand it was Mr. Timmons that was going to be taking over that space?

A No.

Q Do you recall having a discussion with Mr. Blanton about this document?

A No. He just sent it to me, as a matter of

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THE DEPONENT: Atlantic Regional was still the owner of that property. They were still -- had responsibilities and the rights to cure their loan. And I was not going to interfere with their business. If I sent something like that, it could have possibly interfered with their business.

BY MR. LE CLERCQ:

Q Help me understand how it would interfere with their business to let Mr. Blanton know that he should only be entering month-to-month leases?

MS. HOUGHTON: Object to form.

THE DEPONENT: Because of the -- It's obvious if it's -- If they had leases and he had long-term leases, it could have had effect on what he was -- on the leases he had there. They may or may not have wanted to stay because of that. I couldn't get involved or take part in his way of doing business. Otherwise, I would have interfered with him being able to cure the loan. I had to stay out of it.

BY MR. LE CLERCQ:

Q But you had had no correspondence with Richard Cooke subsequent to the filing of the foreclosure proceeding on July 23rd that would

indicate to you that Atlantic was going to cure the default; is that a fair statement?

A That's a fair statement.

MR. LE CLERCQ: I don't have any further questions.

\- - -

EXAMINATION

\- - -

BY MR. ANDERSON:

Q Mr. Porter, my name is David Anderson.

MR. ANDERSON: Madam Court Reporter, can you hear me okay?

THE REPORTER: I can right now.

BY MR. ANDERSON:

Q I represent, of course, as you know, Joe Blanton and The Blanton Company in this matter. I've got a few questions I want to make sure that I understand.

Is it the bank's position, then, that The Blanton Company was not serving as the bank's agent until the actual foreclosure order was signed?

A That's correct. Until we had the deed in our name, that's correct.

Q Okay. Once the property went into foreclosure, is it your testimony -- I believe your

testimony was that you, with the distressed portion of the property division, would have had the property appraised; is that correct?

A We did, when it got closer to the foreclosure date.

Q And how many times do you normally appraise property?

A Almost every time when we have a foreclosure property. I use the appraisal for the purpose of determining if we have any additional write-downs on the property, and/or it helps me produce the bid amount that we're going to pay at the sale.

Q Was this -- how many times was this property appraised?

A Once.

Q One?

A One.

Q And did you go back and ask them to appraise it in a different manner or just a land value?

A No. I think the appraisal came in with a land value, and it had several different views of it. It had building cost, land value, and I think income values as well.

Q And there's a note about deferred maintenance on the building. Were you consulted with how that figure was derived?

A That's probably some conversations that Blanton and I had, I'm assuming.

Q Why would Mr. Blanton be able to provide you deferred -- value for deferred --

A Oh, the value?

Q Right.

A You know, now that you say that, I don't recall how I got that.

Q Do you recall that there was a deferred maintenance value of $500,000? It's in your notes. I can go back, and I think it's Exhibit Number 13, if my memory is correct.

A Where am I looking at?

Q If you look at your memo that's dated 11/24/15 --

A Okay.

Q It's Bates labeled FRB/CCS 1830.

A Okay.

Q If you look in the impairment summary, you've got a figure there with a deferred maintenance being over 500,000. My question to you is: How was that figure determined?

In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

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they?
A. First Reliance? I know Rick, yeah. We're friends.
Q. That's Rick Saunders?
A. Yeah.
Q. Who are the other principals?
A. His brother.
Q. And what's the name of the brother?
A. I can't remember off the top of my head.
Q. Okay. Have you-all been, prior to the events here, have you ever had any occasion to do business with them?
A. Only on a personal basis.
Q. Tell me about that.
A. Bought some stock in First Reliance when they opened up.
Q. You did?
A. I did, yes.
Q. Do you still own that stock?
A. No.
Q. Why did you sell it?
A. Because I wanted to.
Q. All right. How long did you have it?
A. I don't recall. I don't know. You know, a year, two years, whatever. I don't know.

Q. Do you recall what percentage of the bank that you owned?
A. Obviously it would have been a very low percentage. I think I might have invested maybe 3,000 bucks. I don't recall.
Q. Okay. Would you agree with me that the property manager normally gets his instructions as to how to deal with tenants from the landlord?
A. Yes.
Q. Can we agree that landlord and lessor mean the same thing?
A. Yes.
Q. Have you ever owned -- have you ever been property manager for -- have you ever had more than one boss, as it were? Have you ever worked for more than one landlord on the same property?
A. (Pause.)
Q. Have you ever had a situation -- while you're thinking about that, have you ever had a situation where multiple parties owned a piece of property and hired you as their property manager?
A. Sure.
Q. And are you taking instructions in that case from more than one party?
A. They normally choose someone to be

spokesperson for their group.
Q. But you would see any of the members of that group as someone that you have to listen to as a landlord?
A. Correct.
Q. Okay.
A. And then if there are different opinions, then I would ask them, you know, let's meet and talk this over, and you guys tell me what to do, or you ladies.
Q. And if you signed a lease on their behalf, each of those parties would be obligated under the lease?
A. Certainly. If they were owners or a partnership or LLC or a family trust, whatever.
Q. Okay. So duties of a property manager, you would agree then that it includes supervising and coordinating the maintenance?
A. Yes.
Q. Resolving tenant concerns and complaints?
A. Well, again, when you say -- rephrase that for me, please.
Q. I agree. Let me take another stab at it. Do the typical duties of a property manager include helping to resolve tenant complaints?

A. Yes. But I don't oversee those. I have subs. I don't have any employees that do work. I've got, you know, handymen. I've got roofers, plumbers, electricians, et cetera. Roofers that I deal with on a regular basis. None of them employed by me.
So just to answer the questions: Do I supervise or oversee those repairs? No. I don't have any expertise in doing that except to ask people to do things. I'm not really sure how else to answer it.
Q. Okay. Do you recall having a conversation with Mr. Timmons prior to the signature of the lease that you felt like you had a responsibility to him, given the amount of money that he was going to be investing in the property, to try to get him a long-term lease?
A. Certainly. I would do that with anyone.
Q. Okay.
A. And Mike and I had prior business dealings, and I think sitting here across from each other today that we can still consider ourselves friends.
Q. Understood.
THE DEPONENT: Right?
MR. TIMMONS: Yes, sir.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP, Plaintiff, v. FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227

SWORN DECLARATION OF JOHN MICHAEL TIMMONS, JR.

1) My Name is John Michael Timmons Jr., and I am the Plaintiff in this matter. This affidavit is to provide additional details reguarding my state of mind and the financial duress that I was under in 2016 and 2017.

2) As described in the compliant filed in this matter, and in my prior affidavit, the actions of Bank, Blanton, and Plasma destroyed a profitable business and my career along with it.

3) I began gushing red ink In September 2016. This was a result of the loss of my best staff and employees and the rumor mill in Florence of me being forced out of my location. September 2016 to December 2016 Profit/loss was as follows. September (-4859.24), October + 400.90, November (-2796.18), December (-11,904.59). Total loss (-19,159.11)

4) Plasma purchase Sweetbriar on January 27 2017, and sent me an eviction notice which I got on February 8 2017, and the gushing of red ink would continue. Profit/loss for January-June 2017 was as follows. January (-66.85), February (-2126.72), March (-699.55), April (-242.46), May (-6460.64), June (-3373.01). Total loss (-12,969.03)

5) Total loss from September 2016 to June 2017 Totaled (- 32,128.14) this was absolute devastation professionally, financially and emotionally. I was facing predatory, ruthless adversaries with deep pockets and wealthy backers, and mine were past empty.

EXHIBIT 71

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6) After having spoken with a bunch of lawyers, none of whom would represent me without a payment of money, out of complete desperation I reached out in January, 2017 to attorney Clarence Davis, a friend of Duane Everett, a non lawyer who wrote the January 16, 2017 letter to Bank for me. Due to multiple excuses and Clarence Davis's schedule we actually never met face to face until April 4. On this day I asked Clarence Davis did he realize my lease was 18 years, he replied " No I haven't reviewed the file completely but I will" this was beyond disturbing. I had no money and Clarence had no time. Plasma had already brought dumpsters to Sweetbriar by then, in March, which was the sign to all the world that my business was dead. Later when Davis told me he couldn't represent me unless I paid him $7500, I released him from being my attorney. Though I don't think he ever really reviewed my file, I think he took pity on me at the end, and did have some conversations with Plasma around the time the release was signed.

7) By the time I did finally meet Clarence Davis my business was dead and gone; I had exhausted all my financial resources. I had lost –(-17,566.89) on my P&L the 5 months prior.

8) Given this great financial distress, I had no choice but to sell everything I could get my hands on in an attempt to survive another day, put food on the table.

9) On February 27, 2017 we had to sell my wife's family home, which had been in my wife's family for generations. We could no longer afford the payments.

10) On May 22, 2017 I had to sell 3 gold rings to Ricks Pawn, to my friend Lonnie Gaskins. One of these was my grandmothers wedding ring. I was sick to my stomach to do it, but had no choice.

11) On June 1, 2017 & June 29, 2017 I took everything I could get my hands on to John T Henry Auction Co., to be auction off for whatever I could get. That included an air compressor, rugs, a bedroom suit, a china cabinet, as ecretary, table. These were all treasured possessions, but I was desperate.

12) By far the worst part of this whole episode however was my inability to keep paying child support for Lexie, my oldest daughter. I always paid that $720 every month, until the end of 2016/beginning of 2017, when all I could do was pay $200. I cried when I gave that to Anna Purvis, but I guess I thought it was better than nothing. Ultimately I had to stop even paying that measly $200. My financial reversals, caused directly by the despicable actions of defendants in this case, let me directly into breach of my child support obligations. I was trying to get money as fast as I could, but simply did not have enough to keep up with all of my obligations. Despite my intense fear of the consequences of not paying child support (including prison), and the shame and humiliation of missing those payments, unfortunately, I had to choose which mouths to feed. Given that Lexi's mother Anna Purvis has a good job, they live in a nice house, I had put what resources I could come up with towards the payment of my family members in greater need.

13) To her credit, Anna Purvis never said anything to me about the failure of payment, but it was I think understood between us that as long as I was not paying child support I would not really have any right to see my child like I had before. It would only be whenever it would be convenient for Anna Purvis. Those are times with my child that I will never get back, which is had a devastating effect on me personally, as my goal has always been to be a very active and loving father. It has put a strain on my relationship with my child.

14) By the time June came around I had been in desperate financial circumstances for many months, and simply had no choice. I had to accept Plasmas offer, whatever it was. I had no ability to hire an attorney, and during that time the attorneys that I spoke with, including Mr. Davis, indicated that they would not represent me without payment.

Pursuant to 28 USC Sec. 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on February 1, 2020.

John Michael Timmons, Jr.

ELECTRONICALLY FILED - 2020 May 18 11:04 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
XAVIER SAMS)
Plaintiff(s))
)
vs.)
)
FIRST RELIANCE BANK, ET AL.)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

_____-CP - _____- _____

Submitted By: Ben Le Clercq
Address: 708 South Shelmore Blvd., Suite 202, Mount Pleasant, SC 29464

SC Bar #: 65754
Telephone #: 843-722-3523
Fax #: 843-352-2977
Other:
E-mail: Ben@Leclercqlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. **This form is NOT required to be filed in E-Filed Cases.**

DOCKETING INFORMATION (*Check all that apply)*

**If Action is Judgment/Settlement do not complete*

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

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Incapacitated Adult Settlement (790)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Interpleader (690)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 10/11/2019

EXHIBIT 72 0821

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

ELECTRONICALLY FILED - 2021-10-07 11:12:44 AM - FLORENCE - COMMON PLEAS - CASE#2018CP2102207

ELECTRONICALLY FILED - 2019 Oct 11 12:44 PM - FLORENCE - COMMON PLEAS - CASE#2019CP2102297

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE #
	)	
XAVIER SAMS,	)	
	)	
Plaintiff,	)	**SUMMONS**
vs.	)	
	)	
FIRST RELIANCE BANK, INC.,	)	
THE BLANTON COMPANY, INC.,	)	
JBJR ENTERPRISES, INC. d/b/a	)	
THE BLANTON COMPANY, INC.,	)	
WW PLASMA II, LLC,	)	
DALE PORTER, F.R. SAUNDERS, JR.,	)	
HUNTER WILLIAMS, and	)	
JOSEPH B. BLANTON, individually,	)	
	)	
Defendants.	)	
	)	

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on Ben Whaley Le Clercq, Attorney, at 708 S. Shelmore Blvd, Suite 202, Mount Pleasant, South Carolina, 29464, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer or appear and defend the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default.

Dated: October 11, 2019

Respectfully Submitted,

Ben Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercqLaw.com
David@LeClercqLaw.com
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Counsel for Plaintiff

ELECTRONICALLY FILED - 2019 Oct 18 12:44 PM - FflorENCE - COMMON PLEAS - CASE#2018CP2102827

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE # 2018-CP-21-____
	)	
XAVIER SAMS	)	
	)	
	)	
Plaintiff,	)	**COMPLAINT**
	)	(Jury Trial Requested)
vs.	)	
	)	
FIRST RELIANCE BANK, INC.,	)	
THE BLANTON COMPANY, INC.,	)	
JBJR ENTERPRISES, INC. d/b/a	)	
THE BLANTON COMPANY, INC.,	)	
WW PLASMA II, LLC,	)	
DALE PORTER, F.R. SAUNDERS, JR.,	)	
HUNTER WILLIAMS, and	)	
JOSEPH B. BLANTON, individually,	)	
	)	
	)	
	)	
	)	
Defendants.	)	
_____	)	

COMES NOW, Plaintiff Xavier Sams by and through her undersigned counsel, complaining of the Defendants herein and alleging as follows:

PARTIES

1. Plaintiff Xavier Sams is a citizen and resident of Florence County, South Carolina and was the owner and operator of a recording studio located at 1933 2nd Loop Road in Florence, South Carolina. This case is similar to the case of John Michael Timmons, Jr. v. First Reliance Bank et. al, Case No.: 2018-CP-21-227, in that the premises leased by Plaintiff were adjacent to Timmons' business described in his lawsuit, the leases are similar, the Defendants are the same, and the deceptive, sharp and/or grossly negligent practices of Defendants described in Timmons' action are also present in this case.

ELECTRONICALLY FILED - 2019 May 13 12:44 PM - FflorENCE - COMMON PLEAS - CASE#2019CP2102827

2. Defendant First Reliance Bank, Inc. ("Bank") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed upon information and belief by Defendants Porter and Saunders in 1999.

3. Defendant Dale Porter ("Porter") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. At all times relevant to these claims, Porter was an employee and, upon information and belief, an executive of the Bank, and individually responsible and liable for his own acts and/or the tortious actions of the Bank described herein in which he participated or was otherwise negligent.

4. Defendant F.R. Saunders, Jr. ("Saunders") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. At all times relevant to these claims, Saunders was an employee and chief executive of the Bank, and individually responsible and liable for his own acts and/or the tortious actions of the Bank described herein in which he participated or was otherwise negligent, including negligent supervision. Bank, Porter and Saunders are sometimes referred to herein collectively as "Bank Defendants."

5. Defendant The Blanton Company, Inc. ("TBC") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed in 2013.

6. Defendant JBJR Enterprises, Inc. ("JBJR") is a South Carolina domestic corporation with its principal place of business in Florence, Florence County, South Carolina. It was formed in 2013. Upon information and belief JBJR and TBC are part of a group of companies with common stockholders, officers and employees, which are indistinguishable from one another,

ELECTRONICALLY FILED - 2019 May 13 12:44 PM - FLORENCE - COMMON PLEAS - CASE#2019CP2102827

and which were used herein as an artifice to perpetrate illegal and/or wrongful, tortious and deceptive acts damaging Plaintiff.

7. Defendant Joseph B. Blanton ("Blanton") was, on information and belief, at relevant times to these claims, a citizen and resident of Florence County, South Carolina. During the relevant timeframe, Blanton did business as a property manager and as broker in charge under the name The Blanton Company, Inc., the principal office of which was in Florence, South Carolina. TBC, JBJR and Blanton are sometimes referred to herein as "Blanton Defendants."

8. Defendant WW Plasma II, LLC ("Plasma") is a South Carolina domestic company with its principal place of business, on information and belief, in Florence, Florence County, South Carolina. It was formed in 2016.

9. Defendant Hunter Williams ("Williams") was, on information and belief, at relevant times to these claims, a member of Plasma acting as Plasma's agent in Plasma's dealings with Sams and the Bank that concerned Plasma's ownership of the property at issue in this complaint, and individually responsible and liable for his own acts and/or the tortious actions of Plasma described herein in which he participated or was otherwise negligent.

FACTUAL ALLEGATIONS

10. On August 14, 2006 the Bank acquired a mortgage lien ("the Mortgage") on a Site described as

> i. All that certain piece, parcel or tract of land lying, being and situate in the City of Florence, County of Florence, State of South Carolina, being shown and designated as the major portion of Tract No. 4, containing 3.28 acres, more or less, as shown on a map prepared for Atlantic, by Lind, Hicks & Associates, Surveyors, dated July 25, 2006 and revised August 7, 2006 and recorded in the office of the Clerk of Court for Florence County in Plat Book 89 at page 467. Reference being had to said map for a more complete and accurate description.

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Exhibit G.1.

11. The building on this property was a strip mall within a portion of which (said portion being "the Site") Sams would later open her business under a lease that is the subject of this action ("the Lease") (being the same strip mall and Site where other Tenants, such as Mike Timmons and KT Dunham, also had leaseholds.

12. Also on August 14, 2006, the Bank received a promissory note (the "Note") in conjunction with the Mortgage. **See attached Exhibit D.**

13. The other party signing the Note and Mortgage was Atlantic Regional, LLC ("Atlantic").

14. The Note reflected the Bank's loan to Atlantic in the principal amount of $1,073,420.00.

15. The Note's payments were structured so that the Bank would be paid a relatively small amount, $9,925.73, each month for fifty-nine months, then a very large payment, $966,589.15, due on the maturity date of August 14, 2011.

16. This payment structure created a large risk for the Bank in the event that the borrower defaulted on the Note, which Plaintiff respectfully submits may explain why they insisted Atlantic execute the Assignment of Rents document described below, giving the Bank Possession Rights and Rent Rights which the Bank used to enter the Lease with Sams, and may also explain the Bank Defendants' conduct herein. The Bank throughout has been motivated to "cut its losses."

17. On November 17, 2014, the Bank renewed its Note with Atlantic ("the Renewal"). The Renewal gave the Bank the right to demand payment in full at any time. **See attached Exhibit E.**

18. The Renewal's principal was $843,013.19.

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19. The Renewal's payment structure resembled that of the Note: until the Bank might demand payment in full, there would be fifty monthly payments of $9,055.17 and one final payment of approximately $599,066.41 on the maturity date of November 25, 2019.

20. With the Renewal the Bank maintained the same large risk as described above regarding the Note.

21. On November 17, 2014, Atlantic executed, at the Bank's requirement, an Assignment of Rents ("Assignment of Rents"). The Bank perfected its security interest ("the Security Interest") in the Site for the Assignment of Rents by filing the Assignment of Rents on or about January 27, 2015. **See attached Exhibit F.**

22. The Assignment of Rents/Security Interest gave the Bank possession rights ("Possession Rights") and rights to rents ("Rent Rights"), *whether or not there was a default,* which it in fact asserted as described herein, by the following provisions:

> **LENDER'S RIGHT TO RECEIVE AND COLLECT RENTS.** Lender shall have the right at any time, and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers and authority:
>
> i. **Notice to Tenants.** Lender may send notices to any and all tenants of the Property advising them of this Assignment and directing all Rents to be paid directly ***to Lender or Lender's agent***. ["Notice to Tenants Clause"].
>
> ii. **Enter the Property.** ***Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents***; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the rents and remove any tenant or tenants or other persons from the Property. . . . ["Enter the Property Clause"].
>
> iii. **Lease the Property.** ***Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate***. ["Lease the Property Clause"].

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iv. **Employ Agents.** Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the property, including the collection and application of Rents ["Employ Agents Clause"].

See attached Exhibit F (some emphasis added).

23. The Possession Rights and Rent Rights gave the Bank landlord status for the Site, with power to possess and rent the Site, whether or not there was a default, and including via an agent, "*for such term or terms and on such conditions as Lender may deem appropriate*." **See attached Exhibit F.** Does that language mean what it says? Is it legally valid and binding? (The Bank thought it was, as demonstrated by its motion to enforce the same against Atlantic). Was it a matter of record and on file at the RMC office? Would a prospective tenant entering a lease with Bank Defendants and Blanton Defendants after commencement of Bank's foreclosure proceedings or after the Bank had exercised its rights under the above clauses have the right to rely on the same, and make substantial, expensive improvements to leasehold property in exchange for the promise of a long-term lease? The answer to all these questions is unquestionably "Yes."

24. Bank Defendants and Blanton Defendants did in fact do just that—they entered the Lease with Plaintiff (and leases with other tenants at the Site) on the basis of the rights described in the prior paragraphs, which leases were unaffected by the ultimate foreclosure and the wiping out of the interest of *Atlantic* in the property, since it is axiomatic and hornbook law that foreclosure only affects *junior or subordinate* leases and liens to that of a mortgagee like Bank. In other words, the subordination clause of the Lease ("[t]his lease is and shall be subordinated to all existing and future liens and encumbrances against the property")(and to be construed at any rate against Defendants) only makes the Lease subordinate to liens that are subordinate to that of the Bank. The title, rights to the property and interest of a mortgagee foreclosing junior lienholders

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are not affected by the foreclosure. Bank Defendants and Blanton Defendants had the right, as set out in the Assignment of Rents, to enter the Lease and rent the property on whatever terms they wanted, and they did just that. Had the Lease been with Atlantic, it would have extinguished by the foreclosure. But because the Lease was with the Bank Defendants, and the Blanton Defendants, the Lease was not subordinate and was unaffected by the Foreclosure.

25. Moreover, ***subsequent*** to the obtaining of a judgment of foreclosure, in December of 2015, and then the foreclosure title itself, February 4, 2016, the Bank Defendants and the Blanton defendants both accepted rent payments under the Lease, ratifying and validating the Lease.

26. The Security Interest explicitly created the Bank's power to create an agency for the purpose of taking possession of the property, renting it, creating an agency and/or collecting rents, which the Bank in fact did, as described hereunder, via its agent TBC, Blanton and/or JBJR, and which agency has in fact been confirmed by a court.

27. On July 20, 2015, the Bank filed a foreclosure complaint (2015-CP-21-02106) ("the Foreclosure") and lis pendens in Florence County against Atlantic for default on the Note and Mortgage. **See attached Exhibit G.**

28. The Foreclosure did not name any tenant of the strip mall. **See attached Exhibit G.** Sams was not a tenant at that time, only becoming a tenant after Bank took possession of the Site and/or otherwise becoming the Landlord via the Assignment of Rents/Security Interest attached as **Exhibit F**.

29. On July 23, 2015, Bank exercised its rights under the Assignment of Rents/Security Interest by letter to Atlantic (via Atlantic's agent and guarantor Richard Cooke), Blanton, JBJR, and TBC, the Bank. Bank directed TBC, JBJR, Blanton, and Atlantic to pay over rents to it on the

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property subject to the Security Interest, and made TBC, JBJR, Blanton, and Atlantic its agents for exercising its Rent Rights, stating that Atlantic was in default under a note, mortgage, and Assignment of Rents held by the Bank (the "Assignment of Rents Letter"). **See attached Exhibit H.** Atlantic, TBC, and Blanton accepted and agreed to this agency.

30. Assuming that the Bank had received monthly payments under the terms of the Renewal up through July 23, 2015, the outstanding amount owed to the Bank under the Renewal would have been approximately $779,627.00. Given that Atlantic had defaulted, however, the actual amount owed was likely higher than that.

31. Also on July 23, 2015, the Bank moved this Court to order that TBC and Atlantic pay rents due to Atlantic to the Bank in accordance with the Security Interest (the "Rent Payments Motion"). **See attached Exhibit I.**

32. TBC and Blanton were served with the Rent Payments Motion on July 24, 2015. **See attached Exhibit K.**

33. ***Blanton Defendants, the Bank, Porter and Saunders were therefore, of course, well aware of the Foreclosure prior to entering any Lease arrangements with Sams***.

34. As of July 23, 2015, or prior to such date, Sams was not a tenant at the Site.

35. The Rent Payments motion was granted and the order entered on October 2, 2015, confirming the "facts on the ground" in place since July 23, 2015--Blanton as agent of Bank collecting rents and submitting them to Bank as Landlord. **See attached Exhibit J; see also Blanton Defendants interrogatory responses, excerpt attached as Exhibit J 1** ("First Reliance Bank and Blanton's initial agreement was that Blanton would collect and pay rent monies, which came from the shopping center at issue, to First Reliance. This agreement was entered into on or about July 23, 2015, when motion was filed to pay the rents to First Reliance Bank").

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36. Sams sought a location in Florence around September, 2015, to open a recording studio for music artists.

37. Blanton Defendants acted as the Bank's agents negotiating, drafting and executing the Lease with Sams, and at all times thereafter relevant to this Complaint. **Exhibit J 1.** Bank was an undisclosed principal, and, as such, both Bank and its agents are liable hereunder. **See attached Exhibit S. Exhibit S** is an internal Bank email from Dale Porter, the Bank officer principally responsible for this Site, on the very date the Lease was signed, discussing the "rent rolls and operating statement" and indicating that Blanton was managing the property for the Bank and "is working on a new renter that will help improve these numbers."

38. Blanton additionally acted as an agent of TBC and JBJR when negotiating and executing the Lease with Sams and at all relevant times further described in this Complaint. **Exhibit J 1.**

39. While negotiating the Lease with Sams, Bank Defendants and Blanton Defendants knew that Sams needed to invest considerable money into renovating and up-fitting the Site for the recording studio before it could open. These Defendants knew that operating the recording studio was Sams' intended use of the Site.

40. At the time of negotiating the Lease, Bank Defendants and Blanton Defendants upon information and belief also knew that the Bank intended to buy the Site in foreclosure and to sell it short-term.

41. Nevertheless, Bank Defendants and Blanton Defendants knowingly agreed to and/or executed a three year lease with Sams, to illicitly entice her to spend large sums improving the property which could then be taken by the Bank and sold for a higher price than if said improvements had not been made, with Blanton Defendants getting a commission from the sale of

the same and thus complicit in the scheme. **See attached Exhibit J 2, excerpt of closing with Plasma.**

42. On September 3, 2015, Sams executed the Lease for her recording studio, at the address 1933 Second Loop Road, Florence, South Carolina. **See attached Exhibit A.**

43. The other parties signing the Lease were Blanton and TBC, a property management firm, as—according to the Lease's language—the Lessor. TBC, JBJR, and Blanton were acting as agents for the Bank, who, as of the date of signature of the Lease, had full rights to lease the same "for such term or terms and on such conditions as [Bank] may deem appropriate." **Exhibit F, p. 2**.

44. Blanton Defendants, in drafting the Lease, did not identify the owner or possessor of the Site or the identity of the Landlord/principal.

45. Blanton Defendants told Sams that at the end of the three year lease she could renew for additional terms and would not be kicked out if the property was later sold.

46. Sams relied on these representations to the sign the Lease.

47. The Lease's initial three-year term started on September 1, 2015, and was to run until August 31, 2018. **See attached Exhibit A.**

48. Upon her initial review of the site, Sams knew that she liked the location, but also knew that she would have to invest an enormous amount of time and money in renovations. Because of the terrible, dilapidated condition of the Site, Defendants agreed that the first two months rent would be free due to Sams' improvements. Sams spent all of her money on improvements in reliance on and based on the representations, described further herein, of Defendants. **See attached Exhibit A.**

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49. On October 2, 2015 this Court entered its order granting the Bank's Rent Payments Motion referenced above. **See attached Exhibit J.** The order states in particular:

> ***[The Bank] proposes that the current property manager, the Blanton Company, remain property manager*** . . . . IT IS THEREFORE ORDERED THAT: 1- The Blanton Company will continue to manage the property referred to in the complaint until this matter is finally disposed of, and the Blanton Company will pay over any rents collected to First Reliance Bank.

Exhibit J, p. 1-2 (some emphasis added).

50. Sams spent in excess of $50,000 repairing and up-fitting the Site to open the recording studio. **See attached Exhibit B.**

51. Sams hired workers to perform the renovation work at great expense to herself. The work took about eight weeks, and the recording studio began booking clients around November of 2015.

52. The recording studio operated twenty-four hours a day, seven days per week and was fully booked for the first several months of its opening.

53. The recording studio initially proved popular and artists booked her studio and a Grammy Award winning sound engineer moved to the area from Atlanta, Georgia to work with them.

54. Sams' operations were profitable from the beginning, and she has lost profits which can be reasonably estimated based on Defendants' actions described herein. These same items should be adjusted to reflect non-recurring, normal capitalization and investment expenditures described herein. Sams wishes to be put in the position she would have been in economically but for the Defendants' actions.

55. Sams found out only after considerable expense and effort opening the recording studio that Defendants would "double-cross" her, take her improvements and eventually force her

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to close the recording studio, outrageously cut her locks, forcibly enter the property in manifest violation of the Lease, and allow the theft and/or destruction of expensive recording equipment and other personal and business property.

56. Bank Defendants and Blanton Defendants of course knew before the Lease's execution that the Site was already in foreclosure, that the Bank intended to buy it in foreclosure, and shortly thereafter sell it to minimize the Bank's loss on the Note, and that Sams's pending tenancy and business venture were doomed from the outset. These Defendants were likely motivated by their greed and desire to quickly "cut their losses" and/or share in the profits of a sale.

57. The Bank got its judgment on the Foreclosure on December 2, 2015. **See attached Exhibit L.**

58. On February 4, 2016, the Bank bought the Site and the strip mall parcel containing the Site in foreclosure sale for a bid of $485,300 which amount was, upon information and belief, less than the amount owed to the Bank by Atlantic. **See attached Exhibit M.** This was on information and belief a "credit bid." This loss suffered by the Bank, on information and belief, created and fueled its motivation to "cut its losses" even at the cost of shafting tenants like Plaintiff, Timmons, and Dunham, who all held valid, long term leases, and who had substantially invested in the leased properties in reliance on such leases.

59. Only four days later on February 8, 2016, the Bank outrageously and unconscionably breached and/or anticipatorily repudiated the Lease with Sams, while purporting to extinguish all leases (including the Lease) on the strip mall parcel (including the Site) by letter to TBC (the "Extinguishment Letter"), purporting to transform all current tenancies into month-to-month tenancies. **See attached Exhibit N.** Such action by the Bank, in addition to the others

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described herein, confirms Bank Defendants and Blanton Defendants liability for Plaintiff's damages hereunder. Word of Bank's actions soon spread amongst Sams' clients, as well as the community at large, as the Bank started marketing the Site for sale and "spreading the word", all of which significantly damaged Sams' business and decreased revenues and prospects.

60. Deceptively not mentioning the Security Interest/Assignment of Rents and the fact that it was and had been in actual or constructive possession of the Site, the Bank deceptively, outrageously and illegally misrepresented in its Extinguishment Letter that the Lease's extinguishment was the natural and inevitable result of the Bank's purchase of the foreclosed Site when it stated, "[The Bank] was the high bidder at the [public auction due to the Foreclosure action] and now is the new owner. As a result of that sale, **all agreements** (lease or otherwise) with . . . occupants related to the SweatBriar [sic] Shopping Center **are extinguished**." (emphasis original). **See attached Exhibit N.** In fact, as clearly demonstrated in **Exhibit N 1**, all Defendants and their agents knew that Sam's Lease (and Timmons' Lease, and Dunham's Lease) in fact were legitimate and valid, yet driven by their greed, superior bargaining position, and desire to cut their losses, they pressed forward with their "scorched earth" campaign to force Tenants including Plaintiff from the property.

61. **Exhibit N 1** is disturbing, and demonstrates clearly that ***all*** Defendants knew the Lease (and the lease of Timmons, and Dunham) were valid, were not month to month, but "long term"-- yet they proceeded with their unscrupulous, illegal actions and forcible ejectment of Plaintiff and other tenants from the Site. The exhibit is an email chain between principals and/or agents of the Bank, Blanton, and Plasma prior to the sale of the property from the Bank to Plasma, and it contains significant admissions against interest. David Brock, the Bank Defendants' realtor and agent, wrote to Dale Porter, apparently copying prospective purchaser and Defendant Hunter

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Williams and Williams' agent Greg Wood, on Friday, December 23, 2016 at 10:25 AM, re " Sweetbrier [sic] Shopping Center." Acknowledging both that the long-term leases were valid ***and*** that the Bank was the "lessor" of the property, Brock writes to Porter:

> Dale I spoke with Joe Blanton and he recommends a conference call with Greg Wood. ***Apparently the tenants all have leases in place that go for years and from my experience they will transfer to the new owners. Basically they don't have to leave unless they are willing to leave. I understand that Mr. Blanton sent notices to all tenants informing them that they were on month-to-month leases effective immediately. That sounds as if we are voiding their individual contracts with the lessor. Please advise my experience they may leave on their own accord but they certainly do not have to based on their individual leases.*** I was told they they were on a month-to-month situation but apparently this is not the case . . . the current buyers are under the assumption that the tenants on month-to-month and are planning to close in two weeks. Mr. Blanton recommends a conference call between you Mr. Blanton and Greg Wood to try and work this out as soon as possible please advise.

(Emphasis added).

Hunter Williams and/or Greg Wood (Williams' agent) then respond (or perhaps prior to) Brock's message, tacitly acknowledging the validity of the Lease (and other tenant leases), and adding that they would therefore require "lease amendments" or "acknowledgments":

> We understand the bank's position on issuing lease termination notices prior to a transfer of title and we are not asking for this. Our concern is with the existing leases and the acknowledgement that each lease is now a month-to-month lease. Mr. Blanton being fulling aware of the lease situation does not ensure to us the tenants are in agreement with this position. ***We will require lease amendments or written acknowledgments from each tenant that all lease[s] are month the month prior to the closing.*** Mr. Blanton is a leasing agent for the Bank and if the Bank wants to use his services to secure these acknowledgments, then it would be up to them to do so. ***Once we take ownership, it is our intention to terminate some leases*** and possibly renegotiate others. Thanks for your response and hope you have a wonderful Christmas.

(Emphasis added). Buyers never got the "written acknowledgments" because Tenants (having valid leases, refused to sign, despite all of Defendants bad faith deceit and trickery!

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It would be anything but a "wonderful Christmas" for Sams and the other tenants of the Site, faced with imminent, forcible eviction and the destruction of their businesses and the loss of their investments in their businesses.

62. In its Extinguishment Letter, the Bank communicated its intent to sell the Site short-term, stating:

> The bank would like to enter into month-to-month lease agreements with the current tenants until it has opportunity to explore purchaser opportunities. We would also like to employ your firm [Blanton and TBC] to assist the bank with these agreements and the management of this property while the bank finds a purchaser. If a future purchaser wishes to enter into long term leases with any of the current tenants that will be between them and the tenants with the change of ownership. However, if the bank finds a purchaser that wishes to use the property for some other purpose then ***the bank cannot put itself in a position not to be able to accommodate that purchaser's wishes.***

See attached Exhibit N (emphasis supplied).

63. On February 26, 2016, Blanton delivered Sams a letter (the "TBC Letter") with attached the Bank's Extinguishment Letter (upon information and belief at the direction of the Bank), stating, "It is with much regret that I write this letter. I sincerely wish I had an answer for this [letter from the Bank], but legally, I do not." **See attached Exhibit O.**

64. Defendants' outrageous and unconscionable actions herein quickly became well-known in Florence and ultimately destroyed Sams' business (and the other tenants as well), forcing a loss of her life savings. The ultimate financial repercussions for Sams were catastrophic: Sams, who had realized her life-long dream of being a self-employed entrepreneur, had to go out and work two jobs to pay her bills.

65. Throughout the period of the lease, Sams hand-delivered monthly rent payments to TBC's office. During said period, Sams saw Blanton in TBC's office, but Blanton only notified

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Sams of the Foreclosure and Extinguishment Letter as described above, on February 26, 2016 after having remained deceptively and outrageously silent about it ever since negotiating the Lease with Sams.

66. Blanton and TBC, again acting as agents of the Bank, represented to Sams that a new purchaser would wish to continue the Lease.

67. In making this statement Blanton, TBC, and the Bank intended to induce both Sams' reliance on the prospect that the Lease would continue and to trick her into foregoing taking any action adverse to their interests, in order to sustain the monies they were receiving from the Lease, and to have a "clean slate" and clear title on the Site so as to be able to convey it to a third party purchaser like Plasma.

68. Sometime on or before December 27, 2016, the Bank entered a contract with a purchaser for the Site and strip mall parcel. **See attached Exhibit P.**

69. On December 27, 2016, the Bank sent a letter ("the Acquiescence Letter") to TBC and Blanton notifying them that it was under contract to sell the Site and strip mall parcel on or before January 14, 2017, requesting that they have each tenant sign said letter stating they've been notified of the contract and recognizing that "it will be their responsibility to negotiate leases with the new owner from the current month to month leases they have with the bank." **See attached Exhibit P.**

70. Sams never signed the Acquiescence Letter.

71. Upon information and belief, during negotiations with Plasma, the Bank, TBC, Blanton, one or more individual defendants and/or JBJR knew that Plasma intended to raze the Site and strip mall, yet continued to dupe and mislead Sams and the other tenants, including that the tenancy would continue with the purchaser. Specifically, Greg Wood, Williams/Plasma's

agent, told David Brock and Dale Porter on December 23, 2016 that "our intention is to demolish a portion of the center." **Exhibit N 1, p. 1.**

72. Neither the Bank, Blanton, TBC nor the other Defendants ever communicated Plasma's intention to Sams or the other tenants.

73. The Bank, Blanton, TBC and the other Defendants were aware that they were violating the terms of the Lease and South Carolina laws and did it anyway, which is outrageous and unconscionable conduct. **Exhibit N 1.**

74. The Bank and Plasma closed the deal without further negotiation with, or any payment to Sams and without her signing the Acquiescence Letter, the deal closing on or about January 27, 2017, for $615,000. **See attached Exhibit Q.**

75. Broker was Plasma's agent for the closing between Plasma and the Bank.

76. To the extent that the Lease was not already extinguished by Bank Defendants' and Blanton Defendants' anticipatory repudiation and other wrongful conduct described above, and as an alternative allegation herein, by operation of law, S.C. Code Sec. 27-35-50, the Lease automatically became a Lease with Plasma, on the exact same terms as in the Lease. Nevertheless, given the destruction of Sams' business by the Bank Defendants' and Blanton Defendants' outrageous and unconscionable actions, breach and tortious interference, Sams' damages as to the Bank, the Bank officers and agents, including Blanton, TBC and JBJR, had already accrued. Plasma and Hunter Williams' actions were the finishing blow.

77. By letter dated February 6, 2017 (the "Vacate Letter"), attached as **Exhibit R**, rather than continue the Lease, which it already knew was valid and "long term," Plasma, by its attorney, sent Sams a "termination notice" in which it notified Sams that it would not continue her tenancy, giving Sams until March 13, 2017, to vacate. In this clear breach of contract and

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anticipatory repudiation of the Lease, significantly damaging Sams, Plasma deceptively misrepresented that Sams' tenancy was month-to-month due to the Foreclosure purchase, despite the fact that there is proof that Plasma, Williams and their agents knew that position was false (**Exhibit N 1**), and it failed to mention that Plasma had the power—indeed, legal obligation—to honor the Lease nevertheless.

78. Plasma's actions, as with the Bank, quickly were communicated to third parties and clients of Sams, further damaging her business and decreasing her revenues. For example, numerous construction crews and dumpsters were frequently at the site, all of which further fueled the "rumor mill," decreased Sams' business and scared off clients.

79. Following the outrageous termination and abrupt cancellation of the Lease by Defendants, including the Bank, and subsequently, Plasma, Sams, was forced by Defendants to close the recording studio on or about March 13, 2017, just one year and six months into her expected three-year Lease.

80. At no time following the Vacate Letter was Sams provided an eviction notice or notice of default with right to cure as required by the Lease.

81. In the process of the abrupt, illegal Lease termination by Defendants, Defendants forcibly and illegally cut the locks at the recording studio, entered the location and caused Sams' expensive recording studio equipment to be ruined and/or lost at significant financial loss to her and her business.

COUNT I–BREACH OF CONTRACT
As to Bank, Blanton, TBC, & JBJR

82. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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83. Through its agents TBC, Blanton, and JBJR, the Bank executed the Lease with Sams.

84. The Lease was a contract between Sams and each of the Bank, TBC, Blanton, and JBJR, with all such parties being liable for the same.

85. The Lease's material terms included the term of three years, and assurances of future terms as long as there was no default.

86. The Bank, TBC, JBJR, and Blanton breached the Lease including by anticipatory repudiation when they (1) issued the Extinguishment Letter; (2) unilaterally purported to convert Sams' tenancy into a month-to-month tenancy; (3) issued the Acquiescence Letter; and (4) tortiously interfered with Sams' existing and prospective contractual relations as described below.

87. Sams at all relevant times performed her obligations under the Lease.

88. As a direct and proximate cause of the breaches by Blanton, TBC, JBJR, and the Bank, Sams has lost her three-year lease, her once profitable business, and her recording equipment making it impossible to start new among other damages described *infra*.

89. The destruction of Sams' business, damage to her reputation and standing in the community, and damage to Sams' ability to earn her livelihood and to operate the recording studio was the natural, severe and reasonably foreseeable result of the Defendants' breaches of the Lease.

90. Sams' damages include lost profits for the remaining duration of the Lease, financial harm caused by having to refund deposits from artists that were already booked at her studio, money she spent on renovations, damage to and loss of recording equipment, emotional suffering, damage to business reputation and reputation in the community and loss of enjoyment of life.

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COUNT II – BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

As to Bank, Blanton, TBC, JBJR

91. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

92. Blanton, JBJR, and TBC's fraudulent acts accompanying the breaches described above include: (1) representing to Sams that TBC was the lessor on the Lease, without mentioning who the actual owner and true landlord of the Site was, while knowing that the Bank had already exercised its Rent Rights and Possession Rights for the Site pursuant to the Assignment of Rents/Security Interest; (2) representing to Sams during Lease negotiations that her long-term interest in the Site was "covered" and that Sams could rely on the duration of the Lease, while knowing of the Foreclosure and the Bank's intent to extinguish the Lease and to sell the Site quickly; (3) omitting communicating to Sams, despite knowing, the facts of the filed Foreclosure, the court order for Payment of Rents, the Bank's purchase of the Site in foreclosure, and the Bank's intent to extinguish the Lease and to sell the Site as soon as possible to cut its losses—with the intention of duping and deceiving Sams so as to entice her to invest substantial sums in the Site--until Sams came to know these facts as described *supra*; (4) representing to Sams that it was likely that the new buyer would continue Sams' tenancy and honor the Lease, while knowing that the Bank intended to extinguish the Lease and was not intending to require that a new purchaser honor the Lease; and (5) communicating to Sams in the Acquiescence Letter that it would be her responsibility to renegotiate her lease with the new buyer, while knowing that this was not the law and that the new buyer's only intention was to raze the Site and strip mall and discontinue all tenancies including that of Sams'.

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93. Each of Blanton, JBJR, and TBC's aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Sams' money through rents paid under the Lease and her investments in the Lease and Site. See **Exhibit N 1**, manifestly proving the same.

94. Blanton, JBJR, and TBC had the duty to disclose the facts described with the fraudulent acts above because they had superior knowledge of the facts and said facts were not readily available to Sams and they knew that Sams was acting on the basis of mistaken knowledge.

95. Each of Blanton, JBJR, and TBC's aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Sams, and that Sams' decisions regarding the Lease would be affected were Sams to have the same knowledge.

96. The Bank's, Saunders, and Porter's fraudulent acts accompanying the breaches described above include (1) all the fraudulent acts of Blanton, JBJR, and TBC who were acting as the Bank's agents with respect to Sams and the Lease; (2) purporting to extinguish the Lease by its Extinguishment Letter and representing that such extinguishment was a natural and unavoidable consequence of the Bank becoming the new owner of the Site, despite knowing that this was not an inevitable operation of landlord-tenant, mortgage law, or the Mortgage (**Exhibit N 1**); (3) representing in the Extinguishment Letter and the Acquiescence Letter that existing leases would not be honored by any subsequent purchaser and that each tenant would have the responsibility to negotiate a new lease with a new buyer, while knowing that such Leases automatically became the obligation of the new purchaser by operation of law, and (4) representing in the Acquiescence Letter that tenants would face the scenario of renegotiating leases with the new buyer, despite

knowing that Plasma's intention was to raze the strip mall. Upon information and belief, Porter and Saunders: 1) participated in the tortious and other acts described herein; 2) were negligent in supervising the conduct of business by the Bank and its agents, and/or 3) were negligent in the appointment of one or more wrongdoer/agents.

97. Each of the Bank's, Saunders and Porter's aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Sams' money through rents paid under the Lease.

98. The Bank, Saunders and Porter had the duty to disclose the facts described with the fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Sams and it knew that Sams was acting on the basis of mistaken knowledge.

99. Each of the Bank's, Saunders and Porter's aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Sams, and that Sams' decisions regarding the Lease would be affected were Sams to have the same knowledge.

100. The destruction of Sams' business, damage to her business reputation and standing in the community, and damage to Sams' ability to earn her livelihood and to operate the recording studio was the natural, severe and reasonably foreseeable result of the Defendants' actions.

101. Sams' damages include lost profits for the remaining duration of the Lease, financial harm caused by having to refund deposits from artists that were already booked at her studio, money she spent on renovations, damage to and loss of property, emotional suffering, damage to business reputation and reputation in the community, and loss of enjoyment of life.

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102. Punitive damages are warranted against each Defendant because of each Defendant's fraudulent acts accompanying the breaches of the Lease described herein.

COUNT III—BREACH OF CONTRACT
As to Plasma

103. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

104. To the extent that the Lease was not already extinguished by Defendants' anticipatory repudiation and other wrongful conduct described above, and as an alternative allegation herein, by operation of law, S.C. Code Sec. 27-35-50, the Lease automatically became a Lease with Plasma, on the exact same terms as in the Lease with the Bank, TBC, Blanton, and JBJR.

105. Plasma became a party—and landlord—to the Lease when it purchased the Site from the Bank.

106. The Lease was a contract between Sams and Plasma.

107. The Lease's material terms included the three year term of the lease.

108. Plasma breached the Lease by anticipatory repudiation when it issued its "termination notice" in the February 6, 2017 Vacate Letter, followed in short order by the forcible ejection of Plaintiff usually illegal "self-help."

109. Sams at all relevant times performed her part of the Lease.

110. As a direct and proximate cause of the breaches by Plasma, Sams lost her lease and her once profitable business among other damages described *infra*.

111. At the time of becoming a party to the Lease—and later when it issued the Vacate Letter—Plasma was aware of the adverse effects which their plan to eject Sams and to raze the

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Site would have on Sams, because of their education, training, and information, that Sams operated the recording studio at the Site, and that she had invested much money into its operation.

112. The destruction of Sams' business, damage to her reputation and standing in the community, and damage to Sams' ability to earn her livelihood and to operate the recording studio was the natural, severe and reasonably foreseeable result of the Defendants' breaches of the Lease.

113. Sams' damages include lost profits for the remaining duration of the Lease, financial harm caused by having to refund deposits from artists that were already booked at her studio, money she spent on renovations, damage to and loss of property, emotional suffering, damage to business reputation and reputation in the community, and loss of enjoyment of life.

COUNT IV—BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT

As to Plasma

114. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

115. Plasma's fraudulent acts accompanying the breach described above include (1) representing in its Vacate Letter that the Bank's foreclosure purchase of the Site had transformed Sams' tenancy into a month-to-month tenancy, despite that Plasma (1) knew or reasonably should have known that a month-to-month tenancy was not the inevitable effect of the Bank's foreclosure purchase; and (2) omitted the fact that Plasma retained the right and obligation to honor the Lease when it purchased the Site. See **Exhibit N 1**, manifestly proving the same.

116. Plasma's fraudulent acts were done with reckless disregard of the truth, or with the intent to deceive, and were dishonest in fact, unfair dealing, and done with the design of unlawfully ejecting Sams and unlawfully terminating the Lease.

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117. Plasma had the duty to disclose the facts described with its fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Sams and it knew that Sams was acting on the basis of mistaken knowledge.

118. Plasma's fraudulent acts were done with special knowledge of the facts described with its fraudulent acts above, and with knowledge that these facts were not available to Sams and that Sams' decisions regarding the Lease would be affected were Sams to have the same knowledge.

119. Each of the aforementioned fraudulent acts was done with reckless disregard of the truth, or with the intent to deceive, and was dishonest in fact, was unfair dealing, and was done with the design of unlawfully appropriating Sams' money through rents paid under the Lease.

120. Plasma had the duty to disclose the facts described with the fraudulent acts above because it had superior knowledge of the facts and said facts were not readily available to Sams and it knew that Sams was acting on the basis of mistaken knowledge.

121. Each of the aforementioned fraudulent acts was done with special knowledge of the facts described above, that these facts were not available to Sams, and that Sams' decisions regarding the Lease would be affected were Sams to have the same knowledge. Upon information and belief, Williams: 1) participated in the tortious and other acts described herein; 2) was negligent in supervising the conduct of business by Plasma and/or its agents, and/or 3) as negligent in the appointment of one or more wrongdoer/agents.

122. Punitive damages are warranted against each Defendant because of each Defendant's fraudulent acts accompanying the breaches of the Lease described herein.

123. The destruction of Sams' business, damage to her reputation and standing in the community, and damage to Sams' ability to earn her livelihood and to operate the recording studio was the natural, severe and reasonably foreseeable result of the Defendants' actions.

124. Sams' damages include lost profits for the remaining duration of the Lease, financial harm caused by having to refund deposits from artists that were already booked at her studio, money she spent on renovations, damage to and loss of property, emotional suffering, damage to business reputation and reputation in the community, and loss of enjoyment of life.

COUNT V–FRAUD

As to Bank, Blanton, TBC, JBJR, Saunders & Porter

125. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

126. Blanton, JBJR, and TBC's fraudulent statements (2), (4), and (5)—described in paragraph **92** of Count II above—were affirmative representations of facts that were false because Sams' interest in the Lease was not "covered" but was subject to immediate breach as described above, because it was not likely that the new purchaser would honor the Lease, and because it was not necessarily Sams' responsibility to renegotiate the Lease with the new purchaser, respectively.

127. Blanton, JBJR, and TBC's fraudulent statements (1) and (3)—described in paragraph **92** of Count II above—were misrepresentations by nondisclosure of the facts described therein above.

128. Blanton, JBJR, and TBC's fraudulent statements (2), (4), and (5)—described in paragraph 92 of Count II above—were material because they all directly related to Sams' interest in operating a long-term business.

129. Blanton, JBJR, and TBC's fraudulent statements (1) and (3)—described in paragraph 92 of Count II above—were material because their omitted facts would have led a

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reasonable person in Sams' position to avoid entering the Lease in order to operate a business long-term.

130. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were made with Blanton, JBJR, and TBC's knowledge of their falsity or a reckless disregard of their truth or falsity.

131. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were made with the intent that Sams act on the representations because Blanton, JBJR, and TBC stood to gain from Sams' Lease by managing the property under whatever financial arrangements they had with the Bank.

132. All of Blanton, JBJR, and TBC's fraudulent statements' falsity—described in Count II above—was unknown to Sams.

133. All of Blanton, JBJR, and TBC's fraudulent statements—described in Count II above—were relied on by Sams as the truth in entering and continuing to perform under the Lease.

134. Sams had the right to rely on all of Blanton, JBJR, and TBC's fraudulent statements described in Count II above.

135. Sams was consequently and proximately damaged by relying on all of Blanton, JBJR, and TBC's fraudulent statements described in Count II above.

136. The allegations of fraud against TBC, JBJR, and Blanton pled above are re-pled by incorporation hereby against the Bank, the undisclosed Principal, and correspond to the Bank's statements in (1) of paragraph **92** described in Count II above.

137. The Bank Defendants' fraudulent statements described in paragraph **96** of Count II above—were affirmative representations of facts or failures to disclose that were false because the Lease was not extinguished by the Bank's purchase of the Site in foreclosure, because the Bank

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also had the right to negotiate the Lease with any prospective buyer of the Site, because the Bank had the right to require that a new buyer of the Site honor the Lease, and because Sams would not be able to renegotiate the Lease with the new buyer because that new buyer, Plasma, had communicated to the Bank its intent to raze the Site, respectively.

138. The Bank Defendants' fraudulent statements described in paragraph **96** of Count II above—were material because a reasonable businessperson in Sams' position would have a significant interest in knowing any imminent changes to the party to whom she pays rents and who is exercising powers of a landlord over her tenancy.

139. The Bank Defndants' fraudulent statement (4)—described in paragraph **96** of Count II above—was material because a reasonable businessperson in Sams' position would have a significant interest in knowing how her tenancy would be subject to change, including unilateral termination, by any party related to a forthcoming real estate transaction.

140. All of the Bank Defendants' fraudulent statements—described in Count II above—were made with the knowledge of their falsity or a reckless disregard of their truth or falsity. See **Exhibit N 1**, manifestly proving the same, as well as the knowledge and scienter of the other Defendants.

141. All of the Bank Defendants' fraudulent statements—described in Count II above—were made with the intent that Sams act on the representations because the Bank stood to gain from Sams' Lease by getting Sams' rents.

142. All of the Bank Defendants' fraudulent statements' falsity—described in the Breach of Contract Accompanied by a Fraudulent Act above—was unknown to Sams.

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143. All of the Bank Defendants' fraudulent statements—described in the Breach of Contract Accompanied by a Fraudulent Act above—were relied on by Sams as the truth in entering and continuing to perform under the Lease.

144. Sams had the right to rely on all of the Bank Defendants' fraudulent statements described in Count II above.

145. Upon information and belief, Porter and Saunders: 1) participated or made the statements attributed to the Bank described herein; 2) were negligent/reckless in supervising the conduct of business by the Bank and its agents, 3) were negligent/reckless in the appointment of one or more wrongdoer/agents and/or 4) were complicit in and/or approved the statements and actions described herein. See **Exhibit N 1**.

146. Sams was consequently and proximately damaged by relying on all of the Bank's, Saunders and Porter's fraudulent statements described in Count II above.

147. The destruction of Sams' business, damage to her reputation and standing in the community, and damage to Sams' ability to earn his livelihood and to operate the recording studio was the natural, severe and reasonably foreseeable result of the Defendants' actions.

148. Sams' damages include lost profits for the remaining duration of the Lease, financial harm caused by having to refund deposits from artists that were already booked at her studio, money she spent on renovations, damage to and loss of property, emotional suffering, damage to business reputation and reputation in the community, and loss of enjoyment of life.

149. Punitive damages are warranted.

COUNT VI—FRAUD
As to Plasma and Williams

150. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

151. Plasma's and William's fraudulent statement that Sams' tenancy became month-to-month due to the Foreclosure was an affirmative representation of fact that was false because the Lease was not extinguished and transformed into a month-to-month tenancy by the Bank's Foreclosure, and because Plasma retained the obligation to honor the Lease when it purchased the Site. Moreover, Plasma, Williams, and their agent Greg Wood knew the Lease and other tenant leases were valid ***before*** they purchased the property, **Exhibit N 1**, manifestly proving the same, yet they proceeded to forcibly eject Plaintiff and the other tenants from the Site, deceptively pretending that the lease termination was the natural result of the foreclosure.

152. Plasma's and William's fraudulent implied statement, that it had no right to honor the Lease because the tenancy had become month-to-month, was a representation by nondisclosure because Plasma retained the right to honor the Lease when it purchased the Site.

153. Each of Plasma's and William's fraudulent statements and omissions was material because a reasonable businessperson in Sams' position would have a significant interest in knowing the true nature of his tenancy at the time of Plasma's purchase of the Site and whether Plasma had the right to honor the Lease.

154. All of Plasma's and William's fraudulent statements were made with Plasma's and William's knowledge of their falsity or a reckless disregard of their truth or falsity.

155. All of Plasma's and William's fraudulent statements were made with the intent that Sams act on the representations/omissions because Plasma and Williams stood to gain from not honoring the Lease and ejecting Sams, along with the other tenants, in order to profit from razing the building and re-developing it.

156. All of Plasma's and William's fraudulent statements' falsity was unknown to Sams.

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157. All of Plasma's and William's fraudulent statements were relied on by Sams as the truth in vacating the premises and deciding to cut her losses without asserting any legal rights.

158. Sams had the right to rely on all of Plasma's and William's fraudulent statements.

159. Sams was consequently and proximately damaged by relying on all of Plasma's and William's fraudulent statements.

160. Punitive damages are warranted for each Defendant's fraud and outrageous conduct.

COUNT VII– NEGLIGENT MISREPRESENTATION
As to Blanton, JBJR, TBC, Porter, Saunders and Bank

161. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

162. All Defendants' representations described above—in Count V above—were false for the reasons therein.

163. All Defendants' representations described above—in the allegations of Fraud—were made with Defendants' pecuniary interests described therein.

164. Bank Defendants and Blanton Defendants owed Sams a duty of care to see that they communicated truthful information to Sams because they possessed the special knowledge described above that made it reasonable for Sams to rely on their judgment and ability to make careful inquiry into the likelihood that Sams would actually be able enjoy the negotiated duration of the Lease.

165. Each Bank Defendant and Blanton Defendant breached its duty by omitting or misrepresenting material facts as described above.

166. Sams justifiably relied on each Bank Defendant and Blanton Defendant misrepresentations because, among other grounds, she reasonably placed her trust in (1) each of

Blanton Defendants where it communicated to Sams that her interest in the Lease was "covered" and that no new purchaser could cancel the lease as long as she signed a three year term, and in reliance on Defendants' representations of a long term lease made substantial investments in her leasehold to improve it; (2) the Bank Defendants where they communicated to Sams that the lease was extinguished by its foreclosure purchase and turned into a month-to-month tenancy and it was her responsibility to negotiate her tenancy with any new purchaser; (3) Plasma where it communicated to Sams that her tenancy was month-to-month and Plasma had no power to honor his Lease.

167. Sams suffered a pecuniary loss as the proximate result of his reliance on each misrepresentation of each Defendant, including lost profits, and the outrageous nature of Defendants' actions warrants punitive damages to punish Defendants and deter others from similar deceitful and unscrupulous conduct.

COUNT VIII—NEGLIGENT MISREPRESENTATION
As to Plasma and Williams

168. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

169. All Plasma and Williams representations described above—in Count VI—were false for the reasons therein.

170. All Plasma and Williams representations described above—in the allegations of Fraud—were made with Defendants' pecuniary interests described therein.

171. Each such Defendant owed Sams a duty of care to see that it communicated truthful information to Sams because it possessed the special knowledge described above that made it reasonable for Sams to rely on its judgment and ability to make careful inquiry into the likelihood that Sams would actually be able enjoy the negotiated duration of the Lease.

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172. Each such Defendant breached its duty by omitting or misrepresenting material facts as described above.

173. Sams justifiably relied on each Defendant's misrepresentations because, among other grounds, she reasonably placed her trust in (1) Plasma and Williams where they communicated to Sams that her Lease was turned into a month-to-month tenancy by the Foreclosure; and (2) Plasma and Williams where they impliedly communicated to Sams that they had no obligation to honor her Lease.

174. Sams suffered a pecuniary loss as the proximate result of his reliance on each misrepresentation of each Defendant, and the outrageous nature of Defendants' actions warrants punitive damages to punish Defendants and deter others from similar deceitful and unscrupulous conduct.

COUNT IX—VIOLATION OF UNFAIR TRADE PRACTICES ACT
As to all Defendants

175. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

176. The Defendants' acts—including as described in Count II and Count IV above—were unfair, deceptive and reprehensible—and likely done knowingly. **Exhibit N 1**.

177. The Defendants' acts as described above negatively impact the public interest by decreasing tenants' faith in their dealings with property managers and landlords by making insecure any businessperson's prospect of operating a business in a tenancy that she had negotiated to last longer than one year.

178. Defendants' acts—including those described in Count II and Count IV above—can be repeated because their acts were natural to the Defendants' processes of securing leases, enforcing security interests, litigating foreclosures, closing short-term real estate transactions with

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new buyers, and purchasing and re-developing properties. Not only "can" they be repeated, but in this case it is clear that Defendants' reprehensible and deceptive conduct ***was in fact*** repeated, as shown in Timmons v. First Reliance Bank et al., Case No.: 2018-CP-21-227. Defendants did exactly the same thing to Plaintiff, Mr. Timmons, the owner of another business forced out by Defendants' unscrupulous conduct and sharp business practices. They did the same thing to KT Dunham, the owner of another business at the Site.

179. Members of the public were adversely affected by Defendants' unfair or deceptive acts because, among other reasons, the tenants at the strip mall lost their tenancies due to Defendants' acts and lost their clientele who, in turn, lost the businesses, and likely discussed the same with friends, families, and business colleagues, and the recording studio's employees and clients discussed the pending closure of the recording studio upon learning of the Foreclosure.

180. Sams suffered damages proximately caused by Defendants' unfair or deceptive acts, including actual and consequential damages.

181. Each Defendant knew or should have known that each of its deceptive or unfair acts was a violation of the Unfair Trade Practices Act.

182. Each Defendant thus willfully violated the Unfair Trade Practices Act, warranting treble damages and attorney's fees for Plaintiff.

COUNT X—TORTIOUS INTERFERENCE WITH CONTRACT
As to all Defendants

183. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

184. The Lease was a contract as described above.

185. Each Defendant, at all times relevant to this claim, knew of the contract.

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186. Sams had contracts with the clients, employees and suppliers of the recording studio.

187. Each Defendant, at all times relevant to this claim, knew of these client, employee and supplier contracts.

188. One or more Defendants intentionally procured the breach of Sams' tenancy and/or Lease with TBC, JBJR, the Bank, and Blanton, as well as of Sams' employee, client and supplier contracts, by way of fraudulent and/or negligent misrepresentations described above, as well as the Foreclosure, Extinguishment Letter and Acquiescence Letter, all without justification because the Bank did not have the legal right either to transform Sams' tenancy into a month-to-month tenancy or to extinguish the Lease.

189. Sams suffered damages proximately caused by such interference.

190. Defendants' interference was aggravated and in reckless disregard of Sams' rights, meriting punitive damages.

191. Plasma intentionally procured the breach of Sams' tenancy and/or Lease with one or more Defendants, as well as of Sams' client contracts, with its (1) initial condition, to closing on the strip mall with the Bank, that the Bank have each tenant sign the Acquiescence Letter; and (2) with its fraudulent and/or negligent misrepresentations described above; all procurements being without justification because Plasma intended to raze the strip mall and employed means in bad faith to avoid its pending duties and obligations of the Lease and of its landlord status over the strip mall's tenants including Sams.

192. Sams suffered damage proximately caused by the Plasma's interference.

193. Plasma's interference was aggravated and in reckless disregard of Sams' rights, meriting punitive damages.

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COUNT XI—TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS OPPORTUNITIES

As to all Defendants

194. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

195. Sams had prospective contractual relations with the clients of the recording studio (collectively the "Prospects").

196. These Prospects were reasonably probable based on Sams' prior success as a recording studio operator, on the duration-terms of the Lease, on the existing contracts with clients and on the profits she initially made with the recording studio.

197. Sams lost these Prospects when clients learned of the foreclosure, extinguishment of the Lease, and pending sale of the Site. They were further lost when the same learned of Sams' ejection, Plasma's plan to re-develop the strip mall, and the termination of the Lease.

198. Each Defendant addressed in the claim of tortious interference with contract described above also intentionally interfered with Sams' Prospects by the same acts described in said claim, these acts being improper and wrongful, and effecting improper purposes: namely, to induce Sams to relinquish her contractual right to the Lease and her tenancy at the Site.

199. Sams suffered damage proximately caused by each Defendant's interference.

200. Each Defendant's interference was aggravated and in reckless disregard of Sams' rights, meriting punitive damages.

COUNT XII—BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

As to all Defendants

201. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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202. Each Defendant owed Sams the duty of good faith and fair dealing by virtue of the contract(s) previously alleged to exist between Sams and each Defendant.

203. Each Defendant breached said duty by its acts giving rise to the above claims for breach of contract, breach of contract accompanied by fraudulent act, fraud, and negligent misrepresentation.

204. Each Defendant's breach proximately caused Sams' damages that include, *inter alia*, his loss of the Lease and of his profits from the recording studio.

COUNT XIII—NEGLIGENT SUPERVISION
As to Bank, Saunders and Porter

201. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

202. Based on their employment and/or agency relationship, Bank, Saunders and Porter had a duty to Plaintiff to reasonably and appropriately supervise Bank employees committing tortious conduct described herein, as well as Defendants TBC, JBJR and Blanton also committing tortious conduct described herein.

203. Based on the actions of Bank, Saunders and Porter described above, including their failure to appropriately supervise Bank employees committing tortious conduct described herein, as well as Defendants TBC, JBJR and Blanton also committing tortious conduct described herein — Bank, Saunders and Porter breached their duty to Plaintiff.

204. Plaintiff suffered great damages as a result of Defendant Bank, Saunders and Porter's breach of their duty, in an amount to be proven at trial, including his loss of the Lease and of her profits from the recording studio.

DAMAGES

205. Plaintiff incorporates by reference the preceding allegations as if fully set forth herein.

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206. As a result of the acts and omissions of the Defendants set forth generally above, and other and further acts and omissions of a similar nature, Plaintiff has suffered and will suffer the following damages:

a. Past expenses for general living;

b. Damage to professional and business reputation;

c. Damage to reputation in the community;

d. Past and future lost income and lost profits, and impairment of earning capacity;

e. General damages for suffering, mental and emotional distress, substantial alterations of lifestyle, loss of enjoyment of life, and other significant damages;

f. Unforeseen expenses;

g. Damage for loss of clients and loss of equipment that was damaged during the termination of the Lease;

h. Damage for loss of goodwill;

i. Attorney fees for having to retain counsel to prosecute this action, including as may be allowed under the Lease and SCUTPA; and

j. Plaintiffs' costs of this action, together with interest on special and general damages from the date of occurrence at the legal rate until paid, interest on any judgment awarded herein at the legal rate until paid, and other and further relief as the Court deems equitable and just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages in an amount supported by the evidence at trial;

2. For consequential damages in an amount supported by the evidence at trial;

3. For punitive damages authorized by law;

4. For treble damages as authorized by law;

5. For an award of attorneys' fees and costs to the extent allowed by the Lease and/or other applicable law, including SCUTPA;

6. For pre- and post-judgment interest; and

7. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff requests that this case be tried by a jury.

Dated: October 11, 2019.

s/ Ben Le Clercq

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VERIFICATION

I, Xavier Sams, having reviewed the allegations contained in the Complaint set out above, do hereby verify the same and declare under penalty of perjury they are true and correct, this 09 day of October _____ , 2019.

Xavier Sams

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE # 2018-CP-21- 227
	)	
JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC. d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, individually,	)	
Defendants.	)	
_____	)	

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO MOTIONS FOR SUMMARY JUDGMENT BY BLANTON DEFENDANTS AND BANK DEFENDANTS

Plaintiff hereby submits this Supplemental Memorandum of Law in support of his Motions for Summary Judgment and in opposition to Defendants First Reliance Bank, Inc., Dale Porter, and F.R. Saunders ("Bank") Defendants The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc. and Joseph B. Blanton's ("Blanton") Motions for Summary Judgment.

INTRODUCTION AND OVERVIEW

This case is extraordinary--*both* Bank and Blanton argue *against* the plain meaning of documents *they* authored and executed! Imagine the many Bank borrowers that will be thrilled to hear Bank's allegations that its documents (and borrower's obligation to pay amounts borrowed) *don't* actually mean what they say. To the contrary, however, the "sauce for the goose is good for the gander," and documents (i.e., the Mortgage and Assignment of Rents) *strictly* enforced by the

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Bank in prior related proceedings to this case, and against borrowers in this Court and other courts in South Carolina scores if not hundreds of times (with residential borrowers losing their homes and commercial borrowers losing their businesses as a result) must be given their plain meaning. That leads inexorably and as a matter to law to the conclusion that the Bank was lessor of Timmons' Lease. Bank got all rent revenues, collected by its agent Blanton (who also benefitted thereby), for occupancy at Sweetbriar subsequent to the filing of Bank's foreclosure action. ***Follow the money, it leads directly to the Bank***.

There are three critical, dispositive points discussed in this supplemental memorandum: 1) Blanton was the agent of Timmons, and had a fiduciary obligation to Timmons since Blanton was a "dual agent" of both Bank and Timmons; 2) Even if Blanton was not Timmons' agent, the South Carolina code required that he disclose the existence of the foreclosure (which Blanton was aware of) to Timmons prior to executing Timmons' long term Lease; and 3) Bank's Mortgage and Assignment of Rents mean what they say, and the Court must enforce the plain meaning. In a commercial lending situation, with sophisticated and savvy parties like Bank and Atlantic, it does not violate the public policy of South Carolina to enforce standard, ubiquitous provisions of the Assignment of Rents and Mortgage giving Bank the right to lease the property. Bank's counsel admitted at oral argument that she found nothing in the law of South Carolina preventing Atlantic's transfer in the Mortgage of all "right, title and interest" in Sweetbriar leases to Bank *ab initio*. That statement compels judgment as a matter of law in favor of Plaintiff.

To grant Bank's or Blanton's motion for summary judgment, this Court would have to ignore the plain language of these documents and rule as a matter of law that: i) "out of business" Atlantic was in fact the lessor of Timmons' 18-year Lease, or if Bank was lessor, then Bank's own lease with Timmons did not survive the foreclosure, despite Bank's admissions to the contrary,

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and ii) Bank/Blanton did not ratify Timmons' lease on and after February 4, 2016, the date of the foreclosure sale, despite the voluminous evidence they did just that. Plaintiff respectfully submits the evidence demonstrates as a matter of law that Bank was the lessor, Atlantic the "imposter," the lease survived the foreclosure, and Bank/Blanton ratified Timmons' lease even if Bank was not the lessor *ab initio*, and if the lease did not survive the foreclosure. However, if the Court does not agree, then at a minimum there are documents and evidence which create a question of fact as to the identity of the lessor and ratification, and Defendants' motions should be denied.

Atlantic, owned by Richard Cooke, a convicted felon owing millions of dollars to federal and state authorities, could not possibly have honored Timmons' 18-year Lease as of August 20, 2015, the date the Lease was executed by Timmons and Blanton. Defendants' argument that Atlantic (which Blanton knew was "out of here" as to Sweetbriar) was the lessor, is tantamount to a fraud on the Court, since it requires the Court to accept the deceptive position that Blanton (who knew Timmons was investing heavily in reliance on the long term Lease) knowingly entered that Lease on behalf of Atlantic, a party he knew was "out of business," which was directly refuted by Blanton's own testimony. Specifically, Blanton testified in his deposition that just after he was served with foreclosure papers he spoke with Cooke and told him to:

> let me know what you're doing, when you're getting out of here, so I can talk with the bank and see if they subsequently want to lease – – you know, to lease the space."

(Plaintiff's Motion for Summary Judgment ("MSJ") Ex. 16, Blanton Dep. at p. 102 line 21 – p. 103 line 10).

The referenced statement is an admission that Blanton knew that *Bank* was the lessor of Timmons' lease, not Atlantic, at variance with his current position. Moreover, Blanton also testified he then spoke with and obtained authorization from Bank to lease Sweetbriar. Bank

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likely had independent knowledge that Atlantic was "out of business," which is likely to be demonstrated if they ever produce the "Atlantic file" for periods before July, 2015.[1] But even if Bank had no such independent knowledge, they are imputed with the knowledge of their agent Blanton.[2] Since Bank was lessor, the foreclosure is a "red herring," since it is axiomatic that foreclosure only impacts the interests of *junior* lienholders, and not Bank, who is a "senior" lienholder. Bank employee Porter admitted in his deposition that Bank had the right to enter a "30-year" lease during the post foreclosure filing, pre-foreclosure sale period (MSJ Ex. 68 Porter Depo. at p. 129, lns. 14-21), and that such a lease would survive the foreclosure. These admissions also compel judgment as a matter of law for Plaintiff.

SUPPLEMENTAL STATEMENT OF FACTS

1. Plaintiff incorporates here by reference his previously filed Memorandum in Support of Motion for Summary Judgment against Bank and Blanton.

2. Blanton became a South Carolina licensed real estate agent in or around 1978 and a licensed real estate broker a few years after that. (Ex. 1, Blanton Depo at p. 13, ll. 22-25 and p. 14, ll. 1-3). Blanton has been licensed in the South Carolina real estate business for approximately 41 years. *Id.* at p. 17, ll. 21-25.

3. Blanton testified that he had prior history of business dealings with Timmons and, given the amount of money Timmons was going to be investing in the Sweetbriar property, he had a responsibility to get Timmons a long-term lease. *Id.* at p. 53, ll. 12-22.

4. In fact, Blanton's prior history of business dealings with Timmons included Blanton previously leasing to Timmons a parcel of land on Second Loop Road near the Sweetbriar

[1] Plaintiff has a motion currently pending to compel the production of the same.
[2] See MSJ at p. 47, and citation to *Crystal Ice Company of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979).

shopping center. *Id.* at p. 54, ll. 2-8; and (Ex. 2A, Timmons' Depo. Vol. 1 at p. 26, ll. 6-23). Timmons intended to use this Second Loop property for one of his bar and restaurant projects, Daddy O's Disco. Timmons heard that the person who was in the space may be going out of business so he contacted Blanton who he knew was the leasing agent for the property and asked that Blanton let him know when it became available. Eventually the property became available and Timmons met with Blanton and executed a lease. In addition to acting as the leasing agent on this property, Blanton eventually acted as the broker when Timmons purchased it. (Ex. 2A, Timmons Depo. Vol. I at p. 37, ll. 1-22). Timmons testified that he believed that Blanton acted as dual agent in that situation (Ex. 2B, Timmons Depo. Vol. 2 at p. 55 line 23 to p. 56 line 11; Ex. 2A, Timmons' Depo. Vol. 1 at p. 38, ll. 10-25 and p. 39, ll. 1-15), as is specifically provided for by S.C. Code Ann. §§ 40-57-350(A) and 40-57-30. Timmons also had a sign business and had dealings with Blanton where Timmons did a sign for the Blanton Company office. Ex. 2A, Timmons' Depo. Vol. 1 at p. 43, ll. 2-7.

5. A few years later in December 2014, Timmons was once again looking for a space to lease to start another bar and restaurant business, Tavern on the Loop, and he contacted Blanton again because he heard an existing tenant at the Sweetbriar property was going out of business and told Blanton if that should happen he wanted Blanton to contact him. Ex. 1, Blanton Depo at p. 112, ll. 14-22. Timmons testified that Blanton had always been someone that he trusted doing business with and that "Joe [Blanton] was my guy and that's who I, you know, trusted and signed the lease with." Ex. 2A, Timmons' Depo. Vol. 1 at p. 47, ll. 20-25; p. 49, ll. 10-12.

6. On July 24, 2015, Blanton was served by Bank with court documents relating to the foreclosure of the Sweetbriar property which was three weeks prior to Timmons signing his lease on August 20, 2015. (Ex. 1, Blanton Depo. at p. 110, ll. 17-21).

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7. The foreclosure documents served on Blanton by Bank on July 24, 2015, included a subpoena and a motion for rents containing case number 2015-CP-21-2106 for the foreclosure action as well as a letter from Bank's attorney, Coit Yarborough, stating that Atlantic was in default on its mortgage. (Ex. 3, July 23, 2015 letter to Blanton and Atlantic). Blanton testified that he understood from receiving these documents that the property was in foreclosure proceedings by the bank. (Ex. 1, Blanton Depo at p. 150, ll. 13-23).

8. Timmons was not an existing tenant when Blanton was made aware of the foreclosure and Timmons' lease was not executed until after Blanton knew about that the Sweetbriar property was in foreclosure proceedings. *Id.* at p. 110, ll. 17-21; p. 111, ll. 15-25; p. 112, ll. 1-5.

9. *After* being made aware that the Sweetbriar property was in foreclosure, Blanton called Timmons to inform him that the space Timmons had asked him about months earlier was available to lease. *Id.* at p. 113, ll. 8-15. Bank also knew that its agent Blanton was targeting Timmons as a prospective tenant for the property (MSJ Ex 38, FRB/CCS 001832 at p. 3, and Porter Dep. of same effect, see MSJ pp. 48-9), and Bank of course had a substantial financial interest in Blanton's executing a long term lease with Timmons, since such a lease would bring in additional rent revenue to Bank. Blanton also admitted in his deposition that he knew that since Atlantic was "out of business" because of the foreclosure, that it was Bank that would be leasing the space. (Ex. 1, Blanton Depo. at p. 96, lns. 19-22; p. 97, ln. 25; p. 98, lns. 1-6).

10. On August 17, 2015, Timmons (at Blanton's request) sent Blanton a written proposal calling for a long-term lease and proposing payment amount and other terms. (Ex. 2, Timmons Depo. at p. 58, ll. 3-11; Ex. 4, Timmons Proposal).

11. Timmons' original written proposal called for a 13 year lease. (see Ex. 24 to Plaintiff's Memo in Support of MSJ). Blanton testified that he made written notes on Timmons' proposal

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(MSJ Ex. 24), and it was *Blanton* that (following his fiduciary duty to Timmons as part of his dual agency) came back with a "counter-offer" (Lease, Ex. 5) that added ***five years*** to the total term, making it an 18 year Lease, because Blanton was well aware of the huge investment Timmons was making. (Ex. 2A, Timmons Depo. Vol. 1 at p. 55, ll. 7-23; MSJ Ex. 16, Blanton Dep. at p. 125 line 25 – p. 126 line 25).

12. Having conferred with Bank about Timmons' proposed Lease before entering it, and obtaining Bank's approval, on August 20, 2015, Blanton, knowing Bank had filed foreclosure against Atlantic for Sweetbriar, that Atlantic was "out of business," and that Bank had moved to have him appointed property manager and agent for Bank, and personally served him with papers requiring that all rents be paid to Bank, executed the long term lease (3 terms totaling 18 years) as "Lessor" with Timmons as "Tenant." (Ex. 5, Timmons Commercial Lease). As a matter of law, Blanton was acting as agent for Bank, and also had a "dual agency", with fiduciary obligations to Timmons in addition to those running to Bank.

ARGUMENT

I. Blanton was aware that the Sweetbriar property was in foreclosure prior to leasing it to Timmons, and even though the Bank was the Lessor, Blanton nevertheless had a duty to inform Timmons that the Sweetbriar property was in foreclosure (a "material adverse condition"), but failed to inform Timmons of the foreclosure.

A. Blanton was aware that the Sweetbriar property was in foreclosure prior to leasing it to Timmons.

Blanton became aware that the property at Sweetbriar was in foreclosure when he was served by Bank with foreclosure documents on July 24, 2015. (Ex. 1, Blanton Depo. at p. 110, ll. 17-21). Blanton understood from receiving these documents that the property was in foreclosure proceedings by the Bank. (*Id.* at p. 150, ll. 13-23). Blanton asked Timmons to send Blanton a written lease proposal for the Sweetbriar property and on August 17, 2015, Timmons sent him a

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proposal calling for a long-term lease for 13 years at $1,500 per month. (Ex. 2A, Timmons Depo. Vol 1 at p. 58, ll. 3- p. 60 ine 13; Ex. 4, Timmons Proposal). Blanton came back with a counter-offer that added five years to the term and increased the rent amount. Ex. 2A, Timmons Depo. Vol. 1 at p. 58, ll. 3-11; p. 59-60; Ex. 4). Despite learning on July 24, 2015 that the Sweetbriar property was in foreclosure and being aware of the large sum of money Timmons would need to spend to re-do the space, on August 20, 2015, Blanton executed a long-term lease with Timmons for 18 years.

B. Blanton had a fiduciary duty to inform Timmons that the Sweetbriar property was in foreclosure because he was acting as a dual agent for Timmons and Bank.

The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties. *Warr v. Carolina Power Light Co.*, 237 S.C. 121, 115 S.E.2d 799; *Gordon v. Fidelity Casualty Co.*, 238 S.C. 438, 120 S.E.2d 509.

Each of the three classes referenced in the prior paragraph applies here. Blanton acted as the leasing agent for Timmons and Bank when he executed Timmons' lease for the Sweetbriar property. At the time that Blanton executed the Timmons lease, Blanton was a South Carolina licensed real estate broker serving as a leasing agent and property manager. (Ex. 1, Blanton Depo at p. 13, ll. 22-25 and p. 14, ll. 1-3). Under South Carolina statutory law, "[a] real estate brokerage firm that provides services through an agency agreement for a client is bound by the duties of

loyalty, obedience, disclosure, confidentiality, reasonable care, diligence, and accounting . . . ." S.C. Code Ann. § 40-57-350(A). Additionally, permissible brokerage relationships a real estate brokerage firm may establish include a "disclosed dual agency." S.C. Code Ann. § 40-57-350(A)(3). "'Dual agency' means a form of agency in which a real estate brokerage firm with two clients in the same transaction gives limited agency services." S.C. Code Ann. § 40-57-30.

Timmons had prior dealings with Blanton where Timmons needed a location for one of his bar and restaurant projects and would contact Blanton regarding a property that Blanton was the leasing agent for and ask Blanton to let him know when it became available. When the property would become available, Blanton would contact Timmons and they would work out the lease details. (Ex. 1, Blanton Depo. at p. 54, ll. 2-8; and Ex. 2A, Timmons' Depo. Vol. 1 at p. 26, ll. 6-23). Similarly, around July 2015, Timmons contacted Blanton once again about a property that Blanton was the leasing agent for (Sweetbriar) and requested that Blanton let him know when it became available. (Ex. 1, Blanton Depo. at p. 112, ll. 14-22). Timmons testified that Blanton had always been someone that he trusted doing business with and that "Joe [Blanton] was my guy and that's who I, you know, trusted and signed the lease with." Ex. 2A, Timmons' Depo. Vol. 1 at p. 47, ll. 20-25; p. 49, ll. 10-12 and at p. 38, ll. 10-25 and p. 39, ll. 1-15.

As they had done previously, Timmons and Blanton met (for the lease in question in this case), in early to mid August 2015 to work out the details of the Lease. Upon Blanton's request, Timmons submitted a written proposal for a long-term lease totaling 13 years. (Ex. 2A, Timmons Depo. Vol. 1 at p. 55, ll. 7-23; p. 58-60). Blanton, acting as a dual agent for Timmons and Bank, took the proposal to Bank (as well as Atlantic) to review to "cover his bases." (Ex. 1, Blanton Dep. at p. 125, ll. 24-25 and p. 126, ll. 1-19; p. 178, ll. 23; p. 180, ll. 4-7; p. 181, ll. 3-9). Despite having full knowledge of the foreclosure proceedings, Blanton responded to Timmons with a

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counter-offer for a term totaling 18 years, which was reduced to the written Lease (Ex. 2A, Timmons Depo. Vol. 1 at p. 55, ll. 7-23; p. 58-60), which Lease is attached as Ex. 5. Blanton knew that the property was a "gut job" and that Timmons would be substantially investing in the space. Blanton at that time knew that Timmons had been successful in his prior food, beverage and nightclub businesses.

C. Even assuming Blanton was not an agent for Timmons, he still owed Timmons a duty to disclose the foreclosure because he was required to disclose false or misleading information as a licensed real estate broker under South Carolina statutory law.

South Carolina real estate brokers are required to treat *all* parties honestly and may not knowingly give them false or misleading information. Pursuant to S.C. Code Ann. § 40-57-350 pertaining to Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers:

> A licensee shall treat **all** parties honestly and may not knowingly give them **false or misleading information about the condition of the property which is known to the licensee**. A licensee is not obligated to discover latent defects or to advise parties on matters outside the scope of the licensee's real estate expertise. Notwithstanding another provision of law, no cause of action may be brought against a licensee who has truthfully disclosed to a buyer a known material defect.

S.C. Code Ann. § 40-57-350(G)(1). (Emphasis added).

Additionally, South Carolina real estate broker licensees may operate as a single agent of a party in a transaction, giving the other party customer service and the broker has a statutory duty requiring honesty and fair dealing and the ***disclosure of material adverse facts*** that may affect the transaction. Pursuant to S.C. Code Ann. § 40-57-350,

> (L)(1) A real estate brokerage firm may offer transaction brokerage to potential buyers and sellers. A transaction broker may be a single agent of a party in a transaction, giving the other party customer service or the transaction broker may facilitate the transaction without representing either party.

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> (L)(2) Licensees operating as transaction brokers are required to disclose to buyers and sellers their role and duties in offering customer services to the consumer that shall include the following:
> (a) **honesty and fair dealing**;
> (b) accounting for all funds;
> (c) using skill, care and diligence in the transaction;
> **(d)** ***disclosing material adverse facts that affect the transaction, or the value or condition of the real property and that are not readily ascertainable*****;**
>
> **. . .**
>
> (L)(4) A licensee offering services to a customer shall:
> . . .
> (e) be fair and honest and provide accurate information in all dealings;
> . . .
> (g) disclose known material facts regarding the property or transaction.

S.C. Code Ann. § 40-57-350(L)(1)-(L)(2) and (L)(4). (Emphasis added). In South Carolina, the term "readily ascertainable" with respect to disclosure obligations for real property has been referenced to describe facts that can be uncovered through a reasonable visual inspection of the property such as when "the defect was on the surface." *Monroe v. Wood*, 186 S.C. 507, 197 S.E. 39 (S.C. 1938).

The language of the South Carolina statutory law cited above tracks closely with how fiduciary relationships are defined in South Carolina case law. "A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." *O'Shea v. Lesser*, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992). Likewise, the real estate broker's statutory duty to disclose "material adverse facts" as well as "known material facts" described in S.C. Code Ann. § 40-57-350 (L)(2)(d) and L(4)(g) above, is also similarly defined in South Carolina case law relating to a fiduciary's duty to disclose and also notes that silence may

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constitute fraud and/or negligent misrepresentation. "Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." *Cf. Manning v. Dial*, 271 S.C. 79, 245 S.E.2d 120 (1978) (defendant stood in fiduciary relationship to the plaintiff, and as such he had a duty to disclose all relevant facts when purchasing plaintiff's stock); see also *Jacobson v. Yaschik*, 249 S.C. 577, 155 S.E.2d 601 (1967) (non-disclosure becomes fraudulent when it is the duty of the party having knowledge of the facts to uncover them to the other).

South Carolina statutory law defines a "material adverse fact" as:

a) a condition or occurrence that is generally recognized as:

(i) significantly and adversely affecting the value of the real estate;

(ii) significantly reducing the structural integrity of improvements to real estate; or

(iii) presenting a significant health risk to occupants of the real estate; or

(b) information that indicates that a party to a transaction is not able to or does not intend to meet an obligation under a contract or agreement made concerning the transaction.

S.C. Code Ann. § 40-57-30(16). (Emphasis added).

Regardless of whether or not Blanton acted as an agent for Timmons in the lease transaction as a licensed real estate broker, Blanton owed a duty of honesty and fair dealing to Timmons as a "customer," "client" or party to the transaction as well as a duty to disclose adverse facts that affected the transaction or the value or condition of the property. Blanton and Timmons had a prior history of dealing where they executed a similar lease, in a similar manner, for a similar property just a few years before the Sweetbriar lease. (Ex. 1, Blanton Depo. at p. 54, ll. 2-8; and Ex. 2A, Timmons' Depo. Vol. 1 at p. 26, ll. 6-23; p. 37, ll. 1-22). Blanton was served with the foreclosure documents on July 24, 2015, and was already aware of the foreclosure proceedings

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when he executed the Sweetbriar lease with Timmons on August 20, 2015. (Ex. 1, Blanton Depo. at p. 110, ll. 17-21). Notice that the Sweetbriar property was in foreclosure was hand delivered to Blanton. *Id.* Blanton did not need to undertake any further investigation on his own to discover that fact and there is no valid explanation for his failure to disclose the foreclosure to Timmons.

If Bank is the lessor of Timmons' long term Lease, as Plaintiff contends, Blanton *still* had a duty to disclose the foreclosure to Timmons because it was a material adverse fact affecting the value of the property leased. Real estate investors (like Blanton—who testified to purchasing properties at foreclosure sale) know that foreclosed property usually has lower value because of the mere existence of the foreclosure--which can involve difficult issues—that is why sometimes bargains can be had at foreclosure sale if buyer is willing to accept the commensurate risks.

Conversely, if you ignore the plain language of Atlantic's Mortgage with Bank (MSJ Ex. 3) and Assignment of Rents (MSJ Ex. 11) transferring all "right, title and interest" in Atlantic leases to Bank at the moment of their creation (and also giving Bank the right to lease Sweetbriar), and take the position (as Blanton and Bank do) that "out of business" *Atlantic* was the lessor of Timmons' long term lease, then disclosure by Blanton of the existence of the foreclosure becomes even *more* critical. To the extent that the Timmons' lease was extinguished at the foreclosure sale as Blanton and Bank contend (but which Plaintiff disputes, since it is axiomatic that foreclosure only impacts the interests of junior lienholders, and Bank was a "senior" lienholder), Blanton had a duty to disclose to Timmons that the property was in foreclosure because the foreclosure "significantly and adverse[ly] affected the value" of the 18 year lease. S.C. Code Ann. § 40-57-30(16)(a).[3] (*Bank* also had a duty to disclose the foreclosure to Timmons, based on its duty to act

[3] On October 2, 2015, Ephrem Andrews, the principal of Elite Laser Tag, proposed a long term lease for the anchor space at Sweetbriar to Blanton, who followed up with Bank and Bank's counsel, Coit Yarborough regarding such proposal. Yarborough authorized Blanton to "proceed with the lease." MSJ, par. 22-24, and Exhibits 35, 37. However,

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in a "commercially reasonable" manner as required by S.C. Code Ann. § 29-3-100). Blanton knew that Timmons would have to spend an enormous sum to gut and renovate the property and knew that Timmons could only recoup his investment if he had a long-term lease on the space. (Ex. 2A, Timmons Depo. at p. 55, ll. 7-23; p. 58 ll. 3-11). Much more, because Timmons was forced out of the property, he naturally also lost out on the profits that would have been generated by the business during the term of the Lease.

Further, under S.C. Code Ann. §40-57-30 (16)(b), defining "material adverse fact", Blanton also had a duty to disclose that the Sweetbriar property was in the process of foreclosure when Timmons executed the Lease because that fact would have indicated to Timmons that the lessor of the property (regardless of whether the true lessor was Atlantic or First Reliance) was "not able to" or did "not intend" to meet its obligations under the Lease. In addition to the property being in foreclosure, Blanton knew that Atlantic was in default on its mortgage and was "out of business" and would not have been able to meet its obligations under the lease. (Ex. 1, Blanton Dep. at p. 96, line 3—p. 97 line 21; p. 102 line 21 – p. 103 line 10). Likewise, Blanton knew prior to the lease being executed on August 20, 2015 that First Reliance Bank might not keep the property. (Ex. 1, Blanton Depo. at p. 188, lns. 2-24). Blanton assumed the new "owner" would honor the Lease:

> Q: " . . . [Y]ou hadn't told [Timmons] the property was in foreclosure [at any time between July 24 and August 20]?
>
> A. No. I didn't tell him that obviously because I assumed--and it's stupid to assume anything anymore – – that it would be honored by whomever the owner was. Okay? That's as simple as I can make it.

Andrews stated Blanton "never told him" prior to October 2, 2015 about the foreclosure. Andrews doesn't recall how he learned of the foreclosure, but stated that the foreclosure was a "dealbreaker" for them. Ex. 36 to MSJ, par. 12-16.

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Ex. 1, Blanton 1/16/20 Dep., p. 203 l. 23 – p. 204 l. 23. What Blanton's flawed argument fails to address is that this deposition testimony could of course logically result in the *converse* situation (owner does *not* honor the lease), which only underscores Blanton's duty to disclose.

Blanton was aware that the Sweetbriar property was in foreclosure prior to executing the lease with Timmons. Whether as a dual agent for Timmons and the Bank or because Timmons was a "customer", "client" or party to the transaction, Blanton had a statutory duty to disclose to Timmons that Sweetbriar was in foreclosure. Blanton breached his duty to disclose the foreclosure when he executed the lease with Timmons on August 20, 2015 without informing Timmons of the foreclosure. Based on the foregoing, Blanton's failure to disclose the foreclosure to Timmons was at a minimum, negligent misrepresentation causing damages to Timmons**.**

II. The foreclosure sale did not extinguish the Lease that Bank was a party to and/or had knowledge of prior to the purchase.

It is axiomatic that foreclosure only extinguishes the borrower in possessions' possessory interest, and does not affect the ability of the Bank to lease property. Foreclosure is simply the process by which all further possessory or other right existing in a mortgagor to redeem the estate is defeated and lost to him, and the estate becomes the absolute property of the mortgagee. *Black's Law Dictionary* (10th ed. 2014), defines "foreclose" as:

> ***To terminate a mortgagor's interest in property***; to subject (property) to foreclosure proceedings. "*Should the mortgagor default in his obligations under the mortgage, the mortgagee will seek to "foreclose", i.e., "end" or "close" the mortgagor's rights in the security."* Edward H. Rabin, *Fundamentals of Modern Real Property Law* 1087 (1974).

(emphasis supplied). Accordingly, Bank was the landlord for the leases entered into by Blanton, including the Timmons lease. Moreover, the purpose of the South Carolina recording statute is to protect subsequent creditors and ***purchasers for value without notice***. *See e.g. Eppes v. McCallum Realty Co*. 139 S.C. 481, 138 S.E. 297 (1927) , *Hayden v. Prevatte* 327 F. Supp. 635

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(D.C.S.C. 1971); S.C. Code Ann. § 30–7–10. (emphasis added). There are two basic forms of notice by which a purchaser may be charged with knowledge of the rights of another in real property: actual notice and constructive/inquiry notice. *Spence v. Spence* 368 S.C. 106, 628 S.E.2d 869, 875 (2006), rehearing denied. Here, Bank was a party to the Timmons Lease or, at a minimum, had constructive or actual knowledge of the Timmons lease at the time it purchased the Sweetbriar Property on February 4, 2016. (Ex. 1, Blanton Depo. at p. 123, lns. 1-17; pp. 125-126; p. 188, lns. 9-21; Ex. 6, Porter Depo. at p. 139, lns. 1-13; pp. 167-168). Accordingly, Bank could not have been a ***purchaser for value without notice.***

In its Memo in Support of Motion for Summary Judgment, Bank cites *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774, 777 (1932), when Pipkin purchased the property at the foreclosure sale, he did not have notice that Fletcher executed a lease with the lessor of the property. In *Savannah Timber Co. v. Deer*, 285 F. 777, 783 (D.S.C. 1918), the mortgager defaulted and the mortgagee instituted foreclosure proceedings and filed a Notice of *Lis Pendens*. After the filing of the *lis pendens,* but before the property was foreclosed and sold, the mortgagor executed a deed conveying the property to Deer Island Lumber Co. Notably, in its holding the court specified that "[a]t the date of the commencement of the foreclosure proceedings there was nothing on the record to notify any subsequent purchaser that [the mortgager] had ever parted with the title to the real estate . . . ." *Savannah Timber Co.* at 782. The court's ruling in *Savannah Timber Co.* led off with the fact that the purchaser at the foreclosure sale was unaware that the property had been conveyed to another party.

In the present matter, although Timmons did not record his Lease, Bank cannot argue that as a subsequent purchaser, it did not have actual or constructive notice of the Timmons Lease. Bank instructed Blanton to lease the property and Blanton consulted with Bank and Atlantic prior

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to leasing the property to Timmons. Bank of course had a vested financial interest in leasing the property and Blanton's entering the long term Lease, since Bank would be getting (and did in fact get) all rents. The right to "collect the rents" includes not just the right to collect existing rents, but to rent the property to bring in *new* rents. (Assignment of Rents, MSJ Ex. 11) Blanton also provided a copy of the rent rolls to Bank with all of the leases at the property, including the Timmons lease. (Ex. 1, Blanton Depo. at p. 123, lns. 1-17; pp. 125-126; p. 188, lns. 9-21; Ex. 6, Porter Depo. at p. 139, lns. 1-13; pp. 167-168). Porter testified he had this document prior to the execution of the Lease on August 20, 2015, and thus Porter knew Timmons was a target of Blanton for a long term lease (which would benefit both Blanton and Bank). *Id.*

III. First Reliance Bank was Plaintiff's lessor because it had the right to lease the Sweetbriar property after Atlantic's default pursuant to the language of the mortgage and assignment of rents, and Bank exercised that right.

This case is extraordinary--*both* Bank and Blanton argue against the plain meaning of documents they authored and executed! To the contrary, however, Plaintiff respectfully submits that "hornbook" contract law[4]requires that the Court accept and enforce the plain language of Atlantic's Mortgage with Bank stating:

- "[Atlantic] mortgages, grants and conveys to [First Reliance Bank] all of [Atlantic's] right, title, and interest in and to the following described real property [Sweetbriar]." (p. 1)

- ***"[Atlantic] presently assigns to [First Reliance Bank] all of [Atlantic's] right, title, and interest in and to all present and future leases of the property [Sweetbriar] and all rents from the property [Sweetbriar]***. (p. 1)

[4] If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.,* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley v. Rabon* 266 S.C. 68, *72*, *221 S.E.2d* 767, *769* (1976). "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) (quoting *Heins v. Heins,* 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

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MSJ, Ex. 3. Bank contends that the first clause violates the public policy of South Carolina, since South Carolina is a "lien" not a "title" state, and the mortgage is not a transfer of title but only a lien. Plaintiff respectfully submits that that provision is geared to residential, not commercial mortgages, and provides a floor below which residential mortgages cannot get. But it does not offend the public policy of South Carolina in a *commercial* mortgage for title to be transferred to Bank via the mortgage.

As to the second clause, the point is dispositive as a matter of law. Enforcing it leads inexorably to the conclusion that Bank is a lessor of Timmons' Lease at the moment of execution. Bank's counsel admitted at oral argument that she found "no authority" under the law of South Carolina that the latter clause cited above is abhorrent to the law of South Carolina, or a violation of South Carolina public policy. Such a suggestion could not be made in good faith, lenders are free to put such standard and normal terms in documents with commercial borrowers as have not been found to violate South Carolina public policy. Bank is the author of that clause, and put it in its documents, and (whether or not Bank actually read its own documents—which it did not) the Court should enforce it regardless of the "wisdom or folly" of such a clause. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994).

But even outside the cited clause transferring all "right, title and interest" to leases to Bank, Bank additionally had the right (stated multiple times in multiple places) to rent Sweetbriar under *both* the Mortgage and Assignment of Rents, and had a compelling financial interest to do so (much more than Atlantic), since *Bank* would be getting the rents, *not* Atlantic, and Bank also knew Atlantic was "out of business" and would not cure its default. The Mortgage executed by Atlantic and recorded by Bank *also* stated:

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- "Until the occurrence of an Event of Default, [Bank] may . . . (3) collect the Rents from the Property. (p. 1, 4th par. from bottom)

- "**RIGHTS AND REMEDIES ON DEFAULT**. Upon the occurrence of an Event of Default and at any time thereafter, [Bank], at [Bank's] option, may exercise any one or more of the following rights and remedies . . . .

  Collect Rents. Lender shall have the right, without notice to [Atlantic], to take possession of the property and, as mortgagee – in – possession, collect the rents… . Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver." (Ex. 3 of Plaintiff's Memo in Support of MSJ, Mortgage at p. 6/8, par. 8, emphasis in original).

Additionally, Bank was entitled to lease Sweetbriar pursuant to the November 27, 2014 Assignment of Rents which states:

> [Bank] shall have the right at any time, ***and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers, and authority***:
>
> . . .
>
> Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.
>
> . . .
>
> **Lease the Property.** ***Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.***

The Assignment of Rents further states:

> Employ Agents. Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, ***to rent*** and manage the Property, including the collection and application of Rents. (emphasis added).

Bank's Mortgage and Assignment of Rents does not merely allow it the right to *existing* rent proceeds as Bank contends, but provides in clear, precise language that Bank has the right to

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lease the property and collect rents from *new* tenants, and perform all activities that accompany that right including the right to enter the property and take possession and the right to employ agents (like Blanton) to lease the property and collect new rents from new tenants on its behalf. Bank clearly wanted more than just the right to existing rent proceeds from the leases, it required the right to lease vacant space at the property in order to generate those proceeds. The obvious reason for this is that it prevents a property from sitting vacant until a foreclosure sale can take place. Bank argues that it did not have the right to lease the property to Timmons despite the plain language of the Mortgage and Assignment of Rents as well as the testimony of Dale Porter:

> Q: You would agree with me then that if that language means what it says, that if Atlantic is in default on the property, say, on August 1, 2015, that if the Sweetbriar property -- if some of it is vacant the bank has the right, if it wants to, to come in and lease the property?
>
> A: That would be correct.

(Ex. 6, Porter Depo. at p. 127, lns. 22-25; p. 128, lns. 1-3).

Not only did Bank have the right to lease the property, it exercised that right when Dale Porter and Coit Yarborough instructed Blanton within approximately a week of serving foreclosure documents on Blanton on July 23, 2015, to "[l]ease what you can and, you know, let's get the income coming until we decide to sell it or to continue to manage it." (Ex. 1, Blanton Depo. at p. 188, lns. 2-24).

Contrary to Bank's contention, Plaintiff is not requesting that longstanding South Carolina law on mortgages be changed, only that commercial, savvy, experienced mortgagees like Bank be accountable for the unambiguous language of the documents they prepare, bargain for, and file as a public record. Anyone searching those records would have found the Mortgage and Assignment of Rents giving Bank the right to lease Sweetbriar—the recording of these documents is "notice to the world" of their contents cited above. Bank and Atlantic, both represented by experienced,

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commercial, business people, freely negotiated and bargained for the language in the Mortgage and Assignment of Rents that granted Bank the right to lease Sweetbriar. Bank is the author of both documents, and was in a position of dominance and control in July, 2015 when it filed the foreclosure, following Atlantic's default and breach of same. Bank filed a motion requesting that this Court enforce the Assignment of Rents, and particularly the clause allowing the collecting of rents, via its agent Blanton. Bank now backpedals furiously and claims that the Court should only selectively enforce the Assignment of Rents, and not all of the terms of that document or the Mortgage. The Court should decline Bank's suggestion, and judicially estop Bank from claiming the same, since Bank and its counsel made Rule 11 representations to this Court (see MSJ Ex. 31), and received financial benefit from the same. Bank cannot now say that the Assignment of Rents does not mean what it says simply because it suits them. That would be playing "fast and loose" with this Court.

In its Memo, Bank cites the Restatement (Third) of Property to explain the difference between majority lien theory of mortgages and the minority common-law theory:

> The substantial majority of American jurisdictions follow the lien theory. Under this theory, the mortgagee acquires only a "lien" on the mortgaged real estate and the mortgager retains both legal and equitable title and the right to possession until foreclosure or a deed in lieu of foreclosure . . .
>
> This section does not limit the mortgagee's ability to gain access to the rents and profits of the mortgaged real estate through enforcement of a mortgage on rents agreement or to secure the appointment of a receiver. Each of these remedies should stand on its own merits, unencumbered by the implications of the title-lien theory dichotomy. Access to these remedies is widely available to mortgagees.

Restatement (Third) of Property (Mortgages) § 4.1 (1997). As set out above, in the residential mortgage setting, one might understand the reason for the "lien theory." That does not apply in

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commercial mortgages, and as set out above, this language can be modified by sophisticated commercial parties, and such modification does not offend the law of South Carolina or South Carolina public policy. Notably, nothing in this Restatement prevents an experienced, commercial mortgagor from contracting with a similarly experienced and savvy commercial mortgagee like Bank to grant Bank title to its property via a mortgage, or the right to lease vacant spaces to protect its interest. Again, the reason why a mortgagee would want this right in the first place is to ensure that the property is leased and generating the proceeds that the mortgagee is entitled to.

Bank also notes that South Carolina recognizes a "collateral assignment of rents" in connection with the grant of a mortgage. S.C. Code Ann. § 29-3-100(A)(3). And that after a default under the mortgage, South Carolina recognizes the right of an assignee to collect accrued or unpaid lease revenues without "any act to take possession of the property . . . ." S.C. Code Ann. § 29-3-100(c). Bank's citations are "red herrings." Indeed, South Carolina does recognize these rights. However, nothing in this statute *precludes* the assignee/mortgagee from contracting with the assignor/mortgagor (as here) to grant it the right to go further than the language of the statute and to also lease the property. The Bank has a compelling financial interest in doing so, since it gets the lease revenues from new leases. In fact, the language of the statute clearly contemplates the possibility that the parties would make their own agreements:

> ***Unless otherwise agreed***, after default the assignee is entitled to notify the tenant or other obligor to make payment to him and his also entitled to take control of any proceeds to which he may be entitled. The assignee must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

S.C. Code Ann. § 29-3-100(c).

Additionally, Bank fundamentally misrepresents Plaintiff's position and cites the Restatement (Third) of Property which provides that the "collection of rents pursuant to such a

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mortgage does not constitute the mortgagee a 'mortgagee in possession,' with the duties and liabilities attendant to that status." Restatement (Third) of Property (Mortgages) § 4.2 (1997). First, Bank leasing Sweetbriar does not strictly mean that Bank has "taken possession" of Sweetbriar in the traditional sense. Rather, Bank can lease property without taking possession, and the Assignment of Rents describes multiple, independent rights, one of which is to "enter upon and take possession of the Property," and another of which is to "Lease the Property" and let someone else "take possession." (MSJ Ex. 11, Assignment of Rents at p. 2). Second, Plaintiff does not contend that the mere collection of rents made Bank a "mortgagee in possession," or lessor. Rather, it is the language of Bank's own documents that entitled it to be a lessor, the actions of the Bank instructing Blanton to rent the property, its continuous actions approving and authorizing multiple leases in the "post foreclosure filing/pre foreclosure sale period", and Blanton's knowledge that "out of business" Atlantic was not the lessor, but that Bank was, that made Bank the lessor.

To further support its contention that the Bank's documents do not mean what they say, Bank cites a Georgia case, *Wright v. Home Beneficial Life Ins. Co.*, 155 Ga. App. 241, 242, 270 S.E.2d 400, 402 (1980). In *Wright*, the court reviewed the assignment of rents at issue and found that it only gave the foreclosing bank entitlement to rents but did not amount to a transfer of the borrower's entire interest in the property. *Id* at 242. The court in *Wright* did not rule as a matter of law that no assignment of rents could entitle a mortgagee to the right to possess and lease the property, only that that particular assignment did not. In reaching its conclusion, the *Wright* Court cited a similar assignment of rents from *Padget v. Butler* which only provided the lender "all rents, issues, and profits from said property." *Padget v. Butler* 84 Ga. App. 297, 298, 66 S.E.2d 194. ***Notably the assignment of rents cited in Padget, unlike Bank's assignment, did not provide to***

the lender the right to possess and lease the property. Accordingly, Plaintiff's case is easily distinguishable because the language of the present assignment of rents unambiguously grants Bank the right to possess and lease the property.

CONCLUSION

Based on the foregoing, Plaintiff Timmons request that Bank and Blanton Defendants' Motions for Summary Judgment be denied.

June 8, 2020

Respectfully submitted,

/s/ Ben Le Clercq

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC.,et al.

JOSEPH BLANTON

January 16, 2020

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A. (Moves head up and down.)
Q. Okay. What I would ask is please try to make your answers so that everybody can hear them, and let's not talk over each other.
Now, you're represented by Mr. Anderson today. During the course of the deposition, he may object to the form of a question that I ask. But he's not allowed to answer the question for you.
The only thing that he can instruct you to do is to not answer the question if I ask what you said to him or what he said to you. But I'll tell you right now, I have no interest in anything that you have said to him or anything that he said to you.
What I'm interested in are some of the things that happened with some of the other players. So he can object to the question, but you still have to answer the question.
A. Okay. Understood.
Q. All right. Very good.
And once the deposition has starts, and it has started, you can't talk with him about the substance of your deposition testimony.
So do you have any family members that live in Florence County?

A. Yes.
Q. Can you give me their names, please?
A. Hmm...
Q. First of all, let me ask you approximately how many people in your immediate family live in Florence County?
A. My wife, my two sons, and my five grandchildren, and their wives.
Q. Can you give me first, your sons. I assume they have your name, Blanton?
A. Yes.
Q. Okay. And what's your wife's maiden name?
A. Campbell.
Q. And what are the surnames of your daughters-in-law?
A. Elizabeth Bruce. Laurie Beth Wilson.
Q. The reason I'm asking is because if we go to trial in this matter, I want to find out in the jury who might be related to you.
A. Sure.
Q. How about, how many cousins do you have that live in Florence County?
A. How many?
Q. How many cousins do you have that live in Florence County?

A. Two, I think.
Q. Okay. And those would be first cousins?
A. Yes.
Q. Can you give me their names, please?
A. Understanding that we lost touch many years ago.
Q. Okay.
A. One's name is Marion Lewis Webb, two Bs. The other is Victor Vaught.
Q. Is that V-o-u-g-h-t [sic]?
A. I think so, yes. Well, I know so. Yes, V-a-u-g-h-t.
Q. How about aunts and uncles that live in Florence County?
A. All deceased.
Q. Parents?
A. I have one -- my mother is still living in a nursing home.
Q. What's her maiden name?
A. Her name is Norton.
Q. Okay. Are you on any medication here today that would prevent you from giving truthful and honest answers?
A. I'm on medication, but I don't think there's anything that would keep me from giving honest

answers.
Q. Okay. I'm sorry for asking this question, but it's a standard question that I ask.
Do you have a criminal record, Mr. Blanton?
A. No, sir.
Q. Give me a very brief overview of your educational history. Where did you go to high school?
A. McClenaghan High School here in Florence.
Q. Tell me where you -- did you go to college after that?
A. Went to college at Clemson. I was there for two years. Got married after my sophomore year. Moved to Columbia to go to Carolina so that I could get a job, you know, to work, to help support the family.
And went to Carolina. Took some graduate courses, but I did not graduate. I was probably, I'm guessing, around 20 hours short of graduation.
Q. Okay. Did you do any sort of training or education after you stopped going to college?
A. Yes. I took normal jobs. Then started in the real estate business in -- I want to say 1978. Of course, took all the prerequisite education needed to get a real estate license, which I did.

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Then, a few years after that, took the broker's exam and became a broker in the State of South Carolina.

Q. When did you finish high school?

A. 1971 was my graduation date.

Q. And when did you stop going to college?

A. '74, I think.

Q. Okay. And give me a very brief overview of your work history from then until now.

A. Well, as I said, from '74 to August of '78, I was like anybody else. I bumped around with a couple of different jobs. The one I remember most is I worked with Carolina Mortgage Corporation.

Q. Okay.

A. Soliciting new business. You know, going around from Florence to Marion, Mullins, Georgetown, the beach area, back to Florence. Worked there for a few years.

And it sounds like one of those sad stories, but I started working at UPS in the mornings. I'd get up about 3:00 and go to work at 4:00. Worked there for four and a half hours, I guess, and then I'd go work at King Drug Company.

And then after that -- King Drug Company.

Q. When did you start into the real estate

business?

A. 1978.

Q. And have you been working continuously in the real estate business since then?

A. Yes.

Q. And tell me in what capacity, just briefly.

A. Well, began just a realtor. Then I became broker-in-charge at Cormell Streett & Patterson, and property manager, which was my primary.

I was also an insurance agent for 30-some years. And my two associates and I purchased the building -- or excuse me -- purchased the business, let me think back, I think 1991. Paid for it in 2001, I believe is correct. July 4th, 5th, thereabouts.

Continued to work there with my two partners, John Crouch and Richard Walker, as a partnership. And when we had all our legal work done and our tax and accounting work done, we agreed to sell out our share of stock in CSP at age 62.

Rather than retire, as a part of my buy-out, I took the property management business and opened up the Blanton Company at 126 South Coit Street in Florence and have been doing that since then.

Q. Okay. What was the purchase price? You said you sold to NCNB?

MR. ANDERSON: Object to form.

THE DEPONENT: Cormell Streett Patterson was the business -- or the company that I worked for and owned, one-third ownership, and I sold my stock there. And rather than retiring at age 62, I continued to work, and part of my buy-out was for me to take the property management business as part of my buy-out. And, therefore, I opened the Blanton Company, which is property management, and do some commercial real estate. Do not do any residential real estate.

BY MR. LE CLERCQ:

Q. Who purchased the stock?

A. Richard Walker.

Q. And do you recall approximately what the purchase price was and when was the purchase?

A. I'd say a million bucks, less, you know, the property management value. Exactly what that was, I can't recall. Maybe, you know, 250,000, something like that. I'm not sure.

Q. Was that what you got or you split that with

your other partners, that million bucks?

A. No. That was my buy-out.

Q. Okay.

A. John Crouch had retired earlier, and then it was Richard and I -- Richard Walker, the two remaining partners, and then he bought me out.

Q. So when did you start Blanton Property Management?

A. Let's see. This is 2020. I'm not exactly sure. I'm thinking around 1993.

Q. And have you been working -- has that been your principal occupation since then?

A. Yes.

Q. Okay.

A. I said 1993, but yeah, I think that is correct. I wasn't prepared to answer that, but...

Q. How many employees do you have right now?

A. Two.

Q. And how many employees did you start with?

A. Two.

Q. Okay. So is it a fair statement that since 1978 until now, which is better than 50 years, you've been involved in the -- let's see, I'm sorry -- 40 years -- 42 years.

A. 41 years, something like that.

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they?
A. First Reliance? I know Rick, yeah. We're friends.
Q. That's Rick Saunders?
A. Yeah.
Q. Who are the other principals?
A. His brother.
Q. And what's the name of the brother?
A. I can't remember off the top of my head.
Q. Okay. Have you-all been, prior to the events here, have you ever had any occasion to do business with them?
A. Only on a personal basis.
Q. Tell me about that.
A. Bought some stock in First Reliance when they opened up.
Q. You did?
A. I did, yes.
Q. Do you still own that stock?
A. No.
Q. Why did you sell it?
A. Because I wanted to.
Q. All right. How long did you have it?
A. I don't recall. I don't know. You know, a year, two years, whatever. I don't know.

Q. Do you recall what percentage of the bank that you owned?
A. Obviously it would have been a very low percentage. I think I might have invested maybe 3,000 bucks. I don't recall.
Q. Okay. Would you agree with me that the property manager normally gets his instructions as to how to deal with tenants from the landlord?
A. Yes.
Q. Can we agree that landlord and lessor mean the same thing?
A. Yes.
Q. Have you ever owned -- have you ever been property manager for -- have you ever had more than one boss, as it were? Have you ever worked for more than one landlord on the same property?
A. (Pause.)
Q. Have you ever had a situation -- while you're thinking about that, have you ever had a situation where multiple parties owned a piece of property and hired you as their property manager?
A. Sure.
Q. And are you taking instructions in that case from more than one party?
A. They normally choose someone to be

spokesperson for their group.
Q. But you would see any of the members of that group as someone that you have to listen to as a landlord?
A. Correct.
Q. Okay.
A. And then if there are different opinions, then I would ask them, you know, let's meet and talk this over, and you guys tell me what to do, or you ladies.
Q. And if you signed a lease on their behalf, each of those parties would be obligated under the lease?
A. Certainly. If they were owners or a partnership or LLC or a family trust, whatever.
Q. Okay. So duties of a property manager, you would agree then that it includes supervising and coordinating the maintenance?
A. Yes.
Q. Resolving tenant concerns and complaints?
A. Well, again, when you say -- rephrase that for me, please.
Q. I agree. Let me take another stab at it. Do the typical duties of a property manager include helping to resolve tenant complaints?

A. Yes. But I don't oversee those. I have subs. I don't have any employees that do work. I've got, you know, handymen. I've got roofers, plumbers, electricians, et cetera. Roofers that I deal with on a regular basis. None of them employed by me.
So just to answer the questions: Do I supervise or oversee those repairs? No. I don't have any expertise in doing that except to ask people to do things. I'm not really sure how else to answer it.
Q. Okay. Do you recall having a conversation with Mr. Timmons prior to the signature of the lease that you felt like you had a responsibility to him, given the amount of money that he was going to be investing in the property, to try to get him a long-term lease?
A. Certainly. I would do that with anyone.
Q. Okay.
A. And Mike and I had prior business dealings, and I think sitting here across from each other today that we can still consider ourselves friends.
Q. Understood.
THE DEPONENT: Right?
MR. TIMMONS: Yes, sir.

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BY MR. LE CLERCQ:

Q. Remind me what the prior business dealings were? We'll go into it, but just give me the overview.

A. I think Mike could tell you that better than I. They leased an out-parcel there at that same strip center. Leased it for a while and then purchased it at a later date.

Q. Is that the only prior business --

A. He's done personal business for me at my office.

Q. For example?

A. Signage.

Q. Okay. Does the principal that you work for, the landlord, do they -- you would agree with me that since one of your duties is to lease vacant property, get it fully leased, they don't typically remind you of that obligation on a weekly or monthly basis?

A. No. Except for if a property, as is in cases with all rental properties, whether it be a $500-a-month apartment or a $5,000-a-month commercial, yeah. If it isn't rented for a while, sure. I'll get calls saying, "Hey, what's going on? Why did isn't it rented?"

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Yeah. So to answer your question, that's the best way I can answer it.

Q. I appreciate it.

Tell me what you think the -- if that duty to rent to get the place fully leased is an -- would you agree it's an understood obligation, an understood duty of the property manager in relationship with the owner?

A. Certainly.

Q. And do you think that the owner should understand that or knows that as a general matter?

A. Yes.

Q. Let's talk about the drafting of leases and contracts.

Is that part of the routine day-to-day business of a property manager?

A. Drafting contracts?

Q. Yes, sir.

A. Yes.

Q. And do you have forms that you keep in your computer system that facilitate that happening?

A. Yes. I have different commercial forms. I have one residential form. They're all state approved -- South Carolina Real Estate Association. I have different forms for commercial depending on

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how sophisticated they are.

Q. Okay. And I should have asked you.

You are a licensed realtor. Did you tell me that? I think you did, but my memory is not --

A. Either that or I'd be in jail, yes.

Q. And do you have to go to, like lawyers do, we have to do continuing education?

A. I have continuing ed, yes.

Q. All right. So you have continuing education obligations.

Is it your understanding that the landlord, the lessor of property, is responsible for setting the parameters for the lease of property that will be conducted by the property manager?

A. Yes, to a great extent. However, a lot of times they confer with me to get my feelings on something.

If they say, We want to put a barber shop over here, I'd say no. It's not zoned for that. Or, you know, I don't think that's the best use. Yeah.

Q. And does that conversation happen at the beginning of your relationship with the property manager -- I'm sorry, with the owner?

A. Well, with owners, yes. I said, What do you

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want to do with the property? What are the confines of the lease you want to operate?

And if they tell me they want X amount of dollars and I disagree with them, then we part ways. I mean, I'm just not a miracle worker.

Q. Okay. I'm going to show you some documents, Mr. Blanton, and what I'd like to do with this is I'm going to first hand you a notebook. I've been in too many depositions where stuff's flying everywhere, and when we get to Exhibit 20, they're in a pile and you can't find them.

So what I would ask you to do is as I hand you the exhibits, they're already hole-punched, I would ask you to put them -- Exhibit Number 1 in the tab for Number 1 so that you can find it easily.

Is that okay?

A. Yeah.

Q. So let me hand you that.

(Tendered document.)

MR. ANDERSON: Can we take a break?

MR. LE CLERCQ: Yes, sir.

I forgot to mention. This is not an endurance contest, so whenever you need a break, just feel free to let me know.

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history, et cetera, that I've got a, you know, gut feeling that they ain't going to pay. Okay? I'm not real sure how else to answer that.

BY MR. LE CLERCQ:

Q. Would you expect that if the -- that whatever the bank had done to try to work things out would have occurred prior to the filing of the foreclosure papers? That the foreclosure would be a last resort?

MS. HOUGHTON: Object.

THE DEPONENT: I -- I really can't answer that. I'm not sure. I would think, as a, you know, lender, borrower, that they would hopefully have some kind of working relationship. I don't know.

BY MR. LE CLERCQ:

Q. Okay. I asked you earlier, but you said you'd never been -- you'd never been in a situation where a property you were managing was foreclosed prior to this.

Do I take it from that, that you've never, prior to these events, you never told a tenant that a property was in foreclosure?

A. To the best of my knowledge, no.

Q. Do you think that a property manager when he finds out that a property that he's managing is in foreclosure, does he have an obligation to go to the borrower in possession and say, "What are you guys going to do? Are you going to bring it current, or are you going to let it go?"

A. Well, I was not notified of the foreclosure action until after the fact. So I can't answer that.

Q. But then once you know about it, do you think that a property manager has an obligation to go to the mortgagor in this case and say, "Guys, tell me what's up. Are you going to bring this current, or are you going to let it go?"

And if it's not obligation, is it a smart business practice?

A. You're asking do I have an obligation to go to the mortgagor --

Q. Atlantic in this case.

A. Well, again, I wasn't aware of them being foreclosed on until after the fact.

Q. What I'm saying after you find out that they've been foreclosed upon --

A. I don't have any obligations whatsoever to tell them whether they should pay up or not. No.

Q. That's not my question.

A. Okay.

Q. What my question is: Do you think that you have an obligation to go to them just to find out whether they are going to either bring the property current or whether they're going to let it go to the bank? Because you have to rent the property --

A. Well, I was going to say, as my knowledge, because I was caught in the middle. Okay.

Yeah. Sure. "What are you guys going to do? Are you moving out of here? Are you just going to sit until they basically throw you out?"

I don't know.

Q. Did you actually do that in this case? Did you go to Atlantic at any time after July 24 and have a conversation with them to find out what their intentions were with regard to the foreclosure?

A. I'm sure that we had phone conversations. We'd have a sit-down everybody records, et cetera. But I had conversations with them saying, "Yeah, you know, we're out of business," or "we're gone."

Q. That's what they told you?

A. I think so, yes.

Q. Okay.

A. To the best of my recollection.

Q. Okay. Who was it that told you that? Richard Cook?

A. Richard. He was my main guy that I talked with, yes.

Q. And at some point subsequent to July 24, 2015, you had a phone conversation -- one or more phone conversations with Richard Cook, and he told you words to the effect of, "We're out of business" --

A. Things ain't looking good. Okay? I fear that this may come to fruition. Okay?

Q. And he didn't say, "No. Everything's cool. We're going to bring this current."

A. No.

Q. Did he say that the ambulance company was out of business?

A. I can't truthfully say that he did or did not. Obviously, they were the anchor store, as in a Belk or a Sears or what have you. But he basically told me that their business was bad, and whether they went out of business -- I don't know if they moved to another town and stayed in business. I don't know. Okay?

Q. I heard you say the phrase "we're going to

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let it go."
Did he say those words or words to that effect when you talked with him --
A. I think when he said, "We're going to let it go," I think he meant that we're giving up on trying to maintain or hold the building. Okay? As far as their individual business goes, I don't have a clue.
Q. Understood.
But what I'm interested in is the building.
A. I think that that's what he -- that's the way I interpreted it, yes.
Q. You understood that they were not going to bring the mortgage current, but were going to --
A. That was my understanding.
Q. I'm sorry. Let me finish the question.
A. Okay. I didn't know you weren't finished.
Q. Your understanding after your one or more conversations with Richard Cook was that their business was bad and they were going to let the building go. They were not going to try to bring the mortgage current, but, by contrast, they were going to not -- that the property -- excuse me -- the property was going to go -- the building was going to go to the bank.

A. I was never told that exactly. I just -- it was insinuated that, Hey, we're not going to be able to hang in here. Okay? I don't know how to put it in precise verbiage.
Q. Okay. And you think that was one or even several conversations that took place by telephone after July 24 that were to that effect?
A. After?
Q. July 24.
A. And, again, I hope it's okay if I call you Ben.
Q. Please do.
A. Or Mr. Le Clercq.
We're talking about five years ago. Okay? A lot of times I can't remember what I had for dinner three nights ago. Okay?
Q. I understand. I understand.
A. So this is going on recall.
And I can't sit here under oath and, you know, swear that I remember how many telephone calls I had with him. I just know that we weren't adversaries; that I was going to do whatever they told me to do until the bank told me what to do. Okay?
And so, again, I was in that gray area. I

was caught between -- between the ropes.
Q. Understood.
Did you -- once they -- I understand that it has been five years ago.
Once they told you that, did you have any conversations with anybody from the bank where you let them know that that was the situation? Or do you think that the bank knew that?
MS. HOUGHTON: Object to form.
THE DEPONENT: The -- to my knowledge, that I recollect, is the bank didn't call me to tell me what their dealings were with their client. And I would expect them to.
BY MR. LE CLERCQ:
Q. Do you suspect that if you knew that, that the bank also knew what you just told me?
A. I told you I knew based on my conversations with Mr. Cook that things weren't going real good. I did not understand that to be that they were going to be foreclosed on.
Q. Let me make sure I just understood what you said.
You -- once the foreclosure happened, I've understood you to say that you called Richard Cook on a couple occasions, and the gist of what you got

out of that conversation was that, Point Number 1, things weren't looking good, and that they were not -- likely not to be able to stay in the building, and that the building -- title would likely be lost to the bank in the foreclosure.
A. Okay. The one question I have, Ben, is are we talking about prior to the foreclosure or subsequent?
Q. After.
A. After? I think he said, you know, "We're out of here." You know, "We're going to move out."
Q. Got it.
MS. HOUGHTON: Can we go off the record for a second?
MR. LE CLERCQ: Let me just -- hang on just a second, Lacey.
BY MR. LE CLERCQ:
Q. So that he says that -- the gist that you got was "We're out of here."
Let me make sure just to -- so that the record is clean, and we'll take these three points that I just said. I'd just -- I'd like to take them one by one.
Again, we're talking about the time subsequent to July 24, 2015, when you found out

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that the property was in foreclosure. That First Reliance was foreclosing on Atlantic.

I've understood you to say you recollect having one or more telephone conversations with Richard Cook and he conveyed to you the following basic points: That, Number 1, Atlantic's business was in trouble.

Do you agree with that?

A. Yes.

Q. Number 2, I'll use your words. The gist of what he communicated to you was, "We're out of here."

Do you agree with that?

A. Yes.

Q. You interpreted that to mean that Atlantic was not going to try to bring the mortgage current, but rather, the title to Sweetbriar would be lost in the foreclosure to the bank.

A. That it would be conveyed to the bank in lieu of payments not being made.

Q. Approximately how long after -- again, I won't hold you to exactly, but give me a range of time that you think those conversations took place. And was it on July 24th itself? Was it a week later? Was it a month? You know, when do you

think it was?

A. There's no way I can answer that except to guess. You know, it certainly wasn't on the day that I was presented with the fact that there was a foreclosure action. I guess he called me or I called him and said, "Hey, you know, let me know what you're doing, when you're getting out of here, so I can talk with the bank and see if they subsequently want to lease -- you know, to lease this space."

MR. LE CLERCQ: Madam Court Reporter, can you please read back the last statement by the witness?

(The Court Reporter read back the requested testimony.)

BY MR. LE CLERCQ:

Q. Just to make sure I'm clear on that, did you hear what the court reporter just read back?

A. Yeah.

Q. That was you calling them and you saying to them, being Richard Cook, "Hey, let me know what you are going to do so I can find out from the bank whether they want to lease the property."

A. Yes.

Q. Okay. And what was his response, if you

recall?

A. "We're moving out as soon as possible, moving whatever furniture."

They'd already been moving some prior to, so I knew it was coming down, I guess, so to speak, coming down.

But, again, I wasn't involved in their affairs with the bank. You know, I -- you know, which is -- waiting to be told what to do.

Q. Okay. Do you think that those conversations with Richard Cook took place within the first week of the foreclosure occurring, in other words, prior to July 31, 2015?

A. Ben, I'm not sure.

MR. ANDERSON: Object to form.

BY MR. LE CLERCQ:

Q. Do you know whether it would have been within the first two weeks after that? Do you have any recollection as to when it would have been?

A. I can only tell you that I assume so. I don't know.

Q. Okay. So you assume it would have been within the first couple of weeks of the foreclosure being served upon --

A. I just got through saying --

MR. ANDERSON: Object to form.

THE DEPONENT: -- that I don't -- I don't know. I don't recall.

BY MR. LE CLERCQ:

Q. Okay.

A. You can ask it any way you want to ask it, and I'm going to still answer it the same way.

Q. I understand and I appreciate your candor, Mr. Blanton.

Do you recall, did you have this conversation on your personal cellphone?

A. A lot of my business is done on my personal cellphone. A lot of my business is done on my business phone.

Q. Can you please give me those two numbers?

A. You've got them, but I'll be glad to give them to you again.

My cellphone is 843-230-7568. My business number is 843-662-2557.

Q. Got it.

And is the business phone a land line at your office?

A. Yes.

Q. All right. And who is the phone carrier for that?

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the property."
At what point subsequent to the foreclosure being served upon you -- and when I say that, do you understand what I mean? That on July 24, you were served with a motion to enforce rents.
A. I was noticed --
MR. ANDERSON: Object to the form.
BY MR. LE CLERCQ:
Q. Do you understand -- let's first of all make sure that we're on the same page as to what happened on July 24.
So why don't you tell me what happened on July 24.
A. I don't know.
Q. 2015.
A. I may have been at the beach. I'm not sure.
Q. Okay. But do you recall being served on July 24 with papers relating to the foreclosure?
A. Yeah. Probably. Yeah. Sure. I had to be served so that I wouldn't be sending the checks to Atlantic Regional, yeah.
Q. Okay. And subsequent to July 24, at what point do you recall contacting Mr. Timmons to ask him if he would be interested in leasing property at Sweetbriar?

A. Say that again.
Q. Subsequent to July --
A. He was already a tenant.
Q. I'm talking about --
A. You're saying "subsequent to," meaning after. Okay?
Q. Right.
A. Isn't that what you mean?
Q. That is exactly what I mean.
A. Okay. Mike was already in there. So what's your question?
Q. Well, his lease was not signed until August the 20th of 2015.
A. Okay.
Q. And you were served with the foreclosure papers on July the 24th, 2015 --
A. Okay.
Q. -- which is three weeks before then.
A. Okay.
Q. So Timmons did not actually start his lease until after the service of the foreclosure --
A. Okay. I understand what you're saying now. Yes.
Q. -- after you found out about the foreclosure.

So do you agree he was not, in fact, a lessor of the property -- I'm sorry -- a lessee of the property on July 24, 2015? He wasn't one of your existing tenants?
A. Yes. I think that is correct.
Q. Okay. So after July 24, 2015 -- I'm sorry. Strike that.
Let's get back to what exactly happens on July 24, 2015. You find out about the foreclosure.
What I'm interested in is subsequent to that time, tell me what you recall about your next conversation with Mike Timmons. Did you call him or did he call you?
A. Mike initiated the call, to the best of my recollection, that he heard that the existing business that was there was going to go out of business, and if anything should happen, for me to please contact him. To, again, to the best of my recollection, that's what happened.
Q. Okay.
A. I called Mike and told him that I think these other people are getting out of there.
Q. When we say "the existing business," we're talking about the bar or the restaurant?
A. There was another bar that didn't work --

there was another bar there that did not work.
Q. And he had called you at some point and said he was interested in it, right?
A. Sure.
Q. And then --
A. He knew more about it than I did because he's familiar with that stuff. Yeah.
Q. Then what Mr. Timmons has testified to is that at some point you called him and said the space is available?
A. Yes. Because he had asked me to do so prior, yes.
Q. Okay. And do you recall whether that was subsequent to July 24, when you first called him?
A. I feel pretty positive it was, yes.
Q. Okay. You would agree with me that as a property manager you would never sign a lease with a tenant if you knew that the lessor didn't have the ability to convey the property, for whatever reason. Would you agree with me?
A. Yes.
Q. Okay. Do you think that a company like Atlantic, that is what I'll call a borrower in possession of the property, that once they've been placed in foreclosure proceedings by the mortgagee,

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A. I was noticed --

MR. ANDERSON: Object to the form.

BY MR. LE CLERCQ:

Q. Do you understand -- let's first of all make sure that we're on the same page as to what happened on July 24.

So why don't you tell me what happened on July 24.

A. I don't know.

Q. 2015.

A. I may have been at the beach. I'm not sure.

Q. Okay. But do you recall being served on July 24 with papers relating to the foreclosure?

A. Yeah. Probably. Yeah. Sure. I had to be served so that I wouldn't be sending the checks to Atlantic Regional, yeah.

Q. Okay. And subsequent to July 24, at what point do you recall contacting Mr. Timmons to ask him if he would be interested in leasing property at Sweetbriar?

A. Say that again.

Q. Subsequent to July --

A. He was already a tenant.

Q. I'm talking about --

A. You're saying "subsequent to," meaning after. Okay?

Q. Right.

A. Isn't that what you mean?

Q. That is exactly what I mean.

A. Okay. Mike was already in there. So what's your question?

Q. Well, his lease was not signed until August the 20th of 2015.

A. Okay.

Q. And you were served with the foreclosure papers on July the 24th, 2015 --

A. Okay.

Q. -- which is three weeks before then.

A. Okay.

Q. So Timmons did not actually start his lease until after the service of the foreclosure --

A. Okay. I understand what you're saying now. Yes.

Q. -- after you found out about the foreclosure.

So do you agree he was not, in fact, a lessor of the property -- I'm sorry -- a lessee of the property on July 24, 2015? He wasn't one of your existing tenants?

A. Yes. I think that is correct.

Q. Okay. So after July 24, 2015 -- I'm sorry. Strike that.

Let's get back to what exactly happens on July 24, 2015. You find out about the foreclosure.

What I'm interested in is subsequent to that time, tell me what you recall about your next conversation with Mike Timmons. Did you call him or did he call you?

A. Mike initiated the call, to the best of my recollection, that he heard that the existing business that was there was going to go out of business, and if anything should happen, for me to please contact him. To, again, to the best of my recollection, that's what happened.

Q. Okay.

A. I called Mike and told him that I think these other people are getting out of there.

Q. When we say "the existing business," we're talking about the bar or the restaurant?

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there was another bar there that did not work.

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A. Sure.

Q. And then --

A. He knew more about it than I did because he's familiar with that stuff. Yeah.

Q. Then what Mr. Timmons has testified to is that at some point you called him and said the space is available?

A. Yes. Because he had asked me to do so prior, yes.

Q. Okay. And do you recall whether that was subsequent to July 24, when you first called him?

A. I feel pretty positive it was, yes.

Q. Okay. You would agree with me that as a property manager you would never sign a lease with a tenant if you knew that the lessor didn't have the ability to convey the property, for whatever reason. Would you agree with me?

A. Yes.

Q. Okay. Do you think that a company like Atlantic, that is what I'll call a borrower in possession of the property, that once they've been placed in foreclosure proceedings by the mortgagee,

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get tenants in there.
Is that a fair statement?
MS. HOUGHTON: Object to form.
THE DEPONENT: That is -- yes. That's a fair statement, yes.
BY MR. LE CLERCQ:
Q. And that includes, because it's a strip mall, getting long-term tenants in.
Would you agree with me that that's a fair statement?
A. Not at that point in time.
Q. How do you --
A. How could I -- how could I entice anybody into going into a long-term lease agreement knowing that there may be possible actions to come?
That would be unethical on my part to sign somebody into something. I wouldn't do that. Would never do it.
Q. Well, the lease here, sir, was signed by you as lessor on August the 20th --
A. That's correct.
Q. -- of 2015, which is three weeks after you were served with a motion to enforce rents by the bank.
A. Okay.

Q. And so we will -- it appears to me, based on my review of the documents, that you informed Atlantic and you also informed the bank of Mr. Timmons' proposal to lease the property.
Do you recall that, sir?
MS. HOUGHTON: Object to form.
THE DEPONENT: Well, sure. I would have passed that through to others. I couldn't approve it. Yes.
BY MR. LE CLERCQ:
Q. And you would also agree with me that neither Atlantic nor the bank ever said, "Don't enter this lease with Mike Timmons."
A. No one ever told me to not do that.
Q. And your marching orders as a property manager were to rent vacant property.
A. Correct.
Q. Do you agree?
A. Yes.
Q. Okay. So, and you've already said that you don't think that a party like Atlantic that has been foreclosed upon -- strike that.
Let me ask you this question.
Does a lender that forecloses on property, in your view, have an obligation to disclose to

prospective tenants, tenants that come in the future, that the property that they're interested in is in foreclosure?
Do you think they have that obligation?
MS. HOUGHTON: Object.
THE DEPONENT: I would think so.
BY MR. LE CLERCQ:
Q. Do you think it's also a good practice for them to do that?
A. I would think so.
Q. If a lender forecloses on property, are existing tenants at the moment they start foreclosure proceedings, do you believe that those tenants are bound if they don't have notice of the foreclosure, if the bank decides they're not going to notify those tenants?
MS. HOUGHTON: Object to form.
THE DEPONENT: Okay, Ben. I'm sorry.
BY MR. LE CLERCQ:
Q. Let me try that one again. It was a little awkward.
A. Let's try it again. Yeah.
Q. The -- when Sweet -- at the moment of the commencement of the foreclosure proceedings in 2015, there were existing tenants at Sweetbriar.

Do you agree with me?
A. Yes.
Q. I think you have already said you think the bank has got an obligation to notify those tenants of the foreclosure.
If the bank doesn't do that, does that mean that those tenants are not bound by the foreclosure?
What's the ramifications if the bank doesn't notify those tenants, in your view?
MS. HOUGHTON: Object.
THE DEPONENT: I would think that if I were a tenant -- I put myself in anybody else's place.
If I signed a tenant with Ben Le Clercq, that I signed my lease with Ben. And if all of a sudden the bank came in and took it over from Ben, then I would no longer be obligated to Ben if the bank took it over.
Is that a way to answer it? I'm not real sure how to do it intelligently.
BY MR. LE CLERCQ:
Q. Got it.
So we've got this lease that is signed

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between Mr. Timmons and you, as lessor, for what I would call a long-term lease. And -- on August 20th of 2015.

Would you agree with me that you would not have let him sign that lease knowing that the property was in foreclosure proceedings unless you had also told the bank about the proposed lease?

MS. HOUGHTON: Object to form.

THE DEPONENT: There is no way in this world -- and I'll give my license up tomorrow, and Mike knows this.

There's no way that I would have ever facilitated a lease with someone who's willing to spend their money, put their heart into it, and my heart into it, being a reputable broker who has been here 41 years, I would never, ever do that. And if I did, then just take my damn license away from me. I would not do that.

BY MR. LE CLERCQ:

Q. You were not intending to deceive or trick him?

A. No, sir. I was not. And off the record, I think if you and I and Mike sat down and had a beer and me a Coke, then we both would agree.

Q. I'd like that. We need to have your attorney there at the same time, though.

All right. Have you ever owned the Sweetbriar property?

A. I was a member of the Florence Group, which was an entity that I formed many years ago. I don't remember how many years ago it was.

The Florence Group was three doctors that I put together with myself, Dr. Imbeau, Dr. Steadman, Dr. Howell -- they're all personal friends of mine and my doctors -- I said, "Guys, why don't we put a partnership together and maybe try to buy some commercial property?

Bill Dailey was the owner at that point in time. We purchased the property from Bill Dailey, and the Florence Group owned it for a while. And then we sold it to Atlantic Regional.

Q. Okay.

A. Okay? And I only own 3 percent of interest in that partnership.

Q. And when was that partnership formed? Was it around 1995?

A. Oh.

Q. I'm going to hand you a document, which is going to be marked as Exhibit 4, which I think is

evidence of a closing that might have taken place. If you'll take a look at that document and let me know if you recognize it.

A. I don't know when it was formed. I know that we had several properties that we purchased. As far as when the Florence Group incorporated, went into effect, I don't recall the date.

(EXHIBIT 4, Blanton 000079, 12/07/1995 Letters from Dailey Development, Inc., was marked for identification.)

THE DEPONENT: Okay. I see Dailey, yes.

MR. LE CLERCQ: I'd like you to had him also 5, which is the lease.

(EXHIBIT 5, 08/20/2015 Commercial Lease, was marked for identification.)

BY MR. LE CLERCQ:

Q. Would you agree with me that Exhibit 4 is evidence that previously there had been property transactions relating to Sweetbriar in which you had been involved?

A. Yes.

Q. Now, I'd ask you to take a look at what has been marked as Exhibit 5, which is the commercial lease in this case. And do you recognize that

document?

A. Yes.

Q. Okay. And these are your initials at the bottom of each page?

A. That's correct.

Q. And that's your signature on Page 7?

A. Correct.

Q. And it was signed by you on or about August 20, 2015?

A. Correct.

Q. And the witness to the signature is Kelly R. Modlin, and that is someone from your office?

A. Yes.

Q. And she signed on Page 7?

A. Yes. She signed as a witness, and Jean Parks also signed as witness.

Q. And did you see Mr. Timmons sign the document? Do you recall?

A. Yes. I think so, yes.

Q. Okay. And is the handwriting that you see on the lease other than Mr. Timmons' initials and his signature, is that handwriting your handwriting? For example, on Page 1, where it gives the --

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to take care of.

Q. Including the bank?

A. Not that I recall. Possibly.

Q. Once the property went into foreclosure -- and again, you've said that this was your first property that you'd ever managed that was in foreclosure.

But once you got the motion to enforce rents served upon you, did you understand that the property was in foreclosure?

A. I'm sorry. Could you repeat that, please?

Q. Let me say it again.

You get served on or about July 24, 2015 with some documents. We've already looked at the documents.

There was a subpoena and there was also a motion to enforce rents, and there's a letter from Ray Coit Yarborough that says that Atlantic is in default.

Did you understand from receiving those documents that the property was in foreclosure proceedings by the bank?

A. Yes.

Q. Okay.

A. In proceedings, yes.

Q. All right. And you know how I asked you the two masters question earlier?

Is it a fair statement that after July 24, that given that you didn't have any experience with foreclosure proceedings prior to that, that you're going to cover all the bases and you're going to make sure Atlantic knows about everything and make sure that the bank knows about everything that relates to the property.

Is that a fair statement?

MR. ANDERSON: Object to form.

MS. HOUGHTON: Object to form.

THE DEPONENT: Yes. And I was not familiar at the point serving in the -- where I was serving. Obviously, I told you earlier that I had experience with foreclosures when I was purchasing property myself or on behalf of others.

But yeah. I understand what a foreclosure proceeding is, yes. But as far as who I'm supposed to contact? Who I'm supposed to tell? No.

You know, I think the way I understood your question was is -- no. This is my first go-around. I didn't know what I was

supposed to do. Okay?

BY MR. LE CLERCQ:

Q. Understood. Fair enough.

And so in an abundance of caution, and I think it's supported by the documents we'll look at.

In an abundance of caution, you were talking with everybody that had a legal interest in the party, which means Atlantic and which means the bank.

MS. HOUGHTON: Object to form.

THE DEPONENT: Yes.

MR. LE CLERCQ: What's objectionable?

MS. HOUGHTON: I can elaborate.

MR. LE CLERCQ: No. That's all right. I don't want you to. I'm satisfied with the question.

BY MR. LE CLERCQ:

Q. But let me rephrase it to make sure.

In an abundance of caution, if there were tenant issues, particularly relating to prospective tenants, tenants to come in the future, you were in communication both with Atlantic and, as well, with the bank, because that is the entire universe of everyone that has an interest in the property in

terms of its ownership.

Do you agree with that statement?

A. I agree with the last part of what you said, but the actual question is?

Q. The question is: You get served with the documents that we've already looked at, and you just said you understand that the property is in foreclosure.

You've got a job to do.

A. Or in the --

MR. ANDERSON: Object to form.

THE DEPONENT: -- process of foreclosure, yes.

BY MR. LE CLERCQ:

Q. It's in foreclosure proceedings.

You testified that your mandate is to get property leased, and this is your -- this is the first time that you've been the manager of property that has been foreclosed on.

A. That's correct.

Q. And so there are documents, for example, the document that we've looked at, Document Blanton 120, in which you're contacting the bank -- that indicates that you've contacted the bank, and there's also a prior document that indicates that

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First Reliance Bank."
A. Yes.
Q. All right. So you agree with what Mr. Yarborough has said there?
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. That that's what he was -- that's what -- that's what -- you agree, first of all, that he asked the Court to do that?
A. Yes.
Q. And do you also agree that Mr. Yarborough is simply confirming as of September 30 the facts on the ground, which are that you have been managing the property, you have been finding new tenants, and you have been doing all the things that property managers do?
A. Yes, sir.
Q. Okay. So let's look now at Exhibit 29. It's marked Blanton 321.
A. Okay.
Q. All right. So do you recognize this document?
A. Yes. It's my handwriting.
Q. All right. Very good. And the date on it appears to be August 17, 2015.

And my first question would be: Other than what appears to be the signature -- well, let me ask you.
Is that the signature of Mike Timmons below his typed name?
A. Well, I can't testify to that. I could only assume that it is.
Q. Okay. Tell me what your recollection -- tell me, first of all, what this document is.
A. It's from Mike saying, "My offer is as follows."
And I don't want to read it all out, but "is as follows." And, you know, follow with that.
Q. And this is --
A. And then there were discussions where I would give him three months of, based on the owner's approval, no rent for his upgrade. Common areas to be shared with -- during daylight working hours.
And Mike basically would be responsible after hours because of the nature of the business, because there were beer cans, et cetera, that he was required to, you know, pick up and clean up.
Q. Okay. So again, to confirm, this is Mr. Timmons' offer to lease the space dated

August the 17th, which is three days prior to the lease that he ultimately signed and that you signed.
And sir, is the handwriting on this document, other than what appears to be Mr. Timmons' signature, is that your handwriting?
A. Yes. That's my print, yes.
Q. Okay. So do you recall how you got this document, whether it was by e-mail or by fax or handed to you?
MR. ANDERSON: Object to form.
THE DEPONENT: No, I don't recall.
BY MR. LE CLERCQ:
Q. Okay. So let me -- let's get straight to the part in the bottom.
It appears, first of all, that he's made an offer that would have two 5-year terms and an initial term -- excuse me -- two 5-year renewal terms and an initial term of 3 years. He says the amount that he's going to pay. And then at the bottom is written Ray Coit Yarborough, and there's a telephone number 676-0580.
And then there's a date circled at the bottom, September 1, and it says -- it appears to say, "agreed by Rick Cranford."

And the line actually says, "agreed by 8/18/15."
Can you please interpret all of that handwriting for me. Tell me what it means: The Ray Coit Yarborough, the telephone number, the "agreed by 8/18/15" and then Rick Cranford with his telephone number.
A. It's all my handwriting. Obviously talked with Ray. Talked with Mike. And called Rick Cranford, who agreed, based on that date of 8/18/15, I think.
Q. And did Ray Coit Yarborough also agree to the lease on 8/18/15 when you talked to him?
A. Did he do what, sir?
Q. Did he agree, like with the Elite Laser Tag lease, did he authorize you to enter this lease?
MS. HOUGHTON: Object to form.
THE DEPONENT: I -- I -- I don't know.
BY MR. LE CLERCQ:
Q. But he had authorized you to proceed with the Elite Laser Tag lease, correct?
A. He authorized me to act on behalf of the bank.
Q. Okay. And so was it -- and in cases like with the Elite Laser Tag, if he authorizes you to

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that you didn't receive any state -- you didn't receive any instructions from the bank telling you not to do the lease.

Do you agree with that?

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. If the bank had told you not to do the lease with Timmons, you wouldn't have done it, correct?

A. Yes. That's correct.

Q. All right. And so, but as a general matter, the bank also never told you, "Joe, Don't enter month-to-month leases."

They never said that, correct?

A. (Reading to self.) Yes. It says, "First Reliance Bank" -- (reading to self).

Yes.

Q. Right. So they never told you that.

And they never said, "Mr. Blanton, do not enter any long-term leases at the Sweetbriar property."

A. Not at that point in time, to the best of my recollection.

Q. Okay. Now, I thought we had it as an exhibit, but perhaps not.

I will represent to you that the bank's

interrogatory responses in this matter indicate that prior to the execution of the lease between you, as lessor, and Mr. Timmons, as lessee, that you had a conversation with Dale Porter regarding the lease.

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. Do you recall -- first of all, is that accurate? Prior to the lease with Mr. Timmons being executed, did you also have a conversation with Dale Porter about Mr. Timmons' lease that was being proposed?

MS. HOUGHTON: Object to form.

THE DEPONENT: I don't recall.

BY MR. LE CLERCQ:

Q. Okay. But you don't have any reason to doubt the veracity of what the bank says happened?

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. That that conversation occurred between you and Mr. Porter prior to the lease with Mr. Timmons being executed?

MS. HOUGHTON: Object.

THE DEPONENT: The bank told me to not enter into the lease with Mr. Timmons?

BY MR. LE CLERCQ:

Q. No, no. The question I've got is only: Did you have a conversation with Dale Porter regarding the prospective lease of Mr. Timmons for this property prior to August 20th?

That's all I'm asking. Did you have a conversation with Dale Porter on that subject?

A. I think that I did.

Q. And can you tell me what you recall from that conversation?

A. Again, you know, I was caught between several different road blocks here trying to figure out what to do. At one point in time, Atlantic Regional was telling me, you know, "Rent the building so we can get as much income as we can."

When the bank took it over, to my recollection was -- is, you know, "Lease what you can and, you know, let's get the income coming until we decide to sell it or to continue to manage it." And subsequently, they said, "We do not want to continue to hold it. We want to sell it."

Q. Got it. And you said your main contact at the bank was Dale Porter?

A. Yes.

Q. And would these conversations, you think,

have taken place in person where he told you that, or over the telephone?

A. Mostly on the telephone. We may have met personally from time to time. Again, I can't recall what happened five years ago.

Q. So when he said that, that was a confirmation -- you would agree with me that that's a confirmation of your mandate to get the property leased?

A. My job was to generate as much income as I could for either party. Okay?

Q. Okay.

A. That's what I tried to do.

Q. Now, you testified earlier that you don't think Atlantic has the right to enter a long-term lease when it's in foreclosure.

Would you agree with me that the only other party that would have such a right would be the bank?

MS. HOUGHTON: Object to form.

MR. ANDERSON: Same objection.

THE DEPONENT: If it's in a foreclosure action, again, I'm not an attorney.

If the foreclosure is going on, I would think that they probably would have the

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documents were signed before. They assign that risk or that whatever. But they should be responsible.

Q. Well --

A. To adhere to existing terms and conditions that were written.

Q. Well, you understand that the purpose of this lawsuit is to figure out whether any of the Defendants that have been named in this lawsuit are responsible for the breach of the lease that Mr. Timmons had. And so it's my responsibility as Mr. Timmons' counsel to try to ask questions to figure out who should be responsible.

You've previously seen the assignment of rents document, which says that the bank has the right to lease the property. And you spoke with Coit Yarborough and with Dale Porter about Timmons' lease before it was signed. You also spoke with Mr. Cranford.

Nobody told you, Don't do a long-term lease. You understood your marching orders were to get the property leased.

A. That is correct.

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. Okay. And you've previously testified that the cash payments that came in for occupancy subsequent to July 24 were paid by your office to the bank?

A. That's correct.

Q. And the bank never rejected those payments?

A. That's correct.

Q. Did you think -- were you the one that was responsible for getting -- for sending in the lease that Mr. Timmons would have several months of free rent before he had to make his first rent payments?

A. I was responsible for offering that up to help out the lessee, which was Mr. Timmons. It was up to the owners as to whether they chose to accept that or not, and, in fact, they did.

Q. Do you agree with me that prior to Mr. Timmons executing the lease on August the 20th, that you did not tell him that the property was in foreclosure proceedings?

A. I did not because at that point in time I did not know.

Q. But let me refresh your recollection, Mr. Blanton, so that the record is clear.

You got the motion to enforce rents on

July the 24th of 2015. And you've previously testified that that alerted you to the fact that there were foreclosure proceedings that were being brought by the bank.

Three weeks later, you executed the lease as lessor and Mr. Timmons executed as lessee.

And so the purpose of my question is that at no -- you agree with me that you didn't tell Mr. Timmons the property was in foreclosure at any time between July 24 and August 20?

MS. HOUGHTON: Object to form.

BY MR. LE CLERCQ:

Q. Let me -- in your requests to admit, and I can find the one if you want me to find it, but that exact question is asked in your Request to Admit, and you said -- you admitted that you hadn't told him -- you hadn't told him the property was in foreclosure.

A. No. I didn't tell him that obviously because I assumed -- and it's stupid to assume anything anymore -- that it would be honored by whomever the owner was. Okay? That's as simple as I can make it.

Q. Okay. Let's get Exhibit 24.

Okay. I'm going to hand you Exhibit 24,

which is -- it's an e-mail from Dale Porter to Andy Fowler, and it's an e-mail from a bank -- from the bank to the appraiser.

And the document that I'm referring to is labelled FRB/CCS1827. And give me just a second and I'll find it.

MR. ANDERSON: 27 or 25?

MR. LE CLERCQ: It's 1827. So the document I'm handing you is Exhibit 24.

(EXHIBIT 24, FRB/CCS 001825-0001827, 09/15/2015 Email from Dale Porter to Andy Fowler, was marked for identification.)

BY MR. LE CLERCQ:

Q. And what I would ask you to do is --

MR. ANDERSON: It's 1825, Counsel.

MR. LE CLERCQ: Well, it's a three-page exhibit.

MR. ANDERSON: For the record, the first page -- let's go with the first page.

MR. LE CLERCQ: The very first page of the exhibit is 1825, and the second page is 1826, and the third page is 1827.

So that's the exhibit that I want to ask you about. And in particular, let's go

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF FLORENCE
JOHN MICHAEL TIMMONS, JR., d/b/a TAVERN ON THE LOOP,

Plaintiff,

vs. Case No. 2018-CP-21-227

FIRST RELIANCE BANK, INC., THE BLANTON COMPANY, INC., JBJR ENTERPRISES, INC., d/b/a THE BLANTON COMPANY, INC., WW PLASMA II, LLC, DALE PORTER, F.R. SAUNDERS, JR., HUNTER WILLIAMS, and JOSEPH B. BLANTON, Individually,

Defendants.

DEPOSITION OF: JOHN M. TIMMONS, JR.
DATE: October 9, 2018
TIME: 10:42 AM
LOCATION: A. William Roberts, Jr. & Assoc.
234 Seven Farms Drive, Suite 210
Charleston, SC
TAKEN BY: Counsel for the Defendants
REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

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BY MR. ANDERSON		
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(No Information Requested)

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Q. Okay. So you were involved in two businesses at the same time?
A. Yes, sir.
Q. All right. So Daddyo's. Tell me about that. And you said that was on Second Loop, Daddyo's?
A. Yes, sir.
Q. And Rum Jungle. Where was that?
A. That was in the -- some of these particular places, like the Shooters, Rum Jungle, that was at the same location. We went from Shooters for seven, eight, nine years to Rum Jungle for a couple years. Went out and got a concept of a place we had saw in Vegas on one of the pool tournaments. So we come back and I changed that to the -- to what I called Rum Jungle which was a rum-oriented theme.
Q. All right. So Shooters was -- when you say 12 to 13 years, it was -- it started off as Shooters, but it turned into Rum Jungle?
A. Yes, sir.
Q. For that 12 to 13 years?
A. Yes, sir.
Q. Okay. So then when you got out of that location, that's when you turned it over to Javon

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Kennedy?
A. Yes, sir.
Q. All right. Where was Shooters/Rum Jungle located?
A. 1804 West Palmetto Street.
Q. All right. And then Daddyo's Disco, tell me about that. That was another entity that you leased on Second Loop?
A. Yes, sir.
Q. And who did you lease it from?
A. From Joe Blanton.
Q. Is that the first dealings you had with Joe Blanton?
A. That was, yes, sir.
Q. And how was he as a -- was he managing that particular lease?
A. Yes, sir.
Q. And how long did you deal with Joe Blanton at Daddyo's?
A. We leased the property for several -- several years. I don't really recall how many years, but more than one, and then we actually purchased the property through Joe.
Q. And so you don't know when that would have -- what year running that would have been,

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what time frame.
A. I would only be guessing.
Q. All right. Well, Mr. Blanton didn't own that property, did he?
A. No, sir.
Q. Okay. So you purchased it, and then what happened to Daddyo's Disco?
A. Oh, we ran it for a couple years, and then I changed it to Club V.
Q. So Daddyo's Disco and Club V were the same location?
A. As well as Taboo.
Q. And why did you have these name changes?
A. Every two or three years, depending on the situation, you try to regenerate some excitement, I guess you would say, try to freshen things up and that type -- that type thing. Do a little remodel. Sometimes you remodel, sometimes you wouldn't, but basically just try to keep a good kick start, reboost, I guess you would say. Change the theme a little bit sometimes, depending on what you felt like was hot at that time.
Q. And just keeping up with the whim of the entertainment business there in Florence, or

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the night -- the night club business in Florence?
A. Yes, sir.
Q. Who did you get your Budweiser products from?
A. At the time I think there was called Dubard, but I think -- I know at some time down the road they changed to Crown Beverages.
Q. So Dubard?
A. Yes, sir.
Q. And how about your Miller products? Who were they from?
A. That's always been Schafer Distributing.
Q. And how about your spirits?
A. Different people through the years. I mean, you want anybody I can remember or...
Q. Well, yeah. Who do you -- let's say the most -- the last time with Tavern On The Green, who would have been your spirits entity?
A. Okay. That would be Sarju on Third Loop Road, I think it's called. Ah, heck. I don't remember what Sarju's place is called. Florence Beverages, maybe.
Q. Sarju?
A. Sarju. S-A-R-J-E-W or something to

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advertised for rent, or what do you recall your first dealings with Joe Blanton?

A. I had called -- I had heard that the guy that had the bar on Second Loop Road was not doing so well, in some kind of trouble. So I don't remember how I got Joe's telephone number, the very first contact, but I had called Joe.

And I think, if I remember right, we was -- I had heard of -- I'd heard of Joe or, you know, through the years his name had been mentioned in different things.

But anyway, I called Joe and told him that if that particular -- I knew he was the leasing agent for that property and if he ever had -- if it ever came available I'd appreciate him giving me a call, giving me a shot at it. And he said he would.

And then I don't know how many months later, but I do remember I was in Arizona at a screen printing school. He had called and actually told me that it was -- it was available, and that's kind of how we first met.

Q. All right. So you had expressed an interest to him in leasing a location, and when that particular location came available he called

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you?

A. Yes, sir.

Q. And you had no previous dealings with him prior to that?

A. No, sir.

Q. All right. When you got back from your conference, you met with him?

A. I would assume we met, yes, sir. I would assume we met face to face.

Q. And did he go over a lease contract with you, or did he show you a particular property and say this is available?

A. I was familiar with the -- with the property. I don't -- I really don't recall how the whole -- how that particular whole thing came about, but I would assume there was some type of negotiation as far as terms or something of that nature. And we came to agreement and signed the lease, and then years down the road I think it was for sale and ended up actually purchasing the property.

Q. All right. In that particular instance, that building that you were leasing became available to purchase.

A. Yes, sir.

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Q. And you inquired with Joe about the parameters for that, or was there a separate real estate agent, or what?

A. No. Me, Joe.

Q. Just Joe?

A. Yes, sir.

Q. And so you negotiated with Joe to purchase the property?

A. Yes, sir.

Q. And so he served as the broker for that particular transaction? Do you recall?

A. As far as I remember, that's -- I know I didn't have no other representation. I think it was just Joe, was the only one that I believe was involved.

Q. All right. And so was it you that purchased the property, or did you purchase it through an LLC or an entity?

A. I think -- I think me and Charles Lamb purchased it as us, not a entity.

Q. Okay. So you and Charles Lamb?

A. Yes, sir.

Q. Tell me about Charles Lamb. Who is he and what's your relationship with him?

A. He was a friend of mine that I

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graduated high school with and he had moved to the beach for many, many, many years and he had came back to open up a restaurant in town with his group of restaurant people at the beach over on Irby Street. And then somewhere down the road me and him opened up together the Daddyo's business.

Q. Was he involved with you for the Tavern On The Loop business?

A. Not at the one in Sweet Briar Shopping Center, no, sir.

Q. Is he still around?

A. I would assume he's around, yes, sir.

Q. Is -- you say he was a friend of yours. Does that mean y'all aren't friends any longer, or are you still friends?

A. I consider us friends.

Q. You just don't have any business dealings with him presently?

A. No, sir. He had a son, and that kinda began to consume all of his time. I hadn't talked to Charles in a long time. He's a single parent, I guess you would say.

Q. What is JBJR Enterprises, Inc.? Are you familiar with that entity? JBJR Enterprises, Inc. It's one of the defendants you've sued in

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this complaint.
A. Is that on the front page?
Q. You'll see it right here on the complaint.
A. Oh, oh, oh.
Q. JBJR. It should be on both.
A. I was under the thought process that that was what Mr. Blanton's company was called.
Q. Did you ever enter into any particular contract or any dealings with JBJR?
MR. LE CLERCQ: Object to the form of the question.
THE WITNESS: Can you repeat the question?
BY MR. ANDERSON:
Q. Let me see if I can rephrase the question so it won't be objectionable. Are you aware of any particular contract or business arrangement you may have entered into with JBJR?
MR. LE CLERCQ: Same objection, but you can answer.
THE WITNESS: I'm not aware, as I'm sitting here, of any business dealings that I had with a JBJR Enterprises. My --
BY MR. ANDERSON:

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Q. And let me make it also Joe Blanton and The Blanton Company. When you dealt with Joe Blanton and his company, The Blanton Company, were all those dealings with him primarily as a property manager? In other words, he was managing property that you were interested in?
A. Yes, sir.
Q. And in that role, do you know whether he owned any of the property, or was he basically managing it for an owner?
A. It was my understanding that he was managing all -- he may own some properties that I was not aware of, but it was my -- my understanding with Joe has always been that he was one that -- him and his company manages properties.
Q. Okay. Are you familiar with his operation?
A. I mean, I'm aware of what he does to make a living. I know that he's a property manager.
Q. All right. Does he have a large company, or is it just him and a couple of office workers or...
A. Him and two very sweet ladies.
Q. Okay. Do you consider him a friend?

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A. I do.
Q. Had you done business with him in your sign company or with your T-shirt company or anything of that nature or any other business entities?
A. I actually did do a sign for Joe on his building that he's at now, yes, sir.
Q. All right. Did he pay you for that work?
A. Yes, sir.
Q. Has he always basically kept his word to you in the past?
A. Yes, sir.
Q. When this particular lease -- issues came up with this lease, did Joe meet with you or talk to you about it?
A. When the issues started to arise?
Q. Right.
A. Yes, sir.
Q. What did he tell you?
A. He told me that he was very sorry that this had happened but that he felt like there was nothing for me to worry about because if the bank ever did sell the property, that anybody in their right mind would want to keep actually a tenant

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like myself that paid rent on time every time, was basically his philosophy.
Q. Did he go to bat for you on this transaction?
A. Did he go --
MR. LE CLERCQ: Object to the form.
BY MR. ANDERSON:
Q. Was he trying to assist you with staying in the property?
A. Best of my recollection, according to Joe, he was, yes, sir.
Q. Okay. Would you agree that his role was limited or at least his hands were kind of limited as far as what he could do since he didn't own the property?
MR. LE CLERCQ: Object to the form of the question.
BY MR. ANDERSON:
Q. And there can be objections throughout, and that's just -- he's asserting on the record for the court to later make a determination. But unless he tells you not to answer a question, you're still supposed to answer the question, okay?
A. Okay.
Q. So did you realize that Joe didn't own

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the Tavern On The Loop property or The Blanton Company didn't own that property? You knew that; right?
A. Yes, sir.
Q. You knew that he was managing the property for other owners; correct?
A. Yes, sir.
Q. And so when he was trying to help assist you, he knew that you got into the property and had -- and improved the property for your business; right?
A. Yes, sir.
Q. And he was shocked when there was an issue as far as a deadline or wanting you to move elsewhere.
MR. LE CLERCQ: Objection to the form of the question.
BY MR. ANDERSON:
Q. Did you realize that? I mean, did he tell you he was shocked?
A. He was -- it was my understanding that he was shocked.
Q. And you met with him; right?
A. I would always ask to speak with Joe anytime I would take my rent. I considered him a

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friend.
Q. All right. And other than this relationship, there's been no other -- no other issue with him; right?
A. Correct.
Q. When's the last time you've seen him?
A. I don't remember.
Q. Have you seen him since the suit's been filed?
A. No, sir.
Q. That's no?
A. No, sir.
Q. Do we need to take a break?
A. No, sir.
Q. On No. 2 of this -- page 2 of this document, your responses, I'll draw your attention to the last sentence where it starts Timmons considered Blanton a friend. Do you see that?
A. (Witness moves head up and down.)
Q. Timmons trusted Blanton and had previously done leases with him and purchased property from him. Do you see that?
A. (Witness moves head up and down.)
Q. You have to --
A. Yes, sir. Yes, sir. I'm sorry.

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Q. And Timmons said Blanton's word and handshake, that he had written a contract, signed and dated by both of them. Do you see that?
A. Yes, sir.
Q. You had purchased property from him. He didn't own property. He just served as the broker for --
A. Correct.
Q. -- that previous property that was called -- I can't remember what that particular piece of property was called. I think we talked about it earlier. Daddyo's Disco; right?
A. Yes, sir.
Q. Okay. That's the property you're talking about when you say that you'd purchased property from him --
A. Yes, sir.
Q. -- is that correct?
A. Through him, yes, sir.
Q. Okay. And Blanton hadn't wronged you in the past, at least up to that time or up to the Tavern On The Loop entity. He had always been somebody that you trusted in doing business with; correct?
A. Yes, sir.

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Q. And you go on to say that he had told you, in effect, that if a man's handshake and word is no good, then the man is no good. Do you see that?
A. Yes, sir.
Q. When did he tell you that?
A. We used to talk anytime I would get a chance. And he reminded me a lot of my pops with his philosophy. I can't recall the exact -- exact time frame that Joe said that as I'm sitting here right this second.
Q. Well, would that have been early on with the Daddyo's lease and purchase, or would that have been during the time frame you did the sign for his company, or would that have been during the time frame that you were operating the Tavern On The Loop?
A. I think it was closer to the time that we was negotiating this last lease.
Q. The Tavern On The Loop lease?
A. In the conversation, yes, sir.
Q. When you were negotiating that lease, did you ever ask about who owned the property?
A. No, sir.
Q. Did he ever share with you who owned

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the property?
A. No, sir.
Q. Did you know about an entity, Atlantic, that owned a -- or ran a ambulance company out of one of the buildings?
A. I never knew nothing about Atlantic or any other partners or none of that. My dealings like that have always been with Joe. I knew there was -- was some sort of owner, but I didn't really care one way or the other. Joe was my guy and that's who I, you know, trusted and signed the lease with. I didn't -- I didn't ever hear nothing about the word Atlantic Regional, LLC until I received some sort of paperwork down the road. I mean, down, you know, through this process.
Q. All right. There were other tenants in the Sweet Briar Shopping Center.
A. Yes, sir.
Q. Who were some of those other tenants?
A. One of them was some kind of makeshift nightclub, and then there was a hair salon. There was a day care. At one time there was a Michael's Italian, but not during this process. And there was somebody there that did run some sort of ambulance, an EMS type service.

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Q. Did you know that the ambulance/EMS type service was actually one of the owners, or did you ever know that, or had that ever been told to you?
A. No. When we -- a group of doctors had owned it at one time. I did know that when we purchased the property. And it seemed like it may have -- seems like it may have at some time been mentioned that the ambulance company was the owners of that strip mall or something to that effect.
Q. The other nightclub or other nightclub entity, who was that?
A. I don't even have no clue how you would keep up with that. There was -- whoever wanted to -- I don't know who owned it or signed the lease with Joe, but I know they'd be open sometimes once a month, sometimes not for three months, sometimes four nights in a week. You just didn't ever -- I don't know who owned it. I have no clue.
Q. When you met with Mr. Blanton to lease the property where the Tavern On The Loop was located, did you explain to him what you were wanting to do?
A. Yes, sir.
Q. And what did you tell him?

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A. Told him I wanted to open up a nice sports bar with great food that would have a really good happy hour, where a place like me and him wouldn't be ashamed to carry a business associate or something to that effect after work and have a bite to eat and a cold beer or cold Pepsi or whatever your choice may be.
And I plan on doing it right, that this was -- I was going to put all my knowledge over the previous years that I had learned of the good to mistakes I had made, and this was -- this was the one that I wanted to really do right; a place that I could have my mother and stepfather stop by and me not be ashamed because the floors were painted black and the walls black and there was black lights everywhere like some of my places in the past. I wanted to do this place right.
That's what I told Joe. I said, I'm going to do it right. This ain't -- he says, you ain't going to do none of them -- ain't going to be none of them little kids every night, nothing like you used to do. I said, no, sir. I said, this is going to be -- we're going to -- I'm going to do this one up and have it, you know -- mainly happy hour, really, is what I hoped.

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Q. And did he have a particular location in mind for you, or did you already know about this particular location?
A. Yeah. It kinda, as weird as it may sound, played out kinda like our first interactions. I had called Joe because I had heard rumors that these cats back there in the Sweet Briar was moving out or, you know, going to move out. So I -- and somebody -- I had got a rumor that one or two people had looked at it.
And so I called Joe kinda like I did many, many, many years ago and said, Joe, I hear that that place back there might be -- might come -- become available. And if it is, I want you to give me first shot.
He said, well, Mike, all I can tell you -- and I said -- I told Joe, I said, Joe, Lord have mercy. I don't know that I'd ever seen such. They're open one month -- one day a month, maybe. They won't up this month. Then one week they might open three or four days. I said, I don't know what's going on, but I've heard a couple people's looking at it so just keep in mind if it ever comes available. Let me know.
He said, I don't care what they do with

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it, Mike. He said, they bring me my rent check like clockwork every month. As long as they pay me the rent, I don't care what they do. They can open, not open. Don't make no difference to me. I said, well, I understand that.

I said, well, all I'm saying is, if down the road, next month, next year, whatever the case, if it ever becomes available, just make sure you call me first, if you don't mind. He said, you know I will. I've done it before. I said, yes, sir.

And we chitchatted a minute and asked him how he's been doing and, you know, same old normal type stuff like that.

Q. So what was your -- what were you doing at that particular time?

A. What you mean?

Q. What kind of occupation? What business pursuit were you involved in when you were inquiring about this location?

A. I still had the building up front, right in front of this location.

Q. And what were you running out of that?

A. A bar that I called Tavern On The Loop.

Q. Okay. So you had Tavern On The Loop in

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front of this, but it wasn't part of this --

A. No, sir.

Q. -- shopping center.

A. (Witness moves head from side to side.)

Q. It was just -- where -- tell me about that entity. What was going on in the Tavern On The Loop there?

A. It was still operating fine. There was just no -- there was no friendliness. It was still all the black lights and the floors were, you know, painted. It was just same old 12-hour-a-week kinda late-night bar type thing.

Q. Okay. It didn't have a restaurant?

A. It had a small kitchen in the back where we'd cook wings and hamburgers, yes, sir.

Q. And that's what you were -- that's where you were working at the time when you mentioned this to -- this business concept to Joe?

A. Yes, sir.

Q. All right. You go on in your interrogatories. You say that Blanton was aware of the enormous amount of money that was needed to get the location renovated and suitable for your purposes, all of which were known to Blanton and knew he -- it was his responsibility to make sure

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that there was an adequate lease in place that would give Timmons a long-term commitment so that Timmons could recoup the large investment necessitated by the investment and renovation of the space. Do you see that?

A. Yes, sir.

Q. How did he know what kind of amount of money was going to be spent there?

A. Well, after our first -- whatever and ever, he called me and told me it was available, that I could come by and get a key if I wanted to. And I forget what day it was, but I said, okay. I'll come by the beginning of next week and grab a key and go take a look. So I did.

And then after I looked at it I called Joe and said, I don't know if you've seen this place, but it is a total gut job. They have destroyed the entire -- the only thing that's left is some old pleather couches and more cockroaches and tiny roaches than I have ever seen in my entire life in one particular building. I said, this is a total redo. There really nothing there that I can use for my purposes.

And I don't know. I'm sure Joe probably went over and looked at the place or, you

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know, kind of followed up on what I was telling him. And then we just started communicating, having dialogue like we had done in the past.

Q. All right. So there was a negotiation process before any lease was entered into?

A. Yes, sir.

Q. That conversation you had with Joe, did he go out to the location with you? Did he ever meet you out there?

A. Not that I recall, no, sir.

Q. What did this other entity -- what was it called?

A. Which one?

Q. The place that you were -- that was not open all the time.

A. Oh. I absolutely can't --

Q. Did they serve food there?

A. I don't think they served food there, but there's no telling. I mean, they could have.

Q. Did it have any kind of -- in the interior of that place, did it have any coolers, did it have any stoves, any kind of appliances that --

A. Only thing it had was a hood, and the exhaust system from the hood had been gutted.

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Q. It had been taken out?
A. Yes, sir.
Q. So it was just a hood there?
A. Yes, sir.
Q. And that was in the -- wherever the kitchen was located or was going to be located?
A. Yes, sir.
Q. Did you have any discussion with Mr. Blanton on how much it would cost you to upfit it?
A. Yes, sir.
Q. And tell me about that. How was -- how were those conversations had?
A. I told him I thought it would take somewhere around the hundred thousand dollar mark. 80, 90, hundred grand. That I really wouldn't know until I, you know, looked, evaluated a little bit better, but it wasn't going to be no 30-, $40,000 type operation. It had to be a total upfit. Total, complete upfit, and --
Q. And what did he say?
A. He said, I know it's going to -- he said, I know it's going to be expensive and that I'll make sure you get -- I had made some sort of offer to Joe to what I thought was reasonable,

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being the amount of money I was going to have to spend.
And then Joe come back to me with, I guess, what you would call something like a counter type offer. And he was absolutely aware of the money that I would have to spend and even at one point required me to send him some kind of quick little letter stating the -- you know, what I thought it was going to cost to upfit it. Originally I wanted to pay $1,500 a month, and that wouldn't work.
Q. Did he say he was negotiating with anyone or any particular owner?
A. He said he'd need -- all Joe ever said to me was, I need you to put me together a quick little letter stating your experience and background in the industry, the amount you're going to spend on upfitting and what you are offering to pay for a lease so I can show it to my guys, is exactly what Joe said. My guys.
(DEFENDANT'S EXHIBIT 2, Letter to Mr. Blanton from Mr. Timmons dated 8-17-15, marked for identification.)
BY MR. ANDERSON:
Q. Let me show you what's been marked as

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Exhibit 2. Is that the letter that you're referring to?
MR. LE CLERCQ: Hold on. Just a second, counsel.
MR. ANDERSON: That didn't have a Bates number on it, so if you need to discuss it with him. I'm thinking that that was produced.
MR. LE CLERCQ: We hadn't -- I don't think we've gotten any production from anybody, from any of the defendants on this. So, I mean...
MR. ANDERSON: If you need to take a break and discuss it with him, go ahead.
MR. LE CLERCQ: Okay. This might be a good time for a restroom break also.
MR. ANDERSON: Okay. We'll go off the record.
(A recess transpired from 12:01 until 12:17.)
MR. ANDERSON: Okay. We'll go back on the record.
BY MR. ANDERSON:
Q. Exhibit No. 2. You had talked about that Mr. Blanton had asked for a statement from you regarding what your plans were with the property. Is this the statement you provided to him?

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A. Yes, sir.
MR. LE CLERCQ: Object to the form.
BY MR. ANDERSON:
Q. There's some handwritten notes on this document, and I'm not sure who wrote any of those. Is any of those handwritten notes on that letter from you?
A. No, sir.
Q. All right. But the typed letter itself to Joe Blanton from you, that was signed by you?
A. Yes, sir.
Q. And that was dated August 17th of 2015?
A. Yes, sir.
Q. And so you recall typing this letter to give to Mr. Blanton?
A. Yes, sir.
Q. And this was prior to the lease being entered into?
A. Yes, sir.
Q. All right. Did you bank with First Reliance Bank?
A. Yes, sir.
Q. And were you banking with them at the time that you entered into this lease?
A. Yes, sir.

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF FLORENCE) CVA No. 2018-CP-22-00227

John Michael Timmons, Jr., d/b/a Tavern on the Loop,
Plaintiff,
vs.
First Reliance Bank, Inc., The Blanton Company, Inc., JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc., WW Plasma II, LLC, Dale Porter, F.R. Saunders, Jr., Hunter Williams, and Joseph B. Blanton, Individually,

Defendants.

CONTINUATION OF THE
DEPOSITION OF JOHN MICHAEL TIMMONS, JR.

DATE TAKEN: August 20, 2019

TIME BEGAN: 10:05 a.m.

TIME ENDED: 4:13 p.m.

LOCATION: Oxner & Stacy, P.A.
235 Church Street
Georgetown, SC 29440

REPORTED BY: Michele E. Starkey
Certified Shorthand Reporter
Notary Public for South Carolina

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*Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to any other party or person.

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.....On behalf of the Defendants WW Plasma II, LLC and Hunter Williams

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.....On behalf of the Defendants First Reliance Bank and Dale Porter and F.R. Saunders, Jr.

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ALSO ATTENDING: (None)

STIPULATIONS: The within deposition was taken pursuant to the South Carolina Rules of Civil Procedure.

WAIVER: Examination and reading of the deposition are waived by the witness and by the parties.

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1931 Second Loop Road, correct?
A. Yes, ma'am.
Q. And we talked about another foreclosure that you experienced for a residential property previously, correct?
A. Yes, ma'am.
Q. So it's fair to say that, you know, by the fall of 2015 you understood that foreclosures occur.
MR. LE CLERCQ: Object to form.
A. I mean, yeah, yes, ma'am.
Q. And because you had previously gone through two foreclosures, you were personally familiar with the process of a real estate foreclosure, correct?
MR. LE CLERCQ: Object to form.
A. I was familiar with the fact that if you can't or don't pay or choose not to make your payments, you can be foreclosed on and lose the property, yeah.
Q. And you were aware of the fact that when a foreclosure occurs, a lawsuit gets filed to effectuate the foreclosure, correct? Because you were sued in two foreclosure actions.
A. Yes, ma'am.
Q. Okay. The foreclosure of 1931 Second Loop Road, do you remember, did you get a judgment entered against you where you actually had to pay a bank some

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money or did you just lose the property?
A. Best of my knowledge, I just lost the property.
Q. Okay. So in the summer I guess of 2015, talking about the time immediately before you signed the lease for 1945 Second Loop Road, the foreclosure was in the process of happening on 1931 Second Loop Road, right?
A. According to the paperwork, it looks like it was, yes, ma'am.
Q. Okay. Was it because of the foreclosure that you were looking for a new place to operate?
A. Not necessarily, no. It was -- we had been in talks with--I saw his name on it a while ago--the bank representative to satisfy the amount that was past due on the building and had made some leeway with that but the -- I had called Joe sometime earlier that year because I heard rumors that people was looking at the spot and it was going to be available, and I've always loved that spot. Every bar owner in town loved that spot and I heard they were snooping around trying to get it type thing, kind of the same situation as when I leased the property out front, so I reached out to him back in the day, as I said in my first deposition, and he in a nutshell was like, I don't care what they do. If they don't open one day a month, once every three

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months or 24 hours a day, seven days a week, they pay me my money on time every time, but if it ever becomes available, I'll be sure that you're the first one to know. And that's when he kind of did that sometime in mid or late July or early August of that year if I remember right.
Q. Okay. All right. Regarding Mr. Blanton, I know you mentioned that you had signed a lease with him for 1931 Second Loop Road before you purchased the property, correct?
A. Yes, ma'am.
Q. Other than that property, had you had any other dealings with Mr. Blanton in terms of leases or property?
A. No, ma'am. As far as leases, it was those two lease agreements that we made for 1931 Second Loop Road. I think it was 1945 with that address, although depends on what you look at it will say something different here and there, it seems to be, and then the one purchase of the property up front.
Q. Of 1931 Second Loop Road?
A. Yes, ma'am.
Q. Okay. So your prior professional association with Mr. Blanton was limited to the lease for 1931 Second Loop Road, the purchase of 1931 Second Loop Road,

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and the lease for 1945 Second Loop Road?
A. Yes, ma'am.
Q. Okay. When you purchased 1931 Second Loop Road, did Mr. Blanton represent you in that transaction or the seller?
A. I think if I recall, and I wouldn't bet my children on it by no means or -- but I think he represented both sides. I don't ever -- I never remember another agent involved kind of thing. I believe -- I believe he represented both sides to the best of my recollection.
Q. Okay. So regarding your discussion with Mr. Blanton, I understand you had expressed an interest to him in the property previously and then sometime in the July or August of 2015, he called you about 1945 Second Loop Road; is that right?
A. And said it was available, yes, ma'am.
Q. Okay. What else did Mr. Blanton say to you during that conversation that you can recall?
A. Pretty much just, Hey, just letting you know that the place -- the corner spot back there is available, and I said something to the effect, Well, yeah, I heard -- somebody was telling me earlier this week there was a couple of box vans backed up to the door and I figured they must have been moving their

Ray Coit Yarborough, Jr.
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(843) 676-0580
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July 23, 2015

Richard Cooke
1967 Scott Street
Lake View, SC 29563

The Blanton Company, Inc.
Mr. Joe Blanton
126 S. Coit Street
Florence , SC 29501

HAND DELIVERED

RE: First Reliance Bank, Plaintiff vs. Atlantic Regional, LLC, et al

CA# 2015-CP-21-2106

Dear Sir or Madam:

On behalf of First Reliance Bank and pursuant to the attached assignment of rents from Atlantic Regional, LLC, I am directing that the two of you immediately pay all rent monies held as principal or as agent for Atlantic Regional, LLC, or its tenants on the property referred to in the assignment to Mr. Dale Porter at First Reliance Bank. Atlantic Regional LLC is in default under the terms of a note, mortgage and assignment of rents held by the bank. I am attaching a copy of a motion which I have filed and am herewith serving it upon you. Pursuant to the assignment and S.C. Code Section 29-3-100, all future payments on your lease are to be made to:

First Reliance Bank
c/o Dale Porter
2170 W. Palmetto Street
Post Office Box 36
Florence, South Carolina 29501

Sincerely Yours,

Ray Coit Yarborough, Jr.
Attorney for First Reliance Bank.

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

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Dear. Joe Blaton, August 17, 2015

My offer for the property located at 1945 Second Loop Road is as follows:

- 3 year term with two 5 year options
- $2000 per month for the first 3 year term with 6 months free rent and no security deposit
- First 5 year option $2250 per month
- Second 5 year option $2500 per month

Please take the following into consideration I am a nightclub owner with over 25 years of experience in the industry, all money will be paid on time every time. The reason I think my offer is extremely fair to both parties involved is because the place was destroyed by the previous tenants and I am looking at somewhere between $80,000 to $90,000 investment to get operable.

Thank you for your consideration

8-17-15

Mike Timmons Jr

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COMMERCIAL LEASE AGREEMENT

This lease is made between: **THE BLANTON COMPANY** herein called Lessor, and MIKE TIMMONS, JR. D/B/A TAVERN ON THE LOOP

Herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in the city of Florence, County of Florence, State of South Carolina, described as:

1945 SECOND LOOP ROAD FLORENCE, S.C.

upon the following TERMS and CONDITIONS:

Terms and Rent: Lessor to lease to Lessee the above premises for a term of 3 year, Commencing AUG. 20, 2015 and terminating on SEPT 1, 2018 as provided herein..Lessee shall pay to Lessor, without deduction or offset and prior to notice or demand, and for the use and occupancy of the leased premises, and monthly rental of $2,000 for 36 months & $_____ for ___ months payable in advance on the 1st day of each and every calendar month thereafter in advance.
FIRST MONTH DUE DECEMBER 1, 2015.

(A) All rental payments shall be made to Lessor, at the following address:

126 S. Coit Street, Florence, SC 29501

(B) Late Payments: Any rent payment not received by Lessor within 5 days of its due date shall be subject to a late fee of $45.00. This Late Fee shall commence at 5:01 p.m. on the 5th day of the month and accrue until rent payment and accumulative Late Fees are received by Lessor.

(C) Rents not received by the 9th of the month will be subject to collection by the Magistrate with a $45.00 Eviction fee added to rent due.

(D) Reinstatement fee of $45.00 will also be added to rents not paid by the 9th of the month.

Use:....Lessee shall use and occupy the premises for: BAR
The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose.

EXHIBIT 5

ELECTRONICALLY FILED - 2020 Jun 08 5:32 PM - FLORENCE - COMMON PLEAS - CASE#2018CP2100227

Care and Maintenance of Premises:.....Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including: plumbing, electrical, flooring, painting, plate glass windows, and HVAC systems. Lessee shall surrender the same at termination hereof, in as good condition as received, normal wear and tear accepted. Lessee shall be responsible for all repairs required, excepting the exterior walls and structural foundations. ~~**TENANT RESPONSIBLE FOR FIRST $500 OF HVAC REPAIR.~~ LANDLORD RESPONSIBLE FOR ROOF, EXTERNAL WALLS AND ROOF.

Alterations:.....Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

Ordinances and Statutes:.....Lessee shall, at Lessee's sole cost comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, pertaining to the use of said premises and shall faithfully observe in said use all municipal ordinances, state and federal statutes now in force or which may hereafter be in force and specifically observe and maintain all Environmental standards pertaining to soil contamination.

Security Deposit:.....Lessee shall deposit with Lessor on the signing of this lease the sum of WAIVED IN LIEU OF REPAIRS $ 0 as security deposit for the performance of Lessee's obligations under this lease, including without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease. To be paid $100.00 per month for six (6) months.

Assignment and Subletting:.....Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting with consent shall be void and, at the option of the Lessor, may terminate this lease.

Utilities:.....All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, and electricity and telephone services.

 Lessee Lessor

TENANT TO RECEIVE (3) MONTHS FREE RENT FOR SEPTEMBER, OCTOBER, NOVEMBER FOR RENNOVATIONS TO SAID PROPERTY

Entry and Inspection:.....Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty days prior to the expiration of this lease, to place upon the premises any usual..To Let or For Lease..signs, and permit persons desiring to lease the same to inspect the premises thereafter.

Possession:.....If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or avoidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 1 days of the commencement of the term hereof.

Indemnification of Lessor:....Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim for damages, no matter how caused.

Indemnification of Lessor:....Lessee, as a material part of the consideration to be rendered Lessor's , hereby waives all claims and demands against Lessor for all the aforesaid losses and damages to goods, wares and merchandise in, upon or about said premises, and for injuries to persons in, upon or about said premises, from any cause whatsoever, arising at any time. Lessee will hold Lessor, its employees, agents and affiliated entities exempt and harmless from any liability, loss, cost and obligation on account of any damage or injury to any person, or the goods, wares and merchandise of any person, arising in any manner from the use or occupancy of the premises by the Lessee.

 Lessee Lessor

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Insurance:.....Lessee, at Lessee's sole cost and expense, but for the mutual benefit of Lessor and Lessee maintain public liability insurance, including liability against claims for personal injury, death, or property damage occurring in, upon, or about the premises and on any sidewalks directly adjacent to the premises. The limits of liability of such insurance shall not be less than $500,000 in respect to injury or death of one person and to the limit of not less than $1,000,000 in respect to any one occurrence and to the limit of not less than $100,000 in respect to property damage or in such higher amounts as Lessor may require. **TENANT TO PROVIDE COPY OF POLICY.

Insurance:.....All such policies of insurance shall be issued in the name of Lessee, with the LESSOR'S NAMED AS ADDITIONAL INSURED. Evidence of the insurance of such policies shall be delivered to Lessor within (10) days after the term of this Lease commences. Lessee shall obtain a written obligation on the part of each insurance company to notify Lessor in writing at least (30) days prior to any cancellation or material change of coverage.

Eminent Domain:.....If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

Destruction of Premises:.....In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof. Lessor may elect to terminate this lease whether the demised premises are injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

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Heirs, Assigns, Successors:.....This lease is binding upon and inures to the benefit of the heirs, assigns, and successors in interest to the parties.

Option to Renew:.....Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional term of 10 years commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the monthly rent shall be the sum of $2,400 1ST TERM. The option shall be exercised by written notice given to Lessor not less than _60__days prior to the expiration of initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire. NEGOTIABLE WITH 60 DAYS NOTICE.. 2ND TERM 5 YEARS $2600/month

Subordination:.....This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

Environmental – Hazardous Substances:.....Tenant shall not cause or permit any hazardous or toxic substances, materials, or waste ("Hazardous Substances") to be used, generated, stored or disposed of in, on or under, or transported to or from the premises (Hazardous Materials Activities) unless (a) such Hazardous Substances are necessary for Tenant's business and (b) Tenant first obtains the written consent of Landlord. If these conditions are satisfied, tenant shall at all times and in all respects comply with all local ,state, and federal laws, ordinances, regulations and orders relating to Hazardous Substances.

Tenant shall indemnify, defend (by counsel acceptable to Landlord), protect, and hold Landlord harmless, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures. Losses, costs (including clean-up costs) or expenses (including attorney's fees, consultant's fees and expert's fees) for the death of or the injury to any person or damage to any property whatsoever, arising from or caused in whole or in part, directly or indirectly, by (a) the presence in, on, under, or about the premises of any Hazardous Substances; (b) any discharge or release in or from the premises of any Hazardous Substances; (c) Tenant's use, storage, transportation, generation, disposal, release or discharge of Hazardous Substances, to, in, on under, about or from the premises; or (d) Tenant's failure to comply with any Hazardous Substances law. Tenant's obligation under this section shall survive the expiration or earlier of the term of the lease.

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Lessor's Remedies on Default:... If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 5__ days, after the giving of such notice (or if such other default is of such other nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such _5_ and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than _5_ days notice to Lessee. On the date specified in such notice the term of the lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

Tax Increase:... In the event there is any increase during any year of term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation. Lessee shall pay to Lessor upon presentation of paid tax bills in the amount equal __N/A__per-cent of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

Common Area Expenses:.....In the event of the demised premises are situated in a shopping center or in a commercial building in which there are common areas, Lessee agrees to pay his pro-rate share of maintenance, taxes, and insurance for the common area. TO BE SHARED WITH ADJACENT TENANT DURING 8AM TO 5PM

Attorney's Fees:.....In case suit should be brought for recovery of the premises or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

Notices:.....Any notice which either party may, or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address show below:

_____126 S. Coit Street___,Florence SC 29501_____

Or at such other places as may be designated by the parties from time to time.

 Lessee: _____ Lessor: _____

Additional Terms and Conditions:...

Entire Agreement:... The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed 20th of Aug., 2015

By _____
Lessee

Witness

By _____
Lessor

Witness

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In the Matter Of:

JOHN MICHAEL TIMMONS

vs

FIRST RELIANCE BANK INC et al.

DALE PORTER

January 24, 2020

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into the record, I would ask you to just briefly read over the entire language from there down to the end of the page and just familiarize yourself with it. Make sure you understand it. In fact, while you're doing that, I will just put a couple of selected points into the record.

It states, "Lender's Right to Receive and Collect Rents. Lender shall have the right at any time, even though no default shall have occurred under this assignment, to collect and receive the rents. Lender is hereby given and granted the following rights, powers, and authority:"

One of the rights is to enter the property, that the Lender can enter and take possession of the property. The one at the very bottom of the page states "Lease the Property".

And so what I would ask you to do, please, sir, is to read that subsection into the record where it says "Lease the Property."

A At the very bottom?

Q Yeah, where it says -- starts with "Lease the Property".

A "Lender may rent or lease the whole or any part of the property for such term or terms and on such conditions as Lender may deem appropriate."

Q If you turn over, not to the next page, Exhibit A -- But while you're on Exhibit A, does that, to you, appear to be a fair description of the Sweetbriar Shopping Center?

A Yes, sir.

Q So turn to the next page where it says "Employ Agents". You agree with me it states, "Lender may engage such agent or agents as Lender may deem appropriate, either in Lender's name or in Grantor's name, to rent and manage the property" --

A Yes.

Q -- "including the collection and application of rents."?

A Yes.

Q Same questions as before. Is there anything in the language that you just read or that I've read into the record that you disagree with?

A No, that's what the document says.

Q So you would agree with me the bank does, in fact, have those rights vis-a-vis Atlantic?

A Yes.

Q You would agree with me then that if that language means what it says, that if Atlantic is in default on the property, say, on August 1, 2015, that if the Sweetbriar property -- if some of it is

vacant, the bank has the right, if it wants to, to come in and lease the property?

A That would be correct.

Q It could lease the property on whatever terms it wants, right?

A Are we talking specifically about Sweetbriar?

Q Yes.

A If this is specifically about Sweetbriar, we did not exercise our rights to do that. We had a right to, but we didn't exercise those rights.

Q Okay. So the bank is also given the right to appoint a receiver, right?

A Yes.

Q What's your understanding of a receiver?

A Someone who comes in and begins to collect the rents to -- that would come under contract with us to collect the rents or manage the property.

Q Did the bank at any time vis-a-vis -- I've got to stop using that expression, sorry. Did the bank at any time with regard to Atlantic, to its relationship with Atlantic, did it at any time appoint a receiver?

A I would say no.

Q Blanton doesn't qualify as a receiver?

A I don't see him qualifying as a receiver.

Q Why not?

A I think he was appointed by the Court to collect the rents as he was doing for -- continue as the property manager and agent for Atlantic Regional, and the Court ordered him to direct those rents to the bank, but he was still acting as the agent for Atlantic Regional, not the bank.

Q But you would agree with me that the language that has just been read authorized the bank to retain Blanton, if it wanted to, as its agent to manage the property?

A Yeah, but we didn't exercise that right.

Q Let's use the example that we used with Mr. Blanton. What if a pharmacy had come in on August 1, 2015, and said, we want all of Atlantic's space and we'll pay you a premium for it, but we've got to have a 30-year lease, would the bank, under the document and language you just read, have had the right to enter that lease?

A It had the right to enter that lease, but we would not have interfered with Atlantic Regional. Atlantic Regional would have had to make that decision while it was in foreclosure, in their attempt to cure the loan. We're not going to

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Q Is it your testimony that -- Let me make sure I understand. What you intended -- What the bank intended was that Blanton collect the rents from the tenants and pay them over to the bank, right?
A Correct.
Q But your position on the record here today is that that does not make Blanton the bank's agent?
A That is correct.
(Deposition Exhibit 6 was identified for the record.)
BY MR. LE CLERCQ:
Q Let's take a look at Exhibit 6. This appears to be the motion to enforce rents that was attached to the letter that you've just seen. Do you agree with that characterization?
A Yes.
Q And you see that it's dated July 23, 2015?
A Yes.
Q And is Ray Coit Yarborough the attorney for the bank in this foreclosure proceeding?
A Yes.
Q And you would agree with me that it states that the bank will move the Court to direct the agent to pay the lease proceeds due to Atlantic over to Plaintiff?

A Yes.
Q And you would agree with me that -- that soon thereafter that you received the tenant roster from Blanton?
A Yes.
Q Would you also agree with me that one of these tenant rosters was written the name of Mike Timmons?
A Yes.
Q The bank was in possession of that document prior to the execution of the lease by Blanton with Timmons?
A Yes.
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q Let's look at -- Here's a document that is 6-A. It's not actually -- It's not in -- yeah, turn over to the next one. You see there's a green sticky tab that says 6-A?
A Right there.
MR. LE CLERCQ: This, ma'am, needs to be marked. That's 6-A.
(Deposition Exhibit Number 6-A was marked for identification.)

BY MR. LE CLERCQ:
Q Now, what I would like you to do is flip back to Exhibit 5. And what it says at the bottom of that page is, "Pursuant to the assignment and SC Code Section 29-3-100, all future payments on your lease are to be made to: First Reliance Bank, c/o Dale Porter."
A Uh-huh.
Q Now, if you would, flip back over to 6-A, I'll represent to you this is the code section that Mr. Yarborough has cited. You've indicated the bank's attorney is Coit Yarborough.
A Yes.
Q So I would draw your attention to the very bottom of the page to the highlighted language. Would you agree with me that the bank is obligated to proceed in a -- what the statute calls a commercially reasonable manner in a situation where it is acting in a foreclosure and is exercising its rights under an assignment of rents?
A Yes.
MS. HOUGHTON: Object to form.
(Deposition Exhibit 7 was identified for the record.)

BY MR. LE CLERCQ:
Q Let's take a look at Exhibit 7. And we're going to go -- These are responses to Requests to Admit that we got from The Blanton Company in this case, and I want to get your opinion on this. If you look at page 17 -- I'm sorry, page 13. What I'm looking at is on page 13, paragraph 17. And it says, "Admit that, subsequent to July 24, 2015, Blanton had either an oral, written, or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for: Work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank," and, number 2, "acting as property manager with regard to Sweetbriar, including managing the property Timmons leased." And the response to that by Blanton is "Admitted".
So my question to you would be the same question. Do you agree that subsequent to July 24, 2015, that Timmons -- excuse me. Do you agree that subsequent to July 24, 2015, that Blanton and the bank had either an oral, a written, or an implied contract whereby Blanton had the right to be compensated for his work done collecting the rents?
MS. HOUGHTON: Object to form.

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Q So there weren't any other prospective tenants in -- Let me ask it this way: Who were the prospective tenants for Sweetbriar between August 15 and September 1st of --

A I don't know.

Q You don't recall whether Mr. Blanton mentioned Mr. Timmons' lease in that regard?

A No.

Q What was -- Tell me about your conversation with Mr. Blanton.

A Joe called me up, saying, you know, I've got the tenant that is wanting to lease a property. And he says, I just want to know what I need to do here. And I told Joe, I said, Joe, I said, this loan is in foreclosure. I can't give you any guidance or tell you what to do or what not to do. I'm sorry, I can't do that at this time. I think he ended the conversation, well, I think I'm going to go ahead and enter the lease. I said, I'm sorry I can't tell you help you. That was basically the conversation.

Q And that was by telephone?

A By telephone.

Q Would you agree with me you knew at that time that the lease that was being proposed was not a month-to-month lease, but was a longer term lease?

A I had no knowledge of whether it was going to be long-term or short-term.

Q He didn't say anything about that?

A No, we didn't talk about that.

Q Take a look at the next page of that exhibit. Would these have been the rent rolls that you would have sent to Andy Fowler?

A Yes.

Q And that's both page 1826 and the next page, 1827.

A Okay.

Q And 1826 is the cash flow statement for Sweetbriar July 2015. And you would agree with me that page 1827, up at the upper right, the date of that document is July 28, 2015?

A I do.

Q So you would agree with me that Blanton had sent you the tenant directory on or prior to July 28, 2015?

MS. HOUGHTON: Object to form.

THE DEPONENT: Say that again now.

BY MR. LE CLERCQ:

Q All right. The document has got a date of July 28, 2015, at 11:24 a.m.

A Right.

Q Do you -- So I assume that that's the date that -- well, I don't know. I don't want to assume anything. Is that the date that you think that Blanton produced the document? Is that the date they sent it to you? Or is that the tenants as of July 28? Tell me what your understanding of that is.

A He just sent me the rent rolls, and I saw these rent rolls, which I sent to the appraiser.

Q Okay. And so would you agree with me that he likely sent you the rent rolls fairly soon after July 24, 2015, when he got served?

A Yes.

Q Would it have been within a week?

A It would have to be, wouldn't it?

Q Yes.

A Okay.

Q All right. Do you see on this page where it says Joyce Kirven, Blue -- Blush Ultra Lounge at 1945 Second Loop Road. Under that it says, Moved. Then underneath that, it says, Mike Timmons.

A Which form are you looking at?

Q I'm looking at 1827.

A Okay. Got it.

Q So do you see where, right underneath the words Joyce, and I think it's Kirven --

A Yeah.

Q -- and then it says Blush Ultra Lounge?

A Uh-huh.

Q It says, Moved. And Mr. Blanton testified he had written that word "moved" in there and also wrote in Mike Timmons next to that.

A Right.

Q Do you recall seeing this document when Mr. Blanton sent it to you?

A I do.

Q And so you would agree with me then that the -- Let me phrase it this way: Do you understand that the space that Mr. Timmons intended for Tavern on the Loop had been previously occupied by the Blush Ultra Lounge?

MS. HOUGHTON: Object to form.

THE DEPONENT: No, I did not know that.

BY MR. LE CLERCQ:

Q You did not know that? All right. Did you understand it was Mr. Timmons that was going to be taking over that space?

A No.

Q Do you recall having a discussion with Mr. Blanton about this document?

A No. He just sent it to me, as a matter of

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DEFENDANTS FIRST RELIANCE BANK, INC., DALE PORTER AND F.R. SAUNDERS, JR.'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS TO ALL CLAIMS ASSERTED BY PLAINTIFF, AND MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

COME NOW, Defendants First Reliance Bank, Inc., Dale Porter, and F.R. Saunders, Jr. (hereinafter "FRB" and collectively "First Reliance Defendants"), and file this Supplemental Memorandum in Support of their Motion for Summary Judgment and Memorandum in Opposition to Plaintiff's Motion for Summary Judgment.

This case arises out of Plaintiff's execution of a commercial lease agreement dated August 20, 2015 with lessor "The Blanton Company" ("TBC") acting as property manager for non-party property owner Atlantic Regional, LLC ("Atlantic Regional") for a space in the Sweetbriar shopping center ("Sweetbriar"). Plaintiff executed this lease subsequent to recordation of FRB's first-position mortgage dated August 14, 2006 on the property in question, and following FRB's filing of a foreclosure action against Atlantic Regional and *Lis Pendens* dated July 20, 2015 notifying the public of such foreclosure proceedings, but before FRB purchased the property at foreclosure auction. Plaintiff did not record the 8-20-15 Lease. Plaintiff now asserts claims against the First Reliance Defendants arguing that the 8-20-15 Lease was valid, survived the foreclosure, and is enforceable against FRB.

The First Reliance Defendants submitted a comprehensive Memorandum in Support of their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment dated May 15, 2020 ("5-15-20 Memorandum"). On May 18, 2020, Plaintiff filed a Memorandum in Support of his Motion for Summary Judgment against the First Reliance Defendants. The First Reliance Defendants have already comprehensively briefed most of the issues raised in Plaintiff's Memorandum in their 5-15-20 Memorandum. The First Reliance Defendants are entitled to summary judgment in this case because by operation of the foreclosure judgment and sale, as well as the South Carolina *Lis Pendens* statute and recording statutes, the 8-20-15 Lease Plaintiff executed with TBC was extinguished as a matter of law and cannot now support Plaintiff's claims against the First Reliance Defendants. However, The First Reliance Defendants file this Supplemental Memorandum in order to respond to specific arguments raised in Plaintiff's Memorandum. First, the First Reliance Defendants respond to Plaintiff's assertions that FRB was the "true lessor" on Plaintiff's 8-20-15 Lease, including Plaintiff's argument that FRB is judicially estopped from denying that TBC acted as its agent in executing the 8-20-15 lease with Plaintiff. Second, the First Reliance Defendants respond to Plaintiff's argument that FRB did not proceed in a "commercially reasonable manner" as a matter of law. Third, the First Reliance Defendants respond to Plaintiff's assertion that FRB ratified the lease Plaintiff executed with TBC by accepting rent payments from Plaintiff on a month-to-month arrangement after FRB became the owner of the property. The First Reliance Defendants incorporate the statement of facts contained in their 5-15-20 Memorandum.

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I. <u>The First Reliance Defendants are entitled to summary judgment on all of Plaintiff's claims because they are all predicated on the existence of a valid lease enforceable against First Reliance Bank. First Reliance Bank is not a party to Plaintiff's 8-20-15 Lease, and it was extinguished by operation of law following foreclosure judgment and sale.</u>

First, Plaintiff argues FRB was party to and the lessor of Plaintiff's 8-20-15 Lease because as a matter of law, FRB was the legal owner of the property at the time Plaintiff executed his 8-20-15 Lease and because the "Mortgage specifically transferred all leases from Atlantic to Bank *ab initio*." *See* Pl. Memo. At P. 4, 28-30. Thus Plaintiff argues that by operation of the loan documents between FRB and its borrower, Atlantic Regional, Plaintiff can successfully assert a landlord-tenant relationship with FRB. Second, Plaintiff argues, irrespective of his contentions about the legal effect of FRB's mortgage documents with Atlantic Regional, FRB is a party to his 8-20-15 Lease because TBC entered into the Lease as FRB's agent. Plaintiff argues FRB "specifically authorized the Lease" and TBC has acknowledged it was entering the 8-20-15 Lease on behalf of FRB. *See* Pl. Memo. At P. 4. These factual allegations are not supported by the evidence and consist of Plaintiff's mere speculation, which is not a viable basis on which to resist FRB's Motion for Summary Judgment.

As discussed in Defendants' 5-15-20 Memorandum, Plaintiff executed his 8-20-15 Lease after FRB initiated foreclosure proceedings and filed a valid Notice of *Lis Pendens* concerning the foreclosure, but before FRB purchased the property at foreclosure auction. At that time, Atlantic Regional was the owner of Sweetbriar and had not been divested of any rights in the property. South Carolina law unequivocally required a foreclosure action, a foreclosure judgment, and a foreclosure sale in order to lawfully divest Atlantic Regional of its ownership of the property. *See* S.C. Code Ann. § 29-3-10; § 29-3-630. TBC was acting as agent and property manager for Atlantic Regional at this time. After Plaintiff executed his 8-20-15 Lease, on October 2, 2015, the Court in

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the Foreclosure Action granted FRB's Motion for Payment of Rents and ordered TBC to begin paying FRB rents derived from the subject property. *See* Deposition of Dale Porter attached as Exhibit A to Defendants' 5-15-20 Memorandum ("Porter Depo") at Ex. 20. On October 6, 2015, pursuant to the Court Order, TBC began paying rents derived from the property to FRB. *See* Deposition of Joseph Blanton attached to Defendants' 5-15-20 Memorandum as Exhibit C ("Blanton Depo.") at P. 31, Vol. 2, Ex. 8. Based on Plaintiff's testimony, Plaintiff had no contact with any employee of FRB until January 2017, about a year and a half after he executed the 8-20-15 Lease. *See* Pl. Cont. Depo, attached as Exhibit C to Defendants 5-15-20 Memorandum at P. 67, 75. Based on Plaintiff's testimony, Plaintiff claims he did not know about the foreclosure or that FRB had any connection to the property until February 2017, approximately six (6) months after execution of his 8-20-15 Lease. *See* Pl. Depo. at P. 64.[1]

As argued in these Defendants' 5-15-20 Memorandum, the relationships between FRB, TBC, and Atlantic Regional are clear as a matter of law based on South Carolina statutes defining the rights of the parties and the filings and court orders in the Foreclosure Action. These statutes and documents provide a basis for summary judgment on behalf of these Defendants. Further, there is no evidence that FRB sought to convert TBC from acting as agent for Atlantic Regional to agent of the bank; it only sought payment of the rents. Payment of the Sweetbriar rents is all FRB sought pursuant to its July 23, 2015 demand letter, its July 23, 2015 Motion for Payment of Rents, and it is all the Court ordered in its October 2, 2015 Order granting FRB's Motion. TBC

[1] [1] In Plaintiff's Summary Judgment Memorandum, Plaintiff includes a great deal of extraneous matter including Plaintiff's allegations regarding his alleged damages and Plaintiff's allegation that FRB was facing a high risk of closure during the relevant time period and was under pressure from the FDIC to sell Sweetbriar, which is not accurate. *See* Deposition of F.R. Saunders, Jr.at P. 30, 32, 35, 42, 47. Since these facts are not relevant to any issue before the Court on the Cross-Motions for Summary Judgment, the First Reliance Defendants will not respond exhaustively to the same.

did not begin paying such rental proceeds to FRB until approximately 6 weeks after Plaintiff executed his 8-20-15 Lease with TBC. There is no evidence that FRB authorized TBC to enter into the lease with Plaintiff, and no evidence that TBC was managing the property for FRB during the Foreclosure Action. Instead the evidence indisputably shows that TBC continued to manage the property on behalf of Atlantic Regional and continued to direct all of its questions about lease approval, maintenance issues, and utility issues to Atlantic Regional during the Foreclosure Action, as it always had. The evidence shows that TBC expressly sought and received permission from Atlantic Regional to enter into Plaintiff's 8-20-15 Lease. There is **no evidence** that FRB authorized TBC to enter into a lease on its behalf. There is no issue of fact- the undisputed evidence establishes TBC entered Plaintiff's 8-20-15 Lease on behalf of Atlantic Regional. By operation of law, the foreclosure terminated the lease and the *lis pendens* statute renders the lease unenforceable. For these reasons, Plaintiff's Motion for Summary Judgment must be denied, and these Defendants' Motion for Summary Judgment must be granted.

1. ***Plaintiff cannot rely on the loan documents between FRB and Atlantic Regional to establish a landlord-tenant relationship between FRB and Plaintiff.***

Plaintiff argues that as a matter of law, all lease agreements Atlantic Regional entered into during its ownership of Sweetbriar were automatically transferred to FRB, and FRB had a landlord-tenant relationship with Atlantic Regional's tenants. Specific to the facts of this case, Plaintiff argues that at the moment Plaintiff executed the 8-20-15 lease with Atlantic Regional, all of Atlantic Regional's duties as lessor transferred to FRB as a matter of law based on the loan documents. Plaintiff cites no law for this extraordinary assertion. Plaintiff is not a party to the loan documents, and claims not to have known of the existence of these documents until some time well after he executed his 8-20-15 Lease. Plaintiff attempts to use documents to which he is not a party and of which he claims no knowledge as a sword to force FRB into a landlord-tenant

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relationship with Plaintiff. Plaintiff cites no legal support for his theory, and it fails as a matter of law. The First Reliance Defendants have already addressed the nature and legal effect of a mortgage as defined under South Carolina law. As cited in Defendants' 5-15-20 Memorandum, other jurisdictions have rejected the argument made by Plaintiff here, that a plaintiff-tenant can assert a landlord-tenant relationship with a foreclosing lender due to similar assignment language in the lender's loan documents with its borrower. *See e.g.* Restatement (Third) of Property (Mortgages) § 4.2 (1997); *see also Wright v. Home Beneficial Life Ins. Co.,* 155 Ga. App. 241, 242, 270 S.E.2d 400, 402 (1980).

2. The undisputed evidence shows that TBC entered Plaintiff's 8-20-15 Lease on behalf of Atlantic Regional; there is no evidence that TBC requested or received authority from FRB to enter into Plaintiff's Lease.

Plaintiff argues that as a factual matter, TBC acted as FRB's agent during the Foreclosure Action and that FRB specifically authorized TBC to enter into Plaintiff's 8-20-15 Lease. Plaintiff's arguments are based on Plaintiff's unsupported allegations, and not on the evidence. Specifically as to Plaintiff's Lease, the evidence is clear that to the extent TBC entered the Lease on behalf of a principal, such principal was Atlantic Regional; there is no question of fact on this issue. Mr. Blanton emailed the Lease Proposal to a representative of Atlantic Regional. *See* **Exhibit A** hereto, which consists of a compilation of email correspondence between TBC and Atlantic Regional during the Foreclosure Action; the specific email referenced here was originally attached to FRB's 5-15-20 Memorandum as Exhibit D. Atlantic Regional directed Mr. Blanton to negotiate a shorter rent-free initial term to account for the improvements Plaintiff sought to make. *See id.*; Blanton Depo. at Ex. 29, Ex.5, P. 179 Vol. 1. Atlantic Regional approved and authorized TBC to enter the Lease. *See* Blanton Depo. at P. 181 Vol. 1; Ex. 29; Blanton Depo. at P. 35-38 Vol. 2. Plaintiff argues Mr. Blanton testified he understood FRB to be the lessor on Plaintiff's 8-20-15 Lease. *See*

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Pl. Memo at P. 12-13. This is not accurate. Mr. Blanton testified unequivocally TBC entered the Lease on behalf of Atlantic Regional. *See* Blanton Depo. at P. 120 Vol. 2 ("**I entered the lease on behalf of Atlantic Regional**."); *see also* Blanton Depo. at P. 135 Vol. 2. Mr. Blanton further testified:

> I think -- again, I think Atlantic Regional was struggling so bad, you know, saying, 'Hey, man. Get a tenant in there. Get a tenant in there.' And [Plaintiff] and I have known each other; we spoke back and forth. And when it came available, he and I worked out terms that we thought were acceptable. And I passed that on to Atlantic Regional, and they thought it was acceptable, and then Mike and I executed the lease.

[Blanton Depo. at P. 117, Vol. 1].

In contrast, there is no evidence that FRB authorized TBC to enter into the Lease. TBC had no agreement with FRB which authorized TBC to enter leases on behalf of FRB. *See* Blanton Depo. at P. 35-38 Vol. 2. Plaintiff asserts in his memorandum that "Bank specifically authorized the Lease" and "Blanton did in fact speak with Bank and Bank's attorney about Timmons' long term Lease, both of whom indicated that yes Bank did want to lease the space." *See* Pl. Memo at P. 4, 13. Neither of these assertions are supported by any evidence. Mr. Porter, the FRB employee primarily involved with the Foreclosure Action, testified that he does not recall any discussion about Plaintiff during the Foreclosure Action, was not told about Plaintiff's proposed lease terms, and did not receive a copy of Plaintiff's lease proposal. *See* Porter Depo. a P. 166-167; 174; Ex. 16. While Mr. Blanton makes some statements that he thinks he would have told Mr. Porter about Plaintiff's interest in the property, Mr. Blanton testified:

> **Q: Do you have a recollection of speaking with anyone at First Reliance Bank about Mr. Timmons' proposed lease or interest in the property?**
>
> **A: No.**

Blanton Depo. Vol 2 at P. 37. Even if the Court finds there is a "scintilla" of evidence that TBC told Mr. Porter about Mr. Timmons' interest in the property despite Mr. Blanton's testimony that

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he doesn't actually remember doing so, there is no evidence, and Plaintiff has pointed to no evidence, that TBC informed FRB about the specific proposed lease terms, provided FRB a copy of the written lease proposal or proposed 8-20-15 Lease, asked for FRB's authority to enter the 8-20-15 Lease, or received such authority from FRB.

As to FRB's foreclosure attorney, Mr. Yarbrough does not recall any discussion about Mr. Timmons, states he did not have authority to approve any lease on behalf of FRB at that time and would not have approved any lease on behalf of FRB if he had been asked. *See* Affidavit of Ray Coit Yarborough dated May 12, 2020 at Par. 11-15, and attached as Exhibit E to Def. 5-15-20 Memorandum. While Mr. Blanton does testify he believes he spoke to FRB's foreclosure attorney regarding Plaintiff's interest in Sweetbriar, he does not recall the content of the discussion. *See* Blanton Depo. at P. 150-151 Vol. 2; P. 181, Vol. 1. When asked if Mr. Yarborough approved or authorized Plaintiff's 8-20-15 Lease, Mr. Blanton testified that he did not know. *See* Blanton Depo. at P. 181, Vol. 1.There is no evidence FRB's attorney was apprised of the specific terms of the proposed Lease or that he was asked for any sort of approval. *See* Blanton Depo. at P. 150-151 Vol. 2; P. 181, Vol. 1. Plaintiff asserts that TBC "sent the [Plaintiff's] lease proposal both to Atlantic and to Bank attorney Coit Yarborough." *See* Pl. Memo. At P. 16. Mr. Blanton did not testify as such and there are no documents or emails to showing the proposal was sent to Mr. Yarborough. There is no evidence whatsoever that TBC sent Plaintiff's written lease proposal to Mr. Yarborough, whether based on written correspondence or testimony. Most importantly, there is no evidence that FRB's attorney authorized TBC to enter into the 8-20-15 Lease.

At most, Plaintiff has cited portions of TBC's deposition testimony that Mr. Blanton believes he told FRB employee Dale Porter and attorney Yarborough about Plaintiff's interest in the property (disputed by Mr. Porter and Mr. Yarborough). This does not equate to FRB having

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knowledge of the specific proposed lease terms or authorization of TBC to enter into a lease on behalf FRB. There is no evidence that FRB authorized TBC to enter into the 8-20-15 Lease on FRB's behalf, or that TBC acted as FRB's agent in executing the 8-20-15 Lease.

3. TBC did not generally act as agent and property manager for FRB during the pendency of the Foreclosure Action.

Plaintiff also argues that TBC was generally acting as FRB's property management agent beginning July 23, 2015, the day FRB made a demand on TBC as agent for Atlantic Regional, to pay FRB the rents derived from the property. This assertion is likewise not supported by the evidence. A copy of the email correspondence between TBC and Atlantic Regional pertaining to Plaintiff's 8-20-15 Lease, other prospective tenants, and general property management issues that came up during the pendency of the Foreclosure action relating to insurance, building repair and maintenance, and dividing up utility charges among tenants is attached hereto as **Exhibit A**. Correspondence of this nature exists because TBC was managing this property on behalf of Atlantic Regional during the Foreclosure Action. No such correspondence of this nature exists between TBC and FRB, because TBC was not working for FRB, was not managing the property on behalf of FRB, was not acting as agent of FRB, and had no legal relationship with FRB other than its obligation to remit rents to FRB after the October 2, 2015 Court Order directing it to do so.

TBC's testimony is clear that TBC understood it continued to work for Atlantic Regional during the pendency of the foreclosure. *See e.g.* Blanton Depo. at P. 24, Vol. 2 ("Until it is absolutely tee-totally foreclosed, which the bank notified me it had been foreclosed on, technically I was still working for Atlantic Regional"); *see also* Blanton Depo. at P. 99-100, Vol. 1 ("I was going to do whatever [Atlantic Regional] told me to do until the Bank told me what to do. Okay? And so, again, I was in that gray area. I was caught between the ropes."); Blanton Depo. at P. 120-

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121, Vol. 1 ("But as I understand it, until the bank actually foreclosed as opposed to notice of intent to foreclose, I was still basically being employed by Atlantic Regional.").

Plaintiff asserts that TBC's "marching orders" from FRB were specifically to rent the vacant property in the shopping center and that Mr. Blanton testified "when the bank took it over, to my recollection was- is- you know, lease what you can and, you know, let's get the income coming until we decide to sell it or continue to manage it." *See* Blanton Depo. at P. 188; Pl. Memo. at P. 14;39. Based on the phrase "when the Bank took it over," it appears Mr. Blanton may be referring to the time period after the Bank took ownership of the property in February 2017, approximately 6 months after Plaintiff executed his 8-20-15 Lease. This further appears to be the case as Mr. Blanton also testified that after he found out about the foreclosure, he spoke with FRB, and was told that FRB did **not** want to lease the property, but wanted to sell it. *See* Blanton Depo. at P. 107. Even if this ambiguous testimony (directly contradicted by other testimony) could create an issue of fact as to whether FRB generally told TBC it wanted property leased during the Foreclosure Action, this would still not change the nature of the relationships between FRB and TBC. A statement of that nature would not convert TBC from the agent of Atlantic Regional to acting as the agent of FRB, and it does not change the fact that there is no evidence FRB authorized TBC to enter into leases generally, or specifically Plaintiff's 8-20-15 Lease on its behalf.

Further, Mr. Porter disputes that he gave any such instructions to TBC, either in July 2015 or at any time. *See* Dale Porter Deposition at P. 177; 153-154. Mr. Porter testified that his only conversation with Mr. Blanton in which the issue of leasing vacant property came up was as follows (with respect to an unidentified prospective tenant):

> Joe called me up, saying you know, I've got the tenant that is wanting to lease a property. And he says, I just need to know what I need to do here. And I told Joe, I said, joe, this loan is in foreclosure. I can't give you any guidance or tell you what to do or what not to do. I'm sorry, I can't do that at this time. I think he ended the

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> conversation, well I think I'm going to go ahead and enter the lease. I said, I'm sorry I can't tell you help you [sic].

See Porter Depo. at P. 166. Mr. Porter testified that TBC did not act as agent or property manager for FRB during the Foreclosure Action. *See* Porter Depo. at P. 69; 146-147 ("all we were interested in was redirecting those rents to the bank that Atlantic Regional would have gotten normally."). Mr. Porter further testified that he did not believe it was appropriate for FRB to weigh in on matters relating to proposed leases or issue orders to Atlantic Regional's agent, TBC, during the pendency of the Foreclosure Action. *See* Porter Depo. at P. 93 ("Until the bank gets ownership of the property, I don't think it's the place for the bank to discuss how –what kind of leases or that kind of thing. I don't believe that's the case. Otherwise we would be interfering with the borrower's ability to cure his loan by interfering in his business.").Thus Mr. Porter's testimony is that he expressly did not give TBC any instructions, because TBC was not FRB's agent. Mr. Yarborough denies giving TBC any instruction to rent vacant property. *See* Yarborough Affidavit, attached to Def. 5-15-20 Memorandum as Exhibit E.

The TBC testimony cited by Plaintiff, even if construed in the manner asserted by Plaintiff, does not provide a "scintilla" of evidence on a material issue to defeat these Defendants' right to summary judgment.

4. ***FRB is not judicially estopped from denying that TBC acted as its agent and executed Plaintiff's 8-20-15 Lease on behalf of FRB.***

Plaintiff argues comments made by FRB's foreclosure attorney at the hearing on the Bank's Motion for Payment of Rents on September 30, 2015 (over a month after execution of Plaintiff's 8-20-15 Lease), are properly interpreted as a statement by FRB that it considered TBC its agent and property manager, and that FRB is now estopped from arguing TBC was not its agent and property manager pursuant to the doctrine of judicial estoppel. Mr. Yarborough's comments at the hearing were:

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> And as I read the statute, we can request that all rents be paid to us through that, using that assignment of rents, but there are some other potential leases sort of up in the air, and something needs to be done to, to either consummate the leases or reject the leases. We would like to employ the Blanton Company to collect the, collect the leases and to manage the property, as they have been doing all along, on behalf of the bank, as well as the owner, pending this action, and we want the rents paid over to First Reliance Bank.

See Pl. Memo at Ex. 31. First, as testified by Mr. Porter in his deposition and Mr. Yarborough in his Affidavit dated May 12, 2020, FRB never considered TBC or Mr. Blanton to act as FRB's agent or property manager during the pendency of the Foreclosure Action. *See* 5-15-20 Memorandum at Ex. E; Porter Depo. at P. 69. Second, at most, Mr. Yarborough's comments are ambiguous and the product of imprecise language. It is overwhelmingly clear from FRB's Motion and the Court Order granting FRB's Motion, that FRB only sought and the Court only granted payment of rents. The Court did not make any other order divesting Atlantic Regional of any rights or otherwise changing the relationships between Atlantic Regional, TBC and FRB during the pendency of the Foreclosure. Third, these comments occurred over a month after Plaintiff executed his 8-20-15 Lease. Even if they could be construed as a request and statement that FRB sought to convert TBC from acting as the agent and property manager of Atlantic Regional to acting as agent and property manager for FRB on **September 30, 2015,** this has no impact on the Parties' relationships as of **8-20-15,** when Plaintiff executed his lease with TBC.

Even if Mr. Yarborough's comments could be construed in the way Plaintiff asserts, the doctrine of judicial estoppel has no application here. The elements of judicial estoppel are as follows:

> (1) two inconsistent positions must be taken by the same party or parties in privity with each other;
> **(2) the two inconsistent positions were both made pursuant to sworn statements;**
> (3) the positions must be taken in the *same or related* proceedings involving the same parties in privity with each other;

(4) the inconsistency must be part of an intentional effort to mislead the court; and
(5) the two positions must be totally inconsistent-that is, the truth of one position must necessarily preclude the veracity of the other position.

Wright v. Craft, 372 S.C. 1, 38, 640 S.E.2d 486, 506 (Ct. App. 2006) (emphasis added). Moreover, "[j]udicial estoppel generally applies only to inconsistent statements of fact… the doctrine does not apply to conclusions of law or assertions of legal theories." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). "[C]ourts must apply the doctrine with caution. The determinative factor in the application of judicial estoppel is whether the party who is alleged to be estopped intentionally misled the court to gain unfair advantage." *John S. Clark Co. v. Faggert & Frieden, P.C.,* 65 F.3d 26, 28–29 (4th Cir. 1995).

Here, as set forth above, FRB is not taking inconsistent positions. Moreover, Plaintiff does not rely on the "sworn statement" of any Defendant in this case, but imprecise comments of counsel as to an issue which was not before the Court. There was no intentional effort to mislead the Court, and FRB did not gain any "unfair advantage" through counsel's 9-30-2015 comments. The Foreclosure court granted the Motion filed by FRB, that is, TBC was ordered to pay FRB the rents. FRB did not gain any additional rights due to the comments. The doctrine of judicial estoppel has no application in this case.

It is abundantly clear from all of the undisputed evidence, correspondence, testimony, and the orders of the Court in the Foreclosure Action that TBC acted as property manager and agent for Atlantic Regional during the pendency of the Foreclosure Action and entered into Plaintiff's 8-20-15 Lease on behalf of Atlantic Regional. Plaintiff is not entitled to summary judgment, as the First Reliance Defendants dispute, as a factual matter, the portions of TBC testimony on which Plaintiff relies. Moreover, the First Reliance Defendants assert they are entitled to summary judgment because, even when simply based on the record evidence consisting of Plaintiff's

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deposition testimony, TBC's deposition testimony, the Foreclosure Action pleadings and orders, and the documents produced in this case including email correspondence between Atlantic Regional and TBC, there is not a "scintilla" of evidence to support Plaintiff's assertion that TBC entered into the 8-20-15 Lease on behalf of FRB, or that FRB authorized TBC to do so.

II. "Commercial reasonableness" is not an element of any of Plaintiff's claims, and even if it were, the First Reliance Defendants acted in a commercially reasonable manner.

Plaintiff argues that the First Reliance Defendants did not act in a "commercially reasonable" manner as a matter of law, and Plaintiff is entitled to summary judgment on this basis. Plaintiff does not explain how a requirement of commercial reasonability exists in this case, and does not point to any of his specific causes of action (i.e. breach of contract, fraud, intentional interference with contractual relations, intentional interference with business opportunities etc.) of which "commercial reasonableness" is an element. Plaintiff cites a South Carolina statute authorizing exercise of a collateral assignment of rents, such as that held by FRB as to Sweetbriar, S.C. Code Ann. § 29-3-100, which states:

> Where an assignment of leases, rents, issues, or profits is a collateral assignment, after a default under the mortgage, conditional sales contract, or evidence of indebtedness which the assignment secures, the assignee is thereafter entitled, but not required, to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits subject to the assignment, without need for the appointment of a receiver, any act to take possession of the property, or any further demand on the assignor. Unless otherwise agreed, after default the assignee is entitled to notify the tenant or other obligor to make payment to him and is also entitled to take control of any proceeds to which he may be entitled. **The assignee must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.**

(emphasis added). Plaintiff cites no law to support his position that S.C. Code Ann. § 29-3-100 imposed any duty on FRB to Plaintiff or otherwise constitutes an element of any of Plaintiff's causes of action. This statute authorizes an assignee (often a lender) to collect rental proceeds pursuant to an assignment of rents, and governs the manner in which an assignee may collect such

rents from an existing tenant of the assignor (often a borrower). S.C. Code Ann. § 29-3-100 does not contemplate or extend to the scenario alleged by Plaintiff in this case, of an assignee/lender entering into a lease in its own name with a new tenant on the property which is the subject of the assignment. "Commercial reasonableness" is not an element of any claim asserted by Plaintiff and is irrelevant to the determination of whether Plaintiff's 8-20-15 Lease was terminated by the foreclosure action, or whether Plaintiff can establish any factual or legal support for his theory that FRB is the "true lessor." Moreover, even if "commercial reasonableness" were an element at issue of one of Plaintiff's claims, there is no evidence that FRB acted in a commercially unreasonable manner.

Plaintiff argues FRB acted unreasonably because FRB knew Blanton was negotiating Plaintiff's long term lease in advance of it being signed, and FRB never instructed TBC not to enter into leases during the Foreclosure Action. Plaintiff further asserts that FRB intended to demolish Sweetbriar due to expensive deferred maintenance, and encouraged TBC to pursue tenants during the pendency of the Foreclosure Action because "Bank merely wanted to siphon off rents from Timmons and the other Sweetbriar lessees (whose long term tenancies would increase the appraised value of Sweetbriar in the short term) to pay to defray the costs of tearing the property down." Pl. Memo at P. 49. Plaintiff further argues "Bank's duty to act in a commercially reasonable manner required Bank, at a minimum, to inform Timmons that it did not intend to honor, or was uncertain to honor the long term lease." *See* Pl. Memo. At P. 50.

FRB was simply engaged in the process of conducting a foreclosure. FRB's scope of knowledge of Plaintiff and TBC's activities during the Foreclosure Action has already been addressed above. FRB had no duty to Atlantic Regional's prospective tenants in general, but specifically, FRB certainly cannot have had a duty to an individual it did not know about. Plaintiff

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argues that Mr. Porter did have knowledge of Mr. Timmons prior to 8-20-15 because FRB produced an email in this case from Mr. Porter to an appraiser dated September 15, 2015 which included a Sweetbriar tenant roster. *See* Pl. Memo at P. 49; Porter Deposition at Ex. 13, attached to Pl. Memo as Exhibit 38. The tenant roster was provided by TBC and is dated July 28, 2015. *Id.* The roster has a hand-written note by Mr. Blanton next to one of the other tenants that states "Mike Timmons." *Id.* However, Mr. Porter testified that he did understand the hand-written note to mean that a gentleman named Mike Timmons was signing a lease and moving into the property. *See* Porter Depo. at P. 169. Further, Mr. Porter testified that he does not know at what point before September 15, 2015 he received this tenant roster. *See* Porter Depo. at P. 276. Accordingly, Mr. Porter very likely received this roster after Plaintiff executed his lease, and in any event did not see the hand-written note and interpret it or understand it to mean Plaintiff was signing a lease or had signed a lease. Mr. Porter's clear testimony is that he does not recall any knowledge or discussion of Plaintiff's proposed lease prior to it execution, and the tenant roster highlighted by Plaintiff does not change this.

More broadly, as set forth above, Mr. Porter testified that it is his understanding that it was not appropriate for FRB to instruct or issue orders to TBC, because TBC was the agent of Atlantic Regional, which was not divested of its property rights until the conclusion of the Foreclosure Action and a foreclosure sale. *See* Porter Depo. at P. 166, 69, 93. Mr. Porter also testified that from the Bank's perspective, it is not "in the property management business" and prefers not to obtain ownership of property at foreclosure sales. Further, if FRB is in the position of taking ownership of foreclosed property, it would prefer for the property to be unoccupied. *See* Porter Depo. at P. 21-24. As set forth above, there is no evidence that FRB encouraged or authorized TBC to enter into the 8-20-15 Lease. Plaintiff asserts FRB intended to demolish the property

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because Mr. Porter noted on an impairment worksheet dated November 24, 2015 (3 months after execution of Plaintiff's 8-20-15 Lease and designed to aid FRB in determining a bid amount for an approaching foreclosure auction), that based on appraisals it "appears the highest and best use is to sell as raw land which will require the demolition of the current building." *See* Pl. Memo at Ex. 38; Porter Depo. at P. 171. Mr. Porter testified that FRB would never have undertaken the task of demolishing the property, but would only ever have sold the property as is. *See* Porter Depo. at P. 171. Mr. Porter's comments reflect nothing more than FRB's analysis of the financial aspects of the Sweetbriar property as the foreclosure sale approached and FRB needed to determine the amount of its bid. *See id.*

S.C. Code Ann. § 29-3-100 and its reference to "commercial reasonableness" do not bear on the questions before the Court in deciding Plaintiff and FRB's cross motions for summary judgment. Even if commercial reasonableness were an issue in this case, there is no evidence that FRB acted unreasonably.

III. The First Reliance Defendants did not ratify the 8-20-15 lease Plaintiff executed with The Blanton Company.

Plaintiff erroneously argues that FRB ratified Plaintiff's 8-20-15 Lease because FRB accepted Plaintiff's rental payment after FRB became the owner of Sweetbriar in February 2016. Under South Carolina law, "[r]atification, as it relates to the law of agency, means the express or implied adoption and confirmation by one person of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." *Lincoln v. Aetna Cas. & Sur. Co*., 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989); see also *Neely v. Love*, 144 S.C. 271, 142 S.E. 623, 642 (1928)("Ratification is a matter of intention express or implied, on the part of the principal, and, in order to establish an implied ratification, there must be some acts or conduct on his part which reasonably tends to show such intention."). Ratification exists upon the

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concurrence of three elements; (1) acceptance by the principal of the benefits of the agent's acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements. *Id*. "When the act relied on to show ratification is equally consistent with a purpose to the contrary, an intent to ratify is not ordinarily implied." *Neely*, 144 S.C. 271, 142 S.E. at 642.

On February 2, 2016, Plaintiff wrote a rent check to TBC for the month of February. *See* Pl. Memo at Ex. 39. On February 4, 2016, FRB purchased the Sweetbriar Shopping Center at the foreclosure sale. *See* Ex. G to Pl. Compl. By letter dated February 8, 2016, FRB notified TBC of its purchase and stated its unequivocal position that all leases were extinguished as result of the foreclosure sale. *See* Porter Depo. at Ex. 25. FRB further noted it would allow the current tenants to remain on a month to month basis only. *See id.* On February 24, 2016, TBC remitted funds to FRB representing February rental payments less expenses. *See* Pl. Memo at Ex. 44. By letter dated February 26, 2016, TBC informed the Sweetbriar tenants of FRB's lease extinguishment letter.

Ratification does not exist in this case, because Plaintiff cannot establish any circumstances or an affirmative election indicating FRB's intention to adopt Plaintiff's 8-20-15 Lease. Rather, the undisputed facts show that FRB sent its February 8, 2016 letter clearly stating its intention that all leases were terminated and henceforth month-to-month, before receiving any post-foreclosure rent proceeds on February 24, 2015. There is no question of fact on this issue. Plaintiff focuses on the fact that the lease extinguishment was not communicated to Plaintiff until after FRB received a portion of his rent payment. However, Plaintiff's understanding and intent is not the focus of the ratification inquiry; the focus is on the conduct and intent of the alleged principal and whether the circumstances show FRB intended to adopt Plaintiff's 8-20-15 Lease. South Carolina law looks to the intent of the alleged principal, and not to another party's knowledge of principal's intent, in

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determining whether ratification exists. In other words, the timing upon which Plaintiff gained knowledge of FRB's intent to extinguish the leases is irrelevant to the ratification inquiry. Therefore, because FRB clearly intended to extinguish all leases and engage in month-to-month leases with tenants prior to accepting Plaintiff's post-foreclosure rent payments, FRB did not ratify Plaintiff's lease.

CONCLUSION

For the foregoing reasons, for the reasons set forth in the First Reliance Defendants' 5-15-20 Memorandum, and for any others as may be developed prior to a hearing on this Motion, the First Reliance Defendants respectfully request the Court grant this Motion for Summary Judgment as to all claims asserted by Plaintiff. There is no genuine issue of material fact requiring resolution by a factfinder, and summary judgment in favor of the First Reliance Defendants is proper pursuant to SCRCP 56. Moreover, Defendants show that Plaintiff's Motion for Summary Judgment is due to be denied.

Respectfully submitted,

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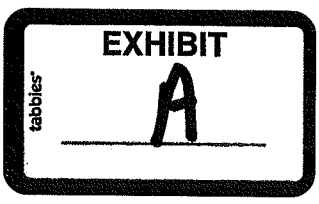
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Rick Cranford

From: Kelley Modlin <kelley@theblantoncompany.com>
Sent: Tuesday, August 18, 2015 10:37 AM
To: Rick Cranford
Subject: 1945 Second Loop Rd Timmons, Mike 081815
Attachments: 1945 Second Loop Rd Timmons, Mike 081815.PDF

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com



Dear. Joe Blaton,

August 17, 2015

My offer for the property located at 1945 Second Loop Road is as follows:

- 3 year term with two 5 year options
- $2000 per month for the first 3 year term with 6 months free rent and no security deposit
- First 5 year option $2250 per month
- Second 5 year option $2500 per month

Please take the following into consideration I am a nightclub owner with over 25 years of experience in the industry, all money will be paid on time every time. The reason I think my offer is extremely fair to both parties involved is because the place was destroyed by the previous tenants and I am looking at somewhere between $80,000 to $90,000 investment to get operable.

Thank you for your consideration

Mike Timmons Jr

8-17-15

MIKE TIMMONS
206-6086

RAY Coit yarbor
676-058

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Jean Parks

Sweetbriar

From: Jean Parks
Sent: Tuesday, August 25, 2015 10:57 AM
To: 'Rick Cranford'
Subject: Emailing: Commercial Lease Timmons, Mike
Attachments: Commercial Lease Timmons, Mike.PDF

Copy for your file.

Your message is ready to be sent with the following file or link attachments:

Commercial Lease Timmons, Mike

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

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Rick Cranford

From: Rick Cranford
Sent: Tuesday, August 18, 2015 10:48 AM
To: Kelley Modlin
Subject: RE: 1945 Second Loop Rd Timmons, Mike 081815

Kelley

There are workers there today doing construction of some sort – does this mean that Joe accepted theses terms or are we still negotiating? The only real issue I have with the terms is the six months free rent – seems like a lot. I'd propose a much less time period, like 2 months since the rent is reasonable and no deposit is required.

From: Kelley Modlin [mailto:kelley@theblantoncompany.com]
Sent: Tuesday, August 18, 2015 10:37 AM
To: Rick Cranford
Subject: 1945 Second Loop Rd Timmons, Mike 081815

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

Docs from Cranford 019 0949

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Rick Cranford

From: Rick Cranford
Sent: Thursday, August 20, 2015 6:55 PM
To: Logan McGill
Subject: Fwd: Keys

Will you find a copy or make a copy of a key to old MEDCARE office and mail or drop by to kelly please? If mail put a note so she will know it is to 1935 second loop. Thanks

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lake View SC 29563
Phone (843) 759-0025
Fax (843) 759-2950

Begin forwarded message:

> **From:** Kelley Modlin <kelley@theblantoncompany.com>
> **Date:** August 20, 2015 at 11:00:09 AM EDT
> **To:** Rick Cranford <rcranford@cmcseniorcare.com>
> **Subject: Keys**
>
> Rick,
>
> 1935 2nd loop is now on the Website. Our keys to the unit do not work.
>
> By any chance, do you have a set that does.
>
> Have a great day.
>
> Jean
>
> *Kelley R. Modlin*
> *Property Management*
> *The Blanton Company*
> *126 S. Coit Street*
> *Florence, S. C. 29501*
> *(843) 662-2557*
> *Kelley@TheBlantonCompany.com*

Docs from Cranford 020 0950

Rick Cranford

From: Kelley Modlin <kelley@theblantoncompany.com>
Sent: Monday, October 05, 2015 12:12 PM
To: Rick Cranford
Subject: Elite Tactical Laser Tag 1935 Second Loop Rd
Attachments: Elite Tactical Laser Tag 1935 Second Loop Rd.PDF

Rick –

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

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ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

Efrem B. Andrews
4008 Lake Russell Drive
Florence, SC 29501
October 2, 2015

Mr. Joe Blanton
The Blanton Company
126 S. Coit Street
Florence, SC 29501

Dear Mr. Joe Blanton:

This letter is to express interest on behalf of Elite Tactical Laser Tag LLC, in leasing the property located at: 1935 Second Loop, Florence, SC 29501 in the Sweetbriar Shopping Plaza formally occupied by Carolina Medcare.

Elite Tactical Laser Tag LLC, will be a premier tactical laser tag venue, powered by iCombat equipment which is supported by Universal Electronics out of Whitewater, WI; a $60 million company. The concept gives players a fully immersed experience of competitive combat in a totally safe environment. ETLT will capitalize on the video game experiences like Call of Duty, Battlefield and other popular first person shooter games to bring those players out of their homes and into a realistic action packet arena that we plan to place inside your facility at 1935 Second Loop. ETLT plans to feed the need of local residence and travelers on the I-95 corridor for safe family entertainment.

After carefully evaluating the facility and fair-market value I propose the following terms for your consideration.

In leasing the for-mentioned space Elite Tactical Laser Tag at its own expense will do the following:

1. All of its needed up-fit / build-out for business operations. If it is determined that the current restrooms are not ADA complaint, the completion cost to bring such restrooms into compliance shall be an item open for additional negotiations in this lease agreement.

ELITE TACTICAL LASER TAG
WHERE HEROES ARE BORN EVERYDAY

ETLT would like to lease the facility for three (3) years with an option to renew for an addition two (2) year minimum. Based on the estimated 14,000 total square footage, we would like an all in lease rate of $4.90 per square foot for the first year, which would include base rent and triple net calculation cost equaling $68,600 per year and/or $5,716 per month. For the next two years we propose yearly increases as follows:

Year number two (2) a 2% increase equaling $69,972 per year and/or $5,831 per month. In year number three (3) a .029% increase rounded to an even $72,000 per year and or $6,000 per month. In the two year minimum renewal option we would like to hold steady at the $72,000 per year and/or $6,000 per month. We would like to take possession of the property for build-out no later than Nov 1, 2015

In order for ETLT to be successful we would like the landlord to provide the following incentives:

1. We anticipate build-out to take 2-3 months and would like to pay zero (0) rent during this time period.
2. In order to establish a strong revenue base we would like to operate at a reduced rental rate of 50% during months 4-5, with full rental rate due in month 6 of the leasing period and going forward until lease termination date.
3. If the build-out is completed earlier then the estimated time and ELTL is able to open for business sooner than the estimated build-out time, we would like to immediately start paying rent at the reduced rate listed in item #2 for two (2) consecutive months and then the full rental rate going forward.
4. Certifications that all electrical, plumbing, roofing and HVAC systems are operable with no issues and if not repairs are to be made timely by the landlord, prior to occupancy on Nov 1, 2015.

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Docs from Cranford 015 0953

ELITE TACTICAL
LASER TAG
WHERE HEROES ARE BORN EVERYDAY

I am excited at the prospect of leasing the above-mentioned space and partnering with your organization. Elite Tactical Laser Tag will be an asset to you and the Sweetbriar Plaza. If you have any questions about this proposal of leasing terms, or the business itself, please contact me at 804-248-1466, or by email @ eandrews@sc.rr.com.

Thank you for taking the time to consider this offer. I look forward to a prompt and favorable reply.

Sincerely,

Efrem B. Andrews

Elite Tactical Laser Tag LLC

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Rick Cranford

From: Kelley Modlin <kelley@theblantoncompany.com>
Sent: Tuesday, October 20, 2015 10:36 AM
To: Rick Cranford
Subject: RE: Elite Tactical Laser Tag 1935 Second Loop Rd

Still working on it. The gentleman is going through a bunch red tape. That's all we know for now.

From: Rick Cranford [mailto:rcranford@cmcseniorcare.com]
Sent: Tuesday, October 20, 2015 10:28 AM
To: Kelley Modlin
Subject: RE: Elite Tactical Laser Tag 1935 Second Loop Rd

Kelley

Do you know if Joe was able to get the lease signed and if this is a done deal or not?

Thanks.

From: Kelley Modlin [mailto:kelley@theblantoncompany.com]
Sent: Monday, October 05, 2015 12:12 PM
To: Rick Cranford
Subject: Elite Tactical Laser Tag 1935 Second Loop Rd

Rick –

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

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Rick Cranford

From: Rick Cranford
Sent: Thursday, October 15, 2015 3:57 PM
To: Jean Parks
Subject: RE: new tenant

Jean

Is the new tenant taking the old Carolina medcare space a done deal? If so, when does their lease take effect? Have a few things in the space I need to arrange to have moved out.

Also, the awning that came off of the beauty shop is being stored in the back hall of that space and will need to be removed. Can you check with Joe to see if it needs to be re-installed over the beauty shop. If so, can you guys have someone take care of that.

Thanks!!

From: Jean Parks [mailto:jean@theblantoncompany.com]
Sent: Thursday, October 15, 2015 12:27 PM
To: Rick Cranford
Subject: new tenant

The new tenant has asked to see if she can put up a different
Color awning. It's a shade of blue.

Let me know what you think.

Jean Parks
Property Manager
THE BLANTON COMPANY
126 S. Coit St.
FLORENCE SC 29501
(Direct number) (843)662-2557
Email: jean@theblantoncompany.com



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Kelley Modlin

From: Kelley Modlin
Sent: Monday, October 05, 2015 12:06 PM
To: 'Rick Cranford'
Subject: Elite Tactical Laser Tag 1935 Second Loop Rd
Attachments: Elite Tactical Laser Tag 1935 Second Loop Rd.PDF

CALL Coit Y.

Rick –

Joe Blanton asked me to send this to you.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

10/8/15 Called Coit Yarborough
He said to proceed with lease
and hold rents in escrow until
court order says where rents
go.

GBB 10/8/15

BLANTON000131 0958

Xavier SAMS

Jean Parks

From: Rick Cranford [rcranford@cmcseniorcare.com]
Sent: Thursday, October 15, 2015 3:49 PM
To: Jean Parks
Subject: Re: new tenant
Attachments: image002.gif

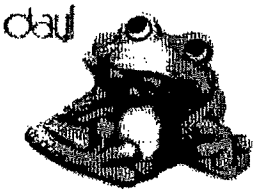
1933
2nd Loop

As long as they pay for it - no issue with the change from us.

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lake View SC 29563
Phone (843) 759-0025
Fax (843) 759-2950

On Oct 15, 2015, at 12:26 PM, Jean Parks <jean@theblantoncompany.com> wrote:

> <image001.jpg>
> The new tenant has asked to see if she can put up a different
> Color awning. It's a shade of blue.
>
> Let me know what you think.
>
> *Jean Parks*
> Property Manager
> THE BLANTON COMPANY
> 126 S. Coit St.
> FLORENCE SC 29501
> (Direct number) (843)662-2557
> Email: jean@theblantoncompany.com
> Have a happy day!



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Kelley Modlin

From: Kelley Modlin
Sent: Thursday, September 03, 2015 12:24 PM
To: 'Rick Cranford'
Subject: Commercial Lease Sams, Xavier 1933 Second Loop Rd
Attachments: Commercial Lease Sams, Xavier 1933 Second Loop Rd.PDF

Hello Rick –

Joe Blanton asked me to send this commercial lease agreement to you for 1933 Second Loop Rd.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

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Kelley Modlin

From: Rick Cranford [rcranford@cmcseniorcare.com]
Sent: Thursday, September 03, 2015 1:51 PM
To: Kelley Modlin
Subject: Re: Commercial Lease Sams, Xavier 1933 Second Loop Rd

Thanks

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lake View SC 29563
Phone (843) 759-0025
Fax (843) 759-2950

On Sep 3, 2015, at 12:30 PM, Kelley Modlin <kelley@theblantoncompany.com> wrote:

Hello Rick –

Joe Blanton asked me to send this commercial lease agreement to you for 1933 Second Loop Rd.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

<Commercial Lease Sams, Xavier 1933 Second Loop Rd.PDF>

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Kelley Modlin

From: Rick Cranford [rcranford@cmcseniorcare.com]
Sent: Thursday, September 03, 2015 12:31 PM
To: Kelley Modlin
Subject: Automatic reply: Commercial Lease Sams, Xavier 1933 Second Loop Rd

I am away from the office and will have limited access to email through 9/7/15. Should your message require immediate attention, please contact Braxton Barnette at bbarnette@cmcseniorcare.com who will be taking call while I'm away. Thanks.

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Rick Cranford

From: Kelley Modlin <kelley@theblantoncompany.com>
Sent: Thursday, September 03, 2015 12:30 PM
To: Rick Cranford
Subject: Commercial Lease Sams, Xavier 1933 Second Loop Rd
Attachments: Commercial Lease Sams, Xavier 1933 Second Loop Rd.PDF

Hello Rick –

Joe Blanton asked me to send this commercial lease agreement to you for 1933 Second Loop Rd.

Kelley R. Modlin
Property Management
The Blanton Company
126 S. Coit Street
Florence, S. C. 29501
(843) 662-2557
Kelley@TheBlantonCompany.com

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525/D521

COMMERCIAL LEASE AGREEMENT

This lease is made between: **THE** BLANTON COMPANY herein called Lessor, and XAVIER SAMS D/B/A [redacted] time

Herein called Lessee. Lessee hereby offers to lease from Lessor the premises situated in the city of Florence, County of Florence, State of South Carolina, described as:

1933 2ND LOOP ROAD

upon the following TERMS and CONDITIONS:

Terms and Rent: Lessor to lease to Lessee the above premises for a term of 3 year, Commencing Sept 1, 20 15 and terminating on AUG 31, 20 18 as provided herein..Lessee shall pay to Lessor, without deduction or offset and prior to notice or demand, and for the use and occupancy of the leased premises, and monthly rental of $ 650 payable in advance on the 1st day of each and every calendar month thereafter in advance. YEAR 2 $ 650 /mo. YEAR 3 $ 700 /mo.

(A) All rental payments shall be made to Lessor, at the following address:

~~1416 W. Evans St.,~~ Florence, SC 29501
126 S. COIT ST.

(B) Late Payments: Any rent payment not received by Lessor within 5 days of its due date shall be subject to a late fee of $45.00. This Late Fee shall commence at 5:01 p.m. on the 5th day of the month and accrue until rent payment and accumulative Late Fees are received by Lessor.

(C) Rents not received by the 9th of the month will be subject to collection by the Magistrate with a $45.00 Eviction fee added to rent due.

(D) Reinstatement fee of $45.00 will also be added to rents not paid by the 9th of the month.

Use:....Lessee shall use and occupy the premises for: RECORDING STUDIO
The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose.

RENT TO BEGIN NOV. 1, 2015
2 MONTHS FREE DUE TO TENANT IMPROVEMENTS.

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Care and Maintenance of Premises:.....Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including: plumbing, electrical, roof, flooring, painting, plate glass windows, and HVAC systems. Lessee shall surrender the same at termination hereof, in as good condition as received, normal wear and tear accepted. Lessee shall be responsible for all repairs required, excepting the exterior walls and structural foundations. **TENANT RESPONSIBLE FOR FIRST $500 OF HVAC REPAIR.

Alterations:.....Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

Ordinances and Statutes:.....Lessee shall, at Lessee's sole cost comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, pertaining to the use of said premises and shall faithfully observe in said use all municipal ordinances, state and federal statutes now in force or which may hereafter be in force and specifically observe and maintain all Environmental standards pertaining to soil contamination.

Security Deposit:.....Lessee shall deposit with Lessor on the signing of this lease the sum of $650.00 as security deposit for the performance of Lessee's obligations under this lease, including without limitation, the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

Assignment and Subletting:.....Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting with consent shall be void and, at the option of the Lessor, may terminate this lease.

Utilities:.....All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, and electricity and telephone services.

 Lessee _____ Lessor _____

Docs from Cranford 010 0965

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Entry and Inspection:.....Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty days prior to the expiration of this lease, to place upon the premises any usual..To Let or For Lease..signs, and permit persons desiring to lease the same to inspect the premises thereafter.

Possession:.....If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or avoidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within 1 days of the commencement of the term hereof.

Indemnification of Lessor:....Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claim for damages, no matter how caused.

Indemnification of Lessor:....Lessee, as a material part of the consideration to be rendered Lessor's, hereby waives all claims and demands against Lessor for all the aforesaid losses and damages to goods, wares and merchandise in, upon or about said premises, and for injuries to persons in, upon or about said premises, from any cause whatsoever, arising at any time. Lessee will hold Lessor, its employees, agents and affiliated entities exempt and harmless from any liability, loss, cost and obligation on account of any damage or injury to any person, or the goods, wares and merchandise of any person, arising in any manner from the use or occupancy of the premises by the Lessee.

 Lessee [redacted] Lessor [redacted]

Docs from Cranford 011 0966

[redacted] cost and expense, but for the mutual benefit of Lessor and Lessee [redacted] insurance, including liability against claims for personal injury, death, or property damage occurring in, upon, or about the premises and on any sidewalks directly adjacent to the premises. The limits of liability of such insurance shall not be less than $500,000 in respect to injury or death of one person and to the limit of not less than $1,000,000 in respect to any one occurrence and to the limit of not less than $100,000 in respect to property damage or in such higher amounts as Lessor may require. **TENANT TO PROVIDE COPY OF POLICY.

Insurance:.....All such policies of insurance shall be issued in the name of Lessee, with the LESSOR'S NAMED AS ADDITIONAL INSURED. Evidence of the insurance of such policies shall be delivered to Lessor within (10) days after the term of this Lease commences. Lessee shall obtain a written obligation on the part of each insurance company to notify Lessor in writing at least (30) days prior to any cancellation or material change of coverage.

Eminent Domain:.....If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premise, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

Destruction of Premises:.....In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof. Lessor may elect to terminate this lease whether the demised premises are injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.

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Docs from Cranford 012 0967

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Jean Parks

From: Rick Cranford [rcranford@cmcseniorcare.com]
Sent: Wednesday, September 30, 2015 12:13 PM
To: Jean Parks
Subject: Re: Water Bill

Jean

I was there last week when A guy from the water department came out. What he determined was that there was in fact 2 meters going to 1937. One controls the water going to two bathrooms and two sinks and the other water going to one sink. Both bills seem to get hit with a minimum usage charge. it looks as if maybe back when the building was first built there were two different units that were combined to make what is now 1937. He said he was going to go back and talk to them about combining the bill or waving the minimum usage charge on at least one of the meters so that we were not paying nearly $100 for water that rarely got used. I have not heard anything back from them either.

As far as stormwater, I guess the best thing to do is to divide The total charge by the number of units and have each units' water bill charged accordingly.

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lake View SC 29563
Phone (843) 759-0025
Fax (843) 759-2950

On Sep 30, 2015, at 11:06 AM, Jean Parks <jean@theblantoncompany.com> wrote:

> I talked with the water dept. again today. They still cannot answer my question. They will put in another order to check for 2 meters on this 1937 Second loop bill.
>
> I talked with Public works again about the stormwater fee bill. This is for the entire property. We can have this split between all the businesses
> But we have to tell Public works what percentage to charge each tenant. This percentage would be billed to each individual address.
>
> Let me know which way to go.
>
> ---
>
> **From:** Rick Cranford [mailto:rcranford@cmcseniorcare.com]
> **Sent:** Monday, September 21, 2015 10:48 AM
> **To:** Jean Parks
> **Subject:** RE: Water Bill
>
> Jean
>
> Did you ever hear back on the water bill issue?
>
> ---
>
> **From:** Jean Parks [mailto:jean@theblantoncompany.com]
> **Sent:** Monday, July 27, 2015 11:48 AM
> **To:** Rick Cranford
> **Subject:** RE: Water Bill

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Still waiting to hear back ..My contact must have been on vacation.

From: Rick Cranford [mailto:rcranford@cmcseniorcare.com]
Sent: Monday, July 27, 2015 11:44 AM
To: Jean Parks
Subject: Water Bill

Jean

Were you able to find out any information about the water bills we talked about early last week?

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lakeview SC 29563
(843) 759-0025
rcranford@cmcseniorcare.com

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Rick Cranford

From: Rick Cranford
Sent: Tuesday, September 29, 2015 10:04 PM
To: Joe Blanton
Subject: Fwd:
Attachments: doc20150929111738.pdf; ATT00001.htm

Joe

I received this in the mail today - sending to you guys to keep on file. Thanks

Rick Cranford
Cooke Management Company Inc.
PO Box 808
Lake View SC 29563
Phone (843) 759-0025
Fax (843) 759-2950

Begin forwarded message:

> **From:** <CMCScanning@cooke-associates.com>
> **Date:** September 29, 2015 at 12:17:39 PM EDT
> **To:** <rcranford@cooke-associates.com>
>
> ---
> FS-1128MFP
> [00:c0:ee:8b:87:b4]
> ---

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY) 9/24/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
FRED JONES COMPANY INC.
PO Box 6675
Florence, SC 29502

CONTACT NAME
PHONE (A/C, No, Ext) (843) 662-9401 FAX (A/C, No) (843) 669-7851
E-MAIL ADDRESS shobson@fjcins.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: SENTINEL INSURANCE COMPANY	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
GLAMMED OUT "A DIVERSE SALON" LLC.
2623 WISDOM LANE
EFFINGHAM, SC 29541
(843) 665-5785

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT LOC			22 SBA RP8763	10-04-15	10-04-16	EACH OCCURRENCE $ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) $ 1,000,000 MED EXP (Any one person) $ 10,000 PERSONAL & ADV INJURY $ 1,000,000 GENERAL AGGREGATE $ 2,000,000 PRODUCTS - COMP/OP AGG $ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) $ BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION $						EACH OCCURRENCE $ AGGREGATE $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N N/A If yes, describe under DESCRIPTION OF OPERATIONS below						WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT $ E.L. DISEASE - EA EMPLOYEE $ E.L. DISEASE - POLICY LIMIT $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED.

RE: LOCATION: 1943 2ND LOOP RD., FLORENCE, SC 29501

CERTIFICATE HOLDER
ATLANTA REGIONAL, LLC.
1935 SECOND LOOP RD
FLORENCE, SC 29501

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS

AUTHORIZED REPRESENTATIVE

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JB JR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **PLAINTIFF'S MOTION TO RECONSIDER ORDERS GRANTING DEFENDANTS FIRST RELIANCE BANK, INC., DALE PORTER, F.R. SAUNDERS, JR. AND WW PLASMA II, LLC AND HUNTER WILLIAMS' MOTIONS FOR SUMMARY JUDGMENT AS TO ALL CLAIMS ASSERTED BY PLAINTIFF AND FOR EXPEDITED CONSIDERATION**

TO: ALL DEFENDANTS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned counsel, respectfully moves this Court for an Order reconsidering its grant of summary judgment for Defendants First Reliance Bank, Inc., Dale Porter, F.R. Saunders, Jr. ("FRB" or "Bank") and WW Plasma II, LLC and Hunter Williams ("Plasma"), and for expedited consideration. The Orders of the Court were filed on June 23, 2020. Pursuant to SCRCP Rule 59(e), the judgments of the Court filed on June 23, 2020 should be reconsidered and reversed.

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Lanham v. Blue Cross & Blue Shield*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000); *Mosteller v. County of Lexington*, 336 S.C. 360, 520 S.E.2d 620 (1999); *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 280, 573 S.E.2d 830, 835(Ct. App. 2002); *Trivelas v. South Carolina Dep't of Trasp.*, 348

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S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001); *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct. App. 2002); *Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001); *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001); *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); *Middleborough Horizontal Prop. Regime Council v. Montedison*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995). "Summary judgment is inappropriate when further development of the facts is desirable to clarify the application of the law." *Lee v. Kelley*, 298 S.C. 155, 158, 378 S.E.2d 616, 617 (Ct. App. 1989). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Redwend Ltd. P'ship*, 354 S.C. at 468, 581 S.E.2d at 501; *Baril*, 352 S.C. at 280, 573 S.E.2d at 835; *Hall*, 349 S.C. at 173-74, 561 S.E.2d at 656; *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001); *Stewart v. State Farm Mut. Auto. Ins. Co.*, 341 S.C. 143, 533 S.E.2d 597 (Ct. App. 2000); *see also Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003) (noting that summary judgment should not be granted even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom).

In *Schmidt v. Courtney and Kemper Sports*, 357 S.C. 310, 318, 592 S.E.2d 326 (Ct. App. 2003), the South Carolina Court of Appeals noted that summary judgment is a "drastic remedy" which should be cautiously invoked and reversed summary judgment due to the novel issue for South Carolina law involved in the case.

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1. The Mortgage and Assignment of Rents documents created and executed by First Reliance Bank ("FRB") conveyed all of Atlantic's right, title, and interest in the Sweetbriar property to FRB.

If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.,* 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley v. Rabon* 266 S.C. 68, *72*, *221 S.E.2d* 767, *769* (1976). "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) (quoting *Heins v. Heins,* 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). The court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

Here, the mortgage executed by Atlantic and recorded by FRB (**Plt.'s Memo, Ex. 3, p. 1**) transferred title to Sweetbriar from Atlantic to FRB, and states on the first page:

- "[Atlantic] mortgages, grants and conveys to [First Reliance Bank] all of [Atlantic's] right, title, and interest in and to the following described real property . . . [Sweetbriar]."
- ***"[Atlantic] presently assigns to [First Reliance Bank] all of [Atlantic's] right, title, and interest in and to all present and future leases of the property [Sweetbriar] and all rents from the property [Sweetbriar]***.

(emphasis supplied). Despite this clear language, the Court has decided *as a matter of law* that this clause does ***not*** mean that Atlantic assigned one of its rights (the right to be a landlord) to Bank. The Court's decision is manifest error, since the language of the clause says exactly that ("all . . . right"). What does it mean, if it does not mean what it says on its face? The Court's Order does not explain. This clause is not subject to interpretation, it must simply be enforced.

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Additionally, FRB was entitled to lease Sweetbriar pursuant to the November 27, 2014 Assignment of Rents which states:

> [Bank] shall have the right at any time, ***and even though no default shall have occurred under this Assignment, to collect and receive the Rents. For this purpose, Lender is hereby given and granted the following rights, powers, and authority***:
>
> . . .
>
> Enter the Property. Lender may enter upon and take possession of the Property; demand, collect and receive from the tenants or from any other persons liable therefor, all of the Rents; institute and carry on all legal proceedings necessary for the protection of the Property, including such proceedings as may be necessary to recover possession of the Property; collect the Rents and remove any tenant or tenants or other persons from the Property.
>
> . . .
>
> **Lease the Property.** ***Lender may rent or lease the whole or any part of the Property for such term or terms and on such conditions as Lender may deem appropriate.***

(Plt.'s Memo, Ex. 11, Assignment of Rents). (emphasis added).

FRB contends that the first clause in the mortgage violates the public policy of South Carolina, since South Carolina is a "lien" not a "title" state, and the mortgage is not a transfer of title but only a lien. Plaintiff respectfully submits that that provision is geared to residential, not commercial mortgages, and provides a floor below which residential mortgages cannot get. But it does not offend the public policy of South Carolina in a *commercial* mortgage for title to be transferred to Bank via the mortgage.

With regard to the second clause in the mortgage, the Court's June 23, 2020 Order granting summary judgment for FRB confirms that "[t]he Court has not been able to find a South Carolina appellate decision specifically addressing the argument made by Plaintiff in this case, which is that a tenant that enters into a lease with a property owner can assert a landlord-tenant relationship with

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the property owner's lender due to assignment language in the property owner's loan documents." **(Order at p. 11)**. Even if we assume that the facts in this case are not in dispute, application of the law to the facts is disputed and this is a novel issue under South Carolina law and therefore, summary judgment should be denied. *Schmidt,* 357 S.C. at 318.

Moreover, FRB had the right to lease the property through an agent like Property Manager Blanton and as shown below, there is evidence in the record that FRB exercised that right.

2. Blanton leased the property to Timmons on behalf of First Reliance Bank ("FRB") as its agent.

In *Fernander v. Thigpen*, 278 S.C. 140, 293 S.E.2d 424 (1982), the South Carolina Supreme Court explained that, generally, "[q]uestions of agency ordinarily should not be resolved by summary judgment where there are any facts giving rise to an inference of an agency relationship." See also, *Reid v. Kelly & Play Air, Inc.*, 274 S.C. 171, 174, 262 S.E. (2d) 24 (1980); *Jamison v. Howard,* 271 S.C. 385, 247 S.E. (2d) 450 (1978). Blanton's role as FRB's agent in leasing the property to Timmons is a question of fact and there is competent, credible evidence (much more than a "mere scintilla") that Blanton was acting as FRB's agent, not the "out of business" Atlantic.

Blanton testified that FRB employed him to act as agent for FRB with regard to Sweetbriar and that FRB's attorney, Coit Yarborough, confirmed that this had been the case at the September 30, 2015 Court proceeding on the enforcement of the Assignment of Rents:

> Q: And you would agree with me that he is – what he says is that they want to employ you, the bank wants to employ you as the property manager to basically confirm the situation which has existed on the ground, which is that you have been acting as the property manager.
>
> Ms. Houghton: Object to form.
>
> Q: Do you agree?

A: Yes, sir.

Q: Okay. And so did you understand from that that Mr. Yarborough was confirming that you were acting as the agent of the bank with regard to matters happening at the Sweetbriar?

Ms. Houghton: Object to form.

A: Yes. My understanding is yes. Uh-huh.

(Ex. 1, Blanton Dep. at p. 173, ll. 9-25).

In fact, Blanton even billed FRB, not Atlantic, for his time to attend this September 30, 2015 hearing. **(Ex. 2, Blanton Invoice to FRB for Court Hearing).** Blanton testified regarding the same:

Q: Appears to be dated October 16. And it's for $100. It's an invoice to Sweetbriar from Joe Blanton. Extended time in court hearing with bank; total $100.

A: Correct.

Q: Would you agree with me that the hearing that you attended on September 30th that you billed $100 for your attendance at that hearing?

A: That would have to be with Attorney Coit, I think – it would have to be with Attorney Coit Yarborough.

(Ex. 3, Blanton Dep. at p. 195, ll. 4-25; p. 196, ll. 13-25; and p. 197, ll. 1-2).

Blanton also testified that, at a minimum, he had a verbal agreement with FRB to continue managing the Sweetbriar property as he had been doing for them at the time the Timmons Lease was executed. Blanton testified as follows:

Q: All right. So you would agree with me that you had a contract with the bank whereby you would provide property managing services, including leasing vacant property and that you would be compensated by the bank for that.

Ms. Houghton: Object to form.

Q: Do you agree with that?

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Ms. Houghton: Object to form.

A: Yes. They – and we'd have to go bank and look back at a whole lot of records. I don't know if there was a written agreement. There was a verbal agreement for me to continue managing on behalf of First Reliance Bank.

(Ex. 3, Blanton Dep. at p. 195, ll. 4-25; p. 196, ll. 13-25; and p. 197, ll. 1-2).

Blanton's discovery responses similarly confirm that he was acting as agent for the Bank as of July 24, 2015. The scope of that agency relationship is a question of fact, to be determined by the jury. Blanton's answers to Plaintiff's Requests to Admit:

17. Admit that, subsequent to July 24, 2015, Blanton had either an oral, written or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted.

(Ex. 4, Blanton Responses to Plt.'s RTAs, pp. 13-14).

Blanton spoke with FRB and FRB's attorney, Coit Yarborough, about Timmons' long term Lease, both of whom indicated to him that yes Bank did want to lease the space, and Blanton knew of course, based on the testimony below, that it was FRB that would be leasing the space. Within approximately a week of the foreclosure papers being served on Blanton on July 23, 2015, Blanton, FRB Defendant Dale Porter and FRB Attorney Coit Yarborough had an in person meeting at Yarborough's office. Blanton testified in his deposition that he was told by Dale Porter at Bank to

"[***Please what you can and, you know, let's get the income coming until we decide to sell it or to continue to manage it.***'

(Plt.'s Memo, Ex. 17, Blanton Depo. at p. 188, lns. 2-24). Such testimony, credible evidence that the Bank was the Lessor, and authorized its agent Blanton to lease the space, is equally if not more compelling than the other contradictory statements of Blanton. Further, Blanton directly testified that he viewed First Reliance Bank as the lessor because Richard Cook told him Atlantic was out of business and leaving the property, and that Bank would be the lessor:

> A: . . . . I guess he called me or I called him and said, "Hey, you know, let me know what you're doing, when you're getting out of here, so I can talk with the bank [First Reliance Bank] and see if they subsequently want to lease – you know, to lease this space."

(Ex. 5, Blanton Dep. at p. 103, lines 5-10). Blanton did in fact talk with Bank, and they did in fact authorize the lease of the space. Bank's counsel admitted at the hearing on its Motion for Summary Judgment that Bank had the right to lease the space, and that such a lease would survive the foreclosure.[1] In fact, Blanton was adamant about that point in his deposition:

> Q: So we've got this lease that is signed between Mr. Timmons and you, as lessor, for what I would call a long term lease . . on August 20 of 2015. Would you agree with me that you would not have let [Timmons] sign that lease knowing that the property was in foreclosure proceedings unless you had also told the bank about the proposed lease?
>
> Ms. Houghton: Object to form.
>
> A: There is no way in this world – – and I'll give my [real estate] license up tomorrow, and Mike [Timmons] knows this. There's no way that I would've ever facilitated a lease with someone who's willing to spend their money, put their heart into it, and my heart into it, being a reputable broker has been here 41 years, and I would never, ever do that. And if I did, then just take my damn license away from me. I would not do that.

(Plt.'s Memo, Ex. 16, Blanton Dep. at p. 125 line 25 – p. 126 line 25).

Further, On August 17, 2015, Timmons (at Blanton's request) sent Blanton a proposal calling for a long-term lease and proposing payment amount and other terms. **(Plt.'s Memo, Ex.**

[1] Plaintiff is in the process of ordering the hearing transcript and would make it a part of the record.

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22, Timmons Proposal). Blanton made substantial handwritten notes on this paper and (covering "all his bases" because of his unfamiliarity with managing property in foreclosure) sent the proposal both to Atlantic and to FRB attorney Coit Yarborough, the *only* parties with ownership interests in Sweetbriar. **(Plt.'s Memo, Ex. 23, Blanton Depo. at p. 123, lns. 1-9; Ex. 24, Blanton notes with Timmons Proposal**). Blanton wrote "Ray Coit Yarborough 676-0580" on this document, and testified that he "obviously" spoke with FRB attorney Yarborough about Timmons' lease ***prior*** to it being signed on August 20, 2015 as indicated by his notes. **(Plt.'s Memo, Ex. 25, Blanton Dep. at p. 125, lns. 24-25 and p. 126, lns. 1-19; p. 178, line 23; p. 180 line 4-7; n.b. p. 181 line 3-9:** *"Q. Tell me what it means: the "Ray Coit Yarborough, the telephone number… A. It's all my handwriting. Obviously [I] spoke with Ray [Coit Yarborough]*").

Furthermore, Blanton again confirmed in his deposition that he forwarded Timmons' August 17, 2015 lease proposal to FRB for approval before executing it:

> Q: And so we will – it appears to me, based on my review of the documents, that you informed Atlantic and you also informed the bank of Mr. Timmons' proposal to lease the property. Do you recall that, sir?
>
> Ms. Houghton: Object to form.
>
> A: Well, sure. I would have passed that through to others. I couldn't approve it. Yes.

(Plt.'s Memo, Ex. 23, Blanton Depo. at p. 123, lns. 1-17).

This evidence, and the inferences to be drawn from it in a light most favorable to Plaintiff, taken together with the evidence that Atlantic was no longer even in business[2] at the time Timmons entered his lease, contradicts the Orders' findings that: (1) Blanton entered the lease on behalf of

[2] Within a week or so of July 24, 2015, and well prior to signing Timmons' lease as "Lessor", Blanton knew that Atlantic was not going to be able to cure its default on the property because Richard Cooke told him "we're out of business" or "we're gone" and with regard to the property Atlantic was "going to let it go." **(Plaintiff's Memo, Ex. 58, Blanton Depo. at p. 96, lns. 19-22; p. 97, ln. 25; p. 98, lns. 1-6).**

Atlantic; (2) that First Reliance was not a party to the lease; (3) that First Reliance had only sought to exercise its right to receive rental payments; and (4) that Blanton entered into the Lease on behalf of Atlantic Regional and that there is no evidence that FRB authorized or directed Blanton to enter into the Lease on its behalf. Moreover, even if Blanton *did* enter the lease on behalf of Atlantic, that is not dispositive as to whether or not First Reliance Bank was *also* a lessor. Neither Bank nor the Orders cite any authority that precludes two or more lessors from being a party to a lease.

3. Summary Judgment was granted prior to Plaintiff having a full and fair opportunity to complete discovery.

Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Id.*

Plaintiff contends that Atlantic was out of business at the time that the Timmons lease was executed and therefore, Atlantic could not have been the lessor. While there is testimony from Blanton to support this **(Plaintiff's Memo, Ex. 58, Blanton Depo. at p. 96, lns. 19-22; p. 97, ln. 25; p. 98, lns. 1-6) (Ex. 5, Blanton Dep. at p. 103, lines 5-10)**, on June 29, 2020, Plaintiff subpoenaed materials from FRB regarding Atlantic's file which may contain communications between Atlantic and FRB confirming that FRB was aware that Atlantic was no longer in business as well. **(Ex. 6, Subpoena to FRB)**. This would provide additional support for Plaintiff's argument that Atlantic could not have been the lessor and that Blanton executed the lease on behalf of FRB.

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CONCLUSION

The record contains substantially *more* than a "mere scintilla of evidence" that would allow a jury to find that Blanton entered into the Timmons Lease on behalf of First Reliance Bank as its agent and therefore, Plaintiff respectfully requests that the Court reconsider its Orders and deny summary judgment for FRB and Plasma. Even if we assume that the facts in this case are not in dispute, application of the law to the facts is disputed and this is a novel issue under South Carolina law and therefore, summary judgment for FRB and Plasma should still be reconsidered and denied.

July 6, 2020

Respectfully submitted,

/s/ Ben Le Clercq

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Counsel for Plaintiff

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MR. LE CLERCQ: Okay. Let me -- let's do this. I will read to you -- there is --
BY MR. LE CLERCQ:
Q. Have you got Exhibit 34 out, sir?
A. Yes, sir.
Q. All right. I would ask you to turn to Page 2 of that exhibit. And this, what I'll represent to you is that --
MR. OXNER: Hold on. I need a copy of it. I need to be able look at what y'all are talking about. If you've got it or sent it to me and got a Bates stamp number, I can find it on my Dropbox. And I'll be glad to do it that way, like I've been doing all day. But --
MR. LE CLERCQ: Hang on just a second.
MR. OXNER: But, again, that's why you make copies of exhibits for all attorneys.
MR. LE CLERCQ: Mr. Anderson, have you looked at it? Can you please pass it to Mr. Oxner?
MR. ANDERSON: I will want to finish reading it. I don't recall receiving this, but you say we have.
MR. LE CLERCQ: I'm going to e-mail it

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to you right now, Harry.
MR. OXNER: Okay.
MS. HOUGHTON: Will you put me on that also, please?
MR. LE CLERCQ: Yeah.
MR. ANDERSON: And you referenced that Mr. Blanton was there, but where are you getting that from?
MR. LE CLERCQ: There's an invoice that he billed -- first of all, he's already testified to it. And there's also --
MR. ANDERSON: Well, go on the record or continue.
MR. LE CLERCQ: He's testified that he was there. And he also billed for his time, which we'll show in just a second.
BY MR. LE CLERCQ:
Q. Okay. So what I would ask you to do is to take a look at the -- at Page 2 -- and I'll represent to you that this is -- as you see from the first page, which is a record of proceedings held September 30, 2015.
Now, as we've seen earlier, October 2, 2015 was a Friday, so this means that this was a Wednesday. And you previously testified that you

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recall being present in magistrate's court with Mr. Yarborough on this matter.
So I'd ask you to turn to Page 3, and Mr. Yarborough says -- who's, again, the bank's attorney -- "This is a motion to enforce rents. There's an assignment of leases, rents, and contracts filed downstairs in the clerk's office."
And he says, "This is a foreclosure action. There's a Verified Complaint that the defendant is in default on payments. And that defendant, as we've heard, is Atlantic.
"And as I read the statute, we can request that all rents be paid to us through that using that assignment of rents, but there are some other potential leases sort of up in the air, and something needs to be done to either consummate the leases or, you know, reject the leases.
"We would like to employ the Blanton Company to collect the leases and to manage the property, as they have been doing all along on behalf of the bank as well as the owner, pending this action, and we want the rents paid over to First Reliance Bank."
Sir, do you -- Mr. Blanton, do you recall being present in the magistrate's court on

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Wednesday, September 30, 2015, and hearing Mr. Coit Yarborough, the bank's attorney, say those words?
MR. ANDERSON: Object to form.
THE DEPONENT: I recall being there with Ray Coit. As to his exact words, I can't recall. But I do recall being there with him.
BY MR. LE CLERCQ:
Q. And you would agree with me that he is -- what he says is that they want to employ you, the bank wants to employ you as the property manager to basically confirm the situation which has existed on the ground, which is that you have been acting as the property manager.
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. Do you agree?
A. Yes, sir.
Q. Okay. And so did you understand from that that Mr. Yarborough was confirming that you were acting as the agent of the bank with regard to matters happening at the Sweetbriar?
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes. My understanding is yes. Uh-huh.

525

Invoice

To: Sweetbriar

From: Joe Blanton

extended time in court hearing with bank

Total $100.00

PAID

OCT 16 2015



FRB/CCS 000128

0985

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A. Yes. Uh-huh.
Q. Okay. What I see that saying, the same thing that Mr. Yarborough said to the court, which is Mr. Blanton has been the property manager, an agent on the ground, and it appears that the assignment of rents document also provides for the bank to engage you as an agent to do their bidding on the property.
MS. HOUGHTON: Object to form.
MR. ANDERSON: Object to form.
BY MR. LE CLERCQ:
Q. Do you agree?
A. Yes. And we could go around this forever in legalese, but the bottom line is they told me to collect the rents for them. Okay?
Q. Okay.
A. To make it for us simpletons, yes.
Q. All right. Let me hand you Exhibit 15.
(EXHIBIT 15, FRB/CCS 000128, $100 Invoice From Joe Blanton To Sweetbriar, was marked for identification.)
BY MR. LE CLERCQ:
Q. Do you recognize that document, sir?
A. Just a minute, sir. I haven't looked at it

yet. This is Exhibit 15?
Q. Yes, sir.
A. Okay.
Q. Appears to be dated October 16. And it's for $100. It's an invoice to Sweetbriar from Joe Blanton. Extended time in court hearing with bank; total $100.
A. Correct.
Q. Would you agree with me that the hearing that you attended on September 30th that you billed $100 for your attendance at that hearing?
A. That would have to be with Attorney Coit, I think -- it would have to be with Attorney Coit Yarborough.
Q. Okay. If you would please sir, if you'd look back at Exhibit 2, I would like you to flip kind of to the end of that. I want you to look, please, sir, at Page 13.
A. Okay.
Q. And that this talks about your relationship with the bank: "Admit that subsequent to July 24, 2015, Blanton had either an oral, written, or implied contract with First Reliance Bank under which Blanton had the right to be compensated for his services for work done collecting the rents

from tenants of Sweetbriar; and, 2, acting as property manager with regard to Sweetbriar, including managing the property Timmons leased."
And the response is: "Admitted."
And do you -- you agree that you had a contract with the bank to manage the property?
MR. ANDERSON: Which one are you looking at?
MR. LE CLERCQ: I'm looking at RTA17, which is on Page 13 of Exhibit 2.
MR. ANDERSON: Thank you.
BY MR. LE CLERCQ:
Q. All right. So you would agree with me that you had a contract with the bank whereby you would provide property managing services, including leasing vacant property and that you would be compensated by the bank for that.
MS. HOUGHTON: Object to form.
BY MR. LE CLERCQ:
Q. Do you agree with that?
MS. HOUGHTON: Object to form.
THE DEPONENT: Yes. They -- and we'd have to go back and look back at a whole lot of records. I don't know if there was a written agreement. There was a verbal

agreement for me to continue managing on behalf of First Reliance Bank.
BY MR. LE CLERCQ:
Q. Okay.
A. And to forward any rents on to them, less our commission.
Q. You were, in fact, compensated for the work that you did for the bank on property management services subsequent to July 24, 2015, correct?
A. Yes. I mean, whatever the documents say, yes.
Q. Okay. But that is your recollection, that rents came in for occupancy subsequent to July 24, you took your percentage, and then you forwarded the rest to the bank?
A. Yes. That's all here in the documentation that we've already gone over earlier this morning.
Q. Okay.
MR. ANDERSON: Can we take five minutes?
MR. LE CLERCQ: Sure.
(A recess transpired from 3:13 p.m. through 3:19 p.m.)
BY MR. LE CLERCQ:
Q. Mr. Blanton, do you agree with me that if

ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Denied, it was not until the foreclosure took place and the court directed that rental proceeds were to go to the bank that Blanton knew he would not receive compensation from Atlantic Regional.

Interrogatory No. 16:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: See above explanation.

Request for Production No. 16:

Produce any and all communications and other documents indicating that Blanton was compensated for such work by Atlantic Regional, LLC, its members, officers or employees. If there are no such documents, the response must so state.

RESPONSE: Blanton received a portion of rents collected and those fees are shown in the documents previously provided.

17. Admit that, subsequent to July 24, 2015, Blanton had either an oral, written or implied contract with Frist Reliance Bank under which Blanton had the right to be compensated for his services for:

i) work done collecting rents from tenants of Sweetbriar, including Timmons, and sending the same to First Reliance Bank, and

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ii) acting as property manager with regard to Sweetbriar, including managing the property Timmons leased.

RESPONSE: Admitted.

Interrogatory No. 17:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

ANSWER: see above.

Request for Production No. 17:

Produce any and all communications and other documents indicating Blanton's understanding of the nature of his relationship with Bank subsequent to July 24, 2015, or documentation of such relationship.

RESPONSE: Please see documents previously produced.

18. Admit that the $2,000 rent payment described in Timmons' Check # 2129, attached to the Firsts Amended Complaint as Exhibit Z1 and also attached hereto, cleared and funds were made available to Blanton's bank account on or after February 4, 2016.

RESPONSE: The described check was not attached to the admissions therefore this Defendant can neither admit or deny. Blanton deposited all checks received in relation to the lease of said property.

Interrogatory No. 18:

If your response to the foregoing request for admission is anything other than an unqualified "admission," please state with specificity the facts forming the basis for such denial and identify each witness and documents upon which you will rely to support your denial.

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that the property was in foreclosure. That First Reliance was foreclosing on Atlantic.

I've understood you to say you recollect having one or more telephone conversations with Richard Cook and he conveyed to you the following basic points: That, Number 1, Atlantic's business was in trouble.

Do you agree with that?

A. Yes.

Q. Number 2, I'll use your words. The gist of what he communicated to you was, "We're out of here."

Do you agree with that?

A. Yes.

Q. You interpreted that to mean that Atlantic was not going to try to bring the mortgage current, but rather, the title to Sweetbriar would be lost in the foreclosure to the bank.

A. That it would be conveyed to the bank in lieu of payments not being made.

Q. Approximately how long after -- again, I won't hold you to exactly, but give me a range of time that you think those conversations took place. And was it on July 24th itself? Was it a week later? Was it a month? You know, when do you

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think it was?

A. There's no way I can answer that except to guess. You know, it certainly wasn't on the day that I was presented with the fact that there was a foreclosure action. I guess he called me or I called him and said, "Hey, you know, let me know what you're doing, when you're getting out of here, so I can talk with the bank and see if they subsequently want to lease -- you know, to lease this space."

MR. LE CLERCQ: Madam Court Reporter, can you please read back the last statement by the witness?

(The Court Reporter read back the requested testimony.)

BY MR. LE CLERCQ:

Q. Just to make sure I'm clear on that, did you hear what the court reporter just read back?

A. Yeah.

Q. That was you calling them and you saying to them, being Richard Cook, "Hey, let me know what you are going to do so I can find out from the bank whether they want to lease the property."

A. Yes.

Q. Okay. And what was his response, if you

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recall?

A. "We're moving out as soon as possible, moving whatever furniture."

They'd already been moving some prior to, so I knew it was coming down, I guess, so to speak, coming down.

But, again, I wasn't involved in their affairs with the bank. You know, I -- you know, which is -- waiting to be told what to do.

Q. Okay. Do you think that those conversations with Richard Cook took place within the first week of the foreclosure occurring, in other words, prior to July 31, 2015?

A. Ben, I'm not sure.

MR. ANDERSON: Object to form.

BY MR. LE CLERCQ:

Q. Do you know whether it would have been within the first two weeks after that? Do you have any recollection as to when it would have been?

A. I can only tell you that I assume so. I don't know.

Q. Okay. So you assume it would have been within the first couple of weeks of the foreclosure being served upon --

A. I just got through saying --

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MR. ANDERSON: Object to form.

THE DEPONENT: -- that I don't -- I don't know. I don't recall.

BY MR. LE CLERCQ:

Q. Okay.

A. You can ask it any way you want to ask it, and I'm going to still answer it the same way.

Q. I understand and I appreciate your candor, Mr. Blanton.

Do you recall, did you have this conversation on your personal cellphone?

A. A lot of my business is done on my personal cellphone. A lot of my business is done on my business phone.

Q. Can you please give me those two numbers?

A. You've got them, but I'll be glad to give them to you again.

My cellphone is 843-230-7568. My business number is 843-662-2557.

Q. Got it.

And is the business phone a land line at your office?

A. Yes.

Q. All right. And who is the phone carrier for that?

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF FLORENCE

JOHN MICHAEL TIMMONS, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

FIRST RELIANCE BANK, INC., ET AL, Defendants

Case Number: 2018-CP-21-227

Pending in FLORENCE County

TO: First Reliance Bank, Inc., Dale Porter, FR Saunders

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attachment A (list of requested documents)

PLACE	DATE AND TIME
Le Clercq Law Firm, P.C. 708 S. Shelmore Blvd., Suite 202 Mount Pleasant, SC 29464	January 6, 2020, 3:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
	July 10, 2020

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

December 20, 2019 s/Ben Le Clercq

Attorney/Issuing Officer's Signature — Date — Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

Attorney for Plaintiff, 708 South Shelmore Blvd., Suite 202, Mount Pleasant, SC 29464; 843-722-3523

Clerk of Court/Issuing Officer's Signature — Date — Print Name

Pro Se Litigant's Name, Address and Telephone Number :

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(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐ NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

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(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

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ATTACHMENT A

INSTRUCTIONS AND DEFINITIONS

a) The term "person(s)" includes a natural person, firm, association, partnership, business, trust, corporation, or public entity.

b) The word "you" or "your" means **, singularly or jointly and/or all past or present officers, directors, employees, agents, representatives, general partners, attorneys, or other persons acting or purporting to act for, on behalf of, or with **. "You" or "your" also means any affiliate, parent, or subsidiary of **.

c) The term "documents" as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control, regardless of where located, and regardless of whether printed, or reproduced by any process, or written and/or produced by hand, or stored in any form of mechanical or electronic information retrieval system, and whether or not claimed to be privileged or otherwise excludable from discovery, and including, but not limited to, contracts, agreements, records, tape recordings, correspondence, e-mails, memoranda, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings, including directors, shareholders, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcriptions of oral statements, court papers, or any other tangible thing.

d) The term "relating to" as used herein means referred or referring to, alluded or alluding to, related or relating to, tending to support or refute the existence of, concerned or concerning with, connected with, regarding, describing, or reflecting.

e) Documents produced for inspection must be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in this request, or organized per the request below.

f) For each document you claim for which production is requested are privileged and therefore beyond the scope of discovery for each document:

i. Describe the nature of the privilege.

ii. identify the document, by specifying the date of preparation, the nature of its contents, the name of its author, the and business address of its custodian and the name and business address of each person having any knowledge of the factual assortation s reflected in such document; and

g) If any document or available electronic data for which production is requested has been lost or destroyed, for each item, state the circumstances relating to the loss or destruction of such item, the approximate date of loss or destruction and a reasonably complete description of the content of said items.

DOCUMENTS REQUESTED

1. Atlantic Regional LLC's ("Atlantic") payment of a note and mortgage to First Reliance Bank, Inc., including any defaults, extensions, penalties, warnings, etc.

2. Prior to July 1, 2015, any other communications between Atlantic with First Reliance Bank, Inc., or any of its employees or officers relating to Atlantic Regional LLC's ("Atlantic"), Carolina Medcare, Inc., Richard Cooke, or any other member of Atlantic Regional LLC's ("Atlantic"), including Jay Nettles and/or Russell Cobb, relating to the above referenced Note, Mortgage, or the Assignment of Rents.

3. Atlantic Regional LLC's ("Atlantic") record of payments to First Reliance Bank, Inc., from 2004 to present.

4. Any communications or documents indicating that Bank was aware of the financial difficulties and/or criminal investigations of Richard Cooke, any other Atlantic principal, Ryan Finklea, and/or Carolina Medcare, Inc., including when Carolina Medcare stopped paying lease obligations to Atlantic Regional LLC's ("Atlantic"), and any filing of bankruptcy or discussion of any proposed filing.

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5. Execution by Atlantic Regional LLC's ("Atlantic"), of Assignment of Rents in favor of First Reliance Bank, Inc., and any related communications

6. Any documents and communications relating to the arrest of Richard Cooke, by any federal or state authorities, and penalties, restitution or payments made by Richard Cooke to any federal or state authorities, and any communication of same to Joseph Blanton, First Reliance Bank, Inc., Dale Porter, Jess Nance, and/or Allen Griffen.

7. Any documents or communications relating to debarment of Richard Cooke by Medicare or Medicaid, and any communication of same to Joseph Blanton, First Reliance Bank, Inc., Dale Porter, Jess Nance, and/or Allen Griffen.

8. Any financial information documents or disclosures made (e.g., Profit and Loss, Balance Sheets, Income Statement etc.) between 2006 and 2015 to First Reliance Bank, Inc., or any of its employees or officers or agents.

9. Any correspondence with Joseph Blanton or Atlantic., mentioning Carolina Medcare, Inc., and its financial position between 2009 and July 1, 2015.

10. Any decision by Atlantic Regional LLC's ("Atlantic"), or Bank, that Atlantic would not cure a default of its note to First Reliance Bank, Inc., but rather as to the Sweetbriar property to "let it go" to First Reliance Bank, Inc., the Bank in foreclosure.

11. Any and all communications by Atlantic or its members to First Reliance Bank, Inc., Dale Porter, Jess Nance, Allen Griffen, Rick Saunders, or any other First Reliance Bank, Inc., employee or officer as to financial difficulties of Atlantic Regional LLC's ("Atlantic"), and/or Carolina Medcare, Inc., including any intent of Atlantic Regional LLC's ("Atlantic"), not to cure any default.

12. Any and all requests for payoff quotes on the note, prior to July 1, 2015, from Atlantic Regional LLC's ("Atlantic"), to First Reliance Bank, Inc.

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13. Any document indicating Bank was aware of arrest, trial, and/or sentencing of Richard Cooke.

14. Any bank documents indicaing Any efforts by Atlantic Regional LLC's ("Atlantic"), Richard Cooke, or anyone else to sell the Sweetbriar prior to July 20, 2015.

15. Contents of "Atlantic File" at Bank prior to July 1, 2015.

FORMAT OF PRODUCTION

17. Produce all requested things via an electronic cloud storage service such as Dropbox with a link thereto.

18. We request that you produce documents and information segregated and organized pursuant to the request. For example:

> Place all communications in a folder entitled, "Correspondence," and subdivide communications into subfolders organized by recipient of your communications, e.g., subfolder, "First Reliance Bank, Inc.," for your communications with First Reliance Bank, Inc.

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STATE OF SOUTH CAROLINA COUNTY OF FLORENCE John Michael Timmons, Jr. d/b/a Tavern on the Loop, Plaintiff, vs. First Reliance Bank, Inc.; The Blanton Company, Inc.; JBJR Enterprises, Inc. d/b/a The Blanton Company, Inc.; WW Plasma II, LLC; Dale Porter; F.R. Saunders, Jr.; Hunter Williams; and Joseph B. Blanton, individually, Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-21-00227 **DEFENDANTS FIRST RELIANCE BANK, INC., DALE PORTER AND F.R. SAUNDERS, JR.'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER ORDERS GRANTING FIRST RELIANCE DEFENDANTS, WW PLASMA, LLC AND HUNTER WILLIAMS' MOTIONS FOR SUMMARY JUDGMENT AS TO ALL CLAIMS ASSERTED BY PLAINTIFF AND FOR EXPEDITED CONSIDERATION**

COME NOW, Defendants First Reliance Bank, Inc., Dale Porter, and F.R. Saunders, Jr. (hereinafter "FRB" and collectively "First Reliance Defendants"), and file this Response in Opposition to Plaintiff's Motion to Reconsider Orders Granting First Reliance Defendants, WW Plasma, II, LLC and Hunter Williams' Motions for Summary Judgment as to all Claims Asserted by Plaintiff and for Expedited Consideration.

On June 23, 2020, following hearings on May 20, 2020 and June 10, 2020, this Court entered an order denying Plaintiff's Motion for Summary Judgment against the First Reliance Defendants and granting the First Reliance Defendants' Motion for Summary Judgment as to all claims asserted by Plaintiff. On that date, the Court also granted WW Plasma II, LLC and Hunter Williams' Motion for Summary Judgment against Plaintiff. On July 6, 2020, Plaintiff filed a Motion for Reconsideration pursuant to Rule 59(e), SCRCP.

In support of Plaintiff's Motion for Reconsideration, Plaintiff argues the Court erroneously rejected Plaintiff's legal theory that the loan documents executed in favor of First Reliance Bank by its borrower Atlantic Regional, LLC formed the basis of a landlord-tenant relationship between

Plaintiff and First Reliance Bank as a matter of law. Plaintiff also argues the Court erroneously concluded that the lease Plaintiff executed with the Blanton Company acting on behalf of Atlantic Regional, LLC did not survive the foreclosure of the Subject shopping center property and that First Reliance Bank was not a party to the lease. Plaintiff points to the same deposition testimony previously highlighted by Plaintiff in Plaintiff's summary judgment briefs and during oral argument, and inaccurately states First Reliance Defendants' Counsel's arguments at the summary judgment hearings. Plaintiff has not presented any basis for reconsideration under Rule 59(e) and simply makes the same arguments the Court has already considered and properly ruled upon. "Motions under Rule 59 are limited in scope and are not to be used to 'rehash' the same arguments and facts previously presented… Furthermore, a motion to reconsider cannot appropriately be granted where the moving party simply seeks to have the Court rethink what the Court has already thought through." *Dockins v. Benchmark Commc'ns,* 180 F.R.D. 294, 295 (D.S.C. 1998), *aff'd,* 176 F.3d 745 (4th Cir. 1999) (citations and quotations omitted). Pursuant to the Summary Judgment Order, the Court has properly made determinations of law and issued rulings on the numerous issues of law that exist in this case, and properly applied the Rule 56 summary judgment standard in granting the First Reliance Defendants' Motion.

Plaintiff also argues that summary judgment was granted prematurely, and Plaintiff did not have a "full and fair opportunity to complete discovery." Plaintiff asserts that he did not have a full opportunity to conduct discovery because **6 days after** the Court granted the First Reliance Defendants' Motion for Summary Judgment, Plaintiff served a subpoena on First Reliance Bank for documents Plaintiff believes are relevant to the summary judgment issues. Prior to entry of the Court's Order on June 23, 2020, Plaintiff never asserted that summary judgment was premature or that Plaintiff could not defend the First Reliance Defendants' Motion for Summary Judgment due

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to the need for additional evidence and discovery. *See* Rule 56(f), SCRCP (setting out procedure for asserting need for additional evidence to oppose summary judgment and stating "[s]hould it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.")

Importantly, a party cannot use a Rule 59 Motion to advance an issue that could have been raised prior to the judgment but was not. *See Poch v. Bayshore Concrete Prod./S.C., Inc.,* 386 S.C. 13, 31, 686 S.E.2d 689, 699 (Ct. App. 2009), aff'd as modified, 405 S.C. 359, 747 S.E.2d 757 (2013); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia,* 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014). Plaintiff never asserted he could not defend the First Reliance Defendants' Motion for lack of additional discovery and did not request a continuance of the First Reliance Defendants' Motion, despite the extensive briefing in this case and the two (2) lengthy hearings held on Plaintiff and the First Reliance Defendants' Cross-Motions for Summary Judgment. Indeed, Plaintiff filed his own Motion for Summary Judgment against the First Reliance Defendants approximately four (4) months before the First Reliance Defendants filed their Motion, arguing the issues were ripe for determination as a matter of law and based upon the existing evidence of record. Plaintiff cannot now contend, after the Court's determination of the Cross-Motions and the issues presented by the Parties, that he required additional evidence to withstand the First Reliance Defendants' Motion for Summary Judgment. *See e.g. Clarendon Cty. ex rel. Clarendon Cty. Assessor v. TYKAT, Inc*., 394 S.C. 21, 26, 714 S.E.2d 305, 308 (2011) ("Tykat has argued in the alternative that summary judgment was premature and that additional discovery was needed. However, Tykat filed a cross-motion for summary judgment wherein it asserted there were

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no genuine issues of material fact in this case. Accordingly, Tykat cannot now be heard to assert that summary judgment was premature."); *Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 131, 796 S.E.2d 165, 168 (Ct. App. 2016) ("[C]ross motions for summary judgments do authorize the court to assume that there is no evidence which needs to be considered other than that which has been filed by the parties."); *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 319, 731 S.E.2d 869, 872 (2012) ("Moreover, the parties filed cross motions for summary judgment, thereby indicating the parties' belief that further development of the facts was unnecessary."). Finally, Plaintiff has not articulated a logical basis for how the evidence Plaintiff now seeks through a post-Judgment Subpoena would or could change the Summary Judgment result in this case.

CONCLUSION

For the foregoing reasons, the First Reliance Defendants respectfully request the Court deny Plaintiff's Motion for Reconsideration of its June 23, 2020 Order denying Plaintiff's Motion for Summary Judgment and Granting the First Reliance Defendants' Motion for Summary Judgment as to all claims asserted by Plaintiff.

This 9th day of July, 2020.

Respectfully submitted,

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